

What To Expect After CFPB's Student Loan Office Reorg

By James Williams, Kristie Kully and Ori Lev (June 15, 2018, 1:21 PM EDT)

The Office of Students and Young Consumers, or Office of Students, has been an important component of the Consumer Financial Protection Bureau since its creation in 2011. On May 9, 2018, the CFPB's acting director announced plans to fold the Office of Students into the Office of Financial Education.[1] The student loan ombudsman, a position created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, will also reportedly be part of the Office of Financial Education. While this move has been described as signaling a major shift in the CFPB's approach to the student loan market, it may have less of a monumental impact on the regulation of that market than expected.



James Williams

Reorganization Background

Under former Director Richard Cordray, the CFPB was active in regulating the student loan market. For instance, as we have previously noted,[2] the CFPB filed a complaint and proposed settlement against the purchaser of certain loans made to students at Corinthian Colleges Inc., alleging that the purchaser's participation in a loan procurement program constituted abusive conduct.[3] This represents one of 14 enforcement actions the CFPB has brought against student lenders, servicers and associated people and entities.



Kristie Kully

The Office of Students was previously housed in the bureau's Consumer Education and Engagement Division, which focuses on "provid[ing] information for American consumers to consider in their financial decision-making process." [4] This division also includes the Office of Servicemember Affairs and the Office of Older Americans, which were both mandated by Section 1013 of the Dodd-Frank Act.[5] In practice, the Office of Students served as a central point within the CFPB for information on the student loan marketplace. The Office of Students relied on consumer complaints and coordination with state attorneys general and consumer rights organizations, among other information, to identify consumer protection issues related to student loan lending and servicing. The Office of Students also served as an internal advocate for student loan regulatory, supervisory or enforcement activity, and as a resource to other CFPB divisions.



Ori Lev

In this sense, the Office of Students was treated as the equivalent of the statutorily mandated Office of Servicemember Affairs and the Office of Older Americans. Like these other offices, the Office of Students did not have any specific supervisory, enforcement or regulatory responsibility or authority.

Some have speculated that the recent movement of the Office of Students from the Bureau's Consumer Education and Engagement Division to its Office of Financial Education may lead to fewer examinations, investigations and enforcement actions against participants in the private student loan market. As its name indicates, the Office of Financial Education focuses on consumer education. Specifically, its stated focus is "strengthen(ing) the delivery of financial education ... and creat[ing] opportunities for people to obtain the skills to build their financial well-being." [6] Given this focus on consumer education, the bureaucratic reorganization may indicate an increased focus on providing information to students as opposed to serving as a resource for supervisory or enforcement activity.

Robust Regulatory Activity May Continue

Nevertheless, there may continue to be robust regulatory activity and litigation targeting the education lending market from the CFPB, as well as the Federal Trade Commission, state attorneys general and nongovernmental actors.

CFPB

The reorganization does not directly affect the CFPB's Office of Enforcement, which was and remains responsible for initiating investigations and bringing enforcement actions against participants in the student loan market. As noted above, since its founding, the CFPB has brought 14 such enforcement actions. In addition to those enforcement actions, the CFPB had also demonstrated an interest in expanding into other areas of the education market not directly related to student finance, [7] although attempts to "push the envelope" may die down under Acting Director Mick Mulvaney. [8] In any case, the reorganization is unlikely to significantly affect the Office of Students' ability to advocate for enforcement and supervisory activity within the bureau. As before, it remains a potential hub for student lending expertise. The reorganization itself does nothing to change that. The real test will be how the office is staffed and what weight its views are given within the CFPB.

