

Federal Circuit Partially Lifts Ban on Education Department's Default Collection Efforts; Court of Federal Claims Orders Corrective Action by January 2018

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The U.S. Court of Appeals for the Federal Circuit has [partially lifted](#) a preliminary injunction that prevented the U.S. Department of Education (Department) from placing defaulted student loans with private collection agencies (PCAs). Following this ruling, the U.S. Court of Federal Claims has [ordered](#) the Department to complete its efforts to reevaluate bids associated with a disputed contract procurement process by January 11, 2018.

The appeal to the Federal Circuit challenged a ruling of Judge Susan Braden of the U.S. Court of Federal Claims in consolidated lawsuits brought by several PCAs. The PCAs challenged the Department's 2016 award of several large business contracts to collect defaulted student loans. The Department had stayed the 2016 large business contracts in response to the Government Accountability Office's recommendation to reopen the contract competition, request and consider amended bids, and make a new award decision.

Despite the government's self-imposed stay, in May 2017, the Court of Federal Claims issued a [preliminary injunction](#) that broadly enjoined the Department from (1) authorizing performance of the 2016 large business contracts, and (2) "transferring work to be performed under the contract at issue in this case to other contracting vehicle to circumvent or moot this bid protest." The injunction thus prevented the Department from placing defaulted student loans with PCAs under any other preexisting contracts, including 2014 small business contracts and award term extension (ATE) contracts that rewarded top performers under 2009 contracts. The Court of Federal Claims asserted the broad injunction was necessary to maintain the *status quo*. The court based its injunction ruling on, among other things, [an article](#) that stated the CFPB found the value of PCAs to be "highly questionable . . . but unquestionably expensive." The Department appealed the injunction ruling.

On August 21, 2017, the CFPB filed an [amicus brief](#) in the appeal. Disagreeing with the Court of Federal Claims—and siding with the Trump Administration—the CFPB asserted that enjoining the Department from placing defaulted loans with PCAs harmed the public. According to the CFPB, PCAs were a point of contact for borrowers to set up plans to rehabilitate default and, without such rehabilitation, borrowers were not eligible for other federal programs and interest would continue to accrue on loans during the collection delays caused by the injunction. According to the CFPB

“borrowers in default will be better off if they have access to [the Department’s] debt-collection contractors during the pendency of this litigation than if they do not.”

On December 8, 2017, the appellate court lifted the part of the preliminary injunction that barred the Department from “transferring work to be performed under the contract at issue in this case to other contracting vehicles to circumvent or moot this bid protest.” Thus, the Department can continue to place defaulted loans with PCAs under its preexisting small business and ATE contracts. The appellate court’s ruling still prohibits the Department from authorizing performance of the disputed 2016 contracts.

The case continues to proceed in the district court before Judge Thomas C. Wheeler. (Judge Braden transferred the case to Judge Wheeler on November 20, 2017 for “the efficient administration of justice.”) On December 12, 2017, Judge Wheeler held a status conference to discuss allocation of the Department’s backlog of accounts in light of the ongoing injunction, as well as the status of the Department’s corrective action to reevaluate amended bids for the 2016 large business contracts. The Department had previously advised that it intended to complete its corrective action by August 24, 2017—a deadline that expired more than three months ago. At the status conference, the government’s counsel declined to provide the court with a new date certain for completion. Instead, he reported that the Education Department was in the “final stages,” with the Source Selection Authority “in the process of determining which offerors will and will not receive final awards.”

Following the conference, Judge Wheeler noted his displeasure with the pace of the Department’s corrective action. He ordered the Source Selection Authority to make its final award decisions and complete the corrective action by January 11, 2018.

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