

April 8, 2013

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552



405 14th Street
Suite 1100
Oakland, CA 94612
510.318.7900
www.ticas.org

Dear Ms. Jackson:

This is a comment in response to the *Federal Register* Request for Information Regarding an Initiative to Promote Student Loan Affordability published on February 27, 2013, Document ID CFPB-2013-0004-0001). The Institute for College Access & Success (TICAS) is an independent, nonprofit organization that works to make higher education more available and affordable for people of all backgrounds. By conducting and supporting nonpartisan research and analysis, TICAS aims to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society.

We thank you for exploring ways to provide relief to private education loan borrowers. As the Consumer Financial Protection Bureau's (CFPB's) own research and analysis of data and borrower comments and complaints has confirmed, the lack of flexible repayment, refinancing, or modification options for such loans is a serious problem. It has devastating consequences for many borrowers and poses broader economic risks as well.

Private loans are one of the riskiest ways to pay for college. They typically have variable interest rates without a cap, and whether variable or fixed, their rates are nearly always highest for those least able to afford them. Lenders are not required to provide borrower benefits and protections that are guaranteed with federal loans, such as income-based repayment plans, public service loan forgiveness, unemployment deferment, forbearance without fees, and discharge in cases of fraud, school closure, or the borrower's death or permanent disability. Private loans are not a form of financial aid any more than a credit card is when used to cover college expenses, but private loans are treated much more harshly in bankruptcy than credit card debt. For all these reasons, financial aid experts¹, schools², lenders³, and the Department of Education⁴ agree with

¹ See, for example: National Association of State Financial Aid Administrators (NASFAA). 2012. *Cash for College*. www.nasfaa.org/WorkArea/DownloadAsset.aspx?id=3304, p 2, "private loans should only be used as a last resort." See, also: NASFAA's "Be a Smart Consumer" page, which counsels, "Always take federal loans first!" http://www.nasfaa.org/students/Be_a_Smart_Consumer.aspx.

² Using federal aid first is a ubiquitous message on colleges' financial aid websites. Some colleges go further to ensure that students considering private loans are aware of any untapped federal aid eligibility and the differences between private and federal loans. See The Institute for College Access & Success (TICAS). 2012. *Critical Choices: How Colleges Can Help Students and Families Make Better Decisions about Private Loans*. http://www.ticas.org/files/pub/critical_choices.pdf

³ Sallie Mae recommends that borrowers "supplement savings by exploring grants, scholarships and federal student loans before they consider a Sallie Mae private education loan." See: Sallie Mae, *Smart Option Student Loans*.

the CFPB that students who need to borrow should exhaust all available aid, including federal loans, before turning to riskier private lending. Yet, as noted in the CFPB and Education Department's joint report, at least half of all undergraduates who took out a private loan in 2008 had not fully tapped their federal loan eligibility.⁵

The lack of consumer options and protections for private loans is especially troubling in light of parallels with the recent history in the mortgage industry. In both cases, unscrupulous lending practices have left many borrowers saddled with unnecessarily risky and costly loans. In an era of extraordinarily low interest rates in the economy, such borrowers -- who could otherwise be saving for retirement, paying a mortgage, or starting a new business -- remain trapped in high-interest loans. This issue is also timely as student debt levels continue to rise, and the private loan market is returning to growth after shrinking during the credit crisis. There is an estimated \$150 billion in outstanding private education loans,⁶ some with interest rates well into the teens⁷.

As the CFPB's recent summary of comments for this Request for Information noted, student debt can seriously stress household budgets, cause people to put off major purchases, and limit their access to other credit.⁸ Monthly student loan payments can displace the amount of money an individual needs to afford a mortgage.⁹ A high debt-to-income ratio can make it impossible for student loan debtors to secure a mortgage¹⁰ or other types of credit.¹¹ When student debt includes private loans, these problems can be even more acute. If increasing numbers of people are unable to qualify for a mortgage or save for a down payment, and they lack access to modifications and other forms of relief, it could have significant implications for the economy as a whole.

