COMMENTS

to the

Consumer Financial Protection Bureau

[Docket No. CFPB-2015–0021]

Request for Information Regarding
Student Loan Servicing

by the

National Consumer Law Center
(on behalf of its low income clients)

and the

National Association of Consumer Bankruptcy Attorneys

July 13, 2015

The **National Consumer Law Center,**[1] on behalf of its low-income clients, and the **National Association of Consumer Bankruptcy Attorneys**,[2] submit the following comments in response to the Consumer Financial Protection Bureau's request for information regarding student loan servicing. We request that the Bureau and its agency partners (U.S. Department of Education and the U.S. Department of the Treasury) consider the unique problems that student loan borrowers face when they seek relief under the Bankruptcy Code to deal with non-student loan debt, but wish to provide for payment of their student loans. Many of these problems are directly caused by the lack of regulation or policy guidance on the proper servicing of student loan borrowers who are participating in a bankruptcy case.

The comments submitted here focus exclusively on the student loan servicing issues related to borrowers in bankruptcy. NCLC is submitting additional comments in a separate document on the non-bankruptcy servicing issues.

I. The Obstacles Consumers Face In Trying To Repay Student Loans In Bankruptcy.

A significant number of consumers who seek bankruptcy relief file cases under Chapter 13 of the Bankruptcy Code.[3] A Chapter 13 case is often referred to as a "reorganization" because it provides for the adjustment of debts. Unlike a Chapter 7 bankruptcy case, a Chapter 13 case generally gives the consumer the opportunity to adjust his or her financial affairs without liquidating assets. The consumer submits a plan to repay creditors all or part of the money owed them over a three to five year period, usually funded from the consumer's future income. If the plan meets the requirements set out in the Bankruptcy Code and is confirmed by the bankruptcy court, the consumer's payments under the plan are then distributed to creditors by the Chapter 13 trustee, or by the consumer directly in the case of certain long-term obligations such as home mortgages.

There are many reasons why consumers file Chapter 13 bankruptcy cases, though often it is to respond to a home foreclosure or auto repossession, deal with tax obligations, or restructure

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[1] Since 1969, the nonprofit **National Consumer Law Center®** (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC publishes a series of consumer law treatises including Mortgage Lending, Truth in Lending, and Foreclosures and Mortgage Servicing.

[2] The **National Association of Consumer Bankruptcy Attorneys** (http://www.nacba.org) is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA now has 3,000 members located in all 50 states and Puerto Rico.

[3] Approximately one-third (307,783) of the total bankruptcy filings in 2014 were chapter 13 cases. *See* http://www.uscourts.gov/report-name/bankruptcy-filings.

burdensome debt. Consumers who file Chapter 13 bankruptcy cases often also have student loan debt. Because students loans are not dischargeable in bankruptcy except when undue hardship may be proven,[4] many Chapter 13 filers would like to resume or continue making payments on student loans, and make use of administrative income-based repayment plans (IBR), while they are in bankruptcy.

As discussed more fully below, a significant problem confronting consumers is that student loans are typically placed in a forbearance status while the Chapter 13 case is pending. Even if consumers are current on their student loans and are filing bankruptcy to deal with other financial problems, and wish to remain current on their student loans while their Chapter 13 case is pending, the practices of student loan holders and servicers prevent them from doing so. Consumers are also prevented from remaining in good status on IBR plans, and from enrolling in such plans, while the bankruptcy is pending. Even worse, these consumers emerge from bankruptcy further in debt because interest and fees continue to accrue on the loans during the bankruptcy, and these charges are generally nondischargeable in the same way as the underlying debt.[5]

II. The Lack of Clear Guidance On The Servicing Of Student Loans When Borrowers Are In Bankruptcy.

The Department of Education (DOE) has not issued clear public guidance on student loan servicing for borrowers in bankruptcy cases. A regulation dealing with the Federal Family Education Loan (FFEL) Program provides that if the lender (or holder) is notified that a borrower has filed a bankruptcy petition, the lender must suspend any collection efforts outside the bankruptcy proceeding against the borrower.[6] Another section within this regulation provides that in Chapter 7 bankruptcy cases in which the borrower is not seeking an undue hardship discharge, the FFEL lender is instructed to continue to hold the loan notwithstanding the bankruptcy proceeding, and that "once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed."[7] Thus, for Chapter 7 filers, their student loans are effectively placed in forbearance for the three to four months that they are typically in the bankruptcy proceeding.

