

October 2017

Annual report of the CFPB Student Loan Ombudsman

Strategies for consumer-driven reform



Table of contents

| | |
|--|-----------|
| Executive summary..... | 2 |
| 1. About this report..... | 6 |
| 2. Student loan complaint data..... | 7 |
| 2.1 Federal student loan complaints | 7 |
| 2.2 Private student loan complaints..... | 18 |
| 2.3 Debt collection complaint data..... | 26 |
| 3. Ombudsman's discussion | 33 |
| 4. Recommendations..... | 63 |
| 5. Contact information..... | 67 |

Executive summary

- Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, this annual report analyzes complaints submitted by consumers between September 1, 2016 and August 31, 2017. During this period, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) handled approximately 12,900 federal student loan servicing complaints, 7,700 private student loan complaints, and approximately 2,300 debt collection complaints related to private or federal student loan debt.
- During the reporting period, consumers with student loans submitted complaints about more than 250 companies, including student loan servicers, debt collectors, private student lenders, and companies marketing student loan “debt relief.” These consumers identified a range of payment processing, billing, customer service, borrower communications, and income-driven repayment (IDR) plan enrollment problems. The Bureau’s analysis of these complaints suggests that borrowers assigned to the largest student loan servicers may encounter widespread problems, whether these borrowers are trying to get ahead or struggling to keep up with their student debt.
- Since 2012, the Bureau has handled complaints from individual student loan borrowers, and the CFPB Student Loan Ombudsman has monitored these complaints. Each year, reports by the Student Loan Ombudsman emphasize the individual challenges borrowers identify in their complaints. These reports also highlight where challenges may be systemic in nature and illustrate where law enforcement, regulatory action, or market-driven reform may be necessary to better protect similarly situated student loan borrowers.
- From July 21, 2011 through August 31, 2017, CFPB handled over 50,700 private and federal student loan complaints, and about 9,800 debt collection complaints related to private or federal student loan debt. These complaints have served as the critical link in a process through which government agencies and market participants have repeatedly taken action to

improve the student loan system for millions of Americans. In effect, these complaints have led to actions that have collectively returned more than \$750 million to student loan borrowers.

- This report offers three illustrative examples of how an effective consumer complaint process can empower individual consumers to shape public policy. The report describes how consumer complaints led to reforms that expanded invocation of protections through automation; improved borrower outcomes through enhanced, timely, and accurate borrower communication; and mitigated risk of unanticipated borrower harm by spurring industry to make changes to key loan terms.
 - In the first example, servicemembers with student loans submitted complaints to the Bureau that described servicing practices that inhibited access to a specific consumer protection established under the federal Servicemember Civil Relief Act (SCRA). In 2012, the Student Loan Ombudsman and the Bureau’s Office of Servicemember Affairs described the obstacles servicemembers were facing in a public report and also shared these complaints with other federal agencies. These complaints informed enforcement actions by the Department of Justice (DOJ) and the Federal Deposit Insurance Corporation (FDIC), which halted illegal practices at one large student loan servicer and returned more than \$60 million to 77,000 servicemembers. Following this action, the Department of Education improved processes for the invocation of specific consumer protections under the SCRA to better protect federal student loan borrowers serving on active duty. As a consequence of this coordinated interagency work, more than 100,000 military borrowers have automatically saved more than \$20 million in student loan interest charges each year since 2015. This example offers insight into the benefits of automation-driven reform as policymakers seek to strengthen many other aspects of the student loan repayment process.
 - In the second example, borrowers seeking to enroll in IDR plans submitted complaints to the Bureau describing a range of servicing practices that delayed or deterred access to promised payment relief. The Student Loan Ombudsman published a report recounting these problems and, in 2016, the Bureau’s Office of Supervision cited one or more student loan servicers for the unfair practice of “denying, or failing to approve, IDR applications that should have been approved on a regular basis.” The Department of Education’s Office of Federal Student Aid (FSA) also responded to concerns related to IDR application processing in 2016 by strengthening its contractual requirements for

servicers handling student loans owned by the federal government by requiring these servicers to proactively communicate with student loan borrowers who submit incomplete IDR applications. Since these changes, more than 700,000 new federal Direct Loan borrowers have successfully applied for and enrolled in an IDR plan. This example may be instructive before considering steps to “streamline” repayment assistance options by limiting the range of benefits and protections available to consumers with student debt. Clear, plain language disclosures and “just-in-time” communication about available and applicable options can simplify the presentation of information and strengthen the student loan repayment process.

- The final example illustrates where borrower complaints can expose an industry practice that harms consumers and, at the same time, does not serve an essential market function. In this example, individual consumers submitted complaints about private student loan “auto defaults” – the process of calling into default and attempting to collect on a private student loan following the death of, or bankruptcy filing by, a cosigner, even when the borrower is making required payments on time and in full each month. Subsequently, the Bureau’s Office for Supervision cited the practice of auto-defaulting private student loan borrowers to be unfair in cases where the “Whole Loan Due” clause was ambiguous. Ultimately, the largest private lenders have largely ceased including provisions in their new contracts that could be interpreted to permit “auto-defaults” for performing loans and abandoned this practice with respect to their current customers. As policymakers consider reforms that may expand the private student loan market, this example illustrates how features of private student lending can present potential risks to consumers, and how complaints and robust oversight can move the market to mitigate risk of unanticipated borrower harm through consumer-driven reforms to product features.
- In each of the previous three examples, individual consumer complaints led to increased scrutiny by regulators or law enforcement agencies with the authority, tools, and will to take action on behalf of these borrowers after these complaints were highlighted by the Student Loan Ombudsman. These examples provide a roadmap for policymakers to achieve additional consumer-driven reforms and illustrate how individual borrowers can shape changes to government policies and industry practices.
- This report also offers recommendations to policymakers and market participants. In this section, the CFPB Student Loan Ombudsman describes how student loan borrowers benefit

from continued robust, coordinated, and consumer-driven oversight of the student loan industry by federal and state agencies. Further, this report recommends standards to strengthen servicing practices for the servicing of all student loans and accountability for servicers to meet these standards.

1. About this report

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) established a Student Loan Ombudsman within the Bureau. Pursuant to the Act, the Ombudsman shall compile and analyze data on student loan complaints and make appropriate recommendations to the Secretary of the Treasury, the Director of the Consumer Financial Protection Bureau, the Secretary of Education, and Congress.

This report analyzes approximately 12,900 federal student loan servicing complaints, 7,700 private student loan complaints, and approximately 2,300 debt collection complaints related to private or federal student loan debt handled between September 1, 2016 and August 31, 2017. Figures are current as of October 1, 2017.

2. Student loan complaint data

Sources of Information

To identify the range of issues faced by student loan borrowers, this report relies on complaints handled by the Bureau. We also reviewed other information, such as comments submitted by the public in response to requests for information, submissions to the “Tell Your Story” feature on the Bureau’s website, and input from discussions with consumers, regulators, law enforcement agencies, and market participants.¹

2.1 Federal student loan complaints

From September 1, 2016 through August 31, 2017, the Bureau handled approximately 12,900 federal student loan complaints.

¹ This report does not suggest the prevalence of the issues described as they relate to the entire student loan market. The information provided by borrowers helps to illustrate where there may be a mismatch between borrower expectations and actual service delivered. We do not verify the facts alleged in these complaints, but we take steps to confirm a commercial relationship between the consumer and the company. Representatives from industry and borrower assistance organizations will likely find the inventory of borrower issues helpful in further understanding the diversity of customer experience in the market.

2.1.1 Federal student loan complaint data

The following tables are based on complaints sent to companies from September 1, 2016, through August 31, 2017, as exported from the public Consumer Complaint Database as of October 1, 2017.²

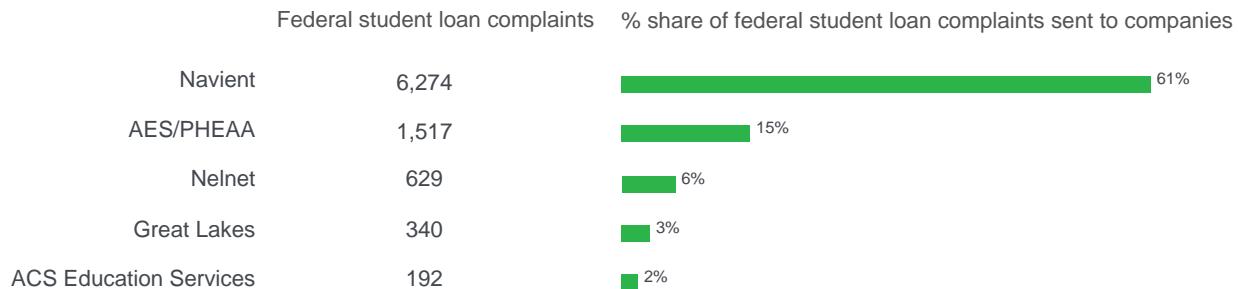
FIGURE 1: FEDERAL STUDENT LOAN ISSUES REPORTED BY CONSUMERS FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: Consumers submitting student loan complaints can select from the following four types of complaint categories: “Getting a loan,” “Can’t pay my loan,” and “Dealing with my lender or servicer”, and “Problem with credit report or score.” The Bureau first began to make it possible for consumers to submit complaints about credit reporting issues when submitting a complaint about another financial product in April 2017. This figure reflects the categories consumers selected when submitting a complaint.

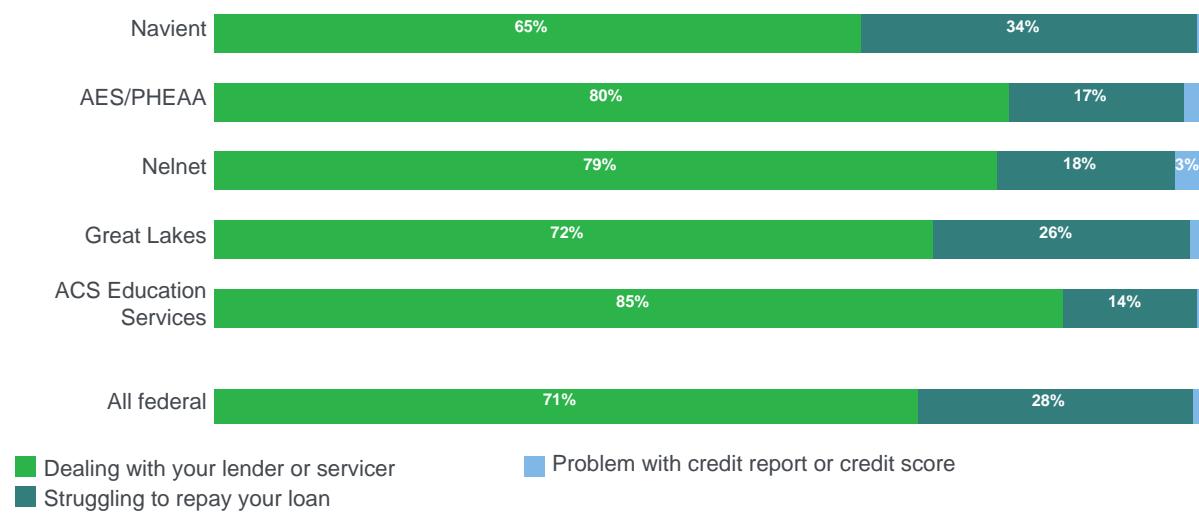
² Not all complaints handled by the Bureau are published in the public Consumer Complaint Database. Complaints are listed in the database after a company responds or after has had the complaint for 15 calendar days, whichever comes first. Complaints that do not meet publication criteria may be removed from the database. The publication criteria are available at http://files.consumerfinance.gov/f/201303_cfpb_Final-Policy-Statement-Disclosure-of-Consumer-Complaint-Data.pdf. Therefore, the number of complaints published in the database may be fewer than the total number of complaints handled by the Bureau.

FIGURE 2: COMPANIES WITH THE MOST FEDERAL STUDENT LOAN COMPLAINTS SENT TO COMPANIES RANKED BY VOLUME FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects complaints where (1) the consumer identified the sub-product as a federal student loan and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table reflects the top companies by complaint volume for the period of September 1, 2016 through August 31, 2017.

FIGURE 3: ISSUES IDENTIFIED IN FEDERAL STUDENT LOAN COMPLAINTS BY COMPANY FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects complaints where (1) the consumer identified the sub-product as a federal student loan, (2) the consumer identified the issue and (3) the identified company responded to the complaint, confirming a relationship with the consumer. This table reflects the top companies by complaint volume. When preparing the images for this report, a graphical error was made in Figure 3 and reflected in the version published on October 16, 2017. Figure 3 has since been updated.

2.1.2 Issues identified in federal student loan complaints

As noted above, during the reporting period, the Bureau handled more than 12,900 complaints about federal student loans. Consumers have submitted federal student loan complaints about problems against over 150 companies covering nearly every aspect of the student loan repayment lifecycle. The following section highlights some of the most significant issues raised by consumers who submitted federal student loan complaints during the reporting period.

BORROWERS COMPLAIN ABOUT PROBLEMS ACCESSING FEDERAL STUDENT LOAN PROTECTIONS

The Higher Education Act provides for a series of protections intended to facilitate repayment success, including the ability to make income-driven payments, receive loan discharge in the event of total and permanent disability, and consolidate older federal loans to become eligible for specific loan benefits.³ Yet federal student loan borrowers continue to struggle to access the protections guaranteed under federal law, many of which are designed to help borrowers avoid delinquency and default during periods of economic disruption or distress.⁴ The Bureau has previously discussed how servicing breakdowns can delay, deter, or deny access to federal benefits and protections, rendering them illusory for many student loan borrowers.⁵ For

³ See, e.g., 20 U.S.C. §§ 1078-3(b)(5) (authorizing Federal Family Education Loan Program (FFELP) loan borrowers to consolidate their loans into a Direct Consolidation Loan in order to obtain certain IDR options or Public Service Loan Forgiveness), 1087(a) (authorizing disability discharge for FFELP loan borrowers), 1098e (authorizing the Income-Based Repayment program for FFELP loan borrowers with partial financial hardships), 1087e(e) (authorizing IDR options for Direct Loan borrowers).

⁴ For a discussion on the range of programs available to federal student loan borrowers experiencing financial distress, see Consumer Financial Protection Bureau (CFPB), *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

⁵ See, e.g., CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (highlighting how the ability to access IDR plans is critical to repayment success); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), <https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman> (explaining how IDR enrollment is

example, nearly all federal student loan borrowers have the right to make payments based on their income through an IDR plan.⁶ The Bureau has also repeatedly documented how the ability to enroll in and maintain an IDR plan is crucial for struggling borrowers hoping to avoid default.⁷ However, borrowers continue to complain to the Bureau that servicing roadblocks may delay or block their ability to make income-driven payments.

