

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

In the Matter of

TUITION OPTIONS LLC and EDVANTAGE LLC,

Respondents.

CONSENT ORDER

WHEREAS, pursuant to § 404 of the Financial Services Law (“FSL”), the New York State Department of Financial Services (the “Department”) investigated whether Tuition Options LLC and EDvantage LLC (“Tuition Options” and “EDvantage” or collectively “Respondents”) were complying with the requirements of the FSL and other applicable laws and regulations in servicing, purchasing, and originating student financing agreements (the “Investigation”); and

WHEREAS, the Department concluded that: (a) Tuition Options engaged in the business of a sales finance company without a license issued by the Department; (b) Tuition Options failed to follow E-Sign Act, 15 U.S.C. § 7001 *et seq.*, best practices and failed to comply with its disclosure requirements prior to providing Truth In Lending Act (“TILA”) disclosures to consumers electronically; and (c) EDvantage provided New York consumers with promissory notes that allowed for capitalized interest, which is unlawful in New York, even though Respondents did not capitalize interest.

WHEREAS, the Department and Respondents are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing;

NOW, THEREFORE, this Consent Order contains the Department’s findings, and the relief agreed to by the Department and Respondents.

THE DEPARTMENT'S FINDINGS

The findings of the Department's Investigation are as follows:

Overview of the Respondents

1. Respondent EDvantage is a Delaware limited liability company. EDvantage provides loans directly to students at certain schools, is a "covered person" as that term is defined in the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5481 *et seq.* (the "CFPA"), and offers a financial product or service within the meaning of the FSL.
2. Respondent Tuition Options is a Delaware limited liability company, and a wholly-owned subsidiary of EDvantage. Tuition Options assists for-profit schools in various aspects of the schools' lending activities. Tuition Options services thousands of student financing agreements that constitute retail installment obligations within the meaning of Banking Law § 491(6-a), as well as promissory notes, and commitment agreements that do not carry any interest. Tuition Options is a "covered person" and "service provider" as those terms are defined in the CFPA, offers a financial product or service within the meaning of the FSL, and is registered with the New York Department of State to do business within New York State.
3. Tuition Options provides certain schools with templates for the financing agreements between the school and its students, and the related disclosures under TILA, which schools may modify and use as the lender. Tuition Options maintains a website that students use to access the student financing agreements and TILA disclosures, and to e-sign the student financing agreements. Tuition Options also has purchased retail installment obligations from the schools.

Engaging in the Business of a Sales Finance Company Without a License

4. Banking Law § 492 prohibits a person from engaging in the business of a sales finance company without a license. Banking Law § 491(7) defines a sales finance company to mean a person engaging, in whole or in part, directly or indirectly, in the business of purchasing or otherwise acquiring retail installment obligations made by and between other parties, or any interest therein.

5. At all relevant times, Tuition Options did not hold a sales finance company license from the Department.

6. Without a license, Tuition Options purchased two (2) retail installment obligations from certain schools that involved New York borrowers or cosigners from schools, and acquired an interest in approximately fifty-three (53) retail installment obligations that involved New York borrowers or cosigners from schools. More specifically, Tuition Options entered into purchase advance agreements and collateral agreements with certain schools. Under such arrangements, Tuition Options provided advances to schools and held retail installment obligations as collateral.

7. Tuition Options's servicing contracts with certain schools authorized Tuition Options to keep 100% of the servicing fees, late charges, and non-sufficient-funds charges collected from borrowers.

Failing to Follow E-Sign Act Best Practices and Failed to Comply with the E-Sign Act's Disclosure Requirements

8. TILA allows certain disclosure forms to be provided to consumers in electronic form so long as the lender complies with the E-Sign Act.

9. EDvantage's promissory notes provided that the consumer consented to electronic receipt of notices including TILA notices.

10. EDvantage utilized Tuition Options’s online servicing platform for obtaining student consent to electronic receipt of TILA notices, and for providing consumers with the approval disclosure forms.

11. Respondents made the approval disclosure forms available to borrowers via a hyperlink titled “View Disclosures & Contract for your loan.” That hyperlink was on the same page of Tuition Options’s website requesting the consumer e-sign the student financing agreement. As a result, Respondents were providing the approval disclosure electronically, via a hyperlink, at the same time that consumers e-signed their student financing agreements.

12. Further, Respondents failed to make required disclosures prior to seeking the consumer’s consent for electronic disclosures. Specifically, they failed to disclose to consumers (i) their right to receive TILA disclosures in non-electronic form, (ii) the procedure for withdrawing consent for notice by electronic means, and (iii) the method for requesting a paper copy of the TILA disclosures. Respondents also failed to provide consumers with a statement of the hardware and software requirements for access to and retention of TILA disclosures provided to them electronically.

Providing Consumers with Promissory Notes which State that Interest May Be Capitalized under Certain Conditions

13. In New York, non-bank lenders are prohibited from compounding interest before the simple interest has accrued—*i.e.*, before a default has occurred—on loans in amounts less than \$250,000. *State of Conn. v. Jackson*, 1 Johns. Ch. 13 (N.Y. Ch. 1814) (adopting the English rule prohibiting compounding of interest); *see also* General Obligations Law § 5-527 (authorizing compound interest provisions for most loans, but expressly providing that the statute does not apply to financing agreements where the original principal debt is in an amount of \$250,000 or less).

14. EDvantage, a non-bank lender, originated promissory notes that contained clauses that purported to allow EDvantage to capitalize (*i.e.*, compound) interest under certain circumstances.

15. As part of the origination process, Tuition Options provided New York consumers with student financing agreements that purported to allow the school, or EDvantage, to capitalize interest in certain circumstances.

