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Supervisory Highlights: Special Edition Student Lending

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Consumer Financial Protection Bureau

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1. Introduction

Student loans represent the second-largest form of U.S. consumer debt at around $1.77 trillion in total outstanding balances. While federal student loans comprise the vast majority of the student lending market, private student loans present notable risks. The refinance market, for example, may offer certain benefits, but refinancing or consolidating federal loans through a private lender results in the loss of important federal protections. And institutional lending products – private loans made by the borrower's school directly to the student – warrant special attention because of the uniquely close relationship between student and school. Additionally, the terms of private student loans are not standardized, and examiners have found certain loan terms problematic for consumers. Because of these substantial risks, the Consumer Financial Protection Bureau (CFPB) is actively engaged in vigorous oversight of all areas of the student loan market to ensure that entities comply with Federal consumer financial laws, including the Consumer Financial Protection Act (CFPA),[1] the Electronic Fund Transfer Act and its implementing regulation, Regulation E,[2] and the Truth in Lending Act and its implementing regulation, Regulation Z.[3]

This edition of Supervisory Highlights focuses on significant findings across the entire student loan market. The first group of findings relates to the refinance market. Examiners identified abusive misleading statements regarding loss of federal benefits as well as regulatory violations in connection with the refinancing and consolidation of loans. The second group involves the offering by private lenders of illusory benefits, including unemployment and disability protections as well as rate reductions for autopay. The third group involves noteholder liability for claims of school misconduct. Examiners identified violations related to private student loan servicers' treatment of borrowers whose loan contracts have provisions allowing them to assert any claims and defenses they have against their school, such as for fraud, against the subsequent noteholder. The fourth group of findings involves illegal collection tactics, such as contract provisions allowing schools to withhold academic transcripts of delinquent borrowers.

The fifth and last group of findings relate to the servicing of federal student loans. For over three years, payments on these loans were paused due to the COVID-19 pandemic. During that time, approximately 20 million borrower accounts were transferred to different federal student loan

[1] 12 U.S.C. § 5481 *et seq*.
[2] 15 U.S.C. § 1693, *et seq*: 12 C.F.R. Part 1005, *et seq*.
[3] 15 U.S.C. § 1601, *et seq*: 12 C.F.R. Part 1026, *et seq*.

servicers. In September 2023, interest began accruing on nearly $1.5 trillion in federally owned loans owed by approximately 43 million consumers.

In October 2023, loan payment obligations resumed for around 28 million borrowers – including more than 6 million entering repayment for the first time. Many of these borrowers applied for income-driven repayment (IDR) plans to reduce their monthly payment amounts. Our recent supervisory work identified significant and pervasive violations related to servicers' handling of the return to repayment. These violations include failing to provide appropriate avenues for consumers to communicate with their servicers, sending deceptive billing statements, withdrawing excess amounts from borrowers' deposit accounts, and numerous problems related to processing of IDR applications.

To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights*, references to institutions generally are in the plural and the related findings may pertain to one or more institutions.[4] We invite readers with questions or comments about *Supervisory Highlights* to contact us at CFPB_Supervision@cfpb.gov.

[4] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

2. Supervisory Observations

2.1 Refinancing student loans

Refinancing student loans poses risks for borrowers, including loss of benefits tied to federal student loans. In addition to other benefits, federal student loans offer access to various forgiveness programs. For example, under the Public Service Loan Forgiveness program, eligible borrowers can have their remaining loan balance forgiven after making 120 qualifying loan payments on an IDR plan, while working for a qualifying public service employer. Under the Teacher Loan Forgiveness program, teachers may be eligible to have a portion of their loans forgiven after working for five years in low-income public schools. When borrowers refinance or consolidate these loans through a private lender, they lose these benefits and protections.

