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SLBA
Student Loan Borrower Assistance

Comments submitted by
The National Consumer Law Center
(on behalf of its low income clients)

To the Consumer Financial Protection Bureau

Re: Comment Request Agency Information Collection Activities

Docket No. CFPB-2017-0023 (82 Fed. Reg. 42082)

October 6, 2017

Introduction

Thank you for the opportunity to comment on the Bureau's proposal to collect data on aggregated student loan servicing metrics and borrower outcomes from student loan servicers. We submit these comments on behalf of the National Consumer Law Center's low-income clients.[1] 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 to make loan repayment more manageable.[2]

We applaud the Bureau's proposal to require quarterly data collection on aggregated student loan servicing metrics and borrower outcomes from student loan servicers. These comments, which include suggestions for improving that data collection, follow up on the detailed comments NCLC submitted to the CFPB in April 2017 in response to the CFPB's related request for information regarding student loan servicing.[3]

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[1] The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations that represent low-income and older individuals on consumer issues. In addition, NCLC publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including *Student Loan Law* (5th ed. 2014.). These comments were written by NCLC attorney Persis Yu.
[2] *See* the Project's website at http://www.studentloanborrowerassistance.org.
[3] *See* Docket No. CFPB-2017-0002.

The student loan servicer is the borrower's primary point of contact. Competent and efficient servicers can help financially distressed borrowers avoid default and access the programs that are best suited for their needs. The main problem with the current system is that student loan borrowers do not consistently receive competent, efficient service. Lax servicer oversight by the U.S. Department of Education combined with a dearth of clear avenues for borrowers to enforce their rights results in preventable distress and defaults. Too many borrowers never learn about or access options that would relieve their debt burdens and help them make fresh starts in life.

In summary, the CFPB has the authority and responsibility to supervise student loan servicers, including federal student loan servicers; this data collection is vital to fulfilling that duty. For this reason, we strongly support the CFPB's efforts to collect data on student loan servicing. In addition, we call on the CFPB to improve its data collection by adding borrower demographic information and data on other programs under the Higher Education Act, and to make this data publicly available.

I. Data on Student Loan Servicing is Increasingly Vital

Data on student loan servicing is critical to assessing and improving servicing quality, and recent pullbacks by the Department of Education make collecting hard data on servicing even more important now than at the time of our April 2017 comments. We are particularly concerned about the Department of Education's decision to end its 2011 and 2014 Memoranda of Understanding with the CFPB. When Congress enacted the Dodd-Frank Act, it gave the CFPB the authority and responsibility to supervise student loan servicers, including federal student loan servicers.[4] We are concerned that, in withdrawing the MOUs, the Department of Education may be attempting to undermine that authority. Under Dodd-Frank, servicers have a duty to comply with CFPB supervision; therefore, we urge the CFPB to continue to require covered servicers to provide data to the CFPB.

Additionally, U.S. Secretary of Education Betsy DeVos recently withdrew guidance that was intended to ensure greater consumer protections in the contracting process for student loan servicers. As 130 Members of Congress said in a letter, "[DeVos's] decision to rescind these memos—including guidance making servicers' past performance and record of compliance with the law the most important non-cost factor in the evaluation—will put millions of borrowers and taxpayers at risk."[5] Given the Department of Education's demonstrated reluctance to hold student loan servicers to basic consumer protection standards, it is now more important than ever for the CFPB to gather the necessary data to conduct its student loan servicer oversight.

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[4] The CFPB has authority over "any person that engages in offering or providing a consumer financial product or service,"12 U.S.C. § 5481(5), and the definition of "financial product or service" includes "servicing loans," with no exclusion for federal student loans, 12 U.S.C. § 5481(15). The CFPB has the authority to supervise any entity that offers or provides a private student loan, regardless of the size of the entity, *id.* § 5514(a)(D), and the larger participants (as defined by Bureau rule) in other markets for consumer financial products or services. 12 U.S.C. § 5514(a)(1)(B). The Bureau has issued larger-participant rules for the student loan servicing and debt collection markets as per the statute. 12 CFR 1090.105 (consumer debt collection market); 12 CFR 1090.106 (student loan servicing market). Neither rule excludes servicers or collectors of federal student loans.

[5] Letter from 130 Members of Congress to U.S. Dep't of Educ. Secretary Betsy DeVos, April 26, 2017.

Collecting data about student loan borrower repayment outcomes is vital. Data is needed in order to evaluate whether student loan servicers are adequately performing their duties, and to identify ways to improve outcomes for borrowers. As we stated previously, there is a striking lack of research on what works in servicing. To the extent research is being done, it appears to be mainly behind-the-scenes efforts by companies to gain competitive advantages. However, servicers do not publicly reveal this research either because they claim it is proprietary or because they claim that their contracts with the Department of Education prohibit them from revealing this information. The proprietary model therefore creates a barrier to equal access to quality servicing.

The CFPB has already materially contributed to increased attention to student loan data, publishing estimates on market size and default trends. It is uniquely situated to collect this data. Through its expertise in the student loan market and with other financial products, the CFPB has the expertise to analyze student loan data to ensure that student loan servicing works for all borrowers.

