



The Voice of the Retail Banking Industry

April 24, 2017

Mr. Darrin King
Paperwork Reduction Act Officer
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Student Loan Servicing Market Monitoring, Docket No. CFPB-2017-0002

Dear Mr. King,

The Consumer Bankers Association (“CBA”)¹ appreciates the opportunity to comment on the proposed “Student Loan Servicing Market Monitoring” information collection. As the voice of the retail banking industry, CBA membership includes private sector lenders who make the majority of private student loans to help families finance a college education. In addition, our members include organizations that are generally experienced in working with federal student loans, having participated in the Federal Family Education Loan Program (FFELP) and, in some cases, currently holding FFELP loans.

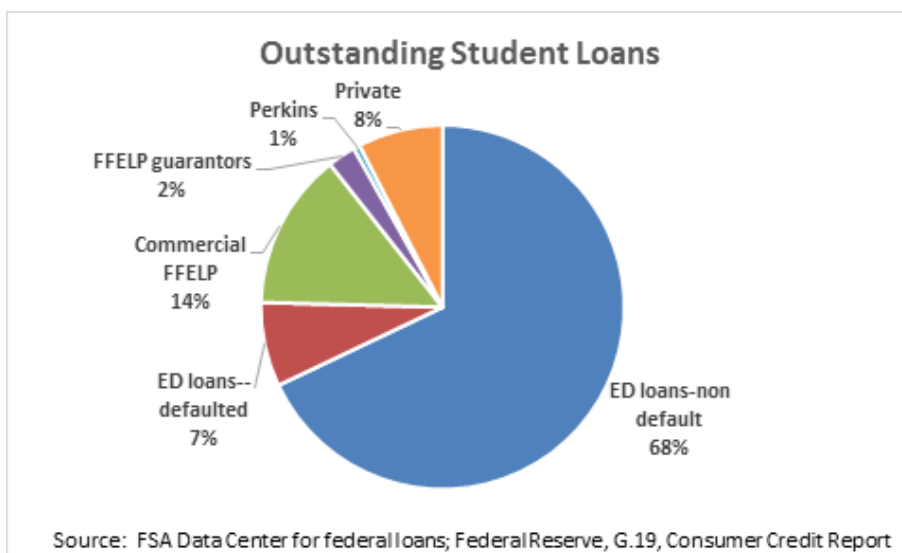
CBA appreciates and shares the interest of the Bureau in the private student loan marketplace being transparent and fair, providing consumers – our members’ customers – with loans that help them meet their goals of attaining a quality college education. CBA members make the majority of private student loans today, playing an important role in making the American dream of a college education possible.

CBA also believes that part of attaining that dream is doing so at a cost that is appropriate for the result achieved – a degree that leads to a good-paying job. Our members are finding that their student and parent customers are succeeding both in educational attainment and in successfully repaying their private student loans. Our members spend tremendous resources in designing loan products tailored to meet their customers’ needs, and they are careful to make loans to customers who are judged highly likely to repay them. The result has been excellent performance across the marketplace. This performance is documented by comprehensive, voluntary data reporting regularly available to the public and policy-makers through the organization MeasureOne, reporting that is currently serving the market well.

¹ The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services – banking services geared towards consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country’s total depository assets. A list of our corporate membership can be found at www.consumerbankers.com.

In light of the current MeasureOne reporting, CBA believes that the proposed new information collection would be duplicative and would offer few benefits while creating major unnecessary costs for our members. Further, CBA rejects the notion that collection of this data is warranted by the “at-risk” populations our members serve. CBA members have demonstrated great performance in the private student loan marketplace, and the collection of new data will only disrupt our members who have seen continuing improvements in their loan portfolios, even as volume has increased. Finally, CBA argues that the CFPB can collect the data requested just as efficiently, and with less risk to the confidentiality of the data provided by our members, through the supervisory process. As such, CBA respectfully asks the Bureau not to submit this information collection to OMB and to either (1) obtain the desired student loan data from the Department of Education and from the MeasureOne report, or (2) to use the supervisory process to gather the desired data.

