

Strengthening the Student Loan System to Better Protect All Borrowers

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Introduction

Never before has higher education been so critical to ensuring a good future and a promising career. A postsecondary education and training credential continues to be the most important investment students can make in their own futures. For some students and their families, though, higher education feels out of reach. Over the past 25 years, state per-student spending is down 25 percent, even after adjusting for inflation; that trend of state disinvestment has helped to drive up the costs of college. Consequently, despite historic investments by the Obama Administration, the maximum Pell Grant in 2015 covers only about 30 percent of the average cost of a four-year public college education – the lowest proportion in history, and less than half of what it covered in 1980.¹

Given falling state investment in public higher education and rising costs at many institutions of higher education, student loans have become an integral part of how students and families afford college. Today, more than half of first-time, full-time undergraduates borrow for college, compared with 40 percent in 2000. The average size of students' loan burden has increased, too, by nearly 40 percent, even after adjusting for inflation.²

Since taking office, the Obama Administration has taken significant steps to increase college affordability. Congress and the President have increased the maximum Pell Grant award by more than \$1,000 and tied it to inflation. The Administration also established the American Opportunity Tax Credit in 2009 to assist families with the costs of college, providing up to \$10,000 for four years of college tuition for nearly 10 million families.³ In 2010 President Obama signed student loan reform into law, generating over \$60 billion in savings and redirecting that money back to students and taxpayers. In 2013, he signed into law further reforms to interest rates on student loans, lowering interest rates for nearly 11 million borrowers. In total, since 2008, the Obama Administration has increased total aid available to students by over \$50 billion and through the American Opportunity Tax Credit, increased tax support for education, all part of a total of about \$150 billion in grants and loans each year for higher education.

While these efforts have helped mitigate the cost of college for millions of American families, Federal student loans remain the primary source of aid that the Federal government provides each year. Today, the Federal government maintains a student loan portfolio of nearly \$1.2 trillion, including \$803 billion in Direct Loans.⁴ Those loans provide benefits far beyond other forms of consumer credit. They are available to all qualified college students; have fixed and affordable interest rates; and for nearly half of undergraduate Stafford loan dollars, the Federal government pays the interest on the loan while a student is in school. Federal student loans also offer flexible repayment options as well as deferment

¹ "Trends in Student Aid 2014." The College Board, 2014:

<http://trends.collegeboard.org/sites/default/files/2014-trends-student-aid-final-web.pdf>.

² National Center for Education Statistics. "Table 331.20: Full-Time, First-Time Degree/Certificate-Seeking Students Enrolled in Degree-Granting Postsecondary Institutions." *Digest of Education Statistics*, 2014:

https://nces.ed.gov/programs/digest/d14/tables/dt14_331.20.asp?current=yes.

³ "Publication 1304: Individual Income Tax Returns 2012." Department of the Treasury, Internal Revenue Service, 2014: <http://www.irs.gov/pub/irs-soi/12inalcr.pdf>.

⁴ As of the third quarter of 2015. Data via Federal Student Aid Data Center.

and forbearance periods to provide a safety net for times of economic hardship. For borrowers pursuing careers in public service, they may be eligible for loan forgiveness on federal student loans after 10 years. Federal loans also carry a host of other protections for borrowers, including closed school cancellations and the ability to discharge the loans in cases of total and permanent disability or death.

The Administration has also undertaken numerous administrative and regulatory actions to improve the application process for Federal student aid, expand income-driven repayment (IDR) plans, and help borrowers navigate the repayment process and reduce student loan interest rates. For example, the Administration has improved and expanded income-driven loan repayment options, ensuring that by the end of 2015, all Direct Loan borrowers can cap their payments at 10 percent of their annual discretionary income so that loan payments are manageable. To increase borrowers' awareness about their repayment options, the Department began a targeted outreach effort and email campaign to tell borrowers about the availability of IDR plans. These efforts have quadrupled participation in these plans to more than 3.9 million Direct Loan borrowers, and delinquencies and defaults are down.⁵

Furthermore, the Obama Administration has worked to simplify and streamline the process for borrowers, from application through repayment. Since taking office, President Obama has significantly simplified the Free Application for Federal Student Aid, known as the FAFSA[®]. The Administration has revamped the online form so families skip questions that are not relevant to them. In addition, over 6 million students and parents took advantage of the ability to electronically retrieve their income information from the IRS when completing their 2014-2015 FAFSA[®]; the electronic data retrieval tool (DRT) is an innovation that improves both speed and accuracy. The ability to electronically retrieve their income information from the IRS is also now offered to borrowers applying for income-driven repayment plans.

Today, an average student fills out the FAFSA[®] in about 20 minutes, only one third of the time it took seven years ago. On September 14, the President announced a new initiative to allow students and families to apply for financial aid earlier. Beginning in the Fall of 2016, students will be able to apply for financial aid starting in October as the college application process gets underway, rather than waiting until January. To make this possible, students filling out the FAFSA[®] will be able to use tax information filed for an earlier year, rather than waiting until tax season to complete their applications. Learning about aid eligibility options much earlier in the college application and decision process will allow students and families to determine the true cost of attending college – taking available financial aid into account – and make more informed decisions.

