



Office of the Commissioner

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Written Testimony of
FTC Commissioner Rohit Chopra***

**Before the U.S. House of Representatives
Committee on Financial Services**

**“Examining Legislation to Protect Consumers and Small Business Owners from Abusive
Debt Collection Practices”**

September 26, 2019

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee, thank you for holding this hearing on abusive debt collection, especially as it relates to the millions of Americans battling their student loan debt.

Since the eruption of the financial crisis and its decimation of the U.S. economy a decade ago, unemployment has come down and the stock market has soared. But the headlines obscure the serious cracks in our economy. Stagnant wages and rising costs mean that many Americans are walking on an economic tightrope, where even a tiny jolt can send them into freefall. According to multiple estimates, there are more than 70 million Americans with past-due bills in collections.

Too often, our system treats these individuals as if they are morally bankrupt or free riding. The reality is much different. Many are battling medical bills that they may not even owe due to a bureaucratic stalemate between their insurance company and their hospital. Others fell behind on utility bills or other household expenses after losing a shift at work. Many small businesses looking to weather a slow season were ensnared by lending schemes that ended up destroying them. And many simply finished school at the wrong time, entering the workforce with a job that barely puts them on a path to paying off their student debt.

Prior to serving as a Federal Trade Commissioner, I was proud to be appointed by the Secretary of the Treasury as the Consumer Financial Protection Bureau’s first Student Loan Ombudsman, where I led the agency’s work on behalf of student loan borrowers. During my time at the CFPB, we published widely cited reports detailing the devastating impact of student loan debt and pursued an aggressive enforcement agenda against lawbreaking companies in the student loan industry.

* This testimony reflects my own views and not necessarily those of the Commission or any other individual Commissioner.

For example, in 2012, my colleague Holly Petraeus, then the head of the CFPB's Office of Servicemember Affairs, and I published a report about unfair treatment of military families by student loan companies.¹ Under federal law, active-duty members of the military receive certain protections when companies collect on student debt. The report spurred an investigation into Navient, formerly known as Sallie Mae, and the Justice Department obtained \$60 million from Navient for violating the Servicemembers Civil Relief Act in a nationwide military family scam. The Justice Department's complaint described Navient's unlawful servicing and collection practices as "intentional, willful, and taken in disregard for the rights of servicemembers."² The CFPB also sued Corinthian Colleges and ITT Educational Services, two publicly traded for-profit colleges that coerced students into high-rate private loans. Corinthian engaged in illegal debt collection conduct when it strong-armed struggling borrowers to squeeze more money out of them. The CFPB was able to obtain hundreds of millions of dollars in debt cancellation for the victims, and Corinthian and ITT are no longer in business.

I later served as a special adviser to the Secretary of Education, where I saw firsthand how much influence and power that Wall Street and government contractors like Navient have over our student loan system. The Department of Education had wide latitude to revoke subsidies and contracts after findings of legal violations, but the Department's student loan arm went to great lengths to protect the status quo.

The Department of Education's student loan arm is one of the largest financial institutions in the world, managing \$1.5 trillion in debt. There are roughly nine million Americans in default on a federal student loan, with many more in serious delinquency. And the federal government makes sure they know it. The government hires a squadron of financial institutions to aggressively pursue borrowers by slamming their credit, levying hefty fees, and even humiliating them with their employer through wage garnishments. Student loan companies should be helping borrowers get back on their feet by advising them on all of their options for managing their student debt. But, all too often, these companies steer borrowers in a direction that most benefits their bottom line. For example, in 2015, the CFPB found that companies collecting on defaulted federal student loans misrepresented key aspects of the student loan rehabilitation program and overstated how the program would improve a borrower's credit report.³

And here's the irony: when student loan borrowers make mistakes, they pay dearly for them. They may not be able to pass an employment verification check or even rent an apartment. But, when student loan companies make mistakes and violate the law, the Department of Education

¹ CONSUMER FIN. PROTECTION BUREAU, THE NEXT FRONT? STUDENT LOAN SERVICING AND THE COST TO OUR MEN AND WOMEN IN UNIFORM (2012), https://files.consumerfinance.gov/f/201210_cfpb_servicemember-student-loan-servicing.pdf.

² Press Release, DOJ, Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014), <https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging>.

³ CONSUMER FIN. PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS (2015), https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf ("In one or more examinations of debt collectors performing collection services of defaulted student loans for the Department of Education, examiners identified collections calls, scripts and letters containing various misrepresentations to consumers").

often covers for them and continues lavishing them with valuable government contracts and subsidies. This is not a recent phenomenon – it has been going on for years under multiple administrations.

