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PRIVATE STUDENT LOANS: PROVIDING FLEXIBILITY AND OPPORTUNITY TO BORROWERS?

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

EXPLORING THE PRIVATE STUDENT LOAN MARKET AND THE CHALLENGES FACED BY BORROWERS OF PRIVATE STUDENT LOANS

JULY 24, 2012

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C O N T E N T S

TUESDAY, JULY 24, 2012

WITNESSES

Additional Material Supplied for the Record

PRIVATE STUDENT LOANS: PROVIDING FLEXIBILITY AND OPPORTUNITY TO BORROWERS?

TUESDAY, JULY 24, 2012

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER PROTECTION,
Washington, DC.

The Committee met at 2:30 p.m., Room SD–538, Dirksen Senate Office Building, Hon. Sherrod Brown, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. The Subcommittee on Financial Institutions and Consumer Protection will come to order.

Thanks, always, to Senator Corker for the good work that he does with the Subcommittee. And Senator Reed and Senator Akaka, thank you for joining us.

My staff particularly appreciates the working relationship with Senator Corker in making these Subcommittee hearings work much better as a result.

On June 29 of this year, Congress passed the Transportation and Student Loan Package, essential legislation that not only ensured funding for our Nation's infrastructure and its highway system but also include extension of the current student loan interest rate of 3.4 percent for subsidized Stafford loans, an issue that Senator Reed especially had worked hard on.

The passage of this legislation was important for seven million undergraduate students nationwide some, we figure, 382,000 of them living in Ohio.

Without this extension, the average student would have faced an additional thousand dollars in student loan debt per subsidized Stafford loan.

As others did, I spent a lot of time in community colleges and 4-year private and public institutions in my State, particularly in Cleveland, Columbus, Cincinnati, Toledo, and Dayton, talking about hearing the stories from a number of students sharing with me their fears are graduating in a challenging economy with high levels, even without this legislation obviously, with high levels of student loan debt. Others shared the experience of family members and friends who are still paying off their loans years after graduation from college.

This is not surprising. Earlier this year, student loan debt, as we have heard repeatedly, student loan debt outpaced credit card debt soaring to more than $1 trillion. It is a problem that affects people of all generations, obviously not just the student but the family sometimes, even the grandparents.

According to a report released by the Federal Reserve Bank of New York, the average student loan debt burden for borrowers under age 30 has risen 56 percent since 2005. Meanwhile borrowers in their 40s are the most likely to default.

Parents and grandparents who may have cosigned for a son or a granddaughter must share the burden of younger generations. It is clear more must be done to ensure future generations are not saddled with high levels of student loan debt while helping borrowers of all ages pay off their student loans.

That is why today's hearing which will focus on the challenges facing borrowers in the private student loan market is so important. That is a small portion relatively of the overall student loan market.

American consumers owe more than $150 million in outstanding private student loan debt, and their numbers have increased. Fourteen percent of undergraduates in 2000 to 2007 have taken out a private loan up from 5 percent in 2003 and 2004 and continuing to increase. This is troubling.

Private student loans are the riskiest way to pay for college. Often these loans come with a variable interest rates ranging from 5 percent, sometimes to 18 percent, often with no limits on origination and other fees.

Additionally, unlike Federal student loans, private student loans are less likely to come with affordable payment plans or loans forgiveness or with deferment options or cancellation rights.

Given the risks and the challenges as well as the opportunities posed by private student loans, I am proud to have fought for the inclusion of the private student loan ombudsman as part of the Dodd-Frank legislation.

For the first time in history, private student loan borrowers have a central place to go file complaints and have an average on it inside the government for them.

I am still concerned that too many borrowers are not receiving the assistance they need from lenders. Last week the Consumer Financial Protection Bureau, which was also, as we know, enacted as part of Dodd-Frank published a report on the private student loan market and the consumers who use these loans.

What was evident from this report is that many borrowers took out private student loans without fully understanding the terms. Now, many of these borrowers are saddled with thousands of dollars of debt with limited options. Hopefully, this hearing will allow us to further understand the challenges faced by these and other students.

In the short term, we can explore ways to provide borrowers with short-term options to get out from under the burden of high-cost private student loans.

In the longer term, I hope that we can provide students and their families with more transparency about private loan options and costs as well as predictability when they are trying to work with their servicers.

I will conclude with the story of Teresa from Mentor, Ohio, east of Cleveland, and her struggles with private student loans. She graduated from college in 2009. She soon after apply to join the Peace Corps. She almost had to turn down this once-in-a-lifetime opportunity because of the unwillingness of our lender to defer her loans while enrolled in the Peace Corps.

She came to one of my constituent coffees to ask for help. Through the work of my staff, her lender finally agreed to defer her loans. Teresa was able to go abroad last year. While domestic issues of broad brought Teresa home sooner than expected, her private student loan challenges remain.

While she has continued to pursue a career in public service that began with the Peace Corps, she struggles to make her monthly student loan payments that topped $400. In just 2 years, her balance of one of the loans has jumped from 22,000 to just under 30,000. Without intervention, these loans will continue to grow. We need to think about people like Teresa as we make these decisions.

Moving forward, I am hopeful today's hearings will help move us closer to a solution of these important issues.

Senator Corker.

STATEMENT OF SENATOR BOB CORKER

Senator CORKER. Thank you, Mr. Chairman, and thank you to the witnesses who are here. I am glad we are here today to talk about the private student loan market. But to me it is more important that we look at the entire picture.

We have been reading in the news lately that student borrowers have nearly $1 trillion in outstanding student loan debt. But, we need to remember, as the Chairman just mentioned, only 7 percent of those loans are private student loans, and the other 93 percent are loans that are backed by the taxpayer.

I think all of us know the real problem we need to consider are the rising cost of college tuition and the amount of Federal student loans students are borrowing.

I might add that on the one hand the Federal Government seems to want to help solve this problem, on the other hand continues to mandate to States things like Medicaid. In our own State, for every percentage that we spend more on Medicaid we spend less on higher education. That is the real driver of why students are borrowing so much money in our own State.

The Federal Government recently took over the Federal loan program as many of us know. I am unconvinced that that change is in any way benefiting students or taxpayers.

There are income forgiveness programs on the Federal loan side where borrowers do not have to pay back the full freight of the loans they borrow, sticking the taxpayer with the unpaid burden.

So, I think it is important for us to understand the whole picture and not just focus on a tiny fraction of the marketplace, and I am pleased that Sallie Mae is here today to talk about the progress that they have made in encouraging students to borrow more responsibly.

And, I look forward to the testimony of the witnesses today.

Senator BROWN. Thank you Senator Corker.
Senator Reed, any opening statement?
Senator REED. No, Mr. Chairman.
Senator BROWN. Senator Akaka, opening statements?

STATEMENT OF SENATOR DANIEL K. AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman.

Good afternoon, panelists, and thank you for being here today, all of you.

I am pleased that Congress is continuing to monitor leading practices regarding student loans. A quality education must include an understanding of economics and personal finance so that all Americans will be prepared to make sound financial decisions.

I look forward to hearing an update from the Consumer Protection Bureau on the work that they have done to improve the consumer financial marketplace.

Thank you all the panelists for your testimony today and I hope that your insights will help this Committee work toward ensuring that students have safe options for obtaining financial support for their college educations.

Thank you much, Mr. Chairman.

Senator BROWN. Thank you, Senator Akaka.

One point I wanted to make that the reason that this hearing, perhaps, Senator Corker, is a little narrower than you might want is that, one, as you know, we do not have jurisdiction over Federal loans the way we do private student loans. But, I am certainly willing to work with this whole, obviously this whole issue of student loan debt wherever it comes from. This is serious.

I would like to introduce the first witness, Rohit Chopra, leads the office for students at the Consumer Financial Protection Bureau where he is designated by Secretary Geithner as the CFPB's student loan ombudsman.

Immediately prior to the opening of the agency, he worked at the Department of Treasury on the CFPB implementation team. He holds a BA from Harvard and an MBA from Wharton at the University of Pennsylvania.

Mr. Chopra, welcome.

STATEMENT OF ROHIT CHOPRA, STUDENT LOAN OMBUDSMAN, CONSUMER FINANCIAL PROTECTION BUREAU

Mr. CHOPRA. Thank you. Chairman Brown, Ranking Member Corker, and Members of the Subcommittee. Thank you for holding this hearing today.

To prosper in today's global economy, our workforce needs skills to innovate in a highly competitive environment; but the rapid growth of student debt raises concerns that warrant the attention of policymakers. Student loan debt has now crossed the $1 trillion mark.

Now, college is still a great investment. Graduates have lower unemployment rates and earn higher wages but there is another side to the story.

Over the past decade, real wages for college graduates have declined. The growing college wage premium is largely explained by faster falling wages of non-degree holders.

But, the cost of college has not been falling—rising faster than inflation, wage growth, and healthcare costs. Growing costs, declining wages and job market uncertainty have led to more debt and more risk. The stories of distressed borrowers reveal the impact of the financial crisis and the significant work that lies ahead.

Prior to the crisis, private student lending rapidly increased. Like in the mortgage industry, lax lending practices are much less common today. Loans are cosigned and often have significant disclosure requirements.

But like the mortgage markets, there are still opportunities to make improvements. Private loans often lack repayment flexibility. In 2007, Congress and President Bush enacted the College Cost Reduction and Access Act, which allowed student loan borrowers to remain current on a loan through the income-based repayment program, but this does not impact private student loans.

Private loan borrowers experience challenges when attempting to restructure their loans due to capital markets conditions and an unusual status in the bankruptcy code. Even the most responsible borrowers have sought to better manage their debt burden. We see that many borrowers feel stuck with high monthly payments because they cannot easily refinance.

In March, CFPB launched a student loan complaint system where many borrowers have sought and received help and lenders have learned more about their borrowers' experience.

We also worked closely with the Department of Education on a Know-Before-You-Owe financial aid shopping sheet that we released this morning, and we have developed online tools used by tens of thousands of consumers on how to navigate their student loan repayment options, avoid default, and honor their commitments.

The CFPB hopes to continue its work with other agencies that might play a critical role in addressing roadblocks to facilitating repayment flexibility and a robust refinance market.

While student debt might not pose systemic risk to the banking system as we saw with mortgages, it would be imprudent to dismiss that growing indebtedness can act as a drag on economic recovery.

Consider borrowers facing high rates and high payments who are dutifully meeting these obligations. Without a refinance option, they struggle to reduce their payments even though they have built a solid credit history.

What might be the consequences of this? Take the housing market. First-time homebuyers are an important source of demand and data reveals that adults in prime homebuying age cohorts are living at home with their parents and seeing reductions in their own home ownership rates.

In addition to home ownership, data also reveals low participation and contribution rates to employer retirement plans among young graduates, which can challenge their future retirement security.

Congress and Federal agencies have taken steps to increase liquidity and the functioning of the credit markets in recent years, but the current conditions in student loan markets may have a long-term impact on the economic vitality of many borrowers today.

Many borrowers are unable to secure adequate credit accommodations to manage their debt burden. Policymakers have paid significant attention to conditions in the mortgage market; but given the potential impact of student debt on the broader economy, the situation demonstrates the need for attention. The CFPB will continue its work to make the loan marketplace work better for borrowers, schools, and honest lenders.

We look forward to working with Congress and policymakers to ensure that economic ability is still within the reach for those who borrowed to invest in an education.

I look forward to your questions.

Senator BROWN. Thank you, Mr. Chopra.

In your private student loan report, you note that the average interest rate in a December sample of private student loans was 7.8 percent. We know with the Federal Reserve monetary policy actions that interest rates in this country are pretty much at record lows.

Talk to me about that differential, why it is so much higher for student loans, what does that mean in terms of students not being able to take advantage of those low rates. What, if anything, can we do about it?

Mr. CHOPRA. So, one unique thing about student loans, particularly private student loans, is that once someone takes on that loan, let us say when they are 18 or a freshman in college, their credit profile can significantly change over time.

As an 18-years-old, they might be considered high risk, but by the time they graduate and are gainfully employed and paying for a few years, they might be a much lower credit risk.

What we see is not many refinancing opportunities to best allocate price to risk; and when markets are not appropriately allocating price to risk, we do not see a well functioning market. So, borrowers may be paying higher rates than what is justified by their risk profile.

Senator BROWN. So, why are there not these refinancing opportunities?

Mr. CHOPRA. It is not clear exactly, but historically the market developed as a consolidation market. So, essentially multiple loans you could consolidate into a single payment. This had to do with the way the Federal Family Educational Loan Program was structured, but partially it is due to capital markets conditions, but we just simply do not see many lenders actively competing to find borrowers who may be able to refinance.

Senator BROWN. Is there a lack of knowledge on the borrowers' part to not think about the issues of refinance, are we not?

Mr. CHOPRA. Yes, I think that is right.

Senator BROWN. If they were—answer that. And then if they were more knowledgeable, are you suggesting there would not be the opportunities to refinance because there are not enough opportunities in the market?

Mr. CHOPRA. Yes, sir. You are right. I think many borrowers simply do not know that refinancing is an option, but we do hear that many of them are dutifully paying on time for months and years and unable to manage their debt better.

Currently, there is not a large amount of marketing on options to refinance. It is generally marketed to people so that they can reduce the number of loans they have into a single payment, but not necessarily to compete down the price. A more competitive market amongst lenders would probably serve to benefit the entire marketplace.

Senator BROWN. Let me shift for a moment.

Quoting your testimony, you note that Federal agencies have intervened in the private student loan market in recent years.

Citing unusual and exigent circumstances, the Federal Reserve Board of Governors exercised its authority to establish the term asset backed securities loan facilities which facilitate the issuance of a wide range of ABS including those backed by private student loans.

Is there a role for the Federal Reserve in providing relief for private student loan borrowers?

Mr. CHOPRA. I think all Federal regulatory agencies, particularly ones that monitor the capital markets, have a role to play to make sure that the market is liquid and well functioning.

I would not necessarily characterize it as relief, but characterize it in terms of increasing competition so that pricing is more fair and more connected to risk.

We have seen in the mortgage space that the FHFA has sought to create the conditions for responsible mortgage borrowers to refinance. And, as I said before, many responsible student loan borrowers see their credit profile dramatically improve over time, but the market may simply not be liquid enough to appropriately price their risk and allow them to have a lower payment.

So, we look forward to providing any expertise to the Federal Reserve Board of Governors and others as they monitor conditions.

Senator BROWN. Thank you, Mr. Chopra.

Senator Corker.

Senator CORKER. Thank you, Mr. Chairman, and thank you again for being here.

You know well the relationship between the investment and higher education at the State level and how that has been diminishing in many cases, in most cases actually because of the tremendous burden of investing in Medicaid which, you know, we have made happen in a big way at the Federal level, but that has a direct relationship on what tuition levels are for students and that is one of the main drivers of why there is so much student debt, is it not?

Mr. CHOPRA. So, it is certainly true that the constrained State budgets, many of which were badly battered starting in 2008 due to declining tax revenues as well as other policy interventions, have led to cuts on a real basis to State higher education.

Senator CORKER. Yes.

Mr. CHOPRA. So, we have to not just address the underlying costs of higher education, but also make sure that markets are working properly.

Senator CORKER. It is pretty fascinating. Here we are, we are dealing with an issue that over the last several years we have helped create and exacerbate and will continue to exacerbate over time. I just want to point that out.

I understand that your agency, a new agency, is advocating that on the private side that students just have the ability to discharge their loan to bankruptcy, is that correct?

Mr. CHOPRA. No. It is actually a little bit different than that. The report that the Secretary of Education and the Director of the Bureau presented to Congress on Friday analyzed about five million records of data starting from 2001 and going forward.

We expected that the 2005 changes to the bankruptcy code would have led to lower prices and greater access; but immediately following the legislative change, we did not see a price decrease. We actually saw a price increase, and larger capital markets conditions we think largely explain volume and access to credit.

So, the Director of the Bureau and the Secretary of Education asked Congress to take a second look, given that borrowers for private student loans may not be able to easily restructure their amortization schedule like in Federal loans.

Senator CORKER. So, you have asked Congress to take, one of the first actions of the consumer bureau is to ask Congress to look at allowing students of private loans, not the public loans, but only the private loans, to file bankruptcy as a way of getting out from under the terms and conditions of those private loans, is that correct?

Mr. CHOPRA. Yes, we have asked Congress to take a second look. We are happy to provide technical expertise.

Senator CORKER. I understand what you are saying and I think we have read the report, and I just find it fascinating that one of the first things that you would do as a consumer protection agency is get us to consider letting students, again only on the 7 percent private loans, not the 93 percent public loans, to be able to file bankruptcy which is one of the most damaging things that a consumer can possibly do.

I just would like for people to take note of that, and I think you understand that on the private side they do not have the flexibilities that you do on the public side, because on the private side, the prudential lenders will not allow them to do many of the things that happen on the public side.

You are aware that, are you?

Mr. CHOPRA. Yes. And, in fact, we have already been working closely with lenders to identify areas where certain prudential guidance, there can be win-win situations for both borrowers and lenders. Lenders have said they feel constrained by the guidance and we think there are opportunities for capital adequacy measures to be met while still allowing the marketplace to function.

Senator CORKER. I think you can see now why so many of us thought that was a really terrible idea to have the consumer agency separate from the prudential lenders, because they have this problem where basically you are giving guidance on the one hand that is very contrary to what the safety and sound regulators are saying on the other.

And, it is this exact conflict, as a matter of fact again it is fascinating to me that in one of the very first things that would come out on a consumer agency, we see this conflict that on the private side the prudential regulators will not allow the private lenders to have the flexibility, give them the flexibilities to actually work through these issues. And so therefore, they have contrary guidance.

And, I think it is pretty fascinating that we are having this hearing. I think it is fascinating that you are not advocating that on the public side students be able to file bankruptcy. I think this is, speaks to possibly some of the political nature of the consumer agency that so many of us were concerned about in the beginning.

Mr. CHOPRA. On the Federal loan side, there actually is a Chapter 13-like option for borrowers, which avoids the damaging parts of going to court and hurting your credit history.

So, a borrower who is unable to make their payments is able to elect the income-based repayment option which caps their payments as a percentage of their discretionary income. That is actually a great, low-cost model for borrowers that we think is a way to weather the unique circumstances of a student loan product, given labor market uncertainty.

And, I would say that the relationship with the prudential regulators has been extremely productive. We have actually been able to find opportunities where we are identifying ways to promote innovation and ways that the whole financial system can actually prosper. I think our work on private student loans with the other prudential regulators is going to be seen by lenders as one that is a win-win for the whole marketplace.

Senator CORKER. I hope that is the case. I appreciate you very much being here. I look forward to hearing Sallie Mae's testimony in just a moment.

Senator BROWN. Senator Reed.

Senator REED. Thank you very much.

The first thing I want to do is to commend you for connecting the dots, let me say, for not just this huge debt overhang but the effect it will have on buying a house for the first time, of being an entrepreneur and starting a business, of reserving money starting very early for retirement.

This to me is one of the most daunting challenges that we have to face going forward. We could have a whole generation that just cannot get started until they are maybe in their mid-30s doing things that we assume could and would be done in your mid-20s. So, I think that is an important point.

Second, just jurisdictionally, your responsibility is, given the nature of the organization, is solely with respect to the private sector lenders, not the public domain, is that clear?

Mr. CHOPRA. Yes. Our authority as the ombudsman and our rulemaking authority relates largely to private student loans, on the origination side.

Senator REED. Right. But it is sufficient to say that a lot of the insights that you have drawn could be applied to the public sector.

Mr. CHOPRA. Yes. As Senator Corker said, it is very important for us to look at this holistically. In a recently released report, the Treasury's Office of Financial Research briefly discussed that student debt burdens could significantly depress demand for mortgage credit and dampen consumption, both of which may be critical drivers for the recovery.

Again, looking at it holistically, one of our first actions was working with the Department of Education to actually improve the financial aid information and student loan information people find.

We are asking schools, on a voluntary basis, to present a simple, one-page financial aid shopping sheet which gives them all of their loan options, as well as what their estimated payment might be after graduation. And, already so many schools across the country have embraced this. We are happy to enter this for the record.

Senator REED. Thank you. One of the major issues, of course, is the escalating cost of college education; and even though you focus in on the private lending sector, you have looked at both public and private institutions.

There is acceleration in cost in private universities too I presume, correct?

Mr. CHOPRA. Yes. There have been cost increases and increased debt burdens across institutional sectors.

Senator REED. And they are not responsible for public programs like Medicaid or anything else. What is driving the private institutions to increase their tuition so dramatically?

Mr. CHOPRA. I am the wrong person to answer questions about the specific economics of college costs. We are a bit more focused on the financing. But generally speaking, we have seen over a period of many, many years escalating costs of college across sectors in excess of inflation.

And, particularly we have seen debt burdens be very high in that for-profit college sector where utilization of private loans was particularly high.

Senator REED. That goes to just a quick technical question. I asked this because I do not know the answer. Are there prepayment penalties included in the language of some of these private loans?

Mr. CHOPRA. The Truth-in-Lending Act actually bans repayment penalties for private student loans that one would anticipate would help facilitate a rather robust refinancing market since borrowers would not be penalized for trading one note for a less expensive note, but that has not bared fruit.

Senator REED. Thank you. That is a very helpful clarification.

And then, the other issue, I think, or among several that I have but let me pose this one.

Is there a correlation between the school and the number of private loans? I mean, one of the things that you have suggested, you have now a format where everyone can sort of check it out. Are essentially some schools steering students to these private loans and is there any kind of relationship between the school and the private lender?

Mr. CHOPRA. In 2007 at the State level, State attorneys general identified certain unsavory relationships between schools and private lenders. But the 2008 Higher Education Opportunity Act has largely changed that and we see a much better relationship between schools and lenders.

In fact, we believe that involving schools more in the process, by requiring certification of private student loans, would actually help schools better counsel their students on their full range of options.

The only marketplace that remains where there are arrangements between private lenders and schools, which present some risk that is worthy of attention, is certain lending arrangements between the proprietary school sector that perhaps are driven to help with compliance with the Higher Education Act's 90–10 requirement.

Senator REED. If I may, just a clarification again. You point out that there is a quasi bankruptcy remedy under public lending which is to go in and make it income-based repayment. That does not exist on the private lending side.

And, the issue here is not, and again I am asking the question so correct me. The issue is not that someone cannot file bankruptcy. It is that they cannot discharge the loan in bankruptcy, is that the technical issue in private lending?

Mr. CHOPRA. Correct. The private loans are treated differently compared to credit card debt and others.

Senator REED. Because of Federal statutes?

Mr. CHOPRA. Correct. The 2005 changes. But, private lenders have increasingly told us that they are looking for ways to offer more repayment flexibility, and we think that is a great opportunity, and again, we hope to engage with lenders and prudential regulators to find win-win solutions for capital adequacy, student loan borrowers and lenders themselves.

Senator REED. Thank you very much.

Thank you, Mr. Chairman.

Senator BROWN. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Chopra, the testimony and report that you presented today suggests that these students have taken out too much debt through student loans because of predatory lending practices. You have also noted that students should consider taking out additional student loans in order to avoid excessive credit card debt.

Can you please elaborate on the appropriate role of private student loans?

Mr. CHOPRA. Sure. The total debt market has reached over $1 trillion, but it is very important to note that education-induced indebtedness is certainly far higher.

Many families utilize home-equity lines of credit, credit cards, and other products to ensure that they can pay for the cost of college.

Generally speaking, a student loan is going to be a safer way than, let us say, a credit card, which is going to have an immediate re-payment requirement that might be challenging for a full-time student.

So, there is certainly a role for private credit in this market. But we do want people to make more optimal borrowing decisions overall. We think some of these steps to make the whole market more transparent, like with this shopping sheet, is a good first step.

Senator AKAKA. Thank you for that.

I understand that CFPB often hears from students who are struggling to repair their student loan through its Student Loan Complaint System.

Private student loans were initially developed to support and supplement Federal student loans. Since the market contracted in

2008, there have been fewer lenders offering private student loans and those that are offering the products often require cosigners.

My question to you is: How Is CFPB helping students who are unable to access reasonable student loans?

Mr. CHOPRA. In the report that we submitted, the Director recommended that the role of the financial aid office in lending decisions be substantially enhanced; and by having private student loans be certified, financial aid offices can be provided the opportunity to give the full range of financing options.

Many times financial aid officers are able to use professional judgment to adjust loan amounts so that borrowers are able to meet their tuition obligations while still borrowing responsibly. You are right, that there are still ways to make sure that the private loan market can meet the demand at a fair price.

Senator AKAKA. I must commend you on your remarks that CFPB has been working together with the Department of Education. I wish that more departments and agencies would be working together on common goals as well.

So, thank you so much for what you are doing, Mr. Chairman.

Senator BROWN. Senator Hagan.

Senator HAGAN. Thank you, Mr. Chairman.

And, Mr. Chopra, thank you for being here today and for what you do.

On the report that CFPB recently released on the issue of the institutional loans made directly by the for-profit schools to the students, it is advertised as a way for students to fill the gap in their tuition after they have exhausted Federal loans or Pell Grant money.

And then I think part of what I heard you say in answer to an earlier question had to do with the 90–10 rule also which we might ask you to elaborate on.

But, many of these institutional loans offered by some of the largest for-profit institutions have interest rates as high as 18 percent.

In addition to serving on this Committee, I serve on the Education Committee, and the Department of Ed and the Health Committee have looked at a number of the different for-profit schools and one in particular has an interest-rate student loan that is 15 percent but they also have a default rate of 80 percent.

Another school has an interest-rate, and these were in 2009 and 2010 these interest-rate numbers, at 18 percent with a default rate of 55 percent.

So, it looks like the for-profits are offering the student loans with high interest rates and yet a low expected repayment rate which I think speaks directly, in some cases, to the aggressive recruiting nature of some of these schools that they are really not that concerned because the default rate is so high as long as it means that that student is, in fact, enrolled and Federal dollars have been collected.

Does the CFPB have plans to study these types of loans further and are there any recommendations that you can offer that will address the institutional loans made by the for-profit colleges and universities?

Mr. CHOPRA. In recent years, there has been financial reforms that have indicated a couple principles that might be worthwhile here to mention.

One is skin in the game. The Dodd-Frank Act actually requires that lenders retain some interest even if they were to sell them into securitized pools of assets.

Another is considering ability to repay. In the mortgage market, lenders will be required to consider whether a mortgage borrower can actually repay.

Senator HAGAN. That is a good idea.

Mr. CHOPRA. And in general, when an entity is able to come out ahead even when they expect upfront that the customer will likely fail, that may be a sign that competitive market forces are not really working and that incentives are distorted.

I think the Bureau has significant expertise in the area of institutional lending and the role that 90–10 might play. So, we will continue to monitor that market closely and, as you have mentioned before, we have also looked in this sector at the recruitment of veterans and service members as it relates to compliance with 90–10.

My colleague Holly Petraeus has been quite outspoken about that and we look forward to continue working with other agencies to monitor this market.

Senator HAGAN. Speaking of that, of the 90–10 rule, the GI Bill is not included in the 90 percent. So, in most of those cases, the Federal part, the Federal loan position assistance is much higher than the 90 percent.

Mr. CHOPRA. What you are saying is correct. We are currently experiencing a rapid increase in the number of veterans returning from foreign conflicts who are enrolling in higher education.

So, it is in the interest of all of us to ensure that they continue to be an economic engine as they were after World War II, but also that they do not unnecessarily take on high-cost credit when they have benefits that they have earned.

Senator HAGAN. And especially when you look at the high expected default rate needs to be taken into consideration.

Mr. CHOPRA. Yes. We closely monitor all aspects of how the marketplace works to ensure that the market is fully functioning and that there is compliance with consumer laws.

