Before the
CONSUMER FINANCIAL PROTECTION BUREAU
Washington, DC 20552

Notice of Proposed Rulemaking on Debt Collection Practices (Regulation F)	)	Docket No. CFPB-2019-0022

COMMENT OF
FEDERAL TRADE COMMISSIONER
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September 18, 2019

I write to outline concerns with the Consumer Financial Protection Bureau's proposed debt collection rule and its impact on the 44 million student loan borrowers and their families.

When it comes to the companies that collect student loan payments, consumers have little to no market power. Loan servicers and debt collectors work on behalf of lenders and creditors, not on behalf of borrowers. Despite the wide availability of affordable repayment plans, there are more than 9 million borrowers in default on their student loans, with many more in severe delinquency.[1] Student loan default deeply affects Americans of all ages. As the industry's primary regulator, the CFPB must ensure that any rulemaking keeps student loan borrowers in mind.

By way of background, since May 2018, I have served as a Commissioner on the Federal Trade Commission, which also enforces the Fair Debt Collection Practices Act. In 2016, I served as Special Adviser to the Secretary of Education, where I focused on consumer protection issues affecting student loan borrowers, including oversight of servicers and debt collectors. From 2010-2015, I served in several roles at the CFPB. The Secretary of the Treasury designated me as the CFPB's Student Loan Ombudsman, pursuant to Section 1035 of the Dodd-Frank Act. While at the CFPB, I led the agency's strategy on student financial services, and I was deeply involved

*This comment letter reflects my own views and does not necessarily reflect the views of the Commission or any other individual Commissioner. While I have narrowly limited my comment to specific issues related to student debt, I also voted to authorize Commission staff to file a separate comment raising other important consumer protection issues worthy of close attention.

[1] Over the past several years, I have published several analyses of student loan default. *See e.g.*, Rohit Chopra, *A closer look at the trillion*, CONSUMER FIN. PROTECTION BUREAU (Aug. 5, 2013), https://www.consumerfinance.gov/about-us/blog/a-closer-look-at-the-trillion/, and Josh Mitchell, *Student-Loan Defaults Rose by 1.1 Million in* 2016, THE WALL STREET J. (Mar. 14, 2017), https://www.wsj.com/articles/student-loan-defaults-rose-by-1-1-million-in-2016-1489498222. I have reproduced this analysis to generate this estimate. I encourage the Consumer Financial Protection Bureau to conduct similar analyses on a routine basis and make these results available to the public.

in the agency's supervision, enforcement, and research in the student loan servicing and debt collection industries.

Federal Student Loan Servicing and Collections. Americans owe $1.5 trillion in federal student loans under Title IV of the Higher Education Act.[2] The vast majority of this debt is collected by financial institutions under contract with the U.S. Department of Education's Office of Federal Student Aid (FSA). FSA was established as a "performance-based organization," allowing it to operate more like a private sector bank. While student loan contractors must generally bid for business pursuant to federal procurement law, FSA often crafts procurement solicitations in ways that advantage politically-connected incumbents, at the expense of competition and new market entrants. Over the years, I have observed that FSA generally preferences the interests of its existing student loan contractors over the interests of student loan borrowers. For example, despite repeated violations of law[3] by one of its largest contractors, Navient (formerly Sallie Mae), FSA has never taken meaningful administrative action to hold the company accountable. Given FSA's lax oversight of its contractors, this has led the CFPB, state banking supervisors, and state attorneys general to scrutinize these firms more closely. During my time at the CFPB, the agency identified serious deficiencies in the federal student loan collections industry.[4]

FSA recently announced plans to reconfigure its ecosystem of contracted servicers and debt collectors.[5] Currently, borrowers receive bills from and make payments to a contracted servicer. If the borrower is more than 270 days delinquent, the borrower's loan is transferred to a third-party debt collector, often referred to as a private collection agency (PCA). These PCAs are typically responsible for notifying borrowers about their rights and responsibilities, including the option to "rehabilitate" their loan by making a series of affordable payments. Recent procurement notices suggest that FSA will shift to a system that will retain contractors that can conduct both pre-default servicing and post-default collections.[6]

If the CFPB plans to update debt collection rules, it must take into account how these actions by FSA will reshape student loan collections, as well as the unique features of federal student loans.

