STUDENT BORROWER PROTECTION CENTER

October 21, 2020

Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Re: Potential Consumer Protection Violations by Climb Credit

Dear Director Kraninger,

We write to inform you about serious concerns of borrower harm in the area of student lending and to request immediate action to hold relevant parties accountable and provide for all available consumer redress.

Climb Credit, Inc., alongside its affiliate Climb Investco, LLC (collectively, "Climb"), describes itself as "a mission-driven student lender focused on helping students attend vocational and career-advancing programs" at partner schools.[1] Climb is a New York-headquartered company registered as a lender in 35 states and the District of Columbia, and its lending finances attendance at occupational training programs across the country.[2] A growing body of evidence indicates that Climb's business practices may place it in violation of the CFPA and other consumer protection laws.[3] We urge you and the Consumer Financial Protection Bureau (the "Bureau") that you oversee to use all available enforcement and supervisory authority to investigate and address the following aspects of Climb's business, to prioritize supervision of the broader universe of companies targeting vulnerable borrowers within which Climb operates, and to comprehensively protect student loan borrowers through the rulemaking process. Our findings include the following:

- **Climb's Advertising of its Private Student Loan Products Appears to be Unfair, Deceptive, and Abusive in Violation of the Dodd-Frank Act.** Climb's central value proposition to students is not only that it provides credit for their education but that it does so at schools and programs that it has carefully vetted for positive student outcomes and high return on students' educational investment.[4] However, as this

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[1] Letter from Angela Galardi Ceresnie, CEO, Climb Credit, to Sherrod Brown, Elizabeth Warren, Robert Menendez, Cory Booker, and Kamala D. Harris, Sen., U.S. S. (Feb. 28, 2020), https://www.banking.senate.gov/imo/media/doc/Educational%20data%20-%20appendix.pdf [https://perma.cc/2XPV-FQEP].

[2] *Climb Lending Licenses*, Climb Credit, https://climbcredit.com/licenses [https://perma.cc/NL52-53JE]; *What's your top choice?*, Climb Credit, https://climbcredit.com/compare/vetting? [https://perma.cc/9FZE-XPAV].

[3] There is no dispute that Climb is a "covered person" under the Consumer Financial Protection Act (the "CFPA"), as it markets and extends education loans to consumers. 12 U.S.C. § 5514(a)(1)(D).

[4] *Climb Credit Enters into $130 Million Loan Purchase Agreements*, PR Newswire (Oct. 19, 2017, 7:01 AM), https://www.prnewswire.com/news-releases/climb-credit-enters-into-130-million-loan-purchase-agreements-300539592.html [https://perma.cc/P95X-CVZK] ("Higher education is broken in the United States, which has led to massive student loan debt and

letter and a broader investigation by the Student Borrower Protection Center ("SBPC") have identified,[5] there is mounting evidence that Climb's marketing relies more on misrepresentation than on careful screening. For example, Climb promotes educational programs that cannot lead to relevant professional licensure, presents inaccurate or inappropriately generalized data on student outcomes when promoting specific programs, and uses dubious methodology to arrive at opaque representations that its "partner" programs have a "high ROI [return on investment]." Climb also solicits loan applications by advertising "example Climb loans" that systematically misrepresent the true cost of credit and appear to violate Regulation Z, the implementing regulation of the Truth in Lending Act (the "TILA"). Overall, Climb's business practices appear predicated on deception and misrepresentation, warranting immediate action pursuant to 12 U.S.C. § 5531(a) and substantial relief for affected borrowers.

- **Climb's Underwriting Practices, Including the Use of Educational Criteria in Credit Determinations, Call for Immediate Scrutiny under the Equal Credit Opportunity Act.** Climb's public statements to Congress and the press raise significant questions regarding its compliance with the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.* (the "ECOA"), which is an "enumerated consumer law" enforceable by the Bureau.[6] Climb makes credit determinations in part based on the school and program that the borrower intends to attend, two factors known to be strongly associated with borrowers' demographic background.[7] However, Climb does not seem to understand the fair lending risks that its practices create. For example, in response to an inquiry from the U.S. Senate Banking Committee, Climb recently represented that it has not conducted *any* empirical testing to determine whether its underwriting model produces racially disparate impacts. Defending this decision, Climb stated simply, "we have no reason to believe our underwriting standards have a disparate impact on members of a protected class. Accordingly, we have not conducted such empirical testing and we believe such testing would be unwarranted."[8]

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a major job skills gap. . . . Depending on the program, some graduates struggle to find a job with earnings high enough to afford to pay down their debt. In contrast, Climb Credit focuses on the education most in-demand for the new economy and that provides a high return to students. Network schools are vetted based on a myriad of criteria, including: job placement rate, salary after graduation and program cost.").

[5] Shadow Student Debt, Student Borrower Prot. Ctr., https://protectborrowers.org/shadow-student-debt-report/ [https://perma.cc/5L3M-4GKV].

[6] 12 U.S.C. § 5481(12)(D).

[7] *See* Letter from Angela Galardi Ceresnie *supra* note 1 ("As described above, Climb Credit uses anticipated income of applicants following graduation from the applicable program for purposes of calculating a future debt to income ratio, which is used in determining whether to grant a loan, in addition to data from credit reports."); Dowse B. (Brad) Rustin, Neil E. Grayson & Kiersty M. Degroote, *Pricing Without Discrimination: Alternative student loan pricing, income-sharing agreements, and the Equal Credit Opportunity Act*, Am. Enter. Inst.: Ctr On Higher Educ., Reform (2017), https://www.aei.org/wp-content/uploads/2017/02/Pricing-Without-Discrimination.pdf [https://perma.cc/BRM8-SDV2].

[8] *See* Letter from Angela Galardi Ceresnie, *supra* note 1.

- **Climb and its Partner Schools May be Committing Additional Consumer Protection Violations.** The SBPC's investigation into Climb reveals highly suspect practices at the for-profit schools that Climb partners with. Though the details of these partnerships remain largely unknown, there is evidence that schools act as brokers and/or lead generators, driving students to take out financing provided by Climb in ways that would bring them under the Bureau's authorities as defined under the CFPA.[9] In addition to closely scrutinizing Climb's practices for compliance with the enumerated consumer financial protection laws, the Bureau should work with governmental partners at both the state and federal level to ensure that an investigation into these schools' practices extends to potential violations of other consumer protections, including federal and state preferred lender list requirements.[10]

We therefore urge the Bureau to investigate Climb's lending practices and take appropriate action to prevent and remedy any and all abusive and deceptive practices, as well as discrimination, in Climb's provision of credit.

I. Climb's Advertising of its Private Student Loan Products and Partner Schools Appears to be Unfair, Deceptive, and Abusive in Violation of the Dodd-Frank Act.

Beyond simply providing credit, Climb's central value proposition to prospective borrowers is that it enables them to attend schools that Climb has vetted for quality and positive student outcomes. Climb represents that "[w]e verify all of our schools and programs for outcomes and value" and that "[e]very school in our network meets our career-advancing criteria," including "ROI standards."[11] Similarly, Climb represents that it partners "with schools offering the knowledge and skills required for jobs with strong earning potential in today's economy" and provides loans "which will improve students' earning potential."[12] Climb therefore positions itself as not only a lender but also an independent judge of schools' quality and return on investment whose endorsement of schools is relevant to consumers' decision to enroll (and finance tuition), representing that "[w]e only partner with schools that have been vetted for quality and deliver results for students."[13]

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[9] Though the present letter focuses on violations of the CFPA by Climb's partners and of the ECOA by Climb, certain activities by Climb's partner schools may also bring them under the definition of a "creditor" and associated compliance requirements set forth in the ECOA. The ECOA defines a "creditor" to include any entity that "regularly arranges for the extension, renewal, or continuation of credit." 5 U.S.C. § 1691(a)(e); 12 CFR § 1002.2(l). To the extent that they are involved in arranging for students to lend with Climb, schools may fall under this definition and, therefore, the Bureau's authority. *See, e.g.*, 12 U.S.C. § 5481(15)(A)(i) & (viii) (defining "financial product or service" to include "brokering" credit and providing "financial advisory services" to consumers); 12 U.S.C. § 5481(26)(A) (defining "service provider" to include persons providing "material services" to a covered person).

[10] As discussed in Section III below, there is also evidence of substantial consumer risk stemming from Climb's business practices related to compliance with Preferred Lender List (PLL) requirements enumerated both in the Higher Education Act and the CFPA. This particularly concerns individual schools listing Climb as a preferred lender without meeting relevant disclosure requirements enumerated under 20 U.S.C. § 1094(h) and 34 C.F.R. § 601.10. *See*, *e.g.*, *Financial Aid*, Am. Beauty Coll., [https://perma.cc/BW23-P5RG]; *Payment and Financial Options for American College of Education*, Am. Coll. Of Educ., [https://perma.cc/2G6Z-D67Y]; *Financial Aid*, Dawn Career Inst., [https://perma.cc/C9KC-D8HL]. State PLL laws—including some that apply beyond the scope of U.S. Department of Education PLL regulations—may also be implicated, requiring investigation by state law enforcement and supervisory agencies. The Bureau's Student Loan Ombudsman is particularly well placed to work across government at every level to ensure that Climb and its partner schools comply with these important protections.

[11] *Gain essential skills. Own your next.*, Climb Credit, https://climbcredit.com/students [https://perma.cc/L9X6-JLVX].

[12] *About Climb*, Climb Credit, https://climbcredit.com/resources/about/ [https://perma.cc/68FB-D8NN].

[13] *Education ROI Calculation*, Climb Credit, https://climbcredit.com/resources/roi/ [https://perma.cc/64LY-CZEW].

In addition to promoting its partner schools, Climb provides prospective borrowers with information on individual programs of study through links that encourage consumers to use Climb's website to "[c]ompare programs"[14] and "[v]et this program."[15] As demonstrated below, these and other program-specific representations appear to be deceptive because they are likely to mislead the consumer based on the consumer's reasonable interpretation under the circumstances and because they are material to the consumer's decision to apply for and accept a loan from Climb.[16]

A. Climb's Loan Solicitations Appear to Deceptively Promote Education Programs that Cannot Lead to Relevant Professional Licensure as Having "Great Outcomes for Students."

Climb advertises various courses of study as highly valuable and leading to positive outcomes for borrowers even when those programs do not lead to relevant professional licenses or to the opportunity to take examinations necessary to secure relevant professional licenses. Climb's representations in the education and teacher training space highlight this dangerous practice.

For example, a prospective student interested in becoming a teacher may navigate to Climb's "Compare Programs" tab, which includes drop-down menus by which the prospective student may browse options for a "Certificate in Teacher Education" within the field of "Teaching & Education."[17] Upon navigating to the list of online courses available within this field, the prospective student arrives at a page advertising "28 courses that help students like you excel in [*sic.*] Certificate in Teacher Education."[18] Each of these courses is displayed with a ribbon and a statement that the course is "Climb recommended," while the webpage itself prominently describes various listed programs as leading to a "degree," a "[c]ertification," or various forms of "[m]icro-[c]redential."[19] In light of Climb's broader messaging around quality assurance, the presentation of this group of courses within the subset of programs Climb advertises as leading to a "Certificate in Teacher Education," and that at least some of the advertised programs do in fact lead to preparation for professional licensure,[20] a consumer may reasonably interpret Climb's recommendation and representations that the courses will help the consumer "excel" in their chosen field as meaning that *each* of the 28 programs presented leads to some variety of officially recognized credential or preparation for formal licensure in teaching or a related field—or at least that Climb would warn them about courses that did not. However, this is not the case.

