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**Comment submitted by
The National Consumer Law Center**

To the Consumer Financial Protection Bureau

Re: Comment Request Agency Information Collection Activities

Docket No. CFPB-2017-0002 (82 Fed. Reg. 11440)

April 24, 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 make loan repayment more manageable.²

Student loan servicers are the borrower’s primary point of contact. If the servicer is competent and efficient, many financially distressed borrowers will be able to avoid default. The main problem with the current system is that student loan borrowers do not receive consistent quality service. Combined with lax oversight and no clear way for borrowers to enforce their rights, too many borrowers never obtain options that could relieve their debt burdens and help them make fresh starts in life.

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 attorneys Joanna Darcus and Persis Yu.

² See the Project’s website at <http://www.studentloanborrowerassistance.org>.

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 follow up on the detailed comments NCLC submitted to the CFPB in July 2015 in response to the CFPB’s related request for information regarding student loan servicing.³ As we stated at that time, 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.

As described in greater detail throughout these comments, good policy relies on good data. There is a critical need for publicly available information in order to evaluate whether student loan servicers are adequately performing their duties, and to identify ways to improve outcomes for borrowers. Although there has been some increase in available data through the Department of Education’s Data Center website, more is needed. 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 both to collect this data and, through its expertise in the student loan market and with other financial products, to analyze it to ensure that student loan servicing works for all borrowers.

I. NCLC Feedback on Table 1: Federal Loan Portfolio Composition & 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, we think more detailed information is needed. We recommend that the CFPB request more detailed information including:

- Information on Borrower Demographics;
- Detailed Information about Loans;
- Information on Loans At Risk of Perpetual Default;
- Information about Repayment Plans;
- Information on Forbearances and Deferments; and
- Information on Discharged and Dischargeable Loans.

a. Information on Borrower Demographics

Unfortunately, evidence suggests that student loan outcomes vary by demographic. Since 2007, the Department of Education has known that borrowers of color are more likely to default on their student loans than white borrowers. An *Education Sector* report from 2007 analyzed data collected by the Department of Education on the default rates of borrowers who graduated in 1992-93 and found that, ten years after graduation, the default rate for African American

³ See Docket No. CFPB-2015-0021-6840.

students was more than five times higher than the default rate for white students, and the default rate for Latino students was more than twice the rate for white students.⁴

Recent research confirms that, for borrowers of color, things do not seem to have improved in the last ten years. Borrowers of color borrow more than white borrowers.⁵ Research published in the Children and Youth Services Review found significant variation in education-debt levels by race and household income, with African American and lower-income students accumulating higher levels of education debt compared to their white and upper-income peers.⁶ Even after controlling for socioeconomic status and college completion rates, African Americans incurred more student loan debt than similarly situated white borrowers.⁷

Likewise, the available research suggests that borrowers of color continue to be more likely to be in distress on their student loans. Research by the Washington Center for Equitable Growth found that, throughout the country, zip codes with higher shares of African Americans or Latinos have much higher delinquency rates on their student loans.⁸ Women of color are especially burdened by student loan debt.⁹ This relationship suggests that communities of color disproportionately suffer from student loan delinquency and likely default.¹⁰

Recently, the Bureau's Office of Fair Lending identified student loan servicing as one of the areas "which present substantial risk of credit discrimination for consumers." As a result, it plans to "evaluate whether some borrowers who are behind on their...student loan payments may have more difficulty working out a new solution with the servicer because of their race, ethnicity, sex, or age." This attention to the student loan servicing market is warranted because there is little research or data readily available about the causes or the extent of the disparities borrowers of color may face during repayment.

In August 2016, a coalition of 40 national, state and local civil legal aid, civil rights, and public interest groups sent a letter to the Secretary of the Department of Education imploring the Department to collect and release data about the disparate impacts of student loan debt on borrowers of color. The CFPB is well positioned to collect this data from large servicers of both federal and private loans. The Bureau's proposed data collection presents an excellent opportunity to do so, and should be expanded to seek information on outcomes for student loan borrowers of color in particular, along with any additional information needed to understand different outcomes or impacts for these borrowers. The data collected would be immediately helpful to the Bureau as it carries out its many supervision and enforcement responsibilities.

⁴ Erin Dillon, "Hidden Details: A Closer Look at Student Loan Default Rates," Education Sector (2007).

