

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

June 11, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: June 11, 2019, Subcommittee on Oversight and Investigations hearing entitled, “An Examination of State Efforts to Oversee the \$1.5 Trillion Student Loan Servicing Market”

The Subcommittee on Oversight and Investigations will hold a hearing entitled, “An Examination of State Efforts to Oversee the \$1.5 Trillion Student Loan Servicing Market,” on Tuesday, June 11, 2019 at 10:00 a.m. in room 2128 of the Rayburn House Office Building. This will be a one-panel hearing with the following witnesses:

- **Joe Sanders**, Student Loan Ombudsman and Supervising Attorney, Consumer Fraud Bureau, Illinois Attorney General's Office
- **Nicholas Smyth**, Assistant Director for Consumer Financial Protection, Senior Deputy Attorney General, Pennsylvania Office of Attorney General
- **Arwen Thoman**, Director, Student Loan Assistance Unit, and Investigations Supervisor, Massachusetts Attorney General's Office
- **Joanna Darcus**, Massachusetts Legal Assistance Corporation Racial Justice Fellow, National Consumer Law Center
- **Scott Buchanan**, Executive Director, Student Loan Servicing Alliance

Overview

Americans owe over \$1.5 trillion in student loan debt, an increase of over \$100 billion since the end of 2017.¹ Students graduating from a four-year college in 2016 owed, on average, \$29,650 each in student loans.² According to recent data from the Federal Reserve Board (FRB), rising student loan debt has contributed to the overall decline in homeownership among individuals ages 24-32.³

In 2018, 20% of those in repayment for their student loans were behind on payments.⁴ Borrowers who did not complete their degree, are first-generation college students, or are Black or Hispanic are more likely to be behind.⁵ Falling behind on student loan payments creates significant financial hardship, by lowering credit scores, increasing the cost of credit, and limiting access to credit. Unlike other types of

¹ FRB, [Consumer Credit Outstanding \(Levels\)](#), May 7, 2019.

² The Institute for College Access & Success, [Quick Facts about Student Debt April 2019](#), Apr. 2019.

³ FRB, [At the Fed, Consumers and Communities Matter](#) at 5, Jan. 2019.

⁴ FRB, [Report of the Economic Well-Being of U.S. Households in 2018](#) at 43, May 2019.

⁵ *Id.* at 44.

debt, student loans are dischargeable in bankruptcy only upon a showing that repayment would impose an undue hardship on borrowers and their dependents.⁶

The Department of Education currently provides four different types of loans under the William D. Ford Federal Direct Loan Program (Direct Loans),⁷ which comprise the largest segment of the outstanding student debt.⁸ Prior to July 1, 2010, under the Federal Family Education Loan (FFEL) Program, private lenders made federal student loans to students, and guaranty agencies insured these funds, which were, in turn, reinsured by the Federal Government.⁹ Borrowers with Direct Loans struggling to make their payments are eligible to enroll in Income-Driven Repayment payment plans (IDR).¹⁰ Generally, the amount borrowers pay under IDR is a percentage of their discretionary income.¹¹ Borrowers with Direct Loans¹² working in the government or non-profit sector may also be eligible for loan forgiveness under the Public Service Loan Forgiveness Program (PSLF) after making 120 qualifying monthly payments.¹³ To be eligible for PSLF, borrowers must first be enrolled in IDR.¹⁴

Student loan servicers are the primary point of contact for borrowers repaying Direct Loans. Of critical importance, student loan servicers are responsible for engaging with borrowers experiencing difficulties making their payments, including providing information about, and managing enrollment in, alternative payment options such as IDR, PSLF, deferment, and forbearance.

Four companies have Title IV Additional Servicing (TIVAS) contracts with the Department of Education to service Direct Loans: Navient Corporation; Pennsylvania Higher Education Assistance Agency (PHEAA), d/b/a FedLoan Servicing and American Education Services (AES); Nelnet, Inc.; and Great Lakes Educational Loan Services, Inc.¹⁵ Student loan borrowers with Direct Loans do not choose their student loan servicer, rather the Department of Education assigns the loan to a servicer after disbursement.¹⁶

Findings Regarding Student Loan Servicing Failures

The Department of Education Office of Inspector General (OIG), U.S. Government Accountability Office (GAO), Consumer Financial Protection Bureau (Consumer Bureau), and consumer groups have

⁶ Federal Student Aid, Discharge in Bankruptcy, available at <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/bankruptcy> (last accessed on May 31, 2019).

