

# The CFPB and Higher Education: Politics, Policy, and Law

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# Vicarious Liability

- Director Cordray's remarks on how to "hold a company accountable."
- Another company may be responsible for the conduct of another when the third-party is acting as the company's agent or at its direction.
  - Ace Cash Express Consent Order (collection activities of third-party collectors)
  - Sprint Consent Order (payment processors).
- Reliance on unfair, deceptive, or abusive acts and practices authority.

# Discover Bank Consent Order

- Discover Bank Consent Order (July 22, 2015).
  - Failure to furnish clear information about interest paid. 12 U.S.C. § 1031.
  - Initiating collection calls at inconvenient times. 12 U.S.C. § 1031.
  - Overstating the minimum amount due. 12 U.S.C. § 1031.
  - Violating the FDCPA with respect to accounts it acquired that were in default (which the CFPB defined to be charge-off status). 15 U.S.C. § 1692.

# Discover Bank Consent Order

- Discover acquired Citibank's private loan business (approx. 800,000 accounts).
- Retained many of Citibank's servicing policies.
- \$25 million civil penalty, compensation to consumers.

# Discover Bank Consent Order

- Discover required students to submit a W-9S before the bank would file appropriate interest documents with the IRS.
- Requirement was disclosed in the paper billing statements, but did not appear in online billing statements.
- Borrowers who did not submit the form would see “\$0” qualified interest payments, which was incorrect.

# Discover Bank Consent Order

- Borrowers whose loans were leaving their grace period received incorrect billing statements.
  - Amounts owed on loans leaving grace
  - Interest owed on loans still in deferment
- Affected approximately 30,000 account statements for 7,000 borrowers.
- Issue appears limited to the former Citibank loans.

# Discover Bank Consent Order

- Borrowers' cell phone corresponds to one time zone, address corresponds to another.
- Discover called time zone associated with cell phone, which was “inconvenient” in other time zone.
- CFPB's FDCPA proposal under consideration would address this practice.
  - Call only during times that are not “inconvenient” in both time zones.

# Discover Bank Consent Order

- Of the 800,000 accounts, many were past due or charged-off.
- Discover placed most of these charged-off accounts with collection agencies; retained 252 charged-off accounts
- These accounts were governed by the FDCPA, yet Discover failed to send the validation notice in the first communication.
- Accounts represented 0.3% of the portfolio.

# Outline of FDCPA Rule

- On July 27, 2016, the CFPB released an outline of its proposed FDCPA rules that are under consideration.
  - Small Business Review Panel
  - FDCPA debt collectors
- Outline for creditors is expected in a few months.

# Outline of FDCPA Rule

- Notable Proposals under Consideration
  - Debt substantiation
  - Data integrity
  - Validation notice and Statement of Rights
  - Collection communications
  - Time-barred debt and obsolete debt

# CFPB Mid-Year Report on Student Loan Complaints

- The volume of complaints continues to increase.
  - Up 34% from prior period
  - 3,100 in six months
- Cosigner release.
- Auto-default language.
- Roadblocks to refinance.

# CFPB Mid-Year Report: Cosigner Release

- CFPB believes borrowers are not aware they are eligible for the benefit.
- Over 90% of borrowers who apply are denied.
  - Criteria is unclear
  - Received other benefit, forbearance, without understanding this would permanently bar them from cosigner release
- CFPB wants servicers to clearly state the required factors, proactively notify borrowers when eligible, and warn certain actions can result lead to disqualification.

# CFPB Mid-Year Report: Auto-Default Language

- CFPB believes auto-default clauses continue to exist and continue to be enforced.
- Auto-default clause in consumer credit agreements. This is when the Note defines the term “I” or “me” to refer to both the primary borrower and the cosigner.
  - Default section states – “I will be in default, and you will have right to demand the immediate repayment of the entire outstanding balance due under this Note, if I die or any bankruptcy proceeding is filed by or against me.”
- Lenders assert the clauses are being removed from notes and won't be enforced.
- Loans are sold and securitized; investors are not honoring this position.
- Risk with leveraging old note template for refinance programs.

# CFPB Mid-Year Report: Roadblocks to Refinance

- Servicers and lenders are not quick enough for the CFPB and borrowers.
- Payoff amounts are inaccurate or never received.
- Cosigners who send a payment, to be applied to a specific loan, allege directions are not honored.

# Accrediting Council for Independent Schools

- The District Court for D.C. denied the CFPB's petition to enforce a civil investigative demand.
- The CID requested Accredited Council provide information to the CFPB as to how it determined to accredit certain high-profile for-profit education institutions.

# Accrediting Council for Independent Schools

- The judge acknowledged the CFPB was struggling to establish the parameters of its authority, but held the agency lacked the authority to investigate the process to accrediting for-profit schools.
- Outrage from Washington and other stakeholders asserting the CID was an overreach because Accredited Council did not provide a financial service.
- Director Cordray responded that Accredited Council was a covered person because it facilitated for-profit schools misleading consumers.
  - Accredited Council is subject to regulation by another agency, the Department of Education, and would have needed to furnish the forms in that channel.
  - Interesting power play between the two agencies and lack of collaboration. Long-standing posture at the CFPB that seems to pervade, others can't do the job well.

# Questions?

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