



STUDENT BORROWER  
PROTECTION CENTER

# COMBATING EXPLOITATIVE EDUCATION

Holding For-Profit Schools Accountable for  
Civil Rights Violations

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# Introduction

For-profit schools have exploited the long-held belief that higher education is the key to a stable and meaningful job while simultaneously failing to deliver on promises of providing a quality education or enhancing the employment prospects of their students. For years advocates, researchers, regulators, and law enforcement officials have documented serious problems in this industry: unfair and deceptive advertising, misrepresentation of graduation rates and employment prospects, aggressive recruiting tactics, coercive and fraudulent financing practices, and abysmal educational services and performance statistics. In keeping with the trajectory of past economic crises, the fallout of the COVID-19 pandemic is leading to a spike in enrollment at for-profit schools.<sup>1</sup> The harms from these institutions' practices fall disproportionately on communities of color; for-profit schools target and focus recruitment efforts on Black and Latinx students, resulting in their over-representation in for-profit schools' enrollments.<sup>2</sup> And while overall rates of default for student borrowers at for-profit schools are high, they are especially bad for students of color: one study found that over a twelve-year period, nearly half of white students, over half of Latinx students, and *two-thirds* of Black students who borrowed money to attend a for-profit school defaulted on at least one of their loans.<sup>3</sup>

**Remedial and prospective policy responses that do not treat these abuses as civil rights issues will fall short of enabling students of color to seek redress and preventing future exploitative practices.**

Civil rights laws provide a powerful tool to combat these abuses. Plaintiffs and regulators have relied on these laws in a variety of contexts to hold accountable entities engaged in discrimination, including reverse redlining—targeting minority communities for exploitative products—across a range of markets. These legal principles are equally applicable to predatory conduct engaged in by for-profit schools. This article illustrates the application of those principles through the case study of a class action lawsuit brought by eight individuals against the Richmond School of Health and Technology (*RSHT*), and provides recommendations for policymakers, regulators, law enforcement officials, and private litigants on how to best use civil rights laws to hold predatory for-profit schools to account.

Private parties continue to bring lawsuits against for-profit schools, and some of these suits include civil rights claims like those made in *RSHT*. But private suits alone are not enough to protect students in the absence of effective state and federal action that addresses the civil rights issues inherent in for-profit schools' business practices. We expect to see federal regulation and enforcement reemerge. When

they do, establishing robust consumer protection and education outcome baselines is essential—and can complement suits like RSHT. But remedial and prospective policy responses that do not treat these abuses as civil rights issues will fall short of enabling students of color to seek redress and preventing future exploitative practices. Although for-profit schools negatively affect a range of students, they disproportionately exploit communities of color. Implementing civil rights-centric policy responses to combat abuses by for-profit schools and related entities will go a long way in ensuring that justice and compensation are available for communities of color who have been particularly affected by these practices. History has proven that the worst actors will continue to circumvent prescriptive rules-based consumer and student protection laws. In contrast, principles-based civil rights laws are flexible enough to prohibit a broad range of discriminatory conduct. An approach that expands the reach of these principles and facilitates civil rights suits stands the best chance of eliminating the industry's abuses.

## Background: For-Profit Schools

Unlike public and private non-profit colleges, for-profit schools operate primarily as revenue-creating businesses. For-profit schools range considerably in size, ownership, and structure.<sup>4</sup> But what they have in common is the primary aim of generating profits for those with a direct financial stake in the business—owners, shareholders, directors, and/or operators—in contrast to public and private non-profit schools which are generally accountable to financially disinterested governing boards.<sup>5</sup>

These financial incentives encourage adoption of a simple formula: for-profit schools seek to entice and enroll the maximum number of students that qualify for large amounts of federal student loans, and often additional loans as well.<sup>6</sup> At the same time, these institutions slash per-student spending, while charging grossly more than what public institutions charge for comparable programs.<sup>7</sup> Federal student loan proceeds are disbursed to the school, allowing institutions to pocket profits generated from federal student aid. Because the federal government, not the school, bears repayment risk, the worst actors do little to provide quality instruction or meaningful employment opportunities.<sup>8</sup> Instead, these entities manipulate employment and student loan default rate statistics in order to deceive prospective students as to program cost, amount of financial aid and loans distributed, and repayment obligations.<sup>9</sup> These problems have been documented for years.<sup>10</sup> A decade ago, undercover tests of for-profit schools conducted by the U.S. Government Accountability Office (GAO) revealed widespread encouragement of fraudulent practices—including personnel encouraging applicants to falsify forms to qualify for federal aid—and every school tested by GAO made deceptive or otherwise questionable statements to undercover applicants, such as misrepresenting likely salaries and graduation rates.<sup>11</sup>

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The poor quality of education at these schools has far-reaching effects, including severe student loan default rates. According to one study, for-profit school students make up 8 percent of all post-secondary students but account for 30 percent of student loan defaults.<sup>12</sup> Students who attend these programs are much more likely than their peers at other schools to default on student loans, and those who graduate from a for-profit school do worse in the labor market than they otherwise would with only a high school education, despite the fact that these programs tend to be significantly more expensive than similar credentials

from public institutions.<sup>13</sup> These rates are unsurprising given that for-profit school students are more likely to experience worse educational outcomes as measured by program completion and employment prospects.<sup>14</sup>

The damage done by for-profit schools falls disproportionately on students of color. The demographics of students who enroll at for-profit institutions skew heavily Black and Latinx when compared with the general population, and with the population of students who enroll at public and private non-profit schools.<sup>15</sup> Black and Latinx students make up less than one third of all undergraduate students, but represent nearly half of those attending for-profit institutions.<sup>16</sup> Military veterans are also overrepresented in enrolled students at for-profit schools.<sup>17</sup>

These disparities are no accident. For-profit schools target Black and Latinx students to exploit specific vulnerabilities, including generational wealth gaps and pervasive inequities that have limited opportunities for more-traditional post-secondary education.<sup>18</sup> These schools similarly target military veterans as a reliable source of GI Bill revenue, which in turn allows for-profit schools to evade regulatory requirements aimed at limiting colleges' reliance of federal student aid.<sup>19</sup>

The table below displays demographic compositions of for-profit schools compared to other types of post-secondary schools based on Fall 2016 enrollment (race/ethnicity data) and January – September 2015 enrollment (military/veteran status data).

### Percentage Distribution of Student Enrollment at Post-Secondary School Types, by Race/Ethnicity and Military/Veteran Status.<sup>20</sup>

	Public	Private Non-Profit	For-Profit
<b>Total</b>	47%	43%	10%
<b>White</b>	50%	43%	7%
<b>Black</b>	36%	40%	24%
<b>Hispanic</b>	49%	41%	10%
<b>Asian</b>	45%	49%	6%
<b>Military</b>	58.7%	14.9%	26.4%

Operators of for-profit schools typically argue that disparities and comparatively worse outcomes are the result of their willingness to provide educational opportunities to underserved populations.<sup>21</sup> That argument does not refute the well-documented evidence of abysmal education quality at these schools, and does not address research showing that similarly situated students take out more money to attend for-profit schools yet would have better outcomes at public universities.<sup>22</sup> In other words, these disparities cannot be explained by characteristics specific to the students who attend for-profit schools. One study found that on average, for-profit school students took out one more student loan than counterparts at public schools, borrowed \$3,300 more, and earned 11 percent less after completing a program.<sup>23</sup> A Senate investigation found that the median debt carried by a student at a for-profit school was \$32,700, compared to a median debt of \$20,000 for students at public colleges, and \$24,600 at private non-profit colleges.<sup>24</sup> More recent data indicate students who attended for-profits graduated with an average balance of \$39,900 in debt, 41 percent more than graduates from other types of four-year colleges.<sup>25</sup> In fact, for the 2019-2020 school year, for-profit schools were the only sector of undergraduate institutions for which the overall level of federal student loan disbursements rose.<sup>26</sup>

**Unfortunately, this expansion is consistent with historical evidence that economic downturns provide fertile ground for predatory practices: people are economically vulnerable, and job prospects and income opportunities are limited. The worst actors often exploit these opportunities.**

If left unaddressed, these problems will continue to proliferate. As it is, the for-profit education industry has ballooned in the last forty years: enrollment at for-profit degree-granting institutions grew from just over 18,000 students in 1970 to a peak of almost 1.7 million students in 2010 amidst the Great Recession, close to a 100-fold increase.<sup>27</sup> The growth in overall post-secondary education over the same period was only about a 2.5-fold increase.<sup>28</sup>

The number of students attending for-profit schools has declined since its peak, but this trend will likely reverse itself soon: Fall 2020 enrollment data shows that while public and private non-profit colleges are seeing declines in enrollment,

for-profit school enrollment is on the rise.<sup>29</sup> That many for-profit schools offer predominantly online instruction positions the industry well amid the challenges of the COVID-19 pandemic and increases the likelihood that prospective students will gravitate to these programs.<sup>30</sup> Even before the pandemic, public and non-profit schools had expanded their online presences, including through long-term contracts with for-profit service providers and in some cases through effective purchases of for-profit schools with developed online infrastructures.<sup>31</sup> These contracts largely maintain the day-to-day operations of the for-profit school—its recruiting, instruction, and student services.<sup>32</sup> As COVID-19 solidifies the urgency of online education, many programs have moved programming online amid closures of physical campuses.<sup>33</sup>



Additionally, some of these schools have publicly admitted that they are “aggressively recruiting,” and many of their ads emphasize the uncertainty of the pandemic and economic climate as reasons to enroll.<sup>34</sup> In fact, three large for-profit school chains have already reported increased inquiries, website visits, and enrollment, and one school has even hired 200 additional personnel to handle the increased inquiry volume.<sup>35</sup> These aggressive practices yield results—enrollment across the for-profit school sector is increasing for the first time in years.<sup>36</sup>

Unfortunately, this expansion is consistent with historical evidence that economic downturns provide fertile ground for predatory practices: people are economically vulnerable, and job prospects and income opportunities are limited. The worst actors often exploit these opportunities. There is evidence that they are already doing so.<sup>37</sup>

## Regulatory Framework

For-profit schools are regulated by federal and state law, but existing regulation has failed to curb abuses in the industry.

