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Comments on "Student Loan Servicing Market Monitoring"
Docket No. CFPB-2017-0002

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The Institute for College Access & Success (TICAS) is an independent, nonprofit organization working to make higher education more available and affordable for people of all backgrounds. Through nonpartisan research and analysis, TICAS aims to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society. Since 2005, our Project on Student Debt has been increasing public understanding of rising student debt and the implications for our families, economy, and society.

The lack of federal and private loan data poses serious obstacles for policymakers and other stakeholders seeking to evaluate and address consumer risks related to student loan servicing. **We strongly support the Consumer Financial Protection Bureau's (CFPB's) proposed Student Loan Servicing Market Monitoring initiative to collect information from both private and federal student loan servicers on their loan portfolios and borrower outcomes**. In addition to these detailed comments, we also signed comments being submitted by the Postsecondary Data Collaborative, of which TICAS is a member, and comments submitted by Americans for Financial Reform, of which TICAS is also a member.[1] Many of the elements of this proposed collection reflect our recommendations in response to the CFPB's 2015 request for information on student loan servicing.[2] Obtaining a clearer picture of the student loan market will help inform and support improvements in servicing practices to help borrowers successfully repay their loans. This data collection will allow for a more comprehensive look at the different pieces of the student loan market (both federal and private loans), as well as more fine-grained detail about how borrowers fare in repayment, such as enrollment and outcomes in different repayment plans, and the use of deferments and forbearances.

In these comments, we emphasize specific points and recommendations, as well as propose technical changes to improve the usefulness of these data for the CFPB, policymakers, loan servicers, and the public at large.

The Importance of Student Loan Servicing

Student loan debt and its servicing have an enormous effect on the lives of students, former students, their families, and the economy at large. Effective student loan servicing helps borrowers manage their debt and stay on top of their monthly payments, while servicing problems can have serious implications for borrowers' credit and their contributions to the broader economy. For example, defaulting on a federal loan has severe consequences, including ruined credit that makes it difficult to buy a car or rent an apartment, and can limit one's ability to get hired. The number of federal student loan borrowers in

[1] Comments submitted by Americans for Financial Reform to the Consumer Financial Protection Bureau (CFPB) on April 24, 2017. http://bit.ly/2ptOKkS.
[2] TICAS. 2015. *Comments on Request for Information Regarding Student Loan Servicing.* http://bit.ly/2oTq9Vb.

default has increased to a record 8.4 million.[3] This suggests real problems in student loan servicing, particularly given the availability of options to help borrowers avoid default, such as income-driven repayment plans.

There is an urgent need to improve the servicing of both federal and private student loans. As documented by the CFPB and others,[4] student loan servicing is inconsistent, oversight is lax, and borrowers lack a clear way to enforce their rights. For example, the most common type of student loan complaint submitted to the CFPB (67%) relates to borrower interactions with lenders or servicers.[5] Borrowers reported problems with payment processing, inaccurate account histories, credit reporting, and getting information about repayment options. Borrowers need to be able to count on servicers to provide information and assistance to help them make affordable payments and stay out of default. Instead, poor servicing has spawned a growing industry of for-profit "debt relief" companies that charge high fees for services that the government is already paying federal loan servicers to provide at no cost to borrowers.[6]

The CFPB's proposed data collection will provide valuable information about the student loan market that is not regularly available from other sources, including:

<u>Data on commercial FFEL and private student loans</u>. The CFPB is uniquely positioned to gather and analyze data on the student loan market, particularly commercial Federal Family Education Loans (FFEL) and private student loans.

While the Department of Education provides some broad summary data on federal student loans,[7] those data lack detail about FFEL loans and do not cover private student loans at all. For example, there are no servicer-level data on borrowers with commercial FFEL loans, which make up most of the over

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[3] Calculations by TICAS using data from the U.S. Department of Education, Federal Student Aid Data Center, "Portfolio by Loan Status (DL, FFEL, ED-Held FFEL, ED-Owned)," http://bit.ly/1O6zgrW. Accessed March 9, 2017. Figures represent Direct Loan and FFEL borrowers whose loans are more than 360 days delinquent, and borrowers who defaulted on a both a Direct and FFEL Loan are counted more than once.

