A \$1.5 TRILLION CRISIS: PROTECTING STUDENT BORROWERS AND HOLDING STUDENT LOAN SERVICERS ACCOUNTABLE

HEARING

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COMMITTEE ON FINANCIAL SERVICES U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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A \$1.5 TRILLION CRISIS: PROTECTING STUDENT BORROWERS AND HOLDING STUDENT LOAN SERVICERS ACCOUNTABLE

Tuesday, September 10, 2019

U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON FINANCIAL SERVICES, Washingto

Washington, D.C.

The committee met, pursuant to notice, at 10:11 a.m., in room 2141, Rayburn Office Building, Hon. Maxine Waters [chairwoman of the committee] presiding.

Members present: Representatives Waters, Maloney, Velazquez, Sherman, Meeks, Scott, Green, Cleaver, Perlmutter, Himes, Foster, Beatty, Heck, Vargas, Gottheimer, Gonzalez of Texas, Lawson, San Nicolas, Tlaib, Axne, Casten, Pressley, McAdams, Ocasio-Cortez, Wexton, Lynch, Adams, Dean, Garcia of Illinois, Garcia of Texas, Phillips; McHenry, Posey, Luetkemeyer, Huizenga, Duffy, Stivers, Wagner, Barr, Tipton, Williams, Hill, Emmer, Zeldin, Loudermilk, Mooney, Davidson, Budd, Kustoff, Gonzalez of Ohio, Rose, Steil, Gooden, and Riggleman.

Chairwoman WATERS. The Financial Services Committee will come to order.

Without objection, the Chair is authorized to declare a recess of the committee at any time.

Today's hearing is entitled, "A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable." I now recognize myself for 4 minutes to give an opening statement.

Good morning. Today, this committee convenes for a hearing to examine the student loan debt crisis. It appears that this may, in fact, be the first-ever Full Committee hearing focused on student lending and the many financial ramifications it has for student borrowers. Given the scale of the crisis at hand, it is long overdue. I thank Congressman Al Green, chairman of our Subcommittee on Oversight and Investigations, for convening the subcommittee hearing on this subject earlier this year, and I look forward to building on the insights from that hearing during our conversation today.

According to the Federal Reserve, Americans collectively have \$1.6 trillion in student loan debt. That is more than credit card debt and more than car loan debt, trailing only mortgage debt. More than 44 million people carry student debt averaging almost \$33,000. Around 9 million borrowers with Federal student loans are currently in default. The burden of student loan debt is preventing young people from saving for retirement, starting small businesses, starting families, and becoming homeowners. This crisis is affecting people across the country, and ultimately, it negatively affects our entire economy.

Nevertheless, Trump's Education Secretary, Betsy DeVos, has consistently taken actions that are harmful for those with student loans, and the Trump Administration's appointees to the Consumer Financial Protection Bureau have also undermined key protections. Just last month, the Trump Administration appointed as student loan ombudsman, a former executive of a major student loan servicer that is being investigated by several State attorneys general for illegal student loan servicing practices.

I am pleased that we are joined by an outstanding panel of witnesses today, including witnesses who have personally dealt with student loans, who have used their positions to raise awareness about the student crisis, or who have fought on behalf of consumers against the harmful practices of student loan servicers. The Education and Labor Committee has an important role to play in this matter, but this committee does as well, given the need to strengthen protections for student loan borrowers and conduct oversight in the area of student loan servicing.

Today, we will discuss a series of bills that are designed to help student loan borrowers in a variety of ways, including: creating a comprehensive student borrower bill of rights; strengthening credit reporting standards; stopping private debt collectors from going after vulnerable student borrowers; protecting private student loan borrowers; and helping borrowers with student debt to purchase their first home. Congress and this committee have a responsibility to take action to ensure that student loan borrowers are better protected.

I now recognize the ranking member of the committee, the gentleman from North Carolina, Mr. McHenry, for 4 minutes for an opening statement.

Mr. MCHENRY. Thank you, Madam Chairwoman, and I appreciate the opportunity to discuss the student loan crisis.

Let's rewind. It is 2009. It is 2010. There were supermajorities by the Democrats in the U.S. House and the U.S. Senate, and a Democrat in the White House. And at that moment, in the midst of the Affordable Care Act, the nationalization of our student lending was added to that bill as a pay-for. It is a consequence of Democrat policies that have nationalized the student debt lending in this country, and as a consequence of those actions, we have saddled a generation with unaffordable debt, and an education that does not match the cost of that education.

This is a crisis, but it is a crisis that Congress created and foisted upon a generation, yet without that generation actually having the decision-making nor the Federal Government the underwriting standards to ensure that good decisions were made, and that we were going to give them a loan that they would be able to repay. So if you think about the consequences of the mortgage crisis that led to the financial crisis, part of that was constitutional lawmaking, yes. But most of that was in the private sector.

This matches that mortgage crisis, but it was Federal action on the whole that has foisted debt upon a generation. It is unconscionable that Congress would do that. We have to fix the law and ensure that the Federal student debt market is much more like the private student debt markets.

Although we don't have jurisdiction over the Department of Education where this is primarily done, we know the statistics. Nearly 43 million individuals, 1 in 6 Americans, have Federal student debt, and according to the Institute for College Access and Success, the Class of 2018 averages almost \$30,000 of debt per student. The Federal loan portfolio now exceeds \$1.4 trillion, and 5.2 million borrowers of the 43 million total Federal student loan borrowers have loans in default.

A significant portion of that debt is at risk of default as well, and not only is the Federal Government the lender of these loans, it is now the largest consumer lender in the nation.

[Disturbance in the hearing room.]

Mr. MCHENRY. They are not cheering for what I just said in the hallway, trust me.

[laughter]

But think about that, the largest consumer lender in the nation. We don't adhere to the same laws that we demand of the private sector in how we foist this debt upon students and young people.

The Federal Government is the largest consumer lender, and the folks responsible for the stability of these loans are in the Department of Education, which does not issue student loans or issue any type of underwriting standards. The Federal Government must become a responsible lender as we demand of the private sector. And we have to make sure the costs match the benefits in education.

We cannot address the student loan crisis in higher education unless we also talk about the cost of higher education. That, too, is not within our jurisdiction, but it is important for us to agree that it is something that we should discuss and debate. Student loan servicers do not set interest rates or loan terms. Student loan servicers are subject to strict rules and regulations. Mechanisms exist to ensure they are held accountable. That isn't the case for the loan originator, the Federal Government. We have to fix this.

I look forward to hearing from the witnesses and, again, I would highlight the fact that the jurisdiction of student lending is not within this committee's jurisdiction. I yield back.

Chairwoman WATERS. Thank you. I now recognize the Chair of our Subcommittee on Consumer Protection and Financial Institutions, Mr. Meeks, for 1 minute.

Mr. MEEKS. Thank you, Madam Chairwoman, for holding this very important hearing. The rapidly increasing growth of student debt is indeed a national crisis, and it is not something that we should be playing politics with at all. It is something that we should be focused on doing something about, because young people today make decisions that affect their lives because they are in debt, many of them. Eighty-five percent of African-American young folks who have bachelor's degrees are in debt. It causes them to have to make decisions to not be able to buy a home or start a family or take a job they want to just because they need a job to pay back the debt. It also causes them to be in a situation where they cannot achieve the American Dream. We must stop this pointing of fingers and trying to figure out what is going on, and blaming this one or that one. We have to fix this problem because a whole generation of Americans, young Americans, are not going to have the benefit of the United States of America and that American Dream. It is time for us to fix it, Democrats, Republicans. Don't let our young people suffer because of our own disagreements. I yield back.

Chairwoman WATERS. Thank you. I now recognize the ranking member of the subcommittee, the gentleman from Missouri, Mr. Luetkemeyer, for 1 minute for an opening statement.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman. The foundation of the American Dream is the idea that a free market economy will allow entrepreneurs, businesses, and workers to succeed. Time and time again, competition and innovation in the private market have provided American consumers with the best possible products and services.

A decade after the government takeover of student lending, the Federal Government is the largest consumer owning or guaranteeing 92 percent of all student loans, or \$1.4 trillion of student debt. The reality is the Federal Government has taken over a massive loan portfolio without practicing anything that even resembles sound lending. The government is lending to millions of students without adequate underwriting, resulting in 22 percent of Federal borrowers being seriously delinquent in comparison to 1.5 percent of private loans, according to the Frazer Bank of New York.

I can tell you as someone who made student loans 30-plus years ago, that we tried to help students, not hurt them. The system today is broken. In my opinion, the government doesn't need to be in the business of direct lending at all, and there are numerous mitigating factors that contribute to student debt today. We must start looking and start producing some reforms that actually help our students and our citizens. With that, I yield back.

Chairwoman WATERS. I want to welcome today's distinguished panel: Mr. Seth Frotman, executive director, the Student Borrower Protection Center; Ms. Persis Yu, staff attorney at the National Consumer Law Center; Ms. Ashley Harrington, senior policy council, Center for Responsible Lending; Mr. Hasan Minhaj, writer, producer, and host, who has shed light on the issue of student loan servicing; and Mr. Jason Delisle, American Enterprise Institute.

Without objection, all of your written statements will be made a part of the record. Each of you will have 5 minutes to summarize your testimony. When you have 1 minute remaining, a yellow light will appear. At that time, I would ask you to wrap up your testimony so we can be respectful of both the witnesses' and the committee members' time.

Mr. Frotman, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF SETH FROTMAN, EXECUTIVE DIRECTOR, STUDENT BORROWER PROTECTION CENTER

Mr. FROTMAN. Chairwoman Waters, Ranking Member McHenry, members of the committee, thank you for the opportunity to testify today. Over the course of the last decade, I have traveled all across this country talking to thousands of people in big cities, small towns, and nearly every slice of America in between. And from these conversations, I have found that one aspect of life cuts across interweaving those communities with seemingly little else in common: the fallout from extraordinarily high student debt. I have heard this in town halls across the Bible Belt, in State capitals coast-tocoast, and in quiet corners amid hushed conversations.

Sixty-thousand consumer complaints tell the same story: borrowers who did everything right—went to school, took on debt, got the degree. Now, they are desperately trying to pay it back, but are derailed at every turn. And in each story, a common question: how could this happen to me after I did everything I was supposed to do? The answer is one we are often too unwilling to acknowledge: we encouraged millions of students to take on billions in debt. And then to add insult to injury, we sent them into a market with a piecemeal consumer protection framework that buckled under the weight of this historic burden. This is the story of our nation's student debt crisis.

We must put aside the notion that simply because investment bankers are not lining the sidewalk of 7th Avenue while holding the contents of their desks in boxes, that somehow this not a crisis, that somehow our nation does not need to act. Action should not be triggered only when a market is deemed as systemically risky, such as subprime mortgage-backed securities. The call to action lies with the impact student debt is having on our neighbors and neighborhoods. It lies in the collective weight of \$1.6 trillion.

Last year, more than 1 million borrowers defaulted on a student loan. That is more than the population of each of your districts. In fact, every 28 seconds, another borrower defaults. That is every 28 seconds of every hour, every day, every week, every year. However, it is more than that. It is also the 3 million borrowers who are at least 2 payments behind. It is the impact that student debt is having on everything from starting a family to buying a home. It is the way that student debt is hurting rural communities, driving income inequality, and propelling the racial wealth gap.

Like kerosene on a fire, student debt is driving the systemic economic and racial inequality that is tearing our communities and our country apart. But it is more than ballooning balances. It is also the bullseye we have placed on the backs of 44.7 million people. The student debt crisis is a consumer protection crisis because too many, for too long, have allowed predatory players to have nearly free rein to prey on the struggle of student loan borrowers.

You should know the names of the companies that have targeted your constituents: Aequitas, Bridgepoint, Citibank, Conduit, Corinthian Colleges, Discover Bank, Higher One, ITT, National Collegiate Student Loan Trusts, Navient, PHEAA, QuinStreet, Sallie Mae, SoFi, TransWorld, Wells Fargo, and the list goes on. Throughout America, big banks and small scams hurt millions of borrowers at every single point of their financial lives, from the day a student receives her first bill until the day she pays off her last loan. Regulators, law enforcement officials, scholars, and consumer advocates have all documented how student loan borrowers have less rights and fewer protections than exist in other markets. I will say it again: the student debt crisis is a consumer protection crisis, and that is where this committee comes in. From credit cards to debt collection, credit reporting to mortgaging servicing, this is the committee that has taken a stand when consumers are getting ripped off. This committee's actions have helped consumers avoid billions of dollars in credit card fees, and have kept tens of thousands of families in their homes. In all of these instances and in so many others, this committee took decisive action on behalf of the American people. The 44 million Americans with student debt and the millions more who are affected by it need you to do the same.

That is what this hearing and the legislation before you today is about, creating the protections and accountability that millions of Americans who receive a student loan bill deserve. This is the unfinished work of financial reform, the unwritten chapter that 44 million Americans need Congress to write.

I would just like to close with this: We cannot continue to be lobbied into believing that the companies getting rich off the misery of millions of Americans are not part of the problem. We cannot continue to ignore this trillion-dollar black hole in our financial markets. As it has done time and again, this committee must protect those chasing the American Dream from those who only seek to prey on its pursuit. Millions of Americans across this country need you to act. Thank you.

[The prepared statement of Mr. Frotman can be found on page 86 of the appendix.]

Chairwoman WATERS. Thank you, Mr. Frotman. Ms. Yu, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF PERSIS YU, STAFF ATTORNEY, NATIONAL CONSUMER LAW CENTER

Ms. YU. Thank you. Chairwoman Waters, Ranking Member McHenry, and members of the committee, thank you for inviting me to testify today regarding how to protect student loan borrowers and hold student loan servicers accountable. I offer my testimony here on behalf of the low-income clients at the National Consumer Law Center (NCLC).

Borrowers are struggling. As the director of the NCLC's Student Loan Borrowers Assistance Project, I see and hear the human toll of the tattered student loan safety net. Vulnerable students, like our clients, attempting to better their lives and better provide for their families through education, face severe consequences if they default on their student loans. Loan servicers play a critical role in ensuring student loan borrowers are aware of their options for repayment and can avoid default.

Unfortunately, as has been extensively documented, the student loan servicing industry has been rife with misconduct. When servicers act abusively and deceptively, the harm can be long term and irreparable. The devastating consequences are intensified for Federal student loan borrowers because the government has collection powers that far exceed the collection powers of most unsecured creditors. The government can garnish a borrower's wages without a judgment, seize tax refunds, such as the earned income tax credit, and portions of Federal benefits, such as Social Security. Racial disparities in default rates disproportionately expose borrowers of color to these government offsets and other damaging collection practices, which systemically strip wealth from families and communities that are already economically disadvantaged.

The amount the government seizes using these tools is often far greater than the amounts borrowers would be required to pay under an income-driven, or IDR, plan. Borrowers who might otherwise qualify to have a zero-dollar payment in IDR could have hundreds of dollars seized from their wages or thousands taken from vital tax credits. IDR is critical for keeping Federal loans affordable, but remains inaccessible for too many borrowers. Many borrowers never learn about IDR and are steered into forbearances or deferments. At NCLC, most of our clients were in a series of forbearances and deferments prior to defaulting on their loans.

Even borrowers who do learn about IDR have trouble staying enrolled in the program, with more than half of borrowers failing to recertify on time. Critically, servicer misconduct is not limited into income-driven repayment. Borrowers struggle to access vital loan cancellation programs because servicers fail to provide them with critical information or improperly deny their applications.

Unlike other credit products, there are few laws specifically governing student loan servicer conduct for either Federal or private loans. This lack of protection has exacerbated the now well-documented problems borrowers face accessing public-service loan forgiveness. One common problem borrowers are experiencing is errors in counting their qualifying payments. Unfortunately, borrowers do not have easy access to basic payment histories that could help correct these errors. NCLC has been working with one such client since February just to get her full payment history and determine how many qualifying payments she has made on her loans.

There are some protections in the contracts that the Department signs with its servicers. However, borrowers rarely know about these rights or have any way to enforce them. Those who are able to find a lawyer to assist them still face an uphill battle because the Higher Education Act provides no explicit right of action. Borrowers can raise State law claims, including those based upon fraud, and misrepresentation, but contrary to much of the State law, the servicers and the Department of Education claim that those claims are preempted by the Higher Education Act. Fairness and justice requires that servicers have the ability to enforce their rights when these rights have been breached by servicers.

Problems are even greater in the private loan market. Without comprehensive Federal laws requiring private student lenders to offer flexible repayment options, borrowers are at the mercy of their creditors. A few lenders claim to offer disability cancellation programs, but in our experience those programs can be hard to access, and, critically, there are no standards for these programs for private loans. Importantly, even where private student loan borrowers do have rights under State law, they are prevented from raising those claims in open court because of forced arbitration clauses. These clauses deprive people of their day in court when a company violates the law, and force victims into a system that is often biased, secretive, and lawless. In conclusion, the problems facing individual borrowers are often symptoms of systemic problems to which systemic responses are required. These problems threaten the financial security of some of the most vulnerable student loan borrowers and keep them from fully participating in the economy. Accountability is critical to ensuring that borrowers receive qualify servicing. Borrowers need real rights and consumer protections, and they need the legal tools to enforce those protections.

Thank you for the close attention you are paying to the student loan servicing market, and for the bills that you are considering today. I appreciate the opportunity to provide this testimony, and I look forward to your questions.

[The prepared statement of Ms. Yu can be found on page 132 of the appendix.]

Chairwoman WATERS. Thank you, Ms. Yu. Ms. Harrington, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF ASHLEY HARRINGTON, SENIOR POLICY COUNSEL, CENTER FOR RESPONSIBLE LENDING

Ms. HARRINGTON. Good morning, Chairwoman Waters, Ranking Member McHenry, and members of the committee. Thank you for the opportunity to testify today about the nation's student debt crisis. With more than 44 million borrowers carrying almost \$1.6 trillion in outstanding student loan debt, Congress has the responsibility to do its part to solve this crisis.

Just a decade ago, we all watched the devastating ripple effect of the 2008 financial crisis. People lost their homes, pensions and savings accounts were wiped out, and a generation of family wealth was gone almost overnight, and college graduates, many with a mountain of student loan debt, were entering a bleak job market. A key lesson from the Great Recession is that skillful loan servicing could have dramatically mitigated the impact of foreclosures and their spiraling spillover effect on neighborhoods and the economy. Despite this relatively recent lesson, the principles we learned seem to have already been forgotten as we face the current student debt crisis.

Student loan servicers have consistently failed to fulfill their obligations and have engaged in a variety of abusive practices that have long-term negative consequences for borrowers. While servicing reform is not the sole answer to the student debt crisis, servicing failures contribute substantially to the growing student debt burden and the creation of undue harm to millions of borrowers.

Today, 2 in 5 borrowers are in default or seriously delinquent, and many borrowers are not reducing their principal even after almost a decade of repayment. Twenty-seven percent of borrowers who entered undergraduate higher education in 2003-2004 had defaulted on their student loans by 2016. Up to 40 percent of this cohort are projected to default by 2024. When we spend \$700 million on collection activities and more than \$800 million on loan servicing activities annually, Congress can and should require more from these contractors.

We should also have concerns that the student debt crisis, already a byproduct of the racial wealth gap, is also further entrenching these inequities and perpetuating the cycle of poverty and economic instability that results from systemic lack of access to resources, capital, and affordable credit. Rather than creating a pathway to opportunity, student borrowers of color are more likely to default and take longer to pay back their loans. For instance, for Black students who entered undergraduate higher education in 2003–2004, almost 49 percent had defaulted by 2016. Up to 70 percent of this cohort is projected to default by 2024. Nearly half of Black graduates with a bachelor's degree owe more on their undergraduate student loan after 4 years than they did at graduation, compared to 17 percent of white graduates.

Student loan servicers have been notorious for putting borrowers into deferment or forbearance. These practices have led to billions of dollars in extra interest and fees being added to the principal balances of already-indebted borrowers. They have also prevented borrowers from accessing affordable repayment plans that will allow them to take part in other wealth-building activities. Servicers should enroll struggling students in income-driven repayment plans, not forbearance. While reforms are definitely needed, IDR plans are an essential tool for preventing delinquency and default.

Despite these documented failures, the current Department of Education has revoked existing policies meant to protect student loan borrowers. It has acted to the benefit of private companies over students and taxpayers, and it has attempted to prevent Federal and State enforcement of consumer protections. States that have passed reforms hold nearly 30 percent of the \$1.5 trillion in outstanding student loan debt. States have historically played a critical role in protecting consumers from abusive and predatory practices, from mortgage servicing to payday lenders.

Student loan servicing is no different. Since 2015, 11 States and D.C. have passed laws to oversee student loan servicers. This is combined with multiple State enforcement actions against servicers like Navient and PHEAA. Their approach to addressing this crisis will shape the lives of millions of borrowers and the health of our economy for decades to come. Federal efforts must complement these State-level actions, not preempt them.

Many of us in this room can attest that good servicing makes a real difference in borrower outcomes. This is especially true for student loan servicing where there are already many options to help students avoid default and be successful in repayment. By failing to hold servicers accountable to basic consumer protection laws and responsibilities, we increase the likelihood of more defaults and that this crisis will worsen. Rather than repeat mistakes from the mortgage crisis, we should learn from that experience and work to achieve a sounder, more effective student loan system. Congress must ensure that Federal dollars are truly an investment, not just a payout. Our nation's future depends on it. Thank you.

[The prepared statement of Ms. Harrington can be found on page 110 of the appendix.]

Chairwoman WATERS. Thank you, Ms. Harrington. Mr. Minhaj, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF HASAN MINHAJ, WRITER, PRODUCER, AND HOST

Mr. MINHAJ. Thank you so much. I want to thank Chairwoman Maxine Waters for the opportunity to testify, and I would like to thank Ranking Member Patrick McHenry for taking the time to Google who I am.

[laughter]

Mr. MCHENRY. Cute. Very cute.

Mr. MINHAJ. My name is Hasan Minhaj. I am a Muslim, and I condemn radical Islamic terrorism. That has nothing to do with anything. I just want that on the record. It is good to get ahead of these things.

[laughter]

Chairwoman Waters invited me here today because I host a political comedy show on Netflix called Patriot Act, which means I may owe some of you guys royalties. DM me, we can talk later. We recently did an episode on the student loan crisis, and it really hit home with our audience, because 44 million Americans owe more than \$1.6 trillion in student loan debt. In fact, the day we shot our episode, we polled our studio audience. It was only about 200 people. And that room alone had over \$6 million of student loan debt. Now, granted, our audience is mainly unemployed poli-sci majors, but that is still a lot of money.

[laughter]

This issue is sidelining millions of Americans. People are putting off marriage, kids, home ownership, and retirement, especially my generation. I am 33, and growing up it was drilled into our heads that you have to go to college if you want a middle-class job. And we even tell kids today, look, if you don't go to college, you might as well get a face tattoo. And then they point to Post Malone, and we are like, okay, that is one guy. He is a very popular musician.

[laughter]

But it is true: two-thirds of all jobs in America require at least some college. This is the standard now, and that wasn't the case when most members of this committee were in school, and you paid far less for your degrees. That is not speculation. We looked up where the 60 members of this committee went to college and what your school's tuition was at that time. Even adjusting for inflation, college cost way less across the board.

So, Chairwoman Maxine Waters, your tuition at Cal State L.A. in 1971 was the equivalent of about a thousand dollars a year. Today, Cal State costs well over \$6,000. That is more than a 500 percent jump. Congressman King, right, in 1965, Congressman King paid the equivalent of almost \$10,000 a year at St. Francis College. Today, St. Francis costs over \$25,000. On average, this entire committee graduated from college 33 years ago and paid an inflation-adjusted tuition of \$11,690 a year. Today, the average tuition at all of your same schools is almost \$25,000. That is a 110percent increase over a period of time when wages have gone up only 16 percent.

So people aren't making more money, and college is objectively way more expensive. Do you see what has happened? We have put up a pay wall to the middle class. And if there is one thing Americans don't deserve more of it, is pay walls. That is why we put up our entire show for free on YouTube. It is also because you can't really find anything on Netflix.

[laughter]

It is like the lost-and-found bin of entertainment. You are like, great, another show about people who love cake.

[laughter]

Now, despite these numbers, you often hear the idea that these kids wouldn't be in trouble if they just took some responsibility. But they are trying to be responsible. They are investing in education. They are trying to pay their loans back, and yet many borrowers are still treated like deadbeats because the government has put their financial futures in the hands of predatory, for-profit loan servicing companies. Companies like Navient and other companies you will hear from today, have a history of misleading borrowers and pushing them into repayment plans that in some cases have cost individual borrowers tens of thousands of dollars in unnecessary interest.

And the worst part is borrowers don't even get to choose their loan servicer. The Department of Education chooses for you, so there is no competition that makes these companies provide better service. Now look, we know the deck is stacked against student borrowers in ways that it wasn't 10 or even 15 years ago, and they deserve some basic protections. Americans should not have to go bankrupt pursuing higher education, and they should never be preyed upon by underregulated loan servicing companies.

So, members of this committee, we know that government is capable of stepping in during a financial crisis. All I am asking today is, why can't we treat our student borrowers the way we treat our banks, because 44 million Americans, that is too big to fail. Thank you so much for your time, and I will now go back to where I came from.

[laughter]

[The prepared statement of Mr. Minhaj can be found on page 130 of the appendix.]

Chairwoman WATERS. Thank you, Mr. Minhaj. Mr. Delisle, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF JASON DELISLE, RESIDENT FELLOW, AMERICAN ENTERPRISE INSTITUTE (AEI)

Mr. DELISLE. Chairwoman Waters, Ranking Member McHenry, and members of the committee, thank you for the opportunity to testify today. My testimony today represents my own views and not those of AEI, which does not take any institutional positions.

We have heard a lot today that there is a problem with the Federal Student Loan Program, that private companies, servicers that the Department of Education has hired to run this government program are cheating borrowers out of benefits, confusing them, and giving them subpar advice, leaving them to incur additional costs. But this common narrative we have heard today seems to assume the problem is entirely due to factors that are under the servicer's control.

But I want to remind the committee, given that the Student Loan Program is not under the committee's jurisdiction, that all of the terms of the Federal Student Loan Program are set by Congress or the Department of Education, and servicers don't own these loans. They also don't get paid more if borrowers owe more. So what this means is the source of all of the perceived mistreatment that we are talking about today—the crushing debt, the misleading information, the confusion—may actually be Congress and the Department of Education, not the servicers. Now, servicers can make mistakes, absolutely. I am not denying that. They can get things. They can be sloppy. But I want to give you some examples of what I am talking about, where the terms of the program actually sow confusion and resentment among borrowers.

The Consumer Financial Protection Bureau (CFPB) operates a complaint database where borrowers can lodge complaints against their Federal student loan servicers. I am going to read you one. It reads as follows: "I have repeatedly requested that all overpayments get applied directly to principal, but my loan servicer, Nelnet, continually advances the due date. Then, they tell me that I don't know how payments work. I then have to educate a willfully ignorant rep on how compound interest works, that advancing my due date is not in my best interest."

due date is not in my best interest." So, I agree this looks strange. Make a larger payment on my loan, and my due date goes out into the future. Where did this come from? Well, it came from the Department of Education. This is the policy: The loan servicer is required to advance the due date if a borrower makes an overpayment. What a strange policy. Where did this come from? Well, like all of these things, someone was trying to help. They were trying to give borrowers extra flexibility in when they needed to make their next payment if they made an overpayment.

This is not necessarily an example of a servicer mistreating the borrower, but that is what it looks like to the borrower. In fact, that is how many of the people on this panel describe the situation. I don't think it is quite accurate.

Let me give you another example. Borrowers often complain that their servicer had misled them—you heard that today—and they are caught off guard by some term of their loan. I want to show you the Department of Education's application form for the Income-Based Repayment Program. I can't quite get it to fully extend to the floor.

These are the terms of the Income-Based Repayment Programs. It runs some 10 pages. You will see on pages 7 and 8, there is a 60-cell matrix comparing all the terms. Is it fair to expect borrowers to understand all of that information? No. Is it fair to expect servicers to explain all that to the borrowers and make sure they understand it? I don't think so. But why do we have a 10-page form listing all of the terms? Because Congress, and the Department of Education, egged on by many of the advocates, required all of these terms. So, borrowers are utterly confused, but they are blaming servicers when it is really the terms of the program.

I have many more examples of this in my written testimony. Those are just two. There are many. But I want to conclude today by telling you what I think Congress can do to solve this program. I think we need a much more straightforward student loan program. Now, this is not going to be easy. It is going to require tradeoffs. It is probably going to require fewer benefits, and fewer options. These are the things that are confusing borrowers. Or we could simply provide the most generous benefits to everybody all the time. That is going to cost a lot of money and probably isn't the best use of scarce resources.

But here is what I want to say that is really important. These tradeoffs exist, and excellent student loan servicing is not going to make them go away. Blaming student loan servicers for the terms of the loan program is not going to make these tradeoffs go away. Congress is going to have to make them. It is up to lawmakers to ensure that borrowers are not misled or mistreated by the Federal Student Loan Program. Thank you.

[The prepared statement of Mr. Delisle can be found on page 76 of the appendix.]

Chairwoman WATERS. Thank you very much. I will now recognize myself for questions, and I am going to address my first question to Mr. Frotman.

In March, you testified before this committee that the lack of action on behalf of student borrowers by the CFPB, "reflects a fundamental lack of seriousness in the work that Congress tasked the Bureau to perform and willful negligence in addressing the deep, systemic problems that plague borrowers owning the second-largest class of consumer debt in this nation."

Instead of vigorously enforcing the law to protect student borrowers, it appears the only notable thing that the Trump Administration has done is to install a high-ranking official from one of the nation's largest student loan servicers to be your successor at the CFPB.

This committee and others are examining the activities of the CFPB, the Department of Education, and student loan servicers, and today's hearing appears to be based on records my staff reviewed going back to 1995, when the first Full Committee hearing was held on the topic of student lending.

Mr. Frotman, given how student debt can affect a borrower's life, including their ability to get a home or start a new business in the broader economy, is the CFPB doing enough to help student borrowers, or is the Bureau coming up short and failing in its job? Are there particular areas that the CFPB and the Department of Education should be prioritizing when it comes to enforcement?

Mr. FROTMAN. Thank you so much for the question, Chairwoman Waters. The student debt crisis is a big problem impacting all of your constituents. The student debt crisis knows no Party, knows no ideology, knows no Administration. And what we have seen is that the historic amount of debt is hurting all of your constituents in their ability to buy a house, or start a small business. And we see how student debt is driving folks out of rural counties.

We usually talk about this in the form of ballooning balances, but it is more than that. It is a bullseye placed on the back of nearly 45 million Americans who are subjected to predatory tactics from the day they take out their loan until the day they pay it back. And what we have seen is that student loan borrowers have less rights and fewer protections than nearly any other type of borrower. You have more protections if you are paying back your credit card or your mortgage. While I was at the Consumer Financial Protection Bureau, this is an issue we worked on a lot, which was, there are big banks, Federal student loan servicers, you name it, up and down the line who are viewing the student debt crisis as their chance to get rich. I am proud of the work we have done. We were able to give back \$750 million for student loan borrowers, and we worked with anyone and everyone, and sometimes we worked with the Obama Administration. Sometimes, we didn't make them happy, but that was the job.

And what you see now at the Consumer Financial Protection Bureau is just walking away from that mission, walking away from the job to stand up for your constituents, when the only thing they have done wrong is taking on debt to chase the American Dream. And I think that is why this hearing and this legislation is so important because the CFPB is one piece of the puzzle. Borrowers need the same rights and protections they would have if they were paying back a credit card and a mortgage. They need to be able to enforce those themselves. They need their States to be able to enforce them because they are really struggling. Chairwoman WATERS. Thank you very much. I wanted to get into

Chairwoman WATERS. Thank you very much. I wanted to get into a little bit about the disparities for minority student borrowers, and I will just get to Ms. Harrington in the short time that I have left on this question. The Center for Responsible Lending published its own report early this year on borrowers of color and the student debt crisis. In trying to help student borrowers of color, your report recommends that we improve repayment options, provide debt relief, strengthen servicing standards, and prevent abuses by forprofit institutions. Do you think the bills we are considering today, including the Student Borrower Bill of Rights, would successfully help student borrowers of color?

Ms. HARRINGTON. Absolutely, Chairwoman Waters. These bills go a long way in the right direction to ensuring that consumer protections are available to student loan borrowers, and that is particularly important for student borrowers of color who disproportionately take out student debt and take out higher levels of student debt than other populations. They have to go to college, and they have to have loans to go to college due to the systemic inequities that we have seen since the founding of this country. So, any extra work that can be done by this Congress to improve that system for everyone, but especially borrowers of color, is essential.

everyone, but especially borrowers of color, is essential. Chairwoman WATERS. Thank you very much. And now, I will recognize the gentleman from North Carolina, Ranking Member McHenry, for 5 minutes.

Mr. MCHENRY. Thank you. And, look, I do think there is a commonality among the full panel here across perspective. The question of affordability of the institution is an important question. It is. I think we all agree on that. Now, how we resolve that becomes a bit of a challenge, but that is the nature of where we are in our society.

Mr. Minhaj, as you outlined in your show, the question of cost is a fundamental issue, too, and you addressed that, and you also addressed the servicers. So you go from the question of the debt, but the key question as well is, and you get to this in some ways, but underwriting. There is no underwriting for a loan. There is a no question of a student being informed enough about the decision they are making that is a life-changing decision.

And we have the Federal Government creating a mechanism and then using private-sector folks to then service their decision, right? You don't say, "underwriting," but you get at it, that these students are given way too many choices for their financial literacy basically, and don't have an understanding of what that will mean to their life for a decade, 2 decades, or 3 decades, and that the decisions they make as a 17-, or 18-, or 19-year-old will have an impact on their ability to buy a house, or a car, or have children, or get married, and the societal impact of that. So, you do a great job of highlighting that, I have to say.

Mr. MINHAJ. You are a fan of the show.

Mr. MCHENRY. I don't want to do that to you because it is probably not helpful.

Mr. MINHAJ. I will get you that tee shirt.

Mr. MCHENRY. I will watch you right after I finish watching the Chappelle special, so we will move from there. Mr. Delisle, as you outlined, too, the question of affordability is a fundamental question, too. The form you outlined, you showed there, is massive. One example I would give you is until the CFPB attempted to rewrite how student debt servicers interact with their clients, servicers could not text the people they are trying to interact with. You ask the average 25-year-old if they answer their phone. Not a chance, right? So, texting is a very reasonable and responsible thing. They can't do it because the rules by which they are servicing the debt do not permit them to, and the regulations out of the CFPB have not been modernized so that they can do that. So, one simple change like that could make a major impact on the ability to service it. But, Mr. Delisle, let's talk about underwriting. What underwriting is done before this debt is given to students?

Mr. DELISLE. Basically none. It is almost a no-questions-asked loan. It is an entitlement. There is no income check, no means testing. It is basically open-ended.

Mr. MCHENRY. And does that mean there are no ramifications if they don't pay?

Mr. DELISLE. There is a ramification if they don't pay. They will accrue additional interest. They could have their tax refund seized. Most of the time, the government is able to get the money back.

Mr. MCHENRY. How clearly is that outlined in the contract for these students?

Mr. DELISLE. It is listed in the master promissory note, which is about as long as this other form that I showed you.

Mr. MCHENRY. So, there is no clear box like on a mortgage that gives you the key ingredients of what you are about to sign for?

Mr. DELISLE. Not really, no. The terms of the loan are listed there, but because of the sort of strange nature of student loans, it doesn't look like or walk like another loan. So, for example, the interest rate that you are going to borrow at is not listed on your master promissory note. That is because we don't actually know the interest rates that you are going to borrow at going forward because the interest rate is different each year you borrow because you take out a new loan every year. So, trying to make these things work and look like traditional financial products doesn't really work that well because we are trying to serve a sort of different market.

Mr. MCHENRY. How do you reform the program to mitigate those risks?

Mr. DELISLE. I don't think there is a huge sort of affordability crisis in student debt, contrary to what everyone has said here. I think there is a lot of available—

Mr. MCHENRY. What do you mean by that?

Mr. DELISLE. Well, I don't see sort of a widespread inability of people to pay their student loans. I hear a lot of complaining about it, but in terms of are people actually financially unable to pay the loan, I don't think that is as widespread as a lot of people believe.

Mr. MCHENRY. But you admit there is a broader societal impact for this level of debt they are coming out of college with?

Mr. DELISLE. Yes, I am sure there is, but also, it is financing an asset. It is financing higher education, so all the concern about student debt, if student debt is harming people, it means higher education is harming people. That is what it paid for.

Chairwoman WATERS. Thank you. The gentlewoman from New York, Mrs. Maloney, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is recognized for 5 minutes.

Mrs. MALONEY. Thank you, Madam Chairwoman, and I thank all of the panelists. The price of college education increased 8 times faster than wages between 1989 and 2016. College tuition costs more than many people earn a year. And while we must address the underlying cost of college, student loans have become so unsustainable that millions of people are now putting off buying homes, starting families, or even starting their careers. That is why I support full loan forgiveness, and I am a co-sponsor of Senator Bernie Sanders' House companion bill, H.R. 3448, the Student Debt Cancellation Act.

These solutions might fall out of the jurisdiction of our committee, but we do have oversight of student loan servicers. Student loan servicers don't own loans, set rates, or control the cost of college, yet they are a critical point of contact for borrowers repaying direct loans, and they are responsible for engaging with the borrowers experiencing difficulties making these payments.

We recently held a hearing on student loan servicers, and one of the troubling things we heard was that some schools engage consultants to push forbearances to keep their default rates down even when other options are better for the borrower. That is because schools would lose access to Federal aid if their default rate is too high. And I would like to know, and I would like to ask Persis Yu, how often does this manipulative practice push borrowers into forbearance when it might not be in their best interest? Shouldn't the best interest of the borrower be the only factor that is considered, not artificially inflating numbers? And what role do the servicers play here?

[^] Ms. YU. Thank you, Congresswoman. In the experience of the borrowers that I work with, many of them have attended predatory schools that have made big promises about the career goals that they will get and the big salaries they will get, and those promises fall through. Unfortunately, many of those schools also engage with default management companies that push borrowers into deferments and forbearances, and we see the fallout of that.

Borrowers come to my office. They are in default. They have a series of these forbearances. They have never heard about incomedriven repayment. Many of these borrowers would have qualified for zero-dollar income-driven repayments, but instead they defaulted because they exhausted their forbearances through these default management companies and now are in default. Servicers have the role of informing borrowers of income-driven repayment. Servicers are required to reach out to borrowers, and for too many borrowers, that is not happening. And that is why we are here today, and we are encouraged by the bills that are being offered by this committee.

Mrs. MALONEY. Also, the Department of Education recently withdrew a set of student loan servicing standards, and many States have since passed their own strong standards and procedures, including restricting forbearance steering and creating a compliance department. Wouldn't everyone, especially borrowers, benefit from a common set of minimum industry best standards that the draft Student Loan Servicing Reform and Consumer Protection Act calls for? Again, Ms. Yu?

Ms. YU. Absolutely. Thank you for this question. There is a desperate need for basic consumer protections for student loan borrowers. Borrowers do not have basic rights to dispute resolution solutions, to timelines for processing payments, for ensuring that borrowers are getting the best options presented to them. The bills that are presented, especially the Borrower Bill of Rights, which would present basic consumer protections, are vitally needed by the borrowers I work with.

Mrs. MALONEY. And in cases of forbearance, in many cases, it just adds to the cost and is not in the best interest of the borrower. Would you like to elaborate on that, Ms. Yu?

Ms. YU. Absolutely. There are some very limited circumstances where forbearances can be useful. However, for the most part, they add to the cost of the loan. The interest is capitalized, meaning the principal balance grows, and then interest is charged upon interest. Importantly, that time is not applied towards forgiveness like it would be under an income-driven repayment plan. Therefore, the loans become more expensive and it extends the life of those loans.

Mrs. MALONEY. Thank you. My time has expired. Thank you.

Mr. CASTEN. [presiding]. The gentlewoman from Missouri, Mrs. Wagner, is recognized for 5 minutes.

Mrs. WAGNER. I thank the Chair. Let's be clear here. The Federal Government is responsible for almost \$1.5 trillion of the overall \$1.6 trillion in student loan debt, around 92 percent of all debt. It is my understanding that only just over \$100 billion of this debt is in private loans, which have a 98 percent repayment rate. Meanwhile, stats from the Federal Reserve Bank of New York suggest that Federal borrowers are not faring well, as more than 20 percent of all borrowers are seriously delinquent or in default, and a large number of Federal borrowers are seeing their loan balances grow, not decrease, post-graduation.

Mr. Delisle, given this bleak outlook for Federal borrowers, shouldn't more be done to protect consumers from assuming more Federal student loan assistance than they can reasonably pay back?

Mr. DELISLE. Yes. I think the place to look for a solution like that most obviously is in graduate school lending. For undergraduates in the Federal Student Loan Program, there is a limit. Congress sets a limit on how much people can borrow, recognizing the kinds of things that you are talking about. A dependent undergraduate can only borrow \$5,500 their first year of school. When it comes to graduate school, Congress had the infinite wisdom to decide to lend unlimited sums to people to go to graduate school, and this is where the big problems are.

Mrs. WAGNER. Well, let's explore that for a minute, Mr. Delisle. Does the Federal Government evaluate a borrower's ability to repay a loan before issuing a loan?

Mr. DELISLE. No.

Mrs. WAGNER. A student who receives a needs-based Pell Grant could also have their parent take out a \$100,000 Parent Plus Loan, even though they have demonstrated that they don't have the means to repay. Is that correct? Mr. DELISLE. That is right. In fact, the Federal Government will

Mr. DELISLE. That is right. In fact, the Federal Government will assess your ability to repay using the financial aid application determining an expected family contribution for your child's education. And even if that number is zero, the Federal Government has determined you can contribute zero towards your student's education—

Mrs. WAGNER. Stunning.

Mr. DELISLE. —and then, they will lend you an unlimited amount to pay for your child's education.

Mrs. WAGNER. Stunning. It seems some Federal borrowers are set up for failure from the start by the rules put in place by Congress. What recommendations, briefly, would you make to Congress to prevent students and their parents from overborrowing?

Mr. DELISLE. I think they probably should restore some sensible limits to the amount that graduate students can borrow, and I think there is really no good public policy purpose served by having the Parent Plus Loan Program that we were talking about.

Mrs. WAGNER. The Federal Government took over the vast majority of student lending from private lenders in March 2020, as we have discussed. How does the design of these Department of Education contracts impact the ability of Federal loan servicers to provide individualized service to borrowers?

Mr. DELISLE. They have to carry out the terms that are set in law, so it can't be that individualized because they have to provide the borrowers the terms that they are entitled to. But because of all the different options and different situations that borrowers could find themselves in, people on the left and the right have decided that it is better that servicers have some discretion in how they counsel borrowers. So, there is some flexibility for servicers to make decisions.

I actually think one of the sort of unintended consequences here of some of these debates, and I look at some of the legislation that was posted today for the hearing, and there is a tendency to want to be more prescriptive of how servicers operate. And I am just a little bit concerned about that, because I am not sure I would supplant lawmakers' judgment for servicers' judgment in the best way to handle each student's individual situation.

Mrs. WAGNER. Private student lenders make at least 18 disclosures on 3 separate occasions before a loan is made, providing much clearer information than is provided for Federal direct loans. Would disclosures for Federal loans, like those private student loan borrowers make, lead to better outcomes for student loan repayment perhaps?

Mr. DELISLE. I don't really think this is an information problem. I held up the form today, the 10-page form with the 60-cell matrix, and people still complain. There are thousands of complaints in the CFPB database about people saying they weren't informed.

Mrs. WAGNER. Let me ask this: Would it help to have disclosures of accumulating debt made during the course of study rather than just when a student first enrolls and graduates?

Mr. DELISLE. It may. The reason why, typically, the Government and Congress have shied away from doing exactly that is they were worried it would scare people from continuing to borrow and finish their education. So, I don't know what the right direction is on that.

Mrs. WAGNER. My time has expired. I yield back.

Mr. CASTEN. The gentlelady's time has expired.

The gentleman from Georgia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you very much, Mr. Chairman. It seems to me that we have a profound question here of, why? In an article, the very distinguished publication, Forbes, mentioned last year that that the price of a4r-year college education has nearly doubled since the 1980s, even though the average annual growth weight in wages and salaries over that same period increased only 3 percent. This means that the cost of this 4-year college education has increased 8 times as rapidly as people working on their jobs earning wages and salaries.

That, to me, is where we need to really pull the covers off and ask, why? Why did the cost of a college education explode over this period at a rate 8 times greater, if we are going to really get to the answers of how we solve this? And further, as a matter of fact, the cost of a 4-year college education—in a more narrow window between 2003 and 2017, the cost a 4-year college education rose nearly 50 percent—48 percent. But between this same smaller window, a 15-year period, wages and salaries rose only 6 percent. This means that the cost of a 4-year college education has increased 9 times as fast as salaries.

So, ladies and gentlemen, why? What has caused this? I think if you each could tell us quickly, if you could put your hand on one thing, so that we would know what to zero in on, because we can put legislation out forever and no one hand-made, let's give free education, because nothing is free. But the issue here is what is causing this abnormality? Teacher salaries? Professor salaries? What has happened? Can we go quickly, and let's try to get on the record why, if you all could put your finger on just one thing, maybe you can give us five things that we can address.

Mr. Frotman?

Mr. FROTMAN. I think in many ways the answer is those five things, but there is one thing that this committee can do to tackle that, which is stop the predatory players that add zeroes to individual borrowers' bills. In the lawsuits against a company, Navient, in courthouses coast to coast, they documented how this company's practices added \$4 billion of—

Mr. SCOTT. Okay. Predatory lending. Great point. We can hit that.

Ms. Yu?

Ms. YU. I don't have the one answer, but to the borrowers that we work with, certainly the fact that the Pell Grant has not kept up has been hurting the borrowers that we see, and has made it so that our borrowers have to take out loans in order to go to school, that it is not a choice for them to take out a loan. They are forced to take out the loans if they want an education, which they need.

Mr. SCOTT. All right.

Ms. YU. And which is why, again, we need these vital consumer protections.

Mr. SCOTT. Forced to take out the loan. All right.

Ms. Harrington?

Ms. HARRINGTON. I think overall, we need to reframe education as an investment in our future, and that looks like many things all of the things that my colleagues have said but also accountability for for-profit colleges, Federal-State partnerships that really invest in equitable higher education, and an ability for students across different backgrounds to really access higher education in an affordable way.

Mr. SCOTT. All right.

Ms. HARRINGTON. And affordability at the front end and the back end.

Mr. SCOTT. All right.

Mr. MINHAJ. Yes. One of the things we covered on the show is the fact that when a student borrower calls their loan servicer, say, Navient, Navient will rush you off the phone, oftentimes in 7 minutes or less, and they will advise you to go into loan forbearance instead of an income-based repayment plan, which would probably be better for you.

So that simple misinformation is a problem, and I think student borrowers need a basic bill of rights, like a protection to not let that perpetuate.

Mr. SCOTT. All right. Thank you.

Mr. DELISLE. I get the sense you would complain, though, if Navient kept them on the phone.

Mr. MINHAJ. No. You wouldn't even tolerate that from United Airlines.

Mr. DELISLE. And read all of these terms to them to make sure they knew exactly what they were getting into. I guess people would be very upset about that too.

Mr. MINHAJ. But they want their best option, not a CVS receipt.

Mr. SCOTT. All right. Thank you. That's very helpful. I think that is very informative. Thank you.

Mr. CASTEN. The gentleman from Florida, Mr. Posey, is recognized for 5 minutes. Mr. POSEY. Thank you, Mr. Chairman. I am wondering why there have been no oversight hearings in the Education and Labor Committee on the role of the U.S. Department of Education in managing its loan servicing agents, and I just wonder if the panelists, beginning on the far right, would give me their comments on that?

Mr. DELISLE. Am I on the far right?

Mr. POSEY. Yes, you are far right.

Mr. DELISLE. I think the sort of nature of my testimony is actually probably why the Education Committee would have a hard time really going after loan servicers and blaming them for the problem, because so many of the things that are frustrating borrowers are actually terms that that committee put into the loan program themselves.

I think that is one of the reasons why the loan servicing issue just is not—they sort of recognize it for what it is, which is not the major problem here.

Mr. POSEY. Thank you.

Mr. MINHAJ. What was the question again? What is the major problem?

Mr. POSEY. Yes. What are your thoughts on the role of the U.S. Department of Education in managing its loans?

Mr. MINHAJ. Just the fact that they outsourced it to private loan servicers?

Mr. POSEY. Your general thoughts?

Mr. MINHAJ. My general thoughts are this—are you familiar with the rapper Lil Uzi Vert?

Mr. POSEY. No.

Mr. MINHAJ. I think it is a huge problem that the youth of America have to bombard their favorite rapper, a pop musician, and ask them to pay back their student loans. They are not even asking for selfies anymore.

Are you a fan of Taylor Swift? Are you a Swiftie, because even her fans have gone up to her and said, "Will you please pay back my student loans?" That is how desperate student borrowers are.

Mr. POSEY. All right. Next?

Ms. HARRINGTON. I think there is absolutely a role for the Department of Education in this, but there is also a role for the consumer agency that we have, which is the CFPB. Student loan borrowers are consumers and they are taxpayers, and they should be protected by the CFPB, and the CFPB should be required to have mechanisms to do so.

And I think there hasn't been a lot of discussion about what the Department can do. Particularly, they can have better oversight and accountability for the bad actors in the system, and that servicers would also for-profit colleges. There are a few mechanisms that the current Department has actually rolled back that would have held these groups accountable—the borrower defense to repayment rule, the gainful employment rule, which would have gotten bad actors out of the system and lowered defaults—because defaults are actually directly correlated to the for-profit college growth and decrease. So, we need to look at the people—at the actors that are actually responsible for some of the burdens in the system.

Ms. YU. Thank you. I agree with my colleagues. We absolutely need the Department of Education to do a better job at protecting student loan borrowers, but as Ms. Harrington said, the current Administration has been shielding servicers from liability and rolling back consumer protections at every opportunity. Oversight by the Department of Education is necessary but not sufficient to solve the student loan crisis. These are private companies, working with borrowers in the second-largest credit market. We need strong consumer protections to protect all student loan borrowers from the private companies that are profiting off of their student loan debt. Mr. FROTMAN. I agree with all of my colleagues. There is a crit-

ical role for the Department, oversight of the Department, but we should remember that under-the FSA has called themselves the largest special-purpose consumer bank in the world, and this is the committee that deals with banks and regulation of financial services companies. And this isn't just a higher education policy issue. This is a consumer finance and a consumer financial protection issue, and borrowers need your help when they are ripped off, when they are trying to pay back their debt.

Mr. POSEY. Okay. I saw where the collections on the private is much greater than the public, and I am just concerned about—we can go back through again-the role of the borrowers in creating the problem.

Mr. DELISLE. I am not sure that the borrowers are really creating a problem here. I think what I see is borrowers frustrated with the terms of the loan program. And so I think that, really, what borrowers are saying is they want something simpler. We talked a little bit about people saying, oh well, they are steering people to the wrong option. Well, how do you know what the wrong option is? A lot of people would disagree on what the right situation is. There are so many options. There are so many different situations. It is almost impossible to tell.

So I don't really think the borrowers are really to blame here. I think it is this sort of really crazy program that we are putting them into.

Mr. POSEY. Okay. And so the correct way to address that problem, you think, best, would be-

Mr. DELISLE. For example, one of the things you could do is stop—one of the repayment plans that people complain about—it is a benefit—sorry, lost my time. Mr. CASTEN. The gentleman from Washington, Mr. Heck, is rec-

ognized for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman. I want to follow up on some of the lines of questioning that Congressman Scott engaged in, but before I do that, I want to be very clear, very explicit, very up front, by stipulating to the need to a substantial increase in a consumer protection regimen to deal with this problem. It, in fact, just seems like common sense to me that absent those protections in a \$1.6 trillion circumstance, that we can and should act.

But there is this issue of the writ cause of the cost of higher education going up at a multiple of inflation. I have read 100 percent since 2000. We have specifically cited 50 percent between the years of 2003 and 2016. The subsequent amount of overall student debt has skyrocketed as well. We know that wages have not kept up.

The writ cause here seems to be wages aren't keeping up to the increased cost of tuition, and the cost of tuition has, frankly, sky-rocketed way beyond inflation adjusted. In fact, that very chart there suggests that a decline in State funding is part of the culprit here. I would like to personally attest to that and offer kind of a framework for why this is happening.

What happens in the west, where higher education is the principal delivery mechanism, is that when economies have recessions, State legislatures reduce their support for higher education and supplant that support with board of trustee increased tuition setting authority. And as a consequence, every time we hit a downturn they pull back on their support and say to the colleges and universities, "It's up to you. You can increase tuition or you can cut your enrollment and reduce staff," the latter which is obviously not very tenable.

So boards of trustees have hiked tuitions very significantly in the last 20 years, and even longer. This occurs every time we hit a recession. And lest you think that I am just trying to lay the blame off and point the finger at State legislatures, I happen to have been a member of the board of trustees of one of those institutions during the last significant downturn, and, yes, I raised my right hand in support of a substantial increase in tuition to compensate for the reduction in State legislative support. This is going to continue to happen if we don't come to grips with what overall tuitions are.

One of the most insidious effects—and I am so grateful to those of you who have mentioned it—is that the substantial increased student loan debt burden has resulted in a significant deferment of home purchasing options. It is just one of the problems, but this is a big one, and this is one I want to point out. Ordinarily, what I would be sitting up here doing is telling you we have a housing crisis in this country, and it is a crisis of supply, and you know what? That is true. We don't have enough units. It messes with the market. There aren't enough starter homes for these young people who are debt-burdened. Rents are going up because people can't get out of their apartments into their starter homes. So, I would tell you it is a supply problem.

There is this portion of the market, however, where it is a demand problem, and what I mean by that is that student debt is creating a material impediment for them to begin their home ownership. Here is why that is so important and how we have to view this holistically and keep this in mind, frankly, I think above and beyond just student loan servicers, which is a problem we ought to attack.

Defined contribution pension programs in this country have fallen off the table. The increase has been in defined contribution levels. And as a consequence, the number one investment for the average American for their retirement security is home ownership, and they are being compelled to defer the beginning of the compounded interest that that investment, that asset provides them with toward their senior years. And this is, in no small part, being brought about as a consequence of increased student debt, which is driven by wage growth being inadequate and tuition skyrocketing. And I seek to highlight this, and consume all my time and none of yours, for which I apologize, because I think a dimension of this that should be considered, above and beyond the student servicing consumer protection reforms, which I hope we will enact in this committee, is how, in particular, to deal with the home ownership question for those who seek to do it? They are deferring it, far fewer are engaged in it, and it is going to hurt them in their retirement, and it is a ticking time bomb.

Please give that some consideration. Thank you for your time.

