

# Supervisory Highlights Student Loan Servicing Special Edition

Issue 27, Fall 2022

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# 1. Introduction

The student loan servicing market has shifted significantly over the past two and a half years. The COVID-19 pandemic led to financial and operational disruptions at servicers. At the same time, the Federal loan payment suspension brought meaningful relief to borrowers. Recently, several Federal contractors left the market, and, as a result, nine million Federal student loan accounts transferred from one servicer to another. Additionally, the Department of Education (ED) introduced specific programs to broaden access to public service loan forgiveness and forgiveness through income-driven repayment. Post-secondary schools, such as for-profit colleges, continued to offer institutional loans that pose particular risks to consumers. During this period, the Consumer Financial Protection Bureau (CFPB or Bureau) engaged in vigorous oversight of the consumer protections set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Consumer Financial Protection Act), in coordination with ED and State regulators.

In light of these developments, this Supervisory Highlights Special Edition focuses on three sets of significant supervisory findings. First, Supervision initiated work at certain institutional lenders and found that blanket policies to withhold transcripts in connection with an extension of credit are abusive under the Consumer Financial Protection Act. Second, Supervision engaged in oversight of major Federal loan transfers and identified certain consumer risks related to those transfers. Third, Supervision identified a considerable number of violations of Federal consumer financial law by student loan servicers in administering Public Service Loan Forgiveness (PSLF), Income-Driven Repayment (IDR), and Teacher Loan Forgiveness (TLF).

Supervision found that servicers regularly provide inaccurate information and deny payment relief to which borrowers are entitled. ED is addressing some of these risks through program changes like the PSLF and IDR program waivers, as well as improved vendor oversight. The extensions to the COVID-19 payment pause for federally owned loans also has given ED some breathing room to implement these changes. However, the findings documented in this report impact servicers' entire portfolios, including commercially-owned Federal Family Education Loan Program (FFELP) loans, and CFPB encourages servicers to address the issues across their portfolios.

## 1.1 Private Student Loans

Private student loans are extensions of credit made to students or parents to fund undergraduate, graduate, and other forms of postsecondary education that are not made by ED pursuant to Title IV of the Higher Education Act (Title IV). Banks, non-profits, nonbanks, credit

unions, state-affiliated organizations, institutions of higher education, and other private entities hold an estimated \$128 billion in these student loans, as reported to the national consumer reporting companies. Private student loans include traditional in-school loans, tuition payment plans, income share agreements, and loans used to refinance existing Federal or private student loans.<sup>1</sup>

The private student loan market is highly concentrated – the five largest private education loan providers make up over half of outstanding volume. For the most recent academic year, consumers took out \$12.2 billion in-school private education loans, which reflects a 15 percent year over year reduction from 2019-20, driven by recent enrollment declines. Additionally, industry sources estimate refinancing activity in calendar year 2021 at \$18 billion; demand for private refinancing appears to have declined significantly because of the pause in Federal student loan repayment and the recent rise in interest rates.<sup>2</sup>

Postsecondary institutions sometimes provide loans directly to their students; this practice is known as institutional lending.<sup>3</sup> Aggregate data on institutional lending are limited. Underwriting requirements and pricing of institutional loans vary widely, ranging from low-interest rate, subsidized loans that do not require co-signers to unsubsidized loans that accrue interest during and after the student's enrollment and do require borrowers to meet underwriting standards or obtain qualified co-signers. At the same time, many institutions also extend credit for postsecondary education through products like deferred tuition or tuition payment plans. Student loans and tuition billing plans may be managed by the institutions themselves or by a third-party service provider that specializes in institutional lending and financial management. Supervisory observations suggest that some institutional credit programs have delinquency rates greater than 50 percent.

Additionally, students may withdraw from their classes before completing 60 percent of the term, triggering the return of a prorated share of Title IV funds to Federal Student Aid (FSA), known as “return requirements.” Institutions of higher education often charge tuition even where students do not complete 60 percent of the term. When a student withdraws from classes without completing 60 percent of the term, the institution often refunds the Title IV funds

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<sup>1</sup> Recently, institutions and other private actors started offering new private student loan products branded as “income share agreements” (ISAs). At least several dozen postsecondary institutions directly offer income share agreements (ISAs), which require consumers to pledge a given percentage of their incomes over a specified period. The repayment process for ISAs may result in consumers realizing very large APRs or prepayment penalties that may be illegal under the Truth In Lending Act or State usury caps.

<sup>2</sup> Navient, July 2022 investor presentation, [https://navient.com/Images/SFVegas-2022-Investor-Presentation\\_tcm5-25984.pdf](https://navient.com/Images/SFVegas-2022-Investor-Presentation_tcm5-25984.pdf), at 7.

<sup>3</sup> This category does not include Perkins loans, which were issued by schools but largely funded by Title IV Federal funds distributed to schools.

directly to FSA and, in turn, bills students for some or all of the amount refunded to FSA, since the school is maintaining its tuition charge for the classes. Institutions handle these debts in a variety of ways, but many offer payment plans and other forms of credit to facilitate repayment. In aggregate, these debts, called “Title IV returns,” can total millions of. Supervisory observations indicate that some of these repayment plans can include terms requiring repayment for more than four years.

## 1.2 Federal Student Loans

ED dominates the student loan market, owning \$1.48 trillion in debt comprising 84.5 percent of the total market, and it guarantees an additional \$143 billion of FFELP and Perkins loans. All told, loans authorized by Title IV of the Higher Education Act (Title IV) account for 93 percent of outstanding student loan balances.<sup>4</sup>

The Federal student loan portfolio has more than tripled in size since 2007, reflecting rising higher education costs, increased annual and aggregate borrowing limits, and increased use of Parent and Grad PLUS loans. Annual Grad PLUS origination volume has more than quadrupled in that time, expanding from \$2.1 billion to an estimated \$11.6 billion during the 2020-21 academic year.<sup>5</sup> Before the COVID-19 pandemic, Parent PLUS volume peaked at \$12.8 billion (in current dollars) in loans originated in the 2018-2019 academic year. Combined, these products accounted for 26 percent of all Title IV originations in the most recent academic year.

Federal student loans suffer high default rates. As of March 2022, approximately \$171 billion in outstanding Title IV loans were in default. This represents nearly 11 percent of outstanding balances but 19 percent of Federal student loan borrowers – a figure that would surely be higher but for the federally owned loan payment suspension. Federal ownership and management of more than four-fifths of outstanding student loans enabled the government, at the outset of the pandemic in March 2020, to directly assist more than 40 million borrowers through the CARES Act and a series of executive orders.

