STUDENT BORROWER PROTECTION CENTER

February 8, 2021

Dave Uejio
Acting Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Re: Prioritizing the Student Debt Crisis as a Civil Rights Crisis

Dear Acting Director Uejio,

We were heartened by your recent announcement directing the Consumer Financial Protection Bureau's (CFPB) Division of Research, Markets, and Regulations to "prepare an analysis of the most pressing consumer finance barriers to racial equity to inform [the Bureau's] research and rulemaking priorities."[1] As you have made clear from the start of your tenure as Acting Director, American consumers can once again know that the nation's top consumer watchdog sees addressing racial inequality as a top priority.[2]

We write to highlight that any comprehensive analysis and regulatory prioritization grounded in removing barriers to societal equity must acknowledge the racially disparate effects of the student debt crisis and the decades-long failure to effectively regulate the student loan industry. Accordingly, the Bureau must utilize the clear authorities already granted to it under the law to initiate a broad-based rulemaking aimed at protecting borrowers throughout every phase of the student loan lifecycle, weeding out predatory practices in all corners of the market, and combating systemic barriers by which student debt acts as both a "cause and a consequence" of deep-seeded racial inequality.[3]

The Student Debt Crisis is a Civil Rights Crisis

A robust body of research has demonstrated how borrowers of color face systemic barriers with regard to every aspect of the borrowing and repayment of student loans and how the

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[1] Dave Uejio, *The Bureau is Working Hard to Address Housing Insecurity, Promote Racial Equity, and Protect Small Businesses' Access to Credit*, Consumer Fin. Prot. Bureau Blog (Feb. 4, 2021), https://www.consumerfinance.gov/about-us/blog/the-bureau-is-working-hard-to-address-housing-insecurity-promote-racial-equity-and-protect-small-businesses-access-to-credit/.
[2] *Out with the Old, in with the Old? Dave Uejio as Acting CFPB Director Until Rohit Chopra is Confirmed and Sworn In*, JD Supra (Jan. 28, 2021), https://www.jdsupra.com/legalnews/out-with-the-old-in-with-the-old-dave-7688091/.
[3] *See* Jillian Berman, *All the ways student debt exacerbates racial inequality—'it's like landing in quick sand'*, MarketWatch (July 27, 2019), https://www.marketwatch.com/story/all-the-ways-student-debt-is-exacerbating-racial-inequality-its-like-landing-in-quick-sand-one-black-student-says-2019-07-18 (quoting sociology professor Jason Houle as stating that student debt is "both a cause and consequence of racial inequality").

unprecedented burden of student loan debt serves to belie the promise of higher education as the "great equalizer."[4] The racial wealth gap drives much of this economic disparity, as the median white household has 13 times the wealth of the median Black household and 10 times that of the median Latino household.[5] Black and Latino borrowers are therefore less able to rely on familial wealth to pay for their postsecondary education[6] and are left to take on student debt at a rate that far outpaces their white peers: 90 percent of Black students and 72 percent of

