

Relief for Private Student Loan Borrowers
April 2013

*National Consumer Law Center's Student Loan
Borrower Assistance Project*



More than 850,000 private student loans are currently in default and thousands of other borrowers are struggling to make their payments. A large portion of these defaults is attributable to irresponsible lending practices driven by Wall Street's demand for student loan asset backed securities, particularly from 2005-2008. Non-traditional and low-income students were particularly vulnerable to the aggressive marketing of these high-cost, high-risk loans.

The impact of unaffordable payments and default on borrowers is huge and has a negative effect on the overall economy. The burden on low-income borrowers is even worse, since these borrowers face the Catch-22 of forgoing essential needs in order to stay current or risking loss of employment, housing and other opportunities because of the negative credit impact of default.

While it is critical to restore bankruptcy rights for all student loan borrowers and to improve loan origination, servicing and loss mitigation for all future borrowers, there must also be additional assistance – in the form of loan modifications – for the cohort of borrowers who were harmed by predatory lenders.

Five Essential Feature of a Loan Modification Program for Private Student Loan Borrowers:

- 1. Affordability:** Loan modifications must provide a real financial benefit to borrowers and must be linked to the borrower's realistic ability to repay. This is essential not only to providing real relief to borrowers in distress, but also to prevent high re-default rates which would make the program not worth the expense from the servicers' and investors' perspective, or the taxpayers', if government funding is involved.
- 2. Preservation of Borrower Protections:** Participation in a loan modification program or acceptance of a loan modification offer should not result in a borrower losing any rights or protections she would otherwise have. This includes forbidding any waivers of rights as a condition of modification and also structuring the program in such a way that previously exempt income or assets of the borrower are not placed at risk (for example, through the expanded collection powers available for federal loans) and time limits for collection are not lengthened beyond previously applicable statutes of limitations.
- 3. Enforceability:** Borrowers must have the ability to enforce their rights under the modification program, including the ability to dispute and appeal denials of eligibility and mistakes in the terms offered and to raise claims and defenses related to the program in legal proceedings.
- 4. Efficiency and Scale:** The program must be designed to reach as many as possible of the borrowers in or at risk of default, both in order to assist those borrowers directly and in order to have a positive impact on the broader economy. Eligibility criteria must be broad enough to encompass all borrowers in need of assistance and the program must be efficient in reaching those borrowers and in minimizing the barriers to uptake. Reaching scale will require either mandating loan modification offers or providing effective incentives sufficient to induce servicers and lenders to modify a large number of eligible loans.

5. Fairness: Any program, particularly one that relies on incentives to or purchase of loans from existing servicers and lenders must not be a bailout or giveaway to lenders. This is essential to avoid moral hazard on the part of lenders and servicers; the industry should not be allowed to externalize the costs of the shortsighted lending decisions it made. Furthermore, the program must be structured to prevent servicers and lenders from “creaming” or selecting particular loans for modification in order to maximize their own finances and from receiving credit or incentive payments for modifications or other actions they would have taken anyway. Finally, the program must have protections to prevent a disparate impact on borrowers of color or other protected groups.

Background Materials: Select NCLC Reports and Comments

- *Response to the Consumer Financial Protection Bureau’s Request for Information Regarding an Initiative to Promote Student Loan Affordability*, April 2013
<http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/2007/03/cfpb-comments-april2013.pdf>
- *The Student Loan Default Trap: Why Borrowers Default and What Can Be Done*, July 2012
<http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/student-loan-default-trap-report.pdf>
- *Piling It On: The Growth of Proprietary School Loans and the Consequences for Students*, January 2011
<http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/proprietary-schools-loans.pdf>
- *Too Small to Help: The Plight of Financially Distressed Private Student loan Borrowers*, April 2009
<http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/TooSmalltoHelp.pdf>
- *Paying the Price: The High Cost of Private Student Loans and the Dangers for Student Borrowers*, March 2008
http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/Report_PrivateLoans.pdf
- *No Way Out: Student Loans, Financial Distress, and the Need for Policy Reform*, June 2006
<http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/nowayout.pdf>

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NCLC’s Student Loan Borrower Assistance Project provides information about student loan rights and responsibilities for borrowers and advocates. 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. www.studentloanborrowerassistance.org.