OCTOBER 2015

Annual report of the CFPB Student Loan Ombudsman

Consumer Financial Protection Bureau

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Executive summary

- Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, this annual report analyzes complaints submitted by consumers from October 1, 2014, through September 30, 2015. During this period, the Bureau handled approximately 6,400 private student loan complaints, an increase of approximately 23 percent compared to that of the previous year. The Bureau also handled 2,300 debt collection complaints related to private and federal student loans.

- This report observes that outstanding federal student loans made by private lenders may have a higher concentration of borrowers in default or delinquency than the student loan market at-large. Last month, the Bureau estimated that more than 25 percent of student loan borrowers are delinquent or in default market-wide. The Bureau observed that at least 30 percent of borrowers with loans made through the Federal Family Education Loan Program (FFELP)—more than 5 million in total—are behind on their loans or are already in default.

- In addition, this report offers commentary on recent analyses published by government auditors, economists, and federal agencies. These analyses offer further evidence to support the Bureau's observations in this report and suggest that these problems may be experienced by a broad segment of student loan borrowers. Taken together, the following discussion offers additional support for the Bureau's recent recommendation that policymakers pursue industrywide standards for student loan servicers.

- Borrowers with both private and federal student loans continue to submit complaints describing servicing and debt collection practices that create barriers to enroll in alternative repayment plans, including income-driven repayment plans for borrowers with federal loans. As private student lenders expand proprietary modification offerings for borrowers in distress, private student loan borrowers report that they encounter servicing problems, including lack of access to timely and accurate information on availability or eligibility criteria to enroll in alternative repayment programs.

- Many debt collection complaints from borrowers with federal student loans describe how borrowers attempt to avoid default during a period of financial hardship, but have difficulty finding information about repayment options, including income-driven repayment plans. Despite the right under federal law to enroll in an income-driven repayment plan, some borrowers report that they did not know they were eligible. The Bureau also received complaints that borrowers who apply for an income-driven repayment plan are held up by paperwork processing delays, receive inconsistent instructions from servicers, or experience difficulty enrolling in these programs.

- This report highlights how economic and other incentives for student loan servicers may encourage servicing practices that contribute to borrower distress, particularly for federal student loans originated by private lenders under FFELP. These loans constituted the vast majority of all new federal student loans until Congress eliminated this program in 2010. From 2006 to 2009, these loans made up more than 75 percent of all new federal student loans. As of June 30, 2015, consumers still owe more than $370 billion in student loans made under this program.

- The following report details analysis from a voluntary request sent by the Bureau's Student Loan Ombudsman to certain market participants, asking for data about loans originated under FFELP and held by private investors. The report also describes certain limitations of this data, noting that it may not be representative of all borrowers with FFELP loans and differences in loan maturity, portfolio composition, and availability of certain benefits may contribute to these results. This analysis finds:

  - The FFELP data we received shows that less than 6 percent of borrowers in our sample are enrolled in income-driven repayment plans. In contrast, borrowers with federal loans made directly by the Department of Education enroll in these plans at nearly three times the rate.

- The FFELP sample shows substantial signs of borrower distress. More than 20 percent of FFELP borrowers in this sample are delinquent or have suspended their monthly payments by using forbearance, but are not yet in default.

- FFELP borrowers in the sample with past-due balances owe higher balances than delinquent borrowers with Direct Loans, raising questions about whether borrowers who may be able to benefit from income-driven repayment plans are not enrolling.

- The report also offers recommendations to policymakers, calling for the compilation of regular performance metrics on student loan servicing, including data on delinquencies and defaults as well as data on borrower performance in income-driven repayment plans. Policymakers should consider compiling and publishing data on a periodic basis to facilitate comparison in performance among student loan servicers.

About this report

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law 111-203, ("Act") established a student loan ombudsman within the Consumer Financial Protection Bureau. Pursuant to Section 1035(d) of the Act, the student loan ombudsman shall prepare an annual report and make appropriate recommendations to the Secretary of the Treasury, the Director of the Consumer Financial Protection Bureau, the Secretary of Education, and Congress. This report is the fourth annual report meeting the requirement set forth in the Act.

This report analyzes approximately 6,400 private student loan complaints and approximately 2,300 debt collection complaints related to private and federal student loan debt received between October 1, 2014, and September 30, 2015. This report also offers analysis and discussion to address issues reported by consumers in the student loan marketplace.

Seth Frotman
Acting Student Loan Ombudsman
Consumer Financial Protection Bureau

1. Student loan complaint data

Information about consumer complaints, including information about student loan and debt collection complaints, is available to the public through the Bureau's Consumer Complaint Database.[1]

The database contains anonymized complaint data provided by consumers, including the type of complaint, the date of submission, the consumer's zip code, and the company that the complaint concerns. The database also includes information about the actions taken by a company in response to a complaint: whether the company's response was timely, how the company responded, and whether the consumer disputed the company's response. The database does not include consumers' personal identifying information (PII). The database includes web-based features such as the ability to filter data based on specific search criteria, to aggregate data in various ways—such as by complaint type, company, location, date, or any combination of available variables—and to download data.

In June 2015, the Bureau enhanced the Consumer Complaint Database by including public-facing consumer complaint narratives detailing the problems consumers face with financial companies concerning mortgages, bank accounts, credit cards, debt collection, student loans, and more. The public can search consumer narratives for specific product names or features, and search by company or by state.

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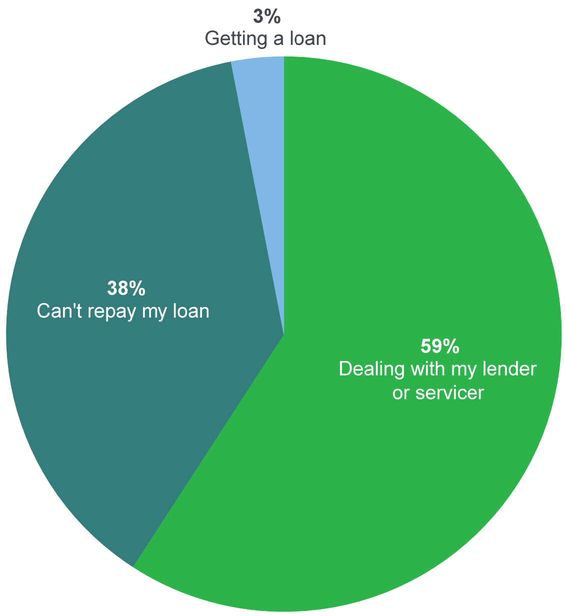
[1] Consumer Financial Protection Bureau, *Consumer Complaint Database, available at* http://www.consumerfinance.gov/complaintdatabase/. Data included in the following section of this report includes complaints submitted to the Bureau between October 1, 2014, and August 31, 2015. Complete data for September 2015 had not been published in the Consumer Complaint Database at the time this report was prepared and the following section reflects this limitation.

The following tables are based on complaints received from October 1, 2014, through August 31, 2015, as exported from the public Consumer Complaint Database on October 1, 2015.[2]

FIGURE 1: PRIVATE STUDENT LOAN ISSUES REPORTED BY CONSUMERS FROM OCTOBER 1, 2014 THROUGH AUGUST 31, 2015[3]



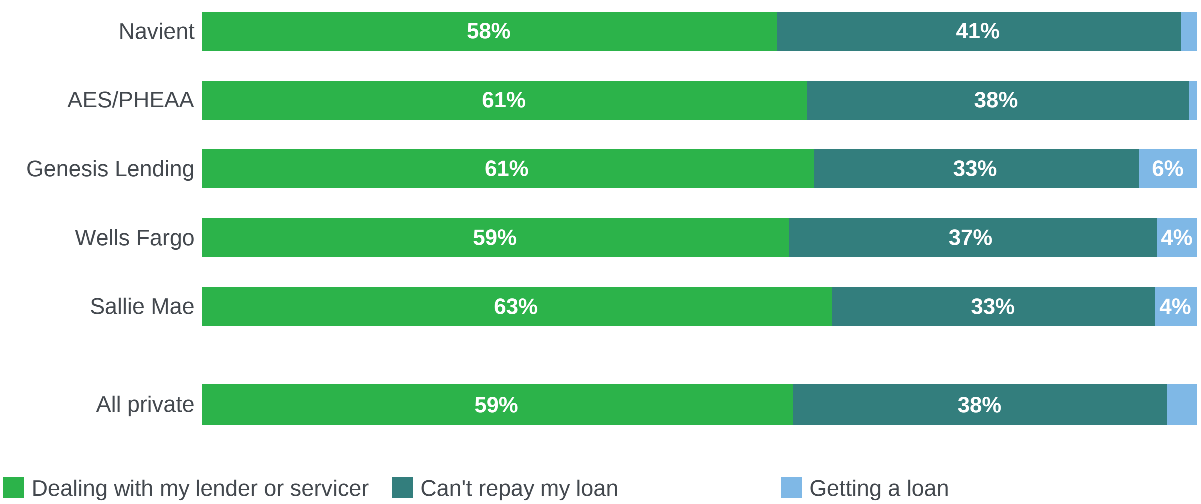
[2] Not all complaints handled by the Bureau are published in the public Consumer Complaint Database. Complaints that do not meet the publication criteria may be removed from the database. The database lists complaints where the companies have had the opportunity to provide a response or after the companies have had the complaint for 15 calendar days—whichever comes first. The publication criteria are available at http://files.consumerfinance.gov/f/201303_cfpb_Final-Policy-Statement-Disclosure-of-Consumer-Complaint-Data.pdf. Therefore, the number of complaints published in the database may be fewer than the total number of complaints handled by the Bureau.

[3] Consumers submitting student loan complaints can select from the following three types of complaint categories: "Getting a loan," "Can't pay my loan," and "Dealing with my lender or servicer." This figure reflects the categories consumers selected when filing a complaint.

