



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

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 (from 14.1% 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).

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

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice

- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods

- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY

- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition

- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET