ADA WEBSITE COMPLIANCE CASES MOVE FORWARD; SENATORS URGE REGULATORY ACTION

As we discussed in a recent article, class action lawyers have been sending demand letters and filing lawsuits claiming that websites belonging to businesses and organizations are "places of public accommodation" and are in violation of the Americans with Disabilities Act (ADA) because they are not accessible to people with visual and hearing impairments.

On January 29, 2016, several consolidated cases in the Western District of Pennsylvania moved forward after a scheduling conference. While claims against some of the defendants have resolved through settlement, claims against the National Basketball Association and Toys "R" Us, among others, are moving forward rapidly, with the parties scheduled to complete depositions in March 2016, and with trial scheduled for May 2, 2016.

Meanwhile, nine Senators from across the country, all Democrats, have sent a joint letter to the Office of Management and Budget urging it to complete its review of the proposed regulations regarding accessibility standards for websites and to impose strict ADA compliance regulations for companies. While the Senators commended the Department of Justice's prosecution of various institutions for having websites that are allegedly not compliant with the ADA, they stated their concern that companies were "exploiting the lack of regulatory clarity" by maintaining non-accessible websites, which the Senators believe to be in violation of the ADA.

These developments show that the issue of whether your company's website complies with the ADA is not going to go away soon. Plaintiffs' lawyers representing visual and hearing impaired groups will likely continue to broaden the scope of who they sue for alleged ADA violations. If you receive a letter demanding action or requesting a settlement, it is important to know your rights before agreeing to anything.

If you have any questions, please contact Attorney Erica N. Reib of O'Neil Cannon at 414-276-5000 for more information.

NEW LAW CHANGES WISCONSIN SALES AND

USE TAX RULES FOR CONSTRUCTION CONTRACTORS

A new Wisconsin law allows contractors to purchase materials tax-free for construction projects undertaken by certain tax-exempt government and non-profit entities. Under former law, such entities generally had to purchase the construction materials directly themselves in order to receive the Wisconsin sales and use tax exemption. Now, construction contractors may make tax-exempt purchases of construction materials for projects owned by exempt entities. These entities generally include the State of Wisconsin and its agencies, counties, municipalities, school districts and other units of local government, sewerage commissions and districts, water authorities, religious, charitable and non-profit entities, and Indian tribes. The new law took effect on January 1, 2016, and applies to construction contracts entered on or after that date.

To qualify for the tax exemption, the contractor must transfer the materials to the exempt entity, and the materials must become “a component of a facility in this state that is owned by the entity.” The new law defines “facility” as a “building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility.” There is a notable express exception. A “facility” does not include a highway, street, or road. Consequently, the new rules will not apply to road and highway projects.

The purpose of the new law is to avoid inflation of the cost of public construction projects due to difficulties in realizing the sales and use tax exemption under prior law. The new law should help government and non-profit entities take full advantage of their tax-exempt status in connection with construction projects. It will also simplify the material purchasing process both for the tax-exempt owner and for the contractor.

If you have any questions, please contact Attorney Steve J. Slawinski at O’Neil Cannon at 414-276-5000.

IS YOUR COMPANY’S WEBSITE COMPLIANT WITH THE AMERICANS WITH DISABILITIES ACT (ADA)?

Recently, class action lawyers around the country have filed lawsuits against businesses and

organizations (even the National Basketball Association) alleging that their websites are not compliant with the ADA. Attorneys on behalf of vision or hearing impaired individuals are alleging that websites available for use by the public must conform to certain standards of accessibility. These claims are based on the ADA's general prohibition that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment… of any place of public accommodation…." Although initially thought to cover only physical locations, plaintiffs' lawyers have argued that the changing technology landscape has modified the definition of "places of public accommodation" over the last twenty years or so. Courts around the country have disagreed as to whether websites constitute a "place of public accommodation," but litigation under the statute continues.

Part of this recent push may come from the Department of Justice's changed stance on accessibility standards for websites. In 2010, the DOJ stated that covered entities could comply with the ADA's requirements regarding websites by providing an accessible alternative, such as a staffed telephone line. However, in June 2015, the DOJ filed statements of interests in at least two lawsuits in support of claims that the defendants needed to make their websites immediately accessible. The DOJ was expected to issue proposed rules in spring 2016, but now it seems as though the DOJ will not complete rulemaking until 2017 or 2018.

If you own a business, you will want to speak with your website developer about these issues. Moreover, if your company has been the target of a letter or lawsuit threatening legal action based on your website, you should contact an attorney to discuss your options before agreeing to any settlement demands.

