

ALERT

CFPB Fines Student Loan Servicer for Allegedly Misrepresenting Eligibility for Loan Forgiveness

April 4, 2022

On Wednesday, March 30, the Consumer Financial Protection Bureau (CFPB) announced that it fined student loan servicer Edfinancial Services (Edfinancial) \$1 million for allegedly misrepresenting Federal Family Education Loan Program (FFELP) borrowers' eligibility for Public Service Loan Forgiveness (PSLF). In addition to the \$1 million fine, the CFPB's Consent Order requires Edfinancial to contact all potentially impacted borrowers and to provide them with accurate information about PSLF. In Edfinancial's statement regarding its settlement with the CFPB, Edfinancial notes that it "strenuously rejects" the CFPB's allegation that it deceived or misled borrowers.

The CFPB's action follows on the heels of warnings to student loan servicers around loan-related representations. On February 18, the CFPB issued a Compliance Bulletin recommending that student loan servicers take specific actions to ensure that they (1) do not misrepresent borrower eligibility for the Public Service Loan Forgiveness (PSLF) Waiver and (2) provide complete information regarding the program (a brief summary of the Compliance Bulletin is available [here](#)). Following CFPB warnings last month, on Wednesday the Department of Education (Ed) sent a letter to certain program participants, raising concerns that alleged misrepresentations regarding PSLF liability might be widespread. The letter signals heightened coordination between the CFPB and Ed's Federal Student Aid (FSA), and states that "FSA and CFPB can be expected to pursue further oversight of these issues, and every company should take pains to address them at once, so as to avoid penalties or other consequences."

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Practice Areas

FTC and Consumer Protection

FFELP and the Limited PSLF Waiver

In 2008, President George W. Bush signed the PSLF program into law to provide student loan relief and cancellation for borrowers working in public-service jobs, including the armed forces, and federal, state, local, and tribal governments. Specifically, the PSLF is a benefit program which allows federal borrowers to earn loan forgiveness following 10 years of public service. To be eligible for PSLF, borrowers with FFELP loans, older federally backed loans that were originally funded by private companies, are required to convert those loans into Direct Loans.

In October 2021 Ed and FSA announced a limited PSLF waiver in an attempt to provide relief to FFELP borrowers during the COVID-19 pandemic. Pursuant to the waiver, any past federal student loan payment by a borrower working in public service can count towards PSLF, regardless of payment plan, loan type, and whether past payments were timely. For borrowers to take advantage of the limited waiver, however, they must consolidate their loans, file a PSLF application, or both, before October 31, 2022.

The Edfinancial Consent Order

In the Consent Order, the CFPB concluded that Edfinancial violated the Consumer Financial Protection Act (CFPA), which prohibits regulated entities from engaging in abusive, deceptive, and unfair acts or practices. Specifically, the CFPB alleges that Edfinancial marketed itself as “providing expert help to borrowers in navigating complex student-loan-repayment options” where its customer service representatives “regularly field questions from FFELP borrowers about PSLF and other types of loan-forgiveness programs,” and that FFELP borrowers reasonably relied on Edfinancial to provide “clear and accurate information” about their eligibility for FFELP.

The CFPB alleges, however, that Edfinancial made five types of deceptive statements to borrowers, in violation of the CFPA –

- **Claim 1:** Edfinancial told FFELP borrowers that they could not qualify for PSLF, and that Edfinancial customer representatives “often did not provide any information about how to become eligible for PSLF when borrowers inquired about the program or mentioned that they worked in a job that was likely a qualifying public-service job.”
- **Claim 2:** Edfinancial incorrectly stated that FFELP borrowers could not consolidate their loans into Direct loans.
- **Claim 3:** Edfinancial misrepresented to FFELP borrowers that they were making payments to PSLF before they consolidated their Direct Loans. However, “borrowers with FFELP loans could not make qualifying payments toward PSLF unless and until they consolidated their loans into Direct Loans.”
- **Claim 4:** Edfinancial incorrectly stated that certain jobs, such as certain non-profit occupations, did not qualify for PSLF.
- **Claim 5:** Edfinancial misled borrowers by describing forgiveness programs for FFELP loans but failing to mention that borrowers could be eligible for PSLF if they consolidated into Direct Loans.

The Ed/FSA Letter Warns That Further Actions Against Loan Servicers are Likely

The March 30 letter issued by FSA, which announced the CFPB's action against Edfinancial, warned other loan servicers that the agency has "no reason at all to think that these issues – which dated from at least January 2017 through at least February 2021 – were unique to Edfinancial. To the contrary, they may well reflect the longstanding approach to how others were handling these same issues during the same period and perhaps even now." Additionally, the letter states that Ed, through FSA, will continue to partner with both federal and state enforcement authorities to further "accountability and oversight efforts."

Student loan servicers and companies involved in the student loan industry should take note of the March 30 actions by CFPB and FSA, and should take steps to ensure that their customer representative calling scripts are updated to provide clear and accurate information about Ed's limited PSLF waiver.

If you have any questions regarding the CFPB's enforcement activity or financial services regulation, please contact one of the attorneys listed on this alert.