Mr. CASTEN. The gentleman from Missouri, Mr. Luetkemeyer, is recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. As I indicated in my opening remarks, I may be the only guy, or if not, maybe one of two on this committee who actually has made student loans, 30plus years ago, so I know a lot about student loan programs years ago as well as what is happening now.

Years ago, our student loan past-due problem, collection problem, was similar to what is in the figures today, and according to New York Bank, less than 2 percent of the private loans have problems, where 22 percent of the Federal loans have problems. So it goes back, in my mind, to underwriting.

Mr. Delisle, what kind of underwriting standards does the Department of Education have? Do they have any at all or are they like the no-doc loans that we got in trouble with during the Great Recession?

Mr. DELISLE. Right. It is a Federal entitlement, so you are entitled to the loan if you are enrolled in a school.

Mr. LUETKEMEYER. We had an example back in the crash of 2008, where low-doc, no-doc loans were a huge problem, because you put people in housing who couldn't afford it. And now, you have people with student loans who can't afford them.

One of the things that we did in my bank when we were there is, we would sit and advise people. It is kind of like if they are a youngster, 16 years old, and want to buy a brand-new Cadillac, and they can only afford a used Honda or whatever, what do you do? You sit there and explain to them what they can afford and what they can't afford. That kind of financial literacy, that kind of financial oversight, that kind of financial help is not there, I would assume, whenever they take out a student loan today.

So, Mr. Delisle, can you tell me the process when somebody takes out a student loan today?

Mr. DELISLE. Yes. I think the way that the program has been designed to try to get at that is to impose some limits on how much undergraduates can borrow. So rather than saying, what is the right amount, they say, "Look, if you are a dependent undergraduate, your first year of school is \$5,500. That is it." It is fairly blunt and unsophisticated, but that is the policy we have for dealing with that. And as I pointed out before, for parents and graduate students, there are no limits, and that is where the problem is.

Mr. LUETKEMEYER. By the same token, though, if they go into an area of study that when they get a job in the real world, they are going to have difficulty paying back a \$5,500-per-year student loan, they need to be told that. Do you not agree?

Mr. DELISLE. Yes. That is the thing.

Mr. LUETKEMEYER. And they need to understand what their ability to actually earn in the real world is there, so they understand how they can actually pay back these loans. There is not that kind of explanation in place today, is there?

Mr. DELISLE. No. There are some efforts to make more earnings information available to people who are attending institutions, but in terms of—no, nobody sits down and says exactly how much you are going to make. There is no requirement that they do that. Although, I am a little bit—I wouldn't imagine that writing something like that in legislation would be the best way to go either, because—

Mr. LUETKEMEYER. Well, I agree. I am old enough that I have the gray hair to prove it. I remember back in the 1970s, when the Federal Government was in the business of direct lending to farmers. That was an absolute total disaster. It absolutely ruined agriculture for 10 years, absolutely ruined it, because the government was making direct loans to whomever could walk in and sign their name, regardless of whether they could qualify, because if you walked in and you were breathing, you could qualify, and that is basically what you have here. It is ruining the student loan lending business, and it has put the taxpayers on the hook for lots of dollars.

I would argue that whenever you have a blank check and you can hand it to the—you know, Mr. Heck and Mr. Scott were arguing here a little bit about the cost of education. Whenever you walk into a school and say, "I have a blank check. Do you want to help fill it out, and let me know what it is like to get into school here?", if there is no accountability on the school's part, or there is no ability of the consumer, the student, to go out and choose based on cost, what school they want to go to.

I wanted to go to a better school that cost more. I couldn't afford it, so I went to a school that cost less, so that I didn't have this huge burden of debt. That is something that students need to be told, need to have explained to them, given to them as an option, and say, "Look, when you get out, this is the problem you are going to have with this huge amount of student debt, or you can go to this school over here which is not going to charge you that much, and you will have the ability to repay much more quickly," and then they can go buy the house that Mr. Heck was talking about.

A quick question for you also, Mr. Delisle, with regards to the contracted services by the servicers. Who sets those parameters in the contract?

Mr. DELISLE. The Department of Education does, but, by extension, Congress does as well because the servicers have to carry out—

Mr. LUETKEMEYER. I know some of the concerns were about repayment. I have a chart in front of me that has 50-plus repayment options that are given to the students—if I am not mistaken, I have 2 seconds yet. I think this delays, to me, the question of what we—if we need to put some more options in here, fine, but they already have over 50 repayment options. If that is not enough, let's talk about it. But I think we have a lot of them in there that they can fall into those categories, that they should be okay. I yield back.

Mr. CASTEN. The gentleman from Colorado, Mr. Perlmutter, is recognized for 5 minutes.

Mr. PERLMUTTER. Thank you, Mr. Chairman. I want to start where Mr. Heck left off with his soliloquy and ask you, Mr. Frotman, what do you and your study see to be the impact on housing of young people coming out of school with a big burden of debt around their necks?

Mr. FROTMAN. The impact of student debt is more than just what appears on your bill every month, and a significant piece of that is the impact this is having on housing. There is one study that showed for every additional \$1,000 of student debt a borrower takes on, they put off buying a house for 2½ months. We have raised a lot more than \$1,000, obviously. And the impact of student debt isn't shared equally. So, you see a tremendous impact when it comes to African-American borrowers, and Hispanic borrowers. And I think as Congressman Heck pointed out, this is a tremendous way that people build wealth in this country, and when student debt is impacting their ability to do so, it should cause us all to think broader about the scope of this problem.

Mr. PERLMUTTER. Thank you. And I kind of agree with a couple of things the gentleman from Missouri, Mr. Luetkemeyer, had to say—choose how big a loan, whether you can repay it, make some intelligent decisions at the beginning. But much of this occurred in the recession when people couldn't find a job and figured they should go retrain themselves so that they could find a job. And so, there are—the cohort is much broader than it used to be, of people seeking student loans, and it was at a time when jobs weren't available.

I would like to turn to you, Mr. Minhaj, and ask you, in your investigations and your expos, what sharp practices, deceitful practices, deceiving practices, manipulative practices did you all see in connection with the servicing? So we start with should anybody have taken out the loan in the first place, and we can disagree about that, and the cost of higher education. But in terms of servicing, what did you see where there were improprieties?

Mr. MINHAJ. Specifically we saw, when it came to servicing, when a student who was actively trying to find the best possible option to repay, when they would get on the phone with their loan servicer, they oftentimes were given misinformation. So instead of telling them, "Hey, you should probably do an income-based repayment plan," because they were trying to get them off the phone within 7 minutes or less they would say, "Go into loan forbearance."

So that is actively students are given bad advice that will hurt them later on down the road, and they think they are doing the right thing because the person on the phone told them to; the expert told them to.

Mr. PERLMUTTER. Did you find any particular servicers to be more abusive than others, or maybe not abusive but—

Mr. MINHAJ. Navient was really bad. Do you have Comcast? Navient is like the Comcast of loan servicing. Do you ever feel that frustration when you are like, ah, they are the worst? You have no choices because the Department of Education put you in this arranged marriage that you can't get out of.

Mr. PERLMUTTER. Okay. Because there are several different servicers, and we really want to get to the bad apples and to the sharp practices, or the practices that really hurt the students. Because first the debt is bad enough, and then to pile it on gets really impossible, because that gets me to my third question, and to the lawyers on the panel.

In 2005, we made it very difficult for individuals to discharge their student loans in a bankruptcy, and actually we have seen the rise in sort of delinquencies go straight up from 2005. So I would just turn to you, Ms. Harrington, or you, Ms. Yu, I don't know if you are both lawyers or not, but you seem like it, so I am going to choose you two to start on that question.

Ms. YU. We absolutely believe that there needs to be more discharge rights for student loan borrowers, and this is one of the ways in which student loan debt is treated differently than any other type of consumer product, and borrowers need the right they need protections. They need bankruptcy protections and they need consumer protections, and right now, student loan borrowers don't have them.

Mr. PERLMUTTER. Anybody else?

Mr. MINHAJ. For what it is worth, I was waitlisted to go to law school.

Mr. PERLMUTTER. You were?

Mr. MINHAJ. Yes.

Mr. PERLMUTTER. I could see why.

[laughter]

Because your professors would have had to take you on all day. Mr. MINHAJ. Actually, I think I was a great student. And for what it is worth, my fingers are still crossed. I am waiting. It has been 12 years, but you never know.

Mr. PERLMUTTER. All right. I yield back to the Chair. Thank you.

Mr. CASTEN. The gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman, and Mr. Delisle, since the theme of today's hearing is holding student loan servicers accountable, and since some of your colleagues on the panel seem to be blaming the student loan servicing industry for the \$1.5 trillion student loan crisis in this country, I wanted to drill down a little bit on the actual role of student loan servicers in contributing or being part of this crisis that we are here to discuss today.

Do student loan servicers advise students as to which school to attend or which degree to pursue?

Mr. DELISLE. No. The servicer isn't involved on the front end of the loan disbursement.

Mr. BARR. Do student loan servicers set tuition rates?

Mr. DELISLE. No.

Mr. BARR. Do student loan servicers advise a student as to how much money to borrow?

Mr. Delisle. No.

Mr. BARR. Do student loan servicers underwrite student loans at origination?

Mr. Delisle. No.

Mr. BARR. Do student loan servicers actually issue loans to students?

Mr. Delisle. No.

Mr. BARR. Do student loan servicers set the terms of the loan? Mr. DELISLE. No.

Mr. BARR. Do student loan servicers set the interest rate for the loan?

Mr. Delisle. No.

Mr. BARR. Do student loan servicers create the income-based repayment plan?

Mr. DELISLE. No.

Mr. BARR. Who did that?

Mr. DELISLE. Congress did, and—

Mr. BARR. Congress did.

Mr. DELISLE. —the Department of Education.

Mr. BARR. Did the student loan servicers, and that industry, did they create the graduated repayment plan?

Mr. DELISLE. No.

Mr. BARR. Who did that?

Mr. DELISLE. It is in statute, so Congress.

Mr. BARR. Did the student loan servicing industry create the extended repayment option?

Mr. DELISLE. No.

Mr. BARR. Who did that?

Mr. DELISLE. It is in statute, so Congress.

Mr. BARR. Did the student loan servicers create the forbearance option?

Mr. DELISLE. No.

Mr. BARR. Who did that?

Mr. DELISLE. Congress.

Mr. BARR. Do student loan servicers get paid more for informing students about the forbearance option?

Mr. Delisle. No.

Mr. BARR. Do they get paid less for informing students about the forbearance option?

Mr. DELISLE. They are paid less when students are enrolled in a forbearance—

Mr. BARR. So, student loan servicers are actually not financially incentivized to inform student loan borrowers about forbearance?

Mr. DELISLE. My understanding is that is how the contract is structured right now.

Mr. BARR. Data show that 9 out of 10 borrowers who were at risk of default can get back on track with their payments if they respond to servicer outreach in a timely manner. What impact has vilification of student loan servicers had on a borrower's willingness to engage with the servicer?

Mr. DELISLE. Well, we have actually seen evidence in the Consumer Financial Protection Bureau's database of borrowers being advised to take a forbearance when it is pretty clear they should, and they don't because they don't trust their servicer, and they have heard bad things about forbearance. So they don't do it, and then they default.

Mr. BARR. Okay. So if student loan servicers are not the problem, let's explore what actually is the problem. Since the Democratic Congress and the Obama Administration orchestrated the government takeover of student loans in 2010, the total amount of student loan debt has exploded. The Federal Government is now the largest consumer lender and owns or guarantees 92 percent of the more than \$1.5 trillion in student loans. The remaining roughly \$100 billion are private loans. The number of Federal student loan borrowers has exploded by 50 percent since the government takeover. At the end of 2018, 70 percent of college students graduated with student loan debt.

Private loans, in contrast, with underwriting standards that actually involve underwriting, that allow lenders to determine whether or not a borrower has the ability to repay, have a repayment rate of 98 percent. And, meanwhile, data from the Federal Reserve suggest that approximately 20 percent of Federal borrowers are seriously delinquent or in default. Actually, about 36 to 40 percent that are not fully in repayment are Federal loans, not private loans.

So, Mr. Delisle, to what do you attribute the difference in the default rates of private loans versus Federal loans?

Mr. DELISLE. The Federal loans are open access. Even people for example, if you lose your job, you become unemployed, you become an excellent candidate for a Federal student loan.

Mr. BARR. I think all—

Mr. DELISLE. On the one hand, that makes sense—

Mr. BARR. I just think all of this—if I could editorialize for a minute here—I think all of this is Exhibit A, of not just the total incompetence of the Federal Government but the victimization of students by Congress, by the Federal Government, by the U.S. Department of Education.

I know everybody wants a boogeyman, and the student loan servicers are a convenient boogeyman. But guess what? Look in the mirror, Congress. Congress created this crisis. Congress created the forbearance option. Congress gave loans to students and didn't even care whether or not they had the ability to repay, and encouraged them to do so.

Meanwhile, we have a dramatic shortage in the skilled trades. We have a dramatic shortage of nurses. We have a dramatic shortage of welders. We need to be reorienting workforce development and career and technical education to say, look, a 4-year college may be good. We need critical thinking skills. I am a product of a liberal arts college. But you know what? We need nurses. We need cybersecurity experts. We need welders and construction tradespeople. Let's graduate these people at \$100,000-a-year jobs with no student debt. That might be a better solution than trying to blame an industry that is just following Federal law created by Congress.

I vield back.

Mr. CASTEN. The gentlewoman from New York, Ms. Velazquez, is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Mr. Frotman, last month the CFPB announced the appointment of Robert Cameron to serve as the private loan ombudsman. Until recently, Mr. Cameron had been deputy chief counsel and vice president of enterprise compliance at the Pennsylvania Higher Education Assistance Authority.

In a statement, you were quoted as calling Mr. Cameron's appointment "outrageous." Can you elaborate on your statement and explain why you believe this appointment is outrageous?

Mr. FROTMAN. It is outrageous but not surprising. We have a Secretary of Education who has used every tool at her disposal to shield student loan companies from accountability, and now the Consumer Financial Protection Bureau has hired, as the top student loan official, someone from compliance at a company that is at the center of every scandal that has ripped off borrowers for a decade.

We have heard a lot today about blaming borrowers or blaming Congress. Congress or borrowers did not force Sallie Mae to rip off 77,000 servicemembers. Congress and borrowers didn't force ACS to lie to public servants. Congress and borrowers didn't force public teachers to have their loans turned to grants, in violation of their rights.

And I think what is happening across this country is that people took on debt to try to get a better life for them and their families, and some of the largest financial services companies in America have been ripping them off for too long. And I think the bills before this committee and this hearing show that those days need to end.

Ms. VELAZQUEZ. And do you have any concern that the Trump Administration only seems to focus on private student loan servicers?

Mr. FROTMAN. Absolutely. I think what we have seen now is private sector companies, where you have borrowers in all of your States who have alleged that they have been ripped off, and this Administration has used every tool at their disposal to say that the Federal Government can oversee these companies. Your State attorneys general can oversee these companies.

If this was 7 years ago, and Arne Duncan told your State AGs that that they were unable to investigate a company for ripping off servicemembers, you would be outraged, and you should be. But that is what is happening today, is the Federal Government is trying to shield private sector companies from accountability for ripping off millions of people.

Ms. VELAZQUEZ. Ms. Yu, do you have any comments?

Ms. YU. I absolutely agree. The fact that the Department of Education is shielding servicers from liability, both from the State AGs and from private borrowers who are attempting to protect their own rights, I think is outrageous, as Mr. Frotman said, and I think that is why it is so important for the borrower bill of rights and the other bills that this committee is considering today.

Ms. VELAZQUEZ. Thank you. Ms. Harrington, in May the Federal Reserve produced a report on the economic well-being of U.S. households in 2018, which, among other things, discusses the state of student loans and other educational debt on the U.S. economy. The report found that individuals who did not complete their degree, or who attended a for-profit institution, are more likely to struggle with repayment than those who completed a degree from a public or private, not-for-profit institution, even including those who took on relatively large amounts of debt. Do you have any sense as to why this is the case?

Ms. HARRINGTON. Absolutely. Non-completion is a big problem in this country, particularly, as you mentioned, in the for-profit college industry. And so what you have is students who have the debt but not the degree, so they don't have the ability to then translate that into the job or the income increase that they hoped, because they were unable to complete. That students were unable to complete for various reasons is disproportionately a problem for low-income students who have a lot of other things that they are battling as they are trying to attend college. They are caretakers. They are single parents. They have to have a job as well. So, we have to be cognizant of the fact that that is absolutely a big issue, and there is a big issue particularly in the for-profit college sector.

Ms. VELAZQUEZ. Thank you. I yield back.

Mr. CASTEN. The gentleman from Texas, Mr. Williams, is recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman, for holding this important hearing to help to deal with the trillion-dollar student debt crisis.

In 2010, the government took over student lending. At that time, the Congressional Budget Office (CBO) predicted that federalizing this program would generate \$58 million in revenue for the government. This initial prediction by the CBO has proven to be wildly inaccurate. The student loan debt crisis is now estimated to cost taxpayers \$306.7 billion over the next 10 years. This was a massive miscalculation made by the Obama Administration. While we can try to single out student loan servicers for contributing to this problem, the simple fact is that there are deep-rooted structural flaws that have allowed the crisis to grow to these levels.

Mr. Delisle, what miscalculations were made back in 2010, when the government took over student lending?

Mr. DELISLE. It relates to the Obama Administration's decision and a Democratic Congress to dramatically increase the generosity of the income-based repayment program. Under the prior version of the program, borrowers paid 15 percent of their discretionary income, and had their loans forgiven after 25 years. Under the Democratic Congress and the Obama Administration, in 2010 they changed that to 10 percent of income and 20-year loan forgiveness.

Here is what that has done to the annual cost of that program. In 2009, it was about \$1 billion a year. Today, it is \$14 billion a year, and that is not what the Obama Administration promised us. The President's top domestic policy advisor went on MSNBC and said these changes will not cost taxpayers any money, and they have gone from \$1 billion to \$14 billion.

Mr. WILLIAMS. All right. Thank you. I think this is a prime example of the government trying to expand their influence in areas where the private sector can actually perform the task better. Many individuals on the other side of the aisle have been calling for greater government control over larger segments of the economy, such as allowing the post office to offer banking services. I hope everyone will see the disaster that has unfolded when we have allowed the Department of Education to become the largest consumer lender in the country. Mr. Delisle, do you think the private sector or the government is better equipped to handle lending?

Mr. DELISLE. I think on the graduate school side, the private market could do a much better job. In fact, I think students who already have college degrees, by definition, are excellent candidates for private lending. And in the parent loan program, I don't think the Federal Government has done a very good job at all there.

Mr. WILLIAMS. So it would be safe to say you are a capitalist? Mr. DELISLE. Yes, I am a capitalist.

Mr. WILLIAMS. All right. Thank you.

In a recent Bloomberg analysis, it was discovered that borrowers are collectively paying down about 1 percent of their Federal debt every year. At this rate, it would take 100 years to repay the loans. Some people in Washington think that simply forgiving student debt would solve the issue. However, I think it is a short-sighted approach to a much more complicated issue.

I am a small business owner back in Texas, and in my world, if you borrow the money, you pay the money back. Pure and simple. So do you think that forgiving current student loan debt will do anything to ensure that we will not be in this exact same position for the next generations who take on these loans, and what message do we send that it is okay to borrow but not to pay back?

Mr. DELISLE. Yes. I think the real problem here, again, is graduate school. The Department of Education shows that about 66 percent of the borrowers who are using this income-based repayment program, the one that is supposed to be a safety net for struggling borrowers, borrowed to go to graduate school. Many of them are projected to earn incomes of \$100,000 and above.

So this loan forgiveness program that was supposed to help struggling borrowers has essentially become a tuition assistance program for high-income graduate students, and that is another example of where the estimates from the Obama Administration were wildly off. They never told us that that is what was going to happen.

Mr. WILLIAMS. Like I said, , borrow the money, and pay it back. Pretty simple formula.

Mr. Delisle, on page 7 of your testimony you talk about how the forbearance lawsuit against Navient from the CFPB is misguided. Can you please elaborate on this statement?

Mr. DELISLE. Yes. I think there are many instances where forbearance is superior to income-based repayment. Many of the panelists today have told you it is one or the other. In fact, here is the amazing part. You can actually get a forbearance while using income-based repayment. You can use them simultaneously. In fact, many borrowers call their servicer, and they are using incomebased repayment, and they say, "I still can't afford it." And what do they do? The servicer offers them forbearance. In fact, the servicer can see that the borrower is already using forbearance. On the kinds of phone calls that you are listening to, you are not privy to that information. So the servicer is actually making the right decision, realizing there is no more option to lower this person's payment. Forbearance is the best option.

Mr. WILLIAMS. Thank you. I yield back.
Mr. CASTEN. The gentleman from California, Mr. Sherman, is recognized for 5 minutes.

Mr. SHERMAN. Our prestigious and elite educational institutions are revered. They house the smartest and most articulate professors and administrators our society has. So, no smart politician would attack or criticize these revered institutions.

Fortunately, this committee includes at least one low IQ member, so let me say that tuition is too damn high. It has doubled, in real terms, adjusted for inflation, since 1989. Is it any better? Health costs have also gone up faster than inflation, but at least, you live longer. At least, the operations are better. Are today's professors any better? I don't know. From 2003 to 2017, a 48 percent increase in tuition.

Now these elite universities, and others, are able to create a selfperpetuating model that claims that they are accomplishing a lot. They admit only the folks they think are the smartest, the most likely to succeed, and then they brag that their graduates are smarter and more likely to succeed than the people who weren't admitted to their institution. And then they say that is because they provided them with such an outstanding education.

Maybe we could do a test and just take all those admitted to Harvard and put them on an island for 4 years, take them back, they continue to be smart, they continue to, in most cases, be wellconnected, from rich families, and guess what? Twenty years later, they are going to be rich people.

Community colleges in California, for in-State students, charge \$1,000 a year, in today's money; it was less back when I went to community college. The education is just as good. But what they suffer from, as the employers know, is that all of the best students are trying to get out of community college and get into something more prestigious.

This is the investor protection committee. If some outfit got people to invest \$100,000 in Zimbabwe currency, we would be all over them. If some outfit gets them to invest \$100,000 in an art history degree, we think that is fine. We just want to make sure that the Federal Government ultimately pays for it.

And finally, there are the struggles of families with student debt. What about the families who don't go to college at all? They are making less money. They, too, are delaying starting a family, buying a house, and they are from families who are less wealthy than those who are struggling with student debt.

So we have a lot of issues, but we have limited jurisdiction here. Our jurisdiction is over the servicing process. One idea I will throw out there is, why don't we allow people, borrowers, to choose another servicer? If you are assigned to one servicer and that servicer isn't doing a good job, you should be allowed to say, "I want this other servicer." Let the servicers compete.

But, believe it or not, I have a question for Mr. Delisle.

Private student loan lenders make 18 disclosures on 3 separate occasions before the loan is made, providing more personalized information than is provided to those borrowing Federal direct loans. They are going to be on the hook for the loan either way so you would think the borrower would benefit from disclosures, whether they owe the money to one outfit or another. Would disclosures for Federal loans like those made to private student loan borrowers lead to better outcomes, and would it make sense to have disclosures on the Federal loans be made during the course of study rather than just at the beginning and the end?

Mr. DELISLE. We have a lot of disclosures already. I showed you the forms.

Mr. SHERMAN. Yes. I am talking about the distinction between the Federal loans and the private loans.

Mr. DELISLE. I don't think you are going to do much good in providing borrowers more information at this point. I think we are at information saturation in the Federal loan program.

Mr. SHERMAN. So should we provide less to those who have the private loans, or more to those who have the Federal loans, or should we continue to have the disparity?

Mr. DELISLE. Well, look. A borrower right now in the Federal loan program has to sit for 70 minutes of entrance and exit counseling.

Mr. SHERMAN. Okay. I will ask another witness. Mr. Frotman? Mr. FROTMAN. What I have seen is that people are taking on debt because it is the only way they could get the degree. This isn't a bootstrap moment. This isn't a tightening the belt. People are taking on debt because they are going to school, and this is the

only way they can. Mr. SHERMAN. I agree. Come to Pierce College, \$1,000. I yield back.

Mr. CASTEN. The gentleman from Arkansas, Mr. Hill, is recognized for 5 minutes.

Mr. HILL. I thank the chairman. And I thank the witnesses for being here on this issue. Certainly, all of us sympathize with the challenges that student lending has brought to a lot of families across our country. I agree with a lot of the comments today that this really isn't the jurisdiction of this committee, and that this kind of debate really should be held firmly over at the Education Committee. And to paraphrase Mr. Frotman, you should know the names of who owes apologies to these families across the country. That is important.

First of all, State legislatures. State legislatures, who don't fund higher education as they had over the entire post-war environment. State legislatures, who instead of doing that, have regressive taxes called lotteries, and hand out scholarship money.

The Congress and the Education Committee, and the Affordable Care Act proponents that sold a bill of goods to the American taxpayers and the American people, saying that this was a reform that would benefit families and pay for the Affordable Care Act. They promised \$58 billion over 10 years to positive contribution to pay for the ACA. What is it? It is costing us \$306 billion negative. So a \$306 billion negative is what CBO says the student loan system has contributed.

An apology from colleges and universities, who aren't educating people in that student aid office or in that admissions office about the cost of college and all of the ways to go about it. They don't do financial literacy training, which is why I support that bill so strongly with my friend, Bill Foster, from Illinois, for Pell and non-Pell, and all the student loan people that they have some sense of where they are going with this. Those people, our families are owed an apology for that group of people who have contributed over a long period of time to this crisis.

I will also say that families bear a responsibility for sort of knowing what they get into. I agree with you that this is presented, for a lot of families, as this is the only way they are going to go to higher education or a 2-year school. I agree.

And this gets into the comments we have all had about rising tuition at these rates. The rate of higher education since 1975, per annual income, is higher than the health care per annual inflation rate that we had collectively complained about as families. It is higher. And I would submit that scholarship lotteries, taking away State legislatures' support, promoting money with no strings attached, all of those things subsidize what? Higher tuition.

So I admire people like Mitch Daniels at Purdue who says, "We are freezing tuition. We are going back to basics to try to make sure we are doing a better job." And so, our administrators owe us that.

But fundamentally, there is no underwriting in these loans. I was at a panel yesterday talking about algorithmic lending, credit underwriting, and someone said, "Boy, we have a terrible, atrocious problem with our student lending. We try to underwrite the loans on the back end, because there is no underwriting on the front end." And that is why these servicing companies have so many complaints about it.

And finally I will say, as a community banker for a long time, nothing broke my heart more than a story. A nurse came to me. Her dad had asked her to come see me. She made \$38,000 a year, working 4 days a week as a nurse at one of our big hospital systems. She went to the University of Arkansas, Little Rock, and she was a single mom, with a child. She lived with her mom, so she doesn't have a housing expense. She had \$170,000 of student loan debt. Why? Pay for your rent. Pay for your child care. Pay for your food. Pay for room and board. Pay for all of these expenses plus tuition and books.

So that is why I think financial literacy is so, so important here, and that personal responsibility.

This is an interesting hearing. I thank you for bringing these subjects. I am sure the CFPB can do more about transparency. Maybe we can improve the forms that accordion out. We were promised, in 2009, that that would be a principal mission of the CFPB—transparency, shortening forms, and making it easier for consumers.

But the fundamental issue, Mr. Chairman, is this should be dealt with in the Education Committee. We need to reform this plan and we need to let families get out from underneath this crushing misdirection of government policy in student lending. I yield back.

Mr. CASTEN. The gentleman from New York, Mr. Meeks, who is also the Chair of our Subcommittee on Consumer Protection and Financial Institutions, is recognized for 5 minutes.

Mr. MEEKS. Thank you, Mr. Chairman.

This is a very, very important subject matter for me. Being a kid who grew up in public housing, not having any family member prior to me able to go to college, parents not making much money. I think my dad at the time might have made \$125 a week. But they had hope for their son, their oldest son, to break the barrier and go to college.

They surely couldn't pay for it. Had I gone to a bank at 18 years old and said, "Give me a loan," and they were going to go through a whole lot of pieces about whether or not I could pay it back, I would not have gotten a loan. I would not have had a chance at getting an education. At 18 years old, never worked in my life, parents poor, can't contribute anything, I would have been denied an education and, therefore, would not be sitting here today because the most significant thing to me is an education. I left, and I apologize, because there was a ceremony going on.

I left, and I apologize, because there was a ceremony going on. That's why I have this Kente cloth on. About 400 years, when the first indentured Africans were brought here as slaves and talked about one of the first things that they were denied was the right to read and get educated. Anything to keep them enslaved was to prevent them from having an education, and that is ultimately what this is about.

If you are rich, you are going to qualify for a loan. You wouldn't need to get one, but you will qualify. You will meet every metric. But if you are poor, you are in trouble.

And I see every other nation focusing on their young to try to make sure they are doing everything that is possible so that they get an education because that is the key to their future. And we talk about being in a competitive world, if we are leaving the majority of our individuals uneducated because they can't afford an education, then we are endangered as a country.

I think all of you on the panel will agree that when we talk about the current student debt, it is a crisis. Is that not correct? It is a crisis. It is a crisis for America.

Mr. Frotman, let me ask you, and I hear my colleagues on the other side talking about all this. But if this was a crisis—and I think it is a crisis for us—right now, the Government of the United States is spending, and I guess they call them socialists, but it is \$18 billion to farmers because of tariffs and other policies of the Administration. What would \$18 billion do to help the crisis of student debt?

Mr. FROTMAN. It is a great question, Congressman. I have traveled coast to coast talking to student loan borrowers in blue States and in red States, and they don't want apologies, they want help. They don't want to hear about a President who hasn't been in office in 3 years or policies from a decade ago. They are struggling now.

And this is the committee that ensures that those who took on the debt don't get ripped off, and they are getting ripped off. They are calling their student loan company and getting bad information. They are getting harassed by debt collectors.

So, \$20 billion, sure. But this is the committee that stands up for those people who have taken on debt to try to make a better life, and student loan borrowers need you to do it again.

Mr. MEEKS. Would it help, because the FHA does not adjust to an income-driven repayment plan, which allows borrowers to pay a reduced amount for their student loans each month based on their income and family size. Instead, debt-to-income ratios are calculated using debt figures higher than the actual figure people are paying. This makes it difficult for many student borrowers to obtain an FHA mortgage.

Shouldn't the FHA base debt-to-income ratios on the amount student borrowers actually pay?

Mr. FROTMAN. Yes.

Mr. MEEKS. Ms. Yu?

Ms. YU. Absolutely.

Mr. MEEKS. Ms. Harrington?

Ms. HARRINGTON. Yes.

Mr. MEEKS. Mr. Minhaj?

Mr. MINHAJ. Sure.

Mr. MEEKS. Mr. Delisle?

Mr. DELISLE. Well, I think this is a good illustration of two complicated Federal programs not working well together because they are complicated, right? That is the source of this problem.

Mr. MEEKS. I will go back to my other issue because the focus is—and I see I am out of time. So I am not going to get a chance to do it, because he is anxious to bang that gavel.

[laughter]

Mr. MEEKS. I yield back the balance of my time.

Mr. CASTEN. The gentleman from New York, Mr. Zeldin, is recognized for 5 minutes.

Mr. ZELDIN. Thank you, Mr. Chairman, and Ranking Member McHenry.

And I actually am going to want to pick up where Mr. Meeks just left off in a moment. I don't think anyone disputes that there is a student loan crisis in our country. A recent study in my home State of New York shows that the average graduate is graduating with approximately \$30,000 in student debt. The Federal Government nationalized student lending as part of

The Federal Government nationalized student lending as part of the Affordable Care Act in 2010. Since then, the Federal Government has become the largest lender in the nation because it owns or guarantees, as been pointed out earlier, \$1.6 trillion in student loans, and as has been said by others, only 8 percent is held by private lenders.

At home in my district on Long Island, we have the next generation trying to achieve the American Dream to be able to start their family, to buy a home, to afford a car that would get them to work. The burden of student debt certainly is a huge obstacle.

It is clear we have a problem. Students are borrowing exorbitant amounts of money, and many don't fully comprehend what they are getting into in the first place. I would use this opportunity to put in a good word, as Brad Sherman was pitching a local college, we have the State University of New York. We have the City University of New York. In my home county, we have Suffolk County Community College.

I was actually recently at a graduation ceremony for a 2-year graduate at Suffolk Community College, and because he made the most of his experience, he was actually transferring to Cornell on a full ride, and he was going to have an Ivy League degree because he applied himself well at this great community college locally.

There are an incredible number of requirements placed upon lenders in the private sector when they originate loans in consumer credit markets, notably the requirement that the lender approve a borrower's ability to repay at the time of origination. It doesn't make sense to me that we wouldn't hold the Federal Government to the same standards. The Federal Government lends to anyone without regard for their ability to repay.

Disclosures for key loan terms, like APR or future monthly payments, are not required on Federal student loans either. I thought Andy Barr's line of questioning was great, as was French Hill's recent remarks. Though it is not in this committee's jurisdiction to pass here, I introduced the ExCEL Act, H.R. 4079. This is where I want to be able to pick up where my colleague from New York, Gregory Meeks, just left off.

I believe that the system should allow people to be paying off their loan based on their ability to repay. For some people, they will be able to repay in a shorter amount of time than others will.

There are periods of low income or unemployment over the course of your career. This is where you can rack up a lot of defaults where you owe a lot of money. We need to help people get through those periods of low income or unemployment so that they are not defaulting and that they are able to more quickly get back up on their feet.

Also, as people are seeing increases, if we were able to move into a better system of factoring in ability to pay, as somebody is getting a promotion and they are getting more of a salary, you want to make sure that the increase that they might be paying towards their student loan is one that doesn't remove the incentive for being able to get that step-up in salary. So, there should be an increase there.

Also, people need time to get their feet under them. You graduate, you get your job, and your first bill quickly comes due. But your ability to make that first payment in Year 1 or Year 2 is not the same as your ability to be able to make that payment, say, in Year 7 or Year 10 because now you are further along the career ladder. So, this flexible repayment approach focuses on the student's ability to repay loans based on their income to ensure the student is not being set up to fail.

Everyone benefits when borrowers and lenders operate under a rational incentive structure, especially when it comes to servicing and loan repayment. Borrowers, servicers, and the taxpayer all benefit when borrowers stay current with their payments.

This committee may not have—well, this committee does have purview over private student loans and their servicers. As French Hill pointed out, there is a lot that needs to get done under the jurisdiction of the Education and Workforce Committee.

Mr. Delisle, I know you may not be able to comment specifically on the merits of the ExCEL Act, but what kind of lessons can the Federal student loan originating servicing market learn from the private loan originating servicing market?

Mr. DELISLE. I want to get at something you mentioned about the need for flexible repayment options in the student loan program. And I should point out that we have them. We have this income-based repayment program.

But ironically, it is actually why we are having-my understanding is, why this hearing was called. Many of the borrowers who are complaining about student loan servicing are actually complaining about the terms of the income-based repayment program.

They say, "I have been making payments for years on time. I have never missed a payment, but my balance keeps going up." And they think the servicer is pulling a fast one on them. That is actually how this program was designed to work.

Mr. ZELDIN. I am out of time. But I just want to point out that we need to make some changes to that because it is not working for the government, it is not working for the borrowers, and many others.

I yield back.

Mr. CASTEN. The gentleman from Texas, Mr. Gonzalez, is recognized for 5 minutes.

Mr. GONZALEZ OF TEXAS. I don't have a lot to comment. We shot arrows at each other and talked about all the issues that are wrong. If I had to ask one question, it would be, what is the solution?

And I will ask Mr. Frotman. If you had to come up with a solution to the grave issue that has impacted everyone—I was a student loan recipient. I wouldn't have been able to go to school without one. I had \$100,000 in student loan debt when I got out of law school, and had to live in a matchbox apartment and really just hunker down to eventually pay that debt. And you know, I did it with much gratitude because I certainly wouldn't be here if it hadn't been for that opportunity.

But clearly, something is really screwed up in this country when it comes to student loan debt, and I don't know that we have the answers to it. Maybe some of you do. So, I want to hear your opinion and others on the panel.

Mr. FROTMAN. Quickly, I think there is some truth to the fact that a lot of this problem doesn't rest with this committee, but a lot does. I think what we have seen is that student loan borrowers are getting ripped off. And one of the reasons why they are getting ripped off is because they don't have the same rights and protections as if they were paying back a credit card or paying back a mortgage.

We have heard a lot about how servicers are just doing the right thing. Part of the lawsuit with all the States and the CFPB against Navient documents the incredible incentives that these companies have to try to drive a profit. There was one employee at Navient who described it this way, "Do I help this borrower and answer their questions, or do I rush through it and afford my groceries?"

These are the incentives that the call reps at these companies have to give bad information, no information, or little information at all. And borrowers need rights and protections that are enforceable so when they get ripped off, they can stand up for themselves.

Ms. YU. I absolutely agree. I think that there are numerous problems, and I sincerely do hope that we solve the tuition crisis. However, likewise, the borrowers that we work with, they took on this debt because they wanted to improve the lives of their families, and now they are saddled with that debt.

Today, there is a hearing in the 11th Circuit where Great Lakes is arguing that they don't have to be held accountable when they commit fraud and misrepresentation because it is preempted by the Higher Education Act. And I think what this committee needs to do is to say that borrowers should not be cheated and lied to.

Ms. HARRINGTON. I would agree with my colleagues. I think that student loan borrowers deserve and need the same protections that all consumers are entitled to in this country. I think that the solution to the student debt crisis is working on both front-end and back-end affordability, and that is what we are talking about here.

And affordability absolutely includes at the back end strong servicing protections and quality servicing for all borrowers. We do need to increase the amount of the Pell Grant. We do need to in-crease investment in HBCUs and MSIs. We do need to do a lot on the front end, but this committee has a big part to play in making sure the CFPB can actually protect student loan borrowers. Mr. GONZALEZ OF TEXAS. Thank you.

Mr. MINHAJ. Mr. Gonzalez, I am very passionate about this issue because I am lucky. When I left college, I didn't have any student loan debt because I have immigrant parents, and they made me live at home with them.

So, I don't have crippling student loan debt. I have crippling emotional debt. And Congress has yet to stand up-

Mr. GONZALEZ OF TEXAS. We all do.

Mr. MINHAJ. —and do anything about it and stand up to my parents and say what you did was wrong. But you don't have to have crippling student loan debt to have empathy for people who are investing in their futures, and that is why I am here today.

Mr. GONZALEZ OF TEXAS. Thank you.

Mr. DELISLE. I mentioned in my testimony that I think we need a simpler system. The program has too many options, too many overlapping features that are just too complicated, even for Congress to anticipate the confusing way they interact and trip up borrowers. And actually, many of them almost look like the borrower is being scammed, where a borrower says, for example, "Wait, my payment increased, and I didn't even know it was going to do that. How come I have been paying the same payment for months, and all of a sudden, my payment increased?"

Those nasty student loan servicers. Actually, it turns out that the borrower is in the graduated repayment plan that is spelled out in statute, where their payment increases every 2 years. The program has been designed to look like a scam to borrowers. So, I think the big solution is to stop blaming servicers and get busy fixing the terms of the program

Mr. GONZALEZ OF TEXAS. Thank you. I yield back.

Mr. CASTEN. The gentleman from Georgia, Mr. Loudermilk, is recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

And truly, this is a crisis. We are seeing and hearing it all around. Before I start my questions, Mr. Chairman, I would ask unanimous consent to insert into the record two letters regarding the student loan crisis by the Consumer Bankers Association identifying the crisis and some suggested solutions to it.

Mr. CASTEN. Without objection, it is so ordered.

Mr. LOUDERMILK. Thank you.

I was meeting with some constituents about 3 years ago back in my district, and we were talking about the void we have in jobs in the nation. And I was talking about the need for a lot of technical skills.

And after I got done, this young lady came up to me, and she said, "Look, I have a twin sister. We both graduated high school at the same time. I went to a tech school, and went right into the workforce. In 4 years, I have made more than my sister has in student debt at this point." It was incredible to me that after 4 years in a professional field, that this young lady who went to tech school, now has made more than her sister had in student debt.

I started looking into it more often and realized that we truly do have a crisis, and there is a lot we have to do.

Mr. Frotman, you said something earlier that I want to follow up on. You said students have to have a loan to go to college. Is that true?

Mr. FROTMAN. Sorry if I wasn't clear enough. I was saying, when I talk to people over the last half decade, that is what they feel like. I think Hua Sun said this best, which is people don't feel like they have a choice. For as long as I can remember, and I am sure for as long as many of you can remember, it was go to school, take on the debt.

Mr. LOUDERMILK. Right.

Mr. FROTMAN. And I think what is happening is that for enormous swaths of American society, that decision is premised on whether or not you take out a loan.

Mr. LOUDERMILK. So it is more that people feel than actually do we happen to know what percentage of students actually graduate with no debt? Does anybody know what that is?

Ms. HARRINGTON. In a 2016 class, 70 percent of graduates had student loan debt. So this is a—

Mr. LOUDERMILK. Okay. So about 30 percent?

Ms. HARRINGTON. This is a vast majority of students, and it is something that is no longer a choice. Sixty-five percent of jobs by just next year are going to require some form of postsecondary education. That is only going to go up.

Mr. LOUDERMILK. Okay. I was just wondering because of that. I started thinking about how 2 of my 3 children graduated 4-year college institutions with zero debt and no scholarship. They actually worked—I couldn't pay for it. They actually worked and paid for their tuition, even from some colleges you would recognize.

Mr. DELISLE. Congressman, if I might add to that statistic?

Mr. LOUDERMILK. Yes.

Mr. DELISLE. Many of the people who take out student loans come from high-income families, which should tell us that people aren't necessarily taking out student loans because they have to. They are making choices. They are maybe making choices to attend more expensive schools. They may think the government is offering such an incredible deal, that they can't turn it down.

So I think it is important that we tend to cast student debt as this thing that only low-income people take on, and it is this huge burden, but many high-income families are choosing to use it.

Mr. LOUDERMILK. Let us follow on what you are talking about there. So in their truth-in-lending that they have received—I assume they receive a truth-in-lending statement so they know what the repayment requirements are. You are talking about people calling back and saying, "Why did my cost go up?" Are they receiving documentation showing the requirements that they have to repay this loan?

Mr. DELISLE. Yes, they are receiving an overwhelming amount of documentation. They also need to sit for about 30 minutes of entrance counseling and about 30 to 40 minutes of exit counseling to get the loan, sign a master promissory note. And then any time they use a different repayment plan, they are also signing another form.

So, we don't have an information deficit. We have as much information as we have options in this program, which is way too many. Ms. HARRINGTON. Sir, could I add something?

Mr. LOUDERMILK. Yes.

Ms. HARRINGTON. Yes, there are high-income individuals who do take out student loans. But there are a significant number of lowincome individuals who have to take out student loans, and that is where the issue lies. Ninety percent of the defaulters are lowincome students who were eligible for Pell Grants. So, those are the folks who are struggling to pay the most, and that continues to be the case because the student debt has not taken them to where they are supposed to go. We do have issues with this system.

Mr. LOUDERMILK. Do you agree with Mr. Delisle that they do know going into it what the requirements are of repayment, their interest rates, their payment, the escalating payments? Is there enough disclosure there?

Ms. HARRINGTON. I don't think this is a question of personal responsibility or more disclosure. This is a question of how we make sure that private actors are acting in the best interest of consumers and students and, therefore, taxpayers.

Mr. LOUDERMILK. I think it is in a sense if—I was under the impression that they were just being given loans by statute or whatever, and they didn't know what they were getting into and the requirement to repay. So, that would be my question.

When you buy a house, the TRID requirements are so expansive with the truth-in-lending that we have to have software to do it.

But anyhow, I see that I am out of time. I can submit the rest of my questions for the record.

Thank you.

Mr. CASTEN. The gentleman from Florida, Mr. Lawson, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman, and witnesses, welcome to the committee.

This is very interesting to me because I have probably over 100,000 students throughout the Fifth Congressional District, so I talk to students all the time about problems they have. I didn't have any student loans because I was an athlete, but a lot of my friends who were in the dorm at night would be talking about what is going to happen to them and how they would have to pay it back.

I have taken a great deal of interest in this particular area, and I don't think the Federal Government caused any problem because—and Congress because we are the good guys, and everybody else is bad. But I have introduced several bills to address various angles of the student loan problem.

These include a bill to refinance Federal loans with a fixed interest rate, excluding income of dependent students in the expected family contribution calculation, and most recently, a bill to extend the interest-free grace period for Federal loans. And the reason why I introduced those is because 6 months after the student graduates from college and they don't have a job, they are expected to pay. So, hopefully, we can delay it for at least a year so you can give them the opportunity to get a job.

And also, you can refinance just about everything. So, they should be able to refinance student loans. I would like to hear the panel discussion on delaying student loans for at least a year so they can find a job and the ability to refinance student loans.

And I will start with you, Mr. Frotman.

Mr. FROTMAN. I think we often get stuck in this mindset that you need to have a silver bullet to solve every problem. There is no silver bullet to solve a \$1.5 trillion student loan problem. So I think bills like these should be encouraged. I think we need to try to attack all of the different ways that student debt is not only impacting individuals, but our larger society.

I would love to learn more about these bills and work with you. Ms. YU. Thank you for your question.

Certainly, borrowers need more assistance getting off the ground. Interest rates for some borrowers are way too high, but also, for the borrowers that we see, it is the fact of their debt. It doesn't matter if it is \$5,000 or \$50,000, whether or not it is a 5 percent or 10 percent interest rate. The borrowers that we work with are just struggling with debt all around, and they need to make sure that they are able to access the programs that already exist.

They would greatly benefit from income-derived repayment. They would greatly benefit from a lot of the cancellation programs that already exist, and they are just not able to access those because of lack of consumer protections.

Ms. HARRINGTON. I would agree with my colleagues, and I would just add that there definitely does need to be streamlining and improvement of the income-based repayment program, to make it actually affordable, based on 8 percent of discretionary income, not 10 percent, and increasing the line above which income starts to 250 percent of the poverty line.

There are a number of things we can do, making it one plan. But again, all of that only matters if students actually can access these programs and plans, if their servicers are actually doing their job and if they have the information they need to be successful.

Mr. MINHAJ. I am not an expert when it comes to refinancing, although I am very good with Microsoft Excel and macros.

Mr. DELISLE. You can refinance a Federal student loan. A Federal student loan has no prepayment penalty. So you are free to go out into the private market and shop for a better rate, obtain the better rate, use all the proceeds from the new loan to pay off the old loan, and you have refinanced exactly like you would refinance a mortgage.

I don't know why it is this common misperception that you can't refinance a student loan. It is actually happening all the time. It is happening right now. There is a company called SoFi sending out mail all over the place saying, refinance your Federal student loan with us. You wouldn't build a whole company around something you can't do, right? So I think there is ample evidence that you can actually refinance a Federal student loan.

Mr. LAWSON. With everything that I have heard from you this morning, you all are the good guys because it seems like everything that has been discussed here, students don't know about it, and the people who have been on this panel and talking about it, and even some of the Members, have no idea about all the things that are available for student loans.

What I have heard is oftentimes, they are not able to refinance a student loan, and the Federal Government should not be making a profit off the backs of students. And I know I am running out of time. I would like to have more discussion with you in the future.

And with that, I yield back.

Mr. CASTEN. The gentleman from Ohio, Mr. Davidson, is recognized for 5 minutes.

Mr. DAVIDSON. I thank the witnesses, and I thank the committee for talking about a major problem in the country, the student debt crisis. We have seen it accelerate in the past decade, and I think we can go back and pinpoint the point in time when the rate of growth of the problem began to accelerate.

The question is, do we have the resolve to actually go to the root cause, or do we want to do things the way Congress normally does, which is akin to the fire department showing up at a burning building and looking at the building burn while we blame one another or try to figure out whose fault it is. We just need to put out the damned fire.

And so when you look at it, how do we do that? The structure in Congress actually prevents getting to the root cause. We have a committee that can only deal with the jurisdiction of servicers. We are sitting here talking about the issue of how—Mr. Barr highlighted the very limited ability of servicers to actually end this problem. We are spending hours talking about servicers here instead of talking holistically about the root cause of the problem and how do you deal with that.

What we did is, as a country, we decided that we wanted students to be able to get loans that the private sector wouldn't make because the default rates would be too high. When I was a young person, and I looked at how much debt I would need to take on, and I looked at the alternatives I had, one of the reasons that I loved my options—one of the reasons I chose to march for free college back in the day is because the Army had the College Fund. And I was able to go to the Army and have a path to not go into debt as my first act as an adult, but to defend our country.

And that led me to go to the United States Military Academy, and all that is part of why I am here today. So I do want to thank the American taxpayers who paid for me to have a great, highquality education.

I think when we think about the taxpayers of America, we need to forget about the forgotten men and women who are actually being defrauded here, and it is the taxpayers. Because they are fronting all this money for no sound underwriting to people who do not have a realistic expectation of paying the money back.

Now that doesn't mean that those students are committing fraud, though some may be. But they do not have a realistic prospect of repaying the loan. And when you have market principles at work, people don't make the loan. They don't. They say, you know, I love you, it is not about you as a person, it is that you do not have a realistic expectation of paying for this.

And when we lost those principles, that is how we crashed the housing market in the United States, and that is how we are crashing the education market in the United States. There are a lot of people being hurt because lawmakers are making half-baked solutions to real problems because the way this place is structured with jurisdictions doesn't allow solutions to the whole problem.

We should be structuring and say, the student debt crisis is a problem. We have a committee for that. That committee has jurisdiction to deal with the whole problem.

We should talk about healthcare and say, the status quo is broken. We should have a healthcare committee. It is 20 percent of the U.S. GDP, 20 percent. And instead, we divvy it up amongst three committees.

You look at immigration, same story. So on and so forth, the spending problem, the broken welfare system, the means-tested programs, the poverty assistance that we have, divvied up amongst 12 of 16 committees. You can't even get a bill to holistically deal with it to appoint a commission, four Republicans, four Democrats. You can't cut spending. You can't launch new programs, but you could refine it to fix the benefit cliffs that are in there. No one can convene it because there is not a single committee with jurisdiction.

And yet, Congress sits here. We demonize each other. We point cameras and say, see, here is the problem. That is the problem, but we don't go to the trouble to put out the fire and solve the problem.

If we want to do it, colleagues, we have to change the structure of the way this place works and do bills that get to the root cause because the American people are being defrauded. We are going to bankrupt our country by spending more money than we have the same way these students are being bankrupted right out of the gate, the earliest stages in life, by taking on more debt than they can afford. That is exactly what this nation is doing today, and we need to change the broken status quo, and that starts right here in this body.

I vield back.

Chairwoman WATERS. Thank you.

The gentleman from Guam, Mr. San Nicolas, who is also the Vice Chair of the committe, is recognized for 5 minutes.

Mr. SAN NICOLAS. Thank you so much, Madam Chairwoman.

I don't think anybody's hands are clean in all of this. I don't think anybody's hands are clean. I think that politics has a way of making us try and pigeonhole the problem and make it be the previous guy's problem or try and identify some other reason why things are the way they are. But the reality is that our entire system is kind of designed to create this mess that we have here today. Ms. Harrington, when you say 90 percent of the defaulters are low-income Pell Grant recipients, I think that speaks volumes to how systemic this problem is. We have people in this country who are looking for opportunities. They see education as the way to go, which is how we are all raised. We are all raised and told to go and get a good education. It is going to open doors for you, and it is going to create a better life than the life that we have now.

We have these, as Mr. Sherman pointed out, institutions of higher learning that see all this money available, and they keep increasing tuition rates. As a local lawmaker back home, I remember trying to introduce legislation to reduce the amount that our students had to pay for tuition. And one of the individuals in the university said, "We don't want to drop it below the Pell Grant rate because that is free Federal money that we are bringing in, and we want to bring that money into the territory."

And you kind of sit back and you look at how the system is almost designed to make the pursuit of capital on the front end the priority and the pursuit of the American Dream for all those people trying to find whatever way they can to get to where they want to go kind of falling into that trap. And of all things, I think that this is ultimately an indictment on our inability to provide significant financial literacy education in our community so that people don't make these individual choices that are hurting them.

But when the whole system is almost designed where you need to go and you need to attend the best possible university you can just get accepted into so you can possibly get the best job that you are going to be able to get after you graduate, and then you borrow as much money as you need to borrow in order to get from here to there, it is that classic case of the ends justifying the means.

Unfortunately, what has resulted from all of that is \$1.5 trillion in student loan debt and a lot of people who took that option trapped. They are trapped because now they have this debt, and it is affecting the debt-to-income ratios. They are not able to go out and borrow for a car to drive to work or to borrow to buy the home that they are dreaming of for their families.

And as much as we talked about systemic risk in this committee, and as much as this committee has done so much work to address it when it was affecting the big banks, we need to really ask ourselves the hard question: Is it systemic risk for an entire generation to be lost to student debt and to hold them all back because they fell into a trap that our society has kind of created for them?

So, we have asked the question of what can we do, and I know that the committee has kind of stayed focused on the servicers. And definitely, there is a service gap that we need to fill. But I wanted to ask the \$1.5 trillion question, and this is the political question that I think a lot of people are talking about.

There are some broad-stroke solutions that people mention, who are running for higher office, but I wanted to ask you folks, what would you do about the \$1.5 trillion, I don't want to say elephant or donkey in the room, but just the \$1.5 trillion giant that we are all facing here? How do we address that?

Mr. FROTMAN. I think it starts, first off, in hearing rooms like this. I think for years, when we started doing this work at the Consumer Financial Protection Bureau and you would talk about the impact of student debt, everything would always revert back to, let me tell you how we are going to make college more affordable for the next guy. An entire generation felt like we were writing them off.

I am not trying to evade the question at all, but we just need to talk about the impact that this debt is having and then come together and realize that it is just an unacceptable outcome for 45 million Americans who have seen their chance at the American Dream hampered by student debt. And I think it starts there.

It starts by talking about housing, impact on buying cars, on racial wealth gap, on income inequality. Because I think we hear about this issue sometimes talked about as like a generation eating too much avocado toast, right? And nothing could be further from the truth. The fastest-growing segment of student loan borrowers are older Americans.

I think we need to come together and realize that this is impacting huge swaths of the American population and the American economy.

Mr. SAN NICOLAS. Well, I am almost out of time. Does anybody have a solution? We were talking about forgiving student loan debt, hitting the reset button. Does anybody here advocate for that or something similar?

Ms. HARRINGTON. Absolutely. We just put out a recent report with the NAACP, Unidos, the Leadership Conference on Civil and Human Rights, and the Urban League, where we argue for broadbased cancellation, even of \$10,000 across-the-board, which would have a significant impact for many borrowers, especially borrowers of color.

Mr. SAN NICOLAS. So, not full forgiveness, but even just partial would give the breathing room necessary.