Borrowers complain about encountering obstacles when seeking to enroll in IDR plans. Borrowers report experiencing servicing obstacles when trying to enroll in an IDR plan, such as unexpected delays, lost paperwork, poor customer service, and inconsistent application processing. Borrowers describe how these obstacles can increase loan costs, reduce benefits, and

essential to preventing previously defaulted federal student loan borrowers from re-defaulting on their loans); CFPB, *Staying on track while giving back: The cost of student loan servicing breakdowns for people serving their communities* (Jun. 22, 2017), <https://www.consumerfinance.gov/data-research/research-reports/staying-track-while-giving-back-cost-student-loan-servicing-breakdowns-people-serving-their-communities>; see also CFPB, *Update from the CFPB Student Loan Ombudsman* (May 16, 2017), http://files.consumerfinance.gov/f/documents/201705_cfpb_Update-from-Student-Loan-Ombudsman-on-Redefaults.pdf (presenting data from servicers that show “the vast majority (greater than 90 percent) of borrowers who rehabilitated one or more defaulted loans were not enrolled and making IDR payments within the first nine months after ‘curing’ a default”).

⁶ See 20 U.S.C. § 1098e(b). Income-Based Repayment (IBR) is one of several types of IDR plans. While all IDR plans peg a borrower’s payment amount to the borrower’s discretionary income and family size, the individual plans each have slightly different terms, the most prominent of which is the percentage of discretionary income used to determine the payment (e.g., IBR payments are set at 15 percent of a borrower’s discretionary income, while payment under Pay As You Earn (PAYE), another IDR plan, are set at 10 percent of a borrower’s discretionary income). See, e.g., 34 C.F.R. §§ 682.215 (defining IBR for FFELP borrowers); 685.209 (defining PAYE, Income-Contingent Repayment (ICR), and Revised Pay As You Earn (REPAYE) for Direct Loan borrowers), 685.221 (defining IBR for Direct Loan borrowers); see also CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (discussing the different IDR options available to federal student loan borrowers).

⁷ See, e.g., CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (highlighting how the ability to access IDR plans is critical to repayment success); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), <https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman> (explaining how IDR enrollment is essential to preventing previously defaulted federal student loan borrowers from re-defaulting on their loans); see also CFPB, *Update from the CFPB Student Loan Ombudsman*, *supra* note 5.

extend repayment terms for consumers.⁸ For example, borrowers complain that when seeking to use a pay stub instead of their tax return to prove their income, their application may sit under review for months at a time, inhibiting them from making progress repaying their loan.⁹

Borrowers also complain that when providing their servicer with income documentation other than a tax return, their servicer may incorrectly calculate their income-driven payment amount, resulting in payments that are higher than expected. Other borrowers complain that when they reach out to their servicer because their standard monthly payment is unaffordable, they are directed to options like forbearance or extended repayment, which may be costlier over the long-term. Borrowers with loans in forbearance complain that while it may provide short-term relief, had they known about and enrolled in IDR options, they could have continued to make progress repaying their loans at an affordable amount.¹⁰

Borrowers report that when they attempt to recertify their IDR plan, their loans are placed into forbearance, despite their right to continue making IDR payments while their new payment amount is determined. Borrowers are required to annually recertify their income and family size in order to continue to qualify for an affordable monthly

⁸ See also CFPB, *CFPB Data Point: Student Loan Repayment* (Aug. 16, 2017), <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-student-loan-repayment> (finding that 23 percent of small-loan borrowers (less than \$20,000) are not making payments large enough to reduce their balances. Over half of this group is made up of borrowers who are delinquent or in default on their student loans.).

⁹ Borrowers may use alternative documentation such as pay stubs to certify their income if their tax returns are not representative of their current income. See, e.g., 34 C.F.R. §§ 682.215(e)(1)(ii), 685.209(a)(5)(B), (b)(3)(i), (c)(4)(B). As the Bureau previously reported, half of all borrowers enrolled in IDR plans used alternative documentation to certify their income. See CFPB, *Midyear update on student loan complaints* (Aug. 2016), files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf (reporting on complaints describing how student loan servicers may delay processing IDR applications and wrongfully reject borrowers seeking to enroll in IDR, resulting in increased interest charges and lost eligibility for certain federal benefits and protections).

¹⁰ IDR options provide for loan forgiveness after 240 or 300 payments (20 or 25 years). See 34 C.F.R. §§ 682.215(f), 685.209(a)(6), (b)(3)(D), (c)(5)(iii)(A).

payment under an IDR plan.¹¹ Generally, servicers are expected to process borrowers' recertification applications in a few weeks.¹² However, when this process takes longer, borrowers are entitled under federal law to continue making income-driven payments at the same amount until their new payment is calculated.¹³ Borrowers complain that when their recertification application is not timely processed by their servicers, rather than extending their current income-driven payments, servicers require that borrowers make their full, standard monthly payment amount, or direct them to enter forbearance. Borrowers complain that when their standard monthly payment is unaffordable, forbearance is their only realistic option. Borrowers further complain that their loans may spend months in forbearance while their recertification application is under review, preventing them from progressing towards loan forgiveness available through IDR forgiveness options or Public Service Loan Forgiveness (PSLF).¹⁴

¹¹ See 34 C.F.R. §§ 682.215(e), 685.209(a)(5), (b)(1)(v), (c)(4); see also CFPB, *When you make student loan payments on an income-driven plan, you might be in for a payment shock* (Aug. 17, 2015), <https://www.consumerfinance.gov/about-us/blog/when-you-make-student-loan-payments-on-an-income-driven-plan-you-might-be-in-for-a-payment-shock>.

¹² In order to recertify an IDR plan, borrowers should submit recertification paperwork no later than 25 days before the end of each annual period. Servicers are then expected to process the paperwork and determine the borrower's payment amount for the next year before the next annual period begins. See 34 C.F.R. §§ 682.215(e)(3)(i), 685.209(a)(5)(iii)(A), (b)(3)(vi)(B)(1), (c)(4)(iii)(A); see also CFPB, *Education loan examination procedures* (June 22, 2017), <http://content.consumerfinance.gov/policycompliance/guidance/supervision-examinations/education-loan-examination-procedures>; CFPB, *Response Letter from Student Loan Ombudsman Seth Frotman to NCLC Director Persis Yu* (May 2, 2017), <http://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/cfpb-idf-drt-response-letter.pdf>.

¹³ See 34 C.F.R. §§ 685.209(a)(5)(viii)(A), (b)(3)(vi)(E), (c)(4)(viii)(A), 685.221(e)(8)(i), (ii); see also CFPB, *Staying on track while giving back: The cost of student loan servicing breakdowns for people serving their communities* (Jun. 22, 2017), <https://www.consumerfinance.gov/data-research/research-reports/staying-track-while-giving-back-cost-student-loan-servicing-breakdowns-people-serving-their-communities>.

¹⁴ Federal student loan borrowers can have their loans forgiven after 20 or 25 years of making payments under an IDR plan, or after 10 years of making qualifying payments while working in public service. See 34 C.F.R. §§ 682.215(f), 685.209(a)(6), (b)(3)(D), (c)(5)(iii)(A) (defining loan forgiveness requirements under IDR plans); 34

Borrowers with older federal student loans, including federally guaranteed bank-based loans, continue to complain about struggles accessing basic loan protections. In 2015, the Bureau documented how borrowers with older bank-based loans made under the Federal Family Education Loan Program (also known as commercial FFELP loans) experienced servicing roadblocks, particularly when seeking to enroll in an IDR plan.¹⁵ During this reporting period, the Bureau continued to receive complaints from borrowers with commercial FFELP loans who reported experiencing a range of servicing problems, including struggling to access income-driven plans, facing delays when trying to consolidate their loans to become eligible for specific federal benefits, or not receiving accurate information from their servicer about their current eligibility for certain benefits. These borrowers complain that these servicing problems increase the cost of their loans over the long-term.

VULNERABLE GROUPS OF STUDENT LOAN BORROWERS ARE ACUTELY IMPACTED BY SERVICING BREAKDOWNS

Certain groups of borrowers may be acutely affected by servicing breakdowns that increase the burden of their student debt. Vulnerable borrowers, including older borrowers and borrowers with severe disabilities, complain about federal student loan servicing problems that can exacerbate their financial distress. This is particularly concerning given the increasing levels of debt owed by some of these borrowers.¹⁶ The Bureau has reported how older consumers with federal student loans are particularly vulnerable to servicing breakdowns because the financial consequences of default can be particularly severe. For example, Social Security retirement

C.F.R. § 685.219(d) (providing loan forgiveness for borrowers who make 120 qualified payments under the Public Service Loan Forgiveness (PSLF) program).

¹⁵ See CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2015), http://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf.

¹⁶ See CFPB, *A nationwide look at how student debt impacts older adults* (Aug. 18, 2017), <https://www.consumerfinance.gov/about-us/blog/nationwide-look-how-student-debt-impacts-older-adults> (finding that student debt owed by older borrowers has grown by 50 percent across the country over the last five years, the number of older borrowers increased by at least 20 percent in every state, and the rate of older borrowers in delinquency increased in all but five states).

benefits can be offset to repay federal student loans in default, which can be financially devastating for older borrowers living on fixed incomes.¹⁷ The Bureau continues to hear complaints from older borrowers explaining how they struggle to access information about how to avoid default or how to cure a default.

Borrowers with permanent disabilities who receive Social Security disability benefits risk having their benefits offset if their federal student loans default.¹⁸ All federal student loan borrowers who are totally and permanently disabled have a right to have their loans discharged through the Total and Permanent Disability (TPD) discharge process.¹⁹ However, borrowers complain to the Bureau about issues related to many stages of the TPD discharge process, from knowing how or when to apply, to providing sufficient proof of their disability. When borrowers cannot afford their monthly payments and are unable to access their discharge protections, they become at risk of default. Borrowers who are disabled complain to the Bureau that when their federal student loans default and their Social Security disability benefits are offset, they struggle to afford basic necessities like housing and medication.²⁰

¹⁷ See CFPB, *Snapshot of older consumers and student loan debt* (Jan. 2017), http://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf; see also Gov't Accountability Office (GAO), *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief* (Dec. 2016), <http://www.gao.gov/assets/690/681722.pdf>.

¹⁸ See Social Security Administration, *The Treasury Offset Program (TOP)*, GN 02201.029 (Mar. 9, 2016), <http://policy.ssa.gov/poms.nsf/lnx/0202201029> (establishing policies and procedures for implementing the Debt Collection Improvement Act of 1996). Federal student loans, generally, may not be discharged through bankruptcy, and upon default, the federal government may offset the borrower's Social Security benefits. In contrast, private student loan lenders cannot offset Social Security disbursements to collect the debt. See CFPB, *Consumer advisory: Your benefits are protected from garnishment* (May 13, 2015), <https://www.consumerfinance.gov/about-us/blog/consumer-advisory-your-benefits-are-protected-from-garnishment/>.

¹⁹ See 34 C.F.R. §§ 674.61, 682.402, 685.213.

²⁰ See GAO, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers Obtaining Permitted Relief*, GAO-17-45 (Dec. 19, 2016), <https://www.gao.gov/assets/690/681722.pdf> ("The Social Security benefits that the Treasury offsets are Federal Old-Age, Survivors, and Disability Insurance

Borrowers further complain that even when their loans do get discharged, the credit reporting can be inaccurate, causing continued financial strain. For example, one veteran with a service-connected disability reported that her discharged loans were inaccurately reported, and it took her nearly a year of phone calls, letters, and credit disputes to correct the error. She complained:

I am a 100% disabled veteran. My status was official through the Department of Veterans Affairs in 2011. I contacted [my servicer] and informed them of my disability status . . . I submitted all required documentation of my status. Somehow the process of discharging my student loan debt, slipped through the cracks and my account showed delinquent. My loans are currently discharged due to my disability status, but it should have never been reported as delinquent. [My servicer] discharged all student loan debt under Total and Permanent Disability application that I filed. The letter for approval states I was eligible as of [2011]. My family and I are suffering greatly by the reporting practices of all . . . major credit reporting bureaus.²¹

Military borrowers continue to complain about problems accessing servicemember protections. Over the past several years, the Bureau has reported about the unique issues faced by military student loan borrowers.²² These reports documented complaints from servicemembers who struggled to access student loan protections guaranteed by federal law, such as interest rate caps under the Servicemembers Civil Relief Act (SCRA), automatic

Benefits, issued under Title II of the Social Security Act. Treasury does not differentiate among retirement, survivor, and disability benefits in administering Social Security benefit offsets, since all of these benefits are eligible for offset").

²¹ <https://data.consumerfinance.gov/dataset/2404146/e77b-5au3>.

²² See, e.g., CFPB, *The Next Front? Student Loan Servicing and the Cost to Our Men and Women in Uniform* (Oct. 2012), <https://www.consumerfinance.gov/data-research/research-reports/the-next-front-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform-3>; CFPB, *Overseas & Underserved: Student Loan Servicing and the Cost to Our Men and Women in Uniform* (July 2015), <https://www.consumerfinance.gov/data-research/research-reports/overseas-underserved-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform>.

recertification of IDR plans, and zero percent interest rate reductions while serving in areas of hostility.²³ The Bureau continues to hear from military borrowers struggling to access basic protections. For example, military borrowers complain about difficulties when trying to recertify their IDR plans while on active duty. Borrowers report that they are unable to find solutions after repeated communications with their servicer about their application, resulting in them having to place their loans in forbearance. Military borrowers also complain that servicers may not apply SCRA benefits appropriately. For example, borrowers complain that servicers may fail to apply the interest rate cap starting as of the date on which borrowers' active duty started. Additionally, veterans with service-connected disabilities complain that they struggle to get their loans discharged after the Veterans Administration determines them to be totally and permanently disabled.

Low balance borrowers complain about servicing issues that raise barriers to accessing the benefits of affordable repayment plans. The Bureau has previously noted that for many low balance borrowers, the benefits of affordable payment options remain elusive.²⁴ Borrowers with loan balances of less than \$20,000 complain that they are unable to access the full benefits of affordable repayment plans, facing delays and denials that result in them owing a higher monthly payment amount. Other low balance borrowers, including those who did not complete their degree, complain that they are driven into forbearance rather than

²³ See 50 U.S.C. § 3937 (providing for a six percent interest rate cap on debt incurred before military service while a borrower is on active duty); 20 U.S.C. § 1098bb (providing the Secretary of Education with authority to waive certain administrative requirements related to student financial assistance programs, including annual IDR recertification requirements, in connection with a war or other military operation or national emergency); 20 U.S.C. § 1087e(o) (providing for no accrual of interest for active duty servicemembers "serving in an area of hostilities in which service qualifies for special pay"); see also CFPB, *Prepared Remarks of Seth Frotman, Student Loan Ombudsman, before the Judge Advocate General's Legal Center and School* (Oct. 18, 2016), http://files.consumerfinance.gov/f/documents/201610_cfpb_Frotman-Remarks-JAG-School.pdf (raising concerns about the challenges military borrowers face under current HEROES act waiver implementation).

²⁴ See CFPB, *Too many student loan borrowers struggling, not enough benefiting from affordable repayment options* (Aug. 16, 2017), <https://www.consumerfinance.gov/about-us/blog/too-many-student-loan-borrowers-struggling-not-enough-benefiting-affordable-repayment-options>.

receiving help to enroll in an IDR plan. These borrowers complain that a single servicing error that prevents timely approval of their IDR recertification application may result in interest capitalization that significantly increases their principal loan balance.²⁵

Despite having a low balance, these borrowers complain that servicing breakdowns cause them to struggle to repay their debt, resulting in delinquency or default. For example, one borrower complained that after explaining her financial hardship to her servicer, the servicer never discussed any available repayment options, and only steered her into forbearance. Another low balance borrower claimed that after her servicer advised her to spend years in forbearance, her loans became delinquent because she had exhausted her allotted forbearance and was not advised of affordable repayment options.

