

Hot Topics In Higher Education: CFPB Priorities & Impacts

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CFPB Policy Priorities

- CFPB recently issued a white paper setting out its policy priorities for the next two years
- Policy priorities reflect CFPB’s perception of the extent of consumer harm and its ability to eliminate or mitigate that harm
- Debt collection and student loan servicing were included in the list of the top nine policy priorities
- Both seem to be characterized as “dead end” areas where consumers cannot “vote with their feet” when treated unfairly
- In some respects, that probably means that all debt collection issues and all student loan servicing issues are now hot topics
- But why the concerns and where is the CFPB most likely to focus its attention?

Student Loan Servicing

- CFPB keeps sounding the trumpets and banging the drums to herald an impending crisis of epic proportions
 - Total debt \$1.2 trillion, mostly federal loans
 - Nearly 8 million borrowers in default and 3 million having difficulties paying
- CFPB claims to see consistent signs of material consumer harm from servicing examinations, investigations, and complaint data
 - Winter 2016 Supervisory Highlights hit auto-default, cosigner release and new owner/same servicer conversion errors
 - Most recent consent orders dealt with statement errors and tax reporting
 - Last Ombudsman's Report criticized barriers to alternative repayment plans
 - Last Report on Servicemember Complaints described problems “dealing” with lenders and servicers, which included problems resulting from limited alternative payment options and problems with certifications for income-driven repayment

Hot Topics – Pre-Default

- Onboarding the loan – confirming that loan terms on system match loan terms in documentation, particularly if loan ownership recently changed or if loan servicing was recently transferred
- Delivery of borrower benefits – document retention, internal and vendor controls, detailed descriptions of criteria for processing (approval, denial or termination)
- Payment issues – standard issues with prompt crediting, allocation of payments and with payment processing (also auto debits) but new emphasis on loan payoffs, possibly reflecting marketplace developments
- Tax reporting – may be emerging as an issue as the result of problems noted in Supervisory Highlights (statements about deductibility) and in consent orders (alleged denial of information needed for deduction)

Hot Topics – Default and Post-Default

- Events of default – lots of attention now on all non-payment defaults, particularly “auto-default” if cosigner dies or files for bankruptcy and borrower has been making payments
- Delivery of loss mitigation alternatives – focus on policies and procedures, training, communications, implementation, and tracking of borrowers receiving benefits
- Maintenance of loss mitigation alternatives – same as above but with special attention to handling of recertification for all borrowers who are on income-derived repayment plans
- Loan discharge – identification of defaulted loans for discharge and processing of same (disability discharges, death discharges, closed school discharges, and even false certification discharges)

What Next?

- Groundwork is being laid for a big uptick in attention devoted by CFPB to servicing of FFELP loans
 - Ombudsman's Report suggests greater rate of default and delinquency
- Increasing scrutiny of servicer compensation of employees and vendors, particularly with regard to compensation around loss mitigation
 - Student Loan Servicing Report urges a “realignment” of incentives
- Continuing focus on the delivery of borrower benefits, elimination of non-payment defaults, and the loss mitigation “success rate”
 - Emerging issue may be status changes/inflection points
- Rulemaking within the next two years seems unlikely but the threat is nonetheless being held out by the CFPB
 - Best practices from other rules plus borrower defense to repayment?

Debt Collection

- CFPB is concerned about debt collection in general and student loan collections in particular
 - More than 1 in 3 consumers with credit reports have collection items
 - More than 1 in 4 student loan borrowers are delinquent or in default
 - At least 3 of every 10 FFELP loan borrowers are behind or in default
- Debt collection remains the most-complained-about subject for the CFPB (and other regulators)
 - CFPB has said it gets around 80,000 debt collection complaints per year
 - Servicemembers: 2015 Report noted 8,900 debt collection complaints
 - Ombudsman's Report noted 2,300 collection complaints related to federal and private student loans

Hot Topics – Prior to Referral

- Content of communications – any statement that looks like a threat or a promise gets careful review, particularly statements that deal with wage garnishment on federal loans or improvements to credit scores
- Call time and frequency – calling too early (before 8:00 AM) or too late (after 9:00 PM), particularly with associated complaints; call frequency a concern but standards are difficult to discern (Massachusetts rule?)
- DNC and C&D requests – presumption seems to be that Do Not Call (DNC) and Cease and Desist (C&D) requests should be honored with burden on servicer to defend call procedures
- Third party disclosure issues – third party disclosure is always a concern but now there seems to be a particular sensitivity to any disclosure in connection with skip tracing efforts

Hot Topics – At or After Referral

- Vendor management – relationships with collection agencies and firms are being carefully reviewed for compliance with servicer bulletin and vendor management principles
- Loan documentation/substantiation – CFPB will expect owner and/or servicer to provide to any collection agency or law firm all necessary documentation for substantiation of student loan debt
- Execution of affidavits - policies for execution of affidavits must be rigorously followed ; affiant needs to be familiar with loan record and must read and sign affidavit in presence of notary
- Dispute procedures and verification – procedures for verification of debt and for resolution of disputes are coming under increasingly intense scrutiny, particularly as they implicate credit reporting

What Next?

- Increasing pressure on student loan servicers to take on fiduciary duties to borrowers with regard to loss mitigation in general
 - Reach out to borrowers and do everything possible to extend loss mitigation alternatives in order to avoid default and collection
- Heightened scrutiny of procedures for delivery of income-driven repayment programs for UDAAP compliance
 - Data received by CFPB showed less than 6% of FFELP borrowers in sample were enrolled in such plans
- Rulemaking still underway – but appears to be delayed (SBREFA process may begin soon, but proposed rules are not imminent)
 - At panel at PLI's 21st Annual Consumer Financial Services Institute moderated by our partner Alan Kaplinsky, CFPB panelists nonetheless said out by early Spring

Thank you for inviting us to speak with you!

Please contact us if you have any questions.

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Panelist – Stefanie H. Jackman

- Partner in the Consumer Financial Services, Mortgage Banking, and Commercial Litigation Groups at Ballard Spahr
- Focuses primarily on complex litigation in the area of consumer financial services and financial institutions law
- Regularly defends financial institutions in connection with CFPB investigations, examinations, and enforcement actions
- Handles individual and class action litigation issues arising under an array of consumer financial laws including UDAAP/UDAP, TILA, FDCPA, and FCRA
- Advises various banks and non-bank creditors and their third party vendors on compliance with state and federal consumer protections laws
- Experience developing Compliance Management Systems for a variety of clients in the collections, healthcare, student lending, auto, and installment lending industries
- Member of Ballard Spahr's Collection Documentation, Marketplace Lending, and Fair Lending Task Forces