If you have any questions, please contact Attorney Erica N. Reib at O'Neil Cannon at 414-276-5000.

LOCAL COURT RULES IN WISCONSIN

While litigators most likely are familiar with the various state and federal local court rules impacting courtroom practice in their geographic areas, they may not be as familiar with the local rules for courts in other areas in which they do not usually practice but have a case.

Wisconsin's state courts have various different sets of local rules. To assist attorneys in complying with these differing local rules, the State Bar of Wisconsin maintains a page on its website—www.wisbar.org—with links to them.

Milwaukee County is the most populous county in Wisconsin, and its Circuit Court has its own

local rules which can be found here:

The Circuit Courts for the various counties outside Milwaukee comprising the greater Milwaukee metropolitan area also have their own local rules, including:

- The Kenosha County Circuit Court which can be found here.
- The Ozaukee County Circuit Court which can be found here.
- The Racine County Circuit Court which can be found here.
- The Sheboygan County Circuit Court which can be found here.
- The Washington County Circuit Court which can be found here.
- The Waukesha County Circuit Court which can be found here.

Wisconsin's federal courts also have their own local rules.

- The local rules for the United States District Court for the Eastern District of Wisconsin can be found here.
- The local rules for the United States District Court for the Western District of Wisconsin can be found here.
- The local rules for the Wisconsin Bankruptcy Courts can be found:
    - Here for the U.S. Bankruptcy Court for the Eastern District of Wisconsin;
    - Here for the U.S. Bankruptcy Court for the Western District of Wisconsin.

In addition, various Wisconsin federal court judges, particularly those in the Eastern District of Wisconsin, have their own practice preferences, some of which can be found:

    - Here for the U.S. District Court for the Eastern District of Wisconsin; and
    - Here for the U.S. Bankruptcy Court for the Eastern District of Wisconsin.

Local rules are subject to periodic modification, so it is advisable to review the local rules at the beginning of each case and thereafter as necessary.

For more information about Wisconsin's state or federal local court rules, please contact Grant Killoran at 414.291.4733

NEW CHANGES TO OBTAINING DISCOVERY IN WISCONSIN FOR USE IN OTHER STATES

Obtaining discovery in Wisconsin for cases pending outside the State will soon become a lot easier. Until the end of 2015, a party in out-of-state litigation will still need to obtain the appropriate commissions from the court handling the underlying litigation and then file those commissions along with the necessary petition materials in a Wisconsin court to have a

subpoena issued for testimony or documentary evidence to be given or produced here. However, effective January 1, 2016, this process will become much more streamlined as Wisconsin finally adopted the provisions of the Uniform Interstate Depositions and Discovery Act (UIDDA).

The UIDDA is a uniform act that is patterned after Rule 45 of the Federal Rules of Civil Procedure. It sets forth an efficient and inexpensive procedure through which litigants can seek and obtain discovery from witnesses located outside the jurisdiction of the trial court. The UIDDA was promulgated in 2007 and has since, at the time of this writing, been enacted in 35 states plus the District of Columbia and the U.S. Virgin Islands.

Specific provisions of the proposed rule change and their interplay with current Wisconsin law were discussed at an open administrative rules conference on December 5, 2014, at which the court voted to return the petition to the Judicial Council for editing and refinements consistent with the court's discussions. On March 24, 2015, the Judicial Council filed an amended petition containing such changes. The matter was discussed further at an open rules conference on June 10, 2015, at which the court voted unanimously to adopt the amended petition, with certain changes to the language and comment regarding the issuance of a subpoena.

By an order dated July 7, 2015, the court ordered that, effective January 1, 2016, Wis. Stat. § 887.24 be repealed and recreated to incorporate the provisions of the UIDDA as modified to comport with Wisconsin law. A copy of the court's July 7th order can be found here.

As recreated, the new Wis. Stat. § 887.24 will allow for subpoenas to be issued for discovery in Wisconsin by two methods:

- First, a party may have a subpoena issued by a clerk of circuit court by submitting a foreign subpoena to the clerk in the county in which the discovery is sought. When submitted, the foreign subpoena must be accompanied by an appropriate Wisconsin subpoena form that includes certain information that is specified in the statute. No filing fee will be required, and the clerk will not open a case file; however, the clerk may keep a record of the subpoenas issued.
- Second, a party may elect to retain an attorney authorized to practice law in Wisconsin to sign and issue a subpoena in his or her capacity as an officer of the court. Any subpoenas issued by Wisconsin attorneys must contain the same statutorily required information as that required for subpoena forms submitted to a clerk of circuit court.