2.2 Private student loan complaints

From September 1, 2016 through August 31, 2017, the Bureau handled approximately 7,700 private student loan complaints.

2.2.1 Private student loan complaint data

The following tables are based on complaints sent to companies from September 1, 2016, through August 31, 2017, as exported from the public Consumer Complaint Database as of October 1, 2017.²⁶

²⁵ See also CFPB, *CFPB Data Point: Student Loan Repayment* (Aug. 2017), <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-student-loan-repayment> (“[F]ive years after starting repayment over 23% of these small-loan borrowers in recent cohorts are not making payments large enough to reduce their balances.”).

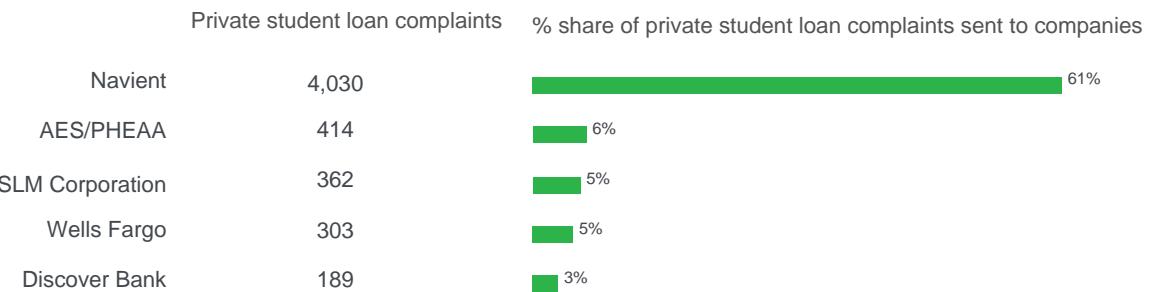
²⁶ See *supra* note 2.

FIGURE 4: PRIVATE STUDENT LOAN ISSUES REPORTED BY CONSUMERS FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



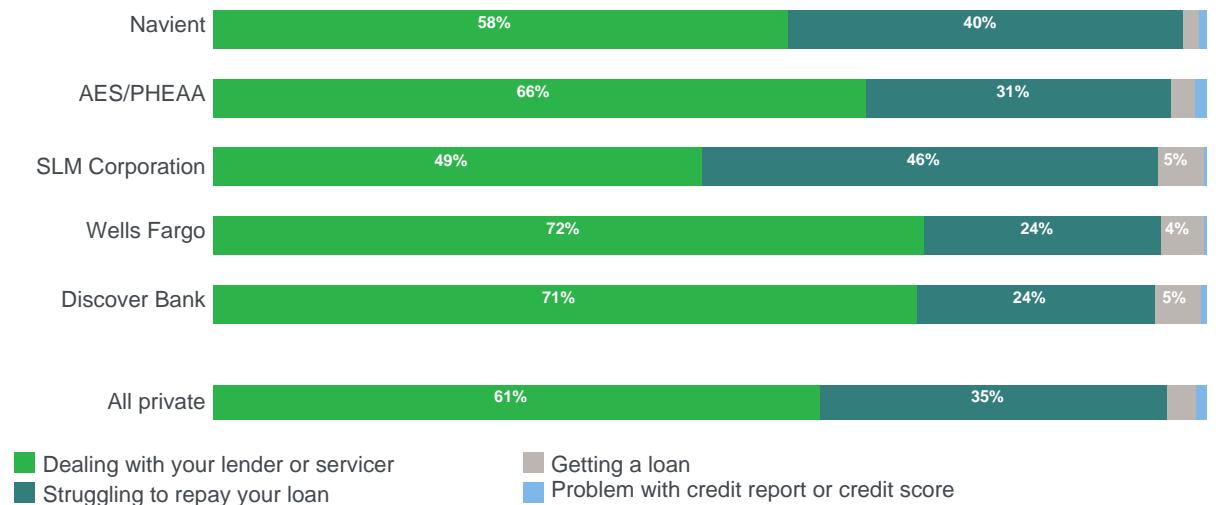
Note: Consumers submitting student loan complaints can select from the following four types of complaint categories: "Getting a loan," "Can't pay my loan," "Dealing with my lender or servicer," and "Problem with credit report or credit score." The Bureau first began to make it possible for consumers to submit complaints about credit reporting issues when submitting a complaint about another financial product in April 2017. This figure reflects the categories consumers selected when submitting a complaint.

FIGURE 5: COMPANIES WITH THE MOST PRIVATE STUDENT LOAN COMPLAINTS SENT TO COMPANIES RANKED BY VOLUME FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects complaints where (1) the consumer identified the sub-product as a private student loan and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table reflects the top companies by complaint volume for the period of September 1, 2016 through August 31, 2017.

FIGURE 6: ISSUES IDENTIFIED IN PRIVATE STUDENT LOAN COMPLAINTS BY COMPANY FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects complaints where (1) the consumer identified the sub-product as a private student loan, (2) the consumer identified the issue and (3) the identified company responded to the complaint, confirming a relationship with the consumer. This table reflects the top companies by complaint volume.

2.2.2 Issues identified in private student loan complaints

Since 2012, the Bureau has repeatedly documented how private student loan borrowers complain that their repayment efforts are sidelined due to servicing errors.²⁷ These problems

²⁷ See, e.g., CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2012), <https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman> (documenting private student loan complaints about improper payment application, untimeliness in error resolution, and inability to obtain an affordable monthly payment); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2013), http://files.consumerfinance.gov/f/201310_cfpb_student-loan-ombudsman-annual-report.pdf (documenting private student loan complaints and noting that just under half of private student loan complaints received during the reporting period were related to consumers seeking a loan modification or other option to reduce their monthly payment in a time of distress); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2014), <https://www.consumerfinance.gov/data-research/research->

can occur whether borrowers are trying to get ahead on their loans, or are struggling to keep up with payments. The Bureau continues to hear from private student loan borrowers who struggle to access promised loan benefits, cannot obtain an affordable repayment plan during periods of financial distress, and cannot effectively direct their payments across multiple loans.²⁸ While the Bureau receives complaints about these issues from all types of borrowers, these problems may create acute challenges for the most vulnerable borrowers, including borrowers on parental leave or borrowers with severe disabilities.

Private student loan borrowers complain that there are limited options for payment relief during periods of financial distress. The Bureau has repeatedly documented how borrowers with private student loans may face additional struggles during times of economic hardship when they are unable to obtain a student loan payment that they can afford.²⁹ During the reporting period, private student loan borrowers complained that when they experienced short-term inability to pay, such as unpaid parental leave or employment furloughs, they struggled to temporarily modify their payments until their income was restored

[reports/annual-report-of-the-cfpb-student-loan-ombudsman-2014](#) (documenting how the issues raised in private student loan complaints mirror the issues seen during the mortgage crisis); CFPB, *Annual report of the CFPB student loan ombudsman 2015* (Oct. 14, 2015), <https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2015> (highlighting the problems experienced by student loan borrowers with older federal student loans made by private lenders); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), <https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman> (highlighting debt collection and servicing problems plaguing the federal programs designed to help defaulted student loan borrowers get on track and into affordable repayment plans).

²⁸ Many private student loans are serviced by non-bank entities. See Figure 5.

²⁹ See, e.g., CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2012), <https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman>; CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2013), http://files.consumerfinance.gov/f/201310_cfpb_student-loan-ombudsman-annual-report.pdf; CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2014), <https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2014>.

due to lack of available options. For example, one borrower with private student loans complained:

I am scheduled to go on maternity leave next month, and will be on leave for 12 weeks. I asked that my payments be temporarily placed on deferment due to the change in my pay. Unfortunately, I was told there were no options to be offered. That I would continue to be responsible for the monthly payments. I have consistently made my payments on time for the last six years. This situation will create an unnecessary burden and stress to an already difficult situation.³⁰

Private student loan borrowers complain about difficulties accessing advertised loan benefits and protections. Some private student lenders offer certain loan benefits to borrowers, such as interest rate reductions for on-time payments, to encourage successful repayment. Borrowers complain to the Bureau about difficulties accessing these benefits, saying that the requirements may be unclear or difficult to satisfy. For instance, borrowers complain about not being able to access repayment incentives when their loans are automatically deferred due to their enrollment status.³¹ Borrowers complain that when servicing errors cause certain benefits to be removed from their loans, it can take months to reactive the benefits, increasing the cost of their loans in the interim.

Other borrowers complain about struggling to access certain programs designed to mitigate the burden of student loan payments during periods of financial hardship. Private student lenders may represent that they offer modified repayment options to borrowers experiencing economic hardship to help borrowers avoid defaulting on their loans. However, when borrowers try to access these modified repayment options, they report receiving inconsistent information on how to qualify from servicing representatives. These borrowers complain that the servicing

³⁰ <https://data.consumerfinance.gov/dataset/2155114/mk4w-kybk>.

³¹ For more information about enrollment status issues, see CFPB, *Student data & student debt* (Feb. 2017), https://www.consumerfinance.gov/documents/2640/201702_cfpb_Enrollment-Status-Student-Loan-Report.pdf.

representative may inaccurately represent that the borrowers qualify for the hardship program, and, in some instances, after relying on these representations and stopping their payments, borrowers only learn that they do not qualify for the program when they are subject to negative credit reporting once their loans become delinquent.

Borrowers and cosigners with severe disabilities complain that they have limited repayment options when they can no longer afford their monthly payment. Unlike federal student loans, there is no right under federal law to have private student loans forgiven if a borrower becomes totally and permanently disabled.³² Private student loan borrowers who become disabled, including veterans with service-connected disabilities, complain that they cannot afford their student loan payments because of limited or inability to work.³³ These borrowers complain that there are limited options for modified repayment of their student loans that take into consideration their newly limited ability to repay.

While some private lenders will cancel a student loan if the primary borrower becomes totally and permanently disabled, borrowers with student loans from these lenders complain that the discharge process can be lengthy and confusing. Borrowers also report that the requirements around providing proof of their disability may be unclear. Other borrowers with disabilities complain that their lenders may not offer any options for loan cancellation in the event of disability.

³² Some private lenders include disability clauses in their student loan promissory notes. In the event the primary borrower becomes totally and permanently disabled, these disability clauses may allow for the primary borrower to be released from the loan obligation. In some cases, the loan may be cancelled entirely. In other cases, the cosigner will assume sole responsibility for the loan balance.

³³ See CFPB, *Hollister K. Petraeus Before the Senate Committee on Veterans' Affairs* (Jul 31, 2013), <https://www.consumerfinance.gov/about-us/newsroom/hollister-k-petraeus-before-the-senate-committee-on-veterans-affairs>. ("It's a sad fact that some veterans with the most severe disabilities will never be capable of obtaining or performing a job that will enable them to repay that private student loan debt. However, as the law now stands, it is very difficult for them to discharge those debts despite the reality of their medical condition. It seems a shame that federal student loans have such a provision for those with 100 percent disability, but there is currently no such relief for those who have private student loans.").

Cosigners who have experienced severe disabilities complain that there are few available options that release them from their obligations on private student loans. They complain that while they are considered equally liable for the debt, they do not have the same protections as the primary borrower in the event that they become permanently disabled. These borrowers report that because they remain obligated on the student loans after becoming disabled, they struggle to access other forms of credit that they depend on to support them as they manage their disability.

Borrowers and cosigners complain that when servicers deny applications for cosigner release, they do not adequately explain how the borrower can successfully qualify for cosigner release. Currently, more than 90 percent of private student loans are made with a cosigner at origination, including 93 percent of all loans made to undergraduates and 60 percent of all graduate students during the 2016-17 academic year.³⁴ The Bureau has repeatedly documented the problems cosigners face when obligated on a student loan.³⁵ The Bureau continues to receive borrower complaints describing how after completing all the steps they believe necessary to qualify for cosigner release, borrowers' applications for cosigner release are still denied. Borrowers complain that when their servicer denies their cosigner release applications, the servicer fails to explain what steps borrowers must take to satisfy the requirements of cosigner release. Cosigners complain to the Bureau that their continued obligation on the loan negatively affects their ability to access other credit, like mortgage and home equity loans.

³⁴ See MeasureOne, *Private Student Loan Report* (Q1 2017), <https://www.measureone.com/pls.php>.

³⁵ See, e.g., CFPB, *CFPB Student Loan Ombudsman's Mid-Year Update on Student Loan Complaints* (June 2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf (finding that 90 percent of private student loan borrowers who applied for cosigner release were rejected); CFPB, *CFPB Finds Private Student Loan Borrowers Face "Auto-Default" When Co-signer Dies or Goes Bankrupt* (Apr. 22, 2014), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-private-student-loan-borrowers-face-auto-default-when-co-signer-dies-or-goes-bankrupt> (finding that lenders were accelerating private student loan balances when a cosigner died or filed for bankruptcy, even when the loan was in good standing).

Borrowers complain that when submitting one payment to cover multiple private loans, their servicer does not allocate the payment according to the borrowers' instructions. Many borrowers choose to make extra payments on their loans in order to pay off their loans ahead of schedule. The Bureau has previously documented that when borrowers make extra payments on their loans in order to advance their financial goals, servicers may not apply the payments in the manner intended by the borrower, ultimately delaying repayment or increasing the cost of their loans.³⁶ The Bureau continues to hear from borrowers who complain about how their payments are applied to their loans. Borrowers complain that when they make extra payments on their loans and include instructions for payment application, their servicers disregard their instructions, or only follow the instructions intermittently. Other borrowers complain that after making extra payments on their loans, their servicer may re-disclose the loan, thereby lowering the monthly payment and extending the loan terms, but also increasing the overall cost of the loan.³⁷ For example, one borrower complained about his servicer extending his repayment term without notice:

I was repaying a student loan to [my lender] for about \$300 a month when suddenly [my servicer] extended my loan for ten years and lowered payments without my permission. Now it seems that despite asking [my servicer] to remedy the changes they made without my permission, and despite paying the \$300 a month the loan has been extended beyond the 10 years. I was supposed to pay based

³⁶ See CFPB, *We asked about your student loans and you answered* (Feb. 3, 2014), <https://www.consumerfinance.gov/about-us/blog/we-asked-about-your-student-loans-and-you-answered>; CFPB, *Letter from Rohit Chopra* (Feb. 3, 2014), http://files.consumerfinance.gov/f/201402_cfpb_letter_payment-processing.pdf (summarizing findings of a voluntary information request to industry about payment allocation policies); see also CFPB, *CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices* (Aug. 22, 2016), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices> (finding that the bank processed payments in a way that maximized student loan borrowers' fees, and misrepresented the value of making partial payments).

³⁷ See also CFPB, *You have the right to pay off your student loan as fast as you can, without a penalty* (Sep. 26, 2016), <https://www.consumerfinance.gov/about-us/blog/you-have-right-pay-your-student-loan-fast-you-can-without-penalty>.