There are no comparable provisions in the regulation specifically addressing how a student loan should be serviced during the three to five years that a borrower is in a Chapter 13 case. Although the holder of a FFEL loan is instructed to file a bankruptcy proof of claim with the bankruptcy court if the borrower is in a Chapter 13 case, the regulation does not address what the holder or servicer should do when payments are received or other typical servicing issues.

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[4] 11 U.S.C. § 523(a)(8).

[5] If the student loan debt is nondischargeable, postpetition interest will not be discharged. *See In re* Kielisch, 258 F.3d 315 (4th Cir. 2001); *In re* Pardee, 218 B.R. 916 (B.A.P. 9th Cir. 1998), *aff'd*, 187 F.3d 648 (9th Cir. 1999); *In re* Jordan, 146 B.R. 31 (D. Colo. 1992).

[6] 34 C.F.R.§ 682.402(f)(2).

[7] 34 C.F.R.§ 682.402(f)(5)(ii).

Perhaps because there is no clear Department guidance or regulation, the holders and servicers of student loans in Chapter 13 cases apparently treat Chapter 13 debtors in the same manner as Chapter 7 debtors, by suspending any collection efforts and placing the loans in forbearance. In sum, student loans are effectively "put on a shelf" during the Chapter 13 case.

Absent a finding of undue hardship, Chapter 13 debtors are obligated to pay upon completion of their bankruptcy the amount owed on student loan debt that has not been paid during the plan. As mentioned, this includes any unpaid interest and fees that have accrued on the debt during the plan. Thus, Chapter 13 debtors often have a strong interest in providing for payment of student loan debt in their Chapter 13 plans. This goal is thwarted by the lack of a comprehensive bankruptcy servicing policy for student loans.

The government is also harmed as payments that could be made on student loans are directed to other creditors. For example, a student loan servicer in a recent case returned several uncashed checks it had received from the trustee in a Chapter 13 case, and later told the trustee that it would not accept further payments.[8] As result, approximately $16,000 was not paid on the debtor's student loans during the administration of her confirmed Chapter 13 plan. While it is unclear from the decision why the servicer refused to accept payments, this result likely would have been avoided if Department guidance addressed the application of payments under a Chapter 13 plan to student loan accounts.

A. Consumers Should Not be Prevented From Enrolling and Participating in IBR Plans While They Are In Bankruptcy.

To enroll in an IBR plan, a consumer must get out of default, either through a loan consolidation or rehabilitation. Subject to bankruptcy court approval, either of these strategies could be pursued as part of the consumer's initial Chapter 13 plan or as a subsequent (post-confirmation) modification of the plan. However, it is our understanding that holders and servicers of student loans will not process an application for consolidation or rehabilitation while the consumer is in a Chapter 13 case.

Mortgage servicers often adopted a similar position years ago, that borrowers should be precluded from participating in loss mitigation and loan modifications programs while they are in bankruptcy. However, that practice changed when government agencies adopted policies that recognize that consumers are eligible for loss mitigation programs while in a bankruptcy case and that applications can be processed without violating bankruptcy law. [9] The Department has not adopted similar policies for student loan programs.

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[8] *See* Educational Credit Management Corp. v. Pulley, 2015 WL 2146903 (E.D. Va. Apr 30, 2015).

[9] *See* Making Home Affordable Handbook for Servicers of Non-GSE Mortgages (version 4.5) Chapter II, §§ 1.2, 10.1; Fannie Mae Announcement 08-03 (Dec. 12, 2008); Dep't of Hous. & Urban Dev. Mortgagee Letters 2013-32 (Sept. 20, 2013) and 2008-32 (Oct. 17, 2008).

B. A Chapter 13 Bankruptcy Can Be An Effective Way For Borrowers To Cure And Avoid Defaults On IBR Plans.

One of the most commonly used provisions of the Bankruptcy Code permits consumers to provide for payment of long-term debts during the pendency of a Chapter 13 bankruptcy. This provision, 11 U.S.C. § 1322(b)(5), permits a Chapter 13 debtor to cure a default and maintain payments on debts "on which the last payment is due after the date on which the final payment under the plan is due." In other words, if payments on debts such as home mortgages and student loans extend beyond the proposed Chapter 13 plan term (typically three to five years), the consumer debtor may make use of section 1322(b)(5).

