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Student Loans and Financial Distress: A Qualitative Analysis of the Most Common Student Loan Complaints

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STUDENT LOANS AND FINANCIAL DISTRESS: A QUALITATIVE ANALYSIS OF THE MOST COMMON STUDENT LOAN COMPLAINTS

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ABSTRACT

Student loan servicers are the face of the U.S. student loan system, and they are not well-liked. Using the Consumer Financial Protection Bureau's (the CFPB) consumer complaint database, we study borrower perceptions of the student loan system. We qualitatively analyzed a sample of complaint narratives drawn from every student loan complaint ever filed with the CFPB. Our analysis of these complaint narratives reveals clear patterns of discontent in four primary areas: 1) a mismatch between ability to repay and repayment options, including problems with forbearance, deferments, the public service loan forgiveness program, income-driven repayment plans, and loan cancellation options; 2) customer service, including sudden and unexplained changes in payment obligations, 3) inappropriate payment processing, such as misapplying payments; and 4) unauthorized loans or outright scams. The first issue was, by far, the most common. Our results highlight areas where better regulation, whether through contract with the

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government, ex ante supervision by regulators, or ex post lawsuits in court, has the potential to improve the function of the student loan ecosystem.

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INTRODUCTION

Student loan debt is the second largest source of consumer debt held by Americans, standing at $1.57 trillion.[1] This amount is

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[1] *See, e.g.*, *Center for Microeconomic Data: Student Debt*, FED. RES. BANK N.Y., https://www.newyorkfed.org/microeconomics/topics/student-debt (last visitied Mar. 21, 2023) (noting that "student loan balances declined slightly to $1.57 trillion in the third quarter [of 2022]"). But some estimates peg student loan debt even higher. *See* Alicia Hahn, *2022 Student Loan Debt Statistics: Average Student Loan Debt*, FORBES (Sept. 19, 2022), https://www.forbes.com/advisor/student-

staggeringly high because most students borrow money to pay for post-secondary education.[2] But student loans are different from many other kinds of consumer debt because they are unsecured and loans are generally made without any sort of underwriting.[3] They require no down payment or collateral; they require only a promise to repay from the borrower's future earnings. Student loans are an economic necessity for nearly everyone seeking a postsecondary degree.[4] This fact creates the conditions that allow student loan lenders and servicers to take advantage of the asymmetrical power they maintain.

Borrowers are on the short end of this asymmetry: they are obligated to repay their debts, but they have little control over the conditions of repayment. Borrowers face many hurdles when attempting to repay their student loans, such as: financial difficulty in making payments; unemployment; and pursuing further education while their loan interest balloons. These and other obstacles force borrowers to interact with their lenders and loan servicers under less-than-optimal conditions. For many borrowers, their frustration was only compounded by such interactions. We now present the voices of student loan borrowers' experience, in their own words, of being on the wrong side of a power and an informational asymmetry.[5]

We studied borrower perceptions of the student loan system as documented in the Consumer Financial Protection Bureau's (the

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loans/average-student-loan-statistics/ (noting that student loan debt stands at $1.75 trillion).

[2] It's notable that student loan borrowing is not equal distributing across the population. For example, Black students are more likely to borrow than their peers and less successful in paying down their debt after graduating. *See* Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, CTR. AM. PROGRESS (Oct. 16, 2017, https://www.americanprogress.org/article/new-federal-data-show-student-loan-crisis-african-american-borrowers/.

[3] *See* 34 C.F.R. §668.32 (listing eligibility criteria for certain federal student aid, a list that does not include credit history); *see also* Dalié Jiménez & Jonathan D. Glater, *Student Debt is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES L. REV. 131, 193 (2020).

[4] Miller, *supra* note 2; *cf.* Kate Sablosky Elengold, *The Investment Imperative*, 57 HOUSTON L. REV. 1 (2019) (describing the forces that encourage students to borrow money, regardless of the cost, because of the perception that higher education always pays off).

[5] *See infra* Section 3.D for more about our information asymmetry concerns. We also note that we report the narratives as they appear in the CFPB's database. However, we have removed idiosyncrasies of the database, such as bracketing dollar figures and spaces added between parentheses, etc., for the ease of the reader. We have italicized quotations from the complaint narratives but have not used quotation marks.

CFPB) consumer complaint database. To do so, we reviewed a sample of complaint narratives drawn from every student loan complaint ever filed with the CFPB. Ultimately, we reviewed thousands of complaints and read hundreds of complaint narratives. In doing so, we heard the pain and frustration expressed by so many student loan borrowers. Many of the complaints are heartbreaking and full of despair. For example, one borrower wrote:

I have become delinquent on my private student loans due to an illness which prevents me from working. I tried to contact navient to ask for medical forebearence, but they say that my loans do not offer any recourse if i become ill or XXXX. now they are calling me 10 times a day and harassing my relatives as well. Navient makes me want to kill myself, i swear to XXXX i will if they don't stop CALLING![6]

In this paper, we do four things. First, we provide some quantitative analysis of the complaints to offer a snapshot of why people complain and against whom they file their complaints.[7] We find that complaints were overwhelmingly filed against just a few entities. In the data we reviewed, slightly more than three-quarters of all

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[6] *Consumer Complaint Database,* CONSUMER FIN. PROT. BUREAU [hereinafter DATABASE], Complaint ID# 2746958; *see also id.* Complaint ID #2393650.
Before I was educated on FAFSA. I was made to believe that my only option for school financing was private student loans. I went ahead and applied for a Student Loan with Wells Fargo. I am newly Graduated and finally got my first job. Of course being newly graduated and not having much experience my salary isnt as high as i would like it to be, once again due to lack of expereince. I am unable to pay the full amount of my Private student Loan. I have reached out multiple times to Wells Fargo to speak about options i have to relive me from some of this financial burden and they were not very helpful at all in wanting to help me. I can not afford the monthly payments they are requiring me to make and I often have to decide which bills to pay and not pay on a month to month basis because the weight of the financial burden is to heavy.

I also herd [sic] *that if I had a private student loan but was eligibale for a federal that i was able to convert this private loan into a federal student loan. I dont know how true that is or not. All i know is that I have tried to contract Wells Fargo multiple times about coming up with a repayment plan that would work for both of us and they are not working with me at all. If i am late on payments (After i told them i was unable to pay full amount) they start to call and harass me non stop to my cell phone and my parents work phone numbers.*

I am trying to take care of my responsibilities but they make it very difficult for me. I feel like I am drowning. ***Please Please help me***. (emphasis added).

[7] *See infra* Section 1: Data and Methods.

complaints were filed against just three companies: Navient, Nelnet, and AES/PHEAA.[8]

Second, we find that a few categories of complaints predominate. To reach this conclusion, we read hundreds of complaint narratives to identify patterns that emerged from the complaint data: most particularly, why people complain about certain firms. Our qualitative analysis of these complaint narratives reveals clear patterns of discontent. Complaints tend to focus on just a few areas, including unrepayable debts, terrible customer service, problems with payment processing, such as misapplying payments, and unauthorized loans or outright scams.

And it is the first category of complaints that truly stands out. Above all other areas, borrowers complain because there is a severe mismatch between their ability to repay and their repayment obligations. The reasons for the complaints vary, including problems with forbearance or deferments, income-driven repayment plans, and loan cancellation programs such as public service loan forgiveness ("PSLF"). Some of these complaints stem from bad servicing (a borrower has better options, but their servicer steers them in the wrong direction) and others from bad policy (a borrower lacks any good options for repayment). We discuss these differences below, but, overall, complaints about burdensome debts and the inadequacy of relief programs predominate.

Third, throughout the paper we provide examples of complaint narratives drawn directly from the CFPB database to highlight the voices of discontented student loan borrowers. We seek to elevate the voices of borrowers in the student loan system, voices not heard often enough in debates about the future of the student loan system.

Fourth, our thematic grouping of complaints allows us to highlight areas where better regulation, whether through contract with the government, ex ante supervision by regulators, or ex post lawsuits in court, can improve the function of the student loan ecosystem.

We explore these four issues in the sections that follow. In the immediately following section, we describe our data and methods. We discuss the scope of the CFPB's student loan complaint data, the areas

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[8] *See* Annual Report of the CFPB Private Education Loan Ombudsman, 28 Tbl. 4, CFPB (Oct. 2020), https://files.consumerfinance.gov/f/documents/cfpb_annual-report_private-education-loan-ombudsman_2020.pdf (last visited Mar. 13, 2023) (In the complete dataset, these companies represent "only" 68% of all complaints. According to data from the CFPB, Navient (1.89 complaints/10,000 borrowers), Nelnet (0.83 complaints/10,000 borrowers), and AES/PHEAA (1.54 complaints/10,000 borrowers) receive complaints at a much higher rate than not-for-profit servicers (0.12 complaints/10,000 borrowers).

in which borrowers filed their complaints, and the companies about which they complain.

In section two, we discuss our results, including the patterns that emerged from our qualitative analysis of the complaint narratives. We provide greater detail on the sorts of complaints we categorized as relating to unrepayable payment obligations, poor customer service, and payment processing issues. In this section, we also provide the bulk of the complaint narratives and where we hear the voices of student loan borrowers most clearly.

Finally, we discuss what to do about the themes that we identify in section three. We explain why loan cancellation is the best solution to resolving these complaints. If that proves to be unattainable, we discuss some areas where some complaints could be resolved through better regulation, better designed contracts, or even market self-regulation. We also explain some limits of private ordering and market regulation.

I. DATA AND METHODS

We downloaded all the student loan complaints posted in the CFPB's consumer complaint database as of August 9, 2022. As we highlighted in an earlier article, there is always a delay in posting complaints to the database.[9] And narratives are posted even more slowly than complaints without narratives because of the need to scrub personally identifiable information from the complaint narratives.[10] That said, as of August 9, 2022, there were 68,065 student loan complaints in our original dataset.[11]

When filing a complaint with the CFPB, a complainant must select the reason for their complaint from a preset list of choices.[12] Table 1 provides a list of the ten most complained-about issues in descending order.[13] Using the CFPB's own system, we focused our

[9] Matthew A. Bruckner & Christopher J. Ryan, *The Magic of Fintech? Insights for a Regulatory Agenda from Analyzing Student Loan Complaints Filed with the CFPB*, 127 DICKINSON L. REV. 49, 60 & n.115 (2022).

[10] *Id.*

[11] Because of delays in posting complaints to the database, it is not possible for another researcher to download the same exact dataset that we have. As a result, we are willing to make our dataset available to researchers upon request to the authors. The ratio of complaints—68,065—to borrowers—more than 42 million—does not mean that these programs are successful. *See id.*. at 56-7 (discussing reasons why borrowers may not complain).