*on what I believed to be the terms of the loan. . . I believe by changing the loan the company intended to collect more interest and has somehow managed to do that despite never getting my permission to change the loan.*³⁸

2.3 Debt collection complaint data

From September 1, 2016 through August 31, 2017, the Bureau handled approximately 2,300 debt collection complaints about private and federal student loans.

2.3.1 Debt collection complaint data

The following tables are based on complaints sent to companies from September 1, 2016, through August 31, 2017, as exported from the public Consumer Complaint Database as of October 1, 2017.³⁹

FIGURE 7: TOP RECIPIENTS OF STUDENT LOAN DEBT COLLECTION COMPLAINTS FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017

| Federal Student Loans | Number of Complaints | Private Student Loans | Number of Complaints |
|-----------------------|----------------------|-------------------------|----------------------|
| Navient | 195 | Navient | 168 |
| AES/PHEAA | 60 | Transworld Systems Inc. | 54 |
| ECMC Group, Inc. | 33 | AES/PHEAA | 41 |

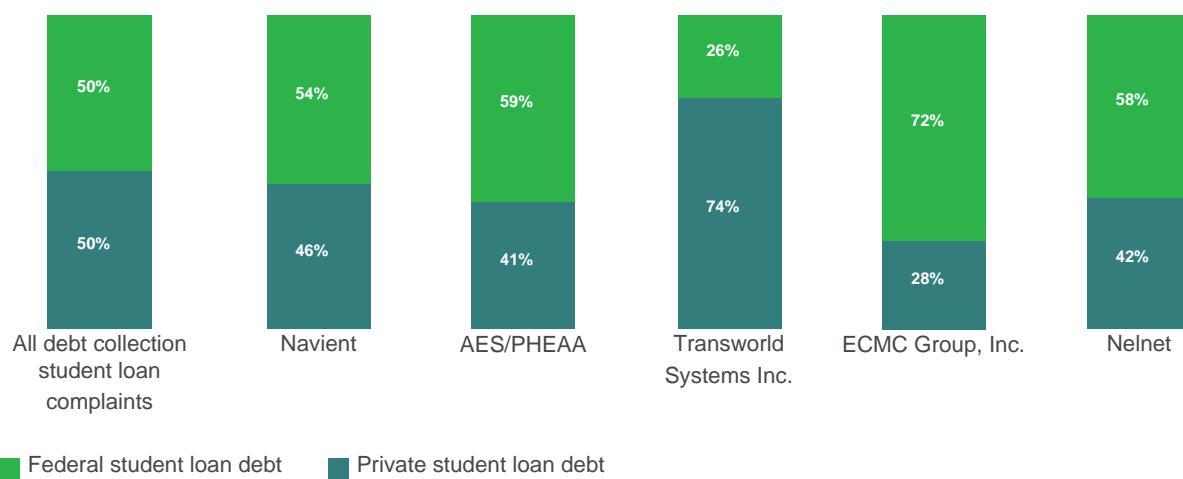
³⁸ <https://data.consumerfinance.gov/dataset/2302598/nw7i-ifim>.

³⁹ See *supra* note 2.

| | | | |
|-------------|----|--------------------------------------|----|
| Great Lakes | 30 | Weltman, Weinberg & Reis Co., L.P.A. | 20 |
| ConServe | 26 | Ability Recovery Services, LLC | 19 |

Note: This table reflects debt collection complaints where (1) the consumer identified the sub-product as a private or federal student loan debt and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table also reflects aggregated complaints of subsidiary debt collection companies under the parent company.

FIGURE 8: DISTRIBUTION OF LOAN TYPE FOR STUDENT LOAN DEBT COLLECTION COMPLAINTS BY COMPANY FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects debt collection complaints where (1) the consumer identified the sub-product as a private or a federal student loan debt and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table was not adjusted to reflect each company's relative market share. This table reflects the top companies by complaint volume. This table also reflects aggregated complaints of subsidiary debt collection companies under the parent company.

2.3.2 Issues identified in debt collection complaints

The Bureau has previously reported how the inability to secure an affordable repayment plan can contribute to borrowers' financial distress, and may ultimately lead borrowers into default.⁴⁰ According to a recent estimate by the Department of Education, more than eight million borrowers have federal student loans in default.⁴¹ The Bureau has shown how federal student loan borrowers who rehabilitate defaulted loans may struggle to access many of the consumer protections established under federal law that offer affordable monthly payments over the long-term.⁴² Additionally, Bureau examiners have found student loan debt collectors using false, deceptive, or misleading statements to collect on a debt, in violation of federal law.⁴³ Once

⁴⁰ See, e.g., CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (highlighting how the ability to access IDR plans is critical to repayment success); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), <https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman> (explaining how IDR enrollment is essential to preventing previously defaulted federal student loan borrowers from re-defaulting on their loans).

⁴¹ See U.S. Department of Education, *Federal Student Loan Portfolio* (accessed Oct. 2, 2017), <https://studentaid.ed.gov/sa/about/data-center/student/portfolio>; U.S. Department of Education, *Federal Perkins Loan Program Status of Default as of June 30, 2016* (June 12, 2017), <https://ifap.ed.gov/perkinscdrguide/1516PerkinsCDR.html>. There is limited data available about the number of unduplicated borrowers in default across the entire federal portfolio, so estimates may vary.

⁴² See CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), <https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman> ("[M]any borrowers face significant headwinds when attempting to successfully exit rehabilitation, enter repayment, and success over the long term – indicating that the borrowers experiencing the most severe financial hardship are the most likely to re-default."); see also U.S. Department of Education, *Understanding Default* (accessed Sep. 18, 2017), <https://studentaid.ed.gov/sa/repay-loans/default>.

⁴³ See CFPB, *Supervisory Highlights: Issue 10, Winter 2016* (Mar. 2016), <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2016> ("Examiners determined that one or more debt collectors used false, deceptive, or misleading representations or means regarding administrative wage garnishment when performing collection services of defaulted student loans for the Department of Education"); CFPB, *Supervisory Highlights: Winter 2015* (Mar. 2015), <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2015> ("In one or more examinations of debt collectors performing collection services of defaulted student loans for the Department of Education, examiners identified collections calls, scripts and letters containing various misrepresentations to consumers. Examiners found that

in default, the collection tactics used by debt collectors can vary based on whether the borrower has private or federal student loans.

Federal law provides collectors with a series of extraordinary tools to collect on defaulted federal student loan debt, including offsetting tax returns and federal benefits, pre-judgment garnishment of wages, and prolonged ineligibility for federal student aid.⁴⁴ During the reporting period, student loan borrowers with defaulted loans complained about aggressive collection tactics from debt collectors. Additionally, federal student loan borrowers reported difficulty accessing federal protections designed to assist borrowers in curing their defaults.

Debt collection practices cause financial distress

Student loan borrowers complain that debt collectors use aggressive and hostile tactics. Borrowers complain that collectors will repeatedly call them at work, even after the borrowers tell the collector to not call them at work. In addition, student loan borrowers with both private and federal student loans say debt collectors call their places of employment and threaten their employer with legal action. Borrowers also complain that collectors may call them early in the morning or late at night, and may use offensive language towards them.

Some borrowers report that debt collectors engage in similarly aggressive tactics when contacting borrowers' family members. Borrowers report that despite the collector having the borrowers' complete and accurate contact information, the collector will continually contact the borrowers' family members and disclose the defaulted debt. Borrowers further note that these collection tactics may persist despite repeatedly instructing the collector to not contact third parties.

collection agents overstated the benefits of federal student loan rehabilitation."); *see also* Minnesota Commerce Department, *Minnesota Commerce Department announces action against improper student loan debt collections* (Aug. 11, 2017), <https://mn.gov/commerce/media/news/#/detail/appId/2/id/307713>.

⁴⁴ See, e.g., 20 U.S.C. § 1095a (Administrative Wage Garnishment); 31 U.S.C. § 3720A (Tax Offset Program); *see generally* 34 C.F.R. § 685.200(d) (preventing a borrower from obtaining new Direct Loans until "satisfactory repayment arrangements" are made on any defaulted federal student loan).

Unlike federal student loans, when a borrower defaults on private student loans, the collector cannot attach or offset federal benefits such as Social Security disability or retirement payments.⁴⁵ However, borrowers with private student loans, including older borrowers receiving Social Security benefits, complain that collectors threaten to collect on their federally protected benefits.⁴⁶

Borrowers complain that they struggle to realize the protections afforded to them under federal law. The Higher Education Act provides federal student loan borrowers in default with two options to “cure” a default and get back on track. Borrowers can “rehabilitate” their debt by entering into an agreement with a debt collector to make a series of nine on-time monthly payments based on their financial circumstances, or borrowers can opt to refinance their defaulted debt with a new Direct Consolidation Loan.⁴⁷ However, the Bureau has

⁴⁵ See also CFPB, *Snapshot of older consumers and student loan debt* (Jan 5, 2017), <https://www.consumerfinance.gov/data-research/research-reports/snapshot-older-consumers-and-student-loan-debt>.

⁴⁶ CFPB, *Four tips to help older student loan borrowers navigate common problems with their student loans* (Jan. 5, 2017), <https://www.consumerfinance.gov/about-us/blog/four-tips-help-older-student-loan-borrowers-navigate-common-problems-their-student-loans>.

⁴⁷ See 34 C.F.R. §§ 682.405 (outlining rehabilitation for FFELP loans); 685.211(f) (outlining rehabilitation for Direct Loans), 685.220(d) (defining a defaulted federal student loan borrower’s eligibility to consolidate his or her loans into a Direct Consolidation Loan). The Bureau has previously reported that many borrowers seeking to cure their federal student loan default will likely be entitled to make a \$0 monthly IDR “payment” after successfully completing their student loan rehabilitation. See CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf (“Based on the formula to determine eligibility for a \$5 rehabilitation payment, the vast majority of these borrowers [who were eligible for \$5 rehabilitation payments] will also be entitled to make a \$0 monthly IDR “payment” once they have cured their default.”).

previously reported that many borrowers struggle to successfully rehabilitate their loans, and may not be aware of the options to consolidate their defaulted loans.⁴⁸

Borrowers attempting to rehabilitate their student loan debt complain that their debt collector fails to send or process required paperwork, which delays their ability to start the rehabilitation program and get out of default. Other borrowers complain that their debt collector will unexpectedly disqualify payments months into their rehabilitation program, delaying their ability to cure their default and get back on track with their loans.⁴⁹ Furthermore, federal student loan borrowers continue to complain that when collectors make errors when handling their loans, it causes needless and extended exposure to the negative consequences of default,

⁴⁸ See CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

⁴⁹ Borrowers with defaulted student loans may begin making rehabilitation payments under a verbal agreement with their collector, generally by agreeing to enroll in automatic payments. The Bureau has previously reported how borrowers who are making income-driven rehabilitation payments complain that they are knocked off track, often after several months of payments, when their collector invalidates these payments retroactively. Collectors can invalidate borrowers' payments when the monthly payment set by the collector is less than what is required based on income documentation subsequently provided by the borrower. Borrowers have complained that collectors will continue to automatically withdraw the incorrect payment amount from their accounts each month, despite having determined that the payment amount was invalid. Likewise, borrowers have also reported that they did not learn that their payments were invalid until they proactively contacted their collector after believing they made all nine required rehabilitation payments. See 34 C.F.R. §§ 682.405(b)(1)(iv), 685.211(f)(1)(ii) (permitting collectors to set monthly payments based on information provided orally by the borrower, provided that the borrower's income is later verified through documentation); see also CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

leading some borrowers to accrue unnecessary interest charges or pay more than they otherwise would to a debt collector.⁵⁰

Borrowers complain that certain collection practices may inhibit their ability to repay their defaulted debt. When borrowers default on their federal student loans, they have limited options for accessing federal student aid that may be necessary to complete their degree. Furthermore, schools will often withhold borrowers' academic records until the default is resolved.⁵¹ Borrowers complain that this practice may prevent them from transferring academic credits to other schools, or prevent them from obtaining employment where potential employers are seeking official copies of the borrower's transcript.

In some states, borrowers with defaulted federal student loans also face the unique risk of professional licensure suspension.⁵² Borrowers complain that when their student loans default, debt collectors may pursue suspension or revocation of professional licenses and certifications, causing additional financial distress. These borrowers complain that once their licenses are suspended, they cannot work in their chosen profession to earn enough income to repay the defaulted debt.

⁵⁰ Federal law also permits collectors to recover collection costs from borrowers by assessing a fee based on a percentage of borrowers' unpaid principal and accrued interest. See U.S. Department of Education, *Collections* (accessed Oct. 10, 2016), <https://studentaid.ed.gov/sa/repay-loans/default/collections>.

⁵¹ See U.S. Department of Education, *Understanding Delinquency and Default*, <https://studentaid.ed.gov/sa/repay-loans/default> ("Your school may withhold your academic transcript until your defaulted student loan is satisfied. The academic transcript is the property of the school, and it is the school's decision—not the U.S. Department of Education's or your loan holder's—whether to release the transcript to you.").

⁵² See, e.g., Alaska Stat. § 14.43.148; Va. Code Ann. § 54.1-2400.5; Fla. Stat. §§ 456.072, 456.074.

3. Ombudsman's discussion

When consumers are provided with an effective channel to make their voices heard by speaking out about obstacles they face in the marketplace, policymakers, including regulators and law enforcement officials, can respond to individual and market-wide problems more effectively. Further, when policymakers use individual complaints to inform their actions, it can shape market-wide reforms that benefit these consumers.⁵³

⁵³ Government agencies, including the Bureau, depend on a variety of inputs to prioritize action and deploy oversight, enforcement, and regulatory functions where appropriate. This discussion seeks to assess the role that consumer complaints can play when issues identified may be systemic in nature, particularly as they relate to these key government functions. Readers should also note that oversight, enforcement and regulation may, and frequently do, take place across federal and state governments without any formal role for consumer complaints. While consumer complaints on their own will not be sufficient to justify regulatory, supervisory or law enforcement action, in certain circumstances, complaints may serve as the impetus for this action and inform decision-making at critical points. Further, as this discussion demonstrates, when government has the tools to analyze consumer complaints and identify the appropriate opportunities to act, an agency may be able to better serve the public and advance its mission.

FIGURE 9: WHEN INDIVIDUAL COMPLAINTS STRENGTHEN STUDENT LOAN REPAYMENT FOR A BROAD SEGMENT OF BORROWERS



Individual student loan borrowers take action, which can set the policymaking process in motion

The Bureau's efficient and thoughtful approach to handling consumer complaints builds a robust record of the specific challenges consumers encounter when repaying student debt. This informs the Student Loan Ombudsman's approach to monitoring, analyzing, and reporting on issues identified by individual consumers. In addition, because of the interaction between the Bureau's complaint system and providers of financial products and services, consumers receive responses, and in some cases monetary and non-monetary relief, directly from companies by simply explaining their issue in a complaint. This functionality, especially on the scale implemented by the Bureau, is unmatched by any other federal or state agency complaint system. Through the Bureau's complaint process, complaints are sent to companies – typically in less than one day – allowing companies to respond to their customers about a problem or misunderstanding.⁵⁴

From July 21, 2011 through August 31, 2017, CFPB handled over 50,700 private and federal student loan complaints, and about 9,800 debt collection complaints related to private or federal student loan debt. In addition to informing ongoing work by the Student Loan

⁵⁴ Companies generally respond to complaints within 15 days. See CFPB, *Consumer Response Annual Report* (Mar. 2017), <https://www.consumerfinance.gov/data-research/research-reports/2016-consumer-response-annual-report>; see also CFPB, *Monthly Complaint Report* (Apr. 2017), http://files.consumerfinance.gov/f/documents/201704_cfpb_Monthly-Complaint-Report.pdf.