⁵ Mark Huelsman, "The Debt Divide: The Racial and Class Bias Behind the "New Normal" of Student Borrowing," Demos (May 19, 2015).

⁶ Michal Grinstein-Weiss, Dana C. Perantie, Samuel H. Taylor, Shenyang Guo, and Ramesh Raghavan, *Racial disparities in education debt burden among low- and moderate-income households*, Children and Youth Services Review Volume 65, June 2016, Pages 166–174

⁷ Id.

⁸ See Marshall Steinbaum & Kavya Vaghul, Washington Center for Equitable Growth, How the student debt crisis affects African Americans and Latinos, (Feb. 17, 2016).

⁹ Suparna Bhaskaran, Pinklining: How Wall Street's Predatory Products Pillage Women's Wealth, Opportunities, & Futures at 20 (June 2016).

¹⁰ Marshall Steinbaum & Kavya Vaghul, Washington Center for Equitable Growth, How the student debt crisis affects African Americans and Latinos, (Feb. 17, 2016).

The CFPB, in collaboration with the Department of Education, should do everything in its power to ensure that unfair and illegal discrimination is eliminated from the federal student loan program. Moreover, disparities in student loan outcomes exist for other demographic categories as well. According to recent GAO and CFPB reports, older borrowers default more on their student loans than their younger counterparts.¹¹ Similarly, we know that gender may also be a factor in student loan outcomes. Unfortunately, we currently have very little direct data about how the disparities in student loan outcomes impact the performance of the federal student loan portfolio. This lack of information is critically important. Therefore, we recommend that the CFPB request that the performance data it is requesting from federal student loan servicers be disaggregated by demographics, including race, gender, and age.

b. Detailed Information about Loans

There is significant diversity within the federal student loan program. 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.

i. Age of Loans

The federal student loan program began guaranteeing loans in 1965. Due to the terms of federal student loans and the extraordinary collection powers of federal government, including the lack of a statute of limitations, the federal student loan portfolio contains loans that are many decades old. Borrowers who are paying on loans that were originated twenty or thirty years ago likely experience different challenges than more recent borrowers. Getting information about the performance of the loans by age of the loan will both help to understand these challenges, and it will help to understand servicers' performance throughout the life of a loan, rather than a snapshot in time. To that end, the CFPB should collect data on the time that it takes borrowers to completely repay their loans.

ii. Educational Institution and Program Types

As the Department of Education's cohort default rates show, loan performance also varies by the type of institution (i.e. public, private non-profit, and private for-profit) and by the type of degree (i.e. certificate, associates, bachelors, or graduate). Performance of these loans is

¹¹ 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); CFPB, Office for Older Americans & Office for Students and Young Consumers, Snapshot of Older Consumers and Student Loan Debt (Jan. 2017).

already measured by default; however, it would be more useful to have data that shows how these loans perform.

iii. Length of Time in Default

In the CFPB’s proposal, “270+ days delinquent” is the final category of loan status. As we understand under the current Department of Education contract, loans are typically transferred from the servicer back to the Department of Education to be assigned to a debt collector, or a claim is paid by a guaranty agency by the time a borrower is 360 days delinquent. However, to the extent that this is not true, or the Department of Education changes its servicing contracts, it would be helpful to distinguish old from new defaults.

iv. Loans with Multiple Borrowers or Endorsers

Finally, though they make up a small percentage of the loan portfolio, the CFPB should also request data on loans where multiple consumers are liable for the loan, such as joint consolidation loans and PLUS loans with endorsers. There is very little data, if any, available about these loans. Anecdotally, we hear that these borrowers struggle to access income-driven repayment plans and other forms of relief due to the challenges associated with having a co-borrower.

c. Information on Loans At Risk of Perpetual Default

In its 2016 Student Loan Ombudsman report, the CFPB estimated that over a third of borrowers who rehabilitate their loans re-default within the first two years.¹² It further highlighted industry estimates that re-default rates could be as high as 75% over the entire life of the loans. This confirms one of our greatest fears – that programs intended to help student loan borrowers may actually put them in a worse position.

