

**Suggested Regulatory Language from Public Citizen, Inc.**  
**Regarding Section 685.300**

Our suggested regulatory language is below. Text inside of bolded brackets should only be included if the Department declines to cover all students at Direct-Loan-participating schools or all of those students' claims, as applicable. Other comments in the margin explain certain changes that have been made in this version or that should be made by the Department under other conditions.

\* \* \* \* \*

(b) \* \* \*

(11) Comply with the provisions of paragraphs (d) through (k) regarding student claims and disputes.

\* \* \* \* \*

(d) Claims in an internal dispute process. The school will not enter into or seek to enforce any agreement that requires a student to pursue a complaint **[[based on a claim related to the school's acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the educational services or programs provided by the school, including through marketing and recruitment,]]** through an internal institutional process before the student presents the complaint to an accrediting agency, government agency, or court.

(e) Aggregate litigation bans. (1) The school shall not enter into or seek to rely in any way on any pre-dispute agreement with a student, with respect to any aspect of a class, mass, consolidated, joined, or representative action **[[that is related to a claim concerning the school's acts or omissions related to the making of a Direct Loan or Parent PLUS Loan or the educational services or programs provided by the school]],** including through marketing and recruitment.

**(2) Reliance on any pre-dispute agreement, with a student, with respect to any aspect of a class, mass, consolidated, joined, or representative action includes, but is not limited to, any of the following:**

**Comment [A1]:** Subsections (v) and (vi) are no longer needed if the Department bars all pre-dispute arbitration agreements, as we urge, and have thus been deleted here.

(i) Seeking dismissal, deferral, or stay of any aspect of a class, mass, consolidated, joined, or representative action;

(ii) Seeking to exclude a person or persons from an action in a class, mass, consolidated, joined, or representative action;

(iii) Objecting to or seeking a protective order intended to avoid responding to discovery in a class, mass, consolidated, joined, or representative action; and

(iv) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class, mass, consolidated, joined, or representative action.

**(3) Required provisions and notices.** (i) The school must include the following provision in any agreements with a student [[recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom a PLUS loan is or was obtained,]] that include any pre-dispute agreement addressing class, mass, consolidated, joined, or representative actions and that are entered into after the effective date of this regulation:

**Comment [A2]:** Paragraph (e)(3)(i) should be omitted if the Department covers all claims for all students at a Direct-Loan-participating school, as we recommend.

“We agree that neither we nor anyone else will use this agreement to stop you from being part of a class, mass, consolidated, joined, or representative action lawsuit in court for any claim. You may file a class, mass, consolidated, joined, or representative action lawsuit in court or you may be a member of a class or representative action lawsuit in court even if you do not file it. [[This provision applies only to claims concerning our acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the provision by us of educational services or programs, including through marketing and recruitment.]]”

(ii) When a pre-dispute agreement addressing class, mass, consolidated, joined, or representative actions has been entered into before the effective date of this regulation and does not contain a provision described in paragraph (e)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (e)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (e)(3)(iii)(B) of this section.

**Comment [A3]:** If the Department does not adopt our recommendation to cover all students, it must add additional language to provide for notice to or amendment of the contracts of students who enter into pre-dispute agreements when they have not yet taken out a covered loan but who later do become borrowers and should thus receive the benefits of the rule.

(iii) The school must ensure the agreement described in paragraph (e)(3)(ii) of this section is amended to contain the provision specified in paragraph (e)(3)(iii)(A) or must provide the notice specified in paragraph (e)(3)(iii)(B) to students no later than the exit counseling required under § 685.304(b), if applicable, or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) Agreement provision.

“We agree that neither we nor anyone else will use this agreement to stop you from being part of a class, mass, consolidated, joined, or representative action lawsuit in court. You may file a class, mass, consolidated, joined, or representative action lawsuit in court or you may be a member of a class or representative action lawsuit in court even if you do not file it. [[This provision applies only to claims concerning our acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the provision by us of educational services or programs, including through marketing and recruitment.]]”

(B) Notice provision.

