



Contracting with a Collection Agency and Developing a Vendor Oversight Checklist

**MN Network Mega Conference
October 2019
Bloomington, MN**

Legal Disclaimer

- The views and opinions expressed by the Presenters are those of the Presenters and not necessarily representative of the SUNY, Todd, Bremer & Lawson, Inc. or COHEAO.
- This information is not intended as legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case.
- Every effort has been made to assure this information is up-to-date as of the date of publication.
- This information is not intended to be a full and exhaustive explanation of the Federal Regulations in any area, nor should it be used to replace the advice of your own legal counsel.

Agenda

- RFP versus Open Collection Contracts
- Common RFP/Contract Elements and Structure
- Developing a Rating Model for Evaluating Bids
- Vendor Oversight Requirements
- Resources





RFP & Contract Structure

RFP Versus Open Contract



- **RFP - Request for Proposal**
 - A process used to elicit bids for a product or service.
 - The RFP and the response of the selected vendor is usually incorporated into the contract.
 - Important to both the selection process and the contractual relationship.

- **How does an open contract process differ?**

Before You Begin the RFP...



- Identify the lead and point of contact for questions on the RFP (may be two different people)
- Form your Review and Selection Committee
 - Include people from areas such as risk management, accounting, IT, legal, etc.
- Identify the insurance and bonding requirements
- Determine the licensing requirements
- Are there special procurement requirements for M/WBE (Minority and Woman Owned Business Enterprises) or use of subcontractors?
- Determine your selection priorities: experience, compliance, security, price, references
- Is an intent to submit required; are in-person presentations required?
- Review the Vendor Oversight Section at the end

RFP Common Elements

- Cover Page
- Glossary, Definition of Terms
- Profile of Your Institution & Contact Info
- Procurement Policies
- Non-Disclosure Agreement
- Disclaimer Statement
- Scope of Work
- Critical Dates
- Response Format
- Fee Structure
- Required Information
- Rating & Selection Criteria



Content – General Information

- Cover page: name, issue date, due date, RFP #
- Glossary/definition of terms
- Profile of your institution: number of students, culture, IT systems, multiple campuses, etc.
- Contact for the RFP: name, address, phone, email
- Procurement policies - special requirements (EEO, M/WBE)
- Non-disclosure agreement
- Disclaimer statement - costs for responding are the responsibility of the bidder



Content – General Information



▪ Scope of work

- Type of services are you seeking
- Type of accounts to be placed (A/R, campus-based loans, non-student debt, institutional loans, domestic, international, etc...)
- Level of efforts prior to placement; average age at placement
- Value of the monthly/annual portfolio placed
- Time allowed to retain accounts
- Process for consolidations, rehab accounts, bankruptcy
- Number of agencies being selected in the RFP process and the total number contracted
- Length of the contract, renewable options

Content – General Information



- **Timeline - Critical Due Dates**
 - Intent to submit a proposal
 - Return of non-disclosure agreement
 - Vendor questions regarding the RFP
 - Institution's response to questions
 - Vendor submission of proposal
 - Selection and notification of contract
 - Effective date of contract

Content – General Information



▪ Response Format

- Where and to whom to send
- Hardcopy or electronic
- Number of copies/requirement for original signatures
- Numbering system (follow the RFP)

▪ Fee Structure

- Is the fee pre-set by the institution or bid selection
- Fee structure for placement type (first, reassigned, litigation)
- Example of how fees are computed (make whole formula)
- Financial Responsibility Policy (screenshot & process)
- Are any payments excluded from fees (i.e. tax offsets, payments received within so many days of placement)
- Gross or net remittance

Content – Required Information



▪ Vendor's Background Information

- Number of years in business under same owner
- Percentage of collection services focused on higher education vs. other industries; (health care, utilities)
- Mergers, bankruptcies, regulatory action
- Location(s) of the company
- Number of employees and hiring and training practices
- Proof of company compliance within the industry
- Company ratings (Better Business Bureau, Dun and Bradstreet)
- Certifications (PPMS - Professional Practices Management System, ACA Special Certification, etc)
- Use of subcontractors (define)
- Association memberships, board/committee participation
- Point persons assigned and their resumes
- Licensing by state

Content – Required Information



- Disaster Recovery/Data Security
 - Operational Audits (i.e. SSAE16 Certification - external audit of data security controls)
 - Security of building and physical data
 - Security of electronic data: encryption methods, firewalls
 - Plans for handling a breach: notification, timeframe
 - Business continuity plan: offsite backups, secondary location
 - PCI Compliance
 - Employee hiring practices – background checks
- Complaint and Dispute Resolution
 - What is the process
 - Who is responsible to respond
 - Timeframe for response