Servicers are responsible for processing a range of different payment relief applications or requests including PSLF, TLF, and IDR, as well as payment pauses including deferment and

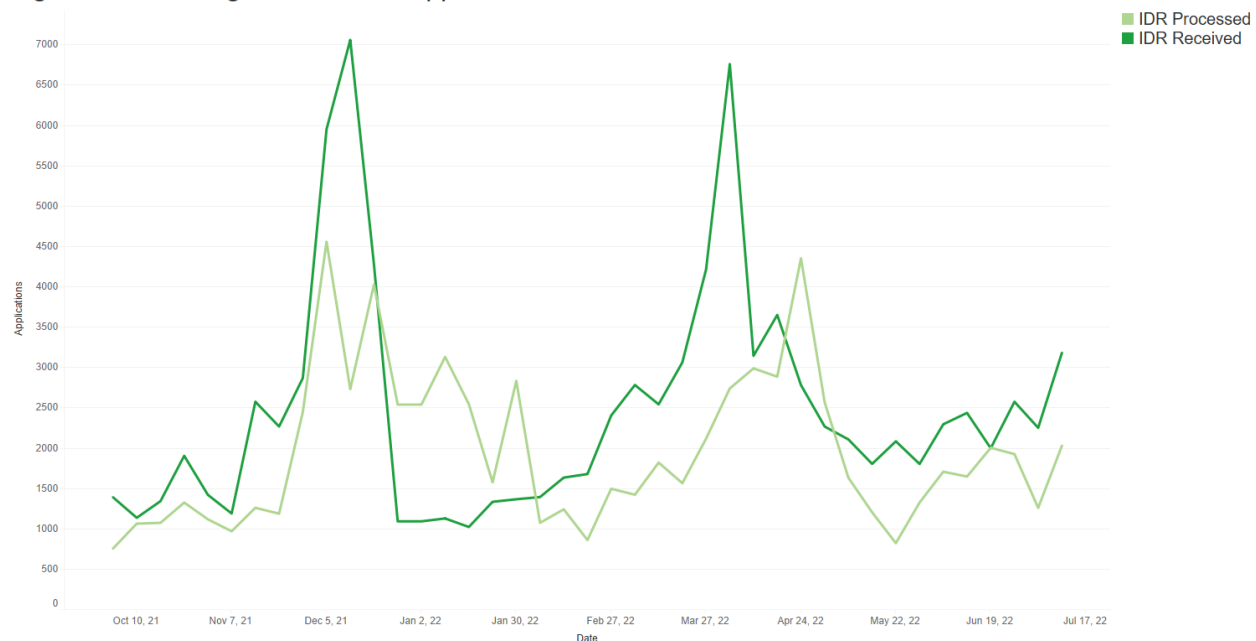
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<sup>4</sup> See <https://www.newyorkfed.org/microeconomics/hhdc/background.html>, and <https://www.newyorkfed.org/microeconomics/topics/student-debt>.

<sup>5</sup> In comparison, annual student borrowing under the subsidized and unsubsidized Stafford loan program rose from \$49.4B in 2006-07 to a peak of \$87.8B in AY2010-11 before beginning a downward trend that tracked with falling undergraduate enrollment that was exacerbated by the COVID pandemic. Stafford originations in AY2020-21 totaled \$62.1B, down more than 29 percent from AY2010-11.

forbearance. The volume of these applications changes significantly over time based on servicer account volume and external events such as the expected return to repayment following COVID-19 related forbearance. To illustrate these trends, Figure 1 shows the total incoming IDR applications and processed applications from October 2021 through July 2022 at one servicer.<sup>6</sup> For example, in December 2021, many borrowers expected to start repaying their loans imminently and thus submitted IDR applications. In light of the intermittent increases in application volume, servicers frequently did not respond timely to borrowers' applications. Additionally, at any given time, servicers may have a meaningful number of unprocessed applications because they wait to process the recertifications until closer in time to the recertification due date.

Figure 1: Receiving Servicer IDR Applications - Processed and Received



ED contracts with several companies to service Direct and ED-owned FFELP loans. When one of these companies decides to stop servicing loans, the accounts are transferred to another contractor. As shown in Figure 2, the recent departures of Granite State and PHEAA/FedLoan Servicing resulted in the transfer of millions of borrower accounts among the remaining Federal loan servicers.<sup>7</sup>

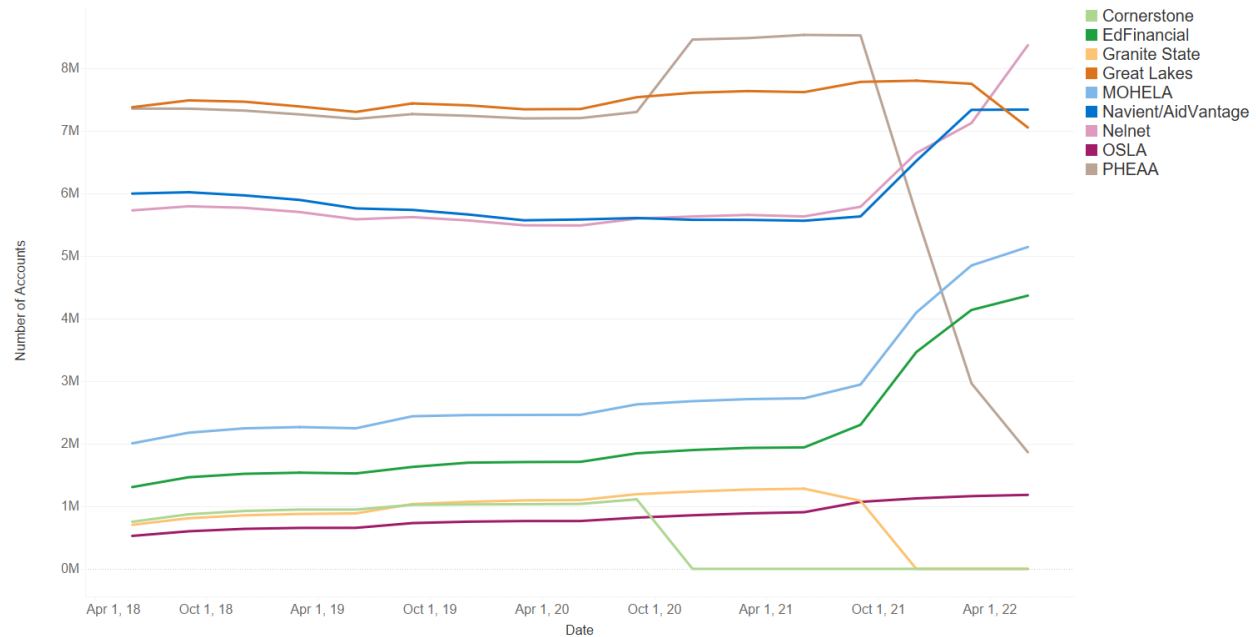
Where a borrower's data has become lost or corrupted as a result of poor data management by a particular servicer, subsequent transfers may result in servicers sending inaccurate periodic

<sup>6</sup> Examiners collected these data in 2021 and 2022.