The federal government plays a critical role in overseeing for-profit institutions, mostly via regulations implementing the Higher Education Act (HEA). The HEA was passed in 1965 and is best known for its provisions that provide access to financial aid for eligible college students, contained in Title IV. In order for a for-profit institution of higher education to receive federal aid for enrolled students, the institution must be legally authorized by the state in which the student is located to provide educational services, must maintain accreditation through a federally recognized accreditor, and must “provide[] an eligible program of training to prepare students for gainful employment in a recognized occupation.”<sup>38</sup> The Department of Education may also revoke eligibility for Title IV federal student aid funding if the recipient school is found to be discriminating on any prohibited basis, including race.<sup>39</sup> These requirements should provide some assurance that schools are meeting baseline educational quality standards and are not engaging in discrimination, but in reality, there are persistent reports of fraud in schools certifying that they are state licensed or in compliance with other HEA requirements when they are not.<sup>40</sup>

**When coupled with poor funding, low staffing, and supervisory boards that are captured by industry interests, state oversight has historically provided ineffective protection against dangerous for-profit schools.**

For-profit schools are also subject to state laws regarding licensing and education quality (if applicable), and are also typically subject to oversight by a state board that oversees all post-secondary institutions.<sup>41</sup> Effective oversight, however, can fail when state regulators ineffectively administer existing authority and regulation to maximize institutional accountability and consumer protection.<sup>42</sup> Some states in recent years have started to expand their oversight role, imposing additional requirements at the margins on for-profit schools relating to marketing and disclosures, but many states have failed to pass legislation imposing even minimal standards and restrictions on for-profit schools.<sup>43</sup> Even the most student-friendly state legislatures and laws have been criticized as providing insufficient oversight.<sup>44</sup> When coupled with poor funding, low staffing, and supervisory boards that are captured by industry interests, state oversight has historically provided ineffective protection against dangerous for-profit schools.<sup>45</sup>

For a period, there was federal momentum aimed at curbing for-profit school abuses. One article went so far as to predict the imminent “downfall of for-profit colleges.”<sup>46</sup> Corinthian Colleges, a major for-profit chain, shut down in 2015 after a Consumer Financial Protection Bureau (CFPB) suit alleged widespread unfair and deceptive practices.<sup>47</sup> ITT Technical Institute, another giant in the field, closed shortly thereafter, following restrictions imposed by the Department of Education.<sup>48</sup> Since 2017, however, federal regulation and enforcement has ground to a halt. The Department of Education under Secretary DeVos reassigned and marginalized the team responsible for investigating for-profit schools, effectively killed investigations into several prominent for-profit schools, and has erected barriers obstructing defrauded borrowers from obtaining relief.<sup>49</sup> The Department of Education also dismantled crucial safeguards for student borrowers by rescinding its own Gainful Employment and Borrower Defense regulations, which provided much-needed protection to student borrowers who attended for-profit schools.<sup>50</sup>

Importantly, although for-profit school abuses fall disproportionately on women and people of color and exacerbate existing debt and wealth inequalities, regulation and enforcement at the state and federal level have not treated these abuses as a civil rights issue.<sup>51</sup>

# Fair Lending Case Study: RSHT Litigation

## Statutory framework and legal principles

The plaintiffs in *RSHT* pursued several causes of action, but principal claims were made under the Equal Credit Opportunity Act (ECOA). ECOA makes it unlawful for “any creditor” to “discriminate against any applicant, with respect to any aspect of a credit transaction” on the basis of membership in a protected class: race, color, religion, national origin, sex or marital status, age, receipt of public assistance, or the good faith exercise of any right under the Consumer Credit Protection Act.<sup>52</sup> For a transaction to be covered by ECOA, it must involve a “creditor,” an “applicant” or “prospective applicant,” and “credit” as defined by ECOA (and Regulation B, the agency rule that implements ECOA). “Creditor” is defined broadly in ECOA and Regulation B, covering persons who “regularly participate[] in a credit decision,” including those who “regularly refer[] applicants or prospective applicants to creditors.”<sup>53</sup> For-profit schools are creditors under ECOA and Regulation B for at least two reasons:

**For-profit schools are creditors under ECOA and Regulation B for at least two reasons: first, many for-profit schools originate their own private student loans; second, even schools that do not originate their own loans assist students with the loan process, satisfying ECOA’s requirement that a creditor “regularly arrange” for extensions of credit.**

first, many for-profit schools originate their own private student loans; second, even schools that do not originate their own loans assist students with the loan process, satisfying ECOA’s requirement that a creditor “regularly arrange” for extensions of credit.

Plaintiffs also pursued claims under Title VI of the Civil Rights Act of 1964, which prohibits discrimination and covers most for-profit schools. Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>54</sup> For-profit schools that receive federal financial assistance—the vast majority—are thus subject to Title VI. Unlike with ECOA, there is no requirement under Title VI that a defendant qualify as a “creditor.”

Both ECOA and Title VI permit plaintiffs to bring reverse redlining claims. Reverse redlining is a practice in which a creditor targets a predatory product to customers based on a protected class. Many reverse redlining cases include allegations that a defendant induced vulnerable victims into a financial transaction designed to take

advantage of their misunderstanding and misplaced trust. Reverse redlining has occurred in a variety of contexts, and courts have been applying the theory for decades.<sup>55</sup>

Plaintiffs in reverse redlining suits are generally required to show that: (1) an entity offered a predatory or unfair product or practice; and (2) either the entity intentionally targeted that product or practice based on a protected class or that there was a disparate impact on that basis.<sup>56</sup>

## Case development

Satisfying these two elements should not be a high bar, particularly at the pleading and motion to dismiss stages. However, the strongest cases are supported by extensive fact development that brings to life a defendant's abusive and discriminatory conduct, and the consequences that conduct has on the lives of victims.

In *RSHT*, for example, the Plaintiffs' months-long pre-suit investigation resulted in a case with eight named plaintiffs and hundreds of pages of sworn declarations from nearly 50 RSHT students and former employees, painting a vivid picture with personal accounts of RSHT's predatory, abusive, and discriminatory practices. These declarations provided factual support for Plaintiffs' claims that the "education" sold by RSHT provided little or no value and left students saddled with student loans they could not afford to pay, and no greater employment opportunities than were available prior to enrolling at RSHT. Further, the declarations from former employees confirmed a practice of chronic misrepresentations to prospective students and revealed efforts to target Black prospective students. Taken together, these materials tell a damning story.<sup>57</sup> These narratives were buttressed by public information, including compiling RSHT's advertising practices and materials, and gathering statistical data on RSHT's enrollment demographics as compared to the surrounding geographic area.

*RSHT* resulted in a class settlement prior to trial. The evidence gathered would have been critical if the case had gone to trial, illustrating for a jury the damage these types of practices have on students and surrounding communities.

## Predatory practices

The predatory product at issue in *RSHT* was an education that provided little or no value and left students worse-off for enrolling due to massive student loans and loss of other opportunities. RSHT fraudulently induced students to apply for thousands of dollars in loans knowing that the school would not meet their educational needs, and it anticipated there was little likelihood the students could repay those loans because the “education” was so lacking.

The quality of education at RSHT was exceedingly poor, despite specific representations from RSHT staff to students that they would learn hands-on skills, that their instruction at RSHT would prepare them to sit for certification examinations, and that RSHT would help them find externships in their field. None of these representations were true. One student related her experience signing up for RSHT’s Community Home Health Program: “I learned near the end of the . . . program that there is no such thing as a certification in ‘community home health’ in Virginia and that RSHT did not know what certification examination I and the other CHH students would take. . . . We complained, but we received no response.”<sup>58</sup> Another student explained that:

[O]ften we didn’t have a teacher. For example, at one point in the program, we did not have a teacher for over a week. We were required to come to class, but did nothing. There was not even a substitute teacher. In my computer class, the teacher did not show up for the final exam. After sitting in the classroom for nearly two hours, an instructor from another program came in and informed us that we would all receive “A”s since the teacher was absent. We never took the exam for that class.<sup>59</sup>

Students were induced to enroll based on misrepresentations that they would find well-paying jobs in their field. La-Deva Dabney, for example, left a job as a pharmacy technician at Wal-Mart—a job requiring her to have a certification, which she earned from community college—because RSHT promised it could help her secure a higher-paying job in the medical billing and coding field. Her RSHT experience was abysmal, and after struggling for a year, she ultimately settled for a job as a management assistant completely unrelated to her RSHT studies, with \$20,000 in student loans to repay.<sup>60</sup> Other students reported they did not receive externships that were necessary to be certified in their field, and that they were ill-prepared to sit for licensing exams because of the poor quality of instruction they received.<sup>61</sup>

Plaintiffs and declarants also explained that the school misled them about what the programs would cost, did not explain the financial aid or loan

**The school misled them about what the programs would cost, did not explain the financial aid or loan repayment process, and committed fraud in signing students up for federal student loans.**

repayment process, and committed fraud in signing students up for federal student loans. They described how the school filled out FAFSA forms for students without requesting their required financial information; did not explain loan repayment terms; fabricated required monthly payments on student loans, including gross misstatements as to monthly payment amounts; and described that students could finance their education through grants, when in fact the school applied for loans on their behalf without their knowledge.<sup>62</sup>

Former RSHT employees confirmed these allegations, revealing that the school falsified employment status reports<sup>63</sup> and recorded graduates working administrative or janitorial jobs at healthcare facilities as being employed within their field of study.<sup>64</sup> These former RSHT teachers and administrators corroborated the students' allegations regarding the poor quality of education at RSHT, and revealed that administrators and teachers altered school attendance forms and grades in advance of audits and required regulatory reporting.<sup>65</sup>

These circumstances are not unique to RSHT; they mirror allegations about for-profit schools generally.<sup>66</sup> A 2012 U.S. Senate investigation discussed earlier in this article detailed similar practices and urged the creation and improvement of a "comprehensive legislative framework" in order to address these abuses.<sup>67</sup> Other accounts reflect similar experiences.<sup>68</sup>

## Discriminatory targeting

In *RSHT*, declarations of students and former employees—corroborated by publicly available information—also painted a vivid picture of discriminatory targeting.<sup>69</sup> As one former RSHT instructor stated in her declaration:

Administrators admitted that the school targeted its marketing efforts at areas that were predominantly low-income and African-American. I talked to the enrollment advisers or "reps" who were responsible for marketing efforts. They made clear to me that they deliberately targeted African American neighborhoods. I know that particular zip codes were targeted on the basis of race. The reps were told to go to African American zip codes, but not to white zip codes. The reps told me that African American neighborhoods were targeted because it was thought that African Americans were vulnerable. The reps thought that African Americans would agree to take out loans and come to the RSHT without asking any questions and inquiring about terms, costs, price, or what they would get from their education. These marketing efforts included targeted flyers and telephone calls. Administrators said that prospective students from the targeted areas were easier to persuade to enroll because they did not have much to lose.<sup>70</sup>

Another former employee confirmed that "RSHT recruiters and administrators knew that they could make a lot of money in the African American community because they could find underprivileged students . . . who would qualify for the government loans that RSHT needed to be profitable."<sup>71</sup>

Declarations confirmed that students learned of RSHT from its targeting of the Black community. Plaintiffs learned of RSHT through its radio and television advertising, which was directed towards Black listeners and viewers.<sup>72</sup> Demographic comparisons of the RSHT campuses to the greater Richmond area reinforced that RSHT's discriminatory targeting resulted in a student body that was demographically very different from the greater geographic area.<sup>73</sup>



## Common Defenses and Rebuttals

Reverse redlining is a well-established legal theory. Regardless, plaintiffs should expect a few arguments commonly raised by defendants.

