



STUDENT BORROWER
PROTECTION CENTER

PRIVATE STUDENT LENDING

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Executive Summary

Despite historically falling in the shadow of the federal student loan market, the private student loan market is large, growing, and riddled with both opacity and consumer harm. As this report lays out:

- **The private student loan market is booming.** Following eight years of substantial year-over-year growth in originations, the total volume of outstanding private student loans is approaching \$130 billion — an amount greater than the payday loan market and the total outstanding balance of past-due medical debt. Growth in the private student lending space has accelerated just as the volume of new federal student loans has begun to decline. Annual federal student loan originations fell by more than 25 percent between the 2010-11 and 2018-19 academic years, while annual private student loan originations grew by almost 78 percent over the same period.
- **Available data show a stark bifurcation in private student loan outcomes.** The limited data available show that high-income students are more likely to borrow private student loans and that those borrowers are generally able to pay them off over time. However, further analysis reveals that while they might be less likely to borrow, students from lower-income backgrounds and students of color who *do* take on private student loans frequently struggle in repayment. This is in part because for-profit attendees are disproportionately likely to borrow private student loans and to face difficulties repaying them, even though they may represent only a subset of the private student loan market. Older consumers are also increasingly burdened by student debt but might otherwise go overlooked because they constitute only a small proportion of the borrower population as a whole. Overall, despite pronouncements by industry that the private student loan market is largely free from consumer harm, vulnerable groups regularly encounter distress while paying back private student loans.
- **Basic facts about large segments of the private student loan market and the broader education finance market surrounding it remain unknown.** Though observers often draw conclusions about the private student loan market at the macro level, critical gaps in data exist that leave assessments of the market and borrower harm within it incomplete.
 - One area where key information is missing, defined in this report as the “tail” of the private student loan market, consists of the nearly \$40 billion of private student loans made by small banks, fintech firms, private nonbank lenders, and various other market participants who do not currently engage in robust public reporting. Though these loans are legally student loans, market observers are left largely in the dark regarding their lenders’ holdings and origination patterns, as well as how borrowers fare in repayment. This lack of information obfuscates the risks borrowers face in this segment and in the private student loan market as a whole.

- Another area lacking transparency in education financing, labeled below as the “shadow education finance market,” is comprised of all the various forms of credit that are marketed for educational purposes but which (unlike loans in the tail described above) do not meet the Truth in Lending Act’s definition of a private education loan. Examples of products in the shadow education finance market include personal loans and revolving credit lines advertised as a method to pay for college but which are not legally student loans. These forms of credit are often expensive and risky, and are frequently marketed toward borrowers at for-profit institutions. Beyond these facts, though, the shadow education finance market is extremely opaque. The scale of unknown information in the space implies serious risks of consumer harm and a heightened need for scrutiny from law enforcement officials, policymakers, and advocates.

- **Policymakers, law enforcement officials, and regulators at every level of government should immediately act to enhance oversight of – and borrower protection in – these markets.** For decades, the private student loan market has been eclipsed by the larger federal student loan market. This has allowed for significant gaps to develop in protections for the millions of borrowers forced to take on private student debt and has given rise to key blind spots for policymakers and law enforcement officials seeking to ensure compliance with the law. As a consequence, predatory actors have been free to exploit borrowers at every stage of the student loan lifecycle, from origination through repayment and often into collections. There is an urgent need for federal, state, and local officials to provide substantially heightened oversight, leveraging the authorities that currently exist and seeking expanded authority to protect the millions of borrowers impacted by this market.

Introduction

Millions of Americans face an unprecedented student debt crisis. However, because most of this debt is made up of federal student loans, market observers frequently overlook the unique burdens and harms that private student loans impose on millions of Americans' financial lives.¹

Private student loans have recently seen rapid growth in both size and prominence. Despite this growth, the private student loan market has less transparency, fewer mechanisms for oversight, and a smaller scale of substantive protections for borrowers than other areas of consumer finance. For example, private student loans typically lack the flexible repayment plans, forbearance options, and rehabilitation opportunities that accompany federal student loans. Yet, as this report discusses, this opaque and lightly regulated segment is poised to play an increasing role in Americans families' financial lives.

This report provides a comprehensive view of the private student loan market, including both traditional private student loans and the "shadow education finance" market comprised of credit that is advertised for educational purposes but that does not meet the Truth in Lending Act's definition of a private education loan. In doing so, this report documents trends in student financing in the years following the financial crisis and demonstrates the need for more rigorous oversight and protections at the federal, state, and local levels.

First, this report provides an overview of the contemporary private student loan market and its recent boom after a slowdown around the period of the 2007-08 financial crisis. Using data from the U.S. Department of Education, the Federal Reserve Board, the Consumer Financial Protection Bureau (CFPB), private credit analysts, and various other public sources, this section seeks to contextualize the private student loan market's growth in terms of changes to other areas of consumer credit.

Second, this report explores who contemporary student loan borrowers are and how they fare in repayment. The data described in this section reveal a bifurcated market where vulnerable borrowers, including those from low-income backgrounds, borrowers of color, older borrowers, and borrowers at for-profit colleges are especially at risk.

Third, this report highlights key areas in which the private student loan market remains troublingly opaque, posing risks to the borrowers who participate in it.

Finally, this report includes recommendations for specific actions that key stakeholders can take to address the challenges outlined in this report and better protect borrowers from abuse.

The Private Student Lending Boom

There is now almost \$130 billion in outstanding private student loan debt in the United States.

Private student loans are generally a supplement to federal student loans.² Students and families give preference to federal student loans in part because private loans typically carry higher interest rates and lack many of the protections that accompany federal loans, including “flexible repayment plans, forbearance options, and contractual rights to periods of loan deferment, rehabilitation, and forgiveness opportunities.”³ School financial aid officials also play a role in ensuring borrowers exhaust their eligibility for grants and federal student loans before taking on private student loan debt and limit private student loan borrowing. Nonetheless, families often find that a private student loan is necessary as a bridge to access higher education.⁴

Research from the Consumer Financial Protection Bureau (CFPB) explains that the private student loan market “rapidly grew” in the period preceding the financial crisis of 2007-08.⁵ The market then entered a sharp decline, contracting alongside other forms of credit as America entered the Great Recession.⁶

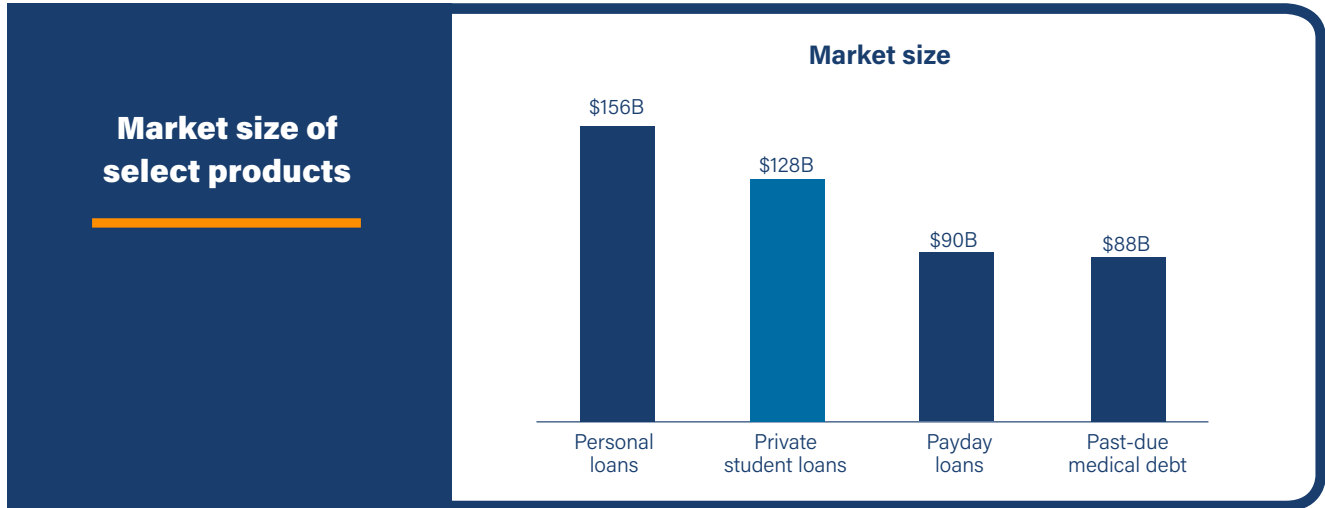
After years of financial turmoil, the economy eventually began to recover from the crisis. Private student loans bounced back even more quickly, growing steadily alongside federal student loans from 2008 to 2010 even as mortgage, credit card, and auto loan balances declined. There was then a leveling off in private student loan balances from 2010 to 2013. However, this slowdown in growth proved temporary — from the 2013-14 academic year through today, private student lending has grown swiftly and consistently.⁷

The recent boom in private student lending came precisely as annual federal student loan originations began to slow. Federal student loan origination volume fell by more than 25 percent between the 2010-11 and 2018-19 academic years, while annual private student loan originations grew by almost 78 percent over the same period. These opposing trends suggest that private student loans are quickly taking on an even more substantial role in financial markets and on American families’ balance sheets.

There are nearly \$130 billion in private student loans and growing

As of the end of 2019, there are an estimated \$128 billion in private student loans outstanding in the United States (Figure 1).