Ombudsman, information contained in these complaints is typically shared in near real-time with a wide range of federal and state government partners, including state attorneys general, banking agencies, and other federal financial regulators and consumer protection agencies, thereby allowing these agencies to leverage consumers' insights as they pursue their respective missions.

Complaints have served as the critical first step in a process that has halted industry practices that harmed some of the most vulnerable individuals, recovered hundreds of millions of dollars for tens of thousands of student loan borrowers, and strengthened aspects of the student loan repayment process to protect millions of consumers.⁵⁵

For example, in 2012, the first annual report by the Student Loan Ombudsman observed that "many borrowers filing complaints and providing input to the CFPB obtained loans to attend for-profit colleges. . . . Some borrowers report that they have been unable to find adequate employment in order to service the debt offered by parties affiliated with the school, despite assurances to the contrary."⁵⁶ In 2015, the Bureau joined the Department of Education to take action against the now-defunct for-profit college chain, Corinthian Colleges, Inc., providing more than \$480 million in relief to current and former students who had received predatory private loans to attend campuses operated by the company.⁵⁷ Earlier this year, the Bureau, in

⁵⁵ See *supra* note 53.

⁵⁶ CFPB, *2012 Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2012), <https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman> ("Many borrowers filing complaints and providing input to the CFPB obtained loans to attend for-profit colleges. Some consumers described how school representatives provided information on loan programs in order for the borrower to quickly obtain financing for enrollment. Some borrowers report that they have been unable to find adequate employment in order to service the debt offered by parties affiliated with the school, despite assurances to the contrary.").

⁵⁷ See CFPB, *CFPB Secures \$480 Million in Debt Relief for Current and Former Corinthian Students* (Feb. 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students>, ("[T]he Consumer Financial Protection Bureau (CFPB) and the U.S. Department of

coordination with a number of state attorneys general, also took action against Aequitas Capital Management for aiding Corinthian's predatory lending scheme, providing for another \$180 million in debt relief to current and former students.⁵⁸

Collectively, the Bureau estimates that complaints from individual student loan borrowers have informed law enforcement actions and policy changes that have produced more than \$750 million in relief for student loan borrowers and strengthened key aspects of the student loan repayment process for millions more borrowers.⁵⁹

Education announced more than \$480 million in forgiveness for borrowers who took out Corinthian College's high-cost private student loans. ECMC Group, the new owner of a number of Corinthian schools, will not operate a private student loan program for seven years and agreed to a series of new consumer protections.""). In addition to the Bureau's work related to Corinthian Colleges' predatory private lending program, the Bureau also required Bridgepoint Education, another for-profit college operator, to provide \$23.5 million in relief to current and former students harmed by its own private lending program and pay an \$8 million penalty to the Bureau. See CFPB, *Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices* (Sept. 2016), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices> ("The Bureau is ordering Bridgepoint to discharge all outstanding private loans the institution made to its students and to refund loan payments already made by borrowers. Loan forgiveness and refunds will total over \$23.5 million in automatic consumer relief. Bridgepoint must also pay an \$8 million civil penalty to the Bureau."). The Bureau's orders often require certain conduct in addition to monetary relief. In the Bridgepoint matter, potential Bridgepoint students also benefited from a term in the Bureau's settlement that requires Bridgepoint to provide students with a robust online interactive financial aid disclosure prior to the students incurring financial obligations.

⁵⁸ See CFPB, *CFPB Takes Action Against Aequitas Capital Management for Aiding Corinthian Colleges' Predatory Lending Scheme* (August 17, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-aequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme> ("Under the CFPB's proposed settlement, if approved, about 41,000 Corinthian students could be eligible for approximately \$183.3 million in loan forgiveness and reduction. In collaboration with the CFPB, several state attorneys general have also reached proposed settlements with Aequitas.").

⁵⁹ In addition to the examples provided in the following sections of this report, consumer complaints, as reported by the CFPB Student Loan Ombudsman, cover issues subsequently pursued through supervisory and law enforcement actions by a broad range of state and federal regulators and law enforcement officials, including the Bureau's own supervisory and enforcement divisions, state attorneys general, the United States Department of Justice, the FDIC, and the Department of Education. See e.g., *supra* notes 57 and 58; see also FDIC, *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act* (May 13,

Borrowers benefit when consumer complaints shape public policy

For five years, the CFPB Student Loan Ombudsman has monitored consumer complaints and provided a pathway for individual consumers' concerns to shape public policy. Each year, reports by the Student Loan Ombudsman emphasize the individual challenges these borrowers identified in their complaints. These reports also highlight where challenges may be systemic in nature, and illustrate where law enforcement, regulatory action, or market-driven reform may be necessary to better protect similarly situated student loan borrowers.

In each of the following three examples, individual consumer complaints led to increased scrutiny by a regulator or law enforcement agency with the authority, tools, and will to take action on behalf of borrowers, after these complaints were highlighted by the CFPB Student Loan Ombudsman.

2014), <https://www.fdic.gov/news/news/press/2014/pr14033.html> ("The FDIC determined that Sallie Mae violated federal law prohibiting unfair and deceptive practices in regards to student loan borrowers through . . . inadequately disclosing its payment allocation methodologies to borrowers while allocating borrowers' payments across multiple loans in a manner that maximizes late fees."); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2013), <https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2013> ("[U]nderpayments, in many cases, appear to be applied by student loan servicers in order to maximize late fees charged to borrowers."); CFPB, *CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices* (Aug. 2016), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices> ("If a borrower made a payment that was not enough to cover the total amount due for all loans in an account, the bank divided that payment across the loans in a way that maximized late fees rather than satisfying payments for some of the loans. The bank failed to adequately disclose to consumers how it allocated payments across multiple loans, and that consumers have the ability to provide instructions for how to allocate payments to the loans in their account. As a result, consumers were unable to effectively manage their student loan accounts and minimize costs and fees.").

Servicemember complaints expose harmful servicing practices and policies, government agencies halt illegal practices, charting a path forward for automation-driven reform

Over the past two decades, policymakers have taken action on a number of fronts to protect consumers who are repaying student debt.⁶⁰ In particular, policymakers have frequently expanded the range of benefits and protections afforded to student loan borrowers under federal law.⁶¹ In response, federal and state agencies have taken action to ensure borrowers are able to effectively and efficiently invoke these rights.⁶² Much of the Bureau’s work in the student loan market has focused on the gap between borrowers’ rights under federal law and the experiences that consumers report when repaying student debt.⁶³

⁶⁰ See, e.g., U.S. Department of Education, *U.S. Department of Education Announces Two Final Regulations to Protect Students and Help Borrowers* (Oct. 27, 2015), <https://www.ed.gov/news/press-releases/us-department-education-announces-two-final-regulations-protect-students-and-help-borrowers>.

⁶¹ See, e.g., P.L. 110-84 (establishing the Public Service Loan Forgiveness program and the Income-Based Repayment program); 20 U.S.C. § 1087e(e) (authorizing the Secretary of Education to establish income-driven repayment options); see also 34 C.F.R. § 685.209 (establishing regulations to implement various income-driven repayment options); U.S. Department of Education, *U.S. Department of Education Announces Availability of Additional Flexible Repayment Plan to Help Borrowers Manage their Student Loan Debt* (Dec. 17, 2015), <https://www.ed.gov/news/press-releases/us-department-education-announces-availability-additional-flexible-repayment-plan-help-borrowers-manage-their-student-loan-debt>.

⁶² See, e.g., *infra* notes 76 and 77; see also Illinois Attorney General, *Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses* (Jan. 18, 2017), http://www.illinoisattorneygeneral.gov/pressroom/2017_01/20170118.html; Washington State Office of the Attorney General, *AG Ferguson Files Suit Against Sallie Mae Offshoot Navient Corp., Announces Student Loan Bill of Rights Legislation* (Jan. 18, 2017), <http://www.atg.wa.gov/news/news-releases/ag-ferguson-files-suit-against-sallie-mae-offshoot-navient-corp-announces-student-loan-bill-of-rights-legislation>; Attorney General of Massachusetts, *AG Healy Sues to Protect Public Service Loan Forgiveness* (Aug. 23, 2017), <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-08-23-pheaa-lawsuit.html>.

⁶³ See, e.g., CFPB, *Midyear update on student loan complaints* (Aug. 2016), http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf (reporting that student loan servicers may delay processing IDR applications and wrongfully reject borrowers seeking to enroll in IDR, resulting in increased interest charges and lost eligibility for certain federal benefits and protections).

In the following example, individual complaints from servicemembers with student loans prompted a government-wide effort to narrow this gap for military borrowers, leading the Department of Education to write new rules in 2014 to automate the process of invoking key protections on behalf of active duty servicemembers. This coordinated interagency work has led to more than 100,000 military borrowers automatically saving more than \$20 million in student loan interest charges each year.⁶⁴ As discussed further below, this example also offers a roadmap as policymakers seek to strengthen many other aspects of the student loan repayment process.

The Bureau identifies and reports on consumer harm described in servicemember complaints. More than 200,000 servicemembers collectively owe more than \$2.9 billion in student debt.⁶⁵ Shortly after the Bureau began handling private student loan complaints in 2012, it received a series of complaints from individual servicemembers about student loan problems related to the Servicemembers Civil Relief Act (SCRA).⁶⁶ The SCRA is a key consumer protection meant to alleviate certain financial burdens from pre-service obligations on active duty servicemembers.⁶⁷ One provision of the SCRA lowers the interest rate on higher-interest,

⁶⁴ Estimates based on the Bureau's analysis of GAO, *Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, GAO-17-4 (Nov. 16, 2016), <https://www.gao.gov/products/GAO-17-4>; see also U.S. Department of Education, Office of Inspector General, *Servicemembers Civil Relief Act* (Feb. 29, 2016), <https://www2.ed.gov/about/offices/list/oig/misc/scrareport02292016.pdf>.

⁶⁵ Estimates are based on the Bureau's analysis of data provided in GAO, *Student Loans: Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, GAO-17-4 (Nov. 15, 2016), <https://www.gao.gov/products/GAO-17-4>.

⁶⁶ For complaint purposes, a servicemember includes anyone who self-identifies as active duty, National Guard, or Reservist, as well as those who previously served and identify as a Veteran or retiree. Servicemember complaints can be submitted by or on behalf of a servicemember or the spouse or dependent of a servicemember.

⁶⁷ 50 U.S.C. § 3902(2). Oftentimes, recruits will join the military or reservists will be called to active duty with prior financial obligations, like car loans, mortgages, and, in particular, student loans. The Servicemembers Civil Relief Act ("SCRA") was created in 1940 (originally as the "Soldiers' and Sailors' Civil Relief Act") to provide protections for servicemembers in the event that transactions and judicial proceeding adversely affect the rights of a

pre-service loans during periods of active duty service.⁶⁸ This protection covers a range of different types of consumer debt, including private student loans. In 2008, Congress expanded this protection to apply to federal student loans.⁶⁹

Complaints from borrowers described a range of student loan servicing practices that appeared to impede them from accessing their right to the SCRA interest rate reduction.⁷⁰ One complaint from a military borrower described communication with his servicer regarding his struggle to invoke this right:

[Servicing personnel] are very unfamiliar with the difference between a reserve soldier that (receives orders to active duty status) compared to Active duty soldiers who can deploy anywhere in the world in 18hrs (who do not get these orders on your whim). We chose to serve our country in full active duty status in a time of war and don't appreciate the run-around that [servicer's] customer service gives continually.

Informed by these and other complaints from military borrowers, in 2012, the CFPB Student Loan Ombudsman and Office for Servicemember Affairs released a report highlighting the range

servicemember during their military service. The Department of Justice has the specific authority to enforce the SCRA and accepts referrals from other federal agencies, including the CFPB, for possible SCRA violations. When the CFPB identifies potential SCRA violations in consumer complaints or during the course of its supervision work, through which it monitors for potential violations of the federal consumer financial law defined in its statute, the CFPB may refer the issues to other federal law enforcement agencies, including the DOJ. See CFPB, *How We Use Complaint Data* (accessed on Sept. 30, 2017), <https://www.consumerfinance.gov/complaint/data-use> (“We share complaint data with state and federal agencies.”).

⁶⁸ See 50 U.S.C. § 3937(a). The SCRA covers a variety of contractual obligations. Section 3937(a) establishes a cap on interest at six percent for debts incurred prior to an individual entering active duty military service.

⁶⁹ See 20 U.S.C § 1078(d).

⁷⁰ See CFPB, *The Next Front? Student Loan Servicing and the Cost to Our Men and Women in Uniform* (Oct. 2012), <https://www.consumerfinance.gov/data-research/research-reports/the-next-front-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform-3>.

of problems servicemembers face when repaying their student loans.⁷¹ The report documented how military borrowers described that servicers established unnecessary or incorrect requirements for borrowers pursuing SCRA interest rate protections,⁷² improperly removed SCRA protections from borrowers' loans prematurely, and placed borrowers in forbearance rather than applying SCRA protections to some borrowers' loans.⁷³

Driven by initial observations suggesting that these challenges were widespread and systemic in nature, the Bureau shared these complaints with other federal regulators and law enforcement agencies.⁷⁴

Bureau complaints lead to action by federal law enforcement agencies and regulators. In 2013, following referral by the Bureau, the DOJ and the FDIC began an investigation into the servicing practices of one large student loan company related to the application of SCRA protections to military borrowers' private and federal student loans.⁷⁵ The following year, DOJ entered into an order with the servicer and its former student loan servicing

⁷¹ See *id.*

⁷² See *id.* at 8 (documenting how servicemembers were being told incorrectly that they must provide a letter from their commanding officer or "certified" orders in order to receive the interest-rate reduction to six percent. The report also showed officers being told to provide orders with an end date in order to receive the interest-rate reduction. Officers' orders usually do not have end dates – they are indefinite.).

⁷³ See *supra* note 70 (documenting how servicers terminated the interest-rate reduction at the end of one year when the servicemember does not provide proof of continuing active-duty service - proof that is not required under the SCRA, and how servicers placed servicemembers in forbearance automatically when SCRA rights were invoked, rather than simply providing the requested interest-rate reduction).

⁷⁴ See U.S. Department of Justice, *Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans* (May 13, 2014), <https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations>. ("The Department's investigation of Sallie Mae was the result of a referral of servicemember complaints from the CFPB's Office of Servicemember Affairs. . .").