Loan rehabilitation is an important option to enable defaulted borrowers to access flexible repayment options, such as income-based repayment, which include potential loan forgiveness. The catch is that, since 2008, borrowers are only able to rehabilitate their loans once. This means that borrowers who rehabilitate and then re-default are no longer eligible to get their loans out of default through rehabilitation. Though borrowers are also able to consolidate some loans out of default, consolidation is similarly limited to generally one chance. Therefore, borrowers who re-default will often be stuck in default indefinitely—with no further chance to get back on track and in good standing.

The stakes for these borrowers are extremely high. They will likely experience the draconian consequences of default, such as wage garnishment, seizure of their tax refunds (including their Earned Income Tax Credit), and offset of their Social Security benefits, potentially for the rest of their lives. Based upon consumer complaints, the CFPB attributes this high level of re-default to ineffective loan servicing and inadequate counseling by debt collectors.

¹² Consumer Fin. Prot. Bureau, Annual Report of the CFPB Student Loan Ombudsman 3–4, 33–34 (Oct. 2016).

Given the severe consequences of getting stuck in default, we recommend that the CFPB request data that can identify the number of borrowers who may be at risk for perpetual default. In addition to obtaining data on borrowers who have previously defaulted on their loans, the CFPB should ask for performance data on loans with the following characteristics:

- Borrowers who have maxed out lifetime eligibility for forbearances and deferments;
- Borrowers who have prior loan rehabilitations or are otherwise ineligible to rehabilitate their loans; or
- Borrowers who have loans that are ineligible for consolidation.

d. Information on Repayment Plans

In addition to the data about repayment plans that the CFPB has proposed collecting, we recommend that the CFPB collect more specific information about these plans. Specifically, in addition to asking about “other” repayment plans, the CFPB should request data about the Alternative Repayment plan. Although the Direct Loan Program regulations provide for an alternative repayment plan if the other repayment plans are not adequate due to the borrower’s exceptional circumstances,¹³ in our experience, borrowers have a hard time accessing this plan. According to data on the Department of Education’s Data Center approximately 280,000 borrowers were in this plan during the first quarter of 2017.¹⁴ The Department of Education utilizes this plan to transition borrowers from rehabilitation into repayment and when borrowers are recertifying their income-driven repayment plans. In order to understand whether servicers are providing borrowers with information about this plan, it would be helpful to know whether borrowers in this plan are in it voluntarily or through one of these limited procedural uses, and how long borrowers stay in the alternative repayment plan.

e. Information on Forbearances and Deferments

The CFPB should also request more detailed information about deferments and forbearances. Deferments and forbearances, when used properly, are an important benefit to borrowers experiencing short-term financial distress. However, as the CFPB highlighted in its recent lawsuit against Navient, servicers often steer borrowers into deferments and forbearances despite the fact that an income-driven repayment plan may be a better option for their circumstances. Therefore, in addition to asking about the number of borrowers in a deferment or forbearance, we recommend that the CFPB ask for:

- The specific type of forbearance;
- The length of the time that borrowers are in a deferment and forbearance; and
- The repayment plan the borrower was in when the forbearance or deferment was initiated.

¹³ 34 C.F.R. § 685.208(l).

¹⁴U.S. Dep’t of Educ., FSA Data Center, Direct Loan Portfolio by Repayment Plan (2017).

This information would be useful for identifying the extent to which deferments and forbearances are being used in place of IDR.

Finally, the time that borrowers utilize economic hardship deferments can qualify for time towards forgiveness in an income-driven repayment plan, whereas time utilizing an unemployment deferment does not. Therefore, the CFPB should ask about economic hardship deferments and unemployment deferments separately.

f. Information on Discharged and Dischargeable Loans

Under the Higher Education Act, borrowers in certain circumstances have a right to have their federal student loans cancelled. Unfortunately, too few borrowers are aware of their cancellation rights. For example, according to a recent GAO report, of the 234,000 borrowers who were identified as eligible to have their loans cancelled due to their total and permanent disability and were sent applications, just over 19,000 have applied for cancellation.¹⁵ Similarly, prior to the closing of Corinthian in 2014, fewer than 6% of borrowers who attended other closed schools had applied and had their loans canceled.¹⁶ Cancellation application rates for defrauded borrowers eligible for “fast track borrower defense” claims are also low relative to the number of borrowers the Department has identified as eligible for relief.¹⁷ These rates are unacceptable 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.