Senator HAGAN. One of the recommendations made in the recent report states that Congress should require the institutions of higher ed to work proactively to protect and inform the private student loan borrowers.

What would this look like? Would it be like Know-Before-You-Owe or should it be solely the responsibility of the school to protect and inform the borrower? Or should the lenders take some responsibility in ensuring that their borrowers have the clear, concise, and accurate information regarding their student loans?

Mr. CHOPRA. Everyone has responsibility and borrowers certainly need to take responsibility for the commitments they take on, and they need clear information.

But the point about financial aid offices is an important one. Currently, most lenders are requiring loans to be certified by the school; to simply verify that the student is actually enrolled, and that they have not already over borrowed. This is a very common sense underwriting principle that was certainly not well observed in the years prior to the financial crisis, where capital market conditions created the incentives for originators to make substantial fees without really needing the borrower to have the ability to repay.

Senator HAGAN. Thank you.

Senator BROWN. Thank you, Senator Hagan.

Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Mr. Chopra, how are you?

Mr. CHOPRA. Good. How are you, sir?

Senator MENENDEZ. Very well.

Let me ask you. I heard your response to a question with reference to borrowers who feel trapped in their present interest rate and are not able to refinance, in essence, at a lower rate. And, I think your answer to the question as a barrier is that there was not enough competition, is that correct?

Mr. CHOPRA. There might also be issues in the servicing infrastructure where borrowers may not know that they are able to make certain changes to their loans. I think it is market conditions as well as financial education and the servicing infrastructure.

Senator MENENDEZ. Does the Bureau have any ideas or suggestions as to either how we create greater market competition or greater inflows of information for individuals so that they can exercise their rights?

Mr. CHOPRA. Sure. We have a strong role to play in educating borrowers about what their options are when they may not be able to make their payments; and we have already released a number of Web tools and other products so that students know how to manage their debt better.

But, one thing we do hear is that even if they want to refinance, there simply is not that much opportunity for them. It is something that many mortgage borrowers think about when they want to refinance but the current market conditions often constrained them and the processes to do so can be paralytic.

Senator MENENDEZ. Well, as someone who has been a strong advocate in a different context of being able to allow mortgage borrowers to refinance at historically lower levels, it seems to me that we should find the wherewithal to be able to achieve this, have responsible, continue to have people be responsible borrowers, be able to relieve some of their debt load at the end of the day.

So, we would love to, maybe, pursue that a little bit more with you as well as how do we stimulate creating competition so that, in fact, that the marketplace itself would find itself more robustly engage in which rates would fall.

How about the part of your report that noted that about 40 percent of private student loan borrowers had not exhausted their Federal student loan limits?

And, in that respect, obviously before you go and borrow in the private sector would it not be more desirable to maximize that which is available to you under Federal student loan limits because those are at lower rates than generally in the private marketplace?

Mr. CHOPRA. Yes, and in fact, if you count people who do not even apply for Federal loans, that number goes north of 50 percent I believe.

One of the key issues, which we put forth in the report, is involving the financial aid office more in the process and giving much clearer information.

There has been an abundance of fine print in quite small font that had invaded so many of our credit card agreements, mortgage agreements, and all other things.

And, there is a lot of work that we try and do to simplify disclosures. We find that this actually is lower cost for smaller financial institutions to provide, and much more clear, to borrowers. You should not need an attorney and a magnifying glass to understand your obligations at age 18.

Senator MENENDEZ. So, the question is: Is there a way to enhance, I mean you mentioned some of the Web sites, are there other opportunities in which we can get, you know, financial aid departments to be more robustly engaged in saying here is the ability, if you qualify. Before you consider taking a private sector loan that will be more costly, you should consider the Federal loan limits.

Mr. CHOPRA. Yes. In fact, most lenders will strongly agree that Federal loans should be looked at first and many of them communicate that to their borrowers.

So, giving financial aid officers the opportunity to actually counsel the student before the consummation of a private student loan would help. We have heard broad support from lenders, schools, and consumer groups for this.

Senator MENENDEZ. Finally, I listened to my distinguished friend and colleague, Senator Corker, express his concerns about the interface between the Bureau and prudential regulators. And, I just wonder. In the process of doing this work, did you find that prudential regulators were doing the type of consumer information and advocacy that the Bureau has been doing in this particular regard?

Mr. CHOPRA. We have a very explicit mission on financial education and also to assist borrowers with the completion of financial aid applications. Their primary role is, of course, to ensure the capital adequacy of the financial system and they do work with us on financial education work; but we have placed a major emphasis on that because we believe it can ensure a more robust marketplace across all consumer financial products.

Senator MENENDEZ. Thank you very much.

Thank you, Mr. Chairman.

Senator BROWN. Thank you, Senator Menendez.

Senator Corker, has one more question and then we will move to the second panel.

Thank you, Mr. Chopra.

Senator CORKER. First of all, you are obviously a very intelligent person. It sounds like you have done a lot of good work and I want to thank you for that.

I, you know, meet with students who are 27-, 28-years-old or people who used to be students and have huge amounts of debt, and you look at the amount of money they are making and you just wonder when they ever are going to have a real life because they are working two and three jobs to pay these loans off.

My frustration really is the hypocrisy around all of this. On the one hand, we hear, you know, especially during an election cycle, talk about student lending and student loans and I assure you my heart goes out to students who have huge amounts of loans that may never be repaid or may take 20 years. And yet, we advocate policies here that drive up tuition rates.

On the private lender side, as Senator Menendez was just referring to, they are seeking flexibility but the prudential regulators are hesitant to give them the flexibilities that you have on the public side.

So, you know, there is the hypocrisy that goes with this whole testimony today, not you, but the difference between the consumer agencies and the prudential. And then, we pass a law that says that student rates are going to be at 3.4 percent, just pull it out of the air.

So, those loans are to all comers regardless of any kind of credit status, all comers, no collateral, no payments made for 4 years.

Is there anyway you, as an intelligent person, could possibly imagine that the Federal Government is going to come out on loans like that and are we not again demonstrating tremendous hypocrisy in that what we are really doing is piling up debt down the road that these same students are going to have to pay off?

Is there any way that when an agency is taking all comers, there is no collateral being put out, no underwriting taking place, and no payments being made the entire time they are in college, is there any way the Federal Government could possibly come out to the good on 3.4 percent loans?

Mr. CHOPRA. The rates set by Congress are a bit outside our jurisdiction, but I will say that the global competitive market is very, very fierce.

And, across all indicators, having a highly skilled workforce, has very real economic growth potential and investing in a way that is strategic such that people who may not have means can access education, there is significant upside to that.

Now, it is hard to underwrite that type of loan. In many cases, you cannot anticipate whether someone is going to be able to repay 5 years in advance. What if they entered in 2005, then the entire global capital markets collapse?

It is a difficult problem, but ensuring that the workforce is built with skills is something that needs to be a priority as well. We have to balance all of these and it is a careful one and we look forward to working with the Senate.

Senator CORKER. I think your answer is "no" financially but there are other benefits.

Mr. CHOPRA. No. It is an "I do not know."

Senator CORKER. Yeah. Thank you.

Senator BROWN. Thank you, Mr. Chopra, very much.

I will call the second panel forward.

I think Senator Corker, there is plenty of hypocrisy to go around when I see what State governments have done when we were in college and schools like Ohio State were considered State universities and now we consider them State-supported or even State assisted.

We can blame it on Medicaid or we can talk about tax structure and a whole bunch of other issues. But that can come later.

I will introduce the three members of the panel as they are beginning to be seated.

Deanne Loonin is Staff Attorney with the National Consumer Law Center and the Director of NCLC, Student Loan Borrowers Assistance Project where she provides direct representation to low-income student loan borrowers.

In her role, Ms. Loonin also assists attorneys representing low-income consumers and teaches consumer law to legal services, private consumer attorneys, and other advocates.

Ms. Loonin received her B.A. from Harvard, Radcliffe College, and her J.D. from the University of California at Berkeley.

Jennifer Mishory is a founding member and Deputy Director of Young Invincibles, a nonprofit, nonpartisan organization that represents the interest of 18- to 34-year-olds.

As Deputy Director, Ms. Mishory directs policy research, communication, and outreach staff for the organization. She served as a consumer advocacy representative to the Department of Education's 2012 negotiated rulemaking on student loans.

Ms. Mishory holds a B.A. from UCLA and a J.D. from Georgetown.

Jack Remondi is President and Chief Operating Officer of Sallie Mae. In this role, he is responsible for the company's loan servicing information technology, credit and underwriting, and marketing and communications divisions.

Prior to his current position, Mr. Remondi served as Vice Chair and Chief Financial Officer where he helped Sallie Mae navigate the financial challenges posed by the economic crisis.

He received his Bachelor of Arts degree in economics from Connecticut College.

Ms. Loonin, if you will begin.

Thank you to all three of you for joining us and for your public service.

STATEMENT OF DEANNE LOONIN, ATTORNEY AND DIRECTOR OF STUDENT LOAN BORROWER ASSISTANCE PROJECT, NATIONAL CONSUMER LAW CENTER

Ms. LOONIN. Thank you, Senator, and thanks to all of you for inviting me to testify today.

Again, my name is Deanne Loonin and I am here on behalf of the low-income clients that we represent and work with.

It is important just from the outset that when we talk about the students who we work with, they are not just young people going to traditional colleges. It is a very important population but actually the face of higher education is much more diverse these days.

And, we have clients who are what are really called sort of non-traditional students, meaning that they are older when they go back to school. In many cases, they have their own dependents. They are actually independent themselves and do not have parents or families to fall back on.

So, we actually have clients who are still suffering under the burden of student loan debt throughout their lives having taken out the loans later in life or in some cases parents having cosigned for their children.

Most of our clients have Federal student loans. But what we saw happen up to the credit crisis was that we were seeing a lot more of our low-income borrowers with private student loans.

And, the market really that was sort of taking place prior to the credit crash essentially was the kind of subprime predatory market that, unfortunately, we saw in other credit markets as well.

We wrote a report in 2008 where we went through some of the parallels to the mortgage market and I will not repeat all of those here but the main point was that a lot of the loans that were made at that time were, unfortunately, really destined to fail and they did fail.

There were very high right-off rates and a lot of people who took out loans, they were never going to be able to pay back. I saw loans at that time for my clients with interest rates of upwards of 20 percent, 25 percent, and these were variable rate loans with very high origination fees as well.

Some of the same sort of rationales for making those loans in the mortgage market we heard in the student loan market too that these would have benefits for low-income borrowers; and actually instead what we have was it was taking opportunity away from a lot of those borrowers, more sort of a reverse redlining situation in a push market.

Fortunately, the market has changed. We do not see those third-party subprime loans for most of our clients anymore. There has been a correction because of the failure, really, of the market and that is why it is such an important time right now for policymakers.

There are sort of two broad themes that I want to emphasize and there is more detail in my testimony about why this is such a critical time.

The first theme is that the opportunity is now to shape the market that is going to reemerge. There are more responsible lending practices going on now and we are all very heartened to see that, but we want to make sure that the same things that happened before do not happen again even if that means that it is a smaller private student loan market; that is better for a lot of our clients if it means that they are not going to be stuck with these predatory loans, with these unaffordable loans.

The second theme that we spend a lot of detail on in our testimony is that we need to figure out ways to provide relief for those who were harmed by the predatory practices of the past.

The lenders, as we have seen and we will hear I am sure more from Sallie Mae today, have moved on for the most part but the borrowers have not been able to. Their futures are shattered in a lot of cases, these are my clients with both Federal and private loans but the difference that we find on the private loans side is that there is so little flexibility on the part of the lenders.

We talk with the private lenders all the time. We try to negotiate modifications, income-based repayment, things like that; and generally, the relief that is available is very short-term relief.

Unfortunately, it is short-term relief but these are long-term structural problems. We understand that there are some barriers.

Senator Corker mentioned, for example, that there are problems with the prudential regulators. That is what we hear. We do not know if that is really the problem that is preventing the lenders from offering broader relief; and if it is, then we want to hear more detail and find out ways to be flexible about those.

In some ways, just like what is happening in the mortgage market and also heeding some of the lessons that we have learned from the modification programs in the mortgage market that these have to be flexible, affordable modifications and also some principal reduction because that is going to make it less likely that the borrowers will redefault.

We also like to look at the possibility of cancellations in extreme situations like death and disability. Some lenders offer this at their discretion but the idea is to have a more standardized, transparent policy so borrowers can know what to expect in these extreme situations.

Again, I have more detail in my testimony including policy prescriptions, and I am happy to take questions at the end about those.

Senator BROWN. Thank you very much, Ms. Loonin.

Ms. Mishory, thank you for joining us.

STATEMENT OF JENNIFER MISHORY, DEPUTY DIRECTOR, YOUNG INVINCIBLES

Ms. MISHORY. Thank you. Chairman Brown, Ranking Member Corker, and other Members of the Subcommittee, thank you for having me here. My name is Jennifer Mishory and I am the Deputy Director of Young Invincibles.

Young Invincibles is a nonprofit, nonpartisan organization that seeks to represent the interests of 18- to 34-year-olds, making sure that our perspective is heard whenever decisions about our collective future are being made.

This spring we released a report detailing the experiences of high-debt borrowers with private student loans. The report analyzed the subset of an online self-selected survey of about 13,000 borrowers.

Additionally, Young Invincibles just completed a 20-State, 40-city national bus tour, talking to young people from all walks of life. Our interactions with young people make it clear. Borrowers are struggling, students are confused; and as the private loan market reemerges, future students need more guidance and more protection.

As has been detailed already, the private loan market has shifted significantly in the past 10 years. Looser, more predatory lending led to a significant increase in the pre-recession private market.

After the credit market dried up, lending standards tightened and the market merged and consolidated. Recently, there have been signs that the private student loan market may again be on the rise.

For example, Sallie Mae is expecting growth in new loans for the second consecutive year. Private lenders have also begun offering new fixed-rate loan options. As the student loan market expands and evolves again, stakeholders must assist struggling borrowers and set up the next generation of college goers for a better financial future.

Borrowers have encountered an array of difficulties amidst this marketplace. While students do have a responsibility to do their homework, the sheer complexity of student loan terms and the fact that many young students are making their first major financial decision necessitates that key institutions involved take aggressive steps to ensure that students are informed.

Unfortunately, this does not happen enough right now. For example, about two-thirds of private loan borrowers in our survey said that they did not understand the major differences between private and Federal loan options.

This is problematic, given that Federal loans often have better rates, better repayment terms based on income, temporary relief when a borrower faces unemployment, and more standardized payment fee requirements.

Current law requires disclosures regarding Federal options and about some private terms, but these are often too little and too late. At the same time, 80 percent of borrowers in the survey turned to their schools as trusted sources of information on these loans. Yet, those offices do not always have the right answers and they are not involved enough.

Bus tour roundtable participants at the high school level also voiced similar problems. Career and college counseling in high schools are understaffed and often undertrained on these issues.

We also hear frequently about significant problems after loans go into payment as borrowers attempt to navigate life crisis, customer service, repayment, and the loan terms.

For example, Cassandra in Cleveland, Ohio, has about $90,000 in private loans. When she was struggling, she said that Sallie Mae did not process your request to make interest-only payments and she was denied a deferment when her husband lost his job.

Repayment terms are nearly impossible for inexperienced borrowers to anticipate on the front-end or to fight while in repayment.

When another borrower, Bridget, went into the Peace Corps after graduation, she said that she was able to defer her Federal loans but not $46,000 in private loans.

Her mother agreed to help make payments while she was gone. A few months before Bridget's return in 2009, her grandfather passed away. The turn of events that ensued led to one missed payment and then one more.

After that second missed payment, she was told that the loan was charged off and the full amount came due. She said that she was told that the only way to move it back into regular repayment would be to pay 60 percent of the balance up front. That is over $27,000.

Currently, she says she pays $300 in monthly payments and that nothing has been put in writing. She does not get a bill. She is unable to check her balance online and she continues to receive bullying calls from that bank.

After 3 years of these monthly payments, she told us that all five separate loans still show up as delinquent every single month. So, her credit score has predictably plummeted.

She tells us that she has no hope of coming up with the lump sum required to rebuild her financial future as none of her monthly payments can count toward that lump sum.

In the wake of the Great Recession and as millions of borrowers struggle to deal with unemployment, delinquencies, defaults, and high debt, and millions more attempt to navigate the post recession private loan market, we must act.

We must rethink the way we treat private loans in bankruptcy. The Department of Education should use its email system and online outreach to inform struggling borrowers about the new options in student loan complaints and send them up to the CFPB, which is a resource that we have sent many borrowers to already.

We also must take aggressive action to protect future borrowers as they make their choices. Lenders should be required to obtain school certification of financial need before dispersing private student loans.

Marketing materials should include clear explanations of repayment terms and be available earlier. We need to ease the application process of proving independence from parents so that borrowers receiving no help from their family can access a fuller set of Federal loans. And stakeholders must ensure that borrowers fully understand the difference between private and Federal loans—particularly with the new options on the table.

For example, if a future teacher getting a master's degree is receiving a competitive interest rate on a fixed-rate private loan, he or she will often be better served taking out a Federal loan due to other terms such as flexible repayment or the ability to defer during times of unemployment.

As the private loan market evolves and potentially reemerges, we must ensure that new borrowers are fully informed and have access to fair-lending terms and current borrowers find some relief and help.

Thank you very much.

Senator BROWN. Thank you very much Ms. Mishory.

Mr. Remondi, thank you for being with us.

STATEMENT OF JACK REMONDI, PRESIDENT AND CHIEF OPERATING OFFICER, SALLIE MAE

Mr. REMONDI. Good afternoon, Chairman Brown, Senator Corker, Members of the Subcommittee.

My name is Jack Remondi. I am President and Chief Operating Officer of Sallie Mae and I thank you for the opportunity to testify today on the private education loan business.

Private education loans help families fill the gap between their own resources, financial aid, grants, and the total cost of the college or university of their choice.

They are not for everyone. They were never intended to replace Federal aid, and in fact, they were originally called supplemental loans indicating their stated purpose.

In most cases, higher education is a family commitment which our private education loans are designed to support. Last year over

90 percent of our private education loans had a cosigner, typically the parent.

Our loans provide important features and protections that benefit the family, including extensive disclosure, interest rate and repayment options, embedded tuition insurance and death and disability loan forgiveness.

But, the best protections inherent in any loan, including private education or Federal student loans is quality underwriting and thoughtful planning before one borrows.

Our free Education Investment Planner helps families know before they go by assisting them with the following important steps for turning access into success: pick the right school, and most important, consider lower-cost options; create a financial plan that covers the entire cost of completing a college degree, not just one semester; make loan payments to keep borrowing costs down; and graduate. Student loans without a degree mean loan payments without the higher earnings to support them.

During the application process, we disclose monthly and total payment information and present customers with a side-by-side choice of interest rate and payment options available to them.

Customers receive multiple disclosures that quantify expected monthly payments and finance charges; highlight the availability of Federal loan programs; encourage the applicant to shop for lower-cost options; and outline the right to cancel the loan.

After disbursement, our customers receive monthly statements that detail their loan balance and accruing interest. Customers who elect to defer payments while in school are reminded of the positive impact that in-school payments would have on the total loan costs.

The most recent findings of our How America Pays for College study shows how effective these disclosures and reminders are. Of private education loans borrowers, 98 percent filled out a FAFSA, the first step for taking out a Federal student loan.

Among all education loan borrowers surveyed, just 3 percent borrowed only private loans. Two-thirds of our customers are making payments while the student is in school—allowing them to save thousands of dollars in interest charges over the life of the loan.

Sallie Mae has pioneered new products and procedures designed to help families make informed decisions. For example, we advocate school certification as an important safeguard. We will not disperse a loan until the school certifies it.

Until recently, nearly all borrowers deferred loan payments while in school. In 2009, Sallie Mae became the first lender to encourage school payments because they save the borrower thousands of dollars in interest charges over the life of the loan. Our in-school customers who opt for either interest payments or a fixed payment of $25 a month can save an estimated 30 to 50 percent in total interest costs.

The results are encouraging even in these tough times. The stories we heard today are certainly important to hear, but they are not the norm. Ninety percent of our loans in repayment are current, and the charge-off rates have dropped from a high of 6 percent to under 3 percent this year.

Still, we recognize that the recession has posed real and significant challenges for many Americans including some of our customers—and because our success depends on our customers' success—we actively assist borrowers experiencing difficulty by understanding their individual circumstances.

To customers who need help, we offer a mix of repayment products and counseling and collection programs that give them the best opportunity to manage their debt obligations. These options include reduced monthly payments, interest only payments, extended repayment terms, temporary interest rate reductions, and if appropriate, forbearance—all scaled to the customer's individual circumstances and ability.

Since 2009, we have modified $1.1 billion in private education loans to help our customers. Nonetheless, loan modifications and other efforts are sometimes insufficient. For this reason, Sallie Mae supports bankruptcy reform that would require a period of good-faith payments, is prospective so as to not rewrite existing contracts with customers, and that applies to Federal and non-Federal education loans alike.

We would also be interested in increasing the options available to defaulted borrowers, specifically the Federal rehabilitation program allows defaulted borrowers to cure their default and rebuild their credit. If a customer makes the required payments, his loan is rehabilitated and the default is removed from their credit history. For all other consumer loans, however, the Fair Credit Reporting Act does not allow for a second chance; and so, there is no provision to rehabilitate private student loans. For some time, we have been discussing the promise of providing this option to private education loan borrowers. We would certainly recommend that Congress consider it.

In sum, market forces and legislative changes, some of which were developed here in this Committee, have combined to make private education lending better understood by students and families, better underwritten, and more targeted to provide the needed financing that can help American families achieve their education dreams and create the opportunity for a brighter future.

Thank you. I would be pleased to answer any questions.

Senator BROWN. I want to interrupt this meeting just for a moment. On the Senate floor and the House floor and by the gate of the Capitol Senator McConnell and Senator Reid are marking the 14th anniversary of the murder of the two Capitol police officers.

On July 24 at 3:40, Officer Jacob Chestnut and Detective John Gibson were shot in the line of duty, and if I could ask a moment of silence from the room.

[Pause.]

Senator BROWN. Thank you all.

Thanks to all three of you for your testimony. I want to start with Ms. Loonin. You made a rather telling statement. Predators have moved on, borrowers can not.

Mr. Chopra's beginning comments on the first panel spoke about the difficulty of refinancing. It is partly the students, potential student, the borrowers know enough about those refinancing opportunities and it is also the paucity of refinancing opportunities, if you will.

Do you see what types of relief or refinancing opportunities are currently available to private student loan borrowers?

And I would like Ms. Loonin's answer but also the other two of you if you would briefly comment on sort of your insight there and at the same time as you answer this, elaborate on any sort of barriers or Federal rules that may impede the lender's ability to provide those relief options to those borrowers.

Ms. LOONIN. Thank you, Senator. Right now what we have been able to see mostly working with our clients is that there are very few private loan refinancing options even available.

A lot of our clients have lower credit scores and so it may be because of that but we also hear from borrowers through our Web site and others who are looking, who are prime borrowers really and are having the same problems. So, I would say there are very few products and opportunities out there.

As far as barriers, just one point that I wanted to make especially since the issue of the regulators has come up numerous times. I think it is very telling, as Mr. Remondi mentioned, the number of options that Sallie Mae, for example, is offering.

So, clearly it is possible to offer some of these options and I would like to hear more if they are hearing from regulators that they can offer some things just not too much.

But one of the problems that we find is that there is this haphazard nature to the options, that some of the lenders will, for example, offer or say that they have programs where they will offer cancellations for death or disability, and sometimes we will call on behalf of our clients and they will say that they have them and sometimes we will call the same lender and they will say that they do not.

So, in terms of barriers it is a little bit harder for us to know exactly what those problems are because we all want to work together to figure those out.

Senator BROWN. Ms. Mishory, your comments.

Ms. MISHORY. I would say similarly the borrowers that have come to us have increasingly expressed frustration at the inability to work with their lender to find better terms and have not found other options in the marketplace.

Mr. Chopra earlier mentioned educating borrowers as well; if there are options, then we also need to make sure that students and borrowers know about those.

And so, that is another issue as well.

Senator BROWN. Mr. Remondi.

Mr. REMONDI. I think, as Rohit Chopra described in his comments, there are a couple of factors here. One is that these are principally, in Sallie Mae's case, family education loans; and the price that we charge or set for the interest rate to the borrowers is based on the highest credit score of both the parents and the student. So, to some extent, they are already gaining the benefit of the parental cosigning on that account based on the interest rate at the time.

Second is that the loans are variable. Most refinancing options that we hear about are talking about fixed-rate loans made in a higher interest rate environment being refinanced into a lower interest rate environment.

Very rarely do we see interest rates or loan products being refinanced because the credit profile of the obligor has changed in such a dramatic way as to change the overall interest rate structure.

And, I think because of those two reasons you see a very limited marketplace for private education loan consolidation or refinancing activities.

Senator BROWN. What can we do about it?

Mr. REMONDI. Well, as I said, I think in most cases those loans would be offered at the same terms and conditions that they are offered at today because they are based on the parents credit worthiness and based on a variable interest rate.

So, as interest rates have come down since 2008, all of the interest rates on our student loans have been coming down with that fall in the short-term interest rate market.

Senator BROWN. What steps do you take in your individual responsibilities or should we take in Congress to ensure students are aware of the differences between these loans and Federal loans, not just the initial interest rate but other kinds of terms of repayment and other problems that might arise during the repayment process?

Ms. Loonin, why do you not start again?

Ms. LOONIN. So, there are some changes in the Truth-in-Lending Act, as you know, so that the disclosures are more expansive than they have been in the past; and there were some very positive changes there.

But, I think, we hope that Congress will take a look at the timing of some of the disclosures also as well so that borrowers get the terms of their actual loans earlier in the process not just a sample of what they may be getting because, as we know, the private loan products really vary quite a lot.

The certification process that a number of people have alluded to here and Mr. Chopra talked about in his testimony as well, we think is another opportunity to make that a mandatory program. Some schools use that opportunity to counsel borrowers as well, and we think that that is an opportunity right then to give a lot of information before the student has actually signed on the dotted line.

Senator BROWN. Ms. Mishory, your thoughts about that.

Ms. MISHORY. I would also add in addition to the options that Ms. Loonin referenced, you know, on the bus tour we talked to a lot of high school juniors and seniors trying to figure out their next steps, and they were confused, and they did not have clear options on where to go.

High school counselors often are not prepared to talk about differences in loans and how students can finance their college education. So, I think a lot needs to be done in college counseling offices. We need to be teaching financial literacy skills even earlier so that families can really prepare their education.

Senator BROWN. Mr. Remondi.

Mr. REMONDI. Well, I think, as we heard in the CFPB report, there is more disclosure today on private education loans than there is on any other consumer lending product out there, period.

And, we do provide all of this information to the borrowers as they are going through the application process. So, they get an indicative rate and, once their credit is approved, they get their actual rate and they see their monthly payment. They have a 30-day term to accept the offer without any changes that we would make and then they also have 30 days after the loan has been funded to cancel the loan. Each time in that process they are encouraged to consider lower-cost Federal loans and to shop for lower-cost options.

So, I think, on the one hand, we are providing an awful lot of good disclosure today. I think to the other participants comments here, one of the pieces that could improve dramatically is helping students and families know where they go. Figure out what they can afford to spend on a college education, pick the right school (that matches the financial abilities of the family along with the prospective earnings they can gain from that career) and think about the full cost of education.

The number one reason students default on student loans, and this is true whether it is Federal loans or private education loans, is the kid does not graduate from school. They have the debt burden but they do not have the economic benefit of the education.

