Written Testimony of Jennifer Mishory
Deputy Director, Young Invincibles

Senate Committee on Banking, Housing and Urban Affairs
Subcommittee on Financial Institutions and Consumer Protection
Hearing on "Private Student Loans: Providing Flexibility and Opportunity to Borrowers?"
July 24, 2012

Chairman Brown, Ranking Member Corker, and other members of the Subcommittee on Financial Institutions and Consumer Protection: thank you for having me here today. My name is Jennifer Mishory and I am the deputy director of Young Invincibles.

About Young Invincibles

Young Invincibles began in the summer of 2009, out of the recognition that young people's voices were not being heard in major national debates that impact our future.[1] In a little more than a year, YI went from a group run out of a law school cafeteria to a national non-profit, non-partisan organization, representing the interests of 18 to 34 year-olds and making sure that our perspective is heard wherever decisions about our collective future are being made. We do this through innovative research and policy analysis, sharing the stories of young Americans, spearheading campaigns designed to educate, inform and mobilize our generation, and advocacy intended to change the status quo.

We have gained expertise in issues facing youth as they navigate the world of higher education, and extensive experience with the student loan market in particular. This past spring, we released a report detailing the experiences of high-debt borrowers with private and federal student loans.[2] The report was based on an online, self-selected survey of approximately 13,000 borrowers.[3] The responses also served as the basis for comments submitted to the CFPB detailing the experiences of private borrowers.

Also, this spring, I served as the consumer advocacy representative in the Department of Education's 2012 negotiated rulemaking on student loans, which gave me a unique understanding of federal loans, and with it, an in-depth understanding of how they interact with

---

[1] *See* Young Invincibles About Us Page, http://www.YoungInvincibles.org/about/.
[2] HEALEY WHITSETT & JEN MISHORY, NERA ECONOMIC CONSULTING & YOUNG INVINCIBLES, HIGH DEBT, LOW INFORMATION (2012), http://younginvincible.com/wp-content/uploads/2012/06/PUB_Student_Loan_Borrowers_FINAL.pdf.
[3] *Id.*

private market options.[4] In addition to this policy and research, we also engage extensively with young people facing these economic issues, to ensure that our policies and advocacy adequately reflect their actual needs. Young Invincibles just completed a 20-state, 40-city national youth bus tour, talking to young people from all walks of life – two-year, four-year, for-profit, non-profit students, non-college youth, recent graduates, and high school juniors and seniors trying to determine their next big step.[5] As expected, student debt was a prevalent topic, and the tour gave us a unique and more refined understanding of how higher education policies work on the ground.[6]

This combination of policy expertise, research, survey data, bus tour, and continued interaction with borrowers who share their stories has presented a unique lens through which to view the changing market. Indeed, the private loan market has shifted significantly in the past 10 years; early growth and looser, more predatory lending standards led to a significant increase leading up to the recession, which then dried up the credit market and contracted private lending, bringing tighter lending standards with it. Borrowers have encountered an array of difficulties amidst this marketplace, including unfair lending practices; inability to manage high payments in a tough economy; and consistent issues with customer service in dealing with these lenders. All parties, but particularly schools and lenders, must also do better to educate borrowers, as we found that:

- About two-thirds of high-debt borrowers in our survey did not fully understand the difference between federal and private loans, and
- About 80 percent of borrowers got their information on borrowing from schools.

Now, with new types of loans, and fewer, more dominant lenders issuing loans and looking to expand once more, stakeholders have a duel responsibility to 1) help struggling borrowers as they try to navigate difficult lending terms in the wake of the Great Recession, and 2) take action to ensure fair, transparent lending as the market once again evolves. Specifically, legislators, regulators, schools, lenders, and consumer groups should:

- Engage in outreach to federal high-debt borrowers to inform them about the new CFPB consumer complaint system, as many of those borrowers will also hold private loans;
- Consider ways to ease the burden on struggling borrowers, including restoring bankruptcy protections and creating federal refinancing options for private borrowers who would otherwise have qualified for federal loans;
- Take aggressive action to provide transparent information about lending options, making repayment terms clear well before the application process and easing access to federal loans, while engaging schools in a mandatory certification

[4] *See generally* Department of Education, Negotiated Rulemaking Committee; Public Hearings, 77 Fed. Reg. 25,658 – 60 (May 31, 2012) (to be codified at 34 C.F.R. ch. VI) *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-05-01/pdf/2012-10488.pdf.
[5] *See* Campaign for Young America, www.CampaignforYoungAmerica.org.
[6] *See* YOUNG INVINCIBLES, WHAT WE FOUND: A SUMMARY OF KEY FINDINGS FROM THE YOUNG INVINCIBLES NATIONAL YOUTH BUS TOUR 13-17 (2012), http://younginvincible.com/wp-content/uploads/2012/06/What-We-Found-Op1.pdf.

system for private loans.