Ms. HARRINGTON. Even just—because that is actually full forgiveness for a significant amount of people who are most at risk. The 90 percent of defaulters who are low income are—the median amount they are defaulting on is less than \$10,000.

So even at \$10,000, we would have a significant impact on the lives of millions of borrowers, and we would help lift them out of poverty.

Chairwoman WATERS. The gentleman from Tennessee, Mr. Rose, is recognized for 5 minutes.

Mr. ROSE. Thank you, Chairwoman Waters.

I am a graduate of Tennessee Tech University in my hometown of Cookeville, Tennessee. And fortunately, I graduated from Tennessee Tech with no student debt and just recently was looking at the statistics for that university and see that still today, 48 percent of their graduates graduate from the university without student debt. The cost is very reasonable, and it is a great university.

It seems to me, and I think others have made this point today, but I want to bear down on it, that we are here swatting at something that is really not the problem. And this committee, unfortunately—or fortunately, depending on your perspective—doesn't have the jurisdiction to deal with the problem.

I look back to July 2010 when the Affordable Care Act was signed into law, and since that time, all new Federal student loans have been made through the Federal Direct Loan Program, administered by the Department of Education. Today, nearly \$1.4 trillion of the \$1.5 trillion in student loan debt is owed or guaranteed by the Federal Government, a Federal Government who did it explicitly because they thought they could make money and use that money to offset the cost of a new entitlement.

And I think what we see, unfortunately, here in Washington is over and over again, the Federal Government occupies a space that the private sector was handling fairly effectively and turns it into a giant mess. Now, here we are trying to swat at the symptoms of this ill, and I am really kind of mystified by why we think beating up on the servicers is somehow the answer to this problem.

By that logic, it is the people who work at the servicers who are the problem. It is those dastardly individuals who get on the phone with you that we should be blaming and we should be sanctioning because how dare they mistreat student loan borrowers when they have them on the phone? And so, I am just kind of mystified by this approach to the problem.

Mr. Delisle, what is the relationship between the Department of Education and the student loan servicing companies?

Mr. DELISLE. It is a contract. The Department of Education hires them on contract to basically run the entire Federal student loan program according to the terms that are spelled out in the law.

Mr. ROSE. And what is the process by which the terms and conditions of those contracts of loan servicing are set?

Mr. DELISLE. It is the standard government contracting process. The Department takes bids and has an amount of money that Congress determines how much it can pay for these contracts and, using that amount of money, spells out what the servicers should do.

Mr. ROSE. And who sets the terms of the loan, such as the interest rate and the loan terms that the borrowers borrow under?

Mr. DELISLE. Congress does. They are set in statute.

Mr. ROSE. Do you think the majority of borrowers are aware that Congress sets those terms?

Mr. DELISLE. It is hard to say. There are certainly some who are unaware of that, who, in fact, the only entity they are interacting with is their servicer. So I think it is reasonable, although incorrect, for them to blame the servicer when they are frustrated with this process. It is the only entity they are interacting with.

But as you can see in my testimony, I give a lot of examples where the servicer is just doing what they are supposed to do, and it looks like a scam to the borrower.

Mr. ROSE. And a servicer's role is ensure that the borrowers are acting according to their repayment plan or to suggest a better option. It is the duty of the servicer to inform the borrower of all of his or her repayment, deferral, and forbearance options. What is the process for choosing a new plan?

Mr. DELISLE. A borrower is entitled to choose any plan for which they are eligible pretty much whenever they want. They can get the information from the Department of Education's website. They can get the information from the servicer who will send them forms, and they can decide which one they want to use. They can ask the servicer about the options. Servicers generally aren't in the position of telling you which one is best for you. That is a really difficult kind of calculation. I am an expert in this. I would have a hard time determining what the ideal option is for every borrower in every circumstance.

Mr. ROSE. Is there any connection between the compensation structure for the company's employees, the servicer's employees, and the repayment plan that the borrower chooses?

Mr. DELISLE. It is mostly based on, are you in good standing, are you in forbearance, or are you delinquent? My understanding is the contract is less about which plan you choose. It is more about whether or not you are in good standing on the loan.

Mr. ROSE. Thank you. I yield back.

Chairwoman WATERS. The gentlewoman from Michigan, Ms. Tlaib, is recognized for 5 minutes.

Ms. TLAIB. Thank you so much, Madam Chairwoman.

I sincerely appreciate this conversation, especially because my district, the 13th Congressional District—I call it 13 districts strong—is the third-poorest congressional district in the country. And it is very dangerous when we start blaming borrowers unfairly, when the system is really set up against them and set up for complete failure.

There was a 52 percent increase in college debt in Michigan from 2007 to 2017; I'm just putting that out there. What is really hard in these conversations is we forget about the human impact. And I think, Mr. Frotman, you were trying to put that forward, and so have you been, Ms. Harrington, you have been trying to put that forward as something that needs to be in this room because doing nothing has consequences on real people's lives.

A Redford Township resident in my district came up to me, and he said he is so concerned about what is happening with his college debt. He is in his late forties, and he wants to buy a home, and he can't because of college debt. Another young woman who just graduated from law school said," I don't want to go into the court. I want to do free, legal pro bono work."

And she said, desperately, "What can I do? Because I hear all these horror stories about people doing the forgiveness loan program if you do public service for 10 years, and I just saw a number that 99 percent of those applicants were being denied." Again, these are teachers, these are public servants, these are people who are giving back to the community that raised them.

One of the things that we keep forgetting is that these are not people buying Ferraris—this is an education. These are not people buying fur coats, which I would prefer people—I have asked them not to buy those. But I am saying, that these are not luxury items.

One of the most successful anti-poverty programs in this country is education. And so we have to continue to try to put the human face on this issue and not try to get so much into the technicality of it because I feel like when we do do that, because there are these different solutions to this, that we get far away from actually saying that there is a crisis here.

And Madam Chairwoman, if I may, later on, I plan on submitting several letters for the record regarding this crisis.

Chairwoman WATERS. Without objection, it is so ordered. Ms. TLAIB. Thank you. We saw in the mortgage crisis that doing nothing had consequences, and all of a sudden, our residents and our families were getting preyed on. And that is what is happening with college debt right now.

Today, you cannot go on Facebook without seeing one of these ads. You cannot listen to a radio without hearing some sort of pitch. You cannot go for 48 hours without getting a robocall or text message congratulating you on the opportunity of a lifetime to help you with your college debt, right?

And we have companies like the Pennsylvania Higher Education Assistance Agency already being paid hundreds of millions of dollars to service these loans and help borrowers. But all of a sudden, these folks are coming in, a lot of my colleagues will call them businesses. I am going to call them scams. They are scam artists. They are scams, period.

We cannot deter from the fact that they are trying to prey on the most vulnerable because, guess what, we made them very vulnerable because we are doing nothing about this crisis.

Mr. Frotman, do you think the reason that these student loan debt relief scams are so prolific, I mean just increased, is because servicers are failing to give borrowers the help they need?

Mr. FROTMAN. Absolutely. I think one of the downstream consequences of the widespread abuses and mismanagement by student loan servicers is just this abundance of scams, of companies willing to prey on the most vulnerable borrowers and steal their last dollar.

Ms. TLAIB. And then, Mr. Frotman, you know, Facebook, Google, Bing, Yahoo!, and others have allowed these con artists, scams to use their advertising platforms and search engines to target struggling borrowers. To what extent do you have concerns that these search engines are in large part responsible for profiting off of the abuses of student loan borrowers and making this crisis worse?

Mr. FROTMAN. Without question, companies like Facebook and other technology companies are making a whole lot of money on ads by scammers, of people preying on student loan borrowers, and I think this is, to go back to a prior question, the building is on fire. The building is on fire now, and there are things that the committee could do to help constituents, your constituents across the country, and this is what is happening. To your point, this is the human face of people getting ripped off.

Ms. TLAIB. And to what extent, and when you think of that list of legislation before us, what extent do you think that we can be doing here to protect them? Because it is going to be hard to get some of my colleagues really on both sides of the aisle to really try to handle this crisis because doing nothing, again, for so long, this is what you have before us.

For me, I am a mom, and so I am trying to—even if band-aids don't work, I am trying to stop the bleeding right now, and now I have so many of my residents falling into the trap of trying to refinance and do all these things.

And by the way, Mr. Delisle, you keep saying that it is not a scam. If it looks like a scam and it acts like a scam, it is a scam. But one of the things that is really distressing is—and I am so sorry, Madam Chairwoman. I can submit my questions later, but

I really want to ask you what we can do in regards to these platforms and how we can protect our residents from scams like this. Chairwoman WATERS. The gentleman from Wisconsin, Mr. Steil,

is recognized for 5 minutes.

Mr. STEIL. Thank you, Madam Chairwoman. I appreciate you calling today's hearing to highlight what is a really serious issue. We have a \$1.5 trillion student loan problem. Today's hearing, though, I think, digs into a false premise as to where the problem is.

The problem is in the underlying cost of the education product in the first place that is driving students into debt. Misdirection works really well in comedy. It is not terribly effective at actually solving what is a very serious problem.

When I was on the University of Wisconsin Board of Regents, what we did to address the student debt issue was we actually froze the cost of tuition, froze it dollar for dollar. And that allowed the cost of tuition to become more affordable for students in the State of Wisconsin. It had a direct impact on the total student loans that students were taking out and actually allowed students to come out with less debt than if they would if we just casually increased the cost of tuition. It is a real solution to a real problem.

We see States go around and sue big, bad corporations because where you can't legislate and get the cost under control of the underlying product in the first place, you litigate. If you can't legislate, you litigate.

And what we need to do is actually have a real, honest conversation about what the underlying cost of the product is that is driving students into debt in the first place. And if you kind of think through just our panel that is here today, I would ask you. at your alma mater, which is I think where we started off at the very beginning of this hearing, what the underlying cost of tuition is?

Mr. Frotman, at the University of Michigan, do you know what the in-State tuition is for a student?

Mr. FROTMAN. I'm not sure.

Mr. STEIL. It is \$15,000. If you are out of State, it is \$51,000.

Ms. Yu, at Holyoke College, do you know what the cost of tuition is? It is \$52,000.

Ms. Harrington, at UNC-Chapel Hill, do you know what in-State tuition is? It is actually pretty darned good. It is less than \$9,000. That is solid work by the University of North Carolina and the University of North Carolina system that is getting that done.

Mr. Minhaj, do you know what the cost of in-State tuition is currently at UC-Davis?

Mr. MINHAJ. Go, Aggies. Yes. So, 2003–2004, my freshman year-

Mr. STEIL. No, no, no. Today. Do you know what the cost is today?

Mr. MINHAJ. Today, it is \$14,490.

Mr. STEIL. Boom. Do you know what the out-of-State—

Mr. MINHAJ. Do I get points for that?

Mr. STEIL. Bonus points, absolutely.

Mr. MINHAJ. Thank you.

Mr. STEIL. Do you know what the out-of-State tuition is?

Mr. MINHAJ. I don't know what the out-of-State tuition is.

Mr. STEIL. It is \$44,000, and I think it is relevant.

Mr. MINHAJ. I don't think that is worth it, though, if you are out of State. I think you do what I do, and you just stay at home. You call it.

Mr. STEIL. I only have only so much time.

Mr. MINHAJ. You invest in the next case, and you just call it-Mr. STEIL. Mr. Delisle, do you know what the cost of tuition is at Lawrence University?

Mr. DELISLE. For a poor student, I believe it is zero.

Mr. STEIL. And do you know what the cost would be-what is the sticker price, which is-

Mr. DELISLE. I don't-well, for a really high-income student, I hope it is really high.

Mr. STEIL. So, the sticker price?

Mr. DELISLE. Thirty thousand?

Mr. Steil. It is \$49,000.

Mr. DELISLE. If they are high income, good.

Mr. STEIL. And so there is a disparity between sticker price-I think you identify a good point there. There is a significant disparity between sticker price and the cost that students are paying. For the published rates that are the most easy to obtain and what is causing a problem for access for students is the sticker price in part.

Mr. DELISLE. But only high-income people pay those sticker prices.

Mr. STEIL. Absolutely. At the University of Wisconsin-Madison, if you are below the median income in the State of Wisconsin, tuition and fees is zero dollars. Not one dollar, zero dollars. It is covered between a combination of the Federal Government, the State, and private donors.

That actually addresses the underlying cost of the product in the first place. And so, where we are having a lot of misdirection into the processors because there are big, bad companies-and I am not telling you that they are perfect. I am telling you it is a misdirection to try to find a bogeyman for what is the underlying problem. And the underlying problem is the folks who are running these universities, whether or not they are State legislators, State senators, governors, boards of regents, they need to come in and address the underlying problem, which is the rising cost of tuition

and fees, let alone as you get into housing and other issues. And so what we did in Wisconsin was to actually put forth a real program that addressed the problem, driving down the underlying cost of tuition, which brings down the debt level. It is darned effective.

And in areas where States continue to see their cost going up, where they can't legislate or they can't put policies in place that actually help students be able to live out the American Dream, we litigate, we sue all these companies, we misdirect, we make a bunch of noise, it is not effective. It is pretty darned frustrating. And I yield back the remainder of my time.

Chairwoman WATERS. Thank you, Mr. Steil.

The gentleman from Illinois, Mr. Casten, is recognized for 5 minutes.

Mr. CASTEN. Thank you, Madam Chairwoman.

And thank you so much to our panel.

Mr. Minhaj, you mentioned in your initial comments that the median income is up 3 percent over the last 33 years. I think you are far too optimistic.

Census data came out with information this week. The median income last year was \$63,000. That is exactly the same as it was in 1999. To the extent it is up over 33 years, that was a creature of the 1990s. It isn't true anymore.

Now during that period, as many have noted, tuition is up over 100 percent. Cost of housing is up 34 percent. The price of a gallon of milk is up 30 percent.

We have about \$1.5 trillion worth of debt. My colleagues across the aisle last term blew a \$1.5 trillion hole in the economy so that we can remove the pain that the ultrawealthy have so they don't have to decide between their milk and their college tuition. The nation's 1 percent thank you.

Meanwhile, we still have this problem. And while there are a whole lot of issues beyond the jurisdiction of this committee that are underlying that, and of course, we will look into all that, I think we have created a fiction that markets are perfectly efficient, and there is no emotion in decision-making, and therefore, the entire marketing industry must be a sham.

But we do have distortions in the system. The 2005 bankruptcy bill says that you cannot discharge your debt in bankruptcy if it is debt associated with a student loan program. You can discharge your credit card debt. You can discharge your mortgage debt. You can discharge all sorts of other debts.

Ms. Yu, can you talk about how that affects the underwriting process? If you know that underwriting a loan in a world where the median income is not keeping up with tuition growth, is effectively never going to default?

Ms. YU. I think that it is driving a lot of the abuses that we see in the private loan market because we know that borrowers are not going to get out from under their debt. So, low-income students are struggling to make payments, and lenders have no incentives to provide them with more flexible repayment options because they are going to be on the hook most likely for the rest.

Mr. CASTEN. So when Mr. Delisle made the comment that, essentially, we are not doing underwriting for student loans, is it safe to say that the underwriting process has been distorted by the 2005 bankruptcy bill?

Ms. YU. I think that is right.

Mr. CASTEN. Okay.

Mr. DELISLE. I was speaking about the Federal student loan program, not private loans.

Mr. CASTEN. Fair enough. There are distortions in the system—

Ms. YU. Which also has no bankruptcy—

Mr. CASTEN. I will get to you in just a moment, Mr. Delisle. There is a separate narrative going on, and we have heard it across this panel, and we have been talking about this for years that if you subsidize the cost of the loan, you will distort economic efficiency. If you give people access to debt that exceeds their ability to repay, they are going to make unwise financial decisions. And that sounds logical. We all took freshman economics. And yet, as Raj Chetty has pointed out in his sort of magisterial work on wealth and income inequality, the single best predictor that you are going to find yourself in the top quartile of income in your peak earning years is whether your parents were in the peak quartile of income when you were born. Some of us were so smart that we chose our parents wisely. Some of us were too dumb to do that.

If it is the case that the access to an affordable education distorts your rationality, it makes you more prone to do foolish things, it makes you more prone to enter into careers that don't generate a useful income, if affordable education is so distorting, why are the children of the ultrawealthy so darned irrational?

Mr. Delisle, you described yourself as a capitalist. Why is it that the ultrawealthy don't enter into lines of work that don't pay them an income?

Mr. DELISLE. I am not sure that is necessarily the case.

Mr. CASTEN. I would note quite to the contrary. The best predictor that you are going to be in the top quartile of income—not wealth, although wealth is also true—is that your parents were born that way.

We do not see data that people who have access to zero-cost loans and never have to repay them, get total loan forbearance, we see no evidence that those people are going into foolish lines of work. Why are they so irrational?

Mr. DELISLE. We see evidence that they are actually—they are doing quite well, which is why I think it is such a waste of money to forgive their loans, which is actually the current policy that we have.

Mr. CASTEN. I am asking a different question. People who do not have to have a loan at all, the reason why they don't have to have a loan at all is because their parents were so wealthy. I am not talking about whether or not those families chose to take out loans they could afford to repay. Why isn't Donald Trump, Jr., working in a shoe store as a philosophy major writing poetry?

Mr. DELISLE. I think the data show—since we will talk about data and evidence here—that high-income families take out student loans.

Mr. CASTEN. That is not the question I have asked.

Mr. DELISLE. You said, why don't they? And I am saying—

Mr. CASTEN. I am asking why people who do not have the need to take out loans violate your theories of economics that assume everybody is rational?

Mr. DELISLE. I don't assume everybody is rational.

Mr. CASTEN. I yield back.

Chairwoman WATERS. The gentleman from Wisconsin, Mr. Duffy, is recognized for 5 minutes.

Mr. DUFFY. Thank you, Madam Chairwoman.

As a father who has his kids now going through school, I've got to tell you, the student loan system is jacked. It's a horrible system, and I think what it does is, if you're poor, you get great subsidies and college is more affordable, and if you're wealthy, you have parents who will help you pay. I think the middle class gets crushed in the way that this system works. That's just my personal opinion from going through the process. Would the panel agree that probably the smarter the kid, the better school they get into, and maybe the less smart the child, the not-so-great school they get into? Do you all agree with that? No?

Ms. HARRINGTON. I don't agree with that, given the history of racial injustices in this country and the fact that we have disparities across K-12 schools that are concentrated in low-income neighborhoods, neighborhoods of color, and we haven't adequately prepared our students and so the smartness level which is usually measured by grade point average or SATs or things like that are inherently biased and they don't determine who is smarter. They determine who had wealthier parents who could put them in certain schools and give them access to certain programs.

Ms. YU. And even the data with those SAT programs show that there's also a mismatch between students who have the ability to get into higher schools but then don't for other reasons.

Mr. DUFFY. Great points. But the higher the SAT and the higher the GPA, the better the school, and the lower the GPA and the lower the SAT, it will be the lower-rung schools. Is that a fair assessment? Whether that's intelligence or smartness, I think you make a good point. Is that fair enough?

Ms. YU. Like I said, there is no—

Mr. DUFFY. If you have a 20 on your SAT, you're probably not going to Harvard.

Mr. MINHAJ. Or if your mom is Aunt Becky, you can just pay your way. What are we talking about here?

[laughter]

Mr. DUFFY. Hold on a second here. What are we talking about here? But what I—

Mr. MINHAJ. You and I, we're both former MTV stars.

Mr. DUFFY. Let me tell you what.

Mr. MINHAJ. I was the star of Season 5. You know what it's like. We can't afford—

Mr. DUFFY. Mr. Minhaj, I'm going to claim my time.

Mr. MINHAJ. Okay.

Mr. DUFFY. I know you think it's a joke. It's not a joke but you think it is and you want to come in here and make light of a serious situation. I don't think it's funny. So, you can sit here and do your film and make people laugh, but we're trying to have a serious conversation and I only have 5 minutes.

Mr. MINHAJ. Okay.

Mr. DUFFY. So, leave it alone. My point is, we do have a problem, and I would agree with my colleagues that the problem belongs with the cost of education, okay, and if you're going to let me go to your school and you're going to charge me \$50,000 or \$60,000 a year and give me a degree that I can't make a living with to pay the loans back, what skin in the game does the school have for letting me in, charging me the money, giving me the debt, and I can't pay it back? Who pays? Does the school pay? Mr. Frotman?

Mr. FROTMAN. No. I think—

Mr. DUFFY. And should they? Should they have skin in the game?

Mr. FROTMAN. I'm actually happy that you're trying to talk about solutions. I think—

Mr. DUFFY. So do they have skin in the game?

Mr. FROTMAN. I think that-

Mr. DUFFY. Should we claw back some of that money?

Mr. FROTMAN. I think that there needs to be more—

Mr. DUFFY. I have to hurry up. I only have a minute and a half. Should we claw back money from the schools? If you give me a degree that I can't pay back my loans with, why should the taxpayers—

Ms. HARRINGTON. There actually were a couple of rules that would have ensured that the worst-performing schools would have had to return that money—

Mr. DUFFY. So you agree—

Ms. HARRINGTON. —under the repayment rule and the gainful employment rule, which the Department—

Mr. DUFFY. So we should claw money back from the schools?

Ms. HARRINGTON. We should hold schools accountable—

Mr. DUFFY. Thank you.

Ms. HARRINGTON. —especially the worst actors, the for-profit schools. It's not about clawing money back. It's about holding schools accountable for the fact that they have low-quality programs that cost a lot of money—

Mr. DUFFY. I think this problem exists with all of the schools.

Ms. HARRINGTON. —with poor outcomes and target schools of color better than—

Mr. DUFFY. Whether you're going to the best schools, medium schools—it's my time. All schools have this problem and so we should claw money back from all the schools that give kids degrees with high debt and they can't pay it back, Number 1.

Number 2, I think we should look at the endowments. You have billions of dollars in endowments and we're talking about what giving loan forgiveness to all students. So, University of Wisconsin, Marathon County, \$5,000 a year to go there for 2 years, then you go to the University of Wisconsin, Madison, for \$18,000 a year. That's a really smart choice. Those are kids making really smart decisions for their financial future versus the kid who goes to Dartmouth and pays \$58,000 a year.

So why should those who became a union welder and went to a union welding school or the kid who went to UWMC pay for the kid who went to Dartmouth and has the pathway of Dartmouth? That's fundamentally unfair if you set up a system where you have kids getting great degrees and making big money and we, the taxpayers, or we, the union members, are going to pay back their school. That's insane. I yield back, Madam Chairwoman.

Chairwoman WATERS. The gentlewoman from Massachusetts, Ms. Pressley, is recognized for 5 minutes.

Ms. PRESSLEY. I just want to say I'm very disturbed as we perpetuate the fiction that we live in a meritocracy and that people advance based simply on acumen when we are in the midst of quite literally some very high-profile people who have their children's SAT scores fixed and things like that have been going on by the powerful and the few for a very long time.

Okay. So I want to say thank you, Chairwoman Waters, for your continued leadership, for making sure that this committee stays focused on those issues of care and consequence to the American people. I especially appreciate the frame and the titling of this hearing.

Several months ago, when Director Kraninger of the CFPB was before this committee, I asked her whether or not we were in the midst of a crisis, and I could not get her on the record to even characterize student loan debt as a crisis when, in fact, it is.

When we talk about the chokehold of this debt, and I've just spent 6 weeks in my district, the Massachusetts 7th, hearing from families who are struggling to put food on the table, to pay the rent, to take care of aging parents, to pay for childcare, and what does all this mean ultimately? It means that people are alive but not living. This debt is not just choking at our ability to build wealth or our purchasing power; it is quite literally choking people.

We had a hearing in Oversight and Reform on trauma, and we learned that suicides are on the rise for many reasons, and one of those reasons is debt despair. So this is choking at the promise of our country, and quite literally, we are losing lives because of the debt that folks are burdened by. So it is a crisis, and for those across the aisle who perhaps think that we are being dramatic, you cannot overstate \$1.6 trillion in debt crushing close to 45 million borrowers. You cannot describe that as anything less than a crisis.

So I thank the chairwoman for her leadership, and for those across the aisle who question whether or not this committee is germane to this issue, when you overlay this with discriminatory policies like redlining, and then Ms. Harrington shares with us that 90 percent of defaults are disproportionately borne by students of color, there's no way that there's not an interconnectedness and intersectionality from homelessness to housing to many of the issues that this committee tackles and so this is exactly what we should be addressing as a committee.

The facts of this crisis, and again it is a crisis, require no exaggeration. We are past the point of just paying attention. It's time to act.

Madam Chairwoman, I'd like to ask unanimous consent to submit for the record a statement from Student Debt Crisis, a nonprofit organization dedicated to combating this crisis.

Chairwoman WATERS. Without objection, it is so ordered.

Ms. PRESSLEY. Thank you. Mr. Frotman, you led the team at the CFPB whose sole responsibility was to watch out for all student loan borrowers and younger consumers. What were some of the trends that you and your team noticed?

Mr. FROTMAN. Unfortunately, what we saw, just like we saw in the mortgage context, was when servicers fail, it hits the most vulnerable borrowers the most, and in the student loan context, these are borrowers of color.

So we see now even holding for constants like income, and degree attainment, African-American borrowers have double-digit rates of default, and with that in mind, the Bureau announced that we were going to be looking at whether or not student loan servicers and student loan companies were in compliance with the nation's Fair Lending laws.

Ms. PRESSLEY. During your time there, did the CFPB begin to look into potential discrimination in the student loan servicing industry in violation of the civil rights laws, including the Equal Credit Opportunity Act?

Mr. FROTMAN. In April of 2017, the CFPB announced that it would be prioritizing in our supervision work whether or not student loan companies were complying with the laws, the nation's fair lending laws, in particular whether or not borrowers based on their race were more likely to have difficulty getting an income repayment plan.

Ms. PRESSLEY. Okay. And to your knowledge, has the Bureau continued to look into these issues?

Mr. FROTMAN. Unfortunately, not. Based on your own conversation with Director Kraninger, it appears as if the Bureau has just dropped this work.

Ms. PRESSLEY. Thank you. Madam Chairwoman, I'd like to request unanimous consent to include a letter from civil rights organizations, including the NAACP and the Leadership Conference of Civil and Human Rights, urging the CFPB to look into racial disparities in student loan outcomes and potential discrimination in loan servicing market.

Chairwoman WATERS. Without objection, it is so ordered.

Ms. PRESSLEY. Mr. Frotman, our friends across the aisle have mentioned that student loan servicers are supposedly not incentivized. Student loan borrowers have forbearance and that they are not financially incentivized to give borrowers poor or outright incorrect advice.

Yet, an audit released by the DOE in February of this year found that more than 60 percent of the Department's oversight report contained examples of servicers acting improperly. If our friends across the aisle are correct and loan servicers are not incentivized to make mistakes and give poor advice, then why is this consistently happening?

Mr. FROTMAN. Because they're wrong, because they are incentivized to give bad advice, they're incentivized to get their call reps off the phone as quickly as possible, which we see across the industry, leading to the outcomes we have today.

Ms. PRESSLEY. Thank you.

Chairwoman WATERS. The gentlewoman from Virginia, Ms. Wexton, is recognized for 5 minutes.

Ms. WEXTON. Thank you, Madam Chairwoman, for yielding, and thank you to the panelists for coming and for sticking with us throughout this very long hearing.

I want to speak for a moment about the Public Service Loan Forgiveness Program, because this is something that's very important to a lot of my constituents. As you know, this program was intended to reward borrowers for public service, and the deal was if you spend 10 years in public service as a teacher, a nurse, a police officer, somebody working in a qualified nonprofit, make 120 monthly payments against your student loans, and the government would forgive what's left.

Now obviously, it's not working out that way. We have evidence that 99 percent of those people who applied for forgiveness were rejected over what most of us would view as technicalities and things that should not be. So, Ms. Harrington, can you speak a little bit to the problems with the program and in particular the role of FedLoan, which administers the program for the Department of Education?

Ms. HARRINGTON. Absolutely. There are definite improvements that could be made to any of the programs the Department administers and right, but again it goes back to whether students have access to the plans and whether servicers are putting them in the—giving them the right information to make sure they are properly enrolled, that they are making the right payments, and that they are proceeding according to the requirements of the law so that they can receive that relief, and most of that information again comes through their servicer, whom they rely on to make sure they are in good standing.

Ms. WEXTON. And they didn't get that information on the front end, most of them, is that correct?

Ms. HARRINGTON. It's a big problem, yes.

Ms. WEXTON. Okay. Ms. Harrington, do you know who Kathleen Smith is?

Ms. HARRINGTON. Yes.

Ms. WEXTON. Who is Kathleen Smith?

Ms. HARRINGTON. She is a Senior Administrator at the Department of Education.

Ms. WEXTON. She was, but did you know that she's been hired by the Pennsylvania Higher Education Assistance Agency?

Ms. HARRINGTON. I had forgotten but, yes, I did know that.

Ms. WEXTON. Okay. So now she's their Director of Federal Relations, is that correct?

Ms. HARRINGTON. Yes.

Ms. WEXTON. So she's now a lobbyist for that private entity.

Ms. HARRINGTON. Yes.

Ms. WEXTON. In fact, FedLoan is a subsidiary of the PHEEA—EAA—

Ms. HARRINGTON. Yes.

Ms. WEXTON. —that administers this faulty program, is that correct?

Ms. HARRINGTON. Yes.

Ms. WEXTON. Okay. And how about Robert Cameron, do you know who that is?

Ms. HARRINGTON. Yes.

Ms. WEXTON. Who's that?

Ms. HARRINGTON. He is the new student loan ombudsman at the CFPB.

Ms. WEXTON. Where was he before becoming the new student loan ombudsman?

Ms. HARRINGTON. He was also at PHEAA.

Ms. WEXTON. Okay. And now, he's overseeing consumer protection. Can you talk just very, very briefly about some of the things that the Department of Education has done, and the CFPB has done to stymie State attempts to hold student loan servicers accountable?

Ms. HARRINGTON. Absolutely. The Department has revoked a few memorandums that would have shared information with the CFPB and other agencies. They have attempted to preempt State enforcement and regulation of student loan servicers trying to curtail the States' ability to enforce consumer protection and protect their own citizens.

The CFPB under this Administration got rid of the Office of Students and now it has hired again, as you said, a person with direct ties to one of the loan servicing companies and so there's a major problem and that's just the tip of the iceberg for action the Department has taken that kind of undermines our confidence that they are working to achieve their mission of supporting students and providing access to high-quality education, and that the CFPB is assuming its mission of protecting consumers, and student loan borrowers are consumers.

Ms. WEXTON. And are you aware that PHEAA's 10-year, \$1.3 billion contract expires in December of this year?

Ms. HARRINGTON. Yes.

Ms. WEXTON. The Department of Education and the CFPB have made it harder for States to go after bad actors. They have put a former executive from one of the bad actors in charge of enforcing consumer protection, right?

Ms. HARRINGTON. Yes.

Ms. WEXTON. And now a former top DeVos aide has gone into government relations with that bad actor, is that correct?

Ms. HARRINGTON. Yes.

Ms. WEXTON. Thank you, Madam Chairwoman. I'll yield back, but that sounds pretty swampy to me.

Chairwoman WATERS. The gentleman from Ohio, Mr. Gonzalez, is recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Madam Chairwoman.

First, I want to submit for the record the Federal Reserve Bank of New York's Staff Report entitled, "The Credit Supply and the Rise in College Tuition: Evidence from the Expansion in Federal Student Aid Programs."

Chairwoman WATERS. Without objection, it is so ordered.

Mr. GONZALEZ OF OHIO. Thank you.

I guess one good thing about this hearing is that there does seem to be almost universal agreement that the effects of massive debt on young professionals' balance sheets has a horrible effect on their ability to (1) start families, and (2) buy homes, basically to get started in the American Dream.

I have a constituent whom I talk to a lot about this and she went to my alma mater for law school, took out a bunch of student loans, and she and her husband are making real trade-offs as far as, can we afford to have another child, can we afford to buy a home, and I think her story is indicative of stories all over the country, again somebody who did everything right, who continues to do everything right, but just can't quite get out from under the crushing debt.

One interesting thing, though, is we seem to be focusing on what I think is just a weird—like the very end of the spectrum, the very final stage, which is the loan servicer, whereas all these other things happen in advance that lead to higher tuition, that lead to the fact that we can't refinance these loans, and so for some reason we're focusing here—I guess that's the only part that we have jurisdiction over, but it strikes me as just a strange place.

So to summarize, Mr. Delisle, just quickly, and I know this has been said a lot, but no underwriting standards? Mr. DELISLE. Right. That's right.

Mr. GONZALEZ OF OHIO. Okay. The Federal Government is essentially guaranteeing the loans?

Mr. DELISLE. They're making them directly.

Mr. GONZALEZ OF OHIO. And then all of this that we're talking about is fully controlled by Congress?

Mr. DELISLE. That's right.

Mr. GONZALEZ OF OHIO. Okay. So, clearly, it's a problem that we have created. I want to focus on the rising tuition costs, which is why I submitted this for the record.

Mr. Delisle, are you familiar with the study that I just mentioned?

Mr. DELISLE. Yes.

Mr. GONZALEZ OF OHIO. Okay. So correct me if I'm wrong, but the premise of this study or the conclusion of this study is that as the Federal Government has taken over these loans, as they've increased caps, that has in fact resulted in skyrocketing tuition?

Mr. DELISLE. That's right. So more lending, higher tuition, that's the finding of that paper.

Mr. GONZALEZ OF OHIO. Right. So the fact that we have gotten into this industry hasn't done a thing about the cost of tuition. All it essentially has done is transferred the debt over to the student.

Mr. DELISLE. Yes. I would say, though, that the tricky part with those analyses is that we know that student loans allow more people to go to school.

Mr. GONZALEZ OF OHIO. Right.

Mr. DELISLE. So it raises tuition, but more people can go, and we know that when people get loans versus people who don't, they can finish and they tend to get better grades. So there's been a lot of complaining about student debt here but sort of fundamentally, it is a sound policy.

Mr. GONZALEZ OF OHIO. Yes. I think that gets into the return on investment (ROI), right? Like that a big investment is okay if there's a real ROI there, and you're right, we haven't talked much about that.

But I want to ask you specifically about an area that I know you researched, which is income-share agreements.

Mr. DELISLE. Yes.

Mr. GONZALEZ OF OHIO. The thing I find interesting, that I like about them, is it sort of shifts the risk, right? So instead of the student taking out the debt, now the university or the institution is taking out the debt, if you will, and saying we will provide this education up front, provided you pay us XYZ over time.

I guess from your research, my question would be, where have you seen this work best? As we're legislating or thinking about it, what should we be thinking about in terms of, these are best practices that are doing well by students and the universities?

Mr. DELISLE. Yes. I think you have it right, and I think it gets to what Congressman Duffy was talking about, that sort of the beauty of an income-share agreement where it is being done right is when the school is making it.

Mr. GONZALEZ OF OHIO. Right.

Mr. DELISLE. When the school makes it, now the school has the risk. They have the skin in the game and the great part is, we talk

a lot about sort of free tuition. An income-share agreement is a way to not charge students tuition, give them an income-share agreement, and they only have to pay it back if it works.

Mr. GONZALEZ OF OHIO. Right. If it works and then you build in certain protections, which I know Purdue University, for one, has done, and I think again the beauty of that is, you graduate and you have no debt. You have a liability. You have to pay the income, but in fact when it comes to borrowing for other things, whether that's a house, a car, whatever, what is currently on people's balance sheets has now moved off. Great.

With that, I will yield back.

Chairwoman WATERS. The gentlewoman from North Carolina, Ms. Adams, is recognized for 5 minutes.

Ms. ADAMS. Thank you, Chairwoman Waters. Thank you for convening the hearing today, and to the witnesses, thank you very much for your testimony.

As a former educator and somebody who educated primarily firstgeneration low-income students of color, this is a very personal issue for me. Student debt is a problem for all young people but particularly for low-income students who are predominantly people of color who look at a higher education degree as their ticket into the middle class, and that's the promise that we make to our young people, and so as Members of Congress, we need to start keeping our promises.

Ms. Harrington, thanks for appearing before the committee. I want to thank you for your work on the Center's report detailing the student debt crisis in my home State of North Carolina.

The report shows that of the 44 million Americans who hold \$1.5 trillion in student loan debt, 1.2 million of those live in North Carolina, holding a debt tab of about \$44 billion.

You'll hear my friends on the other side of the aisle blame the Obama Administration's elimination of the Federal Family Education Loan Program as the cause for the student debt crisis, but can you explain what the Center's report showed are the key causes of the dramatic increase in the debt in North Carolina?

Ms. HARRINGTON. Our report showed that there are a number of key causes. Yes, tuition has risen, but there's been a drastic disinvestment at the State level in higher education. The purchasing power of the Pell Grant has been drastically reduced.

I think we should remember that the Federal loan program was never meant to be the cornerstone of the HAE. It was meant to be the Pell Grant. It was meant to be actual grants, not loans, but we never allowed the Pell Grant to keep up with the cost of college and to keep up with the proportion that it should have covered from the beginning.

It's the rise of for-profit colleges that again have disproportionately targeted low-income students and students of color with programs that are low quality and high cost and students are more likely to drop out of those programs. There's a completion crisis, and this is particularly concerning again in North Carolina where we have a number of alternate institutions that serve students of color and low-income students much better, namely our Historically Black Colleges and Universities (HBCUs). Ms. ADAMS. All right. Thank you. I'm HBCU-strong. You detail in your testimony that students of color are at the most risk due to ballooning student loan debt and in the report, you also mention how North Carolina's HBCUs do well in educating African-American students of limited resources.

First of all, what impact does a high student debt burden for young people of color have on HBCUs?

Ms. HARRINGTON. Wwe've seen that across-the-board, the student debt levels of HBCU graduates are higher and that's because they disproportionately serve more low-income students and students of color.

Over 70 percent of students at HBCUs are low income. Over 80 percent are African American, and the biggest indicator of whether you're going to take out a student loan is how much is your Pell Grant eligibility, and so by disproportionately serving these students but serving them well, they are taking on students who have to take on more debt, so on the back end, it takes students of color, particularly African-American students, more debt and longer to pay it back and they are more likely to default, even when they have a degree.

Ms. ADAMS. So what impact does it have on alumni giving?

Ms. HARRINGTON. It has an impact on the amount that students have of available resources to give back to their school and so I think we can—and this corresponds to the wealth gap in higher education as a whole. So if you already are serving low-income students who will continue to be low income because of the way the system is set up, they often have fewer resources to give back.

HBCUs on average have much lower endowments than larger institutions. That also contributes to the fact that students have to take on more debt and that these institutions continue to struggle unnecessarily.

Ms. ADAMS. Okay. I'm running out of time, but can HBCUs actually be a part of the solution to decreasing the student debt burden, in your opinion?

Ms. HARRINGTON. Absolutely. And there is much we can do to better fund these institutions to make sure that they become a cornerstone of the way we address student debt and the way we address higher education in this country.

Ms. ADAMS. All right. Great. Thank you, Madam Chairwoman. I'm just about out of time. I'll yield back.

Chairwoman WATERS. Thank you very much.

The gentleman from New Jersey, Mr. Gottheimer, is recognized for 5 minutes.

Mr. GOTTHEIMER. Thank you, Madam Chairwoman, and thank you all for being here today. We're all grateful.

The Federal Reserve recently published a new report about home ownership which found that roughly 20 percent of the decline in home ownership among young adults can be attributed to the hefty increase in student loan debt. This is felt particularly hard in my home State of New Jersey.

According to a 2018 study, 61 percent of 2017 college graduates in New Jersey graduated with student loan debt. Concurrently, recent Census data shows that the number of homeowners under 35years-old in New Jersey decreased from 7.7 percent from 2007 to 2016, and 47 percent of 18- to 34-year-olds in New Jersey are living with their parents, the highest percentage in the country.

Home ownership can be an incredible way, as you know, to achieve the American Dream, and I'm worried that not enough households are building wealth through home ownership due to increasing student loan debt.

Mr. Frotman, if I can start with you, sir, one idea put forth by the committee is to direct the Department of Housing and Urban Development to work with the Consumer Financial Protection Bureau and the Federal Housing Finance Agency to review the barriers to home ownership for borrowers with student loan debt and make recommendations for policy changes that will responsibly reduce or eliminate hurdles.

What do you think are some of the biggest barriers that HUD, CFPB, and FHFA should immediately address?

Mr. FROTMAN. I think one of the issues that I've seen is the back end credit reporting system where borrowers are getting their payments reported to a credit reporting agency and it's all over the map and then when lenders go to try to figure out DGI calculations, they're also unnecessarily hamstringing borrowers.

So, I think this is a perfect example of how this is this committee's job. I think there's an opportunity to reduce barriers that are being put in place because of these back-end problems, and I think, as you mentioned, that this bill is a good start.

Mr. GOTTHEIMER. Ms. Yu, you're nodding. You agree with that?

Ms. YU. Yes. One of the issues is, how do we consider negatively amortizing loans when we're looking at housing, for example, and borrowers have the right to an income-drawing payment plan, but then how's the housing market looking at that in terms of what the borrower can afford?

Mr. GOTTHEIMER. Thank you very much. According to the CFPB, 71 percent of student loan complaints between August 2016 and September 2017 involved complications to the lender or servicer, as we've heard about today. The servicers' misrepresentations of information related to the servicing of a loan are increasingly common, as you've all pointed out.

Earlier this year, the Inspector General of the Department of Education reported that between 2015 and 2017, Federal student aid found instances of servicer representatives failing to adequately inform struggling borrowers about their available repayment options, which is very frustrating obviously, if you're not even presenting all of the options.

Ms. Yu, I'll ask you this question. How would creating clear rules of the road prevent student loan servicers from omitting or misrepresenting loan servicing information to benefit student loan borrowers?

Ms. YU. Well, a couple of different ways. First of all, as the Borrower Bill of Rights proposes, we want to make sure that borrowers are informed about income-drawing payment options prior to forbearances. Even if a forbearance is ultimately the best decision, we need to make sure they're getting those options first.

We also need dispute resolutions. Part of the problem is that borrowers are frustrated because things are going wrong, paperwork's getting lost, and they don't have a single source, a single point of contact to try to resolve those errors.

Mr. GOTTHEIMER. Thank you. I hope I have time for one more here. Some academics who work closely on the issue of student loans argue that there's not only a student loan debt crisis but also a student loan repayment crisis, and by forcing students to start paying back their loans right after graduation, we're setting our graduates up for failure.

A 10-year repayment plan is the most common student loan repayment plan, but it could take several years at least after graduation to reach a point where a degree is paying financial dividends.

Ms. Harrington, if I can ask this question to you, has the Center for Responsible Lending put any thought into potential solutions to this repayment crisis?

Ms. HARRINGTON. Absolutely. We recently released a report with several civil rights groups where we talk about ways to improve the income-driven repayment system, how to streamline it into one plan, how to decrease the repayment term to 15 years rather than 20 or 25 years, to base the payments off of 8 percent of discretionary income, and set it at 250 percent above the poverty line rather than 100 percent above the poverty line.

These are all important reforms that make it actually affordable for borrowers to pay back their loans and do other things, like buy homes, start businesses, and save for retirement.

Mr. GOTTHEIMER. Thank you so much. Thank you all for being here. I yield back. Thank you.

Chairwoman WATERS. Thank you very much.

The gentlewoman from Iowa, Ms. Axne, is recognized for 5 minutes.

Mrs. AXNE. Thank you, Madam Chairwoman, and thank you also to the witnesses for being here today. We appreciate it.

Just yesterday, I heard from Liz, she's a teacher in Urbandale in my district, about the issues that she's had with her loan servicer. In 2007, Liz began teaching and, of course, that's when the Public Service Loan Forgiveness (PSLF) Program began. So, she called her servicer to see what she needed to do to be eligible and was told she didn't need to worry about the paperwork yet and wouldn't be eligible for about 10 years or so, and to send in the verification forms when it gets a little bit closer to that date.

Then, when she followed up closer to that date, 5 years later she actually tried to get on top of it by calling in another 5 years to make sure she was eligible, she was told her loans were now ineligible for the PSLF because they had been serviced by other loan entities, unbeknownst to her.

I want to right here tell you a little bit about what she said. Liz further said that she was told there was nothing that could be done and that very few of her payments qualified and then she said, "For a while, I thought I was the only one in that situation. I never grew up with money. I came from a single family household. I remember being so cold in the winter and going hungry. Nothing in my life was easy. So I figured this was just one more thing to add to my long list of unfair things to happen to me but put your head down, work harder, work longer, and somehow maybe you'll come out just a little bit ahead." So, I thank you all for being here because this is truly impacting people's lives, as we've discussed, and, Mr. Minhaj, since you recently did a story on this and you pointed out in your opening testimony that the borrower does not control who their servicer is, does this story that I'm hearing from Liz sound familiar to anything that you heard when you were researching your show?

Mr. MINHAJ. Yes.

Mrs. AXNE. Can you tell me another story briefly that you may have heard that's similar?

Mr. MINHAJ. I can't say the name of the loan servicer provider that they were switched to, but it's very similar to that. It's very similar to the story that you mentioned where, because of misinformation, and they were told the wrong information, they were led down a path that was not beneficial to them in the long term.

Mrs. AXNE. Yes, thank you, and I'd ask any of you, because Liz has contacted me and I don't know what to do to help Liz at this point, and I'd ask any of you for this teacher of 13 years who literally never had a late payment, what can be done now to help her?

Mr. FROTMAN. I think, unfortunately, we hear these stories all the time, and I think we've heard about consumer protection being a smoke screen or a distraction. This is the problem, is that borrowers are reaching out to private sector companies and they're getting lied to.

We've seen the nation's largest teachers' union sue Navient for the exact practices that you are talking about. These companies have to follow the law. Just being an Education Department contractor doesn't mean you get to have a free ride in this country. You have to follow Federal law and State law and I think that borrower has rights, but I think there's more that this committee could do to make sure that this doesn't happen again.

Mrs. AXNE. So we've all heard, and I know this was discussed earlier, that more than 99 percent of PSLF applications are now being rejected, despite Congress explicitly expanding the program last year and, as discussed, President Trump just appointed Robert Cameron, who worked for an at-profit student loan servicer, to serve as the student loan ombudsman.

Mr. Minhaj, does this seem like an Administration that's putting private companies ahead of the interests of its borrowers?

Mr. MINHAJ. I just think it's terrifying that the head of the predatory loan servicing company is now in charge of this thing that's supposed to protect you.

Mrs. AXNE. Moving on, I'd like to address another issue that we're facing and, Mr. Frotman, you brought this up earlier. I'm encouraged about the fact that we're having this discussion on both sides of the aisle, but Americans now owe more than \$1.6 trillion in student loan debt and I think there are two ways that this debt impacts the overall economy explicitly.

You mentioned many, but I wanted to get into housing briefly here. Do you feel, Mr. Frotman, that student loan debt is keeping borrowers from buying homes?

Mr. FROTMAN. Absolutely.

Mrs. AXNE. Thank you. One estimate found that at least 400,000 less Americans own homes because of this student loan debt. Does that sound reasonable?

Mr. FROTMAN. That's correct.

Mrs. AXNE. Okay. And this is exactly why I joined my colleagues, Ms. Kaptur and Mr. Clay, to introduce the Transforming Student Debt to Home Equity Act. It's a legislation that creates a pathway for college graduates to purchase a home and then roll that loan into a lower-interest home mortgage rate.

I am also encouraged, of course, by the discussion draft we're considering in this hearing to instruct Federal regulators to study the barriers to home ownership that student loan is creating.

Ms. Yu, do you think these two bills will help students make the transition to home ownership?

Ms. YU. I think it's incredibly encouraging that we're talking about how to make home ownership more available to student loan borrowers.

Mrs. AXNE. Okay. Thank you so much.

Chairwoman WATERS. The gentlewoman from Pennsylvania, Ms. Dean, is recognized for 5 minutes.

Ms. DEAN. Thank you, Madam Chairwoman. I appreciate the chance to talk about this really important subject.

I come at it through the lens of a mother and a grandmother. Also, I was a university professor for 10 years in Philadelphia at LaSalle University before I got into public service. I met with students regularly who were worried about being closed out of their own education based on debt and the interest on that debt, and I worry about the chilling effect that has on students coming up.

I met with students at my area high school, Norristown Area High School, shortly after I was sworn in this year and they're bright, they're engaged, they're inquisitive, and I asked them what are you doing next, you're seniors, and many of them said, "I cannot imagine taking on the burdensome debt that college would require. I see my own parents still struggling with their own student debt."

So I heard some conversation about what is the foundation of the American Dream. My parents taught me and I believe it for my own children that the foundation of an American Dream is an education. That's where it all begins because with that education, one that we can afford, that our children and our grandchildren can afford, that's how we become fully engaged members of the economy, and so many of you have so aptly described how we have saddled young people with debt such that they cannot fully engage in our economy.

Ms. Ýu, I wanted to talk to you. Early on in my tenure, we had a constituent come in our office. Her daughter had burdensome student loans, and became permanently disabled. The mother is now the full-time caregiver, and the student loan that they had was with a private lender, and while the daughter is forgiven from her debt, the mother as the cosigner is not. So now, she has the fulltime economic and emotional responsibility of caregiving, and I've introduced legislation that I think you've talked about which would require private loan disability discharge.

Can you talk about that and the inequities in the private loan system

Ms. YU. Yes, absolutely. Private loan cancellation programs are absolutely at the discretion of the lender. Some private lenders offer discharge programs, and others don't. There's no standard, there's no clear standard between lenders, and even within lenders sometimes there's disparities between one loan program or the other.

One of the first student loan borrowers that I ever worked with when I was a Legal Aid attorney was totally and permanently disabled due to complications from breast cancer. Her Federal loans were fully discharged because she qualified for that loan program and her private lender actually had a press release saying that they had a disability discharge program available for private loans, but when we went to apply for it for this borrower, they were only willing to offer her to waive interest. They weren't willing to waive any of the principal, which-she was totally and permanently disabled, she couldn't work, she was living on Social Security-didn't make a dent for her.

Ms. DEAN. So requiring private lenders to mirror the Federal requirement, which is discharge in the case of debt to permanent disability, you think that's the right way to go? Ms. YU. Absolutely.

Ms. DEAN. Thank you. I have another bill that would end forced arbitration, the pre-agreement to arbitrate a dispute that has not yet appeared.

Can any of you talk to me about how that would be helpful to our borrowers?

Mr. FROTMAN. Sometimes, we overlook the private student loan market because it's only 7 or 8 percent, but 7 or 8 percent of \$1.6 trillion is a whole lot of money and there's a whole lot of borrowers who are getting ripped off in this market.

We've seen private lenders make loans they know are going to fail, with literally 65 percent default rates. We've seen predatory practices from for-profit schools who have private student loan programs, and in each of these instances, these borrowers were ripped off and they can't access a courtroom to try to seek justice, and I think this is a considerable step. This committee took this step with regard to certain mortgages in terms of banning forced arbitration, and I think it makes a ton of sense in the private student loan market, as well.

Ms. DEAN. And just quickly, if I could follow up with you, can you describe some of the practices in terms of lack of repayment options that you had described with the private lenders?

Mr. FROTMAN. In many ways, a private student loan is just a straight 10-year amortizing loan, and despite what you hear about industry talking points about charge-off rates, there are a lot of private student loan borrowers who are really struggling. The delinquency rates are much higher than what they advertise, and what we saw in the complaints is that people take on this debt kind of on the path to a better life and then something happens.

They have a special needs child or they become totally and permanently disabled, a spouse loses a job, and they're really stuck, and we've seen time and time again that borrowers aren't getting
repayment options. They're trying to pay something and a lot of this goes back again to the lack of protections and bankruptcy. Ms. DEAN. Thank you, Madam Chairwoman. And thank you, sir.

Chairwoman WATERS. The gentlewoman from Texas, Ms. Garcia, is recognized for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Madam Chairwoman, and thank you for holding this hearing. It was quite astonishing to hear from you when you utter the words that this was the first time we've had a hearing on this in the Congress. It just baffles me that we've not really done anything to wrestle with this problem.

Quite frankly, after listening to all the questions and listening to the testimony, I think we're all to blame, and I think it's time for us to take action.

So my question to all the panel members is, rather than repeal and replace, say we just get rid of the whole darn thing and start all over with a white board, what is the first thing that you would want to put on the white board, and let's keep it short because I only have 5 minutes and there's five of you? So, you have a minute each.

Mr. FROTMAN. I think that the Student Loan Borrower Bill of Rights is where I would start. It's simply taking the protections that exist for other borrowers and making sure student loan borrowers have them. That shouldn't be controversial.

Ms. GARCIA OF TEXAS. Borrowers' rights. All right. Ms. Yu?

Ms. YU. I think you need to target servicers towards the most vulnerable borrowers and then make sure that they're protected if they have to take on debt.

Ms. GARCIA OF TEXAS. Vulnerable borrowers based on what? Financial ability to pay, income status, what?

Ms. YU. I think, income status. I think, race and gender. We see that borrowers of color, women, veterans, they have to take on more debt to go to school and I think we need to make sure that education is available for all of our students.

Ms. GARCIA OF TEXAS. Okay. Ms. Harrington?

Ms. HARRINGTON. I agree with the Student Loan Borrower Bill of Rights targeting servicers to the most vulnerable, including lowincome people and people of color. I think we also have to make sure that both Federal agencies and State agencies have the ability to enforce these rights as well as students have the ability to en-force their own rights and protect themselves. Ms. GARCIA OF TEXAS. Okay. Mr. Minhaj?

Mr. MINHAJ. I agree with everything they've said. I think it would be great if we could just go, "Tools, Clear History" on everyone's debt, and I also think we should have a digital clock in here. I think that's a bipartisan position we can all agree on. I don't know what time it is right now. For a second, I thought it was 7:10 and I started freaking out.

[laughter]

Ms. GARCIA OF TEXAS. Does it say 7:10?

Mr. MINHAJ. Well, it was—so if you follow the short hand, technically it's 1:40.

Ms. GARCIA OF TEXAS. All right. We'll order a Mickey Mouse clock next time.

Mr. MINHAJ. Thank you so much.

Ms. GARCIA OF TEXAS. Thank you.

Mr. DELISLE. I actually have a paper where I've laid out a complete redesign of the Federal Student Loan Program. It was published by the Manhattan Institute. I would convert the whole thing to an income-share agreement where you pay back one percent of your income for every \$10,000 you borrow and then you pay it back on your income taxes. I think this would dramatically simplify the program. I would cap the amount people could borrow at \$50,000, but—

Ms. GARCIA OF TEXAS. You would put a cap at \$50,000?

Mr. Delisle. \$50,000.

Ms. GARCIA OF TEXAS. Have you seen tuition rates around the country?

Mr. DELISLE. What I've heard from the members of this committee is that people are being crushed by their debt. So I think the best way to solve the problem is to limit how much they can take out.

Ms. GARCIA OF TEXAS. Do you know how much my law school cost me?

