

Comments of
The Center for Responsible Lending,¹
Americans for Financial Reform,²
Consumer Action,³
National Association of Consumer Advocates,⁴
National Consumer Law Center, on behalf of its low income clients,⁵
U.S. Public Interest Research Group, and
The Woodstock Institute,

On
Defining Larger Participants of the Student Loan Servicing Market
12 CFR Part 1090
Docket No. CFPB-2013-0005
78 Fed. Reg. 18902 (Mar. 28, 2013)
Submitted May 28, 2013

¹ The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Self-Help has provided \$6 billion in financing to 70,000 homebuyers, small businesses and nonprofits and serves more than 80,000 mostly low income families through 30 retail credit union branches in North Carolina, California and Chicago. These comments were authored by Maura Dundon, Senior Policy Counsel, Center for Responsible Lending, maura.dundon@responsiblelending.org.

² Americans for Financial Reform is an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups.

³ Consumer Action has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change particularly in the fields of credit, banking, housing, privacy, insurance and utilities. www.consumer-action.org.

⁴ The National Association of Consumer Advocates (NACA) is a non-profit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

⁵ The National Consumer Law Center, Inc. (NCLC) is a non-profit corporation specializing in low-income consumer issues, with an emphasis on consumer financial issues. NCLC publishes a series of treatises on consumer laws and provides legal, policy and technical consulting and assistance on to legal services, government, and private attorneys and advocates working on behalf of consumers across the country.

Thank you for the opportunity to comment on defining larger market participants in the student loan servicing market. The Center for Responsible Lending (CRL) and the National Consumer Law Center (NCLC) welcome the proposed rule as a first step in standardizing and improving student loan servicing. Just as for mortgages, reliable student loan servicing is crucial for consumers, particularly those facing the growing burden of student loan debt. We support the Bureau's efforts to address this and other issues related to student loans.

The Bureau's focus on student loan servicing coincides with a rise in student loan servicing problems. The Bureau's October 2012 report on private student loans suggests deep problems in the servicing industry: 65% of complaints received by the Bureau about student loans related to repayment (and hence, servicing).⁶ Likewise, NCLC's recent contacts with student loan borrowers indicate dysfunction in the servicing process for both federal and private student loans. Borrowers have reported difficulties with repayment plans and forbearances. Many complaints stemmed from the transfer to the Title IV Additional Servicers (TIVAS), including being placed in the wrong repayment plan or inadvertently missing payments because of the transfer. Borrowers also report problems with private student loan servicers, who often claim to lack authority to approve relief options for borrowers – reminiscent of mortgage servicers who impeded relief to homeowners.

We generally agree with the proposed rule language and the reasoning behind it, with a few exceptions:

1. Clarify that Rule applies to loans borrowed by parents and others on behalf of students.

The Notice and Proposed Rule use the terms “student”, “consumer”, and “borrower” somewhat interchangeably. CFPB should clarify the Rule to ensure that it applies to both loans made to students, and loans made to parents or other third-parties to pay for a student's educational expenses. We suggest inserting an independent definition of “borrower”, and replacing “consumer” and “student” with “borrower” in the definitions of “Number of accounts” and “Post-secondary education loan.” The revisions would read as follows:

Borrower: A borrower is a person who has obtained a post-secondary education loan for the borrower or a third-party.

Number of accounts. A nonbank covered person has at least one account for each ~~student or prior student~~ borrower with respect to whom the nonbank covered person performs student loan servicing. If a nonbank covered person is receiving separate fees for performing student loan servicing with respect to a given ~~student or prior student~~ borrower, the nonbank covered person has one account for each stream of fees to which the person is entitled.

Post-secondary education loan means an extension of credit that is made, insured or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C.

⁶ Consumer Financial Protection Bureau, Annual Report of the Student Loan Ombudsman, Oct. 16, 2012, at 6.

1070 *et seq.*) or that is extended to a ~~consumer~~ borrower with the expectation that the funds extended will be used in whole or in part to pay post-secondary education expenses. A loan that is extended in order to refinance or consolidate a ~~consumer's borrower's~~ existing post-secondary education loans is also a post-secondary education loan. However, no extension of credit under an open-end credit plan (as defined in Regulation Z, 12 CFR 1026.2(a)(20)) or loan that is secured by real property is a post-secondary education loan, regardless of the purpose for the extension of credit

2. Account Volume

We support using account volume as the measure of market participant size. We also agree that the accounts of affiliated companies servicing the same students' loans should be counted towards each affiliate's total. Such aggregation better reflects the actual size of market participants.

