STUDENT BORROWER PROTECTION CENTER

MEMORANDUM

April 20, 2020

TO: Interested Parties

FROM: Seth Frotman, Executive Director
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RE: **Loan Servicing, Enforcement Risk, & the Coronavirus Pandemic**

I. Introduction

The COVID-19 pandemic has created a crisis for American consumers and loan servicers alike. This is true for consumers of all financial products, and student loan borrowers are no exception. As the following memorandum discusses in detail, recent turmoil in the student loan market illustrates the risks and consequences for both borrowers and industry when loan servicers prove unable to accommodate the stress of a substantial economic downturn.

Unprecedented numbers of student loan borrowers have been laid off or are experiencing income loss that leaves them unable to make monthly student loan payments. Borrowers are entitled to relief from their student loan payments through measures like income-driven repayment, deferment, forbearance, modifications, and additional measures put in place by the federal government in response to the crisis.[1] Some private lenders have also established relief available for those affected by the novel coronavirus.[2] However, distressed borrowers traditionally must request this relief on an individualized basis, and therein lies the problem: many student loan borrowers report that they are unable to reach their servicers to even discuss these options, effectively denying them relief. The problem is particularly acute for private student loan borrowers and other consumers who have not received automatic debt assistance through government interventions.

[1] Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong. (2020).
[2] Ron Lieber, *Which Consumer Lenders Are (and Aren't) Helping the Most*, N.Y. TIMES (Mar. 17, 2020), https://www.nytimes.com/2020/03/17/your-money/loan-waivers-coronavirus.html.

These industry practices can lead to significant legal consequences for companies. When servicers place the burden on borrowers to submit individualized requests for relief, despite being unable to receive and evaluate those requests due to a lack of resources, servicers engage in unfair and deceptive practices for which they may be held liable under state and federal law.

Throughout the foreclosure crisis during the Great Recession, servicers were subject to extensive liability stemming from shoddy and illegal servicing practices, and the industry appears to be on the brink of replicating these abuses. However, these issues are not limited solely to student loan servicers. Instead, the challenges facing student loan borrowers and servicers are an ominous sign of issues confronting all consumer financial service providers, and servicers in all markets–from credit cards and auto loans, to mortgages and servicers of other consumer loans. Already, we are seeing dozens of anonymous complaints in the Consumer Financial Protection Bureau's (CFPB) Consumer Complaint Database from borrowers claiming their servicer is not providing effective relief.[3]

Across the entire financial marketplace, lenders purporting to offer relief they cannot actually provide due to inadequate or under-resourced servicing operations will be subject to legal liability in the years ahead. To proactively address this, lenders should abandon the outdated paradigm of providing borrower relief only to those able to request it. Instead, lenders should *immediately and automatically implement payment relief measures and protections against late fees, damaged credit, and other negative consequences for all delinquent borrowers across their entire loan portfolios*.

II. Breakdowns in Student Loan Servicing Present an Ominous Warning to the Entire Consumer Finance Market

Student loan debt now makes up more than $1.6 trillion of consumer debt, making it the second largest source of debt behind mortgages. For years, servicers have had significant problems providing the protections afforded to borrowers under federal laws, including the Higher Education Act, the Servicemembers Civil Relief Act, the Fair Credit Reporting Act, and the prohibition of unfair, deceptive, or abusive acts included in Dodd-Frank.[4] These failures are

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[3] David Dayen, *Unsanitized: Richard Cordray on the Imminent Financial Scam Crisis*, THE AMERICAN PROSPECT (Apr. 8, 2020), https://prospect.org/coronavirus/unsanitized-richard-cordray-imminent-financial-scam/.

[4] *See Press Release: CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices*, CONSUMER FIN. PROT. BUREAU (Aug. 22, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takesaction-against-wells-fargo-illegal-student-loan-servicing-practices/; *Press Release: CFPB Orders Discover Bank to Pay $18.5 Million for Illegal Student Loan Servicing Practices*, CONSUMER FIN. PROT. BUREAU (July 22, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-discoverbank-to-pay-18-5-million-for-illegal-student-loan-servicing-practices/; *Press Release: CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, CONSUMER FIN. PROT. BUREAU (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpbsues-nations-largest-student-loan-company-navient-failing-borrowers-everystage-repayment/; *Press Release: Nearly 78,000 Service Members to Begin Receiving $60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans*, U.S. DEP'T OF

evidenced by the multitude of lawsuits at the federal and state levels demonstrating how servicers have denied the protections to which borrowers are legally entitled, including protections for servicemembers, teachers, and others working in public service.[5]

The widespread failures across the student loan servicing market provide a window into problems consumers have faced even before the current crisis. The actions these companies have taken over the last four weeks are a warning for the hundreds of millions of consumers across all consumer finance markets.