The Department also has eased the burden on distressed borrowers. As a result of new regulations and administrative changes, borrowers seeking Total and Permanent Disability discharges can now submit a single application directly to one servicer, rather than sending multiple applications to multiple loan holders or servicers. Moreover, the Administration streamlined the application process for those seeking discharge by allowing them to use certain Social Security Administration designations as proof of their total and permanent disability, rather than requiring them to undergo an additional review by a

⁵ As of the third quarter of 2015. Data via Federal Student Aid Data Center.

physician. With these redesigned processes, as well as the new online application process, and a dedicated call center, the Department has reduced barriers for borrowers and their physicians. Already, customer contacts related to loan discharge for total and permanent disabilities declined by more than one-third in fiscal year 2014 compared to the prior year.⁶

Private student loans, in contrast, carry significantly fewer protections than those in the Federal student loan program. Students borrowed more than \$6 billion in private student loans in the 2012-13 academic year.⁷ Those loans tend to require a co-signer; often have variable interest rates that are much higher for borrowers with, for instance, lower credit scores; and lack the safety net and other important consumer protections afforded to Federal student loan borrowers. Private loans often contribute to high payment burdens; of private student loan borrowers, 10 percent of recent four-year college graduates had monthly payments for all education loans (private and federal) that exceeded 25 percent of their monthly income.⁸

The Dodd-Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau (Bureau) to protect consumers in the marketplace for financial products and services, including enforcement, supervisory and regulatory authority with respect to student loans. For example, the Bureau has authority to examine nonbank private student lenders for compliance with federal consumer financial laws.⁹ In March 2014, the Bureau expanded its examination program to include the servicing of both private and federal student loans by larger nonbank student loan servicers.¹⁰

Section 5535 of the Dodd-Frank Act directed the Secretary of the Treasury, in consultation with the CFPB Director, to designate a Private Education Loan Ombudsman within the Bureau to provide timely assistance to borrowers of private student loans.¹¹ The Bureau Student Loan Ombudsman was required to enter into a Memorandum of Understanding with the student loan ombudsman established under section 141(f) of the Higher Education Act of 1965, as amended, at the Office of Federal Student Aid, to ensure coordination between the two loan ombudsmen in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans, which was finalized in October 2011. The Bureau Student Loan Ombudsman continues to compile and analyze complaints from individual student loan borrowers and offer recommendations to the Secretary of Education, the Secretary of the Treasury, the Director of the Bureau, and Congress. The Bureau and the Department of Education also published a study on private student loans in 2012, detailing the

⁶ Mitchell, Ted. "Prepared Remarks." Remarks at the Federal Student Aid Servicing Summit in Atlanta, Georgia. 1 December 2014. <http://www.ed.gov/news/speeches/prepared-remarks-us-under-secretary-education-ted-mitchell-federal-student-aid-fsa-servicing-summit-atlanta-ga>.

⁷ "Private Loans: Facts and Trends." The Institute for college Access & Success, 2014: http://ticas.org/sites/default/files/pub_files/private_loan_facts_trends.pdf.

⁸ "Private Student Loans Report." Consumer Financial Protection Bureau, 2012: <http://www.consumerfinance.gov/reports/private-student-loans-report/>.

⁹ 12 USC § 5514

¹⁰ 12 CFR § 1090.106

¹¹ 12 USC § 5535

expansion and contraction of the private student lending market in the years surrounding the financial crisis.¹²

While much progress has been made, there is more that the Federal government can do to protect students, through administrative changes and by working with Congress on legislative reforms. Despite far-ranging affordability efforts and numerous consumer protections built into the Federal loan program, there are still nearly 3 million Direct Loan borrowers more than 30 days delinquent on their loans, and 3.2 million borrowers are in default on more than \$44 billion in Federal loans.¹³ The Administration will continue to improve the Federal student loan program and ensure it is administered as efficiently as possible with the best interests of borrowers in mind. The student loan program is an important piece of President Obama’s commitment to making college affordable.

To improve and enhance protections for borrowers in both the Federal student loan program and for those with private student loans, President Obama proposed a Student Aid Bill of Rights in March 2015, highlighting four essential guarantees to students:

- I. Every student deserves access to a quality, affordable education at a college that is cutting costs and increasing learning.
- II. Every student should be able to access the resources needed to pay for college.
- III. Every borrower has the right to an affordable repayment plan.
- IV. And every borrower has the right to quality customer service, reliable information, and fair treatment, even if they struggle to repay their loans.

This report provides key statutory, regulatory, and administrative recommendations from the Department of Education, developed in consultation with the Department of the Treasury and the Consumer Financial Protection Bureau. These proposals will help protect students and promoting quality, affordable higher education, especially for the students who need it most.

Enhance Oversight of Student Loan Servicing and Institutions

This Administration has taken key steps over the last several years to ensure that providers of a variety of education-related services, including consumer financial products and postsecondary education are responsive to consumers, provide quality services, and are held accountable for their actions. A key mechanism to achieve these ends has been the introduction of centralized complaints systems that enable consumers to submit complaints to agencies and monitor complaint resolution. Another key means has been effective collaboration and information sharing with other Federal and state agencies who share a mission and goal of protecting students and taxpayers.

For several agencies, complaint systems provide a means to facilitate resolution of issues as well as identify potential instances or indications of fraud, waste and abuse. For example, the Department of Veterans Affairs (VA) recently established its GI Bill Feedback System to allow recipients of VA

¹² “Private Student Loans Report.” Consumer Financial Protection Bureau, 2012: <http://www.consumerfinance.gov/reports/private-student-loans-report/>.