⁷⁵ In 2013, Sallie Mae disclosed to shareholders that it was being investigated by the DOJ, FDIC, and CFPB. <https://www.sec.gov/Archives/edgar/data/1032033/000119312513481234/d647469d8k.htm>.

business unit.⁷⁶ The order provided \$60 million in compensation for more than 77,000 servicemembers to address the companies' alleged pattern and practice of failing to properly apply protections under the SCRA to active duty military with private student loans, federal Direct Loans, and older federal loans made by banks and other private lenders.⁷⁷ At the same time, the FDIC entered into an order with these companies for violations of the SCRA, as well as the prohibition on unfair acts and practices under Section 5 of the FTC Act.⁷⁸

Government agencies coordinate policy reform efforts to protect all current and future military borrowers. In 2014, following action by the DOJ and FDIC, the Department of Education issued SCRA guidance for federal student loan servicers that was informed by the issues identified by the Bureau and exposed in the DOJ and FDIC investigation.⁷⁹ This guidance instructed federal student loan servicers to regularly check for borrowers who are eligible for the

⁷⁶ In 2014, Sallie Mae separated into Sallie Mae Bank and Navient Corporation.

⁷⁷ See Consent Order, *U.S. v. Sallie Mae et. al.* (D. Del., May 2014), <https://www.justice.gov/crt/about/hce/documents/salliesettle.pdf>.

⁷⁸ See FDIC, *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act* (May 13, 2014), <https://www.fdic.gov/news/news/press/2014/pr14033.html> ("The FDIC determined that Sallie Mae violated federal laws regarding the treatment of servicemembers (SCRA and Section 5) through the following actions: Unfairly conditioning receipt of benefits under the SCRA upon requirements not found in the Act; Improperly advising servicemembers that they must be deployed to receive benefits under the SCRA; Failing to provide complete SCRA relief to servicemembers after having been put on notice of these borrowers' active duty status.").

⁷⁹ See U.S. Department of Education, *Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs*, GEN-14-16 (Aug. 25, 2014), <https://ifap.ed.gov/dpcletters/GEN1416.html> ("We have also been working with the U.S. Department of Justice and other federal agencies to find ways to ease the process for loan holders to confirm servicemembers' eligibility for the benefits of § 527 of the SCRA. As a result of those efforts, the Department has adopted new procedures for determining which borrowers are eligible for benefits under the SCRA and for what periods. The Department is implementing these procedures for the loans it holds and, in this letter, is authorizing FFEL lenders to adopt similar procedures. . . [W]e have directed the Department's servicers to check the names of borrowers against the DMDC and to apply the interest rate limitation to the accounts of eligible borrowers without a request from the borrower."); see also 34 C.F.R § 682.208(j) (requiring FFELP loan holder to automatically determine military borrower eligibility for interest rate reductions pursuant to the SCRA as of July 1, 2016).

SCRA interest rate reduction by using the Defense Manpower Data Center (DMDC) database and to proactively apply the protection for eligible borrowers.⁸⁰ In effect, the Department of Education removed application requirements from military borrowers by developing an automated solution, thus ensuring all eligible servicemembers could benefit from this protection by placing the burden of identification, application, and invocation on servicers and loan holders, rather than on individual military borrowers.

This newly automated process for identifying borrowers eligible for interest rate reductions pursuant to the SCRA has dramatically increased the number of servicemembers receiving their SCRA protections. A recent audit by the Government Accountability Office (GAO) found that, as a result of policy changes that relieved eligible borrowers of the burden of applying for SCRA protections, the number of servicemembers benefiting from the SCRA interest rate cap grew from approximately 100 beneficiaries in 2008 to more than 100,000 in 2015.⁸¹ By 2015, military borrowers were automatically saving more than \$20 million in student loan interest

⁸⁰ See U.S. Department of Education, *Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs*, GEN-14-16 (Aug. 25, 2014), <https://ifap.ed.gov/dpcletters/GEN1416.html>; see also U.S. Department of Education, *Retroactive Adjustments for Servicemembers Civil Relief Act (SCRA) from August 14, 2008*, FEN-16-20 (Nov. 15, 2016), <https://ifap.ed.gov/dpcletters/GEN1620.html> (“In April [2016], the Department directed its Federal loan servicers to expand the previous match of the DoD database for servicemembers and directed the servicers to match data for servicemembers who were in the servicer’s loan portfolio on or after August 14, 2008. The Federal loan servicers have identified thousands of servicemembers in the Department’s loan portfolio who entered active duty status on or after August 14, 2008. As the Department works to complete the identification of these servicemembers’ active accounts to retroactively apply the SCRA interest rate limitation, we request that FFEL Program loan holders begin to do the same.”).

⁸¹ See GAO, *Oversight of Servicemembers’ Interest Rate Cap Could Be Strengthened*, GAO-17-4 (Nov. 16, 2016), <https://www.gao.gov/products/GAO-17-4>; see also U.S. Department of Education, Office of Inspector General, *Servicemembers Civil Relief Act* (Feb. 29, 2016), <https://www2.ed.gov/about/offices/list/oig/miscc/scrareport02292016.pdf>.

charges each year.⁸² Additionally, the Department of Education has announced that it would implement a process to identify all borrowers who were previously eligible for the rate cap on their federal student loans as far back as 2008.⁸³

Servicers voluntarily adopt automated administration of SCRA protections for private student loans. In 2015, following the announcement of new policies for administering SCRA interest rate protections for federal student loan borrowers, several private lenders and servicers voluntarily adopted the practice.⁸⁴ One government study found that following this change in private lenders' policies, the number of servicemembers who received the interest rate cap on at least one of their private student loans more than doubled, from 14,970 to 33,309.⁸⁵

OPPORTUNITIES AND IMPLICATIONS

This example offers a roadmap for policymakers considering reforms to strengthen the implementation of a broad range of consumer protections available to student loan borrowers. As individual servicemembers with student debt first explained to the Bureau in 2012, an application process that requires proactive engagement from military borrowers coupled with

⁸² Estimates based on the Bureau's analysis of GAO, *Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, *supra* note 81; see also U.S. Department of Education, Office of Inspector General, *Servicemembers Civil Relief Act*, *supra* note 81.

⁸³ See U.S. Department of Education, *Secretary John King's responses to Questions for the Record from the U.S. Senate Committee on Health, Education, Labor and Pensions* (Feb. 26, 2016), https://www.help.senate.gov/download/king_responses ("I am pleased to report that we have initiated a process to conduct a data match and automatically provide credit for any service member who was on active duty since federal student loans became eligible for the benefit. This would provide the benefit to any service member who was on active duty, going back to 2008, whether or not they had applied for the benefit.").

⁸⁴ See *supra* GAO, *Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, *supra* note 81.

⁸⁵ *See id.*

manual handling by student loan servicers creates substantial risk for errors and makes it harder than necessary for servicemembers to invoke their rights.

Policymakers and market participants may find this example instructive as they consider steps to strengthen policies or practices where invocation of other benefits and protections depends on a similar process. This holds true for military borrowers, including those serving in “areas of hostility” and seeking to invoke their rights to a zero percent interest rate for post-2008 Direct Loans, and those veterans who have been rated 100 percent disabled by the Department of Veterans Affairs and who are entitled to loan forgiveness.⁸⁶

This also holds true for their civilian counterparts, including those borrowers who may be eligible for payment relief,⁸⁷ interest rate reductions,⁸⁸ or loan forgiveness or discharge under a wide range of federal programs and protections.⁸⁹ In each of these instances, borrowers must self-identify their eligibility in order to invoke their rights and servicers rely on manual processing to apply benefits and protections to borrowers’ accounts. This likely widens the gap between the total population of eligible beneficiaries for each of these protections and the

⁸⁶ See 20 U.S.C. §§ 1087e(o) (providing for no accrual of interest for active duty servicemembers serving in an area of hostilities in which service qualifies for special pay), 1098d (permitting veterans with service-connected disabilities to have their federal student loans discharged). Under current law, discharge of student debt under the Total and Permanent Disability program may be treated as income for federal income tax purposes. Policymakers may wish to consider the tax treatment of discharged debt when evaluating opportunities to further automate this process.

⁸⁷ See, e.g., 34 C.F.R. §§ 682.215 (defining IBR for FFELP borrowers); §685.209 (defining PAYE, ICR, and REPAYE for Direct Loan borrowers), §685.221 (defining IBR for Direct Loan borrowers).

⁸⁸ See, e.g., 34 C.F.R. §§ 682.200, 685.211.

⁸⁹ See, e.g., 20 U.S.C. § 1087(a) (authorizing disability discharge for FFELP loan borrowers), 34 C.F.R. §§ 682.215(f), 685.209(a)(6), (b)(3)(D), (c)(5)(iii)(A) (defining loan forgiveness requirements under IDR plans), 685.206(c) (providing borrowers with a defense to repayment of federal student loan in the event in situations where an act or omission by the school attended would give rise to a cause of action under applicable state law), 685.214 (providing for the discharge of borrowers’ Direct Loans where the program of study could not be completed because the school closed), 685.219(d) (providing loan forgiveness for borrowers who make 120 qualified payments under the Public Service Loan Forgiveness program).

segment of borrowers able to successfully invoke their rights. As the Bureau’s research has noted in the past, it is often the most vulnerable student loan borrowers who fall through this gap.⁹⁰

The coordinated interagency work to assist servicemembers described in the preceding example may offer insight as policymakers and market participants consider steps to assist other segments of borrowers who may also be denied or deterred from pursuing key programs and protections – particularly where automation could be used to close this gap. For example, the Bureau has repeatedly reported on barriers to affordable student loan payments, including for borrowers eligible for a zero dollar payment under an IDR plan.⁹¹ The Bureau has also explored how the income recertification process can lead to payment shock, increased loan costs, and surprise delinquencies for IDR borrowers.⁹² Following the Bureau’s reporting on these topics,

⁹⁰ See, e.g., CFPB, *Too many student loan borrowers struggling, not enough benefiting from affordable repayment options* (August 2017), <https://www.consumerfinance.gov/about-us/blog/too-many-student-loan-borrowers-struggling-not-enough-benefiting-affordable-repayment-options> (“Lower debt borrowers—likely including many who did not complete college—do not appear to gain the full benefits of affordable payment plans. We saw that among borrowers with less than \$20,000 in student debt, those who are not paying down their student loan debt are three times more likely to be delinquent than to be in good standing. In total, fewer than 30 percent of these borrowers are in good standing after five years. This was generally true for earlier groups of these borrowers, as well as more recent ones, even as access to affordable payment plans expanded rapidly in recent years—suggesting many are not benefiting from these programs.”); see also CFPB, *CFPB Data Point: Student Loan Repayment* (Aug. 16, 2017), <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-student-loan-repayment>.

⁹¹ See, e.g. CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 16, 2015), http://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf (“Borrowers who attend for-profit colleges or two-year colleges make up 70 percent of all borrowers in default, according to one recent analysis. Yet the median debt burden and median wages of these borrowers suggest that the average borrower likely would qualify for a \$0.00 or a substantially lower loan payment under an income-driven repayment plan.”).

⁹² See CFPB, *When you make student loan payments on an income-driven plan, you might be in for a payment shock* (August 2015), <https://www.consumerfinance.gov/about-us/blog/when-you-make-student-loan-payments-on-an-income-driven-plan-you-might-be-in-for-a-payment-shock>; see also CFPB, *Midyear update on student loan complaints* (Aug. 2016), http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf reporting that student loan servicers may delay processing IDR applications and wrongfully reject borrowers

policymakers and industry both have looked to automation to address these problems by exploring options like multi-year income certification, automatic income verification using Internal Revenue Service (IRS) tax data, and automatic enrollment for borrowers with very low incomes as potential policy options to improve repayment success for borrowers experiencing financial hardship.⁹³ Some have suggested that automation may both better protect consumers and offer opportunities to the lower administrative costs of student loan servicing.⁹⁴

Borrowers call for timely, actionable, and accurate information about how to access protections, providing an alternative path for reform as steps are considered to streamline repayment options

Even as policymakers pursue efforts to expand automatic application of certain protections, borrowers will continue to depend on customer service personnel to provide basic information about available options, respond to borrower inquiries, and, in the current system, manually process and evaluate applications for certain benefits and protections. Where borrowers are

seeking to enroll in IDR, resulting in increased interest charges and lost eligibility for certain federal benefits and protections); CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf. (“Based on the formula to determine eligibility for a \$5 rehabilitation payment, the vast majority of these borrowers [who were eligible for \$5 rehabilitation payments] will also be entitled to make a \$0 monthly IDR “payment” once they have cured their default.”).

⁹³ Observers considering automation to address implementation challenges with regard to these protections or programs have also noted the importance of preserving consumer choice, particularly where enrollment in certain benefits or protections may have long term financial consequences for consumers. In particular, observers have noted the importance of preserving an avenue for consumers to “opt-out” of automatic IDR enrollment or recertification initiatives, especially where regular income-driven payments may result in greater lifetime interest charges for borrowers who enroll or significant tax consequences following loan forgiveness. See, e.g., CFPB, *Student Loan Servicing* (Sept. 2015), <https://www.consumerfinance.gov/data-research/research-reports/student-loan-servicing> (analyzing comments from policymakers and industry related to student loan servicing practices).

⁹⁴ See *id.*; see also U.S. Department of Education, *Treasury and Education Announce Progress Toward Multi-Year Income Certification System for Student Loan Borrowers in Income-Driven Repayment Plans* (Jan. 17, 2017), <https://www.ed.gov/news/press-releases/treasury-and-education-announce-progress-toward-multi-year-income-certification-system-student-loan-borrowers-income-driven-repayment-plans>.

pursuing an affordable student loan payment for the first time, they may be particularly vulnerable in the absence of timely, actionable borrower communication and accurate processing by their servicer.

As the following example illustrates, for borrowers experiencing financial hardship, timely, actionable borrower communication and accurate manual processing can be the difference between immediate payment relief and delinquency. Processing applications for borrower protections is a core duty of student loan servicers and is a function on which millions of consumers rely each year as they apply for IDR, for a private student loan modification, or for many of the other rights a borrower may have under law or contract.

Individual complaints describe how servicing practices delay or deter access to federal protections, increasing borrowers' loan costs and frustration. In 2015 and 2016, individual borrowers with federal student loans submitted complaints to the Bureau describing servicing practices related to the process of applying for, and enrolling in, the wide range of affordable repayment options established under federal law. In particular, borrowers reported that student loan servicers denied IDR applications that may have been incomplete or missing required documentation – in some cases without communicating to the borrower that an application had been denied, the reason for denial, or whether the borrower had an opportunity to correct the application.

