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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, vs. AMERICAN FINANCIAL BENEFITS CENTER, a corporation, also d/b/a AFB and AF STUDENT SERVICES; AMERITECH FINANCIAL, a corporation; FINANCIAL EDUCATION BENEFITS CENTER, a corporation; and BRANDON DEMOND FRERE, individually and as an officer of AMERICAN FINANCIAL BENEFITS CENTER, AMERITECH FINANCIAL, and FINANCIAL EDUCATION BENEFITS CENTER, Defendants.	Case No. 4:18-cv-00806-SBA Related Case: 4:17-cv-04817-SBA **DECLARATION OF IAN FOSS IN SUPPORT OF FEDERAL TRADE COMMISSION'S MOTION FOR PRELIMINARY INJUNCTION**

DECLARATION OF IAN FOSS
PURSUANT TO 28 U.S.C. §1746

I, Ian Foss, hereby declare as follows:

1. I am a citizen of the United States over the age of 18. I am employed as a Program Specialist by the U.S. Department of Education ("Education") in the Federal Student Aid office, Policy Liaison and Implementation Staff.

2. As a Program Specialist, my primary function is to communicate policy guidance related to the William D. Ford Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and other Federal student financial aid Programs administered by Education. I am also familiar with the laws and rules governing the Federal Perkins Loan (Perkins Loan) Program.

3. In the course of performing my official responsibilities, I have become familiar with the various types of Federal student financial aid programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA) and with the regulations that apply to those programs. In particular, I am familiar with Education's repayment, forgiveness and discharge options for loans made under the Direct Loan and FFEL programs.

4. The information in this declaration is based upon my knowledge of the Federal student financial assistance programs authorized by Title IV of the HEA and Education's regulations and of the laws relating to the collection of Federal student loans.

OVERVIEW OF THE DIRECT LOAN, FFEL AND PERKINS PROGRAMS

5. The Direct Loan Program was created in 1993 and, since July 1, 2010, has been the primary Federal student loan program.

6. The FFEL Program was created in 1965 and, until July 1, 2010, was the primary Federal student loan program. No new FFEL Program loans have been made since June 30, 2010.

7. The Perkins Loan Program was created in 1958 and is much smaller than the Direct Loan and FFEL programs.

8. Generally, Direct Loans and FFEL loans have the same terms and conditions for the borrowers.

9. There are four types of loans under the Direct Loan and FFEL programs:

   a. Direct Subsidized Loans and FFEL Subsidized Stafford Loans are or were made to eligible students who demonstrated financial need. Since July 1, 2012, only undergraduate students may receive these loans.

   b. Direct Unsubsidized Loans and FFEL Unsubsidized Stafford Loans are or were made to eligible students without regard to financial need.

c. Direct PLUS Loans and FFEL PLUS Loans are or were made to eligible parents of eligible dependent undergraduate students, or (since July 1, 2006) to eligible graduate or professional students. To receive a PLUS loan, a borrower must not have an adverse credit history.

d. Direct Consolidation Loans and FFEL Consolidation Loans are or were made to allow eligible student and parent borrowers to combine loans made under the Direct, FFEL, Perkins and certain other federal student loan programs into one loan.

10. There is only one type of Perkins Loan. Perkins Loans are made by schools to eligible undergraduate or graduate or professional students who demonstrate financial need.

11. Students are limited in how much they can borrow in Direct Subsidized and Direct Unsubsidized loans each year. The same limits applied to FFEL loans. The annual limit depends on the student's year in school, the student's status as a dependent or independent student and the student's status as an undergraduate or graduate or professional student. Other factors that affect how much a student can borrow each year are the student's cost of attendance, the period for which the student is receiving the loan, other aid received by the student and prior loans.

12. Students are limited in how much they can borrow in Direct Subsidized and Direct Unsubsidized Loans on an aggregate basis. The amount of any prior FFEL Subsidized Stafford or Unsubsidized Stafford Loans also counts toward the borrower's aggregate limit. The aggregate limit depends on the student's status as a dependent or independent student and on whether the student is an undergraduate or graduate or professional student.

13. Direct PLUS Loans do not have an annual limit. The maximum amount a parent or student borrower may borrow is limited to the student's cost of attendance minus the amount of other aid received by the student. There are no aggregate limits on PLUS loans.

14. Students are limited in how much they can borrow in Perkins Loans each academic year. The annual limit depends on whether the student is an undergraduate or a graduate or professional student.

15. Federal Perkins Loans are subject to an aggregate limit depending on the whether the student is an undergraduate or a graduate or professional student.

16. If a borrower consolidates non-Direct Loans into a Direct Consolidation Loan the borrower can take advantage of all of the benefits of a Direct Loan.

17. Education is the only holder of Direct Loans.

18. FFEL loans may be held by an eligible lender, a guaranty agency or Education.

19. Perkins Loans are held by the school which made the loan or Education.

20. As of September 30, 2017, there was $1.05 trillion outstanding in Direct Loans made to or on behalf of 33 million students.

21. As of September 30, 2017, there was $305.8 billion outstanding in FFEL Program loans that were made to or on behalf of 14.9 million students.