¹³ As of the third quarter of 2015. Data via Federal Student Aid Data Center.

educational benefits to submit complaints against educational institutions or employers they believe have, for example, acted erroneously, deceptively, or have used misleading recruiting practices. With respect to educational institutions, the VA's system serves primarily as a facilitator between the student and school for complaint resolution. However, the system also enables the VA and others to identify troubling practices or trends that might warrant further investigation and oversight action. Submitted complaints reside in the Federal Trade Commission's (FTC) Sentinel Database and may be reviewed by state and federal law enforcement agencies including the Department of Justice (DOJ) and State Attorneys General. As another example, the CFPB began accepting complaints in 2011 with respect to a variety of consumer financial products. Its systems handled consumer issues concerning mortgages, credit reports, debt collection, credit cards, bank accounts, and private student loans. The CFPB periodically publishes reports on complaints and shares information with state and federal oversight and enforcement agencies.

Informed by these examples and in accordance with the March 10, 2015 Presidential Memorandum, the Department of Education's office of Federal Student Aid (FSA) has begun creating a complaint system to be implemented by July 1, 2016. In particular, FSA is working to establish a streamlined and centralized complaints system with the objectives of providing easy access to students interested in submitting complaints, formalizing and systematizing the handling of submitted complaints, monitoring the resolution process with interventions as needed, and compiling and analyzing data about complaints with a goal of observing and responding to trends as needed.

This new centralized complaint system will establish the means and mechanism for students to submit complaints on the servicing of Federal student loans, as well as complaints against schools concerning Federal student aid issues. For example, while Federal student loan borrowers can always contact their student loan servicer directly concerning any questions or problems they may have, this system will provide another avenue for borrowers to have their questions answered or bring problems to FSA to assist with resolution. This will assist borrowers who are unsuccessful with resolving issues with their servicers or who choose to seek resolution first via the complaint system. The system will also be able to accept, process, and monitor the resolution of student complaints concerning, for example, institutions' processing or delivery of students' Federal financial aid funds.

In the future, this system will also be used to collect other types of student complaints regarding institutions of higher education that participate in Federal student financial aid programs. Students will then be provided a single, centralized portal to reduce the potential confusion that otherwise might exist if multiple complaint systems were established.

Unfortunately some colleges have used abusive practices to prey on students. They have made false and misleading statements to students or prospective students about the value of educational and training programs or the financing needed to pay for such programs. The complaint system will help the Department and others to identify troubling practices and conditions and allow the Department to observe aggregated complaint data to monitor types of complaints, identify areas that need increased oversight, discover trends and repeat problems, and help to improve its delivery of information and products. In addition, it will supplement critical state-level consumer complaint systems and

mechanisms, and provide critical data to State regulatory and law enforcement agencies, other federal agencies, accreditors, and others. The Department can also use the system to report information and data on trends and institutional behavior to current and former students and their families, as well as the general public.

Building on existing work between the Department, DOJ, CFPB, and other federal partners, the Department has created a process for sharing information about potential violations of consumer protection law. Specifically, in 2015, the Department created an interagency task force on for-profit schools, which is comprised of the Departments of Education, Defense, Justice, Labor, the Treasury and Veterans Affairs, as well as the CFPB, the FTC, and the Securities and Exchange Commission. A working group has been established to focus on enforcement related issues, has met regularly, and will continue to meet as needed, but at least once every two months. We recommend that members continue to use memoranda of understanding as well as other information sharing mechanisms, to share information and evidence as appropriate.

Increase Borrower Protections in the Federal Student Loan Program

While the Federal student loan program comes with numerous benefits not available in the private market, there are additional borrower protections that could be strengthened and improved. The current income-driven repayment options could be simplified and streamlined to help ensure more borrowers are aware of and able to access these plans. Student loan counseling should also be improved and made more frequent, flexible, and personalized. Also, servicemembers should not be made to choose between benefits when consolidating federal loans. In addition, as some borrowers become eligible for forgiveness or qualify for certain forms of discharge, they should not face a steep tax bill. If adopted, these proposals would strengthen the Federal loan program by protecting the most vulnerable borrowers who are trying to repay their loans and improving the information and education available to students. Some of these proposals require statutory changes, but others are actions that the Department of Education will pursue within its existing regulatory and administrative authorities.

Streamline and Simplify Income-Driven Repayment

The Administration proposed in the 2016 Budget to create a single, simple, easy-to-understand income-driven repayment plan for borrowers to help them manage their debt. This report echoes the need for a single income-driven plan for future borrowers.¹⁴ A single income-driven plan would simplify borrowers' experiences and allow for easier selection of a repayment plan, while reducing program complexity and targeting benefits to ensure program effectiveness.

¹⁴ The new repayment plan could become the only income-driven repayment plan for borrowers who originate their first loan on or after July 1st, 2016, while students who originated their first loans prior to July 1st, 2016 would continue to be able to select among the existing repayment plans (for plans for which they now qualify and for loans originated through their current course of study), in addition to the new program.

Improve Student Loan Counseling

To successfully manage their finances, student loan borrowers must navigate numerous complex financial topics, including the terms, benefits and protections of their student loans, their repayment options, the consequences of delinquency and default, and general budgeting and financial management. Colleges and universities that participate in the Federal student loan programs are currently required to provide borrowers with entrance and exit counseling. Many higher education institutions rely on the Department of Education's (ED) online loan counseling tools to fulfill that requirement.