In August 2016, the CFPB Student Loan Ombudsman published a report describing a range of challenges borrowers encounter when pursuing their rights under the Higher Education Act to obtain an affordable monthly payment.⁹⁵ This report was informed by a series of consumer complaints that described a range of student loan repayment obstacles, including:

- **Unexpected or unnecessary application denials.** Borrowers reported being rejected because their application had missing information or because their servicer lost

⁹⁵ See CFPB, *Midyear update on student loan complaints: Income-driven repayment plan application issues* (Aug. 2016), http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf.

paperwork, without ever being notified by their servicer that their application was incomplete or being given a chance to fix the problem. Other borrowers reported being rejected simply for checking the wrong box on the application and not being given the opportunity to submit a corrected form. Consumers described how errors discourage them from restarting the application process, and how some borrowers chose to stop making payments, instead of remaining on the road to repayment.⁹⁶

- **Repeated obstacles when re-applying for an income-driven payment.** Some borrowers who successfully enrolled in an IDR plan described how they re-encountered the same obstacles each year when they needed to certify their income and family size annually in order to keep an income-driven payment. These borrowers described how servicing practices related to “recertification,” particularly processing delays and wrongful rejections, can drive substantial and unnecessary increased costs for borrowers.⁹⁷

Taken together, these individual complaints offered insight into a part of the student loan repayment lifecycle that had, until that point, received minimal attention from policymakers, regulators, and law enforcement officials. The Bureau’s Office of Supervision then incorporated IDR application processing into its examination procedures, instructing Bureau examiners to include these processes during routine oversight of the largest student loan servicers.⁹⁸

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ In October 2016, the Bureau released updated Education Loan Examination Procedures. See CFPB, *CFPB Supervision Recovers \$11 Million for 225,000 Harmed Consumers* (Oct. 31, 2016), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervision-recovers-11-million-225000-harmed-consumers> (announcing updated Education Loan Examination Procedures, “These procedures build on the ongoing work by federal agencies and regulators to strengthen student loan servicing practices, and note that servicers’ adherence to Department of Education contracts and regulations may figure into Bureau compliance reviews. They also provide a roadmap for state and local partners implementing student loan servicing examination programs.”).

Bureau examiners cite illegal application processing practices by student loan servicers related to those practices identified in consumer complaints. In 2016, building on the issues identified in individual consumer complaints, CFPB examiners determined that one or more servicers were engaging in the unfair practice of denying, or failing to approve, IDR applications that should have been approved on a regular basis.⁹⁹

Bureau Supervision periodically publishes “Supervisory Highlights” reports to share key examination findings in order to help industry limit risks to consumers and comply with federal consumer financial law.¹⁰⁰ In the Fall 2016 edition of Supervisory Highlights, the Bureau’s Office of Supervision noted that “when servicers fail to approve valid IDR applications, borrowers can be injured by having to make higher payments, losing months that would count towards loan forgiveness, or being subjected to unnecessary interest capitalization.”¹⁰¹ This report indicated that examiners directed one or more servicers to “remedy borrowers who were improperly denied, and significantly enhance policies and procedures to promptly follow up with consumers who submit applications that are incomplete, prioritize applications that are approaching recertification deadlines, and implement a monitoring program to rigorously verify the accuracy of IDR application decisions.”¹⁰²

Policymakers take action to strengthen contracts with servicers and improve borrower access to critical protections. In 2016, the Department of Education’s Office of Federal Student Aid (FSA) responded to concerns related to IDR application processing by

⁹⁹ See CFPB, *Supervisory Highlights Issue 13: Fall 2016* (Oct. 2016), http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf.

¹⁰⁰ See generally CFPB, *Supervisory Highlights* (accessed Oct. 6, 2017), <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-highlights>.

¹⁰¹ CFPB, *Supervisory Highlights Issue 13: Fall 2016* (Oct. 2016), http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf.

¹⁰² *Id.*

strengthening its contractual requirements for servicers handling federal student loans held by the federal government.¹⁰³ Through this action, servicers are required to proactively communicate with student loan borrowers who submit an incomplete IDR application and, consequently, servicers are prohibited from summarily denying these applications. As a result of FSA's reforms, student loan borrowers are protected from certain kinds of improper IDR denials and have greater insight into the IDR application review process. These revisions protected borrowers from many of the practices initially identified by individual consumers in complaints submitted to the Bureau. Directing servicers to provide timely, actionable information about the status of borrowers' IDR applications helps borrowers who are applying for an affordable payment for the first time, as well as those seeking to maintain a payment based on their income.

OPPORTUNITIES AND IMPLICATIONS

The borrower complaints about difficulties encountered when applying for and getting into IDR show that when the burden is on borrowers, rather than their servicers, to navigate a wide array of complex options or paperwork requirements without adequate information, borrowers may fall through the cracks.¹⁰⁴ Further, this example shows how robust, borrower-friendly servicing requirements, including requirements that servicers provide timely, accurate, and actionable information, can empower borrowers to navigate application or paperwork requirements and get on track when seeking to invoke their rights to key protections.

In 2016, the Bureau sought to build on this insight when partnering with the Department of Education to develop and refine a series of personalized prototype disclosures for borrowers

¹⁰³ See U.S. Department of Education, *FSA Training Conference for Financial Aid Professionals: Servicing Update* (2016), <http://fsaconferences.ed.gov/conferences/library/2016/2016FSAConfSession14.ppt> (and accompanying audio, available at <http://fsaconferences.ed.gov/2016sessions.html>).

¹⁰⁴ See CFPB, *Too many student loan borrowers struggling, not enough benefiting from affordable repayment options* (Aug. 16, 2017), <https://www.consumerfinance.gov/about-us/blog/too-many-student-loan-borrowers-struggling-not-enough-benefiting-affordable-repayment-options>.

repaying federal student loans.¹⁰⁵ Consumers who provided feedback to the Bureau on this disclosure project, including borrowers who self-identified as experiencing financial distress, strongly preferred simplified, plain language written communications about available repayment options that, to the maximum extent possible, were personalized to reflect borrowers' individual financial circumstances.¹⁰⁶ The Bureau observed that borrowers could better describe their repayment rights and options – even where the universe of available options was complex – when the information presented was simple, easy to understand, actionable, and personalized, and where written communications employ the principles of user-centered design.¹⁰⁷

These key insights may also assist government agencies seeking to address the proliferation of predatory student loan “debt relief” companies. In many cases, consumers pay high up-front or recurring fees in exchange for “debt relief” that may prove illusory, or may solely stem from enrollment in IDR options otherwise available for free to these borrowers.¹⁰⁸ Strengthened

¹⁰⁵ See CFPB, *CFPB Unveils Student Loan ‘Payback Playbook’ to Provide Borrowers With Personalized Snapshot of Repayment Options* (Apr. 28, 2016), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-unveils-student-loan-payback-playbook-provide-borrowers-personalized-snapshot-repayment-options>; see also U.S. Department of Education, *A New Vision for Serving Student Loan Borrowers* (Apr. 4, 2016), <https://blog.ed.gov/2016/04/a-new-vision-for-serving-student-loan-borrowers>.

¹⁰⁶ See CFPB, *Letter to Under Secretary Ted Mitchell from CFPB Student Loan Ombudsman Seth Frotman Regarding the Revised Payback Playbook Transmittal* (Jan. 13, 2017), http://files.consumerfinance.gov/f/documents/201701_cfpb_payback-playbook-cover-letter-education-undersecretary-mitchell.pdf.

¹⁰⁷ *Id.*

¹⁰⁸ See CFPB, *Student Loan Servicing* (2015) http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (“As discussed previously, federal student loans are unique relative to other consumer financial products in that borrowers have a legal right to a monthly payment driven by their income . . . commenters suggest that awareness of these protections among borrowers who could potentially benefit is limited, making borrowers in distress particularly susceptible to marketing by these debt relief companies. Limited awareness also raises questions about whether outreach and information provided by student loan servicers is sufficient to ensure borrowers are readily able to access these consumer protections.”).

individual borrower communications related to the availability of IDR and other free federal programs that provide payment relief, particularly when targeted to borrowers experiencing financial distress, may offer government agencies an opportunity to assist consumers who would otherwise fall victim to scams.

As noted above, consumers depend on servicers to handle applications for a broad range of benefits and protections, including affordable repayment options, loan forgiveness programs, loan discharge in the event of total and permanent disability, and cosigner release benefits for private student loans. A broad segment of student loan borrowers may benefit from timely and actionable borrower communication and accurate processing under a range of analogous circumstances in the student loan repayment lifecycle. For example, borrowers in default could use well-designed information to make informed choices between options to get back on track with repayment.¹⁰⁹ Similarly, certain Social Security beneficiaries and military veterans could receive actionable and personalized information necessary to invoke their rights to loan discharge if they are totally and permanently disabled.¹¹⁰

¹⁰⁹ In 2016, the Bureau conducted a series of structured interviews with individual student loan borrowers, as part of the iterative user testing process related to a proposed personalized student loan repayment disclosure. These interviews offered additional evidence that borrowers experiencing financial distress may benefit from high-quality servicing, including personalized, proactive outreach by student loan servicers to assist borrowers who may be unable to afford their student loan payment. See Fors Marsh Group, *Qualitative Testing of Prototype Student Loan Disclosure: Prepared for the Consumer Financial Protection Bureau* (Nov. 30, 2016), http://files.consumerfinance.gov/f/documents/201701_cfpb_payback-playbook-user-testing-summary.pdf.

¹¹⁰ See CFPB, *Understand your options: Tips for student loan borrowers with disabilities* (Sept. 20, 2017), <https://www.consumerfinance.gov/about-us/blog/understand-your-options-tips-student-loan-borrowers-disabilities>. In 2016, the Department of Education, in coordination with the Social Security Administration (SSA), took steps to match student loan borrowers with federal Direct Loans against a database of social security beneficiaries who have been identified by SSA as meeting the Department of Education's eligibility criteria for loan discharge. These borrowers were automatically provided with notices describing how to access this protection, but, due to concerns about the tax consequences of the cancellation of debt, were required to "opt-in" to discharge their debt. Should concerns about the tax consequences of loan discharge become no longer relevant, these borrowers would benefit most from automatic matching and loan discharge. However, under the current system, these

As policymakers consider how strengthened servicing practices can complement the automation-driven reforms described in the SCRA example above, this illustration offers a roadmap to enhance the delivery of timely, accurate, actionable information and improve customer service. Servicers are best-positioned to understand the range of options available to individual borrowers, and the specific actions necessary for borrowers to invoke their rights under federal law or their private loan contract. The preceding example may also be instructive before considering steps to “streamline” repayment assistance options by limiting the range of benefits and protections available to consumers with student debt. Clear, plain language disclosures and “just-in-time” communication about available and applicable options can simplify the presentation of information and strengthen the student loan repayment process.

Private student loan complaints identify little-known servicing practice; Bureau takes action and private lenders shift away from enabling harmful practice

The following example seeks to illustrate where borrower complaints can expose an industry practice that harms consumers and that may not serve an essential market function. It also shows circumstances where standard industry practices drive an outcome that is not in the economic interest of lenders, loan holders, or borrowers.¹¹¹ In this example, individual

borrowers would benefit from incremental improvements to borrower communications and strengthened manual processing.

¹¹¹ In many circumstances, private student lenders may elect to sell loans to investors following origination, including circumstances where a lender or loan holder may choose to package these loans into securities and sell bonds backed by these loans to bondholders. In these circumstances, the lender may no longer have a business relationship with the borrower and a student loan servicer may be servicing and collecting on a loan on behalf of a trust with no day-to-day operational role in the repayment process. As the Bureau has discussed in prior publications, this structure may lead to circumstances where servicers’ economic incentives may not align with those of loan holders or borrowers – potentially leading to unnecessary borrower distress. See, e.g., CFPB, *Mid-Year Update on Student Loan Complaints* (June 2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf (“However, once the loan is sold or securitized, the contractual arrangements and incentive structures can create the conditions for servicers to limit their discretion and enforce the provisions – even if it is not in the long-term interest of the bondholders – unless servicers are sufficiently

consumer submitted complaints about a private student loan “auto default.” Subsequently, the Bureau’s Office of Supervision scrutinized the practice, and ultimately the largest private lenders largely abandoned this practice. As discussed further below, this example illustrates how complaints and robust oversight can inform the market, and market participants can move to mitigate risk of unanticipated borrower harm through consumer-driven reforms to product features.¹¹²

Borrowers complain about a little-known practice that drives private student loan defaults. Private student loan promissory notes often contain a “Whole Loan Due” clause. Prior to the 2016-2017 academic year, this clause frequently included a provision that had been interpreted by some in the student loan industry to permit the loan holder to immediately accelerate the loan into default upon the death of, or a bankruptcy filing by, a cosigner. In effect, for some borrowers with cosigned private student loans who were current on their payments, if a cosigner died or filed for bankruptcy, a student loan servicer would immediately demand that the borrower repay the full outstanding balance of the loan. This process was known as a student loan auto-default.¹¹³ This provision caused borrowers with cosigned loans to be called

indemnified.”); see also CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2015), http://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf. (“The fixed fee structure may create an economic disincentive to address borrower distress since compensation remains fixed irrespective of the services a borrower needs in a given month and the servicer will likely incur unreimbursed costs when seeking to mitigate default.”).

¹¹²In October 2015, the U.S. Department of Education called on Congress to prohibit the practice of “auto-defaulting” borrowers with private student loans. See U.S. Department of Education, *Strengthening the Student Loan System to Better Protect All Borrowers* (Oct. 2015), <http://www2.ed.gov/documents/press-releases/strengthening-student-loan-system.pdf>.

¹¹³ Many consumer loan contracts or promissory notes contain provisions interpreted to permit the loan holder to accelerate a loan balance under certain circumstances – known as an “acceleration clause” or “whole loan due clause” – demanding payment-in-full for the outstanding debt. Typically, these provisions are exercised in the event of nonpayment, triggering circumstances where a loan holder may seek to recover an outstanding debt through debt collection or by seeking a garnishment order from a court. However, where a private student loan is cosigned—a feature of more than 90 percent of all recent private student loans—consumer complaints submitted to

into default even when these borrowers had been making their monthly payments on time and in full. One private student loan borrower described grieving for the loss of his recently deceased father, while struggling to navigate this process, explaining:

[A] little over a month ago my father passed away unexpectedly. He was the co-signer of a couple of my student loans . . . I haven't missed a payment on any of my loans in 3-4 years at this point. I got a call yesterday . . . alerting me that one of my loans that was co-signed by my father was referred to [a third party debt collector] and that they were responsible for collecting . . . [the remaining balance] that was left. . . . They referred this loan to a debt collector when nothing was wrong!! . . . This is completely uncalled for, and something that should not have happened. I am at risk of hurting my credit score for something completely out of my control.

Between 2012 and 2014, the Bureau received a series of complaints against multiple lenders and servicers describing similar outcomes.¹¹⁴ Borrowers reported that after the death of a parent, lenders would send condolence notices followed by collection notices. Borrowers also described facing bureaucratic barriers to releasing cosigners from their loans, a commonly advertised benefit that could have helped some borrowers avoid these auto-defaults.

Report by the CFPB Student Loan Ombudsman highlights complaints, raising awareness of auto-default after the death of or bankruptcy by a cosigner. The Bureau's Student Loan Ombudsman sought to highlight the range of problems related to auto-

the Bureau described surprise at a specific type of loan default following the death or bankruptcy of their loan cosigner, even when the loan is current and being paid on time.