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[14] *Compare Programs*, Climb Credit, https://climbcredit.com/compare/paths [https://perma.cc/8TZY-AQ6E].
[15] *What's your top choice?*, Climb Credit, https://climbcredit.com/compare/vetting? [https://perma.cc/9FZE-XPAV].
[16] *Unfair, Deceptive, or Abusive Acts or Practices: Manual Volume 2*, Consumer Fin. Prot. Bureau: Consumer Laws And Regul., (Oct. 2012), https://files.consumerfinance.gov/f/documents/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf [https://perma.cc/WFA2-HRSW].
[17] *What will you be studying?*, Climb Credit, https://climbcredit.com/compare/verticals [https://perma.cc/4U94-XVA7].
[18] *We found 28 courses that help students like you excel in Certificate in Teacher Education*, Climb Credit, https://climbcredit.com/compare/program_details?Attendance=Online&Industry%20of%20Interest=Teaching%20and%20Education&Specialization=Certificate%20in%20Teacher%20Education [https://perma.cc/KMV8-5BRC].
[19] *Id.*
[20] *See, e.g.*, the advertised "Teachers Aide" program offered by ProTrain, which states on its own webpage, "Students will be prepared to take the ETS ParaPro Assessment upon completion of this course." *Teachers Aide*, ProTrain, https://www.protrainedu.org/Lumens/Teachers-Aide/151 [https://perma.cc/93PN-DWPB].

1. American College of Education's Certificate Programs

Among the 28 "Climb recommended" courses that Climb presents under the header of "Certificate in Teacher Education" within the field of "Teaching & Education," 13 are "[c]ertificate" programs offered by the American College of Education (hereinafter "ACE").[21] These certificate programs are generally 10-month, part-time courses that cost up to $469 per month over a period of two years when financed through Climb and cover topics ranging from "Teaching English Learners" to "Virtual Instruction."[22] Climb's advertisements and loan solicitations describe almost all of these courses as leading to a "degree" and market many of them by describing outcomes that specifically involve the student working as a teacher.[23] These advertisements appear to be deceptive in several ways.

First, Climb's advertisements and loan solicitations list "Teacher, Professor, Postsecondary / Higher Education" as "[t]ypical grad job titles" for each of the 13 certificate programs.[24] Reasonable consumers may interpret this representation to mean that graduation from the course enables students to take the relevant licensing exams to become a teacher. In truth and in fact, none of these courses appears to lead to licensure as a teacher. Instead, the reason that "teacher" is a typical job title of graduates for these programs is that most people for whom the certificate programs may be professionally relevant were already teachers when they enrolled. But Climb's pages advertising these programs and soliciting loan applications conceal this material information, rendering its "[t]ypical grad job titles" representations apparently deceptive.

Second, Climb's program-specific webpages also tout an "[a]verage grad salary" for each of these programs of "$45000-$55000."[25] This figure appears to be a reasonable representation of national average teacher salaries.[26] Consumers may reasonably interpret these representations as meaning that these Climb-recommended programs lead or contribute to licensure to work as a teacher and to an average teacher's salary. This interpretation is particularly reasonable in light of Climb's representation that graduates of its partner schools experienced a median salary

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[21] *See supra* note 18. The full list of certificate programs presented includes Adult Education & Corporate Training (*Certificate in Adult Education & Corporate Training*, Climb Credit, [https://perma.cc/NX6M-SR9P]); Advanced Graduate Study (*Certificate in Advanced Graduate Study*, Climb Credit, [https://perma.cc/TY8M-LH6V]); Content Area Instruction (*Certificate in Content Area Instruction*, Climb Credit, [https://perma.cc/7MUE-8PYL]); English as a Second Language & Bilingual Education (*Certificate in English as a Second Language & Bilingual Education*, Climb Credit, [https://perma.cc/7Z4Y-GSR2]); Higher Education (*Certificate in Higher Education*, Climb Credit, [https://perma.cc/L57V-HW7F]); Leadership (*Certificate in Leadership)*, Climb Credit, [https://perma.cc/7TQZ-H7JZ]); Teacher Leadership (*Certificate in Teacher Leadership*, Climb Credit, [https://perma.cc/5RRS-TLP8]); Teaching English Learners (*Certificate in Teaching English Learners*, Climb Credit, [https://perma.cc/AHK2-EZMQ]); Texas Leadership (*Certificate in Texas Leadership*, Climb Credit, [https://perma.cc/RNJ9-7CWD]); Transition to Teaching – Elementary (*Certificate in Transition to Teaching – Elementary*, Climb Credit, [https://perma.cc/5J6K-7485]); Transition to Teaching – Secondary (*Certificate in Transition to Teaching – Secondary*, Climb Credit, [https://perma.cc/F6VQ-ASJZ]); Transition to Teaching in Secondary Education (*Certificate in Transition in Secondary Education*, Climb Credit, [https://perma.cc/5XLT-2VL2]); Virtual Instruction (*Certificate in Virtual Instruction*, Climb Credit, [https://perma.cc/NNQ5-TJ9E]). These certificate courses are distinct from the micro-credentials discussed in Section I.A.2 below.

[22] *See supra* note 18.

[23] For example, Climb states that these courses can help build students' "understanding of a wide range of curriculum development and instructional methods" (*Certificate in Virtual Instruction*, Climb Credit, [https://perma.cc/NNQ5-TJ9E]) and that they can "prepare educators to bridge cultural gaps and differentiate curriculum to meet the needs" of students (*Certificate in Teaching English Learners*, Climb Credit, [https://perma.cc/AHK2-EZMQ]).

[24] *See supra* note 21.

[25] *Id.*

[26] *Average Teacher Salary*, PayScale, https://www.payscale.com/research/US/Job=Teacher/Salary [https://perma.cc/4ERT-Q2VG].

increase of 66.7%[27] because while a licensed teacher is very unlikely to experience a pay raise approaching that figure, someone without a teaching license might experience such a salary bump after becoming licensed and obtaining employment as a teacher. However, Climb's salary representation is apparently deceptive when presented to consumers who are *not* already licensed teachers—who cannot become licensed as a result of taking the course—because the teachers for whom ACE's certificates are potentially professionally relevant were already part of the group earning the represented average salary even *before* graduating from the advertised courses. Thus, Climb's representations appear to be deceptive for consumers who are not already licensed teachers and who cannot obtain either the job title or the represented "[a]verage grad salary" by taking and graduating from the micro-credential course advertised.

Third, even for licensed teachers, Climb's representation of "great outcomes" appears to be deceptive. None of the program-specific pages for ACE's certificate programs on Climb's website indicate whether each program is recognized by a relevant state licensing authority.[28] However, ACE's website appears to indicate that at least five of these Climb-recommended courses are not recognized by any state authority for any reason, while official recognition of the remaining eight courses is extremely limited even for consumers who are already licensed teachers.[29] For example, ACE's website notes that its Certificate in Teaching English Learners "is approved by the Indiana Department of Education for the addition of the English Learners content area to one's existing Indiana teaching license."[30] Climb's webpage recommending this program omits the highly material information that this certificate has tangible benefits only for a small group of consumers (Indianans who already have a teaching certificate) and instead touts the "[a]verage grad salary" for the program as "$45000-$55000" without providing the relevant context: that "grads" for whom the course is professionally relevant are already licensed teachers and part of the cohort earning that average salary. Moreover, Climb's representation that these programs have "high ROI" is difficult to square with its representation that the average graduate salary is "$45000-$55000," which simply brackets the approximate average national teacher's salary of $49,000.[31] As discussed in the section below, Climb's representations that credentials which require a significant financial investment from teachers and result in graduates with average teacher salaries have "high ROI" calls Climb's ROI standards and methodology into question.

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[27] *See supra* note 12.
[28] *See supra* note 21.
[29] *A Note About Professional Licensure*, Am. Coll. of Educ., https://www.ace.edu/tuition-and-admissions/licensure [https://perma.cc/4EKY-UPGG]. The following certificate courses are not represented as being recognized by any licensing authority: Certificate in Adult Education & Corporate Training, Certificate in Advanced Graduate Study, Certificate in Content Area Instruction, Certificate in Higher Education, and Certificate in Teacher Leadership. ACE's website indicates that the Certificate in Teaching English Learners is recognized by Indiana and Ohio; that the Certificate in Texas Leadership is recognized in Texas; and that the Certificate in Transition to Teaching – Elementary, Certificate in Transition to Teaching – Secondary, Certificate in Transition to Teaching in Secondary Education, and Certificate in Virtual Instruction are recognized in Indiana. *Id*. Additional sources indicate that the Certificate in Leadership may be recognized in Florida (*Education Leadership*, Fla. Dep't Of Educ., http://www.fldoe.org/teaching/preparation/edual-leadership.stml, [https://perma.cc/RJ4B-PMDP]), and that the Certificate in English as a Second Language & Bilingual Education may be recognized in Illinois (*Educator Licensure Pre-Approved Pel Coursework – Out of State Institutions*, Ill. State Bd. Of Educ., https://www.isbe.net/Pages/Pre-Approved-Coursework-for-the-Illinois-Professional-Educator-Out-of-State.aspx, [https://perma.cc/XF49-SB58]).
[30] *A Note About Professional Licensure*, Am. Coll. of Educ., *supra* note 29.
[31] *See supra* note 26.

Climb's misrepresentations and material omissions are likely to mislead reasonable borrowers into believing that its partner courses will lead to licensure as a teacher or to an augmented license, when this is not the case for most consumers. These misrepresentations also belie Climb's broader claims of careful vetting for positive borrower outcomes.[32]

2. American College of Education's Micro-Credential Programs

Fourteen (14) of Climb's 28 recommended programs are "[m]icro-[c]redential" courses offered by the American College of Education (ACE) in topics ranging from "Early Childhood Special Education" to "English as a Second Language and Bilingual Education."[33] By the time the consumer has arrived at Climb's page advertising these courses and soliciting loan applications, they have already been presented with various representations stating that Climb's partner programs are vetted and deliver high return on educational investment.[34] Reasonable consumers may interpret these representations to mean that graduation from the course enables or prepares students to take the relevant licensing exams to become a teacher or to augment an existing teacher's license. In fact, none of the 14 micro-credential programs advertised by Climb lead to "Professional Licensure for Teaching and Other Fields,"[35] and most do not appear to be recognized by licensing authorities for any purpose.[36] But Climb's pages advertising individual micro-credential programs and soliciting loan applications omit this material information and instead double down on Climb's representations that these programs are "[v]erified by Climb for high ROI."[37]

Climb's representation that these micro-credential courses have a "high ROI" is also potentially deceptive even to consumers who are already licensed teachers in light of the courses' cost,

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[32] Though not discussed here, Climb's advertisements for ACE's masters and doctoral-level programs raise similar concerns worthy of inquiry by the Bureau. *See We found 28 courses that help students like you excel in Master's Degree in Teacher Education*, Climb Credit, [https://perma.cc/MYZ4-G6QF]; *We found 13 courses that help students like you excel in Doctorate Degree in Teacher Education*, Climb Credit, [https://perma.cc/UM9K-B2QV]; *A Note About Professional Licensure*, Am. Coll. of Educ., *supra* note 29.

