STUDENT LOANS

Student loan debt in America was $1.3 Trillion dollars at the end of 2015 and had surpassed credit card debts owed by Americans. Student loan debt is now second only to Housing debts owed by Americans.

The student loan area has been wrought with fraudulent and deceptive schemes to lure consumers into debt. Many scams developed to access the federal funding.

- each of benefit to enroller
- poor quality of instruction
- low local demand for employing graduates
- high drop out rates
- low income students trying to break out of poverty
- deferred loan payments
- fragmented supervision of the schools

REQUIRED CREDIT REPORTING:

The Higher Education Act, 20 U.S.C. 1080a, requires that guaranty agencies, lenders and Secretary of Education exchange data with consumer reporting agencies (credit bureaus) with regard to outstanding student loans.

NOTICE OF DEFAULT BEFORE REPORTING DATA:

If a student fails to pay on a loan, the student must be given notice that, unless he/she enters an agreed repayment plan, the matter will be ported to the credit bureaus. If no default notice and warning is provided, then the default must not be reported. If no repayment plan is agreed upon, then the default data must be reported.

OBSOLESCENCE OF REPORTED DATA GENERALLY:

* 15 USC 1681c:

(a) Information excluded from consumer reports Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Cases under title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.

(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

> (A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or
>
> (B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.

(b) Exempted cases The provisions of paragraphs (1) through (5) of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

> (1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $150,000 or more;
>
> (2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $150,000 or more; or
>
> (3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $75,000, or more.

© Running of reporting period

(1) In general

The 7-year period referred to in paragraphs (4) and (6) of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which

immediately preceded the collection activity, charge to profit and loss, or similar action. ***

(f) Indication of dispute by consumer

If a consumer reporting agency is notified pursuant to section 1681s–2(a)(3) of this title that information regarding a consumer who?[1] was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

(g) Truncation of credit card and debit card numbers

(1) In general

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) Limitation

This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) Effective date This subsection shall become effective—

(A) 3 years after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005. ***

20 U.S.C. § 1087cc[c]

*** [c] Cooperative agreements with consumer reporting agencies

(1) For the purpose of promoting responsible repayment of loans made pursuant to this part, the Secretary and each institution of higher education participating in the program under this part shall enter into **cooperative agreements with consumer reporting**

agencies to provide for the **exchange of information** concerning student borrowers concerning whom the Secretary has received a referral pursuant to section 1087gg of this title and regarding loans held by the Secretary or an institution.

(2) Each cooperative agreement made pursuant to paragraph (1) shall be made in accordance with the requirements of section 1080a of this title except that such **agreement shall provide for the disclosure by the Secretary or an institution, as the case may be, to such consumer reporting agencies, with respect to any loan held by the Secretary or the institution, respectively, of**—

> **(A) the date of disbursement and the amount of such loans made to any borrower under this part at the time of disbursement of the loan**;
>
> **(B) information concerning the repayment and collection of any such loan, including information concerning the status of such loan; and**
>
> **© the date of cancellation of the note upon completion of repayment by the borrower of any such loan, or upon cancellation or discharge of the borrower's obligation on the loan for any reason.**

(3) **Notwithstanding paragraphs (4) and (5) of subsection (a) of section 1681c of title 15, a consumer reporting agency may make a report containing information received from the Secretary or an institution regarding the status of a borrower's account on a loan made under this part until the loan is paid in full**.

(4)

> (A) Except as provided in subparagraph (B), an institution of higher education, after consultation with the Secretary and pursuant to the agreements entered into under paragraph (1), **shall disclose at least annually to any consumer reporting agency with which the Secretary has such an agreement the information set forth in paragraph (2), and shall disclose promptly to such consumer reporting agency any changes to the information previously disclosed**.
>
> (B) The Secretary may promulgate regulations establishing criteria under which an institution of higher education **may cease reporting the information described in paragraph (2) before a loan is paid in full**.

(5) Each institution of higher education shall notify the appropriate consumer reporting agencies whenever a borrower of a loan that is made and held by the institution and **that is in default makes 6 consecutive monthly payments on such loan**, for the purpose of **encouraging such consumer reporting agencies to update the status of information maintained with respect to that borrower**. ***

(e) Special due diligence rule

In carrying out the provisions of subsection (a)(5)?[1] relating to due diligence, **the Secretary shall make every effort to ensure that institutions of higher education may use <u>Internal Revenue Service skip-tracing collection procedures on loans made under this part</u>**.

SEAMANS v. TEMPLE UNIVERSITY, 744 F.3d 853, 861–63 (3d Cir. 2014)

"We now consider whether the reporting obligations of Temple, a furnisher of consumer credit data under FCRA, are affected by 20 U.S.C. § 1087cc(c)(3). When, as here, the question is one of statutory construction, the appropriate starting place is with the statutory text. "When the words of a statute are unambiguous, then, this first canon [of statutory construction] is also the last: judicial inquiry is complete." Conn. Nat'l Bank v. Germain, 503 U.S. 249, 254, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992) (quotation marks omitted). The text of HEA is unambiguous in a crucial respect—namely, **<u>it refers only to CRAs</u>**:

> *862 Notwithstanding paragraphs (4) and (5) of subsection (a) of section 1681c of Title 15, a *consumer reporting agency* may make a report containing information received from ... an institution [of higher education] regarding the status of a borrower's account on a loan made under this part **<u>until the loan is paid in full</u>**.