Mr. DELISLE. Sure. But people who—law school is a good bet, right, and those people should be able to get loans in the private market, if it's a good bet. If it's a bad bet, they won't get loans—

Ms. GARCIA OF TEXAS. Well, I think it's always a good bet.

Mr. DELISLE. —and they're better off.

Ms. GARCIA OF TEXAS. Well, no. So what else did you say now? You said the income-sharing thing?

Mr. DELISLE. An income-share agreement, so you pay back one percent of your income for every \$10,000 you use in the program. So if you use \$30,000, you would be signing up to pay back 3 percent of your income on your income taxes for a set period of time. So, we don't have all the different options.

In fact, the amazing part about this plan is, if you pay the loans on your taxes, you get rid of loan servicers. They're gone.

Ms. GARCIA OF TEXAS. I just think it's about time that we go ahead and start rethinking the whole thing.

Ms. Harrington, one thing that I would want to make sure of is that when we're talking about vulnerable populations, I know that you talked a little bit about the disparate treatment, if you will, or the impact on African-American communities.

Does it number differently for the Latino community, the Asian community, or how do we fare in all of this?

Ms. HARRINGTON. There are definitely a number of issues across the various communities. Latinos have struggled with the fact that they have higher rates of non-completion which then makes it harder for them to pay back their loans and they do have higher default rates than their white counterparts.

We've also seen a high rate of student debt for Native American populations. Women tend to take out more student loan debt and take longer to pay it back and that also goes back to the income gap and how we pay for it. We've seen a disproportionate impact on older borrowers now who are seeing their Social Security benefits offset. Ms. GARCIA OF TEXAS. Is there a difference between community college debt, you know, junior college, 2-year schools, versus a 4-year university?

Ms. HARRINGTON. Yes, but what's driving the default is really the for-profit college industry and their issues, and also the lack of consumer protections with the servicing level.

Ms. GARCIA OF TEXAS. Thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. The gentlewoman from New York, Ms. Ocasio-Cortez, is recognized for 5 minutes.

Ms. OCASIO-CORTEZ. Thank you, Madam Chairwoman, and thank you to all of our witnesses here today. It's been a very long hearing, with some specious claims, I would add, but it's also been a very hard and long hearing for anyone who has student loan debt.

I literally made a student loan payment while I was sitting here in this chair. I looked at my balance and it is \$20,237.16, and I just made a payment that took me down to \$19,000. So I feel really accomplished right now, but the thing is, is we saw two main arguments from the Republican side over and over again.

One is the idea that this issue is not germane to this committee, that student loans are not germane to the Financial Services Committee, and it seems completely ridiculous, that loans are somehow—you know, this is not our job and I look at all the things that are going on right here and just article after article.

Sure, there's some aspects that are not our job, like, one, what certainly seems like a very large amount of corruption coming out of the Department of Education but also in conjunction with the Consumer Financial Protection Bureau.

I have an article right here from the Washington Post, "Education Department Awards Debt Collection Contract to Company with Ties to Betsy DeVos." Another one, "Student Loan Behemoth Tightens Its Ties to Trump and Betsy DeVos," the company that rejected all but one percent of popular Federal student loan forgiveness is beefing up its already close ties. The third, "Inside Investigations Inside the Education Department's Effort to Obstruct Student Loan Investigations."

What could they be obstructing? What investigations could they be obstructing? Well, in 2009, Sallie Mae's CEO said, "If a borrower can create condensation on a mirror, they need to get a loan this year in order to put their subprime lending in place."

Navient forwarded wrong information to credit reporting agencies saying that permanently disabled veterans had defaulted on their loans when they hadn't. Then, you have ITT Credit Union issuing and using financial aid staff to rush students through an automated application process when they knew that they had projected default rates as high as 64 percent, is that correct, Ms. Yu?

Ms. YU. Yes, that's right.

Ms. OCASIO-CORTEZ. They knew that they were issuing loans that had a default rate of 64 percent?

Ms. YU. Yes.

Ms. OCASIO-CORTEZ. So, they were setting people up to fail.

Ms. YU. They were.

Ms. OCASIO-CORTEZ. And I'm hearing people on this committee saying, it's not our job. This is our job.

Mr. Delisle, you are the Republican or Minority witness and we appreciate that you're here testifying at the Republicans' request.

One of the things, the other argument that they say is that this is Obama's fault, #Obama. It's Congress' fault, congressional Democrats. One of the things that they say is that it's the congressional Democrats' fault and that ending the Federal Family Education Program and moving to the Direct Loan Program, that it's our fault that we're creating the \$1.6 trillion in student loan debt.

Do you agree with those claims?

Mr. DELISLE. I think the terms of the loans for borrowers were identical under both programs.

Ms. OCASIO-CORTEZ. So, that's a no?

Mr. DELISLE. I don't think we know, but borrowers were eligible for identical amounts of debt prior to the change.

Ms. OCASIO-CORTEZ. Okay. Mr. Delisle, it seems like you knew in February 2007, in your report entitled, "Private in Name Only", where you stated even in the executive summary that, "Critics also assert that the complete switch to the Direct Loan Program in 2010 led to record levels of outstanding student debt and defaults, a claim with no causal basis." You went on to emphasize that, "Perhaps the most outrageous of all are the claims that the Direct Loan Program is to blame for the record level of outstanding student debt and a spike in student loan defaults."

So, I'll ask you again. Is it unfair to characterize the 2010 policy changes leading directly to the record \$1.6 trillion in debt?

Mr. DELISLE. It wouldn't make sense that they caused an increase in debt. That's right.

Ms. OCASIO-CORTEZ. Thank you very much, Mr. Delisle. I appreciate that.

And with just a few seconds left, does anyone else have any closing commentary that they weren't able to get in today?

[No response.]

Ms. OCASIO-CORTEZ. All right. Thank you very much.

Chairwoman WATERS. Thank you.

The gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations, is recognized for 5 minutes.

Mr. GREEN. Thank you, Madam Chairwoman.

I am especially thankful that you approved our having the Oversight and Investigations Subcommittee hearing in Houston, Texas. I'd like to report that it was well-attended. Many Members had other places to be and I well understand, but I do want to thank Ms. Tlaib, Mr. Cleaver, Mr. Meeks, and Ms. Garcia, for being in attendance.

I am a little bit concerned about persons who believe that you can somehow pass a skin test. We just left the Visitors Center where we were commemorating some 400 years since the first slaves arrived here and many persons talked about the vestiges of racism, invidious discrimination, slavery, lawful segregation, and how it impacts us today.

At one time, as you well know, Black people were not allowed to learn, not allowed to get an education, and so we have a system now that requires people to do things that they can do. Great strides have been made, but there's still invidious discrimination. It exists, and unfortunately we don't like to acknowledge it, but it does. I'll give you one example that doesn't relate to education, but when Kareem, also known as The Center, was accepted into UCLA, they changed the rules. They changed the rules. They outlawed dunking the ball because they didn't want to see this Black man score all of these points. It's the truth. They changed the rules. The rules change for us all the time, but we've learned to live with it. Literally, I accepted it unfortunately for us.

So I'm saying to you there's still a skin test and it can fail even our best. We find ourselves sending tax dollars to schools we can't get into but they benefit from our tax dollars, very unfortunate.

Today, I hear people complaining about why we're having this hearing. Let me just share one piece of information, intelligence that the staff has accorded me, and the staff does great work. This piece of intelligence reads, "Borrowers first became eligible for loan forgiveness under PSLF in September 2017, 10 years after the program began. As of April 2018, the Department of Education had approved only 55 of 19,321 applications—some things bear repeating: 55 of 19,321 applications—for loan forgiveness under PSFL or 0.0028 percent." That's reason enough.

This number alone justifies some sort of intervention. You cannot justify 0.0028 percent. We have to do something. I'm concerned about persons who get degrees and can't pay their loans back, but I'm also concerned about people who don't get degrees and can't pay their loans back.

If you get a degree, look, I'm concerned about you. Please don't misunderstand, but you're more likely probably in my world to be able to pay it back than the person who doesn't have the degree, who can't get bankruptcy, who's going to have to live with this and work with this throughout life sometimes.

So quickly, if someone could just tell me this, there's some debate about whether or not persons who don't have degrees qualify for the forgiveness program, that there's some opinion that the law doesn't specifically allow it. If you think the law does allow persons who do not have degrees to participate in the forgiveness program, please raise your hand. I'd just like to get a quick survey if you think the law does allow it.

Mr. GREEN. Okay. All but-well, maybe you don't know, sir.

Mr. MINHAJ. I don't know the answer.

Mr. GREEN. Okay. That's good enough. Okay. Look, I am very much concerned about those who don't get the degrees.

Thank you, Madam Chairwoman. I'll yield back.

Chairwoman WATERS. Thank you very much.

I'd like to thank all of our distinguished witnesses for their testimony today.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing is now adjourned. Thank you.

[Whereupon, at 1:55 p.m., the hearing was adjourned.]

APPENDIX

September 10, 2019



Statement before the House Committee on Financial Services On A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable

Borrower Terms and Benefits are Easily Mistaken for Loan Servicing Errors in Federal Student Loan Program

Jason D. Delisle Resident Fellow

September 10, 2019

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Introduction

Chairwoman Waters, Ranking Member McHenry, and members of the committee, thank you for the opportunity to testify about servicing in the federal student loan program.

Americans are anxious about rapidly rising levels of student debt. They wonder whether payments are affordable and if financing college with debt will pay off in the end. But recent news headlines suggest another issue is increasingly on borrowers' minds: bad customer service and shoddy advice during loan repayment. This can leave borrowers feeling confused or cheated, and it can even lead them to incur additional costs.

The view that this is a widespread problem has prompted several states to enact laws aimed at loan servicing.¹ Similarly, several lawsuits that allege borrowers were cheated by bad loan servicing are working their way through the courts.² Some in Congress have even called for a national "student loan bill of rights" to guard against bad loan servicing.³ Of course, today's hearing also demonstrates interest in the topic among lawmakers.

Nearly all student debt is issued through the federal government's student loan program, though the government does not actually service the loans itself. Instead, it contracts with private companies ("servicers") to handle virtually all interactions with borrowers. In fact, borrowers with federal student loans are unlikely to interact with the U.S. Department of Education (the Department) at any point when repaying their loans. Loan servicing companies collect payments, staff call centers, maintain websites, send account statements, and inform borrowers of repayment options. Concerns over the quality and reliability of loan servicing are thus generally directed at the private companies that collect the loans on the government's behalf, rather than Congress or the Department, who set the repayment terms for borrowers through law and regulation.

There is, however, a risk in automatically blaming loan servicing companies over concerns that borrowers are being treated unfairly. The perceived mistreatment may actually be the result of the design of the loan program itself, not in how loans are serviced. In such cases, Congress and the Department are responsible for the problem—and the solution.

My testimony will focus on this important distinction. To that end, I'll outline a number of ways in which features of the federal student loan program—all of which are set in statute and regulation—can confuse and frustrate borrowers and even leave them feeling cheated. To the borrower, it often appears that loan servicers designed these problematic policies and practices when in fact lawmakers are often to blame. The matter is further complicated by the fact that these loan policies and mandated servicing practices are meant to benefit borrowers—which they often do. That makes fixing the program challenging, since almost any reform aimed at improving the system could reduce benefits for borrowers.

The examples I will describe serve to illustrate three overarching points:

- Servicers can easily be blamed for the unintended consequences of policies set by lawmakers, even when servicers administer the program as lawmakers intended;
- 2. The numerous features and benefits in the loan program increase the possibility that borrowers become confused and frustrated, even when provided timely and accurate information;
- Reforming the loan program in a way that prevents borrower confusion and resentment will require policymakers to either reduce the number of features and options in the program or significantly increase the current level of spending to eliminate features that currently limit eligibility and target benefits.

Of course, there are instances where servicers make errors or provide low-guality assistance to borrowers. My testimony should not be taken as an argument to the contrary. That said, the available data do not allow observers to accurately gauge how widespread loan servicing problems are or whether those problems are the result of the program's design or something under servicers' control. Meanwhile, the common narrative about problems in loan servicing seems to assume that the issue is entirely due to factors under servicers' control. As the examples below will illustrate, those problems could easily be the result of factors outside of the servicers' control and thus will require policy solutions.

Background on Federal Student Loans and Servicing

Before proceeding to a discussion of these examples, I'll briefly describe some key facts about the federal loan program and the role of private servicers.

The federal student loan program dates back to the 1960s. In recent years this program has grown rapidly, with nearly \$1.5 trillion in debt held by almost 43 million Americans.⁴ That is nearly the same number of people currently receiving retirement benefits through the Social Security program.⁵ For much of the program's history, private lenders made Federal Family Education Loans (FFEL) loans to borrowers, while the government set interest rates, determined repayment options, and then insured lenders against losses. Since 2010, however, all federal loans have been made and held by the federal government through the Direct Loan (DL) program, which has existed since the 1990s. Direct Loans now make up over 80% of outstanding federal student loan debt.⁶

While private lenders no longer issue federal student loans, private companies still play a major role in the program. The Department currently contracts with nine loan servicing companies to carry out nearly all administrative functions short of disbursing the loan to the student and adjudicating some loan discharge programs.⁷ This is not a new phenomenon: private companies have serviced student loans since the inception of the Direct Loan program. Policymakers generally believe that approach is more efficient and expedient than the Department servicing the loans itself.

Servicers do not own the loans and are required to honor the terms of the program that are set by lawmakers and further clarified by the Department through regulations, guidance, and contractual requirements for servicers. The Department compensates servicers with a fixed payment per borrower with slight variations depending on the status of the loan (in-school, default, delinquent, etc.), as set forth in their contracts with the Department.⁸ The Department spends \$826 million a year administering the student loan program, most of which is spent on servicing contracts.⁹

The Department assigns loans to individual servicers when they are first disbursed to borrowers, and aims to assign more loan volume to the servicers it deems are performing relatively better than others. While borrowers generally cannot select their servicer, there are some instances in which the Department reassigns loans to a different servicer.¹⁰ Servicers maintain a degree of flexibility in the particulars of administering loans and retain their own distinct branding and websites, and they have limited discretion in how they administer the program. For the most part, however, servicers are bound by their contracts, statutes and regulations governing the loan program, and additional guidance issued by the Department.

Program Features Often Misidentified as Servicing Problems

Now I will explain several examples of how the design of the federal loan program can make it appear to borrowers as if their loan servicer is treating them unfairly, when in fact the servicer is simply following the rules of the program. The examples are by no means an exhaustive list, but they are likely the most common or easiest to understand.

Growing Balances or Little Repayment Progress Despite On-Time Payments

The loan program includes a number of repayment options that allow borrowers to make lower monthly payments than what would be required under the default 10-year fixed payment schedule. One of these plans lets borrowers make payments based on their incomes (Income-Based Repayment, or IBR) instead of payments that relate to their balances and interest rates—which is how a traditional loan functions.¹¹ Another option, graduated repayment, lets borrowers make interest-only payments for several years in exchange for making higher payments later. This benefit can be combined with additional options, the consolidation and extended repayment plans, which let borrowers stretch their repayment terms up to 30 years, reducing the amount owed each month but increasing the interest they will owe. All of these plans have another feature in common. By reducing monthly payments, they reduce the pace at which borrowers make progress paying down their debts. In the case of IBR, borrowers' income-based payments can be less than the accruing interest, which causes their balance to increase even though they make on-time payments. To many observers this can seem like a reasonable trade-off. Borrowers can make lower payments but they will have to pay for longer to pay off their debts. In the case of IBR, borrowers' incomes might go up later, at which point they would have to pay the interest that accrued when their incomes were low.

To some borrowers, however, it can look like the loan servicer has done something wrong when they make payments but no progress on their debts. A borrower may rightly wonder why, after making payments for years, his balance never seems to go down or even increases. A borrower might think that the servicer did not credit his payments correctly or miscalculated the amount owed. But the loan program in these cases is working as Congress intended and servicers are administering it correctly.

Borrowers interpreting the benefits of the loan program in this way are not hypothetical. In a lawsuit filed against the loan servicer Navient, court documents show that one borrower in the case alleging he was cheated out of benefits was caught on tape cursing at a customer service representative because his loan balance had grown by \$3,000 while using IBR. He claimed that he had been "screwed" by the rising balance.¹² (The application that the borrower must sign to enroll in IBR explains that he is responsible for any unpaid interest.) Focus group research that I conducted with colleagues at New America documents borrower frustration over slow repayment progress. As one participant put it, "My thing would be that if I actually saw the balance go down, I'd be way more motivated to pay it on time, but... the balance keeps going up. It's like, "What the heck?"¹³

The Consumer Financial Protection Bureau's (CFPB) complaint database includes numerous examples of servicers taking the blame when borrowers see little progress in paying down their debts, even though their servicer appears to be correctly administering the program.¹⁴ One borrower who filed a complaint with the CFPB against the servicer Nelnet regarding a rising balance under IBR said the following:

I currently have a loan with Nelnet. I have the income base payment [IBR] plan, but the monthly interest is higher than the payment I can made [sic]. So my balance is increasing instead of being lower with my monthly payments because I am not paying enough to cover the interest. I write [sic] an email to Nelnet to see if they can apply my payment to the principal, but they respond [sic] that my payment go [sic] first to interest and last to principal. And that I need to make additional payments in order to lower the principal. I can not pay a bigger amount right now and I feel that I am wasting my money because [it] is not making any difference in my final balance.¹⁵

While we do not know the factual circumstances around this borrower's specific situation, it is clear that he is frustrated that his loan balance is growing. Given the terms of the program, however, it is certainly possible that the servicer has done nothing wrong in this case.

Income-Based Repayment (IBR) and Public Service Loan Forgiveness (PSLF)

The IBR and PSLF programs create numerous additional opportunities for borrowers to feel as if their Ioan servicer let them down. But here again, the design of the program is often doing the heavy lifting in sowing confusion and resentment.¹⁶ I have already illustrated how one feature of IBR—rising balances when minimum monthly payments do not cover accruing interest—can cause borrowers to feel like they were mistreated. Other parts of these programs cause similar distress even when servicers execute them exactly as required by Congress and the Department.

The main culprit is complexity. These repayment options involve numerous eligibility rules and special terms and require the borrower to complete paperwork at least annually by nonstandard deadlines. To use IBR, borrowers submit annual income documentation and then make payments equal to 10% of their discretionary income, defined as any income above 150% of the federal poverty guidelines. The government forgives remaining balances after 20 years of payments. Under PSLF, borrowers using IBR have debt forgiven after 10 years of payments (120 monthly payments) while working in nonprofit or government jobs.

Borrowers using IBR and PSLF can easily be caught off guard when one of the many features of the programs come into play. They may then blame servicers for failing to adequately inform them ahead of time. One example is the set of rules regarding interest capitalization on loans in IBR. Under current policy, whenever a borrower switches from one plan to another, fails to re-enroll, or is no longer eligible for IBR, the statute requires that the servicer add any unpaid interest to his principal balance ("capitalization").¹⁷ As a result, the borrower ends up with a larger principal balance and will be charged interest on the capitalized interest going forward. This feature is disclosed on the 10-page IBR application, but it is easy to see how a borrower might be caught off guard when it happens.¹⁸ He is likely to feel as if his servicer failed to adequately inform him of this feature even though it was fully disclosed to him. There is simply too much information for a borrower to track to remain completely informed.

The myriad of eligibility requirements for PSLF regarding loan types, repayment plans, and employment are another area where flawless servicing can still leave borrowers feeling as if they were not treated fairly. Borrowers working toward PSLF complain that they did not know about one of the many eligibility terms and mistakenly believed that they were making progress toward the 120 qualifying payments, only later to find out they were not. This is because lawmakers intentionally designed the program so that borrowers can file paperwork to claim PSLF after they have fulfilled the terms.

While borrowers are inclined to blame servicers when they learn after the fact that they were not making progress toward PSLF, under the existing program design, a servicer does not know that a borrower was under the impression that he was working toward PSLF unless he indicated this to the servicer. Only then can the servicer be expected to take some action in response. If borrowers do not indicate interest in PSLF before working toward it, or inquire about eligibility with a servicer before attempting to make qualifying payments, servicers cannot assist those borrowers in obtaining forgiveness. A recent lawsuit against Navient (which a judge dismissed last month) offers evidence that borrowers are indeed failing to inquire with their servicers about their interest in PSLF, and even when they do express interest, they fail to follow all of the servicer's instructions to qualify.¹⁹

"Paid Ahead Status" Vexes Borrowers

Another feature of the loan program that tends to frustrate borrowers is the "paid ahead status" rule. This unusual and largely beneficial policy requires loan servicers to advance a borrower's due date when he pays more than the minimum monthly payment.²⁰ As is the case with most loans, excess payments on a federal student loan are applied first to any outstanding fees, accrued interest, and then to the principal balance. But Department regulations require servicers to take an additional step when a borrower pays more than is due. The servicer must advance the borrower's due date according to the size of the prepayment.²¹ Borrowers can request that a servicer not advance the due date, but it is the default setting required by Department regulations since 1992.²²

Despite the fact that the Department added this feature to the loan program as a benefit for borrowers those who pay ahead have the option to skip their next monthly payment(s) and stay current on their original repayment schedule—borrowers complain about it.²³ They believe erroneously that the servicer is advancing the due date *instead* of paying down the loan, or that that the servicer chose to adopt this practice to increase the amount the borrower will pay overall. Contray to these misperceptions, when a borrower makes prepayments, he is in fact paying down his loan early, reducing the interest he will owe if he continues to make on this original schedule, and entering paid ahead status simultaneously. While this is a complicated feature of the loan program, by itself it generally cannot harm borrowers.²⁴ Some borrowers, however, misunderstand the policy, see it as harmful, and then blame the servicer for carrying out the policy as Department regulations require, such as the borrower who filed the complaint below with the CFPB:

I have repeatedly requested that all over payments get applied directly to principle [sic], but my loan servicer, Nelnet, continually advances the due date. Then they tell me I don't know how payments work. I then have to educate a willfully ignorant rep on how compound interest works, and advancing my due date is not in my best interest.²⁵ Loan Rehabilitation Program Can Appear Like a Bait-and-Switch

Most observers would agree that if a servicer provides borrowers with information about their loans that later turns out to be inaccurate, the servicer has committed an error and adversely affected the borrower. There is, however, a feature of the loan program that creates exactly this type of scenario, but it was designed with good intentions by the Obama administration at the urging of the advocacy community.

Borrowers who default on their federal student loans can return their debts to good standing, have nearly all collection fees waived, and clear their credit records of the default if they complete a "rehabilitation" plan defined in statute.²⁶ They must make nine on time affordable payments to rehabilitate the loan, which the Obama administration defined in the current regulations as a payment based on the borrower's income.

To help borrowers start making those nine payments quickly, the regulation explicitly allows the collection agencies that act as servicers when loans are in default to calculate a borrower's affordable payment over the phone by asking the borrower about his income.⁷⁷ The borrower can then immediately make a qualifying payment, or so it would seem.

After the phone call, the borrower must send in documentation of his income, and that can create a problem. If his income turns out to be different from what he stated over the phone, his affordable payment under the rehabilitation agreement will change accordingly.²⁸ More importantly, if the payment increases, his prior payments do not count toward the nine required payments for rehabilitation and he must start over in the schedule.

It is not hard to imagine that this frequently occurs. To borrowers it looks as if the collection agency acting on behalf of the government misled them or incorrectly calculated their payments. In fact, the company simply followed the rules of the program outlined by the Department, which were meant to help borrowers. Here is how one borrower put it in a complaint to the CFPB (redactions were made by the CFPB).

I received a letter noting garnishment would begin on my defaulted loan, so I reached out to "Coast Professionals" and tried to deal with it... They have been abusive via phone and **have** provided inaccurate information each time I contact them - quite literally the rules of the game change [emphasis added].

I'm now stuck having my wages garnished, and my son was paying them [\$20.00] a month to get the loan out of default - they updated their " records '' today and decided my husband 's income combined with mine (XXXX the income previously on record with them as we had been trying to scan his paystubs in but they said they were too dark and offered no other solutions - I mailed them a copy, scanned and emailed, faxed, and texted) means my son needs to pay {\$200.00} a month, XXXX the amount he's already paying them...²³

In this complaint, it appears that the borrower's rehabilitation payment was estimated over the phone to be \$20, but when the income documents were submitted as required under regulation, the borrower actually had a much higher income, requiring \$200 monthly payments. It seems like that the collection agency did nothing wrong here and was simply carrying out the rehabilitation program as policymakers designed it. To the borrower, it appears as if the servicer is giving them the runaround.

Forbearance Can be an Optimal Benefit

Some in the policy community believe that when borrowers use forbearance it is evidence that a servicer cheated them out of superior benefits, such as IBR, which include the potential for loan forgiveness.³⁰ Critics allege that servicers "steer" borrowers to a forbearance as an administrative shortcut to save themselves money but leave borrowers worse off. That is certainly possible in theory, but it could also be another instance of servicers taking blame for correctly administering the benefits that lawmakers intended borrowers receive.

A forbearance allows borrowers to postpone payments for a limited period of time, but their loan remains current and in good standing.³¹ To ensure that borrowers can quickly and easily obtain a forbearance, policymakers have established minimal eligibility criteria, allowing borrowers to obtain them over the phone with a servicer or even online. Interest accrues on a borrower's loan during a forbearance and it is capitalized when the forbearance ends. Critics of loan servicers allege that because of the administrative ease with which a servicer can enroll a delinquent or struggling borrower in a forbearance, servicers "steer" borrowers to this benefit instead of IBR, the former of which is administratively cumbersome since it requires that the borrower complete paperwork and submit income documentation. Because IBR offers the potential for loan forgiveness after 20 years of payments, these critics argue that borrowers are always better off in IBR. A forbearance is, in their view, a suboptimal benefit. A servicer with a large number of borrowers using forbearances they say is evidence of a servicer cheating borrowers out of this potential loan forgiveness in an effort to reduce their own administrative overhead. This reasoning encompasses nearly the entire rationale for the CFPB's lawsuit against Navient that is still being litigated.³² The reasoning is misquided.

Servicers and other observers who fully understand the loan program know that a forbearance can be a better option for borrowers than IBR. This should be obvious once these critics consider that lawmakers intended for borrowers to have access to both benefits *simultaneously*. Moreover, borrowers are free to opt for a forbearance instead of IBR if they wish, and a servicer must honor that request even if the borrower would be better off in IBR. It does not require much imagination to understand how a borrower looking to postpone payments would prefer a five-minute phone call to obtain that result over a lengthy IBR enrollment process that can require him to retrieve his most recently filed IRS form 1040 using government websites.

There are other explanations for why forbearance can be an optimal benefit over IBR that require considerable familiarity with not only the loan program but also with a borrower's individual circumstances. Navient's official response to a 2017 Department program review of phone calls with borrowers who enrolled in a forbearance is instructive.³³ In one call, a borrower specifically says that her regular payment is affordable but due to a death in the family she needs short-term relief. In another call, a borrower expects to return to school in the next few months and wants to suspend payments in the meantime to preserve cash for his enrollment period. A servicer who recommends that these borrowers read a 10-page form, submit documentation of their income, and then enroll in IBR to obtain a *short-term* reprieve from payments is wasting everyone's time. And these borrowers are hardly candidates for IBR's loan forgiveness benefit that is triggered after 20 years of enrollment. Furthermore, IBR might not even reduce the borrower's payment if their debt-to-household-income ratio is sufficiently low; the borrower would not learn of this until after they completed the cumbersome administrative process.

Forbearance is optimal in cases where IBR does not reduce a borrower's payment to an affordable amount. That can happen under normal circumstances. Consider a borrower with an \$8,000 loan with a \$104 monthly payment. He and his spouse earn a combined \$65,000 a year in income. He needs to take several months off from work to help an elderly parent and will return to his same job afterwards. During this time he expects his annual income to drop to \$55,000 while he is taking unpaid leave. His budget is going to be tight and he may not be able to stay on top of his loan payment. Is IBR better than forbearance for this borrower seeking payment relief? The question is actually moot. He does not qualify for IBR. His low loan balance combined with his \$55,000 household income make him ineligible for the most generous version of IBR. His best option—in fact his only option—to suspend payments for a short period of time is a forbearance. A servicer would be able to figure this out and inform the borrower accordingly.

In each of these examples, servicers are carrying out the program as lawmakers intended and responding to each borrower's unique circumstances with the available options. To critics of loan servicers, however, borrowers' enrollment in forbearance is seen as evidence of service malfeasance.

Conclusion

As the federal student loan program has grown in size and scope, observers have increasingly turned their attention to the private companies that service these loans. They argue that servicers play an integral role in delivering the benefits of this large entitlement program that helps millions of students pursue a higher education. Some in the policy community have alleged that loan servicers are failing in this role and

undermining the benefits and protections the loan program is supposed to provide. In their view, borrowers are missing out on important repayment options or incurring additional interest costs because of servicer negligence and malfeasance.

My testimony today suggests an additional explanation for why borrowers feel that they have not been treated fairly. Complaints about loan servicing can often be traced to the loan program's design, and in particular, its complexity. The risk that a servicer provides a borrower with inaccurate information, mishandles an application, or fails to follow a borrower's instructions increases with the complexity of the loan program. Similarly, the risk that a borrower misinterprets accurate information that a servicer provides him and as a result believes he was not correctly informed also increases with complexity. And complexity, like "paid ahead status" and PSLF, require a servicer to stretch finite budget resources ever thinner to proactively educate borrowers about it and help them work around it. In short, a complicated student loan program like the one we have invites *perceived* servicing failures and *actual* servicing failures.

This suggests that one solution to frustration and dissatisfaction with student loan servicing is to be found in a more straightforward student loan program, which will require Congress to act. The challenge in this effort is that simplifying the program will either reduce the number of benefits the program provides, or require a large increase in the taxpayer cost of the program.

For example, borrowers would no longer complain about rising loan balances while using IBR if the program did not charge interest in excess of what borrowers were required to pay each month. But the cost to taxpayers of such a change would be substantial, and the benefits would flow to high-income and low-income borrowers alike. Similarly, policymakers could prevent borrowers from complaining that their payments increased while using the graduate payment plan by simply discontinuing that option. Of course, many borrowers might find that option convenient and beneficial. The same tradeoff applies in the case of borrowers from making what critics say is a suboptimal choice, but that will surely leave some borrowers off.

While such tradeoffs are difficult to make, my testimony suggests that if policymakers are not willing to make them, they are unlikely to address a major cause of the concerns about student loan servicing. In the meantime, those who argue that servicing in the federal student loan program is the singular problem are taking the easy way out. They want a loan program with layers of features and options, interacting benefits, and relief targeted to just the right borrowers in just the right circumstances—and they want someone else to make it all work.

That concludes my testimony today. I look forward to answering any questions that the members of the committee may have.

Citations

¹ For more detail on state legislation from California, Colorado, Connecticut, the District of Columbia, Illinois, Maryland, New York, and Washington see Cal. Code Regs. tit. 10, §2032-44.; 2019 Colo. Sess. Laws, 1855.; 2015, Conn. Acts, 15-162. (Reg. Sess.).; D.C. Mun. Regs. tit. 26, § C30 (2018).; 110 III. Comp. Stat. 992/ (2018).; Maryland House Bill 594 (Chapter 546); New York N.Y. Banking Law § 14-A (2019).; 2018, Wash. Sess. Laws, 461. ² For more detail on lawsuits against servicers see Commonwealth of Pennsylvania v. Navient Corporation, 354 F.3d 529 (3rd Cir, 2018), Consumer Financial Protection Bureau v. Navient Corporation, 3:17-CV-101 (M.D. Pa. 2018), Lawson-Ross v. Great Lakes Higher Education Corporation, 18-14490 (11th Cir. 2018), Nelson v. Great Lakes Educational Loan Services, Inc., No. 18-1531 (7th Cir. 2019), and Student Loan Servicing Alliance v. District of Columbia 351 F.3d 26 (D.D.C. 2018).

³ Student Loan Borrower Bill of Rights of 2019, S. 1354, 116th Cong., 1st Sess., § 3

⁵ Student Loan Borrower Bill of Rights of 2019, S. 1354, Troth Cong., Ist Sess., § 3.
 ⁴ US Department of Education, Federal Student Aid, "Federal Student Loan Portfolio," https://studentaid.ed.gov/sa/about/data-center/student/portfolio.
 ⁵ US Social Security Administration, "Social Security Beneficiary Statistics," https://www.ssa.gov/oact/STATS/OASDIbenies.html.

Authors' calculation based on US Department of Education, Federal Student Aid, "Federal Student Loan Portfolio," https://studentaid.ed.gov/sa/about/data-center/student/portfolio. CornerStone Education Loan Services (Utah Higher Education Assistance Authority), FedLoan Servicing/

Pennsylvania Higher Education Assistance Agency (PHEAA), Granite State Management & Resources (GSMR), Great Lakes Educational Loan Services, Inc., New York State Higher Education Services Corporation (HESC)/Edfinancial, MOHELA, Navient, Nelnet, Oklahoma Student Loan Authority (OSLA). See US Department of Education, Federal Student Aid, "Servicer Performance Metrics and Allocations," <u>https://studentaid.ed.gov/sa/about/data-</u> center/business.info/contracts/loan-servicing/servicer.performance.

⁸ US Department of Education, "Loan Servicing/<u>serviceP performance</u>.
 ⁹ US Department of Education, "Loan Servicing Contracts," https://studentaid.ed.gov/sa/about/data-<u>center/business-info/contracts/loan-servicing</u>.
 ⁹ Budget documents show two different figures for the government's total cost of administering the loan program, which includes contract payments to loan servicers. The Department's budget documents show servicing costs to be about \$826 million. See U.S. Department of Education, "Congressional President's FY 2020 Budget Request for the U.S. Department of Education, Student total demainstration."

the U.S. Department of Education, Student Aid Administration," https://www.ed.gov/about/overview/budget/budget20/justifications/y-saa.pdf; The other figure, which is reported in Department of Education budget documents, shows total administrative costs, which includes servicing costs, in present value terms, per dollar lent in the loan program. The Department expects to incur administrative costs, in present value terms, per dollar left in the loan program. The Department expects to incur administrative costs on federal student loans equal to 1.70 percent of each dollar lent over the life of the loan, in today's dollars. The CBO expects the government to make \$98 billion in loans each year, which would translate into \$1.7 billion in administrative costs per cohort of loans. See Office of Management and Budget, "Budget of the US Government, Fiscal Year 2020," https://www.whitehouse.gov/wp-content/uploads/2019/03/appendix/sy2020, odl. ¹⁰ When borrowers consolidates one or more of their loans under the consolidation option, they may choose a new

servicer. Until recently, if borrowers expressed interest in the Public Service Loan Forgiveness program, their loan was automatically transferred to FedLoan Servicing, the private servicer which has had sole servicing authority over the program.

¹¹ This testimony refers to the collection of plans that allow borrowers to make payments based on their incomes as IBR. The IBR plan is generally the most generous plan for new federal student loan borrowers as of 2014. While borrowers with loans from before that date may access other plans that set payments based on income, such as Pay As You Earn (PAYE) and the Revised Pay As You Earn (REPAYE) plan, the vast majority of new borrowers who use such plans will enroll in IBR. ¹²Consumer Financial Protection Bureau v. Navient Corporation, 3:17-CV-101 (M.D. Pa. 2018).

¹³ Jason Delisle and Alexander Holt, "Why Student Loans Are Different," New America, March 2015, https://

ht<u>tps://static.newamerica.org/attachments/2358-why-student-loans-are-</u> different/<u>StudentLoansAreDifferent_March1_Updated.e7bff7703ad4da299fad650f47ac343.pdf</u>. ¹⁴According to statute, the Consumer Financial Protection Bureau (CFPB) is required to receive, review, and attempt to resolve complaints about financial products. In 2012, the CFPB launched a public complaint database, where all submitted complaints are viewable, and began publishing federal loan servicing complaints in 2016. For more detail on the database, see Consumer Financial Protection Bureau, Consumer Complaint Database,

https://www.consumerfinance.gov/data-research/consumer-complaints/. ¹⁵ Consumer Financial Protection Bureau, "Consumer Complaint Database," Complaint #2794720, https://www.consumerfinance.gov/data-research/consumer-complaints/

¹⁶ Direct Loan borrowers who work for ten years in either a government or nonprofit job and are enrolled in an IBR plan are eligible for forgiveness of their loans. Borrowers may choose to certify each qualifying employer as they change jobs, or certify them individually upon applying for forgiveness after making 120 qualifying payments. For more detail on PSLF, see US Department of Education, "Public Service Loan Forgiveness,"

¹⁸ The Department's IBR application includes among its 10 pages a matrix with cells that run 12-by-5 which compare the different terms of the four IBR and related payment plans. The risk that a borrower fails to understand the information in one of the 60 cells in the matrix is so high that it is unreasonable to expect a loan servicer to prevent

any confusion the borrower may have about these features. US Department of Education, "Income-Driven Plan Request," https://static.studentioans.gov/images/idrPreview.pdf.

¹⁹ Daniel v. Navient Solutions, LLC, 328 F.Supp.3d 1319 (11th Cir. 2018).

20 34 CFR § 685.211 (2013).

²¹ The borrower may continue making payments as usual, reducing the total time they repay and the amount interest that they accrue.

22 34 CFR § 682.209 (1992).

While advancing the payment due date has no direct consequence for most borrowers, those participating in the PSLF program are only given credit towards forgiveness for payments made on the regular monthly due date in the scheduled amount due. When these borrowers make prepayments and therefore automatically advance their due dates, they are more likely to erroneously make future payments that will not count towards forgiveness. ²⁴ Borrowers working toward loan forgiveness in PSLF can be affected negatively by the paid ahead status. In PSLF, forgiveness occurs after borrowers make 120 on-time payments. Advancing a borrower's due date when he overpays, which is required under the law, delays when he can make his next on-time payment to his now-advanced due date. Both of these policies were made by Congress, not servicers. Both were intended to help borrowers. But together they can actually cause a borrower to pay more than he otherwise would be required. To the borrower, it can look like he has been cheated out of a benefit, and he is likely to blame his loan servicer ²⁵Consumer Financial Protection Bureau, "Consumer Complaint Database," Complaint #2317538,

 ²⁶ 20 USC § 1078–6, Also see: US Department of Education, "Loan Servicing and Collection—Frequently Asked Questions." https://ifap.ed.gov/LoanServicingandCoilectionInfo/LSCFAQ.html. 27 34 CFR § 685.211. The Obama administration stated in regulatory documents that: "We have revised

§ 682,405(b)(1)(iv) and § 685,211(f)(1)(ii) to specify that a guaranty agency or the Department may calculate a payment amount based on information provided orally by the borrower, and may provide the borrower with a rehabilitation agreement using that amount. We have also specified in revised §§ 682.405(b)(1)(iv) and 685.211(f)(1)(ii) that if the borrower does not provide the guaranty agency or the Department with the documentation required to calculate the payment amount using the 15 percent formula or to confirm the information provided orally on which the Secretary or the guaranty agency calculated the payment amount, the rehabilitatio

agreement entered into for that amount is null and void. https://www.federalregister.gov/documents/2013/11/01/2013-25331/student-assistance-general-provisions-federal-perkins-loan-program-federal-family-education-loan.

"US Department of Education, Federal Student Aid, "Loan Servicing and Collection - Frequently Asked Questions, "https://ifap.ed.gov/LoanServicingandCollectionInfo/LSCFAQ.html#LR-Q2.

²⁹Consumer Financial Protection Bureau, "Consumer Complaint Database," Complaint #2230521,

https://www.consumerfinance.gov/data-research/consumer-complaints/

³⁰ Consumer Financial Protection Bureau v. Navient Corporation, 3:17-CV-101 (M.D. Pa. 2018). Senator Elizabeth Warren to Mr. Jack Remondi, November 13, 2018, https://www.warren.senate.gov/imo/media/doc/18-11-13%20Sen_%20Warren%20letter%20to%20Navient%20CEO%20Jack%20Remondi.pdf.

³¹ Servicers often extend a different kind of forbearance, called administrative forbearance, while they process deferment or long-term forbearance applications, repayment plan changes, and while borrowers are evaluated for loan discharge eligibility. An administrative forbearance allows borrowers to suspend payments while servicers process paperwork, and can be especially beneficial for borrowers who would otherwise be required to make full

 ³² Consumer Financial Protection Bureau v. Navient Corporation, 3:17-CV-101 (M.D. Pa. 2018).
 ³³ Summer Financial Protection Bureau v. Navient Corporation, 3:17-CV-101 (M.D. Pa. 2018).
 ³⁴ US Department of Education, Federal Student Aid, "Navient Use of Forbearance Site Visit Review," https://www.warren.senate.gov/imo/media/doc/Ed.%20Dept.%20May%202017%20FSA%20Audit%20Report. odf

https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service.

¹⁷³⁴ CFR § 682.215



Testimony of Seth Frotman Before the United States Congress House Financial Services Committee A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable September 10, 2019

INTRODUCTION

Chairwoman Waters, Ranking Member McHenry, Members of the Committee, thank you for the opportunity to testify today.

Over the course of the last decade, I traveled all across the country, talking to thousands of people in big cities, small towns, and nearly every slice of America in between. And from these conversations, I have found that one aspect of life cuts across, interweaving these communities with seemingly little else in common—the fallout from extraordinary student debt.

In townhalls across the Bible Belt, parents talk of struggling to put food on the table because their student loan payments consume entire paychecks.¹

In hearing rooms in Augusta, AARP members testify about how student debt leaves them without money for medicine or doctor visits.²

In quiet corners amid hushed conversations, borrowers describe overcoming tremendous adversity to rebuild their lives—their homes, their jobs, their families—but still cannot escape the fallout of crippling student debt.³

Sixty-thousand complaints tell the same story: borrowers who did everything right—went to school and took on debt to get the degree.⁴ Now, they are desperately trying to pay it back but are derailed at every turn.⁵

And in each story, a common question: How could *this* happen to me after I did everything I was supposed to do?

And the answer is one we are often unwilling to acknowledge—we encouraged millions of students to take on billions in debt. And then, to add insult to injury, we sent them into a market with a piecemeal consumer protection framework that buckled under the weight of this historic burden.

This is the story of our nation's student debt crisis.

Despite the vitriol spewed in today's political discourse, the student debt crisis did not stem from an entire generation's personal failure.

Despite the social media screeds, the student debt crisis did not happen because 44 million Americans all lacked personal responsibility.

To those who stood on the frontlines of crises past, these arguments carry a familiar ccho. These are the same tired arguments that have been made in this same room every time Americans came together to demand economic justice.

These arguments are as dangerous as they are wrong.

It is dangerous to tout that student loan debt is "good debt," just as it was dangerous to tout that home values would always rise in perpetuity and an investment in your house always paid off.

It is wrong to claim that student loan borrowers are "better off" without consumer protections and oversight, just as it was wrong when those claims were made until the very moment the mortgage market crashed.

You have heard these arguments, as have your predecessors, as have their predecessors. These arguments were wrong then, just as they are wrong now.

And after a lifetime of listening to these arguments, it should come as no surprise that the people in those town halls are no longer buying it. The people in those hearing rooms don't believe it. All across this country, people see how these arguments fuel a system that promised them the American Dream and then left them behind. They see how the priorities of the staunch proponents of the status quo push their children, their friends, and their neighbors, even further behind.

THE STUDENT DEBT CRISIS

While others might spend this critical moment debating what descriptive noun adequately conveys the true state of this market, this hearing recognizes that we are in a crisis.⁶

Our country is in the midst of a student debt crisis. We must put aside the notion that simply because investment bankers are not lining the sidewalks of 7th Avenue while holding the contents of their desks in a box, that somehow this is not a crisis; that somehow our nation does not need to act.⁷

Action should not be triggered only when a market is deemed "as systemically risky as subprime mortgage-backed securities."⁸ The call to action lies in those townhalls and in those hushed conversations. It lies with the impact student debt is having on our neighbors and neighborhoods. It lies in the collective weight of \$1.6 trillion in student loan debt.

For individual borrowers and families, this impact is real and immediate.

 The average student loan balance is now more than \$33,000, a 60 percent increase from only a decade ago.⁹ Today, nearly eight million borrowers owe in excess of \$50,000 in student debt.¹⁰

- Households are devoting an increasing share of their budgets to pay their student loans. In the last ten years, the share of household balance sheets consumed by student debt has more than doubled.¹¹
- Women make up half of all college students yet owe two-thirds of all outstanding student debt—totaling more than \$900 billion.¹² Not only do a disproportionate number of women take on student debt, but they take on greater amounts of debt. In 2016, women, on average, graduated from bachelor's degree programs with 14 percent higher student debt balances than men.¹³
- African-American and Latino students borrow at higher rates than their white peers data shows that more than 90 percent of African-American and 72 percent of Latino students take out loans to attend college, compared to 66 percent of white students.¹⁴ Furthermore, communities of color borrow in greater amounts, regardless of school, sector or degree.¹⁵ One study found that at graduation, African-American borrowers owe nearly 45 percent more student debt than white borrowers, and the disparity will more than triple in the years that follow.¹⁶
- Older Americans now comprise the fastest growing cohort of student loan borrowers. Outstanding student debt for borrowers over the age of 50 has increased by 512 percent in less than 15 years.¹⁷ Today, 8.4 million Americans over the age of 50 each owe, on average, more than \$31,000 in student debt.¹⁸
- Data now shows how student loan debt affects every aspect of a borrower's financial life, and the ramifications last a lifetime. Student loan borrowers earn less income over their careers,¹⁹ accumulate less wealth,²⁰ delay buying cars and homes,²¹ struggle to build good credit,²² and save less for retirement.²³
- And the impact spreads across their lives and families.²⁴ We now know that student debt
 affects decisions about occupational choice and trajectory,²⁵ continued education,²⁶ and
 family formation.²⁷

And with this significant increase in debt burden, we also see a significant increase in distress.

Last year, more than one million borrowers defaulted on a student loan.²⁸ That is more than the population of every single one of your districts. Today, more than nine million borrowers are currently sitting in default.²⁹ Among them, we find people from every walk of life, including servicemembers, senior citizens, and veterans.³⁰

Another three million borrowers are at least two payments behind.³¹ These are the defaults yet to come—borrowers we can expect the system to fail if we continue to tacitly accept the status quo.

And the harm to these borrowers extends beyond the days past due, beyond the collection calls during dinner. These borrowers may struggle to find and keep jobs,³² to rent homes,³³ and to maintain professional licenses.³⁴ They may have wages garnished,³⁵ tax refunds withheld,³⁶ and Social Security benefits offset.³⁷

But the student debt crisis does not end there.

When you multiply the plight of individual student loan borrowers 44 million times, you see where student debt begins to shape our economy and society.³⁸ Millions of Americans are experiencing the fallout of the student debt crisis. And the devastation ripples across their communities.

- Data now shows how student debt inhibits the economic growth of our neighborhoods and communities. Student loan borrowers are less likely to start small businesses³⁹ or purchase homes.⁴⁰ In fact, student debt is directly responsible for 400,000 fewer home purchases by millennials since 2005.⁴¹
- Studies are beginning to reveal the impact of student debt on public health. Research has
 already shown that foreclosure rates are linked to poorer health outcomes, including for
 preventable conditions, and we are now starting to see the same indicators in the student
 loan market.⁴² Student loan-related stress has been linked to poorer psychological
 functioning, higher levels of stress and anxiety, and may ultimately lead to higher
 healthcare costs across states and the country.⁴³
- Recent studies show that student loan borrowers are leaving America's rural communities, choosing to pursue better economic outcomes in urban areas. The Federal Reserve found that, in fact, those with the most debt are the most likely to leave rural areas.⁴⁴ And as those who remain behind struggle to pay their student debt, data shows they suffer worse credit outcomes and lower wages.⁴⁵
- Research now shows how student debt can be a driver for income inequality, perpetuating
 wealth gaps between and across generations.⁴⁶ Students who are forced to finance their
 education through loans will begin their careers with fewer assets and divert more income
 to debt repayment than wealth accumulation.⁴⁷ And as they progress through their
 professional lives, the gap remains.⁴⁸
- Student loan debt also fuels systemic racial disparities. Where the typical white family has more than four times the assets as African-American and Latino families with the same income, African-American and Latino students are forced to take on more debt to get the same education.⁴⁹ These students then enter the workforce where systemic pay disparities force them to devote larger shares of their smaller paychecks to pay down debt, rather than build wealth.⁵⁰ Additionally, data shows that after more than a decade into repayment, median debt balances for African-American female borrowers will *increase* by 13 percent, compared to a decrease of 44 percent for white male borrowers.⁵¹ And then, when their children go to college, the cycle repeats itself. In numerous ways, student debt is both "a cause and a consequence of racial inequality."⁵²

Like kerosene on a fire, student debt is driving the systemic economic and racial inequality that is tearing our communities apart and tearing our country apart.

THE STUDENT DEBT CRISIS IS A CONSUMER PROTECTION CRISIS

But it is more than ballooning balances. It is more than the rippling repercussions. It is also the bullseye we have placed on the backs of 44.7 million people.⁵³

The student debt crisis is a consumer protection crisis.

Regardless of where your presuppositions of blame for this crisis lie, we should all agree on one thing: if you are taking on debt to chase the American Dream, you should not be ripped off in the process.

However, too many for too long have allowed predatory players to have near free reign to prey on the struggles of student loan borrowers. All across the market, we see:

- Student loan servicers doling out millions in executive compensation while arguing that there is "no expectation" that they will work to help the very borrowers they are paid to serve;⁵⁴
- Private lenders with business practices that would make payday lenders blush, casually making non-dischargeable loans they know are going to fail;⁵⁵
- Banks setting up shop on campus to prey on students and leech overdraft fees from the financial aid of the most vulnerable;⁵⁶
- Social media companies driving revenue for investors by pushing scam ads that tout fake "student loan debt relief" to the most desperate borrowers;⁵⁷
- Companies existing solely to manipulate outcomes for the poorest-performing schools, and committing illegal practices that keep the spigot of taxpayer funds flowing;⁵⁸
- Debt collectors and collection lawyers manipulating the court system in order to garnish borrowers' wages and destroy consumers' credit;⁵⁹
- For-profit schools scouring homeless shelters in an effort to continue to feed at the trough
 of federal dollars;⁶⁰
- Fintech firms driving credit products that force today's students to sign away tomorrow's wages, leaving women and borrowers of color disparately impacted;⁶¹ and
- Bankers slicing and dicing student debt into some of the worst financial instruments in Wall Street's history.⁶²

All across the market, companies premise their business models on abusing student loan borrowers:

Acquitas Capital Management.⁶³ Berkeley College.⁶⁴ Bridgepoint Education.⁶⁵ Career Education Corporation.⁶⁶ Citibank.⁶⁷ Conduent.⁶⁸ Corinthian Colleges.⁶⁹ Discover Bank.⁷⁰ Education Management Corporation.⁷¹ GC Services.⁷² iQor Holdings.⁷³ Higher One.⁷⁴ ITT Education

Services.⁷⁵ National Collegiate Student Loan Trusts.⁷⁶ Navient.⁷⁷ PHEAA.⁷⁸ Pioneer Credit Recovery.⁷⁹ QuinStreet.⁸⁰ Sallie Mae Bank.⁸¹ SoFi.⁸² Sunkey Publishing.⁸³ Student Aid Institute.⁸⁴ Transworld Systems.⁸⁵ Victory Media.⁸⁶ Wells Fargo Bank.⁸⁷

We must disabuse ourselves of the notion that we are merely dealing with outliers in an otherwise benevolent system, or that the problem is limited to one sector of schools.⁸⁸ The problem spans the entire market. Throughout America, big banks and small scams hurt millions of borrowers at every single point of their financial lives—from the day a student receives her first bill until the day she pays off her last loan.

Regulators,⁸⁹ law enforcement officials,⁹⁰ lawmakers,⁹¹ scholars,⁹² and consumer advocatcs⁹³ have all documented how student loan borrowers have less rights and fewer protections than exist in other markets. Because for too long, we have treated student loans as "something different," and therefore have accepted the idea that student loan borrowers should be treated as "something different." And for 44 million people, "something different" has meant something worse.

When large financial services companies that drive borrowers to default are simultaneously taking victory laps after appearing on Fortune 500 lists, we know we must do better.⁹⁴

TIME FOR ACTION

And that is where this Committee comes in.

Because this is the Committee that has repeatedly taken a stand when consumers are getting ripped off.

In 1968, following a boom in middle-class access to credit—often accompanied by deceptive interest calculations—this Committee stepped in to pass the Truth in Lending Act so that consumers could "compare more readily the various credit terms" and be protected against "inaccurate and unfair . . . practices."⁹⁵

In 1970, acknowledging the risk to consumers that accompanies computer-aggregated data, this Committee stepped in to pass the Fair Credit Reporting Act to ensure "fairness, impartiality, and respect for consumers."⁹⁶

In 1996, recognizing the scams that emerged following the oligopolization of the credit reporting market, this Committee stepped in to pass the Credit Repair Organizations Act so that consumers could "establish[] and maintain[] their credit worthiness" without being subjected to business practices that cause "financial hardship upon consumers."⁹⁷

In 2009, following decades of deceptive and abusive practices in the credit card market, this Committee passed the Credit Card Accountability Responsibility and Disclosure Act in order to promote "fair and transparent practices."⁹⁸

And a year later, when our nation was recovering from the largest financial collapse seen in generations, this Committee stepped up again to protect the American consumer by passing the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁹⁹

These efforts, along with so many others, worked.

This Committee's actions helped consumers avoid tens of billions of dollars in credit card fces. 100

This Committee's actions kept tens of thousands of families in their homes.¹⁰¹

This Committee's actions have resulted in more than a billion dollars back to victims of housing discrimination.¹⁰²

In all of these instances, this Committee took decisive action on behalf of the American people. The 44 million Americans with student debt, and the millions more who are affected by it, need you to do the same.

That is what this hearing is about. That is what the legislation before this Committee is about—creating the protections and accountability that the millions of Americans who receive a student loan bill each month deserve.

STUDENT LOAN BORROWERS NEED STRONG, ENFORCEABLE RULES OF THE ROAD

Rampant breakdowns across the student loan market harm every type of borrower, with every type of loan, at every stage of repayment.¹⁰³ Lost paperwork, mishandled payments, deceptive disclosures, and the routine denial of borrowers' repayment rights all add up to billions of dollars in additional debt for millions of borrowers.¹⁰⁴

Law enforcement officials from coast to coast have documented how Navient's forbearance steering practices have denied the most vulnerable borrowers their right to income-driven repayment, resulting in \$4 billion in needless interest being added to their loans.¹⁰⁵ State law enforcement have demanded justice for dedicated public servants who are being denied the promise that the federal government made to them—that if they served in their communities for a decade, they would have their student loans forgiven.¹⁰⁶ And these examples only scratch the surface.

Behind the billions of dollars and broken promises are student loan servicers—large consumer finance companies paid to manage this trillion-dollar market.