Under such a "cure" plan in Chapter 13, the debtor pays the ongoing periodic payments as they come due on the long-term debt while also making payments to pay back any pre-bankruptcy arrearage. The ongoing payments are disbursed to the creditor either by the debtor directly or by the trustee assigned to the case, depending largely upon local practice in the judicial district. Payments on the arrearage are disbursed by the trustee. The "cure" nullifies the contractual consequences of any pre-bankruptcy default and restores the pre-default status quo. Section 1322(b)(5) has been construed to apply even if the debtor is current on the loan and does not need to cure a default, as long as the debtor is proposing to maintain payments on the long-term debt during the bankruptcy.

The debtor's Chapter 13 plan additionally can provide that any pre-bankruptcy default is being "waived" pursuant to 11 U.S.C. § 1322(b)(3). This means, for example, that debtors who file for Chapter 13 relief after defaulting on a long-term student loan repayment plan should be able to reinstate and maintain participation in such a repayment plan. This can be very helpful for a consumer who has defaulted on an IBR and is not eligible under the Department regulations for loan rehabilitation or consolidation as a way to remedy the default, because for example they have had a prior rehabilitation or consolidation, or are subject to a wage garnishment.

Once again, our understanding is that holders and servicers of student loans, based on Department policy, refuse to process payments made under a Chapter 13 plan in a manner that would effectuate a cure of an IBR default and reinstatement in good standing. This practice is inconsistent with the Chapter 13 provisions of the Bankruptcy Code. It also violates the anti-discrimination provision of the Code, 11 U.S.C.§ 525, which prevents government agencies and federal student loan creditors from discriminating against a consumer debtor before and after the Chapter 13 case based on the bankruptcy filing.

C. Regulations Dealing With Mortgage Servicing Have Been Adapted To Address Borrowers In Bankruptcy.

The lack of regulations or guidance addressing the servicing of student loans in ongoing Chapter 13 cases may reflect concerns that loan holders and servicers will violate the bankruptcy automatic stay.[10] In Chapter 13 cases, the automatic stay serves to protect the consumer from collection actions while creditors' claims are being provided for in accordance with the proposed or confirmed plan. It does not prohibit creditors from accepting payments, either from the trustee or directly from the consumer in the case of long-term debts such as mortgages and student loans. For such long-term debts in which the consumer's plan provides that ongoing payments will be maintained, the automatic stay also does not prevent the creditor or its servicer from providing informational statements about the account such as periodic payment statements, provided that there is no harassing or coercive conduct by the creditor to collect the debt.[11]

Concerns about violating bankruptcy law were used by mortgage servicers for many years as an excuse for inadequately servicing mortgage loans in Chapter 13 cases. While not all mortgage servicing problems have been resolved, the servicing industry and regulators have come to recognize that normal servicing protocols can be adapted to conform to bankruptcy law.

In 2008, the Department of Housing and Urban Development (HUD) adopted a sensible approach to borrowers in bankruptcy when issuing Mortgagee Letter 2008-32 as guidance to FHA-insured lenders and servicers. HUD reconsidered its prior exemption from loss mitigation programs for borrowers in bankruptcy, noting that the "Department understands that contact with debtor's counsel or a bankruptcy trustee does not constitute a violation of the automatic stay and that waiting until a bankruptcy is discharged or dismissed before offering loss mitigation may be

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[10] Subject to several exceptions, the automatic stay stops creditors from taking collection action, pursuing or continuing a court case against the debtor, or seizing any property of the debtor based on debts that arose before the bankruptcy petition was filed. *See* 11 U.S.C. § 362.

