

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2015-0021]

Request for Information Regarding Student Loan Servicing

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is seeking comments from the public related to the market for student loan servicing. The submissions to this request for information will serve to assist market participants and policymakers on potential options to improve borrower service, reduce defaults, develop best practices, assess consumer protections, and spur innovation.

DATES: Comments must be received on or before July 13, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2015-0021, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* *FederalRegisterComments@cfpb.gov*. Include Docket No. CFPB-2015-0021 in the subject line of the message.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE, Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number for this proposal. Because paper mail in the Washington, DC area and at the Bureau is subject to delay,

commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street NE, Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern standard time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. **Sensitive personal information, such as account numbers or social security numbers, should not be included.** Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202-435-7275.

AUTHORITY: 12 U.S.C. § 5511(c).

SUPPLEMENTARY INFORMATION: The Consumer Financial Protection Bureau is engaged in a joint effort with the U.S. Department of Education and the U.S. Department of the Treasury to identify initiatives to strengthen student loan servicing. This request seeks comments related to the critical role that servicing plays in facilitating repayment of student loans, in order to improve customer service, identify innovative practices and business models, and assess the current framework that exists regarding the consumer protection for student loan borrowers in repayment.

The submissions to this request for information may serve to assist federal and state agencies in prioritizing resources and to assist financial services providers in developing best

practices. The public comments may also be used to inform a report required by a Presidential Memorandum signed on March 10, 2015.¹

The deadline for submission of comments is July 13, 2015.

The Bureau encourages comments from the public, including:

- Student loan borrowers;
- Organizations representing students and student loan borrowers;
- Innovators, technology providers, and recent entrants into the student loan market;
- Institutions of higher education and affiliated parties;
- Financing services providers, including but not limited to lenders and servicers in the mortgage, credit card, and student loan markets;
- Trust administrators of student loan asset-backed securities;
- Credit reporting agencies;
- Debt collectors;
- Organizations promoting financial education;
- Civil rights groups; and
- Nationally recognized statistical rating organizations.

Please note that the Bureau is not soliciting individual student account information in response to this notice and request for information, nor is the Bureau seeking personally identifiable information (PII) regarding student accounts from the parties or any third party.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will

¹ The White House, *Presidential Memorandum -- Student Aid Bill of Rights* (March 10, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/03/10/presidential-memorandum-student-aid-bill-rights>.

not be edited to remove any identifying or contact information.

PART A: ISSUES RELATED TO STUDENT LOAN REPAYMENT

The student loan market

In the last decade, the student loan market has undergone rapid growth and change.

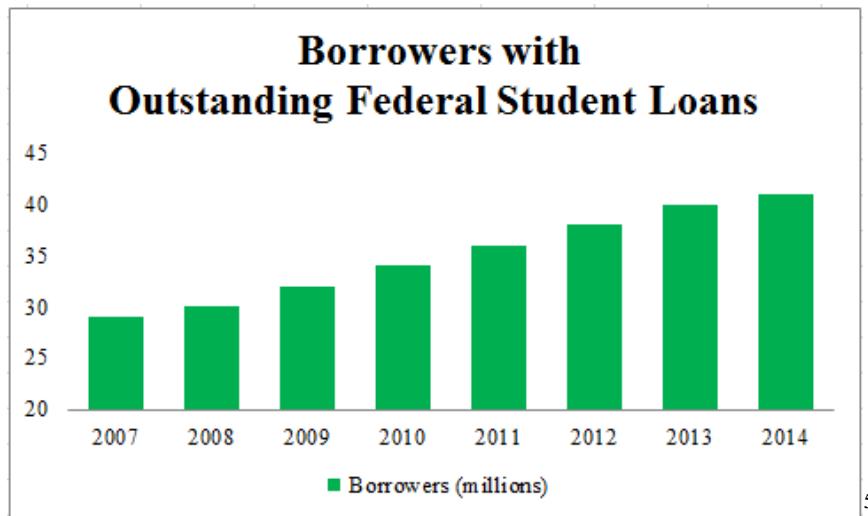
Today, the Consumer Financial Protection Bureau (the Bureau) estimates that there are over 40 million borrowers with student loans who collectively owe over \$1.2 trillion.² Student debt is the largest category of unsecured debt owed by American consumers.

Compared to other large markets of consumer financial products (such as residential mortgages and credit cards),³ availability of market data is quite limited, particularly for private student loans, which grew rapidly in the years leading up to the financial crisis.⁴ Based on the Bureau's analysis of various sources, such as consumer credit panels, audited financial statements, and consumer surveys, both the number and proportion of student loan borrowers in a repayment status has grown.

² U.S. Department of Education, *Federal Student Aid Portfolio Summary*, Data Center: Federal Student Loan Portfolio, accessed on 3/30/2015, available at <https://studentaid.ed.gov/about/data-center/student/portfolio>; Consumer Financial Protection Bureau and U.S. Department of Education, *Private Student Loans* (2012), available at <http://www.consumerfinance.gov/reports/private-student-loans-report/>; and U.S. Department of Education, *Federal Student Aid Annual Report 2014* (2014), available at <http://www2.ed.gov/about/reports/annual/2014report/fsa-report.pdf>.

³ For example, under the Home Mortgage Disclosure Act, most loan-level mortgage application, origination, and purchase data is currently subject to public disclosure, stripped of certain information to protect borrower privacy. The CFPB developed and maintains a web tool to allow the public to access and analyze HMDA data. See Consumer Financial Protection Bureau, *The Home Mortgage Disclosure Act*, available at <http://www.consumerfinance.gov/hmda>. In addition, data from housing GSEs and mortgage-backed securities filings shed significant light on loan-level performance. The Office of the Comptroller of the Currency regularly publishes a mortgage metrics report, detailing loan modification performance and other key servicing data. See, for example, Office of the Comptroller of the Currency, *Mortgage Metrics Report for 2014 Q4* (March 2015), available at <http://www.occ.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics/mortgage-metrics-q4-2014.pdf>.

⁴ Consumer Financial Protection Bureau and U.S. Department of Education, *Private Student Loans* (2012), available at <http://www.consumerfinance.gov/reports/private-student-loans-report/>.



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While the features and borrower characteristics of each type of student loan may vary, the three major types of student loans currently outstanding, as described below, are generally serviced by the same market participants.

The three main types of post-secondary education loans under which borrowers have outstanding balances are loans made under the Federal Family Education Loan program (FFELP), loans made under the William D. Ford Federal Direct Loan (Direct Loan) program, and private student loans. Direct Loans and private student loans are still available for new originations.⁶

Federal Family Education Loans: More than \$380 billion⁷ in outstanding student loans were made under FFELP.⁸ While FFELP loans were generally originated using private capital, they were guaranteed by a governmental or not-for-profit entity, and reinsured by the Federal

⁵ U.S. Department of Education, *Federal Student Aid Annual Report* (2007-2014), available at <http://www2.ed.gov/about/reports/annual/index.html>.