FIGURE 1:⁸

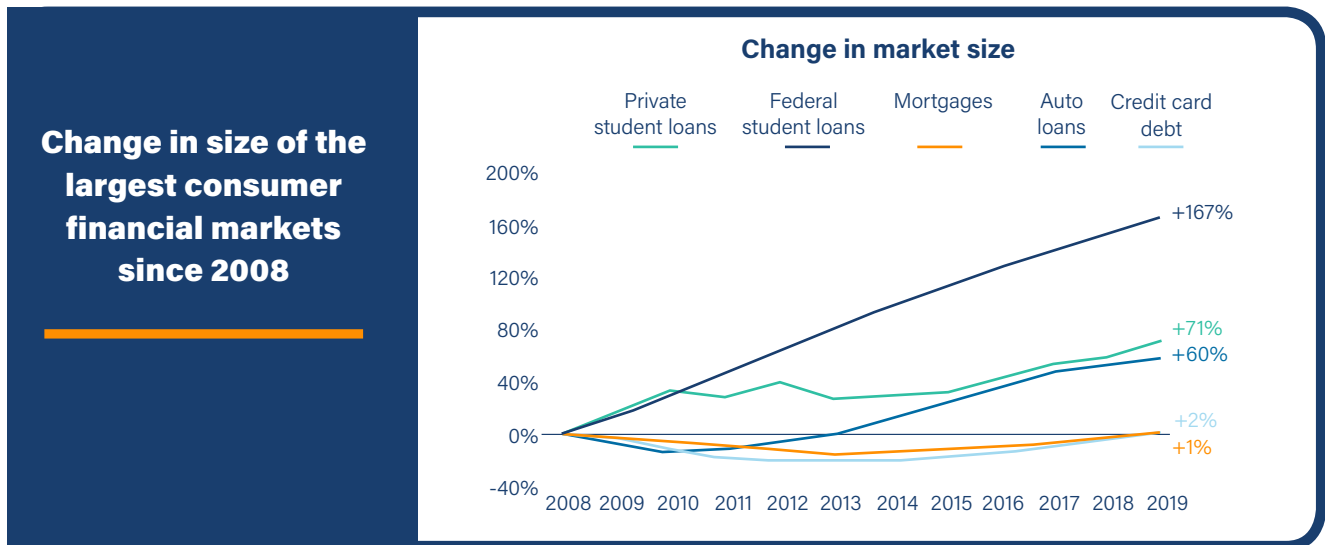


Private student loan growth has outpaced that of other financial products

Student loan borrowers owe 71 percent more private student loan debt than they did a decade ago. From 2008 to 2019, the balance of outstanding private student loans grew a full 11 percentage-points more than auto loans, 69 percentage-points more than credit card balances, and 70 percentage-points more than mortgages (Figure 2).

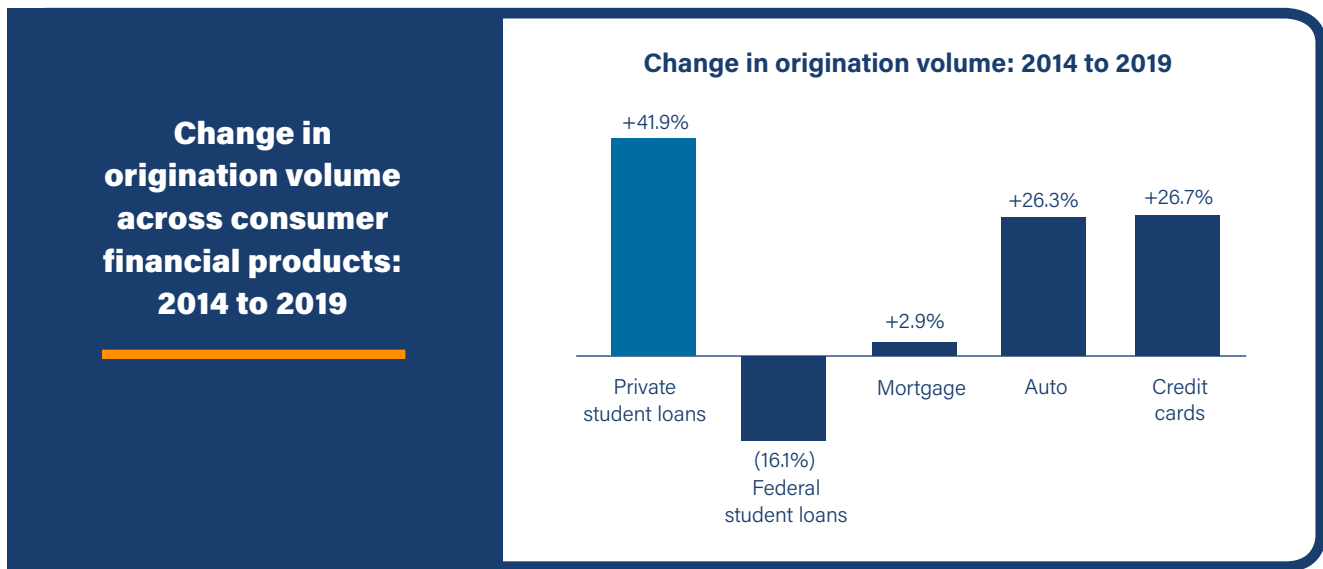
Student loan borrowers owe 71 percent more private student loan debt than they did a decade ago.

FIGURE 2:⁹



The rate of growth in new private student lending has been increasing for more than half a decade and shows no signs of decelerating. While the volume of new federal student loan originations has consistently *decreased* since 2012, the volume of new private student loan origination has *increased* every year over the same period. In fact, the recent rate of growth in private student loan originations has exceeded that of nearly every other consumer financial product, including mortgages, credit cards, and auto loans (Figure 3).¹⁰ For example, between 2014 and 2019, private student loan originations grew a full 15 percentage-points more than credit cards, the second largest area of origination growth.

FIGURE 3:¹¹



The preceding section offers a snapshot of the current state of the private student loan market. Americans typically pursue higher education at greater rates during downturns in the business cycle. Because enrollment in higher education is counter-cyclical, aggregate demand for student financing may increase as the economy continues to deteriorate in response to the coronavirus pandemic and as state lawmakers pull back financial support for public colleges and universities, triggering widespread tuition increases. As the preceding section details, present trends in private student lending suggest a market positioned to drive a continued expansion in lending in the months and years ahead. However, such an expansion comes at a cost: a closer look at recent borrowing trends also suggests that expanded private student lending would bring new risks to some of the most vulnerable borrowers in the student loan system.

Vulnerable Borrowers, Overlooked by Industry Data, Often Struggle

Available market-level data on private student loan repayment rates have led some observers to conclude that borrower outcomes are largely positive.¹² However, data released by industry and industry-funded analysts fail to capture the experiences of borrowers in critical segments of the market, especially those in the most vulnerable populations.¹³ In contrast, the following analysis of existing data points to stark differences in borrower outcomes, with more vulnerable groups — including lower-income borrowers, borrowers of color, and older consumers — frequently facing distress, delinquency, or default.

These outcomes hint at a divergence in the market. On one extreme, certain private student loan companies are targeting super-prime, wealthy, or high-earning-potential borrowers for loans and refinancing. At the other end, predatory players that are less represented in market-level data target vulnerable populations with products that feature high fees and interest rates. Most notably, across all market participants and private student loan products, relatively vulnerable borrowers and borrowers of color frequently struggle in repayment.

This divergence is explained in part by the experiences of students who attend for-profit schools. These students represent only a subset of the private student loan market, but they are much more likely to rely on private student debt to finance their education, and they often face extremely poor labor market outcomes after graduation.¹⁴ The combination of these factors leaves them poised to struggle in repayment.

This divergence is also visible among older consumers, who are increasingly burdened by student debt obligations assumed through cosigning.¹⁵ Many of these borrowers are likely to carry student debt far into retirement and to be unfairly blocked from cosigner release options advertised by student loan companies.¹⁶ This can lead them toward previously unexpected financial struggles and can force them to withhold spending on critical necessities like medical care.¹⁷

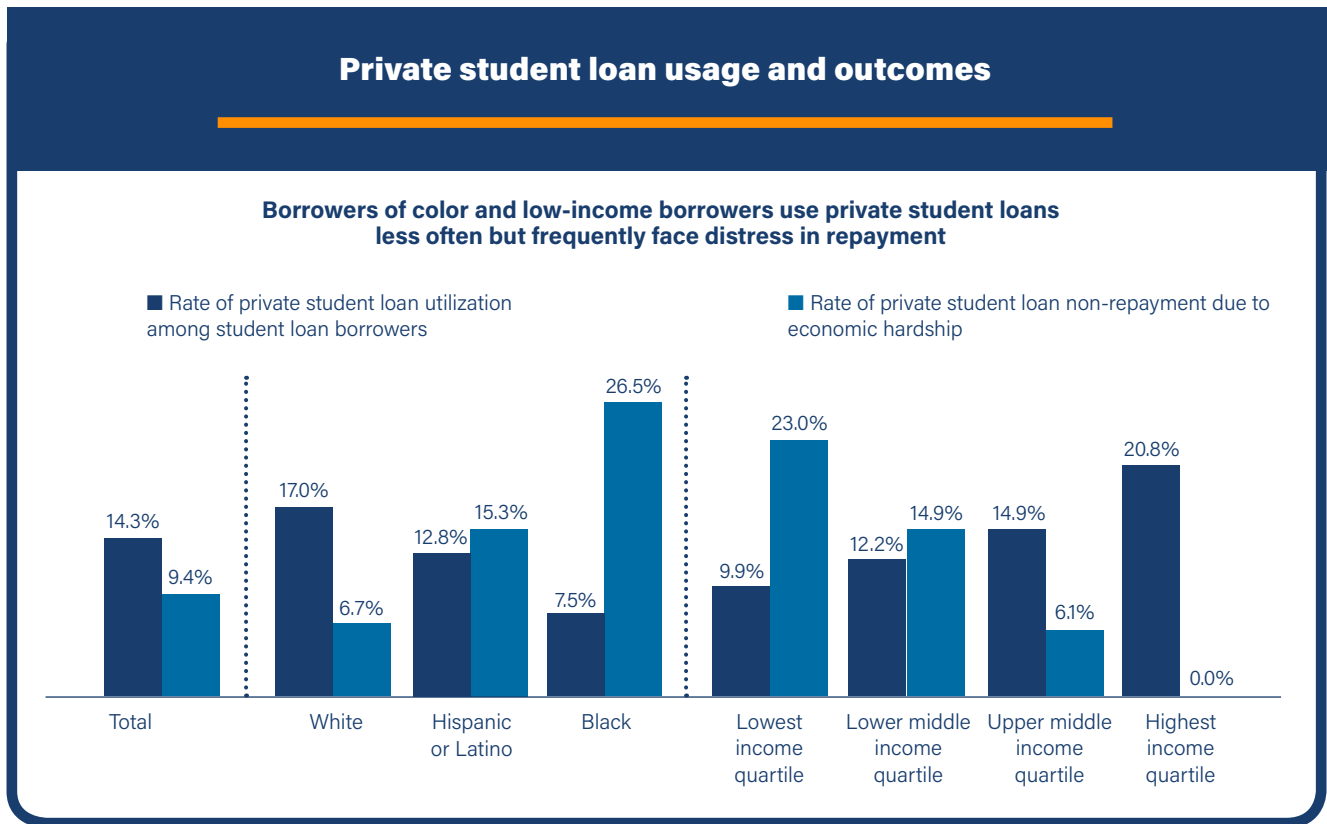
Overall, looking beyond top-line statistics on the private student loan market reveals that vulnerable borrowers frequently find themselves falling behind. This undermines industry efforts to stymie transparency and enhanced protections for borrowers through claims of there being minimal levels of consumer risk in the market.