In order to deliver more effective entrance and exit counseling, the Department proposes requiring that entrance loan counseling occur before the student has signed the Master Promissory Note (MPN). The Department also is exploring requiring annual student loan counseling and potentially requiring students to sign a MPN more frequently as a tool to update them on their existing debt and to make informed decisions about borrowing. The Department needs statutory authority to determine the timing of this additional mandatory loan counseling and to personalize counseling requirements based on the borrower's specific situation. In addition, the Department will begin putting ED's online counseling tools through regular and rigorous consumer testing, to create more personal and more effective loan counseling.

Eliminate Servicemembers' Requirement to Relinquish Benefits in Order to Access Direct Loan Program Benefits

The Servicemember Civil Relief Act (SCRA) includes a provision that caps servicemember interest rates at 6 percent for loans acquired before going on active duty. However, should military borrowers decide to consolidate their FFEL or Perkins loans into Direct Loans as a means of securing access to Public Service Loan Forgiveness (PSLF) benefits or zero percent interest rates when in a hostile fire zone, they must concede their SCRA protections on those loans if he or she is not currently receiving the benefit of the six percent interest rate cap. Members of the military should not need to choose between these benefits. The report proposes allowing borrowers who consolidate a pre-service student loan to keep their 6 percent interest rate SCRA protection as well.

Eliminate Tax Liability on Certain Loan Discharges

Under the tax laws, income from discharge of indebtedness under certain public service loan forgiveness, teacher loan forgiveness, false certification, and closed school programs is not taxable. However, some income from discharge of indebtedness, such as under an IDR plan, is taxable. The report recommends statutory changes to the Internal Revenue Code of 1986 for discharge of indebtedness income from student loan discharges related to Income Based Repayment, Income Contingent Repayment, and borrower defense to repayment discharges to be explicitly excluded from tax.

Streamline Total and Permanent Disability (TPD) Discharge Process

The Department already has the authority through statute and/or regulation to use certain Veterans' Affairs and Social Security Administration disability determinations to ease the application process for borrowers applying for Total and Permanent Disability (TPD) discharge. However, the TPD process still requires that borrowers who have already negotiated one Federal determination of their severe disability to apply to the Department of Education for a TPD discharge of their student loans. While the Department and SSA are working on an administrative agreement to streamline this process, statutory authority to require the data agreements with the VA and the Social Security Administration (SSA) would simplify that process. Streamlining the TPD process for these borrowers will allow the Department to identify those who are eligible and directly offer the discharges to those borrowers.

Principles for Borrower Defense Legislation

Borrowers can seek a loan discharge if the school committed an act or omission that gives rise to a cause of action under applicable State law. This provision has rarely been used in the past, but in light of the actions and ultimate closing of Corinthian Colleges, the Department is creating a streamlined borrower defense process that is fair to students who may have been victims of fraud, and that holds colleges accountable to taxpayers. The Department has announced that it will conduct negotiated rulemaking on borrower defense and plans to develop new regulations to clarify and streamline loan forgiveness under the defense to repayment provision, while maintaining or enhancing current consumer protection standards and strengthening those provisions that hold colleges accountable for actions that result in loan discharges. The Department will specifically look at (1) the procedures to be used for a borrower to establish a defense to repayment; (2) the criteria that the Department will use to identify acts or omissions of an institution that constitute defenses to repayment of Federal Direct Loans to the Secretary; (3) the standards and procedures that the Department will use to determine the liability of the institution participating in the Federal Direct Loan Program for amounts based on borrower defenses; and (4) the effect of borrower defenses on institutional capability assessments. The Department continues to take actions that allow defrauded borrowers to get the debt relief to which they are entitled, step up oversight and enforcement to identify colleges that present the greatest risk to students and taxpayers, and hold schools accountable for their actions.

This report recommends legislative provisions that strengthen—not limit—this Administration's efforts to protect students and taxpayers from waste and fraud through its program integrity regulations, including gainful employment, state authorization, and credit hour regulations. The report also recommends new statutory requirements that hold colleges and their executives – not taxpayers – responsible for fraudulent acts, and offer students access to meaningful information about college costs and outcomes, and limit aggressive and deceptive marketing. In addition, the report recommends amending current law so that students with successful borrower defense claims can receive reinstatement of their Pell eligibility. In addition, the Department recommends changing the law around enrollment practices and increasing consumer protections at the outset so that students are not pressured into enrolling. Lastly, these changes should include eliminating loopholes that make servicemembers and veterans targets for aggressive marketing and recruitment by for-profit colleges.

Protect Borrowers and Students from Predatory Third Parties

In recent years, a number of “student loan assistance companies” have taken advantage of Federal student loan borrowers. These firms charge high fees for services that borrowers can access free of charge online at studentloans.gov. For example, some firms charge more than \$700 for consolidating loans or submitting an IDR application, and often require borrowers to share their FSA identification number or PIN which is prohibited under the terms and use of the FSA ID. The Department recommends a statutory change that would require companies to disclose that students and borrowers can access these services for free before being allowed to charge them, would enact stronger legal protections for the FSA ID and PIN, or would prohibit or otherwise limit companies from charging borrowers a fee.

Update Debt Collection and Offset

The Department would also recommend updating the laws regarding the collection of defaulted student loan debt through offsets of other federal benefits, consistent with the proposal in the President’s 2016 Budget applicable to student loans and other debt owed to the federal government.