[11] Morgan Guar. Trust Co. of N.Y. v. Am. Sav. and Loan Ass'n, 804 F.2d 1487, 1491 (9th Cir. 1986) (mere requests for payment and simple statements for informational purposes do not violate the automatic stay); *In re* Ramirez, 280 B.R. 252 (C.D. Cal. 2002) (mere mailing by a creditor of informational billing statements not a violation of stay); *In re* Knowles, 442 B.R. 150, 161 (B.A.P. 1st Cir. 2011) (simply filing a proof of claim, mailing an annual tax statement, or providing the debtor with an optional payoff statement are not violations of the automatic stay); *In re* Zotow, 432 B.R. 252, 260 (B.A.P. 9th Cir. 2010) (mailing of an informational notice describing increase in monthly escrow payments was not a violation of the plan because 1) there were no attempts to collect prepetition escrow arrearages, 2) the information contained in the notice was necessary and helpful to the debtors since any increase in their monthly escrow payments would affect the feasibility of their plan, and 3) these notices do not rise to the level of coercion or harassment); *In re* Schatz, 452 B.R. 544, 548 (Bankr. M.D. Pa. 2011) (servicer's action in mailing a mortgage statement to Chapter 13 debtor after commencement of the case did not violate the automatic stay because it was not an act to collect, assess or recover a claim against the debtor that arose pre-filing); *In re* Singh, 457 B.R. 790, 801 (Bankr. E.D. Cal. 2011) (the calculation and filing of change in mortgage payment cannot, in itself, be a violation of automatic stay, as this requires more harassing or coercive conduct by the creditor); Chase Manhattan Mortgage Corp. v. Padgett, 268 B.R. 309, 314–15 (S.D.Fla.2001) (stating that § 362(a) does not prohibit mere notice to a mortgagor in bankruptcy of an advance or escrow deficiency). *See also* Home Funds Direct v. Monroy (*In re* Monroy), 650 F.3d 1300 (9th Cir. 2011) (approving Chapter 13 plan provisions requiring servicers to provide monthly statements or coupon books, and notice of payment changes and fees).

injurious to the interests of the borrower, the mortgagee and the FHA insurance funds." HUD's Mortgagee Letter 2008-32 specifically requires mortgagees, upon receipt of notice of a bankruptcy filing, to send information to a consumer debtor's counsel about available loss mitigation options. While HUD noted that nothing in the Mortgagee Letter requires a servicer to directly contact a borrower in bankruptcy, HUD recommends in the letter that servicers should send information relating to the availability of loss mitigation directly to an unrepresented (pro se) consumer with a copy to the bankruptcy trustee, and that the communication should indicate it is not an attempt to collect a debt. These loss mitigation notification requirements in the Mortgagee Letter have been incorporated into a new FHA Handbook that will replace the Mortgagee Letter.[12]

Under the mortgage servicing regulations adopted by the Bureau in the 2013 RESPA and TILA Servicing Rule that became effective on January 10, 2014, most of the provisions apply when a consumer is in a bankruptcy case, including the requirements for processing loss mitigation applications (12 C.FR. § 1024.41), for promptly crediting payments (12 C.F.R. § 1026.36(c)(1)), for sending interest rate and payment change notices (12 C.F.R. § 1026.20), and for responding to information and error resolution requests (12 C.F.R. §§ 1024.35, 1024.36). Although the Bureau granted a temporary exemption to the early intervention (12 C.FR. § 1024.39) and periodic statement (12 C.F.R. § 1026.41) rules so that additional input from industry and consumer commenters could be evaluated, the Bureau has now issued a proposed regulation that would require servicer compliance with the requirements in most instances.[13] The Bureau has carefully considered the distinctions between Chapter 7 and Chapter 13 bankruptcy cases, and issues such as whether the debtor intends to provide for payment of the mortgage obligation in the bankruptcy case. The excellent analysis of the bankruptcy servicing issues provided by the Bureau and the final proposals in the rulemaking docket should serve as a template for any policy developed by the Department with respect to student loans.

III. The Practices Of Loan Holders And Servicers In Assessing Lump-Sum Collections Costs In Bankruptcy Cases.

Several recent bankruptcy cases highlight the serious problem of consumers who have been penalized, through the assessment of exorbitant collection costs, simply because they have filed bankruptcy. For example, in *In re Martish*,[14] the consumer had a federal consolidation student loan in the amount of $11,202.95, with an 9% interest rate. This was her only student loan debt. In 1998, the consumer filed a Chapter 7 case, which was later converted to a Chapter 13 case and concluded in 2001. Still unable to manage her growing student loan debt despite significant payments, the consumer filed a second Chapter 13 case in 2014. By the time this second case was filed, the consumer had made approximately $39,835 in payments on the student loan. The student loan holder, Education Credit Management Corporation ("ECMC"), filed a proof of claim in this case asserting that the debtor still owed $27,021.57. Included in the

[12] *See* FHA Handbook 4000.1 part III, Section A.2(i), effective March, 2016.
[13] *See* Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Proposed Rule, Docket No. CFPB–2014–0033, Fed. Reg. Vol. 79, No. 240 (Dec. 15, 2014).
[14] 2015 WL 167154 (Bankr. E.D. N.C. Jan 12, 2015).

alleged amount due was the assessment of a lump-sum charge for collection costs in the amount of $5,289.57. This penalty for collection costs represented 25% of the principal amount owed at that time. Although not discussed in the decision, it is likely that a similar lump-sum charge for collection costs was included in the proof of claim filed by ECMC in the earlier Chapter 13 case.