Content – Required Information



▪ Service Parameters

- Timeframe to respond to questions from institution
- Timeframe for processing payments
- Data scrubs, skip-tracing, data analytics, credit monitoring
- Reports (standard, customized), online availability and timing
- Online access to borrower account information
- Payment methods accepted
- Credit bureau reporting
- Default reduction services

▪ Financial Statements & Audits

- Financial statements, audit report, specify number of years
- List of findings noted
- Annual compliance audit

▪ Placement requirements

- Electronic, include file layouts
- Integration with school's vendor/servicing system

Content – Required Information



- **Client References**
 - Number of references required
 - Minimum number of years as client
 - Type (similar scope of service or type of institution)
 - List of clients who terminated before end of contract in last # years
- **Additional services included at no cost**
- **Optional services available at a cost**
- **Distribution of accounts with multiple agencies**
 - By type of account
 - Performance-based
- **Insurance and Licensing Requirements**
 - Coverage limits required
 - Fidelity bond
 - List of licenses by state

Content – Required Information



▪ Regulatory Compliance

- FDCPA - Fair Debt Collection Practices Act
- FERPA - Family Educational Rights and Privacy Act
- FCRA - Fair Credit Reporting Act
- Red Flags Rule
- GLBA - Gramm-Leach-Bliley Act
- HIPPA - Health Insurance Portability and Accountability Act
- EFTA - Electronic Funds Transfer Act – Reg E
- TCPA - Telephone Consumer Protection Act
- UDAAP - Unfair, Deceptive or Abusive Acts or Practices
- GDPR - General Data Protection Regulation
- SCRA - Service Member Civil Relief Act
- Any additional contractual compliance requirements



Rating & Selection Criteria

Rating & Selection Criteria



▪ Mandatory Items

- Experience in collecting higher education loans and receivables
- Licensed to do business in all 50 states
- Special licensing requirements in specific cities
- Financial Profile
- Compliance audit report
- Ability to comply with terms and requirements
- Statement that company is not prohibited from contracting under the third-party servicer requirements found in 34 CFR §668.25
- Affirmative action requirements of 41 CFR §§ 60-300.5(a)
- Specific university conditions – MWBE, EEO policy
- List and have all mandatory items signed off on

Rating & Selection Criteria



■ Areas to Consider for Rating the Proposal

- Number of years in business
- Number of years in higher education
- % of clients in higher education
- Client references
- Recovery percentages – **give specific guidance!**
- Bid %, if not pre-established
- Collection procedures
- Security of facility, security of data, disaster recovery plan
- Employee hiring practices, employee training, professional development
- Additional services included at no cost



Vendor Oversight

Vendor Oversight

- **Third-party servicer contract requirements:**
 - Contracts with a third-party servicer must be written and must clearly and thoroughly describe the services and functions the servicer is responsible for providing or performing on behalf of the institution.
 - Institutions must take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards to protect customer information
 - The institution must require the third-party servicer to agree to comply with all aspects of the Family Education Rights and Privacy Act (FERPA)
 - Institutions are required to notify the Department within 10 days of the date it enters into, modifies, or terminates a contract with a servicer to administer any aspect of its participation in the Title IV programs.



Vendor Oversight



- **Third-party servicer contract requirements**
 - **Contracts must contain language that requires the servicer to agree to:**
 - 1) Comply with all applicable statutory, regulatory, and other Title IV requirements;
 - 2) Refer any suspicion of fraudulent or criminal conduct in relation to the institution's Title IV program administration to the Department's Office of the Inspector General;
 - 3) Return all records related to the servicer's administration of the institution's participation in the Title IV programs if the contract is terminated
 - 4) Be jointly and severally liable with the institution for any violation of Title IV requirements resulting from the functions performed by the servicer

Vendor Oversight



- **Third-party servicer contract requirements**
 - **A third-party servicer may not enter into a written contract with an institution if:**
 - 1) The servicer has been limited, suspended, or terminated
 - 2) The servicer has had, during its two most recent audits, an audit finding that resulted in the servicer being required to repay an amount greater than five percent of the funds that the servicer administered for any award year
 - 3) The servicer has been cited during the preceding five years for failure to submit audit reports in a timely fashion
 - The Department will notify an institution in writing if the institution reports a servicer that has been limited, suspended, or terminated by the Department, or if the Department has imposed an emergency action on the servicer.

Vendor Oversight



- **Third-party servicer contract requirements**
 - **An institution may not contract with a third-party servicer to perform any aspect of the institution’s participation in a Title IV program if:**
 1. The servicer (or its subcontractors) is located outside of the U.S.; and/or
 2. Is owned or operated by an individual that is not a U.S. citizen or national, or a lawful U.S. permanent resident.
 - Institutions must search the General Services Administration’s System for Award Management site at <http://www.sam.gov> when it enters into, renews, or revises a contract with a servicer to determine if the servicer is an excluded entity. The institution should keep a copy of the search results in its records.