2.1.1 Deceptive representations about eligibility for forgiveness upon refinancing federal student loans

Examiners found that private lenders offering to refinance federal student loans engaged in deceptive acts or practices where their marketing and disclosure materials give a misleading net impression that refinancing federal loans might not result in forfeiting access to federal forgiveness programs, when, in fact, it was a certainty. A representation, omission, act, or practice is deceptive when: (1) the representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) the consumer's interpretation of the representation, omission, act or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act or practice is material.[5]

Examiners observed that the lenders repeatedly disclosed some of the benefits borrowers would lose access to if they refinanced their federal loans into private loans, but omitted the fact that borrowers would lose access to forgiveness plans. In one instance, the lenders said borrowers "may" lose access to federal benefits, despite it being a certainty. In phone calls about refinancing federal loans, the lenders scripted responses to direct questions about loan forgiveness that omitted the loss of forgiveness benefits upon refinance.

[5] 12 U.S.C. §5531.

These statements were misleading because they created the net impression that borrowers could refinance their loans with the lenders without losing access to forgiveness programs, which is false. The borrowers' interpretation of the representations was reasonable, as borrowers are entitled to accept statements on the lenders' website and the lenders' responses to direct questions in assessing the pros and cons of refinancing federal student loans. The representations are material as they may affect borrowers' decisions regarding whether to refinance their federal loans.

2.1.2 Abusive practice in connection with the loss of forgiveness benefits upon refinancing federal student loans

Examiners also found instances of abusive acts or practices by private lenders in connection with misleading statements about federal forgiveness in connection with refinancing federal loans by private lenders. An abusive act or practice: (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of: a lack of understanding on the part of the consumer of the material risks, costs or conditions of the product or service; the ability of the consumer to protect the interest of the consumer in selecting or using a financial product or service; or the reasonable reliance by the consumer on a covered person to act in the interest of the consumer.[6]

Examiners found that the lenders engaged in abusive acts or practices by taking unreasonable advantage of a lack of understanding on the part of borrowers regarding the material risks, costs, or conditions of refinancing federal loans into private loans. The lenders took unreasonable advantage of borrowers where their representations misled borrowers about the federal benefits at risk when borrowers refinance their student loans. Here, the lenders created the impression that refinancing federal loans may not result in forfeiting access to federal forgiveness programs.

The lenders profited from borrowers paying the full amount of their loans, when the borrowers otherwise potentially could have had some or all of those loans forgiven. They also gained customers who might not otherwise refinance their loans with the lenders, expanding their market share. And they increased loan amounts when borrowers consolidated federal loans with private loans, which increased their revenue from interest on the loans. Borrower complaints

[6] 12 U.S.C. § 5535(a)(1)(B). See also CFPB Policy on Abusive Acts or Practices, April 3, 2023, available at: https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/#1

evidenced a lack of understanding about the impact on eligibility for loan forgiveness and confusion based on the lenders' representations.

2.1.3 Failure to re-amortize consolidated loans after borrowers' requests to exclude certain loans

Examiners found that student loan originators engaged in unfair acts or practices by failing to re-amortize or offer to re-amortize a consolidated refinanced student loan when the borrower requested a modification to the loan package to exclude certain loans during the three-day cancellation period. An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.[7] When seeking to refinance private student loans, borrowers noticed that lenders erroneously included federal student loans in the refinance package and requested, within the applicable three-day cancellation period, to have the federal loans excluded. Lenders failed to exclude the loans from the refinance package before the new loan funded and the lenders had paid off the federal loans. Upon realizing that they should not have included the federal loans in the package, the lenders subsequently removed the federal loans and recouped the payoff amounts. But rather than re-amortizing or offering to re-amortize the refinanced loan, they merely reduced the principal. This tactic lowered the amount owed and shortened the loan term but did not change the monthly payment.

This practice was unfair because it caused or was likely to cause substantial injury to borrowers because they were charged monthly payments larger than what they would have been charged had the federal loans not been included and not given a choice about how to allocate their funds. Borrowers could not reasonably avoid the injuries because they could not control lenders' decisions not to re-amortize or offer to re-amortize the loans. The injuries outweighed any countervailing benefits to consumers or competition.

2.1.4 Failure to cancel loans during three-day cancellation period

Examiners found that student loan originators violated Regulation Z[8] by not allowing borrowers to cancel private education loans without penalty before midnight of the third business day

[7] 12 U.S.C. §§5531 and 5536.
[8] 12 C.F.R. § 1026.48(d).

following the date on which the borrower received the disclosures as required.[9] Specifically, lenders violated the regulation by failing to cancel the refinancing of federal loans as requested by borrowers within the three-day cancellation period.