The Market Context



As the chart shows, 75 percent of the outstanding federal loan volume (both non-default and default) is held and managed by the Department of Education on behalf of the American taxpayer. Another 16 percent are federally guaranteed loans regulated by the Department of Education and held by lenders and loan guarantors. Private loans are a very small share of the overall \$1.4 trillion, at 8 percent of the market. The share of loan volume held by the Department of Education will increase over time as new direct loans are originated and the legacy loan volume of Federal Family Education Loans declines, given that no new loans have been originated under the Federal Family Education Loan Program (FFELP) since June 30, 2010.

The CFPB’s Proposed Data Collection Unnecessarily Duplicates Existing Publicly Reported Private Loan Data

The MeasureOne report,² issued on a semi-annual basis (at industry expense), provides detailed information on the private loan market. The proposed new information collection would be

² MeasureOne, The MeasureOne Private Student Loan Report (Dec. 2016), *available at* <https://www.measureone.com/download.php>.

substantially duplicative of the existing MeasureOne public reporting process, in which the largest private student loan originators voluntarily report detailed data on their loan activity and on loan performance. This process has been under way for the past six years, is well-established and trustworthy, and provides a transparent view of highly valuable market performance metrics.

In addition, the participants in the MeasureOne process have established methodologies and data reporting fields that have resulted in common, standardized reporting at established time intervals over the past six years. Issuing an order that unilaterally requires substantial modification of the data points and cadence of the reporting that is currently taking place in the private sector (and that is available to the public as well as the Bureau) will not result in any appreciable benefit but will involve major, unnecessary costs.

The CFPB's proposed data collection ignores existing reporting and record keeping practices, choosing data categories that are inconsistent with existing reporting and creating new categories of data that are not collected by private loan owners or servicers. CBA believes that it is not necessary to

- create a separate and unique data collection method, with inconsistent and novel data definitions, when industry has already created and operated a reporting system from the nine largest student loan originators for the past six years,
- require a significant burden of additional reporting in a market where loans have excellent credit performance (as described further below), with fewer than 2% defaulting, in order to monitor for risks to consumers that are predominantly found in the federal loan market.

As such, the Bureau's proposed data collection would fail to meet the Paperwork Reduction Act requirement that the information collection is not unnecessarily duplicative of information that is already accessible to the Agency.

The CFPB's Proposed Collection of Private Loan Data Is Not Justified by a Well-Performing Market that Effectively Manages a Consistently Limited "At-Risk" Population

The new private loan data reports proposed by the Bureau are not warranted by the performance of the private loan marketplace. The extremely strong performance of the private student loan marketplace during the post-Recession period has continued quarter after quarter, with continuing improvements even as volume has increased. At least 98% of private loan borrowers have been successfully repaying their loans for years. In fact, the overall strength of underwriting and rigorous ability-to-repay assessments associated with private student loans, coupled with highly effective servicing practices, has resulted in a well-controlled, limited population of "at-risk" private loan borrowers who experience financial distress at any time. The economic cycle may turn negative, but having duplicative data reporting requirements will not lead to better outcomes for student loan borrowers who may run into trouble repaying their loans in the future.

Additionally, unnecessarily gathering more data is not only inefficient, it adds to the clutter that can make it more difficult to focus on the most valuable performance data. Mandating expansive, duplicative, and burdensome new data collection and reporting for 8 percent of the market is inconsistent with restrained, effective, and accountable governmental conduct.

The CFPB Can Collect the Same Data as Effectively, and with Greater Protection Afforded to Loan Holders and Servicers, Through the Supervisory Process

The Bureau may already have on hand the data it needs for any analysis that it finds useful in the supervisory process. All of the organizations that would be covered by this data compilation proposal are subject to supervision by the Bureau. CBA suggests that the Bureau can assemble the information supplied in the supervision process, sort it, normalize it as required, and generate internally the analysis the Bureau is seeking.³

Another major concern with the proposed data collection and reporting is the long-term protection and non-disclosure of confidential and proprietary business information. Private student loan participants are concerned that the confidentiality of data submitted as part of the Bureau's data collection process could be compromised. Currently, all data that the Bureau wishes to collect is available via the supervisory process, which sets a high bar for confidentiality, but the Bureau's proposed "market-monitoring" data collection does not clearly state that it will afford the same protections available within the supervisory process.