Update Exemption for Social Security Offset

The Debt Collection Improvement Act (DCIA) was enacted in 1996 to improve the collection of debt owed to the federal government. That law generally requires agencies, including the Department of Education, to refer delinquent or defaulted debt to the Department of the Treasury offset program (TOP). Treasury may then collect that debt by offsetting from most government payments, including tax refunds and Social Security benefits from SSA. However, the law recognizes that Social Security is a key source of income for many disabled and elderly Americans and includes protection for these benefits. Supplemental Security Income benefits from SSA, which go to very low income individuals who are elderly, disabled or blind, are entirely protected. For other Social Security payments, the law exempts up to \$750 per month to protect individuals from slipping into poverty due to offset. Regulations expanded the amount protected from offset by limiting offset to the lesser of 15 percent of the total benefit or the amount by which the benefit exceeds \$750 per month. However, the \$750 exemption was not indexed for inflation and, as a result, it no longer provides the protection from poverty it did when enacted almost 20 years ago. Therefore, the 2016 President’s Budget proposed, for debt owed to the federal government including student loans, to index that amount to inflation so that the lowest income borrowers are protected by the threshold amount, as intended when originally enacted.

Enhanced Federal Data Sharing to Improve the Federal Student Loan Borrower Experience

The Department of Education, through statutory changes and improved uses of administrative data, can make better use of Federal data to aid borrowers in accessing the benefits and protections available to them. The Department has already begun to use these data exchanges to aid borrowers (for instance, with the IRS data retrieval tool for income-driven repayment applications and the FAFSA®). However, more can be done. The report recommends several statutory changes that will allow the Department of Education and other Federal agencies to exchange information more efficiently.

Support Development of a Multi-Year Recertification Process for Income Driven Repayment Plans

Borrowers are currently required to submit proof of income, family size, and state of residence to certify their eligibility for income-driven repayment (IDR) plans and to determine their required monthly payments on an annual basis. During the past year, the Department of the Treasury and the Department of Education have been working with the Internal Revenue Service to assess the feasibility of developing a process for multi-year recertification for IDR. As with any policy that provides access to taxpayer data, there are costs to developing and operating a secure system with appropriate authentication and controls, and mechanisms for secure communication with third parties. Both Treasury and Education believe that, with sufficient funding, an electronic multi-year certification system can and should be developed to simplify the repayment process for many borrowers in IDR plans. However, because the IRS is unlikely to be able to obtain necessary resources for this initiative, Education plans to work with Congress to obtain the funding needed to advance this important initiative.

Streamline Total and Permanent Disability (TPD) Discharge

Borrowers who are totally and permanently disabled are eligible for a discharge of their federal loans through the completion of a TPD application. Two categories of borrowers, those with a VA service connected disability determination or those with a certain SSA disability determination, can submit the VA or SSA disability determination to ED, rather than a physician certification, along with the ED TPD Application for disabled borrowers to obtain a TPD discharge of their Federal student loan. Through statutory change, the Department could eliminate these extra steps by coordinating with VA to ensure that it is automatically notified through enhanced federal data sharing when servicemembers and veterans who hold Federal student loans qualify for total and permanent disability, automatically generating a discharge application for the borrower.¹⁵ As mentioned on page 9, there are additional statutory changes to the requirements for discharge that could further simplify this process for veterans and servicemembers.

For other borrowers who may qualify for a disability discharge—for instance, those designated by the Social Security Administration as disabled with Medical Improvement Not Expected (MINE)—the automatic federal student loan discharge could be granted, contingent on the provision of documentation of that SSA determination and the borrower’s consent. A statutory change requiring this coordination could further streamline and codify a simpler process for these borrowers.

Expand Department of Education Access to IRS SkipTrace

Most loan servicers indicate that if they can contact delinquent borrowers, they are typically able to put them on affordable repayment plans and keep them current on loan payments. Making it easier for servicers to find and contact struggling borrowers who are severely delinquent, but not yet in default, would improve these borrowers’ ability to avoid default and at a time when they still have many repayment options available to them. Current law allows the Department of Education to obtain name

¹⁵ Because of the tax consequences of TPD discharge, without change to that treatment of discharges, this process could not be truly automated.

and address information from the Internal Revenue Service only for defaulted borrowers, not borrowers who are only delinquent. This proposal would give the Department the authority obtain this information for borrowers who are severely delinquent.

Joint Statement of Principles on Student Loan Servicing

The U.S. Department of Education, the U.S. Department of the Treasury, and the Consumer Financial Protection Bureau have developed this Joint Statement of Principles on Student Loan Servicing as a framework to improve student loan servicing practices, promote borrower success and minimize defaults.¹⁶

General Principles for Student Loan Servicing¹⁷

Consistent with their respective authorities, responsibilities, and missions, the Departments and the Bureau are committed to working together so that all student loan borrowers have access to (1) the information they need to repay their loans responsibly and avoid default; (2) protections so that they will be treated fairly even if they are struggling to repay their loans; and (3) mechanisms so that errors are resolved expeditiously and assurances that student loan servicers, both in the marketplace and through federally-contracted companies, are held accountable for their conduct. The following principles have been developed to advance these goals.

