

The CFPB and Student Loans:
**Where We Stand &
What That Means to You**

PacWest SFS Conference
May 15, 2015

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Outline

- The “larger participant” rule for student loan servicers
- Hot areas in student loan regulatory compliance
- A possible QM-type rule for student loans?
- Lessons learned from recent CFPB consent orders
- Third party service provider oversight
- Fessing up – is it good for you?

Student Loan Servicing “Larger Participant” Rule

- CFPB finalized this rule in December 2013
- CFPB already had examination authority over student lenders under Dodd-Frank
- Larger participant rule covers only a small number of large student loan servicers (with >1 million accounts)
- The Bureau’s enforcement authority is broader, covering all non-banks, regardless of size (as well as large banks)
- The Bureau used the larger participant rule to identify areas in which it believed servicers were not complying with applicable laws and has expanded since



Hot Topics in Student Lending

- Availability of deferment/forbearance options on private student loans that mirror those applicable for Title IV loans
 - Long-term options that reflect ability to pay
- Waive right to default upon death/insolvency of cosigner
- Repayment status processing – overview of options, disclosures, implementation, etc.
- Payment application across multiple loans
- SCRA concerns
 - 6% reduction is on **YOU!**
 - ED, VA and DOD MOU



Hot Topics in Student Lending

- Underwriting standards
- Disclosures re: differences between federal vs. private loans
- Credit reporting (and responding to credit reporting disputes)
- Loan servicing transfers – notice of same and impact of transfer on borrower benefits

A Possible QM-Type Rule?

- The CFPB continues to believe, despite evidence to the contrary, that the student loan market is out of control and could crash
- Also believes private lenders do not work with students
- It frequently compares the situation involving student loans with the buildup to the subprime mortgage crisis
- One frequent criticism is that credit is extended too freely, when the borrower may not have the ability to repay
- All of the elements appear to be present for the CFPB to be motivated to propose a QM-type rule for student loans
- Such a rule could limit the amount of student loan credit available and impose strict underwriting standards, similar to the developments in the mortgage market

Lessons From Recent Consent Orders

- In a 2014 consent order, the CFPB criticized a credit card product that was offered to consumers through the employees of unrelated third parties (at the point of sale at medical/veterinary clinics)
- CFPB criticized lack of training and oversight of these individuals
- Two areas in student lending possibly implicated by this consent order:
 - Student loans funded by one entity, but originated on another entity's platform
 - Private for-profit college loans where school financial aid office is heavily involved in origination process



Third Party Service Providers



- Bulletin 2012-03 (April 13, 2012)
 - Conduct initial due diligence
 - Review policies and procedures
 - Contract representations re: compliance
 - Ongoing monitoring and controls
 - Address issues
- Origination services
- Account servicing
- Debt collection

Focus Areas for the CFPB, FTC and State AGs

- Quality of account documentation
- Authentication of debts and account records under the business records rule
- Internal handling of data to ensure accuracy and integrity
- Failing to verify debts before suing
- Steps taken to verify debts

Focus Areas for the CFPB, FTC and State AGs

- Threatening actions do not intend/do not take in regular course
- Misleading statements of impact of payment on credit or debt
- Failing to report debts as disputed to credit bureaus
- Failing to disclose out of statute debt
- Failing to disclose convenience fees/other charges

How Helpful is it to Fess Up?

- Self-policing: significant benefits, very few risks (other than cost of monitoring)
- Remediation:
 - Seems absolutely necessary to demonstrate responsible conduct in the CFPB's eyes (*cf.* reference to remediation in auto finance fair lending bulletin)
 - In some very limited instances, will provide safe harbors under state law
 - Risk of spurring individual or class action litigation from most remediation efforts

How to “Cooperate” With an Investigation

- The Bulletin makes it clear that merely complying with a CID is not “cooperation”
- Performing a self-investigation is one example given – but there are practical difficulties with doing that
- Offering to provide information without further CIDs
- Making witnesses available for informal interviews/meetings
- Responding to follow-up questions
- Preparing reports on specific issues (once the CFPB makes them known)
- The benefits of cooperation with an investigation

Benefits and Risks of Self-Reporting

- Self-reporting presents a very complex risk-benefit calculation
- The primary risk is reporting an issue the CFPB did not know about, and would not discover otherwise
- Mitigating this risk (i.e., disclosing a violation that is likely to be discovered) may cause the CFPB to give little or no “credit” for the self-reporting
- Very uncertain benefit from self-reporting
- Under any circumstances, self-reporting should be accompanied by a thorough and credible action/remediation plan

Questions?

If you have questions about anything we covered today, please contact:

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