[4] See, for example, Cowley, Stacy, and Jessica Silver-Greenberg. January 18, 2017. "Student Loan Collector Cheated Millions, Lawsuits Say." *The New York Times.* http://nyti.ms/2q5S6GX. CFPB. January 5, 2017. Press Release. "CFPB Warns Student Loan Servicing Problems Can Jeopardize Long-Term Financial Security for Older Borrowers." http://bit.ly/2msBXJQ. Douglas-Gabriel, Danielle. August 22, 2016. *The Washington Post.* "Wells Fargo to pay $4 million for illegal student loan practices." http://wapo.st/2bgyNVo. U.S. Government Accountability Office (GAO). 2016. *Federal Student Loans: Education Could Improve Direct Loan Customer Service and Oversight.* https://www.gao.gov/products/GAO-16-523. CFPB. September 29, 2015. Press Release. "CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers." http://bit.ly/2ps1mcd. CFPB. 2015. *Overseas & Underserved: Student Loan Servicing and the Cost to our Men and Women in Uniform.* http://bit.ly/1eD2VtJ. National Consumer Law Center. 2014. *The Sallie Mae Saga: A Government-Created, Student Debt Fueled Profit Machine.* http://bit.ly/1HAkcBb.

[5] CFPB. 2017. *Consumer Response Annual Report.* http://bit.ly/2nIh7WZ.

[6] For example, see NerdWallet. August 16, 2016. Blog Post. "Student Loan Relief Companies Cash in on Confusion." https://www.nerdwallet.com/blog/student-loan-debt-relief-survey/. See also National Consumer Law Center. 2013. *Searching for Relief: Desperate Borrowers and the Growing Student Loan "Debt Relief" Industry.* http://bit.ly/1wn1Nhh.

[7] U.S. Department of Education. Federal Student Aid Data Center. "Federal Loan Portfolio." https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

$300 billion in outstanding FFEL loans.[8] The CFPB's proposal will fill in these major gaps in the Department's data by collecting information on FFEL and private loans, as well as provide more granular data on loan status by repayment plan and income-driven repayment applications and recertifications.

Additionally, we echo other organizations' concerns about relying on MeasureOne for data on the private loan market.[9] MeasureOne's data exclude private loans that have defaulted, and it is important to track the outcomes and treatment of borrowers who default, since they are often aggressively pursued by debt collectors. MeasureOne also reports a default rate that results in substantially lower rates than other standard measures in the student loan market, which has led to misuse of their findings.[10]

Outcomes and processing obstacles for borrowers applying for or enrolled in income-driven repayment (IDR) plans. IDR plans help borrowers stay on top of their loans by capping federal student loan payments as a percentage of income and providing forgiveness of any remaining balance after 20 or 25 years of payments. These plans are an important option for borrowers struggling to afford their payments, but the CFPB has documented serious problems with the process of enrolling in IDR plans and continuing to make payments based on income.[11]

Over six million federal loan borrowers are currently enrolled in an IDR plan[12] and must update their income information annually (a process called "recertification") to continue making monthly payments based on income. The annual recertification process has been an enormous barrier for many borrowers. More than half of borrowers miss the annual deadline to recertify their income,[13] which can lead to unaffordable spikes in monthly payment amounts, as well as interest capitalization that can add substantial costs.

The CFPB's proposed collection includes detailed data about applications for IDR and the recertification process, which will help establish the scope of problems borrowers are facing, as well as the degree of variation between servicers. For example, servicers can help make the process easier by allowing easy upload of income documentation and having efficient processes and clear communications when following up with borrowers with incomplete applications.

Deferments and forbearances, particularly long-term and serial forbearances. While deferment and forbearance can be good options for borrowers needing short-term relief, remaining in these non-payment statuses for long periods of time can drastically increase student loan balances, which makes

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[8] Calculations by TICAS using data from the U.S. Department of Education, "Location of Federal Family Education Loan (FFEL) Program Loans," http://bit.ly/2pccadr. Accessed April 19, 2017.

[9] For more information, see comments submitted by Americans for Financial Reform to the CFPB on April 24, 2017. http://bit.ly/2ptOKkS.

[10] See, for example, comparisons between short-term accounting charge-off rates for private loans and multi-year cohort default rates for federal loans. Consumer Bankers Association. July 29, 2014. Press Release. "Statement of Richard Hunt of the Consumer Bankers Association." http://bit.ly/2psvJPz.

[11] CFPB. 2016. *Midyear update on student loan complaints: Income-driven repayment plan application issues.* http://bit.ly/2czyiHT.

