April 5, 2013

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

RE: Notice and Request for Information Regarding an Initiative to Promote Student Loan Affordability (Docket No. CFPB-2013-0004)

Dear Ms. Jackson,

Consumers Union, the policy and advocacy arm of *Consumer Reports*®, appreciates the opportunity to submit comments in response to the Bureau's request for information on private student loans. Based on our own research, and informed by stories that consumers have shared with us regarding their experiences, we believe that private student lenders should offer flexible repayment plans and refinance options to private loan borrowers. These two changes would provide immediate relief to borrowers and promote their long-term financial well-being, while restoring some much-needed market discipline to the private student loan industry.

Americans now owe over $1 trillion in student loan debt, surpassing credit card debt for the first time.[1] The cost of tuition has increased over 500 percent since 1985 at state schools, which admit the vast majority of students nationwide.[2] Average family income (adjusted for inflation) is lower than it was a decade ago, making it even harder to keep up with rising tuition without taking out a loan.[3]

According to recent data, two-thirds of all college students graduate with student loan debt.[4] Those who have student debt hold an average of $26,600.[5] Student debt isn't just a problem for 18-22 year olds: student loan borrowers are primarily over 30, and 15 percent of borrowers are over 50.[6] The long-term effects are hard to fully predict, but some experts worry that such over-indebtedness could cause a substantial drag on recovery in the housing market, and the economy as a whole.[7] It is also telling – and

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[1] Josh Mitchell & Maya Jackson-Randall, *Student-Loan Debt Tops $1 Trillion*, WALL ST. J., Mar. 22, 2012, *available at* http://online.wsj.com/article/SB10001424052702303812904577295930047604846.html?mod=ITP_pageone_1 (citing new estimate by Consumer Financial Protection Bureau).
[2] Catherine Rampell, *Why Tuition Has Skyrocketed at State Schools*, N.Y. TIMES, Mar. 2, 2012, *available at* http://economix.blogs.nytimes.com/2012/03/02/why-tuition-has-skyrocketed-at-state-schools/ (citing figures from the Bureau of Labor Statistics).
[3] College Board, Trends in Higher Education, Trends in College Pricing, Changes in Family Income Over Time, http://trends.collegeboard.org/college-pricing/figures-tables/changes-family-income-over-time (last visited Feb. 12, 2013).
[4] THE INST. FOR COLLEGE ACCESS & SUCCESS, STUDENT DEBT AND THE CLASS OF 2011 1 (2012), *available at* http://projectonstudentdebt.org/files/pub/classof2011.pdf.
[5] *Id.*
[6] *Id.* (summarizing data used in CAMPUS PROGRESS, THE STUDENT DEBT CRISIS 20 (2012), *available at* http://www.americanprogress.org/wp-content/uploads/2012/10/WhiteStudentDebt-5.pdf).
[7] *See* NAT'L ASS'N OF CONSUMER BANKRUPTCY ATTORNEYS, THE STUDENT LOAN "DEBT BOMB": AMERICA'S NEXT MORTGAGE-STYLE ECONOMIC CRISIS? 2 (2012), *available at*

worrisome – that student loan debt has grown since the 2008 financial crisis while all other forms of consumer debt have shrunk.[8]

Private Loans Are More Expensive and Come with Fewer Protections

Of the $1 trillion outstanding in student loans, private loans account for roughly $150 billion of the market.[9] Unlike federal loans, private student loans can come with variable interest rates that may be significantly higher than those of federal loans.[10] Unfortunately, students and families often receive confusing financial aid letters from colleges that fail to explain differences between grants and loans, or between federal and private loans.[11] As a result, borrowers may not realize until after graduation the full extent of the debt burdens they face.

Once in repayment, the differences between federal and private loans become stark. For federal loan borrowers struggling with underemployment, low wages or other setbacks, relief is available in the form of deferments, forbearances, or flexible repayment plans such as income-based repayment (IBR)[12] and Pay-As-You-Earn.[13] However, a private loan borrower does not have a legal right to such options – the borrower is at the mercy of the lender, and is no better off than if the debt came from a credit card.[14]

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http://nacba.org/Portals/0/Documents/Student%20Loan%20Debt/020712%20NACBA%20student%20loan%20debt%20report.pdf (warning of negative impact high debt burdens can have on financial decisions such as home-buying and saving fore retirement).