Available data indicate that many vulnerable borrowers face substantial struggles in repayment

Private student loan borrowers from lower-income backgrounds and borrowers of color disproportionately struggle in repayment. Available data show that these borrowers face significantly higher rates of delinquency and default on their private student loans than their predominantly White and/or high-income peers (Figure 4).

As shown in Figure 4, Black students are less than half as likely to take out private student loans as their White peers (7.5 percent v. 17.0 percent, respectively) but are four times more likely to face distress in repayment (26.5 percent v. 6.7 percent, respectively). While the proportion of borrowers in the highest income quartile who reported facing distress in repayment was statistically indistinguishable from zero, nearly a *quarter* of borrowers from the lowest income quartile report not being in active repayment specifically due to economic hardship.

FIGURE 4:¹⁸



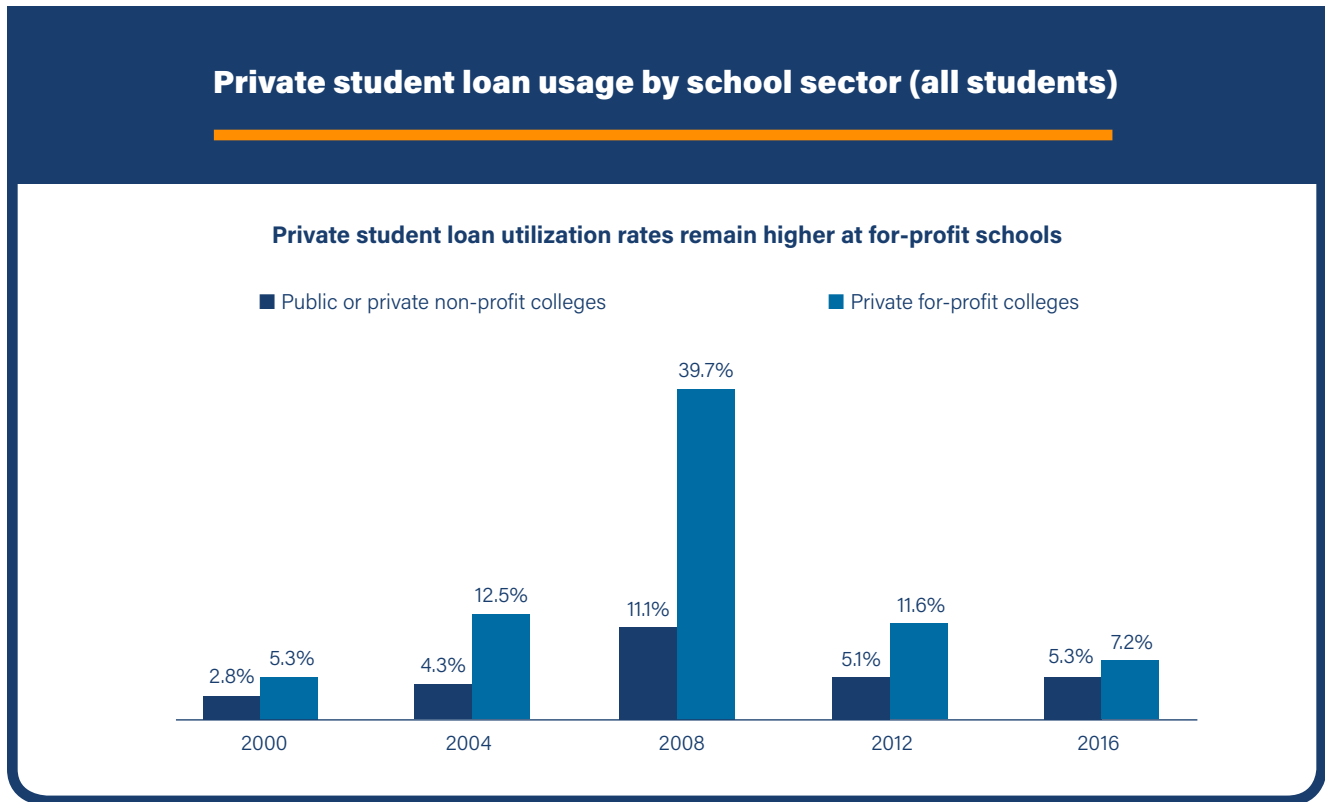
For-profit school attendees are more likely than other students to rely on private student loans

For-profit school attendees are over a third more likely than other students to rely on private student loans (7.2 percent v. 5.3 percent, see Figure 5).¹⁹ This is especially true for veterans, who are often “targeted” by for-profit schools to take on “high-interest private loans . . . without their knowledge or understanding of the true terms of loans.”²⁰

The private student loan balances that for-profit attendees take on fall generally in line with those seen at other types of schools, making them substantial.²¹ A quarter of private student loan borrowers at for-profit schools have private student debt balances of \$11,600 or more, and one-in-ten has debts of \$16,505 or more.²² These debts are separate from, and may exist in addition to, any federal student loan debt owed by these borrowers.²³

The prevalence of private student loans in this segment is of particular concern given their lack of required flexible repayment options, as attendees of for-profit schools often have lower wages and rates of employment than other college attendees and are almost three times less likely to graduate from the program they are enrolled in.²⁴ Consequently, as described below, available data indicate that private student loan borrowers who attend for-profit schools face increased financial distress during repayment.

FIGURE 5:²⁵



While there is limited information regarding how for-profit school attendees with private student loan debt fare during repayment, other data may offer indications and raise cause for concern. For example, private student loan borrowers who attend for-profit schools are more than three times more likely to default on their federal student loans than students attending schools in other sectors.²⁶

FIGURE 6:²⁷

Private student loan usage and federal student loan outcomes		
	Private student loan utilization rate (all students)	Percent of private student loan borrowers who have ever defaulted on a Title IV loan (excluding Parent PLUS)
Private for-profit colleges	7.2%	25.8%
Public or private non-profit colleges	5.3%	8.3%

Older consumers are increasingly saddled by private student debt

The overwhelming majority of private student loans are cosigned. Available data show that as many as 93 percent of currently outstanding private student loans are cosigned, with the yearly rate of cosigning on new private student loans for both undergraduate and graduate students ranging from 86 percent to 89 percent from 2010 to 2019.²⁸ This is distinct from federal student loans, which are never cosigned, and far exceeds cosigning rates observed in other consumer financial products.²⁹

The CFPB estimates that 57 percent of all private student loan cosigners are aged 55 or older.³⁰ Further, analysis of data from the Federal Reserve Board's Survey of Consumer Finances indicates that borrowers aged 55+ with private student loans hold an average private student loan balance of \$20,490 and that one-in-ten private student loan borrowers aged 55 or older has a balance over \$40,000.³¹ Taken together, these facts suggest that a large number of cosigners are entering retirement with substantial private student loan obligations.

Borrowers aged 55+ with private student loans hold an average private student loan balance of \$20,490.

