

Student Loan Enforcement Actions & Litigation

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Introduction

- The total amount of student debt has reached \$1.2 Trillion
- 45 Million people have some amount of student debt
- Average student debt is around \$30,000



Introduction

- Delinquency rate for student loans is around 11.5%
- The CFPB estimates that more than 7 Million students and former students are in default.
 - Almost 14%



Introduction

- Effect on other markets
 - Housing
- Effect on retirement
 - In 2004, only 1% of households headed by people over 65 carried student debt.
 - In 2010, it's close to 4%.
 - Result of seniors' own debt 80% of the time; seniors taking out student loans for family members 20% of the time.



Topics

- CFPB
 - Investigations
 - Enforcement Actions
 - Non-Bank Servicer Rule
 - Ancillary Student Products
- Private Litigation
- Recent legislative attempts



CFPB's Efforts on Student Loans

- **10/2012 – 10/2013: 3,800 complaints**
 - Inaccurate payment processing
 - Inability to modify loans
- **10/2013 – 10/2014: 5,300 complaints**
 - Inaccurate payment processing
 - Inability to get loan modification
 - Auto-defaults
 - Lending practices at for-profit colleges



Inaccurate Payment Processing

- Addresses what lender or servicer should do with an overpayment or a partial payment where student has more than one loan.



CFPB's Sample Text

- 10/2013 - CFPB published sample text for borrowers
 - Comments from the industry
 - Text was not helpful



CFPB's "Opportunity for Input"

- On 11/26/13, CFPB sent a "voluntary information request" to servicers
 - Questions about how they process overpayments
 - Especially when paid by third party
- Servicers were not equipped to let a borrower direct the application of payments.
 - Especially when paid by third party



CFPB v. ITT Educational Services, Inc.

- On 2/26/14, the CFPB commenced the first enforcement action relating to student loans.
 - ITT used high-pressure tactics to draw lower-income and less-sophisticated prospective students into its schools, sign them up for financial aid they didn't understand, and then roll them into third-party private loans that made ITT's financial statements look better.



CFPB v. ITT Educational Services, Inc.

- How does ITT do this?
 - Recruiting
 - Financial Aid
 - Temporary Credit
 - ITT provides 0%, short-term loans generally payable in a single payment at the end of the semester
 - If student can't pay, he or she can't continue schooling
 - Private Loans
 - These private loans are used to pay a student's Temporary Credit
 - These loans are high-interest, high-fee 10-year loans



CFPB v. ITT Educational Services, Inc.

- Count I - ITT engaged in an unfair practice that was not reasonably avoidable by consumers. 12 U.S.C. 5531(c)(1).
- Count II - ITT engaged in an abusive practice in connection with the loans. 12 U.S.C. 5531(d)(2)(B).



CFPB v. ITT Educational Services, Inc.

- Count III - ITT engaged in an “abusive” act or practice in connection with the loans. 12 U.S.C. 5531(d)(2)(C).
- Count IV - ITT violated TILA and Reg Z by failing to disclose a finance charge associated with students’ Temporary Credit balances.



CFPB v. ITT Educational Services, Inc.

- ITT moved to dismiss (4/28/14)
- CFPB opposed dismissal (6/12/14)



CFPB v. Corinthian Colleges, Inc.

- On 9/16/14, CFPB filed enforcement action against Corinthian Colleges, Inc.
 - Corinthian induced students to obtain loans “by promising career training and graduate employment of the type that would enable a consumer to repay his or her debt upon completing Corinthian’s program.”



CFPB v. Corinthian Colleges, Inc.

- High-pressure sales tactics to “low self-esteem” people who have “few people in their lives who care about them”
- Corinthian applied for financial aid for the students.
 - Corinthian provided and promoted private loans.
 - “Genesis loan program” and “EducationPlus program”
 - Corinthian represented it had no interest in the loans.
 - Purchased and collected on them
 - Bonuses for staff members
 - Terminating students’ access to registration and equipment



CFPB v. Corinthian Colleges, Inc.

- Count I – Corinthian engaged in unfair, deceptive, or abusive acts or practices by misrepresenting and omitting information that is material to consumers. 12 U.S.C. 5536(a)(1)(B).
- Count II – Corinthian engaged in acts or practices likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and not outweighed by benefits to consumers or competition. 12 U.S.C. 5531(c)(1).
- Count III – Corinthian collected debts by harassment, oppression, or abuse in violation of FDCPA. 15 U.S.C. 1692d.
- Count IV – Corinthian communicated with students to collect debts at unusual times or places or at times or places known to be inconvenient. 15 U.S.C. 1692c(a).
- Count V – Corinthian collected debts by communicating with persons other than the consumer in violation of the FDCPA. 15 U.S.C. 1692c(b).



CFPB v. IrvineWebWorks, Inc.

- Suit against student loan debt relief company and owner
 - Claim to be “consultation service” that works with DOE to offer borrowers ways to make student loan debt “more flexible and easy to manage”
 - Upfront enrollment fee and monthly fees
 - Help borrowers find repayment plans
 - Advertising material similar to DOE’s seal.
 - One internet website ended in “.us” suffix
 - Website advertised that it works with DOE to consolidate loans
 - Misrepresented costs of services



CFPB v. IrvineWebWorks, Inc.

- Count I – Violated Telemarketing Sales Rule (“TSR”) by taking upfront fees.
- Count II – Violated TSR by implying government affiliation.
- Count III – Violated TSR by failing to clearly disclose costs.
- Count IV – UDAAP by implying government affiliation.
- Count V – UDAAP by failing to clearly disclose costs.



