

CFPB Bites of the Month - 2023 Annual Review - Student Lending

January 25, 2024 | Eric L. Johnson, Justin B. Hosie, Laura J. Bacon, Ryan S. Stinneford, and Thomas P. Quinn, Jr.

In this article, we share a timeline of our monthly "bites" for 2023 applicable to student lending along with some information related to financial products and services offered to students.

Bite 11: Report on College Sponsored Financial Products

On December 19, 2023, the CFPB published its fourteenth Annual Report on College Banking and Credit Card Agreements. This Annual Report is issued pursuant to the 2009 Credit Card Accountability Responsibility and Disclosure (CARD) Act. It relies on data gathered from credit card issuers, publicly available information on college websites, and complaints submitted to the CFPB. The report noted that financial institutions pay many colleges to market financial products and services to students. The CFPB noted several areas of concern from its findings, including that some financial institutions charge students fees on sponsored deposit accounts that are no longer charged to consumers on the open market, such as fees for overdrafts and nonsufficient funds, and/or fees that arise only after the student graduates or reaches a certain age. Additionally, the CFPB expressed concern with higher per account fee averages being paid by student accountholders attending Historically Black Colleges and Universities, Hispanic-servicing institutions, and for-profit institutions. The Annual Report did reference improvement in the manner of marketing credit cards to students, which no longer rely on in-person marketing practices.

Bite 10: Update on Federal Student Loan Borrowers

On September 5, 2023, the CFPB reminded federal student loan borrowers that student loan payments would resume in October, for the first time since March of 2020. The CFPB also reminded borrowers that cancellation and lower payment options could be available, and that these borrowers should explore options before making payments again. The CFPB claimed that some student loan servicers made it harder for borrowers to access lower payments and loan cancellation programs, and that borrowers should be aware of the options available to them. The CFPB also forecasted an on-ramp period in which interest that accrued during the first year on any missed payments would not capitalize, and borrowers would not be placed in default, receive negative credit reporting, or be referred to collections for twelve months. The CFPB also encouraged anyone having issues with their loans to submit a complaint to the CFPB.

Bite 9: CFPB Reports on College Tuition Payment Plans

On September 14, 2023, the CFPB issued a report analyzing tuition payment plans offered by nearly 450

institutions. The report indicated that many plans have inconsistent disclosures and confusing repayment terms, putting students at risk of missing payments, incurring late fees, and accumulating debt. The report also claimed that many institutions withhold transcripts as a debt collection tool. According to the CFPB, students appear to be a captive market and institutions offer limited options for meeting payment obligations. The CFPB claimed that the terms of tuition payment plans waive borrowers' legal protections, limit consumer rights, and misrepresent the rights and protections available. The CFPB noted that it would continue to gather and analyze information on tuition payment plans and the practices of school-based lenders.

Bite 8: CFPB Issued a Report from the Education Loan Ombudsman

On October 20, 2023, the CFPB issued a report from the Education Loan Ombudsman, analyzing over 9,000 complaints about student loans over the prior year. According to the report, about 75% of the complaints about student loans during that period related to the servicing and collection of federal student loan debt, an increase over previous years. The complaints outlined problems with customer service, errors related to basic loan administration, and problems accessing loan cancellation programs. The other 25% of the complaints were related to private student loan debt, including those related to loan cancellation, misleading origination tactics, and coercive debt collection practices. The CFPB attributed the overall increase in complaints to ongoing systemic changes in the federal student loan system, the end to the payments' pause, and increased financial uncertainty among borrowers. These issues coincided with servicers being responsible for the transfer of millions of accounts, new payment policies, and a requirement to address long-standing servicing failures.

Bite 7: Junk Fees Supervisory Highlights Special Report

On March 8, 2023, the CFPB released an edition of its Supervisory Highlights, focused on junk fees. The CFPB addressed various types of financial services including student lending. For student lending, the CFPB took issue with late fees that were charged even when consumers paid on time.

Bite 6: CFPB Addresses Collections on Discharged Student Loans

On March 16, 2023, the CFPB released a bulletin addressing unlawful collection of discharged student loans. The CFPB alleged that certain loan servicers were illegally returning loans to collections after bankruptcy courts had discharged those loans. The CFPB directed those servicers to return the payments and to immediately stop unlawful collection tactics. The CFPB indicated that certain student loans are eligible for discharge in bankruptcy, including loans made to attend unaccredited schools, loans to students attending less than half-time, loans made in amounts in excess of the cost of attendance, and loans made to cover fees and living expenses incurred while studying for the bar exam or other professional exams. CFPB examiners claim that certain student loan servicers have failed to distinguish between these discharged loans and others, and as a result, are collecting discharged debt. The CFPB announced that it expects that servicers will proactively identify discharged student loans, permanently cease collections, and refund consumers affected by unlawful collections in the past.

