CFPB Continues Aggressive Focus on Student Lending

January 25, 2022 | Lucy E. Morris and Kristen Yarows

On January 20, 2022, the Consumer Financial Protection Bureau (CFPB) announced that it will examine colleges' in-house lending practices. According to the press release, the CFPB decided to examine institutional lenders because of the unique power these schools have over students' education and financial future. The CFPB does not believe that these institutional lenders have historically been subject to the same oversight as traditional lenders. Director Chopra announced, "It's time to open up the books on institutional student lending to ensure all students with private student loans are not harmed by illegal practices." The CFPB issued an updated examination manual that includes a new section dedicated to institutional student loans. In addition to reviewing institutions for general student lending issues, Bureau exams will look for any enrollment restrictions, withholding transcripts because of debts, improperly accelerating payments, failing to issue refunds, and maintaining improper lending relationships. Examiners will look at whether these or other practices are unfair, deceptive, or abusive, or violate other laws enforced by the Bureau.

The CFPB's focus on institutional loans is not surprising considering Director Chopra's extensive professional career involving student loans. Chopra was amongst the implementation team that created the CFPB, where he served as the Bureau's first Student Loan Ombudsman. Chopra and the Bureau pursued an aggressive enforcement agenda in the student loan industry, including actions against the for-profit postsecondary schools Corinthian Colleges and ITT Educational Services. After his first stint with the CFPB, Chopra worked on student loan servicing issues as Special Advisor to the Secretary of Education. In last week's press release, the CFPB noted "concern[] about the borrower experience with institutional loans because of past abuses at schools, like those operated by Corinthian and ITT, where students were subjected to high interest rates and strong-arm debt collection practices." As the CFPB examines these institutional loans, we expect it will coordinate with other agencies to maximize deterrence and consumer relief.

In December, Chopra addressed the National Association of Attorneys General and discussed the importance of collaboration. "Rather than discouraging, obstructing, or preempting state enforcement or stronger state laws, the CFPB will be taking steps to *promote* enforcement of federal consumer financial protection law by state attorneys general." Director Chopra encouraged states to bring actions under the Consumer Financial Protection Act (CFPA) when its protections are stronger than state statutes. To encourage more state enforcement of federal law, Chopra committed to exploring ways that states could be able to get more out of the remedies available under the CFPA, for example by seeking civil penalties and accessing the CFPB's rich civil penalty fund for victim relief. For many state enforcers, Chopra was preaching to the choir. In January, a coalition of thirty-nine state attorneys general reached a $1.85 billion settlement with student loan servicer Navient over alleged unfair, deceptive, and abusive student loan lending and servicing practices. The CFPB's own case against Navient remains in litigation.

In addition to state AGs, the CFPB will likely coordinate with federal agencies including the Federal Trade Commission, Department of Justice, and Department of Education. In late 2021, the Department of Education established an Enforcement Office within Federal Student Aid to strengthen oversight and enforcement of postsecondary schools. The Department of Education selected former CFPB enforcement director Kristen Donoghue to head the Enforcement Office. She reports directly to Federal Student Aid's Chief Operating Officer, and former CFPB Director, Richard Cordray. We expect close collaboration between Chopra's CFPB and Cordray's DOE.

In addition to examining traditional institutional loans, the CFPB will likely use its enforcement authority to target both traditional and nontraditional educational loans. In September 2021, the CFPB issued a consent order against Better Future Forward, Inc. (BFF), a provider of income-share agreements (ISAs) for postsecondary education. In exchange for money to finance educational expenses, students with BFF's ISAs agreed to pay a percentage of their income until they paid a specified amount or a certain period elapsed. Despite the lack of an absolute obligation to repay a fixed amount, the CFPB found that BFF's ISAs met the Dodd-Frank Act's definition of "credit" and failed to comply with federal consumer protections. The CFPB's consent order against BFF put the ISA industry on notice that the CFPB considers these transactions private education loans, even if the ISA industry disagrees. Going forward, we expect the Bureau to continue seeking to expand its enforcement authority over traditional and nontraditional education loans, just as it did with Better Future Forward.

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