[4] *See In America, Education Is Still the Great Equalizer*, Homeroom (last visited Apr. 10, 2018), https://blog.ed.gov/2011/12/in-america-education-is-still-the-great-equalizer/; Fed. Res. Board, Report on the Economic Well-Being of U.S. Households in 2018 (May 2019), https://www.federalreserve.gov/consumerscommunities/files/2018-report-economic-well-being-us-households-201905.pdf (finding that 28 percent of African Americans and 15 percent of Hispanics between the ages of 18 and 29 who borrowed for their education are behind on their payments compared to 7 percent for whites in the same age range); Susan Tompor, *Black Women Bear Largest Burden in Student Debt Crisis*, Detroit Free Press (Oct. 10, 2019), https://www.freep.com/in-depth/money/personal-finance/susan-tompor/2019/10/10/student-debt-crisis-us-black-women/2233035001/ ("African American women end up with on average $10,880 more in college debt—or nearly 56% more in debt—than the average white male. . . ."); Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, Ctr. for Am. Progress (Oct. 16, 2017), https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers/ (finding that 12 years after entering undergraduate study the median African American borrower owed 113 percent of his or her original student loan balance while the median white student owed 47 percent of what he or she borrowed over the same time span, and that after the same period nearly half [49 percent] of African American borrowers had defaulted on their federal loans taken on for undergraduate study compared to 21 percent of white borrowers); Ben Kaufman, *New Data Show Borrowers of Color and Low-Income Borrowers are Missing Out on Key Protections, Raising Significant Fair Lending Concerns*, Student Borrower Prot. Ctr. (Nov. 2, 2020), https://protectborrowers.org/new-data-show-borrowers-of-color-and-low-income-borrowers-are-missing-out-on-key-protections-raising-significant-fair-lending-concerns/ (finding that Black borrowers are two times more likely than their white peers to fall behind on their student loans without accessing income-driven repayment, a key student loan borrower protection meant to be broadly available under the law); Judith Scott-Clayton, *The Looming Student Loan Default Crisis Is Worse than We Thought*, Brookings Inst. (Jan. 11, 2018), https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/ ("Debt and default among black college students is at crisis levels, and even a bachelor's degree is no guarantee of security: black BA graduates default at five times the rate of white BA graduates [21 versus 4 percent], and are more likely to default than white dropouts."); Ben Kaufman, *New Data Show Dramatic Disparities for Borrowers of Color with Private Student Loans*, Student Borrower Prot. Ctr. (Oct. 14, 2020), https://protectborrowers.org/new-data-show-dramatic-disparities-for-borrowers-of-color-with-private-student-loans/ ("Almost 24 percent of Black borrowers with private student loans report having fallen behind on at least one private student loan due to economic hardship, nearly four times higher than the proportion of white borrowers."); Rajashri Chakrabarti, William Nober, and Wilbert van der Klaauw, *Measuring Racial Disparities in Higher Education and Student Debt Outcomes*, Liberty Street Econ., Fed. Res. Bank of N.Y. (July 8, 2020), https://libertystreeteconomics.newyorkfed.org/2020/07/measuring-racial-disparities-in-higher-education-and-student-debt-outcomes.html ("Overall, borrowers living in majority Black and majority Hispanic zip codes are much more likely to default on student debt by age 30. Two-year college borrowers in majority Black areas default at 1.9 times the rate of those in majority white areas, and those in majority Hispanic areas default 1.7 times as often as residents in majority white areas. The ratios of default rates among four-year borrowers are very similar. Nationwide default rates are highest for those living in majority Black zip codes and just 1-2 percentage points lower for individuals living in majority Hispanic areas, both for two-year and four-year borrowers.").

[5] Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Research Ctr. (Dec. 12, 2014), https://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/.

[6] *See, e.g.,* William R. Emmons & Lowell R. Ricketts, *College Inadvertently Increases Racial and Ethnic Disparity in Income and Wealth*, Center for Household Financial Stability at the Federal Reserve Bank of St. Louis (Feb. 27, 2017), https://www.stlouisfed.org/publications/in-the-balance/2017/college-inadvertently-increases-racial-and-ethnic-disparity-in-income-and-wealth ("An analysis of data from a youth survey found that 58 percent of black young adults reported that their parents contributed an average of $4,200 over the course of their college career. That compares to an average of $12,000 given by 72 percent of white families.") (citation omitted).

Latino students who complete four-year programs borrow to attend college in comparison to 66 percent of white students.[7]

Black and Latino borrowers also face unique and substantial hurdles in repayment. Twenty years after entering repayment, the median white borrower has paid down nearly 95 percent of his or her original balance, but the median Black borrower still owes nearly 95 percent of his or her original balance.[8] Similarly, 12 years after starting college, the median Latino borrower with a bachelor's degree still owes 80 percent of his or her original balance as compared to the median white borrower who has paid down more than half of his or her original balance.[9]