If we can help families plan better through that process and be more prepared before they go, we would have a better educated consumer and I think better results in both the Federal program as well.

Senator BROWN. Do you agree with Mr. Chopra's statement that you should not need an attorney and a magnifying glass?

Mr. REMONDI. He made that statement on all loans, not just student loans; but in our disclosure statements, you are required to have a certain print font, size font on every disclosure statement, and we certainly meet or exceed all of those standards.

He was referring, I think, to the credit card statement book that we get each, you know, when you get your new credit card that everyone throws away.

Senator BROWN. Are you referring to the 25-year-old eye or 55-year-old eyes?

[Laughter.]

Mr. REMONDI. I have my glasses on.

Senator BROWN. OK. Senator Corker.

Thank you.

Senator CORKER. Thank you all for your testimony. I do appreciate that we have, you know, three folks of differing backgrounds that are trying to solve the problem, and again, I know all of us are concerned when we see people that are unable to make payments or paying for life for their education.

Let me ask, Ms. Mishory, what are some of the predatory lending instances, if you will, that you are seeing out in the market place right now?

Ms. MISHORY. Sure. I mean, as I think was discussed, fortunately a lot of those instances have improved over the last couple of years. We certainly saw from 2005 to 2007 a lot of direct to consumer marketing and a lot of students taking on burdens that they did not need to.

So, I think that we have seen a lot of improvements. I would say that we still see marketing materials that are unclear to students. We need to make sure that marketing materials show terms and they show those terms in a way that students who do not have the ability or experience with these products actually understand them.

Senator CORKER. So, it is more an issue of just people understanding what they are getting into and maybe it being explained in clear language. It is not necessarily that people are out there purposefully trying to take advantage of students.

Ms. MISHORY. I would say that again, as a lot of the panelists discussed, the market certainly has improved over the last couple of years, but that leaves us with the problem of folks who already have all of this debt that they took on.

Senator CORKER. Right.

Ms. MISHORY. And then also ensuring that going forward, as the market changes, we make sure that students know what they are getting.

Senator CORKER. Mr. Remondi, of all the loans that you all make, I am sure there has to be data that shows that people who go to certain colleges are more likely to pay back their loans than others.

Are you all able to look out across our country and see certain outliers where people go to a particular institution and they have more difficulty paying back their loans than others?

Mr. REMONDI. Sure. We have over seven million borrowing customers. So we have a wealth of data that really goes across both Federal student loan programs and the private educational loan marketplace and there absolutely are differences in repayments, success rates, and therefore, the flip side of that, default rates.

Senator CORKER. Right.

Mr. REMONDI. Depending on where.

Senator CORKER. And, when people are making loans to students who attend these institutions, are they taking those kind of things into account?

Mr. REMONDI. I think what happened over the last couple of years is that people were not aware of some of the changes that were coming, firstly the economic environment. More recently, I think lenders are trying to take into consideration the overall success rate of students at a particular institution.

We do not make private education loans to students at every school in the country. We have an approved school list that we use to determine whether or not the borrower is eligible to participate in our programs.

Senator CORKER. On the Federal side, we are making loans to students at every institution regardless, is that correct?

Mr. REMONDI. The Federal program also has a cutoff and it is based on the school's cohort default rate or CDR, but that is a very high default rate standard. I believe it is 25 percent for a couple of years and it is only measuring the incidence of default in the first 2 years after repayment has begun.

Senator CORKER. But obviously the private lenders have to take things like that into account because unlike us, we just cannot make up the numbers and go ahead and kick the can down the road to future generations, is that correct?

Mr. REMONDI. No one else is writing us a check when the borrower defaults.

Senator CORKER. So, let me ask you this question. Is there any way, is it possibly fathomable that an institution like the Federal Government can make loans at 3.4 percent to all comers, no collateral, no credit checks, no payments made for years, and come out in a way that is net positive on the basis of the loan?

Is that even within the realm of—and to any institution whether they actually have a lot of default rates or not or students attending those institutions, is that fathomable?

Mr. REMONDI. No.

Senator CORKER. It is not?

Mr. REMONDI. No.

Senator CORKER. So, I just want to say, and I know I have demonstrated a little bit of an attitude here, that the tremendous hypocrisy, the attitude is at us, it is at us, and that is that, you know, obviously, Ms. Loonin, great testimony and I appreciate your work in this regard and you were talking a little bit about how the private sector side has certain constraints, sometimes the prudential regulators place them on.

Maybe some of them are not as tight as some of them advocate as you mentioned earlier. But, on the private side, they actually have to survive to the next year. I mean they actually have to make it in a solvency way.

On the public side, and in an election year, we can just make things up and you can decide that we want to try to get votes from students and young people by doing things that we know make us even more insolvent as a country but we can just do that.

And so, can you understand why there might be differences between what the private sector is doing that has to actually exist into the future and the public side which we can just print money and borrow money from other people and do things that make us more insolvent during the time of elections?

Can you understand why you would have sort of different types of lending arrangements taking place?

Ms. LOONIN. I can understand but I should say that the loans that I saw during the heyday of the predatory lending were the worst products I have ever seen and I do not think there was any caution put into those when the private lenders were making those.

They were lending to schools that they are talking about now with the bad outcomes. They were lending to students of those schools back then at rates that I have never seen before also, and those were some of the loans that failed at the highest rates.

So, we are talking about it now because the market has changed because of the crash. So, you are right about that but that is actually still a problem, frankly, in the private sector.

Senator CORKER. And by the way, for any entity that is out there doing things like you just mentioned, we ought to do everything we can to put them out of business. I could not agree more.

I am really just talking about really us, not you guys. I thank you for what you do. I just continue to be appalled at our ability to be a responsible.

And, candidly, as I listen to Mr. Remondi, it sounds like that they are trying to be responsible. I do not know if you all would take any issue with some of the things that he just discussed regarding Sallie Mae's policies.

Would you do that?

Ms. LOONIN. I mean, I can say that I agree that they are trying to be responsible now and that I do have very good working relationships with their customer advocate office at Sallie Mae. I think very respectful relationships.

But, unfortunately, for a lot of our clients, they are still not able to offer anything but I do think that a lot of the products that they have created going forward do show much more responsible lending practices.

Senator CORKER. I thank you for your help as advocates in making that happen.

Just in closing, Mr. Remondi, on the institutions, I know there was an effort by the Administration to make it so and it might have been a good policy so that, you know, if a private entity had students that were attending and they were borrowing money that there had to be certain outcomes there or they could no longer participate in certain governmental programs.

It sounds like there may be a number of public institutions around the country that we may need to look at him that same way.

Would you agree or disagree?

Mr. REMONDI. Yes. I mean, there are good schools and there are bad schools that are for-profit and not-for-profit in educational outcomes for their students.

Senator CORKER. And I guess, as far as consumers go, equally bad outcomes for students if they borrow money in a responsible way from a responsible entity whether it is public or private and end up attending one of these schools that really is not equipping them to perform in the 21st century, there is a consumer issue they are also, is that correct?

Mr. REMONDI. Yes.

Senator CORKER. Do you know of a way that we might be a with that?

Mr. REMONDI. Well, I think having information available to students, information about the school's graduation rates, information about the default rates of students who attend those schools is a good step in that direction.

I would go back, though, to my earlier comment that says a lot of this is trying to address how to make a decision about the current semester. I have the tuition bill on the kitchen table, what do I do?

And I think more students and families need to think about the total cost. How am I going to get from first year of college through to graduation so that I actually get the economic benefit from the money we are investing?

Senator CORKER. And for the people that you are dealing with, it is very important to you, as a lender, that they sit down at that kitchen table and try to think through the entire process through graduation because otherwise it is going to end up creating a loss for your institution, is that correct?

Mr. REMONDI. That is correct and that is why we offer our Education Investment Planner as a free Web site tool to customers and noncustomers alike.

Senator CORKER. Are we doing that with the Federal loan program, to your knowledge?

Mr. REMONDI. No, we are not.

Senator CORKER. So, we have a lot of students that are borrowing money from the Federal level and do not have this type of input at the Federal level, that do not have this kind of input on the front end and we, in essence, again us here, not you guys and not certainly any of the witnesses that are trying to overcome some of the predatory issues, we have a policy that may be, in fact, harming people throughout their lifetime, is that correct?

Mr. REMONDI. We are certainly not making the information available to those customers and all of the disclosure examples that were provided today certainly do not exist in the Federal student loan program.

Senator CORKER. Do you know why that would not be the case?

Mr. REMONDI. It is exempt from the Truth-in-Lending law.

Senator CORKER. Yeah. I think you can understand my frustration with the hypocrisy in this institution.

Thank you.

Senator BROWN. I guess I share Senator Corker's views about hypocrisy but I look at many of these for-profit schools that the administration is trying to write some rules for and getting resistance from so many on that when we should know more about the student that you suggest, Mr. Remondi, that is coming for a student loan should know more about, as they look at the whole picture of education, what are the graduation rates of this school, a for-profit or not-for-profit, a 2-year or 4-year, public or private should let them know what placement rates, what kinds of placement counselors and job placement offices they have at these for-profit or not-for-profit schools and what the rate of getting a job are, what the rates of job placement are.

So, I think all of that should be in this picture so there is plenty to go around. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman. I want to tell the panel that I really appreciate your presence and the sharing of your experiences in the student loan programs.

We have heard from you today you information that included that expanding the role of colleges and universities in working with private lenders. However, since 2008, average tuition at private not-for-profit schools has gone up almost 10 percent and tuition at public 4-year schools has gone up 15 percent.

These increases are surely leading students to look for and take out additional loans. Schools both determine tuition and help students find ways to pay their tuition.

I would like to hear from the panel what can be done to ensure that schools continue to provide advice with the best interest of their students in mind and do you see a need for a mutual third party to offer advice to students?

Ms. Loonin.

Ms. LOONIN. Thank you. The cost of college clearly has, as Mr. Chopra mentioned, gone up across all sectors and that is a huge problem; and unfortunately, there are a lot of students going to school who borrow more because obviously the cost is more and it is a complicated problem that is actually driving the costs.

I mean, one thing that I think is important to look at is accountability, something that Senator Corker was just talking about, accountability across all sectors of higher education for outcomes, for completion, for job placement, because the ability to repay the loans frankly even at some of the higher cost institutions is very much dependent on what the outcome is on the education.

If you succeed, and particularly in the Federal programs where there is a lot of flexibility and a lot of options, most likely it is going to be a situation where the borrower is going to come out ahead and, you know, it is good for the economy and all of that as well.

As far as having a neutral third-party advisor, I am not sure at what point of the process that you are talking about specifically.

I think it is always important for borrowers to get neutral advice. I think that the schools themselves sometimes do have conflicts of interest where they want the student to come to the school. They are selling their product in a lot of ways and it may be difficult in some schools to be able to give neutral advice.

On the other hand, a lot of financial aid officers do a very good job now of providing that kind of advice.

Something that Ms. Mishory mentioned is to get that kind of information out to people before they get into the school doors, and that could be in the schools with counselors and that should be as neutral and objective as possible.

Senator AKAKA. Ms. Mishory.

Ms. MISHORY. Yes, I mean, I would absolutely agree the cost of college is a huge issue. We hear about it from all the students that we talk with. Families are really struggling to figure out how to pay for college; and the issue of student debt is simply related and the cost of college is what is impacting this debt.

I do think there are larger issues that we need to address, like State investment in our public institutions. Public institutions are no longer supportable like they used to be.

Someone from my mom's generation paid a third of what I paid to go to a public institution. We need schools to be accountable for the money that they do receive and there are not that many ways in which we hold schools accountable like we should, and we need more information.

We need kids to be able to go and look and say:

> OK, well, the school down the street has a lot of students default on loans and a 50 percent unemployment rate for the past two years' graduating class. But, if I go across the city, kids 2 years out have an 80 percent employment rate. I am going to go to that school across the city.

We do not have that information right now for students and they desperately need it.

Senator AKAKA. Mr. Remondi.

Mr. REMONDI. I would agree that the cost of college has risen dramatically. I think the sticker price though is sometimes a lot different than what the consumer pays and we have not seen debt burdens grow at a more rapid pace than tuition levels.

So, the average student is graduating with about $26,000 worth of debt which is about 2 percent more per year over the last 10 years.

I think one of the challenges they face is that the economy, coming out of school today, it is very difficult for students to get a job either in their field or pay level that they were expecting maybe when they started, and that is creating some of the issues.

But again, going back to this concept of know-before-you-go, if students understand the dynamics, how much it is going to cost to complete their education, what the graduation rate is at that school, what the default rate is, they can make better, more informed decisions in that process.

Senator AKAKA. Let me ask a final question here, Mr. Remondi. Has the recent scandal over LIBOR had any effect on how Sallie Mae sets lending rates and have you thought about the possibility of using a different measure for rate setting?

Mr. REMONDI. Our interest rates are set using the LIBOR index. We have not seen any issues or problems with that. The allegations that have been made to date have said that LIBOR was set artificially low wage which, if that is true, would have been to the benefit of the borrowers.

Senator AKAKA. Thank you very much, Mr. Chairman.

Senator BROWN. Thank you, Senator Akaka.

Thank you each of you, Ms. Loonin, thank you, Ms. Mishory and Mr. Remondi thank you very much.

If you have additional comments, you can submit them to the Committee within the next 7 days. Committee Members may also write questions to you, if you would get the answers to us promptly. So thank you very much for your testimony and your service.

The Committee is adjourned. Thanks.

[Whereupon, at 4:08 p.m., the Subcommittee was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF ROHIT CHOPRA

STUDENT LOAN OMBUDSMAN, CONSUMER FINANCIAL PROTECTION BUREAU

JULY 24, 2012

Chairman Brown, Ranking Member Corker, and Members of the Subcommittee, thank you for holding this hearing today on an issue that touches so many American students, families, and our economy.

A few days ago marked the 1-year anniversary of the opening of the Consumer Financial Protection Bureau. In this year, the CFPB has taken important steps to improve the consumer financial marketplace. The mortgage market, in particular, was especially bruised and battered during the financial crisis. We hope that the CFPB's measures to increase transparency and improve oversight will help restore confidence and heal this multi-trillion dollar market with broad impact for consumers and the economy.

But we have also placed a great deal of attention on a growing market deeply connected to the American Dream—the student loan market. To prosper in today's global economy, our workforce needs skills to innovate in a highly competitive environment. For millions of Americans, student loans have opened doors to a college degree-offering new opportunities to create a better life. But the rapid growth of student debt raises concerns that warrant significant attention of policymakers and regulators.

With outstanding student loan debt reaching the $1 trillion mark late last year,[1] our economy has not just crossed a psychological threshold. Student loans are now the largest form of unsecured household debt, and the CFPB will play an active role in contributing to a properly functioning student loan marketplace.

College is Still a Good Investment, But Not without Risk

College is still a good investment, and higher education remains the surest path to a good career and job security. The unemployment rate for workers with college degrees is 4.1 percent, compared to 8.4 percent for those with just a high school diploma.[2] For younger workers, the unemployment rate for those with college degrees is 8.9 percent compared to over 13 percent for those with just a high school diploma.[3]

But there is another side to this story. Much attention has been paid to the growing "college wage premium"—the difference between wages for those with a college degree versus those without.

Over the past decade, wages for young college graduates have actually declined by 5.4 percent when adjusting for inflation.[4] This growing "premium" is largely explained by declining wages for young people without a degree. Between 1990 and 2010, wages for workers with only a high school diploma declined by 12 percent, when adjusted for inflation.[5] Put another way, the growing gap is not due to a college degree becoming more valuable—it's that the wages are of non-degree holders are falling.[6]

But the cost of attendance at our Nation's colleges and universities has not been falling. In the past decade, the cost of attendance at public schools increased 42 percent, and prices at private not-for-profit schools increased 31 percent, when adjusting for inflation.[7] Tough economic times have led State governments to slash higher education budgets, exacerbating this trend. The cost of tuition and fees has risen

[1] Consumer Financial Protection Bureau and U.S. Department of Education: Report on Private Student Loans (2012).

[2] Bureau of Labor Statistics: Current Population Survey, Household Data, Table A–4, Employment status of the civilian population 25 years and over by educational attainment (June 2012).

[3] Bureau of Labor Statistics: Current Population Survey, Household Data, Table A–16, Employment status of the civilian non-institutional population 16 to 24 years of age by school enrollment, age, sex, race, Hispanic or Latino ethnicity, and educational attainment (June 2012).

[4] Economic Policy Institute: The Class of 2012: Labor market for young graduates remains grim (2012).

[5] National Center of Education Statistics: Digest of Education Statistics, Table 395, Median annual earnings of year-round, full-time workers 25 years old and over, by highest level of educational attainment and sex: 1990 through 2010 (2011).

[6] National Center of Education Statistics: Digest of Education Statistics, Table 395, Median annual earnings of year-round, full-time workers 25 years old and over, by highest level of educational attainment and sex: 1990 through 2010 (2011).

[7] National Center of Education Statistics: Digest of Education Statistics, Chapter 3 (2011).

more than tenfold since 1979, vastly outpacing inflation, wage growth and healthcare costs.[8]

Growing costs, declining real wages, and job market uncertainty have led to more debt and more risk. The consequences of this increased risk are real, as evidenced by troubling employment outcomes and student loan defaults, which are disproportionately felt in the for-profit college sector. While perhaps fewer in number than the struggles of American homeowners, the stories of distressed young college graduates reveal the impact of the financial crisis and the significant work that lies ahead.

Private Student Loans Carry More Risk

While seemingly quite different, dysfunction in the student loan market bears some remarkable similarities to the mortgage market in the years leading up to the financial crisis. High-credit-quality conforming mortgages and Federal student loans originated in this time period were rather ordinary.

But, of course, not all mortgages were so ordinary, and phrases like "no-doc" and "Alt-A" were well-known in the subprime market. While student loans have been originated outside of the Federal loan programs for years, private student loans boomed in the years leading up to the crisis.[9] From 2003 to 2007, the number of undergraduates who took out private student loans almost tripled.[10]

Fueled by investor appetite for asset-backed securities, many private student lenders reduced their underwriting standards and marketed directly (and sometimes heavily) to students. Holders of these securities likely did not expect the levels of delinquency and default on these loans.[11] Theoretically, the rating agencies who evaluated the securities would have served to police quality issues and align incentives of investors and issuers. That alignment appears, in retrospect, to have been imprecise.

Like the subprime mortgage industry, lax lending practices are far less common in the current environment. Most private student loans today are co-signed by creditworthy borrowers and have significant disclosure requirements.[12] But like the mortgage market, there are still cracks in the system that need mending.

Private student loans often lack repayment flexibility[13] when young graduates face a difficult labor market—a marked contrast to the Federal student loan program. In 2007, Congress and President Bush enacted the College Cost Reduction and Access Act, which recognized the need for student loan borrowers to have an option to service their debt as a portion of their income.[14] The income-based repayment program allows a student loan borrower to remain current on a loan, so long as they are paying a fixed percentage of discretionary income; but this is generally not a feature offered to private student loan borrowers.

In addition, some for-profit colleges arrange institutional lending programs for students to borrow directly from the school or a school-affiliated entity. These companies report that they anticipate high levels of default on these loan portfolios.

Private student loan borrowers also experience significant challenges when attempting to restructure their loan obligations, due to an unusual status in the Federal bankruptcy code and a nearly nonexistent refinance market.

Compared to other forms of consumer debt, like credit cards, private student loan debt is more difficult to restructure. In the bankruptcy code, distressed private student loan borrowers are put in the same category as those who cause injury when driving drunk, skip out on taxes, or avoid child support.[15]

Even some of the most responsible borrowers—those who may be making significant sacrifices to make payments on their private student loans—have sought help to better manage their debt burden. Despite a significant change in the interest rate

[8] Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI–U), College tuition and fees, 1979–2011 (2012); Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI–U), All Items, 1979–2011 (2012); Bureau of Labor Statistics, Median usual weekly earnings, Employed full time, Wage and salary workers, 1979–2011 (2012); Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI–U), Medical Care, 1979–2011 (2012).

[9] Consumer Financial Protection Bureau and U.S. Department of Education: Report on Private Student Loans (2012).

[10] *Ibid.*

[11] *Ibid.*

[12] *Ibid.*

[13] Lenders have voiced that the offering of alternate repayment schedules is limited by prudential guidance, which might often require greater provisions for loan losses when granting modifications.

[14] P.L. 110–84.

[15] 11 U.S.C. § 523 (a).

environment, we see that many borrowers feel stuck in high interest rates and high monthly payments, because they cannot easily refinance.

Important Steps Forward in the CFPB's First Year

The CFPB has already begun to act to address concerns in this market. In March, we launched a student loan complaint system where borrowers can get help. Any consumer with a student loan can come to our Web site (*consumerfinance.gov*) or call our toll-free call center to get help. For borrowers with private student loans, we receive complaints directly from borrowers and, through our Web-based portal, connect borrowers with their lender or servicer and work to resolve their complaints.

In our monitoring of the student loan market, as well as through what we hear in complaints and other feedback from borrowers, we observe many issues similar to those experienced by consumers in the mortgage servicing industry. For example, borrowers have told us about problems in the crediting of payments and processing of paperwork, confusion when financial institutions buy and sell portfolios of loans, and difficulty getting clear guidance from student loan servicing personnel when facing financial hardship.

Our complaint system has already helped many borrowers when faced with billing errors, lost paperwork, and other loan servicing issues. We will continue to monitor these servicing issues and plan to provide a report to Congress later this year.[16]

We also worked closely with the Department of Education on a Know Before You Owe "financial aid shopping sheet" to help schools provide better information on student loans and grants. And we've developed online tools, used by tens of thousands of consumers, on how to navigate their student loan repayment options, avoid default, and protect their credit history. We've also begun to supervise the Nation's largest banks, where much of today's private student loan origination takes place, for compliance with Federal consumer financial laws and to detect and assess risks to consumers.

The CFPB hopes to continue and expand our work with other agencies that might play a critical role in addressing roadblocks to facilitating repayment flexibility and a robust refinancing market.[17]

Congress can also play a role. Last week, CFPB Director Richard Cordray and Secretary of Education Arne Duncan presented a report to Congress on the private student loan market. Both Director Cordray and Secretary Duncan provided recommendations on potential improvements to the marketplace. They each asked Congress to consider requiring school certification of loans, modifying the definition of a private student loan, and further investigating whether the 2005 change to the bankruptcy code met its intended goals.[18]

Student Debt in the Broader Economic Puzzle

Over the past year, the CFPB collected thousands of comments from individual student loan borrowers about their experiences with private student loans. A common theme in these stories was the impact of their debt on reaching economic milestones.

Compared to mortgages, student debt does not pose the same sort of systemic risk to the banking system. While policymakers are highly focused on conditions in the labor and capital markets, it would be imprudent to dismiss that growing student indebtedness can act as a drag on economic recovery.

Consider a private student loan borrower with a high interest rate (which could creep even higher given today's interest rates) on a large balance. Many borrowers are dutifully meeting these obligations. But without a robust refinancing market, they struggle to reduce their monthly payments, even though they might have built a solid credit history since their early days of college. Will these honest borrowers be precluded from reaching the economic milestones familiar to American life? And if so, what might be the broader consequences?

Take the housing market: first-time homebuyers are typically an important source of demand and help facilitate move-up purchases from existing buyers. Census data reveals that 6 million Americans ages 25–34 lived with their parents in 2011, a sharp increase from just a few years ago.[19] The 25–29 year old age cohort has expe-

[16] This report is pursuant to Section 1035 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

[17] Consumer Financial Protection Bureau and U.S. Department of Education: Report on Private Student Loans (2012).

[18] *Ibid.*

[19] U.S. Census Bureau: Families and Living Arrangements, Table AD–1, Young Adults Living at Home: 1960 to Present (2010).

rienced significant reduction in homeownership rates since the financial crisis.[20] The National Association of Realtors estimates that people aged 25–34 made up 27 percent of all home buyers in 2011, the lowest share in the past decade.[21]

A recent Federal Reserve Study shows the share of individuals age 29–34 getting a first-time mortgage dropped significantly in the past decade.[22] According to Chairman Ben Bernanke, "Lending to first-time homebuyers has dropped precipitously, even in parts of the country where unemployment rates and housing conditions are better than the national average."[23]

It is not just the goal of homeownership that seems further out of reach. A recent report revealed that just 50 percent of workers under the age of 30 have enrolled in their employer's 401(k) plan.[24] Forty-three percent of young workers do not save enough to receive a full employer match,[25] and are more likely to cash out their plans when changing jobs.[26] The inability to afford making contributions to these employer plans can lead to significant reductions in future nest eggs, calling into question whether young, debt-burdened graduates will enjoy a retirement like previous generations of Americans.

While there are certainly many factors that could explain these trends, we might find continued economic stress for young graduates due to high debt levels—even if the broader labor and capital markets improve significantly.

Congress[27] and Federal agencies have taken steps to increase liquidity and the functioning of the credit markets in recent years, but the current conditions in the student loan market may have a long-term impact on the economic vitality of many student loan borrowers.[28] Many student loan borrowers today—even those who are making large monthly payments on-time—are unable to secure adequate credit accommodations to refinance or modify their debt burden, despite today's historically low interest rate environment.

Policy makers have paid significant attention to the refinancing and modification conditions in the mortgage market. But given the potential impact of student debt on the broader economy, the situation is rapidly demonstrating the need for attention to determine whether action is required.

The CFPB will continue its work to make the private student loan marketplace work better for borrowers, schools, and honest lenders. We look forward to working with Congress and policymakers to address risks in the marketplace and identify ways to ensure that economic mobility is still within reach for those who borrowed to invest in an education.

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[20] U.S. Census Bureau: Housing Vacancies and Homeownership (CPS/HVS), Table 15, Housing Inventory Estimates by Age of Householder and by Family Status: 1982 to Present (2011).

[21] National Association of Realtors: Profile of Homebuyers and Sellers (2011).

[22] Board of Governors of the Federal Reserve System: US Housing Market: Current Conditions and Policy Considerations (2012).

[23] Speech to the 2012 National Association of Homebuilders International Builders' Show (February 10, 2012).

[24] Northern Trust: Line of Sight: The Path Forward—Engaging the Younger Employee in DC Plan Participation (2011).

[25] Aon Hewitt: Navigating the Path to Retirement: 2011 Universe Benchmarks Highlights (2011).

[26] Northern Trust: Line of Sight: The Path Forward—Engaging the Younger Employee in DC Plan Participation (2011).

[27] In 2008, Congress enacted the Ensuring Continued Access to Student Loans Act, which gave the Department of Education the authority to provide liquidity to financial institutions originating student loans through the Federal Family Educational Loan Program. The Department of Education established programs, including a buyer-of-last-resort supported asset-backed commercial paper conduit, which purchased in excess of $100 billion in student loans.

[28] It is worth noting that Federal agencies have intervened in the private student loan market in recent years. Citing "unusual and exigent circumstances," the Federal Reserve Board of Governors exercised its authority pursuant to Section 13(3) of the Federal Reserve Act to establish the Term Asset-Backed Securities Loan Facility (TALF), which facilitated the issuance of a wide range of ABS, including those backed by private student loans.