“We agree that neither we nor anyone else will use any pre-dispute agreement to stop you from being part of a class, mass, consolidated, joined, or representative action lawsuit in court. You may file a class, mass, consolidated, joined, or representative action lawsuit in court or you may be a member of a class or representative action lawsuit in court even if you do not file it. **[[This provision applies only to claims concerning our acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the provision by us of educational services or programs, including through marketing and recruitment.]]**”

(f) Pre-dispute arbitration agreements. (1) The school will not enter into or seek to rely on a pre-dispute agreement to arbitrate any claim **[[concerning its acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the provision by the school of educational services or programs, including through marketing and recruitment]]**, or to delegate to an arbitrator the authority to determine issues of arbitrability for any claim, including any pre-dispute agreement’s scope, validity, or enforceability.

(2) Reliance on a pre-dispute arbitration agreement with respect to any aspect of a claim includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a judicial action filed by the student;

(ii) Objecting to or seeking a protective order intended to avoid responding to discovery in a judicial action filed by the student; and

(iii) Filing a claim in arbitration against a student who has filed a claim on the same issue in court.

**(3) Required provisions and notices. (i) The school must include the following provision in any pre-dispute arbitration agreements with a student **[[recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan is or was obtained,]]** that include any agreement regarding arbitration and that are entered into after effective date of this regulation:**

“We agree that neither we nor anyone else will use this agreement to stop you from bringing a lawsuit in court **[[regarding our acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the provision by us of educational services or programs, including through marketing and recruitment]]**. You may file a lawsuit in court or you may be a member of a class action lawsuit in court even if you do not file it.”

**(ii) When a pre-dispute arbitration agreement has been entered into before the effective date of this regulation and does not contain a provision described in paragraph (f)(3)(i), the school shall either ensure the agreement is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or provide the student to whom the**

**Comment [A4]:** Paragraph (f)(3)(i) should be omitted if the Department forbids pre-dispute arbitration agreements for all claims for all students at a Direct-Loan-participating school, as we recommend.

agreement applies with the written notice specified in paragraph (f)(3)(iii)(B) of this section.

(iii) The school shall ensure the agreement described in paragraph (f)(3)(ii) of this section is amended to contain the provision specified in paragraph (f)(3)(iii)(A) or shall provide the notice specified in paragraph (f)(3)(iii)(B) to students no later than the exit counseling required under § 685.304(b), if applicable, or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) Agreement provision.

“We agree that neither we nor anyone else will use this pre-dispute arbitration agreement to stop you from bringing a lawsuit in court [[regarding our acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the provision by us of educational services or programs, including through marketing and recruitment]]. You may file a lawsuit in court or you may be a member of a class action or representative lawsuit in court even if you do not file it.”

(B) Notice provision.

“We agree that neither we nor anyone else will use any pre-dispute arbitration agreement to stop you from bringing a lawsuit in court [[regarding our acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the provision by us of educational services or programs, including through marketing and recruitment]]. You may file a lawsuit in court or you may be a member of a class action or representative lawsuit in court even if you do not file it.”

(g) Submission of arbitral records. (1) A school shall submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim filed in arbitration by a student against the school or by the school against a student [[concerning a claim related to the school's acts or omissions in the making of a Direct Loan or a Parent PLUS loan or the provision of educational services or programs, including through marketing and recruitment]]:

(i) The initial claim and any counterclaim, and amendments thereto;

(ii) The pre-dispute arbitration agreement filed with the arbitrator or arbitration administrator;

(iii) The judgment or award, if any, issued by the arbitrator or arbitration administrator;

(iv) If an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the school's failure to pay required filing or administrative fees, any communication the school receives from the arbitrator or an arbitration administrator related to such a refusal; and

**Comment [A5]:** If the Department does not adopt our recommendation to cover all students, it must add additional language to provide for notice to or amendment of the contracts of students who enter into pre-dispute arbitration agreements when they have not yet taken out a covered loan but who later do become borrowers and should thus receive the benefits of the rule.

(v) Any communication the school receives from an arbitrator or an arbitration administrator related to a determination that a pre-dispute arbitration agreement provided by the school does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs.