⁶ There are additional Federal programs under Title IV which also authorize student loans. For example, one such program finances loans made directly by certain post-secondary education institutions through their financial aid offices. *See* 20 U.S.C. § 1087aa *et seq.* Another offers grants to those who pledge to become teachers. If the recipients do not become teachers, then the disbursed funds are converted from grants to loans. *See* 20 U.S.C. § 1070g *et seq.*

⁷ U.S. Department of Education, *Federal Student Aid Portfolio Summary*, Data Center: Federal Student Loan Portfolio, accessed on 5/6/2015, available at: <https://studentaid.ed.gov/about/data-center/student/portfolio>.

⁸ 20 U.S.C. §§ 1078(b), (c).

government. These loans are serviced either by the loan holders themselves or by a third-party student loan servicer pursuant to contracts with the loan holders. A noteworthy portion of these loans serve as collateral for asset-backed securities.⁹ Pursuant to the 2010 SAFRA Act, the origination of new guaranteed loans under FFELP was suspended.

Federal Direct Loans: Pursuant to SAFRA, the Department of Education shifted primarily to direct lending, providing loans directly to borrowers under the William D. Ford Federal Direct Loan program.¹⁰ As of the end of calendar year 2014, 28.5 million borrowers collectively owed approximately \$744 billion in outstanding Direct Loans.¹¹ Direct Loans are serviced by third parties that contract with the Department of Education pursuant to Title IV of the Higher Education Act (HEA).¹² Preceding the suspension of new FFELP originations, many of the FFELP student loan servicers were awarded servicing contracts to begin servicing loans held by the Department of Education, including loans made under the Direct Loan program.¹³

Private Student Loans: The student loan market includes private student loans, which are not originated pursuant to Title IV of the HEA. Most private student loans are typically originated by very large depository institutions and specialty student loan companies. A substantial portion of private student loans serve as collateral for asset-backed securities. The market for private

⁹ See, for example, Sallie Mae, *SLM Corporation: Overview of FFELP and FFELP ABS Transactions* (June 18, 2012), available at <https://www.navient.com/assets/about/investors/webcasts/2012FFELPOverviewFinal.pdf>.

¹⁰ See Public Law 111-152, §§ 2101-2213, 124 Stat. 1071 (2010). The Direct Loan Program actually began in 1992, see Public Law 102-325, 106 Stat. 569 (1992), but Federal Direct loans constituted only a small portion of Federal student lending before the enactment of the SAFRA Act in 2010.

¹¹ U.S. Department of Education, *Federal Student Aid Portfolio Summary*, Data Center: Federal Student Loan Portfolio, accessed on 5/7/2015, available at: <https://studentaid.ed.gov/about/data-center/student/portfolio>.

¹² 20 U.S.C. § 1087f(b).

¹³ In 2008, the enactment of the Ensuring Continued Access to Student Loans Act (ECASLA) authorized the Secretary of Education to take extraordinary measures to ensure students could continue to borrow amid turmoil in the capital markets. Under this authority, the Department of Education acquired a large volume of loans made by private lenders through FFELP and assigning the servicing to certain third parties. See P.L. 110-227; following the termination of the FFEL program, third-party servicers were awarded additional Direct Loan volume through this contract. For further discussion, see U.S. Department of Education, *Loan Servicing Update* (July 2012) available at www.ifap.ed.gov/presentations/attachments/NASFAA2012LoanServicingUpdate.ppt.

student loans is opaque, as market participants generally do not make available key origination and performance information, and reporting requirements on outstanding balances and performance are extremely limited.

The vast majority of student loan servicing activity is now concentrated among large student loan servicers that service all three types of student loans.¹⁴

The student loan servicing business model

More than 40 million Americans with student loan debt depend on student loan servicers as their primary point of contact for their student loans. A servicer is often different than the lender or loan holder, and borrowers almost always lack control or choice over which company services their loan. Student loan servicers' duties typically include managing borrowers' accounts, processing monthly payments, and communicating directly with borrowers.¹⁵ These duties may also include informing borrowers about loan repayment options and facilitating enrollment in alternative repayment plans and other benefits, including options to assist federal student loan borrowers experiencing financial hardship.¹⁶

When problems arise because of servicing problems, student loan borrowers may face a range of different consequences. They may miss a payment, owe more money because of additional interest on principal, or face future difficulties with credit because of a poor payment history.

¹⁴ For further discussion of student loan servicing market composition, see Consumer Financial Protection Bureau, *Final Rule: Defining Larger Participants of the Student Loan Servicing Market* (December 2013), available at http://files.consumerfinance.gov/f/201312_cfpb_student-servicing-rule.pdf.

¹⁵ The Bureau defined student loan servicing as (1) receiving loan payments (or receiving notification of payments) and applying payments to the borrower's account pursuant to the terms of the post-secondary education loan or of the contract governing the servicing; (2) during periods when no payments are required, maintaining account records and communicating with borrowers on behalf of loan holders; or (3) interactions with borrowers, including activities to help prevent default, conducted to facilitate the foregoing activities. See 12 CFR §1090.106.

¹⁶ See, for example, 20 U.S.C. § 1098e.

For the majority of student loan borrowers who make payments on time each month and never contact their servicer for additional assistance, loan servicing generally may be limited to accepting and applying monthly payments and awarding benefits earned by satisfying specific loan terms (e.g. interest rate reductions for enrolling in auto-debit or making a series of on-time monthly payments). These borrowers also depend on their student loan servicers to accurately report their payment history to the credit bureaus. Adequate student loan servicing is critical for these borrowers to establish a good credit history through their timely student loan payments, in order to ensure that they are positioned to participate fully in the marketplace for other financial products and services.¹⁷

Student loan borrowers facing unemployment or other financial hardship need adequate loan servicing for a different reason. Student loan servicers assist these borrowers with enrolling in alternative repayment plans, obtaining deferments or forbearances, or requesting a modification of loan terms. For these borrowers, proper loan servicing may be the key to successfully avoid default and ultimately perform on the loan. When borrowers face difficulties, loan servicers can help borrowers avoid default, minimize damage to borrowers' credit, and ensure that borrowers can find sustainable solutions that keep them on a long-term path to future financial success. In addition, adequate loan servicing also helps to ensure that owners of the loans are repaid.

Financial incentives for student loan servicers

¹⁷ In addition, certain consumer protections included in Title IV of the Higher Education Act require student loan borrowers to remit on-time monthly payments under certain repayment arrangements in order to obtain loan forgiveness. These repayment arrangements may require student loan servicers to certify income documentation on an annual basis in order for borrowers to obtain the maximum benefit. In some cases, loan forgiveness is also contingent upon certain types of employment. Student loan servicers are responsible for evaluating the timeliness of monthly payments, evaluating whether employment qualifies a borrower for certain benefits and applying these benefits to borrowers' accounts. Depending on the program, high-quality student loan servicing over a period of 5, 10, 20 or 25 years is critical for these borrowers to realize benefits provided by statute. *See, for example,* 20 U.S.C. §1078-10 and 20 U.S.C. § 1087e(m).