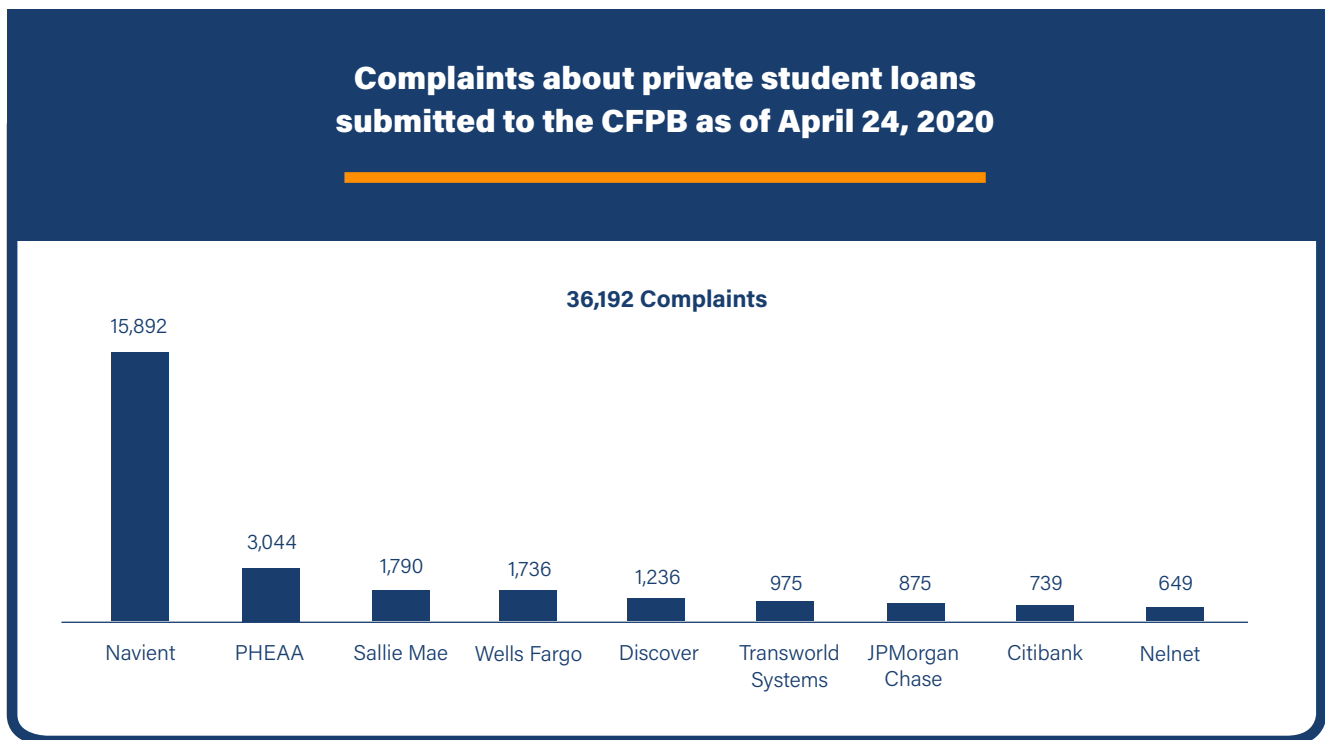
As the private student loan market continues to grow, and as household finances deteriorate in light of the recession recently brought on by the coronavirus pandemic, it is likely that there will be an increase in financial distress among older borrowers. This is in part because cosigners frequently face difficulties when trying to be released from private student loans, regardless of the generous release options that might have been promised when their loan was originated.³² The CFPB has noted that "[t]his practice may constitute a violation of the law, depending on the circumstances."³³

Regardless of its legality, this bait-and-switch can result in older borrowers facing additional years of indebtedness, compounding the burdens they face as they transition to fixed incomes.³⁴ For example, this debt can make seniors more likely to forgo necessary medical care, rely on credit cards to cover daily expenses, or find themselves facing bankruptcy in old age.³⁵ As private student loan balances continue rising for older consumers, these financial burdens will only become even more acute.

Consumer narratives and legal actions point to a market rife with abuses

As discussed above, available data compiled by industry on trends in private student lending and borrower performance fail to offer a detailed view of the harm present in various subsets of the market. However, the more than 36,000 private student loan complaints submitted to the CFPB and the proliferation of law enforcement actions against participants in the private student loan market tell a clear story: the private student loan market is rife with consumer harm and risks.³⁶

FIGURE 7:



The consumer complaint data analyzed in this report predates the economic downturn triggered by the coronavirus pandemic. In the wake of the last recession, consumer complaints helped regulators to identify the drivers of widespread private student loan borrower distress, particularly as breakdowns in loan servicing drove borrowers into default.³⁷ As private student loan borrowers struggle in greater numbers in the months ahead, consumer complaints may offer an early warning of emerging risks and offer key insight into a market still limited by important gaps in data.

12 complaints about private student loans are submitted to the CFPB every day.

Shining a light on abuses in the private student loan market

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An Incomplete Picture

Despite its size and recent growth, the private student loan market remains opaque both within the traditionally defined private student loan market and beyond it. The preceding sections of this report describe how available data sources offer little detail on borrowing and loan performance among key borrower demographics. However, the gaps in data and oversight of private student lending extend much further. Observers still do not know such basic facts about the market as the number of borrowers in it, how much they pay for credit, or how trends in loan terms have changed over time. As a result, billions of dollars in debt used to finance higher education remain out of view for regulators, enforcement officials, and the public.

These persistent blind spots are the result of two separate but related issues.

First, available data sources on private student lending overlook many smaller nonbank lenders, as well as established bank and nonbank lenders that may only make a small volume of private education loans each year. Because the tens of billions of dollars in private student loans that these companies cumulatively make fall outside of existing industry-led reporting mechanisms, this report defines them as constituting a long “tail” of the traditional private student loan market. There is little information regarding the loans contained in this tail, the lenders that made them, the borrowers that owe them, or whether those borrowers are able to successfully repay these debts.

Second, there is a significant but undefined volume of debt owed by current and former students who use other credit products marketed to finance higher education but which fall outside the relatively narrow definition of a private education loan under the Truth in Lending Act (TILA).³⁸ This unquantified volume of outstanding credit and debt includes, for example, specialty personal loans marketed to finance higher education and debts owed to individual schools used to finance unpaid tuition bills. Although the debts in these examples were incurred to finance higher education, neither would be considered, tracked, or overseen by regulators as private student loans. The following discussion seeks to inventory these debts as part of a larger, comprehensive education finance system inclusive of both these debts and traditional private and federal student loans. As such, this report defines these debts as constituting a “shadow education finance market.” Especially given the prevalence of shadow financing in the for-profit college sector, policymakers and law enforcement officials should be particularly attuned to the need for substantially heightened transparency and accountability.

Significant data gaps hinder understanding and oversight of the traditional private student loan market

There is a great wealth of data available on the credit card and mortgage markets, and much of it stems from reporting requirements established under federal law.³⁹ The data reported pursuant to these laws allow policymakers and regulators to track trends in lending and repayment and spot emerging risks to consumers.

However, no equivalent reporting requirements exist for private student lending, leaving policymakers, law enforcement officials, and regulators with notable blind spots when seeking to monitor and better understand the private student loan market.

FIGURE 8:

Blind spots: There are currently no authoritative, public, and consistently available data regarding the private student loan market

We do not definitively know:

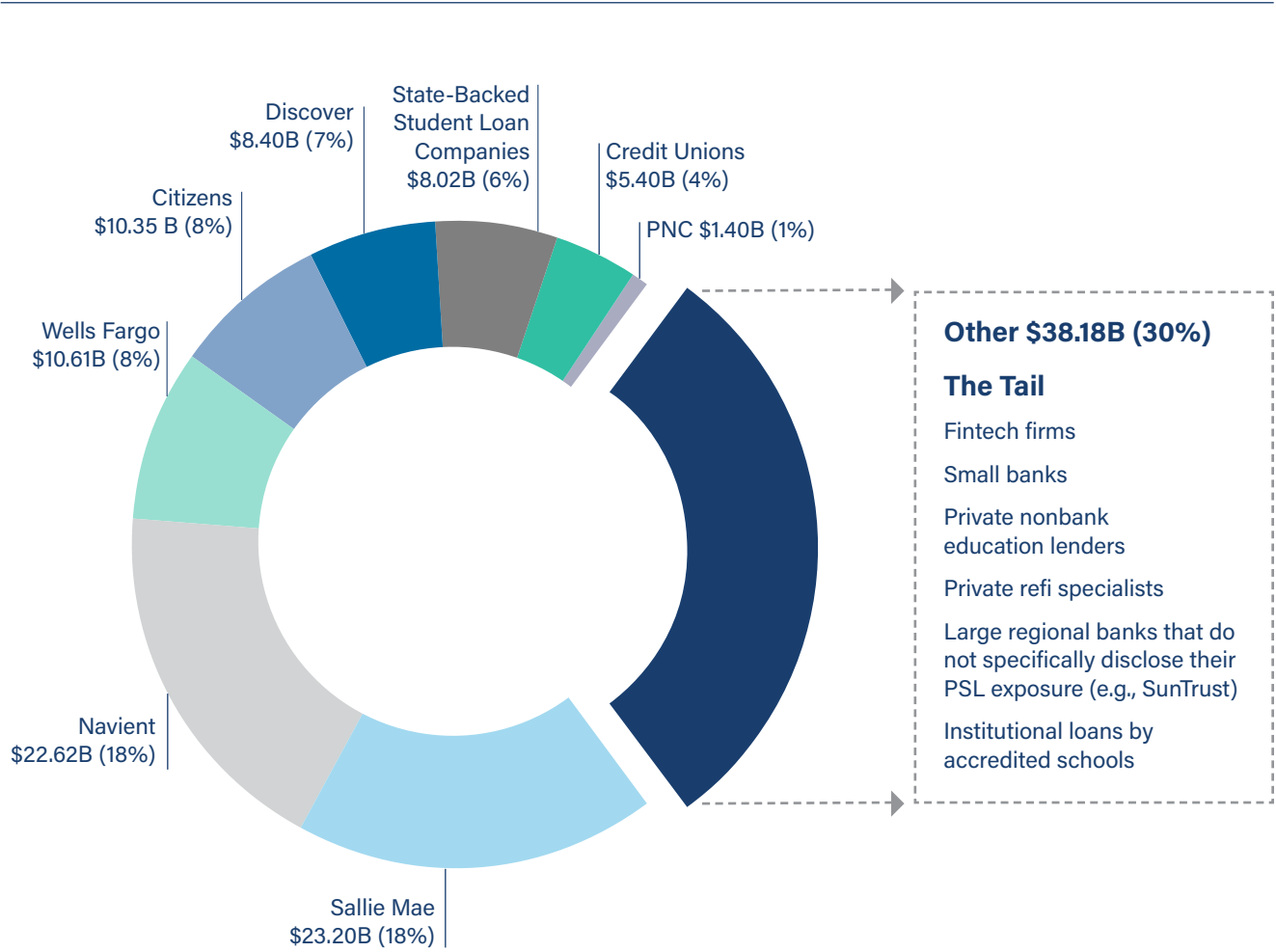
- The full size of the market, including the private student loan market tail
- Trends in origination, including origination by school sector
- Terms and conditions of loans, including interest rates and origination fees
- Differences in finance costs across demographic groups, school sectors, FICO/Vantage scores, and geographies, as well as trends in those differences over time
- Realized ratios of total loan balances to total tuition and fees per student
- Lifetime and annualized default rates across demographic groups, geographies, and loan vintages
- Rates of cosigning in private student lending
- The prevalence of private student debt and repayment outcomes among older consumers
- Outcomes related to student loan servicing, including as it pertains to borrower outcomes across demographic groups⁴⁰

The traditional private student loan market involves a long, opaque tail

Nearly one third of the private student loan market, or over \$38 billion, falls outside of the only regular, publicly available reporting structure that exists in this market — a series of industry-funded reports developed and released by private credit analysts.⁴¹ Because this segment is made up largely of small, opaque companies, it can be thought of as the long tail that juts out of the distribution of student loans made by traditional private student lenders. The tail consists of private student loans made by small banks, fintech firms, private nonbank lenders, specialty lenders chartered or backed by state governments, and various other market participants who do not currently engage in any meaningful, detailed, publicly accessible reporting (Figure 9). Though these loans meet the definition of a private education loan under the Truth in Lending Act, regulators and researchers are left largely in the dark regarding their lenders' holdings and origination patterns, as well as borrower's experiences in repayment.