In *In re Harris*,[15] the consumer filed a Chapter 7 case seeking a discharge based on undue hardship of her student loan, which was initially in the amount of $10,804.20, with an 8% interest rate. Her request for a discharge was denied by the court. Prior to filing bankruptcy, she had paid approximately $14,017 on the loan, through wage garnishments and voluntary payments. When the consumer initiated the undue hardship proceeding, the student loan was transferred to ECMC. At the time of trial, ECMC claimed that the total amount due on the loan, including principal, interest, and fees, was $32,643.73. When ECMC took assignment of the loan, it assessed and recalculated collection costs and added $6,085.52 to the loan balance. This penalty for collection costs represented 25% of the principal amount owed at that time.

We understand that the Department of Education permits the cost of contingent fees that may be incurred to collect a student loan to be collected, and that an amount roughly equal to the commission the Department has paid its collectors may be deducted from borrowers' payments. Only the amount of payments left over after the commission is deducted is applied to interest and then principal, in that order.[16]

However, it is also true that student loan collectors are not permitted to assess an amount in advance for collection fees but must instead apportion a percentage of each *payment* toward collection fees.[17] In an effort to prevent up-front loading of collection costs, the Department has clarified that the borrower is not legally obligated to pay costs that have not been incurred. The Department has recognized that the practice of loading fees up-front can actually discourage repayment and in any case does not reflect actual costs.[18]

Despite the prohibition on loading fees up-front, student loan holders apparently take the view that a lump-sum amount for the entire collection fee can be assessed against the borrower upon the filing of a bankruptcy by the borrower, as if the borrower has effectively made payment of the entire loan balance when the bankruptcy is filed. This is inconsistent with bankruptcy practice. In Chapter 7 cases, payments are not disbursed on student loans in the bankruptcy process, and consumers rarely pay the entire student loan balance in a Chapter 13 case. Based on the facts in *In re Martish* where there were two successive bankruptcy filings, it does not appear

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[15] 2015 WL 128139 (Bankr. D. Neb. Jan 08, 2015).

[16] 34 C.F.R. § 682.404(f) (payments are applied first to collection costs and then to other incidental charges such as late charges, then to interest and principal).

[17] 34 CFR § 682.404(f). The Department has taken the position that a borrower is not legally obligated to pay costs that have not been incurred. Memorandum of Points and Authorities Supporting Motion to Dismiss, Hutchins v. U.S. Dep't of Educ., No. CV-F-02-6256-OWW-DLB, at 31 (E.D. Cal. filed Apr. 25, 2003) (citing H.R. Res. 300, 99th Cong. at 396 (1986), *reprinted in* 1986 U.S.C.C.A.N. 977). The agencies can charge the borrower only those costs that have been incurred as allocated to the particular payment.

[18] *See* 61 Fed. Reg. 60,482 (Nov. 27, 1996).

that the collection costs assessed in bankruptcy cases that are not attributable to actual payments made are later removed from the balance of the borrowers' loans when their bankruptcy cases are concluded.

The assessment of lump-sum collection costs, combined with the Department's payment application rules, make it virtually impossible for consumers who honestly attempt to pay off their debts from ever getting ahead (or stop losing ground). In fact, even after making substantial payments of more than two or three times the original amounts borrowed, consumers still owe amounts that are two or three times the original amounts borrowed. Such unconscionable collection practices for any other type of debt would be considered predatory.[19] It was similar practices by credit card companies that led to reform of that industry.[20] The Bureau and the Department should investigate whether student loan contractors are misapplying the Department's collection regulations for borrowers in bankruptcy.