20 U.S.C. § 1087cc(c)(3) (emphasis added). **The text does not mention furnishers of consumer credit data**.

Temple's primary argument is that despite the absence of a specific reference to furnishers, HEA nonetheless *functionally compels educational institutions to omit the date of first delinquency* and collection history when reporting Perkins Loans to CRAs. This is based on Temple's worry that if it had continuously reported the Loan's full history, including the items at issue such as collection history and date of delinquency, the CRAs may have failed to notice that the Loan was an HEA-qualifying education loan and instead may have treated the Loan as a standard-order defaulted debt. Under that scenario, according to Temple, the CRAs may have mistakenly allowed the Loan to "age off" Seamans's credit report in 1999. *Temple rationalizes that by simply omitting from its report all facts that could trigger the "aging off" provisions, Temple was helping the CRAs comply with 20 U.S.C. § 1087cc(c)(3) and, in practice, furthering the congressional intent to prevent unpaid student loans from "aging off" credit reports*.

As an initial matter, we find it difficult to credit the implicit suggestion that Temple had no avenue, whether through the intricate coding system described above or in some other way, by which to signal affirmatively to the CRAs that a given loan is an HEA-qualifying education loan. In other words, surely Temple could have allayed its own concerns about the CRAs' possible mischaracterization of the Loan *by providing them with more* information rather than *less.*

Nevertheless, whether this is the case or not, the question of whether a particular loan should or should not "age off" a credit report *must be answered by the CRAs, and not by furnishers* such as

Temple. If CRA procedures had allowed the Loan's trade line to expire in 1999, in possible contravention of *20 U.S.C. § 1087cc(c)(3)*, that would be the CRAs' statutory concern, **not an excuse for Temple to report loan information in an incomplete or inaccurate manner.** As stated recently by the Supreme Court, "even the most formidable argument concerning the statute's purposes could not overcome the clarity we find in the statute's text." *Kloeckner v. Solis,* —— U.S. ——, 133 S.Ct. 596, 607 n. 4, 184 L.Ed.2d 433 (2012). **The strange compliance-by-omission** described by Temple is not present in the statutory text at issue and we decline to read such a procedure into it.

Temple also notes its belief that any loan fully repaid according to its original schedule will remain on a person's credit report for 10 years after final payment. Thus a "good borrower" could take out an education loan and fully pay the loan on schedule in 4 years, but would then carry the trade line on her credit report for 10 years afterward. Temple claims that under Seamans's reading of FCRA and HEA, a "bad borrower" who took out a federal education loan and immediately defaulted could then pay the loan 8 years *863 later and see the trade line expunged immediately, because it would be more than 7 years past the date when the loan was sent for collection. The "good borrower" thereby "carries" the trade line on her credit report for more time (14 years) than the "bad borrower" (8 years). Temple suggests that this inequity is a good reason to interpret the relevant statutes in its favor.

Temple has provided no evidence, however, that the appearance of a *non-adverse* payment history, *i.e.,* the one appearing on the "good borrower's" credit report, would impair the "good borrower's" credit score. There is nothing to show, in other words, that these disparate outcomes are inequitable to the "good borrower" at all. Indeed, FRCA itself reflects a policy choice to allow dated adverse credit data to "age off" a credit report because such information might otherwise indefinitely hamper the borrowing capabilities of now-reformed individuals. Non-adverse credit information, by contrast, can be reported indefinitely—at least in part because it demonstrates that a person has been a reliable borrower in the past and will presumably continue to be such in the future.

We thus disagree with the District Court's conclusion that 20 U.S.C. § 1087cc(c)(3) effectively exempts the Loan from FCRA's "aging off" provision indefinitely. Instead, the statutory text of 20 U.S.C. § 1087cc(c)(3) makes clear that **the seven-year window described in 15 U.S.C. § 1681c(a)(4) is extended only "until the loan is paid in full."** Accordingly, once Seamans's loan had been repaid, the trade line pertaining to the Loan should have "aged off" his credit report pursuant to 15 U.S.C. § 1681c(a)(4), because the Loan by that time had been placed for collection more than seven years prior. **In reality, however, the trade line did *not* "age off," and it did not "age off" because Temple never provided the CRAs with the collection history and date of delinquency**. Instead, Temple's incomplete and misleading reporting made

it appear as if Seamans had simply made a late repayment on a non-defaulted loan in 2011, which, under 15 U.S.C. § 1681c(a)(5), could be recorded on his credit report until 2018.

Under the reading of HEA advanced by Temple, a borrower such as Seamans, who initially defaults on an education loan and then later repays it, *is penalized twice*: once because the loan, if unpaid, will not be removed from his credit report, and twice, because even after payment, the loan's trade line will persist for another seven years. We find this consequence to be inconsistent with **Congress's expressed intent that "reporting of defaulted [education] loans to credit bureaus is an effective tool and should be available to institutions ... for the entire period that loan collection is allowed."** S.Rep. No. 105–181, at 58 (1998). The first penalty, to be sure, is an "effective tool" indeed, providing great motivation for a borrower to repay even very old education loans. The second penalty, however, reaches beyond the "period that loan collection is allowed," and serves little purpose. Once the debt is paid, the threat that the negative payment history will persist for another seven years as "adverse information" gives the borrower no further motivation—he has already done everything in his power to satisfy the debt.

In sum, both a straightforward reading of the statutory text and an assessment of the legislative intent compel the conclusion that HEA did not exempt Temple, as a furnisher, from its typical reporting obligations under FRCA. We conclude that furnishers of consumer credit data remain obligated to report fully and accurately under FCRA regarding the collection history and date of delinquency for even an HEA-qualifying education loan.

REINVESTIGATION OF CREDIT REPORTING ERRORS:

Fair Credit Reporting Act [FCRA]:

* Part of Consumer Credit Protection Act of 1968
* ID Theft - early 90s/Mixed Credit files
* 1996 Amendments to FCRA
* 2003 FACTA Preemptions - In 2003, certain state law preemption reached a sunset date and Congress enacted FACTA to further strip consumer rights and make certain state law preemption permanent.
* Concurrent jurisdiction - 1681p. Cases can be removed.

