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CFPB enters consent order with student loan servicer for delayed account adjustments

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On 1 May 2019 the Consumer Financial Protection Bureau (CFPB) announced a consent order with student loan servicer Conduent Education Services LLC (CES) (the company), formerly ACS Education Services, for alleged violations of sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 in connection with servicing loans for borrowers under the Federal Family Education Loan Program, 20 U.S.C. §§ 1071 et seq.

The CFPB alleges that the company engaged in unfair acts or practices for failing to timely process adjustments to borrower loan accounts in connection with forbearance, deferment, and income-based repayments, thereby causing errors to the principal amount balances. This purported failure led to consumer harm by causing borrowers to pay incorrect loan amounts. The CFPB sets forth that, in most instances, the company knew loan information was inaccurate; yet, it failed to inform borrowers of this fact and provided billing statements that reflected an adjustment – causing borrowers to think the status change had been processed and that their principal balances had been adjusted.

Notably, the company reported the issues to the CFPB in 2014, and a three-year remediation process started in 2015 and resulted in the company adjusting 189,000 of the 200,000 reviewed loan "packets" (a term referring to a set of up to nine loans for the same borrower). The company also self-reported additional loans that required similar remediation but that had been identified later.

During the remediation process, the company allegedly caused delays for borrowers seeking loan consolidation by failing to provide necessary payoff information to the new loan servicers within the required 10-day time frame. Instead, the company sometimes took months to provide this payoff information, according to the CFPB. The company self-reported that issue to the CFPB as well.

The settlement requires the company to pay a US$3.9 million civil money penalty and, if it has not already done so, to adjust the principal balances of the relevant loans or to make restitution with respect to loans that have already been paid off.

Key takeaways

- Since the CFPB's inception, the industry has been interested in understanding the benefit of self-reporting to the CFPB. In 2013 the CFPB indicated that self-reporting may "warrant favorable consideration." Earlier in 2018 the CFPB cited self-reporting as one reason it did not assess fines against a large bank in connection with a purported failure to adjust the annual percentage rate for consumer credit card accounts. However, the fines assessed in the CES consent order demonstrate that self-reporting does not necessarily – on its own – alleviate potential penalties from being assessed.

- Every consent order under the current director has relied, at least partially, on unfair, deceptive, or abusive acts or practices (UDAAP). As this action illustrates, critical components of mitigating UDAAP risk are to understand the statute and address process gaps soon after learning that they exist. Here, the company had diverted certain loans that were unable to be automatically processed into a queue for a trained loan processor to handle. Eventually, the queues grew, allegedly containing over 200,000 loan packets that had not been processed. It is not uncommon for operational compliance gaps to arise when (even part of) an automated process is replaced with a manual process because the change may result in risks related to, for example, scalability – if the manual process cannot manage the same volume as the automated process – and accuracy – if the manual process cannot yield correct and consistent results in the same way as the automated process. With respect to UDAAP risks, the knowledge of a gap that could negatively impact consumers imposes a responsibility to promptly address it and remediate (if possible).

- Student lending and student loan servicing will continue to be a focus of the CFPB and Congress. Just last month, democratic senators sent a letter to the CFPB requesting evidence that the CFPB polices the student loan industry and the "administration of the federal Public Service Loan Forgiveness Program." In its letter, the senators reiterate the importance of regulating the student loan industry. An earlier report from the U.S. Department of Education's (the department) Office of the Inspector General found that Federal Student Aid, an office of the department, failed to adequately oversee servicers of federally held student loans. These are just two of the many examples that demonstrate the growing prevalence of student lending and loan servicing in the political and regulatory spotlight.

Contacts

Allison J. Schoenthal
Partner, New York
T +1 212 918 3647
allison.schoenthal@hoganlovells.com

Ashley Hutto-Schultz
Senior Associate, Washington, D.C.
T +1 202 637 5409
ashley.huttoschultz@hoganlovells.com