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July 15, 2016

Undersecretary Ted Mitchell
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

RE: Comments on Department initiative to implement new Title IV education loan servicing portal

Submitted via email: ousevents@ed.gov

Dear Undersecretary Mitchell:

Consumers Union, the policy and advocacy arm of Consumer Reports,[1] appreciates the opportunity to provide input on the Department's plans to implement a new servicing portal for student loan borrowers. We applaud the Department's recent actions to improve servicing outcomes for people with education loans, and believe that a well-designed, Department-branded servicing platform could have a substantial positive impact on borrowers' experiences managing their loans.

As the Department moves forward in selecting vendors and designing this new system, we urge you prioritize the following:

- Specify enforceable conduct requirements in contracts with servicers performing back-office functions, working in consultation with other relevant state and federal enforcement agencies to ensure proper oversight.
- Ensure that servicers performing back-office functions have training necessary to handle special populations, such as disability discharge applicants or public service employees, and tie compensation to quality of outcomes for those populations as well as general performance metrics.
- Design a system that is consumer-tested, intuitive and easy to navigate.
- Prepare communications as appropriate to minimize confusion as borrowers are transferred to the new system.

General Comments

The Department's efforts to overhaul the federal education loan servicing system are crucial – and urgently needed now. In the last ten years in particular, more and more families have been forced to borrow money from the federal government and other financial institutions in order to educate themselves past high school. As a result, the

[1] Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit

vast majority of students who attend college – whether or not they graduate – are now leaving school with loans averaging almost $29,000.[2]

As students exit school, they encounter a bewildering and complex system meant to administer loan repayment plans, process payments, engage in debt collection tactics, and more. Despite the fact that students who take out federal education loans have a legal right to access a range of different repayment options and other benefits after they leave school, many are simply overwhelmed by the complexity of the system. Many of the income-driven repayment (IDR) plans, intended to help borrowers make affordable monthly payments, appear similar but have different eligibility requirements, adding to further confusion. Some may encounter frustration at receiving inconsistent information and having trouble processing paperwork. Others may find the relationship between the Department and loan servicing companies confusing, due in part to receiving communications from the government while in school, followed by communications from different companies later on in repayment.

Loan servicing companies in contract with the federal government are in the best position to help borrowers wade through this complex system – to learn about their options, and make informed choices about how to manage their loans over time. Unfortunately, however, problems with servicers seem to be the norm rather than the exception. When the Consumer Financial Protection Bureau launched a public inquiry last year into education loan servicing practices, they received thousands of comments reporting problems with lost paperwork, misapplied payments, and other common customer service failures.[3] Many borrowers also reported hurdles to accessing the flexible repayment options to which they are entitled under federal law.[4] The Bureau estimates that approximately 1 in 4 borrowers are struggling to repay their loans[5] – a staggering number, in light of the protections that federal loan borrowers are supposed to have by law.

It is even more troubling that borrowers from low-income communities and communities of color appear more likely to fall behind on their loans – even though they borrow smaller amounts on average. The Washington Center for Equitable Growth's "Mapping Student Debt" project shows that borrowers in lower-income communities and communities of color across the nation are more likely to approach delinquency, even on modest amounts.[6] The Federal Reserve Board has also found that borrowers with balances below $10,000 are more likely to fall behind on payments compared to those with higher balances[7] – suggesting that problems stem from factors quite different from the amount borrowed.

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[2] THE INST. FOR COLLEGE ACCESS & SUCCESS, STUDENT DEBT AND THE CLASS OF 2013 1 (2014), *available at* http://projectonstudentdebt.org/files/pub/classof2013.pdf.
[3] CONSUMER FIN. PROTECTION BUREAU, STUDENT LOAN SERVICING: ANALYSIS OF PUBLIC INPUT AND RECOMMENDATIONS FOR REFORM 17 (2015), *available at* http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.
[4] *Id.* at 25.
[5] *Id.* at 4.
[6] *See* Washington Ctr. For Equitable Growth, Mapping Student Debt, Map 1: An Introduction http://mappingstudentdebt.org/#/map-1-an-introduction (showing outcomes by income level), Map 2: Race http://mappingstudentdebt.org/#/map-2-race (showing outcomes by race).
[7] FED. RESERVE BD., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2015 54 (2016), *available at* http://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf (finding that 22 percent of respondents with debts below $10,000 fell behind on payments, compared with

Given that the vast majority of education loans are owned or guaranteed by the federal government, and thus have flexible repayment options that should prevent delinquency and default from ever happening, these outcomes are unacceptable. These troubling data points indicate that the Department must conduct a comprehensive overhaul of the federal education loan servicing system, to prevent unnecessary harms borrowers may be experiencing due to servicers' poor conduct.

Although the Department revised its contracts last year to incentivize servicers to keep borrowers in good standing,[8] additional incentives alone cannot fix the system. Incentives must go hand in hand with quality supervision and vigorous enforcement in order to implement a fair servicing system.

