

## CFPB Sends Signal to Student Loan Servicers Through UDAAP Consent Order

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The Consumer Financial Protection Bureau's (CFPB) focus on ensuring loan servicers' compliance with the implementation of the Public Service Loan Forgiveness (PSLF) program continues. On March 30, 2022, the CFPB entered into a [Consent Order](#) with student loan servicer EdFinancial Services, LLC, to settle the CFPB's allegations that EdFinancial committed deceptive servicing acts and practices related to PSLF. The Consent Order sends another signal to student loan servicers that the CFPB intends to ramp up its oversight of student loan servicer practices, particularly related to misrepresentations to borrowers.

In the Consent Order, the CFPB contends that EdFinancial misled borrowers about their eligibility for loan forgiveness under the PSLF program. EdFinancial neither admitted nor denied the allegations in the Consent Order and issued a statement that it entered into the Consent Order to avoid protracted and costly litigation with the CFPB. The Consent Order includes a \$1 million civil penalty and requires EdFinancial to develop a compliance plan addressing the issues raised in the Consent Order.

Under the PSLF program, student loan borrowers who work in qualifying public-service jobs may be eligible for loan forgiveness. The PSLF program is available for borrowers with federal Direct Loans — student loans made directly by the U.S. Department of Education.

The CFPB's findings in the Consent Order largely center around representations made to Federal Family Education Loan Program (FFELP) borrowers about their eligibility for PSLF. The CFPB specifically highlighted five types of misrepresentations:

- Misrepresentations that FFELP borrowers could not receive PSLF;
- Misrepresentations that FFELP borrowers could not consolidate their loans into a Direct Consolidation Loan;
- Misrepresentations that FFELP borrowers were making payments towards PSLF before

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consolidating their loans into a Direct Consolidation Loan;

- Misrepresentations that borrowers in certain jobs were not eligible for PSLF; and
- Failing to advise FFELP borrowers that PSLF was a potential loan forgiveness option.

The CFPB concluded that these actions constituted a violation of the Consumer Financial Protection Act of 2010's unfair, deceptive, or abusive acts or practices (UDAAP) prohibitions.

In its press release regarding the Consent Order, the CFPB noted that the Consent Order “highlights a systemic problem with loan servicing” of servicers “lying” about loan cancellation and repayment programs to “pad [their] bottom line.” The CFPB’s press release further warns servicers that “additional oversight” from the CFPB is coming. These comments echo the CFPB’s warnings to student loan servicers in their [Summer 2021 Supervisory Highlights](#) and subsequent [February 2022 Bulletin](#) that the CFPB believed servicers were misleading borrowers about their loans’ PSLF eligibility. The Department of Education also sent [a letter](#) to FFELP servicers highlighting the issues in the CFPB’s Consent Order — which the Department of Education notes are not unique to EdFinancial — and noting that it is partnering with other federal and state officials to further its “accountability and oversight efforts.”

The CFPB also has been active in reforming the criteria for PSLF, making it available to more borrowers and setting expectations that loan servicers will adapt their policies and procedures to ensure eligible borrowers are receiving information about the program. In October 2021, the Department of Education issued a limited waiver that allows borrowers to receive credit for past periods of repayment that would not otherwise qualify for PSLF. To be eligible for PSLF, student loan borrowers that did not have a federal Direct Loan — such as those borrowers with a loan made under the FFELP — must first consolidate their student loans into a Direct Consolidation Loan. In February 2022, the CFPB followed the Department of Education’s expansion of PSLF with a [bulletin](#) reminding servicers of their responsibilities to ensure that borrowers received accurate information about the program – and warning them of the potential UDAAP consequences for failing to meet those obligations.

The CFPB’s warnings coincide with a rise in consumer complaints to the CFPB about student loan servicing. While complaints had fallen in 2020 and 2021 during the pandemic, the first three months of 2022 have seen a 67% rise in complaints over the first three months of 2021. With the federal student loan payment pause to be lifted in September 2022 (if it isn’t extended *again*), there is potential for complaints to rise even higher later in 2022. When payments do restart, student loan servicers face the significant challenge of assisting borrowers with the resumption of payments after a more than two-year break, which has the potential to lead to a myriad of issues.

## Next Steps

The CFPB’s Consent Order and related comments are additional markers of the trend towards increased oversight of student loan servicers. Student loan servicers should expect increased scrutiny from the CFPB and prepare accordingly. All student loan servicers should act now to review their practices and procedures, with an eye toward avoiding misrepresentations that the CFPB might target. While the Consent Order specifically relates to misrepresentations in the context of FFELP loans and PSLF — and servicers of FFELP loans should pay particular attention to the CFPB’s factual findings in the Consent Order — [past comments](#) and [actions](#) indicate that the CFPB is focused more

broadly on misrepresentations in servicing.

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