Although the Bureau's proposal stated it would not make this data available to the public, we urge the CFPB to do so. Sharing that data with the public will be immensely important. Good policy relies on good data. Very little data is currently publicly available. As Congress approaches reauthorization of the Higher Education Act and the Department of Education engages in restructuring the servicing contract, the public needs information to ensure that policies are truly in the best interest of student loan borrowers and taxpayers. Therefore, we continue to call on the CFPB to make this data publicly available.

II. Additional Information Needed to Monitor Servicer Performance

We applaud the CFPB's effort to obtain information about servicers' general portfolio composition and performance. This information is key to understanding how we can target services to help borrowers succeed across the board. While the CFPB's proposed data request is a good start, as we explained in our prior comments, more detailed information is needed, especially as relates to loan context, borrower demographics, and loan cancellations.

While the loan performance section proposes to collect data on the different loan programs, in order to get a more complete picture of the student loan market and the challenges that borrowers face, we recommend that the CFPB request additional contextual information. Specifically, we recommend requesting performance data disaggregated by factors such as the age of the loan and the type of institution the loan was borrowed to attend. The CFPB should obtain more information about the length of time loans are in default, to the extent that those loans are in a servicer's portfolio, and about loans with multiple borrowers. We also recommend that the CFPB request that performance data be disaggregated by demographics, including race, gender, and age.

Although, in recent years, there has been some increase in available data through the Department of Education's Data Center website, more is needed. Just last month, the Department added some additional information about loan volume by certain borrower characteristics (i.e. age of borrower, debt size, state, type of school), but it provided no performance level data related to those characteristics (e.g., loan status, repayment plans, etc.). Moreover, it failed to include other characteristics such as race, gender, and completion status.

Collecting performance level data based upon borrower demographics is critical, not only for fair lending purposes, but also for determining the overall performance of student loan servicers. Servicers that are not serving borrowers most at risk of default are failing to adequately service their student loan portfolios. Critically, the Department of Education's Performance Metrics and Allocation Information explicitly allows servicers to omit accounts that were previously rehabilitated.[6] Omitting these borrowers eliminates any incentive for these servicers to provide quality service to some of the borrowers most at-risk of defaulting.

We also urge the CFPB to collect more data about student loan cancellations and eligibility for cancellations, as described more fully in our April 2017 comments. We appreciate the CFPB's focus on how servicers perform with respect to income-driven repayment plans. However, the Higher Education Act also provides that borrowers in certain circumstances have the right to have their federal student loans canceled. Unfortunately, too few borrowers are aware of their cancellation rights and servicers are doing too little to ensure that borrowers are aware of their rights.

Historic participation rates in cancellation programs demonstrate how few borrowers are accessing the loan discharges they are entitled to under the HEA. For example, according to a recent GAO report, 234,000 borrowers were identified as eligible to have their loans canceled due to their total and permanent disability.[7] Roughly half of these borrowers were in default and subject to have their Social Security benefits offset. Had they known about the disability discharge program earlier, many of these borrowers may have never defaulted and could have avoided having their limited resources seized.

Similarly, prior to the closing of Corinthian Colleges, Inc. in 2014, the Department estimated that approximately 6% of borrowers who attended closed schools had applied and had their loans canceled.[8] Cancellation application rates for defrauded borrowers eligible for "fast track borrower defense" claims are also very low relative to the number of borrowers the Department has identified as eligible for relief.[9] These rates are unacceptably low and suggest a significant servicing failure, whereby servicers—borrowers' primary points of contact about their student loan options—are not effectively connecting borrowers to their best options for managing their loans. Therefore, we continue to call on the CFPB to collect this data.

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[6] U.S. Dep't of Educ., Federal Student Aid, Explanation of Allocation and Performance Measure Methodology for the for the Quarter Ending June 30, 2017 (Sept. 22, 2017).

[7] U.S. Gov't Accountability Office, Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief, GAO-17-45 (Dec 19, 2016).

[8] *See* Paul Fain, Best of a Bad Situation, InsideHigherEd.com (Dec. 9, 2014).

[9] The Department of Education reported that it had received 82,000 borrower defense claims out of the 280,000 borrowers who attended Everest or WyoTech between 2010 and 2014. U.S. Dep't of Educ., Federal Student Aid Enforcement Office Report on Borrower Defense (October 28, 2016).

Conclusion

Thank you again for the opportunity to comment on the Bureau's proposal to collect data on student loan servicing metrics and borrower outcomes from student loan servicers. With $1.4 trillion dollars in student loan debt, the need to ensure consistently competent and efficient servicing is greater than ever. Getting high-quality data about student loan performance on a variety of metrics is a critical step to hold servicers accountable and to identify ways to improve outcomes for borrowers. The above recommendations will help the CFPB capture information it needs to ensure that student loan servicing works for borrowers of every race, gender, and age; that servicers are adequately utilizing affordable repayment options to help borrowers avoid default; and that servicers are effectively ensuring that borrowers access all the benefits they are entitled to under the Higher Education Act.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact Persis Yu. (Ph: 617-542-8010; E-mail: pyu@nclc.org).