We appreciate the Department's efforts to date, in coordination with the Bureau and the Treasury Department, to identify key areas for improvement and articulate a "joint statement of principles" to guide the creation of a new loan servicing system.[9] Now the Department must put these principles to work by building a new universal system that guarantees federal loan borrowers access to the benefits they are entitled to receive, as well as the customer service they deserve.

Specific Recommendations

Set forth specific conduct requirements in contracts, and coordinate with relevant enforcement agencies to ensure strong oversight. A well-designed online portal needs back-office vendors to function smoothly and consistently for borrowers. In its next round of contracting, we urge the Department to set uniform minimum standards for all federal education loan servicers involved in the new servicing portal – and to work with other state and federal enforcement agencies to ensure that these standards are enforced.

At present, there are no industry-wide standards for education loan servicers. This is in sharp contrast to other financial services companies, such as mortgage servicers and credit card companies, which are subject to range of conduct requirements by law.

Mortgage servicing. In the context of mortgage servicing, several important reforms have gone into effect that rein in some of the worst abuses that mortgage loan servicers perpetrated against homeowners, particularly during the recent mortgage and foreclosure crisis.[10] For example, mortgage servicers have to conduct active outreach to

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17 percent of those with debts between $10,000 and $25,000 and only 11 percent of those with debts over $100,000).

[8] Press Release, U.S. Dep't of Educ., U.S. Department of Education Strengthens Federal Student Loan Servicing (Aug. 29, 2014), *available at* http://www.ed.gov/news/press-releases/us-department-education-strengthens-federal-student-loan-servicing (announcing revised payment structure to increase compensation for current accounts).

[9] Consumer Fin. Protection Bureau, U.S. Dep't of Educ., & U.S. Dep't of Treasury, Joint Statement of Principles on Student Loan Servicing (2015), *available at* http://files.consumerfinance.gov/f/201509_cfpb_treasury_education-joint-statement-of-principles-on-student-loan-servicing.pdf.

[10] Mortgage servicers are subject to conduct provisions in the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-2617) and Truth in Lending Act (15 U.S.C. §§ 1601-1667f), as implemented via Bureau regulations at 12 C.F.R. § 1024 and 12 C.F.R. § 1026 respectively.

delinquent borrowers - they must contact the homeowner after a payment is 36 days overdue,[11] and must follow up with a written notice after 45 days' delinquency,[12] to inform the homeowner about loss mitigation options and to encourage the homeowner to work with the servicer to resolve the problem.

Federal regulations also require servicers to ensure "continuity of contact" by assigning specific personnel to a homeowner who is delinquent.[13] These personnel must remain available to the homeowner until the homeowner has made at least two payments without incurring a late fee.[14]

If homeowners are to be transferred to a different servicer, they must receive notice 15 days prior to the transfer, and again 15 days after the effective transfer date.[15] In addition, servicers must maintain policies and procedures for retaining key documents and information about mortgage loans for a certain period of time,[16] as well as reasonable procedures for transferring documents to new servicers.[17] Servicers must capture and retain all credit and debit transactions posted to the account, any notes from communications with the homeowner, and copies of any documents the homeowner has submitted to the servicer to fix a problem or apply for loss mitigation plans.[18]

Mortgage servicers are also prohibited from "dual-tracking," or the practice of starting a foreclosure proceeding while the homeowner is still trying to work out a loan modification.[19] Furthermore, homeowners have the right to notice and appeal if their application for a loan modification is denied.[20] They have a private right of action and can sue for damages if the servicer does not follow the law.[21]

When processing payments, servicers credit payments on the day that they are received.[22] If homeowners encounter an overcharge or other error, they can contest it in writing – and the servicer must respond within five days of receiving the communication.[23] Servicers must promptly notify homeowners either that the error has been corrected, or that the servicer has conducted a reasonable investigation and determined that no error occurred.[24]

Credit cards. Credit card companies also have to follow certain procedures to ensure fair administration of borrowers' accounts. For example, credit card companies must give cardholders 45 days prior notice before hiking fixed interest rates or making other

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[11] 12 C.F.R. § 1024.39(a) (2015).
[12] 12 C.F.R. § 1024.39(b).
[13] 12 C.F.R. § 1024.40(a).
[14] 12 C.F.R. § 1024.40(a)(2).
[15] 12 C.F.R. § 1024.33(b).
[16] 12 C.F.R. § 1024.38(c)(1).
[17] 12 C.F.R. §§ 1024.38(a), (b)(4).
[18] 12 C.F.R. § 1024.38(c)(2).
[19] 12 C.F.R. §§ 1024.41(f), (g).
[20] 12 C.F.R. § 1024.41(h).
[21] 12 C.F.R. § 1024.41(a).
[22] 12 C.F.R. § 1026.36(c)(1)(i).
[23] 12 C.F.R. §§ 1035(a), (b), (d).
[24] 12 C.F.R. § 1035(e).