<sup>7</sup> FSA provided these data and authorized publication here.

statements, borrowers losing progress toward forgiveness, and borrowers having difficulty in rectifying past billing errors.<sup>8</sup> To prepare consumers for the transfers, the CFPB published specific information for consumers, including advising them to remain vigilant toward potential scams at a time when they are particularly vulnerable.<sup>9</sup>

Figure 2: Borrower Accounts by Servicer



The trends of Cornerstone, EdFinancial, Granite State, Great Lakes, MOHELA, Navient/AidVantage, Nelnet, OSLA and PHEAA for Date Requested. Color shows details about Cornerstone, EdFinancial, Granite State, Great Lakes, MOHELA, Navient/AidVantage, Nelnet, OSLA and PHEAA.

<sup>8</sup> See generally *Conduent Education Services, LLC* (consent order), Administrative Proceeding (File No. 2019-BCFP-0005), Bureau of Consumer Financial Protection.

<sup>9</sup> <https://www.consumerfinance.gov/about-us/blog/student-loans-transferring-to-new-servicer-learn-what-this-means-for-you/>.

## 2. Institutional Lending

Earlier this year, the CFPB announced it would begin examining the operations of institutional lenders, such as for-profit colleges, that extend private loans directly to students.<sup>10</sup> The lenders have not historically been subject to the same servicing and origination oversight as traditional lenders. Considering these risks, the Bureau is examining these entities for compliance with the Federal consumer financial laws.

### 2.1 Examination Process

Simultaneously with issuing this edition of *Supervisory Highlights*, the Bureau has updated its *Education Loan Examination Procedures*. The Consumer Financial Protection Act provides the Bureau with authority to supervise nonbanks that offer or provide private education loans, including institutions of higher education.<sup>11</sup> To determine which institutions are subject to this authority, the Consumer Financial Protection Act specifies that the Bureau may examine entities that offer or provide private education loans, as defined in section 140 of the Truth in Lending Act (TILA), 15 U.S.C. 1650. Notably, this definition is different than the definition used in Regulation Z. However, a previous version of the Bureau's *Education Loan Examination Procedures* referenced the Regulation Z definition. The new version has now been updated to tell examiners that the Bureau will use TILA's statutory definition of private education loan for the purposes of exercising the Consumer Financial Protection Act's grant of supervisory authority.<sup>12</sup> The new exam manual thus instructs examiners that the Bureau may exercise its supervisory authority over an institution that extends credit expressly for postsecondary educational expenses so long as that credit is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965, and is not an open-ended consumer credit plan, or secured by real property or a dwelling.<sup>13</sup>

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<sup>10</sup> Consumer Financial Protection Bureau to Examine Colleges' In-House Lending Practices, <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/>.

<sup>11</sup> 12 U.S.C. 5514 (a)(1)(D).

<sup>12</sup> <https://www.consumerfinance.gov/compliance/supervision-examinations/education-loan-examination-procedures/>.

<sup>13</sup> This definition does not include Regulation Z's exceptions for tuition payment plans or very short-term credit. Thus, institutions may offer private education loans that make them subject to the Bureau's supervisory authority even if Regulation Z exempts them from disclosure requirements.



The *Education Loan Examination Procedures* guides examiners when reviewing institutional loans by identifying a range of important topics including the relationship between loan servicing or collections and transcript withholding.

**Compliance Tip:** Schools should evaluate the financial services they offer or provide and ensure they comply with all appropriate consumer financial laws.

Where higher education institutions extend credit, the dual role of lender and educator provides institutions with a range of available collection tactics that leverage their unique relationship with students. For example, some postsecondary institutions withhold official transcripts as a collection tactic. Institutions often withhold transcripts from their students who are delinquent on debt owed to the institution, while also requiring new students to provide official transcripts from schools they previously attended. Collectively, this industry practice creates a circumstance in which a formal official transcript is necessary for students to move from one school to another, creating a powerful mechanism to enforce payment demands even when consumers seek to attend a competitor school. Consumers who cannot obtain an official transcript could be locked out of future higher education and certain job opportunities.

## 2.2 Transcript Withholding Findings

Examiners found that institutions engaged in abusive acts or practices by withholding official transcripts as a blanket policy in conjunction with the extension of credit. These schools did not release official transcripts to consumers that were delinquent or in default on their debts to the school that arose from extensions of credit. For borrowers in default, one institution refused to release official transcripts even after consumers entered new payment agreements; rather, the institution waited until consumers paid their entire balances in full. In some cases, the institution collected payments for transcripts but did not deliver those transcripts if the consumer was delinquent on a debt.

An act or practice is abusive if it, among other things, takes unreasonable advantage of the inability of a consumer to protect the interests of the consumer in selecting or using a consumer financial product or service. Examiners found that institutions took unreasonable advantage of the critical importance of official transcripts and institutions' relationship with consumers. Since many students will need official transcripts at some point to pursue employment or future higher education opportunities, the consequences of withheld transcripts are often disproportionate to the underlying debt amount. Additionally, faced with the choice between paying a specific debt and the unknown loss associated with long-term career opportunities of a new job or further education, consumers may be coerced into making payments on debts that are inaccurately calculated, improperly assessed, or otherwise problematic.

This heightened pressure to produce transcripts leaves consumers with little-to-no bargaining power while academic achievement and professional advancements depend on the actions of a single academic institution. Other consumers might simply abandon their future higher education plans when faced with a transcript hold. At the same time, the institution does not receive any intrinsic value from withholding transcripts. Unlike traditional collateral, transcripts cannot be resold or auctioned to other buyers if the original debtor defaults.

Consumers do not have a reasonable opportunity to protect themselves in these circumstances. Since most institutional debt is incurred after consumers have already selected their schools, they may be practically limited to a single credit source. After consumers select their schools, those schools have a monopoly over the access to an official transcript. At the point where consumers need a transcript, they cannot simply select a different school to provide it. For these reasons, Supervision determined that blanket policies to withhold transcripts in connection with an extension of credit are abusive under the Consumer Financial Protection Act and directed institutional lenders to cease this practice.

# 3. Supervision of Federal Student Loan Transfers

In July of 2021, PHEAA and Granite State announced they were ending their contracts with FSA for student loan servicing, triggering the transfer of more than nine million borrower accounts.<sup>14</sup> The Bureau reviewed the transfers of one or more transferee and transferor servicers, with a focus on assessing risks and communicating these risks to supervised entities promptly so that they could address the risks and prevent consumer harm. The Bureau coordinated closely with FSA and State partners as they also conducted close oversight of the loan transfers.

## 3.1 Supervisory Approach

The Bureau's supervisory approach included three components: pre-transfer monitoring and engagement, real-time transaction testing during the transfers, and post-transfer review and analysis. Throughout this process the Bureau worked closely with ED's primary office handling student loans, Federal Student Aid (FSA), and State supervisors including the California Department of Financial Protection and Innovation, Colorado Attorney General's Office, Connecticut Department of Banking, Illinois Department of Financial and Professional Regulation, Washington Department of Financial Institutions, and Massachusetts Division of Banks. This coordination significantly improved oversight.