There are four main types of postsecondary education loans under which borrowers have outstanding balances. Direct Loans are federal loans made directly to borrowers by the U.S. Department of Education through the William D. Ford Federal Direct Loan program. Federal Family Education Loan Program (FFELP) loans were originated by private lenders and guaranteed by the federal government. Federal Perkins Loans, which are co-funded by institutions of higher education and the federal government, are originated and administered by participating institutions. Direct Loans, Perkins Loans and FFELP loans are made pursuant to Title IV of the Higher Education Act of 1965, as amended (HEA). The SAFRA Act enacted in 2010 ended new loan originations under the FFELP program in 2010, but a significant number of loans remain outstanding. Private student loans are made by depository and non-depository financial institutions, states, institutions of higher education, and other entities. Private loans are not governed by the Higher Education Act, but are subject to other federal and state laws. All Federal Direct Loans and some FFELP loans are held by the Department of Education and serviced pursuant to contracts with loan servicers and collection contractors. Servicing for Perkins Loans, privately-held FFELP loans, and private

¹⁶ On March 10, 2015, the President signed a Presidential Memorandum on a Student Aid Bill of Rights to Help Ensure Affordable Loan Repayment. The President directed the Secretary of Education, in consultation with the Secretary of the Treasury and the Director of the Consumer Financial Protection Bureau, to issue a report by October 1, 2015 on, among other things, recommendations concerning private and federal student loan servicing standards, flexible repayment opportunities for all student loan borrowers, and changes to bankruptcy laws. This *Joint Statement of Principles on Student Loan Servicing* will inform this required report.

¹⁷ On September 29, 2015, the Consumer Financial Protection Bureau published *Student Loan Servicing: Analysis of Public Input and Recommendations for Reform*, analyzing comments the Bureau solicited from stakeholders including student loan borrowers, federal student loan servicers, private student loan market participants, policy experts, and state law enforcement officials and regulators as part of the Departments' and the Bureau's joint efforts to identify initiatives to strengthen student loan servicing.

student loans is provided at the direction of the current loan holder, and servicing activities for Perkins and FFELP loans are governed by rules and regulations laid out by law and through the U.S. Department of Education. The economic incentives to provide servicing that best serves borrowers', loan holders', and taxpayers' needs vary across the different types of student loans.

In addition, the respective loan types come with varying levels of consumer protections and special benefits. Direct Loans, in general, offer borrowers more protections than private or FFELP loans. Borrowers with FFELP loans continue to consolidate into the Direct Loan program to access certain protections and benefits including the Public Service Loan Forgiveness Program, the nonaccrual of interest for servicemembers serving in areas of hostilities, and certain income-driven repayment plans. For federal loans, pursuant to provisions in the HEA, institutions of higher education are required to provide certain disclosures to borrowers that provide them with clear and helpful information about their loans and repayment options as part of schools' statutorily required entrance and exit counseling duties.

The Departments and the Bureau intend to work closely with one another, consistent with their respective authorities, to strengthen servicing protections for student loan borrowers, and will seek to ensure that student loan servicing is, where appropriate:

- **Consistent.** Student loan borrowers and servicers alike would benefit from a clear set of expectations for what constitutes minimum requirements for services provided by student loan servicers and servicer communications with borrowers, including adequate and timely customer service. Student loan borrowers should expect effective student loan servicing, including, but not limited to, conduct related to payment processing, servicing transfers, customer requests for information, error resolution, and disclosure of borrower repayment options and benefits. Such conduct should account for and recognize variations in loan features, terms, and borrower protections.
- **Accurate and Actionable.** Student loan borrowers often depend on servicers to provide basic information about account features, borrower protections, and loan terms. It is critical that information provided to borrowers by student loan servicers be accurate and actionable. Information, including explanation and instructions regarding borrowers' loans and repayment options, should be presented in a manner that best informs borrowers, helps them achieve positive outcomes, and mitigates the risk and costs of default.
- **Accountable.** Student loan servicers, whether for-profit, not-for-profit or government agencies, should be accountable for serving borrowers fairly, efficiently and effectively. If servicers fall short and violate federal or state consumer financial laws, the HEA, contractual requirements, or federal regulations, borrowers, federal and state agencies and regulators, and law enforcement officials should have access to appropriate channels for recourse, as authorized under law.

- **Transparent.** The public, including student loan borrowers, may benefit from information about the performance of private and federal student loans and the practices of individual student loan lenders and servicers, including information related to loan origination, loan terms and conditions, borrower characteristics, portfolio composition, delinquency and default, payment plan enrollment, utilization of forbearance and deferment, the administration of borrower benefits and protections, and the handling of borrower complaints. The federal government already makes much of this information available for federal student loans, and private-sector lenders and servicers should follow suit. Portfolio performance data, including data at the individual servicer level, should be available for all types of student loans.

Strengthen Federal Student Loan Servicing

With the move to 100 percent Direct Lending, the Federal government is the primary lender of student loans and provides numerous benefits and protections for federal student loan borrowers. In keeping with the President’s vision for federal student lending, the servicing of those loans must be held to the highest standards. Congress should properly protect borrowers of federal student loans by limiting marketing to them, standardizing the consequences of non-repayment, and providing a stronger advocate for student borrowers within the Department of Education.

