

June 17, 2013

The Honorable Richard Cordray
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Cordray:

Thank you for making improving the student loan market and assisting student loan borrowers a priority for the Bureau. We write to urge the Consumer Financial Protection Bureau to promptly use its authority to enforce consumer financial laws, including the Truth in Lending Act (TILA), to require that private education lenders obtain school certification prior to disbursing private education loans. School certification of private loans is consistent with the Bureau's simple and sensible goal: that students should know *before* they owe.

If Congress and the Administration fail to act by July 1, 2013, the interest rate on new federal Stafford subsidized loans will double from 3.4% to 6.8%. We are deeply concerned that the doubling of interest rates during a period of record-low market interest rates will lead to a significant increase in students mistakenly turning to costly and risky private loans to pay for higher education. That would increase the cost of college for these students and their families, many of whom are already struggling to afford school, and increase the risks that student debt may pose to the economy and the struggling housing market. Requiring lenders to obtain school certification of private loans—including the notification and counseling of students with any remaining federal aid eligibility—would significantly reduce the risks to students, families and the economy, and help students make more informed borrowing decisions.

Last October, Bureau officials noted the “uncanny resemblance” between the challenges faced by struggling homeowners and private education loan borrowers when seeking to renegotiate the payment plans on their loans. We applaud you for addressing this troubling situation for those who have already borrowed, but urge you to also take steps to ensure that more borrowers do not get trapped in these loans. In 2012, Sallie Mae, the largest lender, successfully issued eight offerings of private loan asset-backed securities. With investors eager to find yield in today's rate environment, we may once again see movement toward pushing private loans on students and families who may not understand the risks of these mostly variable-rate products.

As you know, based on the available data, a *majority* of undergraduate private loan borrowers did not borrow the maximum amount in safer federal student loans first, and therefore may not have needed to take out a private loan. Private loans are one of the riskiest, most expensive ways to pay for college. Like credit cards, they typically have variable interest rates that are higher for those who can least afford them. However, private loans are treated much more harshly in bankruptcy than credit cards and other comparable types of debt. Private loans also do not provide the important deferment, income-based repayment, and loan forgiveness options that accompany federal student loans. This leaves most private loan borrowers at the mercy of their lender if they face financial distress due to unemployment, disability, illness, or military deployment, or if their school shuts down before they can finish their certificate or degree.

Last year, you and Secretary Duncan issued a report recommending that lenders be required to obtain school certification of private loans. The report found that at the height of the lending boom only 28% of

all private education loans were “school certified.” This means schools did not have the opportunity to confirm whether the student was enrolled, whether the loan exceeded allowable limits, or if the student was eligible for safer federal loans to counsel them about their options. Today, the vast majority of lenders voluntarily ask schools to certify their private loans, but lenders are not required to do so. Even when they do, many schools do not take the opportunity to inform or counsel students before certifying the private loan. As the joint report notes, a wide range of stakeholders, including organizations representing lenders, schools, financial aid administrators, and students, have endorsed requiring school certification of all private loans, including notification of the student of any available federal aid.

While we strongly support the Know Before You Owe Private Student Loan Act of 2013 (S. 113) to legislatively require school certification, we believe the Bureau has the authority under TILA to require school certification and counseling before private education loans are disbursed and should do so now. The current self-certification procedures do not adequately protect private loan borrowers because there is no mechanism to ensure that the information provided is correct. Any party can fill out the self-certification form, despite the statute’s stating that the cost of attendance and expected family contribution are to be determined by the institution of higher education. The school is *not* required to confirm the accuracy of the information on the form, to provide any information directly to the student, or to play any role in determining the final loan amount. Indeed, private lenders may pre-populate the self-certification form themselves, which can lead borrowers to enter into loans based on inaccurate or misleading information.

In addition, the current self-certification process does not assure that each student receives information about his or her outstanding federal aid eligibility, meaning students are often unaware of how much they can borrow through lower-cost federal financial assistance. Financial aid officers report that students and families seeking private education loans are frequently misinformed about the availability of federal student loans and unaware of the greater risks of private loans. For example, many students and families assume they earn too much to qualify for federal student loans, even though there is no income limit. Accurate and personalized information regarding a student’s outstanding federal aid eligibility is critical for borrowers to make informed decisions about private education loans. However, this information, which only an institution of higher education can provide, is not part of the current self-certification process.

There is considerable evidence that making schools part of the certification process better ensures that borrowers are informed before making serious credit decisions and better protected from unfair, deceptive, or abusive lending practices. School-certified loans have significantly lower default rates than uncertified, or “direct-to-consumer,” loans, which have been found to be two to three times more likely to default. The recent joint report by the Bureau and Education Department notes that some securitized trusts loaded with direct-to-consumer loans have default rates expected to reach 50%. Involving the school in the process also better prevents private lenders from taking unreasonable advantage of a borrower’s lack of understanding of the material risks, costs, and conditions of a private education loan compared to federal loans.

With private lenders currently marketing loans with variable rates starting as low as 2.25%, more students and families may mistakenly conclude that such loans are more affordable than federal loans with a fixed rate of 6.8%. Requiring school involvement now is also critical to prevent a resurgence of the reckless and deceptive private lending practices common before the recent financial crisis.

The statutory language demonstrates that Congress intended to create a rigorous scheme to ensure that borrowers of private education loans are provided full information and protected against unfair lending practices, and to delegate to the Bureau the power to require additional lender disclosures if necessary to ensure adequate consumer protection. The statute requires that private education lenders disclose specific

information at the solicitation, application, approval, and consummation stages to ensure that borrowers are fully informed of the limitations of private loans, as well as the availability of federal student financial assistance. At all four stages, the law requires private lenders to disclose any “other information as the Bureau shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.” Further, Congress clearly envisioned a role for higher education institutions to ensure that borrowers are fully informed, requiring institutions of higher education to provide the self-certification form upon the request of a student and to determine the cost of attendance and the expected family contribution.

Thank you for considering our views. We are deeply grateful that you have made assisting student loan borrowers and improving the student loan market a priority for the Bureau.

Sincerely,

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Association of University Women
American Federation of Teachers
Americans for Financial Reform
Association of Community College Trustees
Center for Responsible Lending
Consumer Action
Consumers Union
The Education Trust
Higher Education Policy Institute
Hispanic Association of Colleges and Universities
The Institute for College Access & Success
NAACP
National Association for College Admission Counseling
National Association of Social Workers
National Black Law Students Association
National Consumer Law Center (on behalf of our low-income clients)
National Consumers League
National Education Association
New Economy Project (formerly NEDAP)
New York Public Interest Research Group
Public Citizen
Rock the Vote
United States Public Interest Research Group
United States Students Association
Woodstock Institute
Young Invincibles

cc: Rohit Chopra, Assistant Director and Student Loan Ombudsman
Zixta Martinez, Associate Director for External Affairs