Private Student Loans: A Changing Market

The private student loan market has undergone enormous changes over the past 10 years. As more students have enrolled in higher education over the past decades, and as tuition costs have increased, students have turned to debt to finance their education. Students have utilized private loans, often in addition to federal loans, for a number of reasons that I will discuss below.

Growth in the pre-recession 2000s

Private student loan debt accounts for roughly 15%, or $150 billion, of the $1 trillion outstanding student loan debt.[7] Much of the increase came in the drastic expansion of student debt from 2000 until 2008. Annual private student loan originations grew from less than $7 billion in 2001 to over $20 billion in 2008.[8] From 2005-2007 in particular, lenders increasingly engaged in predatory marketing of loans directly to borrowers, rather than requiring schools to sign-off on the need for the amount borrowed; they also loosened underwriting, which in turn made the loans riskier for students.[9]

Recession, legislation spurs changes

The Great Recession had an enormous impact on the private student loan market. First, when the market for private student loan asset-backed securities shrank, it lead to significant contraction in the market for private loans.[10] For example, as Figure 1 illustrates (*see page* 6), Sallie Mae's private originations tracked the broader private student loan market by peaking in 2007, and then drastically decreased in the wake of the 2008 financial crisis. In 2008, Sallie Mae originated $6.3 billion in new private student loans; that figure more than halved to $3.1 billion in 2009 and dropped again in 2010 to $2.3 billion.[11] Sallie Mae's originations count for roughly 30-40% of annual originations in the private student loan market.[12]

The changes to the traditional private lending market spurred the expansion of an additional type of private loan, known as institutional loans, within the for-profit college industry. For-profit colleges depend on private loans in part because, in order to receive federal loans and grants, a certain amount of their revenue must come from non-federal sources.[13] Observers and industry analysts have pointed to institutional lending programs as one answer to

---

[7] CONSUMER FINANCIAL PROTECTION BUREAU, PRIVATE STUDENT LOANS 3 (2012), http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.
[8] *Id.*
[9] *Id.*
[10] CHRISTINE HINES AND MICAH HAUPTMAN, BETWEEN A ROCK AND A HARD PLACE: COURTHOUSE DOORS SHUT FOR AGGRIEVED PRIVATE STUDENT LOAN BORROWERS, PUBLIC CITIZEN, July 2012, *available at* http://www.citizen.org/Page.aspx?pid=5515.
[11] Author's analysis of Sallie Mae Corporation earnings reports, 2008 – 2010, *available at* https://www1.salliemae.com/about/investors/stockholderinfo/earningsinfo.htm.
[12] SLM Corp., Q1 2012 Investor Presentation 18 (May 7, 2012), http://bit.ly/OdSB6M.
[13] DEANNE LOONIN, NATIONAL CONSUMER LAW CENTER, PILING IT ON: THE GROWTH OF PROPRIETARY SCHOOL LOANS AND THE CONSEQUENCES FOR STUDENTS (2011), http://bit.ly/gGGuuu.

this need for non-federal revenue after the traditional private lending market shrank.[14] Institutions expect very high default rates on these loans.[15] The College Board estimates that the market for these loans increased from $500 million in 2007-08 to about $720 million in 2010-11.

In the wake of the Great Recession, consumers continue to feel the devastating affects of the over-used, high-interest, poorly underwritten loans that were available in the mid-2000s. Borrowers are experiencing high unemployment and underemployment, and young borrowers face unemployment levels nearly twice the national average.[16] This increase in unemployment has exacerbated private loan delinquencies and defaults.[17] For example, gross defaults are triple pre-recession levels, and the percentage of loans that are 60 or more days delinquent is more than double.[18] Private loans have fewer options for relief during tough times than federal loans, and so the Recession's effects on private borrowers, detailed later, can be particularly painful.