[33] *See supra* note 18. Full list includes Micro-Credential in Community College Leadership (*Micro-Credential in Community College Leadership*, Climb Credit, [https://perma.cc/C3X4-VKRP]); Micro-Credential in Curriculum and Instruction (*Micro-Credential in Curriculum and Instruction*, Climb Credit, [https://perma.cc/N9KK-6ZJE]); Micro-Credential in Differentiated Instruction (*Micro-Credential in Differentiated Instruction*, Climb Credit, [https://perma.cc/HM9M-44HQ]); Micro-Credential in Digital Learning and Teaching (*Micro-Credential in Digital Learning and Teaching*, Climb Credit, [https://perma.cc/9FGH-NSKM]); Micro-Credential in Diversity and Inclusion (*Micro-Credential in Diversity and Inclusion*, Climb Credit, [https://perma.cc/XC9H-4VPW]); Micro-Credential in Early Childhood Special Education (*Micro-Credential in Early Childhood Special Education*, Climb Credit, [https://perma.cc/M9N2-DXXK]); Micro-Credential in Educational Entrepreneurship (*Micro-Credential in Educational Entrepreneurship*, Climb Credit, [https://perma.cc/EQV9-F4SY]); Micro-Credential in Educational Technology (*Micro-Credential in Educational Technology*, Climb Credit, [https://perma.cc/47NE-6SDQ]); Micro-Credential in ESL/BL (*Micro-Credential in ESL/ BL*, Climb Credit, [https://perma.cc/S8SZ-F5L4]); Micro-Credential in International Education (*Micro-Credential in International Education*, Climb Credit, [https://perma.cc/779G-ZCKB]); Micro-Credential in Leadership (*Micro-Credential in Leadership*, Climb Credit, [https://perma.cc/PRE8-9W9C]); Micro-Credential in Learning Behavior Specialist I (*Micro-Credential in Learning Behavior Specialist I*, Climb Credit, [https://perma.cc/27GL-NAEK]); Micro-Credential in Personal & Prof Skills (*Micro-Credential in Personal & Prof Skills*, Climb Credit, [https://perma.cc/Q2DM-HUSZ]); and Micro-Credential in Teamwork Skills (*Micro-Credential in Teamwork Skills*, Climb Credit, [https://perma.cc/79BT-9Y5R]).

[34] *See supra* notes 14–17 and accompanying text.

[35] *A Note About Professional Licensure*, Am. Coll. of Educ., *supra* note 29. ACE cautions that "[s]tudents are strongly encouraged to check licensure requirements in the state in which they live." *Id*.

[36] Climb notes in at least two cases that a micro-credential program it advertises is "recognized by the Illinois State Board of Education" as meeting coursework requirements for certain professional endorsements. *See Micro-Credential in Early Childhood Special Education*, Climb Credit, *supra* note 33; *Micro-Credential in Learning Behavior Specialist I*, Climb Credit, *supra* note 33.

[37] *See supra* note 33.

which is generally between $2,390 and $3,350.[38] Climb does not explain whether the promoted micro-credentials or certificates discussed above are more likely than other forms of continuing education—including credits and credentials that *are* widely recognized by licensing authorities—to lead to pay raises or more lucrative employment opportunities. Nor does Climb present evidence that the teacher pay raises associated with the promoted micro-credentials are sufficient to constitute a positive, let alone "high," ROI.

Climb's apparently deceptive advertising may prove extremely costly for consumers. For example, Climb presents one example ACE micro-credential—the Micro-Credential in Early Childhood Special Education—as costing $273 per month for a year when financed through Climb,[39] with the caveat that the prospective borrower must apply for credit to learn their "exact monthly payment"[40] and that "APRs on loans range from 0.00% – 23.40%."[41] Even if the person pursuing a micro-credential already has a job as a teacher, Climb's "example" debt associated with the unrecognized program would amount to more than 6 percent of the average student's *gross* monthly pay—that is, before any taxes or expenses are deducted—for the next year.[42] This renders Climb's claims of a "high ROI" for micro-credential programs dubious in light of evidence suggesting that any positive impact on earnings resulting from certificates and other short-term credentials does not persist over time.[43]

B. Climb's Loan Solicitations Misrepresent the Nature, Quality, and Student Outcomes for Education Programs Offered by its Partner Schools.

Climb solicits loan applications from consumers through individualized webpages describing courses of study at its partner schools. However, Climb's representations about the programs for which it is soliciting loans contain multiple falsehoods. Two examples will illustrate.

1. Career Pathways Institute

Climb recommends the Career Pathways Institute's Paraprofessional Certification Program for aspiring teachers' aides and solicits consumers to submit a loan application on the same webpage.[44] Climb's loan solicitation represents that "[t]ypical grad job titles" for this program include "Teacher, Professor, Postsecondary / Higher Education."[45] In truth and in fact, a

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[38] *See supra* notes 18, 33.
[39] *See We found 28 courses that help students like you excel in Certificate in Teacher Education.*, *supra* note 18.
[40] *See Micro-Credential in Early Childhood Special Education*, *supra* note 33.
[41] *Id*.
[42] Calculation based on an average teacher salary of $49,624 as provided by PayScale. *See supra* note 26. $273 amounts to 6.6% of the average teacher's $4,135.33 monthly income.
[43] *See* CJ Libassi, *The Neglected College Race Gap: Racial Disparities Among College Completers*, Ctr. For Am. Progress (May 23, 2018, 9:39 AM), https://www.americanprogress.org/issues/education-postsecondary/reports/2018/05/23/451186/neglected-college-race-gap-racial-disparities-among-college-completers/ [https://perma.cc/GLF7-YX8G] (noting that "there is some evidence of an immediate earnings boost from short-term credentials—what this brief calls certificates—but the value of this credential does not seem to persist over time.").
[44] *Career Pathways Institute Teachers Aide*, Climb Credit, https://climbcredit.com/compare/report?Course=d2df65ba-575e-421c-b408abf2d2ac0e77&Location=Online&School=Career%20Pathways%20Institute&coursesToCompare=d2df65ba-575e-421c-b408-abf2d2ac0e77&flow=vetting [https://perma.cc/R5JR-WCCG]. This program does not currently appear on Career Pathways Institute's website. *See Certification Programs*, Career Pathways Institute, https://cpi.theknowledgebase.org/ [https://perma.cc/R54S-PY5G].
[45] *See Career Pathways Institute Teachers Aide*, Climb Credit, *supra* note 44.

paraprofessional certificate is not a qualification to be, and does not lead to licensure as, an elementary, middle, or high school teacher.[46]

Climb's loan solicitation also represents an "[a]verage grad salary" for the Career Pathways Institute's Paraprofessional Certification Program of "$45000-$55000" and states that this information is "provided by PayScale."[47] This representation appears to be deceptive for two reasons. First, PayScale allows consumers to search for income data by school, but a search for Career Pathways Institute returns no matches.[48] It therefore appears unlikely that PayScale is in fact Climb's source for average graduate salary information for this particular program, making Climb's practice of misrepresenting the data source for its income claim likely deceptive.[49] Second, even if this "grad salary" data is generalized and based on teachers' aides as a whole, PayScale provides an average salary for "Teacher Aide" of $20,219 and represents that "[a] Teacher Aide typically makes between $13k - $32k."[50] Climb therefore may misrepresent average income data for the field in which consumers may become licensed through this course by a factor of about two. Climb's misrepresentation of income potential is material and likely deceptive.[51]

2. The Salon Professional Academy of Melbourne

Climb recommends the Cosmetology program at The Salon Professional Academy of Melbourne ("TSPA-M"), representing that "[t]his course gets great results for students."[52] Rather than independently "vetting" the school consistent with its representations to consumers, Climb's

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[46] *See* 20 U.S.C. § 7801(37) ("The term 'paraprofessional', also known as a 'paraeducator', includes an education assistant and instructional assistant.").

[47] *See Career Pathways Institute Teachers Aide*, Climb Credit, *supra* note 44. PayScale is a data analysis company that provides compensation information (and links to recruiting for those who decide they are undercompensated in their current position). *About Us*, PayScale, https://www.payscale.com/about [https://perma.cc/6CWA-RLNT].

[48] *PayScale's 2020-21 College Salary Report*, PayScale, https://www.payscale.com/college-salary-report [https://perma.cc/J77P-YJYU].

[49] *See, e.g.*, Fanning v. Fed. Trade Comm'n, 821 F.3d 164, 172 (1st Cir. 2016) (imposing liability for deceptive implied misrepresentation of the source of website's content).

[50] *Average Teacher Aide Hourly Pay*, PayScale, https://www.payscale.com/research/US/Job=Teacher_Aide/Hourly_Rate [https://perma.cc/A9TF-3J44]. This is in line with other sources of information on teacher's aide income. For example, ZipRecruiter reports average annual teacher's aide salaries ranging from $19,857 (North Carolina) to $27,075 (New York). *See What Is the Average Teachers Aide Salary by State*, ZipRecruiter, https://www.ziprecruiter.com/Salaries/What-Is-the-Average-Teachers-Aide-Salary-by-State [https://perma.cc/PW2U-ATWB]. Significantly, Climb's website does not provide a link to PayScale, its purported source for income data, thereby making it more difficult for consumers to detect its deception.

[51] *See, e.g.*, Fed. Trade Comm'n v. Vemma Nutrition Co., No. CV-15-01578-PHX-JJT, 2015 WL 11118111, at *5 (D. Ariz. Sept. 18, 2015) (noting that "[c]ourts consistently conclude that misrepresentations regarding income potential are material and violate" prohibitions on deceptive acts and practices) (collecting cases).

[52] *The Salon Professional Academy of Melbourne Cosmetology*, Climb Credit, https://climbcredit.com/compare/report?Course=f61e4633-b1ce-4c21-9cbf-8fcc15554b2e&Location=Melbourne%2C%20FL&School=The%20Salon%20Professional%20Academy%20of%20Melbourne&coursesToCompare=f61e4633-b1ce-4c21-9cbf-8fcc15554b2e&flow=vetting [https://perma.cc/4XQM-VQQU].

description of the course is cut-and-pasted from the school's website[53] and potentially violates Regulation Z's prohibition on "co-branding" in the marketing of private student loans.[54]

Climb represents an "[a]verage grad salary" for TSPA-M's Cosmetology program of "$25000-$35000" and states that this range is "provided by PayScale."[55] This representation is evidence of deception for two reasons. First, it appears that PayScale has no specific data for graduates of TSPA-M, as a search for that school returns no matches.[56] Second, the U.S. Department of Education's (the "Department") College Scorecard, which is based on data provided to the Department by TSPA-M, reports median earnings of $12,900 ($1,075 per month) for TSPA-M Cosmetology program alumni a year after they graduate.[57] Though the Department uses a median while PayScale allegedly provides an average, the discrepancy between these figures is nonetheless extremely concerning. Indeed, Climb's representation to prospective borrowers of incomes two to three times the median first-year income that TSPA-M reported to the Department, particularly without program-specific support from its purported source, appears to be deceptive.[58]

Climb's apparently deceptive representations of graduate salaries extend beyond programs, like those discussed above, for which there is evidence that the income representation may be false. First, Climb provides prospective borrowers with an "[a]verage grad salary" for many of the individual education programs advertised on its website in connection with its loan solicitations and represents that PayScale is the source for each of these figures despite the fact that PayScale does not appear to provide school-specific data for many of Climb's partners. Second, Climb creates the impression for reasonable consumers that the "grad salaries" it supplies are specific to

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[53] Both Climb's website and the school's website state:

> At TSPA we know that a career in cosmetology is not just about a haircut or passing the state board exam; it's about innovation in hair color and techniques, basic skin and nail care, knowledge of business strategies, and training in guest services. Our Redken-infused cosmetology program will not only prepare you for the state board exam, but more importantly, for a long-term career in the industry.