2.2 Illusory benefits offered by private lenders

2.2.1 Unfair denial of disability benefits

Examiners found that lenders engaged in unfair acts or practices by denying borrowers' applications for discharge based on Total and Permanent Disability for reasons other than those identified in the loan note where they otherwise satisfied the criteria for discharge based on Total and Permanent Disability.

Examiners observed that borrowers' loan notes provided for Total and Permanent Disability discharge based on the criterion that borrowers were unable to engage in any substantial gainful activity due to a physical or mental impairment of a certain type. The lenders denied applications for Total and Permanent Disability discharges based on criteria not included in the loan note.

This practice caused substantial injury because borrowers were required to continue to make loan payments on loans that should have been discharged according to the contract terms. Borrowers may be required to pay down loan balances of thousands of dollars each. The injury is not reasonably avoidable because borrowers have no way to prevent the lenders from applying additional criteria to their discharge applications. The injury does not outweigh any countervailing benefits to consumers or competition.

[9] 12 C.F.R. § 1026.47(c).

2.2.2 Deceptive misrepresentations regarding autopay discount

Examiners found that private student lenders engaged in deceptive acts or practices by inaccurately representing that their autopay discount was not available to borrowers with certain types of loans when in fact they were eligible.

The lenders had policies providing qualifying borrowers with a discount of 0.25% on their student loan interest rate if they sign up for autopay. On their online borrower portals, the lenders represented that certain types of loans did not qualify for an autopay rate reduction, just before a link to enroll in autopay. However, these types of loans had become eligible for the autopay discount five years earlier.

This representation misled or was likely to mislead borrowers, as it misstated that certain borrowers were not eligible for the autopay discount when they were, in fact, eligible. Borrowers' interpretation of the representation was reasonable, as it is reasonable for borrowers to take at face value an express claim on their lender's portal regarding its policies for autopay eligibility. The representation is material, as borrowers often enroll in autopay to receive the discount on their student loan interest rate. Some borrowers who believe they are ineligible for the autopay rate reduction because they accepted the lenders' misleading misrepresentations may not sign up for autopay, and they may pay more in interest than they would have otherwise.

2.2.3 Illusory unemployment protections

Private student loan originators advertised on their websites and on phone calls with borrowers that private student loan borrowers could suspend their loan payments if they lost their job. Examiners found that the lenders continued to advertise this as an attribute of their private student loans, even after the lenders unilaterally replaced the unemployment program with a less generous one that only allowed borrowers to reduce their payments during unemployment, but only if the borrower met new ability-to-pay eligibility criteria.

Examiners identified two law violations related to advertising this unemployment program, unilaterally eliminating the benefit, and then failing to honor it.

Examiners found that entities offering private student loans engaged in deceptive acts or practices by falsely advertising that private student loan borrowers could suspend their payments for short periods of unemployment when, in fact, the lenders no longer allowed borrowers to do so.

The statements were likely to mislead reasonable borrowers into believing that suspension of the payments would be available if they lost their job. In fact, after a point, the lenders no longer offered this benefit. Borrowers may reasonably take the websites and lenders' statements at face value regarding the ability to suspend their payments during unemployment. These representations were material because they were likely to affect borrowers' choice to originate or refinance their student loans based on the availability of the advertised benefit.

Examiners also found that private student loan originators engaged in abusive acts or practices by taking unreasonable advantage of borrowers' inability to protect their own interest in selecting or using a consumer financial product or service by prominently advertising unemployment protections and then eliminating or not providing those protections after the borrower had already elected the loans.

Lenders took unreasonable advantage of borrowers by promoting the ability to suspend payments for periods of unemployment to attract borrowers, and then reducing costs by significantly rolling back the unemployment protections. Some private student loan borrowers were unable to protect their interests because the lenders did not eliminate the unemployment benefit until after the borrower had taken out the loan. Once they were unemployed, borrowers also had few options to refinance their private loans with another lender. And the borrowers had no control over the lenders' decision to discontinue the protections.