3. Post-secondary education loan

The Bureau should not exclude open-ended loans and loans secured by real property from the definition of post-secondary education loan, if they are expressly marketed as student loans.⁷ Lenders are already offering such loans. For example, Student Choice, a consortium of credit unions, currently advertises a student loan "line of credit" with a limit up to \$75,000 over the course of the student's undergraduate education.⁸ Exhibit A. Wells Fargo advertises a "College Card" credit card to be used for higher education expenses, including books, supplies, and living costs.⁹ Exhibit B. At least one community bank is offering "Education Equity" loans – home equity loans specifically marketed to cover higher education costs.¹⁰ Exhibit C.

The Bureau gave three reasons for excluding open-ended credit and property-secured credit: First, that open-ended credit plans and property-secured credit would be serviced by entities that focus on credit cards and mortgages, rather than on student loans. Second, that the Bureau already has supervisory power over some credit card servicers and mortgage servicers. Third, that the excluded loans differ in key ways from traditional student loans, such as in-school deferral, revolving balances, and security interests.

⁷ The Bureau has the power to examine student loan servicers, regardless of the type of loan, under its authority to examine non-bank larger market participants. 12 U.S.C. § 5514(a)(1)(B). Open-ended loans and real property-secured loans are excluded from the Bureau's enumerated authority to examine all non-bank private student lenders. *See* 12 U.S.C. § 5514(a)(1)(D) (cross-referencing TILA's definition of "private education loan," 15 U.S.C. 1650(a)(7), which excludes open-ended credit and real property-secured loans). But this exclusion does not apply to student loan servicers.

⁸ *See* Credit Union Student Choice, <http://www.studentchoice.org/students/faq/line-of-credit-faq/> (last visited May 23, 2013), attached as Exhibit A.

⁹ *See* Wells Fargo, https://www.wellsfargo.com/credit_center/use_credit/pay_school/ (last visited May 23, 2013), attached as Exhibit B.

¹⁰ *See* Oregon Community Credit Union, <https://www.oregoncommunitycu.org/loans/home-equity#tab-2> (last visited May 23, 2013), attached as Exhibit C.

We disagree with the Bureau's reasoning. First, there is no evidence that the excluded loans would be serviced by credit card or mortgage servicers, as opposed to specialized student loan servicers. But even if they are serviced by credit card or mortgage servicers, the fact that they are nominally credit card or mortgage servicers is irrelevant. They have become student loan servicers, and if their size otherwise matches the Bureau's requirements, they should be subject to supervision as student loan servicers under the same standards as other student loan servicers.

Second, the fact that the Bureau might already have supervisory authority over *some* of these entities under different auspices is irrelevant. *All* student loan servicers with the requisite number of student loan accounts should be covered.

Third, that these loans may differ in some structural respects from "traditional" student loans is no reason to exclude them from coverage. They are being marketed to students as student loans. The Bureau's goal should be to protect this class of consumers as a whole, not to create technical distinctions in the market. The market will evolve quickly; accordingly, the rules should be broad and capture as many types of student loans as possible.

4. Threshold

The Bureau should include servicers with over 200,000 accounts, rather than the higher proposed thresholds of one million or three million accounts. According to the Notice, a threshold of one million would include seven student loan servicers and cover 71-94% of the market. According to the Notice, a threshold of three million would cover only five servicers and 67-88% of the market. Decreasing the threshold to 200,000 would cover 15-18 servicers and 74-99% of the market.

To be effective, the Bureau should include more servicers, rather than fewer. 200,000 accounts is by any measure large, and would require a similar large-scale investment in technology, internal controls, and human resources as a servicer with 1 million accounts. Accordingly, the Bureau should supervise these servicers in order to promote high standards and uniformity in the industry. In addition, expanding the threshold would increase the Bureau's ability to examine niche servicers. These servicers may have relatively smaller account volumes, but may specialize in servicing important subsectors of borrowers.

Thank you for the opportunity to comment on student loan servicing larger market participants. We look forward to further participating with the Bureau's efforts to address the student loan problem.