The servicing market cannot accommodate large scale borrower distress

When student loan borrowers become delinquent during normal times, most servicers follow a similar playbook: get the borrower on the phone, demand the full delinquent amount, negotiate the largest payment possible, and if all else fails, discuss options to reduce or temporarily eliminate payments, like deferment or forbearance. In many instances, borrowers are entitled to relief, whether because relief is specifically provided for under federal law,[6] in their promissory notes,[7] or because they relied on lender promises of assistance in times of difficulty through lender-specific programs.[8]

For private student loans, this model emphasizes collecting as much money as quickly as possible and is predicated on the assumption that the borrower's income and assets will support student loan payments if the borrower de-prioritizes other expenses.

With respect to federal student loans, recent government enforcement actions suggest that this model also generates bad outcomes for borrowers but for different reasons. Rather than pursuing borrowers in an attempt to collect as much cash as possible, servicers of federal student loans are incented to have as little contact with their customers as possible.[9] In normal times, this business

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JUSTICE (May 28, 2015), https://www.justice.gov/opa/pr/nearly-78000-service-members-beginreceiving-60-million-under-department-justice-settlement.

[5] *Press Release: Nearly 78,000 Service Members to Begin Receiving $60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans*, U.S. DEP'T OF JUSTICE (May 28, 2015), https://www.justice.gov/opa/pr/nearly-78000-service-members-beginreceiving-60-million-under-department-justice-settlement; *Press Release: CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, CONSUMER FIN. PROT. BUREAU (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpbsues-nations-largest-student-loan-company-navient-failing-borrowers-everystage-repayment/; *Press Release: AG Ferguson Files Suit Against Sallie Mae Offshoot Navient Corp., Announces Student Loan Bill of Rights Legislation*, WASH. STATE OFFICE OF THE ATTORNEY GENERAL (Jan. 18, 2017), https://www.atg.wa.gov/news/newsreleases/ag-ferguson-files-suit-against-sallie-mae-offshoot-navient-corpannounces-student; *Hyland v. Navient*, No. 1:18-cv-09031 (S.D.N.Y. 2018), available at https://www.courtlistener.com/docket/7974080/hyland-v-navient-corporation/; *State of Illinois v. Navient*, 17-CH-761 (Cir. Ct. Cook Cnty Ill. Ch. Div., July 10, 2018).

[6] The Higher Education Act provides for a wide range of flexible repayment options for borrowers with loans made, insured, or guaranteed by the U.S. Department of Education. 20 USC § 1078 et seq.

[7] *Promissory Note*, DISCOVER, https://www.discover.com/content/dam/dfs/student-loans/pdf/PCL_Prom_Note.pdf.

[8] *Frequently asked questions about Undergraduate loans*, COMMONBOND, https://www.commonbond.co/faq/undergraduate-loans; *Applying for Economic Hardship Deferment*, SOFI (May 7, 2019), https://www.sofi.com/learn/content/economic-hardship-deferment/.

[9] *Student Loan Servicing*, CONSUMER FIN. PROT. BUREAU, (Sept. 2015), https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

model allegedly drove the systematic steering of borrowers into higher-cost repayment options, leading to billions of dollars in unnecessary interest charges passed on to millions of people.[10]

These are not normal times, and the usual playbook is an impediment to providing the servicing borrowers need. Like the broader economy, student loan servicers face both demand-side and supply-side problems.

First, demand for relatively high-touch servicing from struggling borrowers is certain to increase as COVID-19-related layoffs and wage-and-hour reductions increase. By April 9, 2020, Americans filed nearly 16 million new unemployment claims,[11] and many experts predict that the situation will get worse before it improves.[12] For example, the U.S. Private Sector Job Quality Index estimated that "over 37 million U.S. jobs are vulnerable to potential layoffs in the short term."[13] A Federal Reserve Bank of St. Louis study was even more dire, estimating that nearly 67 million Americans are working in jobs at a high risk of layoff due to the fallout from COVID-19 and that job losses could reach 47 million with a corresponding unemployment rate of 32 percent.[14] As a result, many student loan borrowers are left wondering how they will afford rent, groceries, and diapers for their children; there is no hidden income or assets from which to pay student loans.