The CFPB proposes requesting data about the total number of loans discharged. We recommend breaking out the different types of loan discharges. There are several categories of statutory discharges that federal loan borrowers may receive, including disability, death, borrower defense, closed school, unpaid refund, and false certification. Additionally, the CFPB should consider collecting data about student loan discharges through bankruptcy.

We also recommend requesting data for each category of discharge regarding, the number of borrowers/loans identified as likely eligible for discharge (if any), the number of borrowers/loans who have applied for discharge (if known), the number of discharge applications pending (if known), and the number of discharge applications denied (if known). Data specifically tying the pool of loans likely eligible for discharge to current status would be especially meaningful. For example, within the pool of borrowers and loans identified as likely eligible for discharge, the CFPB should collect data on how many of those borrowers have applied for discharge and outcomes or status of those applications, and should collect data on the status of loans likely eligible for discharge but for which no application has been submitted. It would be highly useful to know if there are large numbers of borrowers eligible for discharge who are instead languishing in forbearances or are delinquent and on track for default.

¹⁵ 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)

¹⁶ See Paul Fain, Best of a Bad Situation, InsideHigherEd.com (Dec. 9, 2014).

¹⁷ 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).

For some of these discharges, servicers should have information sufficient to determine that a borrower might qualify for loan cancellation. For example, the National Student Loan Data System identifies the institution that a borrower took out the loan to attend and the date of the loan origination. Therefore, servicers should be able to identify borrowers who attended programs for which the Department has created special borrower defense discharge application forms and processes, borrowers who went to a school immediately before it closed, and borrowers who went to schools the Department has identified as violating false certification regulations. Moreover, the Department can and should regularly share such information, including identities of borrowers presumptively eligible for closed school or group borrower defense discharges, with its servicers to ensure servicers can present relevant discharge application options to borrowers. Therefore, we recommend that the CFPB request information on the number of borrowers who can be determined to be eligible for these discharges.

Additionally, the Department of Education has agreements with the Social Security Administration and the Department of Veterans' Affairs to identify borrowers who qualify for total and permanent disability discharges. Servicers should report the number of borrowers who have been identified through that match process, the number who have been notified, the number who have applied for discharges, and the number who have received discharges.

Gathering information about the types of discharges processed during a given reporting period would benefit the public at large, as well as lawmakers and law enforcement officials advocating on behalf of students in their states, by providing current public information about how many borrowers and how many residents of a state are benefiting from a discharge program. This data is especially useful if paired with information about the number of borrowers potentially eligible for the discharge and the number who have applied, as it allows for assessment of the efficacy of any outreach or servicing efforts related to the discharge program and of the timeline and efficiency of processing. The data would also assist with ensuring accountability for borrowers pursuing this kind of relief.

Additionally, the Bureau should collect data on how long it took each servicer to grant the discharge (measured as time elapsed from the date of application for the discharge to the date the discharge was processed), as well as data on group discharges made without individual applications. The Bureau should also collect information about the number of loans eventually forgiven through income-driven repayment programs (after 20 or 25 years of payments) and Public Service Loan Forgiveness (after 10 years of payments).

II. Federal Loan: Consumer Outreach

The CFPB proposes to request data about servicers' contacts with borrowers. Data should be collected that allows analysis not just of whether a contact has occurred, but of what kind of outcome followed the contact—if any. This is the best measure of “success” of a contact. As described above, student loan servicers are the borrowers' primary points of contact. If their servicers are competent and efficient, many financially distressed borrowers will be able to avoid default. But too few borrowers are aware of their rights to income-driven repayment plans and

statutory discharges. Too many borrowers are steered unnecessarily into deferments and forbearances.

To enable the CFPB to address these issues, we recommend that the CFPB augment its proposal by requesting data that connects servicers' contacts with borrowers to the number of borrowers who apply for loan cancellation, income-driven repayment, or other relief. Ideally, this data would distinguish between the specific types of discharge program and/or repayment plan; the numbers of borrowers who receive IDR or PSLF forgiveness; and borrowers or loans that are placed into a forbearance.

We also suggest that the CFPB collect information about the total number of attempts to contact the borrower, broken down by method, including how frequently borrowers are contacted through autodialers, and through text messages. Robocalls represent a particular area of concern for consumers overall, as consumers complain about robocalls at high rates. We believe that collecting data on the frequency of their use is important.

