*50th Anniversary: Mobilizing for Justice*

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April 8, 2013

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

Re: Request for information regarding an initiative to promote student loan affordability, Docket No. CFPB-2013-0004.

Dear Ms. Jackson:

MFY Legal Services, Inc. (MFY) submits these comments in response to the Consumer Financial Protection Bureau's request for information regarding an initiative to promote student loan affordability. We focus on questions 1a, b, and c, and 2a, b, and c, relating to the Scope of Borrower Hardship; questions 3, 4, and 5, relating to Current Options for Borrowers with Hardship; question 10, relating to Consumer Reporting and Credit Scoring; and question 13, relating to Borrower Awareness.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,000 New Yorkers each year. Specifically, MFY's Consumer Rights Project provides advice, counsel, and representation to low-income New Yorkers on a range of consumer problems, including student loan debt.

MFY commends the Consumer Financial Protection Bureau for examining this important issue that affects a number of our clients. Individuals often come to us because they are having difficulty repaying student loans, and they have practically no options when these loans are private. They often decide that their only choice is to default and take their chances if sued.

**Scope of Borrower Hardship**

In our experience, the primary drivers of private student loan borrower distress are the same causes of consumer debt generally—that is, unemployment, low wages, medical problems and changes in family composition. For example, we often speak with clients who were able to make their monthly student loan payments until they, or a relative who was providing financial support, lost their job. The borrower's own illness or injury may be the source of the unemployment, or a relative's illness or injury may require the borrower to stop working or cut back on hours in order to care for them. Unlike federal student loan borrowers, however, private student loan borrowers are particularly vulnerable to distress because of the lack of flexibility for payment plans, including deferments, forbearances, modifications, and income-based repayment.

The following story is illustrative: Ms. B, a 25-year old woman from Queens, called our Low Income Bankruptcy intake line for assistance because she owes over $100,000 in seven private and federal student loans, for which her aunt co-signed. Ms. B had been making all her payments on time, relying on her own employment and her father's financial assistance. Her father then became seriously ill. In addition to losing his financial support, Ms. B had to cut back on her hours in order to care for him. As a result, she had become unable to make her monthly student loan payments. She deferred a few of her federal loans and began the process of rehabilitation and income based repayment for the rest. Unfortunately, these options are not available for private student loans, and she had no choice but to default. She and her aunt began receiving harassing phone calls, and because she simply has no options, including bankruptcy, she is waiting to see whether she is sued.

Certain characteristics that might predict distress at loan origination are the amount of the borrower's total student debt and other program-specific factors, such as whether the school is for profit, the cost of the degree sought, the institution's graduation percentage, and the average income in the related field. Importantly, many of our clients often do not know the source of their loans, that is, whether they are federal or private, raising questions about what kind of information schools share with students at the onset of the financial aid process, and their role when loans are originated. These same factors are at play regardless of whether the borrower completes the program of study. During repayment, they manifest in terms of the borrower's actual income and debt-to-income ratio.

Regarding how borrowers in distress typically stay current with their private student loans, there is little room for borrowers living on the margins of poverty to reduce consumption in other areas. Most of our clients have long since foregone nonessential expenses in order to meet their private student loan obligations. Particularly for clients who subsist on the bare minimum income, making large student loan payments often means foregoing necessities, like food, and falling behind on rent payments. Without affordable payment options, they have little choice but to default and take their chances in court. Consequently, borrowers must often reduce payments on, or seek deferment of, their federal student loans in order to make payments on private student loans. Often, though, they still cannot make their private loan payments.

Many of our clients also rely on the financial support of family members to meet their private student loan obligations, whether in the form of gifts, informal loans, co-signing, or taking out separate lines of credit, thus draining resources from nonstudents. Other low-income clients lack any family network to help them financially, and have nowhere to turn when faced with crushing student loan debt.

**Current Options for Borrowers with Hardship**

Our clients report feeling that they have no options when dealing with private student loans, and are despondent that not even bankruptcy is available. Very few lenders offer to lower monthly payments, and when they do, the payments are typically still too high because they are calculated based on a percentage of the total amount owed, as opposed to the borrower's ability to pay. Despite high payments, they often are not enough even to cover the interest accruing. When borrowers are offered a payment plan that is both unaffordable and negatively amortizing, they will almost always choose to default.

Similarly, there are no specific payment options based on disability or death, which is particularly problematic for student loan debt because this type of debt is often incurred with the expectation that it will be covered by future employment. Accordingly, the terms of repayment should account for unexpected misfortune that prevents borrowers from fulfilling their plans to enter the workforce. For example, one of our clients, Ms. L, is a 31-year old woman from Queens who took out several student loans in order to realize her dream of becoming a pharmacist. After she graduated, however, her epilepsy became so debilitating that she was unable to hold down any steady employment. Fortunately, her student loans were all federal, and she was able to have them discharged based on her disability. This option would not have been available had the loans been private, and she would have been forced to default.