In its Supporting Statement to its submission to the *Federal Register*, the Bureau states it will not publicly disclose data that identifies a particular company. The Bureau also states it will treat company-specific data consistent with the Bureau's rules on confidential information. However, CBA-member market participants are concerned about two issues in this vein.

First, rather than merely indicating that data collected under this new process will be treated "consistent with" existing confidentiality practices adopted by the Bureau, the Bureau should unequivocally state that it shall not disclose company-specific data and that the data will be protected in strict compliance with the Bureau's confidentiality rules and obligations.

Second, while the Bureau expresses an intent to avoid disclosing company-specific information, the anticipated data collection seems almost certain to do just that. Several members of CBA who are major participants in the *private* student loan market service all or substantially all of the private student loans that they hold. CBA understands that the Bureau plans to instruct third-party servicers who service loans for more than one loan holder to aggregate data in such a way that the individual holder's data is not revealed. However, reporting by a loan holder that self-services will reveal that the data reported is attributable to a particular loan holder, depriving such loan holders of the protections afforded to other loan holders by aggregated, de-identified reporting. For example, data from Servicer X, where Servicer X is actually Lender X as well, will be readily discoverable, especially in connection with Freedom of Information Act requests. This is clearly detrimental and unfair to the organizations that self-service. Finally, this approach which results in the monitoring of individual lender/servicer activities is starkly inconsistent with the purpose of the proposed order to conduct market monitoring.

The CFPB Grossly Underestimates the Burden on Servicers and Proposes Some Unworkable New Data Fields

CBA believes that the Bureau's estimate of \$216,000 for the cost of initial data collection grossly underestimates the financial and regulatory burden imposed on federal and private student loan

³ Tellingly, section 1022(c)(4) of the Dodd-Frank Act specifically calls out the ability of the Bureau to use supervisory examination reports for a market monitoring function, before referencing orders to covered persons.

servicers. As carefully documented in the response to the Notice filed by the Student Loan Servicing Alliance, the initial costs that the 10 student loan servicers will incur to comply with the proposed order will be approximately \$870,000, and the annual recurring cost across the 10 servicers will be \$135,000. As SLSA's analysis indicates, the discrepancies, when compared with the Bureau's estimates, are substantial and far exceed the estimates identified in the Notice.

Additionally, certain data fields will be difficult/impossible to provide. For example, although servicers can report the paid-in-full status of a loan, it will be extremely difficult to track and report on whether it was paid in full by the borrower or a third party. Given that IRS regulations governing interest reporting on student loans permit servicers to treat payments made by others on behalf of a borrower as a payment made by the borrower, servicers generally have not tracked loan payments in the way contemplated by the proposed information collection. In addition, because of the various ways payments are made, it is impossible in many cases to see the origin of the payment. For example, commonly utilized lockbox systems generally do not track the identity of a check writer.

Reporting graduation/program completion data is also highly problematic. Servicer access to such data is dependent on 3rd party data collection/reporting processes, i.e., schools or organizations that gather and report graduation/program completion data on behalf of schools. While servicers track and service loans in accordance with data showing when students separate from school, such data is limited to whether the student is attending or not-attending school and does not extend to whether the student has graduated or completed an academic program. Graduation data is owned and controlled by third parties and can only be obtained by permission from the Department of Education (with respect to Direct Loans and FFELP Loans owned by the Department of Education) or purchasing it from the National Student Clearinghouse (with respect to FFELP Loans and Private Loans). CBA does not believe that the Paperwork Reduction Act requires servicers to provide data that is not on their systems, or to purchase data from a third party, and therefore that it is unreasonable to ask servicers to provide this data to the Bureau.

The CFPB's Stated Market Monitoring Objectives Can be met through Less Burdensome Methods

CBA recommends that the CFPB obtain the data it seeks through available channels either at the Department of Education or through the MeasureOne consortium in order to accomplish its goal of increased market monitoring without creating a duplicative and unnecessary burden on private student loan lenders and servicers.

