the institute for
college access & success
405 14th Street
Suite 1100
Oakland, CA 94612
510.318.7900
www.ticas.org

May 28, 2013

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, DC 20552

Dear Ms. Jackson:

These comments are in response to the *Federal Register* proposed rule by the Consumer Financial Protection Bureau (the Bureau) on defining larger participants of the education loan servicing market (Document ID CFPB-2013-0005).

On behalf of The Institute for College Access & Success (TICAS), we thank you for considering much-needed oversight of the student loan servicing market. 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 education loan debt – and the implications for individuals, families, the economy and society.

TICAS strongly supports the Bureau's exercising its authority to oversee non-bank larger participants in the student loan servicing market. Greater oversight is necessary for a number of reasons, including the size of the market, the current uneven oversight, and the particular vulnerability of its consumers. Additionally, at present there in no federal program for supervision of nonbank student loan servicers with respect to federal consumer financial law. This rule will enable the Bureau to oversee larger participants in an industry that has an enormous effect on the lives of students, former students, their families, and the economy.

The market for federal loans alone includes almost 40 million borrowers and $948 billion in outstanding debt.[1] Private education loans constitute another approximately $150 billion in outstanding debt.[2] One in five U. S. households had outstanding student debt in 2010, double the

[1] U.S. Department of Education, *Annual Report 2012*, Federal Student Aid. http://www2.ed.gov/about/reports/annual/2012report/fsa-report.pdf.
[2] U.S. Consumer Financial Protection Bureau and U.S. Department of Education. 2012. *Private Student Loans*. http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

share just 20 years before.[3] There are also growing signs that increased student debt burdens may be contributing to broader economic trends in home ownership and auto purchases.[4]

There is substantial evidence of problems with the current servicing of student loans. The Bureau's annual Student Loan Ombudsman Report[5] and special report on veterans and student loan servicing[6] document numerous serious problems and borrower complaints regarding servicing of both private and federal education loans. Servicing problems can greatly complicate borrowers' debt management strategies and have serious implications for their credit and their contributions to the broader economy.[7]

It is also important to consider the particular vulnerability of education loan borrowers, which increases the need for oversight of loan servicing. First, borrowers are not able to choose the servicer of their loan, and so are prevented from making choices based on competitive performance. Education loan servicers are given exclusive and guaranteed access to borrowers based on contractual agreements with the loan holders, not the borrowers.

Second, student borrowers often face an unfamiliar landscape, as many are young and/or signing loan agreements for the first time. As a result, they have less knowledge of the way the process works and less experience with loan servicing. Adding to this information inequity, the Federal Reserve Board's rules implementing the Truth in Lending Act[8] do not require final disclosure of a private loan's terms to co-signers, even though co-signers will be held responsible under those terms.[9] The share of private loans with cosigners rose from 67 percent in 2008 to more than 90 percent in 2011. [10]

---

[3] Pew Research Center. 2012. *A Record One-in-Five Households Now Owe Student Loan Debt*. Pew Social & Demographic Trends. http://www.pewsocialtrends.org/files/2012/09/09-26-12-Student_Debt.pdf.

[4] Brown, M. and S. Caldwell. 2013. *Young Student Loan Borrowers Retreat from Housing and Auto Markets*. Federal Reserve Bank of New York. http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html; National Association of Realtors. 2012. *Impact of Student Debt on Future Housing Demand*. http://economistsoutlook.blogs.realtor.org/2012/06/18/impact-of-student-debt-on-future-housing-demand/.

[5] U.S. Consumer Financial Protection Bureau. 2012. *Annual Report of the CFPB Student Loan Ombudsman.* http://files.consumerfinance.gov/f/201210_cfpb_Student-Loan-Ombudsman-Annual-Report.pdf.

[6] U.S. Consumer Financial Protection Bureau. 2012. *The Next Front? Student Loan Servicing and the Cost to Our Men and Women in Uniform*. http://www.consumerfinance.gov/reports/the-next-front-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform/.

[7] Burd, S. 2012. *Getting Rid of the College Loan Repo Man*. Washington Monthly. http://www.washingtonmonthly.com/magazine/septemberoctober_2012/features/getting_rid_of_the_college_loa039354.php?page=3.

[8] U.S. Federal Reserve System. August 14, 2009. Federal Register Notice, Regulation Z; Docket No. R-1353. Final Rule; official staff commentary, Truth in Lending. http://www.gpo.gov/fdsys/pkg/FR-2009-08-14/pdf/E9-18548.pdf.