TABLE 1: COMPANIES WITH THE MOST PRIVATE STUDENT LOAN COMPLAINTS RANKED BY VOLUME[4]

Company	Oct. 2013 – Aug. 2014	Oct. 2014 – Aug. 2015
Navient	1,854	1,724
AES/PHEAA	378	401
Genesis Lending	24	374
Wells Fargo	229	244
Sallie Mae	231	240

FIGURE 2: ISSUES IDENTIFIED IN PRIVATE STUDENT LOAN COMPLAINTS BY COMPANY FROM OCTOBER 1, 2014 THROUGH AUGUST 31, 2015[5]



[4] This table reflects complaints where: (1) the consumer identified the sub-product as a non-federal student loan and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table reflects the top companies by complaint volume for the period of October 1, 2014, through August 31, 2015. This information was not adjusted for market share. Company-level information should be considered in context of market share.

[5] This figure reflects complaints where: (1) the consumer identified the sub-product as a non-federal student loan; (2) the consumer identified the issue; and (3) the identified company responded to the complaint, confirming a relationship with the consumer. This figure reflects the top companies by complaint volume. This information was not adjusted for market share. Company-level information should be considered in context of market share.

FIGURE 3: PRIVATE STUDENT LOAN COMPLAINTS BY MONTH[6]

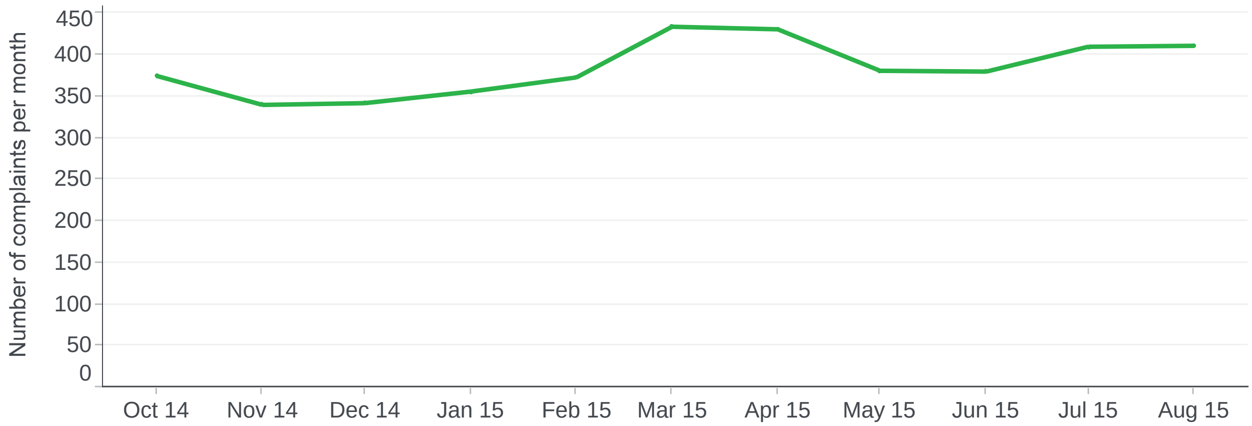
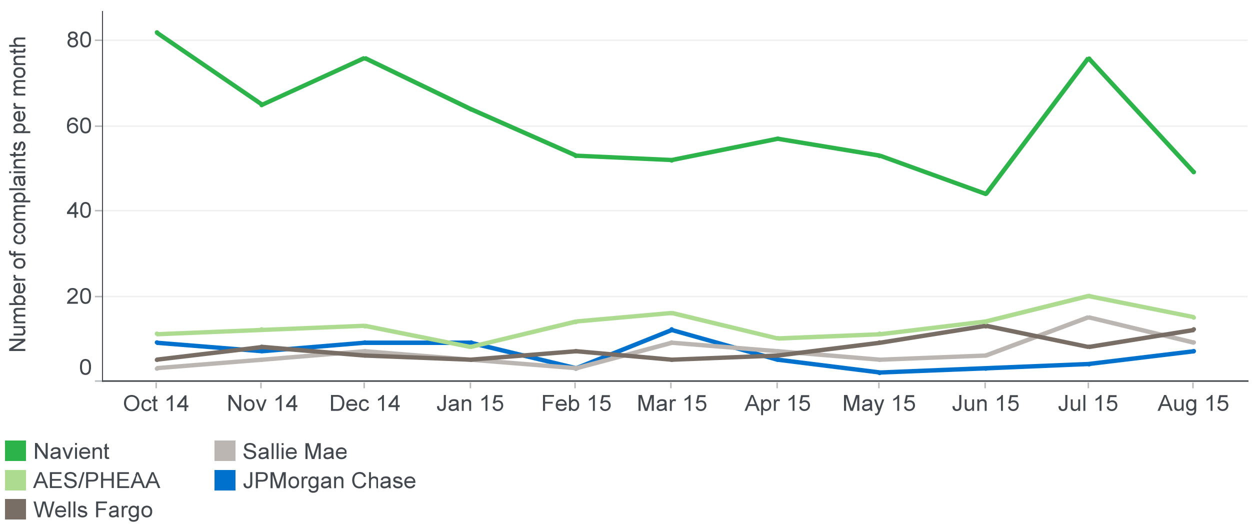


FIGURE 4: PRIVATE STUDENT LOAN COMPLAINTS RELATED TO REPAYMENT DISTRESS BY MONTH[7]



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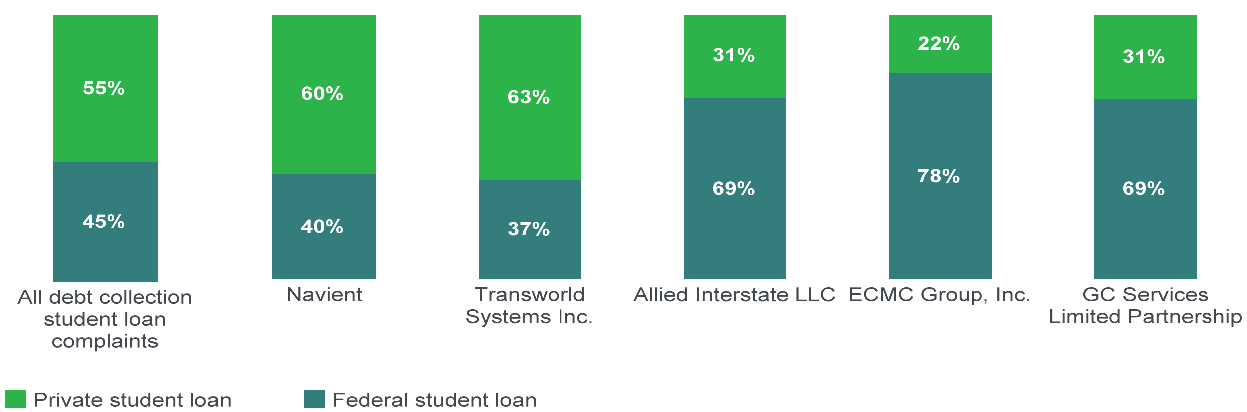
[6] This figure reflects complaints where: (1) the consumer identified the sub-product as a non-federal student loan and (2) the identified company responded to the complaint, confirming a relationship with the consumer.

[7] This figure reflects complaints where: (1) the consumer identified the sub-product as a non-federal student loan; (2) the consumer identified their issue as "Can't repay my loan"; and (3) the identified company responded to the complaint, confirming a relationship with the consumer. This figure reflects the top companies by complaint volume.

TABLE 2: TOP RECIPIENTS OF STUDENT LOAN DEBT COLLECTION COMPLAINTS FROM OCTOBER 1, 2014 THROUGH AUGUST 31, 2015[8]

Federal Student Loans	Number of Complaints	Private Student Loans	Number of Complaints
Navient	86	Navient	128
Allied Interstate LLC	40	Transworld Systems Inc.	57
ECMC Group, Inc.	39	AES/PHEAA	22
Transworld Systems Inc.	34	Allied Interstate LLC	18
Performant Financial Corporation	25	National Enterprise Systems, Inc	17

FIGURE 5: DISTRIBUTION OF LOAN TYPE FOR STUDENT LOAN DEBT COLLECTION COMPLAINTS BY COMPANY FROM OCTOBER 1, 2014 THROUGH AUGUST 31, 2015[9]



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[8] This table reflects debt collection complaints where: (1) the consumer identified the sub-product as a non-federal or a federal student loan and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table also reflects aggregated complaints of subsidiary debt collection companies under the parent company. This information was not adjusted for market share. Company-level information should be considered in context of market share.

[9] This figure reflects debt collection complaints where: (1) the consumer identified the sub-product as a non-federal or a federal student loan and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This figure reflects the top companies by complaint volume. This figure also reflects aggregated complaints of subsidiary debt collection companies under the parent company. This figure was not adjusted to reflect each company's relative market share. Company-level information should be considered in context of company size.

2. Issues faced by borrowers

SOURCES OF INFORMATION

To identify the range of issues faced by student loan borrowers, this report relies primarily on complaints handled by the Bureau. The Bureau handled approximately 6,400 private student loan complaints between October 1, 2014, and September 30, 2015, an increase of 23 percent from the prior year. The Bureau also handled approximately 2,300 debt collection complaints from student loan borrowers related to private and federal student loans.

In addition to complaints, we reviewed other information, such as comments submitted by the public in response to requests for information, submissions to the "Tell Your Story" feature on the Bureau's website, and input from discussions with consumers, regulators and law enforcement agencies, and market participants.[10]

LIMITATIONS

Readers should note that this report does not suggest the prevalence of the issues described as they relate to the entire student loan market. The information provided by consumers helps to illustrate where there is a mismatch between borrower needs and actual service delivered. Representatives from industry and borrower assistance organizations will likely find the inventory of borrower issues helpful in further understanding the diversity of customer experience in the market.