Compare id. with Cosmetology, The Salon Professional Academy (TSPA) Melbourne, https://www.tspamelbourne.com/program/cosmetology/#:~:text=Your%20cosmetology%20career%20opportunities%20after%20TSPA%20are%20limitless.&text=At%20TSPA%20we%20know%20that,and%20training%20in%20guest%20services [https://perma.cc/K5TH-7AYL]. Climb's decision to use program descriptions that use the words "we" and "our" may deceive reasonable consumers about the relationship between Climb and the school. *See infra* note 123, (in which the Department of Justice found that holding oneself out as an independent assessor of quality and value when in fact the methodology by which qualify or value is assessed is influenced by one's financial interests to be a deceptive practice).

[54] 12 C.F.R. § 1026.48(a)(1) prohibits creditors like Climb from "us[ing] the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans." TSPA-M is a "covered educational institution" as defined in 12 C.F.R. § 1026.48(b)(1) because its students receive funding under Title IV of the Higher Education Act. Climb's use of phrases like "[a]t TSPA we know" and reference to "[o]ur Redken-infused cosmetology program" implies that TSPA-M endorses Climb's loans—just like Climb recommends TSPA-M's educational programs—or that TSPA-M and Climb share management or control in a way that amounts to reciprocal-endorsements of their respective educational and financial products and services.

[55] *See supra* note 52.

[56] *See supra* note 48.

[57] *College Scorecard: Most-Recent-Field-Data-Elements*, U.S. Dep't Of Educ., https://ed-public-download.app.cloud.gov/downloads/Most-Recent-Field-Data-Elements.csv [https://perma.cc/JBU3-VE9B].

[58] Climb's representation that this program also has a "high ROI" should also be questioned in light of the College Scorecard data. The "example" presented by Climb in its loan solicitation requires payments of $377 per month for 62 months (a little over five years). *See supra* note 52. That amount constitutes 35% of the median graduate's income in the first year after graduation according to the College Scorecard, leaving the borrower with $698 for all other expenses.

each program by (a) representing that it that "verif[ies] all of [its] schools and programs for outcomes and value," (b) creating a path for prospective borrowers to navigate to individual program webpages through links titled "Vet this program" and "compare programs," and (c) creating individual webpages for each program. Climb's presentation of generalized industry income data as an "[a]verage grad salary" for its programs,[59] and its omission of information necessary to correct this misconception, is apparently deceptive.

C. Climb's Representations of Increased Salaries for Graduates Appear to be Deceptive.

Climb points to several figures to demonstrate that its approach of lending to students enrolled in "vetted" programs with "high ROI" works for its borrowers. However, these figures paint a deceptive picture of potential borrowers' expected outcomes.

Climb represents a "[m]edian salary increase for Climb school graduates" of 66.7%; that "3/5" of Climb partner school graduates who "were unemployed prior to program attendance" obtained full-time employment; and that Climb borrowers enjoyed a 38.9% "[m]edian pay increase for 2nd job after Climb".[60] Climb discloses that these figures are derived from "graduate survey responses" but conceals facts that likely render these figures deceptive for many of Climb's prospective borrowers.[61] First, a reasonable consumer would conclude that these figures reflect recent, up-to-date graduate results. In fact, a separate Climb webpage indicates that this data was derived from a survey of students who graduated between October 2014 and November 2017.[62] Climb's presentation of these statistics as reflecting recent or current graduate outcomes appears to be deceptive. Second, Climb indicates on a separate webpage that the graduates who responded to this survey also appear to have "typically" attended "a coding bootcamp."[63] However, it is a deceptive practice to present a subset of unusual earnings results as typical,[64] and it is unlikely the wage gains of successful graduates of coding bootcamps are representative of expected wage gains for students studying at for-profit cosmetology schools or programs that do not result in eligibility to become licensed in the profession to which the course of study pertains. Moreover, Climb's disclaimer cannot save its income claims from being deceptive.[65] Instead, Climb's disclaimer only confirms the deceptive nature of its top-line misrepresentations.

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[59] *See* Fed. Trade Comm'n v. DeVry Educ. Grp., Inc., No. CV-16-00579-MWF-SSX, 2016 WL 6821112, at *7 (C.D. Cal. May 9, 2016) (refusing to dismiss deception claim where "the third-party study on which [the for-profit school] relied in making their representations compared apples to oranges").

[60] *See supra* note 12.

[61] *Id.*

[62] On a separate webpage, Climb makes another representation about net earnings gains redrived from "1279 individual income data points out of a total of 3105 students who received funding from Climb Credit to attend a representative program, typically at a coding bootcamp, and graduated between October 2014 and November 2017." *Supra* note 11. This is the same number of survey respondents used to support Climb's representation of "[m]edian salary increase for Climb school graduates" of 66.7%. *Supra* note 12. This number does not appear to be a coincidence.

[63] *See supra* note 11.

[64] *See, e.g.*, Fed. Trade Comm'n v. Five-Star Auto Club, Inc., 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000) (collecting cases).

[65] For example, representations may be misleading despite the use of a disclaimer such as "results may vary" if the consumer may reasonably believe that a statement of unusual earning potential represents typical earnings. *See* Fed. Trade Comm'n v. John Beck Amazing Profits, LLC, 865 F. Supp. 2d 1052, 1072 (C.D. Cal. 2012); Fed. Trade Comm'n v. Medicor, LLC, 217 F. Supp. 2d 1048, 1054 (C.D. Cal. 2002).

The deceptive nature of Climb's representations of past graduates' income gains and new employment is confirmed by the disclaimer written in fine print and hidden at the bottom of the relevant webpage, stating:

> All outcomes information has been collected by Climb on a good-faith-efforts basis. However, this information relies on inputs beyond Climb's ability to test or control. Accordingly, Climb makes no representation or warranty as to the accuracy of this information and this information should not be relied on in making a decision whether or not to attend a course at the above-referenced entity. All student experiences are different and outcomes from a program are not guaranteed.[66]

Climb's reliance on these statistics to support its marketing claim that "[w]hat we're doing is working" despite warning in fine print that they are unreliable and should be disregarded by borrowers when deciding whether to enroll in a Climb-affiliated program[67] is likely both deceptive (because consumers may not see the hidden disclaimer) and abusive (because it creates and takes unreasonable advantage of consumers' ability to understand the material risks of Climb's products and services, as well as the consumers' reasonable reliance on Climb to act in their best interest).[68]

D. Climb's Misrepresentations of Graduate Incomes Indicate that its Representations About "Vetting" Programs for ROI Are Apparently Deceptive.

Climb's website does not clearly explain to consumers how it calculates ROI.[69] Instead, Climb broadly explains that "[w]e look at the net cost of the program (including tuition amount and lost wages while attending school) and compare that to the expected salary growth—all while factoring in the likelihood of graduation and job placement," and Climb notes that its "proprietary ROI calculation" incorporates "tuition," "graduation rate," "job placement," "borrowing costs," "current income," and "post-grad income."[70] However, Climb's misrepresentations of graduate income are not only likely a deceptive practice as described above but also cast significant doubt on Climb's representation to borrowers that it has "vetted" and "verified" programs for "high ROI" using "post-grad income" and then recommended them on that basis.

For example, if Climb used an "[a]verage grad salary" of $45,000 to $55,000 when it "[v]erified" Career Pathways Institute's Paraprofessional Certification Program for aspiring teachers' aides purportedly "high ROI,"[71] then Climb's methodology for gathering information and calculating ROI for that program is fatally flawed. The same may be true of Climb's ROI calculations for other programs, as well. Moreover, the use of inaccurate, generalized income data by industry or profession to calculate ROI is also fundamentally inconsistent with Climb's representations to

[66] *See supra* note 11.
[67] *See supra* note 12.
[68] *See* 12 U.S.C. § 5536(a)(1)(B).
[69] *See supra* note 13.
[70] *Id.*
[71] *Career Pathways Institute Teachers Aide*, Climb Credit, *supra* note 44.

borrowers that it evaluates programs and schools on an individualized basis[72] or that its calculations are based on accurate "post-grad income" data.[73]

Climb's recommendations of individual schools and programs of study to consumers are also likely deceptive in light of the "disclaimer," quoted in its entirety above, hidden in small print at the bottom of the page telling prospective borrowers to disregard its prominent marketing claims because Climb cannot "test or control" the data upon which they are based, cannot warrant the information's accuracy, and therefore it "should not be relied on in making a decision whether or not to attend a course at the above-referenced entity."[74]

Climb cannot simultaneously recommend a program of study based on its analysis of outcomes and ROI while stating in the fine print that consumers should not use the data on which its ROI analysis is ostensibly based when selecting and enrolling in a program. For example, Climb's marketing recommendations stating that "[t]his course gets great results for students" and that it is "[v]erified by Climb for high ROI"[75] are fundamentally inconsistent with the disclaimer that Climb's outcome data should not be used—despite Climb's own prominent recommendation—in deciding whether to enroll, and by extension to take out an education loan, with Climb. Conversely, if Climb used different, more accurate income data to calculate the program's ROI and make lending decisions, its consumer-facing misrepresentations of graduate income levels and its source for that data are even more problematic. Worse, because Climb pins a prominent link to "[g]et your financing options [] 5 min" to the webpage—which moves with the consumer as they scroll within the page—consumers may see and rely upon Climb's apparently deceptive marketing representations to apply for a loan without ever seeing the disclaimer, which is hidden at the bottom of each webpage.

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[72] *See, e.g.*, *supra* note 12. In describing its underwriting practices, Climb states, "We identify, assess, and partner with schools offering the knowledge and skills required for jobs with strong earning potential in today's economy. . . . We then provide accessible, affordable loans to attend these schools—which will improve students' earning potential." Here, Climb represents its assessments of potential school partners as happening on an individualized basis instead of through consideration of general data pertaining to entire fields that a student may enter through a given program. *See also supra* note 1, in which Climb responds to an inquiry from the U.S. Senate Banking Committee stating "Our proprietary return on investment (ROI) calculation and diligence procedures ensure we partner only with programs that we have confirmed are delivering income boosting opportunities worthy of the educational investment being made by students." Climb's specifies that the programs themselves are "confirmed" to deliver high ROI, not that those programs happen to be in fields that *generally* produce high ROI.

[73] Climb's description of its ROI calculations—and its resulting representation to consumers that its partner programs have "high ROI"—is also problematic and potentially deceptive because Climb purports to use factors that are necessarily individual for each consumer without first gathering the relevant inputs. For example, Climb represents that it calculates ROI and verifies programs to consumers as having "high ROI" based on "current income" without having any knowledge of consumers' current income. Moreover, an estimation of "current" income for purposes of calculating ROI is likely to be inaccurate with respect to many consumers. The same problem arises with Climb's verification of "high ROI" based in part on "borrowing costs." Climb makes its "high ROI" representation to consumers before consumers have applied for a loan and before the company has made the very credit decision that would determine a consumer's interest rate, and therefore their borrowing costs. Moreover, Climb's recommendation of partner courses based on "high ROI" derived in part from consumers' "borrowing costs" makes its potential violations of Regulation Z's advertising rules, discussed in Section I.E below, even more problematic.

[74] *See supra* note 11.

[75] *Elevate Salon Institute Massage Therapy*, Climb Credit, [https://perma.cc/DXR8-8BML]; *Recording Connection for Advanced Electronic Music Production*, Climb Credit, [https://perma.cc/Y53Q-6NK6]; *Culinary Tech Center Hospitality Operations – Full Tuition*, Climb Credit, [https://perma.cc/8NP7-SDUC]. *See also supra* notes 21, 33.

E. The "Example Climb Loans" in Climb's Advertisements Appear to Deceptively Understate the Cost of Credit and May Violate Regulation Z's Advertising Rules.

