

September 5, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: September 10, 2019, hearing entitled, “A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable”

The Committee on Financial Services will hold a hearing entitled, “A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable,” on Tuesday, September 10, 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:

- **Seth Frotman**, Executive Director, Student Borrower Protection Center
- **Persis Yu**, Staff Attorney, National Consumer Law Center
- **Ashley Harrington**, Senior Policy Counsel, Center for Responsible Lending
- **Hasan Minhaj**, Writer, Producer, and Host
- **Jason Delisle**, Resident Fellow, American Enterprise Institute

Additional witnesses may be invited.

Overview

According to the Federal Reserve, Americans owe more than \$1.6 trillion in student loan debt,¹ which is more than any consumer debt category other than mortgage debt, including auto loans (\$1.17 trillion)² and credit card debt (\$868 billion).³ An estimated 44.7 million people carry student loan debt averaging \$32,731.⁴ Since 2008, student loan balances increased by roughly \$1 trillion.⁵ This ballooning rate of student loan debt can be attributed, in part, to the rising real price of public higher education and stagnant household incomes. The real, after-inflation average cost to attend a four-year public institution rose 48.1% between 2003 and 2017 which corresponds to an increase in the real, after-inflation accumulated amount of student debt of 307% in the same time period.⁶ A student enrolling at a four-year public institution would expect to pay roughly \$10,674 in current dollars in annual tuition, as opposed to \$19,488 in 2016.⁷ Between 1989 and 2016, the cost of attending a four-year university increased on average 2.6% per year, whereas the average annual wage growth was only 0.3%, per year.⁸

¹ Board of Governors of the Federal Reserve System (FRB), [Consumer Credit – G.19](#), June 2019 (released Aug. 7, 2019).

² *Id.*

³ Federal Reserve Bank of New York (FRBNY), [Quarterly Report on Household Debt and Credit 2019:Q2](#), Aug. 2019.

⁴ FRB, [Report on the Economic Well-Being of U.S. Households in 2016](#), May 2017. See also, <https://www.census.gov/data/tables/2018/demo/age-and-sex/2018-age-sex-composition.html>.

⁵ In the first quarter of 2008, total student debt was \$580 billion. See FRBNY, [Quarterly Report on Household Debt and Credit, 2008:Q1](#).

⁶ Koch, James V. [The Impoverishment of the American College Student](#), pp.52-53, Brookings Institution Press, 2019.

⁷ U.S. Department of Education, National Center for Education Statistics. (2019). Digest of Education Statistics, (NCES 2018-070), [Tuition costs of colleges and universities](#), 2017.

⁸ National Center for Education Statistics, via Forbes, [Price of College Increasing Almost 8 Times Faster Than Wages](#), (Jul. 24 2018).

Taken together, the cost to attend a four-year university increased almost 8 times faster than wages between 1989 and 2016.⁹ As a result, the student loan debt burden is now the equivalent of 7.6% of GDP, more than double since 2006, with far reaching consequences for the U.S. economy.¹⁰ Individuals with student loan debt are delaying marriage and family formation, despite the economic benefits conferred by marriage.¹¹ With average monthly loan payments of \$393, student loan debt also hampers small business growth.¹² A 2015 Federal Reserve Bank of Philadelphia study found a significant negative correlation between student loan debt and small business formation.¹³ According to recent data from the Federal Reserve, rising student loan debt has contributed to the overall decline in homeownership among individuals ages 24 to 32 years old.¹⁴ Finally, student loan debt is jeopardizing the short- and long-term financial health of households by preventing young people from accumulating wealth or saving for retirement.¹⁵ Sixty-five percent of student loan borrowers surveyed report having less than \$1,000 in their bank account and 80% of respondents report that the burden of student debt has prevented them from saving for retirement.¹⁶

In 2018, 20% of those in repayment for their student loans were behind on payments.¹⁷ In the first quarter of 2019, 10.9% of aggregate student debt was at 90+ days delinquent or in default.¹⁸ Borrowers who did not complete their degree, are first-generation college students, or are Black or Hispanic are more likely to be behind.¹⁹ 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 debt, student loans are dischargeable in bankruptcy only upon a showing that repayment would impose an undue hardship on borrowers and their dependents.²⁰ Further, the burden of student loan debt is not borne equally: Black students take on 85% more debt than White students, a disparity that only worsens post-graduation.²¹ Fifteen years after leaving college Black borrowers will have 185% more student loan debt than White borrowers.²² This higher debt load results in higher default rates: nearly half of all Black borrowers default within 12 years of entering college, compared to 36% for Hispanic borrowers and 21% for White borrowers.²³

Building on the Committee's oversight of consumer financial protections for student loan borrowers,²⁴ this hearing will further explore these issues as well as discuss potential legislative remedies to increase protections for student loan borrowers.

