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Feds get caught in the crossfire between students and debt collectors

Shahien Nasiripour *Chicago Tribune*, July 27 2016

One in eight Americans has a federal student loan, and complaints of mistreatment are legion. Unfortunately, a series of recent moves by the federal government could prolong borrowers' misery.

The Obama administration has struggled to police student loan collectors at a time when student loan debt has skyrocketed. (The Federal Reserve pegs the total at about $1.4 trillion, double the amount from the start of 2009). The consequences of this debt load for the general public could be disastrous. Of the nearly 42 million people with federal student loans, more than 7 million of them are in default, government data show. Almost 3 million more are at least one month behind on their required payments.

Borrowers who default can face a lifetime of ruined credit, affecting their ability to secure housing or even a job. High debt burdens could hamper household consumption and limit demand for new credit, stunting economic growth, as the Federal Reserve, Treasury Department, and the nation's financial regulators have warned. The federal government owns or guarantees more than 90 percent of all outstanding student loans.

Loan servicers are central to taxpayers' and borrowers' future success. They are the financial middlemen who collect borrowers' payments and counsel them on repayment options. When borrowers struggle, servicers are supposed to answer their phone calls and evaluate their eligibility for the government's various income-based repayment plans. But loan servicers and debt collectors say borrowers dodge their calls.

Consumer advocates, state and federal regulators, and borrowers say these loan companies are largely to blame, due to ill-trained staff and companies' general desire to minimize costs. They argue that some loan companies create financial incentives for employees to end borrowers' phone calls as quickly as possible. The Education Department last year paid its student loan servicers about one-third the typical fee that mortgage servicers receive for handling traditional home loans, according to calculations by Bloomberg.

The White House and consumer advocates agree that bringing more accountability into the system would drive loan companies to improve their customer service and better help borrowers to stay on track.

But advocates say that three recent federal actions, when examined collectively, threaten to undermine President Obama's 2014 pledge that his administration would "make it clear that these companies are in the business of helping students, not just collecting payments, and they owe young people the customer service and support and financial flexibility that they deserve."

First, on July 5, the Federal Communications Commission declared that government contractors, such as those employed by the Department of Education to collect on student loans, are exempt from a law that protects borrowers from phone harassment so long as they're acting on government orders. Groups such as Consumers Union and the National Consumer Law Center say millions of people-particularly low-income Americans-will be harmed as a result. The FCC says a coming rule on federal student loans should alleviate those concerns.

Second, the Education Department rewarded a longtime contractor that reckons it shouldn't have to face lawsuits from aggrieved borrowers. On June 30, the department selected its largest loan servicer, Pennsylvania Higher Education Assistance Agency, alternatively known as American Education Services or FedLoan Servicing, as one of three finalists for a lucrative new contract to handle federal student loans. The selection followed years of assertions by the company that it is immune from consumer lawsuits. Created by the Pennsylvania legislature in 1963, the company is now urging the U.S. Supreme Court to confirm that it enjoys a type of immunity from lawsuits normally reserved for federal and state governments. Keith New, a spokesman for the company, didn't respond to multiple requests for comment.

Finally, the Education Department quietly enabled debt collectors that the government had previously accused of misleading distressed borrowers at "unacceptably high rates" to escape law enforcement consequences and land lucrative federal contracts.

In February of last year, the department announced that it had determined that five of its debt collectors had violated federal consumer protection laws by allegedly misleading borrowers about the terms of their defaulted student loans and, as a result, it wouldn't renew contracts for three of them. The debt collectors vigorously denied the accusations, and four of them-including one that has since received new accounts-sued the department.

In court papers, the department claimed it caught the contracted debt collectors-including a subsidiary of student loan giant Navient Corp.-giving troubled borrowers false information. The department said its employees counted the number of times each of its debt collectors violated consumer protection laws, suggesting that law enforcement would soon launch an investigation.

But it's unclear whether the Education Department ever formally referred its findings to the Consumer Financial Protection Bureau (the agency that enforces the relevant federal law) for enforcement. Officials said they could find no evidence that the department had done so. When asked whether the CFPB received a referral from the Education Department, Moira Vahey, a CFPB spokeswoman, declined to comment. Education Secretary John B. King Jr. told the Senate in February that the allegedly dodgy debt collectors had sufficiently addressed the department's concerns about their practices and that they were now eligible for additional government contracts.

Kelly Leon, a spokeswoman for the Education Department, which administers the government's student loan program, confirmed the contents of King's letter but did not respond to repeated requests for comment on the other matters.

The Education and Treasury departments, along with the Consumer Financial Protection Bureau, said in September that student loan companies should be accountable to borrowers. Government agencies and debtors, the feds said, deserve recourse when loan companies violate laws, regulations, or their federal contracts. Consumer advocacy groups have urged the Education Department to publicly detail the contractual requirements of its next round of student loan contracts so that borrowers would be able to enforce them in court when the feds are slow to respond to allegations of mistreatment.

Until then, student loan borrowers are reliant on a federal government that at times appears to be chipping away at their right to fair treatment. "It totally undermines all the rhetoric around accountability," Persis Yu, director of the Student Loan Borrower Assistance Project at the National Consumer Law Center, said of the government's recent decisions.