Consolidation and transformation

Just as the credit crunch slowed private lending following the recession, in 2010 Congress passed the the Health Care and Education Reconciliation Act[19] which ended federal subsidies to private banks who originate federally-guaranteed loans. Private lending companies, which often held portfolios of both solely private loans and federally-guaranteed loans (or "FFEL" loans), found themselves with more limited lending options. The combination of these events further expanded the share of federal student loans and led many private lenders to reassess their role in the world of student loans.

The relevant players in the private student loan market began to merge and consolidate, and in some cases to leave the private student lending business entirely. For example, U.S. Bank has stated that it is leaving the private student lending business and would no longer accept

---

[14] *Id.*

[15] STEPHEN BURD, NEW AMERICA FOUNDATION, HIGHER ED WATCH, *UPDATED: NEW DATA ON PRIVATE LOAN BORROWING AT CORINTHIAN COLLEGES SHOULD RAISE ALARMS* ¶ 7 (2011), http://higheredwatch.newamerica.net/blogposts/2011/new_data_on_private_loan_borrowing_at_corinthian_colleges_should_raise_alarms-53264.

[16] *Compare* Federal Reserve Bank of New York, Student Loan Debt History, http://www.newyorkfed.org/studentloandebt/ (showing that there are many more young borrowers than older adult borrowers), *and* CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 7, at 44 (showing that and a higher percentage of young borrowers take out private student loans than older borrowers), *with* Another Slow Summer for Young Workers, http://younginvincibles.org/2012/07/another-slow-summer-for-young-workers/ (stating that the youth unemployment level for the past several years has been astronomical, often hovering around twice the national average), *and* HEIDI SHIERHOLZ, ET AL., ECONOMIC POLICY INSTITUTE, THE CLASS OF 2012: LABOR MARKET FOR YOUNG GRADUATES REMAINS GRIM, http://www.epi.org/publication/bp340-labor-market-young-graduates/ (stating that while college graduates generally fare better than non-graduates, their unemployment rate for college graduates is still higher than the overall national unemployment rate).

[17] CONSUMER FINANCIAL PROTECTION BUREAU, supra note 7 at 64,70.

[18] HINES, *supra* note 10.

[19] Health Care and Education Reconciliation Act, Pub. L. 111-152.

applications after March 29, 2012.[20] JPMorgan Chase restricted its private lending to existing bank customers, stating it would focus on its own customers given the decline.[21]

At the same time, large financial institutions have been buying up student loan portfolios. In 2010, Discover acquired Citibank's subsidiary, Student Loan Corporation ("SLC"), with its $4.2 billion in student loans and $3.4 billion of asset-backed securitization funding and liabilities. Later, it also bought Citibank's private student loan portfolio of $2.5 billion in private student loans.[22] Relatedly, Sallie Mae also began purchasing old FFEL loans from other lenders.[23] Wells Fargo also acquired Wachovia[24], leaving the private student loan market dominated by three major financial firms: Sallie Mae, Discover and Wells Fargo.[25]

Unsurprisingly, as lenders tightened their underwriting, the typical private loan borrower became more credit-worthy and students with worse credit history were increasingly required to get a parent to co-sign the loan. According to Sallie Mae's 2008 annual report, the average FICO score for new borrowers jumped 26 points to 738 and the percentage of cosigners increased from 57 to 74 percent.[26] In the second quarter of 2012, Sallie Mae boasted a 746 average FICO score and an 81 percent cosigner rate.[27]

