



STUDENT BORROWER
PROTECTION CENTER

January 28, 2020

Director Kathleen Kraninger
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20052

Dear Director Kraninger:

We are writing to bring to your attention recent allegations of illegal practices by a firm that compiles and sells reports on student enrollment data about tens of millions of consumers, the National Student Clearinghouse (NSC). Further, we are writing to request that CFPB immediately amend the Bureau's public list of consumer reporting agencies to include NSC, ensuring that consumers know they have the right to access reports about themselves, and to have faulty information fixed when errors occur. Lastly, we are writing to advise CFPB that NSC should be subject to routine supervision for compliance with federal consumer financial laws, including the Fair Credit Reporting Act (FCRA).

On January 21, 2020, a federal court in Massachusetts entered an order directing notice be sent to a class of affected consumers announcing a settlement with NSC.¹ This settlement is the result of a class action lawsuit filed by a former student and customer of NSC that alleges NSC violated the FCRA and multiple Massachusetts state consumer protection laws.² According to a proposed settlement agreement filed with the court, this settlement will establish "an approximately \$1.9 million Settlement Fund to provide cash payments for Settlement Class."³ Court filings in this case, *Robinson v. National Student Clearinghouse*, offer clear and convincing evidence that the company's core business function is consumer reporting, as defined in federal law.⁴

¹ Notice Order, *Robinson v. National Student Clearinghouse* (2020) (No. 1:19-cv-10749), <https://www.courtlistener.com/recap/gov.uscourts.mad.208991/gov.uscourts.mad.208991.25.0.pdf>.

² Class Action Complaint, *Robinson v. National Student Clearinghouse* (2019) (No. 1:19-cv-10749); <https://www.courtlistener.com/recap/gov.uscourts.mad.208991/gov.uscourts.mad.208991.1.0.pdf>.

³ Exhibit A: Settlement Agreement and Release, *Robinson v. National Student Clearinghouse* (2020) (No. 1:19-cv-10749), https://www.courtlistener.com/recap/gov.uscourts.mad.208991/gov.uscourts.mad.208991.24.1_2.pdf

⁴ 15 U.S.C. § 1681a(f) (2018) ("The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.").

As described in the complaint filed against NSC in this case, NSC collects, maintains, and sells consumer reports containing information on student “enrollment status” to financial services firms, employers, insurance companies, and other purchasers, including some of the nation’s biggest banks.⁵ In 2018, NSC earned more than \$55 million in revenue, primarily from these activities.⁶ This operation is expansive and nationwide in scope. According to NSC, it collects and maintains data on 97% of currently enrolled college students nationwide, or more than 19.5 million students.⁷

In addition to the recent settlement in *Robinson*, NSC has a history of bad business practices, emerging as a key player in recent supervisory actions brought by CFPB. For example, in 2017, CFPB announced a supervisory action against one or more student loan servicers, where companies relied on “faulty information...in student data reports used to manage millions of borrowers’ accounts...provided by National Student Clearinghouse.”⁸

Further, in 2017, CFPB issued a comprehensive report, *Student Data & Student Debt: How student enrollment status problems can make student loans more expensive*, documenting the broken pipeline between NSC’s consumer reporting function and the financial services industry.⁹ As the Bureau explained in this report, allegations of breakdowns are widespread and longstanding, describing that even:

...the Department of Education has noted that when reporting...breakdowns cause enrollment statuses to become unavailable or incorrect, it can lead to higher loan costs for borrowers and may contribute to increases in student loan delinquency and default.

Based on new allegations made in the *Robinson* case and the growing body of evidence detailing the central role NSC plays as the largest specialty consumer reporting agency that reports on student enrollment data for tens of millions of people, the Bureau must immediately take the following actions:

- **Update the Bureau’s List of Consumer Reporting Companies.** As you are aware, the Bureau maintains and annually updates a list of consumer reporting companies, each of which has an obligation to comply with the Fair Credit

⁵ Class Action Complaint, *Robinson v. National Student Clearinghouse* (2019) (No. 1:19-cv-10749); <https://www.courtlistener.com/recap/gov.uscourts.mad.208991/gov.uscourts.mad.208991.1.0.pdf>.