Vendor Oversight



- **Third-party servicer contract requirements**
 - Third-party servicers that contract with institutions to perform any aspect of the administration of the Title IV programs are required to report the names of the institutions it contracts with to the Department.

- **Compliance Audit Requirement**
 - A third-party servicer that performs any aspect of an institution's administration of the Title IV programs must have an independent auditor conduct a compliance audit of its administration of the functions or services that it performs on behalf of eligible institutions
 - Third-party servicers must follow the procedures contained in the audit guides:
<http://www2.ed.gov/about/offices/list/oig/nonfed/sfa.html>

Vendor Oversight

▪ Safeguarding Student Information

- The information provided to a third-party servicer is limited to the information necessary for the third-party servicer to perform the Title IV function(s) or service(s) the third-party servicer has contracted to perform on behalf of the institution.
- Institutions must ensure that its third-party servicers use PII only for the purpose(s) for which the information was disclosed.
- The Department will initiate an administrative action against the institution and/or its third-party servicer if a servicer violates this prohibition.
- For both institutions and third-party servicers, access to information in Department systems may only be used for the Title IV function or service that is being performed.
- An eligible institution or third-party servicer that allows unauthorized access to Department systems will be considered to have violated its responsibilities and places itself at risk of losing access to Department systems and data, and to possible loss of eligibility to participate in the Title IV aid programs.



Vendor Oversight



- Institutional staff must have access to appropriate Title IV regulatory training and resources to evaluate the policies, procedures, and practices utilized by the institution and any third-party servicer
- The Department DOES NOT endorse or approve third-party servicers. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance.
- The institution must ensure that its third-party servicers (and its subcontractors) comply with applicable Title IV, HEA regulations and program requirements and must ensure that all third-party service contracts contain the required language outlined under 34 C.F.R. § 668.25(c)
- The institution must ensure that there are written procedures that clearly outline the responsibilities of the institution versus the responsibilities of the Servicer. Detailed contract suffices.

Vendor Oversight

- The failure of a participating institution or third-party servicer (or its subcontractors) to properly administer any aspect of a Title IV, HEA program, or to account for the funds that the institution or servicer receives under that program, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for:
 - An emergency action against the institution and/or servicer;
 - A fine on the institution and/or servicer;
 - The limitation, suspension, or termination of the institution's participation in that program; and/or
 - The limitation, suspension, or termination of the servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in that program.

Regulations: 34 CFR § 668.82(c)



Vendor Oversight

- An institution may be held responsible for any liability owed to the Department by the institution's third-party servicer (or its subcontractors) for a violation incurred in servicing any aspect of that institution's participation in the Title IV programs and remains responsible until that amount is paid in full.

Regulations: 34 CFR § 668.23(f)(2); 668.23(g)(4)





Resources

Resources



Listing and Hyperlinks of All Federal and State Statutes & Regulations

1. Check Clearing for the 21st Century Act (“Check 21 Act”), 12 U.S.C. 5001 et seq. <https://www.gpo.gov/fdsys/pkg/PLAW-108publ100/content-detail.html>
2. Dodd-Frank Wall Street Reform and Consumer Protection Act (“UDAAP”), 12 U.S.C. §§ 5481, 5531 & 5536(a) et seq. <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/content-detail.html>
3. Electronic Fund Transfer Act (“EFTA”), 15 U.S.C.1693 et seq. <https://www.gpo.gov/fdsys/granule/CFR-2012-title12-vol2/CFR-2012-title12-vol2-part205>
4. Electronic Signatures in Global and National Commerce (“E-Sign Act”), 15 U.S.C. § 7001 et seq. <https://www.gpo.gov/fdsys/pkg/PLAW-106publ229>

Resources



Listing and Hyperlinks of All Federal and State Statutes & Regulations

5. Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691 et seq. <https://www.gpo.gov/fdsys/granule/CFR-2002-title7-vol12/CFR-2002-title7-vol12-sec1910-2>
6. Fair and Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. § 1681 et seq. <https://www.gpo.gov/fdsys/pkg/PLAW-108publ159/content-detail.html>
7. Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq. <https://www.gpo.gov/fdsys/granule/CFR-2011-title16-vol1/CFR-2011-title16-vol1-chapI-subchapF>
8. Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 et seq. <https://www.gpo.gov/fdsys/granule/CFR-2012-title12-vol8/CFR-2012-title12-vol8-part1006>