Finally, the CFPB should ask servicers to report any complaints that they receive from individual borrowers, including complaints about:

- The content or frequency of the servicer's contact with the borrower;
- The borrower's inability to afford payments; and
- Fraud or misrepresentations by the borrower's school.

III. Data to Improve Access to Income-Driven Repayment

As the CFPB has reported, income-driven repayment (IDR) plans are readily available to most borrowers of federal student loans.¹⁸ IDR plans help to keep vulnerable borrowers out of default and out of the debt collection system by enabling them to meet their loan obligations while keeping their payments affordable.

Servicers are responsible for ensuring that borrowers understand their repayment options and are able to access them. Unfortunately, as the CFPB has documented, borrowers face significant hurdles when enrolling in IDR plans and completing the requisite annual recertification of income. We were encouraged by the news that the Departments of Education and Treasury have agreed to implement a multi-year consent process, which would allow the IRS to automatically transmit borrowers' tax data to their servicers to facilitate the IDR renewal process. Moving from a manual, annual recertification of income to an automated or multi-year recertification process would greatly improve the IDR renewal process. However, even the most automated process cannot replace quality advice or timely and accurate processing. Therefore, we recommend that the CFPB add requests for the following data to its proposal. Collecting this additional data will ensure that the Bureau can determine whether eligible borrowers are able to access IDR.

¹⁸ Consumer Fin. Prot. Bureau, Midyear Update on Student Loan Complaints 6-7 (August 2016).

a. Ensuring Low-Income Borrowers Access IDR

Income-driven repayment is especially important to low-income borrowers. Many of our low-income clients who would otherwise be in default are able to pay \$0/month to stay current on their loans once they successfully enroll in an IDR plan. To ensure that IDR is reaching the borrowers who need it the most, we recommend that the CFPB include requests about the number of borrowers with incomes at or below 150% of the federal poverty level among the items listed in the **IDR Applications, Recertification Anniversaries, and Renewal Applications** sections of its proposal. Specifically, the CFPB should request:

- The number of applications received from borrowers with incomes at or below 150% of the federal poverty level; and
- Of those borrowers, the number who successfully recertify on time each year.

Because these borrowers can stay current on their loan obligations by making monthly payments of \$0 and because they have so little room for error in their budgets, staying on an IDR plan is often critical to default prevention.

b. Incomplete and Abandoned Applications

More data is needed on the reasons why an initial IDR or recertification application remains incomplete or in process. This information may help identify common problems or pitfalls with the IDR application process. The following items, as a starting point, should be added to the planned data collection to capture common reasons an application may be incomplete:

- Awaiting sufficient income documentation; and
- Awaiting spousal certification.

c. Addressing IDR Delays

Many borrowers have reported frustration and concern about delays in the processing of their complete IDR applications and renewals. With the IRS's Data Retrieval Tool down for an extended period of time, we are concerned about the potential difficulties that borrowers may face when they apply or submit annual income documentation for their IDR plans. In the proposed **IDR Applications** section, servicers will be asked to indicate the number of IDR applications approved in less than 30 days, in 30-59 days, and so on. Thirty days is a long time to allow a servicer to process an IDR application. It would be helpful to break down the initial "Under 30 days" option into ten-day increments:

- Under 10 days
- 10-19 days
- 20-29 days

The time to process applications in relationship to borrowers' anniversary date is also important to assessing access to IDR. Several of the items in the proposed **Recertification Anniversaries** and **Recertification Applications** sections also request that servicers report data regarding the number of borrowers who recertified on time and how far in advance of the

anniversary date the recertification applications were approved (under 30 days, 30-59 days, etc.). Since borrowers have no control over how long it takes their servicers to process their complete applications, we recommend the CFPB also request data about how far in advance of their anniversary dates borrowers *submit* the completed recertification applications. Borrowers who have submitted their materials on time may not be coded as “recertified” by their anniversary dates if their servicers have a backlog of applications to review or have processing delays for any other reason. Also, it is not clear whether the current list of options includes an opportunity for servicers to report a response for “complete recertification applications still in process.” This option should be added to each of the relevant sections.