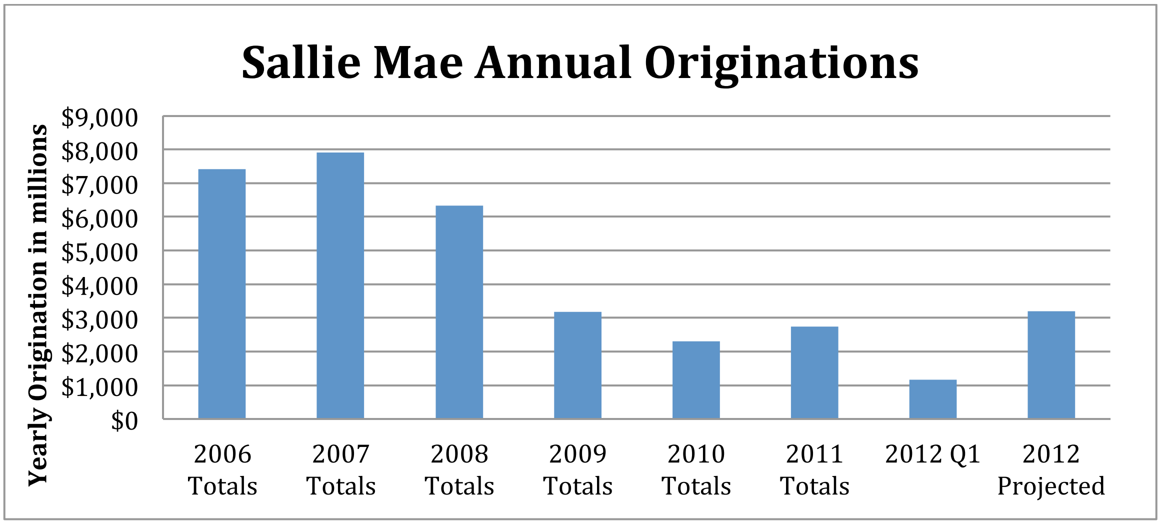
Recently, there have been signs that the private student loan market may again be on the rise. For example, Sallie Mae is projecting growth in new loans for the second consecutive year: in the first two quarters of 2012, Sallie Mae originated almost $1.5 billion in student loans, and

---

[20] Doug Schantz, *U.S. Bank Quickly Exits the Private Student Loan Market*, CHEAPSCHOLAR.ORG, March 28, 2012, http://cheapscholar.org/2012/03/28/u-s-bank-quickly-exits-the-private-student-loan-market/.
[21] Victoria Finkle and Andy Peters, *U.S. Bank, Chase Pull Back from Student Lending*, AMERICAN BANKER, Mar. 30, 2012, *available at* http://www.americanbanker.com/issues/177_63/us-bank-student-lending-cfpb-1048016-1.html.
[22]Discover Completes Acquisition of the Student Loan Corporation, pymnts.com, http://pymnts.com/news/businesswire-feed/2011/january/03/discover-completes-acquisition-of-the-student-loan-corporation-20110103005213/; *see also* David Benoit, *Discover to Buy Citi Student Loan Portfolio*, WALL STREET JOURNAL, Sept. 1, 2011, *available at* http://online.wsj.com/article/SB10001424053111904583204576544313228014344.html.
[23] In the first two quarters of 2012, Sallie Mae issued $5.6 billion in FFEL asset-backed securities, compared to $2.6 billion of private asset-backed securities – establishing themselves as an industry leader in the practice. The corporation plans to "actively and aggressively . . . acquire additional portfolios," demonstrated by their purchase of $2.8 billion in FFEL loans in the first two quarters of 2012. SLM Corp., 2012 Q2 Conference Call to Investors (July 19, 2012) (transcript available at http://seekingalpha.com/article/732671-slm-management-discusses-q2-2012-results-earnings-call-transcript?part=single).
[24] Press Release, Wells Fargo, Wells Fargo and Wachovia Merger Completed, January 1, 2009, *available at* https://www.wellsfargo.com/press/2009/20090101_Wachovia_Merger.
[25] *Compare* Sallie Mae, *Corporate Overview*, https://www1.salliemae.com/about/corp_leadership/, *and* WELLS FARGO & CO., WELLS FARGO & COMPANY ANNUAL REPORT 2011, 239 (2011), https://www.wellsfargo.com/downloads/pdf/invest_relations/wf2011annualreport.pdf, *with* STUDENT LENDING ANALYTICS BLOG, Discover Acquires Citi's Private Student Loan Business; Sallie Mae to Take Federal Loans, http://studentlendinganalytics.typepad.com/student_lending_analytics/2010/09/discover-acquires-citis-private-student-loan-business-sallie-mae-to-take-federal-loans.html.
[26] SLM CORP., ANNUAL REPORT, 8 (2008), https://www1.salliemae.com/NR/rdonlyres/A0450B59-A4A0-4586-9B4C-253FF335008B/10725/FINAL200810KBOW72868BOW012_BITS_N_1422.pdf.
[27] SLM Corp., *supra* note 22.

the company projects a year-end origination total of at least $3.2 billion.[28] Less detailed reporting by other relevant lenders makes it more difficult to estimate the growth in those companies.