[12] These are referred to as "sub-issues" within the CFPB's dataset.

[13] The fifth most common reason is not to provide any reason at all. 5,747 complaints were of this type.

attention on the four most common complaint categories. In order, these are (1) trouble with how payments are handled; (2) received bad information about my loan; (3) can't get flexible payment options; and (4) problem lowering your monthly payments.[14] We chose the top four categories because each, individually, represents approximately ten percent or more of all student loan complaints in the database. And, collectively, these four categories represent almost sixty percent of all complaints.

Table 1: Top 10 reasons for complaints about student loans

Reason for complaint	**Number of complaints**
Trouble with how payments are handled[15]	13,029
Received bad information about my loan[16]	12,439
Can't get flexible payment options[17]	7,637
Can't decrease my monthly payments[18]	6,615
Don't agree with fees charged[19]	5,165
Having problems with customer service[20]	5,080
Need information about your loan balance or loan terms[21]	2,929
Can't temporarily postpone payments[22]	2,615
Keep getting calls about my loan[23]	2,155
Account status incorrect[24]	1,693

[14] The CFPB subtly changed the names of many of the complaint sub-issues. We aggregated the categories that appeared to be effectively the same.

[15] This category was previously "trouble with how payments are being handled" and we've combined the two in our analysis.

[16] This category was previously "bad information about your loan" and we've combined the two in our analysis.

[17] This category was previously "can't get other flexible options for repaying your loan" and we've combined the two in our analysis.

[18] This category was previously "problem lowering your monthly payments" and we've combined the two in our analysis.

[19] This category was previously "don't agree with the fees charged" and we've combined the two in our analysis.

[20] This category was previously "with customer service" and we've combined the two in our analysis.

[21] This category was previously "need information about my balance/terms" and we've combined the two in our analysis.

[22] This category was previously "can't temporarily delay making payments" and we've combined the two in our analysis.

[23] This category was previously "keep getting calls about your loan" and we've combined the two in our analysis.

[24] This category was previously "account information incorrect" and we've combined the two in our analysis.

Table 1 provides a list of the top ten categories of complaints, but we were interested in the narratives that complainants provided. Thus, we looked at only a subset of these complaints. As described further in Table 2 below, it so happened that the top four categories of complaints with narratives are the same as the top four categories of complaints overall. Even the order is the same.

Table 2: Number of complaints with narratives

Reason for complaint	**Number of complaints with narratives**
Trouble with how payments are handled[25]	7,079
Received bad information about my loan[26]	6,891
Can't get flexible payment options[27]	3,439
Can't decrease my monthly payments[28]	3,047

To further make this effort manageable, we reviewed only a subset of the total number of complaints with narratives. Generally, our strategy was to review every 100th complaint in the two larger categories and every fiftieth complaint in the two smaller categories. In other words, the goal was to review approximately 60-70 complaints in each category, or 266 total complaint narratives. However, we ultimately reviewed far more than this because we reviewed hundreds of complaints as part of an earlier project.[29] Although these other complaints informed our review, this paper focuses on 329 complaints reviewed across these four complaint categories in connection with this new project.[30]

In the complete dataset, there were 535 distinct companies subject to at least one complaint. But, as shown in Table 3 below, a few

[25] This category was previously "trouble with how payments are being handled" and we've combined the two in our analysis.

[26] This category was previously "bad information about your loan" and we've combined the two in our analysis.

[27] This category was previously "can't get other flexible options for repaying your loan" and we've combined the two in our analysis.

[28] This category was combined with "Problem lowering your monthly payments."

[29] We originally downloaded a sample of student loan complaints and complaint narratives in March 2020 as part of a separate research project that was published as Bruckner & Ryan, *supra* note 9, at 23.

[30] This increase came from a greater review of complaints in the "can't get flexible options" category.

companies stand out.[31] Nearly half of all complaints were lodged against Navient (44.6%). Navient was formerly part of Sallie Mae (formerly SLM Corporation) until it was spun off as a separate entity in 2014.[32] It is a private company that services and collects on (but no longer originates) student loans. The second-most complained-about company is AES/PHEAA, a quasi-governmental agency that describes itself as a "student aid organization" that interacts with "millions of students and thousands of schools through its loan guaranty, loan servicing, financial aid processing, outreach, and other student aid programs."[33] AES/PHEAA garnered 17.1% of all complaints in our dataset. Nelnet was a distant third with 6.3% of all complaints. And only 5 other companies were subject to more than one thousand complaints in our dataset.

Table 3: Top 10 companies complained about in the complete dataset

Company	Number of complaints
Navient Solutions, LLC.	30,378
AES/PHEAA	11,672
Nelnet, Inc.	4,322
SLM Corporation	2,288
Wells Fargo & Company	1,856
Discover Bank	1,368
Great Lakes	1,186
ACS Education Services	1,125
Transworld Systems, Inc.	950
JPMorgan Chase & Co.	873

As noted above, however, we only reviewed a subset of the data. In the 329 complaints that we reviewed, there were substantial similarities to the complete dataset. Although there were only 44

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[31] While we don't have data on the market share of each company, the CFPB has shared data on the rate of complaints per 10,000 borrowers. And these three companies garner a disparately high ratio of complaints per borrower. *See supra* note 8.

[32] *See Frequently Asked Questions About the Navient Settlement*, MASSACHUSETTS ATT'Y GEN., https://www.mass.gov/info-details/frequently-asked-questions-about-the-navient-settlement#what-is-navient? (last visited Mar. 13, 2023) ("Navient was created in 2014, when the company then known as Sallie Mae (formally, SLM Corporation), separated its loan servicing and recovery business from its consumer banking business. After the separation, the company's loan servicing and collection operations were re-branded as Navient, and the consumer banking business continued under the Sallie Mae brand.").

[33] *About AES*, American Education Services, https://www.aessuccess.org/about/(last visited Mar. 13, 2023).

different companies in the complaints we reviewed, the top five most complained-about companies remained unchanged. And the top 10 most complained-about companies in the complete dataset remained present in our dataset, although the order changed somewhat.[34] For example, Great Lakes was the seventh most-complained-about company in the entire dataset but the sixth most-complained-about company in the restricted dataset. There were some other differences as well. For example, Navient represented almost 45% of all complaints in the complete dataset but almost 53% of all complaints in our sample. AES/PHEAA was represented in 15.8% of complaints in our sample compared with 17.1% in the complete dataset. And Nelnet's share increased from 6.3% to 6.7%.

Table 4: Top 10 companies complained about in our sample

Company	**Number of complaints**
Navient Solutions, LLC.	174
AES/PHEAA	52
Nelnet, Inc.	22
SLM Corporation	14
Wells Fargo & Company	8
Great Lakes	6
Discover Bank	4
ACS Education Services	3
PNC Bank, N.A.	3
(Tie) Citibank, N.A.; MOHELA; ECMC Group, Inc.; Equitable Acceptance Corp.; Transworld Systems, Inc.	2

After narrowing down our dataset, we reviewed the remaining narratives and to identify themes across complaints. The complaints tend to be fairly short: often only a few sentences and rarely more than two full paragraphs. Because we reviewed a modest number of complaints, we could retain an overall sense of the nature of the complaints. This allowed us to conduct a more impressionistic review than some previous researchers.[35]

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[34] In the complete dataset, JPMorgan Chase & Co. was the tenth most commonly complained-about company and Citibank, N.A. was the eleventh. But in the restricted dataset, Citibank, N.A. was in a five-way tie for tenth place.

[35] *Compare* Pamela Foohey, C*alling on the CFPB for Help: Telling Stories and Consumer Protection*, 80 L. & CONTEMP. PROBS. 177, 190 (2017) (reviewing and extensively coding 6,000 complaint narratives across a wide array of complaint categories).

We read through the complaints, highlighting key words and phrases that stood out to us as being the main thrust of the complaint. For example, we coded the following complaint as relating to loan cancellation: *I have submitted the Federal Loan Forgiveness Application to Navient twice once in the Fall of XX/XX/XXXX and in the Spring of XX/XX/XXXX. I when I called they said they never received the application however I have a fax transmission saying it was delivered successfully.*[36]

A second example is the following complaint made against AES/PHEAA: *Upon XXXX in 2018, I was making very little money and literally could not afford to start back repayment on my loans. I at some point was able to defer my loans with the intention of going back to school at the time. I recently realized that FedLoan has reported that I missed 42 payments over all open student loan accounts. I attempted to write a forgiveness letter to my creditors in early XXXX explaining my financial predicament. The accounts are still showing as late payment history on all 3 credit reports and it is affecting my credit score when applying for other financial lending.*[37] We coded this complaint as relating to deferment. Given the date of the complaint (April 4, 2022) and the year referenced in the complaint (2018), it appears that the deferment was never granted despite the student thinking it was ("*I at some point was able to defer my loans* . . .").

II. OUR RESULTS

We reviewed hundreds of student loan complaint narratives as filed in the CFPB's consumer complaint database. This allowed us to identify patterns in the complaint data. Although borrowers complain for various reasons and those complaints can sometimes seem idiosyncratic, there are clear patterns of discontent.[38] Our qualitative analysis revealed a focus on four primary areas: 1) a mismatch between ability to repay and repayment options, including problems with forbearance, deferments, the public service loan forgiveness program, income-driven repayment plans, and loan cancellation options; 2) customer service, including sudden and unexplained changes in payment obligations, 3) inappropriate payment processing, such as misapplying

[36] DATABASE, *supra* note 4, Complaint ID# 2859198.

[37] *Id.* Complaint ID# 5402686.

[38] *See generally* Pamela Foohey, C*alling on the CFPB for Help: Telling Stories and Consumer Protection*, 80 L. & CONTEMP. PROBS. 177, 179 (2017) (noting clear patterns within the database and focusing on the expressive role of the CFPB's complaint database).

payments; and 4) unauthorized loans or outright scams. The first issue was, by far, the most common.

In this section, we will share the words of those who have filed their complaints with the CFPB, which builds on the work of others who have mined the CFPB database before. Most notably, Professor Pamela Foohey, who shared the words of complainants to give voice to their anger, frustration, sadness, and fear.[39] We also find plenty of those types of complaints,[40] but our focus is less on the expressive power of complaints and more about the reasons borrowers give for their complaints.