There is a growing body of research and evidence that student loan distress is weighing on the economy, including papers from the Federal Reserve System about the negative impact on the housing market.⁴ I fear there will be continued consequences if we fail to act.⁵

As the primary regulator of the student loan and debt collection industries, the CFPB must act to address these serious problems. The CFPB has proposed a rule on debt collection, and the agency must ensure that the rules clearly address the epidemic of student loan defaults. Attached is my formal comment to the rulemaking proceeding.⁶

Policymakers and regulators must also fix the misaligned incentives that fuel these problems and ensure that companies face real consequences for their violations, just as borrowers do. Across the country, states are enacting new protections for student loan borrowers when it comes to student loan servicers and debt collectors. I welcome this action and oppose efforts by the Department of Education to preempt these laws.

Twenty years ago, Congress established the Department of Education's student loan branch, the Office of Federal Student Aid, with new powers so it could operate more like a private business. It is time for Congress to reform it, so that it puts borrowers, taxpayers, and our economy ahead of its contractors' profits. Under the Debt Collection Improvement Act, the Secretary of the Treasury is responsible for collecting certain debt owed to the federal government that is past due. The Secretary of the Treasury granted the Department of Education a permanent exemption from transferring loans to the Department of the Treasury. Congress and the Secretary of the Treasury need to revisit this exemption, given the Department of Education's record.

In addition, the Department of Education must do more to cancel student debt. Under existing law, borrowers who have been cheated by institutions of higher education can seek relief. The law also provides for a broad "compromise and settlement" authority to renegotiate debts. Current law gives the Secretary of Education clear authority to act.

If we still believe that going to college and working hard can help an individual climb the economic ladder, we have to wake up to the realities of our broken student loan debt collection

⁴ See, e.g., FED. RESERVE, VOL. NO. 1, CONSUMER & COMMUNITY CONTEXT, "RURAL BRAIN DRAIN": EXAMINING MILLENNIAL MIGRATION PATTERNS AND STUDENT LOAN DEBT (2019), https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf?mod=article_inline and FED. RESERVE BANK OF N.Y., NO. 820, ECHOES OF RISING TUITION IN STUDENTS' BORROWING, EDUCATIONAL ATTAINMENT, AND HOMEOWNERSHIP IN POST-RECESSION AMERICA (2017), https://www.newyorkfed.org/research/staff_reports/sr820.

⁵ Rohit Chopra, Consumer Fin. Protection Bureau, Keynote Remarks at the Fed. Reserve Bank of St. Louis (Nov. 18, 2013), <https://www.consumerfinance.gov/about-us/newsroom/student-loan-ombudsman-rohit-chopra-before-the-federal-reserve-bank-of-st-louis/>.

⁶ Comment of Rohit Chopra, Fed. Trade Comm'n., in the Matter of Notice of Proposed Rulemaking on Debt Collection Practices (Regulation F) (to be codified at 12 C.F.R. pt. 1006), Docket No. CFPB-2019-0022 (Sept. 18, 2019), https://www.ftc.gov/system/files/documents/public_statements/1544795/chopra_-_comment_submission_on_cfpb_proposed_debt_collection_rule_9-18-19.pdf.

system and fix it. If we do not, we will kill the dreams of too many Americans seeking to own a home, start a small business, and raise a family.

Outside of student lending, I believe the Federal Trade Commission also needs to act on abusive debt collection and lending practices, especially where the CFPB cannot. There is \$1.2 trillion in outstanding auto loan debt, as millions of families finance their primary means of getting to work, school, the doctor, and more. Technology has made it easier for lenders and debt collectors to seize cars without warning, and according to some reports, without justification. This is just one of the many issues that need government attention in this large and critical market. Yet despite receiving authority in 2010 to put commonsense rules into place to combat abuses in this market, the FTC has yet to make a proposal.

Taking out a loan as a small business owner is significantly more risky than taking out that same debt as a consumer. That is because the FTC has not banned certain predatory terms in small business loans that have long been banned in consumer loans. These terms have a significant impact on debt collection. For example, small business contracts can still contain “confessions of judgement” which essentially forces the borrower to waive any rights to defend themselves in a debt collection dispute. The FTC has unique jurisdiction to attack debt collection and discrimination issues in this market, and the agency should do so.⁷

The FTC also needs to closely study the algorithms utilized by Big Tech that promote content and ads that are profitable to tech companies and bad actors that peddle scams.⁸ We will need to closely scrutinize how debt collectors are using these companies’ mass accumulation of our personal data.

Thank you for the opportunity to testify and I look forward to working with the Committee on these critical issues.

