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# CFPB Report Finds College and University Tuition Payment Plans May Pose Risks to Consumers

Building on the Consumer Financial Protection Bureau's (CFPB's) September 2022 Supervisory Highlights on student loan servicing (questioning transcript withholding practices), the CFPB issued a September 2023 report on Tuition Payment Plans in Higher Education. Reviewing nearly 450 college websites to gather publicly available information about the types of tuition payment plans offered and related contracts, and analyzing those alongside consumer complaints, discussions with industry participants, and interviews with current consumers, the report concludes: (1) schools offering tuition payment plans (even in no-interest installment arrangements) may be acting as lenders; and (2) inconsistent product definitions and disclosures, non-elective enrollments, high costs for late payments, harmful debt collection practices, and waivers of consumer rights could pose risks to student and parent consumers. The CFPB noted that – while typical tuition payment plans are interest-free – enrollment fees, late fees, and returned payment fees could ultimately result in high cost of credit for consumers. The CFPB estimated that some plans could carry an annual percentage rate (APR) as high as 237%.

## CFPB treatment of colleges offering tuition payment plans as lenders

The CFPB reasoned that allowing students to obtain “education now and pay for it over time” may position some colleges as lenders. Further, the CFPB stated that, although tuition payment plans may be marketed as alternatives to loans, many tuition payment plans should be understood as “a type of loan.” If a tuition payment plan meets the definition of a “private education loan” under Regulation Z, then – unless otherwise exempt (credit for less than 90 days or no interest and a term of one year or less) – private student loan disclosure

requirements may apply. Even a tuition payment plan exempt from private education loan requirements may still be subject to disclosure and other requirements related to offering closed-end credit under both TILA and state lending laws. Depending on how these plans are structured, other federal and state consumer credit laws, such as the Equal Credit Opportunity Act (ECOA), Electronic Fund Transfer Act (EFTA), and the Fair Credit Reporting Act (FCRA), may also apply.

## **CFPB-identified risks to consumers**

### *Inconsistent product definitions and disclosures*

The CFPB found that insufficient disclosures could obscure important details related to the product, cost of credit, and the entity owning or servicing the product, and therefore, put students at risk of missing payments, incurring late fees, and accumulating debt. The report also suggests that varied terms offered in tuition payment plans and the specific terminology used to describe them may confuse consumers about the type of financial arrangement they are entering.

### *Forced enrollment in payment plans*

The report asserts that borrowers may unknowingly enroll in tuition payment plans or feel they have no other option because their tuition due dates were not synchronized with their Title IV Federal Student Aid disbursement dates.

### *Potential high costs of late payments*

Based on the data reviewed, the CFPB determined that students who fall behind on payments are typically charged late fees and may also be charged returned payment fees. Moreover, under certain plans, a single missed payment may result in the entire loan balance being accelerated or converted from non-interest-bearing to interest-bearing.

### *Debt collection practices*

The CFPB found that some institutions may engage in potentially harmful debt collection practices such as withholding official transcripts from delinquent students, as well as removing students from classes, placing academic holds, evicting students from campus housing, and revoking meal plans.

### *Waiver of consumer rights*

According to the report, terms governing tuition payment plans may require consumers to waive consumer rights such as the infancy defense or the right to participate in a class action lawsuit, and force consumers to seek remediation through mandatory arbitration.

For more insights on this report and related issues, please see our September 27, 2023, webinar “What Institutions and Financers of Higher Education Need to Know.”

## **What this means to you**

Institutions offering payment plans should consider whether their practices provide for clear, conspicuous, and comprehensive disclosures that allow students and families to make informed choices. Particularly if the plans provide for fees, interest, or collection practices questioned by the CFPB, institutions should consider whether their plans are structured to comply with all applicable legal and regulatory obligations—including those linked to the Truth in Lending Act, Title IV Federal Student Aid rules, and other relevant federal and state requirements.

## **Contact us**

If you have any questions regarding your current business practices and whether they may constitute lending activity, please contact Annie Cartwright, Leslie Sowers, Abby Felter, Jacob Huston, or your Husch Blackwell attorney.