

**Comments to the Consumer Financial Protection Bureau
on Request for Information Regarding Complaints
from Private Education Loan Borrowers, 77 FR 35659 (June 14, 2012)
Docket No. CFPB-2012-0024**

Submitted August 13, 2012

Introduction

These comments are submitted on behalf of the National Consumer Law Center's low-income clients.¹ NCLC's Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates and provides direct legal representation to student loan borrowers. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens and make loan repayment more manageable.

Our comments on private student loans are based on our experiences representing low-income consumers. We also work with other advocates across the country representing low-income clients. In addition, we receive e-mails from thousands of borrowers each year through our Student Loan Borrower Assistance web site (www.studentloanborrowerassistance.org).

Complaint Process for Private Loan Borrowers

NCLC's Student Loan Borrower Assistance Project works with individual borrowers in several different ways. Our self-help website receives an average of 50,000 hits each month. Of those viewers, about 100 borrowers contact us each month with specific questions or information about their student loan situations.

While we cannot provide individualized legal advice to borrowers who contact us through our web site or by phone, we do provide general information and referrals for additional assistance. For example, we direct borrowers with complaints about private student loans to the CFPB ombudsman. For federal student loan borrowers, we have detailed information on our web site about the Department of Education and guaranty agency ombudsman and customer assistance programs.

In addition to the borrowers contacting us through the website, we provide direct legal representation to a limited number of low-income clients in Massachusetts. We work directly to resolve these borrowers' cases with schools, lenders, and government agencies.

Although most of our clients are seeking assistance for federal student loans, about 20-30% also have private loans. We began to see a growing number of low-income clients with private student loans about ten years ago. Many clients had multiple loans with large balances. Most of these loans were third party loans. As the subprime private student loan market has

¹ The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal services, government and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues.

contracted, we now see fewer clients with new third party private student loans. However, nearly all of our clients with older private loans received high-rate loans that they are unable to repay. In addition, numerous clients have institutional loans from for-profit schools.

Patterns of Complaints

Because of the nature of our representation, we have detailed information about the substance of our clients' student loan problems and outcomes. We also track general information about the substance of borrower inquiries and complaints that we receive through our web site. The complaints we hear from our clients and borrowers contacting us through the web site fall into these main general categories:

1. Confusion About Private vs. Federal Loans

Understanding the type of loan a borrower has is key to resolving issues and preventing default on student loans. Unfortunately, borrowers rarely understand the difference between private and government loans. Because most borrowers do not know what type of loan they have, they are also very frequently confused about where to go for assistance and what type of assistance may be available.

2. Co-Signer Issues

Parents frequently express confusion about the scope of their co-signing obligations. For example, we often hear from parents who understood that their children would be solely liable for the loans even though the parents co-signed. In addition, according to many borrowers that contact us, lenders often exaggerate possible options for parents to remove their names from loan notes in the future.

In one case, a monolingual Spanish speaking client earning minimum wage co-signed multiple private loans for her daughter's education. Her daughter attended a private non-profit college in the Boston area with a tuition of over \$25,000/year. She attended for only about 1 ½ years, dropping out because of concerns about affordability. The client had previously taken out a PLUS loan and thought the private loan was another PLUS loan.

3. Problems with Private Loan Servicers

a. Inability to Get Information About Loan

Many borrowers tell us that they are unable to obtain even basic information, such as amounts owed and paid, from their private student lenders or servicers. A borrower from Franklin, NY contacting us through our web site summarized this problem concisely: "I have a private loan that has been passed around and I can't seem to get ahold of anyone about it."

Another borrower wrote to us: "I have been rotating which loans I don't pay each month (because I owe more than I can afford. I have tried auto-pay plans on a couple of the loans that are less patient. Most have been willing to talk to me, but not help me. ...Key Bank has been the worst one for me so far. They handed me off to several collections companies without really letting me know. I unknowingly continued making payments. I don't know where my money

went after I paid and then found out that Key Bank was no longer using that company. Instead of trying to work with me, Key Bank called my HR department at work and is threatening to sue my parents.... If I had known this was how it would be after college, I probably wouldn't have gone. The stress on me is one thing, but threatening my family is something completely different. Dad probably would never have co-signed if he knew he would be laid off and become disabled. All this and I don't even have a degree to show for it.”