[8] DONGHOON LEE, FED. RES. BANK OF N.Y., HOUSEHOLD CREDIT & DEBT: STUDENT DEBT 5 (2013), *available at* http://www.newyorkfed.org/newsevents/mediaadvisory/2013/Lee022813.pdf (PowerPoint presentation highlighting 2012:Q4 data specific to student loans).

[9] CONSUMER FIN. PROTECTION BUREAU & U.S. DEP'T OF EDUC., PRIVATE STUDENT LOANS 3 (2012), *available at* http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

[10] *See id.* at 12 (lenders reported variable rates ranging from 2.98% to 3.55% at the low end to 9.50% to 19.00% at the high end).

[11] Janet Lorin, *Colleges Confuse Students with Letters Offering Aid That's Debt*, BLOOMBERG NEWS, Apr. 23, 2012, *available at* http://www.bloomberg.com/news/2012-04-24/colleges-confuse-students-with-letters-offering-aid-that-s-debt.html.

[12] The IBR plan caps monthly payments at 15% of the borrower's discretionary income. 20 U.S.C. § 1098e(a)(3) (2012).

[13] In 2010, Congress enacted additional reforms, set to take effect for loans made to borrowers on or after Jan. 1, 2014, that would cap monthly payments at 10% of the borrower's discretionary income. Health Care and Education Reconciliation Act of 2010, 111 Pub. L. No. 152, 124 Stat. 1029, 1081 (2010) (codified in scattered sections of the U.S. Code). The Obama Administration moved the effective date up to Jan. 1, 2012, via executive action. *See* Press Release, White House, We Can't Wait: Obama Administration to Lower Student Loan Payments for Millions of Borrowers (Oct. 25, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/10/25/we-cant-wait-obama-administration-lower-student-loan-payments-millions-b.

[14] Even if the private lender offers forbearance options, they can come at a price. CONSUMER FIN. PROTECTION BUREAU, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN 10 (2012), *available at* http://files.consumerfinance.gov/f/201210_cfpb_Student-Loan-Ombudsman-Annual-Report.pdf; *see also* Eric Pianin, *Student Loans See as Potential Next "Debt Bomb" for U.S. Economy*, WASH. POST, Mar. 10, 2012, *available at* http://www.washingtonpost.com/business/student-loans-seen-as-potential-next-debt-bomb-for-us-economy/2012/03/05/gIQAM0iF4R_story.html (discussing Sallie Mae loan borrowers' recent protest over forbearance fees).

To make things worse, in fact, if the borrower defaults on a private student loan and spirals downward toward bankruptcy, that loan will be treated differently than other unsecured forms of credit at the courthouse. Due to 2005 amendments to the Bankruptcy Code, private student loans cannot be automatically discharged.[15] In order to obtain relief, a student loan borrower filing for bankruptcy must also initiate a separate proceeding and demonstrate that he or she will face "undue hardship" if the student loan is not discharged. This standard has proven very difficult to meet, and courts may vary in their application of the standard because Congress was silent on its definition.[16]

The harsh treatment of private student loans in bankruptcy has led some bankruptcy attorneys to express their concern over its impact on private student loan borrowers.[17] Some have suggested that the current legal framework creates a lack of market discipline because lenders, knowing that the loan will follow the borrower even after bankruptcy, have little incentive to negotiate affordable repayment plans or help the borrower stay out of default.[18] Furthermore, the harsh treatment of student loans runs counter to the general principle that the bankruptcy system is there to provide struggling debtors with a "fresh start" that enables them once more to fully participate in the consumer economy.[19]

This onerous combination – limited rights in repayment and limited rights in bankruptcy – places a doubly unfair burden on the backs of private student loan borrowers.

What Can Be Done

The time is now to make two changes that would bring substantial relief to private student loan borrowers:

First, lenders should offer income-based repayment plans to borrowers. Higher education is a unique investment; the returns can take years to realize, especially when the job market is weak for new graduates. Borrowers who demonstrate financial hardship, due to high debt balances and modest wages, should be allowed to repay a reasonable percentage of their income in order to stay current. Borrowers should not be steered into default as they are building their careers after college.

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[15] 11 U.S.C. § 523(a)(8)(B) (2012).