[12] U.S. Department of Education. March 9, 2017. Electronic Announcement. "Federal Student Aid Posts Updated Reports to FSA Data Center." http://bit.ly/2oC1Nvu.

[13] U.S. Department of Education. "Sample Data on IDR Recertification Rates for ED-Held Loans." Shared on April 1, 2015 at the second negotiated rulemaking session. http://bit.ly/2pTKFDl.

loans much harder to pay off. For borrowers facing longer term issues with repayment, it would be better to enroll them in an IDR plan (described above).

However, borrowers have reported that their servicers have guided them towards forbearance and deferment options, instead of helping them enroll in IDR.[14] A borrower may be inappropriately placed in a deferment or forbearance because it's a quicker process for servicers than walking through other repayment options, or because a college's "default management" contractor or employee persuaded him or her to request a deferment or forbearance regardless of whether it was in the borrower's best interest. There is abundant evidence that some schools are pushing borrowers to seek deferment or forbearance as a way to lower the school's default rate during the period when schools are held accountable for defaults.[15] For example, a Senate investigation found that many for-profit colleges hire a company called General Revenue Corporation (owned by Navient) to help "cure" student defaults.[16] The investigation found that on average, over 75% of students "cured" by this company for four large for-profit colleges were through forbearances and deferments, not borrowers actually making payments on their loans.

The CFPB's proposed data collection will provide information on the number of borrowers in different types of deferment or forbearance, specifically identifying forbearances that last a year or more and loans that are placed in forbearance three or more times over a two-year period. These data would cast light on the prevalence of long-term and serial forbearances, as well as the degree of variation among servicers.

<u>Information on borrowers who are at greatest risk of default, including those who have previously defaulted on their loans and those who did not complete their educational programs</u>. Research consistently finds completion to be a significant predictor of default. For example, the Department of Education found that borrowers who don't graduate are three times more likely to default than borrowers who complete.[17] Additionally, analysis by the CFPB suggests that one-in-three rehabilitated student loan borrowers with low incomes will be driven back into default within two years, due to problematic servicing practices.[18]

<u>Repayment outcomes for borrowers in different repayment plans.</u> Understanding whether borrowers in particular repayment plans are more likely to be delinquent or end up in default would help servicers guide borrowers to the best option for their circumstances, as well as inform policy discussions about improving student loan repayment. The Government Accountability Office found that borrowers in the IDR plans studied were much less likely to be in default than borrowers in standard (non-IDR) repayment

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[14] See, for example, CFPB. September 29, 2015. Press Release. "CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers." http://bit.ly/2ps1mcd.

[15] See, for example, TICAS. 2014. *Comments on Topics for Negotiated Rulemaking.* http://bit.ly/1Gghj11. Pp. 13-15. See also U.S. Senate Health, Education, Labor and Pensions Committee. 2012. *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success.* http://bit.ly/19F8YLM. Pp. 9-10, 150-159.

[16] U.S. Senate Health, Education, Labor and Pensions Committee. 2012. *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*. http://bit.ly/19F8YLM. Pp. 154-158.

[17] U.S. Department of Education. November 15, 2016. Press Release. "FACT SHEET: New Federal Guidance and Resources to Support Completion and Success in Higher Education." http://bit.ly/2lNQFgR. Figures calculated using internal modeling from the Office of Federal Student Aid. See also College Board. 2016. "Two-Year Student Loan Default Rates by Degree Completion Status Over Time." http://bit.ly/2pcfAN7.

[18] CFPB. October 17, 2016. Press Release. "CFPB Projects that One-in-Three Rehabilitated Student Loan Borrowers Will Re-default Within Two Years." http://bit.ly/2pcfSno.

plans.[19] However, those data are several years old and don't cover all of the current IDR plans, so it will be invaluable for the CFPB to regularly collect data on loan status by repayment plan.

To improve the usefulness of the information collected, we have several general recommendations and suggested technical changes:

Make aggregate data publicly available. We request that any aggregate data collected by the CFPB through this proposal be made public to the largest extent possible. Making the data public will provide transparency into the servicing of federal loans backed by the government and taxpayers, which will support improvements in servicing practices to help borrowers successfully repay their loans. The data will help lawmakers craft effective policies to improve student loan repayment, as well as provide important context for organizations that work directly with borrowers. Servicers will also be able to see how their borrowers' outcomes compare to those of other servicers and to the market as a whole, and identify areas of improvement.