The lack of publicly available information about this segment of the market raises important consumer protection questions. Regulators and law enforcement officials cannot uphold consumer financial protection laws, including fair lending laws, without knowing who is lending, who is borrowing, and how borrowers fare in repayment.

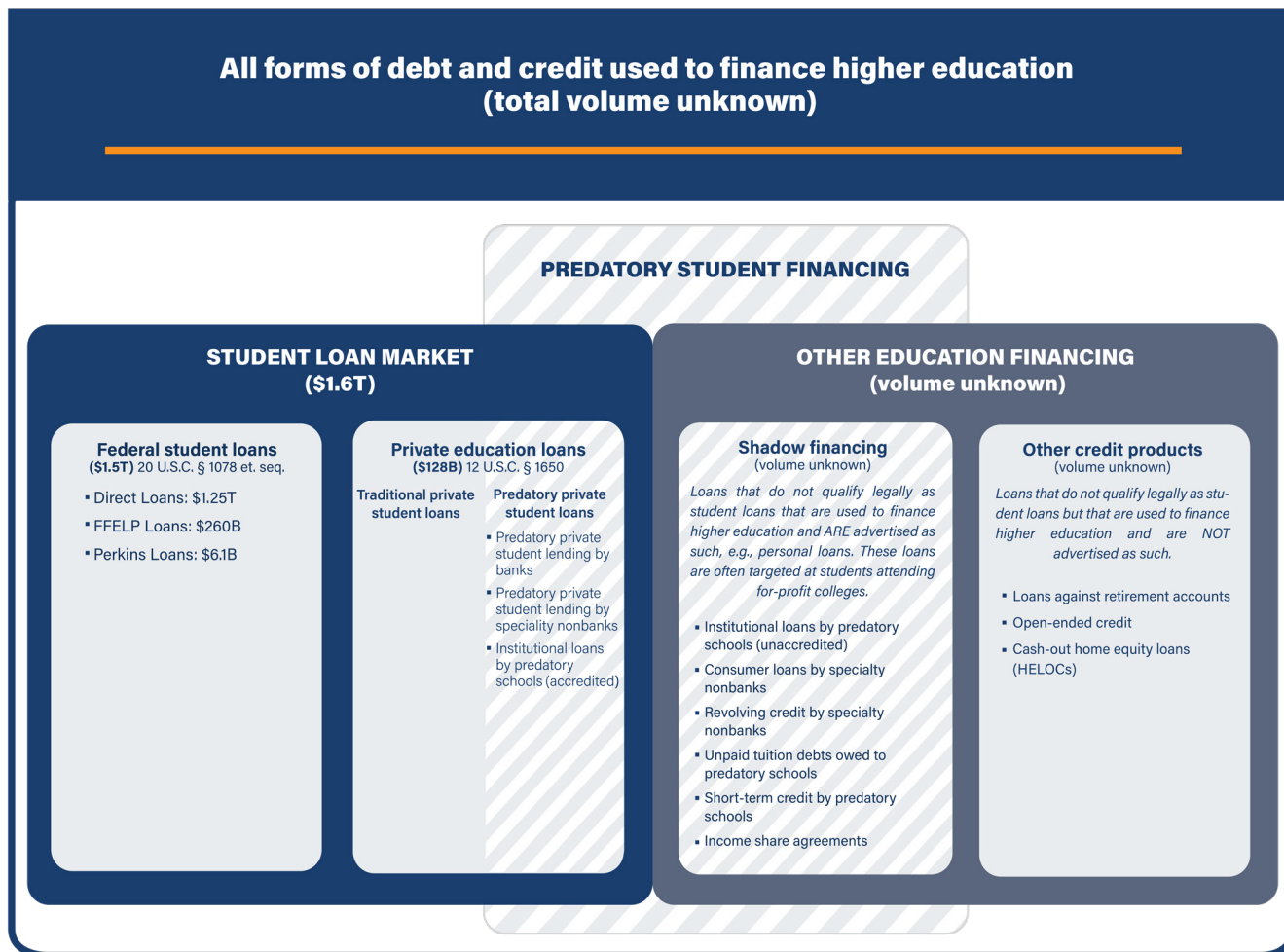
FIGURE 9:⁴²
Private Student Loan Market by Company/Entity



A shadow education finance market looms large

The private student loans discussed to this point are limited to those that meet the statutory definition of a "private education loan" under Truth in Lending Act (TILA).⁴³ However, this narrow definition fails to capture many types of debt and credit marketed by industry and taken on by students and their families as a means to finance higher education.⁴⁴ Collectively, this report designates this area of consumer credit as the "shadow education finance" market — debts that fall outside of the federal definition of a private education loan but are nonetheless marketed and incurred to finance higher education (Figure 10).

FIGURE 10:



The "tail" of the private student loan market under TILA includes, but is not limited to, the area labeled *Predatory private student loans*. *Predatory private student loans* is a subset of loans that qualify as private education lending under TILA and that are generally targeted at students attending for-profit or other short term certificate or career-focused institutions. The tail extends left beyond *Predatory private student loans* and into *Traditional private student loans*.

This visual is not intended to convey the relative size of the *Other education financing market* or the component parts of the private education loan market due to the unavailability of complete data. All dollar figures are approximate.

While companies operating within the shadow education finance market have recently been the recipient of increased scrutiny from law enforcement officials, this segment has historically received little attention from regulators and researchers.⁴⁵ As a result, the overall size of this segment remains unknown.⁴⁶

The scarcity of information about this market segment is especially dangerous given its connection to the for-profit college industry. Lenders in the shadow education finance market help prop up companies operating with almost no oversight, including for-profit businesses masquerading as schools. These companies often lack any reporting responsibilities to accrediting bodies or federal oversight agencies, leaving borrowers at the risk of predatory financial or educational products. The programs these institutions offer are generally ineligible for federal student aid and therefore rely on the shadow education finance market to facilitate these companies' profiteering.⁴⁷

Recommendations

As the preceding sections of this report describe, the private student loan market is large, has important areas of opacity, and poses significant risks to consumers. For nearly a decade, student lenders, lobbyists, and industry-funded analysts have sought to depict post-Great Recession private student lending as well-regulated and safe. Yet, despite assurances that the "vast majority" of private student loan borrowers successfully manage to repay their private student loans, many borrowers continue to struggle.⁴⁸ Further, despite claims that the market is tightly monitored, it continues to lack transparency and accountability.⁴⁹ Finally, despite claims by some private student lenders that state and local efforts to protect borrowers are preempted by federal law,⁵⁰ there remains an important role for state consumer protection enforcement and regulation.⁵¹ As a result, there is an immediate need for new policy interventions to better protect private student loan borrowers.

- **The Consumer Financial Protection Bureau should use its supervisory and enforcement authority over student lending to better protect borrowers in all corners of the student finance market.** Section 1024 of the Dodd Frank Act authorizes the Bureau to supervise any nonbank that "offers or provides to a consumer any private education loan" as defined under TILA, irrespective of the size of the lender, and gives the Bureau the authority to define the scope of its oversight over other larger nonbank providers of consumer financial products.⁵² This presents an immediate opportunity for oversight over certain firms in the tail of the traditional private student loan market. It was clearly Congress's intention that CFPB exercise this authority over smaller firms in the private student loan market; in nearly all other instances, CFPB's supervisory authority is limited to "larger" companies, while Congress imposed no such limitation with respect to private student lending. The Bureau also has an opportunity to further define the scope of federal oversight over "shadow education finance" by defining "larger participants" in the education financing market and subjecting those firms to supervision. The Bureau should exercise this authority, defining "shadow financing" in a manner that covers the entirety of the student financing market, closing existing regulatory gaps, and scrutinizing the lending practices of these firms.
- **State and local government agencies must prioritize oversight in the private student loan market.** Historically, state and local governments have played a leadership role in the oversight and regulation of smaller financial services firms, particularly nonbanks. This has been a key pillar in the American system of regulatory federalism. State and local government agencies can play this role in both the private student loan and "shadow education finance" markets, using existing licensing and oversight authority to examine these firms for compliance with existing state and federal consumer protection laws. Where gaps in current state laws leave state or local agencies without the authority to oversee or regulate these firms, lawmakers should take action. Regulators need the authority to oversee the entire market, ensuring all firms comply with prohibitions on unfair and deceptive practices, consumer lending laws, usury limits, fair debt collection laws, and the enumerated federal consumer financial protection

laws that states are authorized to enforce under section 1042 of the Dodd-Frank Act. States have already followed this road map in some cases.⁵³

