April 8, 2013

Via electronic submission: http://www.regulations.gov

Garry Reeder
Chief of Staff
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Request for Information Regarding an Initiative to Promote Student Loan Affordability [Docket No. CFPB-2013-0004]

Dear Mr. Reeder:

We are writing on behalf of Americans for Financial Reform (AFR) and the following member organizations in response to the Consumer Financial Protection Bureau's Request for Information Regarding an Initiative to Promote Student Loan Affordability, set forth in Federal Register, Vol. 78, at 13327 (February 27, 2013).

Additional information regarding private student loan servicing and collection is needed to design an effective loan modification program. In addition, we believe five criteria, discussed below, are essential to any successful program. **We urge the CFPB to evaluate any proposed loan modification program to determine whether it will – at a minimum – satisfy these essential criteria.** We further urge the CFPB to continue gathering information about industry practices and incentives and about the characteristics of borrowers in distress that will allow it to choose the most appropriate of the available policy options.

The Request for Information focuses on options for creating a loan modification program, as does the remainder of this letter. However, loan modifications, while helpful, should be combined with other policies to provide relief to borrowers and prevent defaults in the future. These policies include:

- Restoring borrowers' access to legal remedies by eliminating the use of pre-dispute binding mandatory (or forced) arbitration clauses from student loan contracts.
- Restoring bankruptcy rights for all student loan borrowers;
- Mitigating the impact of negative credit reporting on borrowers' ability to access housing, employment opportunities and other basic needs;
- Eliminating predatory student lending, including development of sound underwriting standards ensuring ability to pay;
- Including provisions for flexible repayment and death and disability discharges in new originations;
- Excluding universal default;
- Improving the availability and accuracy of information provided to students before they borrow;

- Making sure borrowers have access to all their loan information, both federal and private; and
- Vigorously enforcing federal and state laws to protect borrowers from origination and collection abuses and for-profit school abuses.

Essential Features and Borrower Protections for a Loan Modification Program

In evaluating proposals for PSL modification programs, the agency should evaluate whether the proposal will – at a minimum – satisfy the following essential criteria.

1. **Affordability**: Loan modifications must provide a real financial benefit to borrowers and must be linked to the borrower's realistic ability to repay. This is essential not only to providing real relief to borrowers in distress, but also to prevent high re-default rates which would make the program not worth the expense from the servicers' and investors' perspective, or the taxpayers', if government funding is involved.

2. **Preservation of Borrower Protections**: Participation in a loan modification program or acceptance of a loan modification offer should not result in a borrower losing any rights or protections she would otherwise have. This includes forbidding any waivers of rights as a condition of modification and also structuring the program in such a way that previously exempt income or assets of the borrower are not placed at risk (for example, through the expanded collection powers available for federal loans) and time limits for collection are not lengthened beyond previously applicable statutes of limitations.

3. **Enforceability**: Borrowers must have the ability to enforce their rights under the modification program, including the ability to dispute and appeal denials of eligibility and mistakes in the terms offered and to raise claims and defenses related to the program in legal proceedings.

4. **Efficiency and Scale**: The program must be designed to reach as many as possible of the borrowers in or at risk of default, both in order to assist those borrowers directly and in order to have a positive impact on the broader economy. Eligibility criteria must broad enough to encompass all borrowers in need of assistance and the program must be efficient in reaching those borrowers and in minimizing the barriers to uptake. Reaching scale will require either mandating loan modification offers or providing effective incentives sufficient to induce servicers and lenders to modify a large number of eligible loans.

5. **Fairness**: Any program, particularly one that relies on incentives to or purchase of loans from existing servicers and lenders must not be a bailout or giveaway to lenders. This is essential to avoid moral hazard on the part of lenders and servicers; the industry should not be allowed to externalize the costs of the shortsighted lending decisions it made, particularly between 2005 and 2008. Furthermore, the program must be structured to prevent servicers and lenders from "creaming" or selecting particular loans for modification in order to maximize their own finances and from receiving credit or incentive payments for modifications or other actions they would have taken anyway. Finally, the program must have protections to prevent a disparate impact on borrowers of color or other protected groups.

Background and Discussion

Predatory private student lending shattered the dreams of many individuals seeking to better their lives through education. These loans have become a curse, not an opportunity, for all too many borrowers. Those harmed by lender predatory practices are now stuck trying to get those same lenders to provide relief.

Large and growing numbers of private student loan borrowers are falling behind on their loans. Data is not publicly available on precisely which lenders, loan features and borrowers are most at risk of defaulting. However, the available data strongly suggests that a large portion of private student loan (PSL) defaults are attributable to irresponsible lending practices that became particularly widespread during the period leading up to the credit crisis, roughly from 2005-2008. Private student loan origination during these boom years was driven by the demand for student loan asset backed securities (SLABs). The loans were characterized by high volume, lax underwriting, heavy use of Direct to Consumer (DTC) lending, loan amounts higher than Cost of Attendance, and variable interest rates with very high margins.

The poor economy also had a huge impact on the job prospects of borrowers who received loans during this period and exacerbated student loan burdens, but is only part of the story. Aggressive marketing of PSLs impacted some borrowers more than others. Low-income and non-traditional students were particularly hard hit.[1]

Not surprisingly, default rates are high for all PSLs originated during the boom period, and get higher with each vintage of loan originations.[2] The impact of payment unaffordability and default on these borrowers is huge and has a negative impact on the overall economy. The burden on low-income borrowers is even worse, since these borrowers are faced with the Catch-22 of forgoing essential needs in order to stay current or risking loss of employment, housing and other opportunities because of the negative credit impact of default and other adverse consequences.

While it is critical to improve loan origination, servicing and loss mitigation for all student borrowers going forward, there is good reason to pay special attention to the cohort of borrowers who were harmed by predatory lenders and the financial market's huge appetite for SLABs. Because of the unusual conditions and serious hardships faced by this group of borrowers, the need for assistance is great.

Restoring bankruptcy rights is an important action that Congress should take to provide relief to the worst off borrowers. However, we urge the CFPB to consider other options for providing relief to borrowers harmed by what will hopefully prove to be a short period of

[1] While there was an overall increase of the percentage of undergraduates with PSLs from 5% in 2003-04 to 14% in 2007-09, increases were even larger among students at for-profit colleges (from14.1% in 2003-04 to over 40% in 2007-08), and among students of color (increasing from 4.1.% and 4.6% to 17.3% and 13.2% for Blacks and Hispanics, respectively). *See* Consumer Financial Protection Bureau, "Private Student Loans" (August 29, 2012).

[2] *See* Consumer Financial Protection Bureau, "Private Student Loans," Figs. 16 and 17 (August 29, 2012).

unusually aggressive and inappropriate lending activity. If future loan originations are properly regulated, there should be diminished need for loan modification options.

Mandatory loss mitigation can be justified both as a matter of ability to repay and as a safety and soundness issue. From a safety and soundness perspective, as well, institutions need to anticipate the possibility that the loan debt may prove unsustainable for some borrowers and to put in place programs to turn those loans into performing loans rather than write-offs

The CFPB should be aggressive and creative in seeking solutions for these borrowers that satisfy the five essential criteria identified above.

Sincerely,

Americans for Financial Reform
Consumer Action
NAACP
National Consumer Law Center (on behalf of its low income clients)
Public Citizen
The Institute for College Access and Success