⁶ National Student Clearinghouse, *ProPublica Nonprofit Explorer* (2018), <https://projects.propublica.org/nonprofits/organizations/521836384>.

⁷ National Student Clearinghouse Factsheet, *National Student Clearinghouse* (2019), <https://studentclearinghouse.info/onestop/wp-content/uploads/NSCFactSheet.pdf>.

⁸ CFPB Supervision Finds Some Student Loan and Mortgage Servicers Illegally Fail to Provide Protections to Borrowers, *Consumer Financial Protection Bureau* (Apr. 26, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervision-finds-some-student-loan-and-mortgage-servicers-illegally-fail-provide-protections-borrowers/>.

⁹ Student data & student debt, *Consumer Financial Protection Bureau* (Feb. 2017), https://files.consumerfinance.gov/f/documents/201702_cfpb_Enrollment-Status-Student-Loan-Report.pdf.

Reporting Act.¹⁰ This list includes the three large Consumer Reporting Agencies (Experian, Equifax, and TransUnion), as well as dozens of specialty agencies that collect and sell reports about tens of millions of Americans.

- **Supervise National Student Clearinghouse as a “larger participant” in the consumer reporting market.** In 2013, CFPB finalized a rule establishing supervisory authority over “larger participants” in the consumer reporting market, defined as companies with more than \$7 million per year in annual receipts.¹¹ Based on an analysis of public tax filings for 2016, 2017, and 2018 by SBPC, NSC appears to easily cross this threshold, disclosing approximately \$50 million or more in revenue each year.¹² NSC’s activities, particularly where it sells student data to financial services firms for underwriting purposes, may also make the company a service provider to other supervised entities.¹³ As part of this effort, CFPB should evaluate the full scope of the companies’ activities to ensure students’ data and students’ rights are protected.

Taken together, the recent allegations of abuse by NSC, coupled with past findings by the Bureau through supervision, clearly demonstrate that NCS’s business operations fall within the statutory definition of a consumer reporting agency. Further, statements made by NSC in court filings strongly suggest that, despite operating at a scale that dwarfs other regulated consumer reporting agencies deemed “larger participants” by the Bureau, it has never been subject to supervision and, of even greater concern, denies that it has any duty to its customers to comply with the FCRA.

As NSC explains in settlement documents filed as part of the *Robinson* case:

NSC vigorously denies...that it is a consumer reporting agency and that the FCRA...appl[ies] to it or its business practices...¹⁴

This reckless disregard for its legal obligations should be a warning to the Bureau that NSC poses significant, immediate, and ongoing risks to consumers. For the reasons outlined above, I urge you to immediately designate NSC as a consumer reporting agency and supervise its operations.

¹⁰ List of Consumer Reporting Companies, *Consumer Financial Protection Bureau* (2019), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list.pdf.

¹¹ Final Rule Defining Larger Participants of the Consumer Reporting Market, *Consumer Financial Protection Bureau* (July 20, 2012), <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/defining-larger-participants-consumer-reporting-market/>

¹² National Student Clearinghouse, *ProPublica Nonprofit Explorer* (2016-18), <https://projects.propublica.org/nonprofits/organizations/521836384>.

¹³ CFPB has authority under Section 1022(c)4 of the Dodd-Frank Act to monitor the marketplace for risks to consumers. The Bureau should use this authority to monitor the use of educational data, including enrollment status reports, in the underwriting process for consumer financial products, and to better understand the entire marketplace for this data. For example, other market participants also compile and sell enrollment status reports and other educational data to lenders, but little is known about the size or structure of this market. See, e.g. <https://www.measureone.com/>.

¹⁴ Exhibit A: Settlement Agreement and Release, *Robinson v. National Student Clearinghouse* (2020) (No. 1:19-cv-10749), https://www.courtlistener.com/recap/gov.uscourts.mad.208991/gov.uscourts.mad.208991.24.1_2.pdf

Sincerely,

/s/

Seth Frotman

Executive Director

Student Borrower Protection Center