2.3 Noteholder liability related to claims of school misconduct

Student loan borrowers sometimes allege their schools fraudulently induced them to enroll and to secure private student loans to finance their education. These borrowers may be able to discharge certain loans due to their school's misconduct under numerous state and federal laws and protections. For example, the Borrower-Defense-to-Repayment regulation, 34 C.F.R. §§ 685.400 *et seq*, allows borrowers to challenge the validity of federal loans that they believe were originated due to school misconduct. If the borrower is successful, the borrowers' federal student loans are completely expunged and any amounts they paid on those loans refunded. As of May 1, 2024, the U.S. Department of Education had discharged $28.7 billion dollars for 1.6

million borrowers who were cheated by their schools, saw their institutions precipitously close, or are covered by related court settlements.[10]

The Borrower-Defense-to-Repayment regulation does not apply to private student loans. However, other legal protections may allow borrowers to seek to have their private student loans discharged based on school misconduct. Many private student loans include a contractual guarantee in the promissory note – which may be required by the Federal Trade Commission's Holder-in-Due-Course Rule[11] – that the borrower can assert against any subsequent loan holder any claim the borrower has against their school. In other words, provisions in borrowers' private student loan contracts often ensure that a borrower can assert school misconduct as a basis for loan discharge regardless of who holds the loan.

Examiners identified two violations related to private student loan servicers' treatment of borrowers whose loan contracts have provisions allowing them to challenge their loans against subsequent noteholders and who allege misconduct by their schools.

2.3.1 Misleading borrowers about their contractual rights to challenge fraudulent loans

Examiners reviewed private student loan servicers' practices in connection with borrower contracts that contained language stating that any holder of the contract is subject to all claims and defenses that the borrower would have been able to assert against their school. They found that the servicers engaged in deceptive acts or practices when they implied to these borrowers that they could not challenge their loans using claims or defenses they could have had against their schools. In email responses to borrower complaints (both those made directly to servicers and to complaints referred by the CFPB), servicers stated that there was no discharge program available to these borrowers. In fact, provisions in their loan notes guaranteed their right to allege fraud by their schools as a claim or defense against repayment.

This statement was likely to mislead borrowers by implying that they could not challenge their loans using claims or defenses they could have had against their school. The borrowers' interpretation of the statement to mean that they had no avenues for challenging their private loans based on their school's conduct is reasonable under the circumstances, as they are entitled

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[10] Press Release, U.S. Department of Education, Biden-Harris Administration Approves $6.1 Billion Group Student Loan Discharge for 317,000 Borrowers Who Attended The Art Institutes, (May 1, 2024) (https://www.ed.gov/about/news/press-release/biden-harris-administration-approves-61-billion-group-student-loan).
[11] 16 C.F.R. § 433.2.

to accept that their servicers are providing accurate information about the borrower's rights. The servicers' representations were material because they likely affected the borrowers' decisions regarding whether to pursue their claims.

2.3.2 Failure to consider borrowers' allegations of fraud in contravention of contract

Examiners found that private student loan servicers engaged in an unfair act or practice by failing to consider most borrowers' challenges to their loans related to school misconduct, using claims or defenses they could have had against their schools. The servicers lacked policies and procedures to effectively consider most borrowers' challenges regarding their schools and failed to do so even though provisions in the borrowers' loan notes guaranteed the borrowers' right to assert such challenges. Servicers considered borrowers' claims against their schools only if the borrowers retained attorneys.

This practice resulted in substantial injury to consumers because it caused borrowers to forgo further attempts to challenge their loans or required them to incur the costs necessary to obtain an attorney. Borrowers could not reasonably avoid the injury because they could not know that the servicer would disregard contractual provisions in their loan notes providing that any holder of the contract is subject to all claims and defenses that the borrower would have been able to assert against the seller. The injury is not outweighed by any countervailing benefits to consumers or competition.

