

Draft Borrower Defense to Repayment Language
2021 Negotiated Rulemaking
Nov. 3, 2021

[Highlighted text has changed since October 25, 2021 version]

“**Aggressive Recruitment**” means a post-secondary institution or their agents or contractors exerting unreasonable pressure or instituting policies that have the effect of admissions staff exerting unreasonable pressure upon a consumer to enroll in an institution. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (a) Exploiting a consumer’s fears, anxieties, insecurities, or any specific misfortune or circumstance of such gravity as to impair the consumer’s judgment, to influence the consumer’s decision with regard to the institution;
- (b) Interfering with the ability of a consumer to understand a term or condition of enrollment or a financial product or service related to enrollment;
- (c) Taking unreasonable advantage of someone’s lack of understanding of higher education and financial aid, by reason of socio-economic background, lack of familial experience in higher education, mental or physical impairment or other reason;
- (d) Taking unreasonable advantage of someone who reasonably relies on the recruiting individual or entity to act in their interests;
 - a. Reasonable reliance shall be presumed if the recruiting individual uses a title that implies they are acting in the best interest of the student including but not limited to “admissions representative,” “guidance counselor,” or “academic advisor”;
- (e) Unsolicited contact with a prospective student that has previously requested not to be contacted;
- (f) Initiating communication with a prospective student, prior to enrollment, via telephone (either voice or data technology), in person, via text messaging, or by recorded audio message, in excess of two such communications in each seven-day period to either the prospective student’s residence, business or work telephone, cellular telephone, or other telephone number provided by the student;
- (g) The use of threatening or abusive language or behavior;
- (h) Exerting unreasonable or unsubstantiated time pressures upon a consumer, including the failure to fully explain the school’s use of rolling admissions and open enrollment, if applicable;

- (i) Informing a prospective student of the non-institutional rank, position, or other designation of authority of anyone performing admissions or recruiting services on behalf of the institution;
- (j) Comparing the accreditation or ownership status of the institution to that of any other institution;
- (k) Conditioning the continued employment of admissions staff, expressly or through implication, in any way on the number of students that they enroll;
- (l) The payment of a percentage of an institution's revenue to a third-party performing admissions services for the institution;
- (m) Enrolling a student on the same day that the student first contacts or is first contacted by the institution (not including any contact by a third-party lead generator);
- (n) The use of lead generators where it is not clear the prospective student is providing their information to the school that obtains the lead or where the lead generator misrepresents the purpose of obtaining the prospective student's information, including representations that the information will be used to obtain employment or government benefits or that the lead generator is a potential employer or government agency; and
- (o) Enrolling a student pursuant to a teachout agreement with a school with which the institution has a business or financial relationship or for which the institution receives, directly or indirectly, an inducement.