### For-profit schools that arrange for student loans are “creditors” under ECOA

Defendants may argue that they do not qualify as “creditors” under ECOA. That argument should fail.

ECOA defines “creditor” to include an entity that “regularly arranges for the extension, renewal, or continuation of credit,”<sup>74</sup> which for-profit schools regularly do on behalf of students. Typically, for-profit schools will employ personnel who, at a minimum, assist or direct students as they complete their federal financial aid forms—and in some instances, personnel may even take full control over completing these forms on behalf of students. Even with a minimum level of involvement in the federal student aid process, for-profit schools fit ECOA’s definition of a creditor because they assist students in obtaining federal financial aid, thus satisfying ECOA’s requirement that a creditor “regularly arrange” for an extension of credit. In addition to arranging for credit and referring prospective students to loan providers, many for-profit schools originate their own loans to cover the 10 percent gap left by the federal cap limiting revenue from federal financial aid to 90 percent of revenue.<sup>75</sup> Plaintiffs alleged that RSHT was a covered “creditor” under both of these theories.<sup>76</sup>

### Evidence that plaintiffs were treated worse than other students is not required for reverse redlining claims

Defendants in these cases often argue that plaintiffs cannot prevail absent evidence that similarly situated white (or non-protected class) borrowers were treated more favorably than Black (or protected class) borrowers.

That argument was rejected twenty years ago in a seminal reverse redlining case, *Hargraves v. Capital City Mortg. Corp.*, 140 F. Supp. 2d 7 (D.D.C. 2000), where Plaintiffs alleged that they were targeted for predatory mortgages based on race. The court explained:

Defendants argue that plaintiffs have not shown the terms and conditions of their loans to be discriminatory because they have not shown that defendants make loans on preferable terms to

non-African-Americans. Plaintiffs have sufficiently alleged that the terms of defendants' loans are unfair and predatory; *it is not necessary that the defendants make loans on more favorable terms to anyone other than the targeted class.*<sup>77</sup>

Courts have since taken the same approach, approving reverse redlining allegations absent evidence that similarly situated whites are treated more favorably.<sup>78</sup> The Department of Justice (DOJ) has agreed with this conclusion, including in an amicus brief,<sup>79</sup> and in a recent consent decree settling an ECOA reverse redlining suit against a “buy here, pay here” auto lender.<sup>80</sup>

That conclusion is not only supported by case law, it's common sense. Discrimination occurs by the very act of treating a community or person unfavorably because of protected class status. This observation is true even if it is difficult or impossible to identify similarly situated individuals outside the protected class. For example, consider an employer that sexually harasses its only employee, or one that fires its only employee because of that employee's race, and no one is hired to replace her.<sup>81</sup> No one would seriously dispute that those acts are discriminatory, despite the absence of comparators.

## Reverse redlining claims do not require predatory terms of credit

A defendant might also argue that an ECOA claim must be rejected unless it includes allegations that the underlying financial transactions are predatory, not just the actions and practices used to induce prospective students to engage in those transactions. That argument is equally meritless.

ECOA prohibits discrimination “with respect to any aspect of a credit transaction.”<sup>82</sup> Regulation B (implementing ECOA) broadly defines credit transaction to include “every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit.”<sup>83</sup> The plain language—“every aspect of an applicant's dealings”—includes the product financed, as well as misrepresentations about underlying financial transactions. In other words, ECOA applies regardless of the quality or terms of the loans themselves. If loans are used to induce borrowers to finance predatory services, it is irrelevant if the loans are federal student loans with fixed terms and conditions.

The discriminatory scheme in for-profit school cases includes aggressively (and sometimes fraudulently) inducing students to apply for thousands of dollars in loans knowing there is little likelihood of repayment because the education financed by those loans is so lacking. It's impossible to separate the loan from the transaction itself; the entire transaction is predatory because the product underlying the transaction leaves students worse off as a result. There would be no underlying transaction absent the goal of inducing applicants to take out financing, and the financing arrangement itself. The predatory product exists to induce consumers to

enter into the financial transaction, and the success of the scheme depends upon the consummation of the financial transaction.

The federal government has brought UDAAP allegations against for-profit schools under a similar theory. For example, in 2014 the CFPB brought suit alleging that Corinthian College engaged in a variety of unfair and deceptive practices to induce students to enter into, and collect, educational loans—including misrepresenting student outcomes, misleading prospects regarding loan terms, and using abusive collections tactics.<sup>84</sup> Although this case was brought under the CFPB's UDAAP authority<sup>85</sup>—not as a reverse redlining case—the underlying connection between the illegal practices and financial transactions is the same, and the CFPB in that case did not allege (nor did they need to) that the loans themselves were predatory.

## Arbitration agreements

Schools defending against these lawsuits may also argue that enrollment agreements and other contract documents require mandatory arbitration of potential claims and prohibit students from participating in class actions. Whether mandatory arbitration is required is fact-dependent and plaintiffs may have a range of counterarguments, based on specific terms, conditions, and circumstances of enrollment. We highlight here a more general method for preserving plaintiffs' rights to access courts.

The Department of Education's borrower defense rule—in effect for loans disbursed between July 2017 and July 2020—prohibited schools that received federal student aid from enforcing mandatory pre-dispute arbitration or class action waiver provisions in their enrollment agreements.<sup>86</sup> In September 2019, the Department of Education eliminated those pre-dispute arbitration and class action waiver bans.<sup>87</sup> But the new rules only apply to federal student loans disbursed on or after July 1, 2020.<sup>88</sup> Students who wish to bring claims related to loans disbursed during the time those restrictions were in effect, but prior to July 1, 2020, should be able to avoid arbitration, as their enrollment agreements should not have included these provisions.

Other strategies for enforcing rights in court exist. For example, False Claims Act suits, discussed in more detail below, can be an effective way of pursuing judicial remedies for civil rights violations. Additionally, government enforcement actions can proceed in court and will not be subject to these arbitration agreements. Importantly though, Congress and agencies should pursue legislative and regulatory fixes to ensure students are not deprived of their ability to file judicial suits or seek class relief; we discuss those recommendations below.

## Continuing to Hold For-Profit Schools Accountable

Cases like RSHT remain an important tool for holding for-profit schools accountable for civil rights abuses. We hope to see private plaintiffs and enforcement agencies pursue these cases. One recent complaint, filed against a for-profit vocational school called Florida Career College (FCC), includes allegations very similar to those in RSHT.<sup>89</sup> According to the complaint, FCC targets Black students with high-pressure tactics and false statements to induce them to enroll in extremely low-quality career-training programs. These students borrow thousands of dollars in federal student loans to pay FCC for these programs, but FCC does not provide them with the career training it promised.<sup>90</sup> As of the date of this article, a motion to compel arbitration or, in the alternative to dismiss, is pending.<sup>91</sup>

Parties should also explore alternate legal avenues for holding for-profit schools accountable for civil rights violations, including suits under the False Claims Act (FCA).<sup>92</sup> The FCA allows private parties—relators—to bring suits against entities that submit false claims or statements to the United States for payment.<sup>93</sup> In 2014, former employees brought an FCA lawsuit against Corinthian and its subsidiaries alleging that Corinthian knowingly presented millions of dollars of false claims for payment of federal student financial aid.<sup>94</sup> The complaint alleged

**Parties should also explore alternate legal avenues for holding for-profit schools accountable for civil rights violations, including suits under the False Claims Act.**

that Corinthian would not have been eligible for student financial aid funds but for its express commitment to the Department of Education that it would not engage in racial discrimination in violation of Title VI of the Civil Rights Act of 1964. Corinthian, however, allegedly knew it was engaged in racial discrimination because it deliberately targeted Black students to enroll in expensive sham education programs—i.e., reverse redlining.<sup>95</sup> The relators in that case voluntarily dismissed their claims after Corinthian declared bankruptcy and claims in pending lawsuits were paid out by the Department of Education as receiver.

To our knowledge, that Corinthian suit is the only FCA suit against a for-profit school specifically based on civil rights violations. FCA claims can be complicated—and establishing one is beyond the scope of this article—but there are good reasons to think such cases could be successful. FCA claims may also avoid challenges associated with arbitration and class action arguments, typically raised in traditional antidiscrimination lawsuits.

Regulatory agencies and private plaintiffs should also expand the scope of their investigations. For example, enforcement should account for discrimination against a broad range of protected classes, including military and veteran status. Although not protected under ECOA or Title VI, some states prohibit credit discrimination on the basis of military or veteran status.<sup>96</sup> Evidence shows that members of the military and veterans are targeted by for-profit schools.<sup>97</sup> For example, one settlement between 20 state attorneys general and a marketing company used by for-profit schools included allegations of deliberate misinformation targeted towards veterans, including use of the domain name GIBill.com, which looked like a government website.<sup>98</sup> This targeting is motivated both by historic disparities and because veterans are reliable sources of GI Bill income for schools, which under federal regulations does not count as federal aid under the so-called “90/10” rule. In other words, GI benefits allow schools to supplement the revenue gap left by the general rule that no more than 90 percent of revenue can come from federal financial aid. Just like Black and Latinx students, veterans are overrepresented in for-profit schools compared to the population writ large, and the corresponding percentage of veterans at public and private non-profit schools. Like with Black and Latinx students, this is not an accident; it is the result of a concerted campaign by these schools.

Relatedly, targeting of military spouses and other ad campaigns that target single mothers may also provide an avenue for allegations of targeting based on sex, which would violate ECOA and state law equivalents.<sup>99</sup>

## Policy Recommendations

The for-profit educational industry needs to be reformed. Continued litigation against these schools is critical to address their discriminatory practices, and we urge enforcement agencies and private parties to undertake detailed, fact-intensive investigations to build cases of reverse redlining by for-profit schools.