Reinvestigation of Errors:

* Written dispute process required - You must contest inaccurate information to the consumer reporting agencies [15 USC 1681a[f]]. The FCRA uses a circular definitional pattern between "consumer report" and "consumer reporting agency"

in an effort to limit the scope of its application to certain data reports published about consumers. A consumer reporting agency prepares and publishes consumer credit data reports about persons with whom they have no first hand transactions or experiences. These agencies act as a conduit and repackage data they receive, respectively, from furnishers of credit data, like creditors, collectors, employers, resellers of consumer reports, etc.

* 1681i[a] and 1681s-2[b] - If your credit report contains errors, it is crucial to send a written dispute to the consumer reporting agencies. You may copy the misreporting furnisher [creditor, collector, etc.] but it is critical to write the agencies to preserve your private right of action under the Act. 1681i[a] and 1681s-2[b].
* The agencies are bound to conduct a real and reasonable reinvestigation. They are required to notify competitor credit reporting agencies of your dispute and to notify the misreporting furnisher so that multiple reinvestigations result in an effort to get to the bottom of the matter.
* The furnisher is bound to conduct a real and reasonable reinvestigation. If the reinvestigations are not reasonable and the disputed information is inaccurate, the consumer may assert claims in a civil suit for damages.
* Credit Bureau's Duty to Provide Consumer Documentation to Furnisher: 1681i[a][2][B]
* Duty to Add a Consumer's Dispute Statement in Association with a Specific Account and In Connection with the Credit File/Report: 15 U.S.C. 1681i[c]
* Failing to Mark Contested Accounts As Disputed: 15 U.S.C. 1681s-2[a][3]
* Blocking of Information Resulting From ID Theft: 1681c-2
* Duty to Notate Disputed Accounts As Such: 15 U.S.C. 1681c[f].
* Disputed Items Cannot Be Re-Sold and Transferred: 1681m[f].

* 1681b - The agencies are limited in their right to sell credit reports to persons who have written consent of the consumer, those who have a legitimate business needs, and several other specific enumerated reasons.
* 1681b[f] and 1681q - If a person illegally obtains a consumer report from an agency or reseller without a permissible purpose, then that person may be held criminally and civilly liable, including claims for actual damages, statutory damages, punitive damages, attorneys' fees and litigation expenses. 1681b[f] [part of 1996 amendments to cure original section 1681q, which is a criminal provision]. Section 1681q is still viable as it makes criminal [and through the case law, provides a private civil cause of action] accessing "any information" from a consumer reporting agency "under false pretenses." Note that 1681b[f]

does not require false pretenses.

* 1681e[b] - When a consumer reporting agency prepares and publishes a consumer report about you, they are required to use "reasonable procedures to assure the maximum possible accuracy" of the content of the report.
* Being technically accurate is not the standard. It must be objectively accurate under the circumstances.

* 1681 - Consumers are entitled to one free credit report a year under FACTA. If denied credit or if you sustained adverse action, you are entitled to a free credit report.

* Data Disposal Requirements Under FACTA of 2003
* Furnisher-Debt Collectors Must Provide Consumer With Account/Application Information, Etc.: 15 U.S.C. 1681m[g]
* Failure to Truncate Credit Card Account Numbers: Private Right: 1681c[g]
* Credit Reporting Agency's Duty to Notify Subscribers/Users of Corrections to Disputing Consumer's Credit Report/File
* 1681b[g]: If Report Contains Medical Info, Must Have Consumer's Written Consent to Access
* Requirement to Report Specified Data Fields in the Metro Tape Sequence
* Furnisher's Front End Negative Information Reporting Notice Required Under FACTA Amendment to the FCRA
* Reinsertion of Previously Deleted Data: How and When Can It Happen?
* Re-Aging: Debt Collector's Efforts to Revive Obsolete Reportings
* VIP Databases and Offline Status
* Deceased Reporting Cases
* Violations of the Automatic Stay and Discharge Order[s] By Credit Reportings
* Declaratory and injunctive relief under the FCRA are presently unavailable under jurisprudence in this District and Circuit. There is a split in the law.
* 1681s-2[a] - Front end reporting errors by furnishers. Presently there is no private right of action under 1681s-2[a] and only state law claims may be asserted if not found to be qualified immune or preempted. 1681h[e] and 1681t[b][1][F].
* 1681h[e] - The so-called qualified immunity provision and the 1996 preemption provision have been the real front line in the fight between consumer advocates and industry in connection with credit reporting matters. Presently, there are two lines of cases interpreting 1681h[e] and five different interpretations of 1681t[b][1][F].

* 1681n and 1681o - Willful violations of the Act provide a right to punitive damages. No cap. The US Supremes in 2007, in *Safeco*, found that “willfulness” means “reckless disregard,” and not the “you meant to do it and we saw you holding the smoking gun” that the Fifth Circuit previously held in Cousins, etc. [eliminating giant punitive awards for terrible conduct by credit reporting agencies].

* Other credit reporting problems: Identity theft; Mixed credit files; Privacy violations tied to impermissible accesses; Re-aging debts; Offering new credit to balance transfer old debts absent consent; Offering new credit to balance transfer discharged debts; Reporting the consumer as deceased as a collection tactic; Credit repair scams; Failure to truncate credit card number on receipts [private right exists]; VIP status for limited few; Reinsertion of previously removed data; Duplicated account reportings; Loan shopping inquiries; Violations of automatic stay and discharge orders; Choicepoint; Check reporting agencies, Landlord-tenant reporting agencies.

* Check your credit reports: Statistics show that 50%-90% have errors and 25%-45% have errors so serious that the error[s] will cause a credit denial or adverse action.

* Potential Exposure For Sanctions Due to Filing Bad Faith FCRA Cases: 15 U.S.C. 1681n[c], 28 U.S.C. 1927, and Fed.R.Civ.Proc. 11

* Credit freezes; consumer statements; fraud alerts; VIP databases; Other alerts, etc.; purchasing credit report monitoring.
* Credit Repair Organizations Act [CROA].