(2) Deadline for submission. A school shall submit any record required pursuant to paragraph (g)(1) of this section within 10 days of filing by the school of any such record with the arbitrator or arbitration administrator and within 10 days of receipt by the school of any such record filed or sent by someone other than the school, such as the arbitration administrator or the student.

(3) Submission upon request. The school shall make available to the Secretary, upon request and within 10 days of any such request, any other documents filed or submitted in a proceeding described in (g)(1).

(4) Public availability. Within 10 days of receipt, the Secretary shall post electronically on the Department's website all records covered by this subsection, which shall be publicly available without redaction except to the extent those records, or portions thereof, are subject to a post-dispute confidentiality agreement between the parties, as certified by the school with supporting documentation.

(h) Submission of judicial records. (1) A school shall submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim filed in a lawsuit by the school against the student, or by any party, including a government agency, against the school [[concerning a claim related to the school's acts or omissions in the making of a Direct Loan or a Parent PLUS loan or the provision of educational services or programs, including through marketing and recruitment]]:

(i) The complaint and any counterclaim, and amendments thereto;

(ii) Any dispositive motion filed by a party to the suit; and

(iii) The ruling on any dispositive motion and the judgment issued by the court.

(2) Deadline for submission. A school shall submit any record required pursuant to paragraph (h)(1) of this section within 10 days of filing or receipt, as applicable.

(3) Public availability. Within 10 days of receipt, the Secretary shall post electronically on the Department's website all records covered by this subsection, which shall be publicly available without redaction except to the extent those records, or portions thereof, have been sealed by the court with jurisdiction over the matter, as certified by the school and supported by a sealing order.

(i) Other restrictions on agreements. The school will not enter into or attempt to enforce a provision in any agreement with a student that:

(1) Requires the student to waive his or her right to a jury trial for any future claim brought in a court;

(2) Limits the liability of the school for any future claim asserted by the student; or

(3) Requires the arbitration of any dispute that has or had arisen at the time the agreement is or was entered into but that does not describe the specific nature of the dispute.

(j) Definitions. For the purposes of paragraphs (d) through (i) of this section, the term—

(1) “Class action” means a lawsuit in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23;

(2) “Dispositive motion” means a motion asking for a court order that entirely disposes of one or more claims in favor of the party who files the motion without need for further court proceedings; and

(3) “Pre-dispute arbitration agreement” means an agreement between a school and a student providing for arbitration of any future dispute between the parties.

(k) Scope of agreements covered. For the purpose of this section, any agreement between a school’s employees, representatives, agents, managers, or directors and a student shall be deemed to be an agreement between a school and its student. Limitations under this section on any agreement between a school and its student apply to a school’s heirs, assignees, or any other entities that become parties to the contract after execution.

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## TRACKED CHANGE VERSION

### Suggested Regulatory Language from Public Citizen, Inc. Regarding Section 685.300

Our suggested regulatory language is below. Text inside of bolded brackets should only be included if the Department declines to cover all students at Direct-Loan-participating schools or all of those students' claims, as applicable. Other comments in the margin explain certain changes that have been made in this version or that should be made by the Department under other conditions.

\* \* \* \* \*

(b) \* \* \*

(11) Comply with the provisions of paragraphs (d) through (k) regarding student claims and disputes.

\* \* \* \* \*

(d) ~~Borrower defense~~ Claims in an internal dispute process. The school will not ~~compel~~ enter into or seek to enforce any agreement that requires a student to pursue a complaint based on a borrower defense claim related to the school's acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the educational services or programs provided by the school, including through marketing and recruitment, through an internal institutional process before the student presents the complaint to an accrediting agency ~~or, government agency authorized to hear the complaint, or court.~~

(e) ~~Class action~~ Aggregate litigation bans. (1) The school shall not enter into or seek to rely in any way on any pre-dispute ~~arbitration agreement, nor on any other pre-dispute agreement,~~ with a student, with respect to any aspect of a class, mass, consolidated, joined, or representative action that is related to a borrower defense claim including to seek a stay or dismissal of particular claims or concerning the entire action, unless and until school's acts or omissions related to the presiding court has ruled that making of a Direct Loan or Parent PLUS Loan or the case may not proceed as a class action and, if that ruling may be subject to appellate review on an interlocutory basis, educational services or programs provided by the time to seek such review has elapsed or the review has been resolved school, including through marketing and recruitment.