And these problems will only get worse: The Department of Education estimates that over the next two years, at least 37 million borrower accounts will be transferred between loan companies.¹⁰⁷ Over the next two decades, millions of borrowers will apply for loan forgiveness through income-driven repayment and Public Service Loan Forgiveness.¹⁰⁸ Every year, hundreds of thousands of additional borrowers will be thrust into this broken system.¹⁰⁹

Through amendments to the Truth in Lending Act, this Committee reformed the credit card and mortgage markets,¹¹⁰ helping millions of Americans in the process. This Committee must use the same tools now to reform the student loan market—because millions more still need your help.

And these protections will only be realized when they are enforceable by independent financial regulators, law enforcement officials, and most critically, borrowers themselves. Because

borrowers should not be reliant on the Department of Education-the self-described "largest special purpose consumer bank in the world"---to seek justice when wronged.¹¹¹

This Committee must also fight back against the political tactics of an administration that has prioritized special interests over student borrowers. It must prevent the CFPB's current political leadership from defunding the critical work of policing the student loan market, ¹¹² and it must take steps to end the Department of Education's obstruction of independent law enforcement.¹¹³

PRIVATE STUDENT LOAN BORROWERS NEED BETTER PROTECTIONS

For too long, the plight of private student loan borrowers has been overlooked and dismissed as an "insignificant" slice of the \$1.6 trillion market. But that "insignificant" slice is a \$140 billion market—larger than the payday loan market;¹¹⁴ larger than outstanding past-due medical debt.¹¹⁵

Industry trade groups deceptively tout charge-off rates as the only measure of success, arguing that policymakers need not be concerned.¹¹⁶ And yet, as the Federal Reserve Bank of New York noted just last month, real delinquency rates are "higher than what are published by lenders," because lenders can selectively remove charged-off balances.¹¹⁷ Even after this arbitrary cut-off date, lenders "continue to attempt to collect on these debts and consumers" lives continue to be affected."¹¹⁸ These industry talking points also do nothing to convey the myriad of ways in which this product can ruin the lives of struggling families.

In many ways, private student loan borrowers are among the most in need of Committee action. We see this in consumer complaints—heartbreaking stories where borrowers take on this debt on the pathway to their future, but then tragedy strikes. A high-risk pregnancy leads to a lost paycheck. A child is born with special needs. A borrower becomes totally and permanently disabled. Despite what is touted in marketing materials, private student lenders have no statutory obligation to accommodate any of these borrowers.

And these borrowers need help. Congress started this work in 2018, ensuring that in the event of a borrower's death, her student loan will be discharged and a parent- or grandparent-cosigner will not be left with the bill.¹¹⁹ Now this Committee must extend those protections to borrowers who become disabled.

But there is more work to do in this market. From the predatory lending tactics of for-profit schools to the origination of loans designed to fail, we have seen private student loan borrowers fall victim to illegal practices that lead to a lifetime of debt. However, for too long, the courthouse door has been locked shut when these borrowers sought justice. Just as this Committee banned mandatory arbitration provisions for consumers with certain mortgage loans,¹²⁰ this Committee should do the same for private student loan borrowers.

STUDENT LOAN BORROWERS NEED CONSISTENCY, ACCURACY, AND TRANSPARENCY IN CREDIT REPORTING

Borrowers depend on the student loan industry for more than just sending bills and collecting payments. At the center of borrowers' financial lives sits an opaque web of companies operating the nation's credit reporting system.

When furnishing and reporting practices are premised on outdated and inconsistent policies, the fallout reverberates across a borrower's entire financial life, impacting her ability to get a job, rent an apartment, or even open a bank account. Yet, for years, we have seen disturbing indicators of servicers' inaccurate credit furnishing practices¹²¹ within an antiquated reporting system propagated by industry.¹²² The lack of consistency, accuracy, and transparency only serve to exacerbate the struggle faced by 44 million student loan borrowers.

Like when two identical borrowers were treated differently when they tried to buy a home, simply because of which company serviced their student loans. Or when the use of outdated codes resulted in "harmful conclusions being drawn from [borrowers'] credit histories" simply because these companies refused to adapt to the modern student loan market.¹²³ In this vacuum, industry has set new standards for itself—new guidelines that affect tens of millions of borrowers with no public input and no means to hold servicers and credit bureaus accountable when things go wrong.¹²⁴

This Committee must require student loan companies to accurately and consistently furnish the most basic loan information, including loan balances and servicing transfers. But more than that, borrowers deserve to be treated fairly when servicers place their loans into forbearance or income-driven repayment plans. And finally, when student loan companies drop the ball, endangering the financial futures of millions of Americans, they need to be held to account.

PROTECTING BORROWERS HARDEST HIT BY THE STUDENT DEBT CRISIS

There are now more than nine million borrowers in default on their student loans.¹²⁵ And for the debt collectors that target them, this is big business.¹²⁶ These companies chase fat government payouts at the expense of borrowers' best interests by routinely providing inaccurate, misleading, or outright false information.¹²⁷ The most vulnerable borrowers are left with extra fees and collection costs, often leading to a cycle of default that can last for years.¹²⁸ This toxic mix of abuse and misaligned financial incentives drive federal contractors to extract payments from those in extreme financial distress, even when borrowers have a right to make no payment at all, or to qualify to have their debt cancelled outright.

This Committee has an opportunity to right this wrong, halting harmful collection tactics and giving borrowers new tools under federal consumer law to hold collectors accountable.

This is the unfinished work of financial reform. This is the unwritten chapter that 44 million Americans need this Committee to write.

CONCLUSION

We cannot continue to ignore the trillion-dollar blackhole in our financial markets.

We cannot continue to debate the right number of zeroes on a student loan bill without acknowledging the predatory players that keep them there.

We cannot continue to be lobbied into believing that the companies getting rich off of the misery of millions of Americans are not part of the problem.

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And that is why the work of this Committee is so important.

As it has done time and again, this Committee must stand as the fierce defenders of American families.

As it has done time and again, this Committee must protect those chasing the American Dream from those who seek only to prey on its pursuit.

As it has done time and again, this Committee must act.

Millions of Americans across this country need you to act.

Thank you.

² See An Act To Establish a Student Loan Bill of Rights To Regulate Student Loan Servicers: Hearing on L.D. 995 Before the Comm. on Health Coverage, Ins. and Fin. Serv., 2019 Leg., 129th Sess. (Me. 2019) (testimony from Amy Gallant, AARP Maine),

https://legislature.maine.gov/backend/app/services/getDocument.aspx?doctype=test&documentId=108088; see also Consumer Fin. Prot. Bureau (CFPB), Snapshot of older consumers and student loan debt 13 (Jan. 2017), https://files.consumerfinance.gov/t/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf ("[O]lder consumers with outstanding student loans are more likely than those without outstanding student loans to report that they have skipped necessary health care need such as prescription medicines, doctors' visits, and dental care because they could not afford it."); An Act To Establish a Student Loan Bill of Rights To Regulate Student Loan Servicers: Hearing on L.D. 1507 Before the Comm. on Ins. and Fin. Serv., 2017 Leg., 128th Sess. (Me. 2017) (testimony from Amy Gallant, AARP Maine), https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=75851; Abha Bhattarai, Student debt now affects a staggering number of elderly Americans, Wash. Post (Jan. 16, 2017), https://www.washingtonpost.com/news/business/wp/2017/01/16/student-debt-now-affects-a-staggering-number-ofelderly-americans/ (''A large portion of older student loan borrowers struggle to afford basic needs,' the report said, adding that older borrowers were increasingly likely to have skipped necessary doctors' appointments and prescription medications because they couldn't afford them.").

³ See, e.g., Letter from U.S. Senators to Secretary Betsy DeVos (Oct. 20, 2017), https://www.waren.senate.gov/files/documents/2017_10_20_Letter_to_DeVos_Hurricanes.pdf ("Nearly 10 percent of Puerto Rico's population have federal student loans.... Many of these students continue to be without power, telephone, or internet service needed to make payments on their loans of to request assistance from their student loan servicers."); Megan Leonhardt, *Americans are staying silent on student loan debt—and it's not helping*, CNBC (Aug. 7, 2019), https://www.enbc.com/2019/08/07/student-loans-are-the-most-uncomfortable-conversation-topicfor-americans.htm; see also Michelle Conlin, *Student loan berrowers, herded into default, face a relentless collector: the U.S.*, Reuters (July 25, 2017), https://www.reuters.com/investigates/special-report/usa-studentloans/ (discussing how borrowers' Earned Income Credit tax refunds are offset by the federal government due to defaulted student loan debt, impinging on their ability to use the refund for basic necessities); M.H. Miller, *How student debt*

¹ See, e.g., Julia Barnard & Robin Howarth, North Carolina's Student Debt: A Dimension of a Crisis, Ctr. for Responsible Lending 3 (Aug. 2019), https://www.responsiblelending.org/sites/default/files/nodes/files/researchpublication/crl-nc-fsl-studentloans-aug2019.pdf ("1.2 million North Carolinians have outstanding student loan debt totaling \$44 billion, with this amount having tripled between 2008 and 2018... At least 16.5% of student loan borrowers in North Carolina are in severe delinquency, having made no payments on their loans for 90 days or more."); Aarthi Swaminathan, Map: Cities in the South are being held back by student debt, Yahoo Finance (May 15, 2019), https://finance.yahoo.com/news/student-debt-cities-map-175110486.html ("[T]hirteen of the bottom 20 cities [with the highest levels of student loan indebtedness as a proportion of income] were in the South.").

devoured my life, The Week (Sept. 4, 2018), https://theweek.com/articles/793316/how-student-debt-devoured-life; Mandi Woodruff, 7 College Graduates Whose Lives Were Wrecked By Student Loan Debt, Business Insider (June 6, 2013), https://www.businessinsider.com/students-loan-debt-horror-stories-2013-6.

https://files.consumerfinance.gov/f/201410_cfpb_report_annual-report-of-the-student-loan-ombudsman.pdf; CFPB, Annual report of the CFPB Student Loan Ombudsman (Oct. 2015),

https://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf; CFPB, Annual report of the CFPB Student Loan Ombudsman (Oct. 2016),

⁶ See, e.g., Diane Harris, The Truth About Student Debt: 7 Facts No One Is Talking About, Newsweek (Aug. 8, 2019), https://www.newsweek.com/2019/08/23/student-debt-loans-truth-facts-cover-story-1453057.html ("'Calling it a crisis misrepresents the situation," says Sandy Baum, senior fellow for the Center on Education Data and Policy at the Urban Institute. 'Not everyone with student debt is having his or her life ruined.'"); Glenn C. Altschuler, The student debt-crisis is 't what you think it is, 'The Hill (May 5, 2019), https://thehill.com/opinion/education/42170-the-student-debt-crisis-isnt-what-you-think-it-is; Max Eden, Is There a Student Debt Crisis?, Manhattan Inst. (2016), https://files.eric.ed.gov/fulltext/ED568720.pdf; Paul Davidson, Are student loans as big of a problem as people think?, USA Today (July 7, 2017), https://www.usatoday.com/story/money/2017/07/07/student-loans-big-problem-pcople-think/101842736/; but see Julie Margetta Morgan & Marshall Steinbaum, We Can't Address the Student Debt Crisis until We Understand Its Effects, Roosevelt Inst. (Dec. 3, 2018), https://rooseveltinstitue.org/we-cant-address-student-debt-crisis-until-we-understand-its-effects/.

⁷ See generally Photograph of an employee walking out of the Lehman Brothers building carrying a box of his belongings in New York, Joshua Lott, Reuters (Sept. 15, 2008), https://www.theglobeandmail.com/report-on-business/international-business/us-business/ten-iconic-photos-from-the-collapse-of-lehman-brothers/article4528337/#c-image-0; see also David Teather, Wall Street crisis: Lehman staff tell their stories, The Guardian (Sept. 15, 2008), https://www.theguardian.com/business/2008/sep/15/lehmanbrothers.creditcrunch1; David Ellis, The Meltdown, CNN Money (Sept. 15, 2008),

https://money.cnn.com/2008/09/15/news/companies/lehman_brothers/index.htm; Seth Frotman, Broken Promises: ow Debt-financed Higher Education Rewrote America's Social Contract and Fueled a Quiet Crisis, 2018 Utah L. Rev. 4, 811-846.

8 Greg Gelzinis (@FinGregg), Twitter (May 20, 2019, 8:27 PM),

https://twitter.com/FinGregg/status/1130631254167179267 ("The benchmark for action shouldn't be 'ls it as systemically risky as subprime mortgage-backed securities?" It's a false dichotomy used to justify inaction/regulatory rollbacks.").

9 Fed. Res. Bank of N.Y., 2018 Student Loan Update (2018),

https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/sl_update_2018.xlsx; Fed. Res. Bd, Consumer Credit- G.19 (Aug. 7, 2019), https://www.federalreserve.gov/releases/g19/current/default.htm.

¹⁰ 2018 Student Loan Update, supra n. 9; see also Rajashri Chakrabarti et al., At the N.Y. Fed: Press Briefing on Household Borrowing with Close-Up on Student Debt, Fed. Res. Bank of N.Y. (Apr. 3, 2017), https://libertystreeteconomics.newyorkfed.org/2017/04/at-the-ny-fed-press-birfing-on-household-borrowing-withclose-up-on-student-debt.html ("We have noted in the past that delinquency and default rates are lower among higher-balance borrowers; however, the default rates among higher-balance borrowers have worsened notably in recent years. Further, payment progress is slower among those who borrowed more. Ten years later, over 70 percent

⁴ See CFPB, Annual Report of the CFPB Student Loan Ombudsman 2 (Oct. 2017),

https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf (finding that the "CFPB handled over 50,700 private and federal student loan complaints, and about 9,800 debt collection complaints related to private or federal student loan debt.").

⁵ See id; CFPB, Annual report of the CFPB Student Loan Ombudsman (Oct. 16, 2012), https://files.consumerfinance.gov/f/201210_cfpb_Student-Loan-Ombudsman-Annual-Report.pdf; CFPB, Annual report of the CFPB Student Loan Ombudsman (Oct. 2013),

https://files.consumerfinance.gov/f/201310_cfpb_student-loan-ombudsman-annual-report.pdf; CFPB, Annual report of the CFPB Student Loan Ombudsman (Oct. 16, 2014),

https://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_ Report.pdf. As of September 6, 2019, the 2018 report has not been published.

¹¹

of the original balance has been repaid among those who had borrowed less than \$5,000 when they left college in 2006, compared to a reduction of only 25 percent among students who borrowed more than \$100,000.")

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¹¹ See Fed. Res. Bank of N.Y., Household Debt and Credit Report (Q1 2019), https://www.newyorkfed.org/microeconomics/hhdc.html (last accessed Aug. 8, 2019).

¹² See Kevin Miller, Women's Student Debt Crisis in the United States, Am. Ass'n. U. Women (May 2017), https://www.aauw.org/research/deeper-in-debt,

¹³ See id.

14 See Aissa Canchola et al., The significant impact of student debt on communities of color, CFPB (Sept. 15, 2016), https://www.consumerfinance.gov/about-us/blog/significant-impact-student-debt-communities-color/

¹⁵ See Mark Huelsman, Debt to Society, Demos (June 2019), https://www.demos.org/sites/default/files/2019-06/Debt%20to%20Society.pdf.

¹⁶ See Judith Scott-Clayton & Jing Li, Black-white disparity in student loan debt more than triples after graduation, Brookings (Oct. 20, 2016), https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-morethan-triples-after-graduation/; see also Sara Goldrick-Rab et al., The Color of Student Debt: Implications of Federal Loan Program Reforms for Black Students and Historically Black Colleges and Universities, Wis. Hope Lab (Sept. 2, 2014), https://news.education.wisc.edu/docs/WebDispenser/news-connections-pdf/thecolorofstudentdebtdraft.pdf?sfvrsn=4 (finding that the amount borrowed for college represents a much larger fraction of black students' family income and their future earnings than it does for their white peers).

¹⁷ See Lori A. Trawinski et al., The Student Loan Debt Threat: An Intergenerational Problem, AARP (May 14, 2019), https://www.aarp.org/ppi/info-2019/the-student-loan-debt-threat-an-intergenerational-problem.html

¹⁸ See 2018 Student Loan Update, supra n. 9; see also U.S. Dcp't of Educ., Data Point: Changes in Undergraduate Program Completers' Borrowing Rates and Loan Amounts by Age: 1995-96 Through 2015-16, NCES 2019-437 (Aug. 2019), https://nces.ed.gov/pubs2019/2019437.pdf (finding that the student loan borrowing rate for undergraduates age 50 or older has increased 45 percentage points during the last two decades).

¹⁹ See, e.g., Justin Weidner, Does Student Debt Reduce Earnings?, Princeton (Nov. 2016), https://scholar.princeton.edu/sites/default/files/jweidner/files/Weidner JMP.pdf (finding that "student debt is permanently scarring, as graduates with debt experience no faster income growth than their unburdened peers. Debt induces graduates to enter employment faster and select jobs in unrelated fields, leading to lower income levels and growth rates.").

²⁰ See, e.g., Daniel Cooper & J. Christina Wang, Student Loan Debt and Economic Outcomes, Fed. Res. Bank of Bos., Current Pol'y Persp. (Oct. 2014), https://www.bostonfed.org/-

/media/Documents/Workingpapers/PDF/cconomic/cpp1407.pdf ("In addition, the distribution of total wealth excluding student debt liabilities is lower for homeowners with student debt than for homeowners without student loan debt (again conditional on at least some college attendance). This wealth disparity remains even after controlling for a wide range of demographic and other factors.").

²¹ See, e.g., Meta Brown & Sydnee Caldwell, Young Student Loan Borrowers Retreat from Housing and Auto Markets, Fed. Res. Bank of N.Y. (Apr. 17, 2013), http://libertystreeteconomics.newyorkfed.org/2013/04/youngstudent-loan-borrowers-retreat-from-housing-and-auto-markets.html (finding that homeownership rates of 30-yearold student loan borrowers decreased by more than 5 percent compared with homeownership rates of 30-year-old non-borrowers, and finding that over the analyzed time period student borrowers were less likely to hold auto debt than nonborrowers); Fed. Res. Bank of N.Y., Press Briefing On Household Debt, With Focus On Student Debt 36-47 (Apr. 3, 2017), https://www.newyorkfed.org/medialibrary/media/press/PressBriefing-Household-Student-Debt-April22017.pdf#page=39 (finding that college attendees with student debt have lower homeownership rates than college attendees without student debt and that higher debt balances are associated with lower home ownership rates)

²² See, e.g., Erika Davis, Student Debt: Trends and Possible Consequences, Fed. Res. Bank of Dallas (Sept. 30, 2014); https://www.dallasfed.org/~/media/documents/outreach/fi/2014/fi1403.pdf (finding that in 2013, there was a 24-point differential in average credit scores between 30-year-old consumers with and without student loan debt).

²³ See, e.g., CFPB, Snapshot of older consumers and student loan debt 14 (2017),

²⁴ See, e.g., Caitlin Zaloom, How Paying for College Is Changing Middle-Class Life, N.Y. Times (Aug. 30, 2019), https://www.nytimes.com/2019/08/30/opinion/sunday/college-tuition.html; Elisaa Nadworny, Families, Not Just Students, Feel The Weight Of The Student Loan Crisis, Nat'l Pub. Radio (Sept. 4, 2019), https://www.npr.org/2019/09/04/755221033/families-not-just-students-feel-the-weight-of-the-student-loan-crisis.

²⁵ See, e.g., Weidner, supra n. 19; Davis, supra n. 22; William Gale et al., Brookings Inst., Student Loans Rising: An Overview Of Causes, Consequences, And Policy Options 3–4 (2014), https://www.brookings.edu/wp-content/uploads/2016/06/student_loans_rising_gale_harris_09052014.pdf (showing that student debt "is associated with students pursuing jobs that pay higher wages initially, perhaps at the expense of wages in the future").

²⁶ See, e.g., Gale, supra n. 25 (finding "that student loan borrowers are roughly 60 to 70 percent less likely to apply to graduate school—after controlling for other factors—than non-borrowers.").

²⁷ See, e.g., Robert Bozick and Angela Estacion, *Do student loans delay marriage? Debt repayment and family formation in young adulthood*, 30 Demographic Res. 69, 1865-1891 (June 13, 2014), https://www.demographic-research.org/volumes/vol30/69/30-69.pdf; Dora Gicheva, *Student loans or marriage? A look at the highly educated*, 53 Econ. of Educ, Rev. 207-216 (2016).

²⁸ See U.S. Dep't of Educ., Fed. Student Aid Data Ctr., New Direct Loan Defaults (last accessed Sept. 5, 2019), https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/DLEnteringDefaults.xls (between 2018 Q1 and 2018 Q4, 1,080,300 borrowers defaulted on a Direct Loan).

²⁹ There is no definitive source of information that identifies the number of unique borrowers in default. As of the second quarter of 2019, 5.3 million Direct Loan borrowers were in default on one or more loans and 3.9 million FFELP loan borrowers were in default on one or more loans. There is no equivalent data identifying borrowers in default on private student loans. Readers should note that the estimate is based on limited public data available and may double count borrowers with both FFELP and Direct Loans. See U.S. Dep't of Educ., Fed. Student Aid Data Ctr., *Portfolio by Loan Status (DL, FFEL, ED-held FFEL, ED-Owned)* (last accessed Sept. 6, 2019), https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls; U.S. Dep't of Educ., *Federal Perkins Loan Program Status of Default as of June 30, 2016* (June 12, 2017), https://fap.ed.gov/perkinsedrguide/1516PerkinsCDR.html.

³⁰ See e.g., U.S. Gov't Accountability Off., Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief, (Dec. 19, 2016), https://www.go.gov/products/GAO-17-45; Consumerist, Report: \$171M Garnished From Older Americans' Social Security To Repay Student Debt In 2015, (Dec. 20, 2016), https://www.consumerreports.org/consumerist/report-171m-garnished-from-older-americans-social-security-to-repay-student-debt-in-2015/; Annie Nova, Many disabled veterans eligible for student loan forgiveness are still paying, CNBC (Nov. 12, 2018), https://www.cnbc.com/2018/11/12/many-disabled-veterans-are-still-forced-to-repay-their-student-debt.html.

³¹ See U.S. Dep't of Educ., Fed. Student Aid Data Ctr., Portfolio by Delinquency Status (DL, ED-Held FFEL, ED-Owned) (last accessed Sent. 5, 2019).

https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/DLPortfoliobyDelinquencyStatus.xls; see also Andrew F. Haughwout et al., Just Released: Mind the Gap in Delinquency Rates https://libertystreeteconomics.newyorkfed.org/2019/08/just-released-mind-the-gap-in-delinquency-rates.html.

http://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf (finding that borrowers nearing retirement "had a lower median amount in their employer-based retirement account or an Individual Retirement Account (IRA) than consumers without student loan debt"); Joe Valenti, *A Look at College Costs across Generations*, AARP (May 2019), https://www.aarp.org/content/dam/aar/ppi/2019/05/a-look-at-college-costsacross-generations.doi.10.26419-2Fppi.00063.001.pdf (finding that student loan borrowers may need to work two to seven years longer than non-borrowers to achieve the same retirement savings); Joseph Egoian, 73 *Will Be the Retirement Norm for Millennials*, NerdWallet (Oct. 23, 2013), https://www.nerdwallet.com/blog/investing/73retirement-norm-millennials/ (finding that a 4 year college graduate with median student loan debt of \$23,000 has about \$115,000 less in retirement savings than a 4 year college graduate with no student loans by the time they reach age 73); Mikhail Zinshteyn, *Saddled With Debt, Recent Grads Can't Save*, AARP (May 29, 2019), https://www.aarp.org/money/credit-loans-debt/info-2019/recent-grads-delay-saving.html.

³² See, e.g., Nat'l Conf. of St. Leg., Use of Credit Information in Employment 2015 Legislation (2015), http://www.ncsl.org/research/financial-services-and-commerce/use-of-credit-information-in-employment-2015legislation.aspx (showing that as of 2015, 39 states allowed employers to use credit information in employment decisions); Blake Ellis, Employer credit checks keep jobless out of workforce, CNN (Mar. 4, 2013), https://money.cnn.com/2013/03/04/pf/employer-credit-checks/.

³³ See, e.g., Christine DiGangi, Can You Be Denied an Apartment Because of Bad Credit?, Yahoo Finance (Dec. 13, 2014), https://finance.yahoo.com/news/denied-apartment-because-bad-credit-130049897.html ("The most well-known consequence of having bad credit is trouble getting loans or credit cards, but a low credit score can also make it difficult to find a place to live.").

³⁴ See Jessica Silver-Greenberg et al., When Unpaid Student Loan Bills Mean You Can No Longer Work, N.Y. Times (Nov. 18, 2017), https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html; Nick Sibilla, Defaulting on a student loan could cost you your job in these professions, NBC News (Aug. 28, 2018), https://www.nbcnews.com/think/opinion/defaulting-student-loan-could-cost-you-your-job-these-professionsncna904476.

³⁵ See U.S. Dep't of Educ., Collections (last accessed Sept. 6, 2019), https://studentaid.ed.gov/sa/repayloans/default/collections ("Your loan holder can order your employer to withhold up to 15 percent of your disposable pay to collect your defaulted debt without taking you to court. This withholding ('garnishment') continues until your defaulted loan is paid in full or removed from default.").

³⁶ See id. ("Federal law related to the collection of debts owed to the government requires ED to request that the U.S. Department of the Treasury withhold money from your federal income tax refunds... to be applied toward repayment of your defaulted federal student loan.").

³⁷ See U.S. Gov't Accountability Off., GAO-17-45, Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief (2016), https://www.gao.gov/assets/690/681722.pdf.

³⁸ See Maggie Fitzgcrald, Jamie Dimon sounds off on student debt crisis: 'What we've done is a disgrace', CNBC (June 26, 2019), https://www.cnbc.com/2019/06/26/jamic-dimon-weighs-in-on-student-loan-debt.html (''What we've done is a disgrace and it's hurting America,' JP Morgan's chairman and CEO told Yahoo Finance ... 'I think they should look at all parts of student lending, fix the broken parts, and then forgiveness, and then help people get into school, and then make sure the schools are responsible in getting the kids out'''); Riley Griffin, *The Student Loan Debt Crisis Is About to Get Worse*, Bloomberg (Oct. 17, 2018), https://www.bloomberg.com/news/atticles/2018-10-17/the-student-loan-debt-crisis-is-about-to-get-worse (quoting Fed. Res. Chairman Jerome Powell, ''You do stand to see longer-term negative effects on people who can't pay off their student loans. It hurts their credit rating; it impacts the entire half of their economic life. As this goes on, and as student loans continue to grow and become larger and larger, then it absolutely could hold back growth.'').

³⁹ See, e.g., Brent W. Ambrose et al., The Impact of Student Loan Debt on Small Business Formation (Mar. 31, 2014), https://papers.ssm.com/sol3/papers.cfm?abstract_id=2417676; Brandon Busteed, Student Loan Debt: Major Barrier to Entrepreneurship, Gallup (Oct. 14, 2015), http://www.gallup.com/businessjournal/186179 /student-loan-debt-major-barrier-entrepreneurship.aspx.

⁴⁰ See, e.g., Meta Brown & Sydnee Caldwell, Young Student Loan Borrowers Retreat from Housing and Auto Markets, Fed. Res. Bank of N.Y. (Apr. 17, 2013), http://libertystreeteconomics.newyorkfed.org/2013/04/youngstudent-loanborrowers-retreat-from-housing-and-auto-markets.html (finding that homeownership rates of 30-yearold student loan borrowers decreased by more than 5 percent compared with homeownership rates of 30-yearold student loan borrowers, Fed. Res. Bank of N.Y., *Press Briefing On Household Debt, With Focus On Student Debt* 36–47 (Apr. 3, 2017), https://www.newyorkfed.org/medialibrary/media/press/PressBriefing-Household-StudentDebt-April32017.pdf#page=39 (finding that college attendees with student debt have lower homeownership rates than college attendees without student debt and that higher debt balances are associated with lower home ownership rates).

⁴¹ See Alvaro Mczza et al., Can Student Loan Debt Explain Low Homeownership Rates for Young Adults? 5, Fed. Res. Bd., Consumer & Community Context (Jan. 2019),

https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf.

⁴² See Janet Currie & Erdal Tekin, Is there a Link Between Foreclosure and Health?, 7 Am. Econ. J. Econ. Pol'y 1, 63-84 (Feb. 2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4933518/.

⁴³ See Katrina M. Walsemann et al., Sick of Our Loans: Student Borrowers and the Health of US Young Adults, 124 Soc. Sci. & Med. 85 (Jan. 2015) https://paa2014.princeton.edu/papers/140454; see also Patricia E. McLean-Meyinsse, Are Concerns about Repaying Student Loan Debt Related to Health Status Rankings?, 50 J. of Food Distribution Res. 1 (Mar. 2019) https://www.fdrsinc.org/wp-content/uploads/2019/03/JFDR_50.1_15_McLean-Meyinsse.pdf.

⁴⁴ See PJ Tabit & Josh Winters, "Rural Brain Drain": Examining Millennial Migration Patterns and Student Loan Debt 7-14, Fed. Res. Bd., Consumer & Community Context (Jan. 2019), https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf; see also Cassidy Morrison, Student debt is keeping doctors from rural areas, Wash. Examiner (June 20, 2019), https://www.washingtonexaminer.com/news/student-debt-is-keeping-doctors-from-rural-areas; Low Wages, student debt fuel vet shortage in rural Missouri, Associated Press (Aug. 25, 2019), https://www.apnews.com/0da140722da043e981f3881d1b75d6c3.

⁴⁵ See Tabit, supra note 44; see also Aarthi Swaminathan, 'It's really troubling': Parts of America are trapped in a 'catch-22' economic situation, Yahoo Finance (July 1, 2019), https://finance.yahoo.com/news/rural-americadistressed-communities-181618799.html.

⁴⁶ See William Elliot & Melinda Lewis, Student Debt Effects on Financial Well-Being: Research and Policy Implications, 29 J. Econ. Surveys 614 (2015), http://onlinelibrary.wiley.com/doi/10.1111/joes.12124/full (finding that student loan debt can delay asset accumulation for years and can decrease a family's net worth by 63 percent); Daniela Kraiem, The Cost of Opportunity: Student Debt and Social Mobility, 48 Suffolk U. L. Rev. 689, 699 (2015) ("Students with unmanageable debt are more likely to be low-income, female, black, and have dependent members such as children or elderly parents."); William Elliot & Melinda Lewis, Student Loans Are Widening The Wealth Gap: Time To Focus On Equity 7, Assets & Educ. Initiative, Univ. Of Kan., (2013),

http://aedi.ssw.umich.edu/sites/default/files/publications/publication-cd-reportsr1.pdf ("However, despite our collective belief in an American dream of equitable opportunities for all, higher education today increasingly reinforces patterns of relative privilege, particularly as students rely more and more on student loans to finance college access.").

⁴⁷ See William Elliot, How Student Debt Stunts Financial Growth, The Atlantic (Mar. 1, 2015), https://www.theatlantic.com/business/archive/2015/03/how-student-debt-stunts-financial-growth/386300/.

⁴⁸ See generally Emily Rauscher & William Elliott, The Relationship Between Income and Net Worth: A Virtuous Cycle for High but Not Low Income Households, 20 J. Poverty 380 (2016) (finding that a college graduate with an extra \$10,000 in student loans will achieve the nation's median net worth 26 percent slower than a college graduate without that debt, concluding that financing higher education through student loans can put college graduates who begin school with few assets even further behind their wealthier peers); Thomas Piketty, Transcript of Student Loan Debt Is the Enemy of Meritocracy in the U.S., Big Think (Mar. 19, 2015), http://bigthink.com/videos/thomas-piketty-on-the-rise-of-us-student-debt ("And I think if we really want to promote more equal opportunity and redistribute chances in access to education, we should do something about student debt. And it's not possible to have such a large group of the population entering the labor force with such a big debt behind the.").

⁴⁹ See Mark Huclsman, Debt to Society, Demos (June 2019), https://www.demos.org/sites/default/files/2019-06/Debt%20to%20Society.pdf; see also Jillian Berman, The black-white wealth gap is fueled by student debt, MarketWatch (May 6, 2018), https://www.marketwatch.com/story/how-student-debt-is-fueling-the-racial-wealth-gap-2018-05-03 ("The racial wealth gap means that black students likely have less wealth od raw on when paying for college than their white counterparts, meaning they typically need to rely more on debt to pay for school.").

⁵⁰ See Fenaba R. Addo, Parents' Wealth Helps Explain Racial Disparities in Student Loan Deht, Fed. Res. Bank of St. Louis, Ctr. For Household Fin. Stability (Mar. 2018), https://www.stlouisfed.org/~/media/publications/in-thebalance/images/issue_19/itb19_march_2018.pdf ("Existing racial wealth disparities and soaring higher education costs may actually replicate racial wealth disparities across generations by driving racial disparities in student loan debt load and repayment.").

⁵¹ See Mark Huelsman, Debt to Society, Demos (June 2019), https://www.demos.org/sites/default/files/2019-06/Debt%20to%20Society.pdf (also finding that over 20 percent of black college graduates default, a rate 5 times as high as white bachelor's recipients, and a higher rate than white students who drop out of college with debt.); see also Judith Scott-Clayton & Jing Li, Black-white disparity in student debt more than triples after graduation, Brookings (Oct. 20, 2015), https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/ (finding that African American borrowers are more than three times likely to default within four years as white borrowers); see generally Student Loan Borrowers Across NYC Neighborhoods, Fed. Res. Bank of N.Y. and N.Y.C. Dep't of Consumer Aff. (Dec. 2017).

https://www.newyorkfed.org/medialibrary/media/outreach-and-education/community-development/creditconditions/student-loan-borrowing-nyc-neighborhoods.pdf; *Student Loan Debt Distress Across NYC Neighborhoods: Identifying Indicators of Vulnerability*, N.Y.C. Dep't of Consumer Aff. (Nov. 2018), https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-

StudentLoanDebtDistressAcrossNYCNeighborhoods.pdf; Bina Patel Shrimali, Jacob DuMez, & Sarika Abbi, At What Cost? Student Loan Debt in the Bay Area, San Francisco Off. of Fin. Empowerment (Apr. 2019), https://www.frbsf.org/community-development/files/student-loan-debt-in-the-bay-area.pdf.

⁵² See Jillian Berman, All the ways student debt exacerbates racial inequality—'it's like landing in quick sand', MarketWatch (July 27, 2019), https://www.marketwatch.com/story/all-the-ways-student-debt-is-exacerbating-racialinequality-its-like-landing-in-quick-sand-one-black-student-says-2019-07-18 (quoting sociology professor Jason Houle, as stating that student debt is "both a cause and consequence of racial inequality.").

53 2018 Student Loan Update, supra n. 9.

⁵⁴ Memorandum of Law in Support of Defendants' Motion to Dismiss at 20, <u>CFPB v. Navient</u> <u>Corp.</u>, No. 3:17-cv-00101-RDM (M.D. Pa. 2017) (stating that "the servicer acts in the lender's interest... and there is no expectation that the servicer will 'act in the interest of the consumer.''); see also Shahien Nasiripour, *Student Debt Giant Navient to Borrowers: You're on Your Own*, Bloomberg (Apr. 3, 2017), https://www.bloomberg.com/news/articles/2017-04-03/student-debt-giant-navient-to-borrowers-you-re-on-yourown; Erin Arvedlund, Navient, your student loan servicer, is under pressure from an activist hedge fund. Is that good or bad for borrowers?, Phila. Inquirer (June 2, 2019), https://www.inquirer.com/business/navient-johnremondi-canyon-partners-joshua-friedman-student-loans-20190602.html; Molly Hensley-Clancy, How America's Student Loan Giant Dropped The Ball, Buzzfeed (Feb. 13, 2017),

https://www.buzzfeednews.com/article/mollyhensleyclancy/how-things-went-wrong-at-americas-student-loan-giant ("[F]or a lot of people, it was a question of, 'Do I help this borrower and answer their questions, or do I rush through it and afford my groceries this month?"").

⁵⁵ See e.g., Complaint at 26, <u>III. v. Navient Corp.</u>, No. 2017-CH-00761 (III. Jan. 18, 2017) http://www.illinoisattorneygeneral.gov/pressroom/2017_01/NavientFileComplaint11817.pdf ("If the borrower can create condensation on a mirror, they need to get a loan this year."); CFPB Sues For-Profit College Chain ITT For Predatory Lending (Feb. 26, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-forprofit-college-chain-itt-for-predatory-lending/ ("IT]he costs of the private student loans included 10 percent origination fees and interest rates as high as 16.25 percent."); CFPB, CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme (Sept. 16, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-forprofit-corinthian-colleges-for-predatory-lending-scheme/ ("In July 2011, the Genesis loan interest rate was about 15 percent with an origination fee of 6 percent.").

⁵⁶ See, e.g., CFPB, Letter to the Department of Education (Feb. 5, 2018), https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/letter-department-education/ (providing an unpublished analysis prepared by the Bureau's Office for Students and Young Consumers about student use of college-sponsored deposit and prepaid accounts, obtained through a Freedom of Information Act request in January 2019); CFPB, *CFPB Finds Bank Marketing Deals With Colleges Can Mean Costly Fees and Risks for Students*, (Dec. 14, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-bank-marketing-deals-colleges-can-mean-costly-fees-and-risks-students/; David Baumann, *Students Are Being 'Ripped Off' by Wells Fargo-University Deals*, *Warren Charges*, Credit Union Times (Jan. 18, 2019) https://www.cutimes.com/2019/01/18/students-are-being-ripped-off-by-wells-fargo-university-deals-warren-charges/?slrctum=20190730153010.

⁵⁷ See, e.g., Leticia Miranda, People Are Falling For These Wild Student Forgiveness Scams, Buzzfeed (Aug. 12, 2016), https://www.buzzfeednews.com/article/leticiamiranda/student-debt-relief-scams-are-getting-

worse ("Typically companies post advertisements online, on the radio, and on social media like Facebook and Instagram with messages promising to reduce or completely relieve student debt, according to regulators and attorneys who have represented people who have been scammed."); Danielle Douglas-Gabriel, *Government to Google: Stop fraudsters from using your search engine for student debt scams*, Wash. Post (June 22, 2015), https://www.washingtonpost.com/news/get-there/wp/2015/06/22/government-to-google-stop-fraudsters-from-usingyour-search-engine-for-student-debt-scams/; Sam Adler-Bell, Scam Artists Are Preying on Student Debt Holders and Google Is Helping, The Century Foun. (Sept. 14, 2015), https://tcf.org/content/commentary/scam-artists-arepreying-on-student-debt-holders-and-google-is-helping/?session=1.

⁵⁸ See, e.g., U.S. Gov't Accountability Off., GAO-18-163, Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates 14 (2018), https://www.gao.gov/assets/700/691520.pdf ("One consultant previously offered borrowers gift cards as an incentive to put their loans in forbearance."); Mike Pierce, What it means to be a student loan servicer: Guaranty Agency edition, Student Borrower Protection Ctr. (Mar. 29, 2019), https://protectborrowers.org/what-it-means-to-be-a-student-loan-servicer-guaranty-agency-edition/; see generally Selected Appendices from Staff. Rep. of S. Comm. On Health, Educ., Labor, and Pensions, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success (July 30, 2012), https://www.help.senate.gov/imo/media/for_profit_report/PartII.pdf.

⁵⁹ See Stacy Cowley & Jessica Silver-Greenberg, As Paperwork Goes Missing, Private Student Loan Debt May Be Wiped Away, N.Y. Times (July 17, 2017), https://www.nytimes.com/2017/07/17/business/dealbook/student-loandebt-collection.html; Robyn C. Smith & Emily Green Caplan, Going to School on Robo-signing: How to Help Borrowers and Stop the Abuses in Private Student Loan Collection Cases, Nat'l Consumer L. Ctr. (Apr. 2014), https://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/robo-signing-2014.pdf; Laura Northrup, Student Loans Are The New Robo-Signing Crisis, The Consumerist (June 4, 2015), https://consumerist.com/2015/06/04/student-loans-are-lhe-new-roboisigning-crisis/.

60 See, e.g., Selected Appendices, supra n. 58 at 361-362, 602-613.

⁶¹ See Julie Margetta Morgan et al., Income Share Agreements: A Student Debt Promise Falling Short Of Reality, Roosevelt Inst. (Jan. 10, 2019) https://rooseveltinstitute.org/income-share-agreements-student-debt-promise-fallingshort-reality/; Adam Levitin, What Is "Credit"? AfterPay, Earnin', and ISAs, Credit Slips (July 18, 2019), https://www.creditslips.org/creditslips/2019/07/what-is-credit-afterpay-earnin-and-isas.html; Adam Levitin, How NOT to Regulate ISAs, Credit Slips (Aug. 2, 2019), https://www.creditslips.org/creditslips/2019/08/how-not-toregulate-isas.html; Julie Margetta Morgan, Joanna K. Darcus, & Tariq Habash, Will Income-Share Agreements Be the Next Payday Loans?, The Am. Prospect (July 2, 2019), https://prospect.org/authors/julie-margetta-morganioanna-k-darcus-tarig-habash.

⁶² See Shahien Nasiripour, Wall Street Is Fighting a CFPB Deal Over Billions in Defaulted Student Loans, Bloomberg (Nov. 8, 2017), https://www.bloomberg.com/news/articles/2017-11-08/wall-street-is-fighting-a-cfpbdeal-over-billions-in-defaulted-student-loans ("The worst-performing student loan investment vehicles ever created by Wall Street"); see also CFPB, CFPB Takes Action Against National Collegiate Student Loan Trusts, Transworld Systems for Illegal Student Loan Debt Collection Lawsuits (Sept. 18, 2017),

https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-national-collegiate-student-loantrusts-transworld-systems-illegal-student-loan-debt-collection-lawsuits/; Natalie Kitroeff, *The Lawsuit Machine Going After Student Debtors*, Bloomberg (June 3, 2015), https://www.bloomberg.com/news/articles/2015-06-04/thcstudent-debt-collection-mess.

⁶³ See CFPB, CFPB Takes Action Against Aequitas Capital Management for Aiding Corinthian Colleges' Predatory Lending Scheme, (Aug. 17, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-againstaequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme/; Or. Dep't of Just., AG Rosenblum Announces \$192 Million Aequitas Settlement; \$2.1 Million for Oregon Students (Aug. 17, 2017), https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-announces-192-million-aequitassettlement-2-1-million-oregon-students/.

⁶⁴ See N.Y. City Dcp't of Consumer Aff., Department Of Consumer Affairs Files Charges Against Berkeley College For Deceptive And Predatory Practices (Oct. 19, 2018), https://www1.nyc.gov/site/dca/media/pr101918-DCA-Berkeley-Investigation.page.

⁶⁵ See CFPB, Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices (Sept. 12, 2016), https://www.consumerfinance.gov/about-us/newsroom/consumerfinancial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices/.

⁶⁶ See, e.g., Stacy Cowley, For-Profit Chain Cancels \$494 Million in Student Debt to End State Investigations, N.Y. Times (Jan. 3, 2019), https://www.nytimes.com/2019/01/03/business/student-debt-career-educationcorporation.html.

⁶⁷ See CFPB, CFPB Takes Action Against Citibank For Student Loan Servicing Failures That Harmed Borrowers (Nov. 1, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-citibank-studentloan-servicing-failures-harmed-borrowers/; The Joplin Globe, Guardsman sues Citi, saying loan terms penalize military, Trib. News Serv. (Feb. 22, 2011), https://www.joplinglobe.com/news/guardsman-sues-citi-saying-loanterms-penalize-military/article_f5888f98-17f8-5dc5-84f7-187b3f075741.html.

⁶⁸ See Danielle Douglas-Gabriel, ACS's \$2.4 million settlement in Massachusetts highlights problems in student loan servicing, Wash. Post (Nov. 22, 2016), https://www.washingtonpost.com/news/grade-point/wp/2016/11/22/acss-2-4million-settlement-in-massachusetts-highlights-problems-in-student-loan-servicing/; Danielle Douglas-Gabriel, ACS's \$9 million settlement in New York places a spotlight on problems in student loan servicing, Wash. Post (Jan. 4, 2019), https://www.washingtonpost.com/education/2019/01/05/acss-million-settlement-new-york-placesspotlight-problems-student-loan-servicing/.

⁶⁹ See CFPB, CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme (Sept. 16, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatorylending-scheme/.

⁷⁰ See CFPB, CFPB Orders Discover Bank to Pay \$18.5 Million for Illegal Student Loan Servicing Practices (July 22, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-discover-bank-to-pay-18-5-millionfor-illegal-student-loan-servicing-practices/.

⁷¹ See U.S. Dep't of Just., For-Profit College Company to Pay \$95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations (Nov. 16, 2015), https://www.justice.gov/opa/pr/profit-college-companypay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and.

⁷² See Fed. Trade Comm. (FTC), Student Loan Debt Collector Will Pay \$700,000 for Unlawful Collection Calls in Settlement with FTC (Feb. 14, 2017), https://www.flc.gov/news-events/press-releases/2017/02/student-loan-debtcollector-will-pay-700000-unlawful-collection.

⁷³ See Minn. Com. Dep't, Minnesota Commerce Department announces action against improper student loan debt collections (Aug. 11, 2017), https://mn.gov/commerce/media/news/?id=17-307713.

⁷⁴ See Fed. Dep. Ins. Corp., *FDIC Announces Settlement with WEX Bank and Higher One for Deceptive Practices Related to Debit Cards for College Students* (Dec. 23, 2015), https://www.fdic.gov/news/news/press/2015/pr15102.html.

¹⁵ See CFPB, CFPB Sues For-Profit College Chain ITT For Predatory Lending (Feb. 26, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/; Danielle Douglas-Gabriel, ITT Tech students score victory in bankruptcy settlement, Wash. Post (Nov. 28, 2018), https://www.washingtonpost.com/education/2018/11/28/itt-tech-students-score-victory-bankruptcy-settlement/ ("On Wednesday, a federal judge gave final approval to a settlement that will erase nearly \$600 million that 750,000 students owed ITT Technical Institute."); Harvard Project on Predatory Student Lending, Students Secure More Than \$500 Million in ITT Student Debt Relief as Part of Landmark Settlement Approved Today (Nov. 28, 2018), https://predatorystudentlending.org/news/press-releases/students-secure-500-million-itt-student-debt-relief/.

⁷⁶ See CFPB, CFPB Takes Action Against National Collegiate Student Loan Trusts, Transworld Systems for Illegal Student Loan Debt Collection Lawsuits (Sept. 18, 2017), https://www.consumerfinance.gov/aboutus/newsroom/cfpb-takes-action-against-national-collegiate-student-loan-trusts-transworld-systems-illegal-studentloan-debt-collection-lawsuits/.

⁷⁷ See Complaint, <u>CFPB v. Navient Corp.</u>, No. 3:17-cv-00101-RDM (M.D. Pa. Jan. 18, 2017); Complaint, <u>Pa. v.</u> <u>Navient Corp.</u>, No. 3:17-cv-1814-RDM (M.D. Pa. June 19, 2019); Complaint, <u>Cal. v. Navient Corp.</u>, No. CGC-18-

Am. Fed. of Teachers, Class-Action Lawsuit Launched Against Student Loan Servicer Navient over PSLF (Oct. 3, 2018), https://www.aft.org/press-release/class-action-lawsuit-launched-against-student-loan-servicer-navient-over.

⁷⁸ See Stacy Cowley, Student Loan Company Accused of Mismanaging Debt Forgiveness Program, N.Y. Times (Aug. 23, 2017), https://www.nytimes.com/2017/08/23/business/dealbook/student-loan-forgiveness-lawsuit.html.

⁷⁹ See, e.g., Complaint, <u>III. v. Navient Corp.</u>, supra n. 77; III. Att'y Gen. Lisa Madigan, Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses (Jan. 18, 2017),

http://www.illinoisattorneygeneral.gov/pressroom/2017_01/20170118.html ("Attorney General Lisa Madigan today filed a lawsuit against Navient Corporation, its subsidiaries Navient Solutions Inc., Pioneer Credit Recovery Inc. and General Revenue Corporation and Sallie Mae Bank, over widespread abuses across all aspects of its business, including student lending, student loan servicing and student loan debt collection.").

⁸⁰ See Leo Shane III, GIBill.com shut down in settlement over defrauding veterans, Stars and Stripes (June 27, 2012), https://www.stripes.com/news/gibill-com-shut-down-in-settlement-over-defrauding-veterans-1.181490.

⁸¹ See U.S. Dep't of Just., Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans, (May 13, 2014), https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegationscharging; Fed. Dep. Ins. Corp., FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act (May 13, 2014), https://www.filc.gov/news/news/press/2014/pr14033.html.

⁸² See FTC, Online Student Loan Refinance Company SoFi Settles FTC Charges, Agrees to Stop Making False Claims About Loan Refinancing Savings (Oct. 29, 2018), https://www.ftc.gov/news-events/prcssreleases/2018/10/online-student-loan-refinance-company-sofi-settles-ftc-charges.

⁸³ See FTC, Statement of Commissioner Rohit Chopra, Joined by Commissioner Rebecca Kelly Slaughter, In the Matter of Sunkey Publishing (Sept. 6, 2018),

 $https://www.ftc.gov/system/files/documents/public_statements/1408028/1623211_sunkey_publishing_rc_and_rks_statement.pdf.$

⁸⁴ See CFPB, CFPB Halts Student Loan Debt Relief Scam (Mar. 30, 2016),

https://www.consumerfinance.gov/about-us/newsroom/cfpb-halts-student-loan-debt-relief-scam/; see also FTC, FTC, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams (Oct. 13, 2017), https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announcenationwide-crackdown (announcing "Operation Game of Loans," the first coordinated federal-state law enforcement initiative targeting deceptive student loan debt relief scams.").

⁸⁸ See CFPB, CFPB Takes Action Against National Collegiate Student Loan Trusts, Transworld Systems for Illegal Student Loan Debt Collection Lawsuits (Sept. 18, 2017), https://www.consumerfinance.gov/aboutus/newsroom/cfpb-takes-action-against-national-collegiate-student-loan-trusts-transworld-systems-illegal-studentloan-debt-collection-lawsuits/.

⁸⁶ See FTC, Victory Media Settles FTC Charges Concerning Its Promotion of Post-Secondary Schools to Military Consumers (Oct. 19, 2017), https://www.ftc.gov/news-events/press-releases/2017/10/victory-media-settles-ftccharges-concerning-its-promotion-post.

⁸⁷ See CFPB, CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices (Aug. 22, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-

^{567732 (}Cal. Oct. 16, 2018); Complaint, <u>Ill. v. Navient Corp.</u>, No. 2017-CH-00761 (Ill. July 10, 2018); Complaint, <u>Miss. v. Navient Corp.</u>, No. G2108-98203 (Miss. July 24, 2018); Complaint, <u>Wash. v. Navient Corp.</u>, No. 17-2-01115-1 SEA (Wash. Jan. 18, 2017); see also Complaint, <u>Hyland v. Navient Corp.</u>, No. 1:18-cv-09031 (S.D. N.Y. Oct. 3, 2018); Fed. Dep. Ins. Corp., *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices* and Violations of the Servicemembers Civil Relief Act (May 13, 2014),

https://www.fdic.gov/news/news/press/2014/pr14033.html; U.S. Dep't of Just., Nearly 78,000 Service Members to Begin Receiving \$60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans (May 28, 2015), https://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement;
servicing-practices/; see also Dena Aubin, Immigrants denied credit by Wells Fargo may sue bank. judge says, Reuters (Aug. 4, 2017), https://www.reuters.com/article/us-wells-fargo-immigration/immigrants-denied-credit-bywells-fargo-may-sue-bank-judge-says-idUSKBN1AK1VK; U.S. Dep't of Educ., Wells Fargo Bank Final Program Review Determination Letter (June 28, 2017), https://studentaid.ed.gov/sa/sites/default/files/wells-fargo-bank-finalprogram-review-determination.pdf.

88 See supra notes 63-87; see also CFPB, Supervisory Highlights, (Fall 2015),

http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf (finding that one or more student loan servicer was making misrepresentations to consumers that late fees may be charged on loans held by the Department of Education. While Department of Education loan notes allow for the charging of late fees, the Department of Education did not and does not charge late fees on its loans and it instructs its servicers not to do so); CFPB, Supervisory Highlights (Fall 2016),

https://www.consumerfinance.gov/documents/1389/Supervisory Highlights Issue 13 Final 10.31.16.pdf (finding that one or more servicers was unfairly denying, or failing to approve, income-driven repayment plan applications that should have been approved on a regular basis, causing borrowers to make higher payments and subjecting them to unnecessary interest capitalization; failing to provide an effective choice on how payments should be allocated among multiple loans where the lack of choice can cause a financial detriment to consumers; and deceiving borrowers who have made extra payments on their loans about how much interest would accrue or had accrued, and how that would affect the application of consumers' payments when the borrower began making payments again); CFPB, Supervisory Highlights (Winter 2016), http://files.consumerfinance.gov/f/201603_cfpb_supervisoryhighlights.pdf (finding that one or more student loan company was failing to inform borrowers and co-signers that using forbearance may delay, or even permanently foreclose, eligibility for co-signer release; illegally increasing borrowers' interest rates following a loan sale and subsequent internal servicing conversion; and illegally autodefaulting consumers when a loan's co-signer filed for bankruptcy, regardless of whether the borrower was current on all payments, where the Whole Loan Due clause was ambiguous); CFPB, Supervisory Highlights (Spring 2017), https://www.consumerfinance.gov/documents/4608/201704_cfpb_Supervisory-Highlights_Issue-15.pdf (finding that one or more student loan company was failing to reverse adverse consequences of erroneous deferment terminations, including late fees charged for non-payment during periods when the borrower should have been in deferment, and interest capitalization that occurred because the borrower's deferment was erroneously terminated: and making deceptive statements about interest capitalization during successive deferments or forbearances, when servicers capitalized interest after each period of deferment or forbearance, instead of capitalizing once when the borrower eventually reentered repayment).

89 See, e.g., CFPB, Student Loan Servicing 103 (Sept. 2015)

https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf ("[P]olicymakers have undertaken broad-based legislative and regulatory efforts to strengthen applicable federal consumer financial laws protecting consumers in the servicing of mortgages and credit cards. However, for student loan borrowers, there is no existing, comprehensive federal statutory or regulatory framework providing consistent standards for the servicing of all student loans."); Letter from Conn. Dep't of Banking Counsel Bruce H. Adams to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0381 (July 13, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0381&attachmentNumber=1&contentType=pdf.

⁹⁰ See, e.g., Letter from III. Att'y Gen. Lisa Madigan, et al. to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0376 (July 14, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0376&attachmentNumber=1&contentType=pdf ("Unlike in similar financial service industries, there is little regulation of specific student loan servicer conduct, such as the handling and application of payments.").

