Selected Federal and State Claims Against Student Loan Servicers

Student Debt and Consumer Protection Workshop

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Claims Against Student Loan Servicers
Claims Against Student Loan Servicers: Overview

- **Payment Processing**
  - Charging Excessive and Unnecessary Late Fees
  - Deceiving Borrowers about Student Loan Interest Charges
  - Illegal Capitalization of Unpaid Interest for Borrowers in Distress
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Claims Against Student Loan Servicers: Overview

- **Borrower Protections & Benefits**
  - Cheating Servicemembers out of Military Consumer Protections
  - Cheating Borrowers out of the Right to Income Driven Repayment (Forbearance Steering)
  - Misleading Borrowers Who Need to Recertify IDR Payment Amounts
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  - Mismanaging Payment Counts for Borrowers Seeking Public Service Loan Forgiveness (PSLF)
  - Cheating Borrowers with Cancer out of the Right to Temporary Payment Relief
  - Misinforming Teachers, Servicemembers, and Other Public Service Workers Who Sought Loan Forgiveness
  - Illegally Damaging Credit Profiles of Disabled Borrowers, Including Service-Disabled Veterans
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  - Failing to Timely Process Paperwork
  - Depriving Teachers Financial Assistance Promised through the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
Charging Excessive and Unnecessary Late Fees

Summary:
In 2014, the FDIC determined that Sallie Mae illegally misrepresented how borrowers could avoid late fees. Through supervision in 2015, the CFPB found that servicers made misrepresentations to consumers that late fees may be charged on loans held by the Department of Education. While Department of Education loan notes allow for the charging of late fees, the Department of Education did not and does not charge late fees on its loans and it instructs its servicers not to do so. In late 2017, the Bureau took action against Citibank for incorrectly charging late fees. In 2019, the New York State Department of Financial Services found that ACS engaged in practices that caused borrowers to incur excessive and unnecessary late fees.

Citation: In the Matter of Sallie Mae Bank (May 13, 2014); In the Matter of Navient Solutions, Inc., f/k/a Sallie Mae, Inc., as an institution-affiliated party of Sallie Mae Bank (May 13, 2014); Consumer Financial Protection Bureau Supervisory Highlights (Fall 2015); In the Matter of Citibank, N.A. (Nov. 21, 2017); In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)
Deceiving Borrowers about Student Loan Interest Charges

Summary:
Through supervision in 2016, the CFPB found that servicers deceived borrowers who had made extra payments on their loans about how much interest would accrue or had accrued, and how that would affect the application of consumers’ payments when the borrower began making payments again.

Citation: Consumer Financial Protection Bureau Supervisory Highlights (Fall 2016)
Illegal Capitalization of Unpaid Interest for Borrowers in Distress

Summary:
Through supervision in 2017, the CFPB found that servicers made deceptive statements about interest capitalization during successive deferments or forbearances, when servicers capitalized interest after each period of deferment or forbearance, instead of capitalizing once when the borrower eventually reentered repayment.

Citation: Consumer Financial Protection Bureau Supervisory Highlights (Spring 2017)
Illegal Fee Harvesting: Partial Payments over Multiple Loans

Summary:
In 2014, the FDIC determined that Sallie Mae had illegally allocated borrowers’ payments across multiple loans in a manner that maximized late fees. In 2016, the CFPB found that Wells Fargo was allocating partial payments in a way that maximized fees and failed to give consumers who are repaying two or more loans effective choices about how to apply payments. Additionally, through supervision in 2016, the CFPB found that servicers failed to provide an effective choice on how payments should be allocated among multiple loans where the lack of choice could cause a financial detriment to consumers. ACS also misapplied borrowers’ payments across multiple loans.

Citation: In the Matter of Sallie Mae Bank (May 13, 2014); In the Matter of Navient Solutions, Inc., f/k/a Sallie Mae, Inc., as an institution-affiliated party of Sallie Mae Bank (May 13, 2014); In the Matter of Wells Fargo Bank, N.A. (Aug. 22, 2016); Consumer Financial Protection Bureau Supervisory Highlights (Fall 2016); In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)

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Servicing Failures Leading to Charges for Payments that were not Due

Summary:
In 2017, Massachusetts sued the Pennsylvania Higher Education Assistance Agency (PHEAA) for overcharging tens of thousands of borrowers due to a billing system logic error. PHEAA failed to refund the overcharges or notify borrowers of the overcharges.

Citation: Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency, d/b/a/ FedLoan Servicing (Aug. 23, 2017)
Inflating Billing Statements

Summary:
In 2015, the CFPB took action against Discover Bank for providing misinformation on borrowers' billing statements, inflating the minimum amount owed. The Bureau also took action against Citibank for overstating the minimum amount owed. ACS was also inflating amounts owed on billing statements.

Citation: In the Matter of Discover Bank, the Student Loan Corporation, and Discover Products, Inc. (July 22, 2015); In the Matter of Citibank, N.A. (Nov. 21, 2017); In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)
Making Illegal Debt Collection Calls to Consumers

**Summary:**
In 2015, the CFPB took action against Discover Bank for making illegal debt collection calls to borrowers early in the morning and late at night, often excessively.