For a disproportionate share of borrowers of color, these onerous repayment sequences end in delinquency and default.[10] Within six years of starting school, one-in-three Black borrowers and one-in-five Latino borrowers have defaulted on a student loan compared to roughly one-in-ten white borrowers.[11] Across American cities, borrowers in the most racially segregated communities of color are up to five times more likely to fall behind on a student loan than borrowers in the whitest areas, a disparity that rivals the results of the worst mortgage redlining practices seen in the last financial crisis.[12]

The Student Debt Crisis is a Consumer Protection Crisis for Communities of Color

The student debt crisis is not only about growing balances and monthly bills. It is also a consumer protection crisis wherein predatory actors build entire business models predicated on targeting Black and Latino communities to bolster their bottom line:[13]

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[7] *See* Aissa Canchola & Seth Frotman, *The significant impact of student debt on communities of color*, Consumer Fin. Prot. Bureau Blog (Sept. 15, 2016), https://www.consumerfinance.gov/about-us/blog/significant-impact-student-debt-communities-color/.

[8] Laura Sullivan, Tatjana Meschede, Thomas Shapiro & Fernanda Escobar, Stalling Dreams: How Student Debt is Disrupting Life Chances and Widening the Racial Wealth Gap, Inst. on Assets and Soc. Policy (IASP), Heller Sch. for Soc. Policy and Mgmt. (2019), https://heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifechances.pdf.

[9] Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, Ctr. for Am. Progress (Oct. 16, 2017), https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers/.

[10] *Supra* note 4.

[11] Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, Ctr. for Am. Progress (Dec. 2, 2019), https://www.americanprogress.org/issues/education-postsecondary/reports/2019/12/02/477929/continued-student-loan-crisis-black-borrowers/.

[12] *Disparate Debts: How Student Loans Drive Racial Inequality Across American Cities*, Student Borrower Prot. Ctr. (2020), https://protectborrowers.org/wp-content/uploads/2020/06/SBPC-Disparate-Debts.pdf (finding that borrowers in the most segregated communities of color are up to five times more likely to fall behind on their loans than those in the whitest areas); Complaint, City of Oakland v. Wells Fargo Bank, N.A., No. 3:15-cv-04321 (N.D. Cal. Sept. 21, 2015), ***available at*** https://www.oaklandcityattorney.org/PDFS/Oakland%20v.%20Wells%20Fargo%20endorsed%20complaint%209-21-15.pdf ("In other words, a Wells Fargo loan in an African-American or Hispanic neighborhood is 4.752 times more likely to result in foreclosure as a Wells Fargo loan in a non-minority neighborhood.").

[13] *See, e.g.*, Student Borrower Prot. Ctr., A $1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers Accountable: Hearing before the H. Fin. Servs. Comm. at 5-6, n. 63-87 (statement of Seth Frotman, Executive Director, Student Borrower Protection Center), ***available at*** https://protectborrowers.org/wp-content/uploads/2019/09/Testimony-of-Seth-Frotman-before-HFSC_September-2019.pdf.

- **For-profit schools engage in reverse redlining practices that exploit communities of color, drive the student debt crisis, and leave borrowers in distress.** The for-profit college sector has a long history of deploying widespread illegal tactics to draw in vulnerable students, loading those students with massive student debt burdens, and leaving them with a worthless degree, all while industry pockets windfall profits.[14] There is no doubt that these predatory schools specifically target their practices at communities of color.[15] Black and Latino students make up less than one third of all undergraduate students but represent nearly half of those attending for-profit institutions.[16] Moreover, the noxious combination of for-profit colleges' misrepresentations around student outcomes and the heavy debt burden they impose on current and former students proves particularly damaging for borrowers of color.[17] One study found that over a twelve-year period, less than half of white students, *over* half of Latino students, and *two-thirds* of Black students who borrowed money to attend a for-profit school defaulted on at least one of their loans.[18] The Bureau has repeatedly pursued for-profit schools for violations of consumer financial protection laws,[19] and legal practitioners agree that the Bureau has authority over for-profit colleges with regard to the Equal Credit Opportunity Act.[20] The Bureau must act on this authority to protect borrowers.

