

The CFPB Sets Its Sights on Federal Student Loan Complaints

March 2016

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The Consumer Financial Protection Bureau (“CFPB”) recently began accepting complaints on federal student loans. This Alert discusses the potential effects of that unannounced decision and how industry participants can begin to prepare for increased CFPB scrutiny in this latest area of agency interest.

Last week, the CFPB announced that it would begin accepting complaints from consumers encountering problems with loans from online marketplace lenders,¹ which generated much discussion amongst the industry.² In contrast, two weeks ago, without a press release or blog post, the CFPB began accepting student loan complaints relating to federal student loans, which had previously been handled exclusively by the Department of Education’s (“ED”) Federal Student Aid Ombudsman Group.³ Although this development may not have warranted any fanfare, it is far from minor.

The CFPB’s intake of federal student loan complaints represents a strategic and necessary step towards the agency’s broader goals in the student loan space. For example, last November, the CFPB announced that it intended to explore potential rulemakings in student loan servicing,⁴ and less than a month ago, Director Cordray at the Consumer Advisory Board Meeting listed the student loan market as the second “key area[] where [the agency] hope[s] to make substantial progress over the next two years.”⁵ Certainly, the data collected by the agency will be critical to shaping future rulemakings.⁶ At the same time, with the expansion of its complaint function, the CFPB appears poised to increase its oversight, supervision and enforcement of the student loan servicing space.

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Background

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the CFPB is authorized to collect complaints regarding covered persons who engage in offering or providing a “consumer financial product or service.”⁷ Further, covered persons subject to the agency’s supervision and primary enforcement authority must respond to these complaints.⁸ The agency first exercised this authority in July 2011, when it began taking consumer complaints relating to credit cards. Since then, the CFPB has steadily accepted a greater variety of complaints, from mortgages in December 2011 to virtual currency in August 2014 and most recently online lending.⁹ In March 2012, the CFPB began handling private student loan complaints while directing federal student loan complaints to ED.¹⁰

In parallel, in June 2012, the CFPB established the Consumer Complaint Database (“Complaint Database”) and has routinely expanded its functionality over the last three years.¹¹ The Complaint Database aggregates and organizes company information collected by the CFPB, including:

- Actions taken by a company in response to a complaint (*e.g.*, whether the company believes it acted appropriately, disputes the facts presented in the complaint or cannot verify or dispute the facts);
- How the company responded (*e.g.*, closed with explanation, closed with non-monetary relief or closed with monetary relief);
- Whether the company’s response was timely; and
- Whether the consumer disputed the company’s response.

The Complaint Database allows any public user, including consumers and industry competitors, to filter or sort data based on certain search criteria, such as financial product or service, company, location, date, or any combination of available variables. Further, in March 2015, the CFPB finalized a proposal to publicly disclose complaint narratives of consenting consumers, and in June 2015, consumer narratives identifying named companies became available on the Complaint Database. As structured and implemented by the CFPB, the Complaint Database provides consumers with a powerful means of evaluating the consumer-facing activities and experiences of financial institutions.¹² Equally important, it may drive the internal risk assessment processes of firms and provide useful and, perhaps, even strategic information to competitors of named companies, not to mention fodder for counsel seeking to establish the foundation for consumer class actions.

At the same time, consumer complaints provide the CFPB, which often describes itself as “a data-driven agency,”¹³ with sophisticated information about potential consumer financial protection issues in the market. As explained in the CFPB’s Supervision and Examination Manual, “Consumer complaints play a key role in the detection of unfair, deceptive, or abusive practices. Consumer complaints have been an essential source of information for examinations, enforcement, and rule-making for regulators.”¹⁴

Student Loan Market

As last reported, the CFPB has received approximately 18,400 private student loan complaints and 2,300 debt collection complaints relating to both private and federal student loans.¹⁵ However, these complaints represent just a small fraction of total student loan complaints. While outstanding student loan balances in the US were US\$1.23 trillion as of December 31, 2015, up US\$70 billion from the previous year,¹⁶ private student loans represented only approximately 7.6% of this number.¹⁷ Thus, with the CFPB now accepting federal student loan complaints, the agency’s complaint volume is likely to increase substantially.