**Citation:** In the Matter of Discover Bank, the Student Loan Corporation, and Discover Products, Inc.  
(July 22, 2015)
“Auto-Defaulting” Borrowers with Loans in Good Standing When a Co-Signer Files for Bankruptcy

Summary:
Through supervision in 2016, the CFPB found that servicers illegally auto-defaulted consumers when a loan’s co-signer filed for bankruptcy, regardless of whether the borrower was current on all payments, where the Whole Loan Due clause was ambiguous.

Citation: Consumer Financial Protection Bureau Supervisory Highlights (Winter 2016)
Failing to Reverse Errors

Summary:
PHEAA failed to provide some borrowers with relief addressing the consequences of its own errors, lacking clear policies and procedures for addressing such errors, resulting in inconsistent treatment of similarly situated borrowers. This included providing borrowers inconsistent information about the option to appeal determinations about their payments.

Citation: People of the State of New York, by Letitia James v. Pennsylvania Higher Education Assistance Agency, d/b/a/ FedLoan Servicing and American Education Services (October 3, 2019)
Improperly Increasing Interest Rates

Summary:
Through supervision in 2016, the CFPB found that servicers illegally increased borrowers’ interest rates following a loan sale and subsequent internal servicing conversion.

Citation: Consumer Financial Protection Bureau Supervisory Highlights (Winter 2016)
Cheating Servicemembers out of Military Consumer Protections

Summary:
In 2014, the U.S. Department of Justice and the FDIC took action against Navient for cheating servicemembers out of their right to an interest rate reduction under the Servicemember Civil Relief Act (SCRA). In 2019, the State of New York found that ACS failed to recalculate monthly payments when adjusting the interest rate for servicemembers under the SCRA, leading to higher monthly payments than necessary.

Citation: United States of America v. Sallie Mae, Inc. now known as Navient Solutions, Inc. (May 12, 2014); In the Matter of Sallie Mae Bank (May 13, 2014); In the Matter of Navient Solutions, Inc., f/k/a Sallie Mae, Inc., as an institution-affiliated party of Sallie Mae Bank (May 13, 2014); In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)
Cheating Servicemembers out of Military Consumer Protections

Summary:
In 2011, a member of the Minnesota National Guard sued Citibank, accusing the bank of penalizing military personnel by placing their loans into “mandatory forbearance” at interest rates higher than permitted under the Servicemembers' Civil Relief Act, which can add hundreds of dollars in improper interest charges over the life of a loan. Citibank paid $2.3 million to settle the proposed class action lawsuit.

Citation: Olson v. Citibank (New York State), (July 13, 2010)
Cheating Borrowers out of the Right to Income-Driven Repayment (Forbearance Steering)

Summary:
Navient and PHEAA illegally steered borrowers into forbearance—a repayment option designed to assist borrowers experiencing short-term financial hardship—when borrowers have a right under federal law to enroll in repayment plans that allow for lower monthly payments over the long-term. PHEAA additionally steered borrowers into consolidating their loans, even in cases where it was not appropriate or helpful. Meanwhile, ACS steered borrowers away from new and more favorable repayment programs (PAYE and REPAYE).

Citation: Consumer Financial Protection Bureau v. Navient Corporation; Navient Solutions, Inc.; and Pioneer Credit Recovery, Inc. (Jan. 18, 2017) [Note that a substantially similar violation was pled by the states of Washington, Illinois, Pennsylvania, California and Mississippi in actions against Navient]; People of the State of New York, by Letitia James v. Pennsylvania Higher Education Assistance Agency, d/b/a/ FedLoan Servicing and American Education Services (Oct. 3, 2019); In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)
Misleading Borrowers Who Need to Recertify IDR Payment Amounts

Summary:
In 2017, the CFPB took action against Navient Corporation and its subsidiaries Navient Solutions and Pioneer Credit Recovery, alleging that Navient failed to properly inform borrowers of the need to recertify income under their income-driven repayment (IDR) plans and failed to properly process those renewals, resulting in interest capitalization on borrowers’ loans.

Citation: Consumer Financial Protection Bureau v. Navient Corporation; Navient Solutions, Inc.; and Pioneer Credit Recovery, Inc. (Jan. 18, 2017) [Note that a substantially similar violation was pled by the states of Washington, Illinois, Pennsylvania, California and Mississippi in actions against Navient].
Summary:
Through supervision in 2016, the CFPB found that servicers failed to inform borrowers and cosigners that using forbearance may delay, or even permanently foreclose, eligibility for cosigner release. In 2017, the CFPB alleged that Navient falsely represented to borrowers with cosigned loans the criteria for cosigner release and denied borrowers who obtained the stated criteria. Alternatively, ACS failed to notify borrowers of their eligibility for a cosigner release.

