

PUBLICATION

For-Profit Colleges and the Student Loan Industry Should Take Note of CFPB's Recent Enforcement Action

March 20, 2014

In a recently filed lawsuit, the Consumer Financial Protection Bureau (CFPB) has demonstrated its willingness to assert its authority over both the student loan industry and for-profit colleges. The defendant in that lawsuit, ITT Educational Services, Inc., is a nationwide for-profit college accused by the CFPB of predatory student lending relating to the loans its students take out to fund their ITT education. This is the CFPB's first public enforcement action against the for-profit college industry, and may be a sign of actions to come against other for-profit colleges as well as other participants in the student loan industry, including banks and non-bank student loan servicers.

As previously discussed in the [January edition](#) of this newsletter, there is approximately \$1 trillion in outstanding student loan debt in the United States, and the CFPB has indicated that it considers the student loan industry to be within the CFPB's purview of regulation and supervision. A new CFPB rule took effect on March 1, 2014, that allows the CFPB to oversee non-bank student loan servicers.

In this lawsuit, *CFPB v. ITT Educational Services, Inc.*, filed in the United States District Court for the Southern District of Indiana (Case No. 1:14-cv-292), the CFPB makes numerous allegations relating to purported predatory student lending by ITT. The CFPB first alleges that ITT engages in high pressure tactics to sign up potential students, artificially inflates its job placement figures, and conceals from potential students "the virtual non-transferability of ITT's credits" to other colleges in order to sign up additional students.

The CFPB also alleges that as part of the sign-up process, ITT used deceptive and high pressure tactics to cause the students to take out student loans which ITT knew that the students would be unable to repay. The CFPB alleges that ITT created a private student loan system whereby it caused students to take out short term loans directly from ITT and then subsequently pushed "students into expensive, high-risk loans that ITT knew were likely to default...for the purpose of window-dressing ITT's financial statements and increasing its stock price."

The CFPB alleges that "ITT students relied on ITT and its Financial Aid staff to act in their interests when they signed up for financial aid packages" and that ITT's "Financial Aid staff solicited students' reliance and trust." The CFPB further alleges that "ITT did not act in the students' interest" and "took unreasonable advantage" of the students' "reasonable reliance to act in their interests" by, among other things, using "aggressive repackaging tactics, including the threat of expulsion" unless students took out additional private student loans. Based on these allegations, the CFPB brought three counts against ITT under the Consumer Financial Protection Act for engaging in unfair and abusive practices, 12 U.S.C. § 5536(a)(1)(B).

Finally, the CFPB also brought a claim against ITT for violation of the Truth in Lending Act, 125 U.S.C. § 1601, et seq. (TILA), and Regulation Z, 12 C.F.R. Part 1026, for failure to disclose a finance charge relating to the short term loans issued to students by ITT. The purported basis of the CFPB's TILA and Regulation Z claim is that ITT offered a 25% discount to students who repaid the short term loan at graduation, but did not give this discount to students who entered into repayment plans to repay the short term loans after graduation. The CFPB alleges that to "the extent that such discounts are not applied" to the post-graduation repayment plans,

"ITT is charging students a finance charge in connection with those extensions of credit," and that this charge was not disclosed conspicuously in writing, thus purportedly violating TILA and Regulation Z.

Based upon these claims, the CFPB seeks equitable relief, restitution to borrowers, disgorgement of profits and civil penalties against ITT.

While the target of this enforcement action was a for-profit college, in light of the CFPB's recent statements and rule changes relating to the student loan industry, it is likely that this is the first of many CFPB enforcement actions to come against the student loan industry.