April 24, 2017

Consumer Financial Protection Bureau
Attention: PRA Office
1700 G Street NW
Washington, DC 20552

Re: Student Loan Servicing Market Monitoring, Docket No. CFPB-2017-0002

Americans for Financial Reform ("AFR")[1] and the 31 undersigned organizations appreciate the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") Request for Comment on Student Loan Servicing Market Monitoring.[2]

We support the Bureau's proposed student loan servicing data collection initiative (the "proposal"), and believe that compiling such metrics and borrower outcomes would benefit market participants, federal and state agencies, policymakers, and borrowers. Obtaining a clearer view of the student loan market overall will help inform all market participants on how best to serve student loan borrowers.

CFPB's Critical Role in Student Lending

When establishing the Consumer Financial Protection Bureau, Congress gave a range of directives to the agency regarding the student loan market. For example, Congress gave the Bureau supervisory authority over all nonbank private student lenders, regardless of size, pursuant to Section 1024 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. It required the Bureau to conduct a detailed study of the market, including issues related to compliance with fair lending laws, pursuant to Section 1077. It also established an Ombudsman to resolve complaints and report to Congress, pursuant to Section 1035.

To effectively execute the agency's responsibilities to ensure a fair student loan market, rigorous monitoring of the market through data collection is critical.

Shedding Light on the Opaque Student Loan Market

Consumers and the economy learned a difficult lesson in the last decade: when regulators lack critical data to identify risks, the consequences can be catastrophic. Our experience with the

---

[1] Americans for Financial Reform is a coalition of more than 200 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. A list of coalition members is available at http://ourfinancialsecurity.org/about/our-coalition/.
[2] 82 FR 13125

mortgage market has a clear moral: as noted by Federal Reserve Board Chair Janet Yellen, regulators "missed some of the important linkages whereby problems in mortgages would rebound through the financial system."[3]

For federal student loans, the number of borrowers in default has increased to a record 8.4 million.[4] This suggests real problems in student loan servicing, particularly given the availability of options to help borrowers avoid default, such as income-driven repayment plans. Given the serious problems in today's student loan market, *the benefits to the economy of high-quality data collection far outweigh the costs.*

The CFPB has already materially contributed to increased attention to student loan data, publishing estimates on market size and default trends. These have been important contributions, but much more work is needed. Bureau officials have repeatedly called for more data and transparency in the market. In testimony before the United States Senate, a Bureau official noted that "the opacity of the student loan market remains deeply problematic."[5] There is much that the public still does not know about the student loan market overall. We lack clarity on the suite of options that servicers are providing to distressed borrowers, and what servicers are or are not doing to help borrowers to avoid default. And since student loan borrowers generally do not choose their servicer, we cannot rely on competition to improve outcomes. Filling in existing data gaps will give regulators and policymakers crucial information needed to evaluate risks and trends in the marketplace.

Servicers have a poor track record both when it comes to ensuring that borrowers receive excellent servicing and when it comes to complying with the law. As one example, the Bureau and several state attorneys general recently sued Navient for steering struggling borrowers toward consecutive periods of forbearance, even though the borrowers qualified for income-driven repayment plans, resulting in $4 billion in interest charges added to borrower's principal balances.[6] The Bureau also documented in a 2015 report "widespread servicing failures" that "create obstacles to repayment, raise costs, cause distress" and "driv[e] borrowers to default."[7]

---

[3] United States Senate. Committee on Banking, Housing, and Urban Affairs. Nomination of Janet L. Yellen, of California, to be Chairman of The Board of Governors of the Federal Reserve System. Nov. 14, 2013. 113th Cong. 1st sess. Washington: GPO, 2013, https://www.gpo.gov/fdsys/pkg/CHRG-113shrg85910/pdf/CHRG-113shrg85910.pdf. (statement of Janet L. Yellen, Chair of the Federal Reserve Board).

[4] Calculations by TICAS using data from the U.S. Department of Education, Federal Student Aid Data Center, "Direct Loan and Federal Family Education Loan Portfolio by Loan Status," https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls. Accessed Mar. 9, 2017. Figures represent Direct Loan and FFEL borrowers whose loans are more than 360 days delinquent, and borrowers who defaulted on a both a Direct and FFEL Loan are counted more than once.