Figure 1: Annual Sallie Mae Private Student Loan Originations.[29]



Private lenders have also begun to offer new loan products. The big three lenders all offer fixed-rate loans with the lowest interest rates ranging from 5.72 to 6.79 percent for those who qualify. For example, the Sallie Mae fixed-rate loan advertises an interest rate of 5.75 percent to 12.875 percent, depending on credit history and other criteria.[30] Executives say that these new loan options are increasing in popularity, with some schools looking at the fixed-rate option "as a favorable alternative to PLUS and Grad PLUS" loans.[31] It is clear that while some lenders have moved out of the space, others are intent on re-growing their market power after the dip of the Great Recession, and in fact have already begun to do so. It is unclear, however, whether the gradual improvement of the private loan market will once again loosen private market standards for student loans.

The Borrower Experience: Confusion with a Price Tag

[28] Press Release, SLM Corp. Sallie Mae Reports Second-Quarter 2012 Financial Results 30 (July 18, 2012) *available at* https://www1.salliemae.com/NR/rdonlyres/419DF6AE-C0BB-482B-81CA-3EF94DEB28A9/16488/381351ACL.pdf .
[29] Author's analysis of Sallie Mae Corporation earnings reports, 2006 – 2012, *available at* https://www1.salliemae.com/about/investors/stockholderinfo/earningsinfo.htm.
[30] Press Release, SLM Corp., Sallie Mae Introduces Fixed Rate Private Education Loan (May 7, 2012) *available at* https://www1.salliemae.com/about/news_info/newsreleases/Sallie+Mae+introduces+Fixed-Rate+Private+Education+Loan.htm.
[31] SLM Corp., supra note 22.

About 2.9 million students have private loans, owing approximately $150 billion in debt.[32] Last January, Young Invincibles conducted an online survey to research issues facing private loan borrowers. We received over 13,000 responses to the survey and released a subsequent report with NERA Economic Consulting on a subset of that population – those who had an undergraduate or graduate degree.[33] Certainly, borrowers with higher debt levels are more likely to participant in a self-selected survey, and so the population that we heard from represented borrowers with the highest range of debt levels. An examination of this population sheds light on some of the worst practices, both in origination and repayment, of private lenders. These debtors described a system of confusion and misinformation on the front-end of borrowing, along with surprise, heartache, and at times, financial disaster, as they attempted to repay their loans. As previously mentioned, Young Invincibles also recently completed a 20-state, 40-city national youth bus tour, where we hosted 100 youth roundtables to hear directly from college and non-college youth about the economic issues they faced.[34] Unsurprisingly, roundtable participants frequently raised issues surrounding student loans.

So what did we find? First and foremost, many students and borrowers are lost in a complicated and costly process. It is important to stress that students do have a responsibility to do their homework to understand the obligations of a student loan. However, the sheer complexity of student loan options and terms, and the fact that many young students are making their first major financial decision, necessitates that the key institutions involved take aggressive steps to ensure that students are informed consumers. Unfortunately, these institutions often fail this obligation, and many 18 year-old students are left taking out loans, sometimes as large as a small mortgage, with little guidance or protections.

About 65 percent of survey respondents misunderstood or were surprised by aspects of their student loans or the student loan process; similarly, about two-thirds of private loan borrowers, including those who took out both private and federal loans, said that they did not understand the major differences between their private and federal options.[35] Current law does require disclosures regarding federal options, and about private terms; however, these disclosures have proven to come too late, and, thus far, have been ineffective.[36] By the time students know that they must apply for private loans, or take on loans at all, they have already made college decisions.