Citation: Consumer Financial Protection Bureau Supervisory Highlights (Winter 2016); Consumer Financial Protection Bureau v. Navient Corporation; Navient Solutions, Inc.; and Pioneer Credit Recovery, Inc. (Jan. 18, 2017) [Note that a substantially similar violation was pled by the states of Washington, Illinois, Pennsylvania, California and Mississippi in actions against Navient]; In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)
Depriving Borrowers’ Access to Tax Breaks on Student Loan Interest

Summary:
The CFPB took action against Citibank for deceiving borrowers about their eligibility to deduct student loan interest when preparing federal income taxes.

Citation: In the Matter of Citibank, N.A. (Nov. 21, 2017)
Mismanaging Payment Counts for Borrowers Seeking Public Service Loan Forgiveness (PSLF)

Summary:
In 2017, Massachusetts filed a complaint against PHEAA for putting borrowers’ accounts into forbearance while trying to rectify its own errors, during which borrowers' payments would not qualify for PSLF, leaving borrowers to bear the brunt of PHEAA’s servicing failures. In 2019, the New York Attorney General also took action against PHEAA for failing to timely provide explanations to borrowers for their PSLF payment count determinations and sometimes, providing no explanation for its payment counts at all. PHEAA failed to accurately count borrowers’ PSLF-qualifying payments by making errors in payment counts when loans were first transferred to its systems, failing to maintain accurate counts for payments made post-transfer, and failing to undertake adequate quality assurance measures (if any at all) to confirm the accuracy of payment counts.

Cheating Borrowers with Cancer out of the Right to Temporary Payment Relief

**Summary:**
PHEAA deceived borrowers with cancer by incorrectly stating that a new statutory entitlement to suspend student loan payments had not yet gone into effect or that borrowers with cancer did not qualify for the deferment.

**Citation:** People of the State of New York, by Letitia James v. Pennsylvania Higher Education Assistance Agency, d/b/a/ FedLoan Servicing and American Education Services (Oct. 3, 2019)
Misinforming Teachers, Servicemembers, and Other Public Service Workers Who Sought Loan Forgiveness

Summary:
In 2019, the New York State Department of Financial Services found in its investigation of ACS that the company was misinforming borrowers, including servicemembers, that they are ineligible for PSLF.

Citation: In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)
Illegally Damaging Credit Profiles of Disabled Borrowers, Including Service-Disabled Veterans

Summary:
The CFPB alleged that Navient was misreporting to credit bureaus loans discharged under total and permanent disability discharge, including loans owed by servicemembers and veterans with service-connected disabilities. ACS reported incomplete and erroneous information to credit reporting agencies.

Citation: Consumer Financial Protection Bureau v. Navient Corporation; Navient Solutions, Inc.; and Pioneer Credit Recovery, Inc. (Jan 18, 2017); [Note that a substantially similar violation was pled by the States of California in an action against Navient]; In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)
**Summary:**
Through supervision in 2016 and 2017, the CFPB found that servicers unfairly denied, or failed to approve, IDR plan applications that should have been approved on a regular basis, causing borrowers to make higher payments and subjecting them to unnecessary interest capitalization. In 2019, the New York Attorney General took action against PHEAA for failing to timely and accurately process applications and recertification paperwork for IDR plans, which are intended to help struggling borrowers avoid delinquency and default by limiting monthly payments based on income and household size. PHEAA even removed some borrowers from IDR plans in which they had successfully enrolled. ACS also dropped struggling borrowers from Income Based Repayment (IBR) when they were not supposed to.

**Citation:** Consumer Financial Protection Bureau Supervisory Highlights (Fall 2016); Consumer Financial Protection Bureau Supervisory Highlights (Spring 2017); People of the State of New York, by Letitia James v. Pennsylvania Higher Education Assistance Agency, d/b/a/ FedLoan Servicing and American Education Services (October 3, 2019); In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)
Failing to Timely Process Paperwork

Summary:
ACS failed to process paperwork correctly and in a timely and accurate fashion, delaying borrowers from obtaining lower payments and making payments that counted under PSLF.

Citation: In the Matter of Investigation by Maria T. Vullo, Superintendent of Financial Services, of Conduent Education Services, LLC, f/k/a/ Xerox Education Services, LLC, f/k/a and d/b/a ACS Education Services, Inc. (Jan. 4, 2019)
Depriving Teachers Financial Assistance Promised through the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program

Summary:
In 2017, the Massachusetts attorney general filed a complaint against PHEAA, alleging mismanagement of the TEACH Grant program, which encourages promising teaching students to pursue teaching careers in low-income schools. PHEAA’s servicing failures, including failure to timely and properly process certification forms for the program, caused qualifying TEACH grants to be converted into loans.

Citation: Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency, d/b/a/ FedLoan Servicing (Aug, 23, 2017)
Appendix
Links to Cases Cited - Earliest to Most Recent

- United States of America v. Sallie Mae, Inc. now known as Navient Solutions, Inc. (May 12, 2014)
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Links to Additional Cases - Earliest to Most Recent

- In the Matter of Transworld Systems, Inc. (Sept. 18, 2017)
- CFPB v. The National Collegiate Master Student Loan Trust (Sept. 18, 2017)
Summary of Claims and Citations

- Payment Processing
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Thank You