The Bureau estimates that there are nearly 8 million student loan borrowers in default, representing over \$110 billion in balances.¹⁸ In addition, the Department of Education estimates that another 3 million Direct Loan borrowers are at least 30 days past due on one or more student loans, comprising over \$58 billion in balances.¹⁹ As the number of borrowers with defaulted or delinquent student loans has grown,²⁰ it has prompted questions about what steps servicers should take to achieve greater success in minimizing defaults and curing delinquencies. For example, it appears that few, if any, private student lenders and loan servicers have developed transparent, widely-offered flexible repayment options to mitigate defaults for borrowers in distress.²¹

While federal student loans feature an array of flexible repayment options, it is not clear whether third-party student loan servicers, particularly those servicing Federal Family Education Loans, have adequate economic incentive to enroll borrowers in these options to avoid default. For both private and federal student loans, the compensation model used in most third-party servicing contracts provides student loan servicers with a flat monthly fee per account serviced.²²

¹⁸ As of the first quarter of FY15, 7.3 million federal student loan borrowers were in default on more than \$106 billion in federal student loans. See, U.S. Department of Education, *Federal Student Aid Portfolio Summary*, Data Center: Federal Student Loan Portfolio, accessed on 5/7/2015, available at: <https://studentaid.ed.gov/about/data-center/student/portfolio>; According to a 2012 study of the private student loan market published by the U.S. Department of Education and the Consumer Financial Protection Bureau, 850,000 private student loans with an outstanding principal balance of over \$8 billion were in default. See U.S. Department of Education and Consumer Financial Protection Bureau, *Private Student Loans* (2012), available at <http://www.consumerfinance.gov/reports/private-student-loans-report/>.

¹⁹ U.S. Department of Education, *Federal Student Aid Portfolio Summary*, Data Center: Federal Student Loan Portfolio, accessed on 3/30/2015, available at: <https://studentaid.ed.gov/about/data-center/student/portfolio>.

²⁰ Consumer Financial Protection Bureau, *A closer look at the trillion* (August 5, 2013), available at <http://www.consumerfinance.gov/blog/a-closer-look-at-the-trillion/>.

²¹ Consumer Financial Protection Bureau, *Annual Report of the CFPB Student Loan Ombudsman* (2014), available at http://files.consumerfinance.gov/f/201410_cfpb_report_annual-report-of-the-student-loan-ombudsman.pdf.

²² This monthly servicing fee may be set as a flat dollar amount per month per account, or set based on a percentage of a borrower's aggregate principal balance. In both cases, the fee paid to student loan servicers may vary depending on repayment status but generally do not vary depending on the level of service provided in a given month. See, for example, First Marblehead Corporation, *Prospectus Supplement: The National Collegiate Student Loan Trust 2007-3* (September 17, 2007), available at http://www.snl.com/interactive/lookandfeel/4094003/NCSLT_2007_3_FPS.PDF and U.S. Department of

Although this fee may adjust based on a loan's repayment status, fees are generally fixed on a monthly basis and do not rise or fall depending on the level of service a particular borrower requires in a given month.

The regulatory landscape for student loan servicing

In recent years, policymakers have undertaken broad-based legislative and regulatory efforts to strengthen applicable federal consumer financial laws protecting consumers in the servicing of mortgages and credit cards. For student loan borrowers, there is no existing, comprehensive federal statutory or regulatory framework providing uniform standards for the servicing of all student loans.²³ However, there are limited protections for certain federal student loan borrowers related to certain aspects of the repayment process.²⁴

There may be variation in the level of service delivered by student loan servicers depending on the type of loan borrowed, the identity of lender, or the company selected to service the loan. The statutory and regulatory framework for student loan servicing, and the gaps in that framework, may contribute to this variation.

Higher Education Act of 1965 (HEA). Title IV of HEA authorizes the federal student loan programs and establishes a framework for conduct by and oversight of companies participating in FFELP, including student loan servicers contracted by holders of FFELP loans to service these

Education, *Title IV Redacted Contract Awards 12-13*, available at <https://www.fbo.gov/spg/ED/FSA/CA/FSA-TitleIV-09/listing.html>. Contracts fix monthly compensation on a per-borrower basis, and the compensation depends on the repayment status of each borrower being serviced. See also U.S. Department of Education, *Student Aid Administration Fiscal Year 2015 Request*, at AA-15, available at <http://www2.ed.gov/about/overview/budget/budget15/justifications/aa-saadmin.pdf>. This estimates the average cost per-borrower to be \$1.67 per month, based on the contractual prices and the proportion of borrowers with different repayment statuses.

²³ In 2014, the Bureau expanded its examination program for student loan servicing to supervise both large depository institutions and larger nonbank student loan servicers for compliance with federal consumer law, including the prohibition against unfair, deceptive and abusive practices under the Dodd-Frank Act. This is the first examination program at the federal level focused on both bank and nonbank actors in the student loan servicing market. See Consumer Financial Protection Bureau, *Education Loan Examination Procedures* (December 2013), available at http://files.consumerfinance.gov/f/201312_cfpb_exam-procedures_education-loans.pdf.

²⁴ See, e.g. 34 CFR Part 682 for certain disclosures and other requirements for companies servicing FFELP loans.

loans. This framework establishes a number of conditions that loan holders and service providers must meet in order for federal loan guarantees to remain in effect, including arranging for periodic independent financial audits and complying with program requirements established in implementing regulations.²⁵

Congress has amended Title IV of HEA periodically since its enactment, creating a set of flexible repayment plans, loan cancellation options, and other protections for borrowers with federal student loans.²⁶ Student loan servicers are responsible for administering these benefits and protections. In addition, these amendments have expanded the extraordinary collection tools available to recover defaulted federal student loans, including extra-judicial wage garnishment, tax refund offset, and seizure of federal payments, such as certain benefits administered by the Social Security Administration.²⁷

Amendments to the Higher Education Act included in the Higher Education Opportunity Act (HEOA) of 2008. In 2008, Congress enacted HEOA, reauthorizing HEA and amending Title IV to provide additional protections for borrowers with loans made through FFELP. Implementing regulations require student loan servicers to provide certain notices to borrowers with FFELP loans during the course of repayment, including notices related to account terms, repayment plans, and servicing transfers.²⁸ These regulations create basic compliance

²⁵ See, e.g., 34 CFR §§ 682.401; 682.416. In addition, HEA establishes a number of conditions related to the origination of federal student loans, including specific requirements related to disclosure and counseling at the time of origination and prior to entering repayment.

²⁶ See, for example, P.L. 110-84.

²⁷ For example, the Higher Education Technical Amendments of 1991 eliminated the statute of limitations for lawsuits to collect of federal student loan debt. See P.L. 102-26. In addition, a number of other federal laws govern the collection of debts owed to the federal government. See, for example, P.L. 104-134.

²⁸ See P.L. 110-315. For example, servicers must provide borrowers with a notice of servicing transfer containing information about the new servicer 45 days after the effective date of transfer—a protection that has been triggered for more than 10 million student loan borrowers since 2010. This requirement of notice does not require any notice to the borrower prior to the effective date of transfer. In contrast, protections offered to mortgage borrowers under the Real Estate Settlement Procedures Act (RESPA) requires notice of a servicing transfer 15 days prior to and 15 days after the effective date of transfer.

requirements as a precondition for student loan servicers to maintain eligibility to participate in FFELP.