2.3.3 Corrective actions -- process for considering borrower claims of school misconduct

To address these UDAAPs related to noteholder liability, Supervision directed the private student loan lenders and servicers to maintain and publicize a robust process to consider borrower claims of misconduct by their school. More specifically, Supervision directed the entities to implement a claims-review process that is not unduly burdensome for the borrowers and gives due deference to findings of the U.S. Department of Education or courts regarding claims of misconduct, fraud, or misrepresentation by a borrower's school; that is public and easily accessible; and that ensures any denials are individualized and detailed. With respect to private student loans where the entity had actual notice that the U.S. Department of Education or a court had made a finding of fraud, misconduct, or misrepresentation by the school that resulted in discharge of loans to attend that school, Supervision further directed the entities to suspend collections until they provided the borrower with a detailed reason why their private loans were not the result of similar misconduct.

2.4 Illegal loan collection tactics

2.4.1 False threat of legal action

Examiners found that private student loan servicers engaged in deceptive acts or practices when they included language in collection letters that gave the misleading impression that the servicers would take legal action against borrowers who fell behind on loan payments. Servicers sent letters to borrowers that included language about enforcing collection of debts and adding legal costs to borrowers' debts if the borrowers did not pay. In fact, the servicers had no practice of bringing legal actions and incurred no legal costs associated with pursuing past due amounts during the exam period. Instead, the servicers returned severely delinquent accounts back to the noteholder.

This act or practice was likely to mislead borrowers because they could reasonably understand the letters to mean that the servicer may bring legal action against borrowers when, in fact, the servicer had no policy of bringing legal actions. This understanding is reasonable because borrowers have no way of knowing that the servicers do not bring legal actions to collect debts as a matter of policy. The representation is material because it is likely to affect borrowers' decisions regarding making payments on their debts.

In response to these findings, servicers removed the language referencing legal actions from their letters.

2.4.2 Withholding transcripts as a remedy for default

Academic transcripts are certified records of a student over their course of study. They provide information about courses taken, courses completed, grades, credits earned, certain credentials like majors or minors, and graduation status. Transcripts provide essential documentation of consumers' post-secondary education histories. When requested, institutions provide, or authorize third parties to provide, official transcripts to prospective employers, state licensing or credentialing agencies, and other post-secondary institutions.

Employers or licensing agencies require official transcripts for a range of reasons. For example, some employers may require transcripts to confirm the accuracy of applicants' resumes, and licensing authorities use them to demonstrate that applicants obtained the requisite training.

Consumers also need transcripts when applying to other post-secondary institutions as transfer students or for higher level degrees or credentials. Students may need to demonstrate their completed coursework to obtain credit for that education and progress toward a terminal degree or credential. Moreover, even when consumers do not need or wish to receive credit for any prior education, some post-secondary institutions still require the consumer to provide official transcripts prior to enrollment.

During examinations of entities that created and distributed model retail installment contracts to schools, examiners identified contracts that contained language that allowed for the withholding of transcripts in situations where student borrowers were in default on their education loans. The model contracts contained language allowing educational institutions, as a remedy for default, to "withhold [the student]'s transcripts [or] course completion certificates." Schools used these model contracts to originate institutional loans and reassigned the loans back to the entities for servicing.

Examiners found that the entities risked engaging in an abusive act or practice by taking unreasonable advantage of consumers' inability to protect their interests when they created and distributed to their clients' contracts for institutional student loans that contained language allowing, as a remedy for default, unconditional withholding of official transcripts as a blanket policy.[12] The entities risked gaining unreasonable advantage from the act or practice of creating contracts that permitted educational institutions to engage in blanket withholding of transcripts. Even though the entities did not directly benefit from the contract provision, the provision enabled their partner schools to engage in strong-arm collection tactics and could provide them with an advantage by boosting their market share or revenue. Borrowers were unable to protect their interests because at the time they needed an official transcript for a job, credential, or access to continued education, they were unable to protect themselves by seeking another education elsewhere or seeking credit elsewhere, since other lenders were unlikely to provide credit to borrowers of these schools who are in this position. Nor could the borrowers have protected themselves by choosing an alternative provider at the time of origination of the loan, as they cannot bargain over transcript withholding provisions, and borrowers are unlikely to select a school or loan based on these provisions, as opposed to factors relating to the education itself.

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[12] Examiners previously found that institutions engaged in abusive acts or practices by withholding official transcripts as a blanket policy in conjunction with the extension so credit. *See* CFPB *Supervisory Highlights*, Issue 27 (Fall 2022), available at: https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.