To avoid any conflicts with the rules relating to the unauthorized practice of law, Wis. Stat. § 887.24(3)(d), as recreated, specifically provides that requesting the issuance of a subpoena through either of the prescribed methods in § 887.24(3) will not constitute an appearance in Wisconsin courts. However, should the need for a protective order arise related to the subpoena or should there be a need to enforce, quash, or modify the subpoena, then a

special proceeding will need to be started in the circuit court in the county in which the discovery is sought.

The full text of Wis. Stat. § 887.24, as repealed and recreated, can be found here.

In closing, while Wisconsin lawyers will no longer be needed to serve as local counsel to petition a Wisconsin court to secure discovery for out-of-state parties, they should still understand the rule change to not only effectively counsel out-of-state lawyers and parties on how to obtain discovery in Wisconsin, but also because they may be called on directly to issue subpoenas for discovery from witnesses located in Wisconsin for use in litigation pending elsewhere.

LIMITATION OF LIABILITY

From time to time in drafting an agreement, one of the parties may wish to limit contractually any remedies or liability that the other party might seek at a later point in time. For example, a software developer might seek to limit any possible liability associated with the development of the software or with respect to the contract in any way. Another example would be in a purchase or sale of a business, where a seller may wish to limit liability that the buyer might assert at some future point in time.

In the case, *Aurora Health Care, Inc. v. Codonix Inc.*, *2006 WI 1589629 (E. D. Wis. 2006)*, our firm was defending a party who was sued under a long and sophisticated contract. One part of the contract sought to limit liability to a particular sum or to three times the amounts paid under the contract. Furthermore, there was a limitation which provided that in no event will either party be liable for any consequential, indirect, special, or incidental damages. While there may be a dispute as to the meaning of those terms, clearly this is an attempt to limit liability under the contract.

Contractual remedies such as the ones mentioned above have often been upheld by the courts. In a Seventh Circuit case, the parties' contract contained remedy limitations that excluded lost profits, special, contingent, incidental, or consequential damages. Even in the face of those contractual limitations, the claimant sought significant sums of money in lost profits damages. The court noted that both parties were sophisticated commercial parties and that the limitation of remedies provisions still provided the plaintiff with a minimum adequate remedy, and therefore, the remedy limitation "did not fail of its essential purpose." In essence, the Seventh Circuit said, "a deal is a deal."

Provisions that relate to lost cost savings are typically treated as consequential damages or

lost profits. A court may determine that a contract does not fail of its essential purpose because someone was denied a certain remedy since the remedy provided for in the contract was a product of that party's own negotiation and making. In other words, if you helped design the contract and you signed it, you made your own bed and you must sleep in it.

Limiting liability or, for that matter, limiting warranties that might be available and the remedies that might flow from those warranties are part of a negotiation that allocates risk in accordance with the parties' sound business practices. The courts may say that a commercial purchaser can better assess its economic expectations and anticipate problems with meeting those expectations by demanding particular warranties to address the problems, or to ensure against that particular risk. In fact, some courts have indicated that if a commercial purchaser wants a product of higher quality, or better durability, or a better warranty, the purchaser is free to negotiate in the marketplace.

If a party wants stronger warranties and remedies, they are likely to have to make other concessions such as an increase in the price.

Care should be taken in the negotiation of provisions which may limit the liability of the parties to the contract or may limit any warranties under the contract. If a party is concerned about any such limitations, then the best approach may be to seek to negotiate more favorable terms rather than pursuing a claim at a later point in time where the other side will argue that the opponent is seeking to re-write the contract.

If you have any questions, please contact Attorney Randy L. Nash at O'Neil Cannon at 414-276-5000.

DIZARD IN BIZTIMES.COM: FORMER LAC LA BELLE COUNTRY CLUB SOLD OUT OF RECEIVERSHIP

An investors group that includes the owner of three area golf courses has purchased the former Lac La Bell Country Club near Oconomowoc for $1.3 million.

The golf course was sold to the group by receiver Seth Dizard on behalf of First Bank Financial Centre, which took it back from the previous owner in a foreclosure action.The 18-hole, 140-acre golf course is located at W389 N6996 Pennsylvania St. in the Village of Lac La Belle.

(Excerpted from *BizTimes.com*) Read full article here.