These enforcement actions must be complemented by legislative and regulatory action. Importantly, policy changes that are not specific to civil rights—for example, ones that focus generally on improving educational standards—are needed, but they are insufficient absent a civil rights component, including remedies that focus on reinvestment in communities of color who have suffered the brunt of these practices. To some extent, the federal government pursued this dual approach (combining substantive consumer protections with complementary civil rights remediation) after the mortgage crises a decade ago: the Dodd-Frank Wall Street Reform and Consumer Protection Act created substantive baseline protections against abuses in the mortgage space, including requiring creditors to make reasonable, good faith determinations of consumers' ability to repay mortgages.<sup>100</sup> Those reforms were enacted in parallel with (1) DOJ and private reverse redlining actions based on conduct contributing to the mortgage crises—resulting in targeted relief to counteract the harms disproportionately afflicted on communities of color<sup>101</sup> and (2) statutory solutions meant to curb future discriminatory conduct, such as establishing the CFPB's Office of Fair Lending and Equal Opportunity and amending the Home Mortgage Disclosure Act (HMDA) and ECOA to expand public information used to identify discriminatory conduct in the mortgage and small business credit markets.

This dual approach offers another benefit: prescriptive rules-based consumer and student protection laws, while important, are vulnerable to evasion and an inevitable next iteration of discriminatory practices. Policy responses aimed at broadening the tools available for bringing civil rights claims stand the best chance of eliminating these abuses, regardless of the form those abuses take.

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## Codification of reverse redlining case law

Defendants in reverse redlining suits chronically raise the defenses considered above. While most courts have rejected these defenses, legislative or regulatory clarity could put them to bed once and for all. As noted:

- Schools that arrange for student loans are “creditors” under ECOA;
- Discriminatory targeting is illegal, and evidence that other groups were treated more favorably is not required; and
- Discriminatory schemes to induce applicants to take out credit to fund predatory programs are illegal, and evidence that loan terms themselves are predatory is not required.

The CFPB could amend Regulation B or issue guidance—perhaps in the form of an interpretative rule—codifying these positions, which are already reflected in case law. For example, CFPB guidance on this issue could expand on the text of, and official interpretation to, 12 C.F.R. § 1002.2(l)—which defines “creditor”—to include an illustrative list of entities that would be considered creditors, including secondary schools that are involved in arranging for federal student aid on behalf of students. This guidance would confirm that a school need not originate its own loans in order to be considered a creditor for ECOA purposes.

These actions could be taken in conjunction with complementary interpretations of other consumer protection laws, like the UDAAP prohibitions against unfair practices contained in the FTC and Dodd-Frank Acts. FTC Commissioner Rohit Chopra has advanced this approach, advocating for the FTC to use its unfairness authority to “attack harmful discrimination,” including “[u]sing disparate impact analysis,” in sectors of the economy beyond just housing, employment, and credit, where the theory is routinely applied.<sup>102</sup> Under Commissioner Chopra’s approach, any entity subject to these unfairness provisions would be prohibited from reverse redlining, regardless whether they qualify as a “creditor” under ECOA. The FTC and CFPB should pursue these approaches, and states should consider adopting similar interpretations of their own state unfairness laws.

## Enacting and updating state credit discrimination statutes to ensure that state law covers reverse redlining perpetrated by for-profit schools

States have a critical role to play in enforcing their own laws against predatory for-profit schools. To that end, states should ensure that their laws are broad enough to prohibit reverse redlining by for-profit schools.

Many state credit discrimination statutes are modeled after ECOA and thus clearly prohibit such conduct. Some go even further, with broader definitions of who may not engage in credit discrimination and expanded protected classes. For example, Ohio's credit discrimination statute is similar to ECOA, but includes a more extensive list of prohibited bases, including military status.<sup>103</sup> But some states are more restrictive; for example, Illinois's fair lending statute only prohibits credit discrimination perpetrated by a "financial institution," narrowly defined as "any bank, credit union, insurance company, mortgage banking company or savings and loan association which operates or has a place of business in this State."<sup>104</sup> And some states do not have independent credit discrimination statutes at all, meaning that state law-based reverse redlining claims against for-profit schools would need to be based on more general state antidiscrimination laws, or might even be unavailable under state law.

States that want to empower their citizens and enforcement agencies to curb abuses by predatory for-profit schools should ensure their state lending discrimination statutes: (1) cover a broad range of protected class members and (2) define covered entities such that any person involved in a credit transaction, including those who facilitate or induce consumers into such transactions, are prohibited from discriminating. These statutes should include private rights of action so that aggrieved individuals can bring their own claims, even in the absence of action by enforcement agencies.

## Ensuring that arbitration does not prevent the vindication of students' rights

Legislative or regulatory action is also necessary to ensure borrowers can litigate their claims through class relief in the courts, and not be forced into arbitration. A staggering number of for-profit schools rely on forced arbitration clauses to limit relief available to students, in stark contrast to public and private non-profit schools.<sup>105</sup> To that end, the Department of Education should re-issue the ban on mandatory pre-dispute arbitration and class action waivers in enrollment agreements for post-secondary educational institutions receiving federal funding; it should penalize non-compliance by withdrawing federal funding, as was its former approach.



Complementary action should be taken to re-promulgate some form of the CFPB's rule that prevented financial companies from using arbitration clauses to deny groups of consumers the ability to pursue their legal rights in court.<sup>106</sup> That rule was promulgated after a comprehensive study finding that arbitration clauses were effectively blocking billions of dollars of relief for millions of harmed consumers.<sup>107</sup> Reinstating these protections would require either: that the CFPB issue a rule not in "substantially the same form" as the prior rule—yet one that nonetheless afforded litigants the ability to pursue class relief in court—or that Congress pass a law allowing the CFPB to re-issue the rule.<sup>108</sup>

States should play a role in limiting the extent that mandatory arbitration can be used to prevent students from vindicating their rights, particularly when the federal government declines to intervene. For example, pending legislation in New Jersey would eliminate any state assistance, including grants, scholarships, and loans, to schools operating in the state that require arbitration for claims against the school.<sup>109</sup>

## **A public database of student outcome and student loan data**

Congress should require schools to collect and report individual-level data on education and outcomes, which would allow prospective students and the public to make informed decisions regarding school performance, likelihood of employment, and student debt outcomes. It would also enable regulators and litigants to identify potential discrimination and support reverse redlining claims against the worst actors.

For decades, an equivalent regulatory scheme, HMDA, has provided similar transparency into the mortgage market.<sup>110</sup> Regulators rely heavily on HMDA data to identify potential discrimination, and public HMDA data has proven critical in supporting reverse redlining (and traditional redlining) claims against mortgage lenders.<sup>111</sup>

In the for-profit school context, individual level (de-identified) data could illuminate by campus location for each student and prospective student: (1) demographic information, including race, national origin, sex, age, and military status; (2) amount and types of financial aid received; (3) program; (4) course credits completed; (5) graduation status; and (6) employment status upon graduation, including field and income. This information could also include instructor-specific data, including fields such as credentials, years in the field, and years at the school.

Establishing a publicly available student-level data system should be a priority for the next congressional session. At a minimum, this would entail overturning the unit record ban, and likely also specifically authorizing the collection and public reporting of this data.<sup>112</sup>

Ensuring such a system captures individual demographic characteristics and a variety of outcome-related metrics would provide a powerful tool for private parties, as well as federal and state regulators and enforcement

agencies. That said, while this public data would empower regulators and private litigants to take action against predatory schools, it would not create change in these institutions absent complementary policy responses.

## **Enhanced reporting to state and federal regulators by schools that receive federal funds**

The Department of Education's Office of Civil Rights (OCR) is responsible for enforcing Title VI, including its implementing regulations, against Department of Education-funded programs and entities. To empower and facilitate more meaningful compliance reviews and enable other federal and state regulators to do the same, the Department should require reporting of additional data, metrics, and materials from all entities that receive federal financial aid.

Currently, OCR primarily works on a system of investigating complaints against specific institutions, and it conducts a limited amount of agency-initiated investigations.<sup>113</sup> But OCR's own reviews are unlikely to cover more covert and widespread instances of discrimination because they are based in large part on publicly available information, as well as the limited data that schools are required to submit to the Department.<sup>114</sup>

The Department should impose complementary requirements on schools it oversees to enable OCR and other regulatory and enforcement partners to curb civil rights abuses. To facilitate the discovery of civil rights issues, required reporting should include: copies and information about the distribution of all advertising and marketing materials, disaggregated data on dollars spent on advertising and marketing, including by geography, and demographic data on student loans, defaults, and employment outcomes. To increase accountability, this information should be shared with regulatory partners at the state and federal level—perhaps via interagency MOUs or other information sharing agreements—and portions could be made public.

The Department of Education must craft these requirements to avoid data manipulation, which has been a long-standing problem among some schools. And, as with the public-data proposal above, reporting requirements alone will not change the behavior of egregious actors. But this additional data would enhance the ability of regulators to investigate and bring enforcement actions involving allegations of discrimination, including reverse redlining claims.

## **Strengthening substantive standards for for-profit schools**

Strengthening substantive federal and state regulation dictating minimum consumer and student protections applicable to for-profit schools can facilitate the development of reverse redlining cases. Courts do not require plaintiffs making reverse redlining claims to show violation of an independent legal requirement; predatory

conduct can be shown in myriad ways.<sup>115</sup> But when a school falls short of objective standards or state or federal law has designated a specific practice as deceptive or unfair, it is easy for plaintiffs to show that a school is peddling a predatory product or service.

A full menu of potential state and legislative options is beyond the scope of this article, but examples include: establishing strong consumer protections for all for-profit school students; implementing minimum quality standards governing employment outcomes, graduation rates, and debt-to-earnings standards; and requiring transparency and accountability to ensure students have the information they need about program costs and quality.<sup>116</sup> The Department of Education's 2014 gainful employment rule is one example of a federal rule that provided important substantive protections for students, and that should be re-instated.<sup>117</sup>

Legislators and policymakers should ensure such standards are re-instituted to curb abuses in the industry generally. Such standards not only provide robust baseline protections for all students, they complement reverse redlining suits.

