IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

CONTINENTAL SERVICE GROUP, INC. and PIONEER CREDIT RECOVERY, INC. Plaintiffs, v. THE UNITED STATES, Defendant, and THE CBE GROUP, INC. PREMIERE CREDIT OF NORTH AMERICA, LLC GC SERVICES LIMITED PARTNERSHIP FINANCIAL MANAGEMENT SYSTEMS, INC. and VALUE RECOVERY HOLDINGS, LLC Defendant-Intervenors.	No. 17-cv-449 Chief Judge Susan G. Braden

JOINT EMERGENCY MOTION TO ENFORCE RESTRAINING ORDER

Intervenors, The CBE Group ("CBE") and Premiere Credit of North America LLC ("Premiere"), hereby respectfully request that this Court enjoin the Department of Education ("ED" or "the Agency") from proceeding with its intended recall, tomorrow, of defaulted student loan accounts that are currently in-repayment. Recalling those accounts and placing them with ED's Default Resolution Group contractor Maximus Federal Services, Inc. directly defies this Court's order that prohibits "transferring work to be performed under the contract at issue in this case to other contracting vehicles…"

On March 29, 2017, this Court directed ED to maintain the "status quo" during the pendency of the above-captioned protest by its Temporary Restraining Order ("TRO"), which the Court extended on April 10, 2017 and April 19, 2017, respectively. Also on April 19, 2017, the Court ordered a stay of the proceedings in this protest and two other related proceedings based on Defendant's statements to the Court that "the proposed stay would maintain the status quo while ED explored a global solution." (Apr. 19, 2017 Order, Dkt# 67.) On April 18, 2017, Defendant filed a Notice of Recalling Accounts (Dkt# 65), advising the Court that ED will be recalling defaulted student loan accounts from 13 private collection agencies, including Intervenors CBE and Premiere, whose task orders are set to expire today. Defendant explained that ED will have those accounts administered by Maximus Federal Systems ("Maximus") an entity which administers ED's Debt Management and Collection Systems ("DMCS"). ED represented to the Court that the planned action was consistent with this Court's Orders. This is manifestly wrong. ED's action of recalling the accounts tomorrow or shortly thereafter and having Maximus perform "account maintenance on the accounts," fundamentally alters the *status quo* and will cause severe harm to the borrowers, the public fisc, and petitioners. The accounts at issue are "in-repayment" accounts, meaning that the borrowers have entered into payment arrangements with CBE, Premiere and other private collection agencies. Those payment arrangements do not transfer with the recall of these accounts.

The placement of those accounts that should rightfully stay with CBE, Premiere and a similarly-situated company Transworld Systems Inc. ("TSI") directly prejudices movants, and will predictably, though unnecessarily, harm borrowers whose accounts are currently

being serviced by CBE, Premiere and TSI.[1] We explained these issues in a letter sent to senior officials at ED yesterday with copies to the Contracting Officer, ED's in-house counsel and the Department of Justice. *See* Exhibit 1, Letter from CBE, Premiere and TSI to Mr. James Manning, Acting Undersecretary and James Runcie, FSA Chief Operating Officer. ED confirmed receipt, but has provided no substantive response yet. ED sent a letter in the last fifteen minutes denying our request. *See* Exhibit 2, ED Response Letter.

ED's misguided action directly violates the TRO. If ED follows this same course of conduct next week when the H.4 contracts expire by their terms and recalls the placements currently assigned to those contracts, the result will be the unnecessary disruption of *hundreds of thousands* of defaulted student loan accounts. Instead of stopping the placement of new accounts as this Court ordered, ED plans to cancel the servicing of accounts that are already in repayment and move them to a different contracting vehicle.

We understand the TRO's purpose as preventing "new placements" that would divert work to be performed under the protested awards to some other contract vehicle. We do not believe the Court intended to interrupt the servicing of hundreds of thousands of defaulted student loans that already are in various stages of rehabilitation and repayment, nor do we believe the Court was aware of that potential disaster. ED's planned recall will result in processing stoppages, damaged credit, lost repayment benefits (e.g., interest rate benefits) and other significant harm to a quarter million or more borrowers whose defaulted loans are

[1] By the terms of their incumbent contracts, because each was awarded a follow-on contract, the in-repayment accounts of CBE, Premiere and TSI are to be transferred to those new contracts. Movants *do not* seek the placement of any accounts to their new contracts at this time. Rather, consistent with the TRO's purpose, movants seek to preserve the *status quo ante* and retain the in-repayment accounts until the stay is lifted. As work that is to be performed under the protested contracts, the TRO *expressly* prohibits the placement of these accounts on any other contract vehicle, including ED's contract with Maximus.

currently being serviced by ED contractors. Those borrowers will be placed in a limbo status and will not be able to call *anyone* to service their loans. *See* Exhibit 3, Declaration of Feroze Waheed, Premiere CEO. Maximus, the contractor ED has said will take stewardship of those loans (Dkt #65.1 at ¶ 8), would be violating the Fair Debt Collections Practices Act if it answered borrowers' calls.[2] Some of the borrowers have automatic bank account withdrawal or credit card payment agreements that require action by CBE, Premiere and TSI to collect the debt due the United States. When ED recalls these accounts back to Maximus no one will be able to collect the payments. The borrowers will default on their current repayment plans as payments will not be made or received. ED's imminent actions fundamentally alter the status quo and are not fiscally responsible to the borrowers or to the federal taxpayers. Thus, the well-documented student loan crisis will become a pandemic not because this Court ordered that result, but because ED *thinks* that is what this Court expects.

Setting aside the unnecessary upheaval for hundreds of thousands of borrowers across the country, the specially-trained employees who do this work will have no work to do. Movants, TSI, and next week many more companies, will be forced to lay off workers who earn good wages, especially in Indiana, Iowa, Tennessee and Pennsylvania where CBE, Premiere and TSI employees work.

[2] Section 803 of the Fair Debt Collection Practices Act (FDCPA), provides that only licensed private collection agencies (PCAs) may act to collect third party debts, to include defaulted student loan debts. Because Maximus is not a licensed PCA, it is prohibited from such activities as taking inbound calls from borrowers. Many of these defaulted loans are in the process of rehabilitation and require active PCA management to help the borrowers. If *no one* is allowed to answer borrowers' calls, there are sure to be disruptions to collections. But if Maximus answers those calls, it will violate the FDCPA. We think this Catch 22 will guarantee that ED will face class action litigation from frustrated borrowers, another foreseeable consequence of this ill-conceived plan.

Simply, ED's imminent recall of the in-repayment accounts and its decision to break from its long-established, and contractually prescribed practice of having these accounts remain with ED contractors who have follow-on contracts, is not maintaining the status quo - ED is disrupting the status quo to the severe detriment of the movants, the movants' employees, and many thousands of borrowers.

If the Court desires detailed briefing on these points, or a hearing to discuss these matters, the undersigned attorneys stand ready to provide it today. But we think this is a simple misunderstanding with potentially disastrous consequences, which can be easily resolved by this Court. Therefore, we ask this Court to enjoin ED's planned account recall.

Dated: April 21, 2017

Respectfully submitted,

By: //s// Jeffery M. Chiow
Jeffery M. Chiow (Counsel of Record)

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed the foregoing Joint Motion to Enforce Restraining Order through the Court's Electronic Case Filing ("ECF") System, which will automatically send a copy to all parties.

Dated: April 21, 2017

By: /s/ Jeffery M. Chiow

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