University of the United States (UUS)

Costs in the 2013-14 year

Estimated Cost of Attendance for full-time enrollment		**$ XX,XXX / yr**
Tuition and fees	$ XX,XXX	
Housing and meals (on-campus resident)	X,XXX	
Books and supplies	X,XXX	
Transportation	X,XXX	
Other educational costs	X,XXX	

Grants and scholarships to pay for college

Total Grants and Scholarships ("Gift" Aid; no repayment needed)		**$ XX,XXX / yr**
Grants from your school	$ X,XXX	
Federal Pell Grant	X,XXX	
Grants from your state	X,XXX	
Other scholarships you can use	X,XXX	

What you will pay for the 2013-14 year

Net Costs $ XX,XXX / yr
(Cost of attendance minus total grants and scholarships)

Options to pay net costs

Work options

Work-Study (Federal, state, or institutional) .... $ X,XXX / yr

Loan options*

Federal Perkins Loans	$ X,XXX / yr
Federal Direct Subsidized Loan	X,XXX / yr
Federal Direct Unsubsidized Loan	X,XXX / yr

*Recommended amounts shown here. You may be eligible for a different amount. Contact your financial aid office.

Other options

Family Contribution $ XX,XXX / yr
(As calculated by the institution using information reported on the FAFSA or to your institution.)

- Payment plan offered by the institution
- Parent PLUS Loan
- Military and/or National Service benefits
- Non-Federal private education loan

Graduation Rate

Percentage of full-time students who graduate within 6 years

71%

LOW | MEDIUM | HIGH

Loan Default Rate

Percentage of borrowers entering repayment and defaulting on their loan

6% UUS Average

12% Comparable Institutions

Median Borrowing

Students at UUS typically borrow **$XX,XXX** in Federal loans over **X** years. The Federal loan payment over 10 years for this amount is approximately **$X,XXX** per month. Your borrowing may be different.

Repaying your loans

To learn about loan repayment choices and work out your Federal Loan monthly payment, go to: http://studentaid.ed.gov/repay-loans/understand/plans

For more information and next steps:

University of the United States (UUS)
Financial Aid Office
123 Main Street
Anytown, ST 12345
Telephone: (123) 456-7890
E-mail: financialaid@uus.edu

Customized information from UUS

Testimony before the

U.S. Senate Banking Subcommittee on Financial Institutions and Consumer Protection

"Private Student Loans: Providing Flexibility and Opportunity to Borrowers?"

July 24, 2012

Testimony submitted by:

Deanne Loonin

Attorney

National Consumer Law Center (NCLC) and

Director of NCLC's Student Loan Borrower Assistance Project

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Testimony of Deanne Loonin for the

U.S. Senate Banking Subcommittee on Financial Institutions and Consumer Protection

"Private Student Loans: Providing Flexibility and Opportunity to Borrowers?"

July 24, 2012

The National Consumer Law Center (NCLC) thanks the Committee for holding this hearing and inviting us to submit this testimony on behalf of our low-income clients. 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.[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]

In my work as the Director of NCLC's Student Loan Borrower Assistance Project, I provide training and technical assistance to attorneys and advocates across the country representing low-income student loan borrowers. I have written numerous reports on student loan issues and am also the principal author of NCLC's *Student Loan Law* practice treatise.

I provide direct representation to low-income borrowers through Massachusetts-based legal services and work force development organizations. I also have daily contact with a wide range of borrowers through our student loan web site. Because of my extensive experience representing student loan borrowers and working on student loan matters, I have served as the legal aid representative at a number of Department of Education negotiated rulemaking meetings, including the "Loans team" session earlier this year. My testimony is based on this work and previous work representing low-income consumers at Bet Tzedek Legal Services in Los Angeles.

Introduction

Predatory private student lending has shattered the dreams of many individuals seeking to better their lives through education. These loans became a curse, not an opportunity, for all too many borrowers. Those harmed by lender predatory practices are now stuck trying to get those same lenders to provide relief.

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[1] 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* (4th ed. 2010 and Supp.).
[2] *See* the Project's web site at http://www.studentloanborrowerassistance.org.

This is a critical time for policymakers. Student borrowers who were harmed by irresponsible private student lenders need relief and steps must be taken to ensure that the private student loan market that emerges from the credit crisis is fair and efficient. The last thing students need is a new race to the bottom in the guise of a "recovered" predatory private student loan market.

My testimony highlights the following problems in the private student loan market:

- Due to the lack of a meaningful bankruptcy option or any federally mandated relief, students with little experience in financial matters can incur tens and even hundreds of thousands of dollars of completely unaffordable debt that will follow them and damage their credit for their entire lives.

- Too many students take out private students without having exhausted cheaper and safer federal financial aid.

- Some for-profit schools are making predatory institutional loans that they know, at the outset, students cannot repay.

- Private student loans have high default rates that are likely to climb.

- Most private student lenders have failed to adopt any meaningful policies, such as long-term repayment options or loan modifications, to help students who are buried in debt.

- Despite receiving disclosures, co-signers often do not realize they are liable for loans and lenders often refuse to cancel loans even in the event of the student's death.

- Little data is available on the private student loan market and is sorely needed.

I discuss a number of recommendations for reform throughout my testimony, including a summary of key recommendations at the end.

The Rise, Fall and Rise Again(?) of the Private Student Loan Market

The student loan market is unique in that the government is the primary supplier of loans through the federal student loan program. According to estimates from the Consumer Financial Protection Bureau (CFPB), outstanding student loan debt in the United States topped $1 trillion in 2011, comprised of about $864 billion of federal student debt and $150 billion of private student loan debt.[3]

[3]Press Release, "Consumer Financial Protection Bureau and U.S. Department of Education Joint Report Finds a Cycle of Boom and Bust in Private Student Loan Market" (July 20, 2012).

Private student loans are almost always more expensive over the long term than federal loans. This is especially true for borrowers with lower credit scores or limited credit histories. Federal loans come with a range of borrower protections that are mandated in the federal Higher Education Act, including income-based repayment, deferment and cancellation rights. In contrast, private student lenders are not required to offer any particular relief.

The private student loan market declined in recent years after a relatively long boom. The College Board reports that after peaking at 25% of total education loan volume in 2006-07, nonfederal loans declined to 8% of all student loans in 2009-10 and 7% in 2010-11.[4] More recently, however, lenders have reported a return to growth and increased competition.

The post-credit crisis landscape is much different. The private student lenders still in business have adopted more responsible business models for the most part. For example, the CFPB found that lenders now require schools to certify the student's need for financing in nearly 90% of private loans.[5] Lenders have also tightened credit standards and reduced lending to nonprime borrowers. There is no guarantee, however, that this safer market will persist. As the CFPB highlights, lenders' appetite for risk tends to ebb and flow and there is no assurance that as the memory of the financial crisis fades, lenders will maintain responsible lending practices.[6]

The private loan market generated huge profits for lenders and investors largely because originators sold the loans with the intention of packaging them for investors. Prior to the credit crisis, private student lenders engaged in many of the same predatory practices as occurred in the subprime mortgage market. Not surprisingly, the industry began to crash once it could no longer rely on passing off dubious loans through the securitization process. Defaults and delinquencies ballooned during this time and continue to be a major problem. According to the CFPB, default rates on private student loans spiked following the financial crisis of 2008 as the recession "...exposed the weakened underwriting standards that were fueled by the capital markets during the securitization and lending boom."[7] The default rates have since stabilized, but are expected to remain high. The CFPB concluded in its July 2012 report that defaults on private student loans have increased since the financial crisis and that there are now over $8.1 billion in defaulted private loans, representing more than 850,000 distinct loans.[8]

Moody's acknowledged in early 2010 that the high default rates for private loan securitizations reflected weak underwriting, referring in this case to the 2006-07 period.[9] "Non-traditional" students or those attending "non-traditional" schools had a large portion of the defaulted loans, but many students graduating from traditional colleges and universities have also struggled under unsustainable loan burdens. As the CFPB concludes, both consumers and creditors lose when loans cannot be repaid.

[4] CollegeBoard, "Trends in Student Aid 2011" (2011).
[5] Consumer Financial Protection Bureau, "Private Student Loans" at 70 (July 20, 2012).
[6] Id.
[7] Id. at 63.
[8] Id. at 64.
[9] Student Lending Analytics Blog, "Moody's Outlook for Student Loan Securities: Expect Negative Credit Trends for Private Loans in 2010" (Jan. 29, 2010).

In addition to third party student lending, some states offer their own private loan programs. In New York, for example, the New York Higher Education Financing Authority issues private bonds to purchase loans made by private lenders that participate in the program.[10] Participating lenders must sign agreements to make loans in accordance with the program guidelines. Loan rates are set by the New York State Education Department and are determined by credit score. Interest rate maximums cannot exceed 16.5%.[11]

State lenders that responded to the recent CFPB report claim to provide greater protections to consumers and more relief options. The CFPB report affirms that the default rates for non-profit, state-affiliated lenders in its data set were about half that of their for-profit counterparts.

Institutional Loans: Compounding the Pain for Borrowers

As the subprime student loan market contracted, many schools began to develop their own products. Institutional loans are another type of private student loan. While exact numbers are difficult to come by, the College Board attributes much of the growth to lending by for-profit schools."[12] Overall, the College Board estimates that institutional loans have grown from about $500 million in 2007-08 to $720 million in 2010-11.[13]

As documented in NCLC's January 2011 report, "Piling It On: The Growth of Private Student Loans and the Consequences for Students", the planned default rates on these school loan products are shockingly high.[14] For example, at the beginning of FY 2009, Corinthian Inc. expected a loan default rate on its school loan product of 50% -- before it even made the loans.[15] Corinthian adjusted this estimate to 55% for FY 2009 and predicted a range of 56 to 58% in 2010.[16] At nearly one-third of Corinthian campuses, more than half of all first year students took out high-cost private student loans in 2009.[17]

Other schools have also made institutional loans with exorbitant default rates. Analysts have estimated that ITT may assume close to a 45% loss rate or even higher on institutional loans.[18]

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[10] N.Y. Educ. Law § § 690-694-b; N.Y. Comp. Codes R. & Regs. Tit. 8, § § 2231.1-2213.28. See also New York Higher Education Loan Program Underwriting Manual (August 25, 2010).
[11] N.Y. Comp. Codes R. & Regs. tit. 8 § 2213.9.
[12] College Board, "Trends in Student Aid 2011" at 13 (2011).
[13] Id.
[14] National Consumer Law Center, "Piling It On: The Growth of Proprietary School Loans and the Consequences for Students", (January 31, 2011), available at: http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/proprietary-schools-loans.pdf.
[15] The amount discounted against revenue (the discount rate) is the estimated loan default rate. See generally Corinthian Colleges Q2 2009 Earnings Conference Call Transcript (Feb. 3, 2009).
[16] Q42009 Corinthian Colleges Earnings Conference Call (Aug. 25, 2009).
[17] Stephen Burd, "Updated: New Data on Private Loan Borrowing at Corinthian Colleges Should Raise Alarms", New America Higher Ed Watch (June 17, 2011).
[18] PAA Research LLC. "ESI: Connecting the Dots on ESI's Increasingly Worrisome Off-Balance Sheet Exposure-The Potential 'Daisy Chain' of Events" (June 21, 2011).

However, ITT claims that it is phasing out its institutional loan program and has not originated new loans through the program as of July 2011.[19]

Schools seem to view these loans as "loss leaders" that keep the federal dollars flowing. Among other reasons, for-profit schools must show that at least 10% of revenues come from sources other than federal student aid provided by the U.S. Department of Education. Since many of these schools generate revenues and profits almost exclusively from federal funds, compliance with the 90-10 rule is a lifeline for them and their investors. The school can comply with this rule by inflating their tuition and loaning the amount not covered by federal loans and grants, even if many of these loans get written off as bad debt. As CFPB's Assistant Director for Military Affairs Holly Petraeus has highlighted, this has also led to aggressive targeting of the military service member market as Department of Defense education funds are not currently included in the 90% category.

However, the growth of institutional lending is not only about the 90-10 rule. It is also a way for schools to keep revenues of all types flowing so that profits remain high and the companies remain attractive to investors.

Making unaffordable loans harms student borrowers who generally face numerous collection calls, lawsuits and negative entries on their credit reports that can last for extended periods of time. Many schools require students to make payments on institutional loans while in school. This places many students in a trap. Many cannot pay the monthly payments on institutional loans while they are in school and as a result are often terminated from the schools or are denied transcripts. In contrast, most third party private and all federal loans can be deferred during school. Interest may accrue, depending on the type of loan, but payment is not required.

According to CFPB Director Richard Cordray, "One of the things we see and have seen is lenders who market loans for borrowers knowing that those borrowers are unlikely to be able to pay those loans…But they have other incentives that lead them to make those loans nonetheless. We clearly saw that in the mortgage market in the run-up to the financial crisis, when that market got broken."[20] Following through on these concerns, the CFPB issued a civil investigative demand to ITT Educational Services focusing in part on student loan origination. The CFPB is also investigating Corinthian Colleges.

Who Borrows Private Student Loans and Why?

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.

Based on our experience, borrowers rarely understand the difference between private and government loans. Those who co-sign private student loans are particularly likely to be confused

[19] ITT Educational Services, Inc., 10-Q at 10 (October 21, 2011).
[20] Edward Wyatt, "Some Lenders to Students Face Greater U.S. Scrutiny", New York Times (Jan. 12, 2012).

about the scope of their obligations. 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.

At least in part due to the confusion between federal and private loans, the majority (52%) of private student loan borrowers in 2007-08 borrowed less than they could have in federal Stafford loans.[21] In 2007-08, 25% of private loan borrowers took out no Stafford loans at all and 13% did not apply for federal financial aid.[22]

A high percentage (about 70 -75%) of our clients attend for-profit schools. These schools have had the largest proportion of students taking out private loans and the largest increase in private loan borrowing. Forty-two percent of all for-profit school students had private loans in 2007-08, up from 12% in 2003-04.[23] In contrast, 25% of students at private non-profit four year schools, 14% of students at public four year schools and 4% of students at public two year schools had private student loans in 2007-08.[24] In 2007-08, for-profit school students comprised about 9% of all undergraduates, but 27% of those with private loans.[25]

Some lenders and financial aid office staff tout private loans as an easier alternative to federal loans. In a 2006 report, the Institute for Higher Education Policy noted that students may perceive private loan borrowing to be more convenient than federal loans. Among other reasons, borrowers do not have to fill out the Free Application for Federal Student Aid (FAFSA) form to get private loans.[26] "It was like signing up for iTunes", according to one student.[27]

Students and Families are Confused about Student Loan Options

The Consumer Financial Protection Bureau's collection of complaints about private student loans indicates high levels of confusion among borrowers regarding their loans and the financial aid process. Many borrowers did not know the rules for federal aid eligibility and some could not identify whether they had federal or private loans.[28] In its July report, the CFPB again emphasized that consumers consistently reported an inability to recognize the crucial differences between federal and private student loans.

[21] The Project on Student Debt, "Private Loans: Facts and Trends" (July 2011).
[22] Id.
[23] The Project on Student Debt, "Private Loans: Facts and Trends" (July 2011).
[24] Id.
[25] Id.
[26] Institute for Higher Educ. Policy, "The Future of Private Loans: Who is Borrowing, and Why?" at 22 (Dec. 2006).
[27] Janet Lorin, "Students Pay SLM 9.25% or JPMorgan 10.25% from Exploitive Loans", Bloomberg (June 5, 2012).
[28] Rachel Fishman, "What Borrowers Don't Understand About Student Loans May Hurt Them" Higher Ed Watch (June 18, 2012).

In the worst cases, school financial aid officers or other school staff provides inaccurate information in order to lure borrowers into private loans or otherwise pressure borrowers to take out these loans. Particularly during the heyday of predatory lending, many lenders aggressively marketed their student loan products directly to consumers and schools promoted "approved" lenders that gave kickbacks to the school. Private student lending, particularly prior to the credit crisis, became very much a push market in which products were offered not only in response to consumer need but also to fulfill investor demand. [29] The CFPB notes that the securitization market for student loans during the boom years was similar to the mortgage securities market in many respects, including the market incentives to increase approval rates by lowering minimum credit scores. According to the CFPB, "Simply put, during the boom, lenders made a high percentage of loans to weaker credits. Today, only a very good credit is likely to be approved."[30]

A mandatory certification process is one way to address some of the confusion about student loans and to curb over-borrowing. Lenders report that asking schools to certify a private loan commonly reduces the loan amount because the borrower was not eligible to borrow the amount requested. Some schools use the certification process to counsel students about the risks of private loans and other issues. In a 2011 report, the Project on Student Debt found that college financial aid offices can play a significant role in reducing their students' reliance on private loans.[31] In its recent report, the CFPB concludes that the credit quality of loans that are not school certified is materially worse than average. [32]

The current certification-related provisions in the Truth in Lending Act (TILA) are insufficient. TILA includes a provision requiring creditors to obtain a self-certification form with information about cost of attendance, the expected family contribution and estimated financial assistance.[33] However, the information on the self-certification form does not have to come from the applicant's school or be verified in any way. In fact, lenders are allowed to provide pre-filled self-certification forms directly to borrowers.[34] Mandatory school certification would be more effective in ensuring that borrowers are aware of federal student loan eligibility before taking out private loans.

Disclosures Can be Helpful, But Are Not Enough to Ensure a Fair and Transparent Marketplace

Effective February 14, 2010, lenders making private student loans are required by TILA to provide special disclosures.[35] There are three sets of required disclosures: 1) application and

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[29] *See generally* National Consumer Law Center, "Paying the Price: The High Cost of Private Student Loans and the Dangers for Borrowers" (Mar. 2008), *available at* http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/Report_PrivateLoans.pdf.
[30] Consumer Financial Protection Bureau, "Private Student Loans" at 22 (July 20, 2012).
[31] The Project on Student Debt, "Critical Choices: How Colleges Can Help Students and Families Make Better Decisions About Private Loans" (July 2011).
[32] Consumer Financial Protection Bureau, "Private Student Loans" at 25 (July 20, 2012).
[33] Reg. Z § 226.48(e).
[34] Official Staff Commentary on Regulation Z, 12 C.F.R. § 226.48(e).
[35] 15 U.S.C. § 1638(e); Reg. Z § 226.46.

solicitation; 2) loan approval; and 3) final disclosures. Each is subject to special timing rules and detailed form and content requirements.

The new disclosure rules are a significant improvement for consumers. Among other changes, the disclosures must be given prior to consummation and include more detailed information about cost and repayment options.

However, the new disclosures still leave much to be desired. For instance, the disclosures focus on interest rates, rather than APRs that include fees. In addition, the current scope is too narrow, primarily because it excludes open-end credit. This is problematic particularly as lenders create new products, in many cases offered as open-end credit or disguised as open-end credit. Moreover, there has been limited enforcement and investigation to determine whether private lenders are complying with the new regulations and if they need to be improved.

In addition to TILA disclosures, the CFPB's "Know What You Owe" campaign is a very promising step in improving the information available for prospective borrowers. The CFPB's Student Debt Repayment assistant site is another excellent tool for borrowers seeking to understand the differences between federal and private loans.

Nonetheless, disclosures are never enough to provide substantive protection for borrowers. In a market full of securitized, complex products often made for Wall Street, not Main Street, borrowers cannot rely on disclosures to ensure they get the loan they want and can afford. I have attached a summary of substantive policy recommendations at the end of my testimony.

Financially Distressed Private Student Loan Borrowers Have Nowhere to Turn

Student loan creditors have pushed hard to limit the safety net for borrowers who get in trouble. One of the most notable examples is the 2005 Congressional decision to make private student loans as difficult to discharge in bankruptcy as federal loans. Since 2005, nearly all student loan borrowers must prove "undue hardship" in court in order to discharge their loans. Courts have been very restrictive in applying this standard.[36]

Private student loan borrowers seeking to prove undue hardship often encounter judges who do not understand the difference between federal and private loans. The judges may deny hardship cases based on a mistaken belief that the borrowers have the same flexible repayment and other options as federal student loan borrowers.

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[36] See generally National Consumer Law Center, "No Way Out: Student Loans, Financial Distress and the Need for Policy Reform" (June 2006), available at: http://www.studentloanborrowerassistance.org/uploads/File/nowayout.pdf; Testimony of NCLC and NACBA before the U.S. House of Representatives Committee on the Judiciary, "Undue Hardship? Discharging Educational Debt in Bankruptcy" (September 23, 2009), available at: http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/policy_briefs/testimony_bankruptcy_sept09.pdf.

Collectors often tell our clients that they have nowhere to go because they cannot get bankruptcy relief. The lenders and collectors therefore use the limited bankruptcy relief as a weapon to pressure financially distressed borrowers. A major step in providing relief for borrowers is for Congress to restore bankruptcy rights for student loan borrowers.

The bankruptcy policy might not be so harsh if borrowers had ample non-bankruptcy alternatives to address student loan problems. Given their role in creating the crash, it is reasonable to expect lenders to do everything possible to help borrowers with unaffordable loans. Distressingly, this has not occurred. In NCLC's experience representing borrowers through the Student Loan Borrower Assistance Project, we have found private lenders to be inflexible in granting long-term repayment relief for borrowers. Lenders that had no problem saying "yes" to risky loans are having no problem saying "no" when these borrowers need help.

The most common complaint we hear is that the lenders do not offer meaningful relief. Here are a few voices (e-mails reprinted verbatim) from borrowers contacting us through our web site.

> **Borrower in Ohio**: "I have a private loan with Sallie Mae that allowed me to defer due to economic hardship. All of a sudden it would not allow me to do so and my loan went into default... They have told me to stop paying other bills and to do what I have to do to get the money..They have also told me to take other loans or sell my belongings to get the money., I have nothing except too much debt to income at this time to be able to do so. They tell me to make an offer, but what I can do at this time never works for them…it's their way or no way and it doesn't matter if I'm put out on the street or left to starve."
>
> **Borrower in Sacramento, CA**: "I need an income-based refinance plan, but I haven't found one available for my private loan…Please help me find, or create a solution!!!"
>
> **Borrower in Turner Falls, MA**: "I'm writing to support: H.R. 2028: Private Student Loan Bankruptcy Fairness Act of 2011.
>
> "I graduated with a Bachelors degree in 2008. After graduation I could not find a job because of the poor economy. I searched for jobs daily; I had sent out hundreds of resumes to no avail. I ended up having to pay Sallie Mae $150.00 (that I didn't have) every 3 months for them to grant me a forbearance! That money did NOT go to the principal balance of the loan, it was theirs to keep as well as interest that was accruing due to my involuntary hardship.
>
> "After 2 years of being unemployed I finally obtained a part-time job as a Network Technician, making $13.00 an hour. I struggled to pay bills and old debt (not including student loans). At this time I was forced to continue the forbearance on my education loans; both Federal and Private. I did not make enough money to keep Sallie Mae satisfied. I tried to work out payment plans, but they wanted too much money that I couldn't afford. The payment went up as the interest piled up.

"As of today, I have accrued more than $30,000 in interest with Sallie Mae. My loan went from roughly $90,000 to $120,000 during the years I was unemployed. I continued the $150.00 forbearance "bribes" until late June 2011 when Sallie Mae told me that I had exhausted my forbearance period. I still cannot pay $1000 a month to them.

"I've tried numerous times to work things out with Sallie Mae; they will not work with me on this issue. Needless to say, the phone calls from Sallie Mae are endless and harassing. I have been yelled at, degraded, and verbally abused by their debt collectors, but I see no end to this downward spiral of college debt. (I'm not even working in my field of study).

"I want to live the "American Dream." I want a small house with a picket fence; a golden retriever; a decent job. I do not see the "American Dream" in my future at all."

In all of our efforts working with many borrowers and many lenders, we have not encountered <u>any</u> private student lender with a rehabilitation program or any other program to allow borrowers to get out of default and back into repayment. The CFPB reported that there were no current cure programs for private student loans.[37] According to comments submitted to the CFPB, some state programs have rehabilitation options. However, some state lenders told the CFPB that capital markets funding their loans limited their flexibility in providing relief.[38]

Servicing Problems

A common complaint we hear from borrowers is 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." The CFPB noted that many respondents in its survey discussed challenging repayment experiences with servicers.[39]

Unfortunately, private loan borrower rights to fair billing and accounting statements are not as clear or strong as for federal loans. For example, federal student lenders are required to respond within thirty days to any inquiry from a borrower on a loan. There are also dispute resolution procedures set out in the Higher Education Act.[40] These are essential rights for borrowers that need basic information about what they owe on loans, how much they have paid, and how they can dispute possible errors.

In addition, we are increasingly hearing from borrowers that they get 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. As in the mortgage market, it is critical to investigate how and why servicers are failing to provide relief for

[37] Id. at 13, 66.
[38] Consumer Financial Protection Bureau, "Private Student Loans" at 32 (July 20, 2012).
[39] Id at. 70.
[40] 34 C.F.R. § 682.208(a).

borrowers. Various attempts to address the foreclosure crisis have failed in part because they do not address the misaligned incentives of servicers. We need more information to evaluate whether similar issues are incentivizing student loan servicers to delay or deny modifications that make sense for borrowers and investors.

Lack of Repayment Relief

Unfortunately, private lenders have been generally inflexible in trying to assist financially distressed borrowers.[41] Unlike the federal student loan programs, there is no federal law requiring private student lenders to offer particular types of relief or flexible repayment. Private student loan borrowers are generally at the mercy of their creditors.

None of the loan notes we surveyed in our 2008 report, "Too Small to Help: The Plight of Financially Distressed Private Student Loan Borrowers" specifically provided for income-based repayment.[42] A few stated that borrowers would be able to choose alternative repayment plans in certain circumstances. However, the specific criteria and circumstances were not spelled out in the agreements. Only a few mentioned that graduated repayment was possible. In these cases, the loan contract stated that these plans would be offered only <u>if available</u>. There was no information provided about when such plans were available.

Even in cases of severe distress, the creditors we have contacted have offered no more than short-term interest-only repayment plans or forbearances. This experience holds true for both for-profit and non-profit lenders. Some offer short-term interest-only payment options that merely prolong inevitable defaults, particularly for borrowers with large loan balances.

Private Loan Deferments and Forbearances

Unlike federal loans, there is no federal law requiring private student loan creditors or servicers to offer deferments or forbearances. In a 2008 study, the National Consumer Law Center surveyed private loan notes and found that most lenders provided an in-school deferment option.[43] However, interest generally accrued during this period, and borrowers were given the choice of paying the interest while in school or approving capitalization once they entered repayment. Since the economic crisis of 2008/2009, many lenders that are still offering private student loans are now requiring borrowers to pay interest while in school.

No forbearance rights were specified in nearly half of the loans in the NCLC survey.[44] Creditors may offer these plans, but they do not inform borrowers about available choices ahead of time in the loan notes. A number of lenders in the survey disclosed that they would charge

[41] *See generally* National Consumer Law Center, "Too Small to Help: The Plight of Financially Distressed Private Student Loan Borrowers" (Apr. 9, 2009), *available at* http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/TooSmalltoHelp.pdf.
[42] National Consumer Law Center, "Paying the Price: The High Cost of Private Student Loans and the Dangers for Student Borrowers"(Mar. 2008).
[43] National Consumer Law Center, "Paying the Price: The High Cost of Private Student Loans and the Dangers for Student Borrowers"(Mar. 2008).
[44] *Id.*

fees to process forbearance and deferment requests. The fees were generally up to $50 for forbearances. Under pressure from an online campaign earlier this year, Sallie Mae agreed to make changes in its forbearance fee policy.[45] The company said it would continue to charge the fees, but would apply the payments to customer balances in certain circumstances.

Most creditors have sharply restricted forbearance availability since 2008. In a 2009 report, Fitch noted that lenders began to impose more restrictive forbearance criteria starting in 2008 after realizing that the economic downturn would have a more prolonged impact on a borrower's ability to repay.[46] According to the CFPB, some lenders reported that they were constrained by certain regulators from treating loans in extended forbearance as performing assets.[47]

Modifications and Settlements

Private student loan borrowers need flexibility to prevent and address delinquency and default. Yet, in our experience representing borrowers in financial distress, most lenders, including non-profit lenders, have not been willing to cancel or modify loans or offer reasonable settlements. The CFPB found in its July 2012 report that the lenders in its sample did not currently offer loan modification programs.[48] We have found that the lenders require very large lump sums to settle debts even from borrowers with very low incomes.