16. Tuition Options has represented to the Department that it has never capitalized interest on student financing agreements it serviced, including promissory notes originated by EDvantage. Tuition Options has represented to the Department that it calculates and assesses daily simple interest on the student financing agreements.

Violations

17. Based on the foregoing, the Department finds that Respondents violated Banking Law § 492, and the Department assesses a civil penalty under Financial Services Law § 408.

RELIEF

Monetary Penalty

18. Respondents shall pay a civil penalty of \$203,000 to the Department upon execution of this Consent Order.

19. In addition, Respondents shall pay \$33,309 in the form of disgorgement upon execution of this Consent Order

20. The payment set forth in paragraphs 18 and 19 above shall be in the form of a wire transfer in accordance with the Department's instructions.

21. Respondents shall not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary or disgorgement paid pursuant to this Consent Order.

Licensing and Injunctive Relief

22. Respondents shall immediately cease and desist from engaging in any activities that would violate Banking Law § 492.

23. Within 30 days of the effective date of this Consent Order, Respondents shall submit an application for a sales finance company license, with the required fees, to the Department.

24. Respondents also shall timely submit an application for a student loan servicer license, with the required fees, in accordance with Article 14-A of the Banking Law, and any regulations promulgated thereunder.

25. Respondents have represented that they have corrected the findings cited herein concerning the E-Sign Act and New York's laws concerning the capitalization of interest, and that they shall remove reference to capitalization from their promissory note template.

Other Provisions

26. Respondents submit to the authority of the Superintendent of Financial Services of the State of New York (the "Superintendent") to effectuate this Consent Order.

27. If the Department believes Respondents to be in material breach of this Consent Order, the Department will provide written notice to Respondents and they must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is immaterial or has been cured.

28. Respondents' failure to make the required showing within the designated time period as set forth in paragraph 27 of this Consent Order shall be presumptive evidence of Respondents' material breach. Upon a finding by the Department that any Respondent has breached this Consent Order, the Department has all the remedies available to it under all applicable laws and may use any evidence available to it in connection with any ensuing hearings, notices, orders or other remedies that are available.

29. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondents, either directly or through counsel, and the Department's own factual investigation. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Superintendent in her sole discretion.

30. Upon the Department's request, Respondents shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.

31. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Consent Order are duly approved, and the execution of this Consent Order is duly authorized.

32. All written communications to any party pursuant to this Consent Order shall be directed as follows.

If to the Department:

New York State Department of Financial Services
One State Street
New York, New York 10004-1511
Attn: Christopher B. Mulvihill, Deputy Superintendent, or Serwat Farooq,
Assistant Counsel

If to Respondents:

Thomas J. Fitzpatrick Jr.
Chairman & CEO
Tuition Options LLC
14000 Horizon Way #400
Mount Laurel, NJ 08054
Telephone: 609.980.2503

James Kim
Ballard Spahr LLP
1675 Broadway, 19th Floor
New York, NY 10019
Telephone: 646.346.8089

33. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

34. Respondents waive their right to further notice and hearing in this matter as to any allegations of past violations up to and including the effective date of this Consent Order and agrees that no provision of this Consent Order is subject to review in any court or tribunal outside of the Department.

35. This Consent Order is binding on the parties, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

36. The Consent Order may not be altered, modified, or changed unless in writing signed by the parties hereto.

37. The Consent Order shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or her designee.

38. This Consent Order constitutes the entire agreement between the Department and Respondents and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order.

39. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

40. In the event that one or more provisions contained in this Consent Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

41. Upon the parties' execution of this Consent Order, the Department will discontinue the investigation as to and against Respondents solely with respect to the practices set forth herein that occurred between January 2014 and the effective date of the Consent Order.

42. Nothing in this Consent Order shall be construed to prevent any consumer from pursuing any right or remedy at law.

43. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent or her designee.

WHEREFORE, the signatures evidencing assent to this Consent Order have been

affixed hereto on the dates set forth below.

**NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES**

By: _____
Serwat Farooq
Assistant Counsel
Consumer Protection & Financial Enforcement
Division

August __, 2019

By: _____
Christopher B. Mulvihill
Deputy Superintendent, Civil Investigations
Consumer Protection & Financial Enforcement
Division

August __, 2019

By: _____
Katherine A. Lemire
Executive Deputy Superintendent
Consumer Protection & Financial Enforcement
Division

August __, 2019

TUITION OPTIONS LLC

By: Thomas J. Fitzpatrick Jr.
Thomas J. Fitzpatrick Jr.
Chairman & CEO

August 14, 2019

EDVANTAGE LLC

By: Thomas J. Fitzpatrick Jr.
Thomas J. Fitzpatrick Jr.
Chairman & CEO

August 14, 2019

THE FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.

LINDA A. LACEWELL
Superintendent of Financial Services

August __, 2019

WHEREFORE, the signatures evidencing assent to this Consent Order have been

affixed hereto on the dates set forth below.

**NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES**

TUITION OPTIONS LLC

By: 
Serwat Farooq
Assistant Counsel
Consumer Protection & Financial Enforcement
Division

By: _____
Thomas J. Fitzpatrick Jr.
Chairman & CEO

August __, 2019

August 14, 2019

EDVANTAGE LLC

By: 
Christopher B. Mulvihill
Deputy Superintendent, Civil Investigations
Consumer Protection & Financial Enforcement
Division

By: _____
Thomas J. Fitzpatrick Jr.
Chairman & CEO

August __, 2019

August __, 2019

By: 
Katherine A. Lemire
Executive Deputy Superintendent
Consumer Protection & Financial Enforcement
Division

August 14, 2019

THE FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.


LINDA A. LACEWELL
Superintendent of Financial Services

August __, 2019