⁷ Direct Subsidized loans are need-based loans to cover the cost of undergraduate or career education. Direct Unsubsidized loans are loans to cover the cost of undergraduate, graduate or professional school, and are not based on financial need. Direct PLUS loans are loans made to graduate students and parents of dependent undergraduate students to cover educational expenses not covered by other financial aid, and they require a credit check. Direct Consolidation Loans allow borrowers with multiple federal loans in one loan with a single servicer. See Federal Student Aid, Loans, available at <https://studentaid.ed.gov/sa/types/loans#types> (last accessed on May 31, 2019).

⁸ Student Borrower Protection Center, *A Year Without Action: An Analysis of Borrower Complaints*, Dec. 11, 2018.

⁹ Federal Student Aid, available at Federal Family Education Loan Program Lender and Guaranty Agency Reports, available at <https://studentaid.ed.gov/sa/about/data-center/lender-guaranty> (last accessed on May 31, 2019).

¹⁰ Federal Student Aid, Income-Driven Plans, available at <https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven> (last accessed on May 31, 2019).

¹¹ *Id.*

¹² Borrowers with FFEL or Perkins Loans do not qualify for PSLF unless consolidated into a Direct Consolidation Loan.

¹³ Federal Student Aid, Public Service Loan Forgiveness, available at <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service> (last accessed on May 31, 2019).

¹⁴ If borrowers are enrolled in a standard ten-year repayment plan, then they would have paid off their entire loan by the time they are eligible to have their loans forgiven under PSLF (after 120 payments).

¹⁵ Federal Student Aid, Loan Servicing Contracts, available at <https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing> (last accessed on May 31, 2019). On February 7, 2019, Nelnet announced that it had completed its acquisition of Great Lakes Educational Loan Services, Inc. See Nelnet Investors, *Nelnet Completes Acquisition of Great Lakes Educational Loan Services, Inc.*, Feb. 7, 2018.

¹⁶ Federal Student Aid, Loan Servicers, available at <https://studentaid.ed.gov/sa/repay-loans/understand/servicers> (last accessed on May 31, 2019).

documented widespread servicing failures with respect to Direct Loans. A 2019 OIG Report revealed that Federal Student Aid (FSA)¹⁷ monthly monitoring reports of Direct Loan servicers from January 2015 through September 2017 found that servicers were not adequately informing borrowers struggling to make payments about their available repayment options.¹⁸ According to an April 2017 Consumer Bureau report analyzing student loan complaints, “Federal student loan borrowers reported that when contacting their loan servicers regarding financial distress, servicers provided them with information on hardship forbearance or deferment, instead of potentially more beneficial repayment options like income-driven repayment plans.”¹⁹

Borrowers attempting to enroll in IDR have complained about lengthy delays and improper denials. In 2016, the Consumer Bureau issued a report highlighting concerns that servicers’ failure to timely approve IDR applications could result in significant harm to borrowers, stating, “Borrower complaints note that IDR applications may take weeks or months to process . . . Furthermore, when borrowers’ enrollment in IDR is delayed, they may be subject to otherwise avoidable harms, such as increased loan balances and loss of benefits.”²⁰

The report also found that servicers improperly rejected incomplete IDR applications rather than providing borrowers the opportunity to submit missing information, and that lengthy processing delays caused borrower information to become outdated – leading to rejection of applications.²¹ A 2016 Consumer Bureau Supervisory Highlights report detailing examinations of student loan servicers found that, “servicers were engaging in the unfair practice of denying, or failing to approve, IDR applications that should have been approved on a regular basis.”²²

Borrowers enrolled in IDR must recertify annually and many face obstacles when attempting to recertify. The Department of Education collected data from the largest federal servicers that revealed that between November 2013 and October 2014, 57% of borrowers did not recertify on time.²³ Analysis by the Consumer Bureau Student Loan Ombudsman revealed that “[b]orrowers complain that when their recertification application is not timely processed by their servicers, rather than extending their current income-driven payments, servicers require that borrowers make their full, standard monthly payment amount, or direct them to enter forbearance.”²⁴ A 2015 Consumer Bureau report stated that, “servicing issues related to certifying income continue for borrowers even after they successfully enroll in income-driven repayment plans.”²⁵

Servicers are also not providing timely and accurate information to borrowers who must have it to establish eligibility for PSLF. Notably, current law does not entitle borrowers to receive from their servicers the detailed payment history that is a prerequisite to loan forgiveness. Borrowers first became eligible for loan forgiveness under PSLF in September 2017, ten years after the program began. According to a September 2018 GAO Report, the Department of Education had approved only 55 of 19,321

¹⁷ FSA is the division within the Department of Education responsible for Direct Loans.

¹⁸ U.S. Dept. of Education OIG, [Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans](#) at 10, Feb. 12, 2019.