(2) ~~Reliance on a pre-dispute arbitration agreement, or on any other~~ any pre-dispute agreement, with a student, with respect to any aspect of a class, mass, consolidated, joined, or representative action includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a class, mass, consolidated, joined, or representative action;

**Comment [A1]:** Subsections (v) and (vi) are no longer needed if the Department bars all pre-dispute arbitration agreements, as we urge, and have thus been deleted here.

(ii) Seeking to exclude a person or persons from ~~a class~~ an action in a class, mass, consolidated, joined, or representative action;

(iii) Objecting to or seeking a protective order intended to avoid responding to discovery in a class, mass, consolidated, joined, or representative action; and

(iv) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class ~~action~~; mass, consolidated, joined, or representative action.

~~(v) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court has denied a motion to certify the class but before an appellate court has ruled on an interlocutory appeal of that motion, if the time to seek such an appeal has not elapsed or the appeal has not been resolved; and~~

~~(vi) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court in that class action has granted a motion to dismiss the claim and, in doing so, the court noted that the consumer has leave to refile the claim on a class basis, if the time to refile the claim has not elapsed.~~

(3) Required provisions and notices. (i) The school must include the following provision in any agreements with a student II recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom ~~the~~ a PLUS loan is or was obtained, II that include any ~~agreement regarding pre-dispute arbitration or any other pre-dispute agreement~~ addressing class, mass, consolidated, joined, or representative actions and that are entered into after the effective date of this regulation:

**Comment [A2]:** Paragraph (e)(3)(i) should be omitted if the Department covers all claims for all students at a Direct-Loan-participating school, as we recommend.

“We agree that neither we nor anyone else will use this agreement to stop you from being part of a class, mass, consolidated, joined, or representative action lawsuit in court: for any claim. You may file a class, mass, consolidated, joined, or representative action lawsuit in court or you may be a member of a class or representative action lawsuit in court even if you do not file it. II This provision applies only to ~~class action~~ claims concerning our acts or omissions regarding the making of ~~the~~ a Direct Loan or Parent PLUS Loan or the provision by us of educational services ~~for which the Direct Loan was obtained.~~ or programs, including through marketing and recruitment. II”

(ii) When a pre-dispute ~~arbitration agreement or any other pre-dispute~~ agreement addressing class, mass, consolidated, joined, or representative actions has been entered into before the effective date of this regulation ~~that did and does~~ not contain a provision described in paragraph (e)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (e)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (e)(3)(iii)(B) of this section.

**Comment [A3]:** If the Department does not adopt our recommendation to cover all students, it must add additional language to provide for notice to or amendment of the contracts of students who enter into pre-dispute agreements when they have not yet taken out a covered loan but who later do become borrowers and should thus receive the benefits of the rule.

(iii) The school must ensure the agreement described in paragraph (e)(3)(ii) of this section is amended to contain the provision specified in paragraph (e)(3)(iii)(A) or must provide the notice specified in paragraph (e)(3)(iii)(B) to students no later than the exit



counseling required under § 685.304(b), if applicable, or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) Agreement provision.

"We agree that neither we nor anyone else ~~who later becomes a party to~~ will use this agreement ~~will use it to stop you from being part of a class, mass, consolidated, joined, or representative~~ action lawsuit in court. You may file a class, mass, consolidated, joined, or representative action lawsuit in court or you may be a member of a class or representative action lawsuit in court even if you do not file it. [[This provision applies only to class-action claims concerning our acts or omissions regarding the making of thea Direct Loan or Parent PLUS Loan or the provision by us of educational services for which the Direct Loan was obtained, or programs, including through marketing and recruitment.]]"

(B) Notice provision.

"We agree ~~not to~~ that neither we nor anyone else will use any pre-dispute agreement to stop you from being part of a class, mass, consolidated, joined, or representative action lawsuit in court. You may file a class, mass, consolidated, joined, or representative action lawsuit in court or you may be a member of a class or representative action lawsuit in court even if you do not file it. [[This provision applies only to class-action claims concerning our acts or omissions regarding the making of thea Direct Loan or Parent PLUS Loan or the provision by us of educational services for which the Direct Loan was obtained, or programs, including through marketing and recruitment.]]"

