CENTER FOR CAPITAL MARKETS COMPETITIVENESS

1615 H Street, NW
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July 13, 2015

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, DC 20552

Re. Request for Information Regarding Student Loan Servicing, Docket No. CFPB-2015-0021.

Dear Ms. Jackson:

These comments are submitted on behalf of the U.S. Chamber of Commerce Center for Capital Markets Competitiveness ("CCMC"). The U.S. Chamber of Commerce (the "Chamber") is the world's largest business federation, representing the interests of more than three million companies of every size, sector, and region. The Chamber created CCMC to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy.

CCMC appreciates the opportunity to comment on the request for information (the "RFI") by the Consumer Financial Protection Bureau (the "Bureau") regarding student loan servicing.[1] Graduating from college has put millions of Americans on the path to long-term success and prosperity. Access to credit and the ensuing servicing of that debt have been pivotal to making those dreams come true.

The student loan market differs from other credit markets, however, because of the singularly important role played by the federal government. In the past decade, federal statutes and regulations have significantly reshaped the market, making the federal government the dominant lender. Private student loans, in contrast, comprise only a small fraction of the market. The private sector's primary role instead is to

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[1] *See* Request for Information Regarding Student Loan Servicing, CFPB-2015-0021, 80 Fed. Reg. 29302 (May 21, 2015).

service federal loans subject to contractual terms and regulations imposed by the government.

In short, the federal government made the student loan market what it is today. It consequently cannot now disclaim responsibility for every problem in the marketplace or, conversely, suggest that the private sector deserves all the blame. Rather, the Bureau and the rest of the federal government should work collaboratively with its chosen partners and other industry stakeholders to achieve our shared goal of supporting Americans pursuing higher education and, by that means, the American dream.

We accordingly write to emphasize three points:

- Recognition of the federal government's dominant role in the student loan market should be the starting point for any review of the market.
- The Bureau's supervision of the student loan servicing market renders further reporting requirements unnecessary.
- Given the numerous statutory, regulatory, and contractual requirements imposed on participants in the student loan market, the Bureau should take any policy making steps through a rulemaking process that is coordinated with other relevant agencies.

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(1) Recognition of the Federal Government's Dominant Role in the Student Loan Market Should Be the Starting Point for any Review of that Market.

The RFI only alludes to the federal government's domination of the student loan market. This point bears greater emphasis. In fact, it should be the starting point for any review of the regulation of the student loan market. To that end:

- It long has been the policy of the federal government to encourage prospective students to take loans out to go to school and to encourage lenders to extend loans to them. For example, Congress chose to

encourage lending by imposing a higher standard for discharging student loans in bankruptcy than for discharging other forms of debt.[2]

- Of the estimated $1.2 trillion dollars in outstanding student loans, $744 billion in loans were made through the Federal Direct Loan program.[3] In other words, the federal government itself extended over 60% of all outstanding student loans. Another $380 billion were made under the Federal Family Education Loan Program—i.e. loans guaranteed by a governmental or not-for-profit entity and reinsured by the government.[4] Thus, the Bureau reports that $1.1 trillion of the $1.2 trillion in outstanding student loans are either loans from the federal government or are loans reinsured by the federal government. The much smaller volume of private loans pales in comparison.

- The Student Aid and Fiscal Responsibility Act effectively codified the existing market structure in 2010.[5] Pursuant to that law, the Department of Education now is the sole provider of federal loans borrowers under the William D. Ford Federal Direct Loan program. Those loans are serviced by third party financial services companies with which the Department of Education partners by contract.

- The federal government controls the interest rate paid under federal direct loans, which will continue to be the dominant form of educational funding going forward.[6]

- The federal government shaped the use of private student loans by for-profit schools through its imposition of the 90/10 federal funding

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[2] *See* 11 U.S.C. § 523(a)(8) (providing for an "undue hardship" standard for discharge of student loan debt).

[3] RFI, 80 Fed. Reg. at 29303-04.

[4] *Id.*

[5] *See* Pub. L. 111-152, §§ 2101-2213, 124 Stat. 1071 (2010).

[6] *See, e.g.*, Interest Rates for New Direct Loans, https://studentaid.ed.gov/sa/about/announcements/interest-rate (visited on July 8, 2015) (explaining that "[i]n August 2013, Congress passed and the President signed the Bipartisan Student Loan Certainty Act of 2013," which chose to tie federal student loan interest rates to prevailing rates in the financial markets).

requirement and its policies regarding the types of institutions that may receive federal loan proceeds.[7]

- The federal government controls the contractual terms pursuant to which federal loans are serviced and can oversee the performance of those contracts.[8] For example, the Department of Education uses borrower default rates and customer service measures to determine how to allocate loans among servicers.[9]

- The federal government controls the terms under which federal loans may be forgiven or discharged. For example, the federal government controls the availability and terms of income-based repayment programs.[10]

- Historically, the federal government has insisted on the collection of federal student loan debt. For example, there is no statute of limitations for collections on federal student loan debt.[11] And recently, the federal

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[7] *See* 20 U.S.C. § 1094(a)(24) (stating 90/10 rule). *See generally id.* § 1002 (definition of institution of higher education for purposes of student assistance programs).