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[10] *See, e.g.*, Consumer Financial Protection Bureau, *Request for Information Regarding Student Loan Servicing*, 80 Fed. Reg. 29302, Docket ID CFPB-2015-0021 (May 21, 2015), *available at* http://www.regulations.gov/#!docketDetail;D=CFPB-2015-0021.

SERVICING PRACTICES MAY CREATE OBSTACLES FOR BORROWERS ENROLLING IN ALTERNATIVE REPAYMENT PLANS, INCLUDING INCOME-DRIVEN REPAYMENT PLANS

Borrowers with both private and federal student loans continue to submit complaints describing servicing and debt collection practices that create barriers to enroll in alternative repayment plans, including income-driven repayment plans for borrowers with federal loans. As private student lenders expand proprietary modification offerings for borrowers in distress, private student loan borrowers encounter servicing problems, including lack of access to timely and accurate information on availability or eligibility criteria to enroll in alternative repayment programs.

Since the Bureau began accepting complaints regarding debt collection of student loans in July 2013, a large subset of complaints relate to the collection of federal student loans. In particular, many complaints stem from borrowers attempting to avoid default during a period of financial hardship. Almost all federal student loan borrowers experiencing financial distress are entitled to enroll in repayment plans that set their monthly payments relative to their income—usually at 10 to 15 percent of the borrower's discretionary income, depending on the plan.[11] Using a federal formula, these plans consider borrowers' adjusted gross income and family size in order to determine borrowers' monthly payments. Borrowers eligible for a reduced monthly payment under this formula are considered to have demonstrated partial financial hardship (PFH).[12] For borrowers who are unemployed or who have very low wages, a payment under one of these arrangements may be as low as zero dollars per month.[13] For borrowers with low wages over a long term, these programs also offer loan forgiveness following 20 or 25 years of payments.[14]

[11] For further discussion on income-driven repayment plans, *see* Appendix A.

[12] A borrower experiences a partial financial hardship if his or her monthly student loan payment under the federal formula is less than the payment that would be required under a standard 10-year repayment plan. Borrowers must recertify income on an annual basis in order to retain a payment amount that reflects their financial circumstances; however, borrowers who fail to recertify or are no longer eligible to make a PFH payment are still considered "enrolled" in an IDR, for the purpose of current data compilation and reporting.

[13] *See* 34 C.F.R. § 685.209 (Pay As You Earn (PAYE), only available for Direct Loans or loans consolidated into Direct Loans); 34 C.F.R. § 685.221 (Income-Based Repayment (IBR) under the Direct Loan program); 34 C.F.R. § 682.215 (IBR under FFELP). Payments may be $0.00 based on demonstration of PFH under an income-driven repayment

The complaints related to alternative repayment plans, including complaints related to enrolling and staying enrolled in income-driven repayment plans, share a number of distinct themes, as outlined below.

Distressed private student loan borrowers struggle to obtain information on affordable repayment programs. Many of the complaints handled by the Bureau suggest that a number of borrowers are eager to protect their credit and avoid the consequences of delinquency and default. Many borrowers submitted complaints in an attempt to find out options that would lower their monthly payment or enroll in an affordable repayment program for their private loan. Complaints suggest that servicers may not be proactively contacting borrowers about available repayment options for private loans or may not provide clear information on their websites and online servicing platforms. Complaints suggest that alternative repayment plans may be available but borrowers experience difficulty in obtaining or accessing information on these plans. Complaints also reveal that investigating potential options may require borrowers to contact their lender or servicer to obtain information, and some of these borrowers report receiving responses that servicers were unable or unwilling to offer an alternative repayment plan. Borrowers also complain that they received conflicting information from multiple customer service representatives about eligibility criteria to enroll in alternative repayment programs.

Borrowers with federal loans complain that they are unable to enroll in income-driven repayment plans, despite contacting customer service representatives and submitting the required paperwork. Borrowers tell us that they contact their servicer in order to find out if there are options to obtain an affordable monthly payment. Borrowers experiencing financial hardship complain that even though they reached out to their servicer for help, they did not receive adequate information about income-driven repayment plans or other alternative repayment plans. Some borrowers also complain that when they did receive information, it was in conflict or inconsistent with other instructions or information provided

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plan. Alternatively, payments may be $0.00 for months during which a borrower obtained an Economic Hardship Deferment (EDH).

[14] For the purpose of calculating eligibility for loan forgiveness under IBR or PAYE, servicers are expected to track and evaluate the number of qualified payments made by borrowers in order to ensure that, in total, 20 or 25 years of payments have been provided. For the purpose of determining eligibility for loan forgiveness, "payments" can include months during which a $0.00 payment was made. Months during which a borrower enrolled in forbearance do not qualify toward loan forgiveness. *See, e.g.*, 34 C.F.R. § 685.209.

previously by customer service representatives. Borrowers tell the Bureau that they did not know about the availability of income-based repayment programs or that they qualified for a lower monthly payment.

The Bureau has received complaints and other input[15] from borrowers with older federally-guaranteed loans made by banks and other private lenders under the Federal Family Education Loan Program (FFELP).[16] These borrowers report that they are unable to enroll in income-driven repayment plans despite repeated attempts to find out how to apply or enroll in these programs. These borrowers complain about communication breakdowns following completion of enrollment applications for income-driven repayment plans. These borrowers complain that their servicer does not advise them of the status of their application or that they do not receive confirmation that the application was processed. Borrowers also complain that servicers fail to place their loans in the requested income-driven repayment plan or inform them of other alternative repayment options. One borrower with a FFELP loan told us:

> I have a loan with [servicer] and I have not been given any help dealing with my payment options. I have filled out applications for an [income-based repayment plan] and forbearance. Customer service is constantly giving me false information and not helping me to get my payments lowered. I have complained to numerous organizations and have not gotten any help since. Please, help me. I am trying hard not to allow my loans to go into default. I am not trying to ignore my loans but how can I pay a 2,000 monthly payment. They are not helping me to resolve this payment to a payment that I can afford.

[15] This report is also informed by comments submitted by organizations and individual borrowers in response to the Bureau's May 2015 *Request for Information on Student Loan Servicing*. *See* Consumer Financial Protection Bureau, *Request for Information Regarding Student Loan Servicing*, 80 Fed. Reg. 29302, Docket ID CFPB-2015-0021 (May 21, 2015), *available at* http://www.regulations.gov/#!docketDetail;D=CFPB-2015-0021.

[16] For further discussion on types of federal student loans, *see* Appendix A. Readers should also note that a significant share of the existing FFELP loans originated between July 2008 and June 2010 were acquired by the U.S. Department of Education under a special purchase program; older FFELP loans comprise the majority of FFELP loans held by private sector lenders and loan holders.

Borrowers with federal loans complain that servicers may not consistently communicate information about how to recertify for income-driven repayment plans. Federal student loan borrowers who enroll in an income-driven repayment plan are also required to provide income documentation and updated household size every year to demonstrate continued partial financial hardship (a process known as recertification). If a borrower fails to recertify, the borrower will receive a bill for a monthly payment equal to the ten-year standard payment amount based on the borrower's loans at the time the loans entered the income-driven plan. Recertification requirements exist for borrowers with Direct Loans[17] and borrowers with FFELP loans.[18] Borrowers complain that they submitted paperwork to recertify; however, their servicer did not process it in time to avoid a large jump in their monthly payment.[19] Borrowers tell us that this forced them to choose between missing a payment, requesting forbearance, or submitting a payment amount far greater than what they knew they were entitled to under federal law.

> My IBR is set to expire on Feb 10, 2014. On Nov 16, 2013, I sent in my re-application for the IBR program. I contacted [my servicer] to ensure they received the application and all the materials were correct. They indicated that the application was complete and it takes "37 business days to process the applications." It has been well over that time, about 75 days and counting, and still no response from [my servicer]. I have called repeatedly and the customer service operators all say the same thing. At this time I have cancelled my automatic withdrawal and have placed the loan in a one month forbearance. If I did not place the loan in "forbearance" the payment due on Feb 10 would have been $815.00, radically higher than the $216.00 I had been paying through the IBR program. I hate having to place anything in forbearance.

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[17] 34 C.F.R. § 685.221 (Income-Based Repayment); 34 C.F.R. § 685.209 (PAYE and ICR).

[18] 34 C.F.R. § 682.215 (Income-Based Repayment).

[19] *See* Consumer Financial Protection Bureau, *When you make student loan payments on an income-driven plan, you might be in for a payment shock* (Aug. 2015), *available at* http://www.consumerfinance.gov/blog/when-you-make-student-loan-payments-on-an-income-driven-plan-you-might-be-in-for-a-payment-shock.

Borrowers enrolled in automatic payments may face additional costs when recertification is not processed on time. Borrowers enrolled in automatic payments (auto-debit) with their servicers report unexpectedly higher payments being withdrawn from their bank account automatically when recertification under an IDR is not processed by their annual deadline. Borrowers who do not maintain a high enough balance in their checking accounts to cover an unexpected higher payment may be charged overdraft fees by their financial institutions or fees for insufficient funds (NSF) by their servicers if their payments are rejected.

Borrowers complain that if they do not recertify on time, they lose benefits, face increased costs, and lose credit toward loan forgiveness. As noted above, federal loan borrowers enrolled in income-driven repayment plans are required to submit documentation recertifying their income and household size on an annual basis in order to continue making monthly payments tied to their income (PFH payments).

Many borrowers enrolled in income-driven repayment plans pay less each month than the interest that accrues on their loans. These borrowers' loan balances will grow over time as they continue to make PFH payments. However, income-driven repayment plans offer an important protection for borrowers who recertify on time each year—unpaid interest does not get added to the outstanding principal balance.[20] Borrowers for whom recertification is not timely forfeit this benefit and unpaid interest is capitalized, increasing the cost of the loan, often substantially.

