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Bureau of Consumer Financial Protection
Nondepository Supervision
Room 513-H
1801 L Street, NW
Washington, DC 20036

RE: Defining Larger Participants in Certain Markets for Consumer Financial Products and Services Markets [Docket N. CFPB-HQ-2011-2]

Dear Sir or Madam:

Thank you for the opportunity to provide input on this Notice and Request for Comment on how the Consumer Financial Protection Bureau should define "larger participants" to determine which nondepository covered persons (hereinafter "non-banks") other than residential mortgage, private education, and payday lenders are subject to the Bureau's supervisory authority under the Dodd-Frank Act.

The Institute for College Access & Success (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, launched in 2005, 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 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.* http://projectonstudentdebt.org/files/pub/private_loan_facts_trends.pdf.

[2] Testimony of Pauline Abernathy, Vice President, 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. http://help.senate.gov/imo/media/doc/Abernathy.pdf. Testimony of Lauren Asher, President, 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. http://judiciary.house.gov/hearings/pdf/Asher090923.pdf.

The need for a flexible definition of "larger non-bank participant"

Section 1024(b) of Dodd-Frank grants the Bureau supervisory authority to conduct on-site examinations and require reports from non-banks that provide certain consumer financial products and services. In light of the particularly risky nature of private education loans and the history of little or no regulatory oversight, the law specifically grants the Bureau supervisory authority over anyone who "offers or provides to a consumer any private education loan, as defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650), notwithstanding section 1027(a)(2)(A) and subject to section 1027(a)(2)(C)."[3]

However, some non-bank actors in the private education loan market may not clearly fall within this definition of non-bank entities over which the Bureau automatically has supervisory authority. For instance, some risky private educational lending may not meet the definition of private education lending under TILA because it involves open-end credit.[4] In addition, there are multiple brokers and actors in the private education loan market who, depending on how "offering or providing" is defined, might not meet the definition of "offering or providing" a loan but play a critical role and may not be well-regulated by another entity. For example, publicly traded for-profit college corporations, such as ITT Educational Services and Corinthian Colleges, are making private educational loans to their students and expecting to write-off 45% or more of the loans.[5] However, these corporations may claim not to be private educational lenders because these loans are issued in partnership with banks under highly complex arrangements.[6]

In addition, Sallie Mae, the largest private education lender, is a non-bank entity, but it currently issues its loans through Salle Mae Bank, which is a FDIC-insured bank with under $10 billion in deposits. Sallie Mae acknowledges that it has issued approximately $6 billion in "non-traditional" or subprime private student loans, and projects that 40% of them will default.[7] As by far the largest private student lender with a record of issuing risky subprime loans, Sallie Mae should clearly be considered a larger market participant subject to the Bureau's supervision and enforcement.

It is imperative that the larger participant rule provide the Bureau with the authority to supervise these and other actors in the evolving private loan marketplace, and to assess and weigh the risk to consumers when determining whom to actually supervise. A flexible, broad definition of "larger participant" will allow the Bureau to properly implement its mandate under Dodd-Frank and put non-banks on notice that they may face supervision, which will help protect consumers as well as help ensure a level playing field among competitors in the marketplace.

[3] §1024(a)(1)(D)

[4] For example, DeVry's EduCard is a revolving credit account while the student is in school that becomes an installment loan when the student leaves or completes school. See http://www.devry.edu/assets/pdf/financial-aid-tuition/EDUCARD.pdf. Accessed August 14, 2011

[5] Documents from 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. Documents available at http://harkin.senate.gov/documents/pdf/4dff84b1b4a54.pdf. Testimony of Pauline Abernathy, Vice President, 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. http://help.senate.gov/imo/media/doc/Abernathy.pdf.

[6] National Consumer Law Center. January 2011. *Piling It On: The Growth of Proprietary School Loans and the Consequences for Students*. http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/proprietary-schools-loans.pdf. MF Global Inc.'s Washington Research Group. August 2011. "Education: Lincoln Earnings Call Could Be Game-changer for For-Profit Schools: 90-10 Rule Leads Students to Pay More Out-of-Pocket, Rely Less on Federal Dollars." *Education Bulletin.* http://www.capmarkets.com/ViewFile.asp?ID1=163450&ID2=495152865&ssid=1&directory=14687&bm=0&filename=EDUC0803.pdf.

[7] Student Lending Analytics. May 2010. "The $5.4 Billion Private Student Loan Problem." http://studentlendinganalytics.typepad.com/student_lending_analytics/2010/05/the-54-billion-problem.html.

<u>The rule should recognize the multiple private education lending markets</u>

Private loan volume for undergraduates increased at a double-digit rate each year for over a decade, reaching a peak of $17.1 billion in 2007-08.[8] During this period and currently, there were and are multiple markets within private education lending, and each needs to be considered as separate markets for determining the larger participants. For example, the CEO of Sallie Mae has referred to the "bad lending bubble" of "non-traditional lending" issued from 2004-2007."[9] As of March 30, 2010, First Marblehead reported that half of its $12 billion in outstanding student loans were subprime, and that it expected half of these loans to default.[10] Subprime loan markets have distinct characteristics and should be treated as separate from prime markets, and institutional private loans made by schools to their students are and should be considered distinct markets.

The Bureau's larger participant rule needs to be flexible enough to recognize the different and evolving private education lending markets and the larger participants within them. The 2008 credit crunch dramatically reduced private educational loan volume, with Sallie Mae and other lenders discontinuing their "non-traditional" lending. More recently, there has been an upswing in private loan volume and analysts expect loan volumes to continue to increase.[11] A June 2011 Sallie Mae Private Education Loan Primer documents the expected growth of private lending in the coming years and includes "non-traditional loans" in its glossary of terms.[12] The significant swings in private 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 static volume definitions or metrics.

Thank you for this opportunity to comment. The stakes for private education loan consumers could not be higher and the need for the Bureau's supervision and enforcement could not be more clear. We would be glad to answer any questions you may have on this or other topics, and we can be reached at (202) 223-6060.

Sincerely,

Pauline Abernathy
Vice President

Elizabeth F. Masiuk
Policy Associate

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[8] The Institute for College Access & Success. July 2011. *Critical Choices: How Colleges Can Help Students and Families Make Better Decisions about Private Loans*. http://projectonstudentdebt.org/files/pub/critical_choices.pdf.

[9] Sallie Mae Q3 2009 earnings call transcript. October 2009. http://seekingalpha.com/article/167930-slm-corporation-q3-2009-earnings-call-transcript?page=-1.

[10] Student Lending Analytics. May 2010. "The $5.4 Billion Private Student Loan Problem." http://studentlendinganalytics.typepad.com/student_lending_analytics/2010/05/the-54-billion-problem.html.

[11] The Institute for College Access & Success. July 2011. *Critical Choices: How Colleges Can Help Students and Families Make Better Decisions about Private Loans*. http://projectonstudentdebt.org/files/pub/critical_choices.pdf. Pp 18-19.

[12] Sallie Mae. June 2011. "SLM Private Education Loan ABS Primer." https://www1.salliemae.com/NR/rdonlyres/50F355EE-8FA7-49FA-AABF-D4A4B507A89C/14544/PrivateEducationLoanABSPrimer.pdf. Accessed August 15, 2011.