Many lenders have started to address these issues by creating payment relief measures specific to those affected by COVID-19,[15] and those lenders providing real assistance are to be applauded. However, relief measures are only helpful if borrowers can access them and receive the promised relief. In the student loan market, Congress intervened by "pausing" student loan payments for certain borrowers who owe loans owned by the federal government– a short-term fix contained in the Coronavirus Aid, Relief, and Economic Security (CARES) Act that does little to empower

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[10] *Press Release: CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, CONSUMER FIN. PROT. BUREAU (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpbsues-nations-largest-student-loan-company-navient-failing-borrowers-everystage-repayment/; *Press Release: AG Ferguson Files Suit Against Sallie Mae Offshoot Navient Corp., Announces Student Loan Bill of Rights Legislation*, WASH. STATE OFFICE OF THE ATTORNEY GENERAL (Jan. 18, 2017), https://www.atg.wa.gov/news/newsreleases/ag-ferguson-files-suit-against-sallie-mae-offshoot-navient-corpannounces-student; *Hyland v. Navient*, No. 1:18-cv-09031 (S.D.N.Y. 2018), available at https://www.courtlistener.com/docket/7974080/hyland-v-navient-corporation/; *State of Illinois v. Navient*, 17-CH-761 (Cir. Ct. Cook Cnty Ill. Ch. Div., July 10, 2018).

[11] Rebecca Rainey & Quint Forgey, *Unemployment claims near 17 million in three weeks as coronavirus ravages economy*, POLITICO (Apr. 9, 2020), https://www.politico.com/news/2020/04/09/coronavirus-unemployment-claims-numbers-176794.

[12] Emily Stewart & Christina Animashaun, *How the coronavirus crisis will hit American workers, in one chart*, VOX (Mar. 24, 2020), https://www.vox.com/policy-and-politics/2020/3/24/21191075/coronavirus-recession-worker-layoffs-unemployment-economy-restaurants-stimulus-bill.

[13] *The U.S. Private Sector Job Quality Index* (Mar. 1, 2020), https://www.jobqualityindex.com/.

[14] Miguel Faria-e-Castro, *Back-of-the-Envelope Estimates of Next Quarter's Unemployment Rate*, FEDERAL RESERVE BANK OF ST. LOUIS (Mar. 24, 2020), https://www.stlouisfed.org/on-the-economy/2020/march/back-envelope-estimates-next-quarters-unemployment-rate.

[15] *See* Lieber, *supra* note 2; Anna Helhoski, *Private Student Loan Relief for Borrowers in the Coronavirus Crisis*, NERDWALLET (Mar. 31. 2020), https://www.nerdwallet.com/blog/loans/student-loans/private-student-loan-relief-coronavirus/; Alana Semuels, *"I Feel Like I've Gotten Trapped in This Loan." Here's Why the COVID-19 Stimulus Package Only Helps Some Borrowers*, TIME (Apr. 2, 2020), https://time.com/5814424/coronavirus-stimulus-student-loans/.

borrowers to weather the coming economic storm over the medium- and long-term.[16] Borrowers covered by this new provision will still need to contact their student loan servicer to enroll in an income-driven repayment plan, for example, to avoid payment shock after the provision expires.[17] Further, this half-measure fails to provide any relief to millions of borrowers, excluding a $300 billion segment of the student loan market entirely.[18]

Aside from the short-term federal intervention that covers a portion of the student loan market, protections for privately held student loans announced to date are so company- and product-specific that the average borrower would not understand which protections applied to them.[19] Additionally, these "voluntary" protections only cover a fraction of servicers' portfolios and all require a high-touch level of servicing.[20]

Second, student loan servicers are struggling to supply the required high-tough servicing for distressed borrowers due to difficulty in adequately staffing call centers.[21] For example, multiple servicers explained to borrowers that their phone lines were closed on March 21, 2020.[22] But while some borrowers can use online communication and mobile apps (whose availability and responsiveness may vary), many others will need assistance to identify, understand, and access those options, and for these borrowers, a servicer's inability to staff call centers effectively forecloses relief.

