



March 20, 2024

COURT OF APPEALS AFFIRMS THAT TRUSTS ARE “COVERED PERSONS” IN CFPB DEBT COLLECTION CASE

The Court of Appeals for the Third Circuit held that trusts are “covered persons” subject to the enforcement authority in the Consumer Financial Protection Act (CFPA). *CFPB v. National Collegiate Master Student Loan Trust*, No. 22-1864 (3rd Cir. March 19, 2024).

In 2017 the CFPB initiated enforcement proceedings against 15 trusts holding student loans in regard to debt collection activities. The CFPB alleged that the trusts engaged in unfair and deceptive practices in regard to debt collection, including not having proper documentation. The parties reached a settlement, but the court refused to enter the consent decree. Consequently, the CFPB filed suit against the 15 trusts. The trusts responded that they were not “covered persons” under the CFPA.

The district court determined that the trusts were “covered persons” under the CFPA. The CFPA, which governs the CFPB’s enforcement authority, states that the CFPB may bring enforcement actions to prevent a “covered person” or service provider from committing or engaging in an unfair, deceptive or abusive act or practice. Under the CFPA, a “covered person” is defined as any person that engages in offering or providing a consumer financial product or service. Because the trusts did not deny that their subservicers collected debt or serviced loans, the district court framed the question as: does a person “engage” in an activity if he *contracts* with a third party to do that activity on his behalf? The district court’s answer was yes and the trusts filed an appeal.

The circuit court reviewed the CFPA, which expressly defines “person” to include a trust. The circuit court then looked at the word “engage.” The circuit court reviewed prior cases looking at the word engage as well as dictionary definitions. According to the circuit court, *Merriam-Webster’s Dictionary* defines engage as “to begin and carry on an enterprise or activity” and “to do or take part in something.” The court then reviewed the trust agreements. The trust agreements used the word “engage” in stating the purpose of the trusts. The purpose clauses indicate that the trusts engage in both student loan servicing and debt collection. The court noted that the trusts carried out these activities through administrative agreements. The court explained that when suits are brought against borrowers

for the trusts to collect on student loans, third parties are acting for the benefit of the trusts. Accordingly, the court upheld the district court decision holding the trusts were covered persons subject to the CFPA. The case will now proceed at the district court on the merits.

As placing loans in trusts is a common practice, this case has implications for other areas of lending and the ability of the CFPB to bring enforcement actions against trusts for actions carried out by third parties.

Please contact us with questions on the case or debt collection compliance matters. □

✧ *Elizabeth Anstaett and Mercedes Ramsey*

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