Borrowers must be able to obtain and remain in their IDR plans. For borrowers who are counting on eventual loan forgiveness, processing delays or errors can cause harmful forbearances or changes in loan status that result in their making payments that do not qualify for the kind of forgiveness they seek. For instance, an IDR processing delay or error can often lead to placing loans in forbearance until the recertification is correctly processed and the correct monthly payment amount is set. Borrowers who are pursuing Public Service Loan Forgiveness must be on IDR plans for ten years during which they must make 120 “qualifying” payments before their remaining loan balance is forgiven. Payments made on a non-IDR plan and months in forbearance (during which no payment is due) do not count as qualifying payments. Such delays extend the life of each loan and result in higher loan balances. To avoid these costly delays, we recommend that the CFPB request information about how many eligible payments borrowers have made on the path to forgiveness.

Many borrowers on IDR plans may find that their loans are negatively amortizing. The CFPB should track the number of those loans through this data collection as well, as we are aware that these borrowers may face difficulty when they try to access other forms of credit or pursue other financial goals.

IV. Transparency in the Private Loan Market

We applaud the CFPB for taking the initiative to increase transparency in the private student loan servicing market through this data collection proposal. Our experience representing low-income student loan borrowers and working with other advocates has shown us that private student loan borrowers often struggle to repay their loans. This is largely because private student loan lenders rarely provide affordable repayment plans, loan cancellation or discharges, or other forms of short- and long-term relief. Forbearances and options for curing delinquency and default are not readily available or accessible. Whereas federal loan borrowers have options available that can enable them to stay current on those loans or get back on track, private student loan borrowers are often stuck in default and unceasing cycles of debt collection because of persistently unaffordable payments and a lack of viable repayment alternatives.

Below, we outline additional data regarding the private loan market that, if collected, would further enhance transparency in the private student loan servicing market. This data would help in unearthing the practices that contribute to the types of widespread student loan servicing failures the Bureau has previously cited and, conversely, those practices that contribute to borrower success.

a. Data to Ensure Adequate Consumer Assistance

i. Loan Modifications

We support the CFPB's proposal to collect data on the number of borrowers who have received modifications of private student loans. In our experience, low-income borrowers have few options when they seek to access more flexible repayment terms that are based on their incomes. In addition to the items listed for collection, it would be helpful to know:

- Number of loans for which the lender recalculated and reduced the monthly payment based on borrower income;
- Number of requests/applications for loan modification received;
- Number of requests/applications for loan modification incomplete/in-process; and
- Number of requests/applications for loan modification denied.

Loan modifications can be made for myriad reasons. We recommend that this data collection capture the extent to which the relief is available to borrowers who are at risk of or in distress. Ultimately, it would be helpful to be able to draw conclusions about the extent to which borrowers of private loans have access to relief that is comparable to that available to federal loan borrowers. Thus, the CFPB should try to capture the following information:

- When and why loan modifications are granted;
- Which borrowers receive loan modifications:
 - Loan status (e.g. in good standing, less than 30 days delinquent, 60 days delinquent, more than 120 days delinquent);
 - Credit score;
 - Income or ratio of income to loan balance; and
 - Borrower demographics (e.g. race, ethnicity, gender, age, etc.).

We believe that this information will help capture whether private student lenders and servicers are providing modifications in a fair manner and to the borrowers most in need of a modification.

ii. Cosigner Release Applicants

Because lenders approve private student loan applications based on creditworthiness, many students who do not have a strong credit history (either because they are young or perhaps starting over) are required to have cosigners. Although all student loans can have an impact on familial wealth and resources, the use of cosigners can be particularly trying for the families and friends who are called upon to help make higher education a reality for their loved ones. Because student loans are often repaid over a long period, many borrowers establish strong credit histories by paying these loans. At the same time, some cosigners experience changes in financial circumstances. Cosigner release is an important mechanism by which borrowers can seek to take full, sole responsibility for their loan obligations. Cosigner release protects borrowers who are making payments on their loans from being declared in default because a cosigner files for bankruptcy. Releasing cosigners can alleviate financial pressures and relational stresses and strains between close friends and relatives.