A. Mismatch between ability to repay and repayment options, including problems with forbearance, deferments, and the PSLF program

We coded complaints for this category if the complainant claimed to have outsized loan payments and sought a more feasible payment plan. In addition, we coded complaints for this category if the complaint appeared to relate primarily to issues with forbearance, deferments, the PSLF program, or other loan cancellation programs, whether that problem related to getting into the program in the first instance, being inappropriately steered toward an option they didn't want, or otherwise. In all, we describe five sub-issues within this theme: (1) an inability to repay or a servicer's unwillingness to adjust payments; (2) being placed in the wrong repayment plan; (3) trouble signing up for income-based repayment plans; (4) other problems with loan cancellation and income-based repayment programs; and (5) inability to switch among repayment options.

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[39] *Id.* at 190 (reviewing 6,000 complaint narratives and, among other things, coding them as relating to "six emotions that I predicted would [] have the greatest potential—individually or jointly—to motivate people to publicly voice their grievances: anger, disgust, sadness, fear, shame, and guilt." She also coded a "frustration" variable because she thought it "may be a precursor to or continuing fuel" for the other six emotions she coded). *See also* Sophie B. Laing, *The Best, or the Worst, of Both Worlds? An Investigation of State Student Loan Lending*, (Mar. 2023) (unpublished manuscript) (on file with author) (analyzing over 1,000 student loan complaints made to the CFPB against state student loan agencies, finding generally that borrowers complained about the same issues we find, in addition to state loan-specific complaints about deceptive advertising).

[40] *See supra* note 6 for two examples; *see also supra* note 41 for another.

1. An inability to repay or an unwillingness to adjust payments

A very common borrower complaint was that their payments were outsized relative to their ability to pay. Borrowers commonly mentioned the need for a more feasible payment plan. For example: *I received a statement from [AES/PHEAA] stating the forbearance period is expiring and my next payment is over $400.00 . . .! The whole point of this complaint was because I needed lower payments per month, not to be put in forbearance . . . I still have no resolution on getting a lower payment per month and can not afford a payment of over $400.00. Please help?!?*[41]

Borrowers in this category often suggest that they are being charged unreasonable or even outrageous interest rates.[42] Sometimes they claim that those interest rates increased greatly with neither warning nor explanation.[43] Interest rates above ten percent are commonly noted.[44] High interest rates may help explain why some borrowers are unable to reduce their total obligation despite paying their loans for multiple decades.[45]

What's common about all of these complaints is that borrowers note that their monthly student loan repayment obligation causes them great hardship, because there was no reasonable way for the borrower to make the payment without compromising on basic necessities, such

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[41] DATABASE, *supra* note 4, Complaint ID# 1956517.

[42] *See, e.g.*, *id.* Complaint ID# 2384046 ("*the interest on my loans have been astronomical and almost fabricated in my opinion.*"); *id.* Complaint ID# 2296168 ("*My interest rates are outrageous and variable.*").

[43] *See, e.g.*, *id.* Complaint ID# 2869999 ("*My student loan payments had been around $340.00 a month for several years and without notice in XX/XX/2018, the payment went up to $720.00 a month* . . . .").

[44] *See, e.g.*, *id.* Complaint ID# 2297086 (asserting they had an initial interest rate of 12% on one loan and 11.75% on another, but those rates increased to 12.375% and 12.625%); *id.* Complaint ID# 2592185 (private loan with an interest rate that started at 11% and increased to 12% without satisfactory explanation); *id.* Complaint ID# 3095125 ("*Navient continually raises my interest rate. Every year, it goes up at LEAST .5 %, and it is currently at 10.75 %; up .75 % this year alone.*").

[45] *Cf. id.* Complaint ID# 5143045 ("*. . .I've been trying to pay my loans for 21 years. . . . Also I do not understand why my loan balance has not gone down under the IBR plan. In the 22 years I have been with Granite State Management. I have been making payments but have not seen any movement in my loan balances. I don't understand how the government can set us up for failure in repaying these loans. Please help. . .*"); *id.* Complaint ID# 3041777 ("*I am a public service employee with over 20 years of service. Navient failed to tell me that I could re-finance the student loan and receive public service forgiveness. I have paid on this loan for over 132 months.*").

as medical expenses and transportation, or no way to build a financial cushion against future economic hardships.[46]

Five examples of complaints in this vein are as follows:

- *I owe an outrageous amount of money and therefore they want me to pay an outrageous amount each month. I can't afford the payments they want me to pay. . . . I literally have to go without groceries just to pay this bill because I don't want to default on my loan and have that reported on my credit report.*[47]

- *I cannot get ahead in life due to my debt. My payments are too high, I even went to a state school. . . . My credit is ruined, I cannot afford a new car for my XXXX son to ride safely in. On top of this all I am harassed daily by Navient. I made it clear I cannot afford what they want from me while trying to pay for necessities to live.*[48]

- *In total I borrowed $48000.00 dollars for college. Since 2005 I have been paying my loans on time and have only paid $15000.00 in the [principal] balance with $22000.00 going towards interest! This is on a $48000.00 LOAN! I have been left with no options but to let this go delinquent . . . PLEASE help, the only reason I stopped paying was due to . . . having to pay medical bills so that I could keep seeing the doctor. This is urgent.*[49]

- *I was never offered an affordable payment until the loan balance more than tripled and now Navient is saying I have to pay 10% of my earnings. . . . I really have not had sufficient income to pay these loans. I still live paycheck to paycheck and will never get this debt paid in my lifetime.*[50]

- *After I graduated my exhusband ran away with our children to XXXX and so I had to put my loan payments on hold in order to pursue my children to try to bring them*

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[46] *See also id.* Complaint ID# 2432824 ("*I can't get engaged, married, a house or even live because of my loan payments!*") (edited for conciseness).

[47] *Id.* Complaint ID# 2301233.

[48] *Id.* Complaint ID# 2654839.

[49] *Id.* Complaint ID# 2854345.

[50] *Id.* Complaint ID# 2791205.

> *back. This lasted longer than expected and so my loan had to be refinanced. . . . i don't know what to do. I want to pay off the original $12000.00 I borrowed only. This added interest is killing me.*[51]

Borrower complaints of this type regularly tell stories of extraordinary personal hardship that causes them difficulty in repaying their loans. While this is a problem all by itself, it is compounded when, according to their complaint narrative, their servicers did not work with them to make their repayment amount affordable to them. Their narratives evince a sense of helplessness that elicits sympathy, but their core claims are about the inflexibility of repayment options and servicers' unwillingness or inability to help them in their time of need.

For example, four borrowers wrote complaints along these lines:

- *After Hurricane florence hit the carolinas I called in to see about putting my payments on hold . . . and basically I was told that until i'm homeless and hungry they don't care how I make the payments they just need to be paid. . . .*[52]

- *Navient continually raises my interest rate. Every year, it goes up at LEAST .5%, and it is currently at 10.75%; up .75% this year alone. I have tried contacting them to lower my interest rate (I have a near perfect repayment history with them) but they always tell me there is nothing they can do....*[53]

- *I applied to NAVIENT for a ... lower payment Income Based Repayment plan and have NOT recieved anything as to the status to my request to date. I am a XXXX on fixed benefit income, and really CANNOT afford to repay this student loan. Am I eligible for loan Forgiveness? Thank you for Any HELP!!*[54]

- *My original loan amount (principal) was just over $6000.00 as of the year 2006. Over the course of years, I was never offered any viable alternative when I was*

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[51] *Id.* Complaint ID# 2818204.
[52] *Id.* Complaint ID# 3037832.
[53] *Id.* Complaint ID# 3095125.
[54] *Id.* Complaint ID# 2301307.

> *struggling, other than forbearance. As a result, I have paid in interest, the amount of the original principal amount, and am being told that I still owe $6000.00. This whole experience with Navient is one that organized criminals would envy. This criminal financial instrument they use, while denying borrowers of reasonable options. - I have never defaulted on my loans, but I may soon have no choice. I took out loans for $6000.00. Paying up to $18000.00 is the definition of usury. This is criminal. I should have been informed about other options, other than forbearance.*[55]

2. Wrong repayment plan

Another common source of complaints was from borrowers who felt that they had been enrolled in the wrong repayment plan or who were unable to transfer to another repayment plan. Complaints of this type included many borrowers who were placed in forbearance by their servicer. Sometimes borrowers expressed that they thought they had successfully placed their loans into one of these non-payment statuses, but later found that their loan payments were still due. Others indicated that borrowers had been "steered" toward forbearance as the only option available to them.[56] The last category of borrowers complained about being pushed into forbearance or deferment. Sometimes forbearance or deferment would (allegedly) be presented as the only option available to borrowers when they were unable to make the monthly payments.

Six pithy examples of this type of complaint are:

- *I've been steered into forbearance many times and not told about payment dates…almost tripling my loans.*[57]

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[55] *Id.* Complaint ID# 2935229.

[56] Navient was sued for allegedly using unfair and deceptive trade practices to steer the borrowers into forbearance. The servicer agreed on a settlement with claimants. *See* Adam S. Minsky, *Don't Qualify for the Navient Student Loan Settlement? Here are Some Options.*, FORBES (Jan. 18, 2022), https://www.forbes.com/sites/adamminsky/2022/01/18/dont-qualify-for-the-navient-student-loan-settlement-here-are-some-options/?sh=23ca2f31691b.

[57] DATABASE, *supra* note 4, Complaint ID# 2299551.

- *Every time I call to ask, they say I should just do a forbearance. I do not want to keep doing a forbearance. I want a reasonable payment....*[58]

- *XXXX XXXX, who is now Navient, harmed my student loan when I did a repayment status. They steered me towards several forebearances throughout the life of my loan.*[59]

- *Navient forced me into forbearance and then to consolidate my loans with another service provider.*[60]

- *I came across financial difficulty. When I attempted to lower payments or work out an agreement navient would always push me to deferment or forbiddance. They have always reported me late to the credit bureau, charged a TON of interest, and late fees. Was not willing to work with me.*[61]

- *When I finished school I got a job, then was laid off, then got unemployment then got a job (temp). I went from unemployment to employment then back to unemployed with barely any ability to pay my loans off. I asked for help to pay a minimum and every tie was told to file forbearance. I did this for four years! My interest just kept going up and up.*[62]

Others complained that they were placed in forbearance without their consent or without a clear understanding of what this status meant. For borrowers who were or thought they were in a non-payment status but eventually found that they had missed some payments, it was often unclear whether the students' deferral or forbearance had simply lapsed after a set period, or whether they were never successfully enrolled in an appropriate program for their situation. In either case, borrowers complained that they had suffered ill effects to their credit scores because payments were reported as past due. Although these comments do not often say so explicitly, it seems plausible that more affirmative and accurate communication from their loan servicers would have helped.