Amendments to the Truth in Lending Act (TILA) included in HEOA. HEOA also amended TILA to create new protections for borrowers with private education loans, largely related to the origination of these loans.²⁹ These protections include safeguards to mitigate the risk that private student lenders will extend credit to borrowers to cover expenses beyond the total cost of attendance and requirements for schools entering into preferred lender arrangements with lenders seeking to market private loans to students.³⁰

Fair Credit Reporting Act (FCRA). FCRA and its implementing regulation, Regulation V, require entities that furnish information to consumer reporting agencies to have reasonable policies and procedures regarding the accuracy and integrity of information they furnish.³¹ While furnishing is generally a voluntary activity,³² federal student loan servicers have an affirmative duty to furnish. Title IV of HEA requires that certain participants in the student loan market furnish information about federal student loans to consumer reporting agencies.³³

Risks for consumers repaying student loan debt

In July 2011, the Bureau launched an examination program to supervise education lending and servicing at the largest depository institutions.³⁴ In December 2013, the Bureau finalized a rule expanding its supervisory authority to include large nonbank participants in the

²⁹ P.L. 110-315, 15 U.S.C. § 1650.

³⁰ TILA and its implementing regulation, Regulation Z, explicitly exempt credit extended pursuant to Title IV of the Higher Education Act from requirements established for private education loans. See 15 U.S.C. § 1650 a(7)(A)(i).

³¹ See 15 U.S.C. § 1681-1681x; and 12 CFR Part 1022.

³² See 15 U.S.C. § 1681s and 12 CFR § 1022, App. E (“The Bureau encourages voluntary furnishing of information to consumer reporting agencies.”).

³³ See, for example, 20 U.S.C. § 1080a.

³⁴ In December 2012, the Bureau published the examination procedures used in examinations of student lending at these institutions. See Consumer Financial Protection Bureau, *CFPB Releases Exam Procedures for Student Loans* (2012), available at <http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-releases-exam-procedures-for-student-loans/>.

student loan servicing market—the companies that perform more than 70 percent of all nonbank student loan servicing activity, including those student loan servicers contracted by the Department of Education to service the federally-owned loan portfolio.³⁵ Nonbank entities perform the vast majority of student loan servicing activity.³⁶ Historically, these entities have not been subject to federal or state licensing requirements or supervision for compliance with federal consumer protection laws.

In October 2011, the Secretary of the Treasury designated a student loan ombudsman within the Bureau, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Bureau’s student loan ombudsman is required to submit certain reports to the Director of the Bureau, the Secretary of the Treasury, and the Secretary of Education related to student loan complaints.³⁷ These reports have focused on private student loans and highlighted a range of consumer complaints submitted to the Bureau regarding servicing issues, including:

- **Payment posting:** Some consumers have reported that it takes servicers several days to process payments and servicers may charge interest on the outstanding principal during that processing time. Consumers have complained that servicers may also apply payments to an account well after they debit funds from a borrower’s bank account. Consumers note that some servicers may take several days to process payments submitted online, when other financial services companies are able to credit such payments upon receipt.

³⁵ Consumer Financial Protection Bureau, *Final Rule: Defining Larger Participants of the Student Loan Servicing Market* (December 2013), available at http://files.consumerfinance.gov/f/201312_cfpb_student-servicing-rule.pdf

³⁶ For further discussion of student loan servicing market composition, see Consumer Financial Protection Bureau, *Final Rule: Defining Larger Participants of the Student Loan Servicing Market* (December 2013), available at http://files.consumerfinance.gov/f/201312_cfpb_student-servicing-rule.pdf.

³⁷ See 12 U.S.C. § 5535. In addition, the Higher Education Act established a Student Loan Ombudsman at the U.S. Department of Education to assist borrowers with federal student loans. See 20 U.S.C. § 1018.

- **Processing prepayments:** Consumers may attempt to prepay their loans in order to reduce the amount of interest owed over the life of the loan. But many consumers have expressed confusion about how to pay off their loans early. For example, borrowers have complained that servicers apply payments in excess of the amount due across all their loans, not to the highest-interest rate loan that they would prefer to pay off first. These processing problems may result from insufficient investment in a servicing platform's information technology infrastructure.
- **Processing partial payments:** When consumers have multiple loans with one servicer and are unable to pay all of the loans on their bill in full, borrowers have reported that many servicers instruct them to make whatever payment they can afford. Many complaints have described how servicers often divide up the partial payment and apply it evenly across all of the loans in their account. This may maximize the late fees charged to the consumer.
- **Paperwork and account information:** Consumers have reported experiencing lost paperwork submitted to process applications for forbearance or alternative payment plans. Borrowers have reported that servicers do not correct errors in a timely fashion. Consumers have also reported encountering limited access to basic account information, including their payment history. Some borrowers have reported difficulty when seeking to determine how their payments have been applied to interest and principal, particularly when loans are grouped together for billing purposes.
- **Servicing transfers:** Consumers have noted many servicing interruptions following a change in servicer. Many of these consumers were unaware that their loans had been transferred to a new servicer until the point at which they encountered a problem.

Consumers have explained that, following a change in servicer, they experience interruptions when receiving billing statements, notices, or other routine communications. Consumers have also noted that they were charged late fees because borrowers mailed their payments to their old servicers. Consumers have complained that, in some cases, servicers did not process payments correctly post-transfer, if the consumer mailed a check to the new servicer containing account information from the old servicer.

- **Customer service:** Consumers have complained that servicing personnel may not be adequately trained to provide assistance or may be unaware of resources available to borrowers in distress. This problem may be exacerbated at companies that service many different loan portfolios for third-party lenders. Consumers have reported that servicers transferred them to multiple departments, and, in some cases, none were responsive or empowered to provide a clear answer. Consumers have also complained about being unable to reach appropriate service staff members to correct a mistake in how a payment was applied to their account. Other consumers have complained about conflicting instructions from different employees of the same servicer.
- **Repayment incentives:** It is common for lenders to offer various incentives to borrowers in marketing materials prior to origination. These might include interest rate or principal reductions for engaging in activities that increase the likelihood of repayment, such as graduation or enrollment in an auto-debit program. But consumers have complained that some servicers place unexpected obstacles when borrowers seek to apply these benefits.
- **Issues related to co-signers, including acceleration of performing loans:** Consumers identify a range of issues specific to co-signed student loans, including problems related to access to basic account information for co-signers and problems related to co-signer

release, an advertised benefit of many private loans that some consumers find is prohibitively complicated to obtain. In addition, many consumers assume that the death of a co-signer, often a parent or grandparent, will result in the release of the co-signer's obligation to repay. But many private student loan contracts include provisions that have been interpreted to provide the lender with the option to immediately demand the full loan balance upon death of the co-signer. Many private student loan contracts also include provisions that have been interpreted to allow the lender to place a loan in default if the borrower's co-signer files for bankruptcy.

Borrowers have submitted complaints detailing how they face loan acceleration, including consequences such as credit damage and frequent debt collection calls, even if the loan was in good standing prior to and while the co-signer is in bankruptcy, or upon a co-signer's death. Acceleration may be triggered when data from probate and other court record scans are matched with a company's customer database, without regard to whether the borrower is in good standing.

- **Benefits for members of the military:** Servicemembers have identified problems they encountered when accessing the protections granted to them under federal rules, including the Servicemembers Civil Relief Act (SCRA). The hurdles they describe range from not being able to get the information they need, to being met with roadblocks when they do try to pursue their benefits.