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[14] *See, e.g.*, Consent Decree at 6, Bridgepoint Education, Inc., CFPB No. 2016- CFPB-0016 (Sept. 9, 2016); Complaint at 10, Consumer Fin. Prot. Bureau v. Corinthian Colls., Inc., No. 14-4194, 2015 WL 10854380 (N.D. Ill. 2015) (stating "[r]egardless of whether students were able to repay the private student loans, Corinthian would profit from the increased availability of Title IV monies"); Complaint at 26, Consumer Fin. Prot. Bureau v. ITT Educ. Servs., Inc., 219 F.Supp.3d 878 (S.D. Ind. 2015) (No. 1:14-cv-292) (stating "[w]hile ITT remains profitable—it reaped approximately $59 million in net income during 2013—former ITT students, having been coerced by ITT into the ITT Private Loans, face a high likelihood of defaulting"); Complaint, United States v. Educ. Mgmt. Corp., No. 07-461 (W.D. Pa. 2013); Complaint at 3, California v. Ashford Univ., LLC, No. RG17883963, 2017 WL 5903538 (Cal. Super. 2017); Press Release, U.S. Dep't of Justice, For-Profit College Company to Pay $95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations (Nov. 16, 2015), https://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and; Press Release, Md Off. Att'y Gen., AG Frosh: $1.4 Million in Loans Forgiven for Nearly 1,000 Maryland Students (Nov. 16, 2015), http://www.marylandattorneygeneral.gov/Press/2015/111615.pdf.

[15] *See, e.g.*, Genevieve Bonadies, Joshua Rovenger, Eileen Connor, Brenda Shum & Toby Merrill, *For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate*, Harv. L. Rev. Blog (July 30, 2018), https://blog.harvardlawreview.org/for-profit-schoolspredatory-practices-and-students-of-color-a-mission-to-enroll-rather-than-educate/.

[16] *For-Profit Colleges and Racial Justice*, Harv. Project on Predatory Student Lending, https://predatorystudentlending.org/predatory-industry/racial-justice/ (last accessed Feb. 5, 2020).

[17] *See, e.g.*, *supra* note 14.

[18] Robert Kelchen, *New Data on Long-Term Student Loan Default Rates*, Kelchen on Educ. (Oct. 6, 2017), https://robertkelchen.com/2017/10/06/new-data-on-long-term-student-loan-default-rates/.

[19] Press Release, Consumer Fin. Prot Bureau, CFPB Sues For-Profit College Chain ITT For Predatory Lending (Feb. 26, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/.

[20] Stephen Hayes & Andrea Lowe, Student Borrower Prot. Ctr., Combating Exploitative Education: Holding For-Profit Schools Accountable for Civil Rights Violations (Dec. 2020), https://protectborrowers.org/wp-content/uploads/2020/12/Combating-Exploitative-Education_2020.pdf; *see also* Second Amended Class Action Complaint at 74, Morgan v. Richmond Sch. of Health and Techn., 857 F. Supp. 2d 104 (D.D.C. 2012) (No. 1:11-cv-01066), https://www.relmanlaw.com/media/cases/351_RSHT%20-%20Second%20Amended%20Complaint%2012.7.11.pdf; Complaint, Britt v. IEC Corp., et al., No. 0:20-cv-60814 (S.D. Fl. Apr. 20, 2020), https://predatorystudentlending.org/wp-content/uploads/2020/04/Complaint-Britt-v.-FCC-filed-Apr-20-2020.pdf.

- **Private student loan companies routinely target Black and Latino consumers with high-cost, high risk products, leading borrowers to struggle.** Given the broad wealth disparities discussed above, Black and Latino borrowers are more likely to have outstanding unmet financial need beyond federal student loan limits, leading them to turn to private student loans to finance their education.[21] The nearly $140 billion private student loan market is larger than the payday loan market and the total outstanding balance of past-due medical debt in the U.S., all while lacking key borrower protections available in other areas of consumer finance.[22] This lack of safeguards allows companies operating in it to impose massive costs on borrowers at every stage from origination through repayment.[23] Further, in part because of targeting by for-profit colleges, students of color are more likely to rely on so-called "shadow student debt"—the variety of expensive, misleadingly marketed, and lightly underwritten credit used to prop up these predatory schools, including the emerging market for income share agreements.[24] As companies place a larger private student loan burden on borrowers of color, those borrowers struggle.[25] Recent analysis shows that Black borrowers with private student loans report falling behind on those loans due to economic hardship at nearly four times the rate of white borrowers, and that Black borrowers with private student loans who earned bachelor's degrees are roughly ten times more likely to have fallen behind in repayment than white borrowers with private student loans at the same level of educational attainment.[26]