⁷ Rohit Chopra, Commissioner, Fed. Trade Comm’n., Prepared Remarks for the Forum on Small Bus. Financing (May 8, 2019), <https://www.ftc.gov/public-statements/2019/05/prepared-remarks-commissioner-rohit-chopra-forum-small-business-financing>.

⁸ Four years ago, I wrote to Google, Facebook, and other tech companies to stop allowing scammers to advertise on their platform. Many problems remain. See Danielle Douglas-Gabriel, *Government to Google: Stop fraudsters from using your search engine for student debt scams*, THE WASHINGTON POST (June 22, 2015), <https://www.washingtonpost.com/news/get-there/wp/2015/06/22/government-to-google-stop-fraudsters-from-using-your-search-engine-for-student-debt-scams/>.

**Before the
CONSUMER FINANCIAL PROTECTION BUREAU
Washington, DC 20552**

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Notice of Proposed Rulemaking on)
Debt Collection Practices (Regulation F))
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Docket No. CFPB-2019-0022

**COMMENT OF
FEDERAL TRADE COMMISSIONER
ROHIT CHOPRA ***

September 18, 2019

I write to outline concerns with the Consumer Financial Protection Bureau’s proposed debt collection rule and its impact on the 44 million student loan borrowers and their families.

When it comes to the companies that collect student loan payments, consumers have little to no market power. Loan servicers and debt collectors work on behalf of lenders and creditors, not on behalf of borrowers. Despite the wide availability of affordable repayment plans, there are more than 9 million borrowers in default on their student loans, with many more in severe delinquency.¹ Student loan default deeply affects Americans of all ages. As the industry’s primary regulator, the CFPB must ensure that any rulemaking keeps student loan borrowers in mind.

By way of background, since May 2018, I have served as a Commissioner on the Federal Trade Commission, which also enforces the Fair Debt Collection Practices Act. In 2016, I served as Special Adviser to the Secretary of Education, where I focused on consumer protection issues affecting student loan borrowers, including oversight of servicers and debt collectors. From 2010-2015, I served in several roles at the CFPB. The Secretary of the Treasury designated me as the CFPB’s Student Loan Ombudsman, pursuant to Section 1035 of the Dodd-Frank Act. While at the CFPB, I led the agency’s strategy on student financial services, and I was deeply involved

*This comment letter reflects my own views and does not necessarily reflect the views of the Commission or any other individual Commissioner. While I have narrowly limited my comment to specific issues related to student debt, I also voted to authorize Commission staff to file a separate comment raising other important consumer protection issues worthy of close attention.

¹ Over the past several years, I have published several analyses of student loan default. *See e.g.*, Rohit Chopra, *A closer look at the trillion*, CONSUMER FIN. PROTECTION BUREAU (Aug. 5, 2013), <https://www.consumerfinance.gov/about-us/blog/a-closer-look-at-the-trillion/>, and Josh Mitchell, *Student-Loan Defaults Rose by 1.1 Million in 2016*, THE WALL STREET J. (Mar. 14, 2017), <https://www.wsj.com/articles/student-loan-defaults-rose-by-1-1-million-in-2016-1489498222>. I have reproduced this analysis to generate this estimate. I encourage the Consumer Financial Protection Bureau to conduct similar analyses on a routine basis and make these results available to the public.

in the agency's supervision, enforcement, and research in the student loan servicing and debt collection industries.

Federal Student Loan Servicing and Collections. Americans owe \$1.5 trillion in federal student loans under Title IV of the Higher Education Act.² The vast majority of this debt is collected by financial institutions under contract with the U.S. Department of Education's Office of Federal Student Aid (FSA). FSA was established as a "performance-based organization," allowing it to operate more like a private sector bank. While student loan contractors must generally bid for business pursuant to federal procurement law, FSA often crafts procurement solicitations in ways that advantage politically-connected incumbents, at the expense of competition and new market entrants. Over the years, I have observed that FSA generally preferences the interests of its existing student loan contractors over the interests of student loan borrowers. For example, despite repeated violations of law³ by one of its largest contractors, Navient (formerly Sallie Mae), FSA has never taken meaningful administrative action to hold the company accountable. Given FSA's lax oversight of its contractors, this has led the CFPB, state banking supervisors, and state attorneys general to scrutinize these firms more closely. During my time at the CFPB, the agency identified serious deficiencies in the federal student loan collections industry.⁴

FSA recently announced plans to reconfigure its ecosystem of contracted servicers and debt collectors.⁵ Currently, borrowers receive bills from and make payments to a contracted servicer. If the borrower is more than 270 days delinquent, the borrower's loan is transferred to a third-party debt collector, often referred to as a private collection agency (PCA). These PCAs are typically responsible for notifying borrowers about their rights and responsibilities, including the option to "rehabilitate" their loan by making a series of affordable payments. Recent procurement notices suggest that FSA will shift to a system that will retain contractors that can conduct both pre-default servicing and post-default collections.⁶

If the CFPB plans to update debt collection rules, it must take into account how these actions by FSA will reshape student loan collections, as well as the unique features of federal student loans.