Two examples of complaints of this type are:

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[58] *Id.* Complaint ID# 2299274.
[59] *Id.* Complaint ID# 2635631.
[60] *Id.* Complaint ID# 2426643.
[61] *Id.* Complaint ID# 2299323.
[62] *Id.* Complaint ID# 2602891.

- *My private student loans they were supposed to be in deferment when I reported extended unemployment well they never were deferred my credit was ruined and they are reporting and reaging old debts every month as if they are new. There was an astronomical amount of interest and fees added and I don't even know if I owe for all of these loans. They are old and were supposed to be deferred by XXXX they were bought by Navient and they are reporting illegally.*[63]

- *Upon XXXX in 2018, I was making very little money and literally could not afford to start back repayment on my loans. I at some point was able to defer my loans with the intention of going back to school at the time. I recently realized that FedLoan has reported that I missed 42 payments over all open student loan accounts. I attempted to write a forgiveness letter to my creditors in early XXXX explaining my financial predicament. The accounts are still showing as late payment history on all 3 credit reports and it is affecting my credit score when applying for other financial lending.*[64]

Other borrowers seem to have a clearer understanding of their actual repayment status, but they're unhappy with it. Many express that they feel stuck in a forbearance status. Being stuck in forbearance status, where interest continues to capitalize, can make repayment of the loan seemingly unreachable.

These two complaints highlight some of the claims of and problems with of being "stuck":

- *For the life of the loan, since XXXX , not once have I been offered a reasonable amount that I can pay. I go through this every year. The last time, in XXXX, I was offered to make monthly payments of over $500.00. I keep getting on forbearance year after year after year. My loan has ballooned from about $35K to almost $55K. I am able to make reasonable payments, not an amount that puts me in a position of having to choose between daily needs and repaying a debt. That's why I always end up in*

[63] *Id.* Complaint ID# 1840867.
[64] *Id.* Complaint ID# 5402686.

forbearance yet again allowing for Navient to balloon the loan.[65]

- *I am put on deferment or forbearance. I do not like these options it does nothing to assist with the interest at all so the balance keeps getting larger and larger. . . .*[66]

3. Difficulty signing up for income-based repayment plans

Complainants sometimes claimed that servicers represented to them that forbearance was their only option, or that they made it so difficult to sign up for an income-driven repayment plan that forbearance became their only de facto option.

Consider the following four narratives:

- *NAVIENT is intentionally delaying the approval of income-based payment plan application forcing me to repeatedly ask for administrative forbearance. . . .*[67]

- *I've been struggling to make my payments and Navient made it difficult to access certain programs to restructure my repayment. They made it difficult by allowing me to sign up for certain repayment options online, while others required printing out a form and filling it out by hand in order to sign up. I'm not an expert, but it seemed like the options you could sign up for online would make them more money in interest. I'm now in my second forbearance and not sure how I will be able to make my payments once it becomes current again in XXXX. . . .*[68]

- *Navient encouraged me to put my loans into forbearance during residency which continued into fellowship. I was not given information regarding income based repayment options which would have been a better option. I felt very misled and have increased repayment amounts due to this (which was a total of 6 years). They took advantage of me and did not give me all the information I*

[65] *Id.* Complaint ID# 2467257.
[66] *Id.* Complaint ID# 2562340.
[67] *Id.* Complaint ID# 3215178.
[68] *Id.* Complaint ID# 2724481.

needed to make educated decisions, decisions within my best interest.[69]

- *After XXXX school, I could not afford my student loan payments. Several times between XXXX and XXXX, I contacted my loan provider navient for relief. Despite informing them of my employment in public service as a XXXX XXXX, navient never informed me of income based repayment or forgiveness. Instead I was told forbearance was the only option. I was a single mother. My $XXXX in loans have grown to over $XXXX as a result of deferments that were presented to me as my only option. Despite having been employed as a XXXX XXXX for 14 years, and having made payments for over ten years, I still owe over $XXXX in student loan debt. I can't even save for college for my XXXX children because I am still strapped with so much of my own student debt.*[70]

Two other narratives we read indicate that the borrowers specifically requested to be placed on an income-driven repayment plan but found that administrative errors prevented the borrower from actually being placed into that plan:

- *For the past few years I have been trying to get an income based repayment plan from Navient and they have stated several times that I qualify for it, but they put the account into forbearance where it accrues insane amounts of fees over a course of a few months. Along with the accruing fees they have stated several times that they would send me the forms via email for the income based repayment and though I have called and told them several times that I have not received it, I still get told they will send it again. They confirm my email address with me each time but I still don't receive it though I receive account verification email from them. I'm so tired of Navient not doing as they say they will and getting charged these outrageous fees. I went on their site after fighting with them to send me the forms and finally downloaded them. I filled them out and sent them to the address that was given to me and low and behold I find out later when they*

[69] *Id.* Complaint ID# 3244637.
[70] *Id.* Complaint ID# 3169194.

are trying to talk me into forbearance again that they never received the paperwork.[71]

- *[AES/PHEAA] is my loan servicer. They asked me to complete my income based loan repayment certification, and that they would send me a letter updating my loan payment details. I submitted this before the deadline of XX/XX/2019. Now, my payment has doubled without any communication from the company. When I logged onto my account, they had put my loan in the Revised Pay as You Earn, instead of keeping the Income Based Repayment repayment plan even though my spouse and I file separate taxes. When I called the company regarding this change on XX/XX/2019 at XXXX and the large monthly amount due, the first customer service representative said that half of my consolidated loans had been taken off of income-based repayment and put back on the standard repayment plan, in addition to the other half being put on Revised Pay as You Earn. This is very alarming as it means any interest would have been capitalized and added to my loan amount as soon as the Standard Repayment was put into effect. Furthermore, this would make these loans no longer eligible for PSLF program which I am eligible for. The representative then proceeded to put me on hold again for an additional 20 minutes until the phone line closed. I am struggling to get in contact with anyone that can help me.*[72]

Without doubt, the last two narratives we report indicate a certain understanding, on the part of the borrowers writing the complaints, about the options available to them. However, these narratives were exceptional in that regard. In all, these narratives underscore borrowers' lack of options or information about their options, especially when borrowers encounter hardships.

4. Problems with loan cancellation and income-based repayment programs

We also coded complaints as falling in this category if they were primarily related to issues with one of the many types of loan cancellation or income-based repayment programs. The Public Service

[71] *Id.* Complaint ID# 3491187.
[72] *Id.* Complaint ID# 3228146.

Loan Forgiveness (PSLF) program was the most commonly complained-about cancellation options, but complaints were also coded for this category if they related to the closed school discharge, or total and permanent disability. Complaints suggest that borrowers find the various options for cancellation to be difficult to navigate. And even if borrowers identify a program for which they qualify, they struggle to get their loan servicers to properly apply payments to their loans so that they can fulfill their obligations and qualify for debt cancellation.

Complaints of this type include the following:

- *I submitted my Income contingent repayment plan with supporting documents . . .. I received many letters . . . confirming receipt and processing of my application. However I received at minimum 5 different payment plans . . .. [Then I received an email] stating my Income contingent repayment plan recertification application . . . were not processed . . . because they need more supporting documents and to resubmit my application.*[73]

- *For over 2.5 years I have been trying to get FedLoan to correct my payments for the PSLF program without any success. They payments have been incorrectly not counted after multiple attempts at resolution. Finally ... I then received another updated payment count . . . showing the correct number of payments after almost three years of regularly communicating with FedLoan and getting nowhere. After all of that, they forgave one of my loan sequences, but then "inadvertently missed" (their words) the other two large loan sequences for no reason. They simply didn't process my other two loans and have done nothing to ameliorate the situation.*[74]

5. Unable to switch into the right option

Several borrowers indicated that they have been placed in the wrong repayment program and could not change their repayment options. In most cases, the borrowers believed that they were placed into the incorrect program by their servicer. Because the complaints related to the borrower's repayment options, these were coded as falling within the first theme: problems with forbearance, deferments, the

[73] *Id.* Complaint ID# 2586651.
[74] *Id.* Complaint ID# 4539342.

public service loan forgiveness program, income-driven repayment plans, and loan cancellation options.

For example, one borrower wrote:

- *I was placed into a (Navient) payment plan . . . and payments were made of $130.00 from that point up until today. However, . . . i received a phone call stating that the program that i agreed to was not the right one any longer so I had to complete the over the phone process again and agree to terms. I then received a ... phone call ... stating that the program was not the correct program again and I had to do the entire agreement over the phone again. . . . I received another phone call stating that I was not in the correct program although payments were still being automatically taken out of my account. I was apprehensive about these phone calls as it seemed every month i was getting a call stating that it was the wrong program, so I waited to see if another payment was going to be drafted as it in fact was. I believed that since payments were coming out, that I was still in the program and i did not receive anything in writing stating otherwise. I then finally received a letter in the mail in XX/XX/XXXX stating that I was now in default and the balance was due of XXXX. The entire time payments were being made and I agreed to the program they advised me on. I don't think it is fair and practical to call three months straight saying I was in the wrong program although i agreed to the terms and made payments. I need help getting out of the default status and I believe the burden should be on them as they gave me wrong advice and stated that I was in a program for repayment. Thank you! I plan to call again to try and resolve this, however, they are not being as understanding as they should.*[75]

In this category, we observe again that several of these complaints suggest savvy borrowers who knew that other repayment options were available to them but were frustrated, administratively, from being able to enroll in those programs. But the majority of complaints evidenced less sophistication. Instead of directing the loan servicers to enroll them in specific programs, they sought guidance as to an appropriate loan repayment option, guidance that was often unavailable.

[75] *Id.* Complaint ID# 3161881.

B. *Customer service, including sudden and unexplained changes in payment obligations*

The second major theme in the complaints we reviewed was that student loan servicers provide horrible customer service. Complaints of this sort were often noted alongside another complaint about, for example, one of the borrower's repayment options.[76] But we thought this theme was important to highlight separately because the complaints focused on the failure of servicers to assist struggling borrowers in some fashion. And loan servicers could improve the job they do when interacting with borrowers even without substantive changes to a student loan borrower's repayment options being made.

Complaints about poor customer service were made along five dimensions, including: (1) problems applying payments or getting clear answers, (2) long delays before notifying borrowers of problems, (3) unhelpful agents, (4) inconsistent information from different agents, and a (5) failure to clearly explain the borrower's payment obligations. Each is discussed in turn.