As noted in these reports, consumer complaints are not necessarily representative of typical experiences of student loan borrowers. However, examination and investigative activities have revealed that problems may not be limited to individual consumers filing complaints. For example, in 2014, the Federal Deposit Insurance Corporation (FDIC) addressed alleged

misconduct with one large student loan servicer for illegal practices regarding student loan payment processing.³⁸ The FDIC found violations of a federal law prohibiting unfair and deceptive practices with regard to student loan borrowers through the servicer's following actions:

- Inadequately disclosing its payment allocation methodologies to borrowers while allocating borrowers' underpayments across multiple loans in a manner that maximizes late fees; and
- Misrepresenting and inadequately disclosing in its billing statements how borrowers could avoid late fees.

In addition, the Department of Justice joined with the FDIC to enter an order providing \$60 million in restitution for more than 60,000 servicemembers in an action against the same company, related to its awarding of benefits under the SCRA to active duty members of the military.³⁹ The FDIC found illegal conduct, including:

- Unfairly conditioning receipt of benefits under the SCRA upon requirements not found in the law;
- Improperly advising servicemembers that they must be deployed in order to receive benefits under the SCRA; and
- Failing to provide complete SCRA relief to servicemembers after having been put on notice of these borrowers' active duty status.

³⁸ Federal Deposit Insurance Corporation, *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act* (May 2014), available at <http://www.fdic.gov/news/news/press/2014/pr14033.html>.

³⁹ See Federal Deposit Insurance Corporation, *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act* (May 2014), available at <http://www.fdic.gov/news/news/press/2014/pr14033.html>; and U.S. Department of Justice, *United States v. Navient Solutions, Inc., Navient DE Corporation and Sallie Mae Bank* (May 2014), available at <http://www.justice.gov/crt/about/hce/documents/salliecomp.pdf>.

While supervising for compliance with federal consumer financial laws, the Bureau has also identified illegal practices through its examination program. Bureau examiners found one or more student loan servicers were:⁴⁰

- **Misrepresenting minimum payments:** Bureau examiners found that one or more servicers inflated the minimum payment that was due on periodic statements and online account statements. These inflated numbers included amounts that were in deferment and not actually due.
- **Charging improper late fees:** CFPB examiners found one or more servicers were unfairly charging late fees when payments were received during the grace period. Like many other types of loans, many student loan contracts have grace periods after the due date. If a payment is received after the due date, but during the grace period, the promissory note stated that late fees would not be charged.
- **Failing to provide accurate tax information:** CFPB examiners found cases where student loan servicers failed to provide consumers with information essential for deducting student loan interest payments on their tax filings. The servicers impeded borrowers from accessing this information and misrepresented information on the consumers' online account statements. This practice may have caused some consumers to lose up to \$2,500 in tax deductions.
- **Misleading consumers about bankruptcy protections:** CFPB examiners found that some servicers told consumers student loans are not dischargeable in bankruptcy. While student loans are more difficult to discharge in bankruptcy than most other types of loans, it is possible to discharge a student loan if the borrower affirmatively asserts and proves

⁴⁰ See Consumer Financial Protection Bureau, *Supervisory Highlights: Fall 2014* (2014), available at <http://www.consumerfinance.gov/reports/supervisory-highlights-fall-2014>.

“undue hardship” in a court. Servicer communications with borrowers asserted or implied that student loans were never dischargeable.

- **Making illegal debt collection calls to consumers at inconvenient times:** Examiners found that one or more student loan servicers routinely made debt collection calls to delinquent borrowers early in the morning or late at night. For example, examiners identified more than 5,000 calls made at inconvenient times during a 45-day period, which included 48 calls made to one consumer.

Presidential memorandum on a student aid bill of rights

On March 10, 2015, the President signed a Presidential Memorandum titled the “Student Aid Bill of Rights.”⁴¹ The memorandum was addressed to the Secretary of the Treasury, Secretary of Education, Commissioner of Social Security, Director of the Consumer Financial Protection Bureau, Director of the Office of Management and Budget, Director of the Office of Science and Technology Policy, and the Director of the Domestic Policy Council. The memorandum directed certain executive agencies to undertake a number of steps to improve student loan borrowers’ experience in repayment, with a particular focus on enhancing student loan servicing. The memorandum requires the Secretary of Education, in consultation with the Secretary of the Treasury and the Director of the Consumer Financial Protection Bureau, to issue a report to the President “after assessing the potential applicability of consumer protections in the mortgage and credit card markets to student loans, [on] recommendations for statutory or regulatory changes in this area, including, where appropriate, strong servicing standards.”

Policymakers have established a framework to strengthen servicing protections for mortgage and credit card borrowers

⁴¹ The White House, *Presidential Memorandum – Student Aid Bill of Rights* (March 10, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/03/10/presidential-memorandum-student-aid-bill-rights/>.

The Bureau has observed similarities between the servicing problems encountered by student loan borrowers and those experienced by borrowers with other financial products. Loan servicing generally includes many common functions, irrespective of the underlying consumer financial product, including account maintenance, billing and payment processing, customer service, and managing accounts for customers experiencing financial distress.⁴²

During and in the wake of the financial crisis, Congress, state policymakers, law enforcement officials, and federal financial regulators sought to address a broad range of loan servicing problems in the credit card and mortgage markets. Several large mortgage servicers reached settlements with State and Federal regulators to address a range of troubling practices.⁴³

Mortgage servicing. Congress has passed several significant legislative and regulatory interventions to protect mortgage borrowers from illegal and deceptive mortgage servicing practices. In 1968 and 1974, Congress passed TILA and the Real Estate Settlement Procedures Act of 1974 (RESPA), respectively. Taken together, these statutes provide additional disclosure requirements and regulate certain acts associated with consumer risk and harm.⁴⁴ TILA and RESPA also provide a private right of action and damages in certain circumstances for certain

⁴² There are also noteworthy differences between the servicing of mortgages, credit cards and student loans. These include but are not limited to differences related to the servicing of loans secured by real estate compared to unsecured loans, and practices unique to open-ended products with replenishing lines of credit, commonly used in repeated transactions.

⁴³ For example, in 2012, the attorneys general of forty-nine states, the District of Columbia and the federal government reached an agreement with five large mortgage servicers to address mortgage loan servicing and foreclosure abuses. *See* U.S. Department of Justice, *National Mortgage Settlement*, available at http://www.justice.gov/ust/eo/public_affairs/consumer_info/nms/; In addition, there have been a number of cases of alleged improper treatment of military families, including cases where mortgage servicers conducted allegedly wrongful foreclosures in violation of the SCRA. *See* U.S. Department of Justice, *Recent Accomplishments of the Housing and Civil Enforcement Division*, available at <http://www.justice.gov/crt/about/hce/whatnew.php> (summarizing the enforcement actions concerning the Servicemember Civil Relief Act).