Climb's webpages for individual educational programs provide "example Climb loans" as part of Climb's solicitation of loan applications from consumers.[76] As explained below, these "example Climb loans" likely violate both the CFPA's prohibition on unfair, deceptive, and abusive practices and Regulation Z.

1. Climb's "Example Climb Loans" Appear to Deceptively Understate the Cost of Credit.

Climb's loans include a 5% origination fee, which is a "finance charge" under Regulation Z.[77] Climb's origination fee affects the amount the consumer will pay and must therefore be accounted for when Climb advertises its loans to consumers. Climb clearly understands this, because the "[p]ayment example" it provides on its general, non-program-specific webpage explaining its loan program to consumers provides the "[l]oan amount (including origination fee)" when describing to prospective borrowers the costs of and payments required by its loans.[78] Consumers can use that webpage to navigate to Climb's individual program pages using either Climb's "[c]ompare programs" or "[a]pply now" links.[79] Reasonable consumers viewing Climb's "payment example" would conclude that the "example" loans presented by Climb elsewhere on its website, including examples that appear on webpages to which consumers may navigate from Climb's main webpage, would be calculated in the same way—i.e., that the "loan amount" (and therefore the monthly payments calculated using that amount) would include Climb's origination fee. However, Climb's program-specific pages solicit loan applications by presenting "example Climb loans" that omit Climb's origination fee and therefore misrepresent the example monthly payment. Several examples will illustrate how Climb's program-specific "example" loans misrepresent the true cost of borrowing from Climb.

Climb's webpage soliciting loans for ACE's Micro-Credential in Learning Behavior Specialist I states that the program involves $3,350 Tuition and a $200 Deposit, while providing an "example Climb loan" in which the borrower can "[p]ay $273 per month" for 12 months with a "6.99% interest rate."[80] Using these figures, the consumer would finance $3,150 in tuition after making the $200 deposit. Climb's 5% origination fee would be $157.50 to borrow $3,150 in tuition. Using Climb's represented method for determining the loan amount—including the origination fee in the loan amount—the "example" loan amount would be $3,307.50. Applying the 6.99% interest rate over the 12-month period for this specific "example Climb loan" results in monthly payments of $286.17.[81] Climb's example monthly payment of $273 therefore understates the actual cost by $13.17 per month or $158.04 over the 12-month life of the loan.[82]

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[76] *See, e.g.*, *Micro-Credential in Learning Behavior Specialist I*, Climb Credit, *supra* note 33 (Climb webpage for ACE's Micro-Credential in Learning Behavior Specialist I); *Certificate in Advanced Graduate Study*, Climb Credit, *supra* note 21 (Climb webpage for ACE's Certificate in Advanced Graduate Study).
[77] *See* 12 C.F.R. § 1024.4(a) (defining "finance charge" to include "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit").
[78] *See supra* note 11.
[79] *Id.*
[80] *Micro-Credential in Learning Behavior Specialist I*, Climb Credit, *supra* note 33.
[81] Calculations in this paragraph were made using the APR calculated at *APR Calculator*, Calculator.net, https://www.calculator.net/apr-calculator.html.
[82] Climb may object that applying a 6.99% simple interest rate to a $3,150 loan balance and amortizing over a 12-month period does, in fact, result in monthly payments of $273. However, the program-specific "example Climb loans" likely remain deceptive

Climb's webpage soliciting loans for ACE's Certificate in Advanced Graduate Study states that the program involves $10,680 in Tuition and a $200 Deposit, while providing an "example Climb loan" in which the borrower can "[p]ay $469 per month" for 24 months with a "6.99% interest rate."[83] Using these figures, the consumer would finance $10,480 in tuition after making the $200 deposit. Climb's 5% origination fee would be $524 on a $10,480 loan. Using Climb's represented method for determining the loan amount—i.e., including the origination fee in the loan amount—the "example" loan amount would be $11,004. Applying the 6.99% interest rate over the 24-month period for this specific "example Climb loan" results in monthly payments of $492.63.[84] Climb's example monthly payment of $469 therefore understates the actual cost by $23.63 per month or $567.12 over the 24-month life of the loan.[85]

Climb's practice of soliciting credit applications by providing "example" loans that systematically understate the amount borrowers must pay—as either a monthly or pre-paid finance charge—appears to be deceptive and therefore violates 12 U.S.C. § 5531(a).

2. Climb's "Example Climb Loan" Advertisements Appear to Violate Regulation Z.

Climb's program-specific websites are "advertisements" subject to Regulation Z (12 C.F.R. § 1026) because each of them is "a commercial message in any medium that promotes, directly or indirectly, a credit transaction."[86] Climb's example loans represent "closed-end credit,"[87] and its advertisements must therefore comply with Regulation Z's well-established rules for those credit transactions. They do not.

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for two reasons. First, Climb's statement that consumers "[p]ay $273 per month" for "12 months" for the "example Climb loan" is false because the consumer's monthly payment would be $273 only if the consumer *also* pays the $157.50 origination fee up front and out of pocket. Climb's decision to omit this "prepaid finance charge," 12 U.S.C. § 1026(a)(23), which would be the borrower's first payment associated with the loan, from its representation of the borrower's total payments appears to be deceptive. Indeed, the Bureau has found that failing to include a finance charge when calculating an advertised "annual percentage rate" is a violation of the TILA and Regulation Z. CMM, LLC, CMM of Indiana, LLC, CMM of Alabama, LLC, Cash Mart Express of Fla., LLC, CMM of Kentucky, LLC, CMM of Louisiana, LLC, CMM of Mississippi, LLC, and CMM of Tennessee, LLC, each and collectively d/b/a Cash Tym, 2019 CFPBCO 0004, 2019 WL 2178584 (C.F.P.B. Feb. 2, 2019). Climb's failure to provide the APR applicable to its advertised "example" periodic rate is addressed below in Section I.E.2. Second, Climb's practice of changing the manner in which the loan amount is calculated between its prominent general example, *supra* note 11, and its program-specific example loans conceals the company's bait-and-switch from consumers. Reasonable consumers are particularly unlikely to detect Climb's sleight-of-hand because Climb's program-specific example loans only disclose tuition and deposit amounts, and omit the actual loan amount. *See, e.g.*, *Micro-Credential in Learning Behavior Specialist I*, Climb Credit, *supra* note 33. This omission prevents consumers from discovering that Climb has omitted its loan origination fee from the loan amount by comparing the tuition and actual loan amount, and reasonable consumers are unlikely to engage in the back-calculations found in this paragraph when evaluating the example.

[83] *Certificate in Advanced Graduate Study*, Climb Credit, *supra* note 21.

[84] Calculations in this paragraph were made using the APR calculated at *APR Calculator*, *supra* note 81.

[85] Again, Climb may object that applying a 6.99% simple interest rate to a $10,480 loan balance and amortizing over a 24-month period does, in fact, result in monthly payments of $469. Such an objection lacks merit for the reasons explained above in note 82.

[86] 12 C.F.R. § 1026.2(a)(1) (2019). The official interpretation of this regulation explains that "[m]essages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by Regulation Z" and provides examples including "Electronic advertisements, such as on the Internet." *See* Consumer Fin. Prot. Bureau, § 1026.2 definitions and rules of construction (2019), https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/2/#2-a-2-Interp-1 [https://perma.cc/KM9W-3R6T].

[87] 12 C.F.R. § 1026.2(a)(10) defines "closed-end credit" as consumer credit that does not constitute "open-end credit." It is clear that Climb's private student loans do not meet the definition of "open-end credit." *See* 12 C.F.R. § 1026.2(a)(20).

12 C.F.R. § 1026.24(c) provides in relevant part:

> If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. . . . If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

As noted above, Climb's webpage soliciting loans for ACE's Micro-Credential in Learning Behavior Specialist I provides an "example Climb loan" in which the borrower can "[p]ay $273 per month" for 12 months with a "6.99% interest rate."[88] There can be no dispute that this webpage, including Climb's "example" loan, is an "advertisement" because it promotes Climb's loan products, invites consumers to "[f]ind out your exact monthly payment when you apply for financing," and provides a link to "[a]pply now."[89] Climb does not provide the APR for the "example Climb loan" for ACE's Micro-Credential in Learning Behavior Specialist I[90] or for any of its other program-specific "example Climb loans."[91] The advertisement of a rate without disclosing the corresponding APR appears to be a violation of the TILA and Regulation Z.[92]

Similarly, Climb's "example" loans contain "triggering terms" under Regulation Z—including the period of repayment, amount of payments, and amount of a finance charge—that require Climb to make additional disclosures.[93] However, Climb's advertisement does not disclose "[t]he annual percentage rate," using that term" as required,[94] seemingly violating the TILA and Regulation Z.[95]

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[88] *Micro-Credential in Learning Behavior Specialist I*, Climb Credit, *supra* note 33.
[89] *Id.*; *see also* 12 C.F.R. § 1026.2(a)(1).
[90] *Micro-Credential in Learning Behavior Specialist I*, Climb Credit *supra* note 33.
[91] *See, e.g.*, *supra* notes 21, 33.
[92] *See* Consent Order, Interstate Lending, LLC, CFPB No. 2016-CFPB-0018 (Dec. 20, 2016), https://files.consumerfinance.gov/f/documents/201612_cfpb_0018-Document030-12202016.pdf [https://perma.cc/UX98-KFRF] ("Respondent failed to clearly and conspicuously disclose a corresponding annual percentage rate when advertising a periodic interest rate in violation of section 144(c) of the Truth in Lending Act (TILA), 15 U.S.C. § 1664(c), the Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5536(a)(1)(A), and TILA's implementing Regulation Z, 12 C.F.R. § 1026.24(c)."); Consent Order, Presto Auto Loans, Inc., CFPB No. 2016-CFPB-0021 (Dec. 20, 2016), https://files.consumerfinance.gov/f/documents/201612_cfpb_0021-Document027-12202016.pdf [https://perma.cc/JL3G-HNCM] ("Respondent failed to disclose a corresponding annual percentage rate when advertising a periodic interest rate in violation of section 144(c) of the Truth in Lending Act (TILA), 15 U.S.C. § 1664(c), the Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5536(a)(1)(A), and TILA's implementing Regulation Z, 12 C.F.R. § 1026.24(c)."); Consent Order, Westlake Services, LLC, also doing business as Westlake Financial Services, LLC, and Wilshire Consumer Credit, LLC, also doing business as Wilshire Commercial Capital, LLC, CFPB No. 2015-CFPB-0026 (Sept. 30, 2015), https://files.consumerfinance.gov/f/201509_cfpb_consent-order-westlake-services-llc.pdf [https://perma.cc/FKC2-K6BC] ("By advertising a rate but not disclosing an annual percentage rate, Wilshire violated Section 144 of TILA and Section 1026.24 of Regulation Z."); Agreement Containing Consent Order, In the Matter of First Am. Title Lending of Georgia, LLC, 159 F.T.C. 1887 (Jan. 30, 2015), https://www.ftc.gov/system/files/documents/cases/150130firstamericanagree_0.pdf [https://perma.cc/9SKM-ZZK5] (stating that Defendant shall not "[s]tate the amount or percentage of down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by Section 144 of the Truth in Lending Act ("TILA"), 15 U.S.C. §1664, and Section 1026.24(d) of Regulation Z").
[93] *See* 12 C.F.R. § 1026.24(d)(1) (listing "triggering terms").
[94] *See* 12 C.F.R. § 1026.24(d)(2)(iii).
[95] *See* Consent Order, CMM, LLC, CMM of Indiana, LLC, CMM of Alabama, LLC, Cash Mart Express of Fla., LLC, CMM of Kentucky, LLC, CMM of Louisiana, LLC, CMM of Mississippi, LLC, and CMM of Tennessee, LLC, each and collectively d/b/a Cash Tyme, CFPB No. 2019-BCFP-0004 (Feb. 5, 2019), https://files.consumerfinance.gov/f/documents/cfpb_cash-tyme-consent-

Climb's advertisements illustrate why Regulation Z requires lenders to advertise loans in terms of APR, rather than just periodic interest rates. Climb supplies a 6.99% interest rate for the example loan associated with ACE's Micro-Credential in Learning Behavior Specialist I,[96] which may seem low and be appealing to consumers. In truth and in fact, that example loan carries an APR nearly 10 points higher—potentially violating state usury laws—whether the consumer finances Climb's origination fee (16.248% APR) or pays it up front and out-of-pocket (16.730% APR).[97] Because APR reflects the true cost of borrowing money over time, Climb's practice of using appealing periodic interest rates in its "example Climb loan" advertisements while omitting much higher APRs not only appears to violate Regulation Z but likely constitutes a deceptive practice in violation of 12 U.S.C. § 5531(a) because it has the tendency to mislead reasonable consumers about the likely cost of credit with Climb and how it might compare with other lenders who follow the rules and use APR in their advertisements.

