



Overview of Motions to Dismiss in CFPB Case

filed March 24, 2017

As the nation's leading student loan servicer, Navient helps more than 12 million borrowers navigate loan repayment through proven solutions that fit their individual circumstances. And it's working: borrowers we service are 31 percent less likely to default and 49 percent of loan balances we service for the government are enrolled in income-driven repayment. We have consistently sought clear regulatory standards that apply to all and safeguard the best interests of borrowers, and we continue to support a strong central consumer regulator.

- Navient's responsibilities as a servicer are governed by a comprehensive set of existing federal laws, regulations, and contract requirements applicable to federal student loan servicing and collections. Instead of claiming that Navient violated any of those requirements, the suit invents new rules and claims that Navient failed to comply with them in the past.
- Navient vigorously denies the CFPB's factual allegations and will contest them at an appropriate time in the litigation. But at this stage, we are only permitted to argue legal deficiencies in the CFPB's complaint.
- Winning a motion to dismiss is not typically expected but it is an important part of the legal proceedings and can significantly narrow the issues.
- Examples of the issues are:
 - **The CFPB has exceeded its UDAAP authority.** The CFPB's UDAAP claims exceed its authority under the statute because it has never identified or defined what acts or practices are unlawful. Congress has required by statute that the CFPB must first identify acts or practices as unlawful, and then bring an enforcement action for violations of those rules. But the CFPB has never issued rules that identified or declared the alleged acts or practices unlawful. Instead, it simply brought this lawsuit. Neither the CFPB's statute nor due process permits this approach.
 - **The CFPB's structure is unconstitutional.** A panel of the D.C. Circuit last year found that the CFPB's structure is unconstitutional, and the Department of Justice has now weighed in to support the panel's decision. Given these determinations, the suit should be dismissed.
 - **The CFPB fails to properly support its legal claims.** For example:

Servicers provide information about repayment plans and routinely provide information and support to borrowers, but have no "fiduciary" responsibility to serve as a financial advisor to borrowers under the myriad servicing requirements set forth by the Education Department. As with other form of credit, servicers are responsible to provide accurate information but ultimately it is the borrower who makes decisions about the loan.

The CFPB does not assert that Navient did not send IDR renewal notices. The Bureau's claim fails to recognize that providing a link to a secure mailbox is widely accepted in federal law, including the CFPB's own guidance and other federal regulators such as ED and the OCC. The CFPB also ignores the fact that borrowers who participate in electronic communications opted to do so

The CFPB "cherry picks" a single sentence in the IDR recertification letter, ignoring the remainder of the letter and application form, which show that borrowers were in fact adequately informed of the consequences of not renewing timely.