significant changes.[25] Credit card companies must credit all payments by 5pm on the day they are received,[26] and must send billing statements at least 21 days before they are due.[27] If a consumer pays more than the minimum payment, companies must allocate prepayments to higher-interest balances first, to help pay them down faster.[28]

These examples are instructive for developing education loan servicing standards.[29] We urge the Department to take them into account as the Bureau explores new rules for education loan servicers in the near term.[30] Until such regulations are in place, the Department must use its contracting process to further standardize servicers' conduct – and ensure that mechanisms are in place for the Department's new enforcement unit, the Bureau, and other law enforcement agencies to hold servicers responsible for any violations. We also urge the Department to make full use of the data in its new complaint system to identify emerging problems and share concerns about potential violations with other relevant agencies.

Ensure that borrowers with specialized needs can get the assistance to which they are entitled. Federal education loan borrowers need access to a host of important information – such as different repayment plans and, in some cases, loan discharges. Special procedures for loan discharges apply in case of a borrower's death or disability,[31] or in cases where a school has closed[32] or engaged in unfair and deceptive practices that give the borrower a defense to repayment.[33] Others may be working toward eligibility for the Public Service Loan Forgiveness program, which cancels loan balances after 10 years for eligible public service employees.[34] Servicers must be able to meet these populations' needs and ensure they can access such important legal rights. It is also crucial that the Department tie compensation to servicers' ability to meet the special needs of these borrowers, and hold servicers responsible if they unfairly deny borrowers' access to these options.

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[25] 15 U.S.C. § 1637(i) (2012 & Supp. IV).
[26] 15 U.S.C. § 1666c(a).
[27] 15 U.S.C. § 1666b(a).
[28] 15 U.S.C. § 1666c(b)(1).
[29] We made similar recommendations to the Bureau last year during their public inquiry. *See* Comments from Consumers Union to Consumer Fin. Protection Bureau 7-10 (July 13, 2015), *available at* http://consumersunion.org/wp-content/uploads/2015/07/CFPB_RFI_servicing_0715.pdf.
[30] Press Release, Consumer Fin. Protection Bureau, CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers (Sept. 29, 2015), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers/ ("The Bureau…intends to explore potential industry-wide rules to increase borrower protections").
[31] 20 U.S.C. § 1087(a)(1) (2012 & Supp. IV); 34 C.F.R. §§ 682.402(b-c) (FFEL regulations), 34 C.F.R. § 685.213 (Direct Loan regulations).
[32] 20 U.S.C. § 1087(c)(1); 34 C.F.R. § 682.402(d) (FFEL regulations), 34 C.F.R. § 685.214 (Direct Loan regulations).
[33] 20 U.S.C. § 1087e(h). As of this writing, the Department is still considering public comments in response to its proposed rule for asserting a defense to repayment. Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program, 81 Fed. Reg. 39330, 39330 (proposed June 16, 2016) ("to establish a new Federal standard and process for determining whether a borrower has a defense to repayment on a loan based on an act or omission of a school").
[34] 20 U.S.C. § 1087e(m).

Design a consumer-tested and intuitive single portal, to promote consistent borrower experience and improve communications. The Department has an enormous opportunity to reduce if not eliminate inconsistent communications and procedures by delivering a single new system for all borrowers to use. It is essential that the Department conduct testing to learn how best to present key options – for example, available repayment plans, recertification deadlines for those on income-driven plans, how to request a loan discharge, and how to file a complaint. The Department should also do this level of testing for each language-version of the site, not just the English-language version.

Develop a transition plan to minimize confusion as people are transferred to the new system. The Department has indicated that it will transfer borrowers to the new servicing system over several phases, with a target of 8 million borrowers as the first cohort to transition.[35] As this process unfolds, the potential for borrower confusion will remain high. We urge the Department to provide targeted communications to borrowers before and after the transfer – possibly with a limited moratorium on late fees if the borrower pays the wrong provider – to ensure that borrowers are not punished for good faith mistakes while being transitioned to the new system.

Conclusion

Students and families deserve better treatment from education loan servicers – and they truly need change now. We appreciate the opportunity to provide these comments, and look forward to working with the Department as it stands up a new and improved education loan servicing system.

Sincerely,

Suzanne Martindale
Staff Attorney

[35] U.S. Dep't of Educ., Office of Federal Student Aid, Phase I – Solicitation, Federal Aid Servicing Solution 1 (2016), *available at* https://www.fbo.gov/index?s=opportunity&mode=form&id=e23ab760a842d3f001f6a7500dbf76dd&tab=core&_cview=0 (scroll down to link under Solicitation and SOO, dated Apr. 4, 2016).