⁹ *Id.*

¹⁰ Washington Post, [7 ways \\$1.6 trillion in student loan debt affects the U.S. Economy](#), (June 25 2019).

¹¹ Wilcox, W. Bradford, [For richer, for poorer how family structures economic success in America](#), AEI, (Oct. 28, 2014).

¹² FRB, [Report on the Economic Well-Being of U.S. Households in 2016](#), May 2017; Philadelphia Fed, [The Impact of Student Loan Debt on Small Business Formation](#), Jul. 2015

¹³ Federal Reserve Bank of Philadelphia, [The Impact of Student Loan Debt on Small Business Formation](#), Jul. 2015

¹⁴ FRB, [At the Fed, Consumers and Communities Matter](#) at 5, Jan. 2019.

¹⁵ In 2013 Student debt-burdened households had a median net worth of \$42,800 compared to \$117,700 for those with no student debt. During the Great Recession, households with student loans lost 12.4% of their net worth compared to a 9.3% decrease in net worth for student debt-free households. See Federal Reserve Bank of St. Louis, [Is Student Debt Jeopardizing the Short-Term Financial Health of U.S. Households?](#), Sep./Oct. 2013.

¹⁶ Summer & Student Debt Crisis, [Buried in Debt: a national survey report on the state of student loan borrowers in 2018](#), Nov. 2018.

¹⁷ FRB, [Report of the Economic Well-Being of U.S. Households in 2018](#) at 43, May 2019.

¹⁸ FRBNY, [Quarterly Report on Household Debt and Credit 2019:Q1](#) at 2, May 2019.

¹⁹ FRB, [Report of the Economic Well-Being of U.S. Households in 2018](#) at 44, May 2019.

²⁰ Federal Student Aid, [In some cases, you can have your federal student loan discharged after declaring bankruptcy](#), (accessed Aug 5, 2019).

²¹ CNBC, [Racial wealth inequality is worsened by student debt, study finds](#), Sep. 26, 2018.

²² *Id.*

²³ Inside Higher Ed, [Default Crisis for Black Student Borrowers](#), Oct. 17, 2017.

²⁴ See e.g. FSC Full Committee Hearing, ["Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau"](#), (Mar. 7, 2019); FSC Oversight & Investigations Subcommittee Hearing, ["An Examination of State Efforts to Oversee the \\$1.5 Trillion Student Loan Servicing Market"](#), (Jun. 11, 2019); and [August 13, 2019 letter](#) sent by Chairwoman Waters, Education and Labor Committee Chairman Bobby Scott (D-VA), and Oversight and Reform Committee Chairman Elijah Cummings (D-MD), to the CFPB, U.S. Department of Education and FedLoan Servicing requesting information and records concerning unlawful student loan servicing practices.

Borrower Repayment Challenges Due to Student Loan Servicing Errors

Student loan servicers are the primary point of contact for borrowers repaying private student loans and Federal Direct Student Loans (commonly referred to as Direct Loans), which is the sole government backed loan program since 2010. 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 Income-Driven Repayment payment plans (IDR),²⁵ the Public Service Loan Forgiveness Program (PSLF),²⁶ deferment, and forbearance. 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.²⁷ In certain situations, including if a borrower has filed notice that he or she plans to participate in the PSLF program, the borrowers' loans will automatically be transferred to FedLoan Servicing, a branch of the Pennsylvania Higher Education Assistance Agency (PHEAA).

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 documented widespread student loan servicing failures. A 2017 Annual Report from the Consumer Bureau Student Loan Ombudsman found that 71% of the approximately 12,900 federal student loan complaints handled by the Consumer Bureau between August 2016 and September 2017 were issues related to dealing with the lender or servicer.²⁸ A 2018 survey of student loan borrowers found that 35% of respondents reported difficulty in accessing information about their loans and repayment status, 59% experienced unclear guidance about their repayment option from their loan servicer, and 42% had trouble negotiating a different repayment plan or amount when facing unexpected financial hardship.²⁹ These complaints are reinforced by a 2019 OIG Report revealed that Federal Student Aid (FSA)³⁰ 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.³¹

Borrowers attempting to enroll in alternative repayment plans such as IDR and PSLF have complained about lengthy delays and provision of inaccurate or not timely information on eligibility and recertification requirements leading to improper denials. A 2016 Consumer Bureau report noted that servicers' failure to timely approve IDR applications could result in significant harm to borrowers, stating, "[b]orrower 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."³²

Servicers are also not providing timely and accurate information to borrowers seeking to qualify for PSLF. 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. As of March 31, 2019, the Department of

²⁵ Borrowers with Direct Loans struggling to make their payments are eligible to enroll in Income-Driven Repayment payment plans. Generally, the amount borrowers pay under IDR is a percentage of their discretionary income. See: Federal Student Aid, [Income-Driven Plans](#), (last accessed Aug. 5, 2019).