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[21] *See generally* Kat Welbeck, *Communities of Color in Crisis: Examining Racial Disparities in Student Loan Debt and Borrower Outcomes*, Student Borrower Prot. Ctr. (Jan. 8, 2020), https://protectborrowers.org/communities-of-color-in-crisis-examining-racial-disparities-in-student-loan-debt-and-borrower-outcomes/.

[22] Ben Kaufman, *Fewer Rights, Fewer Protections: Reflections on the Lack of Safeguards in Student Lending*, Student Borrower Prot. Ctr. (Dec. 5, 2019), https://protectborrowers.org/fewer-rights-fewer-protections-reflections-on-the-lack-of-safeguards-in-student-lending/.

[23] *See, e.g.*, *id.*; Press Release, Consumer Fin. Prot. Bureau, CFPB and U.S. Department of Education Joint Report Finds a Cycle of Boom and Bust in Private Student Loan Market (July 19, 2012), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-u-s-department-of-education-joint-report-finds-a-cycle-of-boom-and-bust-in-private-student-loan-market/ (". . . compared to federal student loans, private student loans often lack repayment flexibility and other protections when borrowers are struggling to make ends meet. Most private loans have few options for payment modification or forbearance."); Consumer Fin. Prot. Bureau, Mid-Year Update on Student Loan Complaints (June 2015), https://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf ("Many private student lenders advertise options to release a co-signer from a private student loan. However, lenders' and servicers' policies related to this benefit are often opaque and may create significant roadblocks for borrowers seeking to release a cosigner. Most lenders and servicers generally do not proactively notify borrowers when they may be eligible. Consequently, the overwhelming majority of private student loan borrowers in our sample did not apply for a co-signer release. Of those who did apply, the rejection rate was 90%, on a weighted average basis.").

[24] Kat Welbeck, How Private Student Loans are Furthering Racial Disparities in the Student Loan Market, Student Borrower Prot. Ctr. (Aug. 7, 2020), https://protectborrowers.org/how-private-student-loans-are-furthering-racial-disparities-in-the-student-loan-market/; 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.

[25] Ben Kaufman, *New Data Show Borrowers of Color and Low-Income Borrowers are Missing Out on Key Protections*, *supra* note 4.

[26] Ben Kaufman, *New Data Show Dramatic Disparities for Borrowers of Color with Private Student Loans*, *supra* note 4.

- **A growing body of evidence indicates that student loan servicers may provide borrowers of color with inferior customer service, driving borrowers into delinquency and default.** For years, the Bureau has documented how student loan servicing breakdowns mirror the worst practices common to the mortgage servicing industry during the last crisis.[27] A range of law enforcement and supervisory actions related to the illegal servicing of both federal and private student loans have amplified and lent vivid evidence to these claims.[28] Further, available data reveal stark disparities in the rates at which borrowers of color access repayment protections that are intended to be broadly available under the law.[29] For example, Black borrowers are twice as likely as their white peers to fall behind on federal student loans without accessing income-driven repayment, a key protection that sets student loan borrowers' payments as an affordable percent of their income and which has been shown to make borrowers up to 28 times less likely to default on their loans.[30] These observed disparities in rates of access to IDR are not simply a reflection of differences in borrowers' financial footing; research indicates that differences in student and family background characteristics, such as measures of family income and wealth, account for only half of the Black-white gap in default, with the rest plausibly explained by differences in the quality of loan servicing.[31] The Bureau already has the authority to write rules that will ensure all student loan borrowers are protected against industry abuses and deceptive tactics, setting a bedrock of strong, consistent standards that can drive discrimination out of the student loan market and guaranty that borrowers are treated equally.[32]