Since 2012, the CFPB has issued an annual report from its Student Loan Ombudsman describing the problems in the student loan servicing industry based in large part on its insights into private student loans.¹⁸ In these reports, the CFPB has highlighted a variety of concerns including, for example, the improper application and allocation of payments,¹⁹ delays in payment processing,²⁰ and problems with automatic payments.²¹

These highlights are gleaned directly from the student loan complaint form — when consumers submit student loan complaints, they must select an issue from the list below that best reflects their concern:

- Getting a loan²²
 - Can't qualify for a loan
 - Qualify for a better loan than offered
- Can't repay my loan
 - Can't decrease my monthly payments
 - Can't temporarily postpone payments
 - Can't get flexible payment options
- Dealing with my lender or servicer
 - Trouble with how payments are handled
 - Don't agree with fees charged
 - Received bad information about my loan
 - Need information about my balance/terms
 - Keep getting calls about my loan
 - Having problems with customer service

This type of data informs the agency's judgment as to which issues may be most troubling to consumers and helps the agency tailor its supervisory examinations and investigations. For example, with respect to specific financial institutions, the CFPB's 2015 exams identified issues regarding (i) the allocation of partial payments,²³ (ii) the use of deceptive or misleading language with respect to late fees, tax deductibility of interest and loan dischargeability,²⁴ and (iii) the fair processing and crediting of automatic debits.²⁵

With the expansion of the CFPB's complaint function to include most federal student loans, the agency will now arguably have a more complete picture of the concerns being advanced by student loan borrowers. As with information obtained from prior expansions of the Complaint Database, we expect that the CFPB will leverage the new information from federal student loan complaints to inform its future supervisory, enforcement and rulemaking activity.

Takeaways for Industry Participants

Until now, the CFPB's supervision of and actions in the student loan servicing space have been guided primarily by its review of private student loan complaints. With the agency now broadening its complaint function, it is prudent for industry participants to expect that the CFPB's increased insight into the student loan servicing space will lead to increased industry scrutiny. In particular, industry participants should take note of, and consider whether it may be helpful to engage counsel to assist with, the following:

- The CFPB will use complaint information from federal student loan borrowers to develop supervisory and policy strategies targeted at the market as a whole.
- The CFPB will continue to review and likely adjust agency guidance on student loan servicing practices based, in part, on what the agency gleans from consumer complaints.
- Financial institutions subject to the CFPB's supervisory and primary enforcement authority should ensure that they have policies and procedures in place to handle the increased volume of complaints.
- Student loan servicers responsible for federal student loans should recognize that complaints, including complaint narratives, against their institutions may now be made public.
- Industry participants should review existing and future complaint data to assess whether loan servicing processes can be improved to minimize the risk of a CFPB examination or investigation.