- **Federal, state, and local governments must demand transparency in the private student loan market.** Lawmakers and regulators should pursue opportunities to demand transparency from firms offering these financial products to students and families, bringing firms out of the shadows and into the regulated financial system. For example, state or local agencies could impose requirements to compel all companies providing student financing to register with a state or local agency and to routinely produce basic information about the origination and performance of these loans, filling the key gaps in data discussed in the preceding sections of this report. In New Jersey, lawmakers are considering new legislation to achieve this goal, which can serve as a national model as other policymakers consider similar action.⁵⁴ At the federal level, the Consumer Financial Protection Bureau should also use its “market monitoring” authority to compel private student loan companies to regularly produce data on loan origination and performance.⁵⁵
- **Policymakers at the federal, state, and local levels must create strong, enforceable consumer protections across the marketplace for student financing.** For too long, borrowers with private student loans have lacked clear, enforceable consumer protections similar to those afforded to consumers who use other financial products, particularly mortgages and credit cards. At every step of the lifecycle of a private student loan, companies have taken advantage of borrowers by making predatory loans, using deceptive marketing tactics, tacking on unnecessary fees, and driving struggling borrowers into default. Policymakers must set standards for industry conduct in this market and ensure that these standards are enforceable by individual borrowers, as well as federal, state, and local government agencies.⁵⁶

Taken together, the preceding recommendations offer policymakers, regulators, law enforcement officials, and the general public a road map to address many of the biggest challenges facing the private student loan market. As the looming recession brought on by the coronavirus pandemic leads to significant financial hardship among borrowers who owe private student loans, action by federal, state, and local policymakers is urgently needed and

Endnotes

- 1 See Tariq Habash, *The CARES Act Leaves Behind Millions of Student Loan Borrowers*, Student Borrower Prot. Ctr. (Mar. 27, 2020), <https://protectborrowers.org/the-cares-act-leaves-behind-millions-of-student-loan-borrowers> ("In particular, the bill halts the accrual of interest and suspends payments on all Direct Loans and federally held Federal Family Education Loans (FFEL) for the next six months. But the bill falls short in many ways, including by not providing these same benefits to borrowers whose . . . loans happen not to be owned by the Department of Education (ED)").
- 2 See Consumer Fin. Prot. Bureau (CFPB), *Private Student Loans* 10 n.10 (2012), https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf ("Private education loans are designed to bridge the gap between family resources, scholarship and grants, federal loans and the cost of a college education.") (quoting Sallie Mae, Primer on Private Education Loans).
- 3 *Id.* at 90.
- 4 Note that some estimates indicate that the majority of private student loan borrowers do not first exhaust eligibility for federal student aid. These findings hint that problems beyond a lack of college affordability could play into the prevalence of private student loans. See Inst. for College Access & Success, *Private Student Loans: Facts and Trends* (2019), https://ticas.org/wp-content/uploads/2019/08/pl_facts_trends.pdf.
- 5 CFPB, *Private Student Loans*, *supra* n. 2, at 3.
- 6 See CFPB, *Private Student Loans*, *supra* n. 2, at 3 ("[T]he financial institution private student loan market grew from less than \$5 billion in 2001 to over \$20 billion in 2008, before contracting to less than \$6 billion in 2011").
- 7 Note that, unless stated otherwise, all dates refer to the academic year, which ends annually on June 30. For example, references to 2019 are to the twelve-month period immediately preceding June 30, 2019.
- 8 Private student loan market size calculated for each quarter as follows: the overall value of U.S. student debt as reported at *Consumer Credit – G.19*, Board of Governors of the Fed. Res. Sys., https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html (last updated Apr. 7, 2020), less the overall balance of federal student debt as reported at Dep't of Educ., *Federal Student Aid Portfolio Summary*, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls> (last visited Apr. 15, 2020). For the years in which the Department of Education reported only annual balance values, quarterly values are estimated by distributing annual growth according to historical trends regarding the proportion of annual growth attributed to each quarter. The above-referenced value of the private student loan market is accurate as of the end of Q4 2019. Unless otherwise stated, all other values relating to private student loans are calendarized to the end of the 2018-19 academic year in Q2 2019. Our estimate of the private student loan market's size tracks closely with MeasureOne's estimates. See MeasureOne, *The MeasureOne Private Student Loan Report 7* (2019), <https://cdn2.hubspot.net/hubfs/6171800/assets/downloads/MeasureOne%20Private%20Student%20Loan%20Report%20Q3%202019.pdf> (estimating the market size to be roughly \$125 billion as of Q3 2019). However, our estimates differ from the CFPB's 2012 historical estimates. See CFPB, *Private Student Loans*, *supra* n. 2. This difference can likely be attributed to the use of different data sources and different methodologies to extrapolate from survey data. See Elyssa Kirkham, *Personal Loan Statistics: An Overview of the Changing Loan Landscape*, LendingTree (Feb. 3, 2020), <https://www.lendingtree.com/-loans-statistics> (personal loans); Office of the Comptroller of the Currency, News Release 2019-14, *Comptroller of the Currency Supports CFPB Proposed Rule on Short-Term Small-Dollar Lending* (Feb. 11, 2019), <https://www.occ.gov/news-issuances/news-releases/2019/nr-occ-2019-14.html> (payday loans); *The U.S. Healthcare Cost Crisis*, Gallup, <https://news.gallup.com/poll/248081/westhealth-gallup-us-healthcare-cost-crisis.aspx> (last visited Apr. 15, 2020) (past-due medical debt). All data presented are the most recent available: personal loans are quoted as of Q3 2019, private student loans as of Q4 2019, payday loans as of Q1 2019, and past-due medical debt as of Q1 2019.

- 9 Private student loan market size as calculated quarterly per the methodology outlined *supra* n. 8. Federal student loan portfolio size as reported at Dep't of Educ., *Federal Student Aid Portfolio Summary*, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls> (last visited Apr. 15, 2020). For years where the Department of Education reported only annual balance values, quarterly values are estimated by distributing annual growth across quarters according to historical trends in the proportion of annual growth attributed to each quarter. See *supra* n. 8. Mortgage and auto loan balances can be found at Fed. Res. Bank of N.Y., *Quarterly Report on Household Debt and Credit* (Feb. 2020), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/hhd_c_report_2019q4.xlsx.
- 10 Although the year-over-year volume of new federal student loans has declined over this period, the outstanding aggregate volume of federal student loan debt continues to climb. Researchers have speculated that this is a function of a boom in unpaid interest charges owed by existing federal student loan borrowers coupled with a slow-down in the share of federal student loan borrowers paying off their debts in full. See, e.g., CFPB, *Data Point: Final Student Loan Payments and Broader Household Borrowing* (2018), https://files.consumerfinance.gov/f/documents/bcfp_data-point_final-student-loan-payments-household-borrowing.pdf.
- 11 See MeasureOne, *The MeasureOne Private Student Loan Report* (2019), <https://cdn2.hubspot.net/hubfs/6171800/assets/downloads/MeasureOne%20Private%20Student%20Loan%20Report%20Q3%202019.pdf> [hereinafter MeasureOne, *Private Student Loan Report*] (private student loan origination data); College Board, *Trends in Student Aid* (2019), <https://research.collegeboard.org/trends/student-aid/figures-tables/total-student-aid-and-nonfederal-loans-over-time> (federal student loan origination data); *Title IV Program Volume Reports*, Fed. Student Aid, <https://studentaid.gov/data-center/student/title-iv> (under "Loan Volume: Direct Loan Program" heading, select "AY 2018-2019 Q4") (last visited Apr. 15, 2020) (direct Department of Education source for 2019 federal student loan originations; College Board's tabulations only estimate those data); Fed. Res. Bank of N.Y., *supra* n. 9 (mortgage and auto loan originations); CFPB, *Origination Activity*, https://www.consumerfinance.gov/data-research/consumer-credit-trends/credit-cards/origination-activity/#anchor_lending-levels (last visited Apr. 15, 2020) (credit card origination data; available only through April 2019).
- 12 See MeasureOne, *Vast Majority of Students and Families Successfully Managing Private Student Loans According to Latest MeasureOne Private Student Lending Research Report*, PR Newswire (Dec. 20, 2019, 10:49 AM), <https://www.prnewswire.com/news-releases/vast-majority-of-students-and-families-successfully-managing-private-student-loans-according-to-latest-measureone-private-student-lending-research-report-300978406.html> [hereinafter MeasureOne, *Families Successfully Managing Private Student Loans*]; MeasureOne, *MeasureOne's Private Student Loan Report Shows that Positive Trends Continue in the Private Student Loan Market: 98% of Students and Families Successfully Managing Payments*, PR Newswire (June 18, 2019, 8:00 AM), <https://www.prnewswire.com/news-releases/measureones-private-student-loan-report-shows-that-positive-trends-continue-in-the-private-student-loan-market-98-of-students-and-families-successfully-managing-payments-300870106.html> [hereinafter, MeasureOne, *Positive Trends*].
- 13 See MeasureOne, *Families Successfully Managing Private Student Loans*, *supra* n. 12; MeasureOne, *Positive Trends*, *supra* n. 12.
- 14 See Richard Fry & Anthony Cilluffo, *A Rising Share of Undergraduates Are from Poor Families, Especially at Less Selective Colleges*, Pew Res. Ctr. (May 22, 2019), <https://www.pewsocialtrends.org/2019/05/22/a-rising-share-of-undergraduates-are-from-poor-families-especially-at-less-selective-colleges/>; Stephanie Riegg Cellini & Nicholas Turner, *Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data*, 54 J. Hum. Resources 342, 345 (2019) ("Examining the distribution of average annual earnings effects and average annual debt payments reveals that the vast majority of for-profit students experience both higher debt and lower earnings after attendance, relative to the years before attendance.").
- 15 See CFPB, *Snapshot of Older Consumers and Student Loan Debt* (Jan. 5, 2017), <https://www.consumerfinance.gov/data-research/research-reports/snapshot-older-consumers-and-student-loan-debt>.
- 16 See, e.g., CFPB *Finds 90 Percent of Private Student Loan Borrowers Who Applied for Co-Signer Release Were Rejected*, CFPB (June 18, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-90-percent-of-private-student-loan-borrowers-who-applied-for-co-signer-release-were-rejected/>.