The available evidence indicates that student loan servicers are already overwhelmed and unable to respond to the current influx of calls and emails from worried borrowers.[23] For example, on March 16, 2020, one borrower reported that "FedLoan Servicing is 100% inaccessible via phone, email, or any other direct line of communication."[24] Since then, student loan servicers' unavailability has only gotten worse. On March 20, a week prior to the passage of the CARES Act, the Trump Administration announced that certain federal student loan borrowers could have their monthly payments paused "without incurring interest or penalties" for at least 60 days.[25]

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[16] Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong. (2020).

[17] *Coronavirus and Forbearance Info for Students, Borrowers, and Parents*, FEDERAL STUDENT AID, https://studentaid.gov/announcements-events/coronavirus.

[18] Tariq Habash, *The CARES Act Leaves Behind Millions of Student Loan Borrowers*, STUDENT BORROWER PROTECTION CENTER (Mar. 27, 2020), https://protectborrowers.org/the-cares-act-leaves-behind-millions-of-student-loan-borrowers/.

[19] Semuels, *supra* note 15.

[20] The recent agreement announced between the largest creditors in the student loan market and the New York State Department of Financial Services is an exception to this general observation. As a result of this agreement, 90% of all privately held student loans owed by New York borrowers feature a similar baseline set of emergency protections. *See Press Release: DFS Obtains Relief for Approximately 300,000 NY Student Loan Borrowers not Covered by Federal CARES Act*, NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES (Apr. 7, 2020), https://www.dfs.ny.gov/press_releases/pr202004072.

[21] Ben Kaufman, *When the Student Loan System Fails, Payment Relief Becomes Just Another Empty Promise*, STUDENT BORROWER PROTECTION CENTER (Mar. 23, 2020), https://protectborrowers.org/when-the-student-loan-system-fails-payment-relief-becomes-just-another-empty-promise/.

[22] *Id.*

[23] *See id.*

[24] *Id.*

[25] *See* Michael Stratford, *Trump: Federal student loan borrowers can suspend payments for 60 days*, POLITICO (Mar. 20, 2020), https://www.politico.com/news/2020/03/20/trump-coronavirus-student-loan-payments-139056.

However, the Department of Education explained that "[t]o request this forbearance, borrowers should contact their loan servicer online or by phone."[26] Servicers were immediately overwhelmed with calls and not able to help many borrowers trying to contact them. One borrower reported that Navient's phone system provided a message explaining that "due to technical difficulties we can't take your call at this time," before hanging up.[27] Another borrower tried to contact Navient, only to receive an automated phone call saying that it was swamped with calls.[28] And another reported that PHEAA was responding to emails by directing borrowers back to their FAQs and giving no indication that it would act on the borrower's email.[29] These issues appear to continue[30] and relate to both federal and private student loans.

Taken together, these issues depict a student loan servicing industry in crisis, unable to effectively make individualized determinations for struggling borrowers and essentially denying borrowers their rights as a result. The problems in the student loan industry only serve to underscore the importance of portfolio-wide relief across all debt.

Student loan servicing breakdowns illustrate systemic issues with the servicing of all consumer financial products

The breakdowns in student loan servicing foreshadow the potential collapse of all loan servicing across the marketplace for consumer financial products. Lender and servicer inability to address borrower issues on an individualized basis is not limited to the student loan sector, as consumers report that credit card,[31] mortgage,[32] and auto lenders[33] are also unable to address individual borrower needs.[34]

A servicer's inability to interact with and provide real assistance to borrowers on a timely basis constitutes a failure to live up to both the lender's and servicer's side of the deal. Such failures harm borrowers by effectively depriving them of contractual rights and offered relief, as well as imposing additional stress and hardship during an already difficult time. Servicers and creditors in all markets therefore face substantial legal risk if they fail to meet these challenges.