Resources



Listing and Hyperlinks of All Federal and State Statutes & Regulations

9. Federal Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. 1232g et seq.
<https://www.gpo.gov/fdsys/granule/USCODE-2011-title20/USCODE-2011-title20-chap31-subchapIII-part4-sec1232g>
10. The Federal Information Security Modernization Act (FISMA) 44 U.S.C. § 3541 et seq
<https://www.gpo.gov/fdsys/pkg/PLAW-113publ283>
11. Federal Trade Commission Act (“FTCA”), 15 U.S.C. § 41 et seq. <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title15/pdf/USCODE-2011-title15-chap2-subchapl-sec45.pdf>
12. Health Insurance Portability and Accountability Act (“HIPAA”), 29 U.S.C. 1181 et seq.
<https://www.gpo.gov/fdsys/pkg/PLAW-104publ191/content-detail.html>

Resources



Listing and Hyperlinks of All Federal and State Statutes & Regulations

13. Health Information Technology for Economic and Clinical Health Act (“HITECH”), U.S.C. §§300jj et seq.
<https://www.gpo.gov/fdsys/pkg/PLAW-111publ5/pdf/PLAW-111publ5.pdf>
14. Gramm-Leach-Bliley Act (“GLBA”), 15 U.S.C. § 6801 et seq.
<https://www.gpo.gov/fdsys/pkg/PLAW-106publ102/content-detail.html>
15. Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 501-597b et seq. <https://www.gpo.gov/fdsys/granule/USCODE-2009-title50/USCODE-2009-title50-app-serviceme>
16. Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 et seq. <https://www.gpo.gov/fdsys/granule/USCODE-2011-title47/USCODE-2011-title47-chap5-subchapII-partI-sec227>

Resources



Listing and Hyperlinks of All Federal and State Statutes & Regulations

17. Truth in Lending Act (“TILA”), 15 U.S.C. 1601, et seq.
<https://www.gpo.gov/fdsys/granule/CFR-2012-title12-vol8/CFR-2012-title12-vol8-part1026>
18. Title IV Higher Education Act (“HEA”), 20 U.S.C. § 1071 et seq.
<https://www.gpo.gov/fdsys/pkg/STATUTE-79/pdf/STATUTE-79-Pg1219.pdf>
19. Title VII and VIII of Public Health Service Act (“PHSA”), 42, U.S.C. 201, et seq.
<https://www.gpo.gov/fdsys/granule/USCODE-2010-title42/USCODE-2010-title42-chap6A>

Become a Member of COHEAO



- Membership Benefits:
 - 3 FREE Webinars per year
 - Regulatory & Legislative Updates – Torch & Sparks
 - Lead organization on Perkins advocacy
 - A LOT More than just Perkins:
 - Advocacy and training on legal and compliance issues that impact you and your institution directly
 - TCPA & CFPB Compliance
 - Student Tuition and Accounts Receivable (STAR),
 - **Roundtable Discussions with Subject Matter Experts**
 - **Institutional Loan Task Force**
 - Financial Wellness – Newsletters, Training, Whitepapers
 - A Voice on Capitol Hill – Advocacy and Relationships
 - Institutional membership rates are very affordable: \$210 - \$595 based on FTE (**10% discount when you join within 30 days of this presentation**).



Roundtable Discussions



Would you like **Access to Experts** in the area of Student Financial Services? Do you have a specific question, want to explore best practices, or need training on any of the following topics:

- PERKINS LOAN PROGRAM
- HEALTH PROFESSIONS AND NURSING LOAN PROGRAMS
- INSTITUTIONAL LOAN PROGRAMS
- FISAP
- DEBT COLLECTION BEST PRACTICES
- BANKRUPTCY
- FINANCIAL WELLNESS
- TCPA (TELEPHONE CONSUMER PROTECTION ACT)

If so, simply follow the link below to submit your request for a Roundtable Discussion with COHEAO's Subject Matter Experts! You may also suggest a topic in the area of Student Financial Services that is not included above. We will then be in touch with you to set up a one-hour personalized session to assist with your needs.



COHEAO

Join Us...
COHEAO's Annual Conference:



February 11th & 12, 2020
Washington D.C.

Visit [COHEAO.com](https://www.coheao.com) for more information

Questions...



Contact Information



Maria Livolsi

COHEAO Past President
Director, State University of New York
Student Loan Service Center
518-525-2628
mlivolsi@albany.edu



The State University
of New York

Lori Hartung

President, COHEAO
Director, Midwest Region
Todd, Bremer & Lawson, Inc.
803-371-2394
lori.hartung@tbandl.com

Todd, Bremer & Lawson, Inc.

Educational Collections Specialists