²⁶ Borrowers with Direct Loans 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. 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). To be eligible for PSLF, borrowers must first be enrolled in IDR. See: Federal Student Aid, [Public Service Loan Forgiveness](#), (last accessed Aug. 5, 2019).

²⁷ Federal Student Aid, [Loan Servicers](#), (last accessed Aug. 5, 2019).

²⁸ CFPB Student Loan Ombudsman, [Annual report of the CFPB Student Loan Ombudsman](#), pp.8, October 2017

²⁹ Summer & Student Debt Crisis, [Buried in Debt: a national survey report on the state of student loan borrowers in 2018](#), pp.4-5, November 2018.

³⁰ FSA is the division within the Department of Education responsible for Direct Loans.

³¹ 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.

³² *Id.* at 18.

Education has only approved 518 of the 73,554 borrowers who applied for PSLF and discharged only approximately \$30 million in student loans.³³ 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.³⁴ Rejection rates remain extreme. Forbes reported that 99 percent of people who apply to the PSLF program are still rejected.³⁵

Challenges faced by Private Student Loan Borrowers and their Co-signers

In 2019, \$123 billion in private student loans comprised 7.7% of the \$1.6 trillion in outstanding balances for the entire student loan market.³⁶ Similar to federal student loans, servicing issues and a comparative lack of consumer protections for private student loans remain an area of concern. For example, in its 2017 Annual report of the CFPB Student Loan Ombudsman, the Consumer Bureau found that private student loan borrowers report limited options to modify their payments during periods of financial distress. The Consumer Bureau stated that it had found that borrowers with private student loans “may face additional struggles during times of economic hardship when they are unable to obtain a student loan payment that they can afford. . . [P]rivate student loan borrowers complained that when they experienced short-term inability to pay, such as unpaid parental leave or employment furloughs, they struggled to temporarily modify their payments until their income was restored due to lack of available options.”³⁷

Additionally, legal protections available for federal student loan borrowers may not be available for private student loan borrowers or their co-signers.³⁸ Private loan cancellations are not required by law and private loan borrowers do not have the same range of cancellation options as federal student loans, including for those with permanent disability.³⁹ Private student lenders are not required by law to work with borrowers with permanent disabilities, however, some private lenders are now offering disability discharges.⁴⁰ Private student loans often require a co-signer and, according to a 2015 Consumer Bureau Report, servicers rejected 90% of private student loan borrowers who applied for co-signer release.⁴¹ When a co-signer release is unfairly denied, they can suffer from damage to their credit and be forced into credit products with higher rates.⁴² Moreover, while federal student loans are not subject to pre-dispute arbitration and class waiver provisions, such provisions are common with private student loans.⁴³ Student loan servicers also harm borrowers by engaging in abusive debt collection practices and lawsuits and inaccurate credit reporting.⁴⁴

³³ Federal Student Aid, [Public Service Loan Forgiveness Data](#), (last accessed Aug. 5, 2019).

³⁴ *Id.*

³⁵ Zack Friedman, 99% Of Borrowers Rejected Again For Student Loan Forgiveness, Forbes (2019), <https://www.forbes.com/sites/zackfriedman/2019/05/01/99-of-borrowers-rejected-again-for-student-loan-forgiveness/#d0a5f0cb16b7>.

³⁶ The [MeasureOne Private Student Loan Report](#), pg. 7.

³⁷ CFPB, [Annual report of the CFPB Student Loan Ombudsman](#), pg. 21, Oct. 2017.

³⁸ See generally National Consumer Law Center, [Paying the Price: The High Cost of Private Student Loans and the Dangers for Student Borrowers](#), (Mar. 2008).

³⁹ See NCLC, [Too Small to Help: The Plight of Financially Distressed Private Student Loan Borrowers](#) (Apr. 2009).

⁴⁰ *Id.*

⁴¹ CFPB, [Mid-year update on student loan complaints](#), pg. 2, Jun. 2015.

⁴² *Id.*

⁴³ 667 81 Fed. Reg. 76,072 (Nov. 1, 2016) (amendments to 34 C.F.R. §685.300).