⁴⁴ In addition to TILA and RESPA, Congress enacted the Home Ownership and Equity Protection Act (HOEPA) in 1994 as an amendment to TILA, establishing certain disclosures and protections related to high-cost mortgages. *See* P.L. 103-325.

violations.⁴⁵ Over the past nearly 50 years, Congress has amended both TILA and RESPA on numerous occasions to add additional protections for consumers.⁴⁶

In 2010, Congress again intervened by providing additional protections through the Dodd-Frank Act. The Dodd-Frank Act gave the Bureau authority to promulgate regulations to implement new mortgage servicing protections following the wake of the financial crisis and granted the Bureau with rule-making, supervision, and enforcement authority over covered financial institutions.⁴⁷ The Bureau implemented a series of new rules to significantly improve consumer protections for mortgage borrowers.⁴⁸ The rules address critical servicer practices including error resolution, prompt crediting of payments, and providing payoff statements. They also include requirements relating to servicer policies and procedures, early intervention for delinquent borrowers, continuity of contact, and procedures for evaluating and responding to loss mitigation applications. These rules protect consumers from detrimental actions by mortgage servicers and give consumers better tools and information when dealing with mortgage servicers.

For example, the mortgage servicing rules include:

⁴⁵ 15 U.S.C. § 1640; 12 U.S.C. § 2605.

⁴⁶ See CFPB Consumer Law and Regulations, *RESPA Procedures – TILA RESPA Integrated Disclosures (applicable for examinations after the August 2015 effective date), and Mortgage Servicing Requirements (January 2014)*, available at http://files.consumerfinance.gov/f/201503_cfpb_regulation-x-real-estate-settlement-procedures-act.pdf (summarizing amendments to RESPA); See also, CFPB Consumer Law and Regulations, *TILA Procedures – TILA RESPA Integrated Disclosures (applicable for examinations after the August 2015 effective date), and Higher-Priced Mortgage Loan Appraisals (January 2014), Escrow Accounts (January 2014), and Mortgage Servicing Requirements (January 2014)*, available at http://files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf (summarizing amendments to TILA).

⁴⁷ P.L. 111-203.

⁴⁸ See CFPB Consumer Law and Regulations, *RESPA Procedures – TILA RESPA Integrated Disclosures (applicable for examinations after the August 2015 effective date), and Mortgage Servicing Requirements (January 2014)*, available at http://files.consumerfinance.gov/f/201503_cfpb_regulation-x-real-estate-settlement-procedures-act.pdf (summarizing amendments to RESPA); see also, CFPB Consumer Law and Regulations, *TILA Procedures – TILA RESPA Integrated Disclosures (applicable for examinations after the August 2015 effective date), and Higher-Priced Mortgage Loan Appraisals (January 2014), Escrow Accounts (January 2014), and Mortgage Servicing Requirements (January 2014)*, available at http://files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf (summarizing amendments to TILA).

- **Notice of transfer of loan servicing.** If a lender or servicer transfers a loan's servicing to a new servicer, the prior servicer must provide a notice to the borrower no less than 15 days before the effective date of transfer, and the transferee servicer must provide a notice not more than 15 days after the effective date of transfer, with limited exceptions.⁴⁹ In addition, during the 60-day period beginning on the effective date of transfer, the servicer cannot treat a consumer's payment as late for any purpose (and cannot charge a late fee) if the consumer has made a timely payment to the prior servicer.⁵⁰
- **Timely transfer of documents to new servicer.** Mortgage servicers are required to maintain policies and procedures reasonably designed to facilitate the transfer of information during servicing transfers.⁵¹ These policies should be tailored to ensure timely transfer of all documents and information in the possession or control of the prior servicer relating to the transferred loan to the new servicer.
- **Payoff statements.** A servicer must provide a payoff statement, specifying the amount needed to pay the loan in full as of a particular date, within seven business days after receiving the consumer's written request.⁵²
- **Error resolution procedures.** Generally, mortgage servicers must respond to written notices from consumers asserting a servicing error, such as charges for late fees that the servicer lacks a reasonable basis to impose.⁵³ Within five days of a mortgage servicer receiving a written notice of error, the servicer must provide a timely written response

⁴⁹ 12 CFR § 1024.33(b).

⁵⁰ 12 CFR § 1024.33(c).

⁵¹ 12 CFR § 1024.38(a), (b)(4).

⁵² 12 CFR § 1026.36(c)(3).

⁵³ 12 CFR § 1024.35(a), (b).

acknowledging receipt.⁵⁴ Then the servicer must correct the error or conduct a reasonable investigation and provide a written notice that the error has been corrected or conduct a reasonable investigation and provide the borrower a written notification that no error has occurred, along with the rationale behind the determination, and a statement of the borrower's right to request documents relied upon by the servicer and information on how to request such documents.⁵⁵

- **Continuity of contact.** Mortgage servicers must maintain policies and procedures designed to assign designated personnel to respond to the consumer's inquiries, and, as applicable, assist the consumer with available loss mitigation options.⁵⁶ This gives the delinquent consumers continuity of contact and the ability to access information about the mortgage without being transferred to multiple customer service representatives.
- **Record retention.** Mortgage servicers are required to retain certain records that document actions taken regarding the mortgage loan account until one year after the date the loan is discharged or servicing is transferred.⁵⁷ Records required to be preserved include a schedule of all transactions debited or credited, any notes created by the servicer reflecting communications with the borrowers about the mortgage, and copies of any documents provided by the consumer to the servicer in accordance with error resolution or loss mitigation procedures.⁵⁸
- **Early intervention for delinquent borrowers.** Mortgage servicers must make a good faith effort to establish live contact with a borrower no later than the 36th day of a

⁵⁴ 12 CFR § 1024.35(d).

⁵⁵ 12 CFR § 1024.35(e).

⁵⁶ 12 CFR § 1024.40(a).

⁵⁷ 12 CFR § 1024.38(c)(1).

⁵⁸ 12 CFR § 1024.38(c)(2).

borrower's delinquency.⁵⁹ No later than the 45th day of delinquency, a servicer must provide a written early intervention notice.⁶⁰

Credit Cards. In 2009, Congress enacted the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act), establishing new protections for consumers with credit cards.⁶¹ The CARD Act included a number of changes to credit card servicing and payment processing practices. For example, these changes include:

- **Timely posting of payments.** Credit card companies must credit all payments received by 5 p.m. on the day they are received.⁶² If they are received by 5 p.m. on the due date, payments are generally considered to be on-time.
- **Periodic billing statements.** Credit card companies must have reasonable procedures designed to ensure that billing statements are mailed or delivered at least 21 days before a payment is due.⁶³ In addition, credit card companies must disclose on the billing statement how long it would take the consumer, including how much it would cost, to pay the full balance on the card by paying only the required minimum payments.⁶⁴ The statement must also disclose the monthly payment required to repay the full balance in three years, and the resulting total cost to the consumer, assuming no additional transactions.⁶⁵
- **Application of Payments.** Credit card companies, upon receipt of a payment in excess of the minimum payment amount due, must first apply the excess to the card balance

⁵⁹ 12 CFR § 1024.39(a).

⁶⁰ 12 CFR § 1024.39(b).

⁶¹ P.L. 111-24. Consumers with credit cards had a number of servicing protections in place under TILA prior to the enactment of the CARD Act, including those related to error resolution, limits on liability and periodic statements.

⁶² 15 U.S.C. § 1666c(a).

⁶³ 15 U.S.C. § 1666b(a).