Pre-transfer monitoring and engagement included an evaluation of transfer-related policies and procedures in accordance with the [Education Loan Examination Procedures](#), coordination between the Bureau and FSA in issue and risk identification, and direct engagement between Supervision leadership and specific servicers.

A significant aspect of the oversight involved transaction testing sampled accounts on both ends of the transfer. Within these samples, examiners identified discrepancies between relevant servicers' data and requested clarification to determine whether they represented transfer errors or other consumer risks. Subsequently, the Bureau reviewed these data to identify systemic risks to consumers from the transfers and root causes of the identified discrepancies. Through

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<sup>14</sup> <https://www.pheaa.org/documents/press-releases/ph/070721.pdf>; [https://nhheaf.org/pdfs/press/2021/NHHEAF\\_Network\\_Public\\_Announcement\\_07-19-21.pdf](https://nhheaf.org/pdfs/press/2021/NHHEAF_Network_Public_Announcement_07-19-21.pdf). The total volume of transfers between entities is 14 million borrower accounts, but the transfer from Navient to Maximus of five million accounts did not involve borrower accounts moving to a new servicing platform.

this process, the Bureau provided rapid feedback to servicers and is closely coordinating with FSA to improve consumer outcomes and drive toward timely solutions to any errors.

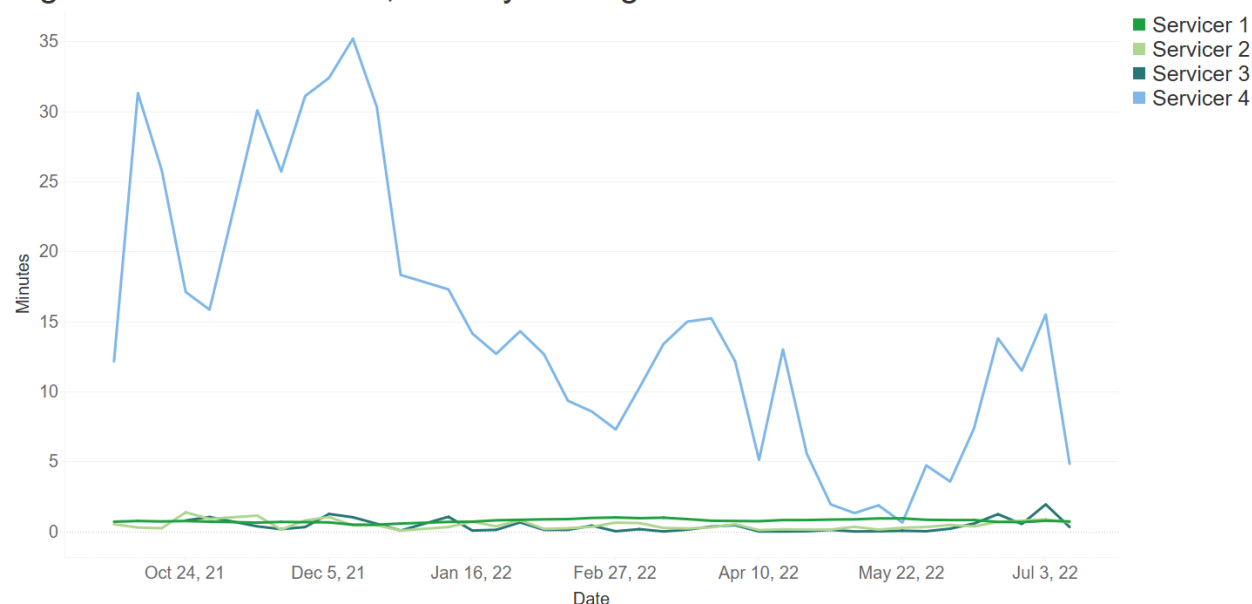
Overall, the near real-time supervision of a portfolio transfer alongside FSA and State regulators was a novel approach. Many of the findings detailed below were resolved, and the corrections help to prevent the type of long-term consumer harm seen in prior transfers.

## 3.2 Findings

Based on the work described above, examiners issued interim supervisory communications to certain entities documenting consumer risks and directing them to take action to address those risks. Notable findings include:

- Many servicers reported that the initial set of information they received during the transfer was insufficient to accurately service loans. In some cases, important account information was missing or provided in an unusable format. For example, examiners identified inaccurate information about certain consumers' monthly payment amounts, due dates, and payment plans. The root cause of many of these discrepancies was one servicer's failure to include current repayment schedules – data showing future expected monthly payments based on consumers' repayment plans – for many accounts in the transfer. This error occurred for hundreds of thousands of accounts.
- Transferee and transferor servicers reported different numbers of total payments that count toward IDR forgiveness for some consumers.
- One servicer sent statements to more than 500,000 consumers that presented inaccurate information about the borrower's next due date and, separately, the date Federal student loans were set to return to repayment.
- One servicer placed certain accounts into transfer-related forbearances following the transfer, instead of the more advantageous CARES Act forbearances.
- Multiple servicers experienced significant operational challenges in managing the transfers at the same time they were implementing major program changes. The payment pauses and extensions, PSLF waiver, and transfers drove increased call volume and applications for payment relief. Some servicers were inadequately staffed, making them unable to effectively manage this volume. As shown in Figure 3, call wait times and average processing time for payment relief increased significantly.

Figure 3: Call Hold Time, Weekly Average



- Some accounts transferred with inaccurate capitalization or paid ahead status. These errors caused the transferee servicer to misrepresent consumers' payment amounts or due dates.

Critically, the ongoing payment pause provides servicers and FSA with more time to correct transfer-related errors by making manual account adjustments, transferring supplemental account information, and correcting previous inaccurate or misleading statements.

Supervision issued Matters Requiring Attention (MRAs) across student loan servicers in a series of interim supervisory communications directing them to act before the transfers concluded to correct many of the issues discussed above.<sup>15</sup> Servicers are currently working to resolve these issues.

Supervision issued MRAs directing servicers to:

- Update their systems with accurate repayment schedules and other missing information;
- Correct misrepresentations on their websites and provide disclaimers where they did not have complete and accurate account details;

**Compliance Tip:** Prior to a transfer, institutions should engage in robust data mapping exercises that include test transfers to minimize errors.

<sup>15</sup> Supervision issues MRAs to supervised entities that direct the entities to take certain steps to address violations or compliance weaknesses and provide written updates on their progress to the Bureau.

- Correct the type of forbearance applied to transferred accounts, ensuring that CARES Act forbearances are applied rather than less-advantageous transfer-related forbearances for the relevant period;
- Correct credit reporting errors;
- Improve their own internal due diligence through additional audits focused on critical date elements;
- Improve transfer-related training for call center representatives; and
- Develop and implement staffing plans to address operational challenges.

