

# One Minute Memo<sup>®</sup>



## CFPB Report Suggests Future Trends In Student Loan Litigation

The continuing recession obviously has hit the student lending business hard, as recent graduates continue to have great difficulty finding work and making payments on their student loans. Outstanding student loan debt is now over \$1 trillion. More than 850,000 private student loans with an aggregate balance exceeding \$8 billion currently are in default, creating enormous incentives for borrowers to challenge their repayment obligations in court. On October 16, 2012, the Consumer Financial Protection Bureau's Student Loan Ombudsman issued his first Annual Report required by the Dodd-Frank Act. In addition to making recommendations for regulatory and legislative action, the report likely provides some insight into theories that consumer lawyers will employ in future cases against student loan lenders.

The first section of the report is a review and analysis of complaints received by the CFPB against student loan lenders to date. In less than seven months, the CFPB has handled approximately 2,900 private student loan complaints. CFPB complaints, of course, already are driving consumer class action litigation because the CFPB is making complaints available on its website for review by enterprising consumer lawyers; the Ombudsman's report goes a step further and provides a summary. That summary indicates that many of the same theories recently used in mortgage litigation will be raised in the student lending arena. These theories include the following:

- Lender's acceptance of "good faith" partial payments prevents the lender from exercising remedies against the borrower
- Lender's application of overpayment to future minimum payments rather than to principal reduction is an unfair business practice or violation of the covenant of good faith and fair dealing
- Lender's failure to promptly credit payments causes borrower to pay more interest than contractually required
- Change in servicing practices after transfer of servicing violates contract requirements
- Failure to properly implement and process the interest rate cap afforded by the Servicemembers Civil Relief Act
- Breach of alleged modification or forbearance agreement, or bad faith in discussions concerning such an agreement

Student loan lenders and servicers would be well advised to review their practices and loan documents with these issues in mind. The full report is available at [http://files.consumerfinance.gov/f/201210\\_cfpb\\_Student-Loan-Ombudsman-Annual-Report.pdf](http://files.consumerfinance.gov/f/201210_cfpb_Student-Loan-Ombudsman-Annual-Report.pdf), and the CFPB Press Release is available at <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-report-finds-private-student-loan-borrowers-face-roadblocks-to-repayment/>.

By: *Scott M. Pearson* and *David M. Bizar*

*Scott M. Pearson* and *David M. Bizar* are the co-chairs of Seyfarth's Consumer Financial Services Litigation practice group. If you would like further information, please contact your Seyfarth attorney, Scott M. Pearson at [spearson@seyfarth.com](mailto:spearson@seyfarth.com) or David M. Bizar at [dbizar@seyfarth.com](mailto:dbizar@seyfarth.com).