

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

CONTINENTAL SERVICE GROUP, INC. and)	
PIONEER CREDIT RECOVERY, INC.)	
)	
Plaintiffs,)	No. 17-449C; 17-499C;
)	17-517C; 17-578C; 17-558C;
and)	17-633C
)	
COLLECTION TECHNOLOGY, INC.,)	CONSOLIDATED
PERFORMANT RECOVERY, INC.,)	
ALLTRAN EDUCATION, INC., AND)	Judge Thomas C. Wheeler
PROGRESSIVE FINANCIAL SERVICES, INC.)	
)	
Intervenor-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., WINDHAM PROFESSIONALS, INC. and VALUE RECOVERY HOLDINGS, LLC)	
)	
Defendant-Intervenors.		

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Defendant-Intervenor, The CBE Group (“CBE”) LLC, hereby respectfully requests that this Court enjoin the Department of Education (“ED” or “the Agency”) from

proceeding with its intended recall, today, of defaulted student loan accounts that are currently in-repayment with CBE. Recalling those accounts and placing them with ED's Default Resolution Group contractor Maximus Federal Services, Inc. then to be redistributed to other private collection agencies (PCAs) causes irreparable harm to CBE and to the borrowers involved. *See generally* Declaration of Chad Benson, filed yesterday at the Federal Circuit and attached to this motion; *see also* Dkt#68 in this matter, a successful prior Emergency Motion to stop the recall of these same in-repayment accounts.

ED seems dead set on proving what it can do, without any regard for undue harm inflicted on long-suffering awardees like CBE and in direct contradiction to the best interests of defaulted student borrowers, the public fisc and ED itself.

ED first announced its recall during today's status hearing. ED (and its Department of Justice attorneys) unquestionably knew that Progressive had filed an emergency motion for TRO to stop the recall of its accounts over the weekend and that CBE had filed a Motion for Reconsideration, Clarification and Amendment of the Federal Circuit's December 8 Order modifying the preliminary injunction in this case.¹ ED's race to push the button and initiate a process that has only negative impacts for every party involved, including itself, is the very definition of arbitrary, capricious and unreasonable conduct.

The accounts at issue are "in-repayment" accounts, meaning that the borrowers have entered into payment arrangements with CBE and other PCAs. Those payment arrangements do not transfer with the recall of these accounts. As discussed in the

¹ CBE notified counsel, including DoJ of its intent to file that motion yesterday at 11:29 am. The Government seems to have been banking on the Federal Circuit denying relief, but nothing in the Court's Orders in any way impinged on this Court's inherent authority to offer Progressive (and now CBE) the relief they request.

status hearing today, those accounts were transferred to CBE's newly awarded contract on or about April 26, 2017 though the Court later ordered work on those transferred accounts to stop.

For the available small business and ATE contractors who were just burdened with a collective 930,000 new defaulted loan accounts that they must collect, this is a pretty small kettle of fish. Thus, it is a near certainty that many borrowers will fall into 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.

Setting aside the unnecessary upheaval for thousands of borrowers across the country, the specially-trained employees who do this work will have no work to do. CBE will have *no work* for its dedicated ED-trained workforce and if corrective action is not imminent, will be forced to lay off workers who earn good wages, especially in Iowa, where CBE, employees work. Thus, as set forth in Mr. Benson's Declaration, CBE will suffer a direct harm of approximately \$7.1 million in 2017 and 2018 for lost revenue and carrying costs. But monetary relief cannot make CBE whole. It has been performing ED's debt collection work for more than a decade and earned the highest marks of any PCA in compliance audits. The loss of that specialized and highly competent workforce could make CBE non-competitive for future ED awards. That sort of harm is not compensable with monetary damages, and is especially harmful where, as here, the only barrier to CBE's performing work on these accounts is the Agency's months-delayed corrective action.

The standard injunctive relief factors weigh heavily in favor of granting CBE's request. CBE is likely to succeed in challenging the arbitrary, capricious and unreasonable

recall of in-repayment accounts. All parties are harmed, including CBE, the defaulted borrowers and ED by a disruptive and unnecessary recall. ED has many available means to allow CBE to resume servicing these accounts, and any of them is less disruptive than this. The balance of harms weighs in favor of CBE. And the public interest is disserved by arbitrary, capricious and unreasonable agency action that has no purpose except to prove what the Government believes it has the authority to do in the hours after a long-standing injunction has been lifted, and in the face of pending requests for judicial relief.

Dated: December 12, 2017

Respectfully submitted,

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

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PROPOSED ORDER

In consideration of the Emergency Motion for Temporary Restraining Order (Dkt# XX) it is hereby ordered that the United States of America, the United States

Department of Education, and their officers, agents, servants, employees, and representatives (collectively, “the Government”) are temporarily restrained, pursuant to RCFC 65(d), from:

Recalling any in-repayment accounts from CBE [or any other December 2016 awardee] until December 26 or until the Government completes its corrective action, whichever is later.

If, and to the extent any portion of CBE’s in-repayment inventory has already been recalled, the Government is enjoined from transferring those accounts to any other private collection agency (PCA) until further Order of this Court.

IT IS SO ORDERED.

Thomas C. Wheeler
Judge

CERTIFICATE OF SERVICE

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

Dated: December 12, 2017

By: /s/ Jeffery M. Chiow

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