

Student Loan Refinance Programs

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Background

- CFPB has consistently recommended to students that they consider refinancing their loans to take advantage of the current low interest rate environment, while criticizing the limited ability to do so, particularly for distressed student borrowers
- There is a federal direct consolidation loan that allows for the consolidation of government loans only – is it a meaningful option?

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Congressional Initiatives

- Congress has considered/is considering creating a federal consolidation loan that would allow for the consolidation of private loans as well as government loans
 - Sherrod Brown bill from several years ago
 - HR 1131: McDermott bill
 - S. 2432: Warren bill

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Congressional Initiatives

- Both bills would create a federal direct refinance loan that would allow for the refinancing of private loans
- Fixed rates; based on Treasury or DOE rates
- Would make private loans fully dischargeable

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Congressional Initiatives

- Requires qualified borrowers of such loans to undergo loan counseling before their private education loan is refinanced; private educational lenders to report specified loan information to ED, Congress, the Secretary of the Treasury, and the CFPB in order to allow for an assessment of the private education loan market; directs ED to undertake a campaign to alert borrowers that they may be eligible for refinancing.

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Congressional Initiatives

- Payfor would be a surtax on AGI > \$1,000,000; 30% marginal rate
- These bills are based on a belief that there are few or no consolidation options, particularly for distressed borrowers

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Private sector consolidation loan programs

- Underwritten loans available to qualified borrowers
- Limited scope: CU member, alum; particular profession
- Based on interest rate mismatch between government loan rates and market rates in current interest rate environment

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Who is Making Consolidation Loans?

- Some traditional lenders are and some are not
 - Banks
 - Credit Unions
 - Non-Profits
- Much attention has been focused on new entrants
 - Technology-oriented; not from a consumer credit background
 - Mostly focused on super-prime, MA, JD, MBA borrowers

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Compliance Considerations for Private Consolidation Loans

- Targeted marketing raises fair lending concerns; “reverse redlining”
 - Selective eligibility of potential borrowers
 - Questionable relevance of attended school or current occupation for otherwise credit worthy borrower

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Compliance Considerations for Private Consolidation Loans

- Marketing Partners
 - Prescreening
 - Use of lead generators

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Compliance Considerations for Private Consolidation Loans

- Consolidation of Private Loans into Private Loans
 - There is no model form or regulatory concern
 - There is Regulation Z commentary on point; no federal loan alternative disclosure needed

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Compliance Considerations for Private Consolidation Loans

- Consolidation of government loans into private loans
 - Some lenders permit this; some do not
 - There is no explicit, express prohibition on using a private loan to consolidate government loans, but there has always been a concern about doing so

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Compliance Considerations for Private Consolidation Loans

- Compliance issues with consolidating government loans
 - There are no regulations, commentary or model forms on how to do such consolidation loans
 - Practical disclosure issue: Federal Loan Alternative disclosure for the application & solicitation and approval disclosures; is there really a federal loan alternative to the private consolidation loan?

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Compliance Considerations for Private Consolidation Loans

- Informal CFPB guidance suggests that the lender must explain the costs and benefits of government-to-private consolidation but without any guidance on how to do so
- Suggested statements:
 - lack of IBR, forgiveness or other federal loan benefits
 - loss of SCRA protection on consolidated loans
 - not for all borrowers
 - fixed rate v. variable rate
 - best for borrowers who don't expect to need federal benefits

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Compliance Considerations for Private Consolidation Loans

- Some lenders apply a net tangible benefit analysis to a G-to-P consolidation
- While there is no regulatory need to do so, such an analysis may dispel UDAAP concerns; is this a best practice for product suitability?
- How does one conduct such an analysis in the absence of any guidance?

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Questions?

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