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September 8, 2014

Hon. Arne Duncan, Secretary
U.S. Department of Education
c/o Jean-Didier Gaina
1990 K Street NW, Room 8037
Washington, DC 20006

RE: Program Integrity – Definition of PLUS Adverse Credit [Docket No. ED-OPE-0082]

Dear Secretary Duncan:

Consumers Union, the policy and advocacy arm of *Consumer Reports*®,[1] appreciates the opportunity to comment regarding the Department's Notice of Proposed Rulemaking to revise the definition of "adverse credit" for the PLUS loan program. We appreciate the Department's efforts to balance access to funds with consumer protections. However, as we previously stated during the negotiated rulemaking sessions that developed this proposal, we believe that the proposed definition of adverse credit goes too far to loosen underwriting standards for loans that come with high interest rates and no borrowing caps.[2]

Given these concerns, we urge the Department to amend the proposed definition of adverse credit by (1) lowering the loan amounts exempted from upfront review to $1000, and (2) setting the lookback period at three years, instead of two, for evaluating collection and charge-off accounts. We also urge the Department to ensure that any additional loan counseling for PLUS loan applicants will encourage them to borrow only the amounts they need to pay for reasonable college expenses. Finally, we urge the Department to release meaningful repayment data on PLUS loans, and to support efforts in Congress to improve the PLUS loan program going forward.

Student Loan Debt is Rising

As the Department well knows, student debt is on the rise. The student loan market now tops $1.2 trillion, and roughly 7 in 10 college students leave school with debt.[3] Average loan balances have risen steadily in recent years; college students who leave school

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[2] *See* Letter from Suzanne Martindale et al. to Negotiators (May 1, 2014) *and* Letter from Whitney Barkley et al. to Negotiators (May 16, 2014), *available at* http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html (scroll down to "Materials provided by non-Federal negotiators to the negotiating committee prior to Session 4").
[3] THE INST. FOR COLLEGE ACCESS & SUCCESS, STUDENT DEBT AND THE CLASS OF 2012 1 (2013), *available at* http://projectonstudentdebt.org/files/pub/classof2012.pdf.

today with debt hold an average balance of just under $30,000.[4] Student debt isn't just a problem for 18-22 year olds: two-thirds of student loan borrowers are over 30, and 15 percent are over 50.[5] It is almost impossible to walk away from a student loan: borrowers who default may be subject to aggressive collection tactics for years.[6] The federal government can garnish wages and even Social Security pensions without going to court.[7] Meanwhile, student loans are nearly impossible to discharge in bankruptcy, unlike credit card or even gambling debts.[8]

The long-term effects are hard to predict, but student debt could create significant obstacles to improving the housing market, and to the nation's economic recovery as a whole, because borrowers must delay other life cycle investments like cars and homes in order to afford their student loan payments.[9] It is also alarming that student loan debt has grown substantially since the 2008 financial crisis, despite downward trends in most other kinds of household debt.[10] Default rates appear to be on the rise, too. The Department's latest estimates show that one in ten Stafford loan borrowers are defaulting on their loans after two years of being in repayment, and one in seven are defaulting after three years.[11]

PLUS Loans Can Place An Enormous Financial Burden on Families

PLUS loans currently top $100 billion outstanding, with $38 billion held by graduate student borrowers and $62 billion held by parent borrowers.[12] PLUS loans are different from other federal loans in that they come with no statutory borrowing caps – a PLUS loan applicant can take out as much as the school's stated cost of attendance.[13] PLUS loans are available to both graduate students and parents of undergraduate students.

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[4] *Id.*

[5] *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).

[6] For example, the federal government has the power to garnish wages – and even protected benefits like Social Security – without needing a court order. 20 U.S.C. 1095a (HEA garnishment/collection for guaranteed FFEL loans; 31 U.S.C. 3720D (DCIA garnishment/collection for Direct Loans).

[7] 31 C.F.R. §§ 900-904 (2011) (setting standards for government collection of all "federal claims," including student loan debts).

[8] Student loans can only be discharged if the debtor can show that repaying the debt will "impose an undue hardship on the debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8) (2006 & Supp. V).

[9] *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* 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).

[10] *See* JESSE BRICKER ET AL., FED. RESERVE BD., CHANGES IN U.S. FAMILY FINANCES FROM 2010 TO 2013: EVIDENCE FROM THE CONSUMER SURVEY OF FINANCES 25-26 (2014), *available at* http://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf.

[11] Press Release, Dep't of Education, Default Rates Continue to Rise for Federal Student Loans (Sept. 30, 2013), *available at* http://www.ed.gov/news/press-releases/default-rates-continue-rise-federal-student-loans.

[12] U.S. Dep't of Educ., Federal Student Aid, Federal Student Loan Portfolio, https://studentaid.ed.gov/about/data-center/student/portfolio (click link to "Federal Student Aid Portfolio by Loan Type (2014:Q3 data).

[13] 20 U.S.C. § 1078-2(b) (2012 & Supp. II).

Although they are borrowing under the same program, Graduate PLUS and Parent PLUS borrowers reflect two very different populations that are borrowing for different reasons. Graduate students are borrowing as an investment in their own futures by obtaining an advanced degree. Loans to graduate students are made on the promise that they will see an increase in salary from their educational attainment that enables them to repay the loans they borrowed.