In response to these findings, the entities removed the contract language and advised their client schools to cease utilizing the contract provision.

2.4.3 Preventing access to education as a remedy of default

Examiners conducted reviews of entities that created and distributed model retail installment contracts to schools who then originated institutional loans and then assigned the loans to the entities for servicing. The model contracts required repayment during the in-school period and contained language allowing, as a remedy for default, educational institutions to “deny Buyer access to classes, computers, final exams, and other education services at the School, terminate or suspend Buyer’s enrollment, deny or cancel Buyer’s registration for additional classes, […] and take other similar actions affecting Buyer’s status as a student at the School[.]”

Examiners found that entities risked engaging in unfair acts or practices by distributing to their clients contracts for institutional student loans which required repayment during the in-school period that contain language stating that a remedy for default is to deny students access to classes or other services related to ongoing education. This language created a risk of injury to consumers because if they defaulted, then schools could deny them access to education programs that consumers had already paid for, including potentially with other loans or savings. Additionally, since jobs that require advanced education generally pay more, this practice reduces the chances that consumers can earn their degree, and in turn reduces consumers’ potential earnings, making repayment of the underlying debt more difficult. Borrowers are unlikely to select a school or loan based on these provisions, as opposed to factors relating to the education itself. Consumers generally do not expect to default, do not consider consequences of default when making product decisions, and cannot bargain over contractual terms. Once the consumer defaults, there is no way to avoid the injury of missing classes and other education benefits because the school controls access to classes. The injury caused by the practices were not outweighed by countervailing benefits to consumers or competition.

In response to these findings, the entities removed the contract language and advised their client schools to cease utilizing the contract provision.

2.4.4 Debiting funds early

Many student-loan borrowers make payments through auto debits, known as electronic fund transfers. Under Regulation E, the servicer, or designated payee, must obtain written authorization before transferring funds from consumers' accounts.[13] The written authorization specifies the date the payment will be withdrawn. Examiners found that servicers violated this provision when they obtained written authorizations to withdraw funds on a specified date but instead withdrew the amounts one to three days prior to the date in the written authorization. Because the funds were not withdrawn on the date in the written authorization, the payee did not have written authorization for the transfers and violated Regulation E. In response to these findings, servicers are revising their policies and developing a remediation plan.

2.4.5 Failing to notify consumers of changed preauthorized electronic funds transfer amounts

Examiners continue to identify issues with failures to notify consumers of preauthorized electronic fund transfers that vary in amount.[14] Consumers entered into agreements to withdraw the monthly payment amount, and the servicer took the monthly payment amount, but did not inform consumers when that amount had changed from the previous month. Regulation E requires the designated payee of a preauthorized electronic fund transfer from a consumer's account to provide the consumer with written notice of the amount and date of the transfer at least 10 days before the scheduled transfer date if the amount will vary from the previous transfer under the same authorization or from the preauthorized amount.[15] Examiners found that servicers violated this provision when they did not provide written notices to consumers before withdrawing an amount that exceeded the previous transfer under the same authorization. In response to these findings, servicers are revising their policies and developing a remediation plan.

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[13] 12 C.F.R. § 1005.10(b).

[14] *Supervisory Highlights*, Issue 34 Summer 2024 is available at: Supervisory Highlights: Servicing and Collection of Consumer Debt, Issue 34 (Summer 2024) | Consumer Financial Protection Bureau

[15] 12 C.F.R. § 1005.10(d)(1).

2.5 Federal student loan servicing during the return to repayment

2.5.1 Extended failure to provide adequate avenues for borrowers to manage key loan issues by phone

Federal student loan servicers operate call centers through which they offer borrowers various services to address key loan issues by phone. These issues include resolving disputes, inquiring about account status, enrolling in federal repayment programs, and making loan payments. Despite purporting to offer the ability to address key loan issues by phone, servicers failed to provide, for extended time periods, adequate avenues for borrowers to manage key aspects of their loans over the phone.