Most borrowers in this survey – 80 percent – turned to their schools as trusted sources of information for these loans.[37] As one borrower told us, "I would have researched more, but I didn't know what to research." We have heard this over and over: borrowers don't know the right questions to ask their financial aid offices, yet they rely on them heavily – and those offices often do not have the right answers. For example, several borrowers were wrongly assured that they would be able to consolidate their private loans upon graduation into their lowest interest

---

[32] Janet Lorin, *Students Pay SLM 9.25% on Exploitive Loans for College*, BOOMBERG BUSINESSWEEK, June 5, 2012, *available at* http://mobile.businessweek.com/news/2012-06-05/students-pay-slm-9-dot-25-percent-on-exploitive-loans-for-college.
[33] *See* WHITSETT, *supra* note 2.
[34] YOUNG INVINCIBLES, *supra* note 6.
[35] *Id.*
[36] 15 USC § 1640 et. seq.
[37] *Id.*

rate loan. College financial aid offices are not serving our students adequately, but they are not alone. Roundtable participants during the Young Invincibles bus tour often stressed the lack of guidance throughout the process: high school students and their families frequently have no one to turn to as they're first making these decisions.[38] As students search for college payment strategies, career and college counseling in high schools are understaffed and undertrained to give adequate guidance.

It is problematic, yet unsurprising, then, that of the high-debt borrowers surveyed,

- About 20 percent mentioned their repayment terms as a source of misunderstanding and/or surprise;
- About 20 percent mentioned the amount of their monthly payments as a source of misunderstanding and/or surprise;
- About 15 percent mentioned their interest rates as a source of misunderstanding and/or surprise.[39]

Clearly, the information gap between what borrowers know and what they must know to make informed decisions is enormous. At the same time, many borrowers stated a frustration with their inability to qualify for federal loans.[40] Those that knew that federal loans were a better option at times found that they did not qualify for those loans, for example because their family income did not meet the standard for federally subsidized Stafford loans, despite the fact that they may have been paying for college independently.

We also hear frequently about significant problems after loans go into repayment and borrowers attempt to navigate life crises, repayment options, and the implementation of particularly draconian loan terms. These problems range from the unfair and incompetent customer service and loan practices, to the more extreme default and bankruptcy complications. I wanted to share just a few stories of borrowers, consistent with the types of stories we hear regularly from our members.

For example, Cassandra in Cleveland, Ohio, has about $90,000 in private loans through Sallie Mae, which has been particularly unforgiving.[41] When she was struggling and needed to make interest-only payments, Sallie Mae did not process her requests. She was denied for a deferment when her husband, one of the millions of Americans falling victim to the recession, lost his job. Another borrower told us that some months when he has extra income, he tries to put it against the principal of his highest interest loan to pay that one off more quickly.[42] But instead, Sallie Mae spreads these payments across all of his loans, making it a negligible amount and applying it to the lower interest loans as well; alternatively, Sallie Mae sets the extra payment aside as a credit toward the next month's interest-only payments, so that it doesn't touch

---

[38] YOUNG INVINCIBLES, *supra* note 6, at 13-6.
[39] WHITSETT, *supra* note 2, at 2.
[40] These observations are a combination of subsequent analysis of the approximately 13,000-person survey, as well as more in-depth interviews with survey participants.
[41] Telephone interview by Nicholas Kelly with Young Invincibles survey participant (July 2012).
[42] *Id.*

any principal balance. These issues are nearly impossible for inexperienced borrowers to anticipate on the front-end, and nearly impossible for borrowers to fight while in repayment.

At times, these problems become even more serious. One borrower from Massachusetts has had a particularly hard time financially since he graduated from college.[43] A few years ago, Fred was the victim of a violent crime, sustaining injuries to his face and head. With no health insurance, the medical debt he accrued further devastated his finances, and he was forced to file for bankruptcy. But with student loans nearly impossible to discharge in bankruptcy, he still left the proceedings with $51,000 in student debt.

Another borrower, Bridgette, told us that when she went into the Peace Corps after graduation, she was able to get her $20,000 in federal loans deferred, but her private lender would not defer her $46,000 in private loans.[44] To deal with this, her mother agreed to help and make the payments for her while she was gone.

A few months before Bridgette's return in 2009, her mother's father passed away. The emotional and logistical crisis that ensued led to one missed payment, and then a second one. After missing the second payment, the loan was charged-off and shifted to the recovery department, meaning that the full amount came due. She was told that the only way to move the debt back into regular repayment would be by making a lump sum payment for 60% of the balance, or $27,600.