[5] Consumer Financial Protection Bureau, Written Testimony of Rohit Chopra before the Committee on the Budget, Jun. 4, 2014, https://www.consumerfinance.gov/about-us/newsroom/written-testimony-of-rohit-chopra-before-the-committee-on-the-budget/.

[6] Consumer Financial Protection Bureau, CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment, Jan. 18, 2017, https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/.

[7] Consumer Financial Protection Bureau, "CFPB Concerned about Widespread Servicing Failures Reported by Student Loan Borrowers," Sep. 29, 2015, http://www.consumerfinance.gov/aboutus/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers/.

The Bureau's data collection proposal would help unearth what leads to these failures, and help inform the discussion on how best to ensure that servicers are providing good outcomes for borrowers.

The Bureau and its partner financial regulators play a major role in data collection and analysis in the mortgage market, and similar efforts are needed to enhance transparency into the student loan market. For example, the Bureau collects mortgage origination data to aid in its efforts to ensure compliance with fair lending laws and to offer critical loan-level data to the public. The Bureau is also working with the Federal Housing Finance Agency to develop a National Mortgage Database.[8] Separately, the Office of the Comptroller of the Currency publishes its Mortgage Metrics report, which aggregates data from servicers. The Bureau should engage in similar data collection efforts on the student loan market.

As an organization founded in the wake of the financial crisis, Americans for Financial Reform is particularly sensitive to the problems that can arise without clear visibility into the full scope of crucial markets. Without industry-wide data, the Bureau and other agencies may miss important trends or risks. The aggregate student loan servicing metrics outlined in the Bureau's proposal would help agencies evaluate risks and would enable servicers to better understand what sorts of interventions are most effective in preventing defaults for different populations.

The proposed data collection would provide valuable information about the student loan market that is not regularly available from other sources, including:

- Data on commercial FFEL and private loans.
- Outcomes for borrowers who are applying for or are enrolled in income-driven repayment plans, which cap federal student loan payments at a modest percentage of income and provide forgiveness of any remaining balance after 20 or 25 years of payments.
- Deferments and forbearances, particularly long-term and serial forbearances.
- Loan status of previously defaulted borrowers.
- Consumer outreach from servicers.

Inadequacy of Data Published by the Department of Education

While many federal agencies, such as the Department of Housing and Urban Development (HUD) and the Department of Veterans Affairs (VA), administer large credit programs (such as the FHA and VA mortgage programs), their efforts to aggregate credit data are typically not adequate for financial regulators to adequately ascertain risks to consumers and the economy more broadly. It is important for other regulating agencies to conduct their own data analyses as well. The need for another agency, in this case the Bureau, to collect and analyze data about the student loan market is especially pronounced given the limits in the Department of Education's ability to gather data from certain key entities involved in student lending.

---

[8] Consumer Financial Protection Bureau, "Federal Housing Finance Agency and Consumer Financial Protection Bureau to Partner on Development of National Mortgage Database," Nov. 1, 2012, https://www.consumerfinance.gov/about-us/newsroom/federal-housing-finance-agency-and-consumer-financial-protection-bureau-to-partner-on-development-of-national-mortgage-database/.

The Department of Education provides some broad summary data on federal student loans,[9] but those data lack detail about Federal Family Education Loans (FFEL) and do not cover private student loans at all. For example, there are no servicer-level data on borrowers with commercial FFEL loans, which make up most of the over $300 billion in outstanding FFEL loans.[10] The Bureau's proposal would fill in those major gaps in the Department's data by collecting information on FFEL and private loans, as well as provide more granular data on loan status by repayment plan and income-driven repayment applications and recertifications.

Concerns of Bias in Private Student Loan Data Published by MeasureOne

Congress recognized that there were considerable challenges in the private student loan market. Section 1077 of the Dodd-Frank Act directed the CFPB and the Department of Education to publish a study, which was finalized in 2012. One of the recommendations made by this study was to "determine whether additional data is needed to enhance consumer decision-making and lender underwriting." The study noted that "the lack of data also impacts lenders" and that "scarcity of publicly-available data may contribute to the use of indicators such as cohort default rate and graduation rates in underwriting."[11] Since that time, the industry has made almost no effort to increase transparency into the state of the market.