Another benefit of income-driven repayment plans is the opportunity for loan forgiveness after 20 or 25 years of payments. For these borrowers enrolled in income-driven repayment plans, every month that they make a qualifying payment helps to satisfy a prerequisite to obtain loan forgiveness.[21] However, if a servicer fails to promptly process applications for either of these

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[20] For borrowers enrolled in PAYE, capitalization is capped at 10 percent of the principal balance at the time the borrower enrolled in PAYE. For borrowers enrolled in ICR, capitalization is capped at 10 percent of the principal balance at the time the borrower entered repayment. 34 C.F.R. § 685.209(a)(2)(iv)(B)(1) (PAYE); 34 C.F.R. § 685.209(b)(3)(iv) (ICR). There are no restrictions on the amount of unpaid interest that may be capitalized for borrowers enrolled in IBR. For borrowers who may experience PFH for a number of years, capitalization of unpaid interest can substantially increase the total cost of their loans. *See* 34 C.F.R. § 685.221 (IBR for Direct Loans); 34 C.F.R. § 682.215 (IBR for FFELP).

[21] For the purpose of calculating eligibility for loan forgiveness under IBR or PAYE, servicers are expected to track and evaluate the number of qualified payments made by borrowers in order to ensure that, in total, 20 or 25 years of

repayment plans, borrowers report that they experience two kinds of negative consequences. First, borrowers complain that they are forced to pay the higher monthly payment, thus decreasing the amount entitled to be forgiven (if the borrower reaches forgiveness). Second, borrowers complain that delayed processing forces borrowers to use forbearance, thus extending the eligibility date for forgiveness by each month that it takes to approve the recertification application. Both of these could result in hundreds or thousands of dollars in additional payments paid by the borrower.

Providing borrowers with accurate and timely information about their loans, including available repayment options and associated terms and conditions, is one of the most critical aspects of loan servicing. The vast majority of borrowers with federal student loans have the right under federal law to apply for income-driven repayment plans. When borrowers struggle to obtain information about these programs or default without taking advantage of income-driven repayment plans, a servicing breakdown may often be the cause.

payments have been provided. For the purpose of determining eligibility for loan forgiveness, "payments" can include months during which a $0.00 payment was made under an IDR plan. Months during which a borrower enrolled in forbearance, however, do not qualify toward loan forgiveness. *See, e.g.*, 34 C.F.R. § 685.209.

3. Ombudsman’s discussion

Based on the issues and themes described in Section Two, the student loan ombudsman offers commentary relevant to the student loan marketplace. This discussion represents the student loan ombudsman’s independent judgment and does not necessarily represent the view of the Consumer Financial Protection Bureau.

3.1 Utilization of income-driven repayment plans

Federal student loans feature a range of alternative repayment plans designed to provide borrowers with additional flexibility when entering repayment or experiencing financial hardship.[22] Access to the protections available under these plans may mean the difference between keeping up with a financial obligation and becoming delinquent. Delivering adequate service is particularly critical in the student loan servicing market for exactly these reasons. As discussed in the previous section, the Bureau has heard through complaints from individual student loan borrowers that borrowers experiencing financial hardship may not be able to understand and enroll in appropriate programs without timely, accurate, and actionable information from their student loan servicer.

[22] For further discussion on income-driven repayment plan, *see* Appendix A.

In May 2015, the Bureau issued a *Request for Information on Student Loan Servicing*.[23] In September 2015, the Bureau published a report describing the comments submitted in response to the *Request for Information on Student Loan Servicing*, including problems reported by borrowers.[24] The report's discussion of public comments relating to specific student loan servicing practices may provide additional context for readers seeking to better understand problems and practices. Issues identified in this discussion include:

- Federal student loan borrowers stated that they were not informed about interest subsidies, loan forgiveness, or other benefits associated with income-driven repayment plans;[25]
- Borrowers report that servicers drove them to a short-term program, such as forbearance, that may be more expensive over time—even though an alternative repayment plan, such as an income-driven repayment plan, would have been a better long-term solution;[26]
- Borrowers who do enroll in an income-driven repayment plan and continued to experience financial hardship encountered problems retaining a payment level that reflects their income, following breakdowns in the annual process used to certify their income and household size.[27]

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[23] Consumer Financial Protection Bureau, *Request for Information Regarding Student Loan Servicing* (May 2015), *available at* http://www.consumerfinance.gov/students/request-for-information-on-student-loan-servicing.

[24] *See* Consumer Financial Protection Bureau, *Student Loan Servicing* (Sept. 2015), *available at* http://www.consumerfinance.gov/reports/student-loan-servicing/. Many of the comments submitted in response to the RFI suggest that some student loan servicers may fail to provide the service necessary to meet borrowers' needs. Borrowers and other stakeholders also identify problems such as lost paperwork and misapplied payments. Borrowers state that they find it difficult to have errors corrected. Borrowers with both federal and private loans also report that they continue to experience serious problems accessing affordable repayment options or other repayment alternatives to avoid default.

[25] *See id.*

[26] *Id*.

[27] *Id*.

Complaints received by the Bureau, as discussed in the previous section, mirror the issues identified in this recent report.

CURRENT SERVICING PRACTICES MAY BE INADEQUATE TO ASSIST BORROWERS IN DISTRESS

Recent data cited by the Government Accountability Office (GAO), economists, and federal agencies support the Bureau's observations and suggest that these servicing problems may be experienced by a broad segment of student loan borrowers.

- **Borrowers who may be eligible for income-driven repayment plans are not enrolling.** A recent report by the GAO found that 51 percent of all Direct Loan borrowers would benefit from an income-driven repayment plan, yet fewer than 20 percent were enrolled (40 percent of potentially eligible borrowers).[28] In addition, this study revealed that 70 percent of borrowers in default had income that would entitle them to a reduced monthly payment under one of these plans.[29]
- **Borrowers who attend for-profit colleges or two-year colleges make up 70 percent of all borrowers in default, according to one recent analysis. Yet the median debt burden and median wages of these borrowers suggest that the average borrower likely would qualify for a $0.00 or a substantially lower loan payment under an income-driven repayment plan.** A recent working paper analyzing a sample of loan performance data provided by the Department of Education

[28] *See* U.S. Government Accountability Office, GAO-15-663, *Federal Student Loans: Education could do more to help ensure borrowers are aware of repayment and forgiveness options* (Aug. 2015), *available at* http://www.gao.gov/products/GAO-15-663 (stating that using its income tax data and the Department of Education's student loan data, the Department of Treasury estimates that about half (51 percent) of Direct Loan borrowers were eligible for IBR as of September 2012. Of these eligible borrowers, an estimated 20 percent participated in IBR or ICR, the only income-driven repayment plans available at the time of Treasury's analysis.). Note that an income-driven repayment program may not be the best repayment plan for all borrowers. Some borrowers may choose non-standard repayment plans, such as the Extended or Graduated plans, which may offer lower initial monthly payments than income-driven plans. Some borrowers may choose to not participate in income-driven repayment plans, as some may prefer to pay off their loans and avoid potential increased loan costs which may be generated by unpaid interest in income-driven repayment plans.

[29] *See id*.

and administrative wage data provided by the Department of the Treasury found that the median debt level for borrowers formerly enrolled at for-profit schools or two-year colleges (characteristics shared by 70 percent of defaulted borrowers in the author's sample) were modest ($10,000-$11,000).[30] The authors also found that median wages for these borrowers were very low ($20,900-$23,900). Based on the Bureau's calculation, depending on a borrower's family size, borrowers with these characteristics may be eligible to make a $0.00 monthly payment under PAYE or IBR. For single borrowers who attended a for-profit college with no dependents, a borrower with a median debt burden and median wages would be entitled to pay $27 per month under Pay As You Earn—a 75 percent reduction from the payment amount due under the standard 10-year repayment plan.[31]

- **Problems may continue for borrowers in income-driven repayment plans seeking to maintain an affordable monthly payment.** In addition, data released by the Department of Education related to the performance of borrowers with Direct Loans suggests that these problems may continue after enrollment. Nearly 60 percent of borrowers missed their annual deadline to recertify under an income-driven repayment plan, triggering a spike in monthly payment and potentially increasing the total cost of their debt through capitalization of unpaid interest and other negative consequences.[32]

- **The identity of the student loan servicer assigned to service a borrower's loan may impact future loan performance.** A study released by the Association of Community Colleges Trustees (ACCT) examined the performance of a cohort of federal

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[30] Adam Looney & Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions they Attend Contributed to Rising Loan Defaults*, BPEA Conference Draft, The Brookings Institution (Sept. 2015), *available at* http://www.brookings.edu/~/media/projects/bpea/fall-2015_embargoed/conferencedraft_looneyyannelis_studentloandefaults.pdf.

[31] In order to perform this analysis, the Bureau assumed that the borrower entered repayment with the median debt burden identified by the authors and assumed that the debt was composed entirely of Direct Subsidized Loans carrying a 4.29 percent interest rate (the current interest rate for Direct Subsidized and Unsubsidized Loans made to undergraduates).

[32] U.S. Department of Education, *Sample Data on IDR Recertification Rates for ED-Held Loans* (Nov. 2014), *available at* http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/paye2-recertification.pdf.

> loan borrowers attending community colleges in Iowa using administrative loan performance data provided by school financial aid offices.[33] This analysis revealed that default rates for seemingly-similar borrowers varied substantially depending on the identity of a borrower's student loan servicer.[34] In one case, nearly three quarters (73.1 percent) of all borrowers assigned to one specific servicer ended up in default.[35] ACCT also observed that, of the six other servicers who handled loans for 1,500 borrowers or more, the share of borrowers who defaulted ranged from approximately 5 percent to more than 20 percent.