## Conclusion

Civil rights laws can be used to hold for-profit schools accountable. But the worst actors will continue to exploit minority communities absent increased regulation and oversight. Federal and state regulators should step up enforcement efforts. Legislators and policymakers should also reinstate substantive consumer protection and education quality standards and complement those protections with concrete actions to ensure consumers can vindicate their rights in court. These measures should be pursued with an understanding that the abuses perpetrated by for-profit schools are a civil rights issue; remedial and prospective measures should account for the disproportionate harm inflicted on minority communities.

## Endnotes

<sup>1</sup> See, e.g., Stephanie Riegg Cellini, *The alarming rise in for-profit college enrollment*, The Brookings Inst. (Nov. 2, 2020), <https://www.brookings.edu/blog/brown-center-chalkboard/2020/11/02/the-alarming-rise-in-for-profit-college-enrollment/>; Kery Murakami, *The Recession and For-Profit College Recruitment*, Inside Higher Ed (Apr. 17, 2020), <https://www.insidehighered.com/news/2020/04/17/new-recession-sets-stage-abuses-profits-critics-fear>; Sarah Butrymowicz & Meredith Kolodner, *For-Profit Colleges, Long Troubled, See Surge Amid Pandemic*, N.Y. Times (June 17, 2020), <https://www.nytimes.com/2020/06/17/business/coronavirus-for-profit-colleges.html>; Todd Sedmak, *Fall 2020 Undergraduate Enrollment Down 4% Compared to Same Time Last Year*, Stud. Clearing House (Oct. 15, 2020), <https://www.studentclearinghouse.org/blog/fall-2020-undergraduate-enrollment-down-4-compared-to-same-time-last-year/>.

<sup>2</sup> See, e.g., Genevieve Bonadies, Joshua Rovenger, Eileen Connor, Brenda Shum & Toby Merrill, *For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate*, Harv. L. Rev. Blog (July 30, 2018), <https://blog.harvardlawreview.org/for-profit-schools-predatory-practices-and-students-of-color-a-mission-to-enroll-rather-than-educate/>; Lauren Camera, *For-Profit Colleges Look to 'Urban Members of Congress' to Protect Gains Under Trump*, U.S. News, (Sept. 23, 2020), <https://www.usnews.com/news/education-news/articles/2020-09-23/for-profit-colleges-look-to-urban-members-of-congress-to-protect-gains-under-trump>.

<sup>3</sup> Robert Kelchen, *New Data on Long-Term Student Loan Default Rates*, Kelchen on Education (Oct. 6, 2017), <https://robertkelchen.com/2017/10/06/new-data-on-long-term-student-loan-default-rates/>.

<sup>4</sup> See generally U.S. Senate Health, Education, Labor, and Pensions Committee, *For-profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Majority Committee Staff Report and Accompanying Minority Committee Staff Views*, at 20-22 (July 30, 2012), [https://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI-PartIII-SelectedAppendixes.pdf](https://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf) [hereinafter "Senate HELP Report"].

<sup>5</sup> Caren A. Arbeit & Laura Horn, U.S. Dep't of Educ. Stat. in Brief, *A Profile of the Enrollment Patterns and Demographic Characteristics of Undergraduates at For-Profit Institutions* at 2 (Feb. 2017), <https://nces.ed.gov/pubs2017/2017416.pdf>.

<sup>6</sup> See, e.g., Complaint, *Consumer Fin. Prot. Bureau v. Corinthian Colls.*, 2014 WL 5786691 (N.D. Ill. Sept. 16, 2014) (No. 1:14-cv-07194), [https://files.consumerfinance.gov/f/201409\\_cfpb\\_complaint\\_corinthian.pdf](https://files.consumerfinance.gov/f/201409_cfpb_complaint_corinthian.pdf) ("Corinthian's business model is predicated on convincing consumers to obtain student financial aid to pay the high cost of tuition to enroll in its programs. . . . Corinthian assisted these students in applying for federal financial aid, but even with the maximum amount of available federal aid, many prospective Corinthian students were not able to afford Corinthian's tuition."). For-profit schools artificially inflate tuition and costs above what students can obtain in federal financial aid to comply with their obligations not to derive more than 90% of their revenue from federal sources, creating "shadow debt" for for-profit school students. See *Shadow Student Debt* Student Borrower Prot. Ctr. (July 2020), <https://protectborrowers.org/wp-content/uploads/2020/07/Shadow-Student-Debt.pdf>.

<sup>7</sup> See, e.g., Senate HELP Report, *supra* note 4 at 17, 36 (noting that the average tuition and fees for an associate's degree program at a for-profit school are more than four times higher than average tuition and fees for an associate's degree program at a public college); see also Elyssa Kirkham, Student Loan Hero, *Study: Here's How Much College Credits Actually Cost* (Jan. 24, 2018), <https://studentloanhero.com/featured/cost-per-credit-hour-study/> (finding that "among two-year schools, the cost per credit at a for-profit school is about 4.5 times higher on average than at a community college or other public school.").

<sup>8</sup> Senate HELP Report, *supra* note 4 at 86-87 ("After spending on marketing, recruiting, profit and other non-education expenses is subtracted, the amount left for educating and supporting students appears relatively meager at many for-profit colleges. . . . In contrast, public and non-profit schools, which by definition do not retain any revenue as profit and do not pay taxes, generally spend a higher amount per student on instruction, and spend a far lower amount on marketing and recruiting."); see also Stephanie Hall, The Century Foundation, *How Much Education are Students Getting for their Tuition Dollar?* (Feb. 28, 2019), <https://tcf.org/content/report/much-education-students-getting-tuition-dollar/>; John J. Cheslock, The Century Foundation, *Examining Instructional Spending for Accountability and Consumer Information Purposes*, Table 3 (Feb. 28, 2019), <https://tcf.org/content/report/examining-instructional-spending-accountability-consumer-information-purposes/> (noting that the ratio of instructional expenditure to collected tuition and fee revenue is 4.35 times lower at for-profit schools than at public schools [comparing "Private FP four-year" schools in the "INSTR" and "CTFR" column to "Public four-year" schools in the same column]).

<sup>9</sup> Senate HELP Report, *supra* note 4 at 53-57.

- <sup>10</sup> See, e.g., Lawyers' Comm. for Civil Rights Under Law et al. Letter to Senators and Sources (Feb. 15, 2019), <https://predatorystudentlending.org/wp-content/uploads/2019/02/Senator-Letter.pdf>; Peter Smith & Leslie Parrish, Ctr. for Responsible Lending, Do Students of Color Profit From For-Profit College? (Oct. 2014), <https://www.responsiblelending.org/student-loans/research-policy/CRL-For-Profit-Univ-FINAL.pdf>; Bonadies, Rovenger, Connor, Shum & Merrill *supra* note 2; The Inst. for Coll. Access & Success, *TICAS Memo on CDR Manipulation* (Aug. 21, 2012), <https://ticas.org/accountability/ticas-memo-cdr-manipulation/>; Senate HELP Report, *supra* note 4; The Leadership Conf. Educ. Fund, *Gainful Employment: A Civil Rights Perspective* (Oct. 17, 2019), <http://civilrightsdocs.info/pdf/education/Gainful-Employment-Brief-Final.pdf>.
- <sup>11</sup> U.S. Gov't Accountability Off., GAO-10-948T, *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices* (Aug. 4, 2010), <https://www.gao.gov/assets/130/125197.pdf>.
- <sup>12</sup> The Inst. for Coll. Access & Success, *TICAS Analysis of Official Three-Year Cohort Default Rates* (Sept. 30, 2020), <https://ticas.org/accountability/cohort-default-rates/ticas-analysis-of-official-three-year-cohort-default-rates-fy17/>.
- <sup>13</sup> The Leadership Conf. Educ. Fund, *supra* note 10; see also Stephanie Riegg Cellini & Nicholas Turner, Nat'l Bureau of Econ. Rsch., *Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data*, Working Paper No. 22287 (Jan. 2018), <https://www.nber.org/papers/w22287> ("[W]e find that certificate-seeking students in for-profit institutions are 1.5 percentage points less likely to be employed and, conditional on employment, have 11 percent lower earnings after attendance than students in public institutions. . . . We find that for-profit students experience small, statistically insignificant gains in annual earnings after attendance compared to a matched control group of young individuals who do not attend college. A back-of-the-envelope comparison of these earnings gains to average debt burdens suggests that for-profit certificate programs do not pay off for the average student.").
- <sup>14</sup> Smith & Parrish, *supra* note 10.
- <sup>15</sup> See *id.*; Bonadies, Rovenger, Connor, Shum & Merrill, *supra* note 2.
- <sup>16</sup> *For-Profit Colleges and Racial Justice*, Legal Servs. Ctr. of Harv. Law Sch., <https://predatorystudentlending.org/predatory-industry/racial-justice/> (last visited Nov. 23, 2020).
- <sup>17</sup> Veterans Educ. Success, *Large For-Profit Schools Remain Dependent on Recruiting GI Bill Students Despite Overall Enrollment Declines, Veteran's Perspective*, Brief No. 4 (April 2018), <https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5ae241e588251be6319e24a5/1524777445871/VES+Issue+Brief+%234+Enrollment.FINAL.v2.pdf>.
- <sup>18</sup> See, e.g., NPR Fresh Air, *How For-Profit Colleges Sell "Risky Education" To The Most Vulnerable*, NPR (Mar. 27, 2017), <https://www.npr.org/transcripts/521371034>.
- <sup>19</sup> E.g., Jasper Craven, *For-profit colleges that get GI Bill money need more oversight, veterans say*, PBS News Hour, Dec. 11 2019, <https://www.pbs.org/newshour/education/for-profit-colleges-that-get-gi-bill-money-need-more-oversight-veterans-say>; Jillian Berman, *These colleges use a loophole to make millions off the GI Bill*, MarketWatch (Nov. 12, 2017), <https://www.marketwatch.com/story/these-colleges-use-a-loophole-to-make-billions-off-the-gi-bill-2017-11-09>; Hollister K. Petraeus, *For-Profit Colleges, Vulnerable G.I.'s*, N.Y. Times, (Sept. 21, 2011), <https://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html> ("For every service member or veteran (or spouse or child, in the case of the post-9/11 G.I. Bill) enrolled at a for-profit college and paying with military education funds, that college can enroll nine others who are using nothing but Title IV money. This gives for-profit colleges an incentive to see service members as nothing more than dollar signs in uniform, and to use aggressive marketing to draw them in and take out private loans, which students often need because the federal grants are insufficient to cover the full cost of tuition and related expenses.").
- <sup>20</sup> Race/Ethnicity data from Cristobal de Brey et al., Nat'l Ctr. For Educ. Stat., *Status and Trends in the Education of Racial and Ethnic Groups 2018* Figure 21.4 (Feb. 2019), <https://nces.ed.gov/pubs2019/2019038.pdf>; Military/Veteran Status data from Student Veterans of America, *National Veteran Education Success Tracker* Table 6 (2017), [https://studentveterans.org/wp-content/uploads/2020/08/NVEST-Report\\_FINAL.pdf](https://studentveterans.org/wp-content/uploads/2020/08/NVEST-Report_FINAL.pdf).
- <sup>21</sup> See, e.g., *Voluntary Military Education Programs Hearing Before the Subcomm. on Defense, Comm. on Appropriations*, 113th Cong. 113-170 (June 12, 2013) (written testimony of Steve Gunderson, President and CEO, The Association of Private Sector Colleges and Universities), <https://www.appropriations.senate.gov/imo/media/doc/hearings/Gunderson%20Testimony.pdf> ("Sixty-four percent of our students are low-income. Sixty-seven percent have delayed postsecondary education making them older than the 18-22 traditional college demographic. Single parents make up 31 percent of our students and 76 percent are from a minority population. . . . Most of our students juggle work, family and school. Most cannot attend a traditional institution of higher education because of scheduling, location or admissions criteria.").
- <sup>22</sup> Luis Armona, Rajashri Chakrabarti & Michael F. Lovenheim, Nat'l Bureau of Econ. Rsch., *How Does For-Profit College Attendance Affect Student Loans, Defaults and Labor Market Outcomes?*, Working Paper No. 25042 (Sept. 2018), <https://www.nber.org/papers/w25042.pdf>; see also Cellini & Turner, *supra* note 13; see also Robin Howarth & Lisa Stifler, Brookings, *The Failings of Online For-profit Colleges: Findings from Student Borrower Focus Groups* (Mar. 2019), <https://www.brookings.edu/wp-content/uploads/2019/03/The-Failings-of-Online-For-profit->