FFEL LOANS:

Reports on Federal family Education Loans (FFEL) student loans may be made for seven (7) years from the later of three dates:
1. when the Secretary of Education or the guaranty agency pays a claim to the loan holder on the guaranty;
2. when the Secretary of Education, guaranty agency, lender or any other loan holder first reported the account to the consumer reporting agency; or
3 If a consumer re-enters repayment after defaulting on a loan, from the date the student subsequently goes into default again on the loan.

PERKINS LOANS:

On Perkins loans, the seven (7) year reporting clock commences the date on which either the Secretary of Education accepted assignment or referral of the loan from the school or first reported the account to a credit bureau, whichever is later. 20 U.S.C. 1087cc(c)(3).

CREDIT BUREAU DUTIES:

Credit bureaus must maintain reasonable procedures to assure the maximum possible accuracy of consumer reports they compile. 15 U.S.C. 1681e(b). Insuring obsolete data in the databank is deleted and automatically deleted by program is the obligation of the credit bureau.
15 U.S.C. 1681c. Thus, student loans must be property coded to insure deletion of the date in compliance with HEA.

If consumer disputes a student loan as involving fraud, the bureau must refer the dispute back to the subscriber (Secretary, guaranty agency, lender or loan holder). The credit bureau must reinvestigate the dispute and not merely mimic the subscriber. 15 U.S.C. 1681i. A consumer reporting agency must do more than mimic its subscribers. The agency must ask basic questions about adverse data it receives, such as verification of the correct identity of the consumer to whom the data attaches, the relationship of the data to the consumer and investigate any extenuating circumstances concerning the derogatory data. The agency must do more than be a mere post hoc correction of erroneously reported data. **Miller v. Credit Bureau, Inc.**, 4 CCH [Consumer Credit Guide] p.99,173 (D.C. Super. Ct. 1972). A consumer reporting agency is liable where it failed to verify derogatory information after receipt of complaint and dispute by consumer. Agency must do more than mimic subscriber. **Bryant v. TRW, Inc.**, 689 F.2d 72 (6th Cir. 1982)[Mich.]; **Dynes v. TRW Credit Data**, 652 F.2d 35 (9th Cir. 1981) [Cal.]. Merely contacting subscriber about disputed data is not a reasonable procedure to investigate disputes. **Swoager v. Credit Bureau of Greater St. Petersburg**, 608 F.Supp. 972 (U.S.D.C. M.D. Fla. 1985). Following reinvestigation, the bureau must report the results to the consumer.

CURING CREDIT REPORTING WOES

PAYING IN FULL

If your client pays the loan in full, the status of the loan becomes current but the default status remains in the historical section of the reporting, assuming the subscriber (Secretary, guaranty agency, lender or loan holder) updates prior reportings. In some instances, when the consumer

pays, the subscriber will not "update" the prior derogatory reporting automatically as a way to "tighten the screws" to the consumer. If the reporting is not updated, you must file a dispute and allow 30-45 days for the bureau to reinvestigate and update the report.

A mere promise to delete the derogatory history by the subscriber, if paid, will not effect the promised change. The bureau may refuse to update "accurate" data, thus, debt negotiation may fail due to an accuracy defense. The subscriber may renege unless the "settlement" is of an account disputed in good faith.

One of the most sensitive topics involves a credit bureau's obligation to delete information once commanded to do so by the subscriber. This can arise in various settings: [1] the data is actually false and must be deleted; and/or [2] the consumer is negotiating the debt and settles the debt with specific assurances that the bureau reports will no longer report derogatory data. The latter scenario can involve good faith, legitimate disputes or consumers trying to "repair" their accurate, derogatory credit rating[s]. Bureaus, as true adversaries to consumers, do not want to delete data. It is their only stock. They tout their ability to sell and report volume, even if it includes inaccurate data. Bureaus believe they may still report data even if instructed by the settling creditor to delete. Of course, the reporting is no longer "verifiable."

Consumer reporting agency which maintained and followed reasonable procedures to assure maximum possible accuracy of its credit reports on consumer had satisfactorily discharged its duty of reasonable care under FCRA with respect to contents of credit report, which indicated that vehicle purchased by consumer and financed through financing agency was voluntarily repossessed, which consumer conceded was true and accurate, although after settlement of consumer dispute, financing company requested that previously reported voluntary repossession be removed from consumer's credit file. **Watson v. Credit Bureau, Inc. of Georgia**, 660 F.Supp. 48 (U.S.D.C. S.D. Miss. 1986).

The **Watson** case hinged on plaintiff's agreement that the reporting was true. Again, most creditors lack principle where they can recover monies. They will promise to remove bad credit ratings in exchange for collection. If the creditor negotiates the point, then it is in contest. The creditor, by contract, has the power to command and cause deletion. If the bureau refuses they are open to an FCRA suit, under 1681i.

Thus, paying the debt in full will result in the derogatory item staying on the consumer's report seven (7) years from payment. The derogatory status will become outdated, but will appear for seven (7) years as outlined above.

CLOSED SCHOOL OR FALSE CERTIFICATION:

If consumer obtains a closed school of false certification, consumer will be discharged from responsibility.

Discharge should be reported to all bureaus to which the subscriber previously reported the status of the loan "so as to delete all adverse credit histories assigned to the loan." 34 C.F.R. 682.402(d)(2)(iv), 682.402(e)(2)(iv).

Again, if the subscriber fails to report the discharge to the bureaus, then you must lodge a reinvestigation request. 15 U.S.C. 1681i. The subscriber must update its reporting or be subject to liability. To avoid reporting problems, as soon as discharge is achieved, send a copy of the discharge, by certified mail, to each of the three national consumer reporting agencies with a cover letter explaining the need to update the consumer's records. The subscriber and bureau must insure deletion of the entire reporting, both current and historical portions of the account reporting.