22. As of September 30, 2017, there was $7.6 billion outstanding in Perkins Loans that were made to 2.5 million students.

23. As of September 30, 2017, of the $305.8 billion outstanding in FFEL Program loans, Education held $93.7 billion or 30.6 percent. This includes loans made to or on behalf of approximately 7.04 million students.

INTEREST RATES ON DIRECT, FFEL AND PERKINS LOANS

25. Interest rates on Federal student loans are set by statute.

26. Some interest rates are specifically set in statute while others are calculated pursuant to a statutory formula and schedule.

27. Direct and FFEL Program loans first disbursed on or after July 1, 2006 have fixed interest rates.

28. Direct Loans first disbursed on or after July 1, 2013 have fixed interest rates that are calculated pursuant to a statutory formula:

    a. Interest rates are calculated for loans first disbursed between July 1 of each calendar year and June 30 of the following calendar year.

    b. The formula used for calculating the interest rate is the high-yield rate of the last 10-year Treasury Note auction prior to June 1, plus a margin.

    c. The margin is different for different loan types and whether the borrower is an undergraduate or a graduate student.

29. Direct Loan and FFEL loans first disbursed prior to July 1, 2006 had variable or fixed interest rates depending on when they were disbursed.

30. FFEL lenders may charge a borrower less than the statutory interest rate.

31. In the Direct Loan Program, Education generally charges borrowers the applicable statutory interest rate for their type of loan except that a borrower may receive a 0.25 percentage point reduction in the interest rate by agreeing to repay the loan through an electronic debit from a bank account.

32. Perkins Loans have a 5 percent interest rate.

DIRECT LOAN AND FFEL PROGRAM REPAYMENT OPTIONS

33. In the Direct Loan and FFEL Programs there are two basic types of repayment plans: traditional repayment plans and income-driven repayment (IDR) plans.

34. Traditional repayment plans require that the loan be repaid in full by the end of a specified repayment period. The required monthly payment amount is determined based on the loan amount, the interest rate and the repayment period (or "loan term").

35. IDR plans provide borrowers with a monthly payment based on the borrower's income, family size and, in some cases, loan amount. After a specified number of years of qualified repayment, the borrower's remaining loan balance may be forgiven.

36. The traditional repayment plans are the Standard Repayment plan, the Graduated Repayment plan and the Extended Repayment plan.

37. In the Standard Repayment plan, payments are fixed over the course of the repayment period. The repayment period for most loans is 10 years. However, the repayment period for Consolidation loans is between 10 and 30 years depending on the amount of the borrower's total education debt.

38. In the Graduated Repayment plan, payments start as low as the amount of accruing interest and gradually increase every two years. No single scheduled payment can be more than three times greater than any other payment. The repayment period for most loans is 10 years. However, the repayment period for Consolidation loans is between 10 and 30 years depending on the amount of the borrower's total education debt.

39. In the Extended Repayment plan, payments are fixed or graduated, at the borrower's choosing. This plan is only available to new borrowers on or after October 7, 1998 who owe more than $30,000 in Direct or FFEL loans. The repayment period is 25 years.

40. There are four IDR plans: the Income-Contingent Repayment (ICR) plan; the Income-Based Repayment (IBR) Plan, the Pay As You Earn (PAYE) plan and the Revised Pay As You Earn (REPAYE) plan.

41. In the FFEL Program, the IBR Plan is the only IDR plan that is available. However, borrowers can choose an Income-Sensitive Repayment Plan. Under this plan, the lender creates a formula by which it will calculate the borrower's payment, based on the borrower's income. The borrower's payment must be at least the amount of accruing interest and the repayment period is 10 years (but it may be extended by 5 more years) through the use of forbearance.

42. All of the IDR plans are available in the Direct Loan Program but not all borrowers can use all of the plans.

43. In the Direct Loan Program, a borrower may change repayment plans at any time. In the FFEL Program, a lender may limit a borrower to one change per year except that the borrower may change to the IBR plan at any time.

44. In the Federal student loan programs, a borrower cannot be charged a fee for choosing a particular repayment plan or changing repayment plans.

45. In the Federal student loan programs, the borrower may always prepay a loan, at any time, without penalty or charges.

46. For borrowers repaying loans under traditional repayment plans, the ICR Plan or the Income-Sensitive Repayment Plan, payments are applied first to collection costs, then to outstanding interest and then to the loan principal. In the IBR, PAYE and REPAYE plans, payments are applied first to interest, then to collection costs and then to principal.

47. In the FFEL Program, lenders may charge a borrower a late fee for late payments of up to 6 percent. Education does not charge a late fee on Direct Loans or FFEL loans it holds.