In addition, supervisory personnel coordinated closely with Federal Student Aid to ensure that both agencies benefit from the Bureau's work. The Bureau worked to verify compliance with these MRAs while FSA directed complementary corrective action and tracked progress towards the resolution of systematic errors such as the failure of one servicer to provide repayment schedules in its initial data transfer. In some cases, FSA's programmatic and contractual tools were brought to bear on complex issues that did not originate with the transfers. For example, the discrepancies revealed in IDR payment counting were not caused by the transfer itself. Rather, oversight of the transfer process revealed a range of operational differences and data weaknesses that predated the transfer. The recently-announced IDR waiver may address many of these issues by standardizing the way periods of eligibility are counted and expanding the repayment, forbearance, and deferment periods considered as eligible payments toward IDR forgiveness. In this way, FSA aims to ensure that all consumers receive the full benefits to which they are entitled, regardless of the servicer or transfer status. It will also provide remediation to address certain prior misrepresentations through broadened eligibility.

## 4. Recent Exam Findings

The Bureau has supervised student loan servicers, including servicers responsible for handling Direct and other ED-owned loans, since it finalized the student loan servicing larger participant rule in 2014.<sup>16</sup> In many instances, examiners have identified servicers that have failed to provide access to payment relief programs to which students are entitled. Examiners identified these issues in both the Direct Loan and Commercial FFELP portfolios; in most cases the conduct constitutes the same unfair, deceptive, or abusive act or practice regardless of what entity holds the loan. The Bureau shared these findings with FSA at the time of the examinations, and in many cases FSA's subsequent programmatic changes including the PSLF and IDR waivers provide meaningful remediation to injured consumers.

### 4.1 Teacher Loan Forgiveness

Certain Federal student loan consumers are eligible for TLF after teaching full-time for five consecutive academic years in an elementary school, secondary school, or educational service agency that serves low-income families. Consumers apply by submitting their TLF applications to their servicers. These applications can be time consuming as they require consumers to solicit their schools' chief administrative officers to complete and sign a portion of the application. Servicers are responsible for processing these applications and sending applications that meet the eligibility criteria to FSA or the loan guarantor for final approval. In that process, servicers are responsible for, among other things, ensuring applications are complete, determining whether the consumer worked for the required period, and verifying that borrowers' employers are qualifying schools by cross matching the name of the employer provided against the Teacher Cancellation Low Income ("TCLI") Directory.

#### 4.1.1 Unfair and abusive practices in connection with Teacher Loan Forgiveness application denials

Examiners found that servicers engaged in unfair acts or practices when they wrongfully denied TLF applications in three circumstances: (1) where consumers had already completed five years of teaching, (2) where the school was a qualifying school on the TCLI list, or (3) when the

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<sup>16</sup> For a period of time beginning in 2017, servicers did not provide information to the CFPB at ED's direction. Recently, coordination with ED/FSA increased significantly, including entering into appropriate confidentiality agreements. The findings documented below come from the first three exams completed after the Bureau resumed unrestricted oversight of federally owned student loans in 2020.

consumer formatted specific dates as MM-DD-YY instead of MM-DD-YYYY, despite meeting all other eligibility requirements.<sup>17</sup>

These wrongful denials resulted in substantial injury to consumers because they either lost their loan forgiveness or had their loan forgiveness delayed. Consumers who are wrongfully denied may understand that they are not eligible for TLF and refrain from resubmitting their TLF applications. Consumers could not reasonably avoid the injury because the servicer controlled the application process. Finally, the injury was not outweighed by countervailing benefits to consumers or competition.

An act or practice is abusive when a covered person takes unreasonable advantage of reasonable reliance by the consumer on a covered person to act in the interests of the consumer. A servicer also engaged in an abusive act or practice by denying TLF applications where consumers used a MM-DD-YY format for their employment dates, particularly where FSA had previously identified one such denial, directed the servicer to reconsider the application, and suggested the servicer refrain from date format denials going forward. The denial of forgiveness was detrimental to consumers, as described above. And the servicer may benefit from the conduct because servicers are paid monthly and denying forgiveness may prolong the life of the loan, generating additional revenue for the servicer.

Consumers reasonably rely on servicers to act in their interests, and this servicer encouraged consumers to consult with their representatives to assist in managing their accounts, including on its websites where it provided information about TLF. Further, it was reasonable for consumers who are applying for TLF to rely on their servicer to act in the consumers' best interests because processing forgiveness applications is a core function for student loan servicers, and they are entirely in control of their evaluation policies and procedures.

In response to these violations, examiners directed the servicer to review all TLF applications denied since 2014 to identify improperly denied applications and remediate harmed consumers to ensure they receive the full benefit to which they were entitled, including any refunds for excess payments or accrued interest.

**Compliance Tip:** Servicers should routinely approve applications for payment relief when they have all the required information to make decisions, even if that information is provided in a nonstandard format or across multiple communications.

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<sup>17</sup> If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.



## 4.2 Public Service Loan Forgiveness

The PSLF program allows borrowers with eligible Direct Loans who (i) work for qualifying employers in government or public service fields, (ii) make 120 on-time monthly qualifying payments, (iii) while in a qualified repayment plan, to have the remainder of their loans forgiven. Congress recognized in 2007 that the “staggering debt burdens” of higher education were driving students away from public service.<sup>18</sup>

By 2018, Congress came to understand that many consumers working in public service would never receive PSLF benefits due the complexities of higher education finance and eligibility requirements. At that time, the PSLF program had discharged loans for only 338 consumers despite receiving 65,500 applications.<sup>19</sup> At a minimum, many applicants had a fundamental misunderstanding about the program terms. In response, Congress authorized additional funding to extend the PSLF benefits to Direct Loan borrowers who would be eligible but for repaying under a non-qualifying repayment plan like the Extended or Graduated repayment plans. The Temporary Expanded PSLF (TEPSLF) allowed these consumers that meet certain additional requirements in their last year of repayment to have the balance of their loans forgiven.

Over the following three years, PSLF and TEPSLF canceled debts for 10,354 and 3,480 consumers, respectively.<sup>20</sup> However, these successful applications continued to be the exception, as more than half a million applications were rejected, including 409,000 from borrowers who had not been in repayment on a Direct Loan for 120 months. These data are explained in part by material misrepresentations by FFELP servicers about critical PSLF terms and application processes.<sup>21</sup>

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<sup>18</sup> E.g., 153 Cong. Rec. S9595 (daily ed. July 19, 2007) (statement of Senator Leahy) (“Because tuition has increased well beyond the rate of student assistance, students today are graduating with staggering debt burdens. With the weight of this debt on their backs, recent college graduates understandably gravitate toward higher paying jobs that allow them to payback their loans. Unfortunately, all too often these jobs are not in the arena of public service or areas that serve the vital public interests of our communities and of our country. We need to be doing more to support graduates who want to enter public service, be it as a childcare provider, a doctor or nurse in the public health field, or a police officer or other type of first responder.”).