Also problematic is that most lenders do not have a formal process for evaluating hardship. It would be easier to predict borrower distress as of origination if there were predictable, uniform guidelines for responding to the common experience of graduating with significant debt and minimal employment opportunities. This lack of clarity is further degraded by the uniform failure of private lenders to memorialize in writing the lower monthly payment plans they offer. Although many private lenders have ombudsmen, they often do not advertise them and sometimes even seek to obscure them from borrowers.

We have not seen lenders working directly with co-signers to modify terms. Generally, the only interactions they have with co-signers is to harass and sue them upon default. In fact, we helped one borrower who was making timely payments on her private student loans until she realized that she had stopped receiving monthly statements. When she called her servicer, she learned that the co-signor on the loan had filed for bankruptcy, which automatically put the loan into default. Within months, the private lender sued her in state court.

Lawsuits that involve the collection of private student loans share many troubling characteristics with both debt buyer and foreclosure lawsuits. The lawsuits are similar to debt buyer cases in that most result in default judgments, often due to the defendant not actually being served, which are then used to obtain unaffordable settlement agreements with unrepresented borrowers. For example, we assisted one borrower who was "served" and sued in a county she had long ago moved away from, and she first learned of the lawsuit when a restraint was placed on her bank account.

Also like debt buyer cases, private student loan lawsuits are often brought by unscrupulous debt collection law firms who use harassment and misrepresentation to extract payments from borrowers. One example of this is Lisa G., a student who co-signed for a private student loan with her father. When she defaulted due to unemployment, they both began receiving several harassing phone calls a day from a debt collection law firm. Relying on the borrowers' confusion over the difference between federal and private student loans, the law firm falsely threatened that it could garnish the father's social security payments unless the student agreed to an onerous payment plan.

Similar to foreclosure cases, private student loan plaintiffs overwhelmingly tend to be securitization trusts that cannot prove standing when pressed by a represented defendant. These trusts typically only obtain title to the loans after multiple transfers, but rarely have documentation proving such transfers. At best, these plaintiffs can only produce a copy of the promissory note between the borrower and the original lender, and possibly documents referring to a purported transfer among several parties that do not specifically mention the student's individual loan. It is precisely because plaintiffs cannot prove standing that many of them rely on default judgments to collect on these loans.

**Consumer Reporting and Credit Scoring**

Delinquent private and federal student loans appear on our clients' credit reports, which can have far-reaching and dire consequences. Employers are increasingly using credit reports in making hiring decisions. A study by the Society for Human Resources Management found that 47 percent of employers conduct credit checks on some or all job applicants.[1] A more recent study by Demos found that one in four unemployed job seekers from a low- or middle-income household said that an employer had requested a credit check as part of a job application.[2] The study also found that one in seven job seekers who have poor credit said they had been told they would not be hired for a job because of information on their credit report.[3] This is an especially troubling trend in the context of student loan debt, which is typically incurred for the specific purpose of finding better employment. However, borrowers of private loans generally do not have the same six-month grace period after graduation, or hardship deferments or forbearances, which can protect their credit during a difficult job search. Instead, borrowers of student loans who do not immediately find employment, and therefore cannot afford their private student loan payments, may quickly find themselves in a credit Catch-22, in which they incur bad credit history because they can't find employment, and then can't find employment because of their poor credit.

As for federal loans, in our experience, when a federal student loan is rehabilitated, the default notation is removed from the trade line in the credit report, but the underlying negative information remains. As a result, the increase in credit score is likely minimal but servicers nevertheless push rehabilitating loans because they profit from them. In reality, the best way to protect borrowers' credit is to help prevent them from defaulting in the first place through reasonable payment and hardship payment options. Reasonable payment plans may also offer the best way to improve already damaged credit, as they offer an opportunity to create positive credit history, which likely outweighs the benefits of removing a single default notation.

**Borrower Awareness**

The best way to reach our client base is through direct mail and advertising in public transportation and public benefits offices, as well as through elected officials' constituent services offices.

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[1] SHRM SURVEY FINDINGS: BACKGROUND CHECKING – THE USE OF CREDIT BACKGROUND CHECKS IN HIRING DECISIONS, Society of Human Resources Management, July 19, 2012.
[2] DISCREDITED: HOW EMPLOYMENT CREDIT CHECKS KEEP QUALIFIED WORKERS OUT OF A JOB, Amy Traub,Demos, February 2013.
[3] *Id*.

Thank you for examining this important subject and its impact on our clients' financial health. Please feel free to contact us should you have any follow-up questions.

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