WILL MY ADULT CHILD WITH AUTISM LIVE INDEPENDENTLY? ESTATE PLANNING FOR FAMILIES OF ADULTS WITH AUTISM SPECTRUM DISORDERS

According to the Centers for Disease Control, the prevalence of autism has increased by 6% to 15% annually since 2002, making autism the fastest-growing developmental disability in the United States.

While this trend may be alarming to young couples having children today, there are also families in our country right now dealing with the confusing prospect of providing for adult children with autism spectrum disorders. More than 3.5 million Americans currently live with autism and 35% of young adults (ages 19–23) with autism have not held a job or received any postgraduate education.

Doug, co-author of this article, is the father of an adult son (19 years old) with autism. Together, he and Megan wrote this article to help families understand that there are ways to provide for their autistic adult children without disqualifying those children from available government programs.

That is the heart of the issue: How can you help your child achieve a level of independence appropriate for him or her while also assuring that you keep all government assistance options available?

Your Help vs. Government Benefits

If you are a parent of an adult child with autism, you are likely looking for ways to help him or her today, and you also want to provide for your child after your death. However, there is a dilemma. If not carefully planned, gifts or inheritances from family members or friends can disqualify your child from eligibility for certain potential government benefits. Those benefits, though often modest in amount, may make the difference between your child living independently in adulthood, or remaining at home or possibly being institutionalized after your death.

For example, an adult child with autism often may meet the legal definition of “disabled”

such that he or she could be entitled to Supplemental Security Income (SSI) benefits. The purpose of SSI is to provide income for food and shelter. It was designed to provide recipients with approximately 75% of the threshold amount for the federal poverty cut-off. As of January 1, 2015, the maximum federal SSI monthly payment for an individual is $733. Many states provide a supplemental SSI benefit, which ranges from about $20 to $100 per month, depending on the state. In Wisconsin, the maximum supplemental SSI benefit is currently $84 per month, which makes the total maximum SSI benefit $817 per month for Wisconsin residents.

Some SSI recipients may be eligible for an additional SSI benefit if they have exceptional needs. These benefits are called SSI-E benefits. Exceptional needs generally means 40 hours per week of attendant care, including custodial care. In Wisconsin, for those who qualify, the maximum SSI-E monthly payment is currently $95.99.

While not exorbitant, these payments can help your adult child have some level of financial independence. But, here's the important part for parents to remember: There are strict limits on how much your child can earn and own and still be eligible for SSI. For example, the amount of your child's SSI benefit is reduced dollar-for-dollar by "countable income." This includes gifts or financial contributions (other than SSI) used by your child to pay for food or shelter. There is also a strict limit of how much your child can own and remain eligible for SSI. The asset limit is generally $2,000, with certain important (but limited) exceptions for necessary items such as a car, home, and certain other assets.

Unfortunately, this means that a well-intended gift or inheritance from a family member (such as you, or a grandparent) could result in your child being disqualified from receiving future SSI benefits. However, this dilemma can be avoided with proper estate planning, through which you can develop a comprehensive plan for your child's financial future. Many times, this estate planning involves creating a special needs trust, through which certain financial assistance can be provided without impacting your child's SSI eligibility.

Special Needs Trusts May Help You Achieve Your Goals

Special needs trusts (also called "supplemental needs trusts") (SNTs) have specific provisions pertaining to the needs of disabled beneficiaries. The purpose of an SNT is to preserve the beneficiary's eligibility to receive public benefits while supplementing his or her lifestyle with private funds in order to enrich his or her life. Usually, parents will set up an SNT during their lifetimes to benefit their disabled child after the parents pass away in order to ensure there are adequate funds available for the child's benefit, without worrying that such funds will disqualify the child from receiving public benefits.

Why Use an SNT?

An SNT may be used to retain and expend funds to supplement (not supplant) government benefits without rendering the beneficiary ineligible to receive them. Here are a few examples of expenses that a properly created SNT generally may cover for the benefit of your disabled child:

