

Student Debt Collection in the COVID-19 Environment

Avoiding and Mitigating Professional Liability E&O and FDCPA Claims

Responses to the COVID-19 pandemic at the federal, state, and local level have included legislation, regulation, and guidance affecting student loan debt collectors. Some of these changes put student loan debt collectors at increased risk of professional liability or errors and omissions (E&O) claims—including class action claims brought under the Fair Debt Collection Practices Act (FDCPA). Goldberg Segalla’s Student Loan Debt Collection E&O Defense Team have created this tip sheet to guide student loan debt collectors and their E&O insurance carriers and help them mitigate professional liability risks in the COVID-19 environment.

BACKGROUND: THE CARES ACT AND U.S. DEPARTMENT OF EDUCATION LOANS

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed on March 27, 2020, suspended payments and interest accrual on all U.S. Department of Education loans until September 30, 2020. In effect, the interest rate has been set to zero percent on all “government education loans,” which includes defaulted and non-defaulted direct loans, defaulted and non-defaulted Federal Family Education Loans (“FEEL”), and the Federal Perkins Loans. It is important to be aware that these deferrals only apply to government education loans, which does not include FEEL Program loans owned by commercial lenders and Perkins Loans owned by a college or university. Individuals that hold eligible loans that do not meet the criteria of the CARES Act for deferral may receive the benefits voluntarily or by entering into a direct consolidation loan. Debtors interested in a direct consolidation loan should be notified that once the CARES Act period terminates, loans may be subject to a higher interest rate than currently assigned. Debt collection service providers should prepare for these requests.

NOTE: *The CARES Act does not concern private student loans, as the U.S. Department of Education does not have legal authority over private student loans.*

KEY CONSIDERATIONS

- The suspension of student loans under the CARES Act is retroactive to March 13, 2020.
- If clients are participating in an income-driven repayment plan, suspended payments will count toward debt forgiveness.
- If clients are participating in Public Service Loan Forgiveness, those clients who were qualified prior to the CARES Act and who work full-time for a qualifying employer will receive credit as if payments were made on time.
- Clients may make partial payments during this period without any penalty.
- Automatic payments are suspended until September 30, 2020—if requested, refunds should be issued.
- Payments made after the effective date may be refunded upon request.

LOCAL REGULATIONS

The CARES Act is not the only legislation that student loan debt collection servicers should be mindful of when making collections decisions. Washington D.C. banned outbound collection efforts during the COVID-19 pandemic with the passage of the COVID-19 Response Supplemental Emergency and Temporary Amendment Act of 2020 on April 7, 2020. Among other things, the amendment banned the following actions until 60 days following the COVID-19 public health emergency: (1) creditors and debt collectors from initiating legal proceedings, repossessions, or visiting a consumer’s home regarding debts that are secured by a vehicle; and (2) outbound collection efforts via any written or electronic communication. The D.C. COVID-19 Amendment permits debt collectors to communicate with a debtor if the communication is in response to a request made by the debtor.

In Massachusetts, emergency regulation 940 CMR 35.00 is designed to protect debtors from unfair and deceptive debt collection practices. The emergency regulation prohibits debt collection agencies and debt buyers from initiating unsolicited debt collection telephone calls to consumers. The emergency regulation also prohibits creditors from filing new lawsuits against Massachusetts consumers, visiting their homes or places of work, or repossessing their cars.

NOTE: *Not all states require an explicit order for communication bans during a state of emergency. It is important to identify any state bans that are automatically triggered by a state of emergency.*

STATE DEBT COLLECTION BANS

Some states are also suspending state collection efforts. In New York, Gov. Andrew Cuomo announced that the state will temporarily halt the collection of medical and student debt owed to the State of New York and referred to the Office of the Attorney General for collection. The suspension of state debt collections and state debt interest has been extended until May 17, 2020. The Office of the New York Attorney General expects to reevaluate the order every thirty days to prevent unnecessary financial stress and recommence collections when it is deemed appropriate.

FDCPA CLAIMS: RISK-MITIGATION TIPS

The COVID-19 pandemic has created an environment where industries must be equally agile and far-sighted—safeguarding the interests of the present and preparing for operations in the coming months. Student loan debt collectors should actively monitor the changing landscape, nationally and statewide, and take care to communicate with their employees about the proper procedures to avoid violating any emergency legislation. Debt collection service providers should consider the following tips.

NOTE: *This information is subject to change based on developments nationally and in various jurisdictions. Changes in the law and/or case law may alter or supersede the information provided below.*

- Prioritize responding to information requests from debtors—maintaining a positive service relationship is important to long-term debtor success.
- Cease all outbound phone calls, mailings, or electronic communications to debtors in states and localities imposing a ban on such communications.
- Provide thorough and frequent communication to debtors in compliance with governing guidance.
 - ▶ These efforts will decrease pressure on debt collector call center employees and provide clarity for debtors.
- Monitor and record information that may be relevant in the coming weeks.
 - ▶ Work with your in-house teams to determine what information will assist in your business's continuity plan.
- Confer with your legal counsel regarding what type of communication may be appropriate in different jurisdictions. Be mindful that a one-size-fits-all approach may result in fines in certain jurisdictions.
- Reorganize your internal teams to prepare to handle the recommencement of debt collection services on September 30, 2020, or as determined by applicable orders.
 - ▶ Prepare outgoing communication to all debtors to indicate when their account collection will recommence.
- Take this opportunity to review all mailings to ensure FDCPA compliance—not all jurisdictions are the same.
 - ▶ FDCPA compliance includes both statutory and controlling case law.

Goldberg Segalla's Management and Professional Liability practice group is home to a dedicated Student Loan Debt Collection E&O Defense Team, focused on handling and defending E&O cases brought against student loan debt collectors, including class actions brought under the Fair Debt Collection Practices Act (FDCPA).

FOR IMMEDIATE GUIDANCE OR TO LEARN HOW OUR TEAMS CAN WORK TOGETHER, CONTACT:

Jonathan S. Ziss

Management and Professional Liability Chair
267.519.6820 | jziss@goldbergsegalla.com

Peter J. Biging

Management and Professional Liability Vice Chair
646.292.8711 | pbiging@goldbergsegalla.com

Colleen M. Murphy

Student Debt Collection E&O Defense Team Leader
716.844.3412 | cmurphy@goldbergsegalla.com

Anthony M. Kroese

716.710.5830 | akroese@goldbergsegalla.com