IV. The Enforcement Of Automatic Default Clauses.

As the Bureau has identified, private student loan contracts are typically co-signed, and provide that the filing of bankruptcy by the borrower or any co-borrower is an event of default that will trigger acceleration of the loan.[21] These contract provisions are routinely enforced by private student loan creditors upon the filing of a bankruptcy, even if the non-filing borrower is current on the loan and intends to continue making payments. For example, many private student loan creditors will refuse to accept installment payments from a student borrower when his or her parent/co-borrower files bankruptcy, and will demand that the full loan balance be paid. Many consumers are unaware that their children's student loans will be put in default because of their bankruptcy filing.

Bankruptcy law addresses problems related to these contract clauses, but the solutions it provides are far from ideal and often require consumers to incur additional litigation costs. For example, section 365(e) of the Bankruptcy Code addresses whether these bankruptcy or "ipso facto" clauses are enforceable in bankruptcy. Because that section expressly provides that such clauses are not enforceable with respect to certain contracts (executory contracts and unexpired leases), many courts have held that they are not invalid under the Code with respect to other debts, such as installment loan obligations.[22] However, some courts have found that the Code invalidates bankruptcy clauses in contracts other than those specifically mentioned in section

[19] *E.g.*, Discover Bank v. Owens, 129 Ohio Misc.2d 71, 822 N.E.2d 869, (Ohio Mun. 2004).
[20] *See* Credit Card Accountability Responsibility and Disclosure Act of 2009, H.R.627.
[21] The Consumer Financial Protection Bureau reports that approximately 90% of private student loans were co-signed in 2011. *See* CFPB Mid-year Update on Student Loan Complaints, April, 2014.
[22] *E.g.*, *In re* AMR Corp., 485 B.R. 279, 296-97 (Bankr. S.D.N.Y. 2013) aff'd, 730 F.3d 88 (2d Cir. 2013); *In re* Yates Dev., Inc., 241 B.R. 247, 253 (Bankr. M.D. Fla. 1999), aff'd, 256 F.3d 1285 (11th Cir. 2001).

365(e)(1).[23] At least in those jurisdictions with favorable law, consumers may argue that these automatic default clauses in private student loans are not enforceable. This may require an affected consumer to initiate a proceeding in the bankruptcy court against the private student loan creditor.

If the co-borrower (often a parent) files a chapter 13 case, the co-debtor stay under Bankruptcy Code section 1301 protects the non-filing co-borrower. It prevents creditors from taking any action to collect the debt against co-borrowers who have not filed for bankruptcy, if the debt is being paid under the debtor's chapter 13 plan. Even if the debtor's plan does not provide for payment of the debt, the co-debtor stay remains in effect until it is lifted by the court upon a creditor's request. If a student loan creditor invokes the bankruptcy clause against the non-filing borrower by accelerating the note and demanding full payment while the co-debtor stay is in effect, this would be an attempt to collect the debt in violation of the co-debtor stay. Courts have generally permitted either (or both) the debtor and the non-filing co-borrower to file motions for contempt seeking sanctions against a creditor who violates the co-debtor stay.[24] However, the debtor or non-filing co-borrower will incur litigation costs in initiating such a proceeding.

If either the student or the co-borrower files a chapter 13 case, they can propose a plan provision enjoining the private student loan creditor from enforcing the bankruptcy clause or seeking collection from the non-filing student or co-borrower. Once again, however, this can involve additional litigation costs, particularly if there is an objection to the plan filed by the student loan creditor.

In virtually all instances, enforcement of automatic default clauses makes no economic sense for the creditor. The Bureau has already collected substantial information and data on the abuses related to the enforcement of such clauses.[25] This practice by private student loan creditors has caused and is likely to cause substantial injury to consumers, and the injury is not outweighed by any countervailing benefits to consumers or to competition.

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[23] Riggs Nat. Bank of Washington, D.C. v. Perry, 729 F.2d 982 (4th Cir. 1984); General Motors Acceptance Corp. v. Rose, 21 B.R. 272, 276 (Bankr. D. N.J. 1982).

[24] *In re* Juliao, 2011 WL 6812542 (Bankr. E.D. Mich. Nov 29, 2011) (motion filed by both debtor and codebtor); *In re* Bertolami, 235 B.R. 493, 495 (Bankr. S.D. Fla. 1999) (motion filed by debtor); *In re* Hughes, 2005 WL 1293982 (Bankr. M.D. N.C. May 2, 2005) (same).

[25] *See* CFPB Mid-year Update on Student Loan Complaints, April, 2014 and Annual Report of the CFPB Student Loan Ombudsman, Oct. 16, 2014.