[27] Consumer Fin. Prot. Bureau, Student Loan Servicing (Sept. 2015), https://www.consumerfinance.gov/data-research/research-reports/student-loan-servicing/.
[28] *See, e.g.*, Consent Order at 9, Wells Fargo Bank, N.A., CFPB No. 2016-CFPB-0013 (Aug. 22, 2016) (Respondent "maximized late fees incurred by many consumers"); Complaint at 18, Consumer Fin. Prot. Bureau v. Navient Corp., No. 3:17-cv-00101-RDM, 2018 WL 2088760 (M.D. Pa. 2018) (stating "Navient's compensation policies for its customer service representatives have incentivized them to push numerous borrowers to forbearance without adequately exploring income-driven repayment plans with those borrowers, and in some cases, without even mentioning income-driven repayment plans at all") Complaint at 11, California v. Navient Corp., No. CGC-18-567732 (Cal. Super. Ct. 2018) (stating "Navient's compensation policies for customer service representatives incentivized this misconduct."); Complaint at 13, Massachusetts v. Pa. Higher Educ. Assistance Agency, 34 Mass.L.Rptr. 616 (Mass. Super. Ct. 2018) (No. 1784-cv-02682) ("PHEAA has wrongfully held borrowers' money that it was not entitled to collect."); Press Release, Cal. Dep't of Bus. Oversight, California Department of Business Oversight Sues Loan Servicer PHEAA/Fedloan (Apr. 2, 2020), https://dbo.ca.gov/2020/04/02/californiadepartment-of-business-oversight-sues-student-loan-servicer-pheaa-fedloan/ [https://perma.cc/ZU33- T6XQ]; Press Release, N.Y. St. Off. Att'y Gen., Attorney General James and Superintendent Vullo Announce $9 Million Settlement of Federal Student Loan Servicing Claims with ACS Education Services (Jan. 4, 2019), https://ag.ny.gov/press-release/2019/attorney-general-james-and-superintendent-vulloannounce-9-million-settlement [https://perma.cc/9U6U-TLXM]; *see also* Seth Frotman, *Every Tool at its Disposal: The Case for a Student Loan Servicing Rulemaking*, 31 Loyola Consumer L. Rev. 553 (2019), https://www.luc.edu/media/lucedu/law/students/publications/clr/pdfs/31-3/10-Frotman.pdf (documenting CFPB allegations of illegal servicing practices).
[29] Ben Kaufman, *New Data Show Borrowers of Color and Low-Income Borrowers are Missing Out on Key Protections*, *supra* note 4.
[30] U.S. Gov't Accountability Off., *Federal Student Loans, Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options*, Report to Congressional Requesters, fig. 6 (Aug. 2015), https://www.gao.gov/assets/680/672136.pdf (according to the report, IDR borrowers had default rates of 0.5 percent in comparison to non-IDR borrowers who had a default rate of 14 percent).
[31] *See* Judith Scott-Clayton, *What Accounts for Gaps in Student Loan Default And What Happens After*, Econ. Studies at Brookings Inst. (June 21, 2018), https://www.brookings.edu/research/what-accounts-for-gaps-in-student-loan-default-and-what-happens-after/.
[32] *See generally* Seth Frotman, *Every Tool at its Disposal: The Case for a Student Loan Servicing Rulemaking*, *supra* note 28.