First, customer service complaints often focused on the company's employees not doing as the customer wished when it came to applying a payment in a certain fashion or failing to give customers clear answers. Three examples of complaints that illustrate this theme are:

- *I've been having a hard time getting answers about my student loans. I've been redirected, hung up on. My loans have been bought and sold adding to the fees and penalties. It's overwhelming, it's scary, and it's been making my life so horrible. I wish I didn't get the fake education from the XXXX. And then have to deal with predatory loans. It's ruining my life. . . .*[77]

- *I reached out via phone to LendKey . . . to change my automatic payments . . . and they refused. They accept payments only on the XXXX of each month. This can cause an undue burden on borrowers who rent (among other examples) because rent is typically due on the XXXX of the month. They had no substantive answer other than "The due date is at the discretion of the lender."*

[76] We did not review complaints in the "customer service" sub-category. Presumably, a greater share of those complaints would be primarily about shoddy customer service.

[77] DATABASE, *supra* note 4, Complaint ID# 2328520.

LendKey is the first and only loan servicer I've seen who refuses to grant this simple (but impactful) request.[78]

- *I am on a payment plan where my account is automatically debited each month. I called to request a debit be cancelled as due to unforeseen circumstances I can not make the payment this month and the payment will likely bounce and I was told they could not cancel it. I said I thought regulation E allowed for this to be cancelled and was told it could not be cancelled since in XXXX (6 months ago) I asked for a similar hold. I again mentioned that i can not make the payment and need to cancel it and was told i could not and a manager would call me back.*[79]

Second, complaints often noted that servicers would allow a lot of time to elapse before contacting customers about mistakes within payments or accounts. The delays would typically occur in relation to a payment that was apparently not made, or was processed incorrectly, but these complaints focused their energy on the length of time it took the bank to contact them. Alternatively, some complaints involved promises by companies to fix an issue by a particular date and then failing to do so. Three examples of complaints in this theme are:

- *Great Lakes did not send me any notice that my loans were due, they alleged that an email notice was sent, I always request my notices by US mail. Great Lakes never called, After 90 days, they sent a letter to me informing me that I am past due. I immediately paid and became current.*[80]

- *I am in need of assistance in straightening out my accounts with your organization. I have called multiple times and get the same answer yet my balance is not corrected! I keep getting told it will be 5-7 business days to fix the issue. Its been nearly 2 weeks and my Stafford loan balance is still not correct.*[81]

- *I never received any notification from the original debtor nor from XXXX XXXX stating that they had the loan now. I requested a copy of the promissory note which I*

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[78] *Id.* Complaint ID# 2564369.
[79] *Id.* Complaint ID# 2508987.
[80] *Id.* Complaint ID# 1932518.
[81] *Id.* Complaint ID# 2476994.

> *received along with a statement showing all my son's payments (which is current through XXXX 2015). . ..*[82]

Third, a theme emerged of complaints focused on the unhelpfulness of customer service agents. Complainants were either told that there was nothing they could do about their issue, customer service assistants were unwilling to help, or they were difficult to work with. Examples of these complaints include:

- *I have called ACS multiple times over the past year to see if there was anything I could do to lower my monthly payment on my private student loans. I have been told that all options have been exhausted and there is nothing they can do unless I default on my loan. I have explained that I will not default and I don't want to be in deferment or forbearance, I would simply like to find a way to lower my monthly payment and pay a little less per month. I am paying $1000.00 per month ($260.00 for federal and $730.00 for private).*[83]

- *I have been trying without success for months to get Navient to work with me ony student loan. I went into a payment agreement which I informed the representative, I really could not afford because of the amount they were requiring me to pay. The representative stated their was nothing else she could do, even after speaking to a manager. It's like they want to see you fail at making payments to them. The representative then made me be signed up for debits to automatically be taken out of my account. As I informed them and suspected would happen, one payment was returned and they stated the whole agreement was null and void. They still would take money from my account per the agreement but it will show negative on my credit report. How do they expect people to get better jobs if they keep making negative hits on reports and don't work with the borrowers income? The loan is XXXX due and I have XXXX dollars being taken out of my account every two weeks. Which is a struggle, the loan number is XXXX XXXX XXXX XXXX.*

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[82] *Id.* Complaint ID# 1355160.
[83] *Id.* Complaint ID# 2722741.

The loan was for the University of XXXX XXXX in XX/XX/2007.[84]

- *I have private student loans with navient and XXXX when I applied for them they never were upfront with me on fees, payment plans, and how many loans I exactly had with them....*[85]

- *I was originally told that I would be on this plan for 10 years before I was eligible for loan forgiveness but I have recently learned that this option is only available to employees of non-profits and public service companies, which I am not. Today I learned that, all along, there was another payment plan I could have been on where they only took 10 % of my gross income for 20 years before I was eligible for loan forgiveness and that they "apologize for no one bringing this to my attention previously". Simply put, this new plan would theoretically have Navient taking less money from me per month for fewer months, essentially yielding them much less money in the long run, and the woman I spoke with couldn't provide me with any information as to why I wasn't on this plan all along. I don't understand why they would have even offered me the higher plan without letting me know there was another option that would cost me less and I don't trust their explanation....*[86]

Fourth, borrowers also complained about receiving inconsistent information from the service provider's representatives. For example, one representative would agree to a certain plan or provide certain information, but when the borrower called back, the new representative would say that the plan was not feasible or that the initially provided information was incorrect. Borrowers who received inconsistent communication when switching service providers also fell in this category. Two examples of complaints on this theme are:

- *I contacted Sallie Mae to request some relief when I could not make $ XXX/month payments on a XXXX% private student loan. Asking if there was any way to lower my payments, I was told that I could enroll in auto debit to*

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[84] *Id.* Complaint ID# 3058292.
[85] *Id.* Complaint ID# 2355179.
[86] *Id.* Complaint ID# 2681776.

save .25% on my interest. I told them that that would not help. I was then told that I would have to miss payments and go delinquent on the loan before they could offer me any additional assistance. After I missed my first payment I called again and was told that I would have to get current before they could offer me any relief. I did not have the {$200.00} that I owed them now they wanted $400.00 before they would discuss relief. I missed an additional payment and called them a third time. This time I informed them that I was recording the call to keep my own records because I believed that I could not rely on them to work with me to offer realistic solutions. They refused to speak to me while I was recording and disconnected the call. [87]

- *I took out XXXX XXXX student loans while in college (I graduated XX/XX/XXXX!) . . . Since then, XXXX XXXX had sold my loan I don't know how many times, but as recent as XX/XX/XXXX!) but when they do that.. my loan seems to start all over again (so I can not find out what the actual origin date of the loan really is). Then XXXX XXXX became Navient (maybe in XX/XX/XXXX?).* [88]

Fifth, complainants often had issues with the terms of their loan. Borrowers commonly expressed displeasure that their monthly payment obligations were recalculated at a larger amount for reasons that felt unclear (and potentially inappropriate) to borrowers. Borrowers often assert that loan servicers are taking unauthorized action.[89] Relatedly, they regularly expressed a desire for more affirmative and accurate communication from their loan servicers. Two examples of complaints of this type are:

- *I wasnt given correct information about my loan and fees and how payments will be I am having multiple Payments taken out of my account and not really sure what pays what. The login provides no clear info. I feel like the amount is higher every time I login even though Im*

[87] *Id.* Complaint ID# 2034212.

[88] *Id.* Complaint ID# 2297464.

[89] It's not clear from the complaints if this is true or if the borrowers do not understand the range of actions they authorized their loan servicers to take.

making payments. In the beginning my credit was effected because I Wasnt informed of payments.[90]

- *Dear CPFB, I believe Navient illegally shorted me on tax returns, and raised my payments rates to my student loans in error/ no provable reason. I have never paid a penny in interest on anything but my student loans, my credit is outstanding, and I have never missed a payment. I have also made additional payments in the past on top of my regular payments. Due to their lack of correspondence and information provided to me despite my emails and calls, they have not given me any proof to or calculations of why they have charged me more and shorted my tax return. I am happy to speak more to explain in further detail and send more information to help file suit. I believe Navient should be investigated for fraudulent activity - especially their handling of customers who were with XXXX XXXX before accounts were handed off to Navient. Many customers like myself likely signed up for a 10 yr plan to payoff the loans. Significant correspondences from when my account was under XXXX XXXX has been lost under the transfer to Navient, and it is negligent that it hasn't been preserved and unfair to the public because XXXX XXXX had locked out access to accounts online during the transition so there was no opportunity to save original data/documentation/correspondences from the user-end.*[91]

C. Inappropriate payment processing, such as misapplying payments

Another major theme involved allegations that the servicer failed to correctly process a consumer's payment.[92] Often the

[90] DATABASE, *supra* note 4, Complaint ID# 3410768.

[91] *Id.* Complaint ID# 2687788.

[92] This has been a long-standing issue, with the second report of the CFPB's student loan ombudsman describing "Opaque or inaccurate payment processing . . . as a significant trend in complaints received during the reporting period." *See Annual Report of the CFPB Private Education Loan Ombudsman,* 2 CFPB (Oct. 2013), https://files.consumerfinance.gov/f/201310_cfpb_student-loan-ombudsman-annual-report.pdf (last visited Mar. 25, 2023) ("It is unlawful for any private student lender to impose a penalty on a borrower making an early payment or making a payment in excess of the minimum amount due. However, borrowers remitting extra payments

processing issues stemmed from a change in a payment's due date, leading to problems processing future payments on time. In addition, there were complainants that alleged to have made certain payments that were subsequently considered by the lender to be late or missing, which seemed to stem from the lender or servicer's failure to timely and correctly process payments. Three examples of this type of complaint are listed below:

- *I submitted my most recent student loan payment to Navient on XXXX/XXXX/2017 (over twenty-four hours before it was due on XXXX/XXXX/2017). I immediately received an email receipt confirming that my payment had been submitted. I was informed on XXXX/XXXX/2017 that my payment was "overdue." Turns out that Navient had not sent the request to my bank until XXXX/XXXX/2017, a full five days after I had submitted the payment. The payment was finally processed later in the day on XXXX/XXXX/2017. I am now worried that I will be charged a late fee, not to mention the repercussions this could have on my credit score.*[93]

- *Navient keeps telling me that my bank account doesn't exist even though I confirmed the routing number several times and went to the bank I have the account with who further confirmed not only the routing number, but the account number as well. Their only solution was to sign up for auto pay. I told them I am not signing up for anything until I get confirmation that they received my payment. I had tried to pay my monthly bill four times so far and they are claiming that they can not take the money from my account.*[94]

- *Wells Fargo would not allow me to pay my loan with my XXXX Checking account online. I tried to make the payments with checks and they never processed those. I called Wells Fargo and told them of this issue and they stated they would launch an investigation. While they were "investigating" they said my checking account was a credit card and then they reported delinquency on my*

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in order to pay off their loans more quickly find that payments are not always properly allocated.").