- Purchase of a residence.
- More sophisticated or advanced medical, dental, psychiatric, or psychological treatment, cosmetic surgery, rehabilitation, and educational or vocational services.
- Paying the differential cost for shelter between a shared or private room in a group home or nursing home.
- Providing entertainment, such as admission to museums and movie theaters, tuition for art courses, restaurant meals while away from his or her residence, cable television service, a computer with games and other software installed, a stereo or CD or DVD player, and tapes or disks.
- Paying for travel for recreation purposes.
- Paying for any services needed by the beneficiary to permit him or her to reside in his or her own home.
- Providing household furniture and furnishings.
- Paying for preparation of income tax returns and paying any income tax liabilities.
- Paying the expenses of a hobby.
- Paying for legal services to obtain, maintain, or regain eligibility for governmental or private agency benefits, to pay for any legal advice and consultation needed by the trustee to administer the SNT properly and to maintain public benefits eligibility.
- Paying for hair grooming and nail care services.
- Paying for writing supplies and postage.
- Purchasing and paying the costs of maintaining pets.
- Purchasing an automobile, including any modifications or special accommodations needed due to his or her disabilities, whether the motor vehicle is operated by the beneficiary or someone else for his or her benefit.
- Paying the costs of making the beneficiary’s living environment more amenable in light of his or her disabilities, whether or not the home in which he or she resides is owned by him or her or by someone else, or is a residence purchased by the SNT, or is a nursing home, or health care center, or community based residential facility.
- Prepaying for funeral and burial pre-arrangements for the beneficiary.

SNTs provide a very powerful financial vehicle to help you provide for your child. But, SNTs are just one estate planning tool you might consider.

If you have a child with autism or other disabilities, you must think strategically about how you might help provide for your child in a way that ensures he or she will be adequately cared for, especially after your death, without taking any actions that might disqualify him or her from receiving government assistance.

If you would like additional information, you may contact either Doug Dehler or Megan Harried at (414) 276-5000.

TRUSTS AS PARTIES TO BUSINESS AGREEMENTS

Sir Walter Scott wrote, “Oh what a tangled web we weave.” Buyers seeking to purchase a business that is partially held in a trust may face this tangle more than others. They wonder, “With whom am I actually doing the deal?” and, “What are my legal rights should the deal fall through?”

On the flip side, if you are looking to sell your business, and part of the stock in your business is held by a trust, you might wonder how you can accomplish the goals you seek without substantial risk that the sale could be undone later in the event all legal requirements were not strictly followed.

Questions around trusts as shareholders of businesses can be complicated, but Wisconsin recently modified its statutes to include some very clear and specific parameters for buying and selling business interests held in a trust.

This article will help people on both sides of the coin to assess their rights and risks when engaging in business transactions where trusts are parties in one way or another.

Overview of Trusts as Parties to Business Contracts

In contemplating a business contract involving a trust, there are three main questions you should ask:

1. Does the trustee have the authority to do what I need him or her to do?
2. What is required for the trustee to exercise his or her authority?
3. What is my risk if it turns out after the fact that the requirements above were not met?

Let’s consider each of these questions in turn:

1. Does the trustee have the authority to do what I need him or her to do?

Wisconsin law gives certain powers to a trustee, but those powers can be trumped by the powers granted in the actual trust. This simply means that you need to know what the trust itself says. There are two documents that should lay everything out for you: the trust agreement or a Certification of Trust. As a buyer, you do not always have a legal right to see a trust agreement in its entirety, but you do have the legal right to receive a Certification of Trust.

Therefore, when you are in a business transaction involving a trust, you will want to ask for a copy of the trust agreement itself or a Certification of Trust.

In a Certification of Trust, the trustee certifies, or swears to, the following information:

- That the trust exists, and the date on which it was created
- The identity of the settlor
- The identity and address of the currently acting trustee
- The trustee's powers (This is the section that will tell you whether a trustee has authority to complete the type of transaction you seek)
- Whether the trust is revocable or irrevocable
- That the trust has not been revoked, modified, or amended in any manner that would cause the representations in the certification to be incorrect
- The authority of a co-trustee to sign and whether all co-trustees are required to sign in order to exercise the powers of the trustee
- The manner in which title to trust property may be taken

Again, Wisconsin law provides certain "default" rules regarding trusts, but those can be changed in the actual trust agreement. Therefore, you need the details from the trust agreement or a Certification of Trust to understand whether and how to accomplish your goals.

2. What is required for the trustee to exercise his or her authority?

You will also want to ask, "Is there more than one trustee?"

Wisconsin's default rule is that there must be consent by a majority of the trustees in order to conduct a business transaction, however, the trust agreement may preempt that rule by stating that it is possible for one trustee to delegate a function to a co-trustee, or require more or less than consent by a majority of the trustees to act.

As a buyer, you are mostly concerned with whether there are multiple trustees. What if there are two trustees and one of them says "yes" to your business transaction and one says "no"? Do both trustees need to sign off? If there are three trustees, there may be a majority or unanimous consent rule in the trust agreement. You should know from the Certification of Trust how many trustees are responsible for the trust and how many it will take to get the deal done.