¹⁹ CFPB, [Monthly Complaint Report Vol. 22](#) at 12, Apr. 2017.

²⁰ *Id.* at 18.

²¹ *Id.* at 22-24.

²² CFPB, [Supervisory Highlights Issue 13, Fall 2016](#) at 16, Oct. 2016.

²³ U.S. Dept. of Education, [Sample Data on IDR Recertification Rates of ED-Held Loans \(2015\)](#) (last accessed on May 31, 2019).

²⁴ CFPB, [Annual Report of the CFPB Student Loan Ombudsman: Strategies for consumer-driven reform](#) at 13, Oct. 2017.

²⁵ CFPB, [Student loan servicing: Analysis of public input and recommendations for reform](#) at 3, Sept. 2015.

applications for loan forgiveness under PSLF as of April 2018, or 0.28%.²⁶ In examining why the Department of Education approved so few applications, the GAO found that the Department: (1) provided servicers with “piecemeal guidance and instructions” on the program; (2) failed to provide servicers and borrowers with definitive information regarding which employers qualified borrowers for forgiveness; and (3) did not ensure that accurate information on borrowers’ prior payments qualifying them for PSLF when the loan was transferred to a PSLF servicer.²⁷ As of March 31, 2019, the Department of Education has only approved 518 of the 73,554 borrowers who applied for PSLF and discharged only approximately \$30 million in student loans.²⁸ The most common reason for rejecting a PSLF application was that the borrower did not provide proof of having made the requisite number of qualifying payments.²⁹

Consumer Bureau’s Mandate for Supervision and Oversight of Student Loan Servicers

Section 1035 of the Consumer Financial Protection Act of 2010 (CFPA) established a Student Loan Ombudsman within the Consumer Bureau to provide, “timely assistance to borrowers . . . compile and analyze data on borrower complaints . . . [and] prepare an annual report.”³⁰ Despite this statutory mandate, the Consumer Bureau has not issued an annual report on student loan complaints since October 2017.³¹ Consumers have since submitted over 14,290 student loan complaints, including many that describe serious servicing deficiencies.³² The position of Student Loan Ombudsman has been vacant since Seth Frotman resigned in August 2018, asserting in his resignation letter that the Consumer Bureau “has abandoned the very consumers it is tasked by Congress with protecting.”³³

On December 3, 2013, the Consumer Bureau issued a rule allowing it to supervise non-bank student loan servicers that handle more than one million borrower accounts, regardless of whether they service federal or private loans.³⁴ Thereafter, the Consumer Bureau specifically began examining student loan servicers’ communications to borrowers regarding IDR and PSLF, among other requirements.³⁵ Through these supervisory examinations, the Consumer Bureau uncovered instances where student loan servicers were unfairly denying or failing to approve IDR applications.³⁶ As noted below, the Department of Education has stymied such oversight efforts since 2017.

The Consumer Bureau previously exercised its authority to protect student loan borrowers from unfair, deceptive and abusive practices.³⁷ On January 18, 2017, the Consumer Bureau filed a lawsuit alleging, *inter alia*, that Navient steered borrowers into forbearance instead of IDR, misallocated payments, and failed to adequately inform borrowers enrolled in IDR plans about recertification.³⁸ Navient filed a motion to dismiss the complaint, which was denied by the court on August 4, 2017.³⁹ The lawsuit remains pending.

²⁶ GAO, *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers* at 11, Sept. 2018.

²⁷ *Id.*

²⁸ Federal Student Aid, Public Service Loan Forgiveness Data, available at <https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data> (last accessed on May 31, 2019).

²⁹ *Id.*

³⁰ 12 U.S.C. § 5535(c).

³¹ CFPB, *2017 Annual report of the CFPB Student Loan Ombudsman: Strategies for consumer-driven reform*, Oct. 2017.

³² See CFPB, Consumer Complaint Database, available at https://www.consumerfinance.gov/data-research/consumer-complaints/search/?from=0&searchField=all&searchText=&size=25&sort=created_date_desc (last accessed May 31, 2019).

³³ NPR, *Seth Frotman resignation letter*, Aug. 27, 2018.

³⁴ CFPB, *CFPB to Oversee Nonbank Student Loan Servicers*, Dec. 3, 2013.

³⁵ CFPB, *CFPB Examination Procedures: Education Loan Examination Procedures*, June 22, 2017.

³⁶ CFPB, *Supervisory Highlights: Issue 13, Fall 2016* at 16-17, Oct. 2016.

³⁷ 12 U.S.C. § 5531.

³⁸ CFPB, *CFPB Sues Nation’s Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, Jan. 18, 2017.