Certain private student lenders have engaged MeasureOne, a for-profit entity, to publish data on the private student loan market. There are a number of serious deficiencies with MeasureOne's data that make it totally inadequate to provide needed insight:

- Defaulted loans evaporate: MeasureOne reports outstanding private student loans, but excludes loans that have defaulted. As the Bureau knows, borrowers in default are often aggressively pursued by debt collectors. To suggest that these loans do not exist is highly problematic.
- Misuse of data: MeasureOne reports a default rate that is manipulated to look substantially lower than other standard measures in the student loan market. This leads to misuse of findings. For example, one bank lobbyist made a highly inaccurate claim that federal student loans have a default rate that is "five times higher" than private student

---

9 See, for example, the Department of Education's "Federal Student Loan Portfolio" data: https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

10 Calculations by TICAS using data from the U.S. Department of Education, "Location of Federal Family Education Loan Program Loans", https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/LocationofFFELPLoans.xls, Accessed April 19, 2017.

11 Consumer Financial Protection Bureau, "Private Student Loans: Report to the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House of Representatives Committee on Financial Services, and the House of Representatives Committee on Education and the Workforce," Aug. 29, 2012, http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

> loans, when comparing a short-term accounting charge-off rate for private loans to a multi-year cohort default rate for federal loans.[12]

These concerns increase the need for the CFPB, which clearly has expertise in private student loans, to collect and analyze student loan data.

Suggested Enhancements to the Aggregate Data Collection

To improve the usefulness of the information collected, we have a few recommended enhancements to the data the Bureau proposes gathering from student loan industry participants.

a) Ensure the Quality and Transparency of the Data

It is important that the Bureau is the entity that receives and processes this data, as this will ensure the highest level of data integrity. The Bureau has a proven track record of useful analysis of data it has collected and aggregated through both the public comment process and through student loan complaints, such as its 2015 report on student loan servicing, and its regular reports summarizing student loan servicing complaints.[13] In addition, its focus on consumer protection means that the Bureau's incentives align most closely with those of student loan borrowers.

We request that any aggregate data collected by the Bureau through this proposal be made public to the largest extent possible. Making the data public will provide transparency into the servicing of federal loans backed by the government and taxpayers, which will support improvements in servicing practices to help borrowers successfully repay their loans. Those data would help lawmakers craft effective policies to improve student loan repayment, as well as provide important context for organizations that work directly with borrowers. Servicers would also be able to see how their borrowers' outcomes compare to the market as a whole, and identify areas of improvement.

b) Collect Data on Outcomes to Guard Against Discrimination

Recently, the Bureau's Office of Fair Lending and Equal Opportunity identified student loan servicing as one of the areas "which present substantial risk of credit discrimination for consumers." As a result, they plan to "evaluate whether some borrowers who are behind on their...student loan payments may have more difficulty working out a new solution with the servicer because of their race, ethnicity, sex, or age."[14] This attention to the student loan servicing market is warranted because there is little research or data readily available about the causes or the extent of the disparities borrowers of color may face during repayment. Their

---

12 Consumer Bankers Association, "Statement of Richard Hunt of the Consumer Bankers Association," Jul. 29, 2014, http://consumerbankers.com/cba-media-center/media-releases/measureone-report-finds-record-low-3-default-rate-private-student.

13 Consumer Financial Protection Bureau, "CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers," Sep. 29, 2015, https://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers/.

14 Consumer Financial Protection Bureau, "Fair Lending Report 2016," Apr. 2017, https://www.consumerfinance.gov/data-research/research-reports/fair-lending-report-2016/.

higher debt loads—combined with disparities in education and broader societal inequalities, including the racial wealth gap and discrimination in the labor and credit markets—has contributed to higher default rates for students of color.[15]

In August 2016, a coalition of 40 national, state and local civil legal aid, civil rights, and public interest groups sent a letter to the Secretary of the Department of Education in which it implored the Department to collect and release data about the disparate impact of student loan debt on borrowers of color.[16] The CFPB is uniquely positioned to collect this data from large servicers of both federal and private loans. The Bureau's proposed data collection should be expanded to seek information on outcomes for student loan borrowers of color in particular, along with any additional information needed to understand different outcomes or impacts for these borrowers. The data collected would be immediately helpful to the Bureau as it carries out its many supervision and enforcement responsibilities.

