

TYPES NOT MAPPED YET October 11, 2022 | TTR not mapped yet | Christopher T. Murray, Aaron D. Lacey, Scott Z. Goldschmidt

Consumer Financial Protection Bureau tells institutional lenders to cease withholding transcripts

The use of transcript holds at institutions of higher education as a debt collection tool has recently become the subject of much debate and scrutiny. Because a transcript hold is one of the few levers that institutions have to address unpaid balances, institutions have long required that students be current on their financial obligations to access a transcript. Critics of the practice, however, argue that such holds may limit the ability of former students to transfer to new institutions, seek employment, or earn more advanced degrees, even for trivial or minor debts.

At the state level, eight states - California, Colorado, Illinois, Louisiana, Maine, Minnesota, New York, Ohio, and Washington - have passed laws prohibiting or limiting the use of transcript holds. And several other states are currently considering similar legislation. On the federal level, transcript holds have lately been a focus for the Consumer Financial Protection Bureau (the "CFPB") and the U.S. Department of Education (the "Department"), as discussed below.

CFPB Finds that Certain Transcript Withholding Policies Violate Federal Law

The Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (the "Act") gives the CFPB authority to supervise nonbanks that offer or provide private education loans, including institutions of higher education. 12 U.S.C. §5514(a)(1)(D). The applicable definition of "private education loan" can be found at Section 140 of the Truth in Lending Act or 15 U.S.C. §1650.

Using this authority, the CFPB [began examining](#) institutional in-house lending programs, including transcript withholding practices, in January 2022. In late September, the CFPB issued a [report](#) finding that "institutions took unreasonable advantage of the critical importance of official transcripts and institutions' relationship with consumers." The report goes on to explain that because transcripts may be necessary to pursue employment or future educational opportunities, "the consequences of withheld transcripts are often disproportionate to the underlying debt amount," and that consumers with little-to-no bargaining power may be coerced into paying debts that were improperly calculated or into abandoning employment or educational opportunities altogether.

Based on the report, the CFPB determined that blanket policies to withhold transcripts *in connection with an extension of credit* are "abusive" under the Act, and institutional lenders were directed to cease this practice. The report does not define the term "blanket policy" or provide examples of policies that may satisfy or run afoul of the Act.

For institutions subject to CFPB authority, an extension of credit by an institution may include offering private education loans, deferred tuition products, or tuition payment plans. Federal student loans made pursuant to Title IV of the Higher Education Act or overdue tuition or fees that are not part of an institutional extension of credit are not covered by this guidance.

The Department Considers Regulatory Action

Along with the CFPB, the Department also has recently indicated a willingness to address the issue of transcript holds. In December 2021, Secretary Cardona [cited](#) enrollment and transcript holds as longstanding institutional policies that may "block retention and completion for our most underserved students."

The Department further addressed this issue during its most recent negotiated rulemaking. As part of the [Certification Procedures issue paper](#), the Department proposed to revise 34 C.F.R. §668.14 to prevent institutions from being able to "withhold transcripts or take any other negative action against a student related to a

balance owed by the student that resulted from... fraud or misconduct by the institution or its personnel.” According to the [Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions](#), the Department is scheduled to issue a Notice of Proposed Rulemaking on Certification Procedures in April 2023.

Takeaways

Institutional loans are subject to a multitude of federal regulations and state laws, including consumer finance and consumer protection laws. Staying apprised of these federal and state laws, and administering an institutional student loan program in accordance with their complex requirements, is a significant challenge. This is particularly true where institutions operate campuses in multiple jurisdictions, have students who reside in multiple jurisdictions, or offer a variety of student financing options (e.g., loans, payment plans, retail installment contracts). Compliance is critical, however, as the ramifications for noncompliance can be severe. Federal and state regulators have also made clear that they intend to aggressively enforce the regulatory framework that applies to student financing opportunities offered by schools.

For an overview of certain significant federal requirements that institutions of higher education should consider when contemplating an institutional loan program or any other student financing opportunity, institutions are welcome to review Thompson Coburn’s white paper: “[Institutional Loans Compliance Considerations](#).” We encourage institutions contemplating any form of student financing opportunity (even simple payment plans) to confer with counsel and other qualified advisors to develop a plan for compliance. Postsecondary institutions with questions are welcome to contact [Aaron Lacey](#), [Scott Goldschmidt](#), or [Chris Murray](#) for assistance.

About REGucation

Welcome to REGucation, the higher education resource that strives, through practical advice and insight, to help the higher education community manage a fast-changing and increasingly complex regulatory environment.

Our goal is to serve as a practical, concise, and accessible resource for institutions confronting regulatory and policy issues. The blog focuses on the extraordinarily broad and sophisticated set of legal challenges faced by contemporary post-secondary institutions, including those involving real estate, construction, joint ventures, litigation, intellectual property, immigration, taxation, financing, employees and benefits, and government relations, to name a few. We also cover the staggering collection of federal, state, and accrediting agency laws and standards specific to higher education.

If there are topics you would like us to cover, or questions you may have regarding a topic that already has been addressed, please do not hesitate to reach out. Finally, if you would like to contribute a guest article, we would love to hear from you.

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