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Private Student Loan Oversight Amid the Coronavirus Pandemic

Critical Data and the Nation's Top Consumer Watchdog are Missing

April 2020

Introduction

Even before the coronavirus outbreak, the private student loan market was rapidly growing, opaque, and rife with consumer harm. Now, as the pandemic spurs widespread economic fallout, millions of private student loan borrowers are facing a dire financial situation.

However, most private student loans do not offer guaranteed payment flexibility for borrowers in distress. In instances where such flexibility is offered, borrowers frequently struggle to access it. This has made private student loan borrowers especially vulnerable to the economic disruptions that have followed the outbreak of the coronavirus.

Further, while data on private student loans and borrowers would be a crucial tool for policymakers responding to this economic tumult, much of it simply does not exist. This includes data indicating whether borrowers have been able to access options for payment flexibility that their private student loan company promised them. This data is missing in part due to the Trump administration's obstruction of a 2017 push by the Consumer Financial Protection Bureau (CFPB) to begin collecting it.

To address the coronavirus, the CFPB must revive and expand this effort at data collection. Building on the preparations made in its abandoned 2017 push, the Bureau should immediately collect the market-level information that policymakers need to protect private student loan borrowers during this pandemic and beyond. If it fails to do this, Congress should immediately step in.

This issue brief outlines why this data is needed and sets forth specific principles to guide its collection. First, the report summarizes the unique impact of the coronavirus on the private student loan market, especially as it relates to the few options distressed borrowers have for relief. Then, it highlights the paucity of data concerning private student lending and the consumer harm that this data gap enables. Finally, it specifies key steps that the CFPB — or, if needed, Congress — must take to address ongoing risks in the market. Specifically, building on groundwork laid as part of the CFPB's 2017 push to collect data on the private student loan market, the report outlines several fields of information that the Bureau or Congress should request from private student loan companies.

This data will serve as a critical tool for policymakers during the present crisis and will remain vitally important even after normalcy returns.

The private student loan market and the coronavirus pandemic

To date, federal action to mitigate the financial distress brought on by the coronavirus pandemic has failed to deliver any relief for borrowers with private student loans. For example, the recently passed stimulus bill excluded private student loan borrowers from the six-month payment pause it guaranteed most federal student loan borrowers. Federal inaction comes as private student loan companies routinely deny borrowers fee waivers, payment cessation options, collections relief, and loan modifications similar to those provided in other consumer financial markets.

As a result, private student loan borrowers remain uniquely vulnerable if they lose their job, face an unexpected expense, or suddenly need to take care of a child or an ailing family member during this public health crisis. Instead of being able to fall back on federal interventions, these borrowers are wholly dependent on the willingness of private creditors to voluntarily offer emergency relief options. When these options exist, they vary widely from company to company and typically leave borrowers even deeper in debt. During the last recession a decade ago, this piecemeal approach to payment relief caused widespread confusion and, in many cases, drove borrowers into default. Unfortunately, as millions of private student loan borrowers face the coming economic downturn, investigative journalism and public scrutiny remain borrowers' best tools to get relief.

Since President Trump declared the coronavirus pandemic to be a National Emergency on March 13, 2020, private student loan companies have issued public statements promising borrowers a pathway toward relief from unaffordable monthly payments, but it is unclear whether borrowers have been able to access this relief. Early signs indicate that industry is paying little attention to private student loan borrowers' distress. For example, Wells Fargo failed to outline options for its customers with student loans in its first public statement outlining its response to the coronavirus across its business segments. This happened even while student loan borrowers currently owe the bank more than $10 billion.

Perhaps most concerningly, the lack of available data on private student loans means policymakers, regulators, and law enforcement have no true understanding of the extent of financial distress and consumer harm in this market.

Without market-level data, policymakers are blind to consumer risks

Accurate, timely market data are a critical tool at nearly every point in the oversight of consumer finance companies. Lawmakers rely on this data to address gaps in consumer protection and ensure laws effectively address the way that consumers interact with the market. Regulators use market data to inform supervision efforts and to examine for compliance with consumer protection law. Law enforcement officials utilize this data to take action to halt abuses and seek justice for consumers when consumer finance companies break the law.

For these very reasons, other consumer financial product markets have extensive data collection requirements. For example, under the Home Mortgage Disclosure Act (HMDA), mortgage lenders report key data points to regulators to increase accountability in the face of predatory and discriminatory lending practices. The CFPB used this data and more to develop a searchable and publicly accessible database on mortgage lending that brought an unprecedented level of transparency to the market. Under the Credit Card Accountability Responsibility and Disclosure Act (CARD Act), the CFPB is required to collect and regularly report on developments in the credit card market, including monitoring the cost, agreement terms, and disclosures associated with current credit cards. In contrast, no comparable reporting requirements exist for private student loans — a $130 billion market that is larger than both the payday loan market and the balance of past-due medical debt in the United States.

This leaves several unacceptably large gaps in market observers' understanding of the private student loan market. For example, there is no authoritative data source to indicate how many private student loan borrowers there are, how much debt they owe, how they are faring in repayment, or whether they are able to access promised protections in moments of distress.

Recent policy decisions by Trump Administration officials show that these knowledge gaps are intentional. Specifically, they are the result of the Administration's successful obstruction of the Consumer Financial Protection Bureau's (CFPB) effort to increase transparency and accountability in the student loan market through routine, comprehensive data collection. In 2017, the CFPB, then led by Director Richard Cordray, sought to compel the student loan industry to produce, on a quarterly basis, detailed data on nearly all private student loan debt owed in the United States, invoking its "market monitoring" authority under the Dodd-Frank Act. In 2017 and 2018, in the face of industry opposition, this data collection effort was delayed by Administration officials at the Office of Management and Budget, then abandoned by current CFPB Director Kathy Kraninger. Now more than ever, the absence of the data this exercise would have produced has created glaring, dangerous gaps that leave consumers vulnerable to harm.