In addition to borrowers of color, we are concerned about potential mistreatment of senior citizens with student debt. Earlier this year, the Bureau issued a report about seniors with student debt, highlighting the unique servicing issues that seniors face.[17] Depending on the circumstances, disparate treatment of senior citizens due to their age may raise significant fair lending risk. Bureau data collection efforts should consider these and other unique issues faced by special populations.

c) Request More Detailed Data on Loan Discharges

The Bureau proposes requesting data about the number of loans discharged, and we recommend breaking out the different types of loan discharges. There are several categories of discharges that that federal loan borrowers may receive, among them: borrower defense discharges, closed school discharges, false certification discharges, and bankruptcy discharges. AFR has long advocated on behalf of defrauded students of for-profit schools, many of whom have pursued borrower defense discharges for their federal loans. For private loan borrowers, some may receive discharges due to bankruptcy, total and permanent disability, or other reasons. Gathering information about the types of discharges processed during a given reporting period would benefit the public at large, as well as lawmakers and law enforcement advocating on behalf of students in their states. Those data would also assist with ensuring accountability for borrowers pursuing this kind of relief.

Additionally, the Bureau should collect data on how long it took each servicer to grant the discharge (measured as time elapsed from the date of application for the discharge to the date the discharge was processed), as well as data on group discharges made without individual

---

15 Coalition Comment Letter to the Department of Education on impact of student debt on communities of color, Aug. 17, 2016, http://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/ltr-sec-king-race-student-debt.pdf.

16 *Ibid*.

17 Consumer Financial Protection Bureau, "CFPB Warns Student Loan Servicing Problems Can Jeopardize Long-Term Financial Security for Older Borrowers," Jan. 5, 2017, https://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-student-loan-servicing-problems-can-jeopardize-long-term-financial-security-older-borrowers/.

applications. The Bureau should also collect information about the number of loans eventually forgiven through income-driven repayment programs (after 20 or 25 years of payments) and Public Service Loan Forgiveness (after 10 years of payments).

d) Request Data on the Frequency and Type of Attempted Contacts

The proposal suggests a number of data points to collect on both outbound and inbound live-contacts to borrowers, initiated by the servicer. We also suggest that the Bureau collect information about the total number of attempts to contact the borrower, broken down by method, including how frequently borrowers are contacted through autodialers, and through text messages. Robocalls represent a particular area of concern for consumers overall, as consumers complain about robocalls at high rates. We believe that collecting data on the frequency of their use is important.[18]

Conclusion

Transparency is critical to having a servicing system that works for borrowers. We are encouraged that the Bureau has taken an important initial step in recognizing the need to gather better data about the student loan market, and we strongly support the Bureau's proposal and urge the agency to move quickly, given the distressing level of defaults in our country. Our coalition looks forward to working with the Bureau to continue make progress on improving transparency in the student loan market.

Thank you for your consideration. Please contact Alexis Goldstein at alexis@ourfinancialsecurity.org or 202-973-8005 to discuss further.

Sincerely,

American Federation of Teachers (AFT)
Allied Progress
Anti-Poverty Network of New Jersey
Billings First Congregational Church
Center for Digital Democracy
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union

---

[18] There is no evidence that repeated robocalls and robotexts will improve repayment outcomes, but there is data showing that consumers complain about robocalls at high rates. Federal Trade Commission ("FTC") data shows that in 2015, an average of 184,000 complaints were filed each month about robocalls. In addition, one fifth of all the complaints the Consumer Financial Protection Bureau ("CFPB") received in 2015 were related to debt collector communication tactics. See: Letter to Regulators: AFR Supports Strong Consumer Protections in FCC Robocalls Rule, Jun. 7, 2016, http://ourfinancialsecurity.org/wp-content/uploads/2016/06/FCC-robocalls-AFR-Docket-02-278.pdf.

Demos
Generation Progress
Higher Ed, Not Debt
Maryland Consumer Rights Coalition
Montana Organizing Project
NAACP
National Association of Consumer Advocates
National Consumer Law Center, on behalf of its low-income clients
National Consumers League
National Council of La Raza
National Education Association
NJ Communities United
NJ NAACP
One Wisconsin Institute
Public Higher Education Network of Massachusetts
Student Debt Crisis
The Institute for College Access & Success (TICAS)
U.S. Public Interest Research Group
Veterans Education Success
Virginia Organizing
Woodstock Institute
Young Invincibles