

**Comments of The Institute for College Access & Success
on the Proposed Rule Defining
Larger Participants in Certain Consumer Financial Product and Service Markets
Docket No. CFPB-2012-0005**

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The Institute for College Access & Success (TICAS) submits the following comments on the Consumer Financial Protection Bureau's proposed rule defining the "larger" debt collectors and consumer reporting agencies subject to supervision by the Bureau.

TICAS is an independent, nonpartisan, nonprofit research and policy organization working to improve both educational opportunity and outcomes so that more underrepresented students complete meaningful post-secondary credentials and do so without incurring burdensome debt. Our Project on Student Debt focuses on increasing public understanding of rising student debt - including private student loan debt - and the implications for individuals, families, the economy and society.

Private student loans are one of the riskiest ways to pay for college, and a majority of private loan borrowers could have borrowed more in federal loans before turning to private loans.¹ Moreover, some non-bank lenders are currently issuing or arranging private loans that they acknowledge a majority of the borrowers will not be able to repay or discharge in bankruptcy.²

Our goal in submitting these comments is to ensure that the "larger participant" rule provides the Bureau with the flexibility it needs to respond to changes in the market and ensure that risky non-bank actors do not evade supervision. As a member of Americans for Financial Reform (AFR), we agree with AFR's submitted comments and elaborate on them below.

¹ The Institute for College Access & Success. July 2011. *Private Loans: Facts and Trends*. Available at http://projectonstudentdebt.org/files/pub/private_loan_facts_trends.pdf.

² Testimony of Pauline Abernathy, The Institute for College Access & Success, before the U.S. Senate Health, Education, Labor and Pensions Committee, Hearing entitled "Drowning in Debt: Financial Outcomes of Students at For-Profit Colleges," June 7, 2011. Available at <http://help.senate.gov/imo/media/doc/Abernathy.pdf>. Testimony of Lauren Asher, The Institute for College Access & Success, before the Subcommittee on Commercial and Administrative Law of the House of Representatives Committee on the Judiciary, Hearing entitled, "An Undue Hardship? Discharging Educational Debt in Bankruptcy," September 23, 2009. Available at <http://judiciary.house.gov/hearings/pdf/Asher090923.pdf>.

Overarching Comments

The Bureau's power to supervise nonbanks that offer consumer financial products and services is a critical part of its mission to protect consumers. Supervision enables the Bureau to detect problems early, prevent or resolve violations quickly, and have a better understanding of the consumer products and services it regulates.

As the Bureau defines the entities that will be subject to examination in this and future rulemakings, it should:

- **Define “larger” flexibly** so that the Bureau has the flexibility to examine a range of entities that may pose different risks for consumers. The Bureau needs to examine not only the “largest” entities but also those that have a disproportionate impact in particular niche markets or on particular populations (such as minority groups, military, students or seniors). Different entities may have different business models and pose different risks. The Bureau is not obligated to actually examine every “larger” participant and can tailor its resources to an evolving understanding of where risks emerge. The recent significant swings in private student lending volume and the emergence of multiple new private loan markets underscore the need for the Bureau's rule not to constrain its authority by setting inflexible volume definitions or metrics.
- **Prevent evasions** by counting the revenues of affiliated companies *and also* firms that act as their agents or are under contract to another firm. The Bureau should also enact an anti-evasion or anti-circumvention rule.
- **Examine all of an entity's consumer financial products and services** even if it is a larger participant in just one market. Many products and services are interrelated, and having a clear picture of a firm's entire operations will enable the Bureau to understand the risks to consumers. Firms that offer more than one product or service may pose different risks to consumers than single-line firms.

“Larger” Debt Collectors

Debt collectors are the industry that generates the most complaints to the Federal Trade Commission. Within the past 17 months, three companies working for the Education Department settled federal or state allegations of abusive debt collections, including one that is majority owned by JPMorgan Chase & Co. (JPM)'s private-equity arm.³

It is essential that the Bureau have the flexibility to examine a broad range of firms. The proposed rule catches only four percent of the nation's debt collectors, far too few. Some of the worst abuses, affecting millions of consumers, may occur at firms that do not have high annual receipts and lack adequate compliance systems or specialize in older, undocumented or disputed debt that sells for pennies on the dollar. The threshold should be expanded by:

³ “Obama Relies on Debt Collectors Profiting from Student Loan Woe,” by John Hechinger, Bloomberg News, March 26, 2012. Available at <http://www.bloomberg.com/news/2012-03-26/obama-relies-on-debt-collectors-profiting-from-student-loan-woe.html>.