We urge the Bureau to investigate these apparent unfair, deceptive, and abusive practices in Climb's advertisements and solicitations of private student loan applications and to use its sweeping appropriate enforcement and supervisory powers to put a stop to these practices and to provide full relief for all borrowers and other consumers affected by Climb's actions.[98]

II. Climb's Underwriting Practices, Including the Use of Educational Criteria in Credit Determinations, Call for Immediate Scrutiny under the Equal Credit Opportunity Act.

Climb is a prominent and frequently cited example of a company developing a new model for student lending, especially as it relates to the growing use of educational criteria in underwriting by financial technology ("fintech") startups.[99] However, Climb's representations about its lending practices and public statements in response to a Senate Committee investigation indicate that it may be in ongoing violation of the Equal Credit Opportunity Act (the "ECOA").[100] The Bureau should investigate these possible violations immediately.

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order_2019-02.pdf [https://perma.cc/69NG-CMCA]: Agreement Containing Consent Order, First Am. Title Lending of Georgia, LLC, 159 F.T.C. 1887 (Jan. 30, 2015), https://www.ftc.gov/system/files/documents/cases/150130firstamericanagree_0.pdf [https://perma.cc/FAZ8-Q6MZ] (consent order stating that defendant shall not "[s]tate the amount or percentage of down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the terms required by Section 144 of the Truth in Lending Act ("TILA"), 15 U.S.C. §1664, and Section 1026.24(d) of Regulation Z").

[96] *Micro-Credential in Learning Behavior Specialist I*, Climb Credit, *supra* note 33.

[97] Calculations in this paragraph were made using the APR calculated at *APR Calculator*, *supra* note 81.

[98] Section 1024 of the Dodd Frank Act authorizes the Bureau to supervise any nonbank that "offers or provides to a consumer any private education loan" as defined under the TILA, irrespective of the size of the lender, and gives the Bureau the authority to define the scope of its oversight over other larger nonbank providers of consumer financial products. 12 U.S.C. § 5514.

[99] Christopher K. Odinet, *The New Data of Student Debt*, 92 S. Cal. L. Rev. 1617 (2019), https://southerncalifornialawreview.com/wp-content/uploads/2019/12/92_6_Odinet.pdf [https://perma.cc/HJ48-TYSM]; Kevin J. James, *New Funding, Aligned Incentives*, Am. Enter. Inst. (2016), https://www.luminafoundation.org/files/resources/new-funding-aligned-incentives.pdf [https://perma.cc/873K-YEB6]; Sustainable Finance, Goldman Sachs (2020), https://www.goldmansachs.com/what-we-do/sustainable-finance/documents/reports/2019-sustainability-report.pdf [https://perma.cc/A9RF-36NA]; *Climb Credit Enters into $130 Million Loan Purchase Agreements*, *supra* note 4 ("Higher education is broken in the United States, which has led to massive student loan debt and a major job skills gap . . . . Depending on the program, some graduates struggle to find a job with earnings high enough to afford to pay down their debt. In contrast, Climb Credit focuses on the education most in-demand for the new economy and that provides a high return to students. Network schools are vetted based on a myriad of criteria, including: job placement rate, salary after graduation and program cost.").

[100] 15 U.S.C. §§ 1691–1691f.

Climb's February 28, 2020 response to an inquiry about its lending practices by five U.S. Senators described its lending practices as follows:[101]

- Climb makes loans only to students at its "partner schools;"
- Climb determines whether to grant a loan by calculating a debt-to-income ratio for the applicant using "anticipated income of an applicant following completion of their program;"[102]
- Climb represents that "[o]nce a decision is made to grant the loan, the interest rate is based on the applicant's FICO score."

These practices raise several concerns about disparate impacts on women and minority borrowers.[103]

Most of Climb's partner schools are for-profit companies that provide vocational or skills-based training that often results in a certificate rather than an accredited degree. Black and Latinx students are overrepresented in for-profit institutions, which impose greater amounts of debt—and therefore present greater business opportunities for lenders like Climb—than their public and non-profit counterparts, often while failing to provide commensurately increased employment prospects and earning power.[104] This enrollment trend is borne out with respect to Climb's for-profit partners for which student demographic data are available.[105] As previously reported by the SBPC, some lenders target students at for-profit schools for high-interest, high-cost financial products that can leave them unable to achieve any level of financial security—essentially, reverse redlining.[106] Climb's decision to target its loan solicitations and extend credit primarily to students at for-profit institutions raises concerns its lending policies have the potential to disparately and negatively impact the students of color who comprise a disproportionate share if its target customer base.[107]

While Climb has consistently stated that it uses the consumer's school to determine whether to extend credit, it has issued seemingly contradictory public statements about whether it uses the consumer's school to determine the terms of credit, such as the interest rate. On one hand, Climb represented to Senator Brown and his Congressional colleagues that "[o]nce a decision is made

[101] *See* Letter from Angela Galardi Ceresnie *supra* note 1.
[102] It is unclear whether Climb uses the type of PayScale data discussed in Section I.B above to determine "anticipated income," or some other data source. If Climb uses different data, additional issues arise with respect to its consumer-facing representations of "[a]verage grad salary."
[103] Like most anti-discrimination statutes, the ECOA prohibits lending practices that result in a disparate impact on protected classes. *See, e.g.*, 12 C.F.R. § 1002.6(a); Policy Statement on Discrimination in Lending, 59 Fed. Reg. 18266-01 (Apr. 15, 1994); Powell v. Am. Gen. Fin., Inc., 310 F. Supp. 2d 481, 487 (N.D.N.Y. 2004).
[104] Ctr. for Responsible Lending et al., Gainful Employment: A Civil Rights Perspective 2 (Nov. 2014), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2014-Gainful-Employment-A-Civil-Rights-Perspective-Oct.pdf [https://perma.cc/PM2V-QM33]; Peter Smith & Leslie Parrish, *Do Students of Color Profit from For-Profit College? Poor Outcomes and High Debt Hamper Attendees' Futures*, Ctr. for Responsible Lending (Oct. 2014) http://www.responsiblelending.org/student-loans/research-policy/CRL-For-Profit-Univ-FINAL.pdf [https://perma.cc/7K8M-GD6Y]. Studies also show that Black and Latinx students who pursue some sort of post-secondary education receive certificates, rather than associates or bachelor's degrees, at disproportionately high rates. *See* Libassi, *supra* note 43.
[105] *See, e.g.*, *Dawn Career Institute LLC*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?130873-Dawn-Career-Institute-LLC [https://perma.cc/72DL-H7YZ]; *American Beauty College*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?108977-American-Beauty-College [https://perma.cc/ZYX6-TA48].
[106] *See generally* Shadow Student Debt, *supra* note 5.
[107] Libassi, *supra* note 43 at Fig. 1.

to grant the loan, the interest rate is based on the applicant's FICO score."[108] On the other hand, Climb's website includes a fine-print "Disclaimer" identifying a range of potential APRs and stating that "[a]ctual interest rates vary within this range based on a number of factors, including your state of residence, credit history, *the school you attend*, and applicable lending laws and regulations."[109] It seems unlikely that both Climb's above-quoted representations to the Senate and to consumers can be true. If Climb's consumer-facing representations that it determines interest rates in part based on borrowers' schools are accurate,[110] the fair lending concerns discussed below become particularly acute.

The use of "school quality" data in making credit determinations—whether the determination relates to the decision to lend at all (as Climb represented to Congress) or as a component of determining terms of credit like interest rates (as Climb represents to consumers)—has been compared to redlining[111] and in some cases may violate the ECOA. For example, the Federal Deposit Insurance Corporation ("FDIC") imposed a Consent Order on Sallie Mae Bank prohibiting it from using cohort default rates ("CDRs") in its scoring models for pricing student loans.[112] The Bureau has also investigated the use of CDRs in the underwriting of private student loans at Congress' direction and found that they may have a disparate impact on minority students by reducing access to credit and increasing its price based on the schools in which those borrowers are disproportionately enrolled.[113]

A recent report published by the SBPC also noted that publicly available data indicates that the use of school- and major-based distinctions in credit determinations "have a significant likelihood of resulting in disparities along protected class lines, particularly based on gender, race, and national origin."[114] Senators Sherrod Brown, Kamala Harris, and Elizabeth Warren similarly pointed out that studies indicate the use of a student's program of study to determine creditworthiness can result in a disparate impact on women and minority borrowers in the availability and price of credit.[115] The same disparate impact may arise from the proxies for educational quality or "ROI" used in Climb's underwriting processes.

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[108] Letter from Angela Galardi Ceresnie *supra* note 1.
[109] *See supra* note 11 (emphasis added).
[110] The Bureau should investigate to determine whether Climb has engaged in deceptive acts arising from its consumer-facing representations of credit factors, standards, and determinations in light of the apparent discrepancy between the company's public statements on this issue.
[111] George M. Walsh, *Cuomo: Lenders 'Redlining' Student Loans*, The Bos. Globe (June 19, 2007), http://archive.boston.com/news/education/higher/articles/2007/06/19/cuomo_lenders_redlining_student_loans/ [https://perma.cc/EJA4-J6FR].
[112] *In re Sallie Mae Bank*, Fed. Deposit Ins. Co. Case Nos. FDIC-13-0266b, FDIC 13-0367k (May 13, 2014), https://www.fdic.gov/news/press-releases/2014/salliemae.pdf [https://perma.cc/XE3Q-W5W6].
[113] *See* Consumer Fin. Prot. Bureau, Fair Lending Report of the Consumer Protection Bureau 22-25 (December 2012), https://files.consumerfinance.gov/f/201212_cfpb_fair-lending-report.pdf [https://perma.cc/5LEH-FE6K]; Consumer Fin. Prot. Bureau & the Dep't of Educ., Private Student Loans 78–85 (Aug. 29, 2012), https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf [https://perma.cc/5QSY-AFEJ].
[114] Stephen Hayes & Alexa Milton, *Solving Student Debt or Compounding the Crisis? Income Share Agreements and Fair Lending Risks*, Student Borrower Prot. Ctr. 19-20 (July 2020), https://protectborrowers.org/wp-content/uploads/2020/07/SBPC_Hayes_Milton_Relman_ISA.pdf [https://perma.cc/6MPR-5ZYB] (citing Anthony P. Carnevale, Jeff Strohl & Michelle Melton, *What's It Worth: The Economic Value of College Majors*, Geo. U. Ctr. On Educ. and the Workforce (2011), https://cew.georgetown.edu/wp-content/uploads/2014/11/whatsitworth-complete.pdf [https://perma.cc/K7K8-XTYK]).
[115] Letter from Senator Sherrod Brown et al. to Kathleen Kraninger, Dir., Consumer Fin. Prot. Bureau (July 30, 2020), https://www.banking.senate.gov/imo/media/doc/2020-07-30_Letter%20to%20CFPB%20re%20use%20of%20educational%20data.pdf.