[16] Most bankruptcy courts have followed a three-part test, first articulated in *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395, 396 (2d. Cir. 1987), that requires the debtor to show (1) current inability to maintain a "minimal standard of living" while repaying the loans, (2) that current circumstances will persist for a significant portion of the repayment period, and (3) the debtor has made a good faith effort to repay. Empirical research has shown that even this standard has been subject to varying interpretations. *See* Rafael Pardo & Michelle Lacey, *The Real Student Loan Scandal: Undue Hardship Discharge Litigation*, 83 AM. BANKR. L.J. 179, 183 (2009); Rafael Pardo & Michelle Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt*, 74 U. CIN. L. REV. 405, 411 (2005).

[17] *See* NAT'L ASS'N OF CONSUMER BANKRUPTCY ATTORNEYS, *supra* note 7, at 2.

[18] *See* NAT'L ASS'N OF CONSUMER BANKRUPTCY ATTORNEYS, STUDENT LOAN DEBT CRISIS SURVEY 2 (2012), *available at* http://nacba.org/Portals/0/Documents/Student%20Loan%20Debt/020712%20NACBA%20student%20loan%20survey.pdf (finding that two-thirds of respondents experienced increasingly aggressive collection practices); Adam Levin, *How to Fix the Broken Student Debt System*, ABCNews, Dec. 16, 2012, *available at* http://abcnews.go.com/Business/fix-broken-student-loan-system/story?id=17978044#.UVn5hzfy045.

[19] *See* Pardo & Lacey, *The Real Student Loan Scandal, supra* note 16, at 183.

Second, lenders should develop refinancing options for private student loan borrowers. When borrowers demonstrate a pattern of responsible behavior, they should have the opportunity to shop around for lower interest rates as they become available. This will help borrowers succeed in repaying their loans and put the extra money they save toward investments or purchases that stimulate the economy. Consumers with mortgages can refinance their loans when they meet certain conditions; student loan borrowers deserve the same opportunity to be compensated for their responsible behavior in repayment. All ideas for funding and promoting a refinance market, including public-private partnerships, should be explored.

Consumers Union's Seven Principles for Fair Student Lending

The two reforms advocated above are, of course, part of a bigger picture. The entire journey of a student loan borrower – starting with receiving financial aid letters and ending with repayment and discharge of the debt obligation – needs safeguards based on fundamental fairness. As the Bureau considers measures to improve the affordability of private student loans, Consumers Union recommends the following principles to guide these and future efforts pertaining to the student loan market:

- **Transparency: Lending options should be easily comparable**

  Schools should be required to provide students with plain English, standardized disclosures that clearly explain their options for financing education, including grants and scholarships as well as loans. The disclosures should enable students to compare and understand the differences between private and federal loans, as well as their estimated monthly loan payments after graduation.

- **Borrowing Options: Schools should help students find the most affordable loans**

  To prevent unnecessary borrowing, private lenders should be required to check with the borrower's school before making a loan. Schools should provide students with pre-loan counseling to review loan costs and eligibility requirements for less costly options.

- **Flexible Repayment: Borrowers must be given reasonable options**

  Lenders should offer flexible, affordable and sustainable repayment options, including income-based payment plans, deferments and forbearances, regardless of the type of loan. Lenders should also permit refinancing of loans, and accept partial payments.

- **Reasonable Costs: Fees should be reasonable and proportional to services provided**

  Borrowers should not be penalized with excessive, new or hidden fees. Lenders should not be allowed to manipulate payments in a manner that harms borrowers.

- **Accountability: Students should have access to effective and timely loan inquiries and dispute resolution**

Those who administer and collect student loan payments should be required to establish clear procedures and a single point of contact for questions and complaints. Complaints handling, resolution and appeals should be centralized and monitored by regulators.

- **Fairness: Abusive, unfair or fraudulent practices must not be permitted**

All borrowers should be protected from deceptive marketing, abusive collection and repayment practices, identity theft, school kickbacks and other fraudulent student loan practices and services.

- **Reasonable Relief: Loans shouldn't be a lifelong burden**

All borrowers should receive opportunities to rehabilitate loans back to good standing with an affordable and sustainable repayment plan. Borrowers should also have the opportunity to obtain loan cancellations in certain circumstances, including long-term economic hardship.

We applaud the Bureau's efforts to rein in the cost of higher education and promote fair treatment of student loan borrowers. We look forward to working with the Bureau going forward on these important issues.

Sincerely,

Suzanne Martindale
Staff Attorney