(f) Pre-dispute arbitration agreements. (1) The school will not ~~compel a student to enter into a or seek to rely on a~~ pre-dispute agreement to arbitrate ~~a borrower defense any claim, or rely in any way on a mandatory~~ [[concerning its acts or omissions regarding the making of a Direct Loan or Parent PLUS Loan or the provision by the school of educational services or programs, including through marketing and recruitment]], or to delegate to an arbitrator the authority to determine issues of arbitrability for any claim, including any pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim agreement's scope, validity, or enforceability.

(2) Reliance on a ~~mandatory~~ pre-dispute arbitration agreement with respect to any aspect of a ~~borrower defense~~ claim includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a judicial action filed by the student;

(ii) Objecting to or seeking a protective order intended to avoid responding to discovery in a judicial action filed by the student; and

(iii) Filing a claim in arbitration against a student who has filed a ~~suit~~claim on the same ~~claim~~issue in court.

(3) Required provisions and notices. (i) The school must include the following provision in any ~~mandatory~~ pre-dispute arbitration agreements with a student ~~II~~recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan is or was obtained, ~~II~~ that include any agreement regarding arbitration and that are entered into after effective date of this regulation:

**Comment [A4]:** Paragraph (f)(3)(i) should be omitted if the Department forbids pre-dispute arbitration agreements for all claims for all students at a Direct-Loan-participating school, as we recommend.

“We agree that neither we nor anyone else will use this agreement to stop you from bringing a lawsuit in court II regarding our acts or omissions regarding the making of ~~the~~ Direct Loan or Parent PLUS Loan or the provision by us of educational services ~~for which the Direct Loan was obtained or programs, including through marketing and recruitment II~~. You may file a lawsuit ~~for such a claim~~in court or you may be a member of a class action lawsuit ~~for such a claim~~in court even if you do not file it. ~~This provision does not apply to lawsuits concerning other claims.~~”

(ii) When a ~~mandatory~~ pre-dispute arbitration agreement has been entered into before the effective date of this regulation ~~that did~~and does not contain a provision described in paragraph (f)(3)(i), the school shall either ensure the agreement is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (f)(3)(iii)(B) of this section.

**Comment [A5]:** If the Department does not adopt our recommendation to cover all students, it must add additional language to provide for notice to or amendment of the contracts of students who enter into pre-dispute arbitration agreements when they have not yet taken out a covered loan but who later do become borrowers and should thus receive the benefits of the rule.

(iii) The school shall ensure the agreement described in paragraph (f)(3)(ii) of this section is amended to contain the provision specified in paragraph (f)(3)(iii)(A) or shall provide the notice specified in paragraph (f)(3)(iii)(B) to students no later than the exit counseling required under § 685.304(b), if applicable, or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) Agreement provision.

“We agree that neither we nor anyone else ~~who later becomes a party to~~will use this pre-dispute arbitration agreement ~~will use it to~~ stop you from bringing a lawsuit in court II regarding our acts or omissions regarding the making of ~~the~~ Direct Loan or Parent PLUS Loan or the provision by us of educational services ~~for which the Direct Loan was obtained or programs, including through marketing and recruitment II~~. You may file a lawsuit ~~for such a claim~~in court or you may be a member of a class action or representative lawsuit ~~for such a claim~~in court even if you do not file it. ~~This provision does not apply to other claims.~~”

(B) Notice provision.

“We agree ~~not to~~that neither we nor anyone else will use any pre-dispute arbitration agreement to stop you from bringing a lawsuit in court II regarding our acts or

omissions regarding the making of ~~the~~ Direct Loan or **Parent PLUS Loan** or the provision by us of educational services ~~for which the Direct Loan was obtained or programs, including through marketing and recruitment~~**]].** You may file a lawsuit ~~regarding such a claim~~**in court** or you may be a member of a class action **or representative** lawsuit ~~regarding such a claim~~**in court** even if you do not file it. ~~This provision does not apply to any other claims."~~