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[26] *See Press Release: Delivering on President Trump's Promise, Secretary DeVos Suspends Federal Student Loan Payments, Waives Interest During National Emergency*, U.S. DEPARTMENT OF EDUCATION (Mar 20, 2020), https://www.ed.gov/news/press-releases/delivering-president-trumps-promise-secretary-devos-suspends-federal-student-loan-payments-waives-interest-during-national-emergency.
[27] *See* Kaufman, *supra* note 21.
[28] *Id.*
[29] *Id.*
[30] *See, e.g.*, Drew (@uHall381), TWITTER (Mar. 30, 2020, 10:45 AM), https://twitter.com/uHall381/status/1244636886947241984.
[31] Broggs (@Broggybroggs), TWITTER (Mar. 30, 2020, 10:26 AM), https://twitter.com/Broggybroggs/status/1244632002114072576; Drew (@uHall381), TWITTER (Mar. 30, 2020, 10:45 AM), https://twitter.com/uHall381/status/1244636886947241984.
[32] Douglass Sloan (@DougSloan), TWITTER (Mar. 30, 2020, 12:01 PM), https://twitter.com/DougSloan/status/1244655909487480834.
[33] Mister mister (@happycampurrr), TWITTER (Mar. 30, 2020, 11:29 AM), https://twitter.com/happycampurrr/status/1244647984157143041; Nicole (@prewars), TWITTER (Mar. 30, 2020, 1:30 PM), https://twitter.com/prewars/status/1244678323927764997.
[34] Dayen, *supra* note 3.

III. Failure to Provide Adequate Servicing Is a Deceptive and Unfair Practice

Servicers of consumer financial products owe a raft of duties to the borrowers with whose loans they are entrusted, ranging from the quotidian– sending bills, processing and applying payments– to the urgent and labor-intensive task of assisting borrowers who find themselves struggling to make their monthly payments. Servicers' failure to meet these duties violates state and federal law prohibiting unfair and deceptive practices in trade or commerce. Moreover, because servicers act on behalf of lenders (or the current owners of the loan), those entities also face liability for their servicers' failures.[35]

Servicers' failure to assist struggling borrowers violates the law

For example, most student loan servicers actively encourage struggling borrowers to contact them for information about and assistance with alternative repayment options. Servicers' exhortations come with a concurrent responsibility to be available when consumers reach out and to provide timely help accessing the available programs. Indeed, federal courts have held that a servicer's failure to act in conformance with promises of assistance is an actionable violation of both state[36] and federal[37] law.

In addition, servicers' inability to provide service to struggling borrowers prevents those borrowers from accessing and exercising their contractual rights to payment relief, or even options generally offered by the lender. This renders those rights and options illusory, thereby breaching both the contracts and the servicers' duty of good faith and fair dealing toward borrowers. The duty of good faith and fair dealing is inherent in every contract and has been described by courts as an "obligation by each party to cooperate with the other so that [each] may obtain the full benefit of performance."[38] Widespread, systematic breaches that deprive borrowers of their contractual rights and the baseline level of servicing reasonably required of lenders violate state consumer protection laws. The imposition of late fees, interest capitalization, adverse credit reporting, and other punitive measures under such circumstances would be doubly unfair and deceptive.

Illegal acts by student loan servicers illustrate a systemic disregard for the law across the servicing of all consumer financial products

American consumers have been through one system-wide loan servicing nightmare during the Great Recession, when mortgage loan servicers' inability to adequately structure processes and staff teams to help distressed borrowers and process modification applications contributed to the foreclosure crisis. This resulted in an avalanche of consumer complaints about inability to

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[35] *E.g.*, *Compliance Bulletin and Policy Guidance*, CONSUMER FIN. PROT. BUREAU (Oct. 31, 2016), https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/compliance-bulletin-and-policy-guidance-2016-02-service-providers/.

[36] *See Nelson v. Great Lakes Educational Loan Services, Inc.*, 928 F.3d 639 (7th Cir. 2019).

[37] *See Consumer Fin. Prot. Bureau v. Navient Corp. et al.*, Case No. 3:17-CV-101, 2017 WL 3380530 (M.D. Pa. Aug. 4, 2017).

[38] *Miller v. Othello Packers, Inc.*, 67 Wn.2d 842, 844, 410 P.2d 33 (1966).

connect with the right personnel, lost and unprocessed submissions, and other issues.[39] Ultimately, these failures led state attorneys general and federal regulators to impose the $25 billion National Mortgage Settlement with the five largest banks and additional consent decrees with smaller servicers.[40]

The demand- and supply-side problems discussed above create the potential for servicing failures worse than those experienced by homeowners during the foreclosure crisis that followed the 2008 financial crisis. In 2008, approximately 4.5 percent of mortgage borrowers were seriously delinquent.[41] Even before the current public health emergency while unemployment was at near-record lows, approximately 11 percent of student loan borrowers were delinquent or in default.[42] With much steeper layoffs than the financial crisis and projected unemployment rates not seen since the Great Depression, the COVID-19 pandemic could push those numbers unimaginably high in the coming weeks and months. Moreover, today's loan servicers face staffing and logistical issues with which their mortgage servicing predecessors did not have to contend.[43]

