NAVIENT

Overview of Motions to Dismiss in State AG Cases

filed March 20, 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 federal laws, regulations and contract requirements. The AGs do not allege that Navient violated any of them. Instead, they are attempting to create new state law rules that go above and beyond the actual servicing requirements and then apply these new rules retroactively. The law does not permit this kind of retroactive regulation. And a state can't unilaterally make up its own rules that don't exist in the federal laws governing the same conduct.
- Navient vigorously denies the factual allegations contained in the Complaints. But at this stage in the legal proceedings—a motion to dismiss, we are only permitted to argue law, not to dispute facts and the Court is required to take the allegations as true. We intend to disprove the States' allegations entirely—but that will not happen until a later point in the case.
- 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.

Argument 1: State consumer protection laws cannot apply where they would conflict with comprehensive federal regulations.

- The Higher Education Act (HEA) contains comprehensive disclosure requirements for federal loan servicers, and provides that federal servicers "shall not be subject to any disclosure requirements of any State law." 20 U.S.C. § 1098g.
- The state AGs have not alleged that Navient violated any provision of the HEA. Instead, they try to use state consumer protection statutes to impose disclosure duties above and beyond federal requirements. § 1098g of the HEA clearly prohibits this.
- The federal Truth in Lending Act (TILA) regulates the disclosures that private education loan originators must make to borrowers.
- The state AGs have not alleged that Navient violated any provision of the TILA. Instead, they try to use state consumer protection statutes to impose duties above and beyond federal requirements.
- State consumer protection laws cannot apply where, as here, they would interfere with a comprehensive federal regulatory scheme.

Argument 2: Even if state consumer protection laws applied, many of the practices alleged do not violate those laws.

- A private education loan originator has no obligation to disclose its opinions about borrowers' default risks or information about the originator's contracts with schools. Even if you accept the allegation that certain loans made prior to the recession were "subprime," subprime lending is not illegal and these loans were proper.
- The state never claims that Navient failed to disclose information regarding IDR plans; it just claims that Navient failed to disclose the information on every phone call. But that's not required.
- General statements that Navient would help struggling borrowers do not transform servicers into "financial counselors," and are not grounds for unfair or deceptive claims. Mistakes associated with payment processing, if true, are not actionable as consumer fraud.