⁹¹ See, e.g., Letter from Congresswoman Susan Davis to Director Cordray in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0379 (July 13, 2015),

https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-

0379&attachmentNumber=1&contentType=pdf ("[I]t is important the Bureau also put in place strong rules for *all* borrowers, regardless of loan type or who owns their loans. As a prime example, the Bureau should look to our work in the CARD Act to help inform how they should best protect borrowers. . . . "); Steve Fenberg and Faith Winter, *Opinion: Colorado will lead the effort to end the student crisis*, The Colo. Sun (Apr. 11, 2019), https://coloradosun.com/2019/04/11/student-debt-steve-fenberg-faith-winter/.

⁹² See, e.g., Letter from Professor Alan White et al. to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-6929 (July 23, 2015), https://www.regulations.gov/document?D=CFPB-2015-0021-6929.

⁹³ See, e.g., Letter from Nat'l Consumer L. Ctr to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-6840 (Sept. 29, 2015),

https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-

6840&attachmentNumber=1&contentType=pdf ("The absence of clear borrower protections contrasts with other consumer credit areas such as credit cards and mortgages."); Letter from Consumers Union to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-7592 (Oct. 20, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-

7592&attachmentNumber=4&contentType=pdf ("The Bureau rightly notes that other kinds of consumer debt come with protections related to repayment and servicing. By contrast, for people who took out loans to get an education, there are fewer protections and the system is often tough to navigate – as a result, these borrowers may be at the mercy of their servicers."); see also Seth Frotman, Broken Promises: How Debt-financed Higher Education Rewrote America's Social Contract and Fueled a Quiet Crisis, 2018 Utah L. Rev. 4 811-846 (July 2018), https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1172&context=ulr.

94 See Navient (@Navient), Twitter (May 16, 2019, 9:08 AM),

https://twitter.com/navient/status/1129010758132600833?lang=en ("We've made the 2019 Fortune 500 list! #Fortune500"); see also Pa. Att'y Gen. Josh Shapiro (@JoshShapiroPA), Twitter (May 16, 2019, 2:47 PM), https://twitter.com/JoshShapiroPA/status/1129096020183404544?ref_src=twsrc%SEtfw ("Yes you did. By unlawfully adding \$4 billion on the backs of students and their families through your predatory student loan practices, as our complaint alleges. Shameful. #Navient"); Sen. Elizabeth Warren (@SenWarren), Twitter (May 16, 2019, 12:58 PM),

https://twitter.com/SenWarren/status/1129068735573233664?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed% 7Ctwterm%5E1129068735573233664&ref_url=https%3A%2F%2Fwzw.marketwatch.com%2Fstory%2Felizabethwarren-calls-navient-scammers-after-student-loan-giant-celebrates-making-the-fortune-500-2019-05-17 ("This student loan company is literally under investigation and being sued by states and the federal government for cheating students to make more money. But congrats on breaking into the #Fortune500, @Navient. I didn't know they had a special section for scammers."); Congresswoman Katie Porter (@RepKatiePorter), Twitter (May 16, 2019, 9:59 AM), https://twitter.com/repkatieporter/status/1129023518916714496?lang=en, ("So the nation's biggest profiteer off of student lending - subject to investigations and lawsuits over predatory practices - is bragging about how they've made the Fortune 500 list on the backs of students..., ").

⁹⁵ Consumer Credit Protection Act, Pub. L No. 90-321, 18 Stat. 146 (1968); see also Christopher L. Peterson, Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act, 55 Fla. L. Rev. 807, 857 (2003), https://papers.ssm.com/sol3/papers.cfm?abstract_id=878951.

⁹⁶ See 15 U.S.C. § 1681(a)(4); see also Austin H. Krist, Large-Scale Enforcement of the Fair Credit Reporting Act and the Role of State Attorneys General, 115 Columbia L. Rev. 8 (2015); Joanne Colombani, The Fair Credit Reporting Act, 13 Suffolk U. L. Rev. 63, 63 (1979) (noting industry-wide procedures enabling CRAs to take advantage of economies of scale "create a correspondingly large number of inaccurate reports"); Elizabeth D. De Armond, Frothy Chaos: Modern Data Warehousing and Old-Fashioned Defamation, 41 Val. U. L. Rev. 1061, 1063–64 (2007) (observing prior to advent of CRAs, credit reputations were built and verified through localized face-to-face interactions); Edward Thrasher, The Fair Credit Reporting Act: Deficiencies and Solutions, 21 Temp. Pol. & C.R.L. Rev. 599, 599 (2012) ("[C]redit and reputation ... have moved from local relationships within smaller communities, such as a local bank official and a local homeowner who regularly see one another, to a national scale where a consumer's transactional history is stored forever in increasingly expanding databases.").

97 15 U.S.C. §§ 1679(a)(1), (2).

⁹⁸ Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24 (2009) (codified at 15 U.S.C. § 1601); see also Congresswoman Carolyn Maloncy, President Signs Rep. Maloney's Credit Card Reforms, (May 21, 2009) https://maloney.house.gov/mcdia-center/press-releases/president-signs-rep-maloney%E2%80%99s-credit-card-reforms ("We have at long last leveled the playing field between credit card companies and their customers...").

⁹⁹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 15 U.S.C. § 5301 et seq.).

¹⁰⁰ See CFPB, CFPB Finds CARD Act Helped Consumers Avoid More Than \$16 Billion in Gotcha Credit Card Fees (Dec. 3, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-card-act-helped-consumers-avoidmore-than-16-billion-in-gotcha-credit-card-fees/; Sumit Argarwal et al., Regulating Consumer Financial Products: Evidence from Credit Cards, 130 Q. J. of Econ. 1, 111 (Nov. 25, 2014), https://doi.org/10.1093/qje/qju037 (estimating that the CARD Act saved consumers \$11.9 billion per year).

¹⁰¹ See CFPB, 2013 RESPA Servicing Rule Assessment Report (Jan. 2019), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.

¹⁰² See Shanti Abedin et al., Making Every Neighborhood A Place of Opportunity: 2018 Fair Housing Trends Report, Nat. Fair Housing Alliance (2018), https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf.

¹⁰³ See, e.g., CFPB, CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers (Sept. 29, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespreadservicing-failures-reported-by-student-loan-borrowers/; CFPB, CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment (Jan. 18, 2017),

https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navientfailing-borrowers-every-stage-repayment/ ([T]he Bureau alleges that Navient has failed to provide the most basic functions of adequate student loan servicing at every stage of repayment for both private and federal loans.").

¹⁰⁴ See e.g., CFPB, Student Loan Servicing (Sept. 2015), https://files.consumerfinance.gov/fi/201509_cfpb_student-loan-servicing-report.pdf; Marian Wang, Student Loan Borrowers Dazed and Confused by Servicer Shuffle, ProPublica (Apr. 23, 2012), https://www.propublica.org/article/student-loan-borrowers-dazed-and-confused-by-servicer-shuffle.

¹⁰⁵ See Complaint, <u>CFPB v. Navient Corp.</u>, supra n. 77; see also Complaint, <u>Pa. v. Navient Corp.</u>; Complaint, <u>Cal. v. Navient Corp.</u>; Complaint, <u>Ill. v. Navient Corp.</u>; Complaint, <u>Miss. v. Navient Corp.</u>; Complaint, <u>Wash. v. Navient Corp.</u>; Complaint, <u>Miss. v. Navient Corp.</u>; Complaint, <u>Wash. v. Navient Corp.</u>; Complaint, <u>Miss. v. Navient Corp.</u>; Complaint, <u>Wash. v. Navient Corp.</u>; Complaint, <u>Miss. </u>

¹⁰⁶ See Complaint, <u>Mass. v. Pa. Higher Educ. Assistance Agency</u>, 1784-CV-02682 (Mass. Sup. Ct. 2017); see also Jillian Berman, *This government loan forgiveness program has rejected 99% of borrowers so far*, MarketWatch (Sept. 23, 2018), https://www.marketwatch.com/story/this-government-loan-forgiveness-program-has-rejected-99of-borrowers-so-far-2018-09-20?ns=prod/accounts-nw.

¹⁰⁷ See Solicitation from the U.S. Dep't of Educ. for the Next Generation Financial Services Environment, Solicitation No. 91003119R0008 (Jan. 2019),

https://www.fbo.gov/utils/view?id=a0303314e019f14fb5e524db737f6aad ("[Greater than] 37 million customers being serviced in the FSA environment (with an additional 5 million serviced through the FFEL program outside of the FSA environment)... Customer base projected to grow over 40% between 2017-26... [and] [m]ost immediately and on a rapid schedule, FSA anticipates migrating, through conversion, nearly 200 million loan accounts from existing servicers to the Enhanced Processing Solution....").

¹⁰⁸ As of Q2 2019, more than seven million borrowers were enrolled in income-driven repayment plans that are eligible for loan forgiveness after 20 or 25 years. *See* U.S. Dep't of Educ., Fed. Student Aid Data Ctr., *Portfolio by Repayment Plan* (last accessed Sept. 6, 2019),

https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/DLPortfoliobyRepaymentPlan.xls. As of March 31, 2019, more than two million borrowers had submitted approved Employer Certification Forms to the Department of Education, indicating intent to pursue Public Service Loan Forgiveness. See U.S. Dep't of Educ., Fed. Student Aid Data Ctr., *Public Service Loan Forgiveness Data* (last accessed Sept. 6, 2019), https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data.

¹⁰⁹ See supra note 101 at 3 ("The lending portfolio is growing at 7% per year, driven by nearly \$100 billion in annual disbursements across more than 17 million annual loan originations.").

¹¹⁰ See CFPB, Laws and Regulations: Truth in Lending Act (Apr. 2015),

https://files.consumerfinance.gov/f/201503_cfpb_truth-in-lendingact.pdf?__hstc=40088317.82af9c9a98fa600b1bb630f9cde2cb5f.1508371200067.1508371200068.1508371200069.1 & hssc=40088317.1.1508371200070& hsfp=1773666937.

¹¹¹ U.S. Dep't of Educ., Secretary DeVos Announces Intent to Enhance FSA's Next Generation Processing and Servicing Environment (Aug. 1, 2017), https://www.ed.gov/news/press-releases/secretary-devos-announces-intentenhance-fsas-next-generation-processing-and-servicing-environment.

¹¹² See Emily Wilkins, New Head of Student Loan Oversight Office Will Have Less Power, Boomberg Gov. (Mar. 1, 2019), https://about.bgov.com/news/new-head-of-student-loan-oversight-office-will-have-less-power/; Glenn Thrush & Stacy Cowley, Mulvaney Downgrades Student Loan Unit in Consumer Bureau Reshuffle, N.Y. Times (May 9, 2018), https://www.nytimes.com/2018/05/09/us/student-loans-consumer-financial-protection-bureau-clob.html?module=inline.

¹¹³ See Chris Arnold, CFPB Chief Says Education Department Is Blocking Student Loan Oversight, Nat. Pub. Radio (May 16, 2019), https://www.npr.org/2019/05/16/723568597/cfpb-chief-says-education-department-is-blockingstudent-loan-oversight.

¹¹⁴ See Off. of the Comptroller of the Currency, Installment Lending: Core Lending Principles for Short-Term, Small-Dollar Installment Lending, OCC Bulletin 2018-14 (May 23, 2018), https://www.occ.gov/newsissuances/bulletins/2018/bulletin-2018-14.html ("U.S. consumers borrow nearly \$90 billion every year in shortterm, small-dollar loans").

¹¹⁵ See Laura Santhanam, *Millennials rack up the most medical debt, and more frequently*, Pub. Broadcasting Serv. (July 26, 2018), https://www.pbs.org/newshour/health/millennials-rack-up-the-most-medical-debt-and-more-frequently ("[O]ne in six Americans have past-due health care bills on their credit report, a debt totaling \$81 billion in all.").

¹¹⁶ See, e.g., CBA Statement on Private Student Loan Performance and the Costs of College, Consumer Bankers Assoc. (Mar. 10, 2015) https://www.consumerbankers.com/cba-media-center/media-releases/cba-statement-privatestudent-loan-performance-and-costs-college.

¹¹⁷ Andrew F. Haughwout et al., Just Released: Mind the Gap in Delinquency Rates, Fed. Res. Bank of N.Y. (Aug. 13 2019), https://libertystreeteconomics.newyorkfed.org/2019/08/just-released-mind-the-gap-in-delinquency-rates.html.

¹¹⁸ Id.

¹¹⁹ But the vast majority of private loan borrowers remain vulnerable to this harmful practice. *See* Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. No. 115-174, § 601 (2018) ("The amendments made by subsection (a) shall only apply to private education loan agreements entered into on or after the date that is 180 days after the date of enactment of this Act.").

120 See 15 U.S.C. § 1639c(e).

¹²¹ See, e.g., Rohit Chopra & Holly Petraeus, Veterans: Take advantage of student loan forgiveness, but don't let it damage your credit (Nov. 17, 2014), https://www.consumerfinance.gov/about-us/blog/veterans-dont-let-studentloan-forgiveness-damage-your-credit/; CFPB, CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment (Jan. 18, 2017), https://www.consumerfinance.gov/aboutus/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/ ("Navient] [h]armed the credit of disabled borrowers, including severely injured veterans...").

¹²² See, e.g., U.S. Dep't of Educ., Fact Sheet: Modernizing Credit Reporting for Student Loans (Apr. 2016), https://www2.cd.gov/documents/press-releases/04282016-credit-reporting.doc.

¹²³ Id.

¹²⁴ See CDIA Issues New, Updated Reporting Guidance for Federal Student Loans, Consumer Data Industry Assoc. (Aug, 2019), https://crrg.s3.amazonaws.com/CDIA+News+Release_Updated+Federal+Student+Loan+Guidance-

2019.pdf ("To develop this updated guidance ... CDIA worked with the Student Loan Servicing Alliance (SLSA) and others involved in the student loan industry.").

125 See supra n. 29.

¹²⁶ See Persis Yu, Pushed Into Poverty: How Student Loan Collections Threaten the Financial Security of Older Americans, Nat'l Consumer L. Ctr (May 2017), https://www.nclc.org/images/pdf/student_loans/student-loancollections-threaten-fin-sce.pdf, Strengthening the Federal Student Loan Program for Borrowers: Hearing Before the S. Comm on Health, Education, Labor, and Pensions, 113th Cong., (2014), https://www.help.senate.gov/imo/media/doc/Loonin1.pdf (statement from Deanne Loonin, "Outsourcing collection is not cheap. Taxpayers paid about \$1 billion in commissions to private student loan debt collectors in 2011. Department projections show commissions growing to over \$2 billion by 2016.").

¹²⁷ See, e.g., CFPB, Annual report of the CFPB Student Loan Ombudsman (Oct. 2016), https://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_ Report.pdf; U.S. Dep't of Educ., U.S. Department of Education to End Contracts with Several Private Collection Agencies (Feb. 27, 2015), https://www.cd.gov/news/press-releases/us-department-education-end-contracts-severalprivate-collection-agencies ('In its review, the Department found that agents of the companies made materially inaccurate representations to borrowers..... (F]ive private collection agencies ... were found to have given inaccurate information at unacceptably high rates about [student loan repayment] benefits. In particular, these agencies gave borrowers misleading information about the benefits to the borrowers' credit report and about the waiver of certain collection fees."); CFPB, Supervisory Highlights 7 (Winter 2015), https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf (finding that at one or more debt collection companies, "agents overstated the rehabilitation program's impact on consumers' credit report and credit scare and the extent to which collection fees would be waived upon completion of the program.").

¹²⁸ See CFPB, Update from the CFPB Student Loan Ombudsman (May 16, 2017), https://files.consumerfinance.gov/f/documents/201705_cfpb_Update-from-Student-Loan-Ombudsman-on-Redefaults.pdf.

Testimony of Ashley C. Harrington

Senior Policy Counsel, Center for Responsible Lending

Before the United States House Committee on Financial Services

A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable

September 10, 2019

I. Introduction

Good morning Chairwoman Waters, Ranking Member McHenry and Members of the United States House Committee on Financial Services. Thank you for the opportunity to provide testimony today about the need to address the servicing issues contributing to this nation's \$1.5 trillion student debt crisis. My name is Ashley Harrington, and I am a senior policy counsel at the Center for Responsible Lending. The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest community development financial institution. For thirty years, Self-Help has focused on creating asset-building opportunities for low-income, rural, womenheaded, and families of color, primarily through financing safe, affordable home loans and small business loans. In total, Self-Help has provided \$6.4 billion in financing to 87,000 homebuyers, small businesses and nonprofit organizations and serves more than 80,000 mostly low-income families through more than 40 retail credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, and Wisconsin.

The growth of outstanding student loan debt over the last decade has been staggering. Today, more than 44 million people¹ carry over \$1.5 trillion of outstanding student loan debt, an amount that exceeds all other types of non-mortgage loan debt. Two out of three graduates in the class of 2017 borrowed federal student loan debt to finance their education.² This phenomenon is especially concerning for communities of color, as the existing wealth gap makes the burden of student loan debt particularly heavy for African American and Latino communities.

It is imperative to any policy making process to first acknowledge the *de jure* racial segregation that American institutions of higher education were built on.³ The results of legal segregation in higher education have created an inequitable legacy for communities of color that persists today. Even after *Brown v. Board of Education* (1954), predominately-white institutions (PWIs) in many states resisted integration and equal treatment for nonwhite students.⁴ And by the end of the 20th century, just at the time when student bodies were diversifying, policymakers were shifting the costs of higher education from the public to the individual student.⁵ In the past decade, the higher education landscape has become significantly more perilous for student

¹ See: https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls. Reflects totals through the end of June 2018

 ² See: http://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf//HHDC_2018Q4.pdf
 ³ Pierre, 2012. History of De Jure Segregation in Public Higher Education in America and the State of Maryland Prior to 1954 and the Equalization Strategy.

https://commons.law.famu.edu/cgi/viewcontent.cgi?article=1074&context=famulawreview.

⁴ Minor, J.T. 2008. "Segregation Residual in Higher Education: A Tale of Two States." American Educational Research Journal 45(4): 862-882.

⁵ Huelsman, Mark. 2019. Debt to Society: The Case for Bold, Equitable Student Loan Cancellation and Reform. Washington DC: Demos. Available at https://www.demos.org/research/debt-to-society.

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borrowers. When state legislatures began to tighten their belts in the wake of the Great Recession, investments in public colleges and universities began to decline.⁶ In response, public colleges and universities raised tuition, and cut student services.⁷ As states slashed budgets and schools raised the cost of a degree, families experienced massive wealth declines from a sinking economy.⁸ With foreclosures, job loss, and downturns in the market fracturing family balance sheets, an entire generation of students needed to borrow more than ever before to attend college. Further, a larger number of students than ever before chose to go to college to pursue an education that could help them secure a solid future.

Within this context, students families of color are more likely to need to borrow for higher education and in larger amounts. Even after graduation, African American and Latino people face substantial job discrimination and earn far less than their white counterparts.⁹ African Americans can also face more difficulty paying off debt and building savings to withstand future financial shocks because of this income gap. Given these disadvantages, these students tend to take longer to pay their loans back compared to their white counterparts.¹⁰ In fact, recent research shows that, rather than helping communities of color build wealth, a college education actually deepens the wealth gap due to the high costs and structural issues in our system.¹¹ For example, young African-Americans take on 85% more student debt than their white counterparts for their education and that difference in indebtedness increases by almost 7% per year after leaving school.¹² Despite these facts, for most students, especially students of color, the pursuit of higher education is not a choice. Indeed, postsecondary education is a necessity, not a luxury, for today's workforce.¹³

Women graduate, on average, with \$2,700 more in student loan debt than men, and because of the gender pay gap, they earn about 26% less, so paying off their debt takes significantly

⁸ 2013 Update: The Spillover Effects of Foreclosures. Center for Responsible Lending (August 2013). Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2013-crl-researchupdate-foreclosurespillover-effects-final-aug-19-docx.pdf.

⁶ Mitchell, Michael; Leachman, Michael; and Masterson, Kathleen. 2016. Funding Down, Tuition Up: State Cuts to Higher Education Threaten Quality and Affordability at Public Colleges. Center on Budget and Policy Priorities. Available at https:// www.cbpp.org/sites/default/files/atoms/files/5-19-16sfp.pdf.

lbid.

⁹ Quillian, Lincoln; Pager, Devah; Hexel, Ole; & Arnfinn H. Midtbøen. 2017. "Meta-analysis of field experiments show no change in racial discrimination in hiring over time." Proceedings of the National Academy of Sciences of the United States of America 114(41): 10870-10875; Gaddis, S. Michael. 2015. "Discrimination in the Credential Society: An Audit Study of Race and College Selectivity in the Labor Market." Social Forces 93(4): 1451-79. ¹⁰ Schultz, Sarah. 2017. "A Blueprint for Higher Education Equity." Washington DC: Young Invincibles. Available at

https:// younginvincibles.org/reports-briefs/blueprint-higher-education-equity/. ¹¹ Houle and Addo, 2018. "Racial Disparities in Student Debt and Reproduction of the Reproduction of the Fragile Black Middle Class." Sociology of Race and Ethnicity 1-16 ¹² Id.

¹³ Over 95% of jobs created since the Great Recession have gone to those with at least a bachelor's degree. See Anthony Carnevale, et al., "America's Divided Recovery: College Haves and Have-Nots" (2016) <u>https://cew.georgetown.edu/cew-reports/americas-divided-recovery/</u>. By 2020, 65% of all jobs will require some form of postsecondary education. Anthony Carnevale, et al., "Recovery: Job Growth and Education Requirements Through 2020." (2014) https://cew-7632.kxcdn.com/wp-content/uploads/2014/11/Recovery2020.FR_.Web_.pdf.

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longer.¹⁷ This is especially true for women of color. African-American women graduate with almost 50% more student debt than white and Latina women at 4-year institutions.¹⁸ Approximately 57% of African American women and 42% of Latina women who were repaying student loans reported that they were unable to meet essential expenses within the past year compared to 34% of all women.¹⁹

Further, while student loan debt is often seen as a Millennial issue, the crisis leaves no age group untouched. The AARP is increasingly concerned about student loan debt affecting the financial stability of older Americans.²⁰ In fact, \$66.7 billion of total outstanding student loan debt was owed by 2.8 million borrowers age 60 and older in 2015.²¹ Nationally, the median student loan balance of older borrowers increased by more than \$1,000, and the total outstanding student debt held by borrowers over age 60 increased by more than 50 percent between 2012 and 2017.²² According to the Government Accountability Office, the increase in student loan debt among seniors has led to more seniors spending their would-be golden years struggling to make ends meet because of the federal government's ability to garnish seniors' social security income for repayment of federal student loan debt.²³

As a result of their need to borrow more, alongside targeting and financial deception by forprofit institutions and often abusive servicers, a disproportionate percentage of students of color and the majority of black students are unable to pay student debt and will default.²⁴ Delinquency and defaults on student loans occur disproportionately for students of color as well as for women. A degree is not a shield from racial disparities: African American bachelor's degree graduates' default at five times the rate of white bachelor's degree graduates and are more likely to default than whites who never finish a degree.²⁵ Latino bachelor's degree graduates' default at twice the rate of their white peers.²⁶ Even those who can pay are

¹⁷ American Association of University Women. (2018). Women's student debt crisis in the United States. Retrieved from https://www.aauw.org/research/deeper-in-debt/. 18 lbid.

¹⁹ Ibid.

 ²⁰ Trawinski, Lori, Montezemolo, Susanna, & Williams, Alicia. 2019. The Student Loan Debt Threat: An Intergenerational Problem. Washington DC: AARP Public Policy Institute. Available at

https://www.aarp.org/ppi/info-2019/the-student-loan-debt-threat-an-intergenerational-problem.html. Office for Older Americans & Office for Students and Young Consumers. 2017. Snapshot of Older Consumers and Student Loan Debt. Consumer Financial Protection Bureau. Available at https://www.consumerfinance.gov/data research/research-reports/snapshot-older-consumers-and-student-loan-debt/. ²² Michael Stratford, Why the AARP is worried about student loans, Politico, June 7, 2018,

https://www.politico.com/agenda/story/2018/06/07/student-loans-debt-aarp-000666.

Government Accountability Office, 2016. Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief. Available at

https://www.gao.gov/assets/690/681722.pdf. ²⁴ Scott-Clayton, Judith. 2018. "The looming student loan default crisis is worse than we thought." Washington, DC: Brookings Institution. Available at https://www.brookings.edu/wp-content/uploads/2018/01/scott-claytonreport.pdf. ²⁵ Brookings Institution, The looming student loan default crisis is worse than we thought, January 10, 2018,

https://www.brookings.edu/wp-content/uploads/2018/01/scott-clayton-report.pdf ²⁶ Id.

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struggling. Today, nearly half of African American graduates with a bachelor's degree owe more on their undergraduate student loan after four years than they did at graduation, compared to 17% of white graduates and approximately 23% of Latinos.²⁷This derails their financial and personal lives and subjects them to harsh collection practices that can keep them from achieving the wealth gains promised by a college education. Meanwhile, their debt keeps growing due to unlimited interest accrual and no statute of limitations on student debt.

The interplay between student loan payments and other major life investments and responsibilities is well documented. Research from the National Association of Realtors shows that the usual student loan borrower delays the purchase of their first home by an average of seven years because of student loan debt.²⁸ Thus, this has serious implications for the housing market as well. Moving forward, the market for new homeownership will be predominately borrowers of color, and long-term student loan debt threatens to shrink the available pool of buyers. Unless bold, new actions are taken, a generation will be trapped in debt undertaken to try to advance their lives.

Given these factors, there is a real need for meaningful policy changes that help those most impacted by the student debt crisis. These changes will have impact beyond individual students and will boost the overall economy. A critical component of this is servicing reform and the creation of a borrower-centered student loan system that ensures consumer protections for all borrowers and strong accountability at all stages of repayment. To that end, my testimony today will:

- Describe the current state of the education loan market and the systemic failures that make it hard for borrowers to succeed in repayment and add to the growing student debt crisis:
- Highlight the failures of the current Department of Education to protect student borrowers and the efforts of states and advocates to mitigate them; and
- Provide recommendations for statutory requirements and improvements to ensure loan servicers and private collections agencies meet basic consumer protection standards and help, rather than prevent, students pay off their loans and pursue the intended benefits of higher education.

²⁷ Brookings Institute, Black-white disparity in student loan debt more than triples after graduation, Oct. 2016, https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-aftergraduation/ ²⁸ National Association of Realtors, Student Loan Debt and Housing Report, Oct. 2017,

https://www.nar.realtor/research-and-statistics/research-reports/student-loan-debt-and-housing-report.

II. The important role of student loan servicing

A. Background on the current system

Though the federal government is the lender for the vast majority of student loans—over 90%—it has outsourced the work of managing these loans to private student loan servicers. These same servicers also handle student loans made by private lenders such as Discover and Sallie Mae. Currently there are nine primary student loan servicers, with four of these, Navient, FedLoan Servicing, Great Lakes and Nelnet dominating the market. Most students do not have a choice of who services their loans, and therefore cannot "vote with their feet" if they are unhappy with their servicer by switching to another.

Once students graduate or leave school, they begin to pay on their federal loans after a sixmonth grace period. Borrowers may enroll in one of several repayment plans depending on their circumstances, ranging from the standard repayment plan with level payments over 10 years, graduated payment and extended term plans, and income-driven repayment options that lower the monthly payment but extend the term over a longer period of 20 to 30 years.²⁹ While reforms to these option are needed,³⁰ the importance of income-driven repayment (IDR) plans cannot be overstated. Their purpose is to provide borrowers access to affordable and reasonable student loan payments by tying loan repayment to post-college earnings (generally 10% of discretionary income) and forgiving any balance on the loan after 20 to 25 years, depending on the type of loan. Enrollment in IDR has been shown to significantly reduce delinquency and default. According to data from the Department of Education, among borrowers enrolled in the standard ten-year repayment plan, 18% are not currently making payments on their loans, whereas for borrowers enrolled in one of the five income-based repayment plans, the delinquency rate is just 8%.³¹

These differences in student loan distress between plans are significant in their impact. Defaults can cause borrowers to spiral into poverty by harming a borrower's credit score and making it more difficult to access jobs and housing, as employers and landlords routinely conduct credit checks when assessing applicants. In some states, defaulted borrowers could lose their drivers' licenses and specialty work licenses related to their employment. Defaulted borrowers can have their wages garnished and tax refunds offset. For seniors, defaulting could mean garnishment of their Social Security income, reducing funds available for basic living needs such as food, shelter, and medications.

²⁹ See: https://studentaid.ed.gov/sa/repay-loans/understand/plans

³⁰ CRL and other civil rights groups advocate for streamlining IDR options down to one plan with payments based on 8% of discretionary income and a repayment term of not more than 15 years. See: Center for Responsible Lending, the National Association for the Advancement of Colored People, UnidosUS, the National Urban League, and the Leadership Conference on Civil and Human Rights. 2019. Quicksand: Borrowers of Color & the Student Debt Crisis. Durham, NC: The Center for Responsible Lending. Available at

https://www.responsiblelending.org/research-publication/quicksand-borrowers-color-student-debt-crisis. ³¹ See: https://www.forbes.com/sites/prestoncooper2/2018/08/07/income-based-repayment-reduces-student-loan-delinquency-but-dont-oversell-it/#3301fbc937d0

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Because student loan servicers link federal loan borrowers and their repayment options, they play a crucial role in helping struggling borrowers stay out of default and on track to repay their loans. Among other responsibilities, these servicers are tasked with collecting student loan payments, educating borrowers about repayment plans, and processing applications and annual re-certifications for income-driven repayment plans. Servicers are in a position to know if a borrower is in distress when they make late payments, and when borrowers contact them to ask about their options. Savvy borrowers may inform themselves of their repayment options, but most borrowers rely on their servicers to help them navigate a confusing system. Despite the fact that servicers are in the best position to proactively help enroll borrowers in IDR and prevent default, borrowers are still confused – which indicates that servicers can do more to assist student borrowers in repayment.³²

B. Loan servicers are not helping borrowers manage their student debt

It's increasingly clear that servicers have consistently failed to fulfill their obligations, engaging in a variety of abusive practices that have long-term negative consequences for borrowers. Audits and borrower complaints have shown that servicers are failing to fulfill these obligations consistently, resulting in long-term negative consequences for borrowers who usually do not have a choice in who is servicing their loans. Indeed, from the time the Consumer Financial Protection Bureau (CFPB) began taking complaints about student lending in late 2011 until February 2017, there were tens of thousands of complaints about loan servicers. Other federal agencies have reported on poor servicing practices as well. An audit conducted by the US Office of the Inspector General found that, from 2015 – 2017, Federal Student Aid rarely enforced servicer compliance with their contracts and did not follow policy when evaluating servicer performance. The failure of servicers to do their job contributes to the growing debt burden as their practices result in unnecessarily longer and larger debt loads.

Documented complaints by borrowers received by the CFPB reflect servicers misapplying payments, reporting incorrect information to credit bureaus, giving incorrect information about Public Service Loan Forgiveness and placing borrowers in pause payment plans, such as deferment and forbearance, that over time cause student's debt to balloon and lead to delinquencies and defaults.³³ Student loan servicers are notorious for putting borrowers into deferment or forbearance when income-driven repayment plans are more suitable and less costly for borrowers. In fact, the CFPB initiated a lawsuit in January 2017 against Navient, then the nation's largest servicer of student loans, for cheating and mistreating student loan

³² In a series of focus groups with struggling student loan borrowers, the New America Foundation found that few borrowers had enrolled in IDR. Those who were unfamiliar with IDR were "confused, perplexed, and often suspicious" of the option. The researchers found that "[t]here was a general lack of awareness about income-based repayment plans, and even those who were using them seemed to be confused about plan details." See: https://www.newamerica.org/education-policy/edcentral/student/oansaredifferent/
³³ See: https://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-snapshot-spotlights-student-loan-

complaints/

borrowers, including routinely failing to put many of their millions of borrowers into the income-driven repayment plans they were entitled to by law. These practices led to up to \$4 billion in extra interest and fees being added to the principal balances of already indebted student loan borrowers.³⁴

Unfair and substandard servicing practices also open the door to scammers purporting to advise borrowers about their options and mislead them into thinking they need to pay large upfront fees to enroll in free income-driven repayment plans or to consolidate their loans. State attorneys general and the CFPB have sued fraudsters taking advantage of borrowers - but the practice will continue to flourish as long as student loan servicers fail to adequately communicate with and assist borrowers.

Recently, concerns have also been raised that servicers are providing access to affordable income-driven repayment in an unequal way, with a disproportionate impact by race and sex.³⁵ Borrowers of color are also more likely than their white peers to experience servicer misrepresentation. First, historical practices preventing inter-generational wealth building mean that borrowers of color graduate with more student loan debt. Second, the overrepresentation of students of color in the student bodies of predatory, for-profit schools and ongoing workplace discrimination mean that borrowers of color are more likely to struggle with repayment of those loans. Servicer misrepresentations increase the costs of those loans and erect yet another barrier to wealth building, perpetuating the cycle.

C. Problems with private collection agencies

Currently, the Department of Education reassigns loans that are 365 days past due from student loan servicers to private collection agencies (federal loans are technically in default at 270 days past due).³⁶ Like all collection agencies, the priority is to recover money from struggling student loan borrowers rather than provide sustainable solutions for loan management. Additionally, student loan debt collection has been shown to be very expensive relative to the amount of recoveries, with the CFPB estimating that these agencies receive \$40 in compensation for every \$1 recovered from some borrowers whose loans are placed back into repayment through a rehabilitation program.³⁷ The Center for American Progress studied student debt collections in 2017 and found that the federal government spent about \$700 million for fewer than 7 million borrowers in default, almost the same amount it spent on loan servicing for more than 33 million borrowers not in default.³⁸

³⁴ See: https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-companynavient-failing-borrowers-every-stage-repayment/

See: https://www.responsiblelending.org/research-publication/protect-student-loan-borrowers-discrimination ³⁶ See: https://studentaid.ed.gov/sa/repay-loans/default/collections

³⁷ See: https://beta.washingtonpost.com/education/2019/02/28/billions-dollars-defaulted-student-loans-aregoing-uncollected-lawsuit-saγs/ ³⁸ lbid.

Student debt collectors have been shown to repeatedly violate debt collection and other consumer protection laws as reflected in numerous borrower complaints about such abuses.³⁹ These abuses include calling consumers multiple times per day even after being asked to stop, calling early in the morning or late at night, calling consumers' workplaces despite knowing that the employers prohibited such calls, leaving phone messages that disclosed the debtor's name and the existence of the debt to third parties, and continuing collection efforts without verifying the debt, even after consumers said they did not owe it.⁴⁰

The Department of Education has announced its intent to fold debt collection duties into student loan servicing under Next Generation Financial Services Environment, or NextGen, a broad overhaul of how student loan servicing and collection are handled and contracted. It remains to be seen whether this overhaul will reduce defaults and improve service for struggling borrowers.

D. Private education loans

In 2015 – 2016, 5% of undergraduates utilized private education loans to fund their education.⁴¹ Most of this group did not maximize available federal aid. While the use of non-federal student debt began to decrease after the Great Recession, the loan volume is now trending upwards. The CFPB has identified troubling practices in private student loan servicing and origination, which can make these loans very risky for borrowers. Private student loans may have high interest rates, and borrowers have no access to relief opportunities offered on federal student loans, such as income-based repayment programs. During the run up to the financial crisis, private student loans, like mortgages, were made using questionable underwriting, trapping borrowers in unaffordable debt. For-profit colleges, in cooperation with financial institutions, have a track record of making harmful private loans to their students.

Congress instructed the CFPB to pay special attention to private loans precisely because they have a problematic history of causing long-term financial distress to borrowers. In the early 2000s, private student loans followed a path similar to mortgage lending. Securitization led to mushrooming growth of questionably underwritten, variable- and high-interest-rate loans, which suffered high default rates after the economy crashed. Many borrowers today suffer from the loans made before the market corrected.

Recent data does suggest that some lenders have improved their private student loan underwriting standards, but problems remain. Federal student loans offer greater consumer protections than private loans, yet many of the students who take out private loans do not first exhaust their federal options. This means that they are unable to access such options as

³⁹ See Deanne Loonin and Persis Yu, National Consumer Law Center, Pounding Student Loan Borrowers: The Heavy Costs of the Government's Partnership with Debt Collection Agencies (Sept. 2014), available at http://www.nclc.org/images/pdf/pr-reports/report-sl-debt-collectors.pdf.

⁴⁰ Ibid.

⁴¹ See: https://ticas.org/wp-content/uploads/2019/08/pl_facts_trends.pdf

guaranteed income-based repayment and loan forgiveness plans, assistance for getting out of default and discharges for disability or death. Since both federal and private student loans are much more difficult to discharge in bankruptcy than other kinds of debt, these protections are crucial.

Colleges can and should play a role in helping students accurately compare private loans to federal loans. Stronger school certification processes, which ensure that students receive full information about their federal and private options, would require colleges and lenders to coordinate with one another to help students choose wisely.

Private loans taken out by students at for-profit colleges also deserve particular attention. As indicated by the CFPB's recent lawsuits against Corinthian Colleges and ITT Tech, the private student loan programs created by for-profit colleges in concert with lenders and other third parties after the credit market constricted were often based on deception and other illegal practices.⁴² Similar programs may still be making loans with very high default rates.

III. The current administration has rolled back important consumer protections for student loan borrowers

During the Obama administration, contract negotiators for student loan servicers were instructed to include important consumer protections and incentives in the contracts.⁴³ Unfortunately, the Department of Education's actions since Secretary DeVos took office in early 2017 have not addressed the existing challenges and, instead, have exacerbated a dynamic that already favored private servicing companies over student loan borrowers. Despite the crisis that student loan debt presents to 44 million borrowers, their communities, and our economy, the current Department of Education refuses to adequately hold servicers accountable. The Department of Education's actions can be sorted into three primary categories: (1) revoking existing policies that were meant to protect student loan borrowers, (2) acting to the benefit of private companies over students and taxpayers, and (3) attempting to prevent federal and state enforcement.

A. The Department of Education has revoked several policies and guidances put in place to protect student loan borrowers from servicing abuses.

In 2016, then Under Secretary of Education Ted Mitchell rolled out a set of policy directives, called the "Student Aid Bill of Rights," that instructed Department of Education employees negotiating servicer contracts to include important consumer protections and incentives in the

https://www.responsiblelending.org/media/new-cfpb-report-finds-troubling-practices-private-loan-servicingand-origination
 ⁴³ Mitchell, Ted. 2016. Policy Direction on Federal Student Loan Servicing. U.S. Department of Education. Available

²⁷ Mitchell, Ted. 2016. Policy Direction on Federal Student Loan Servicing. U.S. Department of Education. Available at <u>https://www.consumerfinance.gov/documents/2313/20160620_US-Department-of-Education_loan-servicing-policymemo.pdf</u>.

new contracts.⁴⁴ In one of her first acts as Secretary of Education, Betsy DeVos reversed the guidelines for the new contracts.⁴⁵ The contract negotiators would no longer be asked to hold student loan servicers to high standards of consumer protection. In March 2017, the DeVos Department revoked a 2015 guidance that barred guaranty agencies from charging collection fees to borrowers who default but quickly enter repayment plans.⁴⁶ The decision to revoke this guidance could, in fact, cost borrowers millions.⁴⁷ A 2017 settlement returned \$23 million to borrowers in a case regarding collection fees that were charged after borrowers had defaulted but had quickly entered repayment plans.⁴⁸

The Education Department has also ignored several calls to standardize servicing guidelines and hold servicers accountable for noncompliance, even though these calls came from within the Trump Administration and even within the Department itself. For instance, the Department of Education has not addressed an August 2018 report from the Treasury Department that recommended standardized guidelines for federal student loan servicers.⁵¹ The Department of Education, similarly, has not adequately addressed a February 2019 internal audit that raised concerns related to the high risk of servicer noncompliance and called for more effective mitigation by FSA.⁵² The same February 2019 audit found that FSA rarely held servicers accountable for noncompliance, and instead neglected to even track errors as long as servicers fixed them in individual instances.⁵³ The audit further reported that the agency "relied on the memories of the employees responsible for the oversight activities to recognize recurring instances.⁵⁴ These details indicate that the Department of Education is neither committed to holding servicers accountable for their mistakes on an ongoing basis, nor are they committed to rewarding servicers with histories of adequate compliance.

⁴⁴ Press release: Education Department to Implement Improved Customer Service and Enhanced Protections for Student Loan Borrowers, Dept of Ed. (July 20, 2016) retrieved: <u>https://www.ed.gov/news/pressreleases/education-department-implement-improved-customer-service-and-enhanced-protections-student-loan-</u>

borrowers ⁴⁵Press release: Memorandum from Secretary of Education Betsy DeVos to FSA Chief Operating Officer James Runcie Regarding Student Loan Servicer Recompete, Dept. of Ed. (April 11, 2017) Retrieved:

https://www.ed.gov/news/press-releases/memorandum-secretary-education-betsy-devos-fsa-chief-operatingofficer-james-runcie-regarding-student-loan-servicer-recompete

 ⁴⁶ Available at <u>https://www.insidehighered.com/quicktakes/2017/03/17/us-rescinds-guidance-collection-fees.</u>
 ⁴⁷ Available at <u>https://www.insidehighered.com/quicktakes/2017/03/21/usa-funds-ties-education-department-adviser;</u> Available at <u>https://ifap.ed.gov/dpcletters/GEN1702.html.</u>

⁴⁸ Available at https://www.insidehighered.com/quicktakes/2017/01/31/usa-funds-settle-suit-loan-collection-fees.
⁵¹ Available at https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities----Nonbank-Financi....pdf; Available at https://www.nasfaa.org/news-

item/15846/Treasury_Department_Pushes_for_Federal_Loan_Servicing_Standards.

² Available at https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf.

 ⁵³ Available at https://www.nytimes.com/2019/02/14/business/student-loans-education-department.html.
 ⁵⁴ Ibid.

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B. The Department of Education has taken many opportunities to enrich private businesses at the expense of student loan borrowers

Evidence shows that the Department of Education has repeatedly acted in ways that improperly benefit education loan servicing companies. As mentioned previously, the CFPB sued Navient in early 2017 for widespread servicing mistakes that cost borrowers almost \$4 billion in unpaid interest due to inappropriate steering of over 1.5 million borrowers into multiple forbearances instead of income driven repayment over a period of 5 years. Rather than providing critical documents related to the case to the another federal government actor, the Department provided them to Navient and withheld them from the CFPB.⁵⁵

In another instance that suggests that the Department of Education was acting inappropriately in order to protect loan servicers at the expense of student loan borrowers, the Department of Education completed an internal audit of Navient in May 2017 but declined to release it to the public until November 2018, well over a year later. The states that had active lawsuits against Navient did not receive copies of the audit until it was released publicly, despite the fact that the audit was relevant to their cases against Navient for breaking state and federal consumer protection laws. Before the audit was made public, the Department of Education maintained that Navient "was not improperly steering borrowers into forbearance." However, according to the Associated Press, the audit appeared to "support federal and state lawsuits that accuse Navient of boosting its profits by steering some borrowers into high-cost plans without discussing options that would have been less costly in the long run."⁵⁶ After the audit was released publicly, Navient cited their servicing contract and claimed that they were not aware "of any requirement that borrowers receive all of their repayment options…on each and every call."⁵⁷

In some cases, possible conflicts of interest have also raised red flags about the Department of Education's conduct vis a vis private companies. In another early action by the DeVos Department of Education (August 2017), data sharing agreements (MOUs) with the CFPB were terminated, reducing oversight of private loan servicers.⁵⁸ These MOUs encompassed information sharing, a critical element of CFPB enforcement efforts, and thus weakened the possibility of federal oversight of both student loan servicers and for-profit colleges. In this case, the day before the MOU termination, more than 872,000 shares of Navient were purchased and, after the termination, the stock price rose.⁵⁹

⁵⁵ Available at https://www.americanoversight.org/nsldn-and-american-oversight-sue-education-department-fornavient-emails-and-records.

⁵⁶ Available at <u>https://www.apnews.com/eeebf667026a420c9893220215e542cb</u>.

⁵⁷ lbid.

⁵⁸ Available at

https://www.insidearm.com/documents/673/Letter_from_ED_to_CFPB_terminating_MOUs_between_ED_and_CF PB.pdf. ⁵⁹ The AFL-CIO called on the Securities and Exchange Commission (SEC) to investigate the trades "to find out

³⁹ The AFL-CIO called on the Securities and Exchange Commission (SEC) to investigate the trades "to find out whether the stock purchases were done illegally, in violation of insider trading laws or the STOCK Act, a 2012 law that makes clear it is illegal for members of Congress or their staff to personally profit on private information

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In 2014, the Obama administration began a process to simplify and streamline the student loan repayment and collection process. Because simplification would require a new servicing system, NextGen—a single website for all federal student loan borrowers, it was expected to require new and different servicing contracts that could include borrower protections and better customer service features. Based on problems with single servicers in the past, bipartisan elected officials and industry groups agreed that contracts should be awarded to multiple loan servicers on the basis of past performance.⁶¹ In the spring of 2017, FSA amended the plan and weakened borrower protections, customer service features, and even called for awarding all servicing contracts to one private servicer.⁶² After bipartisan opposition, FSA withdrew the plan entirely, and re-released a new one that includes a single online platform, returns to the idea of multiple private servicers, but does not include accountability measures.⁶³ In fact, the new plan proposes hiring a private contractor to manage compliance and oversight instead of relying on federal government oversight agencies such as the CFPB.⁶⁴

Related changes in the procurement documents suggest that the Department of Education may be tipping the scales in favor of particular companies. In one example, the Department of Education declared that they would make their contractor selections based on five years of compliance instead of seven (the number cited in Obama-era procurement documents) in June 2019, which many consumer rights groups felt was a move meant to "tip the scales for Navient," given that the new timetable would make a large law enforcement action against Navient by the CFPB too old to count in the procurement process.⁶⁵

C. The Department of Education has attempted to prevent federal and state enforcement

Throughout Secretary DeVos' tenure, the Department has undertaken several actions aimed at curtailing federal and state entities' abilities to regulate and supervise education loan servicers and protect consumers.

At the federal level, the Department of Education has refused to share information with the CFPB. As has been mentioned, the Department terminated two MOUs with the CFPB that encompassed information sharing and federal oversight of student loan companies and for-

obtained in their work."⁵⁹ Available at https://www.reuters.com/article/us-usa-sec-navient/afl-cio-wants-sec-toprobe-trading-in-shares-of-loan-servicer-navient-idUSKBN1CF2UV.

⁶¹ Available at <u>https://www.americanprogress.org/issues/education-</u>

postsecondary/news/2017/06/14/434403/sides-agree-single-servicer-bad-move/; Available at https://slate.com/business/2017/04/betsy-devos-is-wasting-no-time-screwing-over-student-borrowers.html.

postsecondary/news/2018/01/08/444641/education-department-proposes-major-changes-student-aid/. 53 lbid.

⁶⁴ Ibid.

⁶⁵ Available at https://www.politico.com/newsletters/morning-education/2019/06/18/trump-backs-west-virginiagovernor-at-odds-with-devos-448037; Available at https://protectborrowers.org/navient-free-pass/.

¹²

profit colleges in August 2017.⁶⁸ In response to questions from Senator Warren, Director Kraninger of the CFPB wrote in May 2019 that the Department of Education was blocking the CFPB's efforts to oversee student loan servicers.⁶⁹ Kraininger, a Trump Administration appointee, wrote that "Since December 2017, student loan servicers have declined to produce information requested by the Bureau for supervisory examinations" related to federal student loans.⁷⁰

State actors are also responsible for holding student loan servicers accountable for unfair, deceptive, and abusive practices. Thus, several state attorneys general have pursued lawsuits against student loan servicers for violations of state and federal consumer protection laws. One lawsuit from Massachusetts AG Maura Healey, alleged that PHEAA, the largest student loan servicer, overcharged student borrowers and prevented them from making qualified payments, undermining the Public Service Loan Forgiveness and Teacher Education Assistance for College and Higher Education Grant programs.⁷¹ In January 2018, ED sided with PHEAA, arguing that the State of Massachusetts' claims were preempted.⁷² Later, in March, the Department of Education attempted to declare that federal laws preempt state laws governing student loan servicers.⁷³

IV. Despite federal rollbacks, many states have enhanced protections for student loan borrowers

The recent rollbacks at the federal level emphasize the importance of simultaneous efforts at the state level to hold servicers accountable and enforce basic consumer protections. With their traditional police powers, states have the authority to ensure servicers are not engaging in unfair and abusive practices. Just as many states had long overseen debt collectors, recognizing the impact debt collection practices can have on their residents, states responded to widespread concerns about student loan debt and poor servicing practices by implementing a regulatory framework that would allow them to ensure their borrowers were treated fairly by their servicers.

In 2015, Connecticut became the first legislature to pass the "Student Loan Bill of Rights," a bill that required student loan servicers to be licensed by the state, created an Office of the Student Loan Ombudsman, and prohibited student loan servicers from engaging in actions that

item/14616/Federal_Guidance_Escalates_Struggle_Between_ED_States_Over_Loan_Servicing_Oversight. ⁷³ Since, multiple courts have rejected this assertion. For example, in June 2019, a federal appeals court unanimously held that student loan servicers can be sued under state law, despite DeVos's assertion that they are only held to federal law.

⁶⁸ The public announcement occurred in a statement from Representative Virginia Foxx (R-NC), who was, at the time, the head of the House of Representatives Education and Workforce Committee.

⁴⁹ Available at <u>https://www.npr.org/2019/05/16/723568597/cfpb-chief-says-education-department-is-blockingstudent-loan-oversight.</u>

⁷⁰ Available at https://www.npr.org/documents/2019/may/042319-letter.pdf.

⁷¹ Available at https://www.bostonglobe.com/metro/2018/01/10/feds-say-healey-can-sue-student-loanservicer/AgBmFKp0rYySyH92J24hUM/story.html.

⁷² Available at https://www.nasfaa.org/news-

would violate certain bedrock principles of consumer protection. As the bill's author and sponsor, Representative Matt Lesser, noted at the time, the Student Loan Bill of Rights represented a shift from thinking about student loans as an issue of higher education "to a systemic problem for the financial sector of the economy." Other states took notice, and California⁷⁷, Illinois⁷⁸, and Washington DC⁷⁹ followed to enact new laws in 2016.

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Early in 2017, the Consumer Financial Protection Bureau, the Illinois Attorney General, and Washington Attorney General announced a lawsuit against Navient Corporation, at the time the largest student loan servicer in the country.⁸⁰ The lawsuits alleged that the servicers routinely undermined borrowers by misapplying payments, reporting incorrect information to credit bureaus, and placing borrowers in plans that caused their debt to balloon. The Bureau's complaint confirmed what many student loan borrowers had experienced – loan balances increasing after being placed into forbearance rather than an income driven repayment plan, payments that were misapplied, and even disabled veterans who were denied credit after their student loan servicing company failed to correctly report the discharge of their loans to the credit bureaus.

Faced with constituents struggling to gain their financial footing as they dealt with their student loan debt, more states became interested in exerting their traditional police powers to protect student loan borrowers. Predictably, however, the industry groups that lobby on behalf of servicers and state guaranty agencies stepped up their efforts to protect corporate interests. As mentioned above, in late February 2018, after months of lobbying by student loan servicers, including the CEO of Navient, the DeVos Administration released a Notice of Interpretation, outlining the Department's belief that state student loan servicing laws are pre-empted by federal law.⁸¹ The document outlines the Department's belief that federal law completely preempts all state laws that impact federal loan servicing – not only state licensing regimes but even prohibiting servicers from misleading borrowers and asserting general principles found in each state's laws prohibiting companies from engaging in unfair and deceptive acts and practices.⁸² While the memo has been given virtually no legal weight and found to be unpersuasive by multiple courts, it had the effect of clearly establishing the Department of Education as a foe of student loan servicing reform.

⁷⁷ Student loan servicers: licensing and regulation: Student Loan Servicing Act.

https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB2251

⁷⁸ Student Loan Servicing Rights Act: <u>http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=3830&ChapterID=18</u>
⁷⁹ Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016:

http://lims.dccouncil.us/Download/36411/B21-0877-SignedAct.pdf

⁸⁰Douglas-Gabriel, Danielle "Student Loan Servicer Navient Hit With Three Government Law Suits in One Day" Washington Post (Jan. 18, 2017) https://www.washingtonpost.com/news/grade-point/wp/2017/01/18/studentloan-servicer-navient-hit-with-three-government-lawsuits-in-one-day/ Black the service of t

⁸¹ Federal Register "Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers" (March 12, 2018)

https://www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulationof-the-department-of-educations-federal-student-loan⁸² ld.

Despite the attempt by the Department and servicers to thwart state interests, Washington and Maryland still passed some version of the Student Loan Bill of Rights during the 2018 legislative season, and the power of states to regulate the abusive practices of student loan servicers remained clear. In fact, a bi-partisan group of 30 state attorneys general affirmed the right of the states to oversee and enforce student loan laws, signing a letter stating, in part:

Given the states' experience and history in protecting their residents from all manner of fraudulent and unfair conduct, they play an essential role in consumer protection in student loans and education. States are uniquely situated to hear of, understand, confront, and, ultimately, resolve the abuses their residents face in the consumer marketplace. Abuses in connection with schools or student loans are no different. As with other issues facing their citizens, state regulators bring a specialized focus to, and appreciation for, the daily challenges experienced by students and borrowers. Far from interfering with the Department and other federal efforts to rein in abuses, the record overwhelmingly demonstrates that state laws and state enforcement complement and amplify this important work.⁸³

A poll done by the Center for Responsible Lending and the Maine Center for Economic Policy in October 2018 revealed another cause for concern for state officials – student loan borrowers who move out of state to find jobs that pay enough to help repay their debts. In Maine, more than 40% of those polled knew someone who had left the state in order to pay for their student loan debt.⁸⁴

The poll also revealed the deep ripple effects of student debt. The majority of student loan borrowers who were polled reported that they had struggled with payments, reduced the amount they were saving for retirement, and unable to purchase a car. More than 30% of respondents reported that they had put off paying rent or their mortgage to pay a student loan, failed to pay another bill, or even have been unable to afford food or clothing.

A similar poll from Maryland, which Center for Responsible Lending commissioned with the Maryland Consumer Rights Coalition, found that borrowers overwhelmingly (85%) support licensing and oversight of student loan servicers in their state. ⁸⁵

In the 2019 session, states worked to strengthen the bills that would be filed across the country, expanding on the principles first created by the passage of the Connecticut bill in 2015. The new versions of the Student Loan Bill of Rights not only required student loan servicers to be licensed by the state and enumerated certain prohibited acts, but also created affirmative duties for servicers and, importantly, included a private right of action, enabling borrowers to

⁸³ Sign On Letter to Congress re Student Loan Preemption, Mar. 15, 2018,

https://ni.gov/oag/newsreleases18/2018-0315_AG-Letter-to-Congress-Opposing-Student-Loan-Preemption.pdf ⁸⁴ https://www.mecep.org/new-poll-mainers-struggle-to-pay-down-student-debt-say-loan-servicers-are-makingmatters-worse/

matters-worse/ ⁸⁵ https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/gonzales-poll-studentloan-debt-apr2018.pdf

enforce these new servicing laws. New York,⁸⁶ Colorado,⁸⁷ Maine,⁸⁸ Rhode Island,⁸⁹ and New Jersey⁹⁰ passed these comprehensive bills, while Maryland passed an update to their 2018 bill, adding prohibited acts, affirmative duties, and a private right of action. And Nevada took a first step towards a Student Loan Bill of Rights, passing a bill to establish the Office of the Student Loan Ombudsman.