As the GAO notes, "the inconsistency and gaps we identified in how . . . loan servicers communicate with borrowers about income-driven repayment raise questions about the sufficiency of this information. Without such information, borrowers who are unaware of these plans may miss the opportunity to reduce their risk of delinquency or default."[36] Recognizing the need to improve the delivery of actionable information to student loan borrowers, the Department of Education has pursued a direct-to-consumer education campaign to encourage enrollment in IDR plans by borrowers with Direct Loans—outreach separate from the service provided by its contractors. However, the recent publications discussed above and the problems highlighted in the complaints discussed in this report raise serious questions about whether, despite such efforts, certain borrowers continue to be ill-served by current student loan servicing practices and further support the need for market-wide reform.

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[33] Association of Community College Trustees, *A closer look at the trillion: Borrowing, Repayment, and Default at Iowa's Community College* (Sept. 2015), *available at* http://www.acct.org/files/Publications/2015/ACCT_Borrowing-Repayment-Iowa_CCs_09-28-2015.pdf.

[34] *Id.*

[35] The authors of this study note that "It is important to note that [the servicer with the highest default] rate may be inflated because the FY2011 cohort was in repayment during two major shifts in the federal loan programs–the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) and the Student Aid and Fiscal Responsibility Act of 2009 (SAFRA)...[This servicer] also reportedly held on to loans that were in late-stage delinquency or that otherwise at had a high risk of default so as not to artificially inflate the rates of the other federal servicers."

[36] U.S. Government Accountability Office, GAO-15-663, *Federal Student Loans: Education could do more to help ensure borrowers are aware of repayment and forgiveness options* (Aug. 2015), *available at* http://www.gao.gov/assets/680/672136.pdf.

ECONOMIC INCENTIVES FOR STUDENT LOAN SERVICERS MAY CONTRIBUTE TO LIMITED UTILIZATION OF INCOME-DRIVEN REPAYMENT PLANS

While federal student loans feature an array of flexible repayment options, it is not clear whether third-party student loan servicers have adequate economic incentive to enroll borrowers in these options to avoid default.[37]

For both private[38] and federal student loans, the compensation model used in most third-party servicing contracts provides student loan servicers with a flat monthly fee per account serviced.[39] Although this fee may adjust based on a loan's repayment status, fees are generally fixed on a monthly basis and do not rise or fall depending on the level of service a particular borrower requires in a given month.

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[37] On August 28, 2015, an interagency task force, consisting of the Department of the Treasury, Department of Education, Office of Management and Budget, and Domestic Policy Council, suggested specific changes to the compensation structure and performance measurements included in federal Direct Loan servicing contracts. These recommendations also endorse minimum service-level and borrower communications requirements, recognizing that while necessary, realigned incentives alone may be insufficient to achieve these agencies' goals. U.S. Department of Education, *Recommendations on Best Practices in Performance-Based Contracting* (2015), *available at* http://www2.ed.gov/finaid/loans/repay/best-practices-recommendations.pdf.

[38] Readers should note that alternative repayment plans for private student loans are generally available at the discretion of loan holder and are not entitlements under federal law. In some cases, lenders may include these programs in the terms of borrowers' promissory notes. Student loan servicers may be required to provide details about the availability of these programs and facilitate enrollment for eligible borrowers.

[39] This monthly servicing fee may be set as a flat dollar amount per month per account, or set based on a percentage of a borrower's aggregate principal balance. In both cases, the fee paid to student loan servicers may vary depending on repayment status (generally rising as borrowers transition from "in school" to "in grace" to "in repayment") but generally do not vary depending on the level of service provided in a given month. *See, e.g.*, First Marblehead Corporation, *Prospectus Supplement: The National Collegiate Student Loan Trust 2007-3* (Sept. 17, 2007), *available at* http://www.snl.com/interactive/lookandfeel/4094003/NCSLT_2007_3_FPS.PDF; U.S. Department of Education, *Title IV Redacted Contract Awards 12-13*, *available at* https://www.fbo.gov/spg/ED/FSA/CA/FSA-TitleIV-09/listing.html. For Direct Loans, contracts fix monthly compensation on a per-borrower basis, and the compensation depends on the repayment status of each borrower being serviced. *See also* U.S. Department of Education, *Student Aid Administration Fiscal Year 2015 Request* at AA-15, *available at* http://www2.ed.gov/about/overview/budget/budget15/justifications/aa-saadmin.pdf (estimating the average cost per-borrower to be $1.67 per month, based on the contractual prices and the proportion of borrowers with different repayment statuses).

The current contract incentive structure put in place by the Department of Education for loans it holds employs a fee schedule that declines as borrowers reach increasingly severe stages of delinquency.[40] In effect, this contract structure attempts to incent servicers to direct resources in order to assist borrowers prior to default. In contrast, certain servicing contracts for securitized student loans provide a fixed monthly fee for all borrowers in "repayment" status, which includes current accounts, accounts in repayment but not current, accounts in forbearance, and accounts in IDR plans.[41]

The fixed fee structure may create an economic disincentive to address borrower distress since compensation remains fixed irrespective of the services a borrower needs in a given month and the servicer will likely incur unreimbursed costs when seeking to mitigate default.[42]

Notably, the effects of this compensation structure on servicing practices may also contribute to other problems identified by student loan borrowers experiencing financial distress. Borrowers have stated that servicers may encourage them to enroll in programs designed to provide short-term relief rather than those designed to lower monthly payments over a longer time period. Student loan borrowers, borrower assistance organizations, and other stakeholders have expressed concern that these servicing practices, particularly for federal student loans not held by the Department of Education, are driven by servicers' incentives.[43] In effect, servicers may

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[40] U.S. Department of Education, *Title IV Redacted Contract Awards 12-13*, *available at* https://www.fbo.gov/spg/ED/FSA/CA/FSA-TitleIV-09/listing.html.

[41] *See, e.g.*, Nelnet Student Loan Funding, LLC, *Nelnet Student Loan Trust 2011-1 Offering Memorandum* (Feb. 2011), *available at* http://www.nelnetinvestors.com/dsdownloads.cfm?CategoryID=5164&Year=2011; Navient Corporation, *Prospectus Supplement to Base Prospectus dated May 14, 2014*, *available at* https://www.navient.com/assets/2014-1.pdf.

[42] Companies servicing securitized loans made under the FFEL program may have an additional disincentive to facilitate enrollment in income-driven repayment plans—bonds backed by these student loans may default if loans are not paid on schedule. As a number of credit rating agencies have noted, increased utilization of various borrower protections has increased the risk of default for these securities.

[43] *See, e.g.*, Consumer Financial Protection Bureau, *Request for Information Regarding Student Loan Servicing*, 80 Fed. Reg. 29302, Docket ID CFPB-2015-0021, CFPB-2015-0021-0364 ("In the context of FFEL servicing, it is also possible that servicers have an additional financial disincentive to enroll borrowers in IBR. FFEL loans can be securitized, unlike Direct Loans. Recently, rating agencies have downgraded FFEL-backed securities in part because of increased enrollment in IDR plans.").

prefer to facilitate enrollment in short-term programs as a way to limit the length and volume of customer contacts and manage costs—enrollment in short-term programs can generally be completed verbally during a single phone call, while longer-term arrangements require processing of paperwork and additional customer contacts.

In August 2015, an interagency task force, consisting of the Department of the Treasury, Department of Education, Office of Management and Budget, and White House Domestic Policy Council, released recommendations "to ensure that contractors providing student loan servicing help borrowers responsibly make monthly payments on their student loans," developed in consultation with the Bureau and other stakeholders.[44] These recommendations suggest specific changes to the compensation structure and performance measurements included in federal Direct Loan servicing contracts.[45] Although these recommendations focus on opportunities to improve contract incentives for borrowers with loans held by the Department of Education, investors, trustees, and companies structuring new securitizations may wish to consider adjusting servicers' compensation to encourage specific outcomes.[46]

VAST MAJORITY OF BORROWERS WITH PRIVATELY-HELD, FEDERALLY-GUARANTEED STUDENT LOANS MADE BY PRIVATE LENDERS (COMMERCIAL FFELP) DO NOT UTILIZE INCOME-DRIVEN REPAYMENT PLANS

Data on utilization and performance of borrowers enrolled in income-driven repayment plans is not widely available to the public. The Department of Education does publish summary information related to utilization of these programs by Direct Loan borrowers,[47] but this

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[44] *See* Dept. of Education, *Best Practices*, *supra* note 37.

[45] *See* U.S. Department of Education, *Another Step Forward Under the Student Aid Bill of Rights* (Aug. 28, 2015), *available at* http://www.ed.gov/blog/2015/08/another-step-forward-under-the-student-aid-bill-of-rights/.

[46] Readers should also note that, even as the Department of Education attempts to improve incentives for its contractors, student loan market participants structuring new securitizations of FFELP loans continue to rely on servicing compensation models that may offer disincentives to assist borrowers in distress, even when the issuer is the same corporate entity as the student loan servicer and retains residual interest in the trust.

[47] *See* U.S. Department of Education, *Federal Student Aid Data Center*, *available at* https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

information lacks key indicators, including servicer-level information about the share of borrowers making payments that reflect their income (PFH payments) and information about the performance of borrowers enrolled in these programs. In contrast to the information published about federal loans held by the Department of Education, very little information is available about income-driven repayment plan utilization for borrowers with FFELP loans.[48]

In recent months, national credit rating agencies have expressed concerns over the performance of certain securitizations of FFELP loans, in part based on increased utilization of income-driven repayment plans by FFELP borrowers and by the reliance on forbearance, and to a lesser extent deferment, by borrowers with these loans.[49] These analyses suggest a potential tension between borrowers' legal right to access alternative repayment plans and student loan trust issuers' economic incentive to ensure that bonds backed by these loans perform on schedule. In order to address the lack of public information about the utilization of these programs by borrowers with commercial FFELP loans, the Bureau sought to obtain additional information about the performance of these loans, as discussed below.