[93] DATABASE, *supra* note 4, Complaint ID# 2297987.

[94] *Id.* Complaint ID# 2342558.

> *credit report stating that I never bothered to make payments.*[95]

More than a dozen complaints involved claims that companies were not correctly applying the money being paid on loans. For example, some complainants alleged that companies refused to allow them to pay down principal balances by making payments that exceeded their required monthly payments. Others allege that companies held excess payments until the following month and then applied them to the next payment due. And still others alleged that companies only applied excess payments to interest due and not toward principal balances. Four examples of this type of complaint are:

- *I have a student loan with Wells Fargo. I tried to set up automatic payments greater than the required monthly amount and was told that Wells Fargo does not offer that option. I was advised that I should set up an automatic payment from my bank account and the additional payments would be applied to principal (as I believe they should be). The first automatic bill pay from my checking account was made to my student loan with Wells Fargo on XXXX XXXX, 2015 for $50.00 and the full amount was applied to interest.*[96]

- *My loan is managed by Navient. My monthly payment is $300.00. I normally pay over the monthly payment to help pay down my principal. This decision was based on my conversation with customer service of my loan institute. I called Navient on XXXX/XXXX/17 after reviewing my payment history. It appears that my excess payment is being applied to interest not the principal. The customer service lady stated that the extra was paid to interest. All my extra payment of the $300.00 should be applied to principal not interest since the interest is based on the principal balance each month.*[97]

- *cosigner with my daughter have asked several times to make a principle reduction on the loan and they keep applying it as paid ahead status . . . would like to know why*

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[95] *Id.* Complaint ID# 3525318.
[96] *Id.* Complaint ID# 1474520.
[97] *Id.* Complaint ID# 2310659.

I cant make a principle reduction to reduce my repayment schedule.[98]

- *I have autopay set-up for XXXX federal loans. Navient did not process the autopay as contracted for XXXX/XXXX/2017 forcing me to make a manual payment. They are claiming I am pass due. They are responsible for initiating the autopay.* [99]

D. *Unauthorized loan or outright scams*

Complaints on this theme involved borrowers who had issues with unauthorized loans from companies they had previously dealt with or thought they were being set up to be stolen from. A common type of complaint was that the complainant co-signed only a single loan but found themselves liable for multiple loans. They often also alleged that the lender could not supply appropriate documentation for these other alleged loans, including allegations of forged signatures.

Three examples of complaints of this type are:

- *I co-signed for a loan in XXXX with WellsFargo for my ex-spouse for XXXX. WellsFargo provided more loans to her without verifying my consent or me as co-signer. XXXX, XXXX additional loan was granted to her with me as a co-signer (Without my approval or cosign) 1. WellsFargo as a BANK continued to use my credential to issue additional loans and DID NOT verify my signatures. 2. WellsFargo NEVER asked me for my permission on these loans, BANKS should verify the person (co-signers) upon whose name they are providing the money. 3. Most Likely it is a identity theft issue also when my ex-spouse applied for more loans with my signature forged. WELLS fargo now is after me on all loans that she took, wellsfargo says I was the co-signer on ALL, while I was not. I co-signed only XXXX loan. The borrower doesnt live with me from XXXX and the bank is sending me letters for payments. I am not responsible for any loan that I did not co-signed. I already sent documentation to wells fargo telling them to remove my name on the XXXX loans taken in XXXX. Attachements : Copy of XXXX promisory*

[98] *Id.* Complaint ID# 1853330.
[99] *Id.* Complaint ID# 2566397.

notes that wells fargo sent me. NOTE the signature differences.[100]

- *I spoke with XXXX XXXX at XXXX Loan Consolidation on XXXX XXXX, 2015. He assured me that once I went through the process and paid $590.00 to consolidate my loans, they would pay my loans off. I would pay $XXXX/month. I have been paying since XXXX 2015 and contacted XXXX to discuss my total loan amount that I saw on their website. It was $2000.00 more than my initial amount and they told me that my loans had not been paid since XXXX 2015.*[101]

- *This is a complaint about an active loan with Navient. This loan was taken out in XXXX in the amount of $25000.00 to attend XXXX, a now closed school that has defrauded students. Since their closure the students of XXXX XXXX, the department of education has created two programs to assist students affected, and any direct loans qualify for forgiveness. This is a private loan, so it has not been forgiven, even though the educational promise was proven fraud and was not fulfilled. The loan was serviced by Navient which then openly coerced the borrower into a repayment plan that never paid down any of the principal balance. The payments were resulting in an increase of the balance, bumping the amount owed to $30000.00 by XXXX. This loan has been in 16 years of repayment with Navient and the amount currently owed is $15000.00. This should have been a standard student loan with fair repayment options. This loan should qualify for a forgiveness program. The deceitful practices of lending and unfair repayment options have destroyed the borrowers credit, and have kept them relating a student loan for decades that they never received the educational benefit of. The borrower has effectively paid tens of thousands of dollars over 16 years for nothing but the profit and benefit of Navient.*[102]

Finally, and sadly, a few narratives falling within this theme point to the deceptive trade practices of the schools the borrowers

[100] *Id.* Complaint ID# 1674714.
[101] *Id.* Complaint ID# 2137153.
[102] *Id.* Complaint ID# 5474606.

attended, in addition to forced forbearance status that the borrowers complained Navient forced them into. These narratives evince a double deception. First, they indicate that the borrowers were made promises of employment following receipt of their degree that never came to fruition. Second, they demonstrate that their servicer left them with no other option but forbearance. The following narratives reveal this theme:

- *There are absolutely NO options available to us that have these private student loans. The only option is forbearance and the max is 24 months! Plus you have to PAY for it!! XXXX XXXX calls my phone almost every 2 hours!! I don't have the $XXXX/mth payment! Don't they get it? how can I possibly pay $XXXX/mth on my private student loans? When will something be done about this? There are really no other options with these private student loans. I would even try to pay $50.00 or something on it every month but to them it doesn't matter, it's still late. So what other option do I have?? Default. My degree was totally worth it. Yea right. There is no way that an XXXX or XXXX yr old student knows what tey are getting themselves into when they sign these promissory notes. No freaking way. Because if they had told me what I know now at XXXX I would have ran out of that school. We are slaves to debt for the rest of our lives. Predatory lending practices . . . yes it exists. Unfortunately it has snuck its way into our educational system, crippling students that have no idea what they are getting into. I just can't believe nothing has yet to be done. When I went into the school to see my counselor because i was having a hard time finding work, (as promised the school has job leads and placement) she handed me a stack of XXXX job applications. Very professional. I feel like i was completely ripped off at an extreme cost.*[103]

- *Was talked into getting massive amounts of loans when I enrolled, was lied to about the amount I was taking and was not assisted with finding a career that would allow the ability to pay off the loan. Attempts to renegotiate or reduce payments resulted in being told only options are forbearance for up to 3 months at a time. When attempting to add additional payments or trying to pay off*

[103] *Id.* Complaint ID# 1597278.

> *specific loans, funds are split between loans seemingly arbitrarily even when specifying that payment should only be going to one, and XXXX/Navient will change due dates of payments without ample notice, resulting in late payment.*[104]

III. POTENTIAL RESPONSES TO OUR FINDINGS

Our qualitative analysis of student loan complaints in the CFPB complaint database revealed several areas where consumers have repeatedly expressed dissatisfaction with their interactions with the student loan system, mostly with loan servicers.[105] In this section, we discuss steps that might be taken to address these problems.

One obvious solution is to cancel all outstanding student loan debt and to make higher education free to all future students going forward.[106] This would resolve all the outstanding complaints immediately and prevent new ones on a forward-going basis. It is our preferred solution for addressing all types of complaints.

While full and immediate cancellation for all federal student loan borrowers appears to be politically unpalatable to the Biden administration, they have taken multiple steps to cancel some or all student loan debt for millions of borrowers. For example, the Biden administration has taken multiple steps to fix problems with the PSLF program. We applaud those efforts. They include: 1) extending "the pause on student loan payments & collections because it's not fair to ask tens of millions of borrowers to resume payments on debts" that are likely to be forgiven;[107] 2) the PSLF waiver;[108] 3) reducing the income-based repayment requirements to 5%—from 10%—of

[104] *Id.* Complaint ID# 2296788.

[105] In an earlier paper, the authors found that only 8.5% of student loan complaints in the CFPB database were made against companies that are only student loan lenders and "8.37 percent were complaints about all others (including debt collectors and student loan guarantors." Bruckner & Ryan, *supra* note 9, at 32. In other words, the vast majority of complaints are made against companies that offer student loan servicing. Although we used a more recent and a substantially larger dataset for this analysis, our results are similar. As noted earlier just three companies (Navient, Nelnet, and AES/PHEAA), all of which service student loans, account for the vast majority of complaints in our new dataset.

[106] *See* John Patrick Hunt, Jubilee Under Textualism, 48 J. LEGIS. 31 (2021).

[107] Miguel Cardona (@SecCardona), TWITTER (Nov. 29, 2022, 1:42 PM).

[108] *The Limited PSLF Waiver Opportunity Ended on Oct. 31, 2022*, FED. STUDENT AID, https://studentaid.gov/announcements-events/pslf-limited-waiver (last visited Mar. 13, 2023).

discretionary income for borrowers with undergraduate debt;[109] 4) an effort to correct unethical or incorrect occurrences as it relates to credits towards IDR plans, including "12 or more months of consecutive forbearance or 36 or more months of cumulative forbearance toward IDR and PSLF forgiveness;"[110] 5) making it easier to discharge student loan debts in bankruptcy;[111] and 6) counting certain deferments and forbearances toward fulfilling the PSLF requirements, such as those for Peace Corps and AmeriCorps service, National Guard duty, cancer treatment, economic hardship, U.S. DOD student loan repayment, administrative or mandatory administrative, and military service.[112]

All in all, these changes mitigate repayment hardships or outright cancel student loan debt for millions of Americans. And, for others, it may provide some relief. Future student loan cancellation, whether through Congressional or executive action, may also occur. For example, the Biden administration has also facilitated loan cancellation for other borrowers by addressing holdups with other loan cancellation programs.[113]

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[109] *See New Proposed Regulations Would Transform Income-Driven Repayment by Cutting Undergraduate Loan Payments in Half and Preventing Unpaid Interest Accumulation*, U.S. DEPT. OF EDUC. (Jan. 10, 2023), https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation.