Improvements to the student loan servicing system are essential V.

A. Recent litigation efforts illustrate the extent of the problem

In courts across the country, cases filed by student borrowers and state Attorneys General illustrate a pattern of poor servicing practices that prevent borrowers from making informed decisions about repaying their loans or taking advantage of programs enacted by Congress. Fundamentally, the system is broken, with servicers seemingly only concerned about reducing costs and shortening customer service calls. Far from engaging in robust oversight, the Department of Education has sought to frustrate attempts to protect student borrowers.

Since 2017, the Consumer Financial Protection Bureau and the States of California, Illinois, Massachusetts, Mississippi, Pennsylvania, and Washington have brought actions against student loan servicers. The complaints provide a litany of abusive servicing practices.⁹¹ Private litigants have also sought to enforce state consumer protection laws against servicers.⁹² The claims range from mishandling processing related to the PSLF program, mishandling recertification for TEACH grants, to steering borrowers into forbearance, providing inaccurate information, and engaging in abusive collection practices.

As noted, the Department of Education has responded to this litigation alleging serious servicing misconduct by seeking to shield the servicers from state law (while also failing to enforce its own rules against servicers). However, several courts have rightly dismissed the Department's March 2018 notice purporting to claim that the Higher Education Act broadly preempts state law.⁹³ Unfortunately, the Department's message has empowered servicers to claim preemption, tying up state and private litigation. If servicers can shield themselves from state law, with the aid of a federal agency that cannot and does not exercise adequate

⁸⁶ NY Banking Law, Article 14-A:

⁸⁷ Colorado Student Loan Servicers Act: https://leg.colorado.gov/sites/default/files/2019a_002_signed.pdf

⁸⁸ The Student Loan Bill of Rights: https://legislature.maine.gov/legis/bills/bills_129th/billtexts/SP028501.asp

⁸⁹ Student Loan Bill of Rights Act: http://webserver.rilin.state.ri.us/BillText/BillText19/HouseText19/H5936A.pdf ⁹⁰ An act concerning the appointment of a Student Loan Ombudsman, regulating student loan servicers, amending

P.L.2005, c.1991, and supplementing Title 17 of the Revised Statutes:

https://www.njleg.state.nj.us/2018/Bills/PL19/200_.PDF ⁹¹ See e.g., Illinois v. Navient Corp., 17-CH-761, Illinois Circuit Ct. Cook County; Washington v. Navient Corp., No. 17-2-01115-1 SEA, Wa. Sup. Ct.; Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency, Massachusetts Sup. Ct., Suffolk County, Case No. 1784 CV 02682; Pennsylvania v. Navient Corp., No. 17-cv-1814, M.D. PA; Consumer Financial Protection Bureau v. Navient, No. 17-cv-00101, M.D. PA. See e.g., Nelson v. Great Lakes, Hyland v. Navient, Lawson v. Great Lakes.

⁹³ See e.g., *Nelson v. Great Lakes*, No. 18-1531, 7th Cir., June 27, 2019), *SLSA v. D.C.*, Dist. Ct. of D.C. (Dec. 2018).

oversight, then student borrowers will have nowhere to turn and will lose out on the programs created to ease repayment and to reward public service.

B. The consequences of poor servicing have already been illustrated by the foreclosure crisis

A key lesson from the Great Recession is that skillful loan servicing could have dramatically mitigated the impact of foreclosures and their spiraling spillover effects on neighborhoods and the economy. During the foreclosure crisis, policymakers and service providers to families facing foreclosure repeatedly called for corrections to ineffective and abusive servicing. Many of the same problems we see today in student loan servicing were raised in the mortgage context-homeowners had trouble reaching their servicer by phone, and contacts did not have the authority or ability to help the homeowners. A customer might call and reach a different contact each time. Servicers misapplied payments, failed to follow processes required around notice for debtors, and failed to follow investors' loss mitigation requirements. Servicers also lacked capacity, adequate management, and sufficient quality control. At the time of the foreclosure crisis, it was widely acknowledged that better servicing could have converted distressed mortgages into stable loans in which the mortgagee did pay something, generating revenue for investors, and contributing to a stronger, stable neighborhood. Instead, as larger numbers of mortgagees fell into distress, servicers were overwhelmed and unable to keep up with growing defaults. Worse, as one family in a neighborhood faced foreclosure, the foreclosure affected neighboring property values, eventually depressing the whole economy and foreclosures grew.

Two key lessons emerged from the mortgage crisis that should now be applied to reforming student loan servicing. First, servicer incentives, funding, and accountability matter a great deal. Servicers will focus on cost-reduction and follow incentives to push borrowers to solutions that suit the servicer. If we want servicers to work with borrowers on income-driven repayment or other payment solutions, and to follow basic procedures for applying payments, providing information, or documenting efforts, incentives and accountability must drive those efforts. Second, over time, the foreclosure crisis and ensuing response showed that it is critical to minimize the complexity of any "application" or "certification" process that helps distressed borrowers modify their loan. The mortgage market has moved to simplified processes that automatically modify loans for distressed borrowers, assuming that affordable reduced payments benefit both the borrower and investors more than the high cost of foreclosure/pursuing default.

Applying these lessons to student loan servicing is actually much simpler than it has been in the mortgage servicing context. With mortgages, loans had been pooled and securitized. Investors in the mortgage pools had conflicting interests, even more in the vast majority of cases where mortgagees had multiple loans, held in separate pools, and the first lien holder had an interest at odds with modifying the second. Here, the Department of Education is the overwhelmingly predominant investor and could provide global direction and accountability for servicers. If servicers were directed to prioritize working with borrowers to manage their debt, avoid

default, and/or modify loans, and held accountable for basic standards, they would not face the same conflicting instructions that mortgage servicers struggled with. Here are examples of ideas proposed during the mortgage crisis that could be applied more easily in the student loan servicing context:

- Loss mitigation must be conducted prior to foreclosure (default collection in the case of student loans)
- · Loss mitigation agreements must be affordable for the borrowers
- Late paying customers must be referred to counseling
- Basic servicing standards should be implemented and monitored, such as requiring a
 response to inquiries and requests for information in a timely way and requiring
 servicers to report loss mitigation efforts by activity and geography;
- Default should be delayed if borrower enters a low-cost repayment plan and makes timely payments;;
- Discharge of student loans in bankruptcy should be permitted;
- Loan servicers should be paid adequately for the time-intensive work of loss mitigation and loan modification (i.e. putting borrowers in repayment plans); and
- Forgiven student loan debt should not be treated as taxable income.

VI. Towards a new, improved borrower-centered student loan servicing system

Five key fixes to strengthen servicing standards and oversight could go a long way toward helping student loan borrowers and ensuring a better return on our investment in higher education.

- Reform student loan servicing abuses by setting clear consumer protection standards.
 These include requiring servicers to act in the best interests of borrowers, prohibiting abusive fees and practices, and ensuring that voluntary overpayments are allocated to principal. Fees should be minimized, payments processed efficiently, and errors should be resolved quickly and with documentation. Loan documents and history should be easier to understand and access. Prevent the reporting of inaccurate information to credit bureaus. Prevent fraud and abuse through debt relief scams and other predatory schemes by limiting the behavior and holding servicers liable for scams that are successful. Common sense affirmative duties and clear prohibited acts can ensure that servicers communicate with borrowers in a timely manner and that they provide consistent information.
- Restructure servicer compensation to encourage and compensate servicers for spending time with borrowers at risk of delinquency and default, including enrolling borrowers in income-driven repayment. Today, we spend more to put borrowers into collection than we do to help them get more affordable payments and stay current on their loans. Compensation rates encourage servicers to push forbearance because servicers are not compensated once a loan is in default and are compensated progressively less as a borrower gets further into delinquency.

- 3. Affirm and assert the power of the CFPB and state attorneys general in servicing oversight and enforcement by explicitly making violations of servicing standards enforceable under state Unfair, Deceptive, or Abusive Practices (UDAP) laws and the CFPB Act. Today, the Department of Education is ignoring its own duty to effectively oversee student loan servicers and simultaneously trying to block states from exercising oversight. Affirm that states have a right to oversee and sanction abusive student loan servicers. Require the Department of Education to cooperate with the CFPB and state entities. Cap general federal debt collection amounts to no more than the amount the borrower would pay under IBR.
- 4. Empower borrowers to enforce their own rights and protect their own financial futures. Ban mandatory arbitration clauses and recognize a private right of action by borrowers against student loan servicers and debt collectors who violate consumer protection laws or contract requirements. Allow discharge of student loans in bankruptcy.
- 5. Increase transparency and stem the negative collateral effects of the student debt crisis. Collect and publish data from servicers to track servicing metrics for all loans. Require regular reporting on student loan servicer performance and activity. Work to ensure that the burden of student debt is not an insurmountable barrier to other wealth-building activities such as homeownership and entrepreneurship.

VII. Conclusion

Rather than lifting people out of poverty and providing access to the middle class, student debt is further entrenching the racial wealth gap and perpetuating the cycle of poverty that results from systemic lack of access to resources, capital, and affordable credit. Our short-sighted approach is leaving jobs unfilled, money wasted, and human potential squandered, threatening our national security and economic well-being.⁹⁴ With \$1.5 trillion in student debt and with defaults on the rise, good servicing is vital.

In 2008, we saw firsthand that individuals and taxpayers are left paying the bill when we fail to hold industry accountable for complying with basic rules of the road. The student loan debt crisis is on track to decimate our economy and our communities in much the same way the mortgage crisis did. Reforming the student loan servicing and collection system could have a major impact on the ability of students to achieve financial security, the core intent of our student loan and higher education system. Skillful student loan servicing could convert distressed loans into stable repayment plans that generate revenue and enable borrowers to contribute to stronger, more stable communities. Ineffective servicing can produce the opposite results. Rather than repeat mistakes from the mortgage crisis, we should learn lessons from that experience and work to achieve a sounder and more effective student loan system today.

⁹⁴ Council on Foreign Relations. 2012. "U.S. Education Reform and National Security," Independent Task Force Report vol. 68. Available at https://cfrd8-

files.cfr.org/sites/default/files/report_pdf/TFR68_Education_National_Security.pdf.

TESTIMONY OF HASAN MINHAJ

A \$1.5 TRILLION CRISIS: PROTECTING STUDENT BORROWERS AND HOLDING STUDENT LOAN SERVERS ACCOUNTABLE

09/10/19

THANK YOU SO MUCH. I WANT TO THANK CHAIRWOMAN MAXINE WATERS FOR THE OPPORTUNITY TO TESTIFY. AND I'D LIKE TO THANK RANKING MEMBER PATRICK MCHENRY FOR QUIETLY TOLERATING IT.

LADIES AND GENTLEMEN, MY NAME IS HASAN MINHAJ.

CHAIRWOMAN WATERS INVITED ME TO SPEAK TODAY BECAUSE I HOST A SHOW ON NETFLIX CALLED "PATRIOT ACT." WE RECENTLY DID AN EPISODE COVERING THE STUDENT LOAN CRISIS, AND IT REALLY HIT HOME WITH OUR AUDIENCE. AND IT'S PROBABLY BECAUSE 44 MILLION AMERICANS OWE MORE THAN 1.6 TRILLION DOLLARS OF STUDENT LOAN DEBT.

IN FACT, THE DAY WE SHOT OUR EPISODE, WE SURVEYED OUR STUDIO AUDIENCE — WHICH IS ONLY ABOUT 200 PEOPLE — THAT ROOM ALONE HAD OVER 6 MILLION DOLLARS OF STUDENT DEBT. GRANTED MY AUDIENCE IS MAINLY ASIAN DENTAL STUDENTS. BUT STILL. THAT'S A LOT.

NOW I HAVE A CONFESSION TO MAKE. I WAS EXTREMELY LUCKY TO LEAVE SCHOOL WITHOUT DEBT BECAUSE I HAVE IMMIGRANT PARENTS, AND THEY FORCED ME TO LIVE AT HOME DURING COLLEGE. SO I DON'T HAVE CRIPPLING FINANCIAL DEBT. I HAVE CRIPPLING EMOTIONAL DEBT. AND CONGRESS HAS YET TO DO ANYTHING ABOUT THAT.

BUT YOU DON'T NEED TO BE DROWNING IN DEBT TO UNDERSTAND THAT THIS ISSUE IS SIDELINING MILLIONS OF AMERICANS. MARRIAGE. KIDS. HOMEOWNERSHIP. AND RETIREMENT ARE ALL BEING PUT ON HOLD BECAUSE OF THIS CRISIS.

ESPECIALLY FOR MY GENERATION. GROWING UP, IT WAS DRILLED INTO OUR HEADS, "YOU NEED TO GET A COLLEGE EDUCATION TO GET A MIDDLE CLASS JOB." WE EVEN TELL KIDS TODAY, "IF YOU DON'T GO TO COLLEGE, YOU MIGHT AS WELL GET A FACE TATTOO. AND WE ALL CAN'T BE POST MALONE." AND IT'S TRUE! 2/3 OF ALL JOBS IN AMERICA REQUIRE SOME COLLEGE OR A BACHELOR'S DEGREE. THIS IS THE STANDARD NOW. BUT THAT WASN'T THE CASE WHEN YOU WENT TO COLLEGE. AND BY YOU, I MEAN THE MEMBERS OF CONGRESS ON THIS COMMITTEE. MOST OF YOU GREW UP IN A TIME WHEN MIDDLE CLASS JOBS DIDN'T REQUIRE A BACHELOR'S.

AND YOU ALL PAID FAR LESS FOR YOUR DEGREES. COLLEGE HAS BECOME TWO TO THREE TIMES MORE EXPENSIVE. IN THAT SAME PERIOD, WAGES HAVE ONLY GONE UP ABOUT 16 PERCENT. PEOPLE AREN'T MAKING MORE MONEY AND COLLEGE IS WAY MORE EXPENSIVE.

WE'VE PUT UP A PAYWALL TO THE MIDDLE CLASS. AND IF THERE'S ONE THING AMERICANS HATE — IT'S PAYWALLS. THAT'S WHY WE PUT OUR ENTIRE SHOW FOR FREE ON YOUTUBE. BECAUSE WE CARE ABOUT THE VIEWERS. ALSO, BECAUSE YOU CAN'T FIND ANYTHING ON NETFLIX. I'M SORRY, I'M NOT JUST GONNA TALK INTO MY ROKU REMOTE, "ROKU: PLAY SANTA CLARITA DIET."

BUT DESPITE THESE NUMBERS, WE KEEP HEARING THE SAME TALKING POINT: "IF STUDENT BORROWERS JUST TOOK MORE 'PERSONAL RESPONSIBILITY,' THEY WOULDN'T BE IN THIS PREDICAMENT." BUT THEY'RE TRYING TO GET AHEAD BY DOING THE MOST RESPONSIBLE THING THEY CAN — INVEST IN EDUCATION.

AND YET MANY OF THEM ARE TREATED LIKE DEADBEATS BECAUSE THE GOVERNMENT IS PUTTING THEIR FINANCIAL FUTURES IN THE HANDS OF PREDATORY, FOR-PROFIT, LOAN SERVICERS. COMPANIES LIKE NAVIENT GIVE BORROWERS TERRIBLE CUSTOMER SERVICE AND PUSH THEM INTO REPAYMENT PLANS THAT ADD BILLIONS IN INTEREST TO THEIR LOANS.

AND THE WORST PART IS — YOU DON'T EVEN GET TO CHOOSE YOUR LOAN SERVICER. THE DEPARTMENT OF EDUCATION CHOOSES ONE FOR YOU. SO THERE'S NO COMPETITION TO FORCE THESE COMPANIES TO PROVIDE BETTER SERVICE.

LOOK — THE DECK IS STACKED AGAINST BORROWERS IN WAYS IT WASN'T EVEN 10 OR 15 YEARS AGO. WHY ARE WE PUNISHING STUDENT BORROWERS? WHY AREN'T WE GIVING THEM BASIC PROTECTIONS?

AT THE VERY LEAST, WHY CAN'T WE TREAT OUR BORROWERS THE SAME WAY WE TREAT OUR BANKS? BECAUSE 44 MILLION AMERICANS --- THAT'S TOO BIG TO FAIL.

IN A COUNTRY THIS WEALTHY, ANY AMERICAN SEEKING HIGHER EDUCATION SHOULD NEVER HAVE TO GO BANKRUPT, THEY SHOULD NEVER BE PREYED UPON, AND THEY SHOULD NEVER HAVE TO LIVE WITH MY PARENTS.



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Testimony of Persis SiChing Yu, National Consumer Law Center Before the U.S. House of Representatives Committee on Financial Services regarding "A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable" September 10, 2019

Introduction

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee on

Financial Services, thank you for inviting me to testify today regarding how to protect student

borrowers and hold student loan servicers accountable. I offer my testimony here on behalf of the

low-income clients of the National Consumer Law Center (NCLC).1

At NCLC, I direct the Student Loan Borrower Assistance Project. Our Project's policy

and advocacy efforts derive from our direct legal representation of low-income clients in

Massachusetts. These clients seek our assistance because they are struggling with student loan

debt. Through our client work, we see and hear the human toll of the tattered student loan safety

net. In addition to our work in Massachusetts, we consult with advocates across the country

¹ The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. Since 1969, we have worked with thousands of legal services, government, and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC's Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates, and provides direct legal representation to student loan borrowers. We work with other advocates across the country representing low-income clients. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable. See the Project's website at www.studentloanborrowerassistance.org.



representing borrowers—many with complaints against student loan servicers. Student loan borrowers are desperately in need of clear and enforceable consumer protection laws like those before the Committee today.

Draconian Consequences of Student Loan Default

Currently, nearly 45 million people in the United States owe more than \$1.5 trillion on their student loans. Roughly a quarter of federal loan borrowers are delinquent or in default.² Vulnerable students who—like our clients—pursue education to better their lives and better provide for their families face severe consequences if they default on federal student loans.

Loan servicers, which are lenders themselves or are hired by lenders, play a critical role in determining whether student loan borrowers succeed in repayment or experience default. In addition to communicating with borrowers about their loan repayment benefits and options, servicers are responsible for helping borrowers to access those options, processing payments, and assisting with problems. In this role, servicers wield substantial power over borrowers' financial stability.

For example, when borrowers miss out on affordable repayment options or have payments misapplied, it can damage borrowers' credit histories, increasing the cost of access to further credit and potentially erecting barriers to accessing employment and housing. As the Consumer Financial Protection Bureau (CFPB) aptly explained in its 2015 report on student loan servicing, "the consequences of borrowers' failure to satisfy an obligation can be particularly injurious" for those borrowers who have limited credit history.³ Consequences can extend beyond traditional lending because "consumer credit profiles serve as a precondition to

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 ² See U.S. Dep't of Educ., Federal Student Aid, Data Center, Federal Student Loan Portfolio; see also, Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input and Recommendations for Reform (Sept. 2015).
 ³ Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input 140-141 (Sept. 2015).

employment, housing, and access to credit, and consequently, servicing errors can have spillover effects on many other aspects of borrowers' lives and livelihoods."⁴

These devastating consequences of default are intensified for federal student loan borrowers. The federal government has collection powers against defaulted student loan borrowers that far exceed the collection powers of most unsecured creditors. Wielding these coercive tools, the government often siphons thousands of dollars from borrowers already experiencing financial distress. The government can garnish a borrower's wages without a judgment, seize tax refunds (including the Earned Income Tax Credit),⁵ and seize portions of federal benefits such as Social Security.⁶ The amount the government seizes using these tools often is far greater than what the same borrowers would have been required to pay under an income-driven repayment (IDR) plan. These punitive collection activities often push low-income households to or over the financial brink.

Racial disparities in default rates disproportionately expose borrowers of color to these government offsets and other damaging debt collection practices. The impact of the Department's default collection tools extends beyond borrowers' immediate families and into their surrounding communities. Research by the Washington Center for Equitable Growth found that zip codes with higher shares of African Americans or Latinos, including many communities that are already economically disadvantaged, show much higher delinquency rates on their student loans.⁷ The government's collection practices have the disastrous effect of systematically

⁴ Id.

⁵ See Appendix A; Persis Yu, NCLC, Voices of Despair: Student Borrowers Trapped in Poverty When Government Seizes Their Earned Income Tax Credit Report (Mar. 2018).

⁶ NCLC, Student Loan Law Ch. 9 (5th ed. 2015), *updated at* www.nclc.org/library. See also, Persis Yu, NCLC, Pushed into Poverty: How Student Loan Collections Threaten the Financial Security of Older Americans (May 2017).

³ Marshall Steinbaum and Kavya Vaghul, Washington Center for Equitable Growth, How the Student Debt Crisis Affects African Americans and Latinos (Feb. 17, 2016).

stripping wealth from communities of color through the above-mentioned seizures of cash, as well as the imposition of huge collection fees.

Even borrowers who avoid default and repay their debts can face additional charges if they fall behind on their payments at any point. This can require further sacrifices to pay the monthly bills, dampening consumption and hindering the economy as a whole.⁸ Research by the Federal Reserve Bank of New York suggests that burdensome student loan debt is causing borrowers to delay homeownership and live with their parents longer.⁹ For borrowers facing financial hardship, competent and accurate servicing can be the difference between missing a payment and staying on track.

Widespread Servicer Misconduct Threatens 45 Million Student Loan Borrowers

The scale of the federal student loan servicing industry and the impacts of its actions are vast. Americans now owe more in student loan debt than they do for auto loans, credit cards, or any other non-mortgage debt.¹⁰ Federal data shows that almost a quarter of the nearly 45 million student loan borrowers are in distress on their loans.¹¹

Unfortunately, the servicing system has become so confusing that an entire industry of for-profit "debt relief" companies has sprung up to supposedly deliver what the free government servicers are failing to provide. Borrowers run the risk not only of paying exorbitant fees to these companies, but also of losing important rights.¹²

Contrary to claims by servicers, U.S. Department of Education regulations on servicer

⁸ U.S. Dep't of Treasury, Press Center, Remarks of Deputy Secretary Raskin at the University of Maryland-Baltimore County (Apr. 29, 2014), https://www.treasury.gov/press-center/press-releases/Pages/j12374.aspx.
⁹ Zachary Bleemer, Meta Brown, Donghoon Lee, Katherine Strair, & Wilbert van der Klaauw, Echoes of Rising Tuition in Students' Borrowing, Educational Attainment, and Homeownership in Post-Recession America, Federal Reserve Bank of New York Staff Reports, no. 820 (July 2017).

¹⁰ See Fed. Reserve Bank of N.Y., Household Debt and Credit Report: Q1 2018 (May 2018).

 ¹¹ See U.S. Dep't of Educ., Federal Student Aid, Data Center, Federal Student Loan Portfolio; see also, Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input and Recommendations for Reform (Sept. 2015).
 ¹² See Deanne Loonin and Jillian McLaughlin, NCLC, Searching for Relief: Desperate Borrowers and the Growing Student Loan 'Debt Relief' Industry (June 2013).

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behavior are far from robust, and historically, its enforcement of borrower protections has been woefully insufficient. Upholding and improving federal consumer protection laws has never been more crucial. Record numbers of Americans struggle to afford their student loans, and many needlessly suffer long-term and irreparable harm from servicer misconduct, abuses, and deception. Servicers must be accountable for their actions and to the taxpayers who handsomely compensate them.

With the assistance of a competent and efficient servicer, financially distressed borrowers may avoid default by accessing flexible repayment plans, loan cancellation programs, or deferments or forbearances (which temporarily stop payments) that are appropriate for their circumstances. Unfortunately, as has been extensively documented, the student loan servicing industry has long been rife with misconduct. The four largest servicers of federal student loans have a documented history of "widespread servicing failures" that "create obstacles to repayment, raise costs, cause distress" and "driv[e] borrowers to default."¹³

In April 2017, the Consumer Financial Protection Bureau (CFPB) released a report detailing complaints filed by student loan borrowers working to repay their student loans. Specifically, borrowers and other stakeholders reported experiencing:

- A wide range of sloppy, patchwork practices by servicers that create obstacles to repayment, raise costs, cause distress, and contribute to driving struggling borrowers to default.
- Difficulty enrolling and staying in income-driven repayment plans including processing delays, inaccurate denials, lost paperwork, and insufficient information or guidance.
- · Confusion about their progress toward Public Service Loan Forgiveness programs. After

¹³ Consumer Fin. Prot. Bureau, CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers (Sept. 29, 2015).

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years of making payments, some borrowers learn that their loans are not enrolled in a qualifying repayment plan, even though they have told their servicers that they were pursuing Public Service Loan Forgiveness.¹⁴ As one private student loan borrower's complaint to the CFPB's Complaint Database

illustrates, borrowers experience challenges not only with ensuring the proper allocation of

payments, but also in attempting to resolve disputes:

Navient regularly and consistently fails to appropriately apply my student loan payments. I have XXXX loans ; XXXX are paid for by my cosigner, XXXX are paid for by me. I can't use their Autopay system (which I 'm assured works better) because they have previously withdrawn large sums of money without authorization. Instead we send payments with notes regarding which chunk of loans are to be paid with each payment. about every 6 months this system fails, and we have to start again explaining to many staff members how the money is to be applied. They typically tell me I have failed to make a payment (even though I can see it on my account website), they threat me with late fees and collections agencies... I have spoken repeatedly to their Consumer Advocate office to no avail....

In the federal loan context, servicing issues prevent borrowers from being able to access

many of the benefits offered by the Higher Education Act (HEA), which governs the federal

student loan program. IDR is the umbrella term for the various affordable loan repayment

options. IDR plans require borrowers to pay only a set percentage of their income toward their

student loan bills, and can require a small or even zero dollar monthly payment from the

borrower.¹⁵ Remaining on an IDR plan provides the borrower with sustainable loan repayment

and a path to forgiveness of any remaining balance after twenty or twenty-five years of IDR

payments.16

 ¹⁴ Consumer Fin. Prot. Bureau, CFPB Monthly Snapshot Spotlights Student Loan Complaints (Apr. 2017).
 ¹⁵ 20 U.S.C. §§ 1087e(d)(1)(E) (applicable to Direct Loans), 1098e (FFEL). See 34 C.F.R. §§ 682.215 (FFEL), 685.221 (Direct Loan).
 ¹⁶ Id.

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This year marked the 25th anniversary of the first IDR plan: the Income-Contingent Repayment Plan (ICR). This means that student loan borrowers who entered ICR in 1994 should begin receiving loan forgiveness for completing 25 years of qualifying payments. Because of changes in IDR repayment options, borrowers originally enrolled in ICR who have not yet completed 25 years of payments can achieve forgiveness sooner or immediately by switching to the Revised Pay As You Earn (REPAYE) plan, which has a shorter repayment period for some borrowers. Despite the fact that forgiveness has been a potential option for some borrowers since REPAYE was implemented in late 2015, initial numbers indicate that fewer than 20 borrowers have utilized this option. This raises questions about whether borrowers are truly going to be able to access forgiveness under IDR. NCLC has submitted a Freedom of Information Act request to the Department of Education seeking data to determine the barriers keeping federal student loan borrowers from receiving the forgiveness to which they should otherwise be entitled.¹⁷

Despite the abundant benefits to the financial health of borrowers and their families, IDR programs remain consistently inaccessible for many borrowers, with documented low levels of participation by eligible borrowers.¹⁸ Problems with enrolling and renewing borrowers in IDR plans are particularly prevalent. Entering a borrower into an IDR plan is time-intensive and expensive for servicers, so servicers fail to invest resources in ensuring that borrowers understand and successfully access the most affordable and sustainable repayment plan. Instead, servicers steer many borrowers into forbearances and deferments, which are profitable for the servicer and costly to the borrower. Some servicers have misrepresented that borrowers have no other repayment options.

¹⁷ See Appendix B.

¹⁸ U.S. Gov't Accountability Office, Federal Student Loans: Education Could Do More to Help Ensure Borrowers are Aware of Repayment and Forgiveness Options, Report No. GAO-15-66 (Aug. 2015).

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An NCLC client had this experience as she struggled to afford her student loan payments after completing a medical assistant program at a local for-profit school. Every year, she dutifully contacted her servicer and submitted documentation of her financial hardship. Despite clear eligibility for a zero dollar payment, she was never enrolled in an IDR plan. When this borrower came to NCLC, she had never even heard of IDR options. Instead, each year when she called her servicer to discuss her financial situation and options, she was directed into a number of forbearances. She remained in good standing on her loan, due to her extreme diligence. However, by steering her towards forbearance, the servicer's actions wasted years she could have spent in an affordable repayment plan, working toward the eventual resolution of her loan.

Our client's experience is far from unique, and state enforcement actions targeted at this type of misbehavior tell similar stories. Several state attorneys general (including those from California, Illinois, Massachusetts, Pennsylvania, and Washington) and the CFPB have sued servicers for similar failures related to enrolling borrowers in IDR.¹⁹

In 2016, the U.S. Government Accountability Office (GAO) estimated that a borrower owing \$30,000 in federal loans who spent three years in a forbearance would pay \$6,742 more than a borrower on a 10-year standard repayment plan who did not spend any time in forbearance.²⁰ The GAO further stated that encouraging "forbearance over other options that may be more beneficial, such as [IDR] plans," will continue to place some borrowers "at risk of

¹⁹ See Consumer Fin. Prot. Bureau v. Navient Corp., 2017 WL 3380530 (M.D. Pa. Aug. 4, 2017); Press Release, Att'y Gen. of Cal., Attorney General Becerra Charges Navient Corporation, Largest Student Loan Servicer, with Deceitful Practices and Debt-Collection Misconduct in Lawsuit (June 28, 2018); Press Release, Att'y Gen. of Penn., Attorney General Shapiro Sues Nation's Largest Student Loan Company for Widespread Abuses (Oct. 5, 2017); Press Release, Att'y Gen. of II., Attorney General Madigan Sues Navient And Sallie Mae For Rampant Student Loan Abuses (Jan. 18, 2017); David Gutman, State AG Sues Student Loan Company, Alleging Unfair And Deceptive Practices, Seattle Times (Jan. 18, 2017); Press Release, Att'y Gen. of Mass., AG Healey Secures \$2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer (Nov. 22, 2016).
²⁰ U.S. Gov't Accountability Office, Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight: Highlights, Report No. GAO-16-523, 19 (May 16, 2016).

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incurring additional costs without any long-term benefits."²¹ Borrowers also experience problems staying in IDR plans. Research from the Department of Education revealed that more than half of borrowers in IDR plans did not complete their annual recertification on time, which can lead to a dramatic increase in payment amount, and ultimately default.²²

Importantly, servicer misconduct is not limited to issues regarding borrowers' access to income-driven repayment. Statutory discharges (or cancellations) provide the most powerful remedies for federal student loan borrowers. They offer complete relief as opposed to simply reducing the monthly payment or delaying the repayment obligation.²³ However, many borrowers struggle to access these beneficial loan cancellation programs.

For example, one of my former clients borrowed federal loans to attend the American Career Training Travel School (ACCTS). The school's owners were accused of fraudulently obtaining \$153 million in federal student loans.²⁴ According to U.S. Senate testimony, from 1986 through 1989, 90 percent of students enrolled in the travel school received federal aid, but only 16 percent completed their courses.²⁵ Based upon the "complex issues surrounding" this particular school's closure, the Department of Education published a Dear Colleague letter in 1997, alerting servicers and lenders that it had expanded the eligibility criteria for closed school discharges for student who attended this school.²⁶ Yet, despite reaching out to his loan servicer several times, my client never learned about the possibility of a closed school discharge. Instead, he defaulted on his loans and his wages and tax refunds were repeatedly seized. When he

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²¹ Id. at 20

²² U.S. Dep't of Educ., Negotiated Rulemaking for Higher Education 2015 - PAYE Session 2, Sample Data on IDR Recertification Rates for ED-Held Loans (2015),

https://www2.ed.gov/policy/highered/reg/hearulemaking/2015/paye2-recertification.pdf. ²³ NCLC, Student Loan Law Ch. 10 (5th ed. 2015), updated at www.nclc.org/library.

 ²⁴ Ken Cummins, "Senate Panel: Pompano School Misused Loans," South Florida Sun-Sentinel, Feb. 27, 1990.
 ²⁵ Id.

²⁶ U.S. Dep't. Of Educ., Dear Colleague Letter 97-G-300 (July 1997).
homeless shelter. With one simple form, we were able to stop the coercive debt collection. relieve him of the obligation to repay, and recover thousands of dollars that this client had paid on the loans. Competent, more student-oriented servicing would have prevented this tragedy.

A civil legal aid organization in California assisted a borrower who attended a longdefunct for-profit college nearly three decades ago. This borrower met the eligibility criteria for a false certification discharge, and the legal aid program helped her apply. However, the servicer denied the discharge because the Spanish-speaking borrower submitted an expired Spanishlanguage discharge application. She submitted that version of the application because the Department of Education had not produced a new Spanish-language version. In fact, the Department of Education directs all federal loan servicers to continue accepting expired forms until new versions of the forms become available.²⁷ Ultimately, with the assistance of the legal services office, this client prevailed after an informal appeal to the Department of Education.

Servicing errors have also caused thousands of teachers to have their TEACH Grants (federal grants given to encourage teachers to work in high need areas) converted into Federal Direct Loans. Data obtained by Public Citizen, Inc., through a Freedom of Information Act request demonstrates that one servicer hired by the Department of Education to oversee the TEACH Grant program appeared to have erroneously converted more than 15,000 TEACH Grants to loans, amounting to an error rate of 38 percent among all conversions.²⁸ Significant problems with respect to erroneous conversions have continued under a successive servicer as well.29

The student loan system is complex and borrowers need competent servicers to help them

²⁷ See e.g., U.S. Dep't of Educ., Fed. Student Aid, Electronic Announcement: Revision of the Federal Student Loan Discharge Applications (Jan. 29, 2019). ²⁸ Danielle Douglas-Gabriel, "This situation . . . made my first four years of teaching so much harder": How a grant

 ²⁹ See Cory Turner and Chris Arnold, Dept. of Education Fail: Teachers Lose Grants, Forced To Repay Thousands

In Loans, Nat'l Public Radio, Mar. 28, 2018.

navigate their options. Unfortunately, the servicers, who are paid hundreds of millions of dollars by taxpayers, are failing to consistently provide that service, and borrowers are the ones to suffer the consequences.

Need for Clear and Enforceable Federal Consumer Protections

There are few laws specifically governing student loan servicer conduct for either federal or private loans. The absence of clear borrower protections contrasts with other consumer credit areas such as credit cards and mortgages. In its October 2013 report, the CFPB pointed to protections in the Real Estate Settlement Procedures Act (RESPA) for mortgages and the Credit CARD Act and the need to examine whether these types of reforms could apply to the student loan servicing market.³⁰

The CFPB pointed out that some of the provisions in mortgage servicing rules that could apply to student loan servicers include notice of transfer of loan servicing, timely transfer of documents to new servicers, payoff statements, error resolution and dispute review procedures, continuity of contact, records retention, and early intervention for borrowers nearing default.³¹

In April 2019, *The New York Times* highlighted one of the problems keeping borrowers from accessing public service loan forgiveness: errors in the count of their qualifying payments.³² In order to verify the number of qualifying payments and to ensure that servicers are counting payments properly, borrowers need to have access to a full and complete payment history. Unfortunately, borrowers do not currently have easy access to this information. Borrowers are able to get basic information about their federal loans from the National Student Loan Data System, but it does not provide payment level data.

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 ³⁰ Consumer Fin. Prot. Bureau, "Annual Report of the CFPB Student Loan Ombudsman" (Oct. 16, 2013).
 ³¹ Id.
 ³² Ron Lieber, "Your Student Loan Servicer Will Call You Back in a Year. Sorry.," N.Y. Times, Apr. 12, 2019.

The student loan servicers should have payment records, but the extent to which they make this information available to borrowers varies widely.³³ Mortgage servicers are required to provide borrowers with information within 30 days of a qualified written request, but there is no federal statute requiring a student loan servicer to give the borrower information like that contained in a payment history.

NCLC has been attempting to obtain a complete payment history for one of our clients since February. Like so many other borrowers working in public service, she believes that her servicer miscounted the number of payments she has made which could qualify for public service loan forgiveness. According to *The New York Times*, some borrowers in this situation are told that it could take up to a year to resolve these counting errors.³⁴

On the federal loan side, there are some explicit due diligence regulations, but only for Federal Family Education Loan (FFEL) Program loans and Perkins loans. These regulations require lenders and servicers to engage in certain activities, depending on how long the borrower has been delinquent. There are no such regulations for Direct Loans and the regulations that do exist do not do enough to protect borrowers. The Department of Education states that at least some of the FFEL provisions were incorporated into its contracts with Direct Loan servicers. However, borrowers rarely know about those rights.

In general, the Department of Education states in the contracts that it does not intend to provide additional service-level requirements, but it does expect "best of business practices" to be deployed.³⁵ Servicers are also required to meet "all statutory and legislative requirements."³⁶ The problem is that contractually provided incentives alone fail to set standard and transparent

 ³³ See Persis Yu, NCLC, Student Loan Forgiveness Cannot Work Without a Right to a Payment History (May 22, 2019), available at https://protectborrowers.org/qualifying-payments/.
 ³⁴ Lieber, supra note 31.

 ³⁵ U.S. Dep't of Educ., Fed. Student Aid, Solicitation Number: FSA-TitleIV-09-D-0014, Attachment A-1(June 17, 2009).
 ³⁶ Id.

borrower protections. Further, the lack of enforcement by the Department of Education combined with limited borrower rights to enforce protections means that servicers are largely unaccountable when they fail to provide quality service or violate applicable law.

Few student loan borrowers have the ability to seek redress when servicers violate their rights. Those who are able to find a lawyer to assist them still face an uphill battle because the HEA provides no explicit private right of action to student loan borrowers who seek to enforce disclosure requirements or challenge a servicer's failure to comply with other obligations set out in federal law. Borrowers can raise state law claims, including those based on fraud and misrepresentation, but servicers assert that these claims are preempted by the HEA.

Even though student loans are the second largest credit market in the country, there is a dearth of clear and enforceable consumer protections for student loan borrowers. Fairness and justice require that borrowers have the ability to enforce their rights when breached by servicers. **Private Student Loans and Distressed Borrowers**

Private student loan borrowers are generally at the mercy of their creditors. In our experience representing borrowers in financial distress, most lenders, including non-profit lenders, have not been willing to cancel or modify loans or offer reasonable settlements. Unlike the federal student loan programs, there is no comprehensive federal law requiring private student lenders to offer particular types of relief or flexible repayment. As will be discussed in greater detail in this section, private loan borrowers often experience a lack of flexible repayment options, limited refinance options, and few cancellation options for the most vulnerable borrowers.

Lack of Flexible Payment Options

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Private student loan borrowers need flexibility to prevent and address delinquency and default. Loan modifications that enable a borrower to make payments on a loan rather than defaulting are in both the borrowers' and the lenders' best interests. But the CFPB found in its July 2012 report that the lenders in its sample did not currently offer loan modification programs.³⁷

Modifications may lead to lost revenues for lenders, but in many cases the losses will be much greater if the servicer refuses assistance. Many borrowers we hear from are living in extreme poverty with little or no future earnings prospects. Yet servicers remain largely unaccountable for their dismal performance in making modifications.

In one example, an NCLC client owed approximately \$90,000 in student loans. Half of this balance was due to private loans from three different private lenders. This client has developmental disabilities and, since leaving school, works full time as a waitress. She is currently in an IDR plan for her federal loans, and has worked out a payment arrangement for two of her three private lenders. Unfortunately, her third lender refused to accept any amount less than the full monthly payment of \$200 – which she cannot afford. Because the lender refused to work out a payment arrangement, she is now three years past due on this account.

Though her credit history is not perfect, the past due private student loan is the biggest drag on her credit score. Unfortunately, because she cannot get up to date on this one private loan, it will continue to report a past due balance until it is obsolete. Furthermore, although this lender only sends one bill with one monthly payment, because she took out the loan in three separate disbursements, it is reported on her credit reports as three separate past due accounts.

Few Refinance Options Available

³⁷ Consumer Fin. Prot. Bureau, "Private Student Loans" at 66 (July 20, 2012).

Private lenders' failure to offer relief options is compounded by the lack of reasonable refinancing or consolidation products. To the extent refinance options exist, the products mainly target prime or superprime borrowers and are not available for those who are struggling the most.³⁸ Some of these products even use borrowers' education backgrounds for determining creditworthiness. Use of education data is quite troubling as there are obvious racial differences and disparities in educational attainment.39

When private lenders do make student loan modification products available, many aggressively seek to push borrowers to include federal student loans in private consolidation loans. If borrowers choose this product, they will lose the rights from their federal loans, such as affordable repayment and disability discharges. Some other products allow borrowers to refinance by converting their student loans into a mortgage. While this may allow some borrowers to lower their interest rates or payments, it replaces an unsecured debt with a debt tied to their home, increasing the chances that borrowers will lose their home should they run into financial trouble.

Cancellation Options for the Most Vulnerable Borrowers

Private lenders, including non-profit lenders, rarely cancel student loans or offer reasonable settlements. A few lenders have said they will cancel loans in limited circumstances. For example, at a May 2019 investment conference, Sallie Mae represented that all of its private student loans included a "Student Death & Disability Release."40 Navient also offers a Total and Permanent Disability Discharge, but only for Smart Option Student Loans and College Ave refinance loans. Wells Fargo announced a similar program in December 2010, stating that it

³⁸ Deirdre Fernandes, "The Difficult Task of Qualifying for Student Loan Refinancing," Boston Globe, Aug. 14,

 ³⁹ Aryn Bussey, Educational Redlining? The use of education data in underwriting could leave HBCU and MSI graduates in the dark (July 24, 2019) *available at* https://protectborrowers.org/educational-redlining.
 ⁴⁰ Steve McGarry, Sallie Mae, Presentation at 2019 Barclays Americas Select Franchise Conference (May 14, 2019).

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would require verbal or written notification of a student's permanent and total disability followed by receipt of acceptable documentation.

It is unclear whether lenders administer these policies consistently. Critically, there is also no standard system for disability cancellations for private loans.

A client I worked with prior to joining NCLC was in medical school when she was diagnosed with breast cancer. Though her cancer was in remission, the side effects from treatment left her totally and permanently disabled. Her only income was from Social Security Disability, and barely covered her basic necessities. She had both federal and private loans with Sallie Mae (now Navient) which she attempted to cancel through a disability discharge. Together, we were able to get her federal loans discharged. However, when she applied to have her private loans discharged, Sallie Mae only agreed to forgive the interest portion of her private loans. Though she had established her disability, Sallie Mae continued to collect on her still unaffordable private loans. She received several collection calls a day, causing her stress and anxiety. She died from cancer-related complications about 6 months later.

Forced Arbitration Clauses Deny Private Loan Borrowers Access to Justice

Importantly, even where private student loan borrowers do have rights under state law, they are often prevented from raising those claims in open court because of forced arbitration clauses. For example, a New York borrower brought a case alleging that Citibank, N.A. engaged in a scheme to collect additional interest at the expense of private student loan borrowers. The borrower claimed that Citibank deceived them into believing that their monthly payments had been reduced because of an interest rate reduction, when in fact, the majority of the payment

reduction was due to a reduction in the amount of principal being repaid each month. The court granted Citibank's motion to compel arbitration and, therefore, dismissed the case.⁴¹

Arbitration clauses deprive people of their day in court when a company violates the law, forcing victims into a system that is often biased, secretive and lawless. Interestingly, a 2014 article in American Banker reports that consumers saw no increase in credit card prices after Bank of America, JPMorgan Chase, Capital One, and HSBC dropped their forced arbitration clauses as a result of litigation.⁴² Similarly, mortgage rates did not increase after Congress banned forced arbitration in mortgages.43

There is significant data showing that forced arbitration hides misconduct and blocks accountability for wrongdoers. A 2015 CFPB study found that arbitration clauses are extraordinarily prevalent, almost always include class action waivers, and effectively squelch consumer claims.44 Forced arbitration clauses have prevented hundreds of valid class actions from getting off the ground and have deprived consumers of a number of important remedies that are often available in class adjudication, including injunctive relief to halt corporate wrongdoing.45

Responsible companies obey the law, and own up to their mistakes if things go wrong. Forced arbitration clauses prevent private student loan borrowers who have been harmed by abusive servicing from getting the relief they deserve and shield companies that harm consumers from being held accountable.

Conclusion

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⁴¹ Kuehn v. Citibank, N.A., 2012 WL 6057941 (S.D.N.Y. Dec. 6, 2012).

⁴² Adam J. Levitin, "BankThink: Mandatory Arbitration Offers Bargain-Basement Justice," American Banker, May 13, 2014. ⁴³ *Id.*

⁴⁴ Consumer Fin. Prot. Bureau, CFPB Finds Few Consumers File Arbitration Cases (Dec. 12, 2013).

⁴⁵ NCLC, Consumer Arbitration Agreements § 1.4 (7th ed. 2015), updated at www.nclc.org/library.

The problems facing individual borrowers are often symptoms of systemic problems to which systemic responses are required.

High-quality, borrower-centric servicing is essential to improving student loan outcomes, but is often overlooked in policy debates. If the servicer is competent and efficient, many financially distressed borrowers will be able to avoid default by accessing affordable repayment plans, statutory discharges, or deferments or forbearances appropriate for their circumstances.

The reality of the current servicing system, unfortunately, is far from this ideal. Unfortunately, as many of the problems detailed demonstrate, too many borrowers never access the options that could relieve their debt burdens and help them make fresh starts in life. Borrowers experience a range of problems in the student loan servicing industry, including a range of issues with payment processing, communications, and accessing affordable repayment options or loan cancellation programs. These problems threaten the financial security of some of the most vulnerable student loan borrowers and keep borrowers from fully participating in the economy.

Accountability is critical to ensuring that borrowers receive quality servicing. Borrowers need real rights and consumer protections and they need legal tools to enforce those protections.

Thank you for the close attention you are paying to the student loan servicing market, for the bills you are considering today, and for the opportunity to provide this testimony. I look forward to your questions.

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Appendix A



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ABOUT THE NATIONAL CONSUMER LAW CENTER



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

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VOICES OF DESPAIR: STUDENT BORROWERS TRAPPED IN POVERTY WHEN THE GOVERNMENT SEIZES THEIR EARNED INCOME TAX CREDIT

The U.S. Treasury is seizing Earned Income Tax Credit (EITC) refund checks from the working poor to repay student loans that are in default, and the consequences on working families are devastating.

The government's policy of seizing federal student loan borrowers' EITC runs counter to almost every goal Congress set for the EITC¹ and its student loan programs. These programs were designed to support economic mobility and achievement of financial stability for low-income Americans working towards a better future, and to help lift future generations out of poverty.

When the federal government seizes EITC refund checks from student loan borrowers in distress, it does the opposite—too often trapping low-income families in poverty by making it harder to access work, stable and safe housing, and to pay for basic necessities and medical care. Worse, the main victims of EITC seizures are children, since by far the largest EITC payments go to families with children, and the confiscation of these vital funds can have a dramatic impact on children's well-being.

What is the EITC?

The Earned Income Tax Credit (EITC) is an anti-poverty government program that provides crucial support to low-income working families. A taxpayer's EITC is calculated as a fixed percentage of earnings until the credit reaches a maximum amount. The credit is fully refundable, meaning that if a family's EITC is greater than its income tax liability, the excess is paid as a tax refund. The amount of the EITC varies based on a recipient's income, marital status, and number of children. By design, the EITC provides substantially more support for families with children,

This policy also compounds the harms borne by low-income borrowers, who in many cases were denied the promised benefits of education: they were lured in to attend a fraudulent school or a school that closed in mid-course, or life circumstances forced them to leave the

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Voices of Despair

school before completing the course of study. Systemic obstacles, a lack of effective support, and abusive practices often precede a borrower's default.

Researchers have found the Earned Income Tax Credit, which enjoys bipartisan support, has boosted employment among single mothers and reduced reliance on welfare.

In January 2018, the National Consumer Law Center asked student loan borrowers2 who had their EITC seized to share their stories and to tell us what they planned to do with their tax credit. This report

highlights some of the common themes from borrowers and shows the devastating impact of confiscating these funds from low-income working families.³

We have shared borrowers' stories, unedited and in full, in the final section, "In Their Own Words: Borrower Stories."

THE EITC MAKES WORKING POSSIBLE

The EITC has been lauded by Republicans and Democrats alike as one of the federal government's most successful job-creation and anti-poverty programs.⁴ In particular, the EITC has had a positive effect on the workforce participation of single mothers.5 One study found that EITC expansions were responsible for 34 percent of the increase in employment among single mothers between 1993 and 1999.6 In addition to encouraging employment, the EITC has led to a decline in welfare use.7

One borrower, a struggling single father of twin seven-year olds, described how the seizure of his EITC refund meant that he could not repair his car and so could not get to work:

"I am a struggling single father of twin 7 year olds I work hard for my money and I only make \$11.50 an hour I handle all the bills and all of my children's needs the best that I can but I fell behind on my rent and my car broke down which is my only transportation to work. I was desperately waiting for my taxes and my earned income credit so I could pay my rent and fix my car. All of that was offset due to old student loans now I can't pay my rent or fix my car so I can't go to work. Now me and my kids are probably going to have to move

"I don't understand how it is ethical or Fair to make a family become homeless all because the Department of Education needs my \$7,000 more than my children.'

Single father of twins

into a homeless shelter due to the fact that I can't pay my back rent. And now I

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can't even go to work because I can't fix my car. All of this could have been avoided and I probably still could have paid some money on my loans if all of my money was not seized. I don't understand how it is ethical or Fair to make a family become homeless all because the Department of Education needs my \$7,000 more than my children"

Another borrower wrote:

"I was planning on paying my rent up for a few months as well as get a car so I can continue to get back inforth to work. As well as get my son who is 4 with autism to the doctors office due to he a juvenile arthritis. Now I am unable to do anything because I have no money.i was counting on that money so we can get back on track with bills and rent .. please someone help us before it's to late.."

<u>Other borrowers</u> reported needing the refund in order to secure childcare or to acquire a vehicle in order to avoid a 2 and 1/2 hour daily commute to work.

LOSS OF EITC CAUSES OR EXACERBATES HOUSING AND OTHER FINANCIAL INSTABILITY

One of the most common complaints from borrowers is that losing their tax refund will impact their ability to stay in their home or to move their family into a safe home. Many borrowers reported being behind on rent or utilities and had been relying on their expected refund to get caught up, and to ensure that they could stay in their homes. Some reported feeling unsafe in their current situation and had hopes that their refund would give them the means to move to a safer location. Others reported being homeless or living with relatives and hoping to use the money to obtain stable housing. For many borrowers seeking access to safe housing, having to pay the first and last month's rent, in addition to a deposit, is a key barrier. The EITC, which for tax year 2017 can be as much as \$6,318, can help families overcome that barrier.

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<u>One student loan borrower</u>, a U.S. Army veteran and father of four, described how the seizure of the EITC refund affected his family's housing and financial stability:

ED took our EITC refund

"I am a 2 time US Army veteran and a father to 4 children and a husband to my stay at home wife ******. We are in a section 8 house and on food stamps and Wic. I am applying for my service connection and out of work, our refund for 8,880 Was going to keep us in our home and keep our only car from reposesotion. We transport our kids to and from school. We might loose everything now. ... God help us." "Our refund for 8,880 Was going to keep us in our home and keep our only car from reposesotion, ... We might loose everything now."

- U.S. Army veteran, father of four

<u>A homeless parent with two children</u> had counted on the EITC refund as a way to find stable housing:

"I am homeless, living from hotel to park bench with two children and my tax money was all I had to look forward to, to get my family out of this horrible situation. I am a single parent and both of my parents are deceased thus leaving me with no additional financial help. Now that my refund is gone, I don't know what to do."

A mother who feared for her and her childrens' safety wrote:

"Tax offset is taking the EITC that was to be used for relocatiin of children for safety reasons. I absolutely feel violated and helpless."

Almost every borrower who wrote us described similar desperation.

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THE EITC IS CRITICAL FOR FAMILIES CARING FOR CHILDREN OR OTHER FAMILY MEMBERS

The EITC has had tremendous success in improving outcomes for children, pulling about 3.3 million children out of poverty in 2015 alone and reducing the severity of poverty for another

7.7 million children that year. But seizures of EITC refunds hit low-income children the hardest, and this impact on children was painfully apparent in the stories borrowers shared with us. By design, the EITC provides substantially more support for families with children. The amount of the EITC varies based on a recipient's income, marital status, and number of children.⁸ In 2017, families with one child could receive a credit of up to \$3,400 and families with three or more children could receive up to \$6,318. In contrast workers without children could only receive up to \$510.⁹ Because the EITC is designed to provide significantly more support to families with children,

The EITC has had tremendous success in improving outcomes for children, pulling about 3.3 million children out of poverty in 2015 alone and reducing the severity of poverty for another 7.7 million children that year.

- Center on Budget and Policy Priorities, Policy Basics: <u>The Earned Income Tax Credit</u>

seizing it from student loan borrowers disproportionately takes money away from those with children.

In nearly every single one of the stories, the borrowers echoed how they needed the EITC to provide for their children. <u>One single mother</u> stated:

"I am a single mother struggling to make ends meet. For the past 2 years I've had my taxes taken due to an offset with the Department of Education. ... I have a 5year-old and it is heartbreaking I look forward to getting things he needs and extra things only to learn I am not getting anything back. ... Taking my taxes defeats the purpose. I am a single mother barely surviving. I wanted to speak up for my son. This money is for him to provide for him and get him things for his education that he's getting today.... Please someone help."

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Another parent shared:

"My children and I are now broke struggling , in a shelter, no money"

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MANY BORROWERS NEED THE EITC TO PAY FOR BASIC NECESSITIES

As <u>one borrower pointedly stated</u>:"I have needed my EITC every single year, not for new things or vacations but for necessities." According to the Center for Budget and Policy Priorities, families use the EITC mostly to pay for necessities, repair homes, and maintain vehicles that are needed to commute to work.¹⁰

Many borrowers shared that they were counting on the money to buy clothes and shoes for their growing children. Many people mentioned using the refund to get caught up or ahead on utilities. Some rely on their refund in order to get medical treatment.

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One borrower stated, "I had to cancel surgery because we aren't able to pay \$1500."

A mother of two wrote of her desperation when her EITC was seized:

"My taxes were seized, my company that I work for let us go due to down sizing and not enough work. ... I have been finding low paying jobs that barely pays \$200 every two weeks. I am a divorce mother of two and was expecting to pay rent, utilities, feed my children. ... I have been trying to make it, I have no government assistance, I need help asap."