CONSOLIDATION LOANS:

Direct Loan borrowers in default may consolidate their loans if they either make three affordable monthly payments or agree to repay under the Income Contingent repayment or Income based plans. An interruption in this consecutive period is allowed for qualifying military service members or affected civilians. These borrowers may resume their payments after their service is completed.

Some states also have programs to help active duty military so that they may take leaves of absence from school without penalty. Some states also require schools to provide refunds or tuition credits to service members called to duty.

REHABILITATION OF THE LOAN:

To successfully rehabilitate a loan, a borrower must make nine consecutive reasonable and affordable payments during a ten month period. An interruption in this consecutive period is allowed for qualifying military service members or affected civilians. These borrowers may resume their rehabilitation payments after their service is completed.

REPAYMENT PLAN DOES NOT IMPROVE RATING AUTOMATICALLY:

The loan stays in default even if you enter a repayment plan unless you enter a written agreement that the reporting subscribers will take it out of default status. Be sure and obtain a clear, comprehensive settlement contract. Cover all the bases or it may be a wasted effort.

DISCHARGE IN BANKRUPTCY:

If a student loan is discharged in bankruptcy, you should recall that, while it will be listed as "discharged," a bankruptcy is generally considered to be the most derogatory and damaging type of data which can appear on a credit report. further, under 15 U.S.C. 1681c, a bankruptcy may be reported by the credit bureaus in cases under Title 11 or the Bankruptcy Act, from the date of entry of the order for relief or the date of adjudication, for a period of ten (10) years. Generally, credit bureaus delete a successful wage earner bankruptcy in seven (7) years from date of final discharge.

REFINANCING LOANS: ENTERING THE SECONDARY MARKET

Student loans are a lucrative investment. Most lenders enjoy government guaranteed repayment while having the ability to use the full resources of the government and strong-arm collection methods to gain full repayment plus.

Not surprisingly, companies have popped up to place student loans into the secondary market. Entering the secondary market causes the student debtor and any guarantors on the loan[s] to lose important rights, such as forbearance, forgiveness, etc.

So, you get a call, letter or email offering you an opportunity to get a 1% or 2% interest rate reduction and the offer claims that over the life of the refinanced loan, you will save thousands of dollars. The offer even suggests that your application will be shopped to am number of potential lenders in a pool of lenders at their access.

The "Match.com" style offer to place you with a new lender at a fairly nominal interest rate reduction seems like a purely cost-saving offer.

"Credible" a/k/a Credible Labs, Inc. f/k/a Stampede Labs, Inc., a 2012 start-up entity from San Francisco

In 2015, Credible approached the LSBA about the LSBA promoting Credible to lawyers and law students.
Claimed to be a "free" service akin to match.com for student loan debtors and "for free" match debtors [and their guarantors] with potential lenders.
Debtors would complete an application and Credible would "rate shop" it to lenders in Credible's stable of potential lenders.
Does not warn debtors that entering the secondary loan market results in debtors and guarantors losing substantial rights.
Engages in efforts to have additional guarantors sign on to loans. Pressures debtors to have additional solvent guarantors added to loans being refinanced.
Seeks to shorten repayment periods. This frequently increases default rates.
Less favorable repayment terms offered [despite a nominal interest rate reduction].
Credible claims to be nothing more than a match-maker yet its "agreement" with the debtor contains:

* a very broad arbitration clause that would foist arbitration at the debtor's costs in California.
* a very broad indemnity clause whereby debtor indemnifies Credible.
* California choice of law.
* waiver of jury trial, if you could avoid arbitration.
* waiver of claims and remedies, including damages.
* broad language designed to protect Credible's lenders.

DEFENSES:

ABILITY TO BENEFIT [ATB] FALSIFICATION:

False school certification discharge/cancellation based on a lack of ability to benefit. 34 CFR 682.402[e][1]. The school falsified the student's ability to benefit.

FORGERY:

Forgery is also an absolute defense to the loan. As in closed school and false certification cases, consumer must dispute the forgery to the bureaus and the subscriber (Secretary, guaranty agency, lender or loan holder). As in all types of application and financial fraud, absent authority, the consumer is not liable. The bureau must reinvestigate and delete the entire account. 15 U.S.C. 1681i. The subscriber must cease reporting false date or by subject to suit under various theories.

FRAUD:

A student loan's enforcement requires that it be lawful under basic contract laws. Fraud, like forgery and mistake, constitute valid defenses. The HEA does not limit contract defenses.

INFANCY:

Oddly, the HEA specifies that infancy is not a defense. 20 USC 1092a[b][2]. Limitation of this defense only applies to FFEL loans but not Perkins loans. 20 USC 1087e[a][1].

MISTAKE:

As you know, mistake is a contract defense but its usage is limited.

DISCHARGE DUE TO TOTAL AND PERMANENT DISABILITY OF CONSUMER:

It is a conditional discharge, upon proper proof, and after three years pass a final discharge may be approved. 65 Fed. Reg. 65,680-65,695 [11-1-2000]. A physician's certification is required proof that debtor cannot work and is unable to earn monies due to illness or injury that is expected to continue indefinitely or result in death.

DEATH:

Death of the borrower is a defense to Stafford, SLS, Perkins, and Federal Direct Loans. 20 USC 1087; 34 CFR 674.58, 682.04, 685.212.[a]. Death of the student or both parents discharges PLUS loans. 34 CFR 682.402[a][2].

MILITARY SERVICE:

The **"Post 9/11 G.I. Bill"** is one of the student aid programs for military service members. This program provides significant new educational benefits for service members on active duty and after active duty. Military service members who have served an aggregate of at least 90 days on active duty in the Armed Forces are eligible. The benefit amounts vary depending on the amount of service. Those who serve for 36 months are eligible for 100% of benefits.