In February 2015, the Bureau asked a number of companies with portfolios of privately-held FFELP loans (commercial FFELP) to provide portfolio-level information about income-driven payment plan utilization.[50] Using information provided in response to this request, the Bureau

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[48] A substantial share of outstanding FFELP loans is securitized. Limited information about the utilization of these IDR plans is made public in investor disclosures and analyses performed by credit rating agencies. In recent months, two credit rating agencies have downgraded a number of bonds backed by FFELP loans, citing increased utilization of income-driven options. *See, e.g.*, Moody's Investors Service, *Moody's reviews for downgrade 106 tranches from 57 FFELP student loan securitizations as a result of the risk of default at maturity*, (Jun. 22, 2015), *available at* https://www.moodys.com/research/Moodys-reviews-for-downgrade-106-tranches-from-57-FFELP-student--PR_328361.

[49] Readers should note that pressure on trusts backed by commercial FFELP loans should not impact access to credit for future borrowers. Since Congress enacted the SAFRA Act in 2010, private capital is no longer used to fund new originations of federal student loans. For further discussion, *see* Susan Dynarski, *No, Student Borrowers Don't Need to Worry About Loan Market Turmoil*, N.Y. Times (Sept. 29, 2015), *available at* http://www.nytimes.com/2015/09/30/upshot/no-student-borrowers-dont-need-to-worry-about-loan-market-turmoil.html?_r=0.

[50] Consumer Financial Protection Bureau, *Letter from Rohit Chopra to Market Participants on Student Loan Modifications* (Jan. 2015), *available at* http://files.consumerfinance.gov/f/201501_cfpb_request_ffiec-interagency-guidance-student-loan-information.pdf.

analyzed a sample that included portfolio-level summary information[51] of more than $150 billion in commercial FFELP loans collectively owed by more than 7.5 million borrowers as of December 31, 2014. This is not a statistically-valid, random sample and these results should not be interpreted to suggest significance. However, given that this sample includes information about approximately 60 percent of all privately-held FFELP student loans outstanding,[52] it may offer readers insight into common experiences for borrowers with privately-held FFELP loans serviced by large, nonbank specialty student loan servicers.

Readers should note that there are important differences between the composition of loans in the FFELP portfolio and in the Direct Loan program. In particular, FFELP portfolios have a greater share of more seasoned loans, as the most recent FFELP origination occurred during the 2009-2010 academic year.[53] In addition, FFELP portfolios may also have a higher proportion of consolidation loans, which may have longer repayment terms and, consequently, relatively lower monthly payment amounts.[54] Furthermore, the most generous income-driven repayment plan, Pay As You Earn (PAYE), is unavailable to borrowers with FFELP loans. These distinctions may make income-driven repayment plans less appealing or useful to certain borrowers with FFELP loans.

However, given the limited public data available related to the performance of FFELP loans, this comparison may provide important context to policymakers and market participants seeking to understand the diversity of servicing practices in the student loan market. Stakeholders may

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[51] Information provided in response to this voluntary request, which was not a confidential supervisory request, did not include any loan-level records related to any individual student loan borrowers, and did not include any personally identifiable information (PII).

[52] As of the end of FY14, the Department of Education estimated that $256 billion in commercial FFELP loans remain outstanding. The Bureau's FFELP sample included information about performance of $162 billion in commercial FFELP.

[53] Readers should also note that the fact that loans that are paid down are excluded from both the FFELP and Direct Loan estimates might have a larger effect on FFELP estimates since there may mechanically be a lower proportion of borrowers who are current on standard 10-year repayment plans. In effect, a greater share of FFELP loans have been repaid, which may result in a larger concentration of delinquent borrowers.

[54] Additionally, a significant portion of FFELP consolidation loans charge very low fixed rates (some below 3 percent), and thus may not follow the historical prepayment rates for older loans that carry higher interest rates.

also wish to consider whether certain characteristics about borrowers in this sample, including average balances, delinquencies, and forbearance utilization, suggest underutilization of income-driven repayment plans by some FFELP borrowers.

The segment of the student loan market comprised of FFELP loans shows a higher level of distress than the market as a whole. Based on the Bureau's analysis, at least 30 percent of borrowers with FFELP loans are either in default or more than 30 days past due. In contrast, approximately 25 percent of student loan borrowers are in default or more than 30 days past due, market-wide. The Bureau's analysis also reveals fewer than six percent of borrowers with commercial FFELP loans in our sample were enrolled in an income-driven repayment plan at the end of 2014[55]—substantially lower than the utilization of income-driven repayment plans by borrowers with Direct Loans.[56] The results from our analysis and assessment of company responses to this information request are described below.[57]

Fewer than 6 percent of commercial FFELP borrowers are enrolled in an income-driven repayment plan. Our analysis of the responses provided by FFELP servicers, when compared to publicly-available data on the Direct Loan program, reveals that commercial FFELP borrowers utilize income-driven repayment plans at nearly one-third of the rate of borrowers in the Direct Loan program. At the end of calendar year 2014, nearly 16 percent (15.9

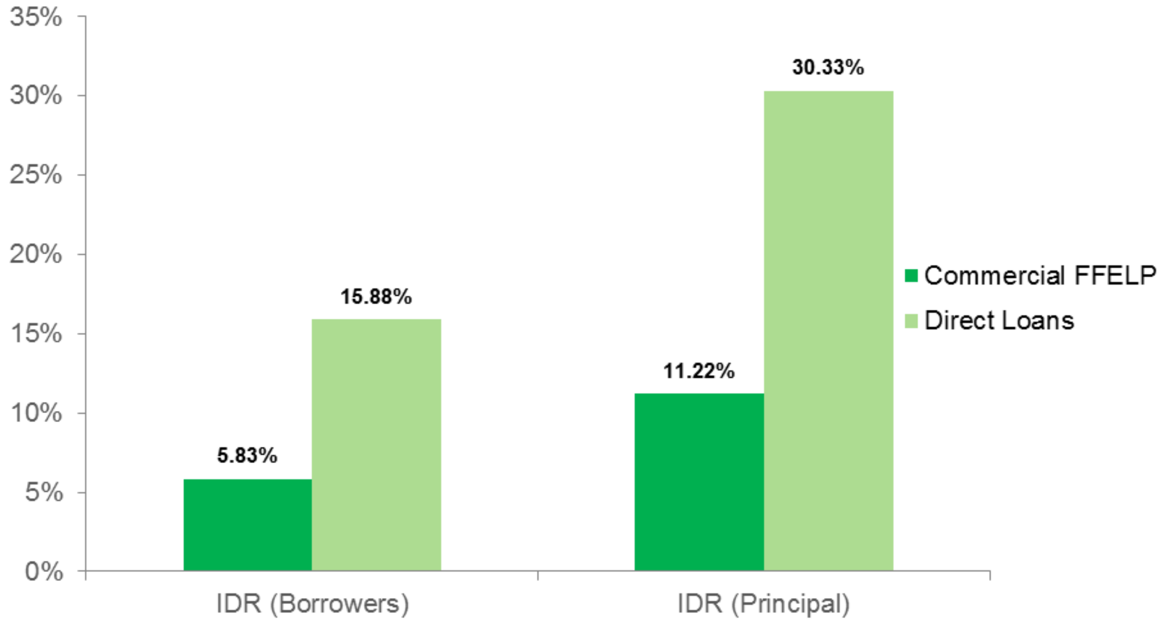
[55] Readers should note that the following analysis compares information about loans serviced by respondent student loan servicers as of December 31, 2014, with information published by the U.S. Department of Education related to income-driven repayment plan utilization by Direct Loan borrowers as of the end of FY15Q1 (Dec. 31, 2014). For more information about income-driven repayment plan utilization in the Direct Loan portfolio, *see* U.S. Department of Education, *Federal Student Aid Data Center: Federal Student Aid Portfolio Summary* (accessed on Aug. 22, 2015), *available at* https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

[56] The limited data available about the utilization of these plans has been released by the Department of Education related to performance of the Direct Loan program. There may be significant cohort effects that contribute to loan performance in a specific repayment plan. For example, by definition, borrowers in PAYE may not have federal loans originated prior to 2007. Readers should also note that IDR utilization has nearly doubled since 2013 and a significant number of borrowers may not have been required to recertify income under these arrangements because they have not yet been enrolled for a full year. In addition, significant gaps in data remain related to utilization and performance of alternative repayment arrangements for both FFELP and private student loans.

[57] In order to control for some of the differences between the Direct Loan portfolio and our FFELP sample, the Bureau compared FFELP loans in repayment status to Direct Loans in repayment status (excluding loans in "in school" and "in grace" status from this analysis).

percent) of Direct Loan borrowers were enrolled in an income-driven repayment plan, compared to fewer than 6 percent (5.9 percent) of borrowers in our FFELP sample (See Figure 6). As a share of outstanding principal, servicers in our FFELP sample reported income-driven repayment plan utilization at less than half of the rate of the Direct Loan program (11.2 percent v. 30.3 percent).