CFPB v. College Education Services LLC

- Suit against student loan debt relief company and owners
 - Similar allegations
 - Google AdWords campaign
 - Claimed they would cut student loan debt in half
 - Guaranteed loan forgiveness
 - Would establish “custom-tailored programs and plans” for the borrower’s specific individual needs
 - Between \$195 and \$2,500 in fees; most or all upfront
 - Failed to provide any services
 - Failed to obtain “guaranteed” lower payments
 - Failed to obtain relief in less than 6 weeks



CFPB v. College Education Services LLC

- Count I – Violated Telemarketing Sales Rule (“TSR”) by taking upfront fees.
- Count II – Violated TSR by misrepresenting the results it could obtain.
- Count III – UDAAP by misrepresenting the results it could obtain.
- Count IV – UDAAP by targeting financially-distressed borrowers and holding its employees are “counselors” and “advisors” with expertise to establish custom-tailored plans.
- Count V – Violation of Florida Unfair Trade Practices Act by misrepresenting the results it could obtain.



CFPB v. College Education Services LLC

- Parties filed joint motion for entry of consent decree (12/11/14)
 - Permanent injunction against providing debt relief services
 - \$25,000 to CFPB
 - \$25,000 to Florida AG
 - Reporting and recordkeeping requirements



CFPB's Non-Bank Servicer Rule

- On 12/3/13, the CFPB issued a rule that allows it to supervise certain non-bank student loan servicers for the first time.
 - Went into effect on 3/1/14
 - Governs any servicer that handles more than 1 Million accounts
 - Considered a “larger participant”
 - Applies regardless of whether they service federal or private loans



CFPB's Non-Bank Servicer Rule

- Anticipates that this will allow it to govern the 7 largest student loan servicers
- These 7 service a total of 50 Million accounts



Ancillary Student Products

- US Government Accountability Office's report "College Debit Cards: Actions Needed to Address ATM Access, Student Choice, and Transparency"



Ancillary Student Products

- The CFPB gathered publicly-available agreements between colleges and financial institutions
 - Alerted financial institutions to “the potential risky practice of not readily disclosing arrangements with college and universities to market bank accounts, prepaid cards, debit cards, and other financial products”
 - Called on all financial institutions to make their agreements publicly-available



Ancillary Student Products

- On 8/6/14, posted the status of its findings –
 - 11 of 14 largest universities have agreements
 - CFPB located 4 agreements
 - 3 of the 4 were missing information
 - Only 1 (University of Iowa) made its contract publicly available without redaction
- CFPB sending alerts (letters) to schools



Private Litigation

- Plaintiffs haven't been successful with claims for “education malpractice.”
 - The relationship is contractual in nature.
 - If it were to recognize a cognizable claim for education malpractice, the court would have to make judgments about the validity of broad educational policies and also, more importantly, it would have to sit in review of the day to day implementation of those policies.



Private Litigation

- What claims work?
 - Breach of contract for express and specific promises made in catalogs and advertising material
 - Other school-related claims, alleging claims such as substandard equipment and materials
 - Claims under state loan broker statutes where a subsidiary arranges for a loan made by a parent company
 - Garden-variety cease and desist claims



Private Litigation

- **FTC Holder Rule**

- Smith v. ComputerTraining.com, Inc. (E.D. Mich. 2011)
- The students sued the school and their student loan lender.
- The school defaulted.
- The court explained that the remainder of the claims were against the lender and explained how the students could maintain those claims.



Claims Surrounding Collection Activity

- Plaintiffs may assert a variety of claims surrounding student loan collection activity.
 - State consumer protection statutes
 - Common law theories



Claims Surrounding Collection Activity

- Preempted?

- The HEA and its regulations provide a specific scheme for collection activity.
 - Explicit about the activity that a servicer must undertake
 - Courts split over extent of preemption



Fair Lending/Disparate Impact

- **Rodriguez v. SLM Corp. (D. Conn.)**
 - Plaintiffs alleged that their private student loans had unreasonably high interest rates and fees when compared to similarly-situated white students.
 - They alleged that SLM violated ECOA.
 - They based these allegations on the fact that SLM used both a particular student's credit history and also a school's cohort default rates in determining the interest rate and fees to apply to a particular loan.
 - They alleged that SLM should have known that a disproportionately higher number of schools with high minority populations have higher cohort default rates.



Fair Lending/Disparate Impact

- SLM moved to dismiss
 - ECOA lacks the “effect” and “impact” of policies language that is found in other statutes.
 - The District of Connecticut noted that other courts had disagreed with that argument.
 - It denied the motion to dismiss.



Recent legislative attempts to address student loans

- **S. 1803**

- “Student Loan Borrowers’ Bill of Rights”
- Introduced 12/11/13
- Currently in committee

- **H.R. 3892**

- “Student Loan Borrowers’ Bill of Rights Act of 2013”
- Introduced 1/15/14
- Currently in committee



Recent legislative attempts to address student loans

- Know Before You Owe Private Student Loan Act of 2013
- S. 113
 - Introduced on 1/23/13
 - Referred to committee
- H.R. 3612
 - Identical to S. 113
 - 11/21/13 – introduced and referred to committee



Recent legislative attempts to address student loans

- Bank on Students Emergency Loan Refinancing Act
- H.R. 4582
 - Introduced 5/6/14
 - Referred to committee
 - Directs Secretary of Education to develop a program to refinance student loans at lower interest rates
- S. 2292
 - Identical to H.R. 4582
 - Introduced 5/6/14
 - Referred to committee



Recent legislative attempts to address student loans

- S. 2432

- Introduced 6/4/14
- Assigned to committee
- Reported out of committee 6/5/14
- Failed cloture vote on 6/11/14
- Motion made to proceed to consideration of the measure on 9/18/14