Despite the many potential benefits of cosigner release, borrowers who seek cosigner release are often stymied by opaque processes and misinformation about the eligibility criteria. The final two items for collection, rows 4.2.2.2.2.0 and 4.2.2.2.3.0, appear to seek the same data. We suggest that the Bureau add clarity by being more specific about the data it seeks to capture in the final row. If the Bureau is requesting information about lender/servicer discretion to deny a cosigner release even when the borrower meets the criteria for one, then that should be explicit. A more specific inquiry will increase the likelihood that the CFPB will be able to draw accurate conclusions about servicing quality from data it receives.

b. Loan Status

We recommend that the CFPB seek information to determine the steps private student loan servicers take to help borrowers prevent and resolve delinquencies in addition to the deferments and forbearances listed among the items in the data collection. We recommend that the Bureau seek information about the specific types of deferments and forbearances available. To the extent that additional loss aversion or mitigation options exist, we recommend that the CFPB seek data about them as well.

c. Defaults and Discharges

i. Loans Discharged (within the reporting period)

Many borrowers of federal loans obtain significant relief from loans for a number of reasons, including because their school closed, the school falsely certified their eligibility for federal loans or failed to give them refunds, total and permanent disability, or death. Many private lenders claim to have forgiveness programs; however, borrowers have found those programs hard to access. We recommend the CFPB request data about the number of discharge applications received, the bases for these discharges, and whether the application resulted in a full or partial discharge of loans.

To the extent private lenders offer discharges, the CFPB should collect data related to each type of discharge available. For instance, we are aware that some private loans can be discharged due to the total and permanent disability of the borrower. For each type of discharge it would be helpful to know:

- Number of applications received;
- Number of applications incomplete/in-process;
- Number of applications granted - full relief from loan obligation;
- Number of application granted - partial relief from loan obligation;
 - If partial, the basis for partial relief (e.g. interest only, a percentage, etc.);
- Number of applications denied; and
- Total amount of loans discharged.

Bankruptcy discharges are another, specific type of loan discharge that private loan borrowers may obtain. The CFPB should collect data about these discharges as well.

d. Complaint Data

Since early 2012 when it began accepting them, the CFPB has consistently received complaints from borrowers of private student loans. We have also fielded many complaints over the years from low-income student loan borrowers and their advocates. These complaints often relate to disputes and other issues with lenders and servicers about access to loan histories or difficulty getting lower monthly payments. They also pertain to debt collection harassment and lawsuits.

The CFPB is uniquely positioned to analyze the effects that the dearth of rights, guarantees, and options has on private student loan borrowers. As the CFPB has noted in past reports, there is not a lot of publicly available data about the private student loan market.¹⁹ Therefore, we applaud the CFPB for seeking this data collection that could provide crucial information to the Bureau, informing its understanding of the level of service and quality of communication that borrowers of private loans receive and whether those borrowers are able to access even the limited options that are contractually available to them.

Requiring private loan servicers, like federal loan servicers, to report on complaints (number and general content) they receive would provide some accountability for servicers. The data would provide additional insights to the CFPB about borrower concerns since servicers may receive complaints from borrowers who do not also make complaints to the CFPB directly.

e. Consumer Outreach

Just as the CFPB intends to collect data about consumer outreach from federal loan servicers, we recommend that the CFPB seek similar data about the private loan market. Since each private loan is governed by its individual terms, borrowers must rely on their lenders and servicers to provide them with timely, accurate information about their loans and their repayment options. To the extent that servicers are proactively reaching out to borrowers, it would be helpful to collect data about that outreach. This would help determine the amount of effort servicers are putting into outreach, the efficacy of that outreach, and whether borrower outcomes differ based on the outreach. It would also be helpful to know whether borrowers are actively contacting their private loan servicers in attempt to manage their loans.

Since some of the items of data requested from federal loan servicers do not apply to private loan servicers, the following list could be used instead for the private loan data collection:

- Borrower initiated request for change in repayment plan/payment amount;
- Voluntary forbearance application received or applied to account;
- Other borrower initiated change in repayment schedule (not payment plan/amount or voluntary forbearance);
- Borrower submitted payment;
- Borrower requested cosigner release; and

¹⁹ Consumer Fin. Prot. Bureau, Midyear Update on Student Loan Complaints (August 2016).

- Borrower requested loan documentation or information (including copy of loan application, promissory note, and payment history).

For further context, it would also be helpful to know what dates, factors, or other considerations influence a servicer's decision to reach out to a borrower.

Conclusion

Thank you again 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. With \$1.4 trillion dollars in student loan debt, the need to ensure quality and consistent 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 to ensure that student loans work for all borrowers regardless of race, gender, or 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 further questions, please feel free to contact Joanna Darcus or Persis Yu. (Ph: 617-542-8010; E-mail: jdarcus@nclc.org, pyu@nclc.org).