

Issue 9
Proposed Regulatory Language
Team II—School-based Loan Issues

Origin: HEOA section 488(g)

Issue: Entrance Counseling

Statutory cites: HEA Section 485(l)

Regulatory cites: §§682.604(f) and 685.304(a)

DCL GEN-08-12 cite: Page 102

Summary of issue: The entrance counseling that institutions is required to provide to first time borrowers of FFEL Program or Direct Loan Program loans at or prior to disbursement is modified under new subsection (l) of section 485 of the HEA to ensure that the borrower receives detailed information on the terms and conditions of the loan and the borrower's responsibilities with respect to the loan.

Institutions are encouraged to use interactive programs to test the borrower's understanding of the terms and conditions of their loans. The entrance counseling may be conducted during an in-person session, or provided in a separate notice to a borrower who acknowledges receipt and understanding by signing and returning an acknowledgement

to the institution or by providing an online borrower acknowledgement of receipt.

The entrance counseling must include the following information:

- To the extent practicable, what the effect of accepting the loan to be disbursed will have on the eligibility of the borrower for other forms of student aid;
- An explanation of the use of the master promissory note;
- Information on how interest accrues and is capitalized during periods when the interest is not paid by the borrower or the Secretary;
- For Unsubsidized Stafford Loans or PLUS Loans made under the FFEL or Direct Loan programs, the option of the borrower to pay the interest while in school;
- The definition of half-time enrollment at the institution, during regular terms and summer school, and the consequences of not maintaining half-time enrollment;
- An explanation of the importance of contacting the appropriate offices at the institution if the borrower withdraws prior to completing the program of study so the institution can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;
- Examples of monthly repayment amounts based on a range of level of indebtedness of borrowers of loans under section 428 or 428H of the HEA and, as

appropriate, graduate borrowers of loans under section 428, 428B or 428H of the HEA, or the average cumulative indebtedness of other borrowers in the same programs as the borrower at the same institution;

- The obligation of the borrower to repay the full amount of the loan, regardless of whether the borrower completes the program in which the borrower is enrolled within the regular time for completion;
- The likely consequences of default on the loan, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;
- Information on the NSLDS and how the borrower may access their records; and
- The name and contact information of the individual a borrower can contact with questions regarding the borrower's rights and responsibilities for the terms and conditions of the loan.

Regulatory language:

FFEL

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(f) *Initial counseling.* (1) A school must ensure that initial counseling is conducted with each Stafford loan borrower prior to its release of the first disbursement,

unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan. ~~The initial counseling must~~

~~(i) Explain the use of a Master Promissory Note;~~

~~(ii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming;~~

~~(iii) Describe the likely consequences of default, including adverse credit reports, Federal offset, and litigation;~~

~~(iv) In the case of a student borrower (other than a borrower of a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion of the program, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school; and~~

~~(v) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Stafford loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained at the same school or in the same program of study at the same school.~~

(2) A school must ensure that initial counseling is conducted with each graduate or professional student PLUS loan borrower prior to its release of the first disbursement, unless the student has received a prior Federal PLUS loan or Direct PLUS loan. ~~The initial counseling must~~

~~(i) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school;~~

~~(ii) For a graduate or professional student who has received a prior Federal Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in §682.603(d)(1)(i) through §682.603(d)(1)(iii); and~~

~~(iii) For a graduate or professional student who has not received a prior Federal Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in paragraph (f)(1)(i) through (f)(1)(iv) of this section.~~

(3) Initial counseling **for Stafford and PLUS Loan borrowers** must **provide the borrower with comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower--**

(i) During an entrance counseling session ~~be~~ conducted either in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school;
or

(iii) , by audiovisual presentation, or Online, by interactive electronic means, with the borrower acknowledging receipt of the information. ~~If initial counseling is conducted through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.~~

~~(64)~~ If initial counseling is conducted through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling, including completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

(45) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, prior to releasing the proceeds of a loan, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials.

(~~5~~6) Initial counseling for Stafford Loan borrowers must--

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, ~~Federal offset,~~ **delinquent debt collection procedures under Federal law,** and litigation;

(iv) In the case of a student borrower (other than a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, **does not complete the program within the regular time for program completion,** is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school; ~~and~~

(v) Inform the student borrower of sample monthly repayment amounts based on--

(A) A --a range of student levels of indebtedness ~~or on~~ the ~~average indebtedness~~ of Stafford loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained; **or**

(B) The average cumulative indebtedness of other borrowers in the same program at the same school as the borrower ~~at the same school or in the same program of study at the same school.~~

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on an unsubsidized Stafford Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records;

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

(7) Initial counseling for graduate or professional student PLUS Loan borrowers must--

~~(i)~~ (i) ~~Inform~~ the student borrower of sample monthly repayment amounts based on--

(A) A ~~a~~ range of student levels of indebtedness ~~or on~~ the ~~average indebtedness of~~ graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained: or, ~~at the same school or in the same program of study at the same school;~~

(B) The average cumulative indebtedness of other borrowers in the same program at the same school as the borrower.

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school;

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior Federal Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in §682.603(d)(1)(i) through §682.603(d)(1)(iii); and

~~(iii)~~ iv) For a graduate or professional student PLUS Loan borrower who has not received a prior Federal Stafford, or

Direct subsidized or unsubsidized loan, provide the information specified in paragraph (f) (~~61~~) (i) through (f) (~~16~~) (~~iv~~ xii) of this section.