[Colleges.pdf](#) (“[P]articipants wished they had chosen less expensive and higher quality options, such as community colleges and public four-years.”).

<sup>23</sup> Armona, Chakrabarti & Lovenheim, *supra* note 22.

<sup>24</sup> Senate HELP Report, *supra* note 4 at 18.

<sup>25</sup> The Inst. for Coll. Access & Success, Student Debt and the Class of 2019 at 23 (Oct. 2020), <https://ticas.org/wp-content/uploads/2020/10/classof2019.pdf>.

<sup>26</sup> Robert Shireman & Kevin Miller, The Century Foundation, *Student Debt is Surging at For-Profit Colleges* (May 28, 2020), <https://tcf.org/content/commentary/student-debt-surging-profit-colleges/>.

<sup>27</sup> Nat'l Ctr. for Educ. Statistics, Table 303.70, [https://nces.ed.gov/programs/digest/d19/tables/dt19\\_303.70.asp](https://nces.ed.gov/programs/digest/d19/tables/dt19_303.70.asp) (“Total undergraduate fall enrollment in degree-granting postsecondary institutions, by attendance status, sex of student, and control and level of institution: Selected years, 1970 through 2029.”).

<sup>28</sup> *Id.*

<sup>29</sup> Sedmak, *supra* note 1.

<sup>30</sup> The Inst. for Coll. Access & Success, *The Evolution of the For-Profit College Industry: New Challenges for Oversight* at 5-6 (Dec. 2019), <https://ticas.org/accountability/the-evolution-of-the-for-profit-college-industry-new-challenges-for-oversight/>.

<sup>31</sup> See, e.g., Margaret Mattes, The Century Foundation, *The Private Side of Public Higher Education* (Aug. 7, 2017), <https://tcf.org/content/report/private-side-public-higher-education/>; Reed Parker, *Purdue Global Completes Acquisition of Kaplan University*, Inside Indiana Bus. (Mar. 23, 2018), <https://www.insideindianabusiness.com/story/37794414/purdue-global-completes-acquisition-of-kaplan-university>.

<sup>32</sup> See, e.g., Lindsay McKenzie, *Unpacking the Arizona-Ashford Deal*, Inside Higher Ed (Sept. 15, 2020), <https://www.insidehighered.com/news/2020/09/15/unpacking-university-arizona%E2%80%99s-deal-ashford>.

<sup>33</sup> Butrymowicz & Kolodner, *supra* note 1.

<sup>34</sup> See, e.g., Abigail Hess, “We are aggressively recruiting right now”: How for-profit colleges are preparing for next semester, CNBC Make It (May 19, 2020), <https://www.cnbc.com/2020/05/19/how-for-profit-colleges-are-preparing-for-next-semester.html>; Taela Dudley, The Century Foundation, *College Marketing in the COVID-19 Economy* (Aug. 18, 2020), <https://tcf.org/content/report/college-marketing-covid-19-economy/?agreed=1&agreed=1>; Alex Kish & Walter Ochinko, Veterans Ed. Success, *Investigative Analysis: Advertising Trends for Selected Postsecondary Institutions during the COVID-19 Pandemic* (Aug. 2020), <https://vetsedsuccess.org/issue-brief-investigative-analysis-advertising-trends-for-selected-postsecondary-institutions-during-the-covid-19-pandemic/>.

<sup>35</sup> Meredith Kolodner & Sarah Butrymowicz, *Could the online, for-profit college industry be “a winner in this crisis”?*, The Hechinger Rep. (June 17, 2020), <https://hechingerreport.org/could-the-online-for-profit-college-industry-by-a-winner-in-this-crisis/>.

<sup>36</sup> *Supra*, note 29.

<sup>37</sup> *Supra*, notes 34-35.

<sup>38</sup> 20 U.S.C. § 1002 (describing the Title IV requirements for institutions of higher education).

<sup>39</sup> *Id.*; see also *infra* Statutory framework and legal principles.

<sup>40</sup> See, e.g., Press Release, U.S. Dep’t of Educ., *For-Profit College Company to Pay \$95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations* (Nov. 16, 2015), <https://www.ed.gov/news/press-releases/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and-other-violations>; Press Release, U.S. Dep’t of Just., *Alta Colleges to Pay U.S. \$7 Million to Resolve False Claims Act Allegations* (Apr. 20, 2009), <https://www.justice.gov/opa/pr/alta-colleges-pay-us-7-million-resolve-false-claims-act-allegations>; Nat’l Consumer Law Ctr., *Government Investigations and Lawsuits Involving For-Profit Schools (2004 – May 2014)* (2014), <https://www.nclc.org/images/pdf/pr-reports/for-profit-gov-investigations.pdf> (cataloguing government investigations into a range of issues at for-profits, including false certifications submitted to state and federal regulators).

<sup>41</sup> For a state-by-state breakdown of the state agencies and regulations that govern oversight of for-profit schools. See The Children’s Advocacy Institute, University of San Diego School of Law, *For Profit Postsecondary Schools: Oversight and Governing Statutes & Regulations* (2014),

[http://www.caichildlaw.org/Misc/Information\\_statebystate.pdf](http://www.caichildlaw.org/Misc/Information_statebystate.pdf). State regulators are not only tasked with regulating federally recognized and accredited for-profit schools but also higher risk unaccredited for-profit schools.

<sup>42</sup> Matthew A. Bruckner, *The Forgotten Stewards of Higher Education Quality*, 11 U.C. Irvine L. Rev. 1 (2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3713136](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3713136).

<sup>43</sup> Massachusetts, for example, requires that the school disclose the program's cost, graduation rate, percent of students who are not paying their loans, and percent of students who obtained full-time employment in their field of study, both on their website and in writing to prospective students. The Massachusetts regulations also prohibit for-profit schools from contacting prospective students via phone or text message more than twice in any seven-day period. 940 Mass. Code Regs. 31.00, *et. seq.*

<sup>44</sup> For example, comments by Harvard's Project on Predatory Student Lending highlight gaps in Massachusetts' substantive regulation of for-profit schools. See Toby Merrill, Comment, *Regarding the Revised Proposed Regulations of Private Occupational Schools at 230 Mass. Code Regs. 12.00-17.00*, Legal Servs. Ctr. of Harvard Law Sch., Sept. 12, 2014, <https://predatorystudentlending.org/wp-content/uploads/2018/09/09.2014-Merrill-Comment-on-DPL-Revised-Proposed-Regs.pdf>.

<sup>45</sup> Deanne Loonin & Jillian McLaughlin, Nat'l Consumer Law Ctr., *State Inaction: Gaps in State Oversight of For-Profit Education*, at 4-5 (Dec. 2011), <https://www.nclc.org/images/pdf/pr-reports/state-inaction-for-profit-higher-edu.pdf>; Bruckner, *supra* note 42.

<sup>46</sup> Alia Wong, *The Downfall of For-Profit Colleges*, The Atlantic (Feb. 23, 2015), <https://www.theatlantic.com/education/archive/2015/02/the-downfall-of-for-profit-colleges/385810/>.

<sup>47</sup> Melinda D. Anderson, *When For-Profit Colleges Prey on Unsuspecting Students*, The Atlantic (Oct. 24, 2016), <https://www.theatlantic.com/education/archive/2016/10/when-for-profit-colleges-prey-on-unsuspecting-students/505034/>.

<sup>48</sup> Justin L. Mack, Chelsea Schneider & Stephanie Wang, *ITT Tech Shuts Down After Federal Disciplinary Action*, The Indianapolis Star (Sept. 6, 2016), <https://www.govtech.com/education/higher-ed/ITT-Tech-Shuts-Down-After-Federal-Disciplinary-Action.html>.

<sup>49</sup> Danielle Ivory, Erica L. Green & Steve Eder, *Education Department Unwinds Unit Investigating Fraud at For-Profits*, N.Y. Times (May 13, 2018), <https://www.nytimes.com/2018/05/13/business/education-department-for-profit-colleges.html>.

<sup>50</sup> Program Integrity: Gainful Employment, 84 Fed. Reg. 31392 (July 1, 2019); Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 Fed. Reg. 49788 (Sept. 23, 2019).

<sup>51</sup> Research has shown that students in comparable programs at community and public colleges have far better outcomes than comparable programs at for-profit schools. See *supra* notes 13-14.

<sup>52</sup> 15 U.S.C. § 1691.

<sup>53</sup> 12 C.F.R. § 1002.2(l).

<sup>54</sup> 42 U.S.C. § 2000d.