FTC

The FTC has recently reaffirmed its jurisdiction in the student loan market. On May 31, 2018, it reached a settlement with two student loan debt relief companies as part of a coordinated federal-state "enforcement initiative targeting deceptive student loan debt relief scam(s) ... called Operation Game of Loans." [9] This activity is likely to continue, given new FTC Commissioner Rohit Chopra, who was previously the student loan ombudsman at the CFPB and who helped build the bureau's Office of Students. While at the CFPB, Chopra was an effective advocate for the CFPB's efforts to monitor and regulate the student loan market. [10]

State Attorneys General

In addition, states may become particularly active in regulating the student loan market. State attorneys general and regulators have indicated a general desire to take the lead in enforcing consumer protection laws, and states have expressed a particular desire to regulate the student loan market in light of the CFPB's reorganization. Many states have recently adopted student loan bills of rights and licensing schemes for student loan servicers. For instance, the state of Washington recently enacted Senate Bill

6029 titled the “Washington Student Education Loan Bill of Rights.” This legislation expands the state’s Consumer Loan Act to regulate and require licensure of such servicers.

The bureau’s reorganization led to particularly critical comments from one state regulator, Maria Vullo, the superintendent of the New York State Department of Financial Services, or DFS. Vullo expressed the department’s concern “with the CFPB’s troubling decision to minimize the role of the Office of Students and Young Consumers.” She also noted that the department’s Student Protection Unit will continue “safeguarding students from fraud and misrepresentation in the market, monitoring student-related financial practices in New York and educating student consumers and their families regarding available financial products and services to empower them to make informed choices. And violators of the law will be met with swift DFS response.”[11] Other states could adopt similarly aggressive approaches to regulating the student loan market in light of the CFPB’s reorganization.

Other Sources of Activity

The student loan market has been subject to relatively high levels of media scrutiny given the large portfolio of outstanding education debt and default rate trends.[12] This may pressure the CFPB, FTC and/or state regulators to bring actions against particularly egregious actors. Consumer advocacy groups also may increasingly use avenues such as class action litigation to pursue education lending relief.

Implications for the Student Loan Ombudsman

Even if the CFPB’s student loan reorganization dampens supervisory and enforcement activity, it could arguably increase the effectiveness of the student loan ombudsman (which, as mentioned above, will move to the Office of Financial Education). The ombudsman is largely mandated to perform certain data collection and analysis responsibilities, which may be easier to accomplish within an office focused on consumer education. Among other things, Section 1035 of the Dodd-Frank Act tasks the ombudsman with:

- Receiving, reviewing and attempting to informally resolve complaints from borrowers. This includes collaborating with the U.S. Department of Education, educational institutions, lenders, guaranty agencies, loan services, and other private education loan program participants.
- Coordinating with the student loan ombudsman established under the Higher Education Act to provide assistance to borrowers seeking to resolve complaints related to private education loans or federal student loans.
- Compiling and analyzing data on borrower complaints regarding private education loans.
- Making recommendations to various stakeholders.
- Preparing and publishing an annual report that describes the activities and effectiveness of the ombudsman during the preceding year.[13]

The ombudsman’s data collection, analysis and recommendation responsibilities have previously led to changes in the CFPB’s education loan examination procedures. Specifically, the CFPB updated these procedures in June 2017 to focus on education loan servicers’ performance with regard to the Public Sector Loan Forgiveness program.[14]

Mulvaney has consistently stated that if the bureau finds that quantifiable consumer harm exists, it will vigorously pursue the appropriate remedies.[15] Perhaps the ombudsman's recommendations will provide that spark.

Conclusion

Much has been made of Mulvaney's attempts to reorganize the bureau. For instance, the CFPB's January announcement that it would be transferring the Office of Fair Lending and Equal Opportunity, or OFLEO, from the Division of Supervision, Enforcement and Fair Lending to the Office of Equal Opportunity and Fairness sparked media backlash and Congressional inquiries.[16] However, unlike OFLEO, the Office of Students' existence is not mandated by the Dodd-Frank Act and it was not charged with investigating or bringing enforcement actions against student lenders or servicers, or playing a direct role in overseeing student lending examinations. Against this background, it appears more likely than not that the recent reorganization of the Office of Students will have a less profound impact on the student loan market than the OFLEO restructuring may have with regard to fair lending investigations, enforcement actions and examinations.