<u>THE ICR PLAN</u>

48. The ICR Plan is only available to Direct Loan borrowers. Direct PLUS loans made to parent borrowers are not eligible for the ICR Plan but Direct Consolidation Loans made on or after July 1, 2006 that repaid Direct PLUS loans made to parents are eligible for the ICR Plan.

a. Under the ICR plan, payments are the lesser of: (i) 20 percent of the difference between the borrower's income and the poverty guideline amount for the borrower's family size and state of residence; or (ii) the amount the borrower would pay if the payment was calculated based on a 12-year amortization schedule with fixed payments adjusted based on the borrower's income.

b. The income of a borrower's spouse is considered in the calculation of the borrower's payment amount if they file a joint federal tax return or they elect to jointly repay their Direct Loans under the ICR Plan.

c. If a spouse's income is included in the calculation of the borrower's payment, the payment amount for each individual is prorated by the percentage of the combined eligible Direct Loan debt attributable to the borrower.

d. The repayment period in the ICR Plan is 25 years. Any remaining loan balance after 25 years of qualifying repayment is forgiven.

<u>THE IBR PLAN</u>

49. Both Direct Loan and FFEL Loan borrowers are eligible for the IBR Plan. Direct and FFEL PLUS Loans made to parent borrowers and Direct and FFEL Consolidation Loans that repaid those loans are not eligible for the IBR Plan.

a. Under the IBR plan, payments are the lesser of: (i) 15 percent (or 10 percent if the borrower is a new borrower after July 1, 2014) of the difference between the borrower's income and 150 percent of the poverty guideline amount for the borrower's family size and state of residence; or (ii) the amount the borrower would have paid under the 10-year Standard Repayment Plan at the borrower requested the IBR Plan.

b. To use the IBR plan, the borrower must have a partial financial hardship (PFH). A PFH exists is the monthly amount the borrower would pay on the borrowers' eligible Federal student loans under the 10-year Standard Repayment Plan (based on the greater of the loan amount owed when the borrower first entered repayment or the amount owed when the borrower requested the IBR Plan) is greater than the amount the borrower would pay under the IBR Plan, as calculated under the formula described in paragraph 49.a.i.

c. The income of a borrower's spouse is considered in the calculation of the borrower's PFH and payment amount if they file a joint federal tax return.

c. If a spouse's income is included in the calculation of the borrower's payment, the payment amount for each individual is prorated by the percentage of the combined eligible Direct Loan debt attributable to the borrower.

d. The repayment period in the IBR Plan is 25 years (or 20 years for a new borrower on or after July 1, 2014). Any remaining loan balance after 25 or 20 years of qualifying repayment is forgiven.

<u>THE PAYE PLAN</u>

50. Only Direct Loan borrowers are eligible for the PAYE Plan. Direct PLUS Loans made to parent borrowers and Direct Consolidation Loans that repaid Direct or FFEL PLUS loans made to parent borrowers are not eligible for the IBR Plan.

a. Under the PAYE plan, payments are the lesser of: (i) 10 percent of the difference between the borrower's income and 150 percent of the poverty guideline amount for the borrower's family size and state of residence; or (ii) the amount the borrower would have paid under the 10-year Standard Repayment Plan at the borrower requested the PAYE Plan.

b. To use the PAYE plan, the borrower must have a partial financial hardship (PFH). A PFH exists is the monthly amount the borrower would pay on the borrowers' eligible Federal student loans under the 10-year Standard Repayment Plan (based on the greater of the loan amount owed when the borrower first entered repayment or the amount owed when the borrower requested the PAYE Plan) is greater than the amount the borrower would pay under the PAYE Plan, as calculated under the formula described in paragraph 50.a.i.

c. To use the PAYE Plan, the borrower must be a new borrower of a Direct Loan on or after October 1, 2007 who received a disbursement of a Direct Loan on or after October 1, 2011.

d. The income of a borrower's spouse is considered in the calculation of the borrower's PFH and payment amount if they file a joint federal tax return.

e. If a spouse's income is included in the calculation of the borrower's payment, the payment amount for each individual is prorated by the percentage of the combined eligible Direct Loan debt attributable to the borrower.

d. The repayment period in the PAYE Plan is 20 years. Any remaining loan balance after 20 years of qualifying repayment is forgiven.

THE REPAYE PLAN

51. Only Direct Loan borrowers are eligible for the REPAYE Plan. Direct PLUS Loans made to parent borrowers and Direct Consolidation Loans that repaid Direct or FFEL PLUS loans made to parent borrowers are not eligible for the IBR Plan.

a. Under the PAYE plan, payments are 10 percent of the difference between the borrower's income and 150 percent of the poverty guideline amount for the borrower's family size and state of residence.

b. Generally, the income of a borrower's spouse is considered in the calculation of the borrower's payment amount regardless of whether they file a joint federal income tax return or separate returns.

c. If a spouse's income is included in the calculation of the borrower's payment, the payment amount for each individual is prorated by the percentage of the combined eligible Direct Loan debt attributable to the borrower.

d. The repayment period in the REPAYE Plan is 20 years if the borrower is only repaying Direct Loans received as an undergraduate student. Any remaining loan balance after 20 years of qualifying repayment is forgiven.

e. The repayment period in the REPAYE Plan is 20 years if the borrower is repaying any Direct Loans received as a graduate or professional student. Any remaining loan balance after 20 years of qualifying repayment is forgiven.