- 17 See AARP, *Student Debt Across Three Generations* (2018), https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2018/three-generations-student-debt-infographic.doi.10.26419-2Fres.00249.002.pdf.
- 18 See *Private (alternative) loans with (percent >0) by Race/ethnicity (with multiple) and Income quartile: all students, for Total loans (excluding Parent PLUS Loans) (X >= 1)*, Nat'l Ctr. for Educ. Statistics, https://nces.ed.gov/datalab/index.aspx?ps_x=cccacadb (last visited Apr. 15, 2020) (income quartiles are constructed using family income for dependent students and student income for independent students, including spouse's income if the student is married, and demographic characteristics are observed in the data); Nat'l Ctr. for Educ. Statistics, *National Postsecondary Student Aid Study: 2016 Undergraduates* (2018), https://nces.ed.gov/datalab/powerstats/pdf/npsas2016ug_subject.pdf.

Note that the utilization rates in Figure 4 represent the proportion of undergraduates in each group who report having private student loans among all undergraduates in that group with at least some student loan debt of any kind, excluding Parent PLUS loans. More simply, this number reflects the rate of private student loan utilization among all student loan borrowers in each demographic group.

Given the lack of data regarding the distribution of private student loan defaults across demographic groups, as well as problems discussed below related to the furnishing of private student loan repayment information to credit bureaus, distress is described here using a constructed rate of "non-repayment due to economic hardship." Non-repayment due to economic hardship is estimated based on borrower-reported repayment statuses collected in the Federal Reserve Board's *Survey of Consumer Finances*. See *Survey of Consumer Finances*, Fed. Res. Board, <https://www.federalreserve.gov/econres/scfindex.htm> (last updated July 23, 2018). The survey asks borrowers about whether they have student loans, and whether those loans are federal student loans or not. Loans reported as "non-federal" are coded here as "private." For each student loan, the survey then asks respondents whether they are currently repaying on their loan and, if not, why. Respondents who report that they hold at least one private student loan on which they are not making payments specifically because they are "unable to afford [their] loan payment" (that is, they are not in a forbearance or grace period) are coded as being in "non-repayment due to economic hardship" on a private student loan. Survey weights provided by the Federal Reserve Board are then applied to estimate the proportion of borrowers across groups who are in non-repayment due to economic hardship.

For rates of "non-repayment due to economic hardship," race identification variables are pulled directly from the Federal Reserve Board's *Survey of Consumer Finances*. Income quartiles for the non-repayment rate are constructed based on reported household data in the Federal Reserve Board's *Survey of Consumer Finances* (note that no instances of a borrower from the highest income quartile being in non-repayment due to economic hardship were observed in the data. This is likely due to sample size.).

Several sources point to inconsistencies and incomplete information in credit reporting related to the student loan market. For example, while discussing student loan delinquency rates in its Consumer Credit Panel, the Federal Reserve Bank of New York stated that "these relative levels would be misleading. Why? A major reason is charge-off practices—student loans are typically reported as defaulted only after a full year (360 days past due)," a far longer prereporting term than in other areas of credit. Andrew F. Haughwout et al., *Just Released: Mind the Gap in Delinquency Rates*, Fed. Res. Bank of New York: Liberty Street Economics (Aug. 13, 2019), <https://libertystreeteconomics.newyorkfed.org/2019/08/just-released-mind-the-gap-in-delinquency-rates.html>. Readers should also note that, because of private student loans' special treatment in bankruptcy, there remains a substantial but unquantified volume of very old, distressed private student loan debt that need not be reported on lenders' balance sheets or trust disclosures, but that may still be enforceable against borrowers. Finally, data on student loan delinquencies and defaults ignore the prevalence of forbearance, deferment, and grace periods, statuses that, in the most recently available data, accounted for more than one-quarter of student debt listed as "current." See MeasureOne, *Private Student Loan Report*, *supra* n. 11 (private-student loan origination data). Overall, while data directly reporting on outcomes in the private student loan market would be preferable, it is currently neither available at the level of detail necessary for the present work nor reliable where available.

- 19 See *Private (alternative) loans (%>0) with (Percent>0) by NPSAS institution control for years 1996, 2000, 2004, 2008, 2012 and 2016*, Nat'l Ctr. for Educ. Statistics, https://nces.ed.gov/datalab/index.aspx?ts_x=cccae8 (last visited Apr. 15, 2020) (7.2% of students at for-profits used PSL, while 5.3% of students at other colleges use PSL).
- 20 *Why For-Profit Schools Are Targeting Veterans Education Benefits*, Veterans Educ. Success, <https://vetsedsuccess.org/why-for-profit-institutions-are-targeting-veterans-education-benefits> (last visited Apr. 15, 2020).

- 21 See *Percentile exclude zeros for Private (alternative) loans by NPSAS institution control*, Nat'l Ctr. for Educ. Statistics, https://nces.ed.gov/datalab/index.aspx?ps_x=cccaa1a (last visited Apr. 15, 2020).
- 22 See *id.*
- 23 See *id.*
- 24 See CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (2015), https://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf; see also Stephanie Riegg Cellini & Nicholas Turner, *Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data*, 54 J. Hum. Resources 342, 345 (2019); *Fast Facts: Graduation Rates*, Nat'l Ctr. for Educ. Statistics, <https://nces.ed.gov/fastfacts/display.asp?id=40> (last visited Apr. 15, 2020).
- 25 See *Private (alternative) loans (%>0) with (Percent>0) by NPSAS institution control for years 1996, 2000, 2004, 2008, 2012 and 2016*, Nat'l Ctr. for Educ. Statistics, https://nces.ed.gov/datalab/index.aspx?ts_x=cccae8 (last visited Apr. 16, 2020) (note that this is only among undergraduates, and that the referenced utilization rate refers to the proportion of private student loan borrowers among all students, not just among students with debt).
- 26 The authors of this report elected to focus on disparities in loan performance by school sector because this observation contrasts sharply with public statements by large private student lenders and the industry in general about the purported credit quality of borrowers in the private student loan market. See *supra* n. 12. Readers should also note that borrowers at for-profit schools who borrow both federal student loans and private student loans might do relatively better than borrowers at for-profit schools who borrow federal student loans only. Further research is needed to answer questions about the drivers of disparities in loan performance within the for-profit school sector. This report does not attempt to answer these questions.
- 27 See *Private (alternative) loans with (percent >0) by NPSAS institution control*, Nat'l Ctr. for Educ. Statistics, https://nces.ed.gov/datalab/index.aspx?ps_x=cccaped50 (last visited Apr. 16, 2020) (referring to the rate of private student loan utilization among all students, not just among students with student loans); *Title IV loans (excludes Parent PLUS): ever defaulted on a loan through 2017 with (percent >0) by Control of first institution in 2011-12, for Private (alternative) loans: cumulative amount borrowed through 2017 (X >= 1)*, Nat'l Ctr. for Educ. Statistics, https://nces.ed.gov/datalab/index.aspx?ps_x=cccaafcb3 (last visited Apr. 16, 2020).
- 28 See MeasureOne, *Private Student Loan Report*, *supra* n. 11. Note that the numbers are starting to get rather high even for graduate private student loans.
- 29 Readers should note that certain federal loans made to parents or graduate students may require an "endorser" where a student borrower has certain adverse information in her credit history. Endorsers are different from cosigners in that endorsers are not compelled to repay the loan unless the student borrower fails to do so. By contrast, a cosigner is co-obligated on the loan from the date the loan is made. See *Endorser*, Fed. Student Aid, <https://studentaid.gov/help-center/answers/article/endorser/> (last visited Apr. 16, 2020) (endorser's role); see also CFPB *Finds 90 Percent of Private Student Loan Borrowers Who Applied for Co-Signer Release Were Rejected*, CFPB (June 18, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-90-percent-of-private-student-loan-borrowers-who-applied-for-co-signer-release-were-rejected/> (regarding student loan cosigning rates); CFPB, *The Consumer Credit Card Market* 23 fig.1 (2019), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf (roughly 5–15 percent of credit card borrowers have a cosigner).
- 30 See CFPB, *Snapshot of Older Consumers*, *supra* n. 15.
- 31 SBPC data analysis and private student loan balance estimates from the Federal Reserve Board's Survey of Consumer Finances. *Survey of Consumer Finances*, *supra* n. 18. The survey asks borrowers about whether they have student loans, and whether those loans are federal student loans. Loans reported as "non-federal" are coded as "private," and the cumulative balance of such loans for each borrower is recorded as their "private student loan balance." Respondents' ages are reported in the survey, and survey weights provided by the Federal Reserve Board are then used to construct percentiles of student loan balances.