James K. Williams is an associate at Mayer Brown LLP.

Kristie D. Kully and Ori Lev are partners at Mayer Brown. Lev previously served as deputy enforcement director at the CFPB and led the Office of Enforcement at the Office of Foreign Assets Control.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] E-mail from Mick Mulvaney, Acting Dir., CFPB, to CFPB (May 9, 2018, 11:01 EST), <https://assets.documentcloud.org/documents/4454936/CFPB-Memo.pdf>.

[2] CFPB: Profit Motive of Loan Purchaser Is Element of Novel "Abusive" Claim, Mayer Brown LLP (Sept. 20, 2017), https://www.mayerbrown.com/files/Publication/ffb02aed-e4e7-4057-b1e5-660036b0e489/Presentation/PublicationAttachment/976a4ce1-9ffc-4bbc-a96f-65ee20bf51b8/Update-CFPB-Profit-Motive_092017_V3.pdf.

[3] Compl., CFPB v. Aequitas Capital Management Inc., No. 17-1278 (D. Or. Aug. 17, 2017); Proposed Stipulated Final Jgmt. and Order, CFPB v. Aequitas Capital Management Inc., No. 17-1278 (D. Or. Aug. 17, 2017).

[4] Consumer Education and Engagement Division, CFPB, <https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/consumer-education-engagement/>.

[5] Dodd-Frank Act, Pub. L. No. 111-203 § 1013 (2011).

[6] Consumer Education and Engagement Division, CFPB, <https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/consumer-education-engagement/>.

[7] See Consumer Financial Protection Bureau v. Accrediting Council for Independent Colleges and Schools, No. 15-1838 (D.C. Cir. April 21, 2017).

[8] See Mick Mulvaney, The CFPB Has Pushed Its Last Envelope, Wall St. J. (Jan. 23, 2018), <https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561>.

[9] Operators of Student Loan Debt Relief Schemes Settle FTC Charges, FTC (May 31, 2018), <https://www.ftc.gov/news-events/press-releases/2018/05/operators-student-loan-debt-relief-schemes-settle-ftc-charges>.

[10] See Biography: Rohit Chopra, FTC, <https://www.ftc.gov/about-ftc/biographies/rohit-chopra>.

[11] Statement by New York Financial Services Superintendent Maria T. Vullo Regarding the Consumer Financial Protection Bureau's Office for Students and Young Consumers, DFS (May 9, 2018), <https://www.dfs.ny.gov/about/statements/st1805091.htm>.

[12] See e.g. Rachel Hinton & Ashlee Rezin, A Generation Buried in Student Debt, Chicago Sun-Times (June 2, 2018); <https://chicago.suntimes.com/feature/a-generation-of-college-students-buried-in-debt/>; Josh Mitchell, Nearly 5 Million Americans in Default on Student Loans, Wall St. J. (Dec. 13, 2017), <https://www.wsj.com/articles/nearly-5-million-americans-in-default-on-student-loans-1513192375>.

[13] Dodd-Frank Act, Pub. L. No. 111-203 § 1035 (2011).

[14] CFPB Issues Report on Student Loan Servicing and Updated Student Loan Examination Procedures, Mayer Brown LLP (June 29, 2017), <https://www.mayerbrown.com/CFPB-Issues-Report-on-Student-Loan-Servicing-and-Updated-Student-Loan-Examination-Procedures-06-29-2017/>.

[15] See Mick Mulvaney, The CFPB Has Pushed Its Last Envelope, Wall St. J. (Jan. 23, 2018), <https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561>.

[16] See Mayer Brown LLP, An Uncertain Future For Fair Lending Enforcement At CFPB, Law360 (March 1, 2018), <https://www.mayerbrown.com/files/News/5fbf0e25-286d-48f0-be08-992e89792308/Presentation/NewsAttachment/82b67c69-7bbe-42ee-810d-f0f5029fb5a8/AnUncertainFutureForFairLendingEnforcementAtCFPB.pdf>.