A lender's failure to have a loan modification program and other practices to help distressed borrowers is an element or sign of unfair origination and underwriting practices. Speculative projections of future income made as part of determining ability to pay also require a plan for contingencies if the student's income is not – either temporarily or permanently – as projected. Loan modifications that enable a student to make payments on a loan rather than completely defaulting are in both the students' and the lenders' best interests, but as we have seen in the mortgage market, sometimes industry needs a push to come up with a win-win solution.

Modifications may lead to lost revenues for servicers, but in many cases the losses will be much greater if the servicer refuses assistance. Many borrowers are financially destitute with little or no future earnings prospects. Some are severely disabled or otherwise unable to work. Yet servicers remain largely unaccountable for their dismal performance in making modifications.[49]

In some cases, we hear from servicers that they do not have the authority to accept a settlement offer. This is an unacceptable and unproductive response to a borrower looking for

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[45] Tamar Lewin, "Online Campaign Prompts Sallie Mae to Change Fee Policy for Loan Suspensions", The New York Times (Feb. 2, 2012).
[46] Fitch Ratings, "Private Education Loans: Time for a Re-Education" at 6 (Jan. 28, 2009).
[47] Consumer Financial Protection Bureau, "Private Student Loans" at 65-66 (July 20, 2012).
[48] Consumer Financial Protection Bureau, "Private Student Loans" at 66 (July 20, 2012).
[49] For a discussion of this problem in the mortgage context, see National Consumer Law Center, "Why Servicers Foreclose When They Should Modify and other Puzzles of Servicer Behavior" (Oct. 2009).

help. Servicers that claim to lack authority to modify loans should put the borrower in touch with the owner or entity that does have such authority.

Some lenders and servicers have discussed settlement with us. In every case, the lender has requested at least 80% of the total balance as settlement. This is far beyond an amount our clients can afford. In rare cases, we have represented low-income clients who have been able to raise significant funds to settle debts. Even these offers have been rejected. We do not understand why a creditor would reject substantial funds from a low-income consumer, particularly since the creditor is unlikely to recover much if anything from these consumers.

Just as in the mortgage industry, there seem to be institutional barriers to finding the win-win situation that puts borrowers back on the track of repaying their loans. Laws and regulations that require private student lenders to have workable repayment programs for financially distressed borrowers may be necessary to jump start this process.

Mandatory loss mitigation can be justified both as a matter of ability to repay and as a safety and soundness issue. Because a student's future income cannot be known at the time of loan origination, responsible lending requires safety valves that ensure that the loan will be affordable even if initial projections turn out wrong. From a safety and soundness perspective, as well, institutions need to anticipate the possibility that the loan debt may prove unsustainable for some borrowers and to put in place programs to turn those loans into performing loans rather than write-offs.

This may involve addressing barriers in accounting or other safety and soundness standards to facilitate modifications. For example, Student Loan Corporation announced in public filings that the Office of the Comptroller of the Currency reviewed forbearance polices on private student loans and recommended a number of proposed changes including more rigorous requirements for participation in forbearance and loss mitigation programs, shorter forbearance periods and the requirement for minimum periods of payment performance between forbearance grants.[50]

Loan Cancellations Outside of Bankruptcy

Pursuant to statute and Department of Education regulations, federal student loans can be cancelled if the borrower dies or becomes severely disabled. Similar programs are only available at lender discretion for private loans. The documents from a number of loans that we reviewed for our 2008 study stated explicitly that there will be no cancellation if the borrower or co-signer dies or becomes disabled.[51]

A few lenders have said they will cancel loans in very rare circumstances. For example, Sallie Mae announced in 2010 that it had hired a company to administer claims for a new total

[50] See Student Lending Analytics Blog, "OCC Tightens Forbearance Policies on Private Student Loans" (Jan. 19, 2010).
[51] National Consumer Law Center, "Paying the Price: The High Cost of Private Student Loans and the Dangers for Student Borrowers" (Mar. 2008).

and permanent disability program for private education loans.[52] This program, however, applies only to the Smart Option Student Loans. The company also announced that it would forgive any unpaid balance in the event of a primary borrower's death. It is unclear whether this policy is being administered consistently.

Wells Fargo announced a similar program in December 2010, stating that it would require verbal or written notification of a student's death or permanent and total disability followed by receipt of acceptable documentation. The forgiveness, according to Wells Fargo, covers the death or disability of the student, leading to forgiveness of not only the student's obligation, but also the obligation(s) of any co-signers.[53]

However, the companies to date have not provided public information about eligibility and application requirements. 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.[54] He tragically died in a car accident. The government discharged the federal student loans, but the bulk of the son's loans were private.

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. Although she volunteered as a City Year corp member for two years, she never really got the chance to make the impact she came here to make before she was taken from us.
>
> 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.

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[52] See Securian Company News Release, "Securian Wins Contract for Administering Total and Permanent Disability Claims on Private Student Loans" (March 8, 2010).

[53] See Wells Fargo, News Release, "Wells Fargo Enhances Student Loan Products to Include Loan Forgiveness" (Dec. 17, 2010)

[54] Marian Wang, "Grieving Father Struggles to Pay Dead Son's Student Loans", Pro Publica (June 14, 2012).

This case illustrates the current haphazard approach in these tragic cases. One of the private lenders sent condolences and discharged the debt. The other lender told this mother that there was no such cancellation option.

As with loan modifications, the presence of a program for disability and death discharges is part of assessing whether lending is designed at the outset to be based on ability to pay. Discharges in case of the student's death are particularly important to prevent deception and unfairness for parents who do not expect to be liable, and should not be, for a loan after the student dies.

School-Related Cancellations

The right to assert defenses to repayment of the loan when the school fails to deliver on its promises is especially important when private lenders have close ties to for-profit schools that promote, package or help the lender market their private loan products. In these cases, borrowers are often unable to obtain relief directly from schools, many of which are out of business or insolvent by the time borrowers seek redress. Even borrowers who successfully obtain damages from an unscrupulous school are often left with significant loan debt.

A key to lender liability in many cases is 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.[55] 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. The lender's liability is capped, though: at most the student borrower can recover any payments made and have the remaining indebtedness canceled, even if the borrower's damages are greater.

Similar relief is available for most federal loans. 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.[56] 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. I have attached a few examples of contradictory language in third party and institutional private student loans at the end of my testimony.

Because the FTC does not have jurisdiction over banks, the holder rule only applies to schools, not depository lenders. That is, the FTC rule obligates only the schools, not the lenders, to include the holder notice in the contract. In general, the school must insert the notice in

[55] 16 C.F.R. §433.2.
[56] National Consumer Law Center, "Paying the Price: The High Cost of Private Student Loans and the Dangers for Student Borrowers" (March 2008).

consumer credit agreements whenever the school originates the extension of credit and must arrange for the lender to insert the notice in the lender's credit agreement whenever the school refers the consumer to the lender or otherwise has a business arrangement with the lender.

An example of this concern can be seen in a recent letter from AES, which was servicing one of our client's Chase private student loans. The school this client attended had referred him to Chase for the loan. Yet AES replied that it was unable to do anything. 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."

Out of Control Collection Practices

Instead of working with borrowers, many lenders increase collection activity against financially distressed borrowers. In 2008, Sallie Mae, for example, announced steps to resolve higher risk accounts, including a more aggressive use of collection efforts.[57]

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. [58]

In addition, some private lenders attempt to charge collection fees for private student loans that are similar to the very high levels allowed in the federal loan program. These lenders may attempt to collect as much as 25% of loan balances even if they have exerted little or no effort to collect.[59] This may violate state laws and/or contract provisions limiting collection fees. Further, packing on collection costs inflates the loan balance so that many borrowers will never be able to make a dent in the debts. They become stuck in a spiral where the payments they make only pay off the collection fees. Interest continues to accrue and the overall debt balloons. Other common problems include:

1. Private lender misrepresentations that there is no statute of limitations for private student

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[57] Paul Basken, "Sallie Mae Reports $159-Million Loss and More Delinquencies by Borrowers", The Chron. of Higher Educ. (Oct. 23, 2008).
[58] 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).
[59] See, e.g., Bottoni v. Sallie Mae, Inc., 2011 Wl 635272 (N.D. Cal. Feb. 11, 2011).

loan collection. We frequently hear this from our clients. The debt collector may say something like, "This debt will never go away" or "we have the right to come after you forever."

2. Misrepresentations that defaults on private student loans limit eligibility for new federal student loans and grants.

3. Misrepresentations that the defense of infancy does not apply. This defense arises when the borrower is too young to enter into a binding contract. There is a specific infancy defense exclusion for federal student loans, but not for private. [60]

4. Co-signer complaints. Most private lenders now require co-signers. Many of the borrowers who contact us through our web site are co-signers, often parents. They are often confused not only about the scope of their obligations, but also inconsistent and in some cases inaccurate promises about removing cosigners from accounts.

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.

Common Problems with Private Student Loan Terms

1. Unfair and abusive default triggers, such as universal default clauses

Borrowers are in default on federal loans if they fail to make payments for a relatively long period of time, usually nine months. They might also be in default if they fail to meet other terms of the promissory note. There are no similar standardized criteria for private loan defaults. Rather, default conditions for private student loans are specified in the loan contracts. In most cases, borrowers will not have a long period to resolve problems if they miss payments on a private student loan. Private loans may go into default as soon as one payment is missed. This severely limits borrowers' opportunities to try to resolve problems and opens them up to onerous collection tactics, credit damage, and possible litigation.

A few of the default "triggers" in the loans we reviewed in our 2008 report were particularly troubling.[61] For example, the typical loan we reviewed stated that borrowers could be declared in default if "in the lender's judgment, they experience a significant lessening of ability to repay the loan" or "are in default on any other loan they already have with this lender, or any loan they might have in the future." The last category closely resembles the heavily

[60] See 20 U.S.C. § 1091a(b)(2) (Higher Education Act exclusion of infancy defense).

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

criticized "universal default clause" that were common in many credit card agreements. A borrower could be current on the student loan, but still declared in default based on a different loan or credit product. This is particularly problematic as large student lending companies begin to develop a range of student financing products, including tuition assistance plans.

2. Mandatory Arbitration Clauses

Sixty-one percent of the loan notes in NCLC's 2008 survey contained mandatory arbitration clauses.[62] These clauses are just one example of lenders' systematic strategy to limit a borrower's ability to challenge problems with the loans or with the schools they attend.

We strongly recommend a ban on forced arbitration, which is unfair, deceptive and abusive in the student loan context for the same reasons that it denies access to justice for other financial products.

Lack of Reliable Data about Private Student Loans

There is no comprehensive database on private loans, comparable to the government's National Student Loan Data System. Lenders do not publish proprietary data on their loans. The national data that is available is based on various estimates or infrequent surveys. The College Board, for example, uses data from an informal pool of the largest non-federal loan sponsors.[63] Recently, the Department of Education began posting on CollegeNavigator.gov private loan data for schools, but these data are for first-time, full-time students only and appear to be highly unreliable and inconsistent.[64] The lack of this type of information in the private student loan context is a major impediment to understanding the scope of the problem and helping borrowers.

Among other strategies, we agree with the recommendations in the July 2012 CFPB report to provide mechanisms for borrowers to understand a complete picture of their student loans, including the creation of a centralized, publicly accessible data system.

Conclusion

Thank you for the opportunity to testify before the Subcommittee today. Congress and regulators must act now to provide relief for borrowers buried in student loan debt and as the private student loan market recovers, to ensure that the private student loan market that emerges from the credit crisis is fair and efficient.

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[62] Id.

[63] See generally College Board, "Trends in Student Aid 2011" (2011).

[64] Project on Student Debt, "Student Debt and the Class of 2009" at 10-11 (October 2010), available at http://projectonstudentdebt.org/files/pub/classof2009.pdf.

Expensive credit does not promote equal access to education. Rising costs of higher education are certainly a major concern, but the answer is not to allow a revival of predatory student lending.

Summary of Recommendations to Protect Private Student Loan Borrowers and Ensure Fair Lending

Origination of Private Student Loans

- Develop and enforce sound underwriting standards ensuring ability to pay.
- Define and act against unfair, deceptive and abusive marketing practices.
- Improve and broaden scope of Truth in Lending Disclosures (TILA) and enforce TILA requirements.
- Require school certification of loans, including notifying borrowers of any untapped federal student loan eligibility.

Servicing

- Encourage and, where appropriate, require loan modification standards for distressed borrowers and discharges in case of death or disability.
- Extend Fair Credit Billing Act rights to private student loan borrowers.

Collection

- Enforce fair debt collection laws for the entire student loan collection market, both federal and private student loans.
- Prohibit deceptive, unfair and abusive default triggers, such as universal default clauses.
- Ban collection actions in inconvenient forums.

Additional Relief for Borrowers and Measures to Promote Responsible Lending

- Enforce the FTC Holder rule giving borrowers defenses against lenders with close relationships with unscrupulous schools.
- Ban mandatory arbitration clauses.
- Push restoration of bankruptcy rights for student loan borrowers.

Data Collection and Research

- Collect data on private student lending, including loan defaults, lender responses to borrower distress as well as campus-level loan volume and pricing.
- Create an accessible data base where borrowers can get information about all student loans.

Education Finance Loan
Private Educational Loan Programs
Entrance Interview for Applying for the Education Finance Loan

School Name: AICASAC

Print Student's Name [redacted]

Student's ID# [redacted]

1. I understand I may be completing the entrance interview prior to being awarded the Education Finance Loan or my completing the promissory note.

2. I am obligated to repay my Education Finance Loan even if I do not complete the program, am unable to obtain employment, or am otherwise dissatisfied with the education or other services received.

3. I must repay my loan with all accrued interest and fees.

4. Repayment will begin following a 6 month grace period after I graduate, withdraw from school, or cease to be enrolled as at least a half-time student.

5. Effective for applications received on or after March 2, 2009, the interest rate is Libor plus 9.5%, and is adjusted quarterly. Effective for applicatons received on or after March 2, 2009 there will be a 6% origination fee that is added to my loan. The lender will inform me in a disclosure statement what my interest rates and origination fee will be. Interest rates and origination fees may suddenly be changed by the lender before loans are disbursed.

6. I must notify the lender (and any subsequent holder of the loan) and my school, in writing, if I change my name, change my telephone number, change my address, change my graduation date, withdraw from school, do not enroll or enroll less than half-time, or transfer to another school.

7. If I believe I cannot make payments when due, or if I believe I qualify for a deferment or forbearance of my loan payments, I must contact the lender (and subsequent holder of the loan).

8. If I fail to repay my loan, it will be reported to a National Credit Bureau and have a negative effect on my credit rating. If applicable, I will have to pay additional costs, including but not limited to: collection costs, fees, legal and court costs.

9. I understand this IS NOT a Federal Loan.

10. I have tried to obtain an alternative loan from at least one other source and have been denied. I understand that the rates and fees of the Education Finance Loan may be higher than other private loans.

11. The school has told me that I should utilize all gift (grants and scholarships) aid and federal educational loans prior to applying for any private loan program. If I borrow a private (alternative loan) or federal loans, I should borrow responsibly and compare loan interest rates as fees.

12. I understand that I am more likely to be approved for this loan if I have a credit worthy cosigner.

13. I understand that before I sign the promissory note, I must read the promissory note and disclosure statements for this and every loan.

14. I understand that if I need subsequent loans of any kind, I must reapply and meet the established credit requirements that are in effect at that time. If I am eligible, future loans may not have the same rates, fees, or conditions of my initial loan.

15. My award letter or Student Financial Plan will disclose whether I am pre-qualified for an Education Finance Loan.

16. I understand that the funds borrowed through the Education Finance Loan can never exceed my direct cost of attending school minus other financial aid that I may have received.

17. I understand that after this loan is originated, this loan will likely be sold to the school, an affiliate under common ownership with the school (such as Education Finance I LLC) or an unrelated third party. As long as I continue to meet the requirements of the loan, the borrower benefits applicable to my loan will remain effective after it is sold.

18. I understand that this loan is only available to students attending schools owned directly or indirectly by Education Management LLC.

Student's
Signature/Date [redacted] 10/22/09

Version created February 24, 2009

In this Application/Promissory Note, the words "I", "me", "my", and "mine" mean each and every Borrower and Cosigner, individually and collectively, who signed this Application/Promissory Note. The words "you", "your", "yours", and "Lender" mean Bank One, N.A., its successors and assigns, and any other holder of this Application/Promissory Note. "School" means the school named at the top of the first page of this Application/Promissory Note.

A. PROMISE TO PAY: I promise to pay to your order, upon the terms and conditions of this Application/Promissory Note, all principal, interest and other charges set forth herein.

B. LOAN; DISCLOSURE STATEMENT:

1. **By signing this Application/Promissory Note, and submitting it to you, I am requesting that you make this loan to me in an amount equal to the Loan Amount Requested plus any Loan Origination Fee described in Paragraph F of this Application/Promissory Note. When you receive my signed Application, you are not agreeing to lend me money. You have the right not to make a loan or to lend an amount less than I am requesting. I agree to accept an amount less than the Loan Amount Requested and to repay that portion of the Loan Amount Requested that you actually lend to me.**

2. If you decide to make a loan to me, you will mail me the disbursement check (the "Disbursement Check") and a statement disclosing certain information about the loan in accordance with the federal Truth-in-Lending Act (the "Disclosure Statement"). You have the right to disburse my Disbursement Check through an agent. At your option, you may also make any Disbursement Check co-payable to me and the Cosigner or to me and the School. In addition to other information, the Disclosure Statement will tell me the amount of my disbursement and the amount of the Loan Origination Fee. The Disclosure Statement is part of this Application/Promissory Note. Upon receipt of the Disclosure Statement, I will review the Disclosure Statement and notify you in writing if I have any questions. My endorsement of the Disbursement Check will acknowledge receipt of the Disclosure Statement and my agreement to be legally bound by this Application/Promissory Note.

3. If I am not satisfied with the terms of my loan as disclosed in the Disclosure Statement, I may cancel my loan. To cancel my loan, I will give you a written cancellation notice, together with my unused Disbursement Check or, if I have already endorsed and delivered the Disbursement Check to the School, a good check, payable to you, in the full amount of the Disbursement Check. If I have delivered the Disbursement Check to the School, I cannot cancel more than ten (10) days after I originally received the Disbursement Check. If I give notice of cancellation but do not comply with the requirements of this Paragraph B.3, this Application/Promissory Note will not be canceled and I will be in default of this Application/Promissory Note. (See Paragraph I.)

C. DEFINITIONS:

1. "Disbursement Date" means the date shown on any Disbursement Check you prepare for me (not the date I endorse or negotiate my check).

2. The "Deferment Period" will begin on the Disbursement Date and end on the Deferment End Date.

3. "Deferment End Date" means the date specified below for the applicable loan program (the applicable loan program is stated on the first page of this Application/Promissory Note).

(a) ***Education One Undergraduate Alternative Loan Program:*** If I have elected the "Immediate Repayment" option (the applicable repayment option is stated on the first page of this Application/Promissory Note), there is no Deferment Period, and my first payment will be 30-60 days after the last disbursement of my loan. If I have elected the "Interest Only" repayment option (the applicable repayment option is stated on the first page of this Application/Promissory Note), then interest payments will begin 30-60 days after the first disbursement of my loan, the "Deferment End Date" will be the date the Student graduates or ceases to be enrolled at least half-time in the School (or another school participating in this loan program), and principal and interest payments will begin 30-60 days after that date. If I have elected the "Full Deferral" repayment option (the applicable repayment option is stated on the first page of this Application/Promissory Note), then the "Deferment End Date" will be 180 days after the Student graduates or ceases to be enrolled at least half-time in the School (or another school participating in this Loan Program). In any event, the Deferment End Date will be no more than 4½ years after the Disbursement Date (or 5½ years if the Student is enrolled in a five-year undergraduate program at the School).

(b) ***Education One Graduate Professional Education Loan Program:*** 180 days after the Student graduates or ceases for any other reason to be enrolled at least half-time in the School (or another school participating in this Loan Program), but no more than 4½ years after the Disbursement Date; provided, however, that if the Student begins a medical residency or internship during the Deferment Period, then the Deferment Period will end 180 days after the day the residency or internship ends, but no more than 8½ years after the Disbursement Date.

4. The "Repayment Period" begins the day after the Deferment Period ends, (or, if there is no Deferment Period, the day after the Disbursement Date). The Repayment Period is 20 years, unless monthly payments equal to the minimum monthly payment amount (See Paragraph E.4) will repay all amounts owed in less than 20 years, in which case the Repayment Period will be the number of months necessary to pay in full the amount I owe at the minimum payment.

D. INTEREST:

1. Accrual – Beginning on the Disbursement Date, interest on the outstanding balance of this Application/Promissory Note will accrue on the unpaid Loan Amount each day (including holidays and other days you are closed) at the Variable Rate (Paragraph D.2) divided by the number of days in the year in question.

2. Variable Rate – The "Variable Rate" is equal to the Current Index plus a Margin. The Margins for both the Deferment Period and the Repayment Period are shown on the first page of this Application/Promissory Note. In no event will the Variable Rate exceed the maximum interest rate allowed by the laws of the State of Ohio. The Variable Rate will change quarterly on the first day of each January, April, July and October (the "Change Date(s)") if the Current Index changes. The "Current Index" for any calendar quarter beginning on a Change Date (or for any shorter period beginning on the Disbursement Date and ending on the first Change Date) is based on the London Interbank Offered Rate ("LIBOR") as published in the "Money Rates" section of *The Wall Street Journal*. Each calendar quarter, the index will equal the average of the LIBOR rates published on the first business day of each of the three (3) calendar months immediately preceding such calendar quarter, **rounded to the nearest one-hundredth percent (0.01%)**. If *The Wall Street Journal* was not published or if the LIBOR rate was not published on any one or more of the first business days of each of the three calendar months immediately preceding the calendar quarter, then the Current Index will be determined by using the immediately preceding Current Index. If on any first business day of a calendar month more than one LIBOR rate is published, then the highest rate published will be used to calculate the Current Index. If the LIBOR rate is no longer available, you will choose a comparable index.

3. Capitalization – If I have elected the "Full Deferral" repayment option (the applicable repayment option is stated on the first page of this Application/Promissory Note), I am not obligated to make any payments until the loan enters the Repayment Period. You will add unpaid accrued interest to the principal loan balance as of the last day of each calendar quarter (the last day of December, March, June and September) during the Deferment Period and at the end of my Deferment Period. Interest that is added to principal is called "Capitalized" interest. Capitalized interest will be treated as principal. In addition, if I am in default and the loan has been sold to TERI (see Section L.12), TERI may capitalize accrued and unpaid interest as of the date it purchases my loan. I understand that you will add all accrued and unpaid interest to the principal balance of my loan on the last day of the Deferment Period and at the end of any forbearance period.

E. TERMS OF REPAYMENT:

1. Deferment Period – If I have elected either the "Interest Only" repayment option or the "Full Deferral" repayment option (the applicable repayment option is stated on the first page of this Application/Promissory Note), you will send me statements during the Deferment Period (showing the total outstanding principal balance of my loan and the interest that has accrued on my loan). Statements will be sent to the address shown on your records. If I have elected the "Interest Only" repayment option, I agree to make payments each month during the Deferment Period equal to the accrued interest on the outstanding balance of this Application/Promissory Note. If I have elected the "Full Deferral" repayment option I may, but am not required to make payments during the Deferment Period. You will add any interest that I do not pay during the Deferment Period to the principal balance, as described in Paragraph D.3.

2. Repayment Period – During the Repayment Period, you will send me monthly statements or a coupon book which shows the amounts of minimum monthly payments and the payment due dates. You reserve the right to send monthly statements or coupon books to either the Borrower or the Cosigner. I will make consecutive monthly payments in amounts at least equal to such minimum monthly payments by the applicable payment due dates until I have paid all of the principal and interest and any other charges I may owe under this Application/Promissory Note.

3. Repayment Terms – My monthly payment will be established based on the rules in this Application/Promissory Note when my Repayment Period begins. My monthly payment amount will be calculated as of the day the Repayment Period begins ("Repayment Date"). It will also be calculated following any subsequent deferment or forbearance period or any request by the Borrower to the servicer to change the monthly payment due date (each of which events is a new "Repayment Date"). After any Repayment Date is set, my monthly payment will be recalculated once each year prior to the anniversary of the Repayment Date. My new monthly payment amount, which will take effect on the anniversary of the Repayment Date, will be disclosed to me each year by the servicer. The new monthly repayment amount will equal the amount necessary to pay in full, over the number of months remaining in the Repayment Period, the amount I owe in equal monthly installments of principal and interest at the Variable Rate in effect at the time of the calculation. I understand that this may result in a reduction or increase in my monthly payment as calculated each year. I understand that during the Repayment Period (and, if I have elected the "Interest Only" repayment option, during the period of monthly interest payments) the servicer may change the monthly payment due date of future payments to a later date for the convenience of the servicer in processing payments or in order to coordinate the due dates of all of my loans processed by the servicer. This change in monthly payment due date may result in the charging of additional interest in the month of the change, which I agree to pay.

4. Minimum Repayment – During the Repayment Period, my minimum payment will be at least $25 each month or the entire unpaid loan balance, whichever is less. I understand that I may pay more than my monthly payment at any time without penalty or charge.

5. Amounts Owing at the End of the Repayment Period – Since interest accrues daily upon the unpaid principal balance of my loan, if I make payments after my payment due dates, I may owe additional principal, interest, and/or late charges at the end of

the Repayment Period. If I have not paid my late charges, I will also owe additional amounts for those late charges. In such cases you will increase the amount of my last monthly payment to the amount necessary to repay my loan in full in a single payment.

6. Payments – Payments will be applied first to late charges and other fees and charges, then accrued interest, and the remainder to principal. If I have multiple loans processed by the servicer, and I submit a single payment that is not sufficient to pay all of the amounts I owe, such payment will be divided between or among the loans in accordance with applicable law and the servicer's customary procedures.

7. Other Charges - If any part of a monthly payment remains unpaid for a period of more than 15 days after the payment due date, I will pay a late charge not exceeding $5.00 or 5% of the overdue payment amount, whichever is less. I will pay only one late charge for any payment, regardless of the number of days it is late. To the extent permitted by law, I agree to pay you all amounts you incur in enforcing the terms of this Application/Promissory Note, including reasonable collection agency and attorney's fees and court costs and other collection costs.

F. LOAN ORIGINATION FEE: You may charge me an Origination Fee. If you charge me, at the time you issue any disbursement to me, or on my behalf, you may add the Origination Fee to my loan amount. The dollar amount of any Loan Origination Fee will be determined by multiplying the sum of the Loan Origination Fee and the Loan Amount Requested, to the extent advanced to me, times the Loan Origination Fee Percentage shown on the first page of this Application/Promissory Note. The percentage would be higher if computed only on the amount advanced rather than the entire principal amount (Loan Origination Fee plus Loan Amount Requested). For example, a nominal Loan Origination Fee of 6.5% on the entire principal amount would equal 6.9519% of the amount advanced. The Loan Origination Fee I will pay, if any, will be shown on my Disclosure Statement and will be added to the principal amount of my loan. To the extent permitted by law, and unless I timely cancel this Application/Promissory Note (see Paragraph B.3), I will not be entitled to a refund of any Loan Origination Fee after my Disbursement Check has been negotiated.