3. What is my risk if it turns out after the fact that the requirements above were not met?

From a buyer's perspective, one of the biggest concerns about conducting a business transaction that involves a trust is whether they will ultimately have someone to hold accountable should the transaction fail or should there be other issues. From a seller's

perspective, you need to keep this in mind so that you understand a trustee's risk in engaging in business transactions.

Legally, usually a trustee who signs off on a transaction as trustee cannot be held personally liable by the buyer on that contract. However, the buyer does have legal protections.

If you, as a buyer, enter into a transaction in good faith, you can enforce any legal issues against the trust property, but not against the trustee personally. If you have requested a Certificate of Trust and conducted the transaction properly based on that information, then you can show that you did your due diligence and worked in good faith. These are your remedies:

- A person who in good faith enters into a transaction in reliance upon a Certification of Trust may enforce the transaction against the trust property as though the representations made in the Certification of Trust were correct.
- A person who in good faith deals with a trustee is not required to inquire into the extent of a trustee's powers, or the propriety of the trustee's exercise of those powers.
- A person who in good faith and for value deals with a trustee without knowledge that the trustee is exceeding or improperly exercising his powers is protected from liability as though the trustee properly exercised his powers.

If you have any questions, please contact Attorney Megan O. Harried at O'Neil Cannon at 414-276-5000.

STUDENT LOANS: RECENT FEDERAL WARNING SHOTS TO FINANCIAL INSTITUTIONS

You can hardly throw a textbook today without hitting a media story about student loans. From the debt burden that graduates face to the actual loans that students have access to and how they're structured, our country is taking a hard look at college costs and financing. Now the landscape is shifting.

Students, who used to hold little power in the loan process, are gaining a voice. Financial institutions should take note and adjust their loan-making processes or face more regulation and potential losses down the road.

This article shares information about recent federal announcements and their implications to the banking industry.

Recent Federal "Guidance"

There are, essentially, two types of student loans: 1) standard payment plans with established payment amounts and timelines from the moment a student graduates, and 2) graduated repayment plans under which the student's initial payments are lower and then increase approximately every two years. Most graduated repayment plans require monthly payments over ten years.

The problem with graduated payment plans (and, let's face it, many other student loans) is that some students don't end up making as much money as they expected upon graduation and they struggle to pay their debt. A deeper look into some of the loan structures themselves led federal regulators to make a recent announcement to financial institutions that originate private student loans.

On January 29, 2015, federal financial regulatory agencies issued guidance for financial institutions that originate private student loans with graduated repayment terms. Some of the guidance may seem common sense, but clearly the regulators saw practices in the private banking industry that made them take note.

Financial institutions should see these guidelines as a warning shot: you've got to study your private student loan-making process and even your student loan culture or face more federal attention down the road.

The federal agencies issued the following principles for financial institutions that make private student loans with graduated repayment terms to ensure that they "prudently underwrite the loans in a manner consistent with safe and sound lending practices":

- Ensure orderly repayment by calibrating repayment terms to reasonable standards based on debt;
- Avoid payment shock by including repayment terms that a borrower can meet over the life of the loan;
- Align payment terms with income and do not structure repayment terms to mask delinquencies or defer losses;
- Provide clear disclosures to the borrower as required by applicable laws and regulations, including the Truth in Lending Act;
- Comply with all consumer laws, regulations, and reporting standards; and
- Contact borrowers before reset dates to help establish student debt as a priority and aid borrowers in responding to any challenges.

More Power to the Students Coming

Further proof of a shifting landscape: The White House is studying whether it should be easier to wipe out student loans in the bankruptcy process. Currently, federal law prohibits student loans from being discharged in bankruptcy, except in rare cases. In a nutshell, banks need to work with students to arrive at fair repayment plans, or they may risk losing their assets in that student's bankruptcy process.

The takeaway from this recent “guidance”? Students are gaining power in the loan process and banks need to be much more careful about how they structure loans and how they communicate with students throughout the life of a loan.

What Should You Do?

Financial institutions need to take a hard look at their private student loan-making process, their relationships with students throughout the life of a loan, and their very culture around student loans. You have received a warning: “Do this right, and do it fairly, or face consequences.”

If you have any questions, please contact Attorney Melissa S. Blair at O’Neil, Cannon, Hollman, DeJong and Laing S.C. at 414-276-5000.