⁶⁴ 15 U.S.C. §§ 1637(b)(11)(B)(i) and (ii).

⁶⁵ 15 U.S.C. § 1637(b)(11)(B)(iii).

bearing the highest interest rate, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.⁶⁶

PART B: QUESTIONS RELATED TO STUDENT LOAN SERVICING

The Bureau is interested in responses in the following general areas, as well as the specific questions below. Part A of this Request for Information (RFI) provides a general overview of the problems experienced by consumers when repaying student debt.

In the following section, we offer commenters a series of questions to consider when responding to this RFI. Responses may include answers to the following categories of questions. Part One of this section solicits feedback on questions related to general practices in the student loan servicing industry, including industry practices for borrowers in distress. Part Two seeks comments on the applicability of consumer protections from other consumer financial product markets, including the markets for servicing credit cards and mortgages. Part Three solicits feedback on the availability of data about student loan performance and borrower characteristics during repayment. Respondents are encouraged to provide responses to any of the broad categories of questions outlined below.

Part One: General questions on common industry practices related to student loan repayment

The following section seeks to solicit input on common practices, policies, and procedures in the student loan servicing market. Respondents may wish to address any structural features of the student loan servicing market as they relate to specific practices, including but not limited to:

- The traditional compensation model for third-party student loan servicing, including compensation related to default aversion and alternative repayment options;

⁶⁶ 15 U.S.C. § 1666c(b)(1).

- Information systems used by student loan servicers, including information systems used to process alternative repayment options, servicing transfers, and furnishing of credit information; or
- Existing federal and state statutory or regulatory protections for student loan borrowers in repayment.

Respondents may also wish to highlight effective or innovative approaches to delivering service, including:

- Practices by incumbents or new entrants in the student loan servicing market;
- Practices by loan servicers in other markets, including but not limited to servicing practices for credit cards and mortgages; or
- Alternative business models to traditional loan servicing that could reduce costs, increase recoveries, or enhance transparency for borrowers.

Practices related to student loan repayment

- (1) Please describe the extent to which issues related to the following common student loan servicing policies and procedures should inform policymakers and market participants considering options to improve the quality of student loan servicing, including but not limited to:
- a. Processing, allocation, and application of payments (including partial payments and prepayments);
 - b. The imposition and disclosure of late fees, including the impact of late fees across billing groups;
 - c. Transfer of loans between lenders, loan holders, and student loan servicers;

- d. The complaint resolution process (including the consumers' ability to adequately request and receive accurate and timely responses for information and corrections related to their account);
- e. Furnishing of credit information to credit reporting agencies (including the appropriateness, adequacy, and accuracy of the information furnished);
- f. The impact of a single late payment on borrowers' future abilities to avail themselves of repayment benefits, such as interest rate reductions for enrolling in auto-debit;
- g. Disclosure, accessibility, and availability of refinance products;
- h. Disclosure, accessibility, and availability of options to release a co-signer from their legal obligation to repay a co-signed student loan; or
- i. Disclosure, accessibility, and availability of options to discharge or reduce student loan debt in the event of the death or disability of a borrower or co-signer.

Practices related to student loan repayment for borrowers in distress

- (2) Please describe the extent to which issues related to the following common student loan servicing policies and procedures should inform policymakers and market participants considering options to improve the quality of student loan servicing for borrowers in distress, including but not limited to:
- a. Procedures servicers utilize to ensure that borrowers can avail themselves of alternative repayment options;
 - b. The circumstances in which a fee occurs or should be permissible, and the manner of disclosure of servicing-related fees, including those imposed for modifications or cessation of payment (e.g. forbearance or deferment);

- c. The offering and disclosure of variable rate private loans that increase the interest rate based on borrower behavior, including missed payments;
- d. Policies and procedures related to acceleration of debts (including the availability and disclosures of co-signer release policies);
- e. Disclosure, accessibility, and availability of affordable modification options; or
- f. The adequacy and clarity of communication regarding certain borrower rights to discharge debt (e.g., in cases of school misconduct, borrower disability).

Impact of practices related to student loan repayment for borrower segments with unique characteristics

(3) Please identify any unique issues that are specific to certain segments of the student loan borrower population related to the common student loan servicing practices, operations, policies, and procedures described above. Responses should consider borrower segments with unique characteristics, including but not limited to servicemembers, veterans, and their families; first-generation college attendees; current or former attendees of Historically Black Colleges and Universities (HBCU) or Minority-Servicing Institutions (MSI); and older Americans.

Part Two: Applicability of consumer protections from other consumer financial product markets

Respondents may wish to evaluate existing loan servicing protections for consumers in other markets, including protections for consumers with mortgages and credit cards. The following questions seek to solicit feedback on any conduct requirements required by statute, regulation, consent decree or other means that should inform policymakers and market participants when considering options to improve the quality of student loan servicing. Respondents may wish to consider aspects of loan servicing in these markets that are common across products and may

also wish to note differences between types of loan servicing that may make the delivery of service unique to a particular market. Responses need not address all questions in this section and need not be limited to the specific provisions identified below.

Requirements related to mortgage servicing practices

(4) Describe any mortgage servicing standards or other provisions under RESPA, TILA or the Home Ownership and Equity Protection Act (HOEPA) that should inform policymakers and market participants considering options to improve the quality of student loan servicing.

Responses need not be limited to requirements related to:

- a. **Payment handling.** Specific conduct requirements for mortgage servicers related to payment handling, including payoff requests or prompt crediting of payments, and to periodic statements, including the timing of periodic statements or specific periodic statement disclosures for delinquent borrowers.
- b. **Servicing transfers.** Specific conduct requirements for mortgage servicers in the event of a servicing transfer, including requirements related to the timing of notices in the event of a transfer of servicing, record retention requirements for the transferor servicer, or prohibitions against certain late fees and treating certain payments as late for a fixed period following the transfer of servicing.
- c. **Error resolution.** Specific conduct requirements for mortgage servicers related to error resolution and requests for information, including notices required upon receipt of a written notice of error or request for information, requirements related to investigations and error resolution, requirements related to the production of requested information, and notices required if requested information is not available.

- d. **Interest rate adjustment notifications.** Specific conduct requirements for mortgage servicers related to interest rate adjustment notifications, including notice of interest rate adjustment prior to the first payment at a new rate and notice of rate adjustment prior to the first payment due after the rate adjusts, if payment will change.
- e. **Loan counseling.** Specific conduct requirements for creditors related to homeownership counseling, including the timely provision of information about homeownership counseling organizations or requirements related to the confirmation of consumer's completion of homeownership counseling prior to making a loan that permits negative amortization to a first-time borrower.

Requirements related to mortgage servicing for borrowers in distress

- (5) Describe any mortgage servicing standards or other provisions under RESPA, TILA, or HOEPA that should inform policymakers and market participants considering options to improve the quality of student loan servicing for distressed borrowers. Responses need not be limited to specific conduct related to:
 - a. **Live contact.** Specific conduct requirements for mortgage servicers related to outreach to delinquent borrowers, including the requirement for mortgage servicers to establish or make good faith efforts to establish live contact with borrower early in borrowers' delinquency.
 - b. **Loss mitigation information.** Specific conduct requirements for mortgage servicers related to the disclosure of loss mitigation options, including the requirement for mortgage servicers to maintain policies and procedures reasonably designed to ensure that servicer personnel assigned to a delinquent borrower provide the borrower with

accurate information about loss mitigation options and actions the borrower must take to be evaluated for such loss mitigation options.