G. RIGHT TO PREPAY: I have the right to prepay all or any part of my loan at any time without penalty or charge.

H. FORBEARANCE: If I am unable to repay my loan in accordance with the terms established under this Application/Promissory Note, I may request that you modify these terms. I understand that such modification would be at your option. I understand that I will remain responsible for all interest accruing during any period of forbearance and that you will add any interest that I do not pay during any forbearance period to the principal balance, as described in Paragraph D.3.

I. WHOLE LOAN DUE: To the extent permitted by applicable law, I will be in default if: (1) I fail to make any monthly payment to you when due, (2) I die, (3) I break any of my other promises in this Application/Promissory Note, (4) Any bankruptcy proceeding is begun by or against me, or I assign any of my assets for the benefits of my creditors, or (5) I make any false written statement in applying for this loan or at any time during the Deferment or Repayment Periods. I understand that if I default on my loan, disclosure of my loan information to consumer reporting agencies may adversely affect my credit rating. If I default, I will be required to pay interest on this loan accruing after default. The interest rate after default will be subject to adjustment in the same manner as before default. To the extent permitted by law, upon default, you will have the right to give me notice that all amounts outstanding under this Application/Promissory Note are due and payable at once. Upon default, you may also capitalize any interest and fees (i.e., add accrued and unpaid interest and fees to the principal balance), and increase the Margin used to compute the Variable Rate by two percentage points (2%).

J. NOTICES:

1. I will send written notice to the servicer authorized by you to service my loan account, or any subsequent holder of this Application/Promissory Note, within ten days after any change in my name, address, or enrollment status at the School. I will send any notice that I give under this Application/Promissory Note to the servicer authorized by you to service my loan account, to the address you provide.

2. Any notice required to be given to me by you will be effective when mailed by first class mail to the latest address you have for me. Unless required by applicable law, you need not give a separate notice to the Cosigner, if any.

K. INFORMATION:

1. I must update any and all information related to this Application/Promissory Note or my loan application whenever you ask me to do so.

2. I authorize you from time to time to request and receive from others credit related information about me (and about my spouse if I live in a community property state).

L. ADDITIONAL AGREEMENTS:

1. I understand that you are located in OHIO and that this Application/Promissory Note will be entered into in the same state. CONSEQUENTLY, THE PROVISIONS OF THIS APPLICATION/PROMISSORY NOTE WILL BE GOVERNED BY FEDERAL LAW AND THE LAWS OF THE STATE OF OHIO, WITHOUT REGARD TO CONFLICT OF LAW RULES.

2. The proceeds of this loan will be used only for my educational expenses at the School. The Cosigner will not receive any of the loan proceeds.

3. My responsibility for paying the loan evidenced by this Application/Promissory Note is unaffected by the liability of any other person to me or by your failure to notify me that a required payment has not been made. Without losing any of your rights under this Application/Promissory Note you may accept (a) late payments, (b) partial payments or (c) payments marked "paid in full" or with other restrictions. You may delay, fail to exercise, or waive any of your rights on any occasion without losing your entitlement to exercise the right at any future time, or on any future occasion. You will not be obligated to make any demand upon me, send me any notice, present this Application/Promissory Note to me for payment or make protest of non-payment to me before suing to collect on this Application/Promissory Note if I am in default, and to the extent permitted by applicable law, I hereby waive any right I might otherwise have to require such actions. I WILL NOT SEND YOU PAYMENTS MARKED "PAID IN FULL", "WITHOUT RECOURSE" OR WITH OTHER SIMILAR LANGUAGE UNLESS THOSE PAYMENTS ARE MARKED FOR SPECIAL HANDLING AND SENT TO THE ADDRESS IDENTIFIED FOR SUCH PAYMENTS ON MY BILLING STATEMENT, OR TO SUCH OTHER ADDRESS AS I MAY BE GIVEN IN THE FUTURE.

4. I may not assign this Application/Promissory Note or any of its benefits or obligations. You may assign this Application/Promissory Note at any time.

5. The terms and conditions set forth in this Application/Promissory Note and Instructions and the Disclosure Statement constitute the entire agreement between you and me.

6. If any provision of this Application/Promissory Note is held invalid or unenforceable, that provision shall be considered omitted from this Application/Promissory Note without affecting the validity or enforceability of the remainder of this Application/Promissory Note.

7. A provision of this Application/Promissory Note may only be modified if jointly agreed upon in writing by you and me. Any modification will not affect the validity or enforceability of the remainder of this Application/Promissory Note. If I fax my Application/Promissory Note, I have read and understand the prohibition regarding changes in Paragraph L.16.

8. To the extent permitted by law, you have the right to apply money from any of my deposit account(s) with you to pay all or a portion of any amount overdue under this Application/Promissory Note. If I am in default at any time (including but not limited to a situation where I give an improper cancellation notice), you may exercise on my behalf any right that I may have to cancel my enrollment at the School and receive a full or partial refund of payments made to the School. I authorize the School to pay any or all of such amounts directly to you upon receipt of notice from you that I am in default under this Application/Promissory Note, and I give you a security interest in all such amounts.

9. If this Application/Promissory Note is executed by more than one Borrower, any notice or communication between you and any of the Borrowers will be binding on all of the Borrowers. Each Borrower intends to be treated as a principal on this Application/Promissory Note and not as a surety. To the extent any Borrower may be treated as a surety, such Borrower waives all notices to which such Borrower might otherwise be entitled as such by law, and all suretyship defenses that might be available to such Borrower (including, without limitation, contribution, subrogation and exoneration). Each Borrower agrees that any Borrower may agree to any forbearance or other modification of the repayment schedule and that such agreement will be binding on each Borrower. It shall not be necessary for you to resort to or exhaust your remedies against any Borrower before calling upon any other Borrower to make repayment.

10. All dollar amounts stated in this Application/Promissory Note are in United States dollars. I will make all payments in United States Dollars with no deduction for currency exchange.

11. The Student's failure to complete the education program paid for with this loan will not relieve any Borrower of any obligation under this Application/Promissory Note.

12. **I acknowledge that the requested loan may be subject to the limitations on dischargeability in bankruptcy contained in Section 523 (a) (8) of the United States Bankruptcy Code. Specifically, I understand that you have purchased a guaranty of this loan, and that this loan is guaranteed by The Education Resources Institute, Inc. ("TERI"), a non-profit loan guaranty agency.**

13. I authorize any School that I may attend to release to you, and any other persons designated by you, any requested information pertinent to this loan (e.g., enrollment status, prior loan history, and current address).

14. I authorize the Lender, any subsequent holder of this Application/Promissory Note, and their agents to: (1) advise the School of the status of my application and my loan, (2) respond to inquiries from prior or subsequent lenders or holders with respect to my Application/Promissory Note and related documents, (3) release information and make inquiries to the persons I have given you as references, for the purposes of learning my current address and telephone number, (4) check my credit and employment history and to answer questions about their credit experience with me, and (5) disclose to TERI, the Borrower, and/or the Cosigner either in connection with this transaction or any future transaction all information (including status information and non-public personal information) of the Borrower and/or the Cosigner provided in connection with this Application/Promissory Note.

15. Waiver by Lender: Except as stated in Paragraph L.8, you waive (give up) any right to claim a security interest in any property to secure this Application/Promissory Note. This does not affect any right to offset as a matter of law.

16. If I fax my signature(s) on the first page of this Application/Promissory Note back to you and keep the copy I signed, I understand that under federal law the fax you receive will be an original of the first page of this Application/Promissory Note and I will refax the first page upon request by Lender. I may NOT amend the Application/Promissory Note by making changes to the Signature Page, which are then faxed to Lender. If the Borrower faxes the Signature Page, and the Lender approves the application, then there will be two originals of the Agreement; the Lender's copy and the Borrower's copy.

Written Testimony of Jennifer Mishory
Deputy Director, Young Invincibles

Senate Committee on Banking, Housing and Urban Affairs
Subcommittee on Financial Institutions and Consumer Protection
Hearing on "Private Student Loans: Providing Flexibility and Opportunity to Borrowers?"
July 24, 2012

Chairman Brown, Ranking Member Corker, and other members of the Subcommittee on Financial Institutions and Consumer Protection: thank you for having me here today. My name is Jennifer Mishory and I am the deputy director of Young Invincibles.

About Young Invincibles

Young Invincibles began in the summer of 2009, out of the recognition that young people's voices were not being heard in major national debates that impact our future.[1] In a little more than a year, YI went from a group run out of a law school cafeteria to a national non-profit, non-partisan organization, representing the interests of 18 to 34 year-olds and making sure that our perspective is heard wherever decisions about our collective future are being made. We do this through innovative research and policy analysis, sharing the stories of young Americans, spearheading campaigns designed to educate, inform and mobilize our generation, and advocacy intended to change the status quo.

We have gained expertise in issues facing youth as they navigate the world of higher education, and extensive experience with the student loan market in particular. This past spring, we released a report detailing the experiences of high-debt borrowers with private and federal student loans.[2] The report was based on an online, self-selected survey of approximately 13,000 borrowers.[3] The responses also served as the basis for comments submitted to the CFPB detailing the experiences of private borrowers.

Also, this spring, I served as the consumer advocacy representative in the Department of Education's 2012 negotiated rulemaking on student loans, which gave me a unique understanding of federal loans, and with it, an in-depth understanding of how they interact with

[1] *See* Young Invincibles About Us Page, http://www.YoungInvincibles.org/about/.
[2] HEALEY WHITSETT & JEN MISHORY, NERA ECONOMIC CONSULTING & YOUNG INVINCIBLES, HIGH DEBT, LOW INFORMATION (2012), http://younginvincible.com/wp-content/uploads/2012/06/PUB_Student_Loan_Borrowers_FINAL.pdf.
[3] *Id.*

private market options.[4] In addition to this policy and research, we also engage extensively with young people facing these economic issues, to ensure that our policies and advocacy adequately reflect their actual needs. Young Invincibles just completed a 20-state, 40-city national youth bus tour, talking to young people from all walks of life – two-year, four-year, for-profit, non-profit students, non-college youth, recent graduates, and high school juniors and seniors trying to determine their next big step.[5] As expected, student debt was a prevalent topic, and the tour gave us a unique and more refined understanding of how higher education policies work on the ground.[6]

This combination of policy expertise, research, survey data, bus tour, and continued interaction with borrowers who share their stories has presented a unique lens through which to view the changing market. Indeed, the private loan market has shifted significantly in the past 10 years; early growth and looser, more predatory lending standards led to a significant increase leading up to the recession, which then dried up the credit market and contracted private lending, bringing tighter lending standards with it. Borrowers have encountered an array of difficulties amidst this marketplace, including unfair lending practices; inability to manage high payments in a tough economy; and consistent issues with customer service in dealing with these lenders. All parties, but particularly schools and lenders, must also do better to educate borrowers, as we found that:

- About two-thirds of high-debt borrowers in our survey did not fully understand the difference between federal and private loans, and
- About 80 percent of borrowers got their information on borrowing from schools.

Now, with new types of loans, and fewer, more dominant lenders issuing loans and looking to expand once more, stakeholders have a duel responsibility to 1) help struggling borrowers as they try to navigate difficult lending terms in the wake of the Great Recession, and 2) take action to ensure fair, transparent lending as the market once again evolves. Specifically, legislators, regulators, schools, lenders, and consumer groups should:

- Engage in outreach to federal high-debt borrowers to inform them about the new CFPB consumer complaint system, as many of those borrowers will also hold private loans;
- Consider ways to ease the burden on struggling borrowers, including restoring bankruptcy protections and creating federal refinancing options for private borrowers who would otherwise have qualified for federal loans;
- Take aggressive action to provide transparent information about lending options, making repayment terms clear well before the application process and easing access to federal loans, while engaging schools in a mandatory certification

[4] *See generally* Department of Education, Negotiated Rulemaking Committee; Public Hearings, 77 Fed. Reg. 25,658 – 60 (May 31, 2012) (to be codified at 34 C.F.R. ch. VI) *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-05-01/pdf/2012-10488.pdf.
[5] *See* Campaign for Young America, www.CampaignforYoungAmerica.org.
[6] *See* YOUNG INVINCIBLES, WHAT WE FOUND: A SUMMARY OF KEY FINDINGS FROM THE YOUNG INVINCIBLES NATIONAL YOUTH BUS TOUR 13-17 (2012), http://younginvincible.com/wp-content/uploads/2012/06/What-We-Found-Op1.pdf.

system for private loans.

Private Student Loans: A Changing Market

The private student loan market has undergone enormous changes over the past 10 years. As more students have enrolled in higher education over the past decades, and as tuition costs have increased, students have turned to debt to finance their education. Students have utilized private loans, often in addition to federal loans, for a number of reasons that I will discuss below.

Growth in the pre-recession 2000s

Private student loan debt accounts for roughly 15%, or $150 billion, of the $1 trillion outstanding student loan debt.[7] Much of the increase came in the drastic expansion of student debt from 2000 until 2008. Annual private student loan originations grew from less than $7 billion in 2001 to over $20 billion in 2008.[8] From 2005-2007 in particular, lenders increasingly engaged in predatory marketing of loans directly to borrowers, rather than requiring schools to sign-off on the need for the amount borrowed; they also loosened underwriting, which in turn made the loans riskier for students.[9]

Recession, legislation spurs changes

The Great Recession had an enormous impact on the private student loan market. First, when the market for private student loan asset-backed securities shrank, it lead to significant contraction in the market for private loans.[10] For example, as Figure 1 illustrates (*see page* 6), Sallie Mae's private originations tracked the broader private student loan market by peaking in 2007, and then drastically decreased in the wake of the 2008 financial crisis. In 2008, Sallie Mae originated $6.3 billion in new private student loans; that figure more than halved to $3.1 billion in 2009 and dropped again in 2010 to $2.3 billion.[11] Sallie Mae's originations count for roughly 30-40% of annual originations in the private student loan market.[12]

The changes to the traditional private lending market spurred the expansion of an additional type of private loan, known as institutional loans, within the for-profit college industry. For-profit colleges depend on private loans in part because, in order to receive federal loans and grants, a certain amount of their revenue must come from non-federal sources.[13] Observers and industry analysts have pointed to institutional lending programs as one answer to

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[7] CONSUMER FINANCIAL PROTECTION BUREAU, PRIVATE STUDENT LOANS 3 (2012), http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.
[8] *Id.*
[9] *Id.*
[10] CHRISTINE HINES AND MICAH HAUPTMAN, BETWEEN A ROCK AND A HARD PLACE: COURTHOUSE DOORS SHUT FOR AGGRIEVED PRIVATE STUDENT LOAN BORROWERS, PUBLIC CITIZEN, July 2012, *available at* http://www.citizen.org/Page.aspx?pid=5515.
[11] Author's analysis of Sallie Mae Corporation earnings reports, 2008 – 2010, *available at* https://www1.salliemae.com/about/investors/stockholderinfo/earningsinfo.htm.
[12] SLM Corp., Q1 2012 Investor Presentation 18 (May 7, 2012), http://bit.ly/OdSB6M.
[13] DEANNE LOONIN, NATIONAL CONSUMER LAW CENTER, PILING IT ON: THE GROWTH OF PROPRIETARY SCHOOL LOANS AND THE CONSEQUENCES FOR STUDENTS (2011), http://bit.ly/gGGuuu.

this need for non-federal revenue after the traditional private lending market shrank.[14] Institutions expect very high default rates on these loans.[15] The College Board estimates that the market for these loans increased from $500 million in 2007-08 to about $720 million in 2010-11.

In the wake of the Great Recession, consumers continue to feel the devastating affects of the over-used, high-interest, poorly underwritten loans that were available in the mid-2000s. Borrowers are experiencing high unemployment and underemployment, and young borrowers face unemployment levels nearly twice the national average.[16] This increase in unemployment has exacerbated private loan delinquencies and defaults.[17] For example, gross defaults are triple pre-recession levels, and the percentage of loans that are 60 or more days delinquent is more than double.[18] Private loans have fewer options for relief during tough times than federal loans, and so the Recession's effects on private borrowers, detailed later, can be particularly painful.

Consolidation and transformation

Just as the credit crunch slowed private lending following the recession, in 2010 Congress passed the the Health Care and Education Reconciliation Act[19] which ended federal subsidies to private banks who originate federally-guaranteed loans. Private lending companies, which often held portfolios of both solely private loans and federally-guaranteed loans (or "FFEL" loans), found themselves with more limited lending options. The combination of these events further expanded the share of federal student loans and led many private lenders to reassess their role in the world of student loans.

The relevant players in the private student loan market began to merge and consolidate, and in some cases to leave the private student lending business entirely. For example, U.S. Bank has stated that it is leaving the private student lending business and would no longer accept

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[14] *Id.*

[15] STEPHEN BURD, NEW AMERICA FOUNDATION, HIGHER ED WATCH, *UPDATED: NEW DATA ON PRIVATE LOAN BORROWING AT CORINTHIAN COLLEGES SHOULD RAISE ALARMS* ¶ 7 (2011), http://higheredwatch.newamerica.net/blogposts/2011/new_data_on_private_loan_borrowing_at_corinthian_colleges_should_raise_alarms-53264.

[16] *Compare* Federal Reserve Bank of New York, Student Loan Debt History, http://www.newyorkfed.org/studentloandebt/ (showing that there are many more young borrowers than older adult borrowers), *and* CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 7, at 44 (showing that and a higher percentage of young borrowers take out private student loans than older borrowers), *with* Another Slow Summer for Young Workers, http://younginvincibles.org/2012/07/another-slow-summer-for-young-workers/ (stating that the youth unemployment level for the past several years has been astronomical, often hovering around twice the national average), *and* HEIDI SHIERHOLZ, ET AL., ECONOMIC POLICY INSTITUTE, THE CLASS OF 2012: LABOR MARKET FOR YOUNG GRADUATES REMAINS GRIM, http://www.epi.org/publication/bp340-labor-market-young-graduates/ (stating that while college graduates generally fare better than non-graduates, their unemployment rate for college graduates is still higher than the overall national unemployment rate).

[17] CONSUMER FINANCIAL PROTECTION BUREAU, supra note 7 at 64,70.

[18] HINES, *supra* note 10.

[19] Health Care and Education Reconciliation Act, Pub. L. 111-152.

applications after March 29, 2012.[20] JPMorgan Chase restricted its private lending to existing bank customers, stating it would focus on its own customers given the decline.[21]

At the same time, large financial institutions have been buying up student loan portfolios. In 2010, Discover acquired Citibank's subsidiary, Student Loan Corporation ("SLC"), with its $4.2 billion in student loans and $3.4 billion of asset-backed securitization funding and liabilities. Later, it also bought Citibank's private student loan portfolio of $2.5 billion in private student loans.[22] Relatedly, Sallie Mae also began purchasing old FFEL loans from other lenders.[23] Wells Fargo also acquired Wachovia[24], leaving the private student loan market dominated by three major financial firms: Sallie Mae, Discover and Wells Fargo.[25]

Unsurprisingly, as lenders tightened their underwriting, the typical private loan borrower became more credit-worthy and students with worse credit history were increasingly required to get a parent to co-sign the loan. According to Sallie Mae's 2008 annual report, the average FICO score for new borrowers jumped 26 points to 738 and the percentage of cosigners increased from 57 to 74 percent.[26] In the second quarter of 2012, Sallie Mae boasted a 746 average FICO score and an 81 percent cosigner rate.[27]

Recently, there have been signs that the private student loan market may again be on the rise. For example, Sallie Mae is projecting growth in new loans for the second consecutive year: in the first two quarters of 2012, Sallie Mae originated almost $1.5 billion in student loans, and

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[20] Doug Schantz, *U.S. Bank Quickly Exits the Private Student Loan Market*, CHEAPSCHOLAR.ORG, March 28, 2012, http://cheapscholar.org/2012/03/28/u-s-bank-quickly-exits-the-private-student-loan-market/.

[21] Victoria Finkle and Andy Peters, *U.S. Bank, Chase Pull Back from Student Lending*, AMERICAN BANKER, Mar. 30, 2012, *available at* http://www.americanbanker.com/issues/177_63/us-bank-student-lending-cfpb-1048016-1.html.

[22] Discover Completes Acquisition of the Student Loan Corporation, pymnts.com, http://pymnts.com/news/businesswire-feed/2011/january/03/discover-completes-acquisition-of-the-student-loan-corporation-20110103005213/; *see also* David Benoit, *Discover to Buy Citi Student Loan Portfolio*, WALL STREET JOURNAL, Sept. 1, 2011, *available at* http://online.wsj.com/article/SB10001424053111904583204576544313228014344.html.

[23] In the first two quarters of 2012, Sallie Mae issued $5.6 billion in FFEL asset-backed securities, compared to $2.6 billion of private asset-backed securities – establishing themselves as an industry leader in the practice. The corporation plans to "actively and aggressively . . . acquire additional portfolios," demonstrated by their purchase of $2.8 billion in FFEL loans in the first two quarters of 2012. SLM Corp., 2012 Q2 Conference Call to Investors (July 19, 2012) (transcript available at http://seekingalpha.com/article/732671-slm-management-discusses-q2-2012-results-earnings-call-transcript?part=single).

[24] Press Release, Wells Fargo, Wells Fargo and Wachovia Merger Completed, January 1, 2009, *available at* https://www.wellsfargo.com/press/2009/20090101_Wachovia_Merger.

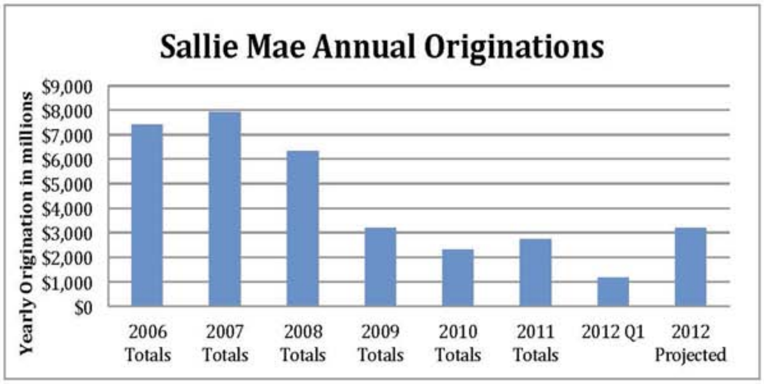
[25] *Compare* Sallie Mae, *Corporate Overview*, https://www1.salliemae.com/about/corp_leadership/, *and* WELLS FARGO & CO., WELLS FARGO & COMPANY ANNUAL REPORT 2011, 239 (2011), https://www.wellsfargo.com/downloads/pdf/invest_relations/wf2011annualreport.pdf, *with* STUDENT LENDING ANALYTICS BLOG, Discover Acquires Citi's Private Student Loan Business; Sallie Mae to Take Federal Loans, http://studentlendinganalytics.typepad.com/student_lending_analytics/2010/09/discover-acquires-citis-private-student-loan-business-sallie-mae-to-take-federal-loans.html.

[26] SLM CORP., ANNUAL REPORT, 8 (2008), https://www1.salliemae.com/NR/rdonlyres/A0450B59-A4A0-4586-9B4C-253FF335008B/10725/FINAL200810KBOW72868BOW012_BITS_N_1422.pdf.

[27] SLM Corp., *supra* note 22.

the company projects a year-end origination total of at least $3.2 billion.[28] Less detailed reporting by other relevant lenders makes it more difficult to estimate the growth in those companies.

Figure 1: Annual Sallie Mae Private Student Loan Originations.[29]



Private lenders have also begun to offer new loan products. The big three lenders all offer fixed-rate loans with the lowest interest rates ranging from 5.72 to 6.79 percent for those who qualify. For example, the Sallie Mae fixed-rate loan advertises an interest rate of 5.75 percent to 12.875 percent, depending on credit history and other criteria.[30] Executives say that these new loan options are increasing in popularity, with some schools looking at the fixed-rate option "as a favorable alternative to PLUS and Grad PLUS" loans.[31] It is clear that while some lenders have moved out of the space, others are intent on re-growing their market power after the dip of the Great Recession, and in fact have already begun to do so. It is unclear, however, whether the gradual improvement of the private loan market will once again loosen private market standards for student loans.

The Borrower Experience: Confusion with a Price Tag

[28] Press Release, SLM Corp. Sallie Mae Reports Second-Quarter 2012 Financial Results 30 (July 18, 2012) *available at* https://www1.salliemae.com/NR/rdonlyres/419DF6AE-C0BB-482B-81CA-3EF94DEB28A9/16488/381351ACL.pdf .

[29] Author's analysis of Sallie Mae Corporation earnings reports, 2006 – 2012, *available at* https://www1.salliemae.com/about/investors/stockholderinfo/earningsinfo.htm.

[30] Press Release, SLM Corp., Sallie Mae Introduces Fixed Rate Private Education Loan (May 7, 2012) *available at* https://www1.salliemae.com/about/news_info/newsreleases/Sallie+Mae+introduces+Fixed-Rate+Private+Education+Loan.htm.

[31] SLM Corp., supra note 22.

About 2.9 million students have private loans, owing approximately $150 billion in debt.[32] Last January, Young Invincibles conducted an online survey to research issues facing private loan borrowers. We received over 13,000 responses to the survey and released a subsequent report with NERA Economic Consulting on a subset of that population – those who had an undergraduate or graduate degree.[33] Certainly, borrowers with higher debt levels are more likely to participant in a self-selected survey, and so the population that we heard from represented borrowers with the highest range of debt levels. An examination of this population sheds light on some of the worst practices, both in origination and repayment, of private lenders. These debtors described a system of confusion and misinformation on the front-end of borrowing, along with surprise, heartache, and at times, financial disaster, as they attempted to repay their loans. As previously mentioned, Young Invincibles also recently completed a 20-state, 40-city national youth bus tour, where we hosted 100 youth roundtables to hear directly from college and non-college youth about the economic issues they faced.[34] Unsurprisingly, roundtable participants frequently raised issues surrounding student loans.

So what did we find? First and foremost, many students and borrowers are lost in a complicated and costly process. It is important to stress that students do have a responsibility to do their homework to understand the obligations of a student loan. However, the sheer complexity of student loan options and terms, and the fact that many young students are making their first major financial decision, necessitates that the key institutions involved take aggressive steps to ensure that students are informed consumers. Unfortunately, these institutions often fail this obligation, and many 18 year-old students are left taking out loans, sometimes as large as a small mortgage, with little guidance or protections.

<u>About 65 percent of survey respondents misunderstood or were surprised by aspects of their student loans or the student loan process; similarly, about two-thirds of private loan borrowers, including those who took out both private and federal loans, said that they did not understand the major differences between their private and federal options.</u>[35] Current law does require disclosures regarding federal options, and about private terms; however, these disclosures have proven to come too late, and, thus far, have been ineffective.[36] By the time students know that they must apply for private loans, or take on loans at all, they have already made college decisions.

Most borrowers in this survey – 80 percent – turned to their schools as trusted sources of information for these loans.[37] As one borrower told us, "I would have researched more, but I didn't know what to research." We have heard this over and over: borrowers don't know the right questions to ask their financial aid offices, yet they rely on them heavily – and those offices often do not have the right answers. For example, several borrowers were wrongly assured that they would be able to consolidate their private loans upon graduation into their lowest interest

[32] Janet Lorin, *Students Pay SLM 9.25% on Exploitive Loans for College*, BOOMBERG BUSINESSWEEK, June 5, 2012, *available at* http://mobile.businessweek.com/news/2012-06-05/students-pay-slm-9-dot-25-percent-on-exploitive-loans-for-college.
[33] *See* WHITSETT, *supra* note 2.
[34] YOUNG INVINCIBLES, *supra* note 6.
[35] *Id.*
[36] 15 USC § 1640 et. seq.
[37] *Id.*

rate loan. College financial aid offices are not serving our students adequately, but they are not alone. Roundtable participants during the Young Invincibles bus tour often stressed the lack of guidance throughout the process: high school students and their families frequently have no one to turn to as they're first making these decisions.[38] As students search for college payment strategies, career and college counseling in high schools are understaffed and undertrained to give adequate guidance.