Another single mother of two wrote: "I can barely afford food for us."

My taxes were seized, my company that I work for let us go due to down sizing and not enough work. ... I have been finding low paying jobs that barely pays \$200 every two weeks. I am a divorce mother of two and was expecting to pay rent, utilities, feed my children. ... I have been trying to make it, I have no government assistance, I need help asap - Single mother of two

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BORROWERS DID NOT RECEIVE NOTICE THAT THEIR REFUND WOULD BE TAKEN

Many borrowers do not know that their tax refund will be taken until it is too late. Although the Department of Education is required to mail the borrower a written notice that it intends to seek the tax offset,¹¹ the addresses it uses are not always current, especially for low-income borrowers who must move frequently, are homeless, or otherwise have unstable housing situations.

Because low-income workers rely on the EITC to make work possible and to meet their financial obligations, when the government seizes borrowers' Earned Income Tax Credits, it makes it harder for those borrowers to pay back their loans.

As one borrower wrote:

"I understand I have student loans but I was not aware of the offset. They sent it to a address that I haven't lived at for over 2 years."

Additionally, if the Department previously sent notice of its intent to offset the borrower's tax refund, the offset may occur again without a new notice.¹² As a result, many borrowers do not get notice and opportunity to remedy their student loans and prevent the offset before it is too late.

Moreover, as reflected in some of the stories we received, even when the borrowers do try to remedy their loans, the offset may still occur. For example, the government has a counterproductive policy of continuing to seize the EITC of borrowers who are actively in the process of restoring their student loans to current repayment status through loan rehabilitation. Through "rehabilitation," a borrower may get a loan out of default by making nine consecutive on-time payments over a period of ten months. The payment amount is determined based on the borrower's income.

<u>One borrower with a young child</u> explained how shortly after she was able to get a full-time job and begin a repayment plan with the Department, she found out that her tax refund was being seized anyway:

"My fiancé, our 2 year old son and 1 have been struggling to get on our feet for about 2 years now. ... we both were finally able to get full time jobs [T]he beginning of January I called the department of education and set up payment

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arrangements to assure that they weren't going to take my refund to which I was told they were not going to take it because I had set them up. Never missed a payment and they took 2 payments from my 1 check to jump start the payments. Called that number today and was told they took it. All 5000 if it."

Because low-income workers rely on the EITC to make work possible and to meet their financial obligations, the government's practice of seizing borrowers' EITC payments while borrowers are in the process of trying to rehabilitate their loans diminishes the likelihood that these borrowers, who are making a good-faith effort to repay their loans, will have the resources to be able to do so.

IT IS TIME TO END EITC SEIZURES FROM DISTRESSED BORROWERS

The National Consumer Law Center has long <u>advocated for an end to the policy of seizing EITC</u> refunds from distressed borrowers, and the borrowers who have shared their stories here cannot afford to wait. The time for action is now.

To address the harms caused by the government's current EITC seizure policies, Congress should pursue a statutory solution for exempting student borrowers' EITC¹³ payments from seizure. In the interim, the U.S. Department of Education should work with the U.S. Treasury to reimburse the seized EITC payments of low-income borrowers

We have shared a sampling of the dozens of borrowers' stories that NCLC received, in full, in the next section, "In Their Own Words: Borrower Stories."

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IN THEIR OWN WORDS: BORROWER STORIES

1. Subject: ED took our EITC refund

I am a 2 time US Army veteran and a father to 4 children and a husband to my stay at home wife ******. We are in a section 8 house and on food stamps and Wic. I am applying for my service connection and out of work, our refund for 8,880 Was going to keep us in our home and keep our only car from reposesotion. We transport our kids to and from school. We offset. might loose everything now. We even signed up for loan repayment (rehab) program 09Feb18. We even have a letter from American student assistance saying they suspended

We even have a letter from American student assistance saying they suspended their offset attempt on 22Feb18, but our entire refund was

- US Army veteran

their offset attempt on 22Feb18, but our entire refund was offset Anyway on the same day we got the letter stating they wouldn't do that, 22Feb18. There is no justice in this situation so far... God help us.

2. Subject: They took my income tax with no warning

They took my income tax return without any notice that it was going to happen. I had no idea it was going to happen and as a single mother of three it cost us our place to live. We are now staying in my car for the next few weeks until I figure something out and they didn't care that I was. I was unable to pay 300 a month on my loans for a college the govt shut down and my credits don't transfer or count towards any degree because they shut it down for fraud. I do however still my income tax. owe my loans regardless. I can't afford to pay them because the college credits didn't count towards any degree to get a - A borrower job to pay them back. So here I am no degree no credits and working for nothing and unable to pay the loans and now

So here I am no degree no credits and working for nothing and unable to pay the loans and now they took

3. Subject: How the offset affects me

they took my income tax.

I have a student loan on default and my wages were getting garnished so i was already expecting to not get any tax return which me being a single parent of 5 kids and one on it's way depend on to catch up on past due bills and buy my kids what i can't buy during the year. Aside from that i lost my job and being 8 months pregnant i can't seem

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to get another so i have nothing to depend on..my landord is being patient but he won't wait forever..i need my taxes they should not be allowed to take 100% of them it's unfair to struggling families like myself.

4. Subject: Tax offset with no notice

My taxes were seized, my company that I work for let us go due to down sizing and not enough work. I made really good money. I have been finding low paying jobs that barely pays \$200 every two weeks. I am a divorce mother of two and was expecting to pay rent, utilities, feed my children. Trying to get a head, so this offset is causing a great loss. I had contacted student loan department and they allowed me to apply for hardship and was approved so, it shows on my credit as well. So I was unaware my money would have been taken. I have been trying to make it, I have no government assistance, I need help asap.

I am a divorce mother of two and was expecting to pay rent, utilities, feed my children. Trying to get a head, so this offset is causing a great loss.

- A borrower

5. Subject: Tax Offset

My fiancé, our 2 year old son and I have been struggling to get on our feet for about 2 years now. This year was the biggest return I've had yet and we were going to use it to finally get a jump start and get our own place. This year has been rough already. Currently staying with my parents, our car slid off the road last month so we were without a car for about 3 weeks. Had to get a another beater with a heater and hope it lasts longer than the last one. But we both were finally able to get full time jobs of course as soon as we are without a car and relying on other ppl to take us to and from work. So the beginning of January I called the department of education and set up payment arrangements to assure that they weren't going to take my refund to which I was told they were not going to take it because I had set them up. Never missed a payment and they took 2 payments from my 1 check to jump start the payments. Called that number today and was told they took it. All 5000 if it.

6. Subject: EITC seized due to Student Loan Debt

I currently owe approximately \$100,000 in federal student loans. I am a divorced mother of 5 children who quit school when my marriage failed in 2011. Since, I have been struggling to support my family. I work every day and file my taxes for them to take my

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return every year. I receive no child support and receive no financial assistance from the government because I supposedly make too much. But I make so little and support so many that I can't afford a repayment option even if they gave It's a sad and disgusting way to it to me. I have needed my EITC every single year, not for new force someone into poverty. things or vacations but for necessities. I have no credit card debt, I have a 2003 vehicle that is currently in the shop with a - A borrower \$500 bill waiting for me next week, propane to heat my extremely modest home in the country. Every single year my money is stolen from me, for debts dating back 13 years, and evidently will be until I can't claim my children as dependents anymore. It's a sad and disgusting way to force someone into poverty.

7. Subject: Refund intercepted

Mother of 3. Was planning on using my refund to repair my vehicle and move into home with enough bedrooms. In December I arranged and began payment plan to get out of default and now I won't see any of my refund.

8. Subject: Tax garnished for defualt on student loans

2015 I had went through a divorce stated using drugs lost my job and owe alot of driving with suspended lisence tickets. I have a child and I wanted to pay my fines and get my lisence possibly a cheap car. I needed my tax return to get me on my feet.

9. Subject: offset dept of education

I am a single mother struggling to make ends meet. For the past 2 years I've had my taxes taken due to an offset with the Department of Education. I never received a notice stating that my taxes would be offset, or that I could make payment arrangements before the offset years ago. I have a 5-year-old and it is heartbreaking I look forward to getting things he needs and extra things only to learn I am not getting anything back. My oldest son died in a fire when he was 6-years-old, I thought I could continue my classes and it would be best to continue my schooling, rather than take time off. I failed two classes which made me get behind. I then applied for

Taking my taxes defeats the purpose. I am a single mother barely surviving, I wanted to speak up for my son. This money is for him to provide for him and get him things for his education that he's getting today.

- Single mother

forbearance and thought I was staying on top of the time I had before it expired. I

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wanted to write a letter to the Department of Education asking for grievance or forgiveness and a chance to continue my education. The purpose of me working towards my Bachelor's in health care admin was so I could make a decent income and be self-sufficient. Taking my taxes defeats the purpose. I am a single mother barely surviving. I wanted to speak up for my son. This money is for him to provide for him and get him things for his education that he's getting today. I will try to call the collection agency in the morning to see what can be done. I have a limited time before I have to find a place to stay. Please someone help.

10. Subject: REFUND OFFSET

I got a student loan for Itt and it was closed. I thought that it would be fixed because i never could finish my degree nor would anyone else accept my credits. I filed my income tax this year with 2 kids im out of work. Im 49 and hard to find work and now my money is gone

11. Subject: Taxes taken and getting evicted

I had set up payment plans with the state of Ky for my student loan payments. They quit pulling the payments out of my checking account in July 2017. They are taking my federal taxes with the offset. I have 3 days to be out of my apartment. I called them and they told me that I have to appeal the decision to see if I can get my refund back. I have once again set up payment plans to pay my student loans. I do not make enough money for the federal government to require me to make a monthly payment but the state of Ky says I will never go below a \$5 monthly payment.

12. Subject: Offset

I was gonna use my eitc to but my kids clothes and shoes because I haven't been working but the department of education took it

13. Subject: Refund was taken due to offset of student loans

 My name is ***** and I am a single mother of 6 kids and 4mos
 I never got notice or a pregnant with number 7. I was expecting my tax refund when I
 warning.

 found out at the last minute that the full amount was taken. Due to a student loan dept. I never got notice or a warning. I am
 - Single mother of six

 facing eviction and me and my kids will be homeless due to this offset. I have contact numerous agency's and also the department of education. I was told that I have to fill a hardship and wait 7-10 days for my paper work to come in the

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mail. I don't have 7-10 days I have an eviction notice 5days and we have to move out. I was planning on paying my rent up for a few months as well as get a car so I can continue to get back inforth to work. As well as get my son who is 4 with autism to the doctors office due to he a juvenile arthritis. Now I am unable to do anything because I have no money.i was counting on that money so we can get back on track with bills and rent .. please someone help us before it's to late ..

14. Subject: Student Loan Tax Offset

I just found out that my taxes (with EITC) were offset. I didn't know that it was going to happen. I filed my taxes on 02/08. I received a letter from collection agency (dated 02/09) advising that they "may evaluate whether I qualify for involuntary collection". I called them & opted for loan consolidation. I received a 2nd letter from the agency (dated 02/14) with the standard "unless you notify us within 30 days". I sent my consolidation forms back via FedEx on 02/21. On 02/22, my IRS status updated with a link to article "Tax Topic 203, Refund Offsets ". That is when I found they had taken \$6695.27 of my - A borrower \$7037 refund. I made \$10,000 last year. I'm a single mother of 3 children, 1 of them in college. My refund was going to help us get a vehicle, catch up on rent & utilities, & literally put shoes on my kid's feet. I have no expendable income. I am devastated. It just doesn't seem fair that someone living paycheck to paycheck can have their single line of hope jerked away like that.

My refund was going to help us get a vehicle, catch up on rent & utilities, & literally put shoes on my kid's feet. It just doesn't seem fair that someone living paycheck to paycheck can have their single line of hope jerked away like that.

15. Subject: Refund offset

My taxes were taken due to delinquent student loans. My husband is unemployed and we are a family of 5, living with his mother. We receive government assistance to help us. We live off of unemployment, which you know is not very much money and we have 3 children. We rely on our income tax money to buy our children the things that they need, i.e. clothes, shoes, etc. I have tried to find a job but am unsuccessful. This has hurt us a great deal because we only

We rely on our income tax money to buy our children the things that they need, i.e. clothes, shoes, etc

- A borrower

have one vehicle and were going to use our tax money to purchase a used car so we could both have a vehicle. I don't believe that we should have to suffer, they could have

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at least taken half of the refund as to the whole amount.

16. Subject: This is happening to me now!! I had no notice whatsoever, this money was to help a struggling single mom keep a roof over her daughter's head and the heat on... I can't believe that the way this is happening is legal!!!! My loans have been passed around from agency to agency and I have received no notice getting different answers from everyone I finally set up a payment plan with the right collections agency for my loans to find out the dept. Of education is offsetting my taxes, they are taking the entire thing!!! When I call to get answers on why the dept of education and the collection agency are both trying to collect on the same loan I get hung up on by the dept of education!!!

17. Subject: EIC Taken to Pay Student Debt

I became a single mom last year after getting out of a domestically violent relationship. I receive no support from my daughter's father, finical or other. I cannot afford childcare, as it is so expensive it does not make sense to work my \$11 an hour job to pay someone to watch my daughter. I'm unable to work full time because my availability is limited to when i can have a family member babysit for free. My daughter and I share a bedroom in a town home with two other roommates. I have defaulted on my student loans, and have about \$900 in other debts. I have not been able to contribute to my portion of utilities in couple months, and have to borrow from my - Single mother mother to help with my part of rent and diapers.

I have not been able to contribute to my portion of utilities in couple months, and have to borrow from my mother to help with my part of rent and diapers.

My tax return was \$4978 which was offset to pay student loans. I was hoping I'd be able to buy my daughter new shoes and clothes for the upcoming summer season.

Hopefully things will get better.

18. Subject: Why did they take all my money?

The student loan place took all my money!! It's all I had. My car broke down. I'm a single mom. I live from pay check to pay check. I have tons of bills that I was going to get caught up on. And buy a car. I don't know what I'm going to do now. I have talked to the student loan place like 15 times before now and told them I live paycheck to

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paycheck. And they put my loan on hold. And now they do this.

19. Subject: The edu took all of my return today

I didnt even know my load was in default. I never recieved any letter that said my taxes will be garnished either. I just recently moved to a new place with my disabled 15 yr old daughter and my soon to be 4 month old son. Due to our old landlord selling the place we were living at & lead in the water due to pipes. I am back out of work due to no babysitter because of my daughters condition. I was planning on using my tax return to help with the transition to the new place to keep us from being homeless until i can find a job that can work with my daughters school hours. I called to see what i can do i enrolled in a rehabilitation program with the creditor and made my first \$5 payment. This is all part of the process to apply for the tax hardship that they make almost impossible to do and now potentially risking my children being homeless because they didnt want to do anything the right way. I filed my taxed on the 29th of january 2018 & used my new address they had time to contact me

20. Subject: EITC All gone

It's been a struggle as a single mom to get ahead with a new baby and no help from his father I was really counting on my EITC to get ahead on some bills like rent and utilities, get all of my car maintenance because it's a vital source in our family and my car was given to me by my mom who passed away last Christmas. I wanted to get out of some debt with a credit card, and then use it to buy a crib, some toys and new bed set for my 7 month old son and a new bed for my 8 yr daughter who they are sharing a room. Clothes for our family for the summer and new school year come August. Now with it all gone it's a very stressful and disappointing g time for me.

I was really counting on my EITC to get ahead on some bills like rent and utilities, get all of my car maintenance because it's a vital source in our family

- Single mother

21. Subject: Tax offset

They took my while offset from me and I'm a very low income person and struggling to take care of my son. I hope they go to hell for this

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22. Subject: EITC/Refund Snatched

I was expecting a refund of \$542 in Federal and \$46 in State Taxes, but they both were garnished. Employment comes and go, I do not make any money, and really have not because the jobs requires a bachelors or masters and it is difficult to get that because I cannot pay for college, I only have an associates degree and it is still not enough. I was planning on paying rent with my income taxes and stocking up on food, cleaning supplies, and hygiene products, but now There is no way of winning or I have to find another way because I am hungry, I am OCD, I getting ahead. have mental health issues I'm getting help with and other - A borrower medical issues. I guess there is nothing I can do about it, the government always want money and do not care about people at all, so while I thought a few hundred dollars would make my economic struggles a little easier for a second, well, that thought is definitely dead. There is no way of winning or getting ahead. It's sad because there is no help, no assistance, nothing. I tried all payment plans.

23. Subject: Tax offset hardship

I am 3 mnths be hind on my rent i have 3 kids and a BWL to pay for my light and heat my rent is 680mnthly. I have been in a domestic relatinship and had to leave my home town in chicago and moved to Lansing michigan in 2017 i had not recieved an offset letter can someone pls help me and my kids....

24. Subject: Offset

I am a struggling hard working adult who make less than 25000 per year and take of two adult siblings. I qualified for earn income credit and due to student loans my taxes were taking and now I'm unable to catch up on past due bills and has put me in a real financial bind and I understand I owe for student loans but when you're barely surviving it's hard to think of repaying student loans.

25. Subject: Student loan offset

I'm a single father of 3 children and am a full time student in college I'm currently on leave from work to insure my study's come first! Me and my kids will be effected by this tax refund offset tremendously and we will be in Financial hardship because of it. I've not received any help from the IRS, Department of Education, nor the immediate credit

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recovery debt collector! I don't know what else to do.

26. Subject: school loan offset

I was unaware that my refund of over 10,000 was going to be taken for repayment of student loans. I am homeless, living from hotel to park bench with two children and my tax money was all I had to look forward to, to get my family out of this horrible situation. I am a single parent and both of my parents are deceased thus leaving me with no additional financial help. Now that my refund is gone, I don't know what to do. They took every penny I worked for last year.

27. Subject: My taxes got siezed along with E.I.C

I am a struggling single father of twin 7 year olds I work hard for my money and I only make \$11.50 an hour I handle all the bills and all of my children's needs the best that I can but I fell behind on my rent and my car broke down which is my only transportation to work. I was desperately waiting for my taxes and my earned income credit so I could pay my rent and fix my car. All of that was offset due to old student loans now I can't pay my rent or fix my car so I can't go to work. Now me and my kids are probably going to have to move into a homeless shelter due to the fact that I can't pay my back rent. And now I can't even go to work because I can't - Single father of two fix my car. All of this could have been avoided and I probably still could have paid some money on my loans if all of my money was not seized. I don't understand how it is ethical or Fair to make a family

I don't understand how it is ethical or Fair to make a family become homeless all because the Department of Education needs my \$7,000 more than my children.

become homeless all because the Department of Education needs my \$7,000 more than my children

28. Subject: Yes, my refund was taken away, all 8,,000 worth. I was planning on using that to purchase my daughters graduation gown, pay off bills and to move into a home of our own. We are living with family at the moment.

I went to an Everest College from 2009/2010 to 2014 when this school was being sued for giving false information to students. I never knew any of this and was never given any information of this and am now STUCK with STUDENT LOANS that I can not pay.

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29. Subject: Tax offset

I was going to use my tax refund to move into a home big enough for me and my children. Pay my car off so that's one less thing that I had to pay every month. I was going to buy my children new clothes and shoes that actually fit them. I have about 2,000 dollars worth of bills behind. I just needed my money to get ahead now they took the money I earned and just took it from me. I understand I have student loans but I was not aware of the offset. They sent it to a address that I haven't lived at for over 2 years. I have changed my address multiple times. I had no idea I had to call them and tell them my new address. I just feel like that's wrong.

30. Subject: They took my refund

I owe student loan, never received a letter about an offset and next thing I know my kids and I are almost homeless with all the plans and hopes being flushed down the drain by the IRS doing this. I understand this is my debt, but I was only getting 7,300 and they kept the majority I received 1,800 and no one can help me try to get this reduced. My kids and I were counting the days to get a home with my taxes I work so hard for..I only made 23,00 last year single parent working alone...providing for her family by herself. If it's possible to have this offset reduced I would give anything for some info from anyone to help.

31. Subject: EITC/refund taken 2 years in a row

I am a 39 yo single mother of 2. I went back to college later in life (graduated '14) for a

business degree in hopes of a better future for my children. I've been employed w/the same medical group for 12 years, not making much money & unfortunately, have not been able to find better employment due to the area and the economy. We are living paycheck to paycheck. We lost our apartment last year, August 2017, due to the tax refund being taken, something I usually rely on for the year. (I "make too much" money to get assistance, except my children do get a medical card; my insurance premium at work has went up also). My children & I were fortunately able to move in with my mother, w want to be able to get a place, but am unable to save any money f

We lost our apartment last year, August 2017, due to the tax refund being taken, something I usually rely on for the year.

- Single mother of two

children & I were fortunately able to move in with my mother, which we need to leave. I want to be able to get a place, but am unable to save any money for a down payment. As of Jan. 2017, now my wages are also being garnished and I am going to be unable to put my children in their sports (track/softball). I can barely afford food for us.

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32. Subject: Tax offset on earned income credit

I am a single mother of 2 children and struggling to not be homeless. I fell behind on student loans after the death of my husband due to the fact that now my household had become a single income. I was counting on my return this year to get back on track and save some money to help with those unforseen bumps in life. Now I'm left in the middle of an ocean with no life support, the U.S department of education has taken all of my federal and state income tax. My loans are in life. in a rehabilitation program, but not knowing about this program before filling taxes this year, it was to late to stop the offset. I don't believe it is right for them to take everything, a percentage should be implemented and that is all they should take. Had I known this was going to happen I would have waited until I knew how to keep it from happening. Shame on the U.S department of education and the government.

I was counting on my return this year to get back on track and save some money to help with those unforseen bumps

- Single mother of two

33. Subject: Tax offset and Eic, while in poverty

I just had a baby in October 2017, the whole year of 2017 I've been fighting in court with ACS about my oldest daughter of 7 yrs old. I haven't not for one day got a chance to set up a payment plan under the stress being pregnant , fighting in family court to keep my daughter and being homeless residing in shelter. In 2018 I beat the case ,I was able to keep my daughter now have two children in shelter still in poverty, but I'm happy to have my children . I file my taxes hoping to have money to provide for my children and just getting over stress all year 2016-2017 student loans take my refund . My children and I are now broke struggling , in a shelter, no money Just unhappy . I still have no way of paying loans and things were just looking good for us barely . Please help us .

34. Subject: Offset

This is happening to me as we speak. They will take my eic March 2, 2018. I do not believe it is fair for them to take money that was given by the government which deemed that i do not make enough to survive. Eic was to help get to a place where I would be able to get out of poverty so that I could re tabling my self, and pay creditors to help ultimately get me out of poverty and therefore boosting my credit as well as fostering economic growth this money was not made by my physical work, but was given to help people in situations like this. They also took the money that was given by

Voices of Despair

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the government to help my children. on top of it they preaded the payments to multiple debts ultimately increasing my debt instead of paying off one entirely. I was going to use the eic to pay off other debts and pay a portion to student loans. also I was going to use it for rent as im behind, and by the necessities for my children which their basic of survival granted by the government is now taken away

 35. Subject: Tax offset is taking the EITC that was to be used for relocatiin of children for safety reasons
 Tax offset was to be children

 I Absolutely feel violated amd helpless.
 children

Tax offset is taking the EITC that was to be used for relocatiin of children for safety reasons.

-A borrower

36. Subject: Refund offet by student loan while they garnish wages

They garnish around \$46 a week from my wages to repay my loan and they still took every single bit of my refund. that refund would have paid my bills that I got behind on because of the wage deduction.

37. Subject: Surprise!!!! Took State and Federal!!

We can relate! I found out that ALL of our returns went to pay Student Loans for my husband It would have been \$7500@@@ Both of our teenagers can't be claimed after this year leaving only 1 of 3 we can receive the child tax credit for next year.

My husband has a 2.5 hour train/bus ride to work and back daily. That's 13 hours 5 times a week!! 65 hours! The returns were supposed to get a vehicle, first one in over a decade. Then we planned to pay off the electric, phones, internet, cable, outstanding debts, etc. We thought that all the stress over lack of money would be lessened. I had to cancel surgery because we aren't able to pay \$1500. That was totally reliant on the refunds as well.

I had to cancel surgery because we aren't able to pay \$1500.

- A borrower

Topping it off is the money we now owe to H&R Block for the filing fees and the refund advance of \$500, both to be taken out of the returns! Another \$1000 owed!

How can we pay the Student Loans or anything else when they took our monetary way up and out away from us?!?!

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Thanks, *****

38. Subject: Single mother of 3

I been homeless pass year off so and was depending on refund to move in own house so me and kids have own space to call home I'm a part time worker struggle everyday to make a leaving off check to check...never got no notice or garnished so never expected offset taking money..now I don't know what gone do or what to tell kids.. I been homeless pass year off so and was depending on refund to move in own house so me and kids have own space to call home I'm a part time worker struggle everyday to make a leaving off check to check..

- A homeless borrower

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175**ENDNOTES**

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¹ Thomas L, Hungerford and Rebecca Thiess, Economic Policy Institute, The Earned Income Tax Credit and the Child Tax Credit History, Purpose, Goals, and Effectiveness (September 25, 2013) available at http://www.epi.org/publication/ib370-earned-income-tax-credit-and-the-child-tax-credit-history-purpose-goals-and-effectiveness/. ² Persis Yu, National Consumer Law Center, Blog Post: Earned Income Tax Credits Seized from Stundens Childrel Long Borgware (reported Lan 22, 2018) available at

Struggling Student Loan Borrowers (reposted Jan. 22, 2018) available at http://www.studentloanborrowerassistance.org/earned-income-tax-credits-seized-struggling-student-loan-

http://www.studentloanborrowerassistance.org/earned-income-tax-credits-seized-struggling-student-loan-borrowers-2/. ³ The stories are anonymous and unverified. ⁴ Laura Kliewer, Counsel of State Governments, The Tax Credit Enjoys Bipartisan Support, and May Soon Cet a Boost in Some Midwest States (April, 2017) available at http://www.csgmidwest.org/policyresearch/0417-EITC_aspx. ⁵ Center on Budget and Policy Priorities, Policy Basics: The Earned Income Tax Credit at 2 (updated Oct. 21, 2016), available at http://www.cbpp.org/research/defal-tax/policy-basics-the-earned-income-tax-credit

⁶ Jeffrey Grogger, "The Effects of Time Limits, the EITC, and Other Policy Changes on Welfare Use, Work and Income among Female-Head Families," Review of Economics and Statistics 405, May 2003.

 ¹ Id. at 400.
 ³ Tax Policy Center, Taxation and the Family: What is the Earned Income Tax Credit?, available at http://www.taxpolicycenter.org/briefing-book/key-elements/family/elit.cfm.

⁹ /d. ¹⁰ Center on Budget and Policy Priorities, Policy Basics: The Earned Income Tax Credit at 1 (updated <u>10</u> Center on Budget and Policy Priorities, Policy Basics: The Earned Income Tax Credit at 1 (updated) Oct. 21, 2016), available at http://www.cbpp.org/research/federal-tax/policy-basics-the-earned-income-

tax-credit. ¹¹ See National Consumer Law Center, Student Loan Law, § 9.2.2 (5th ed. 2015) available at http://library.nclc.org/sl. ¹² Id Id.

¹⁴ Id. ¹⁵ NCLC, Stop Taking the Earned Income Tax Credit from Struggling Student Loan Borrowers October 2016 2 (Oct. 2016) available at <u>http://bit.ly/1R61miq</u>.

NCLC[®] NATIONAL

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CONSUMER LAW CENTER*

Advancing Fairness in the Marketplace for All Washington Office: 1001 Connecticut Ave, NW Suite 510 Washington, DC, 20036 Phone: 202/452-6252 Fax: 202/296-4062
Appendix B

NCLC*

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www.nclc.org

July 1, 2019

SENT VIA EMAIL

U.S. Department of Education Office of Management Regulatory Information Management Services 400 Maryland Avenue, SW, LBJ 2W220 Washington, DC 20202-4536 EDFOIAManager@ed.gov

Re: Freedom of Information Act Request

Dear Chief Information Officer:

On behalf of the National Consumer Law Center (NCLC), pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. \S 552, I hereby make the following request.

On July 1, 1994, 25 years ago to this date, borrowers in the Direct Loan program became eligible to enroll in the Income Contingent Repayment (ICR) plan. The ICR plan provides forgiveness to borrowers who have an outstanding balance after 25 years of repayment. Therefore, the first cohort of borrowers who entered ICR in 1994 and remained in an incomedriven repayment (IDR) plan should be eligible for forgiveness starting this month. We are aware that a small number of borrowers who entered ICR early on have already become eligible for forgiveness because they switched to the Revised Pay As You Earn (REPAYE) plan, which provides forgiveness after 20 years of repayment to borrowers who are paying only undergraduate loans.

We seek information to determine how many people will be eligible for forgiveness based upon their early and continuous enrollment in the ICR plan or enrollment in ICR followed by a switch to another IDR plan like Income Base Repayment (IBR) or REPAYE. We also seek information about how many borrowers would potentially be eligible for forgiveness but for common

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challenges borrowers face in repayment, including missed, delayed, or nonqualifying payments due to recertification delays, forbearances, certain deferments, and missed payments.

Specifically, we request all records, including reports, memoranda, forms, and other documents dating back to July 1, 1994, that discuss, analyze, itemize, address, or pertain to:

Part A: Borrowers Expected to Receive IDR Forgiveness

- Number of borrowers paying in the ICR plan who have made 300 "qualifying" payments as defined in 34 CFR §§ 685.209 and 685.221 as of July 1, 2019, broken down by servicer, state, race, and gender.
- 2) Data on loans where borrowers have made 300 "qualifying" payments in ICR as of July 1, 2019, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by servicer, state, race, and gender.
- Number of borrowers paying in any IDR plan who have made 300 "qualifying" payments as of July 1, 2019, broken down by servicer, IDR plan, state, race, and gender.
- 4) Data on loans where borrowers have made 300 "qualifying" payments in any IDR as of July 1, 2019, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by servicer, IDR plan, state, race, and gender.
- 5) The number of borrowers as of the date that this request is fulfilled who have received forgiveness under any IDR plan, broken down by month and year of forgiveness, servicer, IDR plan, whether the borrower had any graduate loans forgiven, state, race, and gender.
- 6) Data on loans where borrowers as of the date that this request is fulfilled who have received forgiveness under any IDR plan, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by month and year of forgiveness, servicer, IDR plan, whether the borrower had any graduate loans forgiven, state, race, and gender.
- 7) Number of borrowers paying in any IDR plan who are expected to have their loans forgiven in 2019, broken down by month, servicer, IDR plan, whether the borrower has graduate loans, state, race, and gender.
- 8) Data on loans where borrowers paying in any IDR plan who are expected to have their loans forgiven in 2019, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by servicer, IDR plan, whether the borrower has graduate loans, state, race, and gender.
- 9) Number of "qualifying" payments made by any borrower who was ever enrolled in an IDR plan broken down by IDR plan, whether the borrower has graduate loans, servicer, state, race, and gender.
- 10) As of the date that this request is fulfilled, the number of borrowers sent notices by the U.S. Department of Education or its servicers explaining "that the borrower is approaching the date that he or she is expected to meet the requirements to receive

loan forgiveness" as required by 34 CFR §§ 685.209 and 685.221, broken down by month and year sent, IDR plan, servicer, state, race, and gender.

- 11) Written notices sent by the U.S. Department of Education or its servicers indicating either "that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness" or "that the borrower's obligation on the loans is satisfied" as required by 34 CFR §§ 685.209 and 685.221.
- 12) Processes in place, including but not limited to instructions to servicers, to ensure that the Secretary is able to determine when a borrower has met the loan forgiveness requirements as required by 34 CFR §§ 685.209 and 685.221.
- 13) Any projections (including but not limited to those done by the U.S. Department of Education, any of its servicers or other contractors, or other agencies) of the number of borrowers expected to receive forgiveness through IDR, in total and broken down by year in which forgiveness is projected to occur, servicer, IDR plan, state, race, and gender.
- 14) Any projections (including but not limited to those done by the U.S. Department of Education, any of its servicers or other contractors, or other agencies) of the total dollar amount (with principal and interest itemized) of loans expected to receive forgiveness through IDR, in total and broken down by year in which forgiveness is projected to occur, servicer, IDR plan, state, race, and gender.

Part B: IDR Enrollment Data

- 1) Number of borrowers enrolling for the first time in any IDR plan broken down by servicer, IDR plan, month and year of enrollment, state, race, and gender.
- 2) Number of borrowers who enrolled in any IDR plan and remained in any IDR plan continuously until the loan was repaid, forgiven, or to the present, broken down by servicer, IDR plan, present status, month and year of initial enrollment, state, race, and gender.
- Number of borrowers who switched from one IDR plan to another IDR plan, broken down by servicer, original IDR plan, new IDR plan, month and year of IDR switch, state, race, and gender.
- Number of borrowers who exited an IDR plan and switched into a non-IDR plan, broken down by servicer, IDR plan, month and year of plan switch, state, race, and gender.

Part C: On-Time Recertification

- Number of borrowers who recertify their IDR plan on-time, broken down by servicer, IDR plan, year, state, race, and gender.
- 2) Number of borrowers who recertify their IDR plan after the hard deadline, broken down by length of delay in recertifying, servicer, IDR plan, year, state, race, and gender.
- Number of borrowers who have recertified their IDR plan late multiple times, broken down by the number of times the borrower has recertified late, servicer, IDR plan, year, state, race, and gender.

 Number of borrowers who fail to recertified their IDR plan, broken down by servicer, IDR plan, year, state, race, and gender.

Part D: Delinquency and Default

- 1) Number of borrowers who were enrolled in an IDR plan when they defaulted, broken down by servicer, plan, month and year of default, state, race, and gender.
- Number of borrowers who failed to recertify their IDR plan and defaulted within 12 months after failing to recertify, broken down by servicer, plan, year of default, state, race, and gender.
- Delinquency status of borrowers currently enrolled in an IDR plan, broken down by plan, servicer, state, race, and gender.

Part E: Forbearances and Deferments

 Number of borrowers enrolled in an IDR plan who were placed in a forbearance or deferment, broken down by IDR plan, year, servicer, type of forbearance or deferment, duration of forbearance or deferment, state, race, and gender.

Part F: Paid Loans

- Number of borrowers who were enrolled in an IDR plan and paid their loans in full, broken down by IDR plan, whether the borrower has graduate loans, year, servicer, state, race, and gender.
- 2) Data on loans where borrowers were enrolled in an IDR plan and paid their loans in full, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by IDR plan, whether the borrower has graduate loans, servicer, state, race, and gender.
- 3) Number of borrowers who were enrolled in an IDR plan and had their loans forgiven through a cancellation program (including but not limited to Total and Permanent Disability, Death, closed school, borrower defense, false certification, Public Service Loan Forgiveness), broken down by IDR plan, whether the borrower has graduate loans, year, servicer, forgiveness program, state, race, and gender.
- 4) Data on loans where borrowers who were enrolled in an IDR plan and had their loans forgiven through a cancellation program, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by IDR plan, whether the borrower has graduate loans, servicer, forgiveness program, state, race, and gender.
- 5) Number of borrowers who were enrolled in an IDR plan when they consolidated the loan that was in IDR, broken down by IDR plan, whether the borrower has graduate loans, year, and servicer, state, race, and gender.

If producing all of the requested records simultaneously delays release of the information, we respectfully request that the records be released as they become available. In your response to

this request, please specify whether: (1) you are providing all records responsive to the request; (2) no records exist that are responsive to the request; or (3) records exist that are responsive to the request, but you are claiming that some or all of those documents are exempt from disclosure.

If it is your position that some of the requested documents or some portion of any of the requested documents are exempt from disclosure, please provide the nonexempt portions of those records. In addition, if it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each document being withheld. Also, please identify the person making the decision to deny the request.

The National Consumer Law Center requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii), because it does not seek the records for a commercial purpose and disclosure of the contract is in the public interest as it is likely to contribute significantly to public understanding of the operations and activities of the government.

The records sought by NCLC are not publicly available. NCLC intends to make any records released in response to this request available to the public free of charge. Public availability of the requested records is of critical importance to the public's ability to understand and participate in an ongoing debate about simplifying income-driven repayment, servicing, and servicer accountability.

A waiver of search and review fees is also warranted because NCLC qualifies as "representative[s] of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii). NCLC is a representative of the news media in that it is an organization actively gathering news for an entity that is organized and operated to publish or broadcast news to the public, where "news" is defined as "information that is about current events or that would be of current interest to the public." 5 U.S.C. § 552(a)(4)(A)(iii)(III).

NCLC operates a regular blog with original editorial content reporting on and analyzing student loan issues. See http://www.studentloanborrowerassistance.org/resources/blog/. NCLC also regularly publishes reports, books, and newsletters on consumer issues. At the core of its mission, NCLC uses its materials and trainings to inform advocates, organizations, and policy makers about pressing issues affecting consumers. This includes informing borrowers, advocates, organizations, and policy makers of their rights under federal and state law.

NCLC is a nonprofit corporation founded in 1969 that assists consumers, advocates, and public policy makers nationwide who use the powerful and complex tools of consumer law to ensure justice and fair treatment for all, particularly those whose poverty renders them powerless to demand accountability. We have limited funds and every expense that we pay limits our ability to fulfill our mission of protecting low-income consumers. Accordingly, we request that you waive all fees related to this request. If, however, a waiver is not granted, then please notify us of the amount of any proposed charges before those activities are carried out.

We will expect a response within 20 working days as provided by law. If you have any questions or would need more information, please feel free to contact me at (617) 542-8010.

Thank you for your consideration of this request.

Sincerely,

<u>/s/ Persis Yu</u>

Ms. Persis Yu Staff Attorney National Consumer Law Center 7 Winthrop Square, 4th Floor Boston, MA 02110 P: (617) 542-8010 F: (617) 542- 8028 pyu@nclc.org

CONSUMER BANKERS ASSOCIATION CENTENNIAL

September 9, 2019

CBA'

The Honorable Maxine Waters Chairman House Financial Services Committee 2129 Rayburn House Office Building Washington, DC 20515 The Honorable Patrick McHenry Ranking Member House Financial Services Committee 2129 Rayburn House Office Building

Washington, DC 20515

HELPING FINANCE THE AMERICAN DREAM SINCE 1919

Dear Chairman Waters and Ranking Member McHenry:

On behalf of the Consumer Bankers Association (CBA), I would like to share our views regarding the student loan market and recommendations for improving outcomes for student loan borrowers at the upcoming Committee hearing, "A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable." CBA serves as the voice of the retail banking industry, and its membership includes the private sector lenders who make the majority of private student loans to help families finance a postsecondary education.

The State of Student Loan Debt

As lawmakers look for solutions to help borrowers out from under the growing and worrisome student debt crisis, it is important to have a clear understanding of the crux of the problem. Student loan debt in America currently totals \$1.58 trillion. The federal government dominates the market by holding an astonishing 92 percent of this debt totaling \$1.44 trillion in loans. With one in five federal borrowers seriously delinquent or in default and many experiencing increasing loan balances post-graduation, it is clear federal student loans are driving this crisis.

By contrast, the remaining \$119 billion of student loan debt is held by private lenders, including members of CBA. By working with borrowers to ensure an ability to repay and a clear understanding of loan terms, private lenders are setting up borrowers for a positive financial experience post-graduation. In fact, 98 percent of private student loan borrowers are successfully repaying their loans due to high underwriting standards and financial counseling received before the borrower assumes the loan.

Know Before You Owe Federal Student Loans

Over the years, policymakers have offered multiple solutions to help borrowers with repayment when they are unable to meet their obligation. This approach attempts to address the problem after a borrower has assumed the debt but fails to address root causes of our nation's federal student loan debt problem – the cost of college and federal over-lending. Rather than focusing exclusively on how to help borrowers after they are already heavily in debt, policymakers should hold colleges accountable for their student outcomes and create sensible safeguards to ensure sound financial decisions are made before students and parents take out federal loans.

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Access to accurate, personalized information about the true cost of a federal student loan is critical to making an informed decision about how much, if any, debt to take out to finance a postsecondary credential. Unfortunately, federal student loan borrowers must weed through more than a dozen pages of generic disclosures and squint to read fine print to unearth key loan terms. The federal loan disclosures, provided at disbursement, fail to provide terms specific to individual borrowers. Instead, they give broad categories of interest rates, fees, and estimated monthly payments, and lack information on the total cost of the loans.

Federal student loan disclosures should be streamlined and improved by bringing them in line with the Truth in Lending Act (TILA) disclosures required of bank loans, including private student loans. These disclosures outline key terms such as interest rate, fees, monthly payment, total cost of the loan, and annual percentage rate (APR) in a clear and concise manner to help improve transparency and prevent over-borrowing.

CBA supports H.R. 1161, the Student Loan Disclosure Modernization Act, bipartisan legislation introduced by Representatives Emanuel Cleaver (D-MO) and Jim Banks (R-IN), which makes some of these needed improvements to student loan disclosures. The bill would improve the Department of Education's inappropriately named Plain Language Disclosure by clearly explaining the costs and terms of federal student loans to help borrowers better understand their loan commitments and increase their prospects of successfully repaying.

Student Loan Servicing

As previously stated, CBA encourages policymakers to address the root cause of student debt – the cost of college and federal over-lending. As noted, improved up-front and ongoing disclosures about the terms and conditions of federal loans are the first step. Banks can offer ideas based on their own experience serving their customers about how to improve disclosures and, later, work with borrowers to help them deal with obstacles to repayment. CBA would be pleased to work with the Committee on solutions for improving disclosures and working with federal loan borrowers to improve repayment outcomes.

CBA noted in a letter earlier this year to the Subcommittee on Oversight and Investigations, several states have implemented or are considering laws to place new requirements on student loan servicers. These state laws are focused on the federal contractors who service Direct Loans that make up the bulk of student loan debt. However, private lenders are sometimes impacted by these state laws, despite the fact that there is no indication of serious problems with servicing of private loans, as shown by the strong performance of private loan borrowers who are consistently repaying their loans on time. Some state laws apparently conflict with federal regulatory requirements related to privacy and safety and soundness for CBA's federally regulated members. As a result, these laws could make it difficult for lenders to serve students, thereby reducing consumer choice and access to higher education.

We urge the Committee to take note of these factors and oppose state-level actions that reduce the ability of federal agencies to oversee financial institutions and create an intersecting web of conflicting

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state provisions. For example, legislation under consideration in California would put state officials in the position of exercising "visitorial powers" over national banks in violation of federal law. Several states are considering similar legislation. Likewise, some states are considering imposing student loan data reporting requirements that would be duplicative of the private sector's voluntary reporting and would offer few benefits while creating major unnecessary costs for our members. Multiple, conflicting and duplicative requirements that national banks submit state-level reports, or produce proprietary business data, would violate national preemption principles.

CBA members are committed to policies that ensure financial institutions operate in a safe manner and treat their customers honestly and fairly. As you know, federally chartered banks are regularly examined and regulated by prudential regulators to ensure safety and soundness, as well as by the Consumer Financial Protection Bureau (CFPB) for compliance with consumer protection laws. A checkerboard of conflicting and unworkable state rules has the potential to confuse consumers and make it difficult for lenders to offer low-cost private student loans.

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Thank you for your consideration of our views. CBA welcomes the opportunity to work with the Committee to improve student loan borrower outcomes.

Sincerely, RelHat

Richard Hunt President and CEO Consumer Bankers Association

1000 CONSUMER BANKERS ASSOCIATION CENTENNIAL

September 10, 2019

CBA

HELPING FINANCE THE AMERICAN DREAM SINCE 1919.

The Honorable Maxine Waters Chairman House Financial Services Committee 2129 Rayburn House Office Building Washington, DC 20515 The Honorable Patrick McHenry Ranking Member House Financial Services Committee 2129 Rayburn House Office Building Washington, DC 20515

Dear Chairman Waters and Ranking Member McHenry:

On behalf of the Consumer Bankers Association (CBA), I would like to share these additional views on *draft legislation* under consideration in the September 10, 2019, Committee hearing, "A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable." CBA serves as the voice of the retail banking industry, and its membership includes the private sector lenders who make the majority of non-federal, private student loans to help families finance a postsecondary education.

The Student Loan Servicing Reform and Consumer Protection Act

CBA strongly opposes the discussion draft Student Loan Servicing Reform and Consumer Protection Act as it is duplicative of a long-standing regime of student loan legislation and regulation governing federal student loans and private education loans. Federal student loan servicing is already subject to requirements of the Higher Education Act, regulations promulgated by the Department of Education and federal contracts between the Department and its servicers. Similarly, private student loans are subject to long-standing requirements of the Truth in Lending Act (TILA) and to rules promulgated by prudential regulators, the Department and the CFPB. This proposed legislation is duplicative and would unnecessarily complicate the origination and servicing of student loans.

The Fair Credit Reporting for Student Loans Act

CBA opposes the discussion draft of the Fair Credit Reporting for Student Loans Act because it imposes new restrictions on the credit bureau reporting process that would impair financial institutions' ability to accurately underwrite the loans that they make. Limiting access to information in the underwriting process diminishes lenders' ability to accurately evaluate risk and creates potential harm for both consumers and institutions' safety and soundness. The proposal also gives new and duplicative authority to the CFPB to issue overlapping rules and standards relating for information collected by consumer credit reporting agencies. Credit bureau reporting of student loans, federal and private, is already extensively mandated and performed by lenders and servicers, who are continually working together through existing procedures to improve reporting standards for the benefit of lenders and consumers.

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The Ensuring Fair Legal Recourse for Private Student Loan Borrowers Act

CBA opposes the discussion draft Ensuring Fair Legal Recourse for Private Student Loan Borrowers Act as it unnecessarily hinders contract terms between borrowers and private lenders. Pre-dispute arbitration and joint-action waivers help reduce the cost of providing private student loans and there has been no showing that borrowers have been adversely impacted by these standard loan terms in the private loan marketplace. The CFPB itself found in a 2015 study that arbitration is consistently faster and less expensive than litigation, and results in significantly higher returns for consumers.¹

The CFPB Student Loan Integrity & Transparency Act

CBA applauds the Administration for recently filling the role of CFPB student loan ombudsman and believes it should remain separate from the section for students and young consumers. Through responsible lending practices and a 98 percent repayment rate, private student loans set students up for success. CBA believes there is a role for the federal government to help families most in need, but the current system of unlimited federal lending has led to increased tuitions and double-digit default rates. While the CFPB notes the position title is Private Education Loan Ombudsman, it is clear the problem is with the federal student loan program, and the ombudsman should focus on implementing needed improvements there. CBA opposes the consolidation of the roles of the CFPB Student Loan Ombudsman and Section Chief For Students & Young Consumers. An ombudsman should be impartial and serve in a confidential capacity, while a division head at the agency is a policy maker, enacting rules or recommending enforcement by the agency. CBA strongly recommends the Bureau separate the positions.

The Know Before You Owe Private Education Loan Act

CBA opposes the proposed Know Before You Owe Private Education Loan Act in its current form because it would impose an unnecessary burden on institutions by requiring them to duplicate disclosures that private education loan lenders already are required to make repeatedly under the Truth in Lending Act (TILA). Private lenders are already required by the TILA to notify borrowers of interest rate, fees, monthly payment, total cost of the loan, and annual percentage rate (APR) in a clear and concise manner on three separate occasions <u>before</u> originating a loan to help improve transparency and prevent over-borrowing. CBA supports the requirement that such disclosures be made, but strongly recommends that rather than requiring institutions to repeat them a fourth time, the institutions provide the same disclosures about federal student loans. Among TILA disclosures private lenders already make is a notification to potential borrowers that they should check their federal aid options. An additional requirement on institutions to discourage private loans may steer students away from private options that may be better for them and is not in the consumer's best interest.

Federal student loans do not offer clear and concise disclosures, and borrowers need to read through pages of complicated and confusing language that fails to provide terms specific to individual borrowers. Instead, they give broad categories of interest rates, fees, and estimated monthly

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¹ CFPB, Arbitration Study: Report to Congress, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a) (Mar. 2015), *available at* https://www.consumerfinance.gov/data-research/research-reports/arbitration-study-report-to-congress-2015/.

payments, and lack information on the total cost of the loans. If Congress would like to help the student debt crisis by way of increased student loan disclosures, it should focus these efforts on federal loans, such as with the bipartisan Student Loan Disclosure Modernization Act introduced by Representatives Emanuel Cleaver (D-MO) and Jim Banks (R-IN), and which is discussed in the above letter. It would make some of these needed improvements to student loan disclosures. The bill would improve the Department of Education's inappropriately named Plain Language Disclosure by clearly explaining the costs and terms of federal student loans to help borrowers better understand their loan commitments and increase their prospects of successfully repaying.

The Private Loan Disability Discharge Act

CBA bank lenders currently forgive the loans of borrowers with total and permanent disabilities and find this proposed legislation unnecessary. In addition, due to the construction of the legislation we are concerned this bill would complicate an already working process related to disability discharge that banks utilize.

CBA member institutions meet the demand of students in need of education funding by utlizing high underwriting standards, multiple disclosures and establishing an ability to repay – enabling banks to realize a 98% student loan repayment rate. By contrast, the federal student loan program has a much higher default rate with 1 in 5 borrowers seriously delinquent or in default, holds 92% of the student loan debt and provides very little assistance to borrowers by way of know before you owe disclosures that will ensure they understand the terms of the loan. Thank you again for your consideration of our views, and we remain eager to work with the Committee to improve outcomes for student loan borrowers.

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Sincerely, Riccl. Hart

Richard Hunt President and CEO Consumer Bankers Association

Questions for the Record

Financial Services Committee

"A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable."

Representative Rashida Tlaib

Dear Lisa,

My name is James Sancricca and I have been in the teaching profession for 20 years. I received my undergraduate degree in education, K-8 certified, at Eastern Michigan University. While I was receiving my education, I worked a full-time job and carried a full-time credit load at EMU. At one point I was working 60 + hours and carrying a 20-hour course load. My parents were not in the position to assist me financially and I was living on my own while supporting my younger sister. Needless to say, being granted student loans was a blessing that allowed me to complete my education. I began teaching in the Detroit Public Schools after a one-year stint in the suburbs. Teaching in Detroit was always my goal and I was excited to be given this opportunity. I began teaching at Goodale Elementary School in 1999. This large school (800 students) on the east side of Detroit was rich in history, full of talented, passionate educators, populated by bright, energetic students, but was plagued with a crushing level of poverty. The percentage of students receiving free school lunches was well over 90%. After 13 rewarding years at Goodale (eventually renamed Beckham Academy) I transferred to another eastside Detroit Public School named Hutchinson. This school was also an excellent place to work, displaying the same exceptional qualities as the previous school in which I taught, unfortunately the students and their families also shared the difficulties associated with high poverty. Hutchinson also had a 90% plus free lunch program participation rate. So, as illustrated, I have taught in high-poverty schools nearly my entire career and will begin my 20th year at the end of August. While I love the children I've had the privilege to teach and wouldn't trade my experiences in the Detroit Public Schools for anything, teaching here has come with challenging economic sacrifices. I have had to spend thousands of dollars each year to provide my students with resources they need to thrive. Everything from food to clothing to supplies. In addition to the outlay of personal funds to make sure my students are taken care of properly my colleagues and I have shared the unfortunate experience of having to endure a 10 year take over and mis-management campaign by the State of Michigan. During this dark time, I lost tens of thousands of dollars totaling an estimated \$150,000. While I entered the district with the knowledge I would make less money than I could have earned elsewhere, it was a sacrifice I was willing to make in order to be given the opportunity to teach somewhere I felt

I could make a deep contribution. The cuts to my compensation by the emergency managers have caused deep financial distress. Unfortunately, the bills did not stop nor did the unplanned events that put an additional strain on my financial situation. Family and friends in crisis needing a place to live and support, a roof collapsing, and a series of floods destroying everything in my basement including my HVAC system. After 20 years in the teaching profession and the completion of a bachelor's degree, master's degree and many hours of additional education I am disappointed to say that my financial situation is quite dire. I live from check to check with no money set aside for

emergencies. I haven't been able to take a vacation away for more than ten years, haven't been able to purchase or lease a car since 2004 (thank goodness for my dependable Dodge Durango and it 200,000 miles), haven't been able to buy anything for my home in at least 10 years, and was unable to throw my parents the grand party they deserved for their 50th wedding anniversary. I say all of this to illustrate how assistance with forgiving my student loan debt will improve my financial well-being. I am not asking for hand-outs. I have worked continuously since I was a young boy delivering the Detroit News, then as an employee of a local grocery store while I put myself through college, then directly into my career as an educator. I have dedicated myself to my profession and often receive chiding from those who love me that I spend too much time at work. Many of my colleagues at work have been able to secure loan forgiveness through the Teacher Loan Forgiveness Program initiated in October 2007 as part of the Public Service Loan Forgiveness Program. In this program teachers can have their loans forgiven after 10 years of repayment if they work in a school with a highpoverty rate for at least five years. Unfortunately for me I was not eligible for this loan, although I have taught in high-poverty schools for many more than the five years required, because of a stipulation in the program that disallows any loan incurred before 1997. I believe only the first of my loans was incurred in or before 1999 but that was enough to exclude me from this program. I am disillusioned that such a stipulation was included in the legislation that allowed for this program. It is random, unfair, and excluded many citizens who need some relief. So, I continued to struggle with my almost 300 dollar/month student loan payment until I was made aware of a 2018 program to forgive loans that were previously ineligible for forgiveness. Upon researching my eligibility for this program, I was informed that I could not apply for this program because my loans were switched to indirect loans when I consolidated my loans. I was never given any information

at the time of the consolidation that my loans would by switched from direct student loans to indirect loans thereby making them exempt from any future forgiveness programs. I was sold on the consolidation because of the lower interest rate I was given but would have rejected the offer had I been given all the facts. At the time of this consolidation with Sallie Mae/Navient in 2004 I owed almost \$35,000 as of this month August 2018, I still owe over \$30,000. After nearly 15 years of repayment the principal on this loan has only been reduced by \$5,000. These loans have been an unending money pit from which there is seemingly no escape. As a hardworking, contributing citizen of the City of Detroit and the State of Michigan I sincerely hope you can help to find a way to remove the burden of my student loan debt. I've been paying off these loans for 20 years and without assistance will be paying on them for at least another 10 years. I believe it is unfair that because I choose a career path to help people in the most need I should be penalized with an entire lifetime of debt. I am a man who has always had a hard time asking for help. I am trying to evolve and bring more balance to my life. As part of this evolution I am discovering that I can't go it alone. I discussed my predicament with my father and he encouraged me to reach out to my representative for assistance. He informed me that he too had a situation similar to mine and he reached out to his representative in congress who was able to assist him in receiving the GI Bill benefits he earned during his service to our country in the Navy. I hope you can find a way to help me escape from this untenable situation. Thank you for the concern and attention you have given to this challenge. You have given me hope for a brighter future.

Sincerely,

James Sancricca

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