Despite these obvious fair lending risks, Climb admits that it has made no effort to determine whether its lending policies and practices produce a discriminatory disparate impact on borrowers in violation of the ECOA. Instead, Climb represented to members of the U.S. Senate that it had no reason to believe its credit practices have a disparate impact on members of a protected class, had therefore "not conducted such empirical testing," and took the position that even trying to determine whether a disparate impact existed "would be unwarranted."[116] More recently, Climb's chief operating officer responded to Senators' concerns about potential disparate impacts of its lending practices by confirming that "[w]e don't currently assess disparate impact with race data, because we don't collect race data."[117]

We urge the Bureau to investigate these potential violations of federal fair lending law and what appear to be serious deficiencies in Climb's compliance management systems—deficiencies that should be notable even in the absence of the evidence discussed here, as a lack of fair lending testing is itself significant for supervision[118]—and to take appropriate enforcement and supervisory action to prevent any further discriminatory lending actions and provide relief for affected borrowers.

III. Climb and its Partner Schools May Be Committing Other Unfair and Deceptive Acts or Practices.

Climb and its partner schools share a troubling relationship based on mutual self-interest, which may operate to the detriment of students. Climb effectively serves as a lead generator for its partner schools by recommending programs and providing students with often apparently deceptive information, including the misrepresentations described above, to make its partners appear attractive.[119] Meanwhile, Climb's partner schools refer borrowers to Climb for financing.[120] This relationship opens the door for several types of unfair, deceptive, and abusive practices that may harm consumers.

First, Climb's representation that it independently vets its partner schools is problematic in several ways. With respect to unaccredited schools and programs, consumers may rely on

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[116] Letter from Angela Galardi Ceresnie *supra* note 1.

[117] Danielle Douglas-Gabriel, *Senate Democrats Raise Concerns About Educational Redlining in Student Lending*. Wash. Post (July 31, 2020), https://www.washingtonpost.com/education/2020/07/30/senate-democrats-raise-concerns-about-educational-redlining-student-lending/ [https://perma.cc/H8ZA-YD4G]. Climb did state that it monitors and updates its regulatory compliance around disparate impact, *id.*, presumably as it relates to gender discrimination.

[118] *Compliance Management Review Examination Procedures*, Consumer Fin. Prot. Bureau (Aug. 30, 2017) https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/compliance-management-review-examination-procedures/ [https://perma.cc/AWC8-NU54].

[119] Climb's apparently deceptive practices, described throughout, are substantially similar to unfair and deceptive practices that have resulted in enforcement action against other companies operating as lead generators for educational institutions. *See, e.g.*, QuinStreet, Inc., Assurance of Voluntary Compliance (June 27, 2012), https://www.sec.gov/Archives/edgar/data/1117297/000119312512284713/d372925dex101.htm [https://perma.cc/3452-X6LA]. Deceptive lead generation practices seeking to recruit students on behalf of for-profit schools are an ongoing problem. *See* Complaint, Request for Investigation, Injunction, and Other Relief Submitted by Veterans Education Success, QuinStreet, Inc. and Reach Network, Inc., F.T.C. (June 18, 2020), https://vetsedsuccess.org/wp-content/uploads/2020/06/FTC-Petition-Lead-Generators-final.v3.pdf [https://perma.cc/H72Z-YGHK].

[120] *See, e.g.*, *Financial Aid*, Am. Beauty Coll., https://americanbeautycollege.edu/cosmetology-scholarships/ [https://perma.cc/BW23-P5RG]; *Financial Aid*, Dawn Career Inst., https://www.dawncareerinstitute.edu/Financial-Aid.php [https://perma.cc/C9KC-D8HL]; *Payment and Financial Options for American College of Education*, Am. College of Educ., https://www.ace.edu/tuition-and-admissions/payment-options [https://perma.cc/2G6Z-D67Y]. Climb represented to the Senate that its "borrowers are generally sourced from applicants who have already been accepted into a program at one of our partner schools." Letter from Angela Galardi Ceresnie *supra* note 1.

Climb's vetting as independent verification of program quality—a role that lenders are ill-suited to fill in the post-secondary education system.[121] Relatedly, consumers may reasonably believe that Climb's representations that it selects and partners only with "high ROI" schools mean that institutions with which Climb does not have a lending relationship are of inferior quality or lead to less lucrative employment than similar Climb-affiliated programs. In addition, since Climb represents that its loan applicants are typically accepted at (and likely referred to Climb by) its partner schools,[122] Climb's own self-interest in originating loans may compromise its vetting and program-selection process and render its consumer-facing representations of meaningful "vetting" potentially deceptive.[123]

Second, while the details of Climb's relationships with its partner schools are unknown, publicly available information also indicates that the actions of some Climb partner schools may bring them within the definition of "covered persons" under the CFPA.[124] For example, in *Consumer Fin. Prot. Bureau v. ITT Educ. Servs., Inc.*,[125] the for-profit school ITT was found to be a "covered person" because it provided "financial advisory services"[126] to its students, and because it provided material services to private student lenders, bringing it within the CFPA's definition of "service provider."[127] Climb's public statements indicate that its partner schools provide it with "material services" by furnishing non-public information concerning graduation rates and students' post-graduation outcomes to assist Climb in determining whether and on what terms to grant loans. In addition, the schools' referral of students to Climb for financing may constitute a "material service," and any accompanying advice provided to students with respect to qualifying and applying for a private student loan may constitute "financial advisory services" and/or the "brokering" of private student loans.[128] We therefore urge the Bureau to investigate Climb's relationship with these schools to determine whether (a) Climb's own financial interests are influencing its "vetting" and recommendations to consumers that it uses to solicit loan

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[121] While borrower and lender interests in educational quality are nominally aligned, the lender's economic interest extends only to repayment, while the borrower's interest extends to the rest of their financial life—i.e., whether the education afforded sufficient increased earning opportunities above and beyond the ability to scrape together monthly student loan payments. "Return on investment" therefore mean very different things for lender and borrower. Moreover, by acting as both the lender (that is, the party pricing risk) and the verifier of the school's quality (information that the consumer might use to gauge risk), Climb creates a large and likely lucrative information asymmetry between itself and the borrower. This asymmetry allows Climb, as a purportedly forward-looking lender, to represent its partner programs as worthwhile for students while also commanding high rates (up to 35 percent APR) on its loans. *Partners*, Climb Credit, https://climbcredit.com/partners [https://perma.cc/YJH3-DJA9].

[122] Letter from Angela Galardi Ceresnie *supra* note 1.

[123] For example, the U.S. Department of Justice and state attorneys general brought civil enforcement actions against the credit rating organizations, Standard & Poor's and Moody's, over the companies' representations that their ratings of structured financial products known as Residential Mortgage-Backed Securities (RMBS) and Collateralized Debt Obligations (CDOs) were independent, objective, and uninfluenced by their business relationships with the investment banks that issued the securities, when in fact the ratings (and the criteria upon which they were based) were influenced by business considerations. Those cases settled for approximately $2.24 billion. *See* Press Release, U.S. Dep't of Just., Justice Department and State Partners Secure $1.375 Billion Settlement with S&P for Defrauding Investors in the Lead up to the Financial Crisis (Feb. 3, 2015), https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-1375-billion-settlement-sp-defrauding-investors [https://perma.cc/GD53-QZS3]; Press Release, U.S. Dep't of Just., Justice Department and State Partners Secure Nearly $864 Million Settlement with Moody's Arising from Conduct in the Lead up to the Financial Crisis (Jan. 13, 2017), https://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-nearly-864-million-settlement-moody-s-arising [https://perma.cc/H7QT-86FL].

[124] *See* 12 U.S.C. § 5481(6)(A).

[125] Consumer Fin. Prot. Bureau v. ITT Educational Services, Inc., 219 F. Supp. 3d 878 (S.D. Ind. 2015).

[126] *See* 12 U.S.C. § 5481(15)(A)(viii).

[127] *See* 12 U.S.C. § 5481(26)(A).

[128] *See* 12 U.S.C. § 5481(6)(A)(1).

applications; and whether (b) Climb's partner schools are "covered persons" subject to the CFPA, and if so whether they are complicit in Climb's misconduct.

Third, Climb and some of its partner schools also appear to violate state and federal regulations governing preferred lender lists. Climb is a "private education lender" for the purpose of federal preferred lending laws,[129] and at least 15 of its partner schools appear to accept funds under Title IV of the Higher Education Act and therefore to be "covered educational institutions" subject to regulations of preferred lending arrangements promulgated and enforceable by the Bureau,[130] the

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[129] Climb falls within the definition of "private education lender" because it "solicits, makes, or extends private education loans." 15 U.S.C. § 1650(a)(7). The Department of Education's regulations incorporate this definition. *See* 34 C.F.R. § 601.2.