<sup>55</sup> See, e.g., *Saint-Jean v. Emigrant Mortg. Co.*, 50 F. Supp. 3d 300 (E.D.N.Y. 2014) (denying motion to dismiss FHA and ECOA claims); *M&T Mortg. Corp. v. White*, 736 F. Supp. 2d 538 (E.D.N.Y. 2010) (denying motion for summary judgment on FHA and ECOA claims); *Martinez v. Freedom Mortg. Team, Inc.*, 527 F. Supp. 2d 827 (N.D. Ill. 2007) (denying motion to dismiss FHA and ECOA claims); *Munoz v. Int'l Home Capital Corp.*, No. C 03-01099 RS, 2004 WL 3086907 (N.D. Cal. May 4, 2004) (same); *Phillips v. Better Homes Depot, Inc.*, No. 02-CV-1168 (ERK), 2003 WL 25867736 (E.D.N.Y. Nov. 12, 2003) (denying motion for summary judgment on ECOA claims); *Matthews v. New Century Mortg. Corp.*, 185 F. Supp. 2d 874 (S.D. Ohio 2002) (denying motion to dismiss FHA and ECOA claims); *Hargraves v. Capital City Mortg. Corp.*, 140 F. Supp. 2d 7 (D.D.C. 2000) on reconsideration in part, 147 F. Supp. 2d 1 (D.D.C. 2001) (denying motion for summary judgment on FHA and ECOA claims) [hereinafter "*Hargraves*"].

<sup>56</sup> *Hargraves*, 140 F. Supp. 2d at 20 ("In order to show a claim based on reverse redlining, the plaintiffs must show that the defendants' lending practices and loan terms were 'unfair' and 'predatory,' and that the defendants either intentionally targeted on the basis of race, or that there is a disparate impact on the basis of race."); *Steed v. EverHome Mortg. Co.*, 308 F. App'x 364, 368 (11th Cir. 2009) (adopting the *Hargraves* test); see also *Brook v. Sistema Universitario Ana G. Mendez, Inc.*, No. 8:17-cv-171-T-30AAS, 2018 WL 1743500, at \*4 (M.D. Fl. May 4, 2017) (holding that "[t]he Court sees no reason why Plaintiff cannot pursue her Title VI claim using a theory akin to reverse redlining," and citing reverse redlining cases brought pursuant to ECOA, the Fair Housing Act, and sections 1981 and 1982).

<sup>57</sup> Conducting ex-parte interviews of a party-opponents' former employees is permissible under the ABA Model Rules of Professional Conduct, representing the majority rule followed by most jurisdictions. See Model Rules of Pro. Conduct r. 4.2 cmt. 7 (Am. Bar Ass'n 2020). However, a minority of jurisdictions do not permit this practice, so litigators should be sure to check the ethical rules pertaining to one or all of the following:



where the attorneys litigating the case are barred, where the case is filed, and where the investigation is occurring (depending on choice-of-law principles).

<sup>58</sup> Second Amended Class Action Complaint Exhibits at Ex. 13, Declaration of L. Grant at ¶¶14-15, *Morgan v. Richmond Sch. of Health and Tech.*, No. 1:11-cv-01066 (D.D.C. Dec. 7, 2011), [https://www.relmanlaw.com/media/cases/440\\_Morgan%20v.%20RSHT%20-%20Declarations%20of%20Current%20and%20Former%20RSHT%20Students.pdf](https://www.relmanlaw.com/media/cases/440_Morgan%20v.%20RSHT%20-%20Declarations%20of%20Current%20and%20Former%20RSHT%20Students.pdf) (note that the case was later transferred and the case number changed to No. 3:12-cv-00373. However, these filings were made under the original case number) [hereinafter *RSHT Complaint Exhibits*].

<sup>59</sup> *Id.* at Ex. 3, Decl. of M. Blaney at ¶¶13-14.

<sup>60</sup> Second Amended Class Action Complaint at ¶¶ 200-210, *Morgan v. Richmond Sch. of Health and Tech.*, No. 1:11-cv-01066 (D.D.C. Dec. 7, 2011), [https://www.relmanlaw.com/media/cases/351\\_RSHT%20-%20Second%20Amended%20Complaint%2012.7.11.pdf](https://www.relmanlaw.com/media/cases/351_RSHT%20-%20Second%20Amended%20Complaint%2012.7.11.pdf) [hereinafter *RSHT Complaint*].

<sup>61</sup> See, e.g., *RSHT Complaint Exhibits*, *supra* note 58 at Ex. 8, Decl. of E. Dawkins Sr. at ¶¶16-19; Ex. 9, Decl. of R. Douglass at ¶¶11-12; Ex. 12, Decl. of J. Freeman at ¶¶15-17.

<sup>62</sup> E.g., *RSHT Complaint*, *supra* note 60 at ¶¶ 133-134, 154-155, 243-246.

<sup>63</sup> *Id.* at ¶ 352.

<sup>64</sup> *Id.* at ¶ 363.

<sup>65</sup> *RSHT Complaint Exhibits*, *supra* note 58 at Ex. 44, Decl. of B. Drew at ¶¶ 3-16; Ex. 43, Decl. of D. Cosner at ¶¶ 12-19.

<sup>66</sup> See, e.g., U.S. Gov't Accountability Off., GAO-10-948T, *supra* note 11; Tressie McMillan Cottom, *The Coded Language of For-Profit Colleges*, *The Atlantic* (Feb. 22, 2017), <https://www.theatlantic.com/education/archive/2017/02/the-coded-language-of-for-profit-colleges/516810/>; Allie Conti, *How For-Profit Schools Have Targeted and Taken Advantage of Black Students*, *Vice* (Sept. 10, 2019), <https://www.vice.com/en/article/bjwj3d/how-for-profit-colleges-have-targeted-and-taken-advantage-of-black-students>; David Halperin, *Corinthian Colleges Files Show Big Fees to Google, BET, Lead Generators*, *HuffPost* (Dec. 8, 2017), [https://www.huffpost.com/entry/corinthian-colleges-files\\_b\\_13480614](https://www.huffpost.com/entry/corinthian-colleges-files_b_13480614); Smith & Parrish, *supra* note 10.

<sup>67</sup> See Senate HELP Report, *supra* note 4 at 15-17 (identifying the following problems at for-profit institutions: high tuition, aggressive and misleading recruiting, low retention rates, low per-student spending on academics but high per-student spending on marketing, questionable academic rigor, lack of student services, poor job placement services, high debt loads, high rates of student loan default, and failure of regulation to address these problems).

<sup>68</sup> See, e.g., Smith & Parrish, *supra* note 10; Howarth & Stifler, *supra* note 22.

<sup>69</sup> Plaintiffs in *RSHT* uncovered strong evidence of intentional discriminatory targeting, which is the focus here. Courts have also approved disparate impact reverse redlining claims, where allegations show policies cause disproportionate impacts. See, e.g., *Horne v. Harbour Portfolio VI, LP*, 304 F. Supp. 3d 1332, 1341 (N.D. Ga. 2018).

<sup>70</sup> Plaintiff's Memo of Points and Authorities in Opposition to Defendant's Motion to Dismiss at 4, *Morgan v. Richmond Sch. of Health and Tech.*, No. 3:12-cv-00373 (D.D.C. July 13, 2012), [https://predatorystudentlending.org/wp-content/uploads/2018/03/RSHT-20120713\\_Response-to-MtD-4853-0176-3679-v.1.pdf](https://predatorystudentlending.org/wp-content/uploads/2018/03/RSHT-20120713_Response-to-MtD-4853-0176-3679-v.1.pdf).

<sup>71</sup> *Id.* at 4.

<sup>72</sup> *RSHT Complaint*, *supra* note 60 at ¶¶ 44, 174, 260.

<sup>73</sup> *Id.* at ¶¶ 79, 375-378.

<sup>74</sup> 15 U.S.C. § 1691a(e); 12 C.F.R. § 1002.2(l).

<sup>75</sup> Deanne Loonin, Nat'l Consumer Law Ctr., *Piling it on: The Growth of Proprietary School Loans and the Consequences for Students* (Jan. 2011), <https://www.studentloanborrowerassistance.org/wp-content/uploads/File/proprietary-schools-loans.pdf>.

<sup>76</sup> See Plaintiff's Memo of Points and Authorities in Opposition to Defendant's Motion to Dismiss at 10 n.3, *supra* note 70.

<sup>77</sup> *Hargraves*, *supra* note 55, 140 F. Supp. 2d at 20 (emphasis added).

<sup>78</sup> See, e.g., *Horne v. Harbour Portfolio VI, LP*, 304 F. Supp. 3d 1332, 1342 (N.D. Ga. 2018); *M&T Mortg. Corp. v. White*, 736 F. Supp. 2d 538 at 575 (E.D.N.Y. 2010); *Davenport v. Litton Loan Servicing LP*, 725 F. Supp. 2d 862, 876 (N.D. Cal. 2010); *House v. Cal. State Mortg. Co.*, No. CV-F-08-1880 OWW/GSA, 2009 WL 2031775, at \*19 (E.D. Cal. July 9, 2009); *Saint-Jean v. Emigrant Mortg. Co.*, 50 F. Supp. 3d 300 (E.D.N.Y. 2014) (denying motion to dismiss FHA and ECOA claims); *Martinez v. Freedom Mortg. Team, Inc.*, 527 F. Supp. 2d 827 (N.D. Ill. 2007) (denying motion to dismiss FHA and ECOA claims); *Munoz v. Int'l Home Capital Corp.*, No. C 03-01099 RS, 2004 WL 3086907 (N.D. Cal. May 4, 2004) (same); *Phillips v. Better Homes Depot, Inc.*, No. 02-CV-1168 (ERK), 2003 WL 25867736 (E.D.N.Y. Nov. 12, 2003) (denying motion for summary judgment on ECOA claims); *Matthews v. New Century Mortg. Corp.*, 185 F. Supp. 2d 874 (S.D. Ohio 2002) (denying motion to dismiss FHA and ECOA claims).

<sup>79</sup> Brief of the United States as Amicus, *Hargraves*, *supra* note 55, <https://www.justice.gov/crt/housing-and-civil-enforcement-cases-documents-231>.

<sup>80</sup> See *United States ex rel. Cooper v. Auto Fare, Inc.*, No. 3:14-cv-0008-RJC-DSC, 2014 WL 2889993 (W.D.N.C. June 25, 2014); Press Release, U.S. Dep't of Justice, U.S. Justice Department and North Carolina Attorney General Reach Settlement to Resolve Allegations of Auto Lending Discrimination by "Buy Here, Pay Here" Used-Car Dealerships (Feb. 10, 2015), <https://www.justice.gov/opa/pr/us-justice-department-and-north-carolina-attorney-general-reach-settlement-resolve>.