<https://www.salliemae.com/student-loans/>. They also recommend federal loans as step two in their "1-2-3 approach" to school financing, after scholarships, grants and other non-borrowing options (step one), but before students "fill in the gap with private education loans" (step three). See: Sallie Mae, *Important Information about Private Loans*. <https://www.salliemae.com/student-loans/information.aspx>.

⁴ See: U.S. Department of Education, *Federal Versus Private Loans*, Federal Student Aid.

<http://studentaid.ed.gov/types/loans/federal-vs-private>. "Need a loan to help pay for college? Consider federal loans first!"

⁵ U.S. Consumer Financial Protection Bureau and U.S. Department of Education. 2012. *Private Student Loans*.

<http://www.consumerfinance.gov/reports/private-student-loans-report/>.

⁶ Ibid.

⁷ See: Student Lending Analytics. 2008. *What is the Average Interest Rate on a Private Student Loan Today?*

Student Lending Analytics Blog.

http://studentlendinganalytics.typepad.com/student_lending_analytics/2008/11/what-is-the-average-interest-rate-on-a-private-student-loan-today.html.

⁸ U.S. Consumer Financial Protection Bureau. 2013. *Reminder: Sound off on our student loan affordability initiative*. <http://www.consumerfinance.gov/blog/reminder-sound-off-on-our-student-loan-affordability-initiative/>.

⁹ See: National Association of Realtors. 2012. *Impact of student Debt on Future Housing Demand*. Economists Outlook Blog. <http://economistsoutlook.blogs.realtor.org/2012/06/18/impact-of-student-debt-on-future-housing-demand/>.

¹⁰ See: Young Invincibles. 2012. *Denied?: the Impact of Student Debt on the Ability to Buy a Home*.

<http://younginvincibles.org/wp-content/uploads/2012/08/Denied-The-Impact-of-Student-Debt-on-the-Ability-to-Buy-a-House-8.14.12.pdf>.

¹¹ See: Lee, D. 2013. *Household Debt and Credit: Student Debt*. Federal Reserve Bank of New York. (presentation for press briefing). <http://www.newyorkfed.org/newsevents/mediaadvisory/2013/Lee022813.pdf>. Pages 16-20 show interaction between student debt and other types of debt.

Relief for borrowers with burdensome private loan debt is urgently needed and important to get right. As you evaluate possible approaches, we urge you to focus only on options that meet the following criteria:

- The proposed relief cannot be another bailout for lenders.
- The relief must be meaningful and designed to maximize borrower protections and reduce the overall burden of debt.
- Consumer information surrounding any relief strategy must be easily understood and widely disseminated.
- If the relief envisioned involves an enrollment process, it must be consumer-friendly.
- The plan must be carefully considered to avoid abuses such as selection bias or moral hazard.

Each of these criteria are discussed below.

This cannot be another bailout for lenders. The plan(s) must not intentionally or unintentionally enrich lenders at taxpayers' expense or create incentives for making unaffordable loans. As we explained in a coalition letter to the Treasury Secretary in 2009 (regarding TALF), "A bailout for the providers of usurious private student loans will not solve the college affordability crisis caused by the failing economy, and will actually be detrimental to many students and consumers."¹² Rather, lenders must make meaningful concessions to reduce the overall burden of private education debt. A fair and well-designed borrower relief strategy would require lenders to absorb enough of the risks inherent in the loans to deter such risky lending in the future.

The relief must be meaningful and designed to maximize borrower protections and reduce the overall burden of debt. The plan must provide substantial relief for the borrowers most in need, and it must not diminish borrower protections. This is even more important if taxpayers are to bear any of the expense of loan modifications or other forms of relief. The plan should be designed to help borrowers remain in or return to good standing and keep up with their payments going forward. Options include reducing payments, interest rates, or principal. The solution should not increase costs for borrowers by simply stretching out payments for longer periods of time.