⁴⁴ In Seth Frotman’s written testimony before the Committee on March 7, 2019 at [footnote 43](#), Mr. Frotman highlighted several examples of abusive debt collection and credit reporting practices in the student lending marketplace: “Complaint at 45, CFPB v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. 2017) (“Pioneer’s false promises that rehabilitation would remove all adverse information regarding the borrowers’ loans from their credit reports.”); Minn. Commerce Dep’t, [Minnesota Commerce Department announces action against improper student loan debt collections](#) (Aug. 11, 2017), (“Minnesota Commerce [Department] . . . and regulators in four other states have reached a \$500,000 joint settlement with two subsidiaries of iQor Holdings Inc. for improper debt collection practices, including making abusive and harassing phone calls to increase student loan payments.”); Complaint at 70, Ill. v. Navient Corp., No. 17-CH-00761 (Jan. 18, 2017) (“ . . . Pioneer Credit Recovery, and General Revenue Corporation’s unfair and deceptive debt collection practices.”); [In the Matter of Transworld Systems, Inc. Consent Order](#), CFPB No. 2017-CFPB-0018 (Sep. 18, 2017). (“In support of many of these lawsuits, [Transworld] executed affidavits that falsely claimed personal knowledge of the account records and the consumer’s debt, and, in many cases, personal knowledge of the chain of assignments establishing ownership of the loans.”).

Legislative Proposals

- **Student Loan Servicing Reform and Consumer Protection Act** is a discussion draft that amends the Truth in Lending Act (TILA) to help struggling student borrowers by (1) requiring servicers provide accurate repayment options and resources, (2) setting minimum industry standards for all student loan transactions, (3) creating clear “rules of the road” to prevent student loan servicers from omitting or misrepresenting loan serving information, and (4) improving disclosures to borrowers when their loan is sold or transferred or if the borrower is identified as at-risk of default. The bill is similar to S. 1354, the Student Loan Borrower Bill of Rights sponsored by Sen. Dick Durbin (D-IL).
- **Fair Credit Reporting for Student Loans Act** is a discussion draft that would require the Consumer Bureau, in consultation with the Department of Education, to establish standards for reporting credit information about borrowers’ student loans and provides consumers with tools to enforce these rights.
- **Fair Student Loan Debt Collection Practices Act** is a discussion draft that would amend the Fair Debt Collection Practices Act (FDCPA) to, among other things, bar collecting against student loan borrowers meeting the zero dollar “payment” income guidelines. This builds on a recent court case that would allow the Department of Education to stop using private debt collectors.⁴⁵
- **Private Loan Disability Discharge Act** is legislation sponsored by Rep. Madeleine Dean (D-PA) that would amend TILA to include a required discharge of private student loans in the event a borrower becomes permanently disabled. Cosigners would also be discharged of their obligation in the event of a borrower’s permanent disability.
- **Ensuring Fair Legal Recourse for Private Student Loan Borrowers Act** is legislation sponsored by Rep. Dean that would amend TILA to prohibit pre-dispute arbitration clauses and class action bans for private student loans.
- **H.R. 2833, the CFPB Student Loan Integrity & Transparency Act** is a bill sponsored by Rep. Katie Porter (D-CA) that would strengthen Consumer Bureau’s oversight of student lending by (1) requiring information sharing on student loan data between Consumer Bureau student loan ombudsman and the Department of Education, (2) prohibiting the Department of Education from entering into student loan service agreement unless servicer directly provides information to Consumer Bureau student loan ombudsman and (3) requiring the Consumer Bureau Director to maintain adequate staffing and resource levels for ombudsman to execute functions of office.
- **Know Before You Owe Private Education Loan Act** is a discussion draft that would amend TILA to require schools to counsel students before they sign on to expensive, often unnecessary, private education loan debt and inform them of any unused federal student aid eligibility. This bill would also require the prospective borrower’s school to confirm the student’s enrollment status, cost of attendance, and estimated federal financial aid assistance before the private student loan can be made. This legislation is similar to S.2184 sponsored by Sen. Durbin.
- **Promoting Homeownership and Community Investments by Student Borrowers Act** is a discussion draft that directs the Department of Housing and Urban Development (HUD) to work with the CFPB and the Federal Housing Finance Agency (FHFA) to review the barriers to homeownership for borrowers with student loan debt and make recommendations for policy changes that will responsibly reduce or eliminate these barriers.
- **H.R. 3511, the Transform Student Debt to Home Equity Act** is a bill sponsored by Rep. Marcy Kaptur (D-OH), which would require HUD and FHFA to jointly establish a pilot demonstration program to provide, to eligible applicants with federal student loan debt, assistance in purchasing eligible properties.

⁴⁵ Washington Post, [“Education Dept. scores a victory in long-standing battle with private debt collectors,”](#) Aug. 1, 2019.