<sup>19</sup> FSA Public Service Loan Forgiveness Data, <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data>.

<sup>20</sup> See FSA November 2021 Public Service Loan Forgiveness Data, <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data>.

<sup>21</sup> *Supervisory Highlights*, Issue 24, Summer 2021. Consent Order, *EdFinancial Services, LLC*, 2022-CFPB-0001 (Consumer Financial Protection Bureau March 30, 2022).

In an effort to make the PSLF program “live up to its promise,” ED announced a PSLF waiver in October 2021.<sup>22</sup> The waiver significantly changed what periods of repayment were considered eligible and opened a pathway for FFELP borrowers to receive credit toward forgiveness for the first time, if those borrowers consolidate into Direct Loans by October 31, 2022, providing the potential for cancellation for nearly 165,000 borrowers with a total balance of \$10.0 billion. In an effort to help identify and address servicing errors, ED announced that it would also review denied PSLF applications for errors and give borrowers the ability to have their PSLF determinations reconsidered.

Starting in March 2020, the CARES Act provided additional relief for consumers. During the CARES Act payment suspension and subsequent extensions, consumers are not required to make any payments and can request a refund for any payments they did make. These protections were included in subsequent extensions of the repayment pause. Importantly, regardless of whether a consumers paid anything, all months during this time will count toward PSLF and other forgiveness programs.

During the periods covered by this report, borrowers submitted two kinds of PSLF forms: Employer Certification Forms (ECFs) and PSLF applications. ECFs certify that borrowers worked for qualifying employers for a specified period, while PSLF applications document their current qualifying employment and request forgiveness of the loans when they have reached 120 qualifying payments. A combined PSLF form was made available in November 2020 for both PSLF applications and ECFs.<sup>23</sup>

#### 4.2.1 Unfair practice of providing erroneous initial PSLF eligibility determinations, qualified payment counts, and estimated eligibility dates.

Results of ECFs and PSLF applications are communicated to consumers through letters telling consumers whether the form was approved or denied and including counts of consumers’ total qualifying payments (QPs) and estimated eligibility dates (EEDs) for reaching the 120 payments required for forgiveness. Examiners identified both wrongful denials and approvals of applications or ECFs. In many cases, the servicer corrected these errors months later, after the

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<sup>22</sup> Press Release, U.S. Department of Education Announces Transformational Changes to the Public Service Loan Forgiveness Program, Will Put Over 550,000 Public Service Workers Closer to Loan Forgiveness (October 6, 2021), <https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness>.

<sup>23</sup> See <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-10-28/changes-public-service-loan-forgiveness-pslf-program-and-new-single-pslf-form>. <https://www.pheaa.org/documents/press-releases/ph/070721.pdf>.

consumer complained or the servicer identified the issue. In the sample reviewed, examiners found that the servicer wrongfully approved ECFs where the borrowers had ineligible employment or had loans that were otherwise ineligible. This representation could lead consumers to falsely believe they are accruing credit toward forgiveness and delay taking steps like loan consolidation that could actually make them eligible. Other ECFs were wrongfully denied when representatives erroneously determined the forms had invalid employment dates, were missing an employer EIN, or were otherwise incomplete – when in fact they were not.

Examiners also found that a servicer engaged in an unfair act or practice by miscalculating consumers' total QPs or EEDs and then communicating that erroneous information to consumers pursuing PSLF. Examiners' sample suggests these errors were common with many consumers receiving multiple incorrect QP or EED determinations across multiple ECF submissions.

Wrongful approvals and denials and incorrect PSLF eligibility information resulted in a substantial injury because the availability of PSLF can substantially impact borrowers' careers, financial situation, and life choices. Depending on the circumstances, consumers may have committed to additional work with their employers for these months, instead of pursuing other opportunities; made other major financial decisions, such as financing the purchase of a residence or automobile; or delayed consolidation of their FFELP loans. The injury is not reasonably avoidable because borrowers have no choice among student loan servicers, no way to ensure the servicer properly processed these forms, and were often not aware of the processing errors. Finally, the injury was not outweighed by countervailing benefits to consumers or competition because there is no direct benefit to consumers or competition created by improper approvals or denials.

#### **4.2.2 Deceptive practice of misleading borrowers about student loan COVID-19 payment suspension refunds and PSLF forgiveness**

Despite the PSLF-related benefits of the CARES Act payment suspension, some consumers seeking PSLF continued to make payments on their student loans during the suspension. Examiners found that at least one servicer engaged in a deceptive act or practice by implicitly representing to these consumers that they must make payments during the COVID-19 payment suspension for those months to be eligible for PSLF. During the suspension, consumers received standard PSLF communications including denials that informed them that qualifying payments are ones made under specific repayment programs – known as REPAYE, PAYE, IBR, and ICR. Other letters informed consumers that the estimated eligibility date is based on making “on-time, qualifying payments every month” when in fact no monthly payments were required for the period of the payment suspension. Taken together, these communications

created the implicit representation that consumers' payments made between March 2020 and the effective date of forgiveness were necessary for PSLF when in fact they were not.

Hundreds of consumers faced this situation, and in the first year of the payment suspension approximately eight percent of all consumers that earned PSLF forgiveness had made payments during the payment suspension but did not receive a refund of those payments upon achieving forgiveness. Consumers rely on servicers to provide accurate information about forgiveness programs, so they reasonably believed that those payments were necessary. These representations were material because if consumers knew these payments were refundable, they likely would have requested a refund as those payments were unnecessary for achieving PSLF.

### 4.2.3 Unfair practice of excessive delays in processing PSLF forms

Examiners found that at least one servicer engaged in an unfair act or practice when it excessively delayed processing PSLF forms. In some cases, these delays lasted nearly a year. These delays could change borrowers' decisions about consolidation, repayment plan enrollment, or even employment opportunities. For example, when FFELP loan borrowers apply for PSLF, they are denied because those loans are

ineligible, but they are told that a consolidation could make the loan eligible. Therefore, a delay in processing the PSLF form could cause consumers to delay consolidation and delay their ultimate forgiveness date.<sup>24</sup> In addition, examiners observed that some borrowers spent unnecessary time contacting their servicers to expedite the process or receive status updates when these forms were delayed. Consumers plan around their debt obligations, and excessive delays can alter consumers' major financial decisions and cause substantial injury that is not reasonably avoidable and not outweighed by countervailing benefits to consumers or competition.

**Compliance Tip:** Servicers should regularly monitor both the average time for application review and outlier experiences. Delays in processing forms can be unfair even where they affect a subset of the portfolio.