Bite 5: CFPB Proposes Rule to Establish Public Registry of Terms and Conditions in Form Contracts

On January 11, 2023, the CFPB announced that it was proposing a rule to establish a public registry of terms and conditions used in form contracts. The proposed rule would establish a public registry of supervised nonbanks' terms and conditions. The registry would include those terms provided in "take it or leave it" form contracts that claim to waive or limit consumer rights and protections. The proposed

rule would apply to nonbanks subject to CFPB supervisory jurisdiction, including private student loan lenders and larger participants operating in student loan servicing. Examples of terms and conditions that would be included in the registry are those that: waive servicemembers' legal protections, "undermine" credit reporting rights, limit lender liability for bank fees caused by a lender's repeated debit attempts, and mislead consumers by using unenforceable waivers. In addition to the terms and conditions published on the registry, the CFPB would also require company information to be published such as the company's legal name, state of incorporation or organization, headquarters and principal place of business addresses, and unique identifiers. Additional information would also be required. The public comment period is now closed.

Bite 4: CFPB Files Statement of Interest in Student Discrimination Case

On April 14, 2023, the CFPB announced that it had filed a statement of interest in a Florida case to help protect consumers from "discriminatory targeting." In that case, the plaintiffs alleged a for-profit nursing school extended and arranged for students to take out loans, and intentionally targeted its program based on race. The plaintiffs claim that the school imposed new grading policies and graduation requirements after students enrolled, increasing the program's time and cost, and that these actions constituted "discriminatory targeting." The nursing school has argued that the plaintiffs failed to specify an aspect of the transaction that discriminated based on race and did not identify a specific unfair or predatory term. The CFPB takes the position that the Equal Credit Opportunity Act's prohibition on discrimination applies "with respect to any aspect of a credit transaction" and therefore the plaintiffs were able to allege discriminatory targeting without identifying specific loan terms that violated the law.

Bite 3: CFPB Announces Settlement Distribution in Student Loan Action

On July 6, 2023, the CFPB announced a settlement distribution in a prior student loan action, that resulted in checks going to 7,000 borrowers. The distribution was related to a July 2020 settlement related to alleged Telemarketing Sales Rule violations. The CFPB claimed that the company involved advertised that it would help federal student loan borrowers reduce or eliminate their monthly payments, in exchange for paying fees of up to \$699. The Department of Education offers these options to federal student loan borrowers for free. Under the Telemarketing Sales Rule, it is illegal to request or receive any fees for debt-relief services sold through telemarketing before the terms of the debt are altered or settled and the consumer has made at least one payment pursuant to the new arrangement. However, the CFPB alleged that the company requested and received payments from consumers within a few days, or at the latest, within 30 days of their enrollment—before the terms of the debts were altered. The CFPB distributed \$3.543 million from the CFPB's civil penalty fund and funds received from the defendant in this case.

Bite 2: CFPB and 11 States Enter Order Against Student Lender

On November 20, 2023, the CFPB announced that it joined with 11 states to bring an enforcement action against a student lender that promoted a "job guarantee" and "six-figure salaries." According to the CFPB, the company deceptively claimed its income share transactions were not loans because repayment was not mandatory. However, the CFPB claims that the company's terms did require repayment. The CFPB also claimed that the company did not disclose required terms to consumers, such as the amount financed and the annual percentage rate. The CFPB further claimed the company pushed consumers into converting their income share agreements to revised "settlement agreements"

that required payments even if they had not found a job. The company also allegedly filed debt collection lawsuits in a distant jurisdiction that it did not disclose in its agreements. The CFPB required the company to refund \$4.2 million to consumers, cancel all outstanding transactions, permanently cease operations, and pay a penalty to the civil penalty fund.

Bite 1: CFPB Allocated \$11 Million for Consumers Related to Student Loan Debt-Relief

On March 23, 2023, the CFPB announced that it had allocated \$11 million for consumers who were allegedly harmed by a student loan debt relief operation. In 2020, the CFPB alleged that a student-loan debt-relief business and four attorneys were part of an operation that charged approximately \$11.8 million in illegal upfront fees to thousands of consumers. The Telemarketing Sales Rule prohibits upfront fees for debt-relief services sold through telemarketing. In addition to collecting those fees, the CFPB alleged that the debt-relief operation led consumers to believe that they were working solely with an attorney, but actually distributed the fees to the business. The original complaint also alleged that consumers were encouraged to stop paying their student loans altogether. The CFPB distributed the funds to approximately 2,600 consumers.

Conclusions and Predictions

With the Supreme Court killing the Biden administration's student loan forgiveness efforts with a pair of twin decisions in June of 2023, the administration pivoted to develop new income-driven repayment (IDR) options for federal student loans - such as the Saving on a Valuable Education (SAVE) Plan to aid consumers with resuming repayment obligations following the COVID-related payment pauses. As we move into 2024, we expect the CFPB to keep a watchful eye on the impact of federal student loan payment resumption on consumers, while also ensuring that alternative repayment options available to consumers are properly implemented. Much of this emphasis will likely fall on the actions of servicers who are primarily responsible for ensuring the proper implementation of payment obligations and options available to consumers.

This emphasis appears to have already begun. On January 5, 2024, the CFPB issued an Issue Spotlight that summarized its concerns after monitoring the first several months after recommenced repayment obligations. The Issue Spotlight pointed to staffing issues at servicers causing unreasonably long hold times and delays in processing income-driven repayment applications, along with the incorrect billing statements, as its key observations to date. Due to the three year delay in federal student loan repayment requirements, and the potential impact these renewed obligations might have on consumer credit strain, we expect this to be a topic of focus in the year ahead.

Still hungry? Please join for our next CFPB Bites of the Month. Here is our lineup for 2024. If you missed any of our prior Bites, request a replay on our website

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