³⁹ CFPB, *Semi-Annual Report of the Bureau of Consumer Financial Protection*, Fall 2018.

Department of Education's Obstruction of Supervision and Oversight of Student Loan Servicers

A recent letter from Consumer Bureau Director Kraninger revealed that, since December 2017, student loan servicers, based on direction from the Department of Education, have refused to provide information related to Direct Loans and the FFEL Program in response to Consumer Bureau supervisory examinations.⁴⁰ Additionally, the Department of Education terminated its statutorily mandated Memorandum of Understanding (MOU)⁴¹ with the Consumer Bureau as of October 1, 2017.⁴² The refusal of student loan servicers to turn over information and the lack of an MOU with the Department of Education impedes the Consumer Bureau's ability to protect borrowers from unlawful servicing practices. The Department of Education has also sought to halt state efforts to provide oversight of student loan servicers.⁴³

State Efforts to Protect Student Loan Borrowers

State Attorneys General have initiated enforcement actions to protect student loan borrowers from unlawful servicing practices. In 2017 and 2018, California, Illinois, Mississippi, Pennsylvania and Washington (State) sued Navient alleging improper servicing of student loans.⁴⁴ The States in these actions alleged, *inter alia*, that Navient steered borrowers into forbearance instead of IDR, failed to adequately alert borrowers enrolled in IDR plans about recertification, engaged in deceptive collection practices, and misrepresented the amount necessary to bring delinquent loans current.

In 2017, the Massachusetts Attorney General sued PHEAA, the exclusive servicer for borrowers participating in PSLF. Massachusetts alleged that PHEAA, among other things, delayed processing applications for IDR causing borrowers to lose the opportunity to make qualifying payments towards PSLF and miscalculated borrowers' qualifying payments toward PSLF.⁴⁵

Some states seek to protect student loan borrowers through additional activities. State Attorneys General acquire information about difficulties experienced by student loan borrowers through consumer complaints submitted to their offices by the citizens of their states. For example, Illinois, Massachusetts, New York, Pennsylvania, and Washington all provide the opportunity to submit consumer complaints.⁴⁶ Illinois has passed a student loan bill of rights requiring student loan servicers to provide borrowers struggling to make payments with information about all of their repayment options.⁴⁷

⁴⁰ NPR, [CFPB Chief Says Education Department is Blocking Student Loan Oversight](#), May 16, 2019.

⁴¹ 12 U.S.C. § 5535(c)(2).

⁴² *Id.*

⁴³ The Washington Post, [Education Dept. opens door for student loan companies to ignore state authority](#), Mar. 9, 2018.

⁴⁴ State of California Department of Justice – Xavier Becerra, [Attorney General Becerra Charges Navient Corporation, Largest Student Loan Servicer, with Deceitful Practices and Debt-Collection Misconduct in Lawsuit](#), June 28, 2018; see also Office of the Attorney General State of Mississippi, [AG Hood Launches Lawsuit Against Student Loan Lenders](#), July 24, 2018; Josh Shapiro Attorney General, [Legal Action: Attorney General Shapiro Sues Nation's Largest Student Loan Company for Widespread Abuses](#), Oct. 5, 2017; Washington State Office of the Attorney General, [AG Ferguson Files Suit Against Sallie Mae Offshoot Navient Corp., Announces Student Loan Bill of Rights Legislation](#), Jan. 18, 2017.

⁴⁵ New York Times, [Massachusetts Complaint Against the Pennsylvania Higher Education Assistance Agency](#), Aug. 23, 2017.

⁴⁶ Illinois Attorney General Kwame Raoul, Protecting Consumers: Filing a Consumer Complaint, available at <http://www.illinoisattorneygeneral.gov/consumers/filecomplaint.html> (last accessed on May 31, 2019); see also Mass.gov, File a consumer complaint, available at <https://www.mass.gov/how-to/file-a-consumer-complaint> (last accessed on May 31, 2019); Letitia James NY Attorney General, Filing a Consumer Complaint, available at <https://ag.ny.gov/consumer-frauds/Filing-a-Consumer-Complaint> (last accessed on May 31, 2019); Josh Shapiro Attorney General, Submit a Complaint, available at <https://www.attorneygeneral.gov/submit-a-complaint/> (last accessed on May 31, 2019); Washington State Office of the Attorney General, File a Complaint, available at <https://www.atg.wa.gov/fileacomplaint.aspx> (last accessed on May 31, 2019).

⁴⁷ See e.g. Illinois Attorney General Kwame Raoul, [Attorney General Madigan: Legislature Acts to Help Student Loan Borrowers - Madigan Applauds Override of Governor's Veto of Student Loan Bill of Rights](#), Nov. 7, 2017.