Create Limitations on Marketing for Federal Loans/Servicers

Consumers should be protected from excessive marketing on the part of contractors providing student loan servicing for Federal loans. This would include banning the marketing of other financial products to borrowers while they are in school or after they leave school (or making after-school marketing allowable only on an opt-in basis). Currently the Department of Education, through its contracts, prohibits contractors from soliciting or promoting other services or products that they or their affiliates offer while servicing Department of Education borrowers or Federally held debt. This includes all communication channels and touch points, including but not limited to: inbound and outbound calls and emails, web pages, any mailings specific to the status of their account, direct personal and automated interaction, etc. The Administration proposes codifying this contractual provision to ensure that all Federal student borrowers are protected into the future.

Improve Credit Reporting for Student Loans

The recent changes to—and overall complexity of—the student loan system impacts a consumer’s credit report and credit access. In particular, the Department has seen inconsistencies in how the credit reporting guidelines treat borrowers who have similar balances but different repayment plans. The current guidelines mean that credit reports may not accurately reflect the borrower’s credit standing when that borrower is enrolled in an income-driven repayment plan with a large debt balance but a much smaller monthly payment, which may affect a borrower’s ability to get additional credit. The reporting guidelines also do not adequately account for the loan forgiveness provisions of income-driven repayment plans. The report recommends revising credit reporting for student loans to reflect the

intricacies of the current Federal repayment options, recognize borrowers who are in good repayment status, and ensure fairness and transparency for all borrowers.

Update the Federal Student Loan Ombudsman Role

The Federal Student Loan Ombudsman is a statutorily created position at Federal Student Aid (FSA). This office should serve as an advocate for borrowers and students which can be difficult when an Ombudsman reports to the agency that it oversees. The report recommends moving the Office of the Ombudsman role and its responsibilities outside of FSA, to the Department of Education. This would ensure that the Ombudsman is independent from the agency it oversees. In addition, the Ombudsman should have a borrower-centric consumer focus, rather than its current responsibility to be simply a mediator in times of dispute.

Allow Servicers to Contact Federal Student Loan Borrowers via their Cell Phones

If servicers are able to contact a borrower, they have a much better chance at helping that borrower resolve a delinquency or default. Many student loan borrowers, especially those that may just be graduating, move frequently in addition to no longer having landline phone numbers. As such, it can be difficult for servicers to find a borrower except by using a cell phone number. Current Federal law prohibits servicers from contacting borrowers on a cell phone number using an auto-dialer unless the borrower has provided explicit consent to be contacted at that number. With phone numbers changing or being reassigned on a regular basis, it is virtually impossible for servicers to use auto-dialing technology. The President's 2016 Budget proposed amending this law to allow the use of automated dialers to contact borrowers to inform them of their federal repayment obligations and benefits like Pay As You Earn, or Rehabilitation, in the case of a defaulted borrower. This proposal also protected borrowers from unnecessary calls or calls at protected times of the day. Congress should change the law to ensure that servicers can contact borrowers using modern technology and help them get into the right repayment plan and avoid the consequences of default or resolve their default.

Advance Protections for Private Student Loans

While the volume of private student lending has decreased since the recession, there are still millions of dollars in outstanding private student loan debt and millions of borrowers who have limited consumer protections in this market. The report recommends several steps to ensure private student loan borrowers are better informed, that they have access to other benefits, and that they are insulated from worst-case scenarios.

Only Allow Acceleration of Debt if a Borrower Defaults Due to Missed Payments and Prohibit "Auto-Default" for Cosigned Loans

Federal regulators have identified troubling practices in the private student loan market where borrowers who were current on their co-signed student loans were driven into default by their servicer due to actions outside of their control. In the most egregious cases, servicers placed current borrowers into default automatically because their co-signer died or filed for bankruptcy. If borrowers are current, they should be able to remain in such a status without fear that their lender will drive them into

financial ruin due to outside circumstances. The report recommends prohibiting certain practices, including requiring a borrower to pay in full if a co-signer dies or declares bankruptcy.

Improve Transparency of Cosigner Release Provisions and Qualification Criteria

Many lenders currently advertise that borrowers can have their co-signer removed once they enter repayment but do not tell borrowers how they can qualify. At a minimum, lenders should be required to tell prospective borrowers how they may get co-signer relief. Moreover, private student lenders may be able to reduce costs and increase transparency by proactively notifying borrowers when they have met certain pre-application requirements that are often imposed before a borrower applies for cosigner release. Making applications for cosigner release easily accessible (online) could also prove more cost-effective for market participants and prevent lenders from deterring borrowers from cosigner release by making the application process and pre-requirements difficult to access. We recommend investigating whether changes to policies and required practices related to cosigner release could benefit consumers and private lenders alike.

Make Private Student Loans Dischargeable in Bankruptcy

There has been no evidence that the 2005 changes to bankruptcy caused interest rates on student loans to decline or access to credit to increase significantly. As private student loans generally do not include the consumer protections, such as income-driven repayment plans, included in federal loans, the undue-hardship standard for bankruptcy discharge leaves private student loan borrowers in financial distress with few options.

There are strong grounds for maintaining different standards for federal student loans. Federal loans are not underwritten, have generous terms and protections, and the payments can be limited based on income. Private student loans, by contrast, are underwritten and most do not have a built in income-driven repayment plan. For these reason, the report recommends allowing private student loans that do not offer PAYE-like borrower protections to be dischargeable in bankruptcy similar to other forms of consumer debt. Allowing private lenders the protection of non-dischargeability if they offer PAYE-like features will provide an incentive for private lenders to create meaningful ex ante payment modification options available for when borrowers cannot make standard payments.