[8] *See, e.g.*, Press Release, U.S. Department of Education Strengthens Federal Student Loan Servicing (Aug. 29, 2014) (explaining that the Department had "renegotiated the terms of its contracts with federal student loan servicers in order to strengthen incentives for them to provide excellent customer service and help borrowers stay up-to-date on their payments"), *available at* http://www.ed.gov/news/press-releases/us-department-education-strengthens-federal-student-loan-servicing.

[9] *See, e.g.*, Jana Hernandes, *Loan Servicing Information - First Quarter's Customer Service Performance Results* (Mar. 26, 2015) ("Per the contractual agreement with each of our federal loan servicers, the Department of Education (the Department) will annually measure servicer performance in the areas of customer satisfaction and default prevention. We will then use these results to determine each servicer's allocation of future loan volume when applicable."), *available at* https://ifap.ed.gov/eannouncements/032615LSIFirstQuarterCustServPerformResults.html.

[10] *See, e.g.*, Press Release, New Data Shows a Lower Percentage of Students Defaulting on Federal Student Loans (Sept. 24, 2014) ("In June, as part of a broad effort to lift the burden of student loan debt, President Obama directed Secretary Duncan to allow all federal student loan borrowers to cap their monthly payment amounts at 10 percent of the borrower's monthly income. The Department has begun to put the President's directive into effect, with the goal of making the new plan available to borrowers next year. The Department is also using innovative communication strategies this fall to help inform borrowers of their repayment options, especially when they run into difficulty managing their student loan payments. Thanks to a wide variety of outreach efforts, more than 2.5 million Direct Loan borrowers are currently enrolled in an income-driven repayment plan."), *available at* http://www.ed.gov/news/press-releases/new-data-shows-lower-percentage-students-defaulting-federal-student-loans.

[11] *See* Higher Education Technical Amendments Act of 1991, Pub. L. No. 102-26, § 3, 105 Stat. 123, 124 (1991).

> government provided only limited relief to students of Corinthian Colleges—which the government itself had put out of business—and even then only after extensive pressure.[12]

Unsurprisingly given its controlling stake in the student loan market, the federal government can address most, if not all, of the significant issues that might arise in the student loan marketplace without imposing new regulatory burdens on its private sector partners. Consequently, while it is appropriate to help private sector partners address any concerns with student loan servicing, the Bureau and the federal government more broadly should not ignore the primary importance of the federal government's decisions about to whom to lend, under what terms, and for what purposes.

For example, the Bureau should remember that it is the federal government that chooses the company that services an individual borrower's direct federal loans. While it may be true that the consumer does not have the ability to choose its loan servicer, it is hardly fair for the Bureau—and the government more broadly—to suggest that this fact is somehow the servicer's fault.

Similarly, the Bureau should consider that the federal government could set any deadlines it wishes in its contracts with loan servicers, but that any such requirement would come at a high price. Immediate resolution of customer concerns, even if possible, would require enormous resources and expense; costs that would be borne by the federal government through higher servicing costs and, ultimately (unless taxpayers cover any difference), by borrowers who must pay higher rates to cover those increased costs. The federal government may ultimately choose these tradeoffs, but it has not done so to date, whether by statute, regulation, or contract.

(2) The Bureau's Supervision of the Student Loan Servicing Market Renders Further Reporting Requirements Unnecessary.

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[12] *See, e.g.*, Danielle Douglas-Gabriel, *How the Government Plans to Help Students Left Hanging by For-Profit Corinthian Colleges*, WASH. POST., June 9, 2015 (noting that "lawmakers and consumers advocates [are] questioning whether the government is doing enough to clean up a mess they say could have been prevented"), *available at* http://www.washingtonpost.com/business/get-there/how-the-government-plans-to-help-students-left-hanging-by-for-profit-corinthian-colleges/2015/06/08/04794a0d-17cd-4d07-83b7-c8523972b254_story.html.

The Bureau suggests in the RFI that only limited data is available on the student loan servicing market.[13] This suggestion is strange. The Bureau supervises the student loan servicing market. The insights and access provided by that supervisory process render any new reporting requirements unjustifiable.