¹¹⁴ See U.S. Department of Education, *Secretary John King's responses to Questions for the Record from the U.S. Senate Committee on Health, Education, Labor and Pensions* (Feb. 26, 2016), https://www.help.senate.gov/download/king_responses.

defaults as described in complaints by individual private student loan borrowers.¹¹⁵ For example, the report detailed how, even when borrowers successfully made months or years of on-time payments, they reported receiving demands from debt collectors for the full balance of their private student loans following the death of, or a bankruptcy filing by, a cosigner. The report also explained how lenders obtained information about cosigners' deaths and bankruptcy filings,¹¹⁶ and detailed how the credit reporting of the auto-defaulted loans had ramifications across these borrowers' personal finances.¹¹⁷

Bureau examiners scrutinize these industry practices, identifying illegal practices at one or more student loan servicers. Following publication of the Student Loan Ombudsman's report, the Bureau's Office of Supervision included in its Winter 2016 edition of *Supervisory Highlights* a detailed description of a set of circumstances where examiners halted illegal auto-defaults at one or more student loan servicers.¹¹⁸ The Bureau's Office of Supervision reported that examiners found that one or more student loan servicers were engaged in the unfair practice of auto-defaulting borrowers when the cosigner filed for bankruptcy.¹¹⁹ Bureau examiners determined "the practice of auto-defaulting private student loan borrowers to be unfair in cases where the 'Whole Loan Due' clause was ambiguous on this point because reasonable consumers would not likely interpret the promissory notes to allow their

¹¹⁵ See CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 16, 2014), <https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2014>.

¹¹⁶ These auto-defaults may be occurring when data from probate and other court record scans are matched with a financial institution's customer database, without regard to whether the borrower is in good standing.

¹¹⁷ These defaults are also typically reported to credit bureaus and negatively impact the credit profile of a borrower.

¹¹⁸ See CFPB, *Supervisory Highlights: Issue 10, Winter 2016* (Mar. 2016), <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2016/>.

¹¹⁹ See *id.*

own default based on a [cosigners'] bankruptcy.”¹²⁰ The Supervisory Highlights also reported that examiners found that one or more servicers did not notify either borrower or the cosigner that the loan was placed in default.¹²¹ Some consumers only learned that a servicer placed their loan in a default status when they identified adverse information on their consumer reports, the servicer stopped accepting loan payments, or they were contacted by a debt collector.¹²²

Industry participants voluntarily improve the repayment process for student loan borrowers. Following publication of the Bureau’s initial report on this topic, the largest private student lenders informed the Bureau that they had halted auto-defaults in their own portfolios, explaining that the practice of calling into default a performing loan did not make sound financial sense for loan holders. However, lenders continued to include contract terms that could permit these practices in the future, either by the lenders themselves or by future loan holders.¹²³ During this period, the Bureau continued to receive complaints from consumers who

¹²⁰ See *id.*

¹²¹ *Id.* (“Examiners determined that one or more servicers engaged in an unfair practice in violation of the Dodd-Frank Act relating to auto-default. When a private student loan had a borrower and a cosigner, one or more servicers would auto-default both borrower and cosigner if either filed for bankruptcy. These auto-defaults were unfair where the whole loan due clause was ambiguous on this point because reasonable consumers would not likely interpret the promissory notes to allow their own default based on a co-debtor’s bankruptcy. Further, one or more servicers did not notify either co-debtor that the loan was placed in default. Some consumers only learned that a servicer placed the loan in a default status when they identified adverse information on their consumer reports, the servicer stopped accepting loan payments, or they were contacted by a debt collector. Supervision directed one or more servicers to immediately cease this practice. Additionally, since the CFPB’s April 2014 report first highlighted auto-defaults as a concern, some companies have voluntarily ceased the practice.”).

¹²² See *id.*

¹²³ CFPB, *CFPB Student Loan Ombudsman’s Mid-Year Update on Student Loan Complaints* (June 2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf (“Subsequent to last year’s report, we asked certain market participants about current industry practices and policies related to co-signed private student loans. We received six responses to the information request from respondents representing many corporate forms, including large depository institutions and third-parties servicing loans held by banks or in a securitized pool.”).

had encountered auto-defaults, typically where loans had been securitized and sold to investors after origination.¹²⁴

Contemporaneous with the publication of the Bureau supervisory findings, the Student Loan Ombudsman highlighted the issue of auto-defaults in remarks to the Consumers Bankers Association.¹²⁵

¹²⁴ In 2015, a subsequent report by the CFPB Student Loan Ombudsman described how these practices persist where loans are held in trust and serviced by nonbank student loan servicers that have no business relationship with the original private student lender. See CFPB, *Mid-Year Update on Student Loan Complaints* (June 2015), <https://www.consumerfinance.gov/data-research/research-reports/2015-mid-year-update-on-student-loan-complaints> (“For example, if the originating private student lender includes clauses that it interprets as permitting an auto-default in the case of co-signer death even when a loan is current, the lender might make a business decision to refrain from enforcing the provision, but only if the loan is held by the lender. However, once the loan is sold or securitized, the contractual arrangements and incentive structures can create the conditions for servicers to limit their discretion and enforce the provisions – even if it is not in the long-term interest of the bondholders – unless servicers are sufficiently indemnified.”).

¹²⁵ In particular, these remarks reinforced concerns about how these practices may persist when loans are sold, where loan contracts may be interpreted by a future holder to permit this practice. See also CFPB, *CFPB Student Loan Ombudsman’s Mid-Year Update on Student Loan Complaints* (June 2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf.

Many banks and other lenders have told the Bureau that they do not plan to auto-default borrowers—that, in effect, this practice is not or is no longer a problem for their customers. This promise is of little solace to the student loan borrowers who, because their loans have been securitized and sold, find themselves in default when their co-signer parent or grandparent dies. . . . By introducing uncertainty, these clauses may also impede a well-functioning student loan servicing marketplace. If you believe that defaulting a borrower who is otherwise paying off her loans makes bad business sense, then the clauses that allow this practice should not be a contractual obligation for your customers.

Over the following six months, individual private student lenders informed the Bureau that they had removed contract provisions that could be interpreted to permit auto-defaults from all new private student loans. In October 2016, the Consumer Bankers Association further informed the Bureau that its members, including the nation's largest private student lenders, had modified provisions in their loan contracts that could be interpreted to permit auto-defaults.¹²⁶ In effect, lenders had removed any avenue in which a current or future lender or servicer could demand full payment on a performing loan due to the death of, or bankruptcy filing by, a cosigner for these new borrowers. Without these provisions, new borrowers with these private student loans do not have to worry about auto-default after the death of, or bankruptcy filing by, a cosigner.

¹²⁶ See CFPB, *Prepared Remarks of CFPB Director Richard Cordray at the Consumer Advisory Board Meeting* (Oct. 27, 2016), <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-consumer-advisory-board-meeting> (“I am pleased to be able to share a communication I received last week from the Consumer Bankers Association, written on behalf of the nation’s largest private student lenders. They informed the Bureau that these banks have now taken further action by ensuring that their new loan contracts do “not provide a basis for accelerating or placing a good-standing loan in default” upon the death or bankruptcy of a co-signer. This means that even when these new loans are sold or securitized, the terms of the loans will protect borrowers from these harmful practices in the future.”). In the 2016-2017 academic year, the six largest private lenders originated more than \$7.8 billion in private student loans. See MeasureOne, *Private Student Loan Report* (Q1 2017), <https://www.measureone.com/pls.php>.

OPPORTUNITIES AND IMPLICATIONS

This example demonstrates that, where standard industry practices may drive outcomes that are not in the financial interests of borrowers or loan holders, individual consumer complaints can raise awareness, focus oversight, and lead the student loan industry to reassess a practice. In this case, the response by the largest private student lenders eliminated a practice identified by borrowers as harmful, and that may also have been contrary to the industry's own economic interests.

Consumer complaints from borrowers with private student loans have identified a range of other practices that may be harmful to consumers and may not be in the economic interest of noteholders or lenders, such that a change in industry practice may also present an opportunity for a similar “win-win.” In particular, access to a modification of loan terms under certain circumstances may offer private student loan borrowers experiencing financial hardship the opportunity to successfully repay their debts, thereby avoiding a loan default that is costly for both borrowers and loan holders.¹²⁷

This holds true for borrowers experiencing financial hardship and may also hold true for borrowers who become disabled and may default on a private student loan where there is no flexibility in repayment terms. Some lenders have developed disability discharge or modification programs when private student loan borrowers become disabled—either driven by the same

¹²⁷ For further discussion, see Board of Governors of the Federal Reserve System, *Testimony of Todd Vermilyea, Senior Associate Director, Division of Banking Supervision and Regulation before the Senate Committee on Banking, Housing and Urban Affairs* (June 2013), <https://www.federalreserve.gov/newsevents/testimony/vermilyea20130625a.htm> (“When conducted in a prudent manner, modifications of problem loans, including student loans, are generally in the best interest of both the institution and the borrower, and can lead to better loan performance, increased recoveries, and reduced credit risk.”); see also Federal Financial Institution Examination Council, *Guidance on Private Student Loans with Graduated Repayment Terms at Loan Origination* (Feb. 2, 2015), <https://www.fdic.gov/news/news/financial/2015/fil15006.html>; CFPB, *Student Loan Affordability* (May 8, 2013); http://files.consumerfinance.gov/f/201305_cfpb_rfi-report_student-loans.pdf; CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2014), <https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2014>.

economic incentives that have led other lenders to expand modification options, or, in the case of loan discharge, potentially seeking to mitigate headline or reputational risks stemming from collections against disabled borrowers. However, the Bureau continues to receive complaints suggesting that these options may not be widely available or well understood.

As policymakers consider future action that may provide an increased role for private student lending, this illustration also reveals how the complex nature of the private student loan market can lead to misaligned economic incentives and outcomes that may cause significant harm to student loan borrowers.

--

In each of the preceding examples, individual consumer complaints led to increased scrutiny by a regulator or law enforcement agency with the authority, tools, and will to take action on these borrowers' behalf, after these complaints were highlighted by the CFPB Student Loan Ombudsman. In each of these examples, a broader segment of borrowers benefited from a policy or market shift that halted harmful practices and improved the customer experience. Taken together, these examples offer policymakers a roadmap for how to obtain and use the experiences of borrowers as reported in complaints to identify a problem, and to encourage action and reform in the student loan market. This approach mitigates borrower distress and drives better outcomes over the long-term.

4. Recommendations

Policymakers and market participants may wish to consider the following recommendations to address the specific issues identified in this report.

Student loan borrowers benefit from robust, coordinated, and consumer-driven oversight of the student loan industry by federal and state agencies.

In each of the preceding examples, the regulators and law enforcement agencies responsible for providing oversight over student loan companies used consumer complaints to inform and shape this oversight. These consumer complaints revealed systemic issues that informed supervisory and enforcement actions that ultimately ended harmful industry practices and halted violations of law across the student loan industry. Subsequently, policy changes and market shifts led to protections for a broader segment of student loan borrowers.

FIGURE 10: BORROWERS BENEFIT WHEN COMPLAINTS INFORM CONSUMER-DRIVEN OVERSIGHT



Consumer-driven oversight sits at the nexus between consumer complaints and systemic reform. Borrowers benefit from five key features of this process, each of which depends on specific actions by agencies responsible for oversight. Borrowers benefit when 1) they are empowered to submit complaints to agencies with supervisory and/or enforcement authority; 2) servicers are subject to routine examinations informed by information about the experiences of borrowers; 3) agencies responsible for oversight have the necessary tools and authority to take action to halt harmful practices; 4) agencies share critical information about problems and

practices across the community of government entities responsible for oversight, regulation, and law enforcement in this market; and 5) public policy is shaped by information identified through this oversight.

Consumers benefit when the student loan industry is subject to coordinated oversight by regulators at both the federal and state levels. As the Bureau has noted in the past, a robust state-federal partnership offers tangible benefits to student loan borrowers by providing rigorous oversight in every corner of the student loan servicing market, both through analysis of data leading to recommendations for better practices, and where the knowledge and insights from oversight inform federal and state policymaking.¹²⁸

Student loan borrowers would benefit from standards to strengthen servicing practices for the servicing of all student loans and to have servicers held accountable for meeting these standards.

For more than five years, the Bureau has worked with federal and state agencies, law enforcement officials, and other stakeholders to assist individual borrowers and to address a wide range of harmful or illegal practices in the \$1.4 trillion student loan market.¹²⁹ In conjunction with this work, the Bureau has also documented how student loan borrowers would be well served by industrywide standards for quality service that cover all types of student loans.¹³⁰ Policymakers, regulators, and law enforcement officials seeking to improve the student loan repayment process may draw on the approaches outlined above when seeking to set and

¹²⁸ See CFPB, *Prepared Remarks of Seth Frotman Before the California State Senate Banking and Financial Institution Committee* (Mar. 22, 2017), http://files.consumerfinance.gov/f/documents/201703_cfpb_Frotman-Testimony-CA-Senate-Banking-Committee.pdf; see also State of Connecticut Department of Banking, *Response to CFPB Request for Information on Student Loan Servicing* (July 13, 2015), <https://www.regulations.gov/document?D=CFPB-2015-0021-0381>.

¹²⁹ See Section three.

¹³⁰ See CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

strengthen practices. As the examples in the prior section of this report illustrate, borrowers benefit when servicing reforms reflect their experiences and address with precision the discrete obstacles identified across the student loan repayment process. Standards to strengthen servicing practices, particularly where servicers provide timely, actionable communications related to available repayment options, may also empower vulnerable borrowers to avoid third-party “debt relief” scams.

FIGURE 11: BORROWERS BENEFIT WHEN REFORMS ARE SHAPED BY BORROWERS’ EXPERIENCES



To this end, as policymakers consider efforts to reform the student loan repayment process, borrowers would benefit from industrywide standards to strengthen servicing practices and rigorous oversight for meeting these standards. If and when servicers fall short, borrowers, regulators, and law enforcement officials should have access to appropriate channels for recourse.

--

Section two of this report describes a range of servicing and collections practices reported by consumers that continue to cause student debt stress and may increase the cost of student loan repayment or drive borrowers into default. Section three of this report offers examples of how a series of student loan complaints identifying similar patterns about specific experiences, issues, or problems led to action to improve student loan repayment for a broader segment of consumers, offering policymakers and market participants an effective roadmap to enact necessary reforms.

It is clear that there is still much work to be done to improve the student loan system for millions of borrowers. Industrywide standards to strengthen servicing practices, coupled with robust oversight across federal and state agencies, can help to shape a student loan repayment process that meets borrowers’ needs by ensuring that borrowers are treated fairly, that they can

access the benefits and protections guaranteed under law or contract, and that they can successfully satisfy their student debt.

5. Contact information

To reach the CFPB's Student Loan Ombudsman:

By phone (844) 611-4260

By email students@cfpb.gov

By mail Consumer Financial Protection Bureau
Attn: Seth Frotman
1700 G Street NW
Washington, DC 20552

To submit a complaint:

Online consumerfinance.gov/complaint

By phone 180+ languages, M-F 8am-8pm EST
Toll-Free: (855) 411-CFPB (2372)
TTY/TDD: (855) 729-CFPB (2372)

By mail Consumer Financial Protection Bureau
PO Box 2900
Clinton, Iowa 52733

By fax (855) 237-2392

Press and media requests:

By email press@consumerfinance.gov

Congressional inquiries:

By phone (202) 435-7960