Service must have occurred on or after September 11, 2001. Service members who are serving on

active duty are eligible as well as those who completed their service or were discharged or released. Only certain types of discharges and releases qualify, including honorable discharges or discharges or releases for certain medical conditions or hardships. Those still on active duty may be better served using the existing benefits. You should check with the Department of Veterans Affairs for more information. The V.A. also has a G.I. Bill feedback system if you have questions or concerns and a comparison tool to help servicemembers learn about education programs and compare estimated benefits by school.

In order to qualify, students must be pursuing an approved program of education as defined in the law. Benefit amounts are equal to the charges for the program of education, except that the amount may not exceed the maximum amount charged for in-state undergraduate students in the state where the student is enrolled. Students may receive money not only for tuition, but in many cases for housing, books and supplies, and possibly even a relocation payment. In certain situations, this benefit may be transferred to the service member's spouse and one or more children.

The time period to use these benefits expires at the end of the 15 year period beginning on the date of the last discharge or release from active duty.

The President signed into law the "Harry W. Colmery Veterans Educational Assistance Act," also known as the "**Forever GI Bill**," which will bring significant changes to Veterans' education benefits. The law is named after the American Legion national commander who wrote the original GI Bill language in 1944, and will allow more service members and veterans to use the GI Bill and more time to use it. The VA summarized some of the changes that go into effect immediately, including:
•The 15-year time limitation for using Post-9/11 GI Bill benefits is eliminated for Veterans who left active duty on or after January 1, 2013, and qualifying dependents.
•Reservists who had eligibility under the Reserve Educational Assistance Program (REAP) and lost it due to the program sunset provision will have that service credited toward the Post-9/11 GI Bill program.
Certain work-study is permanently authorized; previously it had to be re-approved by Congress every few years.
•The VetSuccess on Campus program will be available to students across the country.
•VA will help Veterans to more clearly identify schools that offer them priority enrollment.

The Higher Education Act prohibits interest accrual while eligible military service members are serving on active duty during a war, military mobilization, or national emergency. This benefit applies only to Direct loan borrowers and only for loans first disbursed on or after October 1,

2008. Borrowers with FFEL loans may consolidate into the Direct Loan program to take advantage of this benefit.

MILITARY SERVICE DEFERMENT:

This deferment is available in all three loan programs, FFEL, Direct and Perkins. It is available to military service members on active duty during a war, other military operation or national emergency, members of the National Guard called to active duty during a war, military operation or national emergency and reserve or retired members of the Armed Forces called to active duty during a war, military operation or national emergency. This deferment may be granted based on a request from the borrower or the borrower's representative. Borrowers or their representatives must submit a deferment form signed by an authorized official. Alternatively, the borrower may submit a copy of military orders or a statement from a commanding or personnel officer proving that the borrower is serving on active duty during a war, military mobilization, or national emergency. There is no time limit on the military deferment. (The previous three year time limit was eliminated in 2007). The eligibility period ends 180 days after the borrower is demobilized from active duty service. Some borrowers called to active duty will not be eligible for military deferments. To help address this gap, there is a mandatory forbearance available to National Guard members who qualify for the post-active duty deferment but do not qualify for a military or other deferment.

SERVICE MEMBER CIVIL RELIEF ACT [SCRA]:

Some rights available under the Servicemember Civil Relief Act are also relevant. Any individual on active duty is entitled to the benefits, whether or not they are stationed in a war zone. Important rights include:

* Creditors must reduce the interest rates to 6% on an obligation incurred by a servicemember before active duty. The reduction lasts as long as the servicemember is on active duty. These protections apply to student loans, as well as to most other types of debt, including car loans, mortgages, credit cards and business debts. Any interest reduced as a result of this law should be forgiven, not just deferred. For federal student loans, the 6% interest reduction only applies to borrowers in military service as of August 14, 2008. According to the Department of Education, borrowers may not receive a refund of interest paid in excess of the 6% limit before August 14, 2008. The Department announced in August 2014 that it will apply the interest rate limitation to accounts of eligible borrowers without a request from the borrower. The Department encourages

FFEL lenders and servicers to do the same. The Department has created a form for servicemembers to use in requesting the interest rate limitation.

* The Act gives relief to servicemembers facing collection actions.

In October 2012, the Consumer Financial Protection Bureau (CFPB) issued a report about problems with student loan servicing for military service members. The CFPB also has a guide for servicemembers with student loans.

ACTIVE DUTY STUDENT DEFERMENT:

This should be called "Post-Active Duty Deferment" because it is for borrowers who are enrolled in school when they are called to active duty and plan to re-enroll after they have completed their service. This deferment is available in all three loan programs, FFEL, Direct and Perkins. Eligible borrowers include members of the National Guard and reserve or retired members of the Armed Forces called to active duty at the time, or within six months prior to the time, that they were enrolled in school. These borrowers may receive a deferment for up to 13 months following completion of active duty military service and any applicable grace period. The period expires at the earlier of a borrower's re-enrollment in school or the end of the 13 month period. Similar to the military service deferment, the borrower must be on active duty to qualify for this deferment. But unlike the military service deferment, activation during a war or other military operation or national emergency is not required. The deferments page of this site contains more information about the range of deferment options for all borrowers.

ADDITIONAL MILITARY AND CIVILIAN OPTIONS:

These additional options are available to members of the national guard called to active duty, reserve or retired members of the Armed Forces called to active duty, active duty members of the Armed Forces who are reassigned and certain civilians. The active duty service must be in connection with a war, military operation or national emergency.

Eligible civilians are those who reside or are employed in an area that is declared a disaster area by any federal, state or local official in connection with a national emergency or who suffered direct economic hardship as a direct result of a war, other military operation or national emergency.