As the Bureau explains, "[t]he vast majority of student loan servicing activity is now concentrated among large student loan servicers that service all three types of student loans," *i.e.*, Federal Family Education Loans, Federal Direct Loans, and private loans.[14] The Bureau has clear authority over those servicers. In addition to the investigatory authority it may exercise over all financial services companies,[15] the Bureau has supervisory authority over student loan servicers by virtue of the larger participant rule for student loan servicing that it promulgated in 2013.[16] There, the Bureau ensured that it had expansive authority, going so far as to decline to exercise authority only over the five largest services (which service between 67% and 87% of non-bank outstanding balances) and instead defining a threshold amount that would capture 71% to 93% of non-bank outstanding balances.[17] Combined with its supervisory authority over financial institutions, the Bureau thus has full visibility into the vast majority of the student loan servicing market.

The Bureau knows this, of course, suggesting that it has something else in mind than merely securing the data necessary to enforce the consumer financial protection laws. By its comparison to the collection of data under the Home Mortgage Disclosure Act of 1975, the Bureau appears to mean that the student loan servicing market is opaque to the extent that students and members of the public do not have access to loan-level data describing credit extended to individual consumers.[18] But any suggestion that an equivalent regime should be established for student loans is unreasonable. The purpose of collecting HMDA data was to guard against redlining

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[13] *See* RFI, 80 Fed. Reg. at 29303.

[14] *Id.* at 29304.

[15] *See generally* 12 U.S.C. § 5562(c) (granting Bureau authority to issue civil investigative demands).

[16] *See* Final Rule, Defining Larger Participants of the Student Loan Servicing Market, 78 Fed. Reg. 73383 (Dec. 6, 2013).

[17] *Id.* at 73996, 73998.

[18] *See* RFI, 80 Fed. Reg. at 29303 n.3.

and other historical discriminatory actions in the mortgage market.[19] Congress has not taken such extraordinary steps in other credit markets and there is no reason for it to do so here. Of course, if there is any discrimination in that market, it should be immediately eliminated. But, if there is discrimination in the extension of federal loans, the federal government could just stop discriminating—further reporting requirements would be unnecessary. And of course the Bureau has sufficient tools to assess any risk of discrimination in the private lending market; no evidence of which the Bureau presents here. Thus, going forward, the Bureau should continue to use its ample supervisory authority rather than imposing unnecessary and burdensome new reporting requirements.

(3) Given the Numerous Statutory, Regulatory, and Contractual Requirements Imposed on Participants in the Student Loan Market, the Bureau Should Take any Policy Making Steps Through a Rulemaking Process that is Coordinated with Other Relevant Agencies.

As detailed above, the student loan market is a product of federal policy making and already is saturated with federal regulatory scrutiny. Student loan servicers consequently must navigate countless different federal requirements while interfacing with various federal offices. This regulatory complexity makes it particularly important that any further changes in regulatory policy are accomplished through a notice and comment process that is appropriately coordinated with other federal agencies. Efforts to change the practices of loan servicers through enforcement actions, informal guidance, or other forms of pressure are sure to cause confusion in the marketplace, conflict with other regulatory mandates, or otherwise backfire.

For example, we have been concerned about pressure the Bureau has brought to bear in an apparent effort to change co-signer release policies for private student

[19] *See* Pub. L. No. 94-200 § 302, 89 Stat. 1124, 1125 (1975) ("The purpose of this title is to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.").

loans.[20] This pressure has created substantial confusion in the marketplace as the Bureau appears to seek fundamental change to these policies, not merely the resolution of inadvertent mistakes. But as the Bureau knows, co-signer release policies are controlled by contracts between consumers and lenders, the terms of which in turn drive loan pricing. Pressure to revise such policies to allow consumers who otherwise would not be credit-worthy to maintain their credit puts lenders in a double bind. Either they change policies, incur additional expenses associated with retaining the non-credit-worthy customers, and raise rates (likely to noncompetitive levels) or they risk facing an enforcement action for flouting the Bureau's apparent wishes.

Here, as elsewhere, the Bureau should not expect vague pressure to achieve productive ends. Instead, if the Bureau believes that new rules are appropriate, it should promulgate them through the rulemaking process and give companies ample time to change their operations to meet any new requirements. In this way, companies will be able to compete on a level playing field with their attention focused on serving customers, not on navigating vague quasi-regulatory requirements.

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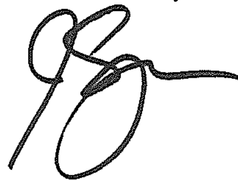
We thank you for your consideration of these comments and would be happy to discuss these issues further with appropriate staff.

Sincerely,



Jess Sharp, Managing Director

[20] *See, e.g.*, Press Release, CFPB Finds Private Student Loan Borrowers Face "Auto-Default" When Co-Signer Dies or Goes Bankrupt (Apr. 22, 2014), *available at* http://www.consumerfinance.gov/newsroom/cfpb-finds-private-student-loan-borrowers-face-auto-default-when-co-signer-dies-or-goes-bankrupt/.