During the return to repayment in the fall of 2023, examiners reviewed metrics the servicers provided on a biweekly basis regarding how they handled incoming calls from student loan borrowers. These metrics covered average call-hold time, abandonment rate, callback speed, and call-center staffing levels. In this period, borrowers calling their servicers faced key average call hold times of 40-58 minutes. Average hold times exceeded 30 minutes during 57-91 percent of operating hours. And more than 41 percent of borrowers abandoned their calls before connecting with an agent. The periods of unavailability lasted multiple weeks.

Examiners concluded that that a lack of oversight contributed to these failures. Servicers' boards did not provide for the appropriate staffing levels to handle the influx of calls generated from the federal return to repayment process.

Supervision found that the servicers' failures to provide, for an extended period, an adequate avenue for borrowers to timely resolve disputes, inquire about account status, or in enroll in federal repayment programs, when they offered the option of addressing these issues by phone amounted to unfair acts or practices in violation of 12 U.S.C. §§ 5531 and 5536. The failures caused or were likely to cause borrowers substantial injury by wasting time, delaying information, and delaying their ability to apply for benefits, which can result in increased payment amounts or delayed loan forgiveness. Borrowers cannot avoid this injury because they do not choose their loan servicer and have no control over its level of service, and other methods of seeking assistance like online account access or callbacks were unavailable or ineffective. And they cannot resolve individualized issues through other channels such as online accounts. This injury is not outweighed by any countervailing benefits to borrowers or competition.

Supervision also found that these failures violated the CFPA's prohibition against abusive acts or practices.[16] The servicers took unreasonable advantage of the borrowers' inability to protect their own interests. Borrowers could not protect their own interests because they do not choose their loan servicer, nor can they control their servicer's level of service. The servicers' conduct prevented borrowers attempting to protect their own interests in timely resolving disputes or in accessing benefit programs by reaching out to their servicer—as instructed—from actually speaking to a representative who could help them. Many borrowers also could not protect their interests in avoiding extensive hold times because they could not resolve some of their individualized issues through alternative channels, such as online accounts. The servicers gained an unreasonable advantage as they saved on operational expenses, including from understaffing their call centers, which resulted in extensive wait times that many borrowers could not avoid.

In response to these findings, Supervision directed servicers to maintain adequate avenues for borrowers to timely resolve disputes, inquire about account status, and enroll in federal repayment programs by phone (including by ensuring against unreasonably long average call-hold times and unreasonably high call-drop rates for any extended period); develop and maintain plans to address reasonably foreseeable spikes in borrower communications demand to ensure that, regardless of demand, borrowers consistently have adequate avenues to manage their loans; identify the borrowers who attempted to call their servicers, waited more than an hour before abandoning their call, and within three months took significant action on their loan; and provide information on borrower remediation.

2.5.2 Deceptive billing statements

Examiners found that federal student loan servicers engaged in a deceptive act or practice by providing borrowers with inaccurate payment amounts and due dates on billing statements and disclosures.

Federal student loan servicers provided borrowers inaccurate monthly payment amounts due to both system weaknesses and miscalculations. Some of the miscalculations were due to the servicers misapplying federal poverty guidelines, using the wrong family size or income, or failing to include spousal debt. Examiners also reviewed billing statements or disclosures with incorrect payment due dates. These included providing borrowers incorrect due dates prior to October 1, 2023, the end of the federal student loan payment pause, and giving repayment dates

[16] 12 U.S.C. §§ 5531 and 5536.

to borrowers with pending and approved borrower defense applications. Borrowers with pending or approved borrower defense applications should have been in a forbearance until the discharge or decision process was completed.

These misrepresentations were likely to mislead borrowers about the amount they owed and when their payment was due. Borrowers reasonably interpreted billing statements and disclosures from their federal student loan servicers as an accurate and reliable source of information on the amount due and due date for their payments. Express misrepresentations or misrepresentations regarding central characteristics such as cost or payment due dates are material.

2.5.3 Debiting unauthorized amounts

Regulation E requires the designated payee to obtain written authorization before transferring funds from consumers' accounts.[17] Examiners observed that student loan servicers obtained authorizations that allowed them to withdraw the monthly payment amount but the servicers then withdrew amounts that exceeded the written payment amount, in some cases instead withdrawing the entire outstanding loan balance. Because the authorizations allowed the servicers to withdraw only the monthly payment amounts, the preauthorized electronic funds transfers were not authorized in writing and therefore violated Regulation E.