[110] *Income-Driven Repayment Account Adjustment*, FED. STUDENT AID, https://studentaid.gov/announcements-events/idr-account-adjustment (last visited Mar. 13, 2023)

[111] *Justice Department and Department of Education Announce a Fairer and More Accessible Bankruptcy Discharge Process for Student Loan Borrowers*, U.S. DEPT. OF JUST. (Nov. 17, 2022); *Cf.* Matthew Adam Bruckner, Brook E. Gotberg, Dalíe Jimíenez & Chrystin Ondersma, *A No-Contest Discharge for Uncollectible Student Loans*, 91 U. COLO. L. REV. 183 (2020) (calling on the Department of Education to make it easier to discharge student loans in bankruptcy); John P. Hunt, *Consent to Student Loan Bankruptcy Discharge*, 95 *INDIANA L.J. 1137 (2020) (*calling for liberalization of bankruptcy laws related to student loan debt).

[112] Fact Sheet: Charting the Path Forward for Public Service Loan Forgiveness, U.S. DEPT. OF EDUC. https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/futureofpslffactsheetfin.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term= (last visited Mar. 13, 2023).

[113] Gabriel T. Rubin, *Biden Cancels $5.8 Billion in Student Loans for Former Corinthian College Students*, WALL ST. J. (June 2, 2022 2:27 pm ET), https://www.wsj.com/articles/biden-to-cancel-all-student-debt-from-defunct-corinthian-colleges-11654123168 (reporting on the $5.8 billion in debt cancellation provided to 560,000 borrowers under the borrower-defense or closed school debt cancellation programs).

The Biden administration has also announced that it will cancel $10-20,000 of federal student loan debt for various borrowers. Though this plan is currently halted by a ruling of the 8th Circuit and a Texas District court, more than 26 million student loan borrowers have applied for debt cancellation through this program.[114] Those cases have been heard by the Supreme Court of the United States, which is expected to rule by June 2023.[115]

But these are only partial solutions and millions of Americans will still have student loan debt and complaints about the student loan system even if the Biden administration's executive actions on student loans are ultimately upheld. Thus, we turn our attention to other potential solutions, including ex ante supervision by regulators, self-regulation because of reputational concerns, regulation via contract, or ex post lawsuits in court.

We think that it is generally preferable to allocate resources to debt cancellation instead of patching up our student loan system. Yet, there are several steps that could be taken to address the problems that we've identified.

A. Too expensive

We noted that many borrowers complain they have no reasonable way to make their student loan payments without compromising on basic necessities, such as housing or transportation. This complaint isn't always explicitly stated as such, but it seems to be a reasonable inference when borrowers are complaining about trouble with forbearance or deferments that they needed these options because they were unable to service their debts at the time.

Unfortunately, our analysis of the complaint narratives does not reveal why student loan borrowers aren't offered better payment plans, an easy-to-use dashboard to review when their loans are in forbearance or deferment, appropriate notification when loan payments

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[114] *8th Circuit Temporarily Pauses Biden's Student Debt Relief Plan,* Buckley Firm (Oct. 28, 2022), *https://buckleyfirm.com/blog/2022-10-28/8th-circuit-temporarily-pauses-biden%E2%80%99s-student-debt-relief-plan. See also* Adam S. Minsky, *Already Applied for Student Loan Forgiveness? 6 Key Updates*, FORBES (Nov. 7, 2022, 12:10 PM), https://www.forbes.com/sites/adamminsky/2022/11/07/already-applied-for-student-loan-forgiveness-6-key-updates/?sh=62e08563588d (noting that 26 million borrowers applied for debt forgiveness).

[115] *See Biden v. Nebraska & Department of Education v. Brown Case Summary*, CONSTITUTIONAL ACCOUNTABILITY CENTER, https://www.theusconstitution.org/litigation/biden-v-nebraska/(last visited Mar. 21, 2023).

have restarted, better IDR options, or other possible solutions to their problem. It also cannot address the critical differences that exist between types of student loans, whether federal or private, and the different solutions to these problems that each type of loan may merit. And despite the clear themes across the many narratives we examined, it is almost impossible to say whether the failures the complaints evince are due to policy or implementation of policy, although we suspect both. As such, it is hard to determine whether these issues can be addressed by interventions other than student loan cancellation or a major overhaul of borrower's income-driven repayment options.[116]

That said, we're skeptical that many federal student loan servicers are particularly motivated by reputational risk.[117] These companies are borrower-facing but their primary customer is the federal government.[118] And while the largest student loan servicers have been the target of thousands of complaints[119] and plenty of lawsuits,[120] their primary customer did not terminate their contracts because of these problems. Instead, two of the most complained-about servicers Navient and PHEAA (also known as FedLoan Servicing),[121] recently chose to

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[116] The Biden administration has proposed major changes to income-driven repayment plans, though it is not clear that these new changes will ever become law or, if they do, whether they would solve the implementation problems evidenced by the complaints. *See New Proposed Regulations Would Transform Income-Driven Repayment by Cutting Undergraduate Loan Payments in Half and Preventing Unpaid Interest Accumulation*, U.S. DEPT. OF EDUC. (Jan. 10, 2023), https://www.ed.gov/news/press-releases/new-proposed-regulations-would-transform-income-driven-repayment-cutting-undergraduate-loan-payments-half-and-preventing-unpaid-interest-accumulation.

[117] *Cf.* John Hunt, *Credit Rating Agencies and the "Worldwide Credit Crisis": The Limits of Reputation, the Insufficiency of Reform, and a Proposal for Improvement*, 2009 COLUMBIA BUS. L. REV. 109 (2009).

[118] A substantial portion of the student loan market relates to private student loans, however. *See Private Student Lending,* STUDENT BORROWER PROTECTION CENTER (Apr. 2020), https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf (discussing the $130 billion private student loan market).

[119] *See supra* Tables 1 & 2. *See also* Bruckner & Ryan, *supra* note 9, at 75, tbl 1.

[120] "Navient dealt with several lawsuits in recent years, with the U.S. Consumer Financial Protection Bureau alleging that Navient mishandled borrower accounts and steered borrowers toward forbearance instead of other options like income-driven repayment plans." *See* Hannah Bareham, *Navient is the Third Company to Exit Federal Student Loan Servicing This Year, Here's How Your Student Loans are Affected,* BANKRATE, (Oct. 21, 2023) https://www.bankrate.com/loans/student-loans/navient-exit-student-loan-servicing/.

[121] *Id.*

voluntarily quit servicing federal student loans.[122] As further evidence that the federal government is not terribly concerned about their bad reputation,[123] the Navient loans will continue to be serviced using "the same student loan servicing technology platform," and by the same people, as "about 800 Navient employees who had previously worked on the Department of Education loan servicing team will transfer to Maximus," the successor to Navient.[124] Thus, it appears that the status quo is likely to continue for most borrowers.

B. Customer service

Complaints relating to customer service were sometimes standalone complaints.[125] For instance, this borrower appeared to be unhappy with how their loan terms were explained to them: *I had originally been lent my private student loans by citi bank . . .. It was not made clear to me what the length of the term would be or the double digit interest rate until after graduation.*[126] However, it was quite common for us to cross-code these complaints. For example, a complaint against Navient alleged that: . . . *I . . . was enrolled into a program that was supposedly income driven. I gave them my information and made my first payment to come out XX/XX/2019. [But then] . . . I was reported to the major credit departments for non-payment. I called today to ask what happened and was told that no one promised that my credit would not be affected and that my payment is a partial payment and wont apply towards my forbearance for 3 months. I was never told this*

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[122] Paul Hartwick & Nathan Rutledge, *Navient Recieves Approval to* Transfer *Department of Education Servicing Contract to Maximus,* NAVIENT (Oct. 20, 2021), https://news.navient.com/news-releases/news-release-details/navient-receives-approval-transfer-department-education.

[123] Danielle Douglas-Gabriel, *Consumers Take Issue with Aidvantage's Management of Federal Student Loans,* WASH. POST (Mar. 11, 2022), https://www.washingtonpost.com/education/2022/03/11/aidvantage-student-loan-servicing/ (noting that "Maximus, which offers back-end support for the Education Department's portfolio of defaulted loans, said . . . [it] only follows the direction of the department on collection matters and has no say in determining whether the federal agency should pursue defaulted borrowers, . . .").

[124] Harwick & Rutledge, *supra* note 122 ("The loans will remain on the same student loan servicing technology platform, owned by Fiserv, and about 800 Navient employees who had previously worked on the Department of Education loan servicing team will transfer to Maximus").

[125] Presumably, the entire CFPB database has far more standalone customer service complaints that are recorded in our sample because we did not sample complaints from the "customer service" sub-category of complaints. *See infra* note 76. Customer service is a stand-alone complaint category.

[126] DATABASE, *supra* note 4, Complaint ID# 2735669.

on the phone, just that as soon as I am enrolled into the income driven program It would reflect on my account. I spoke to a supervisor today XX/XX/19 at XXXX at Navient who told me (without reviewing the call record) that my complaint never happened. The supervisor also told me that the program is not income driven it is a type of forbearance used to get accounts back on track. . . ."[127]

We coded this as being both about income-driven repayment programs because the borrower alleged that they were enrolled on IDR but there were problems with the enrollment negatively affecting the borrower's credit, and also about poor customer service because of the allegation that the borrower received conflicting information on the phone from different customer service agents.

As noted above, complaints about poor customer service were made along five dimensions, including problems applying payments, long delays before notifying borrowers of problems, unhelpful agents, inconsistent information from different agents, and a failure to clearly explain the borrower's payment obligations. Unfortunately, there is no silver bullet to remedy any of these issues.

We do not think that servicers are deploying nefarious customer service agents to interact with their consumers in order maintain their power and informational asymmetry advantages, but the customer service problems we see evidenced in the narratives are certainly exacerbated by these same dynamics. Rather, we think that it seems to be a problem of incompetence—on the part of servicers and the employees they hire, train, and put in public-facing roles. Were staffing and training appropriate, we would expect to see fewer complaints falling under this category. Yet, we saw many that led us to believe this issue was pervasive between servicers and across the sector.

Borrowers are at the mercy of their servicers to staff their operations appropriately (such that delays are mitigated) and to train their staff (such that they are knowledgeable, helpful, and can provide clear answers to borrowers). In our sample, "customer service" is a misnomer in the student loan sector. Servicers must do better, and borrowers are within their rights to demand better from their servicers. If not, and at least with respect to federal loans, the contracts maintained between the Department of Education and its servicers should be discontinued and granted on a competitive basis to servicers capable of serving the needs of the Department's vast borrower base.