This is an area of particular concern because many of these problems escalate only because lenders do not respond to requests for basic information. In some cases, a borrower may be satisfied with a clear statement showing prior payments and loan terms. Instead, these borrowers are often frustrated because they do not know who to reach to get clear information about their obligations. They may send requests for information to general addresses or any contact information they can find and never receive a response.

Borrowers increasingly complain about getting the run-around when trying to work out solutions with lenders. This is particularly common when loans have been securitized and it is unclear which entity has authority to modify loans.

b. Inconsistent Options

There is tremendous inconsistency in the way private student lenders handle inquiries. We experience these problems first hand when advocating for our low-income clients. Even within the same company, we often get different answers to questions about affordable repayment plans, cancellation policies, and other potential relief options. For example, when we call Sallie Mae’s customer advocate office directly, we tend to get different answers depending on who answers the phone. When we call a particular contact at Sallie Mae, we generally get more consistent information. This is particularly worrisome for the vast majority of borrowers who do not have a representative or attorney to assist with their cases. These borrowers are unlikely to have the contacts necessary to cut through lender or servicer bureaucracies.

Furthermore, in our experience, most lenders do not make written promises about possible relief options.² The lenders repeatedly tell us that they evaluate relief options on a “case by case” basis. This means that there is little or no information on web sites or elsewhere about the range of options that might be available to struggling borrowers.

Another problem is that some creditors give inconsistent information about the scope of their authority. For example, some creditors tell us that they absolutely cannot provide relief after they have written off accounts or sent accounts to collection. Yet in some cases, even lenders making these absolute statements will take files back from collection for possible resolution. Although we hear in news reports and elsewhere that there are regulatory barriers preventing creditors from offering certain types of relief after accounts have been written off, we have never heard this directly from a creditor while discussing particular cases.

² See generally, National Consumer Law Center, “Too Small to Help: The Plight of Financially Distressed Private Student Loan Borrowers” (April 2009).

c. Lenders Evading Responsibility

In our experience, servicers are generally unreliable in handling cases in which borrowers have serious complaints about the school. About three-quarters of our clients attended for-profit schools. Lenders generally targeted low-income, for-profit school students for the most predatory, abusive loan private loan products. Yet we find that lenders and servicers evade responsibility and claim no legal liability in most cases even when the lenders and schools had very close referral or other relationships.

In one example, a client had serious complaints about the school he attended. Yet AES, which was servicing the client's Chase private student loans, replied that it was unable to provide any relief despite the fact that the school had referred him to Chase for the loan. AES states in its letter that it understands that the client is seeking the possibility of a settlement and that it empathizes with the client's situation in regards to the alleged misrepresentation made by the school. However, according to AES, "We are unable to cancel the debt incurred. Pursuant to Section L. Additional Agreements of the Credit Agreement, it states, 'If I fail to complete the education program paid for with this loan, I am not relieved of any obligation within or pursuant to this Application/Promissory Note.' Your client may wish to seek resolution from the school itself."

When we contacted Chase about this client, Chase wrote back stating that we should contact the school regarding any practices in regards to the education it provided. According to Chase's letter, "We are only a lender and servicer. Funds are disbursed upon the school's certification. Once certified, we have no further correspondence with the school."

Among other problems, the lender or servicer's evasion of liability in these circumstances likely violates the FTC Holder rule. The holder rule (more accurately referred to as the Federal Trade Commission Preservation of Claims Rule), puts lenders on the hook when they have "referring relationships" with schools that defraud students or shut down unexpectedly.³ The holder rule gives lenders an incentive to scrutinize the schools with which they have close relationships and to originate loans only with upstanding schools. This helps promote responsible lending. Under the FTC holder provision, students who have claims or defenses that they could have raised against the school can raise them against the lender.

Yet, private student lenders have sought numerous ways to avoid this type of liability, including hiding behind preemption arguments. Many simply do not include the holder notice in the loan notes. Nearly 40% of the loans in our 2008 survey followed this potentially illegal approach.⁴ Other lenders include the notice but attempt to deny borrowers its benefits by placing contradictory clauses in the notes. In our survey, 90% of the notes that included the FTC notice undermined it in some way by attempting to prohibit borrowers from raising defenses.

³ 16 C.F.R. § 433.2.

⁴ National Consumer Law Center, "Paying the Price: The High Cost of Private Student Loans and the Dangers for Student Borrowers" (March 2008).