Disaggregate data by borrower characteristics, to cast light on disparate treatment or outcomes of people of color, older borrowers, and other potentially vulnerable groups. We echo other organizations' calls for the CFPB to collect and publicize data about the impact of student loan debt on borrowers of color and older Americans with student debt.[20]

Disaggregate data on loan discharges. We echo other organizations' requests to break out the different types of loan discharges in this proposed information collection, such as total and permanent disability discharges, closed school discharges, borrower defense discharges, false certification discharges, and bankruptcy discharges.[21] Gathering information about the types of discharges processed during a given reporting period would benefit the public at large, as well as lawmakers and law enforcement. Those data would also assist with ensuring accountability for borrowers pursuing relief. Additionally, the CFPB should collect data on how long it took each servicer to grant the discharge (measured as time elapsed from the date of application for the discharge to the date the discharge was processed), as well as data on group discharges made without individual applications.

Collect loan status data for borrowers who completed their programs and those who did not. This proposed information collection includes separate counts of borrowers who completed their programs and did not complete their programs, as well as data on the repayment plans those borrowers are enrolled in. However, the proposed collection does not cover the *loan status* of completers versus noncompleters, which would cast light on differences in delinquency rates and the use of deferment and forbearance.

Collect repayment plan data for recently defaulted borrowers. This proposed information collection tracks the loan status for borrowers who recently got out of default (e.g., whether they become delinquent again), but it would also be helpful to find out which repayment plans those borrowers are enrolled in. For example, borrowers can "rehabilitate" their defaulted loans by making monthly payments as low as $5, if their income is low relative to their debt. Those borrowers would be best

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[19] U.S. Government Accountability Office. 2015. *Federal Student Loans: Education Could Do More to Help Ensure Borrowers are Aware of Repayment and Forgiveness Options.* http://www.gao.gov/assets/680/672136.pdf.
[20] For more information, see comments submitted by Americans for Financial Reform to the CFPB on April 24, 2017. http://bit.ly/2ptOKkS.
[21] Ibid.

served by entering an IDR plan after completing loan rehabilitation, but the CFPB has found major problems with the transition from default into an IDR plan.[22] To get a clearer picture of the scope of those problems and where they may be concentrated, this data collection should include repayment plan data for recently defaulted borrowers. It would also be helpful to separate borrowers who rehabilitated their defaulted loans from those who consolidated out of default, to see if borrowers fare better under one approach versus the other.

Collect data from collection agencies. In this or another information collection, it would be helpful for the CFPB to gather and analyze data from collection agencies that interact with borrowers who have defaulted on their loans. This proposed collection will track whether recently defaulted borrowers are staying out of default, but data from collection agencies would help illuminate how easily borrowers are able to get out of default in the first place.

Collect college-level data. More and better data are needed at the level of the institution (college) the borrower attended. Data on forbearance, deferment, and delinquency by school would be useful for both institutional and servicer accountability purposes. Having institution-level data on the use of serial forbearances and deferments would help policymakers identify cases where borrowers are not receiving proper counseling about IDR and other repayment options and where schools may be attempting to manipulate their default rates, as discussed earlier.

Additionally, for both college and servicer accountability purposes, it would be helpful to report college-level default rates for a longer period (e.g., for the first five years after entering repayment rather than just the current three-year period for CDRs). Tracking borrowers by institution for a longer period of time would provide a more comprehensive picture of how successfully students are able to repay their loans after leaving a given school. These data would also identify cases where a significant share of borrowers are defaulting soon after the period that is counted for schools' federal aid eligibility, suggesting servicers were facilitating default rate manipulation. Disclosing longer term default rates would also provide key information to consumers and policymakers without compromising the timeliness of the shorter-term CDRs used for assessing a school's eligibility for Title IV funding.

Technical comments on market monitoring tables. We echo several recommendations from the National Consumer Law Center and offer several other suggestions.

Table 1: Federal Loan Portfolio Composition & Performance

1. Add a column break-out of loans by institution type (sector of institution for which the loans were taken out). These data would help identify differences in loan status based on whether the loans were taken out at particular types of institutions.
2. Add "recently defaulted borrowers" as a row and separate out borrowers who rehabilitated their defaulted loans from those who consolidated out of default, as discussed above under "Collect repayment plan data for recently defaulted borrowers."
3. Add "program completion" as a column, as discussed above under "Collect loan status data for borrowers who completed their programs and those who did not."
4. In 1.5.3.0.0.0, break out the types of loan discharges, as discussed above under "Disaggregate data on loan discharges."