It is problematic, yet unsurprising, then, that of the high-debt borrowers surveyed,

- About 20 percent mentioned their repayment terms as a source of misunderstanding and/or surprise;
- About 20 percent mentioned the amount of their monthly payments as a source of misunderstanding and/or surprise;
- About 15 percent mentioned their interest rates as a source of misunderstanding and/or surprise.[39]

Clearly, the information gap between what borrowers know and what they must know to make informed decisions is enormous. At the same time, many borrowers stated a frustration with their inability to qualify for federal loans.[40] Those that knew that federal loans were a better option at times found that they did not qualify for those loans, for example because their family income did not meet the standard for federally subsidized Stafford loans, despite the fact that they may have been paying for college independently.

We also hear frequently about significant problems after loans go into repayment and borrowers attempt to navigate life crises, repayment options, and the implementation of particularly draconian loan terms. These problems range from the unfair and incompetent customer service and loan practices, to the more extreme default and bankruptcy complications. I wanted to share just a few stories of borrowers, consistent with the types of stories we hear regularly from our members.

For example, Cassandra in Cleveland, Ohio, has about $90,000 in private loans through Sallie Mae, which has been particularly unforgiving.[41] When she was struggling and needed to make interest-only payments, Sallie Mae did not process her requests. She was denied for a deferment when her husband, one of the millions of Americans falling victim to the recession, lost his job. Another borrower told us that some months when he has extra income, he tries to put it against the principal of his highest interest loan to pay that one off more quickly.[42] But instead, Sallie Mae spreads these payments across all of his loans, making it a negligible amount and applying it to the lower interest loans as well; alternatively, Sallie Mae sets the extra payment aside as a credit toward the next month's interest-only payments, so that it doesn't touch

[38] YOUNG INVINCIBLES, *supra* note 6, at 13-6.
[39] WHITSETT, *supra* note 2, at 2.
[40] These observations are a combination of subsequent analysis of the approximately 13,000-person survey, as well as more in-depth interviews with survey participants.
[41] Telephone interview by Nicholas Kelly with Young Invincibles survey participant (July 2012).
[42] *Id.*

any principal balance. These issues are nearly impossible for inexperienced borrowers to anticipate on the front-end, and nearly impossible for borrowers to fight while in repayment.

At times, these problems become even more serious. One borrower from Massachusetts has had a particularly hard time financially since he graduated from college.[43] A few years ago, Fred was the victim of a violent crime, sustaining injuries to his face and head. With no health insurance, the medical debt he accrued further devastated his finances, and he was forced to file for bankruptcy. But with student loans nearly impossible to discharge in bankruptcy, he still left the proceedings with $51,000 in student debt.

Another borrower, Bridgette, told us that when she went into the Peace Corps after graduation, she was able to get her $20,000 in federal loans deferred, but her private lender would not defer her $46,000 in private loans.[44] To deal with this, her mother agreed to help and make the payments for her while she was gone.

A few months before Bridgette's return in 2009, her mother's father passed away. The emotional and logistical crisis that ensued led to one missed payment, and then a second one. After missing the second payment, the loan was charged-off and shifted to the recovery department, meaning that the full amount came due. She was told that the only way to move the debt back into regular repayment would be by making a lump sum payment for 60% of the balance, or $27,600.

Currently, she has it set up with the bank to make $300 monthly payments. Nothing has been put in writing and she does not get a monthly bill. Any statements as to the remaining balance or interest being charged only come after she makes an explicit request for that information. She is unable to check her balance or the receipt of payments online. She still gets bullying calls from the bank.

The debt shows up as delinquent every single month, even though she has made monthly payments for three years now. She has five separate loans, and each of them shows up as a distinct delinquency; unsurprisingly, her credit score has plummeted. Meanwhile, she has no hope of coming up with the lump sum required to rebuild her financial future, as none of her monthly payments can count toward the $27,500.

As borrowers come to us and share their experiences, they paint a picture of draconian loan terms, widespread misinformation and misunderstanding, and frustration with the continued inaction of political leaders. That picture is generally not pretty. As millions of borrowers struggle to deal with the after-effects of the pre-recession lending boom, and millions more attempt to navigate the more stringent post-Recession private loan market, we must act to ensure that these borrowers are not left out in the cold.

Looking Ahead: Tools for Success

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[43] *Id.*
[44] *Id.*

Regulators, legislators in charge of market oversight and ongoing lawmaking, consumer advocates and lenders themselves should concern themselves with both helping current borrowers who are struggling, and educating new borrowers as to their best lending options. Borrowers are provided with little information before they enter the lending system, and must negotiate a maze of traps along the way – misinformation, unfair lending practices, and the recession – to name a few. The very institutions that have failed these borrowers up to this point must take action going forward.

Assist Current Borrowers

Stakeholders should ensure that current borrowers receive fair treatment that is responsive to the current harsh economic climate. While federal loans have many basic consumer protections built in, private student loans are often missing these key features, which are most critical during times of economic distress. Similar to the foreclosure crisis, it is not in our economy, our country, or our students' best interest to simply let millions of borrowers default on their private student loans.

First, we must rethink the way we treat private loans in bankruptcy. Past evidence and current predictions show that allowing private student loans to be discharged in bankruptcy has minimal impact on the ability of lenders to provide this option to borrowers.[45] In fact, when asked in a quarterly investment conference call this spring, Sallie Mae CEO Albert Lord agreed that it would be "reasonable" to allow for bankruptcy after a "3-4-5-6 year period."[46] However, he did take issue, in treating federal and private loans differently in bankruptcy. When asked about the impact on the private student loan pricing or the market in general, Lord stated that he didn't know "that one could measure the effect, it would be so small."[47] Industry has shown at least an openness to helping these borrowers; so, too, should Congress.

Second, the Department of Education should conduct outreach to high-debt, struggling borrowers to direct them to the new student loan complaint system established by the Consumer Financial Protection Bureau. Many high-debt federal borrowers also have private loans, and the Consumer Financial Protection Bureau, for the first time, provides private loan borrowers a place to go.[48] We have already referred numerous borrowers to the complaint system to seek help with their issues – be it an inability to get a response from a lender around unfair charges, concerns about financial distress and an ability to make payments, or general complaints with the ways in which schools and lenders have marketed themselves to borrowers. But we are only one organization, and there are millions of private loan borrowers. Email and other online outreach

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[45] CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 7 at 74.

[46] SLM Corp., 2012 Q1 Conference Call to Investors, April 19, 2012 (transcript available at http://seekingalpha.com/article/511971-slm-s-ceo-discusses-q1-2012-results-earnings-call-transcript?part=single).

[47] *Id. See also* Discover Fin. Servs., Quarterly Report (June 25, 2012) (stating "The enactment of this legislation, which has been proposed in past Congresses without success, could adversely impact our student loan business and our borrowers, although we believe that our underwriting practices and the high percentage of our loans that have cosigners reduce the risk to our business from the possible enactment of this legislation"), http://biz.yahoo.com/e/120626/dfs10-q.html.

[48] Press Release, Consumer Financial Protection Bureau, Consumer Financial Protection Bureau now taking private student loan complaints (Mar. 5, 2012), *available at* http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-now-taking-private-student-loan-complaints/.

through the Department of Education could help provide relief to significant numbers of borrowers.

Finally, legislators should consider allowing private borrowers who did not take advantage of their full federal eligibility when they originally took out loans, can refinance their private loans and consolidate into federal loans. Student loan experts agree that students should generally exhaust their federal student loans options before turning to private loans but this often does not happen. For example, under this proposal, a borrower who took out $5,000 in federal loans and $5,000 in private loans when they were actually eligible for a full set of federal loans could refinance that $5,000 of private debt into federal debt. This would allow borrowers who may not have been adequately informed of their full eligibility to correct the mistake, while still compensating private lenders. Countless debtors, often full of regret, tell us that they would not have taken out private loans, but "I just didn't know." This would allow those borrowers to finally make that choice.

Ensure Fair Practices for Future Borrowers

Moving forward, there is much we can do to protect future student borrowers, particularly given the fact that the private loan may again increase. A consistent theme runs through the responses that we received in our private student loan survey, comments from participants on the bus tour, and feedback throughout our work around student loans: student borrowers feel lost in a complicated, murky, and costly process that too often renders them powerless. Certainly, students have an obligation to learn their rights; but the very institutions that they rely on to educate them often do not provide adequate information. The complexity of student loan options and terms often means that borrowers have a superficial understanding of their loans. Even as we move out of the Great Recession, the job market for young people starting their careers is projected to remain harsh.[49] Stakeholders should be vigilant to ensure a fair, transparent private loan market emerges as we climb out of a difficult economic climate, and create an environment where consumers hold enough information to make rational decisions for themselves.

First, we need aggressive action to improve student information when it comes to borrowing money. Entrance counseling should include a series of knowledge-testing questions about student loans that borrowers work through early in the process. Lenders should be required to obtain certification of financial need before disbursing private student loans – a practice that fell out of fashion earlier in the decade, but has seen a comeback lately.[50] Additionally, email and mail solicitations should include a clear explanation of repayment terms upfront, not just interest rate estimates and vague references to federal options. Borrowers should not have to apply for loans to understand the repayment terms associated with them; they should be able to shop carefully far in advance.

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[49] *See* RORY O'SULLIVAN AND ALISTAIR JOHNSTON, YOUNG INVINCIBLES, NO END IN SIGHT? THE LONG-TERM YOUTH JOBS GAP AND WHAT IT MEANS FOR AMERICA (2012), http://younginvincibles.org/wp-content/uploads/2012/07/No-End-In-Sight-7.9.12.pdf.

[50] CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 7 at 3-4.

Second, many borrowers have come to us with difficulties in qualifying for a full set of federal loans because while the system holds them out to be dependent on their parents, their families in fact are not contributing to their higher education. Easing the application process to proving independence and better communicating the ways in which students can show their independence will facilitate greater access to better federal lending options.

Finally, legislators and regulators should ensure that borrowers fully understand the differences between the new private loans offering fixed interest rates and federal loans. Sallie Mae has reported that the fixed rate option has been well-received by schools especially, and that some schools have taken a look at fixed rate option as a favorable alternative to PLUS and GradPLUS loans.[51] While some students may qualify for lower interest rates on the fixed rate private loans, schools and lenders have obligations to ensure that students receive the full scope of information surrounding the terms of these loans. This information is important if these loans are targeted at specific types of students, like graduate students. For example, even if a future teacher and master's degree candidate receives a competitive interest rate on a fixed-rate private loan, he or she may be better served taking out the federal loan due to other terms involved, such as more flexible payments based on income or deferment during times of unemployment. These federal options are particularly helpful given that so many teachers lost their jobs over the past few years, and illustrate the type of decision-making that needs to go into loan choices. That teacher must have upfront, transparent information before making a borrowing decision.

The private lending market has been a roller coaster over the past decade. The rapid increase in the market in the first half of the decade resulted in a myriad of problems for consumers. Lenders aggressively marketed loans directly to consumers; students, with little background on the loans and other available options, took up private loans and often forewent better federal options. Many borrowers, often lacking full information about their options and facing a tough economic climate, hold unmanageable debt and face unfair lending practices. Meanwhile, while the private loan market shrank and consolidated during the Great Recession, signs show that this market is again growing. As the student loan market expands and evolves and youth unemployment remains high, stakeholders must assist struggling borrowers and set up the next generation of college-goers for a better financial future.

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[51] SLM Corp., *supra* note 22.

PREPARED STATEMENT OF JACK REMONDI

PRESIDENT AND CHIEF OPERATING OFFICER, SALLIE MAE
JULY 24, 2012

Good afternoon Chairman Brown, Senator Corker and Members of the Subcommittee. My name is Jack Remondi. I am the President and Chief Operating Officer of Sallie Mae. I thank you for the opportunity to testify on the private education loan marketplace, which has witnessed a significant transformation in recent years. More than ever, a college degree provides a pathway to a lifetime of higher income and employment. Yet, with today's cost, most families find they need to finance a portion of the total cost. Private education loans provide a small, but important, supplement for students and families that can help them access a higher education. In our 40 years, Sallie Mae has helped more than 31 million Americans achieve their college dream. As a result of our experience, Sallie Mae understands the importance of education, and how it can drive positive economic change for individuals and families across the economic spectrum. We take seriously our role of providing responsible private education loans to those who rely on them when making the college investment.

As the country's leading saving-, planning- and paying-for-college company, with the mission of helping make higher education accessible and affordable for American families, Sallie Mae is grateful for this opportunity to share our perspective in this discussion.

Overview

The market for private education loans is a small, but important, source of funding that helps students and families responsibly fill the gap between their own income and savings, financial aid, grants, Federal loans, and the total cost of their chosen college or university. Created decades ago, at a time when available aid was not enough to meet the full cost of education, private education loans were introduced to support families in meeting remaining costs after other resources and were never intended to replace Federal aid. In fact, they were originally called "supplemental" loans, indicating their stated purpose. We recommend that the Committee consider today's market in terms of size and providers, and its limited, but important, supplemental role in financing higher education.

In academic year 2007–08, students and families borrowed $23.2 billion in "non-Federal," or private education loans, representing about 6 percent of all spending on higher education. With increases in Federal loan limits, more robust underwriting standards and a very difficult economic environment, 3 years later, in academic year 2010–11, students and families borrowed less than $8 billion in non-Federal education loans, representing about 1 percent of total spending on higher education.[1]

Over the same period, however, the Federal loan program grew by 50 percent, from $69 billion to $104 billion.[2] Today, Federal loan originations are 13 times that of private education loans.

We believe that education loans are not meant to be the sole source of higher education funding. In fact, we administer 529 college savings plans and interest-free tuition installment plans for millions of families. When those and other aid are not enough, families consider borrowing, and when they do, as with any loan, education loans should be taken out with care. Students and their families need to assess the total cost of education, not just the bill for the current semester, and be sure that what they borrow is what they can afford based on current and projected financial resources.

As a means for achieving economic success in America, a higher education is more valuable than ever. Various studies have estimated that college graduates will earn, on average, between $650,000 and $1,000,000 more over the course of their careers than those with only high school diplomas.[3] In addition to increased earnings potential, a higher education results in lower unemployment rates. National unemployment figures for June were at 8.2 percent; however, Americans with a bachelor's degree or higher had a jobless rate of just 4.1 percent. The benefits of employment extend to new college graduates, as well. The unemployment rate of new graduates is 9.8 percent compared to 20.6 percent for their same-age peers with no post-secondary education.[4]

[1] College Board, "2011 Trends in Student Aid", McKinsey & Company.
[2] College Board, "2011 Trends in Student Aid".
[3] Georgetown University Center on Education and the Workforce, August 2011.
[4] Bureau of Labor Statistics, Current Population Survey, June 2012.

Higher education is a major lifetime investment and helping college-bound students and their families responsibly make this investment is Sallie Mae's top priority. Experience has taught us that a one-size-fits-all approach does not work. That is why we have developed a suite of tools and products that help students and families build plans that are right for their situations and that will assist them whether college is a long way off or right around the corner.

Our goal is to educate families up front about the entirety of the education finance process, and to make sure that access yields success. Families will be their own best defense against over-borrowing if they keep these basic principles in mind:

- Choose a school that is within financial reach.
- Create a financial plan that goes beyond the first year and includes all the expected costs through graduation.
- Consider career plans and likely starting salary in the borrowing decision.
- Remember that loans require repayment.
- Explore Federal loans first.
- Keep balances down by doing whatever can be done to make loan payments while in school.
- Make loan payments, even partial ones, if at all possible when out of school to keep balances from growing out of control. Deferring payment is the same as borrowing more—the loan balance grows every day.
- Perhaps most important of all, graduate. Nobody wins when debt is incurred for a degree that does not materialize. Student loans without a degree mean loan payments without the increased employment prospects and higher earnings to support them.

Sallie Mae has a long-standing practice of advising a "1–2–3 approach" to paying for college to empower families to make informed decisions. Specifically, we recommend that families do the following:

1. Use scholarships, grants, savings and income.
2. Explore Federal loans.
3. Consider an affordable, responsible private education loan to fill any remaining gap.

The Administration's recent report on private education loans stated, "Students and their families would be better served by having access to all pertinent financial information concerning the college decision prior to deciding which college to enroll at and how much debt to incur."[5] Sallie Mae couldn't agree more. Although applying for financial aid is an annual exercise, we encourage families to plan for the multi-year commitment required to fund a college degree. In fact, we design our planning tools to assist families in determining how to meet the full costs of a college education. A 1-year snapshot is simply not enough.

Our free Education Investment Planner gives families the tools and information they need to become educated planners and savers. The free tool helps users "know what they will owe" over the entire course of completing their college degree, and assess before borrowing whether that amount will be manageable given their current and expected future income.

In most cases, higher education is a family commitment. Sallie Mae's *How America Pays for College* research found that three out of four families believe parents and students should share the responsibility for paying for college. In practice, six out of 10 parents contribute, either through savings or borrowing, to fund their children's educations. Our private education loans are designed to support that shared responsibility and commitment. Last year, over 90 percent of our new private education loans had a cosigner, usually a parent.

At Sallie Mae, efforts to inform students and families about their loans begin at loan application and continue until the loan is paid in full. During the application process, students and their cosigners view monthly and total payment information customized to their borrowing amount and qualifying interest rate. Applicants are presented with a choice of interest rate structure, variable or fixed, and a choice of repayment options that include in-school payments of interest, nominal payments of $25 a month or deferred payments.

Once approved, customers receive multiple disclosures with detailed loan information. These communications clearly highlight the availability of Federal loan pro-

[5] Consumer Financial Protection Bureau and Department of Education, "Private Student Loans," July 2012.

grams, quantify expected monthly payments and finance charges, encourage the applicant to shop around, and outline the right to cancel the loan after disbursement.

The education process continues after loan proceeds are disbursed. Our private education loan customers receive statements monthly that detail their loan balance and accruing interest. Customers who elected to defer payment while in school are reminded of the effect that making in-school payments would have on their total loan costs. This continuing education has been successful, and we are pleased that so many of our customers have benefited from this cost-saving practice.

Sallie Mae's private loan portfolio is strong, and our underwriting is sound. Even in these tough times, the vast majority of our customers are successfully making on-time payments. In fact, 90 percent of our loans in repayment are current. Our private loan delinquencies have steadily declined since the peak of the recession, and charge-offs have dropped from a high of 6 percent of loans in repayment to 3 percent this year.

Still, we recognize that the economic recession has posed real and significant challenges for some of our customers. Our success depends on our customers' success, and therefore, we are committed to working with customers to help them navigate difficult financial circumstances and preserve their good credit standing. To assist borrowers with past due loans, we reach out to gain an understanding of the individual circumstances they face. To customers who have exhausted traditional repayment options and are demonstrating a reduced ability to pay, we offer a mix of repayment products, counseling and collection programs that give them the best opportunity to manage their debt obligations and succeed. These options include reduced monthly payments, interest-only payments, extended repayment schedules, and temporary interest rate reductions, all scaled to a customer's individual circumstances and ability to make manageable payments. Since 2009, we have modified $1.1 billion in loans to help our customers manage their loans.

Nonetheless, in some cases, loan modifications and other efforts are insufficient and bankruptcy may be the only path. Sallie Mae supports reasonable reform to bankruptcy laws that would allow borrowers to discharge their education loans—both private and Federal—after a good faith period of attempting to repay. Any reform must recognize that education loans have unique characteristics and benefits. They are unsecured credit extended to borrowers whose assets are initially limited, but can be expected to grow over a lifetime of greater earnings power attributable to the value provided by the education obtained through these loans. Consequently, given the lifelong nature of this "collateral," Congress saw fit that neither private nor Federal loans be easily dischargeable in bankruptcy. This has been the case for Federal loans since the late 1970s. Private education loan rules, which had mixed treatment depending on the lender/guarantor, were standardized with the same protection in 2005.

Recent graduates with sizable education loans and relatively few assets, a common combination in education lending, create a moral hazard that drove the creation of these bankruptcy protections. "Many Students Avoiding Payment of Loans by Filing for Bankruptcy" was a 1976 *New York Times* headline about this unique problem. As graduates become employed, increase their earnings and assets and recognize the value of establishing good credit, this hazard diminishes. Sallie Mae supports bankruptcy reform that would require a period of good faith payments, that is prospective so as not to rewrite existing contracts, and that applies to Federal and non-Federal education loans alike.

Education loans are an important financial tool for responsible borrowers. They help provide access to a brighter future. Responsible lending standards, clear information and consistent laws are good for borrowers and lenders alike. We take this point seriously. Sallie Mae is ever mindful that our success is tied directly to the financial success of our customers, and our products and practices reflect that reality.

Our loans provide important protections for the family, including tuition insurance, and death and disability loan forgiveness. But the best protection inherent to any loan, including a private education loan, is the underwriting of the loan itself. Further, we all have a role to play in preventing over borrowing and working to assure as many students graduate as possible.

In the last 5 years, the private education loan marketplace has undergone significant change. Driven by the credit market crisis and changes at the State and Federal levels—including changes developed by Congress—today's smaller private education loan marketplace provides extensive disclosures, adherence to new rules for financial aid offices, and tightened underwriting standards that better match loans with a family's ability to repay.

As you examine the private education loan marketplace, we hope Congress will recognize the comprehensive series of legislative and marketplace changes implemented in recent years that strengthened consumer protections and witnessed product innovations that have reduced costs for borrowers.

It is a mistake to believe "private" or "non-Federal" is synonymous with "un-regulated." The private education loan marketplace is extensively regulated. The vast majority of private education loans are made through highly regulated traditional banking channels, to borrowers protected by numerous State and Federal consumer lending laws. As the Consumer Financial Protection Bureau and U.S. Department of Education noted in their report:

> Private Student Loan borrowers have significant protections under the Truth-in-Lending Act (TILA), the Equal Credit Opportunity Act (ECOA), the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), the Federal Trade Commission Act (FTCA), and the Consumer Financial Protection Act. (p. 67)

The Higher Education Opportunity Act of 2008 amended the Federal Truth-in-Lending Act to establish a series of extensive, modernized disclosures to provide private education loan borrowers clear, consistent, and easy-to-compare information about private loans. Quoting again from the report:

> The new Truth in Lending Act (TILA) disclosures for Private Student Loans are unique to that product. No other installment loan is subject to quite so much disclosure. (p. 68)

Also, the private education loan marketplace operates in accordance with important common safeguards to private education loans that were developed by Congress and passed as part of the Higher Education Opportunity Act of 2008. The HEOA established borrower protections such as a guaranteed 30-day window to accept the loan without term changes and the right to cancel loans after approval; it limited certain practices, such as school co-branding; it regulated campus lender lists; and it required borrowers to self-certify their costs of education and to confirm they are aware of the availability of Federal loans before completing their private education loan applications.

As a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act, rulemaking authority under many of these laws and regulations has been transferred to the Consumer Financial Protection Bureau. We have been working with the CFPB, including participating in their recent study, to ensure that consumers have access to responsible education loan products that not only help provide access to higher education, but also are designed to help produce success.

At Sallie Mae, our disclosures provide borrowers clear, consistent, and easy-to-compare information about private education loans.[6] These disclosures inform borrowers of the potential life-of-loan costs and provide multiple reminders to explore the availability of lower-cost options, including Federal loans. In the most recent findings of our *How America Pays for College* study, we found how effective these reminders are:

- Of private education loan borrowers, 98 percent filled out the Free Application for Federal Student Aid form, or FAFSA, which is the first step toward taking out a Federal loan.
- Last year, 25 percent of students borrowed Federal loans only, 9 percent used a mix of Federal and private loans, and 1 percent tapped private loans only.

We believe that these significant results are directly related to the increased disclosures provided to consumers. In addition, Sallie Mae has pioneered new products and procedures designed to further help families make more informed, affordable choices.

Today, most private education loans are certified by the school. Sallie Mae advocates school certification as an important safeguard against over-borrowing; we will not disburse a private education loan until the school financial aid office certifies the need for and the amount of a loan. This is not because we are required to—we are not—but because it is an important check against over-borrowing.

Until 3 years ago, nearly all borrowers deferred loan payments while in school. In 2009, Sallie Mae became the first national lender to encourage payments while in school. In addition, we designed shorter repayment periods based on loan amounts, which, combined with in-school payments, dramatically reduce finance charges.

We encourage payments before graduation because it saves thousands of dollars over the life of the loan, and we reward customers who elect an in-school payment

[6] Examples of these disclosures are available at *www.SallieMae.com/primer.*

option with lower interest rates. Our in-school customers who opt for either the interest payment plan or the fixed $25 per month plan can save an estimated 30 to 50 percent in total interest costs.

In academic year 2011–12, when offered the choice of three repayment options, including no payments while in-school, 63 percent of Sallie Mae in-school customer families choose to lower their costs of borrowing by making payments. This compares to just 5 percent of customers who made in-school payments before we introduced the practice of encouraging them.

One area where we are anxious to see some change is in the area of working with defaulted borrowers. For those who have defaulted on their Federal loans, the Federal rehabilitation program provides a powerful incentive to borrowers to return to regular repayment and rebuild their credit. Under this program, if a customer makes a specified number of timely payments, his loan is "rehabilitated" and, by law, the default must be removed from his credit history. The statute requires the lender to report this change to the credit history. For all other consumer credit, however, the Fair Credit Reporting Act does not allow such a "second chance." There is no provision for lenders to rehabilitate defaulted private loans and then request the removal of a default that did, in fact, occur. For some time, we have identified the need for a similar rehabilitation solution. We believe it is appropriate for Congress to consider legislative changes that could provide this option to private education loan borrowers.

Conclusion

Higher education is an American priority, and how to pay for college is a family decision. Families will maximize the return on their investment when students graduate; thus, they should approach paying for college as they would any other serious investment: by understanding the full cost and the expected return.

Sallie Mae has long recommended that students and their families finance higher education from savings, scholarships, grants, Federal student loans, and, if necessary, a responsible private education loan.

Private education loans are a small but critical component of how families pay for college. Used by just 10 percent of families, private education loans help families cover the gap between other financial aid and their chosen school's cost of attendance.

Legislative changes and market forces have combined to make private education lending better understood by families, better underwritten, and more targeted to provide the needed financing that can be the difference between achieving an academic goal and failing to do so.

Sallie Mae is proud to have helped more than 31 million Americans achieve their dream of a higher education. We pledge to continue responsible lending practices and to work with policymakers where there are opportunities to make further improvements.

Thank you. I would be pleased to answer any questions you may have.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR REED FROM ROHIT CHOPRA

Q.1. Are we seeing some signs of renewed growth in volume for private student loans? What steps should we take now to prevent a return to the lax underwriting and predatory lending that we saw between 2001 and 2008?

A.1. Since 2008, origination of private student loans has grown, but has not reached the level seen prior to the financial crisis. In the Report on Private Student Loans submitted by the Director of the Consumer Financial Protection Bureau (CFPB) and the Secretary of Education, CFPB Director Richard Cordray and Education Secretary Arne Duncan each recommended that Congress consider requiring all private student loans to be "certified" by the school's financial aid office. This step could help students to avoid overborrowing and help to ensure that schools have the opportunity to counsel students about potentially lower-cost loan options before students take out private student loans.

Q.2. Are you seeing patterns of complaints from borrowers? What are some of the more frequent complaints? How have they been resolved?