Ensure Borrower Death Discharge

Federal student loans are discharged upon a borrower's death with receipt of the borrower's original or certified copy of their death certificate. This is not the case for all private student loans. Although some private loan companies do discharge debt upon the death of the student, many do not. The report recommends requiring that all lenders discharge student loans in the case of the death of the student borrower and provide this information to borrowers and their co-signers when they apply for the loan.

Reiterate Support for Recommendations from 2012 Joint Report on Private Student Loans

In 2012, the Department of Education and Consumer Financial Protection Bureau submitted a report on private student loans as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹⁸ Combining feedback from experts in the field and industry participants, the report identified the areas in the private student loan market that necessitated further consideration, methodological refinement, and reform. The report reiterates our support for these recommendations aimed at improving consumers' experience in the private student loan market.

CFPB Recommendations:

Requiring School Certification of Private Student Loans Could Reduce Over-Borrowing and Lead to Better Product Choices

CFPB recommended requiring that prior to originating a private student loan, lenders coordinate with institutions to receive certification that the loan amount does not exceed student need. It noted that using the existing electronic network among lenders and institutions could be utilized to expedite this change in the system, replacing a self-certification process by students.

Consider Modernizing and Clarifying the Definition of a Private Student Loan Under the Truth in Lending Act

Since there are several loan programs funded by the federal government that technically fall under the definition of a private student loan, CFPB mentioned that in order to ensure consumer clarity and a level playing field, Congress may want to clarify the definition of a private student loan.

Provide Mechanisms for Borrowers to Understand a Complete Picture of Their Student Loans

CFPB urged Congress to explore how it can improve transparency of existing loan obligations for borrowers and ensure borrower understanding of their entire debt obligations, in the absence of a comprehensive data system, like the Federal system, National Student Loan Data System, for private student loans.

Determine Whether Additional Data Are Needed to Enhance Consumer Decision-Making and Lender Underwriting

Successful consumer decision making depends on borrowers receiving all the information needed to choose their best educational options. The absence of sufficient data can also harm lenders, leading to unfair underwriting. The report recommends exploring what additional outcomes data may give regulators greater confidence that underwriting is in compliance with the nation's fair lending laws.

¹⁸ "Private Student Loans." Consumer Financial Protection Bureau and the U.S. Department of Education, 2012: http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

Department of Education Recommendations:

Requiring Institutions of Higher Education and Private Education Lenders to Work Proactively to Protect and Inform Private Student Loan Borrowers¹⁹

The Department urged Congress to require institutions of higher education to determine whether a private education loan borrower has exhausted his or her eligibility for Federal student aid, and to certify a borrower's need for a private education loan before a private education lender issues the loan. Because some student loan borrowers do not apply for Federal student loans, and many do not exhaust their federal aid options, they are left with private student loans less-favorable repayment plans and interest rates. The Department recommended that Congress mandate that students are notified by institutions of their eligibility of Federal aid, and if they have not used all their options, the institutions notify students that these Federal loans will likely be more beneficial to them. They further recommended that this disclosure include an affirmation, signed by the borrower, that they have received, and they understand this information from the institution, and they have made their decision with that information in mind. Further, the Department recommended to require lender disclosures on the availability of Federal student aid and to require institutions to certify all private student loans, consisting of the verification of student enrollment, the private student loan amount, and that the amount of the loan does not exceed the student's need. This certification process should occur before the private loan is made available to students.

Afford Greater Flexibility and/or Relief to Private Student Loan Borrowers Who are Experiencing Financial Distress, Including Potential Changes to the Treatment of Private Student Loans in Bankruptcy Proceedings

The absence of consumer protections afforded to federal student loans in the private student loan market, combined with the current restriction on bankruptcy discharge, leave private student loan borrowers in distress with no economic relief. The report noted that significantly lowered interest rates had not been observed, which was the justification for the statutory change at the time; and there was no evidence of systematic abuse of student loan discharge prior to 2005. As such, the Department recommended determining which safeguards are adequate to ensure that students' pursuit and attainment of postsecondary education, including when financed through the use of credit beyond Federal loans, do not jeopardize borrowers' ability to recover from severe financial distress. This determination should weigh the relative impact of providing student loan consumers with flexibility and relief.

Amending The Definition of Private Education Loan to Exclude Other Federal Education Loans

The report recommended that the definition of a private loan should exclude all Federal education loans. The Department encouraged Congress to consider excluding only private education loans made by eligible

¹⁹ Congress previously considered a provision that would have required institutions of higher education and lenders to work together to protect and inform private student loan borrowers of their eligibility for Federal student aid in the House-passed version of the Dodd-Frank financial reform bill.

not-for-profit holders as long as the following controlling factors are mandated to protect borrowers: a ban on price discrimination based on a borrower's credit worthiness; a requirement that repayment safety nets such as deferment, forbearance, and IDR are included in the terms and conditions of the loan; and a mandate that loan forgiveness be provided for public service such as teaching, nursing, and social work.

The Department of Education and the CFPB Should Work with Congress to Identify How to Provide a Comprehensive Picture of Student Borrowing That Includes Both Federal and Private Student Loans

Private student loan borrowers do not have a resource comparable to NSLDS, and some borrowers unable to comprehend their educational debt obligations. The Department recommended the creation of a centralized, publically accessible, and privacy-protected system for borrowers to access private student loan data that is comparable and compatible with NSLDS. Borrowers' ability to see both types of loans together could help improve borrowers' debt management and improved financial decision making.