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<sup>24</sup> The PSLF waiver will provide meaningful remediation to this population by automatically counting periods of FFELP repayment as eligible if the borrower consolidates their loan by the deadline and submits the PSLF form for the relevant time period.

## 4.2.4 Deceptive practice of misrepresenting PSLF eligibility to borrowers who may qualify for TEPSLF

Before ED announced the PSLF waiver, examiners found that certain servicers engaged in deceptive acts or practices when they explicitly or implicitly misrepresented that borrowers were only eligible for PSLF if they made payments under an IDR plan, when in fact those borrowers may be eligible for TEPSLF. One servicer’s training materials specifically advised representatives not to initiate a conversation regarding TEPSLF. Examiners identified calls where representatives told borrowers that there was nothing they could do to make years of payments under graduated or extended payment plans eligible for PSLF. In response to a direct question from a consumer about her nearly 12 years of payments, one representative explained that they “count for paying down your loan, but it doesn’t count for PSLF.”

This false information that borrowers could only obtain PSLF through qualifying payments under an IDR plan, when TEPSLF was available, was likely to mislead borrowers. Based on this false information, consumers considered other options besides PSLF like paying their loans down with lump sum payments. These misrepresentations also caused certain consumers to refrain from applying for IDR because they understood that they had not made any eligible payments while enrolled in graduated or extended plans.

## 4.2.5 Remediation for PSLF-related UDAAPs

Broadly, the PSLF violations identified relate to erroneous ECF and PSLF application determinations or servicers deceiving borrowers by providing incomplete or inaccurate information to consumers about the program terms. At present, the PSLF waiver can address many of the most significant consumer injuries by crediting certain past periods that were previously ineligible, assuming that consumers receive the benefits of the waiver as designed. In addition, Supervision directed the servicer to complete reviews of PSLF determinations and to identify consumers impacted by the violations. The servicer will audit the work and report on the remediation-related findings to the Bureau. Where consumers continue to face financial injuries from these violations, the servicer will provide monetary remediation. In addition, the servicer will notify consumers who were not otherwise updated on the status of their PSLF applications that certain information they received was incorrect, and it will provide those consumers with updated information.

- **Compliance Tip:** Entities should review Bulletin 2022-03, *Servicer Responsibilities in Public Service Loan Forgiveness Communications*, which details compliance expectations in light of the PSLF waiver. As explained in the Bulletin, “After the PSLF Waiver closes, direct payments to borrowers may be the primary means of remediating relevant UDAAPs.”

## 4.3 Income-Driven Repayment

Federal student loan borrowers are eligible for a number of repayment plans that base monthly payments on their income and family size. Over the years, the number of IDR programs has expanded, and today several types of IDR plans are available depending on loan type and student loan history. Most recently, ED implemented the Revised Pay As You Earn (REPAYE) for certain Direct student loan borrowers. For most eligible borrowers, REPAYE results in the lowest monthly payment of any available IDR plan.<sup>25</sup> By the end of 2020, more than 12 percent of all Direct Loan borrowers in repayment were enrolled in REPAYE.<sup>26</sup>

Enrollment in these plans requires consumers to initially apply and then recertify annually to ensure payments continue to reflect consumers' current income and family size. Consumers supply their adjusted gross income (AGI) by providing their tax returns or alternative documentation of income (ADOI). ADOI requires consumers to submit paper forms and specified documentation (such as paystubs) for each source of taxable income. The servicer then uses this information to calculate the consumer's AGI and resulting IDR payment. When computing the IDR payment, servicers must also consider consumers' spouses' Federal student loan debt.<sup>27</sup>

Consumers might not timely recertify their IDR plans for various reasons including, but not limited to, they may not have understood that recertification was necessary, or they may have encountered barriers in the recertification process. Likewise, some borrowers may have experienced a boost in income making the standard repayment amounts manageable. Regardless, many consumers who fall out of an IDR plan seek to reenroll at some point in the future. This creates a gap period between IDR enrollments. Unlike other IDR plans, REPAYE requires consumers to submit documentation to demonstrate their income during the gap period before they can be approved to return. Servicers use this documentation to determine whether consumers paid less during the gap period than they would have under REPAYE. If so,

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<sup>25</sup> Under the program's terms, consumers are generally entitled to make monthly payments equal to 10 percent of their discretionary income. After repaying for 20 years (on undergraduate loans) or 25 years (for borrowers who received any Federal loans to finance graduate school), any remaining balance on the loans are forgiven.

<sup>26</sup> An additional 5 percent of consumers were enrolled in the Alternative repayment plan – the plan in which borrowers are placed in if they do not recertify their income or enroll in another repayment plan. <https://studentaid.gov/data-center/student/portfolio>

<sup>27</sup> See <https://studentaid.gov/sa/repay-loans/understand/plans/income-driven#apply> ("If you do not meet the conditions for documenting your income using AGI—you have not filed a federal income tax return in the past two years, or the income on your most recent federal income tax return is significantly different from your current income—you must provide alternative documentation of income.").

servicers calculate catch-up payment amounts that get added to consumers' monthly income-derived payments.

During the COVID-19 payment suspension, ED did not require consumers to recertify their incomes. Consumers' payment amounts and duration of IDR enrollments were essentially paused in March of 2020. Recently, ED authorized servicers to accept consumers' oral representation of their incomes over the phone for the purposes of calculating an IDR payment amount. ED will not require consumers that provide their incomes this way to provide any further documentation demonstrating the accuracy of that amount.

In April 2022, ED announced it was taking steps to bring more borrowers closer to IDR forgiveness.<sup>28</sup> ED is conducting a one-time payment count adjustment to count certain periods in non-IDR repayment plans and long-term forbearance.<sup>29</sup> This waiver can help address past calculation inaccuracies, forbearance steering, and misrepresentations about the program terms. While the revision will be applied automatically for all Direct Loans and ED-held FFELP loans, Commercial FFELP loan borrowers can only become eligible if they apply to consolidate their Commercial FFELP loans into a Direct Consolidation Loan within the waiver timeframe. FSA estimates the changes will result in immediate debt cancellation for more than 40,000 borrowers, and more than 3.6 million borrowers will receive at least three years of credit toward IDR forgiveness.<sup>30</sup> The pool of borrowers who may potentially benefit from IDR forgiveness is large. As of March 2022, one third of Direct Loan borrowers in repayment were enrolled in an IDR plan.<sup>31</sup>

### 4.3.1 Unfair act or practice of improper processing of income-driven repayment requests

Examiners found that servicers engaged in unfair acts or practices when they improperly processed consumers' IDR requests resulting in erroneous denials or inflated IDR payment amounts. Servicers made a variety of errors in the processing of applications: (1) erroneously

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<sup>28</sup> <https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

<sup>29</sup> ED also announced that it was issuing new guidance to student loan servicers to ensure accurate and uniform payment counting, that it would track payments on a modernized data system, and that it would seek to display IDR payment counts on StudentAid.gov that borrowers could access on their own. See <https://studentaid.gov/announcements-events/idr-account-adjustment>.