A.2. Since launching our consumer response function for student loan complaints in March of this year, we've received over 2,500 complaints from borrowers experiencing difficulties with their private student loans. Prior to the establishment of the CFPB and the ombudsman function for private student loans, there was no single point of contact for consumers to file complaints about private student loans.

The most notable subset of these complaints involves borrowers seeking loan modifications due to difficulty securing adequate employment. A significant number of borrowers are experiencing general servicing problems, ranging from billing disputes and lost paperwork to difficulties obtaining alternative payment plans advertised by lenders and servicers.

We are pleased that many of these complaints have been favorably resolved by lenders and servicers. Borrowers have been able to enroll in new payment plans and have received refunds for errors by lenders and servicers. Pursuant to Section 1035 of the Dodd-Frank Act, we will provide a report to Congress later this year providing further details on the student loan complaints we have received.

Q.3. In the private student loan report that the CFPB and the Department of Education submitted to Congress last week, it was noted that in the wake of the student loan boom and bust there is more than $8 billion in defaulted private student loans. What steps can lenders take to assist borrowers who are in default on their private student loans? Are there examples of lenders that have made significant efforts in this regard?

A.3. Unlike many other consumer financial products, such as auto loans and mortgages, student loans are not secured by collateral and very difficult to restructure in bankruptcy. These attributes might reduce the incentive of lenders to employ typical loss mitigation interventions. It is also very difficult to restructure private student loans in bankruptcy proceedings, further diminishing lenders' incentives to offer loan modifications.

To our knowledge, there have not been examples of successful large-scale efforts by lenders to modify private student loans in default. Generally speaking, defaulted loans are charged off and lenders often take legal action or utilize third-party debt collectors to make recoveries.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR REED FROM DEANNE LOONIN

Q.1. How much responsibility do institutions of higher education bear in the private student loan boom and bust described in the CFPB report? What should their responsibilities be going forward?

A.1. There are many ways in which institutions of higher education bear some responsibility for the boom and bust cycle and the resulting harm to student borrowers. The clearest example is the cost of higher education. There are many reasons why costs have skyrocketed and schools are not fully to blame, but they do share some of the blame and responsibility to help curb costs and therefore reduce student borrowing.

In addition, particularly prior to the credit crisis, many schools engaged in practices that created conflicts of interest, including promoting certain lenders, marketing lender products at schools, and referring students to particular lenders. Schools bear the responsibility of ensuring that they are acting in the best interests of students, not lenders.

Some schools bear direct responsibility for the boom and bust cycle due to irresponsible institutional lending practices. These practices are documented in detail in the CFPB report and in NCLC's January 2011 report, "Piling It On."

Going forward, schools can help prevent harm to students by establishing effective counseling and loan certification programs. They can also provide transparent information about financial aid packages, clearly delineating grants vs. loans and Federal loans vs. private loans.

Schools should work only with lenders that include FTC Holder notices in their loan agreements. In addition, schools that refer students to particular lenders should provide as much information as possible to students about these products. Schools should investigate lender practices and take steps to work only with lenders that meet minimum standards and do not engage in deceptive and abusive practices.

Q.2. The CFPB and the Department of Education recently made recommendations regarding improvements to private student loans to Congress. What are your thoughts on these recommendations? What additional recommendations to Congress would you suggest?

A.2. We support the recommendations in the July 2012 CFPB report. However, we believe even stronger action is needed. Our additional points below focus on recommendations to Congress:

a. Bankruptcy reform. The CFPB and Department of Education recommend investigating whether changes are needed to the treatment of privateloans in bankruptcy. Although further investigation may be helpful, we believe that Congress has sufficient information to restore bankruptcy rights to these borrowers. There was no valid reason to eliminate these rights for private student loan borrowers in 2005. Congress should act quickly and restore bankruptcy rights for struggling borrowers.

b. Non-bankruptcy relief for private student loan borrowers. The report notes that private student loans do not offer any of the debt management or mitigation options enjoyed by Federal loan borrowers. We agree with the conclusion that Congress should work with the CFPB and Department of Education to investigate this issue further. However, this is not enough. We recommend additional action, including:

- Investigating any regulatory barriers to private student loan relief and working with regulators to amend guidance as necessary to ensure that private lenders have flexibility to offer meaningful relief to distressed student loan borrowers.
- Require that private lenders offer a standardized set of loss mitigation relief prior to acceleration of debts.
- Create a mandatory, standard loan modification program for distressed borrowers.
- Require private student lenders to offer death and disability discharges and investigate the current discretionary death and disability private loan discharge programs to determine whether lenders are offering accurate information about these options.

c. Ban mandatory arbitration clauses in private student loan agreements.

We also urge Congress and the Federal agencies to investigate servicing practices in the private student loan industry. Ultimately, we recommend creation of national servicing standards that will establish minimum protections that must be offered to borrowers. This may also require amendments to ensure that the Fair Credit Billing Act applies to private student loans.

Thank you for holding this hearing and soliciting additional input.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR REED FROM JACK REMONDI

Q.1. In the Consumer Financial Protection Bureau's report to Congress, it was noted that there was approximately $8 billion in default from 850,000 distinct private student loans that were made prior to the credit crisis in 2008. What percentage of these loans are Sallie Mae loans?

A.1. Sallie Mae and eight other lenders provided a dataset comprised of loans originated between 2005 and 2011. As CFPB stated in their report, this information was provided under a non-disclosure agreement and is protected under various Federal laws as proprietary and confidential business information (see footnote 3 on page 109 of CFPB's Report on Private Education Loans).

Sallie Mae does provide a significant amount of public data and information on the performance of its private education loan portfolio, every quarter, through its investor releases and its submissions to the Securities and Exchange Commission. In terms of defaults, Sallie Mae reports the amount of loans that have been charged off, meaning the amount that has failed to make a payment for 212 days. With the credit crisis and the onset of the recession, Sallie Mae experienced an increase in private education loan defaults, *i.e.,* charge-offs. Annual charge-offs peaked in 2009 at $1.3 billion and have since declined steadily since. For the first half of 2012, private education loan charge-offs were $459 million.

Q.2. In your testimony, you state that since 2009 Sallie Mae has modified $1.1 billion in loans to help your customers. Please provide a breakdown of the types of modifications offered, broken down by the number of borrowers, the dollar value of the modification provided, and the percentage of modified loans that are currently in good standing.

A.2. During 2009, we instituted an interest rate reduction program to assist customers in repaying their private education loans through reduced payments, while continuing to reduce their outstanding principal balance. This program is offered in situations where the potential for principal recovery, through a modification of the monthly payment amount, is better than other alternatives available. Along with demonstrating the ability and willingness to pay, the customer must make three consecutive monthly payments at the reduced rate to qualify for the program. Once the customer has made the initial three payments, the loans status is returned to current and the interest rate is reduced for the successive 12-month period.

Since the inception of the rate reduction program, we have cured over 32,000 unique borrowers for $1.3 billion in outstanding loans. All of the borrowers in the program have their interest rates reduced to a level where they can manage to keep up with timely monthly payments. Roughly 50 percent of the customers in the rate reduction program have their interest rate lowered to 1 percent interest rate during the program period. Currently we are experiencing a 78 percent success rate, as defined by borrowers remaining current and completing their 12-month program.

Q.3. When is a Sallie Mae private loan determined to be in default? Please describe any programs or procedures that Sallie Mae has in place to prevent borrowers from defaulting on their loans.

A.3. At Sallie Mae, we charge off the estimated loss of a defaulted loan balance, at the end of each month, for loans that are 212 days past due. Other lender's policies may vary, since each lender makes this determination as a result of guidance from their respective

Federal banking regulator. In the Federal programs, a borrower is considered in default if they have not made a payment in over 271 days.

It is important to recognize that the vast majority of our private loan customers manage their payments successfully. In our most recent quarter, our annualized private loan charge-off rate was 3.1 percent, down from 5.4 percent in 2009, a remarkable decline particularly in light of the current raised levels of unemployment.

The first step in preventing defaults is the loan underwriting process, which assesses a borrower's ability and willingness to repay the loan. In most instances, our private education loans are made to the family where a parent and student borrower share the responsibility of evaluating loan choices and in making decisions about loan amounts required to supplement other resources and fill the financing gap.

One vital component of reducing defaults is early education for borrowers on the value and costs associated with higher education. That is why we provide tools, such as our Education Investment Planner, to make sure that students and families can plan for the full cost of attaining a degree.

We find that customers who make in-school payments have lower delinquency rates when commencing full payment because they have already developed good payment habits and have kept the amount due lower. That is why we design our loan products to encourage in school payments, providing financial incentives to make payments in school to keep borrowing costs low. We go beyond the mandatory Truth-in-Lending disclosures, to show our customers the choices that they have in products and the long-term costs/savings of those choices. We provide monthly statements to all private education loan customers in school. Even for the one-third of our customers who chose to defer payments while in school, we provide them monthly statements and encourage them to make any payments to defray the long-term costs of their loans.

We also encourage customers to enroll to make payments via auto debit, which results in significantly lower rates of delinquency. To incent them to enroll in this program, we typically offer a 0.25 percentage point interest rate reduction.

Loan repayment and default prevention programs should be part of a thoughtful strategy that (1) reduces the likelihood of default over the life of the loan and related impacts to a consumer's credit, (2) makes the payment amount manageable given income and necessary expenses, and (3) manages and reduces the overall and lifetime cost of borrowing. Sallie Mae's position is that repayment plans and strategies that ignore any of these components are likely to yield unintended consequences in the long term.

Some of the repayment plans that Sallie Mae offers to distressed borrowers include: tiered monthly payment options, interest-only payment periods, extensions of loan terms, and forbearances. In additional to the traditional programs, Sallie Mae developed the rate reduction program described in the previous response. Critical to the success of any of these tools is the process that we undertake with the customer to make sure that the program will work. We work with the customer to assess their overall financial situation. With the customer, we assess their current private loan obligations, Federal student loan payments, other consumer debts, income, and discretionary and essential spending in order to put together a comprehensive view of their personal budgets. We use this view to help identify repayment options to best meet their individual situations and ability to pay. However, in all cases, we make clear to the borrower that alternative payment schedules will increase the overall cost of the loan.

We have modified loans for tens of thousands of borrowers, and continue to make these modifications based on the borrowers' personal situations. The great majority of these consumers have successfully kept their loans from returning to delinquency or defaulting.

Q.4. For loans made between 2004 and 2008, what percentage are in default? What is the dollar value of these defaulted loans?

A.4. Response: As part of our public disclosures, we provide detailed default information. The vast majority of defaults occur within 3 years of entering repayment. As a result, the vast majority of our charge-offs since 2008 have been associated with our older loans. Our charge-offs are reported in our quarterly investor disclosures that we file with the Security and Exchange Commission, which we discuss in our response to the first question. As part of our public investor information, we do provide default information on certain private education loans, which are eligible for securitization trusts, by year of entering repayment and year of default. A sample table showing this information is included below. The most recent public release was in our Q2 2012 Investor Presentation, which can be found at *https://www1.salliemae.com/about/investors/webcasts/*

Undergraduate/Graduate[1]

Repayment Year	Disbursed Principal Entering Repayment ($m)	Periodic Defaults by Years in Repayment[2],[3] 0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total
1998	$11	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.5%	0.8%	0.4%	0.2%	1.5%	0.7%	0.4%	0.3%	0.0%	5.0%
1999	$28	0.0%	0.0%	0.0%	0.1%	0.9%	0.6%	1.4%	0.4%	0.3%	1.0%	0.5%	0.3%	0.8%	0.3%	0.0%	6.5%
2000	$70	0.0%	0.0%	0.0%	0.6%	1.1%	1.3%	0.6%	0.9%	1.5%	1.5%	1.0%	0.8%	0.3%	0.0%		9.7%
2001	$187	0.0%	0.0%	0.1%	1.1%	1.4%	0.9%	1.8%	1.3%	2.3%	1.9%	1.5%	0.5%	0.0%			12.7%
2002	$386	0.0%	0.2%	0.2%	1.2%	1.1%	1.9%	1.6%	2.3%	1.9%	1.3%	0.7%	0.0%				12.4%
2003	$683	0.0%	0.2%	0.6%	1.0%	1.9%	1.6%	2.7%	2.4%	1.8%	0.9%	0.1%					13.0%
2004	$1,132	0.0%	0.2%	0.3%	1.9%	1.8%	3.0%	2.8%	1.8%	0.9%	0.1%						12.9%
2005	$1,538	0.0%	0.0%	0.5%	2.5%	3.7%	3.3%	2.1%	1.2%	0.1%							13.4%
2006	$2,014	0.0%	0.1%	1.6%	3.7%	3.7%	2.4%	1.2%	0.1%								12.9%
2007	$2,453	0.0%	0.4%	3.5%	4.6%	2.9%	1.5%	0.1%									13.1%
2008	$2,936	0.0%	2.4%	4.2%	3.9%	1.8%	0.1%										12.4%
2009	$3,271	0.0%	3.4%	3.6%	2.5%	0.1%											9.7%
2010	$2,814	0.0%	3.5%	2.6%	0.2%												6.3%
2011	$1,891	0.0%	1.9%	0.2%													2.1%

Note: Data as of 6/30/12.
(1) Undergraduate/Graduate loans marketed under the Signature Student Loan brand.
(2) Periodic Defaults for the most recent two calendar Years in Repayment are for a partial year.
(3) Numerator is the amount of principal in each cohort that defaulted in each Year in Repayment. Denominator is the amount of disbursed principal for that Repayment Year.

Q.5. For loans made after 2008, what percentage are in default? What is the dollar value of these defaulted loans?

A.5. See previous answer.

Q.6. How has Sallie Mae's private student loan underwriting changed since 2008?

A.6. In 2008, we tightened our underwriting requirements and applications with coborrowers increased. Our proprietary underwriting model uses multiple factors to assess ability, stability, and willingness to repay. To determine the ability to repay we look at such factors as a family's debt-to-income ratio and cash-flow available to manage outstanding debt. We assess the willingness to pay by looking at credit scores and prior payment history. Today, our loan originations have high levels of cosigners (currently about 90 percent for undergraduate loans). Our private education loans are designed to support that shared responsibility and family commitment. In fact, in the majority of cases, a creditworthy cosigner helps applicants receive a lower interest rate offer than they would otherwise and serves as a vital influence on the student's borrowing experience.

Since 2008, both the average FICO on new private education loans and the percentage of loans that are cosigned have steadily increased, as shown below:

- 2007: average winning FICO of 709 and 55 percent were cosigned.
- 2008: average winning FICO of 726 and 65 percent were cosigned.
- 2009: average winning FICO of 745 and 83 percent were cosigned
- 2010: average winning FICO of 739 and 89 percent were cosigned.
- 2011: average winning FICO of 748 and 91 percent were cosigned.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Hearing on Private Student Loans: Providing Flexibility and Opportunity to Borrowers

Statement for the Record of the Education Finance Council

Committee on Banking, Housing and Urban Affairs
Subcommittee on Financial Institutions and Consumer Protection
July 24, 2012

The Education Finance Council (EFC) is the trade association representing nonprofit and state agency student lenders. For decades, these entities have provided access to higher education for hundreds of thousands of students through low interest rate alternative student loans. These loan products give students and parents an affordable option to finance the rising cost of higher education.

EFC's submission to the Committee focuses on the Private Student Loan Report (Report) released by the Consumer Financial Protection Bureau (CFPB) on July 20th.[1] Because the Report was developed from data and public comments from an array of stakeholders, it serves as a good proxy for many of the policy debates surrounding non-federal student loans.

The Report reinforces the fact that nonprofit and state agency alternative loan programs are consumer friendly. The Report points to "consumer education, not using risk-based pricing, using fixed rates in most cases, providing more repayment options, requiring all loans to be school certified, and having a general mission to benefit the public" as key elements that distinguish nonprofit and state agency alternative loan programs from other private student loans.[2] By acknowledging the characteristics of these alternative loan programs, the CFBP properly determined that not all non-federal loans are the same and not all non-federal loans are bad.

Unfortunately, the CFPB's assertion in the Report, which is echoed by many advocates, that federally originated loans are *per* se less risky than private loans, is misleading[3]. Federally originated loans have no protections against over-borrowing. Because student loans, particularly PLUS loans, originated by the federal government generate a large amount of budgetary revenue, there is no incentive to reduce the borrowing amounts of students and parents. In fact, there have never been any effective federal programs proposed or implemented, apart from the Pell Grant program, that have been focused on meaningfully reducing the amount of money students should borrower for college. The argument that federally originated loans offer more robust protections than non-federal loans is specious. Advocates point to the availability of the recently expanded Income Based Repayment (IBR) option as one of the chief benefits federally originated loans have over private loans. It is a fact that IBR and the related Income Contingency Repayment and predecessor Income Sensitive Repayment plans were designed to assist borrowers who had lower paying jobs. Unfortunately, these programs have been contorted in to a cure-all for the sagging economy and lackluster job prospects. Pushing borrowers to attenuate payments over 25 years while at the same time demanding they maintain a low income threshold is a hard bargain and does little to truly ease student debt. Clearly, the sound public policy option is to encourage borrowers to borrow less from the onset of the decision-making process of financing higher education.

The Report also recommends that Congress examine the existing treatment of student loans in bankruptcy.[4] Changing the status quo treatment of private student loans in bankruptcy, doesn't address

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[1] The Report was mandated under section 1077 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (H.R. 4173, P.L. 111-203).

[2] Report at pp. 30-31.

[3] See, Report at pp. 13-16 asserting that Stafford Loans are a "better choice for most consumers."

[4] Report at p. 87

the twin causes of excessive non-federal student debt: borrowing more than what is needed and skyrocketing tuitions. How the bankruptcy code treats a student loan should never drive decisions on how to finance higher education. As stated above, the key to managing student debt, including non-federal loans, is effective understanding of how much to borrow; not eliminating responsibilities at the end of the process. For decades, nonprofit and state agency student lenders have operated programs with the goal of preventing over-borrowing. These programs, many of which are online portals that must be completed before a borrower completes the application process, give students and parents real-time information about how much is needed to borrow to meet the stated higher education objective and how the decision of the amount borrowed will affect their lifestyle after graduation. While the Report does not settle the debate on whether or not changing the treatment of student loans will lead to an uptick in bankruptcy petitions, easing the ability to eliminate student loan debt will incentivize irresponsible financial behavior.

Outside the scope of the Report, the second cause of the explosion in student debt is the exponential rise in higher education costs. According to the College Board, tuitions rates at are increasing at anywhere from 3.2 percent at for-profit schools to 8.3 percent at public four-year institutions. While the causes for these increases range from cuts to state aid to rising capital costs, they do not include the inability to discharge private student loans in bankruptcy except under a showing of undue hardship. Congress would serve the interests of students better by working collaboratively with the private sector to deal with increases to college costs rather than taking a piecemeal approach to bankruptcy reform.

In addition to bankruptcy dischargeability, the Report contains several recommendations, many with which we agree. It is imperative that if Congress chooses to act on any these recommendations, that the Banking and Financial Services committees exercise jurisdiction. Supporting this is the fact that Dodd-Frank Wall Street Reform and Consumer Protection Act did not receive a sequential referral to the House Education and Labor Committee. Further, the definition of "private education loan" [5] used in the Dodd-Frank Wall Street Reform and Consumer Protection Act as well as in the Report is based on a law over which this committee had primary jurisdiction. More importantly than the procedural rationales is the fact that too often when a discussion of private loans ensues within other committees focused on matters of higher education and the judiciary, there is a confusing combination of two important postsecondary education issues: what is the most appropriate and accessible pathway and what is the best way to finance the decision with non- federal funds. Keeping the debate over non-federal student loans grounded in the committee with expertise on the financial markets will provide a sound, reasonable analysis of the CFPB recommendations.

EFC and its members are prepared to provide additional in-depth analysis to the Committee on the positive and negative implications of the implementation of each of the CFPB's and Department of Education's recommendations proposed in the Report.

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[5] See, conference report on HR 4175, Section 1036, definition of Private Loan Ombudsman: "for purposes of this section, the terms `private education loan' and `institution of higher education' have the same meanings as in section 140 of the Truth in Lending Act (15 U.S.C. 1650)"

CBA | CONSUMER BANKERS ASSOCIATION

The Voice of the Retail Banking Industry

Statement of the Consumers Bankers Association

U.S. Senate Committee on Banking, Housing & Urban Affairs
Subcommittee on Financial Institutions & Consumer Protection

July 24, 2012

The Consumer Bankers Association (CBA) appreciates the opportunity to submit this statement for the record for the Senate Banking Subcommittee on Financial Institutions & Consumer Protection hearing on private student loans.

CBA is the trade association for today's leaders in retail banking – banking services geared towards consumers and small business. Founded in 1919, CBA provides leadership, education and federal representation on retail banking issues on behalf of its member companies. CBA's Education Funding Committee is comprised of most of the major private student lenders and is the public policy voice for the industry in Washington.

CBA and its member institutions recognize the value of higher education. A 2009 report by the U.S. Bureau of Labor Statistics (BLS)[1] highlights lower unemployment and those with bachelor's degrees have "higher earnings." It points out "this amount is 1.8 times the average amount earned by those with only a high school diploma."[2] In good times and in bad times, a college degree will provide a better opportunity at landing a job with higher earnings than those without a college degree.

While 93% of today's loans are originated by the federal government, families and students are covering the cost of higher education through grants, financial aid, scholarships, college savings plans or income. When many of these options do not cover the cost of attendance, private lenders play a critical role in bridging that gap. In fact, the recent CFPB/Department of Education report, "Private Student Loans" (Joint Report) called these products "useful tools in the education finance toolkit"[3] and members of the CBA Education Funding Committee are important leaders in the private sector effort to help students and families meet their education financing needs.

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[1] http://www.bls.gov/spotlight/2010/college/pdf/college.pdf (pg. 3) See chart in appendix

[2] http://www.bls.gov/spotlight/2010/college/pdf/college.pdf (pg. 4) See chart in appendix

[3] "Private Student Loans" report by the CFPB and the Department of Education (page 11) http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf

Today's Student Loan Market

In recent months, much attention has been paid to the student loan market, rising debt and the skyrocketing costs of college. It is apparent that private student loans are often misunderstood and misrepresented. Much of this confusion is based on the private student loan market from five years ago, which has changed dramatically into the current system.

Since 2008, we have seen significant efforts on the part of the private sector to improve underwriting, tighten school certification, and implement new Truth-in-Lending disclosures for private student loans. In fact, nearly all undergraduate and graduate loans are school certified. All of these changes have helped consumers. The Joint Report states that "borrowers have significant protections under the Truth-in-Lending Act (TILA), the Equal Credit Opportunity Act (ECOA), the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), the Federal Trade Commission Act (FTCA), and the Consumer Financial Protection Act."[4]

Most importantly, private loans, unlike federal loans, contain the most critical consumer protection; an evaluation of a borrower's ability to repay. While the federal loans targeted principally at undergraduates, Stafford Loans, do have some annual and cumulative limits, there are also federal loans for parents and graduate students, PLUS Loans, which are made up to the full cost of college with a minimal review of a borrower's credit history and no assessment of their ability to repay.

As the CFPB's Raj Date often puts it, "People who are going to lend money should care about getting paid back. And if you care about getting paid back, you should inquire about, and evaluate, a borrower's ability to pay you back. This should not be controversial."[5]

Today, most, if not all of the top private lenders offer fixed rate products that are competitively priced and broadly available. Variable-rate products are at historic lows and are a great option for those consumers who understand their product features. Innovation and more competition in the marketplace have directly benefited consumers seeking private loans tailored to their needs. In fact, the CFPB acknowledged that lenders are now offering products, which, in some cases, are "an appropriate substitute for an unsubsidized Stafford loan."[6]

Another critical fact about today's marketplace is the role of the federal government, which is originating approximately 93% of all loans with private lenders responsible for the other 7%. It is also important to remember that private student loans are generally designed to fill the remaining gap between the full cost of attendance and any family contributions, scholarships, government benefits, and lower cost loans the student may receive.

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[4] "Private Student Loans" report by the CFPB and the Department of Education (page 67) http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf

[5] Testimony of CFPB Deputy Director Raj Date, July 19, 2012. http://financialservices.house.gov/UploadedFiles/HHRG-112-BA15-WState-RDate-20120719.pdf

[6] "Private Student Loans" report by the CFPB and the Department of Education (page 16) http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf

CFPB & Department of Education Report

In general, CBA views the Joint Report with mixed results and will highlight a few key points on both sides. We were pleased to see it acknowledge a number of key reforms to the private student loan market since 2008. This includes the use of federally mandated disclosures which are required of private loans but not federal loans. The Joint Report also highlights that 90 percent of all private loans are made after school certification.

CBA agrees some borrowers are likely best served with Stafford loans and welcome the CFPB acknowledgement that some borrowers may be better served by private loan products. CBA strongly believes it is important for consumers to have the necessary information to effectively shop and compare loan products. For example, private loans can beat PLUS loan products for some students. PLUS Loans have a 7.9% fixed interest rate with a 4% origination fee. Most of today's private loans do not have origination fees and there are a number of lenders offering fixed-rate products with lower rates for well-qualified borrowers.

One major shortcoming of the Joint Report was the inadequate consideration of the federal student loans and the role that the cost of college plays in creating debt problems for students and their families. Federal student loans account for more than 85% of all existing debt. In addition, federal student loans are approximately 93% of today's market. While the Department of Education and the CFPB were required to by the Dodd-Frank Act to examine private student loans, the agencies were not prevented from examining the entire student loan market. In our view, any study leaving out 93% of the market cannot provide consumers or policymakers with an accurate picture to make important decisions.

CBA also believes the Joint Report should have taken a deeper look at the rising costs of college. Paying for college can be one of the most difficult decisions families will make. What has made this even more challenging is the rising cost of attendance. From 1986 to 2011, college tuition has increased by 498% while inflation only rose 115%. Our student debt issues will only get worse if we do not look at the root cause of this debt. President Obama acknowledged higher tuition costs as the root cause in his State of the Union Address and urged policymakers to act on the skyrocketing costs of college. CBA agrees increasing costs are the principal driver of the student debt issue and believes the Joint Report should have taken a deeper look at this aspect of the problem.

Instead of looking at the foundation of the student debt issue, the Joint Report recommends for Congress to revisit and determine whether changes are needed to the bankruptcy code - and only the treatment of private student loans. The main reason given is private loans offer "less flexibility compared to federal loans."[7] At the same time, the Joint Report discusses that this lack of flexibility is due in major part to regulatory constraints imposed by prudential regulators.

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[7] "Private Student Loans" report by the CFPB and the Department of Education (page 87) http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf

The CFPB should look for ways to give private lenders the tools necessary to provide additional flexibility which could help borrowers in certain circumstances. The CFPB should first focus on helping struggling consumers find a workable solution short of bankruptcy, since bankruptcy makes it more difficult and expensive to obtain credit in the future, and has other long-lasting negative consequences.

Conclusion

There is no question that higher education opens the doors for future employment and higher earning potential. We have also seen the cost of college skyrocket in recent years, making the decision of where to attend, what major to pursue and how to pay for the cost of attending that much more important.

CBA long supports efforts to help families and students through this important process. We have witnessed a major shift in the private market in recent years through Congressional action and market forces. This newly crafted and dynamic market has led to more competitive products and a valuable option for those who are unable to cover their costs through grants, scholarships, and low-cost loans.

We urge policymakers to focus their efforts on ways to make college more affordable and accessible for all. In particular, this country must address the heightened and rapidly rising cost of college. This is the only way to address the debt levels that have now contributed to a trillion dollar loan market.

Finally, CBA looks forward to continuing to work with Congress, students and all stakeholders on these important issues.