Currently, she has it set up with the bank to make $300 monthly payments. Nothing has been put in writing and she does not get a monthly bill. Any statements as to the remaining balance or interest being charged only come after she makes an explicit request for that information. She is unable to check her balance or the receipt of payments online. She still gets bullying calls from the bank.

The debt shows up as delinquent every single month, even though she has made monthly payments for three years now. She has five separate loans, and each of them shows up as a distinct delinquency; unsurprisingly, her credit score has plummeted. Meanwhile, she has no hope of coming up with the lump sum required to rebuild her financial future, as none of her monthly payments can count toward the $27,500.

As borrowers come to us and share their experiences, they paint a picture of draconian loan terms, widespread misinformation and misunderstanding, and frustration with the continued inaction of political leaders. That picture is generally not pretty. As millions of borrowers struggle to deal with the after-effects of the pre-recession lending boom, and millions more attempt to navigate the more stringent post-Recession private loan market, we must act to ensure that these borrowers are not left out in the cold.

Looking Ahead: Tools for Success

[43] *Id.*
[44] *Id.*

Regulators, legislators in charge of market oversight and ongoing lawmaking, consumer advocates and lenders themselves should concern themselves with both helping current borrowers who are struggling, and educating new borrowers as to their best lending options. Borrowers are provided with little information before they enter the lending system, and must negotiate a maze of traps along the way – misinformation, unfair lending practices, and the recession – to name a few. The very institutions that have failed these borrowers up to this point must take action going forward.

Assist Current Borrowers

Stakeholders should ensure that current borrowers receive fair treatment that is responsive to the current harsh economic climate. While federal loans have many basic consumer protections built in, private student loans are often missing these key features, which are most critical during times of economic distress. Similar to the foreclosure crisis, it is not in our economy, our country, or our students' best interest to simply let millions of borrowers default on their private student loans.

First, we must rethink the way we treat private loans in bankruptcy. Past evidence and current predictions show that allowing private student loans to be discharged in bankruptcy has minimal impact on the ability of lenders to provide this option to borrowers.[45] In fact, when asked in a quarterly investment conference call this spring, Sallie Mae CEO Albert Lord agreed that it would be "reasonable" to allow for bankruptcy after a "3-4-5-6 year period."[46] However, he did take issue, in treating federal and private loans differently in bankruptcy. When asked about the impact on the private student loan pricing or the market in general, Lord stated that he didn't know "that one could measure the effect, it would be so small."[47] Industry has shown at least an openness to helping these borrowers; so, too, should Congress.

Second, the Department of Education should conduct outreach to high-debt, struggling borrowers to direct them to the new student loan complaint system established by the Consumer Financial Protection Bureau. Many high-debt federal borrowers also have private loans, and the Consumer Financial Protection Bureau, for the first time, provides private loan borrowers a place to go.[48] We have already referred numerous borrowers to the complaint system to seek help with their issues – be it an inability to get a response from a lender around unfair charges, concerns about financial distress and an ability to make payments, or general complaints with the ways in which schools and lenders have marketed themselves to borrowers. But we are only one organization, and there are millions of private loan borrowers. Email and other online outreach

[45] CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 7 at 74.
[46] SLM Corp., 2012 Q1 Conference Call to Investors, April 19, 2012 (transcript available at http://seekingalpha.com/article/511971-slm-s-ceo-discusses-q1-2012-results-earnings-call-transcript?part=single).
[47] *Id. See also* Discover Fin. Servs., Quarterly Report (June 25, 2012) (stating "The enactment of this legislation, which has been proposed in past Congresses without success, could adversely impact our student loan business and our borrowers, although we believe that our underwriting practices and the high percentage of our loans that have cosigners reduce the risk to our business from the possible enactment of this legislation"), http://biz.yahoo.com/e/120626/dfs10-q.html.
[48] Press Release, Consumer Financial Protection Bureau, Consumer Financial Protection Bureau now taking private student loan complaints (Mar. 5, 2012), *available at* http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-now-taking-private-student-loan-complaints/.

through the Department of Education could help provide relief to significant numbers of borrowers.

