

April 4, 2014

Rohit Chopra
Assistant Director and Student Loan Ombudsman
Consumer Financial Protection Bureau

James Runcie
Chief Operating Officer
Office of Federal Student Aid
U.S. Department of Education

Sent via e-mail

Dear Mr. Chopra and Mr. Runcie:

As representatives of the undersigned consumer and student advocacy groups, we are writing to request information about student loan servicing.

As the Department of Education and the Consumer Financial Protection Bureau noted in a 2012 report to Congress on private student loans, investor appetite for asset-backed securities fueled a boom of risky lending, mirroring some of the troubling practices in the subprime mortgage market in the run-up to the financial crisis in 2008.

Troubling origination practices have also existed in federal loan programs. For example, Sallie Mae reached a settlement in 2007 with New York Attorney General Andrew Cuomo for kickbacks paid to school officials in exchange for loan volume. The National Consumer Law Center recently highlighted problems with Sallie Mae, including origination concerns, in the report “The Sallie Mae Saga: A Government-Created, Student Debt Fueled Profit Machine.”

Similar problems occurred in other credit markets. However, unlike student loans, Congress and regulators addressed many of the problems in these other markets, including mortgages. For example, the Dodd-Frank Act amended the Real Estate Settlement Procedures Act and the Truth-in-Lending Act to provide more protections to homeowners, many of whom took on loans with predatory origination practices. In addition, the Consumer Financial Protection Bureau (CFPB) issued final mortgage servicing regulations in January 2013, requiring mortgage servicers to provide certain information and protections to consumers.

Although there is existing statutory and regulatory authority to extend similar protections to student loan borrowers, there remain large gaps in the protections available to student loan borrowers compared to other consumers. This is particularly acute in the private student loan market. These products are generally more expensive for borrowers with little or no relief for financially distressed borrowers.

In order to understand the current level of consumer protection, we ask that you respond with information about whether there are student loan servicer requirements in any of the categories listed. Please outline the specific protections or other requirements that apply in each. Please distinguish between federal and private student loans. We have included some examples under each category.

This information is extremely useful to borrowers and advocates seeking to ensure that the federal and private student loan marketplace works fairly and efficiently.

1. Dispute Resolution

For example, in the mortgage market, arbitration clauses are restricted.

Are arbitration clauses restricted in any way in student loan and school enrollment contracts?

2. Periodic Statement and Payment Handling

For example, mortgage servicers are required to credit payments on the date of receipt, provide payoff statements in writing within 7 business days of the request, and provide special statements for delinquent borrowers.

Do similar requirements exist for student loan servicers?

3. Servicing Transfer

For example, mortgage servicing regulations prohibit late fees 60 days after a transfer if a payment is received by the transferor servicer. Regulations also mandate timely transfer of documents and notices to borrowers.

Are similar protections in place for student loan borrowers?

4. Error Resolution

Are student loan servicers required to respond to written requests from borrowers about servicing errors as mortgage servicers must under new regulations?

5. Request for Information from Consumer/borrower

Mortgage servicers must provide borrowers with certain information upon the receipt of certain requests, including the “qualified written request” requirement in RESPA.

Are student loan servicers required to provide similar responses?

6. Interest Rate Adjustment Notices

Mortgage servicers must provide interest rate adjustment notices 60 to 120 days prior to the first payment due after a rate adjustment.

Are there similar requirements for companies servicing variable rate federal and private student loans?

7. Servicing for Delinquent Borrowers

Mortgage servicers are required to provide information about loss mitigation and alternative repayment plan options.

Are student loan servicers required to inform delinquent borrowers about options such as income-based repayment, Pay as You Earn, or private loan alternative options?

In addition, mortgage servicers with loss mitigation programs are required to respond to borrower inquiries on particular time lines and to provide detailed responses in cases of denial. Are there similar requirements for student loan servicers?

8. Post-Default Proceedings and Bankruptcy

For example, the National Mortgage Settlement requires that servicers shall conduct a quarterly review of foreclosure documents or post-default proceeding documents.

What is currently in place to ensure that student loan servicers are accurately documenting post-default proceedings?

9. Loss Mitigation During Bankruptcy

The National Mortgage Settlement includes prohibitions on denial of loss mitigation to borrowers on the basis that they are debtors in bankruptcy.

Are student loan servicers and debt collectors permitted to discriminate against borrowers on the basis of bankruptcy status?

10. Restrictions on Servicing Fees

For example, the National Mortgage Settlement and CFPB regulations include payment application rules that limit late fees in some situations.

Are similar provisions in place for delinquent student loan borrowers?

Please feel free to contact Deanne Loonin at the National Consumer Law Center (dloonin@nclc.org;617-542-8010) if you have any questions. Thank you for your prompt consideration of this request for information.

Signed,

Americans for Financial Reform

Consumer Action

Consumers Union

National Consumer Law Center

The Institute for College Access & Success and its Project on Student Debt

Woodstock Institute