[22] CFPB. 2016. *Annual Report of the CFPB Student Loan Ombudsman: Transitioning From Default to an Income-Driven Repayment Plan.* http://bit.ly/2dMY25Q.

5. Add a "military flag" as a row and as a column, to identify repayment outcomes for borrowers who are active duty servicemembers. This flag is already included in Table 4 for private loans.

Table 3: Federal Loan: Income-Driven Repayment Programs

1. In section 3.2 (IDR applications), break out the "under 30 days" approval time into two categories: "15 or fewer days" and "16-29 days." The Department of Education states that its target turnaround time is 15 days, and it would be useful to see how many servicers are meeting that target.[23]
2. In section 3.3 (recertification anniversaries), break out a separate column for the REPAYE plan because the row "not eligible for 'partial financial hardship (PFH)'" does not apply to REPAYE, and the consequences for failing to recertify on time in REPAYE are different than for the other IDR plans.
3. In section 3.4 (recertification applications), clarify whether "approved under 30 days" means that complete recertification applications were approved within 30 days after the borrower's anniversary date, not whether those applications were processed within 30 days of receipt. If the former, it would be helpful to collect information on when borrowers actually submitted their paperwork.
4. In section 3.4 (recertification applications), clarify whether "not approved within 180 days (or by end of review period) means complete applications that are still in process.
5. In section 3.4 (recertification applications), separate out "applications submitted with a tax return" into those submitted with paper tax returns or tax transcripts and those submitted online via StudentLoans.gov, using tax data transferred using the IRS Data Retrieval Tool.[24] It would also be helpful to allow servicers to indicate whether they allow IDR applications to be submitted electronically through StudentLoans.gov, or whether they require borrowers to submit paper applications.
6. In section 3.4 (recertification applications), for borrowers who recertified after their anniversary date:
    a. Break out the number of borrowers who had $0 payments in IDR before missing their recertification deadline.
    b. Break out borrowers by whether they missed the deadline in their early years in IDR or later (e.g., borrowers who missed the deadline in their first year after entering the IDR plan, in their second year after entering the IDR plan, or in their third year or later).
    c. Collect information on borrowers' loan status after missing their IDR recertification deadline. Particularly, it would be helpful to find out whether those borrowers are still current on their loans (less than 30 days delinquent), delinquent, in forbearance, in deferment, or in default.

Table 4: Private: Portfolio Composition & Performance

1. In "special instructions" replace "Summaries should reflect federal loan borrowers' accounts" to "Summaries should reflect private loan borrowers' accounts."

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[23] Douglas-Gabriel, Danielle. April 5, 2016. "Delays. Backlogs. Confusing applications. Obama's latest student loan plan is having growing pains." *The Washington Post.* http://wapo.st/2oAcgbJ.

[24] The IRS Data Retrieval Tool is currently unavailable, but is expected to be restored later in 2017. If there are periods during this information collection where the DRT was unavailable, the DRT outage should be noted when sharing and analyzing the data.

2. In 4.4.2.0.0.0, break out the types of loan discharges, as discussed above under "Disaggregate data on loan discharges."

Definitions

1. Add definitions for "alternative docs," "IDR Applicant/Application Reporting Period," and "IDR Recertification Reporting Period."
2. Clarify that "non PFH status" for IBR I, IBR II, and PAYE refers to borrowers who do not demonstrate a PFH during the reporting period. The current definitions describe "enrollment in [the IDR plan] where borrower does not demonstrate Partial Financial Hardship (PFH)." Borrowers cannot initially enroll in those plans without a PFH, but they are not kicked out of those plans if they lose PFH status due to changes in income and/or family size.
3. For the definition of "Applied to change repayment plan" (3.3.1.3.0.0), clarify what it means that "borrowers application processing metrics should be captured in section 2.2." Section 2.2 refers to "not current" borrowers with no payment or contact established.
4. For all elements referring to IDR applications or recertifications with a tax return, clarify that a tax transcript can also be used as proof of income.

Thank you for this opportunity to comment and for the CFPB's continued attention to improving the quality of student loan servicing. If you have any questions about these comments, please contact Diane Cheng at dcheng@ticas.org or (510) 318-7900.