- **Including any firm that has annual receipts from *any* source of \$7 million or more** (thus excluding small businesses), as long as at least \$3.5 million are related to the collection of debts related to consumer financial product or service.
- **Counting the receipts of, and potentially also examining affiliated companies and companies that are under contract to a central firm.** For example, a debt buyer should not escape examination by employing a series of third party collectors, each of which is below the threshold.
- **Proposing a subsequent rulemaking**, soliciting small business input, to consider a lower threshold that permits the Bureau to **spot check debt collectors who are below the small business threshold but affect millions of consumers.**

These proposed changes will also help ensure that the Bureau has authority to examine student loan debt collectors. Unfortunately, there are serious collection abuses in both the federal and private student loan industries. In the private student loan industry, the National Consumer Law Center reports that many collectors make inaccurate claims about their collection powers, frequently claiming that they can use collection tools unique to federal loans, such as Social Security offsets.⁴

With respect to federal loan collection, the Department of Education has turned over almost all the student loans it holds to private collection agencies. A Treasury Department report states that the Department of Education uses private collection agencies heavily to collect defaulted student loans and refers every eligible debt to these agencies as quickly as possible.⁵ Here, too, the National Consumer Law Center has found a remarkable amount of deceptive, unfair, and illegal conduct by private collectors and guarantors. There are several reasons for the extent of these abusive collection actions, including:

- Remedies available to collect on student loans are often both unique and misunderstood (for example, federal tax refund offsets, federal benefits offsets, and non-judicial garnishments), and collectors often misrepresent the exact nature of these remedies when they send collection letters.
- Private collection agencies are delegated the responsibility for determining the size of a reasonable and affordable payment plan for rehabilitation. In addition, these collection agencies are supposed to help determine if students have defenses to wage garnishments, tax refund offsets and other collection actions, even though the collection agencies' financial incentive is not to offer reasonable and affordable plans or to acknowledge defenses.

⁴ Testimony of Deanne Loonin, National Consumer Law Center at U.S. Senate Judiciary Subcommittee on Administrative Oversight and the Courts, Hearing entitled "The Looming Student Debt Crisis: Providing Fairness for Struggling Students," March 20, 2012. Available at <http://www.judiciary.senate.gov/pdf/12-3-20LooninTestimony.pdf>.

⁵ U.S. Department of the Treasury, U.S. Government Receivables and Debt Collection Activities of Federal Agencies: Fiscal Year 2008 Report to the Congress 14 (July 2009).

“Larger” Consumer Reporting Agencies

Consumer reporting agencies (CRAs) control access to credit, and often employment, housing and insurance, for nearly every single American. We support examination of the “Big Three” CRAs and the other agencies covered by the Bureau’s proposed threshold of \$7 million in receipts. However, the 30 agencies covered represent only seven percent of the nation’s CRAs. The Bureau must have the flexibility to examine other significant CRAs, especially if they have a disproportionate impact in niche markets or communities. As with debt collection, the threshold should be expanded to include any firm that has annual receipts of \$7 million or more **from any source** as long as at least \$3.5 million of receipts are from consumer reporting.

Furthermore, we **strongly oppose the carve-out for furnishers of information** to consumer reporting agencies. The Bureau must ensure that major furnishers of information to CRAs are examined. While many furnishers, such as banks or payday lenders, are subject to examination for other reasons, some important furnishers are not included. These debt collectors have a huge impact on the financial lives of consumers precisely because of their status as furnishers to the Big Three CRAs and should be supervised.

As discussed above, we also urge the Bureau to establish a **flexible scope of supervision** and supervise all consumer financial products and services in which a company engages. For consumer reporting, the Bureau should at least have the ability to supervise all aspects of the company that deal with consumer information, because the same data, procedures and systems are often used. At a minimum, the Bureau should be able to examine the use of data *collected* for consumer financial products or services even if the *usage* is not for a financial product or service. For example, many employers are now using credit reports from the Big Three CRAs in screening job applicants. The Bureau should have the ability examine the systems and policies of the nationwide CRAs when they issue credit reports for employment purposes.

Finally, we urge the Bureau to state explicitly in the proposed rule that it covers **credit scoring providers** as either service providers or consumer reporting agencies.

Thank you for considering these comments to protect past, current and future students in the areas of debt collection and credit reporting. If you have any questions about these comments, please contact Pauline Abernathy at (202) 223-6060 x 603.