Delinquency Trigger for Consumer Protections. First, the CFPB should ensure that any new regulations arm borrowers with rights and protections after a borrower is a certain number of days past due on a Federal Direct Loan, rather than when the loan is assigned to a third-party collection firm. Given that these loans are managed by a third-party financial institution and may

² FED. STUDENT AID, *Fed. Student Loan Portfolio*, <https://studentaid.ed.gov/sa/about/data-center/student/portfolio>

³ <https://www.consumerfinance.gov/about-us/newsroom/written-testimony-of-rohit-chopra-before-the-committee-on-the-budget/> (last visited Sept. 17, 2019).

⁴ See e.g., CONSUMER FIN. PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS (2015), https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf ("In one or more examinations of debt collectors performing collection services of defaulted student loans for the Department of Education, examiners identified collections calls, scripts and letters containing various misrepresentations to consumers").

⁵ See Stephanie Eidelman, *NextGen Deadline Postponed Again, and ED Considers Selling Defaulted Loans*, INSIDEARM (May 2, 2019), <https://www.insidearm.com/news/00045002-nextgen-deadline-postponed-again-and-ed-c/>.

⁶ FED. BUS. OPPORTUNITIES, SOLIC. NO. 91003119R0008, NEXTGEN BUS. PROCESS OPERATIONS, https://www.fbo.gov/index?s=opportunity&mode=form&id=4ccf4acdbe7d196698111dc16aa94616&tab=core&_cvi_ew=1 (last visited Sept. 17, 2019).

never be reassigned to a specialty collector in FSA's new collections ecosystem, the assignment trigger may not be appropriate.

Since the delinquent loan may never be reassigned, the CFPB should assess whether protections under the regulation should be triggered when the borrower is 90 days past due. Typically, student loan servicers furnish negative credit reporting information after a borrower is more than 90 days delinquent, which can have a significant impact on the borrower's credit score. In addition, FSA contractor compensation has typically been heavily dependent on the proportion of borrowers that are fewer than 90 days past due. The CFPB should not align its definition with the Higher Education Act's definition of default, where loans are generally treated as in default after 270 days of delinquency. This definition is a vestige of a now-discontinued federal student loan program and was developed prior to the establishment of broadly available income-driven repayment programs.

Limiting Excessive Calls. Second, the CFPB should ensure that student loan borrowers are not excessively called or harassed by student loan collectors. The proposed rule sets certain frequency limits on communications with borrowers.⁷ As the notice recognizes, student loan borrowers accrue multiple loans over the course of their academic programs – they rarely have just one student loan. The proposed rule sets frequently limits based on the number of accounts, rather than the number of individual loans.⁸

Student lenders have wide discretion to place multiple loans under the same account number, or to assign different account numbers depending on the type of loan. In the collection context, this can lead to disparate treatment for similarly situated borrowers, and in particular can result in excessive calls for borrowers whose loans are spread across many account numbers. Given the ambiguity in how “account” can be defined and the potential for abuse, the CFPB should consider setting frequency limits based on the definition of “accounts” found in 12 C.F.R. §1090.106, which specifically addresses the issue of student loan servicing accounts. This regulatory provision defines an individual account as one where a financial institution is serving a specific borrower for a specific stream of fees from a creditor. If the institution is receiving separate streams of fees from multiple creditors, this could be an indicator that the accounts are truly distinct from one another. This modification can help protect student loan borrowers from excessive calls related to the same account.

Every day, there are thousands of student loan defaults in our country. This has a devastating impact on a borrower, reducing the likelihood that they can pass an employment verification check or ever purchase a home. Under multiple administrations, the Department of Education's FSA has made this problem worse by placing the interests of its contractors above the interests of student borrowers. As the student loan industry's primary regulator, the CFPB must do more to safeguard our economy and protect borrowers from abuse. Thank you for considering these comments.

⁷ While this comment does not address the specific frequency limit in the proposed rule, the CFPB's proposed limits seem excessive, as my colleague, Commissioner Rebecca Kelly Slaughter, describes in more detail in her comment letter.

⁸ *Id.* at 23, 320 – 21.