GRACE PERIODS:

Initial grace periods can be extended for up to three years.

IN-SCHOOL DEFERMENTS:

In-school deferments can be extended for up to three years during a borrower's service, including the time necessary to return to school for the next enrollment period if the borrower plans to re-enroll.

FORBEARANCE:

The three year limit on Perkins forbearances is eliminated for these borrowers. In addition, they are entitled to forbearances for up to one year without having to provide documentation or to sign a written agreement. These forbearances can be granted based on the borrower's written or oral request or the request of a family member or other reliable source. See 20 USC 1080[c].

OTHER JOB-RELATED CANCELLATIONS:

Some of the job-related cancellations require borrowers to work in a certain career field for a specific length of time. This requirement is waived for affected individuals if the reason for the interruption is related to the borrower's service. There are federal loan cancellations tied to military service available in the Perkins loan program. Military service is also considered "public service" for purposes of the Direct Loan public service cancellation.

STATUTES OF LIMITATIONS?:

No. Congress removed limitations periods for collection of student loans. Public Law 102-26 eliminated the prior limitations periods for collection of a student loan under a federal loan program. The prior limitations were found in 20 USC 1091a[a].

LACHES?:

Some courts have allowed a laches defense despite removal of the statutes of limitations. See, ex., **US v. Robbins**, 819 F.Supp. 672 [E.D. Mich. 1991]. Other courts disapprove of laches as inapplicable against the government based on sovereign immunity. **US v. Summerlin**, 310 US 414, 60 S.Ct. 1019. Courts have held that laches was eliminated as well as the liberative statutes.

US v. Smith, 862 F.Supp. 257 [D.Ha.].

ADDITIONAL DEFENSES IN LITIGATION:

National Collegiate Student Loan Trust Collection Lawsuits

* **Trustees not Trusts as a Party**. Plaintiff identifies itself as NATIONAL COLLEGIATE STUDENT LOAN TRUST ****. It does not further describe itself beyond stating that it is "domiciled" in Delaware. The word "TRUST" appears in its name yet the suit is not filed by a Trustee as required by Louisiana law. **La. C.C.P. art. 699**; **Joe Conte Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.**, 689 So.2d 650 [La. App. 4 Cir. 1997] ["The Family Trust lacks procedural capacity to assert any claims on its own behalf because it was never properly joined in this action. **Article 699** of the Louisiana Code of Civil Procedure provides that the Trustee of an express trust is the proper plaintiff to sue to enforce a right of the trust estate. Louisiana courts regularly enforce this rule, and grant Exceptions of No Right of Action dismissing claims brought on behalf of trusts by parties other than the trustees. See, **Huber v. Calcasieu Marine National Bank of Lake Charles**, 262 So.2d 404, 407 (La. App. 3 Cir.1972); **Succession of Hines**, 341 So.2d 42, 45 (La. App. 3 Cir.1976)."]. There is no allegation of a Trustee or any allegation as to the nature of the entity that plaintiff may be other than using the word "TRUST" in its name. A party's status must be alleged and identified. Plaintiff lacks procedural capacity to sue and has stated no right of action. The petition appears to be a cookie-cut type form used to expedite filings. A student loan arises from a promissory note or some other evidence of indebtedness and not an "account" in the nature of a credit card.

* **Assignment issues**: Louisiana Code of Civil Procedure article 681 requires that a plaintiff allege and actually have a real and actual interest in the claim it asserts. Louisiana Code of Civil Procedure article 698 permits standing and claims when a valid assignment is alleged and proven. There is no relationship alleged other than Plaintiff claims it is the "holder"of a "promissory note" which is not proper jargon for suit on an apparent student loan note based on a "non-negotiable credit agreement" copy. If an assignment is the basis of the action, it must be alleged and is not alleged. The law does not vary state-to-state. Comparably, in **National Check Bureau, Inc. v. Ruth**, 2009 Westlaw 2516123 [Ohio App. 9 Dist. 2009], the court found that an assignment was not properly alleged or properly proven.

Further, in **Unifund CCR Partners Assignee of Palisades Collection, LLC v. Hemm**, 2009 Westlaw 2106289 [Ohio App. 2 Dist. 2009], the court noted that the plaintiff [and as the alleged assignee] failed to explain their relationship, if any. "The party asserting that a debt is due to it by virtue of an assignment must prove that the debt was in fact assigned to it." **Ceramic Tile International, Inc. v. Balusek**, 137 S.W.3d 722, 724 [Tex. App. San Antonio 2004, no pet.]; **Delaney v. Davis**, 81 S.W.3d 445, 448-449 [Tex. App. Houston [14th Dist.] 2002, no pet.]. In **Ceramic Tile International, Inc. v. Balusek**, supra, the Court of Appeal reversed a trial court's judgment favoring an assignee who never introduced the assignment into evidence at the trial. See 137 S.W.3d at 725." Also see **Powell v. McCauley**, 126 S.W.3d 158, 163 [Tex. App. - Houston [1st Dist.] 2002, no pet.]; **American Fire & Indem. Co. v. Jones**, 828 S.W.2d 767, 769 [Tex. App. Texarkana 1992, writ denied]; **Pape Equipment Co. v. I.C.S., Inc.**, 737 S.W.2d 397, 399 [Tex. App. - Houston [14th Dist.] 1987, writ ref'd n.r.e.]; see also **Esco Elevators, Inc. v. Brown Rental Equipment Co., Inc.**, 670 S.W.2d 761, 764 [Tex. App.- Fort Worth 1984, writ ref'd n.r.e.]; **Briscoe v. Texas General Ins. Agency**, 60 S.W.2d 814, 815 [Tex. Civ. App.- Amarillo 1933, no writ]; **Indemnity Ins. Co. of North America v. Garsee**, 54 S.W.2d 817, 820 [Tex. Civ. App.-Beaumont 1932, no writ]; **Skipper v. Chase Manhattan Bank USA, N.A.**, Not Reported in S.W.3d, 2006 Westlaw 668581 [Tex. App. - Beaumont 2006]. The claimant must come forth with proof of its right and standing when challenged. A party who demands performance of an obligation must prove the existence of the obligation. La. C.C. art. 1831; **Suire v. Lafayette City–Parish Consol. Govt.**, 907 So.2d 37 [La. 2005]; **Kyle v. Smith**, 999 So.2d 130, 2008 WL 5074438 [La. App. 2 Cir. 2008]. In comparable cases where the lender and its collectors attempt to foist arbitration, the courts have likewise required allegations and evidence of a contract and rights to force arbitration. **Chase Bank USA, N.A. v. Leggio**, 997 So.2d 887 [La. App. 2 Cir. 2008]; **Chase Bank USA, N.A. v. Leggio**, 999 So.2d 155 [La. App. 2 Cir. 2008]; **NCO Portfolio Management Inc. v. Gougisha**, 985 So.2d 731 [La. App. 5 Cir. 2008].