(~~87~~) A school must maintain documentation substantiating the school's compliance with this section for each student borrower.

Direct Loan

§ 685.304 Counseling borrowers.

(a) *Initial counseling.* (1) Except as provided in paragraph (a) (~~65~~) of this section, a school must ensure that initial counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) Except as provided in paragraph (a) (~~56~~) of this section, a school must ensure that initial counseling is conducted with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior Direct PLUS Loan or Federal PLUS Loan. ~~The initial counseling must~~

~~(i) Inform the student borrower of sample monthly repayment amounts based on a range of student levels or indebtedness or on the average indebtedness of graduate or professional~~

~~student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school;~~

~~(ii) For a graduate or professional student who has received a prior Federal Stafford, or Direct Subsidized or Unsubsidized Loan provide the information specified in §685.301(a)(3)(i)(A) through §685.301(a)(3)(i)(C); and~~

~~(iii) For a graduate or professional student who has not received a prior Federal Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(4)(i) through (a)(4)(iii) and paragraph (a)(4)(v) of this section.~~

(3) Initial counseling for Direct Subsidized Loan, Direct Unsubsidized Loan, and Direct PLUS Loan borrowers must provide the borrower with comprehensive information on the terms and conditions of the loan and on the responsibilities of the borrower with respect to the loan. This information may be provided to the borrower--

(i) During an entrance counseling session, conducted in person;

(ii) On a separate written form provided to the borrower that the borrower signs and returns to the school;

(iii) Online, by interactive electronic means, with the borrower acknowledging receipt of the information;

(4) If initial counseling is conducted through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling, including completion of any interactive program that tests the borrower's understanding of the terms and conditions of the borrower's loans.

(5) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

~~(i) Inform the student borrower of sample monthly repayment amounts based on a range of student levels or indebtedness or on the average indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school;~~

~~(ii) For a graduate or professional student who has received a prior Federal Stafford, or Direct Subsidized or Unsubsidized Loan provide the information specified in §685.301(a)(3)(i)(A) through §685.301(a)(3)(i)(C); and~~

~~(iii) For a graduate or professional student who has not received a prior Federal Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(4)(i) through (a)(4)(iii) and paragraph (a)(4)(v) of this section.~~

~~(3) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.~~

~~(46) Initial counseling for Direct Subsidized Loan and Direct Unsubsidized Loan borrowers must--~~

~~(i) Explain the use of a Master Promissory Note (MPN);~~

~~(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;~~

(iii) Describe the likely consequences of default, including adverse credit reports, ~~garnishment of wages,~~ **delinquent debt collection procedures under** Federal ~~law~~~~offset~~, and litigation;

(iv) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, does not complete the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school;

(iv) Inform the student borrower of sample monthly repayment amounts based on—

(A) A a range of student levels of indebtedness ~~or on the average indebtedness of~~ Direct Subsidized Loan and Direct Unsubsidized Loan borrowers, or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the borrower has obtained; **or**

(B) The average cumulative indebtedness of other borrowers in the same program at the same school **as the borrower.** ~~or in the same program of study at the same school; and~~

~~A(v) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied~~

~~with or does not receive the educational or other services that the student borrower purchased from the school.~~

(vi) To the extent practicable, explain the effect of accepting the loan to be disbursed on the eligibility of the borrower for other forms of student financial assistance;

(vii) Provide information on how interest accrues and is capitalized during periods when the interest is not paid by either the borrower or the Secretary;

(viii) Inform the borrower of the option to pay the interest on a Direct Unsubsidized Loan while the borrower is in school;

(ix) Explain the definition of half-time enrollment at the school, during regular terms and summer school, if applicable, and the consequences of not maintaining half-time enrollment;

(x) Explain the importance of contacting the appropriate offices at the school if the borrower withdraws prior to completing the borrower's program of study so that the school can provide exit counseling, including information regarding the borrower's repayment options and loan consolidation;

(xi) Provide information on the National Student Loan Data System and how the borrower can access the borrower's records;

(xii) Provide the name of and contact information for the individual the borrower may contact if the borrower has any questions about the borrower's rights and responsibilities or the terms and conditions of the loan.

(5) Initial counseling for graduate or professional student Direct PLUS Loan borrowers must--

(i) Inform the student borrower of sample monthly repayment amounts based on--

(A) A range of student levels or indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained; or

(B) The average cumulative indebtedness of other borrowers in the same program at the same school.

(ii) Inform the borrower of the option to pay interest on a PLUS Loan while the borrower is in school

(iii) For a graduate or professional student PLUS Loan borrower who has received a prior Federal Stafford, or Direct Subsidized or Unsubsidized Loan provide the information specified in §685.301(a) (3) (i) (A) through §685.301(a) (3) (i) (C); and

(iv) For a graduate or professional student PLUS Loan borrower who has not received a prior Federal Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the

information specified in paragraph (a) (6) (i) through paragraph (a) (6) (xii) of this section.

(~~6~~5) A school may adopt an alternative approach for initial counseling as part of the school's quality assurance plan described in §685.300(b) (9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (a) (1)-(4) of this section unless the Secretary determines that the alternative approach is not adequate for the school. The alternative approach must—

(i) Ensure that each student borrower subject to initial counseling under paragraph (a) (1) or (a) (2) of this section is provided written counseling materials that contain the information described in paragraph (a) (4) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school's alternative approach. These performance measures must include objective outcomes, such as levels of borrowing, default rates, and withdrawal rates.

~~(6) If initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.~~

(7) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.