- 32 See CFPB, *Mid-year Update on Student Loan Complaints* (2015), https://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf.
- 33 *Id.*
- 34 See CFPB, *Snapshot of Older Consumers*, *supra* n. 15 (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/aarp/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/73-retirement-norm-millennials/> (finding that, by age 73, a four-year college graduate with median student loan debt of \$23,000 has about \$115,000 less in retirement savings than a four-year college graduate with no student loans); 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>.
- 35 See CFPB, *Snapshot of Older Consumers*, *supra* n. 15 (medical expenses); AnnaMaria Andriotis, *Over 60, and Crushed by Student Loan Debt*, Wall St. J. (Feb. 2, 2019, 12:00 AM), <https://www.wsj.com/articles/over-60-and-crushed-by-student-loan-debt-11549083631> (credit cards); Hillary Hoffower, *The Number of Older Americans Filing for Bankruptcy Has Surged by up to 300% in Recent Years—and Boomers Are No Exception*, Bus. Insider (Aug. 8, 2019, 3:51 PM), <https://www.businessinsider.com/more-baby-boomers-in-debt-filing-for-bankruptcy-2019-8> (bankruptcy).
- 36 See *Consumer Complaint Database*, CFPB, https://www.consumerfinance.gov/data-research/consumer-complaints/search/?from=0&product=Student%20loan%E2%80%A2Private%20student%20loan&product=Student%20loan%E2%80%A2Non-federal%20student%20loan&product=Debt%20collection%E2%80%A2Private%20student%20loan%20debt&product=Debt%20collection%E2%80%A2Non-federal%20student%20loan&searchField=all&searchText=&size=25&sort=created_date_desc (last updated Apr. 24, 2020).
- 37 See CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (2014), https://files.consumerfinance.gov/f/201410_cfpb_report_annual-report-of-the-student-loan-ombudsman.pdf.
- 38 12 U.S.C. § 1650 (2012).
- 39 See CFPB, *The Consumer Credit Card Market 2* (2014), <https://www.consumerfinance.gov/about-us/newsroom/bureau-releases-report-consumer-credit-card-market/> (“The Credit Card Accountability Responsibility and Disclosure Act (CARD Act) requires the [CFPB] to prepare a biennial report to Congress regarding the consumer credit card market [that includes] . . . findings regarding, among other things, the cost and availability of credit and innovations in the credit card marketplace.”); *Mortgage Data (HMDA)*, CFPB, <https://www.consumerfinance.gov/data-research/hmda/> (last visited Apr. 16, 2020) (“The Home Mortgage Disclosure Act (HMDA) requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages. These data help show whether lenders are serving the housing needs of their communities; they give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory.”).
- 40 See Student Borrower Prot. Ctr., *Private Student Loan Oversight Amid the Coronavirus Pandemic* (2020), <https://protectborrowers.org/wp-content/uploads/2020/04/Coronavirus-PSL-1022c4-issue-brief-vF.pdf>.
- 41 See MeasureOne, *Private Student Loan Report*, *supra* n. 11.

- 42 Note that only privately held student loans originated outside of the Federal Family Education Loan Program (FFELP) are considered in the present calculation and in this publication generally. FFELP loans are treated by the authors as federal student loans, irrespective of the loan holder. Private student loan market-share data are the most recently available through Q4 2019 based on variability in the publication of data for Q1 2020. Data for credit unions is as of Q1 2019, and data for state-backed student loan companies are as of Q2 2019. See Sallie Mae, *Sallie Mae Reports Fourth-Quarter and Full-Year 2019 Financial Results* (Jan. 22, 2020), https://www.salliemae.com/assets/investors/shareholder/SLM_Corp_Q4_2019_Press_Release.pdf; Navient, 2019 4th Quarter and Full Year Earnings Call Presentation (2020), <https://navient.com/assets/about/investors/webcasts/Earnings-Presentation-Q419.pdf>; Wells Fargo, *4Q19 Quarterly Supplement* (2020), <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/earnings/fourth-quarter-2019-earnings-supplement.pdf>; Citizens Fin. Group, *Annual Report (Form 10-K)* (Feb. 24, 2020), <https://otp.tools.investis.com/clients/us/citizens/SEC/sec-show.aspx?Type=html&FilingId=13945779&Cik=0000759944>; Discover Fin. Servs., *Quarterly Report (Form 10-Q)* (Oct. 30, 2019), <http://d18rn0p25nwr6d.cloudfront.net/CIK-0001393612/bbe057a5-43e6-464c-97df-4fe93a629c96.pdf>; PNC Fin. Servs., *Annual Report 113-14 (Form 10-K)* (Feb. 6, 2020), <https://thepncfinancialservicesgroupinc.gcs-web.com/static-files/2ce8642a-1688-4adf-8f15-6facd57a0a66> (PNC's private student loan portfolio size is estimated as the value of education loans originated using FICO as a credit metric given PNC's statement that "[it] use[s] FICO scores as a primary asset quality indicator for . . . non-government guaranteed or non-insured education loans . . . Internal credit metrics, such as delinquency status, are relied upon heavily as asset quality indicators for government guaranteed or insured education loans . . ."); see also Aman Johal, *Cooperatives Outperform in Student Lending*, Credit Unions (Aug. 5, 2019), <https://www.creditunions.com/blogs/industry-insights/cooperatives-outperform-in-student-lending/> (credit unions); *Educ. Fin. Council, 2019-2020 Non-Profit & State-Based Education Loan Handbook* (2019), https://cdn.ymaws.com/www.efc.org/resource/resmgr/efc_members/2019-2020_nfp_loan_handbook.pdf (state-backed student loan companies). Note that SunTrust reports engaging in private student lending, but is accounted for in the tail of the market because it does not report its private student loan holdings separately from its "other direct loan" segment. See SunTrust Banks, Inc., *Quarterly Report 76 (Form 10-Q)* (Oct. 28, 2019), <http://d18rn0p25nwr6d.cloudfront.net/CIK-0000750556/4e227220-5046-4893-8bc2-bf4b97bb50ef.pdf>.
- 43 12 U.S.C. § 1650 (2012).
- 44 See 12 U.S.C. § 1650 (2012). In 2009, the Federal Reserve Board of Governors issued implementing regulations further narrowing the statutory definition of a "private education loan." Under this regulation, a "[p]rivate education loan means an extension of credit that: (i) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); (ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends; (iii) Does not include open-end credit, any loan that is secured by real property or a dwelling; and (iv) Does not include an extension of credit in which the covered educational institution is the creditor if: (A) The term of the extension of credit is 90 days or less; or (B) an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments." 12 C.F.R. § 226.46 (2009), <https://www.govinfo.gov/content/pkg/FR-2009-08-14/pdf/E9-18548.pdf>.
- 45 See, e.g., Colleen Tressler, *FTC Settlement Against University of Phoenix*, FTC Blog (Dec. 10, 2019), <https://www.consumer.ftc.gov/blog/2019/12/ftc-settlement-against-university-phoenix>.
- 46 Such debt might be much more common than expected. Although the overall size of the "shadow education finance market" is unknown, the Federal Reserve Board reported in 2019 that 31% of student loan borrowers have some form of debt outside of the definition of a student loan that was used for education finance. See *Report on the Economic Well-Being of U.S. Households in 2018*, Fed. Res. Board., <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-student-loans-and-other-education-debt.htm> (last updated Jan. 30, 2020). This includes 24% of borrowers with education debt having some amount of credit card debt used to finance their own education, and 11% of such borrowers taking on a home equity line of credit (HELOC) to finance a child or grandchild's education. This is not to say that all of this debt was marketed as a product to be used to finance higher education, which is part of the present definition of what constitutes the "shadow finance market" (that is, a product is considered inside the "shadow finance market" if it both does not qualify as an education loan under TILA and was marketed for use as student financing). However, statistics such as those from the Federal Reserve Board underscore how large this shadow market could be and how much further research is needed on the space.

- 47 See, e.g., *Financing*, Luxx Brow Academy, <https://www.luxxbbb.com/financing> (last visited Apr. 16, 2020) (this school is not eligible for federal student aid so instead offers loans from TFC Tuition Financing, a specialty nonbank lender that focuses on attendees of for-profit institutions).
- 48 See MeasureOne, *Families Successfully Managing Private Student Loans*, *supra* n. 12.
- 49 See Kerry Rivera, *Expert Offers Insights on Trends and Opportunities in Student Lending Space*, Experian (Dec. 19, 2017) <https://www.experian.com/blogs/insights/2017/12/student-lending-expert-qa>; Manuel Madrid, *States Take on Student Debt Abuses as the Trump Administration Defaults*, Am. Prospect (Oct. 2, 2017), <https://prospect.org/education/states-take-student-debt-abuses-trump-administration-defaults> (finding that federal oversight and regulation of student lending has been "weak," leading to opportunities for intervention by the states).
- 50 See, e.g., Richard Hunt, *CBA Comment Letter for Record on HFSC OI Hearing on Student Loan Financing*, Consumer Bankers Ass'n (June 11, 2019), <https://www.consumerbankers.com/cba-issues/comment-letters/cba-comment-letter-record-hfsc-oi-hearing-student-loan-servicing>.
- 51 See, e.g., 12 U.S.C. § 5552 (2012) (establishing a role for states in enforcing federal consumer financial protection laws).
- 52 12 U.S.C. § 5514 (2012).
- 53 For instance, in August 2019, the New York Department of Financial Services brought an action against a specialty financing provider for for-profit schools for operating as an unlicensed "sales finance company" in New York. See DFS Superintendent Linda A. Lacewell Announces Settlement with National Student Loan Servicer of For-Profit Schools, N.Y. Dep't Fin. Servs. (Aug. 15, 2019), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1908151; see also Consent Order, *In re TFC Credit Corp.* (Conn. Banking Comm'n May 28, 2019), <https://portal.ct.gov/-/media/DOB/Enforcement/Consumer-Credit/2019-CC-Orders/TFC-Credit-Corporation-CO.pdf?la=en>.
- 54 Senator Cunningham Introduces Legislation to Protect Private Student Loan Borrowers, N.J. S. Democrats, <https://www.njsendems.org/senator-cunningham-introduces-legislation-to-protect-private-student-loan-borrowers/> (last visited Apr. 16, 2020); S.B. 2358, 219th Leg., Reg. Sess. (N.J. 2020).
- 55 Student Borrower Prot. Ctr., *supra* n. 40.
- 56 State lawmakers have introduced a range of proposals to expand protections for borrowers with private student loans, including legislation in Maryland to halt abusive student loan debt collection lawsuits, legislation in Connecticut to create new protections for borrowers who cosign private student loans, and the New Jersey legislation mentioned above includes a wide range of new student borrower protections, including new rights for borrowers with private loans and prohibitions on common abuses by private student lenders, servicers and debt collectors. See *Del. Lesley Lopez: Crack Down on Predatory Lenders*, Md. Matters (Mar. 5, 2020), <https://www.marylandmatters.org/2020/03/05/del-lesley-lopez-crack-down-on-predatory-lenders/> (Maryland); Bill 381, Gen. Assemb., Feb. Sess. (Conn. 2020) (Connecticut); *Senator Cunningham Introduces Legislation to Protect Private Student Loan Borrowers*, *supra* n. 54.



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