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1 CFPB Now Accepting Complaints on Consumer Loans from Online Marketplace Lender (Mar. 7, 2016).
2 See e.g., James Koren, *Online lenders drawing more scrutiny by regulators*, LOS ANGELES TIMES, Mar. 9, 2016; ACA International,
3 *CFPB Expands Complaint Database to Include Online Marketplace Lenders* (Mar. 8, 2016).
4 A subset of federal student loan complaints, i.e. those regarding financial aid eligibility and loan disbursements, will continue to be
5 directed to the Department of Education.
6 Fall 2015 Statement of Regulatory Priorities.
7 Prepared Remarks of CFPB Director Richard Cordray at the Consumer Advisory Board Meeting (Feb. 25, 2016).
8 We note, though, that the CFPB's most recent Agency Rule List (Fall 2015) includes student loan servicing as a "Long-Term Action,"
9 meaning that the agency does not expect to take any regulatory action within the year.
10 12 U.S.C. § 5534(a).
11 12 U.S.C. § 5534(b).
12 To date, the CFPB accepts complaints regarding credit cards (July 2011); mortgages (December 2011); bank accounts and
13 services, private student loans, and consumer loans (March 2011); credit reporting (October 2012); money transfers (April 2013);
14 debt collection (July 2013); payday loans (November 2013); prepaid cards, credit repair, debt settlement, pawn and title loans (July
15 2014); virtual currency (August 2014); federal student loans (February 2016); online market lending (March 2016).
16 To be clear, when federal student loan concerns came in the form of credit reporting complaints or debt collection complaints, the
17 CFPB handled them. However, prior to this recent development, federal student loan borrowers trying to submit a general student
18 loan complaint were directed to ED.
19 The Complaint Database was initially populated by data on credit card complaints. It was expanded in March 2013 to include data on
20 private student loan complaints.
21 ED is also developing, pursuant to a Presidential mandate, its own centralized complaint system for student loan servicing — the
22 Enterprise Complaint System ("ECS") — aimed towards "providing easy access to students interested in submitting complaints,
23 formalizing and systematizing the handling of submitted complaints, monitoring the resolution process with interventions as needed,
24 and compiling and analyzing data about complaints with the goal of observing and responding to trends as needed." ED,
25 Strengthening the Student Loan System to Better Protect All Borrowers, at 7 (Oct. 1, 2015). On March 10, 2015, President Obama
signed the "Student Aid Bill of Rights," directing the Secretary of Education, by July 1, 2016, to "develop and implement a simple
process for borrowers to file complaints regarding Federal financial aid, including those pertaining to lenders, loan servicers, private
collection agencies, and institutions of higher education." Furthermore, the memorandum required ED to provide data from the ECS
to other enforcement agencies that are responsible for oversight of federal student loan lenders, loan servicers, private collection
agencies, and institutions of higher education. Presidential Memorandum — Student Aid Bill of Rights (Mar. 10, 2015). On December
10, 2015, ED published a notice in the Federal Register inviting comments on its plans to create a new website as part of the ECS.
80 Fed. Reg. 76678, 76679 (Dec. 10, 2015).
See, e.g., CFPB Strategic Plan FY 2013 - FY 2017, available at <http://www.consumerfinance.gov/strategic-plan/>.
CFPB Supervision and Examination Manual, at UDAAP 9.
Annual Report of the CFPB Student Loan Ombudsman, at 2 (Oct. 2015); Annual Report of the CFPB Student Loan Ombudsman, at
2 (Oct. 2014); Annual Report of the CFPB Student Loan Ombudsman, at 2 (Oct. 2013); Annual Report of the CFPB Student Loan
Ombudsman, at 2 (Oct. 2012). The CFPB did not begin accepting debt collection complaints until July 2013.
See Fed. Reserve Bank of N.Y., *Quarterly Report on Household Debt and Credit* (Feb. 2016); Fed. Reserve Bank of N.Y., *Quarterly
Report on Household Debt and Credit* (Feb. 2015).
The MeasureOne Q3 2015 Private Student Loan Report, at 1 (Dec. 17, 2015).
See, e.g., Annual Report of the CFPB Student Loan Ombudsman, at 11 (Oct. 2015) ("To identify the range of issues faced by
student loan borrowers, this report relies primarily on complaints handled by the Bureau."); Annual Report of the CFPB Student Loan
Ombudsman, at 10 (Oct. 2014) ("To identify the range of issues faced by student loan borrowers, this report relies primarily on
complaints handled by the Bureau.").
Annual Report of the CFPB Student Loan Ombudsman, at 8-11 (Oct. 2013); Annual Report of the CFPB Student Loan Ombudsman,
at 7-8 (Oct. 2012).
Annual Report of the CFPB Student Loan Ombudsman, at 13 (Oct. 2013); Annual Report of the CFPB Student Loan Ombudsman, at
9 (Oct. 2012).
Annual Report of the CFPB Student Loan Ombudsman, at 16 (Oct. 2015).
Federal student loan borrowers who have problems getting a loan cannot submit a complaint to the CFPB and must still send their
complaint to ED.
CFPB Supervisory Highlights, Fall 2015, at 22 (Nov. 2015).
Id. at 23-24; CFPB Supervisory Highlights, Summer 2015, at 9-10 (June 2015).
CFPB Supervisory Highlights, Fall 2015, at 23 (Nov. 2015).