* The exception of no right of action contests whether the plaintiff is in the class to which the law extends a remedy. **Greenbriar Nursing Home, Inc. v. Pilley**, 637 So.2d 429 [La. 1994]; **Frazier v. Green Steel Bldg., Inc.**, 409 So.2d 1290 [La. App. 2 Cir. 1982]; **Gustin v. Shows**, 377 So.2d 1325 [La. App. 1 Cir. 1979]. Evidence is admissible in support of or opposition to an exception of no right of action. La. C.C.P. art. 931; **Frazier v. Green Steel Bldg., Inc.**, 409 So.2d 1290

[La. App. 2 Cir. 1982]. Only if the petition pleads a valid cause of action would the court then consider a no right of action exception raised. The peremptory exception of no right of action questions whether the particular plaintiff is a party to whom the law affords a remedy. La. C.C.P. art. 927; **Greenbriar Nursing Home, Inc.**, supra; **Babineaux v. Pernie-Bailey Drilling Co.**, 262 So.2d 328 [La. 1972]. The exception of no right of action results in an evidentiary trial of the exception. The court in **J.M.Y. v. R.R.**, 1 So.3d 725 [La. App. 3 Cir. 2008], stated: "This court discussed the standard of review of an exception of no right of action in **Mississippi Land Co. v. S & A Properties II, Inc.**, 01-1623, pp. 2-3 [La. App. 3 Cir. 5/8/02], 817 So.2d 1200, 1202-03 [citations omitted]: An exception of no right of action has the function of determining whether the plaintiff has any interest in the judicially enforced right asserted. The function of this exception is to terminate the suit brought by one who has no judicial right to enforce the right asserted in the lawsuit. The determination of whether a plaintiff has a right of action is a question of law. Accordingly, we review exceptions of no right of action de novo. Evidence can be admitted to support the allegations in a exception of no right of action, but if no evidence is offered the court must decide the exception solely on the basis of the plaintiff's allegations. **Indus. Co., Inc. v. Durbin**, 02-0665 [La.1/28/03], 837 So.2d 1207." Plaintiff failed to allege any basis for a right of action except an inaccurate claim of a "promissory note". Documents attached to a petition are considered incorporated into the pleading. "The well-pleaded facts of the petition and the contents of attached incorporated documents and exhibits are controlling in determining both a no cause and no right of action." **Morris v. Rental Tools, Inc.**, 435 So.2d 528, 531 [La. App. 5 Cir. 1983]. Louisiana utilizes fact pleading, meaning that the mere conclusion of the pleader unsupported by facts does not set forth a cause or right of action. **Arledge v. Sherril**, 738 So.2d 1215 [La. App. 2 Cir. 1999]; **Bryan D. Scofield, Inc. v. Susan A. Daigle, Ltd.**, 999 So.2d 311 [La. App. 3 Cir. 2008]; **Scheffler v. Adams and Reese, LLP**, 950 So.2d 641 [La. 2007]; **O'Dwyer v. Edwards**, 15 So.3d 308 [La. App. 4 Cir. 6/10/09]; **Montalvo v. Sondes**, 637 So.2d 127, 131 [La. 1994]. The trial court cannot ignore deficient pleadings or facially contradicting or erroneous pleadings and permit a case to proceed to its merits when the petition is deficient, contradicting or facially erroneous and the petition is the subject of a proper exception. The purpose of the exception of vagueness is to place the defendants on notice of the nature of the facts sought to be proved so as to enable him generally to prepare his defense, as well as additionally by a formal pleading to identify the cause of action so as to bar its future re-litigation after determination by the present suit. **AAA Delivery,**

Inc. v. Airborne Freight Corp., 646 So.2d 1113 [La. App. 5 Cir. 11/16/94], writ denied, 649 So.2d 423 [La. 1995]; **Smart v. Gold, Weems, Bruser, Sues & Rundell**, 955 So.2d 263[La. App. 3 Cir. 2007], writ denied, 959 So.2d 497[La. 2007]. No proper assignment or transfer of rights are alleged. **Petch v. Humble**, 939 So.2d 499, 2006 Westlaw 2422914 [La. App. 2 Cir. 2006]; **Hamilton v. AAI Ventures, LLC**, 768 So.2d 298 [La. App. 1 Cir. 2000]. Amendment of the petition cannot cure failure to name a proper plaintiff, assuming a claim at all and assuming standing by anyone to sue defendants. This suit should be dismissed, with prejudice. Upon granting an exception of no right of action or no cause of action, it is within the sound discretion of the trial court to allow or deny the plaintiff the ability to amend the petition. **FIA Card Services, N.A. v. Gibson**, 978 So.2d 1230 [La. App. 2 Cir. 2008].