The CFPB Should Obtain Federal Loan Data from the Department of Education

Data on the federal market is available from the Department of Education. CBA respectfully suggests the Bureau should not require private parties to do at their own expense what the government could be doing under its contracts with federal student loan servicers. Instead of establishing a new and different data collection process, the Bureau should develop methods to obtain the information it needs on federal loans, the vast majority of outstanding student loans, from the Department of Education, which could also modify its contracts with its student loan servicers to include more data collection provisions. To the extent that government agencies would be better served by having more efficient processes in place for sharing data, CBA suggests that those processes be developed by the Department of Education rather than adding additional, uncompensated requirements on private parties.

The Private Sector Can Voluntarily Expand Current Public Reporting to Include New Private Loan Data Items While Continuing to Enjoy Strong Confidentiality Protections

As noted in the chart above, private student loans make up 8 percent of the student loan market. Private market participants are continually reviewing the data that is being publicly reported, and are considering adding additional data points. In fact, the consortium of lenders that reports data to MeasureOne would be willing to work with the Bureau to incorporate appropriate additional data, on a prospective basis, into the existing process to the extent practicable. Consortium members would also be willing to ask the organizations that have not been participating in the MeasureOne data collection process to join the lenders who are currently participating. The MeasureOne consortium currently includes lenders that originate almost 70 percent of private student loans.⁴

The current MeasureOne reporting process provides preferred confidentiality protections to contributed data through its use of a third-party private sector entity that aggregates information.⁵ Thus, its reports protect proprietary information of all parties. This is another reason that CBA suggests that the existing MeasureOne process is sufficient, and in critically important ways, superior to the Bureau's proposal for direct collection of data.

Most of the 10 organizations that the Bureau anticipates falling under its data request participated in a detailed study conducted by the Bureau in 2011 and 2012 under Section 1077 of the Dodd Frank Wall Street Reform Act of 2010. This study involved voluntary submission of data by loan holders and servicers to MeasureOne using a legal structure that provided clear confidentiality protections to the data. Thus, the organizations' proprietary information was protected, and the data requested under that authority was provided to the Bureau in a timely manner. Using the current MeasureOne process or the current supervisory process internally would be the best approaches, but following a similar process as was used in the Bureau's 2011/2012 study is an alternative, less burdensome, approach that could be re-created with appropriate modifications as needed.

Other Specific Issues that Require Disapproval of the Bureau's Proposed Data Collection

Creating a new data collection regime rather than relying on either the MeasureOne consortium or the supervisory process:

- Would not fall under the authority of Section 1022(c)(4)(B)(ii) of the Dodd-Frank Act, which allows the Bureau to "require covered persons . . . to file with the Bureau . . . as the Bureau may require by rule or order, annual or special reports." This raises the legal issue of whether the Bureau can require regular quarterly reports from the Affected Companies under this authority since such reports would no longer be "special."
- Would require the provision of data that is not readily available, fails to fully recognize how complex the student loan process can be, and in some cases is not possible to measure. For example, the Specific Data Requests would require reporting and outcomes of loan modification requests. Yet, such requests often are changed as borrower or co-signer circumstances change or if the borrower decides to pursue a different approach that protects their credit, such as loan consolidation or a shorter-term forbearance.

⁴ See The MeasureOne Private Student Loan Report *at note 2*.

⁵ *Id.*

- Would require retroactive reporting, mandating that servicing organizations create reporting mechanisms for events that have already occurred and for which records were created with no anticipation of a future, mandated reporting requirement. The proposed order requires student loan servicers to provide a report on the fourth quarter of calendar year 2016 that includes outcomes for processes begun in the first quarter of calendar year 2016. Such a retroactive process could only be accomplished at great expense, and it would by definition not be reliable since the reports would have to be manually altered to comport with the Bureau's Requests.
- Section 1055 of the Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the CFPB to bring an action for violation of an "order." If a federal or private student loan servicer subject to an order issued pursuant to the information collection on student loan market monitoring were to fail to provide a single item of the data requested or inadvertently misreport a single data item based on a technical error, including information that does not exist or cannot be gathered without substantial manual effort, the Bureau could take the position that such failure constitutes violation of an "order" and impose substantial civil money penalties. The risk of this outcome is incongruent with a data collection effort seeking to understand aggregate market trends for purposes of identifying "best practices".

Thank you for the opportunity to comment on the new information collection, Student Loan Servicing Market Monitoring. CBA is happy to work with the Bureau on alternative approaches that we believe will better serve the consumers and the marketplace.

Sincerely,



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