<sup>81</sup> See *Abdu-Brisson v. Delta Air Lines, Inc.*, 239 F.3d 456, 468 (2d Cir. 2001) (providing similar illustration of firing single employee). The Supreme Court once opined that Congress could not have intended to insulate from Title VII redress a situation in which "an employer hired a woman for a unique position in the company and then admitted that her salary would have been higher had she been male." *Cnty. of Washington v. Gunther*, 452 U.S. 161, 179 (1981).

<sup>82</sup> 15 U.S.C. § 1691(a).

<sup>83</sup> 12 C.F.R. § 1002.2(m).

<sup>84</sup> Complaint, *Consumer Fin. Prot. Bureau v. Corinthian Colls.*, *supra* note 6

<sup>85</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1031, 124 Stat. 1376, 1383 (2010).

<sup>86</sup> See Clare McCann, *The Ins and Outs of the Borrower Defense Rule*, New Am. (July 10, 2017), <https://www.newamerica.org/education-policy/edcentral/ins-and-outs-borrower-defense-rule/>.

<sup>87</sup> 84 Fed. Reg. 49788, 49879 (Sept. 23, 2019).

<sup>88</sup> *Id.* at 49788.

<sup>89</sup> Complaint, *Britt, et al. v. Florida Career Coll.*, No. 0:20-cv-60814 (S.D. Fla. Apr. 20, 2020), <https://predatorystudentlending.org/wp-content/uploads/2020/04/Complaint-Britt-v.-FCC-filed-Apr-20-2020.pdf>.

<sup>90</sup> *Id.*

<sup>91</sup> Plaintiff's Memo in Opposition to Defendant's Motion to Dismiss or Compel, *Britt*, No. 0:20-cv-60814 (S.D. Fla. June 22, 2020), <https://predatorystudentlending.org/wp-content/uploads/2020/04/0030-01-Pl-Opp-to-Def-MTD-or-Compel.pdf>.

<sup>92</sup> While the False Claims Act provides a strong opportunity to hold for-profit schools accountable, the law has not been used to its full potential in the higher education context. The Department of Education has seldomly cut off a school's access to Title IV, even when there is substantial evidence that the school is in violation of its agreement with the Department. There are opportunities to strengthen federal and state laws to ensure that violations of the law in order to access funding is a direct violation of the False Claims Act, see Sabita J. Soneji, Student Borrower Prot. Ctr., *Stamping out Fraud in Higher Education through the False Claims Act: "Material" Should Mean Something* (Oct. 21, 2019), <https://protectborrowers.org/stamping-out-fraud-in-higher-education-through-the-false-claims-act-material-should-mean-something/>.

<sup>93</sup> 31 U.S.C. § 3729(a)(1); see Stephen F. Hayes, *Enforcing Civil Rights Obligations Through the False Claims Act*, 1 Colum. J. Race & L. 29 (2011).

<sup>94</sup> Complaint, *United States ex rel. Boyd v. Corinthian Colls.*, No. 1:14-cv-06620 (N.D. Ill. Aug. 27, 2014), <https://predatorystudentlending.org/wp-content/uploads/2018/03/2.-U.S.-ex-rel.-Boyd-v.-Corinthian-Coll.-Complaint-N.D.-Ill.-2014-4830-0354-7231-v.1.pdf>.

<sup>95</sup> *Id.* at ¶ 2.

<sup>96</sup> See, e.g., 775 Ill. Comp. Stat. Ann. § 5/4-102; N.Y. Exec. Law § 296-a; Ohio Rev. Code Ann. § 4112.021; 34 R.I. Gen. Laws § 34-37-4.3; Wash. Rev. Code § 49.60.175.

<sup>97</sup> See, e.g., Senate HELP Report, *supra* note 4 at 147-148; see also *supra* nn. 17, 19.

- <sup>98</sup> Libby A. Nelson, *\$2.5M Settlement over 'GI Bill.com'*, Inside Higher Ed (June 28, 2012), <https://www.insidehighered.com/news/2012/06/28/attorneys-general-announce-settlement-profit-college-marketer>.
- <sup>99</sup> Senate HELP Report, *supra* note 4 at 147-48; see also Jillian Berman, *Plagued by scandal, for-profit colleges target single mothers*, MarketWatch (Sept. 11, 2017), <https://www.marketwatch.com/story/plagued-by-scandal-for-profit-colleges-target-single-mothers-2017-09-07>.
- <sup>100</sup> See, e.g., Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act, 78 Fed. Reg. 6407 (Jan. 30, 2013).
- <sup>101</sup> See, e.g., Press Release, U.S. Dep't of Justice, Justice Department Reaches Settlement with Wells Fargo Resulting in More Than \$175 Million in Relief for Homeowners to Resolve Fair Lending Claims (July 12, 2012), <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief>; Press Release, Relman Colfax PLLC, *Baltimore Settles Landmark Fair Lending Case Against Wells Fargo* (July 12, 2012), <https://www.relmanlaw.com/news-baltimore-settles>.
- <sup>102</sup> Statement of Commissioner Rohit Chopra at 2, *FTC v. Liberty Chevrolet, Inc. d/b/a Bronx Honda*, No. 1:20-cv-03945-PAE (S.D.N.Y. May 27, 2020), [https://www.ftc.gov/system/files/documents/public\\_statements/1576002/bronx\\_honda\\_final\\_rchopra\\_bronx\\_honda\\_statement.pdf](https://www.ftc.gov/system/files/documents/public_statements/1576002/bronx_honda_final_rchopra_bronx_honda_statement.pdf).
- <sup>103</sup> Ohio Rev. Code Ann. § 4112.021.
- <sup>104</sup> 775 Ill. Comp. Stat. Ann. § 5/4.
- <sup>105</sup> See Chris Morran, *Screwed Over By A For-Profit College? You Probably Signed Away Your Right To Sue*, Consumerist (Apr. 29, 2016), <https://consumerist.com/2016/04/29/screwed-over-by-a-for-profit-college-you-probably-signed-away-your-right-to-sue/>.
- <sup>106</sup> 82 Fed. Reg. 33210 (July 19, 2017).
- <sup>107</sup> Eric Goldberg, *Correcting the record on the CFPB's arbitration rule*, Consumer Fin. Prot. Bureau Blog (Oct. 16, 2017), <https://www.consumerfinance.gov/about-us/blog/correcting-record-cfpbs-arbitration-rule/#:~:text=This%20summer%2C%20the%20Consumer%20Financial,their%20legal%20rights%20in%20court>.
- <sup>108</sup> 5 U.S.C. § 801(b)(2).
- <sup>109</sup> A. 4407, 2020 Leg., 219th Sess. (N.J. 2020), [https://www.njleg.state.nj.us/2020/Bills/A4500/4407\\_11.PDF](https://www.njleg.state.nj.us/2020/Bills/A4500/4407_11.PDF).
- <sup>110</sup> 12 U.S.C. § 2803, *et seq.*; 12 C.F.R. § 1003.
- <sup>111</sup> See, e.g., *City of Memphis v. Wells Fargo Bank, N.A.*, No. 09-2857-STA, 2011 WL 1706756, at \*1-\*2 (W.D. Tenn. May 4, 2011); Second Amended Complaint at 16-17, *Emigrant Mortg. Co.*, No. 1:11-cv-02122-SJ-JO (E.D.N.Y. Oct. 2, 2014), [https://www.relmanlaw.com/media/cases/89\\_Emigrant%20-%20Second%20Amended%20Complaint.pdf](https://www.relmanlaw.com/media/cases/89_Emigrant%20-%20Second%20Amended%20Complaint.pdf).
- <sup>112</sup> Currently, a provision enacted as part of the 2008 congressional reauthorization of the HEA limits the Department of Education's authority to collect or use student-level data other than very limited sampling data conducted for research purposes; this provision is commonly known as the "unit record ban." Advocates and policymakers have tried to overturn the ban in order to allow the creation of a federal student-level system. Most recently, the College Transparency Act of 2019 bill was introduced by a bipartisan group of House members, which would authorize NCES to collect student-level data on enrollment, retention, completion, and post-graduation outcomes by institution and major. See, e.g., Reps. Paul Mitchell & Raja Krishnamoorthi, *Helping Americans make smart choices when investing in higher ed*, The Hill (Mar. 12, 2019), <https://thehill.com/blogs/congress-blog/education/433655-helping-americans-make-smart-choices-when-investing-in-higher>; Andrew Hibel interviewing Rep. Raja Krishnamoorthi, *Can Student Outcome Data Make College Selection More Transparent?*, HigherEdJobs, <https://www.higheredjobs.com/HigherEdCareers/interviews.cfm?ID=2069>.
- <sup>113</sup> *Ensuring Equal Access to High-Quality Education*, Dep't of Educ. Off. of Civil Rights, [https://www2.ed.gov/about/offices/list/ocr/docs/ensure03\\_pg6.html](https://www2.ed.gov/about/offices/list/ocr/docs/ensure03_pg6.html)
- <sup>114</sup> *Id.*
- <sup>115</sup> Whether a practice is predatory is a jury question. See, e.g., *Hargraves*, *supra* note 55 at 21. The Department of Justice has explained that a universal standard for what qualifies as "predatory" is unnecessary: "To suggest that courts will not be able to distinguish these practices from good faith but high-risk . . . lending calls into question the ability of governments ever to regulate the lending industry to protect consumers against unfair or deceptive practices," and that "'predatory lending' is sufficiently identifiable such that, when its victims are selected based on race, it constitutes discrimination." Brief of the United States as Amicus, *Hargraves*, *supra* note 79.

<sup>116</sup> See, e.g., *What States Can Do to Protect Consumers: Student Loans*, Nat'l Consumer Law Ctr., <https://www.nclc.org/issues/fs-student-loans.html>; The Leadership Conf. Educ. Fund, *supra* note 10.

<sup>117</sup> In July 2019, the Department of Education published a notice repealing that rule. The legality of that rescission is being challenged in court. See *AFT V. DeVos*, Student Defense, <https://www.defendstudents.org/cases/aft-v-devos>; Docket, *Am. Fed'n of Tchrs. v. DeVos*, No. 5:20-cv-00455, 2020 WL 5257561 (N.D. Cal. Sep. 3, 2020).