



## Illinois Attorney General Lawsuits Bring Increased Scrutiny to Student Loan Industry

By: John F. Costello, Jr., Simon A. Fleischmann and Katherine Heid Harris

The Illinois Attorney General's Office has filed two lawsuits against companies purporting to offer student loan relief services. The complaints allege the two companies engaged in deceptive marketing practices and charged consumers hundreds of dollars in upfront fees to reduce or eliminate their student loan debt burden. While the lawsuit is at core an attack on the debt settlement industry, it brings more attention and scrutiny upon all participants, good and bad, in the student loan industry.

On July 14, 2014, the Illinois Attorney General Lisa Madigan filed the lawsuits against First American Tax Defense LLC, based in Chicago, and Broadword Student Advantage LLC, based in Frisco, Texas. The complaints allege the unlicensed companies engaged in deceptive marketing practices and illegally charged consumers upfront fees to reduce or eliminate their student loan debt burden using methods available directly to the borrowers. The lawsuits allege the companies are in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, the Credit Services Organizations Act, and the Debt Settlement Consumer Protection Act. The complaints are via the Illinois Attorney General's website, available [here](#) and [here](#).

The complaints allege that the services defendants offered for a fee are available free of charge from government services, such as from the U.S. Department of Education, and not-for-profit services. The complaints also take issue with the defendants' alleged misrepresentation of their affiliation with governmental programs, such as assistance enrolling in a fake "Obama forgiveness program." According to a press release, Madigan stated that "[t]hese companies illegally charge fees for services that student loan borrowers can obtain themselves through government programs at no cost." Madigan continued: "My office will be aggressive in cracking down on scam operations that prey on student loan borrowers for profit."

### Increased Regulatory Scrutiny of Student Loan Industry Participants

These lawsuits are likely the first of many as the student loan industry moves into the crosshairs of regulators and litigators. As is widely reported in the media, student loan debt levels have grown to historic proportions, affecting nearly 40 million Americans who have over \$1 trillion in outstanding debt. In announcing the lawsuits, Madigan urged current and former students never to pay upfront for help with student loan debt relief. The associated press release also reminded consumers how to obtain information and provided sources for free assistance, including from the U.S. Consumer Financial Protection Bureau (CFPB) and the U.S. Department of Education's Student Loan Ombudsman.

### Consumer Financial Protection Bureau

The CFPB has established a dedicated unit to focus on student loan issues. Specifically, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) established a student loan ombudsman



within the Consumer Financial Protection Bureau. The Dodd-Frank Act also requires the Director of the Consumer Financial Protection Bureau and the Secretary of Education to submit a Report to Congress on private student loans. That Report, available [here](#), was submitted at the end of 2012, and makes some interesting statements about how after the financial crisis many lenders have changed their underwriting and marketing practices. The Report also comments on the fact that many borrowers are struggling to repay their debts. For those who watch the increased trend toward regulatory scrutiny in the mortgage industry, this Report looks like the blueprint for the student loan industry becoming the next big target for regulators. In another report from late 2012, the CFPB focused on student loan industry participant compliance with the Servicemembers Civil Relief Act. That report, entitled “[The Next Front? Student Loan Servicing and the Cost to Our Men and Women in Uniform](#),” recounts consumer complaints filed with the CFPB by military servicemembers and their families, noting that complaints indicated “[m]any servicemembers navigate hurdles that may be unnecessary in order to receive the SCRA interest rate cap.” One of these hurdles was the recurring complaint that servicemembers were told their interest-rate cap would expire annually, and they were subsequently required to submit additional orders in order to retain this benefit.

Further, late last year, the CFPB finalized a rule permitting the agency to oversee operations at the largest student loan servicers. As a result, the CFPB will regularly examine the seven biggest companies, giving it insight into practices employed by financial groups that collectively service more than 70 percent of the student debt market. That rule, entitled “[Defining Larger Participants of the Student Loan Servicing Market](#),” is available [here](#).

### **State Attorneys General**

In addition to their authority to enforce their own state laws, the Dodd-Frank Act expanded state Attorneys General authority to directly enforce certain federal consumer protection laws and provisions under Dodd-Frank. While Title X of Dodd-Frank grants the CFPB very broad powers, it recognizes a federalism balance, providing for coordination between the CFPB and the State regulators. The Act also empowers state Attorneys General and other relevant State regulators to serve as force multipliers, enforcing the Act’s provisions. In other words, there are now 50 more enforcement authorities for student loan industry participants to contend with in addition to the federal CFPB.

### **Take Away**

Although the Illinois Attorney General’s lawsuit is not directed at student loan lenders, servicers or their practices, it does signal a willingness of the states to involve themselves in the industry to protect borrowers. Lenders and servicers are well-advised to be transparent with their borrowers and provide information about and links to resources available through the government and not-for-profits. Many borrowers who have defaulted on their loans will seek any technicality available that could give them a leg up in renegotiating the terms of their loans. Now more than ever lenders and servicers must understand the evolving regulatory landscape in their industry and be sure to enact policies that will protect them from frivolous claims brought by defaulted borrowers and regulators.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors:

**John F. Costello, Jr.** | 312-443-0374 | [jcostello@lockelord.com](mailto:jcostello@lockelord.com)

**Simon A. Fleischmann** | 312-443-0462 | [sfleischmann@lockelord.com](mailto:sfleischmann@lockelord.com)

**Katherine Heid Harris** | 312-443-1713 | [kharris@lockelord.com](mailto:kharris@lockelord.com)