[127] *Id.*, Complaint ID# 3129861.

C. Payment processing

In an age of automated loan processing, it seems unfathomable that servicers would fail to correctly process a borrower's payment. Yet, many complaints allege just that. Giving the servicer the benefit of the doubt, this problem seems as if it could be a function of a change in a payment's due date, which contributes to issues in processing future payments. But several complaints also alleged that the borrower made timely payments that the servicer deemed to be late or missing, not because the borrower missed the payment but because the servicer did not process the payment correctly on time. Regulatory intervention seems unlikely to cure these issues. Rather, regulation by contract may provide an appropriate remedy to borrowers.

Because servicers do not contract with borrowers but rather with lenders—an obvious flaw in the system—servicer contracts with lenders could be redesigned to allow borrower protections, such as a no-fault inquiry into a borrower's missing or off-schedule payment. That is, an independent organization, such as the CFPB, could be given greater regulatory power—by contract—and tasked with reviewing and mediating disputes between borrowers and their loan servicers to determine timeliness of payments. Such a remedy would resolve both of the above issues. If this is too pie-in-the-sky, then to solve the first issue discussed in this section, servicers could be forbidden from making changes to payment dates not initiated by borrowers themselves, by contract. Lawsuits should be a last resort to this issue, when much of it can be solved through private ordering.

But we reviewed several complaints under this category that evidenced a larger problem: to wit, when servicers did not correctly apply payments made to the loans the borrower desired to pay down. In this instance, complainants alleged that their servicers disallowed them from making payments that would pay down principal balances if they exceeded their required monthly payments. In some cases, complaint narratives indicate that some servicers held excess payments until the following month and applied payment overages to the next payment due or, alternatively, applied excess payments to interest due and not toward principal balances. Even if this is how the Higher Education Act structures overpayments for federal borrowers, this is problematic, because student loan borrowers may make excess payments to target principal balances on high interest loans, if they so desire. Yet, their inability to achieve their desired result, to say nothing of the lack of uniformity by servicers in handling excess payments, exposes a problem that needs a solution.

One regulatory measure that could be put in place is for the U.S. Department of Education to clarify to its participating servicers that excess payments be handled in the same way, i.e., applied to principal balances of certain student loans at the election of the borrower. For private student loan servicers, the solution is less obvious, but refusing to fall in lockstep with other servicers' approaches to excess payments could trigger an exodus, via re-consolidation, away from servicers that stray from industry norms. So, market self-regulation may be a quasi-solution. Of course, a better alternative may be that a contractual relationship between borrower and servicer, for how excess payments will be handled, could provide a baseline rule for how these matters will be treated—fair to both the borrower and servicer, to the extent that informational asymmetries are eliminated in the contracting relationship.

D. Unauthorized loans or outright scams

The sad truth for too many borrowers—particularly those that took out private loans, attended a for-profit postsecondary education institution, or both—is that a lack of communication, and outright misinformation, pervades the sector. We noted that several borrowers complained about issues with loans they felt they never authorized. Often, the complainant co-signed a single loan but found that they were liable for multiple loans, sometimes without supporting documentation from the servicer to establish that the borrower authorized the loan in the first place. It is not readily apparent that these issues are widespread. And the regulatory solutions for this type of issue are even less clear.[128] But one thing is certain: lenders and servicers could and should do more to educate co-signors on loans as to what exactly they are agreeing to. Yet, it is not necessarily the case that any level of cosignor education would alleviate allegations of borrowers getting hoodwinked into repaying loans they never authorized.[129]

However, with respect to scams, the most salient—and solvable—problems we observed in the narratives we read dealt with the deceptive trade practices of the schools the borrowers attended, and the forbearance status that the borrowers complained they were forced into. We mentioned earlier that the narratives on this theme indicate a double deception. First, many of these borrowers were made promises of post-graduate employment by their postsecondary institutions that never panned out. Second, many of these same borrowers were told by their servicers that forbearance was their only option. Thus, policing

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[128] Possibly regulatory solutions could include better documentation retention policies and improved ID theft resolution policies.

[129] *See, e.g.*, Lauren E. Willis, *Against Financial Literacy Education*, 94 IOWA L. REV. 197 (2008).

of unscrupulous and predatory postsecondary education institutions, particularly those that operate for profit, would cure the first deception. As such, efforts to improve general oversight generally could be helpful. But the second deception is unnecessary, to the extent that these borrowers' student loans are forgiven.

The Biden administration has done just that for many borrowers preyed on by scamming institutions and predatory lenders.[130] The Biden administration has forgiven more than $1 billion in student loan debt for borrowers in this position. Undoubtedly, this solution fixes the problem for these borrowers, but still, more can be done to avoid these practices in the first place. Policing is the solution, despite the fact that reputational hazard could contribute to the solution.

Sure, for-profit postsecondary institutions worry about reputational risk. They depend on tuition for revenue, and when students avoid attending their schools because of the known hazards of doing so, their bottom line is impacted. But regulatory and accreditation agencies can and should ensure that predatory practices are rooted out from higher education, once and for all.[131] State attorneys general have played a role in this important work,[132] and the Federal Communication Commission has taken action in ordering student loan consolidation scammers to cease and desist.[133] But the Department of Education could take steps, for instance, to refuse to allow federal loans to be used at for-profit institutions that have ever engaged in these practices.

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[130] Robert Farrington, *For Profit College Student Loan Forgiveness List,* THE COLLEGE INVESTOR (Nov. 17, 2022), https://thecollegeinvestor.com/40244/for-profit-college-student-loan-forgiveness-list/.

[131] *See, e.g.*, Matthew Adam Bruckner, *The Forgotten Stewards of Higher Education Quality*, 11 U.C. IRVINE L. REV. 1 (2020) (advocating for state higher education regulatory to police institutional quality to protect student borrowers from low-value institutions of higher education and offers three specific policies: a state version of 1) financial responsibility scores; 2) the gainful employment rule; and 3) a cohort default rate metric.)

[132] *See, e.g., Attorney General Bonta Urges FTC to Examine Deception Claims by For-Profit Colleges Related to Student Earning Potential*, CAL. ATTY. GENERAL (May 10, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-urges-ftc-examine-deceptive-claims-profit-colleges. *See also* Annie Waldman, *Attorneys General Come Down on Accreditor of For-Profit Colleges*, PROPUBLICA (April 11, 2016), https://www.propublica.org/article/attorneys-general-come-down-on-accreditor-of-for-profit-colleges.

[133] *See, e.g.,* Edward Conroy, *Federal Communication Commission is Cracking Down on Student Loan Scammers*, FORBES (Nov. 22, 2022), https://www.forbes.com/sites/edwardconroy/2022/11/22/federal-communication-commission-is-cracking-down-on-student-loan-scammers/?sh=5ade64647104.

States could also act vis-à-vis their licensing authority.[134] The same can be done with predatory lending and servicing; that is, they can be taken off the federal loan dole, but that seems unlikely to happen. Thus, in reality, if no further steps are taken by state and federal agencies to curb the abuse of borrowers by lenders and servicers, borrowers must turn to the courts for relief, which is something they have already done with little to no avail.[135]

CONCLUSION

Through grounded-theory qualitative analysis of hundreds of student loan borrower complaints, this paper reveals clear patterns of discontent among student loan borrowers by reviewing hundreds of student loan complaint narratives from the CFPB's consumer complaint database. That discontent centers on four areas: 1) borrowers' inability to repay their student loan debt dominates the reviewed complaints; 2) poor customer service, 3) trouble getting servicers to apply payments properly, and 4) unauthorized loans and some outright fraud. Throughout the paper we highlight the words of the complainants themselves because their words powerfully express their helplessness, their pleas for assistance, and, sometimes, their anger.

These results are important because student loan debt is the second largest type of consumer debt in America, and one of the fastest growing types of consumer debt. And student loan lenders and, particularly, servicers appear to take advantage of less knowledgeable borrowers. We believe that our results highlight areas where better regulation, better contracts, and better oversight can improve how the student loan ecosystem functions regardless of whether borrowers are being harmed due to bad faith or simple incompetence.

However, it is this first category of complaints—complaints about burdensome debts and the inadequacy of relief programs—that predominates. As such, it bears mentioning that the most obvious solution to complaints in the first category is the same: cancel all student loan debt. This is true whether the complainants focus on issues with forbearance or deferments, income-driven repayment plans, or loan cancellation programs such as PSLF. The baseline reason for the complaint is simple: borrowers cannot repay their debts. As a result, student loan borrowers face great financial uncertainty and adversity—

[134] *See* Bruckner, *The Forgotten Stewards of Higher Education Quality*, *supra* note 131.

[135] John P. Hunt, *Bankruptcy as Consumer Protection: The Case of Student Loans*, 52 ARIZ. ST. L.J 1167 (2021) (suggesting that school fraud could be taken into account when borrowers seek an undue-hardship discharge in bankruptcy).

impacting their future and their basic attempts at life-making in the present. But it doesn't have to be this way.

We have uncovered evidence of a bigger problem within the student loan sector that is not merely limited to the expense of loans, problems with customer service, payment processing issues, or the scamming of student loan borrowers. Borrowers often can't choose who services their loan; they can't choose levels of service or even whether they are placed in certain repayment statuses, like administrative forbearance, and so on. Admittedly, there is some standardization in interest rates and repayment plan options. But neither of these mechanisms do much to change the simple fact that, for many borrowers, the act of taking out student loans is an example of an adhesion contract, riddled with informational asymmetry.

These are two ways that make student loan borrowing like an adhesion contract: (1) borrowers that have to take out loans for education do not have many options for the origination of the loan, let alone forecasting the repayment plan they will ultimately enter; and (2) most of the information is controlled by the lenders and servicers who have all the power in terms of the loan repayment conditions (which borrowers seldom read carefully) and force borrowers' hands to extract return on their investment via interest.

In this way, student lending is a oligopolistic enterprise: there are few lenders and servicers in comparison to the number of borrowers. Because of this, lenders and servicers have every incentive to leverage informational and power asymmetries to maintain the status quo. So, the complaints we reviewed and reported in this study evince a sort of reaction to being on the losing side of these asymmetries. But this sentiment permeates the rest of the complaint narratives we read as well. To us, this is evidence that student loan borrowers all seem to indicate a kind of buyers' remorse—one that could be cured through loan forgiveness. The Biden Administration has taken some important steps towards cancelling some student loan debt, and we end this paper with an urge for further action.

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