

Alerts & Publications



California Department of Business Oversight Sues One of the Nation's Largest Student Loan Servicers

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KEY CONTACTS

Elizabeth L. McKeen

Newport Beach
D: +1-949-823-7150

Danielle Oakley

Newport Beach
D: +1-949-823-7921

Laurel Loomis Rimon

Washington, DC
D: +1-202-383-5335

Daniel R. Suvor

Los Angeles
D: +1-213-430-7669

In January 2020, Governor Gavin Newsom announced that the California Department of Business Oversight (DBO) would be revamped into the Department of Financial Protection and Innovation (DFPI), substantially increasing consumer protection staff, resources, and enforcement powers under the proposed California Consumer Financial Protection Law (CCFPL). In a move that likely signals an uptick in DBO enforcement actions in connection with that initiative, last week the DBO sued one of the nation's largest student loan servicers, Pennsylvania Higher Education Assistance Agency (PHEAA), to combat what it perceives as the federal government's "lax oversight" and failure to implement "consistent or market-wide federal standards for student loan servicing ... to the detriment of student loan borrowers."

In its complaint filed in San Francisco County Superior Court, the DBO has sued PHEAA under the California Student Loan Servicing Act (SLSA), which applies to companies that manage or service student loans in California. The statute designates the DBO to administer and enforce its provisions, which address: (i) licensure; (ii) examination; and (iii) enforcement. Cal. Fin. Code, §§ 28100, *et seq.* The DBO alleges that PHEAA, as a licensee, obstructed the DBO's examination into whether PHEAA improperly administered the federal Teacher Education Assistance for College and Higher Education ("TEACH") Grant program.

According to the DBO's complaint, PHEAA failed to publicly release required information about its application of the program and allegedly refused to provide the DBO with various records, in purported violation of Financial Code section 28152, which provides that "[t]he Commissioner and his or her appointees may examine the books, records, and documents of the licensee. ..." *Id.* at § 28152(a). The DBO alleges that PHEAA refused to produce the documents on the grounds that: (1) the Commissioner's examination authority under the SLSA is preempted by the Higher Act; and (2) PHEAA is prohibited from releasing student borrower records to the DBO pursuant to the PHEAA's contract with the Education Department and the federal Privacy Act of 1974, 5 U.S.C. §§ 552a *et seq.* The DBO is seeking injunctive and declaratory relief for the production of these records, in addition to statutory penalties of \$2,500 per violation.

Although the outcome of this litigation is uncertain, it is clear that the DBO is not waiting on the passage of the CCFPL—which requires legislative approval of Governor Newsom’s proposed budget by June 15, 2020—to showcase its anticipated enforcement powers. Entities covered by the newly enacted SLSA should continue to monitor regulatory and enforcement developments in California, which may provide consumer protections beyond federal standards.

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Elizabeth L. McKeen, an O’Melveny partner licensed to practice law in California, Danielle Oakley, an O’Melveny partner licensed to practice law in California, Laurel Loomis Rimon, an O’Melveny partner licensed to practice law in California and the District of Columbia, and Daniel Suvor, an O’Melveny partner licensed to practice law in California, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.

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