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CFPB Initiative to Promote Student Loan Payment Plans

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The Consumer Financial Protection Bureau ("CFPB") responding to the growing amount of student loan debt, has initiated a request for information "to determine options that would increase the availability of affordable payment plans for borrowers with existing private student loans" on February 27, 2013. Comments must be received on or before April 8, 2013.

Among other things, the **notice and request for information** from the public published in the *Federal Register*, continues the process of the CFPB's exploration of opportunities to spur refinance and modification activity in the private student loan market. Specifically, the request seeks information on options to increase the level of affordable repayment options for both pre-default and post-default borrowers in distress who wish to repay their loans but may be lacking near-term ability to service their obligations.

According to the CFPB, there are more than 38 million student loan borrowers with over $1.1 trillion in outstanding debt. Further, a recent report by the CFPB and Department of Education submitted to Congress found that "as of the end of 2011, there were more than $8 billion in defaulted private student loan balances, with even more in delinquency."

Under the Consumer Financial Protection Act (Section 1035 of the Dodd-Frank Act) the CFPB student loan ombudsman has the authority to make "appropriate recommendations" to the Director of the Bureau, the Secretary of the Treasury, the Secretary of Education, and Congress.

The CFPB in the Notice recognizes that the "private student loan market might … benefit from further loan modification activity" like in the residential mortgage loan market. The Notice speculates that with concessions, creditors might increase the net present value of distressed loans through such modifications. The CFPB acknowledges, however, there are differences among private student loans and mortgages that might fundamentally impact creditors' economic calculus for determining whether to offer a change in repayment terms.

Also, the CFPB states that there are a number of potential impediments to offering alternative repayment options, including: "(a) Accounting guidelines that add complexity when offering alternative repayment options without charging off the loan; (b) operational and information technology limitations among loan servicers; and (c) incentive mismatch among trustees, administrators, and/or noteholders in asset-backed securities trusts and loan servicers."

The CFPB is interested in responses in the following general categories: scope of hardship; current options for borrowers with hardship; past and existing loan modification programs for other types of debt; servicing infrastructure; consumer reporting and credit scoring; lender participation; borrower awareness; and impact on spillover markets (e.g., access to mortgage credit).

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For more information, please contact ***Jonathan L. Pompan*** *at 202.344.4383 or* ***jlpompan@Venable.com****.*

Jonathan L. Pompan, a partner in the Washington, DC office of Venable LLP, co-chairs the firm's Consumer Financial Protection Bureau Task Force. His practice focuses on providing comprehensive legal advice and regulatory advocacy to a broad spectrum of clients, such as nonbank financial products and services providers, nonprofit organizations, and trade and professional associations, before the CFPB, the FTC, state Attorneys General, and regulatory agencies.