Delinquency Trigger for Consumer Protections. First, the CFPB should ensure that any new regulations arm borrowers with rights and protections after a borrower is a certain number of days past due on a Federal Direct Loan, rather than when the loan is assigned to a third-party collection firm. Given that these loans are managed by a third-party financial institution and may

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[2] FED. STUDENT AID, *Fed. Student Loan Portfolio*, https://studentaid.ed.gov/sa/about/data-center/student/portfolio
[3] https://www.consumerfinance.gov/about-us/newsroom/written-testimony-of-rohit-chopra-before-the-committee-on-the-budget/ (last visited Sept. 17, 2019).
[4] *See e.g*., CONSUMER FIN. PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS (2015), https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf ("In one or more examinations of debt collectors performing collection services of defaulted student loans for the Department of Education, examiners identified collections calls, scripts and letters containing various misrepresentations to consumers").
[5] *See* Stephanie Eidelman, *NextGen Deadline Postponed Again, and ED Considers Selling Defaulted Loans*, INSIDEARM (May 2, 2019), https://www.insidearm.com/news/00045002-nextgen-deadline-postponed-again-and-ed-c/.
[6] FED. BUS. OPPORTUNITIES, SOLIC. NO. 91003119R0008, NEXTGEN BUS. PROCESS OPERATIONS, https://www.fbo.gov/index?s=opportunity&mode=form&id=4ccf4acdbe7d196698111dc16aa94616&tab=core&_cview=1 (last visited Sept. 17, 2019).

never be reassigned to a specialty collector in FSA's new collections ecosystem, the assignment trigger may not be appropriate.

Since the delinquent loan may never be reassigned, the CFPB should assess whether protections under the regulation should be triggered when the borrower is 90 days past due. Typically, student loan servicers furnish negative credit reporting information after a borrower is more than 90 days delinquent, which can have a significant impact on the borrower's credit score. In addition, FSA contractor compensation has typically been heavily dependent on the proportion of borrowers that are fewer than 90 days past due. The CFPB should not align its definition with the Higher Education Act's definition of default, where loans are generally treated as in default after 270 days of delinquency. This definition is a vestige of a now-discontinued federal student loan program and was developed prior to the establishment of broadly available income-driven repayment programs.

<u>Limiting Excessive Calls.</u> Second, the CFPB should ensure that student loan borrowers are not excessively called or harassed by student loan collectors. The proposed rule sets certain frequency limits on communications with borrowers.[7] As the notice recognizes, student loan borrowers accrue multiple loans over the course of their academic programs – they rarely have just one student loan. The proposed rule sets frequently limits based on the number of accounts, rather than the number of individual loans.[8]

Student lenders have wide discretion to place multiple loans under the same account number, or to assign different account numbers depending on the type of loan. In the collection context, this can lead to disparate treatment for similarly situated borrowers, and in particular can result in excessive calls for borrowers whose loans are spread across many account numbers. Given the ambiguity in how "account" can be defined and the potential for abuse, the CFPB should consider setting frequency limits based on the definition of "accounts" found in 12 C.F.R. §1090.106, which specifically addresses the issue of student loan servicing accounts. This regulatory provision defines an individual account as one where a financial institution is serving a specific borrower for a specific stream of fees from a creditor. If the institution is receiving separate streams of fees from multiple creditors, this could be an indicator that the accounts are truly distinct from one another. This modification can help protect student loan borrowers from excessive calls related to the same account.

Every day, there are thousands of student loan defaults in our country. This has a devastating impact on a borrower, reducing the likelihood that they can pass an employment verification check or ever purchase a home. Under multiple administrations, the Department of Education's FSA has made this problem worse by placing the interests of its contractors above the interests of student borrowers. As the student loan industry's primary regulator, the CFPB must do more to safeguard our economy and protect borrowers from abuse. Thank you for considering these comments.

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[7] While this comment does not address the specific frequency limit in the proposed rule, the CFPB's proposed limits seem excessive, as my colleague, Commissioner Rebecca Kelly Slaughter, describes in more detail in her comment letter.

[8] *Id.* at 23, 320 – 21.