In other instances, consumers signed authorizations that allowed servicers to withdraw monthly payment amounts for certain loans from one deposit account and monthly payment amounts for other loans from a different deposit account. The servicers then withdrew payments for all the loans from one of the two deposit accounts. Because the authorization only allowed the servicers to withdraw the monthly payment amounts for specific loans and they instead withdrew monthly payment amounts for other loans, the preauthorized electronic funds transfers were not authorized in writing and therefore violated Regulation E.

[17] 12 C.F.R. § 1005.10(b).

2.5.4 Excessive delays in processing of applications for income-driven repayment plans

Federal student loan borrowers are eligible for a number of repayment plans that base monthly payments on their income and family size; these plans are called IDR plans. To enroll in IDR plans, consumers must submit applications to their servicers who process the applications.

Examiners found that servicers engaged in unfair acts or practices when they caused consumers to experience excessive delays in processing times for IDR applications. In many reviewed files, it took more than 90 calendar days for servicers to process the IDR applications. These delays caused or were likely to cause substantial injury as interest continued to accrue while servicers processed IDR applications, so excessive delays likely resulted in unnecessary accrued interest. In addition, the delays may have prevented borrowers from making payments which count towards loan forgiveness. These delays also caused borrowers considerable frustration and wasted time as they repeatedly tried to obtain information from servicers about the status of their applications. Consumers could not reasonably avoid the injury because they do not choose their servicer and have no control of how long it takes servicers to review and evaluate borrowers' applications. The injury to consumers was not outweighed by countervailing benefits to consumers or to competition.

2.5.5 Improper denials of applications for income-driven repayment

Examiners found that servicers engaged in unfair acts or practices when they improperly denied consumers' IDR applications. Examiners found that servicers denied consumers' applications for failing to provide sufficient income documentation despite consumers providing sufficient documentation of income. Examiners also found that servicers denied consumers' applications because they had ineligible loan types, when in fact the consumers had eligible loans. These improper denials caused or were likely to cause substantial injury because consumers who are improperly denied paid or were at risk of paying higher monthly payments. Additionally, some consumers may have spent time and resources addressing the denials. Consumers could not reasonably avoid the injury because servicers are responsible for processing IDR applications in accordance with processing requirements and consumers do not choose their servicers. And the injury to consumers is not outweighed by countervailing benefits to consumers or competition.

2.5.6 Providing inaccurate denial reasons in response to income-driven-repayment applications

Examiners found that servicers engaged in deceptive acts or practices by providing inaccurate denial reasons to consumers who applied for IDR plans. The denial letters misled or were likely to mislead borrowers as the denial reasons were not accurate, and in multiple cases, erroneously denied eligible consumers. It is reasonable for borrowers to expect servicers to properly evaluate their eligibility for IDR plans and for denial letters to accurately explain the reasons why servicers denied their IDR applications. The misleading representations were material as the inaccurate denial reasons were likely to influence borrower choices with respect to applying for IDR plans by, for example, leading to borrowers' confusion about eligibility criteria and discouraging borrowers from re-applying for an IDR plan by telling them to find and provide unnecessary additional information in order to qualify.

2.5.7 Failure to advise consumers of the option to verbally provide income in connection with income-driven-repayment applications

During the COVID-19 pandemic and through February 29, 2024, the Department of Education allowed consumers to apply for IDR plans by providing an attestation of income over the phone or in writing, this process was referred to as self-certification.

Examiners found that servicers engaged in unfair acts or practices by failing to advise consumers that they could self-certify their income when applying for an IDR plan. Consumers contacted their servicers to discuss their pending IDR applications that were delayed due to missing income documentation, but the servicer representatives did not advise consumers that they could provide the missing information by making an oral attestation during the call. These acts or practices caused or were likely to cause substantial injury because it caused servicers to deny consumers' applications, preventing lower payment amounts, potential interest subsidies, and credit towards loan forgiveness. Consumers could not avoid this injury because they do not choose their servicers and relied on the servicers to provide relevant information regarding IDR applications. The injury to consumers is not outweighed by countervailing benefits to consumers or competition.