FIGURE 6: INCOME-DRIVEN PAYMENT PLAN UTILIZATION AS A SHARE OF PORTFOLIO IN REPAYMENT, BY PROGRAM[58]



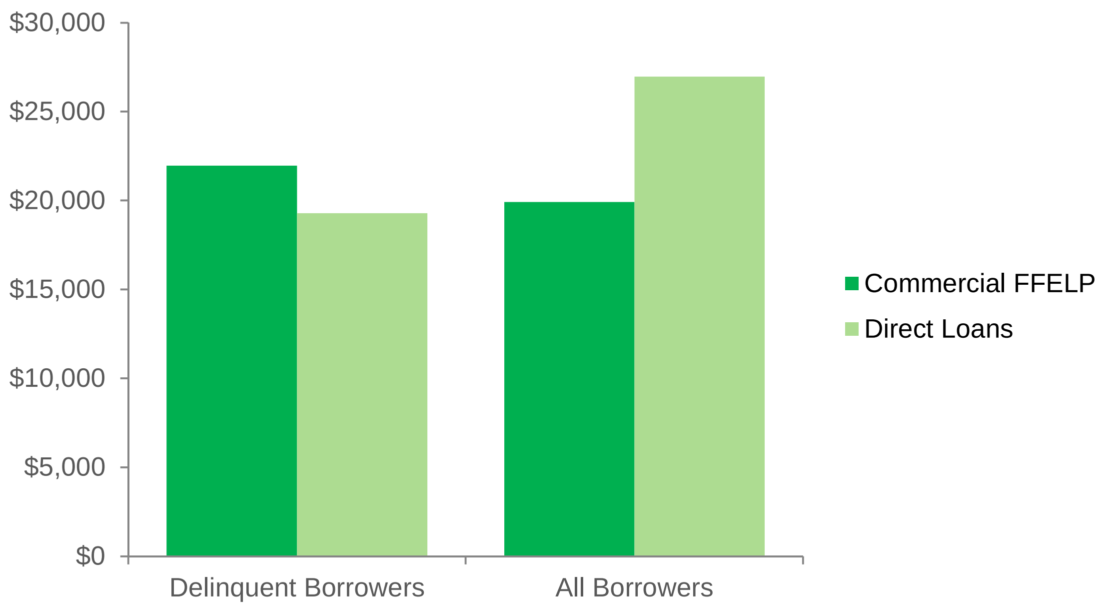
As noted above, certain characteristics of outstanding FFELP portfolios may mean that these borrowers are less likely to benefit from IDR plans than borrowers with Direct Loans, which may explain some of the gap in utilization rates. However, certain characteristics of our FFELP sample suggest that many of these borrowers may benefit from IDR enrollment, but have not obtained one.

The average balance in the commercial FFELP loan sample was lower than the average balance in the Direct Loan portfolio; however, the average balance of a delinquent borrower in the FFELP loan sample was higher. The average balance of a delinquent borrower in the FFELP sample ($21,970) was nearly 15 percent higher than the average balance of a delinquent borrower in the Direct Loan portfolio ($19,280) (Figure 7). In

[58] Information in this chart about FFELP is not based on random sample, the population may not be representative of all borrowers with privately-held FFELP loans and readers should not infer statistical significance based on this analysis. However, given that this sample includes information about approximately 60 percent of all privately-held FFELP student loans outstanding, it may offer readers insight into the experience for a borrower with a privately-held FFELP loan serviced by a large, nonbank specialty student loan servicer.

contrast, the average balance of a borrower across the FFELP sample ($19,900) was 35 percent lower than the average balance of a borrower in repayment in the Direct Loan ($26,970). It is important to note that balances include both original principal as well as capitalized interest and fees.

FIGURE 7: AVERAGE BALANCE FOR ALL BORROWERS AND DELINQUENT BORROWERS IN REPAYMENT, BY PROGRAM[59]



More than 12 percent borrowers with commercial FFELP loans are more than 30-days past due. Our sample shows continued signs of distress among borrowers with commercial FFELP loans at levels comparable to the Direct Loan program. By outstanding principal balance, the FFELP sample reflects a share of loans more than 30 days past due that was 25 percent greater than the share of delinquent loans in the Direct Loan portfolio (13.5 percent v. 10.8 percent). In contrast, the FFELP sample reflects a smaller share of borrowers in

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[59] Information in this chart about FFELP is not based on a statistically-valid, random sample and readers should not infer statistical significance based on this analysis. However, given that this sample includes information about approximately 60 percent of all privately-held FFELP student loans outstanding, it may offer readers insight into the experience for a borrower with a privately-held FFELP loan serviced by large, nonbank specialty student loan servicers.

distress than the Direct Loan program (12.2 percent v. 15.1 percent). In addition, portfolio data published by the Department of Education shows that the share of FFELP borrowers in default (including both commercial FFELP and FFELP held by the Department of Education) is substantially higher than the share of borrowers in default on Direct Loans, both on a borrower basis (23 percent v. 14 percent) and on a dollar basis (8 percent v. 17 percent).[60]

More than 10 percent of borrowers were enrolled in forbearance in both our commercial FFELP sample and in the Direct Loan program. Many borrowers, with both FFELP and Direct Loans, may utilize forbearance for a myriad of different reasons, including short-term periods of unemployment and financial hardship. However, forbearance is not the best option for many borrowers experiencing long-term financial hardship.[61]

Borrowers in the commercial FFELP sample and in the Direct Loan portfolio rely on forbearance at comparable levels. Nearly 15 percent of outstanding principal in the commercial FFELP sample is in forbearance, compared to just over 16 percent of outstanding principal in the Direct Loan program. Approximately 10 percent of borrowers in the commercial FFELP sample are enrolled in forbearance, compared to approximately 13 percent of Direct Loan borrowers.[62]

Taken together, this snapshot of commercial FFELP performance raises additional questions about the adequacy of current servicing practices for borrowers with these loans. As the following section discusses in greater detail, the public would also benefit from increased transparency around performance of these loans.

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[60] In order to control for some of the differences between the Direct Loan portfolio and the FFELP portfolio, the Bureau compared FFELP loans to Direct Loans in repayment statuses and default status (excluding loans in "in school" and "in grace" status from the denominator in this data point). *See* U.S. Department of Education, *Federal Student Aid Portfolio Summary* (accessed on Oct. 7, 2015), *available at* https://studentaid.ed.gov/about/data-center/student/portfolio.

[61] For further discussion, *see* Consumer Financial Protection Bureau, *Student Loan Servicing* (Sept. 2015), *available at* http://www.consumerfinance.gov/reports/student-loan-servicing/.

[62] The Bureau's sample also revealed variation between servicers' use of forbearance. At one servicer, more than 12 percent of borrowers used forbearance, compared to an average of 10 percent across our sample.

3.2 A path forward

In September 2015, the Bureau revealed that more than 25 percent of student loan borrowers are delinquent or in default on a student loan, calling for industrywide reforms to assist student loan borrowers, including those experiencing financial distress. As the preceding sections of this report suggests, many borrowers may encounter substantial servicing problems when repaying older federal loans made by banks and other private lenders and distress appears to be more concentrated in this segment of the student loan market. These servicing problems may contribute to continued distress, despite the availability of income-driven repayment plans. The preceding discussion of economic incentives and the Bureau's analysis of commercial FFELP performance data both suggest that borrowers may not be adequately served by current practices.

When considering steps to improve the services and information provided to student loan borrowers, policymakers may be inclined to focus on borrowers with federal Direct Loans, which are the source of more than 90 percent of new student loan originations. Even though no new federal loans have been made by private lenders under FFELP in more than five years, borrowers with these loans still comprise nearly one-third (31 percent) of all outstanding federal student loans.[63] Policymakers should take steps to ensure that any initiatives to reform the student loan servicing market address continuing distress among borrowers with FFELP loans.

Taken together, the preceding discussion offers additional support for the Bureau's recent recommendation that policymakers pursue industrywide standards for student loan servicers. The Bureau, the Department of Education, and the Department of the Treasury noted in their recent Joint Statement of Principles on Student Loan Servicing that borrowers and servicers would benefit from a clear set of expectations.[64]

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[63] *See* U.S. Department of Education, *Federal Student Aid Portfolio Summary* (accessed on Oct. 7, 2015), *available at* https://studentaid.ed.gov/about/data-center/student/portfolio.

[64] *See* U.S. Department of the Treasury, U.S. Department of Education and Consumer Financial Protection Bureau, *Joint Statement of Principles on Student Loan Servicing* (Sept. 2015), *available at* http://files.consumerfinance.gov/f/201509_cfpb_treasury_education-joint-statement-of-principles-on-student-loan-servicing.pdf.

In addition, policymakers should consider additional steps to expand public access to data on student loan performance and the utilization of alternative repayment plans, including income-driven repayment plans.

Compile and publish data on student loan performance, including metrics on default, delinquencies and utilization of forbearance, preferably at the servicer level. As we have discussed in this report and in past publications, public data on student loan performance is limited when compared to available data on origination and performance of other consumer financial products, particularly mortgages[65]–a view shared by regulators,[66] researchers,[67] and industry leaders.[68] To address these gaps in available data, policymakers should consider establishing a uniform set of metrics on student loan performance for all types of student loans. Student loan performance metrics could include:

- Servicer-level performance data, including metrics on delinquency, default, and utilization of forbearance;
- Servicer-level performance data on loan performance for borrowers who have previously been in default, including information about long-term outcomes for these borrowers and metrics on re-defaults; and
- Metrics on loan performance based on certain borrower characteristics, including debt burden, school type, and completion.

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[65] *See* Consumer Financial Protection Bureau, *Testimony of Rohit Chopra before the Senate Committee on the Budget* (May 2014), *available at* http://www.consumerfinance.gov/newsroom/written-testimony-of-rohit-chopra-before-the-committee-on-the-budget; *see also* Consumer Financial Protection Bureau, *Student Loan Servicing* (Sept. 2015), *available at* http://www.consumerfinance.gov/reports/student-loan-servicing/.

[66] *See, e.g.* Federal Reserve Bank of New York, *Opening Remarks at the Convening on Student Loan Data Conference* (Mar. 4, 2015), *available at* http://www.ny.frb.org/newsevents/speeches/2015/dud150304.html.