Parents, on the other hand, do not see an increase in their incomes from their children's education. Parents do not receive the potential increase in cultivation or skilled knowledge that comes with more education. They have no guarantee that their children will help pay the loans back, or will even finish school.

For these reasons, allowing parents to borrow many thousands of dollars in PLUS loans raises unique concerns. According to Department data analyzed by Bloomberg on PLUS loan repayment rates, only 45 percent of the $62 billion Parent PLUS loan portfolio is actively being repaid.[14] Such a low repayment rate raises important questions about parents' ability to successfully repay the loans they've borrowed.

The Proposed Rule Goes Too Far to Loosen Underwriting Standards

We appreciate the Department's intent to include accounts in collections and charged-off accounts in the definition of "adverse credit." As the Department has rightly noted, accounts in either status are well beyond 90 days delinquent,[15] and thus indicate heightened financial stress for the applicant.

However, the proposed thresholds for evaluating applicants' histories may still let too many PLUS loan applicants – most of whom are parents – take on debts they are unable to repay. The proposed exemption for outstanding debts totaling less than $2,085 could lead to a determination of no adverse credit even where the applicant has debts significant enough to attract ongoing collection attempts and lawsuits.

Furthermore, a two-year lookback period for accounts in collections and charged-off accounts is too short. We appreciate that the existing five-year lookback period may capture old debts from the height of the recent recession that do not reflect the applicant's current financial health. However, applicants with debts that have only been in collections or charged off for two years could still be subject to aggressive collection practices, which may cause further financial stress in the near future. Such applicants may not be good candidates for automatic approval. We would suggest a three-year lookback period as a compromise.

PLUS Loan Counseling Must Emphasize Dangers of Overborrowing

We appreciate the Department's proposal to require additional loan counseling to applicants who apply for reconsideration after an initial denial. Meaningful counseling will be interactive, and require the applicant to adjust possible borrowing amounts in order to see the net cost of borrowing varying loan sizes up to the maximum amount for which

[14] Janet Lorin, *Alarm Raised by Plan to Ease Credit Norms on U.S. Parent Loans*, BLOOMBERG, May 26, 2014, *available at* http://www.bloomberg.com/news/2014-05-27/alarm-raised-by-plan-to-ease-credit-norms-on-u-s-parent-loans.html.

[15] William D. Ford Direct Loan Program, 79 Fed. Reg. 44640, 44646 (proposed Aug. 8, 2014).

they are eligible. It is crucial for applicants to understand that they can borrow *less than the maximum* – and that they should borrow only what they need – to prevent overborrowing that could burden them for decades.

More Repayment Data on PLUS is Needed to Understand Borrower Behavior

We are pleased that the Department is considering releasing more data about the PLUS loan program, including default rate information based on applicants' credit history characteristics as well as default rates by institution.[16] However, default rates alone do not provide a complete picture of how widespread financial distress may be. Some non-defaulted borrowers may in fact be making on-time payments each month, but others may be somewhere else along the spectrum of repayment outcomes. PLUS borrowers who have been in deferments and forbearances for years, or who are making payments once every few months to avoid default, would not be included a cohort default rate – but they are certainly distressed borrowers. Therefore, we urge the Department to collect, analyze and publish robust data on repayment patterns of PLUS loan borrowers, disaggregating graduate student and parent borrowers.

Meaningful Reform to the PLUS Loan Program Must Take Place in Congress

We recognize that the Department must work within the statutory authority it is afforded by Congress to craft regulations for the PLUS loan program. As many negotiators stated around the table at the spring 2014 meetings, the PLUS program must be improved through statutory changes to better ensure that access is balanced with consumer protection. To that end, we urge the Department to support legislative efforts to improve the PLUS program in a few important ways.

First, Congress should separate Parent and Graduate PLUS loans, and create two different lending programs. These loans serve two different groups of borrowers, for two different purposes.

Second, loans made to parents should be carefully underwritten using ability to repay metrics, not just an examination of credit histories. A borrowing standard focused on parents' ability to repay would help to ensure that families are not borrowing beyond their means in order to finance their children's college educations, while still ensuring access to PLUS loans for families with imperfect credit histories who nonetheless are able to afford payments on the loans they borrow.

We would also urge Congress to require meaningful and interactive loan counseling for all PLUS loan applicants, emphasizing that they need not borrow the entire amount for which they are eligible, and should only borrow the minimum amount necessary to pay for educational and living expenses.

It is our hope that, years from now, the next negotiated rulemaking committee revisiting these rules will have a more modern, tailored PLUS program to work with, and more accurate data to review.

[16] *Id.* at 44648.

Conclusion

Access to education for all is extremely important. The Department must take steps, using the full extent of its authority, to ensure that students are accessing education that is affordable. Easing underwriting standards for PLUS loans may be the wrong answer to a very legitimate question about how to ensure access to education.

We urge the Department to prioritize consumer protections in its regulations, and to advocate for change in Congress where appropriate, to help prevent the rising financial burdens being placed on students and families to get an education.

We look forward to working with the Department in the future on this and other rulemakings affecting higher education.

Sincerely,

Suzanne Martindale
Staff Attorney