Lack of Relief

Borrowers' most common complaint is that the lenders do not offer meaningful relief. We provided more detail about this issue in the prior comments filed with the CFPB about private loans and in our recent testimony before the U.S. Senate Banking Committee.⁵

The bottom line is lenders rarely offer any meaningful relief for our clients. As discussed above, we are also concerned about the haphazard nature of the limited relief that some lenders offer or claim to offer. For example, a number of creditors have announced that they will discharge private loans based on disability or death. However, the companies to date have not provided public information about eligibility and application requirements. Furthermore, the few borrowers who have accessed these programs have found that, in reality, the programs provide very little relief. We do not know of any investigation as to whether these programs are described in writing in loan agreements or elsewhere and whether the lenders are following up on their promises.

A few recent media reports have highlighted families grieving after losing a child and also having to deal with private student loan debts. In one case, the son had been the pride of his family, according to the article, and the first to go to college.⁶ He tragically died in a car accident. The government discharged the federal student loans, but the bulk of the son's loans were private.

In another example, a grieving mother recently wrote to us:

“Two days after Christmas we tragically lost our only daughter in a car accident. She was just 24 years old. She completed her college degree as a Social Worker, an occupation that wasn't going to make her rich in money, but in her words what counted most, helping others...

Like so many other students, she was mired in student loan debt after graduation...Needless to say our family has been devastated by this tragedy. While we're still dealing with our loss and the pain and devastation it's caused our family we are also dealing with the legal troubles that come when a young person dies with barely any accumulated assets but like so many recent graduates, increasing student loan debt. I co-signed for her loans to help her complete her degree and to fulfill our dream of having that piece of paper on our wall. I signed never thinking she wouldn't be able to repay the loan on her own.

In this case, one of the private lenders sent condolences and discharged the debt. A representative from the other lender, Sallie Mae, according to the mother, said there was no such cancellation option.

⁵ National Consumer Law Center, Testimony before U.S. Senate Subcommittee on Financial Institutions and Consumer Protection, “Private Student Loans: Providing Flexibility and Opportunity to Borrowers?” (June 24, 2012); National Consumer Law Center, “Comments to the Consumer Financial Protection Bureau on Request for Information Regarding Private Education Loans and Private Educational Lenders” (Jan. 17, 2012).

⁶ Marian Wang, “Grieving Father Struggles to Pay Dead Son's Student Loans”, Pro Publica (June 14, 2012).

Inferior Customer Service and Lack of Referral Options

Many of the problems we encounter in trying to find the appropriate entity to discuss complaints with a creditor are discussed above. Some lenders such as Sallie Mae have customer advocate units. In our work with representatives from this unit, we find it is most effective if we have a particular person to contact. If we call the main number, we often get incomplete or inconsistent responses about relief options and other critical issues.

Many borrowers tell us that they tried to contact their federal student loan holders for help with private loans. Although some of the guaranty agency ombuds programs have created procedures to attempt to help borrowers with private student loans, in general, these procedures are only as effective as the relief options available. This means that even federal servicers or guaranty agency staff that sincerely want to help end up leading borrowers to dead ends.

Despite their role in facilitating borrowers taking out private student loans, we have not seen any instances in which a school has helped in resolving a private loan case.

The most serious barriers arise when we try to get information from or resolve accounts with collection agencies. There are serious collection abuses in both the federal and private student loan industries. In the private student loan industry, many violations occur due to collectors' inaccurate claims about their collection powers. It is particularly common for collectors of private student loans to claim that they can use collection tools unique to federal loans, such as Social Security offsets.⁷

In the increasingly aggressive collection environment, we are hearing more complaints from borrowers and their attorneys that the entities suing to collect do not actually own or hold the loans. This is frighteningly reminiscent of the recent robo-signing scandal in the mortgage market. Among other practices, plaintiffs in litigation have been unable to prove that the private student loans were in fact properly assigned to them. We urge the CFPB to investigate the scope of this problem and work with state and other federal regulators to ensure that entities collecting on private student loans have authority to do so.

Thank you for your consideration of these comments. Please feel free to contact Deanne Loonin if you have any questions or comments. (Ph: 617-542-8010; E-mail: dloonin@nclc.org).

⁷ See, e.g., *Strom v. National Enterprise Systems, Inc.*, 2011 WL 1233118 (W.D.N.Y. March 30, 2011) (Alleging that collector of private student loan advised that it would seize plaintiff's SSDI funds in bank account).