Consumer information must be easily understood and widely disseminated. Borrower awareness is critical to a fair and successful relief policy. The relief, who qualifies, and how to get it must be explained simply and clearly -- regardless of any underlying complexity -- so that borrowers will have reason to seek more information and needed relief. Borrowers must be made aware of any changes to their loan amount, terms, or required payment, even if the relief plan does not require borrowers to opt in and apply for it.

A detailed outreach plan from the administering agency must be developed as part of the loan modification plan, which should include use of various forms of public media as well as direct

¹² The Institute for College Access and Success (TICAS). *Letter to Chairman Barney Frank, Financial Services Committee and Chairman George Miller, Education and Labor*. 26 Jan. 2009.
http://www.ticas.org/files/pub/TALF_consumer_protections.pdf.

outreach to borrowers. Any application processes and all forms of outreach need to be consumer tested to ensure the effectiveness and clarity of the process.

Since most private loan borrowers also have federal loans, contacting federal loan borrowers in repayment could be one useful channel for government outreach. Additionally, lenders should be required to notify borrowers of the loan modification plan and eligibility requirements. The form and content of this notification should be prescribed and done in conjunction with government outreach, as lender outreach alone is subject to manipulation and conflicts of interest.

If the relief envisioned involves an enrollment process, it must be consumer friendly.

Any application process must be accessible to borrowers with the greatest need and least support, and consumer tested before it goes into use. A complex and/or paperwork-intensive process for determining eligibility is costly to administer and risks deterring borrowers in desperate need of help.

Making borrowers who meet certain criteria automatically eligible for some form of modification or other relief could reduce or eliminate the need for a stand-alone application process. However, such approaches should first be analyzed to assess their potential for over- or under-inclusion of borrowers based on need. Existing indicators of likely borrower distress could be one factor for eligibility for private loan relief, for example, if the borrower's federal loans were discharged due to fraud, school closure, severe and permanent disability, or death. In such cases, the discharged federal loans were likely taken out alongside private loans that are still being collected on. Private loans are not reliably discharged even in extreme situations where borrowers clearly cannot or should not be required to repay.

If an application process is required, it should be easy to determine if a borrower is eligible and should not be subjective or subject to manipulation. Factors that could be considered for eligibility might include qualifying for Income-Based Repayment (IBR) or having a partial financial hardship when private loans are factored into the debt in a borrower's debt-to-income ratio, or being in economic deferment or forbearance on federal loans. The borrower's financial situation and the riskiness of the private loan itself merit consideration in these determinations.

The plan must be carefully designed to avoid abuses such as selection bias or moral hazard.

Policymakers must be cautious that creating a loan relief plan does not inadvertently result in harmful or abusive outcomes. In addition to an outreach plan as discussed above, steps should be taken to ensure that lenders cannot simply hand-pick the loans that they most want modified.

Additionally, it must be made clear that the designated modification(s) can be for pre-existing loans only. This is necessary to avoid inadvertently encouraging lenders to take greater risks, knowing that a safety valve can protect their investment, and effectively creating a perpetual taxpayer-funded bailout to underwrite risky private lending decisions.

Finally, steps must be taken to prevent a similar crisis in the future. The CFPB should, for example, ensure effective underwriting of new loans so that high-risk practices are avoided. Also, the CFPB should take immediate action to require school certification for all private

education loans. This would require lenders to confirm with the school that the borrower is in fact a student at the institution and is eligible to borrow the amount being requested, and would require that schools inform students about the risks of private loans and of any remaining eligibility for safer federal loans. Such a change has been endorsed in the past by both the CFPB and the Department of Education.

Thank you again for your efforts to explore ways to promote student loan affordability. If you have any questions about our comments, please contact Joseph Mais at (202) 223-6060 ext. 602 or jmais@ticas.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'LA', with a stylized flourish extending to the right.

Lauren Asher
President