The National Mortgage Settlement provides a useful starting point to consider the consequences of widespread servicing breakdowns, but federal and state officials learned much from that settlement and its aftermath about providing effective consumer relief, creating and enforcing servicing standards, and deterring future misconduct. Moreover, in the eight years since the National Mortgage Settlement, state officials have reinforced that companies violate consumer protection laws when they obstruct consumers' ability to exercise contractual rights by failing to adequately staff the call centers.[44]

Servicers across all types of consumer financial products who struggle to operationalize even well-intentioned borrower relief programs on an individualized basis for borrowers who cannot contact them therefore risk significant legal consequences. However, servicers can help struggling borrowers, use available staff efficiently, and minimize their legal risk.

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[39] Governor Sarah Bloom Raskin, *Speech: Problems in the Mortgage Servicing Industry*, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (Nov. 12, 2010), https://www.federalreserve.gov/newsevents/speech/raskin20101112a.htm; *CFPB Supervision Report Highlights Mortgage Servicing Problems In 2013*, CONSUMER FIN. PROT. BUREAU (Jan. 30, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervision-report-highlights-mortgage-servicing-problems-in-2013/.
[40] *See Joint State-Federal National Mortgage Servicing Settlements*, http://www.nationalmortgagesettlement.com/.
[41] Christopher J. Mayer et al., *The Rise in Mortgage Defaults*, FEDERAL RESERVE BOARD (2008), https://www.federalreserve.gov/pubs/FEDS/2008/200859/200859pap.pdf.
[42] *State Level Household Debt Statistics 2003-2019*, FEDERAL RESERVE BANK OF NEW YORK, https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/area_report_by_year.xlsx, available for download at https://www.newyorkfed.org/microeconomics/databank.html.
[43] *E.g.*, *2019 Annual Report*, FINANCIAL STABILITY OVERSIGHT COUNCIL, https://home.treasury.gov/system/files/261/FSOC2019AnnualReport.pdf.
[44] *See, e.g.*, *Press Release: Seattle-Based Julep Beauty to Pay $3M in AG Lawsuit Over Deceptive Business Practices*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL (Sept. 6, 2016), https://www.atg.wa.gov/news/news-releases/seattle-based-julep-beauty-pay-3m-ag-lawsuit-over-deceptive-business-practices ("While Julep's terms stated that consumers may cancel at any time, in practice it was often extremely difficult to do so. Julep did not employ enough customer service representatives to handle the volume of cancelation requests, and some consumers had to call multiple times before a cancellation was honored.").

IV. All Loan Servicers Must Implement Fee-Free and Automatic Cessation of Payments for Distressed Borrowers on a Portfolio-Wide Basis

The COVID-19 crisis has already stretched servicers' ability to render individualized borrower assistance past the breaking point, with many borrowers unable even to contact their servicers. Where servicers are unable to fulfill their end of the bargain to assist individual distressed borrowers in exercising their contractual and equitable rights, lenders must authorize and servicers must provide automatic, universal relief on a portfolio-wide basis in order to avoid serious legal liability. Moreover, promises of relief are insufficient when they prove to be illusory because lenders and servicers know, expect, or later learn that borrowers are unable to access them in any significant numbers.

There is no reason for servicers to wait until borrowers experience significant distress to act. Rather than wait for a borrower to fall a month behind, lenders and servicers across consumer financial markets should suspend payments for all borrowers who are either delinquent as of April 1, 2020, or who fail to make their full monthly payment for April before the May payment becomes due. Additionally, interest should not accrue on any debts, and payments should be considered paid in full by the borrower when furnishing payment information to credit bureaus. Through this approach, borrowers who remain able to make their payments can and will do so while struggling borrowers will be afforded real relief without overwhelming limited servicer resources.

However, this is not only about doing the right thing. Authorizing and implementing automatic, portfolio-wide relief for distressed borrowers will also conserve lender and servicer resources for the most critical borrower interactions and offer lenders and servicers an effective strategy to mitigate compliance risk, potentially assuaging skeptical federal and state regulators as they scrutinize companies' efforts to assist struggling borrowers during and after the pandemic.