[130] *See* 12 C.F.R. § 1026.46. *See also* 15 U.S.C. §§ 1650(b)–(d). Partner schools include the following: (1) American Beauty College. *See American Beauty College,* U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?108977-American-Beauty-College [https://perma.cc/V58K-5JT3]; *American Beauty College - Cosmetology (with Interest-Only)*, Climb Credit, [https://perma.cc/58LU-YU2X]. (2) American Institute of Medical Sciences & Education. *See American Institute of Medical Sciences & Education,* U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?455202-American-Institute-of-Medical-Sciences-Education [https://perma.cc/PW6V-L63B]; *American Institute of Medical Sciences & Education - Neurodiagnostic Technologist (Evening) - Grade Year 2*, Climb Credit, [https://perma.cc/ZR6T-NGSK]. (3) Boca Beauty Academy. *See Boca Beauty Academy,* U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?481483-Boca-Beauty-Academy [https://perma.cc/NNL2-FBCL]; *Boca Beauty Academy - Cosmetology*, Climb Credit, [https://perma.cc/M9E9-KRLN]. (4) Brookline College-Phoenix. *See Brookline College-Phoenix*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?104090-Brookline-College-Phoenix [https://perma.cc/XH7U-L8R6]; *Brookline College - Bachelor's in Nursing - AY 1*, Climb Credit, [https://perma.cc/W2PH-EE84] (suggesting the Brookline program in the Phoenix area). (5) Brookline College-Albuquerque. *See Brookline College*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?444088-Brookline-College-Albuquerque [https://perma.cc/Y45W-VUTM] (last visited Oct. 6. 2020); *Brookline College - Bachelor's in Nursing - AY 1*, Climb Credit, [https://perma.cc/3QB5-SYS8] (suggesting the Brookline program in the Albuquerque area). (6) Celebrity School of Beauty. *See Celebrity School of Beauty*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?454917-Celebrity-School-of-Beauty [https://perma.cc/35MK-K3KZ]; *Celebrity School of Beauty - Cosmetology*, Climb Credit, [https://perma.cc/7LP2-XL8F]. (7) Culinary Tech Center. *See Culinary Tech Center*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?486390-Culinary-Tech-Center [https://perma.cc/FC2L-ABFK]; *Culinary Tech Center - Hospitality Operations - Full Tuition,* Climb Credit, [https://perma.cc/8PZM-BXWK]. (8) Dawn Career Institute. *See Dawn Career Institute*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?130873-Dawn-Career-Institute-LLC [https://perma.cc/CN48-ZU2F]; *Dawn Career Institute - Nursing Assistant*, Climb Credit, [https://perma.cc/PYH4-SVZV]. (9) Focus Personal Training Institute. *See Focus Personal Training Institute*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?488253-Focus-Personal-Training-Institute [https://perma.cc/TU59-RCM5]; *Focus Personal Training Institute - Master Course (Full Tuition)*, Climb Credit, [https://perma.cc/N3AA-X64D]. (10) The International Culinary Center. *See The International Culinary Center*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?191287-The-International-Culinary-Center [https://perma.cc/GPG6-Q2F7]; *International Culinary Center - A- Culinary Arts Full Time*, Climb Credit, [https://perma.cc/V4EJ-F8NZ]. (11) Midwestern Career College. *See Midwestern Career College*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?457536-Midwestern-Career-College [https://perma.cc/9U79-4845]; *Midwestern Career College - Medical Assisting*, Climb Credit [https://perma.cc/5RWB-QJVJ]. (12) Peloton College. *See Peloton College*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?459514-Peloton-College [https://perma.cc/M8KJ-UFG2]; *Peloton College - Information Technology*, Climb Credit, [https://perma.cc/4HUJ-L3AC]. (13) The Salon Professional Academy-Delray Beach. *See The Salon Professional Academy-Delray Beach*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?492360-The-Salon-Professional-Academy-Delray-Beach [https://perma.cc/6URH-7HC7]; *The Salon Professional Academy of Delray Beach - Cosmetology*, Climb Credit, [https://perma.cc/S48C-P8BM]. (14) The Salon Professional Academy-Ft Myers. *See The Salon Professional Academy-Ft Myers*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?459347-The-Salon-Professional-Academy-Ft-Myers [https://perma.cc/2X8W-DNLU]; *The Salon Professional Academy of Ft. Myers - Cosmetology (15 Month Program)*, Climb Credit, [https://perma.cc/E3E9-LJPV]. (15) The Salon Professional Academy-Melbourne. *See The Salon Professional Academy-Melbourne*, U.S. Dep't of Educ. Coll. Scorecard, https://collegescorecard.ed.gov/school/?385132-The-Salon-Professional-Academy-Melbourne [https://perma.cc/6RYT-CKML]; *The Salon Professional Academy of Melbourne - Cosmetology*, Climb Credit, [https://perma.cc/4XQM-VQQU].

U.S. Department of Education,[131] and some states.[132] It is apparent that Climb has entered into a "preferred lending arrangement" with these institutions, in which (i) Climb issues loans to students attending the schools, and (ii) the schools recommend, promote, or endorse Climb's loan products.[133] For example, partner schools promote Climb by providing borrowers with basic terms of Climb loans and links to applications on Climb's website.[134] However, some of Climb's partner schools appear to violate federal and state preferred lending regulations—for example, by failing to make required disclosures to consumers and failing to provide students with the required number of "private education lenders"[135] or failing to adopt and post prominently a "code of conduct" on its website prohibiting revenue sharing, gifts, or assigning borrowers to a particular lender.[136] These preferred lending statutes and regulations were implemented to correct serious market failures and address lender and school misconduct that caused widespread harm to students who fell victim to deceptive marketing and predatory loans as uncovered in an investigation by the New York Attorney General's Office[137] and detailed in two reports from the Senate Health, Education, Labor and Pensions Committee.[138] We therefore urge the Bureau to work with its federal and state partners to address any and all violations of these important consumer protection regulations, prevent the well-documented consumer harms associated with non-compliant preferred lender lists, and ensure that students have all the information they need to make informed credit decisions.

IV. Conclusion

Climb's practices described in this letter require immediate investigation and decisive action to provide relief to affected consumers. However, the issues raised in this letter also reflect deeper, systemic problems at the intersection of private student lending and for-profit schools.[139] These issues require a multifaceted response involving investigation and enforcement, supervision, and administrative rulemaking. For example, the Bureau should:

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[131] 34 C.F.R. § 601.

[132] *See* Iowa Code Ann. § 261F; 940 Mass. Code Regs. 31; N.Y. Educ. Law § 620 *et seq*. State preferred lender list regulations often have broader application than those of the U.S. Department of Education, and apply to schools that do not receive federal funds.

[133] *See* 20 U.S.C. § 1019(8); 34 C.F.R. § 601.2; 15 C.F.R. § 1650(a)(6) (adopting definition of "referred lender arrangement" from 20 U.S.C. § 1019(8)); 12 C.F.R. § 1026.46(b)(4) (same).

[134] *E.g.*, *supra* note 10.

[135] For example, the American Beauty College ("ABC") represents that "We've recently partnered with a student lending company, Climb. They have a simple online application and you can find [out] if you've received a loan in just minutes." *Financial Aid,* Am. Beauty Coll., *supra* note 10. However, ABC's website does not provide at least two private lenders, 34 C.F.R. § 601.10(d)(2)(i), much less the disclosures about its relationship with Climb as required by federal law. *See* 34 C.F.R. § 601.10(d)(3). ABC's practices also potentially violate the state laws identified in Section III.

[136] *See* 20 U.S.C. § 1094(a)(25); 20 U.S.C. § 1094(e); s*ee, e.g.*, *Financial Aid*, Dawn Career Inst., *supra* note 10.

[137] *See, e.g.*, Press Release, N.Y. Attorney General, Cuomo Announces First Multi-State Agreements in Student Loan Investigation (Apr. 23, 2007), https://ag.ny.gov/press-release/2007/cuomo-announces-first-multi-state-agreements-student-loan-investigation [https://perma.cc/UZG9-66R7]; Press Release, N.Y. Attorney General, Cuomo Announces Six Schools Agree to Code of Conduct in Student Loan Investigation; Says "tide has Turned" in Student Loan Investigation (Apr. 20, 2007), https://ag.ny.gov/press-release/2007/cuomo-announces-six-schools-agree-code-conduct-student-loan-investigation-says [https://perma.cc/N9K9-XLA5]; Press Release, N.Y. Attorney General, Attorney General Cuomo Announces Agreement with Three Lenders (June 20, 2007), https://ag.ny.gov/press-release/2007/attorney-general-cuomo-announces-agreement-three-lenders [https://perma.cc/T4KW-RDYZ]; Press Release, N.Y. Attorney General, Attorney General Cuomo Announces Settlement with the Seventh Largest Lender in the Country (July 20, 2007), https://ag.ny.gov/press-release/2007/attorney-general-cuomo-announces-settlement-seventh-largest-lender-country [https://perma.cc/28UH-WMKE].

[138] Senate Comm. on Health, Educ., Labor and Pensions, Report on Marketing Practices in the Federal Family Education Loan Program (2007), https://files.eric.ed.gov/fulltext/ED497127.pdf [https://perma.cc/BKQ4-QD8R]; Senate Comm. on Health, Educ., Labor and Pensions, Second Report on Marketing Practices in the Federal Family Education Loan Program (2007).

[139] *See generally* Shadow Student Debt, *supra* note 5 at 35.

- **Investigate Climb and its Partner Schools.** The practices outlined above offer evidence that Climb and its partner schools are misleading borrowers, deploying potentially discriminatory lending tactics, and committing various other violations of consumer protection law. The Bureau must immediately scrutinize Climb's—and its partner schools'—conduct and compliance with all applicable consumer financial protection laws. Moreover, the Bureau's Student Loan Ombudsman should utilize his unique position to coordinate efforts and facilitate information sharing across the federal government—and among states where students use Climb products to finance their education—to further assess where Climb's practices violate applicable federal and state laws, including the Higher Education Act, state prohibitions on unfair and deceptive practices, and state preferred lender list requirements.

- **Prioritize Market-Wide Supervision of Firms that Drive Students to Take on Shadow Student Debt, Exposing Illegal Conduct and Halting Borrower Harm.** Unfortunately, the allegations presented here against Climb are part of a larger segment of the market that targets vulnerable borrowers. Research by the SBPC has revealed an expansive web of companies similar to Climb.[140] These companies also peddle risky, high-cost loans that play a vital role in the survival of predatory for-profit schools.[141] As the SBPC has documented, practices like those described above are regrettably common where firms drive students to take on shadow student debt.[142] The CFPA provides the Bureau broad authority to supervise non-depository private student lenders like Climb and its peers. It is imperative that the Bureau bring this authority to bear through the prioritization of robust supervision aimed at reigning in companies that drive students to take on shadow student debt. As the SBPC has noted previously, this should be a component of a larger effort that also includes the creation of a nationwide registry of all non-bank providers of consumer financial products and services.[143]

- **Prioritize Protecting Student Loan Borrowers through the Rulemaking Process.** The extent and variety of the borrower harm presented here serve as a reminder of why the CFPA granted the Bureau broad authority to protect student loan borrowers at every stage of repayment (e.g., origination, servicing, collections).[144] Companies like those that drive students to take on shadow student debt, and in the higher education finance market more generally, have proven adept at generating new ways to prey on student loan borrowers and evade scrutiny from law enforcement. To protect borrowers, the Bureau must utilize the full range of tools at its disposal under Title X of the Dodd-Frank Act to better protect borrowers, including by creating strong new consumer protections that span the lifecycle of student financing, from origination and servicing through debt collection and credit reporting. Further, the Bureau should ensure that any rulemaking addresses harmful practices by any firm offering a consumer financial product or performing a consumer financial service in this market, irrespective of whether the firm is a bank or nonbank. While the Bureau once committed to promulgating student loan servicing regulations as

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[140] *Id.*
[141] *Id.*
[142] Ann Carns, *Consumer Groups Take PayPal to Task Over Student Loan Credit Line*, N.Y. Times (Aug. 21, 2020), https://www.nytimes.com/2020/08/21/business/paypal-student-loans-synchrony.html [https://perma.cc/7DQF-YXMZ].
[143] Shadow Student Debt, *supra* note 5 at 35.
[144] Christopher Lewis Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review*, 90 Tul. L. Rev. 1057 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2780791 [https://perma.cc/8CPE-7P3J].

part of its rulemaking agenda,[145] the evidence of abuses by Climb and its peers demands that the Bureau expand the scope of any planned regulation to ensure it addresses a wider universe of borrower harm. This includes ensuring that any new rules explicitly apply to schools that partner with financial services firms to broker these products and expanding the definition of a "private education loan" so as to faithfully execute lawmakers' intent to protect all borrowers using private credit to pay for college.

Thank you for your attention to these important issues, and we look forward to seeing swift action to protect borrowers from the misconduct described above. Please feel free to reach out if you have any questions.

Sincerely,

Student Borrower Protection Center

CC:
Honorable Betsy DeVos, Secretary, Department of Education
Representative Maxine Waters, Chairwoman, House Financial Services Committee
Senator Sherrod Brown, Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs
Senator Elizabeth Warren, Ranking Member, Senate Subcommittee on Financial Institutions and Consumer Protections
Senator Cory Booker
Senator Kamala Harris
Senator Robert Menendez
Honorable Robert Cameron, Student Loan Ombudsman, Consumer Financial Protection Bureau

[145] Kelly Cochran, *Fall 2015 Rulemaking Agenda*, Consumer Fin. Prot. Bureau (Nov. 20, 2015), https://www.consumerfinance.gov/about-us/blog/fall-2015-rulemaking-agenda/ [https://perma.cc/YY6N-JGDG].