(g) Submission of arbitral records. (1) A school shall submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim filed in arbitration by ~~or against the school concerning a borrower defense claim; a student against the school or by the school against a student~~ **]]concerning a claim related to the school's acts or omissions in the making of a Direct Loan or a Parent PLUS loan or the provision of educational services or programs, including through marketing and recruitment****]]:**

(i) The initial claim and any counterclaim, **and amendments thereto;**

(ii) The pre-dispute arbitration agreement filed with the arbitrator or arbitration administrator;

(iii) The judgment or award, if any, issued by the arbitrator or arbitration administrator;

(iv) If an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the school's failure to pay required filing or administrative fees, any communication the school receives from the arbitrator or an arbitration administrator related to such a refusal; and

(v) Any communication the school receives from an arbitrator or an arbitration administrator related to a determination that a pre-dispute arbitration agreement ~~regarding educational services~~ provided by the school does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs.

(2) Deadline for submission. A school shall submit any record required pursuant to paragraph (g)(1) of this section within ~~60~~**10** days of filing by the school of any such record with the arbitrator or arbitration administrator and within ~~60~~**10** days of receipt by the school of any such record filed or sent by someone other than the school, such as the arbitration administrator or the student.

**(3) Submission upon request. The school shall make available to the Secretary, upon request and within 10 days of any such request, any other documents filed or submitted in a proceeding described in (g)(1).**

**(4) Public availability. Within 10 days of receipt, the Secretary shall post electronically on the Department's website all records covered by this subsection, which shall be publicly available without redaction except to the extent those records, or portions thereof, are subject to a post-dispute confidentiality agreement between the parties, as certified by the school with supporting documentation.**

(h) Submission of judicial records. (1) A school shall submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim filed in a lawsuit by the school against the student, or by any party, including a government agency, against the school ~~concerning a borrower defense claim;~~ concerning a claim related to the school's acts or omissions in the making of a Direct Loan or a Parent PLUS loan or the provision of educational services or programs, including through marketing and recruitment;

(i) The complaint and any counterclaim, and amendments thereto;

(ii) Any dispositive motion filed by a party to the suit; and

(iii) The ruling on any dispositive motion and the judgment issued by the court.

(2) Deadline for submission. A school shall submit any record required pursuant to paragraph (h)(1) of this section within ~~30~~10 days of filing or receipt, as applicable, ~~of the complaint, answer, or dispositive motion, and within 30 days of receipt of any ruling on a dispositive motion or a final judgment.~~

(3) Public availability. Within 10 days of receipt, the Secretary shall post electronically on the Department's website all records covered by this subsection, which shall be publicly available without redaction except to the extent those records, or portions thereof, have been sealed by the court with jurisdiction over the matter, as certified by the school and supported by a sealing order.

(i) Other restrictions on agreements. The school will not enter into or attempt to enforce a provision in any agreement with a student that:

(1) Requires the student to waive his or her right to a jury trial for any future claim brought in a court;

(2) Limits the liability of the school for any future claim asserted by the student; or

(3) Requires the arbitration of any dispute that has or had arisen at the time the agreement is or was entered into but that does not describe the specific nature of the dispute.

(j) Definitions. For the purposes of paragraphs (d) through (h) of this section, the term—

(1) "Borrower defense claim" means a claim that is or could be asserted as a defense to repayment under § 685.206(c) or § 685.222;

(2) "Class action" means a lawsuit in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23;

(32) “Dispositive motion” means a motion asking for a court order that entirely disposes of one or more claims in favor of the party who files the motion without need for further court proceedings; and

(43) “Pre-dispute arbitration agreement” means an agreement between a school and a student providing for arbitration of any future dispute between the parties; and.

~~(5) “Mandatory pre-dispute arbitration agreement” means a pre-dispute arbitration agreement included in an enrollment agreement or other document that must be executed by the student as a condition for enrollment at the school. Show citation box~~

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(k) Scope of agreements covered. For the purpose of this section, any agreement between a school’s employees, representatives, agents, managers, or directors and a student shall be deemed to be an agreement between a school and its student. Limitations under this section on any agreement between a school and its student apply to a school’s heirs, assignees, or any other entities that become parties to the contract after execution.

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