- c. **Timing requirements for foreclosure filings.** Specific conduct requirements for mortgage servicers related to timing for foreclosure filings, including the specific prohibition on mortgage servicers from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process until after a borrower becomes delinquent for a certain period of time. Respondents may wish to contrast these requirements with conduct requirements in place related to servicing student loans in late-stage delinquency.
- d. **Assignment of continuity of contact personnel.** Specific conduct requirements for mortgage servicers related to ensuring borrowers can access customer service personnel, including the requirement for mortgage servicers to maintain policies and procedures reasonably designed to achieve the objective of assigning continuity of contact personnel (which can be one or a team of personnel) to a delinquent borrower who will be available via telephone, and will provide a live response to a borrower immediately or in a timely manner.
- e. **Conduct by continuity of contact personnel.** Specific conduct requirements for mortgage servicers related to customer service provided by continuity of conduct personnel, including the requirement for mortgage servicers to have reasonable policies and procedures reasonably designed to ensure that assigned continuity of contact personnel retrieve in a timely manner written information the borrower provided to the servicer (or prior servicers) in connection with a loss mitigation application and provide

such information to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable.

- f. **Prohibition on recommending default.** Specific conduct requirements for creditors related to conditions under which a creditor can recommend refinancing of a high-cost mortgage, including a prohibition on recommending default on an existing loan.
- g. **Prohibition on certain fees.** Specific conduct requirements for creditors related to fees charged to borrowers, including the requirement that creditors, servicers and assignees cannot charge a fee to modify, defer, renew, extend, or amend a high-cost mortgage, the restriction of late fees to four percent of the past due payment and rules for imposing late fees when a consumer resumes making payments after missing one or more payments, or the limitation on the imposition of fees for payoff.

Requirements related to servicing practices in the credit card market

- (6) Describe any protections afforded to consumers with credit cards, including but not limited to protections under the Credit CARD Act of 2009 (15 U.S.C. § 1637), to inform policymakers and market participants considering options to improve the quality of student loan servicing. Responses should consider, but should not be limited to:
 - a. **Notice of rate increases and significant changes.** Specific conduct requirements for card issuers related to written notice of an increase in an annual percentage rate or any other significant change, including the requirement that such notice be sent 45 days prior to the effective date of the rate increase or change.
 - b. **Notice of certain penalties for late payments.** Specific conduct requirements for card issuers related to written notices required in response to borrowers' failure to make a

minimum payment within 60 days of the due date, including the notice requirement triggered when a card issuer increases the APR or fees.

- c. **Timing of periodic statements.** Specific conduct requirements for card issuers related to the timing of periodic statements, including the requirement that a creditor may not treat a payment on an open-end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement is mailed or delivered to the consumer no later than 21 days before the payment due date.
- d. **Posting of payments.** Specific conduct requirements for card issuers related to the posting of payments, including the requirement that credit card companies credit or treat as on time all payments received by 5 p.m. on the day they are received.
- e. **Fees for processing payments.** Specific conduct requirements for card issuers related to fees for processing payments, including the requirement that a creditor may not impose a separate fee to allow the borrower to repay an extension of credit or finance charge, such as a fee for processing a payment, unless such payment involves an expedited service by a service representative of the creditor.
- f. **Application of payments.** Specific conduct requirements for card issuers related to the application of payments, including the requirement that credit card companies upon receipt of a payment in excess of the minimum payment amount due, must first apply the excess to the card balance bearing the highest interest rate, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.
- g. **Limitations on changes to fees, charges and annual percentage rates.** Specific conduct requirements for card issuers related to certain changes to terms, including the

requirement that a card issuer may not elect to increase the annual percentage rate or assess fees or other charges, with some exceptions.

- h. **Disclosures related to payments and interest charges.** Specific conduct requirements for card issuers related to disclosures about payment application and interest charges, including the requirement that credit card issuer provide disclosures on consumers' periodic statements warning them that if they make only minimum payments on their accounts, they will pay more in interest, and it will take longer to pay off their account balance.
- i. **Online publication of certain documents.** Specific conduct requirements for card issuers related to the publication of certain documents online, including the requirement for a creditor to establish and maintain an Internet site and post the written agreement between the creditor and the consumer for each credit card account under an open-end consumer credit plan and that the creditor provide in electronic format the credit card agreement on the creditor's website.

Other requirements related to loan servicing

- (7) To what extent should the specific conduct requirements included in settlements between financing services providers and state law enforcement agencies inform policymakers and market participants considering options to improve the quality of student loan servicing? Respondents may wish to address, but need not be limited to, specific requirements contained in the National Mortgage Settlement (NMS), including protections related to members of the military and their families.
- (8) Describe any other standards of conduct required by statute, regulation, consent decree or other means that should inform policymakers and market participants when considering

options to improve the quality of student loan servicing, including but not limited to, provisions related to:

- a. Payment handling and allocations;
 - b. Periodic statement requirements;
 - c. Disclosures required on periodic statements;
 - d. Servicing transfers;
 - e. Dispute resolution procedures;
 - f. Request for information;
 - g. Interest rate adjustment notifications;
 - h. The imposition of fees;
 - i. Imposition of interest rate penalties in response to changes in customer behavior;
 - j. The availability and accessibility of affordable repayment options; or
 - k. The ability for a lender to place a borrower or co-signer in default based on consumer behavior other than missed payments.
- (9) Describe the extent to which the existing statutory or regulatory protections afforded to consumers under the following laws should inform policymakers and market participants considering options to improve the quality of student loan servicing:
- a. Truth in Lending Act;
 - b. Real Estate Settlement Procedures Act;
 - c. Fair Credit Reporting Act;
 - d. Fair Debt Collection Practices Act;
 - e. Electronic Funds Transfer Act;
 - f. Higher Education Act; or

g. Federal Trade Commission Act.

Part Three: Impact of limits on availability of data about student loan servicing and student loan repayment on borrowers

The following section seeks to solicit input about the availability of data on student loan performance and on borrower characteristics during repayment. Respondents should consider existing data sources and gaps in availability that should inform policymakers and market participants considering options to improve the quality of student loan servicing.

(10) To what extent do available data and reports about student loan repayment reveal usage and specific risks to student loan borrowers, including those related to:

- a. Loan performance, delinquency, and default;
- b. Utilization of income-driven payment plans and other alternative repayment options; or
- c. Utilization of repayment options that result in temporary cessation of payment, including deferment and forbearance.

(11) To what extent do gaps in available data create problems for policymakers or other stakeholders seeking to evaluate consumer risks as it relates to student loan servicing?

(12) To what extent are publicly available data sets in other consumer financial markets (e.g., the Bureau's Home Mortgage Disclosure Act microdata, the OCC's monthly mortgage metrics, and the Bureau's Credit Card Agreement Database) instructive as policymakers consider ways to better afford the public and regulators the ability monitor trends in the market and assess consumer risks?