[9] For more information, see: TICAS. 2009. *Summary of New Disclosures for Private Student Loans*. http://www.ticas.org/pub_view.php?idx=495.

[10] U.S. Consumer Financial Protection Bureau and U.S. Department of Education. 2012. *Private Student Loans*. http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

Third, taxpayers, the federal government, and states have a large and direct stake in student loan servicing. Not only do they have an interest in protecting vulnerable consumers, but they also have significant financial investments into student loans and their servicing. Governments use taxpayer funds to finance and service federal loans and private loans made by state and quasi-state agencies. Taxpayers also subsidize federal and private loans through the federal income tax deduction for student loan interest payments, which was recently made permanent.

We believe that robust oversight of larger participants in the student loan servicing market should, at a minimum, include:

- servicers with at least one million accounts, and possibly also those with fewer accounts;
- servicers that the Department is required by statute to contract with for loan servicing; and
- servicing of education loans to students as well as to parents and others for another person's education.

Servicers with at Least One Million Accounts, and Possibly Also Those with Fewer Accounts. The Bureau proposes to define all nonbank servicers with one million or more accounts as "larger participants" for purposes of oversight. We support the decision to use account volume as the measure of market participant size. We also agree that the accounts of affiliated companies servicing loans for the same borrowers should be counted toward each affiliate's total as a more accurate reflection of the size of the servicing entity.

The one million accounts threshold should not be increased and consideration should be given to decreasing it. Raising the threshold to three million accounts, an example of a higher alternative threshold given in the Bureau's request for comments, would exclude from supervision at least two very large loan servicers responsible for billions of dollars in education loans, leaving only five loan servicers subject to the Bureau's supervision. One of the servicers that might be excluded if the thresholds were raised to three million accounts even describes itself as "one of the largest loan servicers in America."[11]

Instead, consideration should be given to lowering the account volume threshold to include any servicer with more than 200,000 accounts, an example of a lower alternative threshold mentioned by the Bureau. Such servicers are still large by almost any standard. Because they have enough volume to require investments in technology and human resources to manage those accounts, additional supervision should not be unduly burdensome.

Servicers That the Department Is Required by Statute to Contract with for Loan Servicing. The Higher Education Act requires that the Department of Education contract with certain

[11] MOHELA press release. May 1, 2013. *MOHELA Recognized for Innovative Mobile Application Development at 2013 Gateway to Innovation*. https://www.mohela.com/serverfiles/news/73.pdf.

nonprofit loan servicers.[12] The Department's contracts hold these servicers to specific contractual performance standards, but supervision is limited and not focused on federal consumer financial laws. Given that these lenders are guaranteed access to federal student loan servicing contracts and paid with federal taxpayer funds, it is appropriate that they should be subject to heightened supervision to ensure they are complying with all federal consumer financial laws.

Servicing of Education Loans to Students as Well as to Parents and Others for Another Person's Education. It is important that this rule applies to the servicing of all education-related loans, whether made to the student or to a parent or another person. The rule should be clarified to make certain that all forms of educational loan servicing are covered, regardless of who the borrower is. The proposed rule uses the term "student" interchangeably with "borrower" and "consumer." We recommend it be clarified so that loans to parents and other borrowers for education are clearly included in the calculation of loan volume to be supervised by the Bureau.

Additionally, other loans that are marketed as education loans should be included in the final rule, specifically open-ended and property-secured loans. Despite potential complexities that may come with structural differences in these types of loans, if they are marketed as education loans, they should be treated as education loans, included in the loan volume calculation, and subject to the protections of this class of lending.

Thank you for the opportunity to comment on the Bureau's proposed definition of "larger participants" in the student loan servicing market. If you have any questions about our comments, please contact Pauline Abernathy at (202) 223-6060 ext. 603 (pabernathy@ticas.org) or Joseph Mais at (202) 223-6060 ext. 602 (jmais@ticas.org).

Sincerely,

Pauline Abernathy
Vice President

Joseph Mais
Senior Policy Analyst/DC Director

[12] Burd, S. 2009. *Non-Profit Student Loan Scandals*. New America Foundation: Higher Ed Watch blog. http://higheredwatch.newamerica.net/blogposts/2009/non_profit_student_loan_scandals-19124; Burd, S. 2011. *Budget Cutters Should Take Aim at Set Aside for Non-Profit Student Loan Servicers*. New America Foundation: Higher Ed Watch blog. http://higheredwatch.newamerica.net/blogposts/2011/budget_cutters_should_take_aim_at_set_aside_for_non_profit_student_loan_servicers-512.