The nation's top consumer watchdog must act

As consumer financial markets plummet deeper into turmoil, the most recent actions by the CFPB suggest that the nation's top consumer watchdog is not engaged in a meaningful attempt to protect consumers. Rather than redoubling efforts to secure critical data to target oversight and regulation amid this economic upheaval, the CFPB recently announced that it would *postpone* certain industry data collections under the guise of providing companies "flexibility." In other words, the top consumer watchdog continues to set policies that deny the regulator access to real-time market data, even as the country enters a possibly unprecedented recession.

Now more than ever, lawmakers, regulators, and law enforcement officials need as much insight as possible into industry's practices and borrowers' experiences in consumer financial markets — and that need is particularly acute in the private student loan market.

Accordingly, the Bureau should immediately take the following actions to protect consumers, including the millions of Americans who owe approximately $130 billion in private student loans:

- **Immediately implement the Bureau's 2017 Student Loan Servicing Market Monitoring initiative.** The CFPB must complete the unfinished work of building a definitive, publicly accessible dataset detailing the contours of the private student loan market and spotlighting emerging risks to borrowers. Career civil servants at the Bureau have already identified the relevant data points necessary to direct the agency's regulatory, oversight, and enforcement efforts in the private student loan market. This proposal raises key questions for private student loan companies, including how many borrowers are included in companies' loan portfolios, how much debt borrowers owe, how many are falling behind, and importantly, how many have been able to access the help they need during times of economic tumult.

- **Expand Student Loan Servicing Market Monitoring to track key practices at the center of industry's response to the coronavirus pandemic.** In light of the coronavirus pandemic, the CFPB should not just finalize the data collection proposed in 2017 but also expand it to include the following additional data points focused on assessing risks to borrowers experiencing financial hardship:

  - **Availability of customer service.** Average and median call times for borrowers trying to contact their student loan company, including the number of borrowers in each decile of wait time, and the total amount of debt owed by borrowers in each decile;

  - **Back-end processing of emergency relief options.** Average and median processing times, in days, for borrowers waiting for an approval or denial of eligibility for relief programs (e.g. a loan modification or forbearance), the number of borrowers in each decile of processing time, and the total amount of debt owed by borrowers in each decile;

  - **Access to temporary relief options.** The number of applicants who are approved, denied, or have their applications deemed incomplete when seeking eligibility for short-term relief programs (e.g., a temporary loan modification, or forbearance), with denials broken out into subcategories detailing the reason for the rejection and the amount of debt owed by borrowers in each category;

  - **Access to permanent loan modifications.** The number of applicants who are approved or denied for a permanent loan modification and the amount that borrowers in each group owe, with denials broken out into subcategories detailing the reason for the rejection.

- **Release a public "report card" scoring companies' coronavirus responses.** Furthermore, the CFPB should commit to publishing monthly updates of aggregated, company-specific data to ensure that lawmakers, state regulators, law enforcement officials, and individual consumers can access a "report card" that scores the handling of financially distressed borrowers by the largest private student loan companies.

These actions are merely a first step.[1] They also offer a guide for lawmakers, regulators, and law enforcement officials as they approach oversight across the marketplace for consumer financial products and services. Specifically:

- **The CFPB must expand market monitoring across consumer financial products and services.** Immediate action in the student loan market could create a roadmap for the Bureau to protect consumers across the marketplace for consumer financial products and services. In the coming months, millions of consumers across America will face significant disruption in their financial lives. The CFPB's work must reflect the full scope of the risks that could pose. Accordingly, the Bureau should, in quick succession, exercise its statutory market monitoring authority in all key markets in order to protect consumers from mortgage foreclosures, dubious auto lending and collection practices, and continued predatory tactics by debt collectors.

- **If the CFPB fails to act, lawmakers should compel industry to produce robust, market-wide data.** Finally, if the CFPB refuses to act in this critical moment, Congress should step in by collecting and publishing this data itself. For three years, we have seen the Bureau fall short of its critical role in protecting hundreds of millions of our nation's consumers. Americans cannot wait for this paradigm to change while their financial futures hang in the balance.

Conclusion

As the effects of the coronavirus pandemic unfold, American families are already struggling under the weight of consumer debts. A broad range of providers of consumer financial products and services, including commercial banks, credit card issuers, and private student loan companies, have offered these borrowers purported pathways toward relief. However, lawmakers, regulators, and law enforcement officials lack the data to determine whether consumers are successfully accessing or benefiting from them. This is an emergency, and it is one that also reveals a persistent structural challenge for policymakers and the public: that the nation's top consumer watchdog is failing to closely monitor the marketplace and that it will be blind to new risks that emerge as this crisis evolves.

The proposal to expand oversight over the student loan market outlined in this report illustrates a potential path forward for the CFPB. Further, this tactic — routine, granular market monitoring focused on the key business practices that determine the success or failure of struggling consumers — is broadly applicable to every market the agency regulates. It also offers a framework for state regulators as they expand oversight in the absence of an aggressive federal consumer watchdog. Regulators and law enforcement officials at every level of government must act now to protect borrowers.

1 Although this issue brief focuses on the dangerous gaps in data on the private student loan market, given widespread confusion over implementation of the CARES Act, the Bureau should also prioritize the federal student loan-specific elements of its 2017 Student Loan Market Monitoring proposal. This initiative, as originally conceived, provides the Bureau with the framework to collect and publish information about whether borrowers with federal student loans are successfully accessing the protections that Congress promised in this new legislation.