[67] Susan Dynarski, *We're Frighteningly in the Dark About Student Debt*, N.Y. Times (Mar. 20, 2015), *available at* http://www.nytimes.com/2015/03/22/upshot/were-frighteningly-in-the-dark-about-student-debt.html.

[68] *See, e.g.*, Richard Hunt, *How to fix the student loan mess* (Oct. 2015), *available at* http://www.cnbc.com/2015/09/21/how-to-fix-the-student-loan-mess-commentary.html ("[T]ransparency for federal loan-performance data should be increased...clear and honest reporting to the public is critically important. If federal programs are going to improve, taxpayers and policymakers must understand the problem.").

Robust performance metrics can better position policymakers and market participants to target resources to assist at-risk consumers and can inform future initiatives to establish industrywide standards for the servicing of student loans.

Compile and publish data on alternative repayment plan utilization for federal and private student loans and on the performance of borrowers enrolled in these plans, preferably at the servicer level. To address gaps in available data related to utilization and performance of borrowers in alternative repayment plans, policymakers should consider establishing a uniform set of industrywide metrics on alternative repayment plan utilization and performance, including robust information about income-driven repayment plans. Policymakers may also wish to consider whether there is an opportunity to aggregate and publish this data on a periodic basis in order to facilitate comparison in performance among student loan servicers.

Borrowers, market participants, and regulators would all benefit from the periodic publication of data related to:

- Servicer-level utilization and performance data specific to income-driven repayment plans, including data on the share of borrowers making partial financial hardship (PFH) payments;

- Servicer-level data on certain practices related to income-driven repayment plans, including recertification of income and alternative documentation of income; and

- Servicer-level utilization and performance data on other payment arrangements, including graduated repayment plans and term extensions.

In addition to informing future regulatory, enforcement, and market-monitoring work by federal agencies and law enforcement officials, the compilation of these metrics may also provide incentives for servicers to improve performance and proactively resolve servicing issues.

4. Contact information

To reach the CFPB's Student Loan Ombudsman:

By email	students@cfpb.gov
By mail	Consumer Financial Protection Bureau 1700 G Street NW Washington, DC 20552

To submit a complaint:

Online	consumerfinance.gov/complaint	
By phone	Toll-Free:	(855) 411-CFPB (2372)
	Español:	(855) 411-CFPB (2372)
	TTY/TDD:	(855) 729-CFPB (2372)
By fax	(855) 237-2392	
By mail	Consumer Financial Protection Bureau PO Box 4503 Iowa City, Iowa 52244	

Press and media requests

By email	press@consumerfinance.gov

Additional resources to assist student loan borrowers

Repay Student Debt web tool

http://www.consumerfinance.gov/paying-for-college/repay-student-debt

Paying for College suite of tools

www.consumerfinance.gov/paying-for-college/

Ask CFPB

http://www.consumerfinance.gov/askcfpb/

Appendix A

The federal student loan market is comprised principally of two types of student loans, one of which are still available to new students at origination: federally-guaranteed loans made through the Federal Family Education Loan Program, which was discontinued in 2010, and federal Direct Loans.[69]

- **Federal Family Education Loan Program (FFELP):** More than $370 billion[70] in outstanding student loans were made under FFELP.[71] While FFELP loans were generally originated using private capital, they were guaranteed by a government or not-for-profit entity, and reinsured by the federal government. These loans are serviced either by the loan holders themselves or by third-party student loan servicers pursuant to contracts with the loan holders. A noteworthy portion of these loans serve as collateral for asset-backed securities.[72] As directed by the 2010 SAFRA Act, the origination of new guaranteed loans under FFELP was discontinued.

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[69] There are additional Federal programs under Title IV which also authorize student loans. For example, one such program finances loans made directly by certain post-secondary education institutions through their financial aid offices. *See* 20 U.S.C. § 1087aa et seq. Another offers grants to those who pledge to become teachers. If the recipients do not become teachers, then the disbursed funds are converted from grants to loans. *See* 20 U.S.C. § 1070g et seq.

[70] *See* U.S. Department of Education, *Federal Student Aid Portfolio Summary* (accessed on Oct. 7, 2015), *available at* https://studentaid.ed.gov/about/data-center/student/portfolio.

[71] *See* 20 U.S.C. §§ 1078(b), (c).

[72] *See, e.g.*, Sallie Mae, *SLM Corporation: Overview of FFELP and FFELP ABS Transactions* (June 18, 2012), *available at* https://www.navient.com/assets/about/investors/webcasts/2012FFELPOverviewvFinal.pdf.

- **Federal Direct Loans:** Pursuant to SAFRA, the Department of Education shifted primarily to direct lending, providing loans directly to borrowers under the William D. Ford Federal Direct Loan program.[73] As of the end of calendar year 2014, 28.5 million borrowers collectively owed approximately $744 billion in outstanding Direct Loans.[74] Direct Loans are serviced by third-parties that contract with the Department of Education pursuant to Title IV of the Higher Education Act (HEA).[75] After the suspension of new FFELP originations, many of the FFELP student loan servicers were awarded servicing contracts to begin servicing loans held by the Department of Education, including loans made under the Direct Loan program.[76]

COMMON INCOME-DRIVEN REPAYMENT PLANS FOR BORROWERS WITH FEDERAL STUDENT LOANS

Since 1994, certain borrowers with federal Direct Loans have had access to income-driven repayment plans. Congress and the Department of Education have taken steps to broaden the share of borrowers eligible to take advantage of these plans, significantly expanding the population of enrolled borrowers. The three largest payment plans for federal student loan borrowers are Income-Contingent Repayment (ICR), Income-Based Repayment (IBR), and Pay As You Earn (PAYE).

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[73] Pub. L. No. 111-152, §§ 2101-2213, 124 Stat. 1071 (2010). The Direct Loan Program actually began in 1992, *see* Pub. L. No. 102-325, 106 Stat. 569 (1992), but Federal Direct loans constituted only a small portion of federal student lending before the enactment of the SAFRA Act in 2010.

[74] U.S. Department of Education, Data Center: Federal Student Loan Portfolio (accessed on May 7, 2015), *Federal Student Aid Portfolio Summary, available at* https://studentaid.ed.gov/about/data-center/student/portfolio.

[75] 20 U.S.C. § 1078(f)(1)(B).

[76] In 2008, the enactment of the Ensuring Continued Access to Student Loans Act (ECASLA) authorized the Secretary of Education to take extraordinary measures to ensure students could continue to borrow amid turmoil in the capital markets. *See* Pub. L. No. 110-227.Under this authority, the Department of Education acquired a large volume of loans made by private lenders through FFELP and assigned the servicing to certain third parties. *Id*. Following the termination of the FFEL Program, third-party servicers were awarded additional Direct Loan volume through this contract. For further discussion, *see* U.S. Department of Education, *Loan Servicing Update* (July 2012), *available at* www.ifap.ed.gov/presentations/attachments/NASFAA2012LoanServicingUpdate.ppt.

Income-Contingent Repayment (ICR). Created in 1994 and limited to borrowers in the Direct Loan program, ICR was the first broadly accessible income-driven repayment program designed to assist borrowers with low wages relative to their student debt.[77] This program remains the only income-driven repayment plain available to borrowers with Direct Consolidation Loans that include any federal loans made to parents through the PLUS program. Borrowers enrolled in ICR are eligible to have any remaining balance forgiven after 25 years of monthly payments. There is no income test to enter ICR; payments are limited to 20 percent of discretionary household income and there is no upper limit on how much a payment can rise.

Income-Based Repayment (IBR). In 2007, Congress enacted the College Cost Reduction and Access Act (CCRA), authorizing IBR, the first income-driven repayment plan available to virtually all borrowers with federal student loans, with the notable exception of parents of undergraduate students borrowing through the PLUS program.[78] This repayment plan has been available since July 1, 2009, and is currently the only income-driven repayment option broadly available to student borrowers with loans made under FFELP. Borrowers seeking to enroll in this program must certify their income in order to demonstrate partial financial hardship (PFH). For borrowers with an adjusted gross income less than 150 percent of the applicable poverty line for their family size, this formula entitles these borrowers to make a monthly "payment" of $0.00, irrespective of the size of their total federal student loan debt. Any adjusted gross income above this threshold is considered to be a borrower's "discretionary income" under program guidelines. This definition of discretionary income has also served as the foundation for subsequent income-driven repayment options created since 2007.[79]

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[77] 20 U.S.C. § 1087a

[78] Pub. L. No. 110-84, 121 Stat. 784 (2007).

[79] For most borrowers seeking to establish partial financial hardship under an income-driven repayment plan, servicers must assess borrowers' debt against their discretionary income, which, as noted above, is defined as their Adjusted Gross Income on a federal tax return (AGI) less 150 percent of the poverty line applicable to a borrower's family size. Borrowers also have a right to certify their discretionary income using alternative documentation of income (ADOI), if their AGI does not accurately reflect their current financial circumstances.

Payments under IBR cannot exceed the lesser of 15 percent of a borrower's discretionary income or the amount owed under the standard 10-year repayment plan at the time a borrower enrolled in IBR (also known as a borrower's "permanent standard payment"). Borrowers certify their income and household size on an annual basis in order to continue making PFH payments. All borrowers in IBR are eligible for loan forgiveness after 25 years of payments under this plan.

Pay as You Earn (PAYE). The Department of Education has also taken significant steps to broaden the income-driven options for borrowers with Direct Loans experiencing PFH. In addition to ICR and IBR, certain recent Direct Loan borrowers have a right to enroll in PAYE—an income driven repayment plan that limits Direct Loan borrowers' payments to 10 percent of their discretionary income and offers loan forgiveness after 20 years of payments.[80]

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[80] For borrowers enrolled in PAYE, capitalization is capped at 10 percent of the principal balance at the time the borrower enrolled in PAYE. 34 C.F.R. § 685.209(a)(2)(iv)(B)(1).