Finally, legislators should consider allowing private borrowers who did not take advantage of their full federal eligibility when they originally took out loans, can refinance their private loans and consolidate into federal loans. Student loan experts agree that students should generally exhaust their federal student loans options before turning to private loans but this often does not happen. For example, under this proposal, a borrower who took out $5,000 in federal loans and $5,000 in private loans when they were actually eligible for a full set of federal loans could refinance that $5,000 of private debt into federal debt. This would allow borrowers who may not have been adequately informed of their full eligibility to correct the mistake, while still compensating private lenders. Countless debtors, often full of regret, tell us that they would not have taken out private loans, but "I just didn't know." This would allow those borrowers to finally make that choice.

Ensure Fair Practices for Future Borrowers

Moving forward, there is much we can do to protect future student borrowers, particularly given the fact that the private loan may again increase. A consistent theme runs through the responses that we received in our private student loan survey, comments from participants on the bus tour, and feedback throughout our work around student loans: student borrowers feel lost in a complicated, murky, and costly process that too often renders them powerless. Certainly, students have an obligation to learn their rights; but the very institutions that they rely on to educate them often do not provide adequate information. The complexity of student loan options and terms often means that borrowers have a superficial understanding of their loans. Even as we move out of the Great Recession, the job market for young people starting their careers is projected to remain harsh.[49] Stakeholders should be vigilant to ensure a fair, transparent private loan market emerges as we climb out of a difficult economic climate, and create an environment where consumers hold enough information to make rational decisions for themselves.

First, we need aggressive action to improve student information when it comes to borrowing money. Entrance counseling should include a series of knowledge-testing questions about student loans that borrowers work through early in the process. Lenders should be required to obtain certification of financial need before disbursing private student loans – a practice that fell out of fashion earlier in the decade, but has seen a comeback lately.[50] Additionally, email and mail solicitations should include a clear explanation of repayment terms upfront, not just interest rate estimates and vague references to federal options. Borrowers should not have to apply for loans to understand the repayment terms associated with them; they should be able to shop carefully far in advance.

---

[49] *See* RORY O'SULLIVAN AND ALISTAIR JOHNSTON, YOUNG INVINCIBLES, NO END IN SIGHT? THE LONG-TERM YOUTH JOBS GAP AND WHAT IT MEANS FOR AMERICA (2012), http://younginvincibles.org/wp-content/uploads/2012/07/No-End-In-Sight-7.9.12.pdf.

[50] CONSUMER FINANCIAL PROTECTION BUREAU, *supra* note 7 at 3-4.

Second, many borrowers have come to us with difficulties in qualifying for a full set of federal loans because while the system holds them out to be dependent on their parents, their families in fact are not contributing to their higher education. Easing the application process to proving independence and better communicating the ways in which students can show their independence will facilitate greater access to better federal lending options.

Finally, legislators and regulators should ensure that borrowers fully understand the differences between the new private loans offering fixed interest rates and federal loans. Sallie Mae has reported that the fixed rate option has been well-received by schools especially, and that some schools have taken a look at fixed rate option as a favorable alternative to PLUS and GradPLUS loans.[51] While some students may qualify for lower interest rates on the fixed rate private loans, schools and lenders have obligations to ensure that students receive the full scope of information surrounding the terms of these loans. This information is important if these loans are targeted at specific types of students, like graduate students. For example, even if a future teacher and master's degree candidate receives a competitive interest rate on a fixed-rate private loan, he or she may be better served taking out the federal loan due to other terms involved, such as more flexible payments based on income or deferment during times of unemployment. These federal options are particularly helpful given that so many teachers lost their jobs over the past few years, and illustrate the type of decision-making that needs to go into loan choices. That teacher must have upfront, transparent information before making a borrowing decision.

The private lending market has been a roller coaster over the past decade. The rapid increase in the market in the first half of the decade resulted in a myriad of problems for consumers. Lenders aggressively marketed loans directly to consumers; students, with little background on the loans and other available options, took up private loans and often forewent better federal options. Many borrowers, often lacking full information about their options and facing a tough economic climate, hold unmanageable debt and face unfair lending practices. Meanwhile, while the private loan market shrank and consolidated during the Great Recession, signs show that this market is again growing. As the student loan market expands and evolves and youth unemployment remains high, stakeholders must assist struggling borrowers and set up the next generation of college-goers for a better financial future.

[51] SLM Corp., *supra* note 22.