<sup>30</sup> <https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

<sup>31</sup> <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/DLPortfolioByRepaymentPlan.xls>

concluding that the ADOJ documentation was not sufficient,<sup>32</sup> resulting in denials; (2) improperly considering spousal income that should have been excluded, resulting in denials; (3) improperly calculating AGI by including bonuses as part of consumers' biweekly income, resulting in higher IDR payments; (4) failing to consider consumers' spouses' student loan debt, resulting in higher IDR payments; and (5) failing to process an application because it would not result in a reduction in IDR payments, when in fact it would. These practices caused or likely caused substantial injury in the form of financial loss through higher student loan payments and the time and resources consumers spent addressing servicer errors. Consumers could not reasonably avoid the injury because they cannot ensure that their servicers are properly administering the IDR program and would reasonably expect the servicer to properly handle routine IDR recertification requests. The injury was not outweighed by countervailing benefits to consumers or competition resulting from the practice, as servicers should be able to process IDR requests in accordance with ED guidelines.

#### 4.3.2 Unfair practice of failing to sufficiently inform consumers about the need to provide certain income documentation when reentering the REPAYE payment plan

Consumers enroll in REPAYE by submitting a form with income documentation; they must recertify annually. Consumers who fail to recertify on time are removed from REPAYE and placed into the "Alternative repayment plan" which has monthly payments that are generally significantly higher than those under the REPAYE plan.<sup>33</sup> Many consumers attempt to reenroll in REPAYE creating a gap period that can range from one month to multiple years. Consumers who apply to reenroll in REPAYE must provide income documentation for the gap period. At one servicer, during a two-year period only 12 percent of applicants attempting to reenter REPAYE for the first time provided the required gap period income documentation. Among the 88 percent that were initially denied for this reason, 74 percent were delinquent six months later compared to only 23 percent of consumers who had been successfully reenrolled in REPAYE.

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<sup>32</sup> For example, denying an IDR application because there is no pay frequency listed on a paystub when in fact the paystub showed the frequency, or the borrower wrote the frequency on the paystub.

<sup>33</sup> Specifically, the monthly payment under this plan is the fixed amount necessary to repay the loan in the lesser of 10 years or whatever is left on the consumer's 20- or 25-year REPAYE repayment period.



Examiners found that servicers engaged in an unfair act or practice when they failed to sufficiently inform consumers about the need to provide additional income documentation for prior gap periods when reentering the REPAYE repayment plan. By failing to sufficiently inform consumers about the need for income documentation for gap periods, servicers likely caused the failure of many consumers to successfully reenter REPAYE with their first

applications because consumers were unaware of this requirement. This caused or was likely to cause substantial injury because consumers are deprived of the benefits of the REPAYE program (which often offers the lowest repayment amount among IDR plans). Consumers could not reasonably avoid the injury because their servicers did not inform them of the requirement to include income documentation during the gap period.

**Compliance Tip:** Entities should monitor consumer outcome data to identify potential unfair, deceptive, or abusive acts or practices. Delinquency rates and frequent denials on applications for payment relief may suggest the company is not meeting its obligations under the Consumer Financial Protection Act.

### 4.3.3 Deceptive practice of providing inaccurate denial letters to consumers who applied for IDR recertification

Starting in March of 2020, the CARES Act and subsequent executive orders suspended payments on all ED-owned student loans and temporarily set interest rates to zero percent. These executive orders also extended the “anniversary date” for consumers to recertify income for their IDR plans to after the end of the payment suspension.

Examiners found that servicers engaged in a deceptive act or practice by providing consumers with a misleading denial reason after they submitted an IDR recertification application. Servicers told consumers that they were denied because the executive orders suspending payments had delayed their anniversary date, which made their applications premature. In fact, servicers denied the applications because the consumers’ income had increased, in some cases rendering the consumer no longer eligible for an income-driven payment amount under their IDR program because their income-based payment exceeded the standard repayment amount.<sup>34</sup> These denial letters were likely to mislead consumers and affect important decisions related to their repayment elections. For example, a consumer who knew their application was rejected because of an increase in income (instead of the extension of the anniversary date) would know to refile if their income had actually decreased. And even if consumers did not have a decrease

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<sup>34</sup> In other instances, the payment increased but the consumer was still eligible for the income-based payment plan. Servicers’ policy was to deny applications before the anniversary date that resulted in increased payments.

in income, having information indicating that their IDR application was denied because of a payment increase would assist them in financial planning for future payments.

#### **4.3.4 Deceptive practice of misrepresenting eligibility of Parent PLUS loans for income-driven repayment and PSLF**

Parent PLUS loans allow parents to fund educational costs for dependent students. Parent PLUS loans are eligible for one IDR plan, ICR, if the loans are first consolidated into Direct Consolidation loans. Generally, to benefit from PSLF, borrowers with Parent PLUS Loans must consolidate their loans into Direct Consolidation loans and make qualifying payments under an ICR plan.

Examiners found that servicers engaged in deceptive acts or practices when they represented to consumers with parent PLUS loans that they were not eligible for IDR or PSLF. In fact, parent PLUS loans may be eligible for IDR and PSLF if they are consolidated into a Direct Consolidation Loan. These representations were likely to cause reasonable borrowers considering IDR or PSLF for Parent PLUS loans to forgo taking any future steps to pursue those programs. Examiners directed servicers to improve policies and procedures, enhance training, and improve monitoring to prevent future violations.

# 5. Conclusion

The Bureau will continue to supervise student loan servicers and lenders within its supervisory jurisdiction – regardless of the institution type. *Supervisory Highlights* can aid these entities in their efforts to comply with Federal consumer financial law and manage compliance risks. This report shares information regarding general supervisory findings, observations related to the recent transfer of millions of federally owned student loan accounts, and violations of the Consumer Financial Protection Act’s prohibition on unfair, deceptive, and abusive acts or practices.

The Bureau recommends that market participants – student loan servicers, originators, and loan holders – review these findings and implement changes within their own operations to ensure that these risks are thoroughly addressed. The Bureau expects institutions to incorporate measures to avoid these violations and similar consumer risks into internal monitoring and audit practices. Robust compliance programs seek to eliminate the problematic practices described in *Supervisory Highlights* while ensuring that consumers receive complete remediation for any past errors. Evidence of strong compliance programs that take these steps is a factor in the Bureau’s risk-based supervision program and tool choice decisions, including decisions on whether or not to open follow-up enforcement investigations. The Bureau expects institutions to self-identify violations and compliance risks, proactively provide complete remediation to all affected consumers, and report those actions to Supervision. Regardless, where the Bureau identifies violations of Federal consumer financial law, it intends to continue to exercise all of its authorities to ensure that servicers and loan holders make consumers whole.