- **The student loan debt collection machine singles out communities of color with illegal and predatory tactics, amplifying disparities among those already subject to the worst outcomes in the student loan system.** In courtrooms across the country, even during the ongoing pandemic, borrowers are regularly dragged into court for defaulted student loan debt.[33] These borrowers are routinely lied to, illegally hounded, and subjected to withholding and wage garnishment[34]—sometimes pushing them into poverty.[35] Borrowers of color are disproportionately the targets of these predatory practices.[36] For example, recent research has revealed that the National Collegiate Student Loan Trusts, a particularly rapacious creditor known for engaging in the same "robo-signing" tactics seen in the last financial crisis,[37] has overwhelmingly focused its efforts to pursue unjust court judgments on communities of color.[38] In Maryland, for example, more than half of NCSLT lawsuits over the past six years were filed against borrowers in majority-minority zip codes, and more than a quarter were filed against borrowers living in majority-Black Prince George's County.[39] These tactics are replicated every day in courts across the country.[40] Moreover, these discriminatory practices have helped the debt collection industry reach record profits in 2020 while Black and Latino

[33] Student Borrower Prot. Ctr., The Long Legacy of Predatory Private Student Loans (Jan. 2021), https://protectborrowers.org/wp-content/uploads/2021/01/Maryland-NCSLT.pdf.

[34] *See, e.g.*, Consent Order, Transworld Systems, Inc., CFPB No. 2017-CFPB-0018 (Sept. 18, 2017) ("In support of many of these lawsuits, [Transworld] executed affidavits that falsely claimed personal knowledge of the account records and the consumer's debt, and, in many cases, personal knowledge of the chain of assignments establishing ownership of the loans."). Complaint at 45, Consumer Fin. Prot. Bureau v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. 2018) ("Pioneer's false promises that rehabilitation would remove all adverse information regarding the borrowers' loans from their credit reports."); Complaint at 70, Illinois v. Navient Corp., No. 17-CH-00761 (Ill. Cir. Ct. 2017) ("Pioneer Credit Recovery, and General Revenue Corporation's unfair and deceptive debt collection practices."); Press Release, Minnesota Commerce Department, Minnesota Commerce Department Announces Action Against Improper Student Loan Debt Collections (Aug. 11, 2017), https://mn.gov/commerce/media/news/?id=17-307713 ("Minnesota Commerce [Department] . . . and regulators in four other states have reached a $500,000 joint settlement with two subsidiaries of iQor Holdings Inc. for improper debt collection practices, including making abusive and harassing phone calls to increase student loan payments.").

[35] *See, e.g.*, U.S. Gov't Accountability Off., GAO-17-45, Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief (2016), http://www.gao.gov/assets/690/681722.pdf (showing that 47 percent of student loan borrowers subject to Social Security offsets have a monthly benefit that is below the poverty line and is further reduced by the offset. For 16 percent of borrowers, their Social Security benefits are above the poverty line but the offset reduces the benefit below the poverty line); Consumer Fin. Prot. Bureau, Snapshot of older consumers and student loan debt (Jan. 2017), https://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf (detailing the financial strain benefits offsets have on older student loan borrowers); Consumer Fin. Prot. Bureau, 2016 Annual report of the CFPB Student Loan Ombudsman (Oct. 2016) https://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf, (documenting how servicing breakdowns can lead to "unnecessary offset of tax returns garnishment of wages or certain [S]ocial [S]ecurity benefits, and prolonged ineligibility for federal student aid.").

[36] Student Borrower Prot. Ctr., The Long Legacy of Predatory Private Student Loans, supra note 33.

[37] Stacy Cowley & Jessica Silver-Greenberg, *Behind the Lucrative Assembly Line of Student Debt Lawsuits, N.Y. Times* (Nov. 13, 2017), https://www.nytimes.com/2017/11/13/business/dealbook/student-debt-lawsuits.html.

[38] Student Borrower Prot. Ctr., The Long Legacy of Predatory Private Student Loans, supra note 33.

[39] *Id.*

[40] For example, only seven of New Jersey's 21 counties are majority-minority, yet more than half of NCSLT lawsuits in the state are filed in those 7 majority-minority counties. Almost a quarter of cases in New Jersey are filed in Hudson and Essex Counties, which have populations that are respectively 72 percent and 70 percent non-white. Further, in New York, only three of the 62 counties in the state are majority-minority, but almost half of NCSLT lawsuits in the state are filed in those three majority-minority counties. In particular, 44 percent of NCSLT lawsuits were filed in Kings, Queens, and Bronx counties, which are 50.2 percent, 52.2 percent, and 55.3 percent non-white, respectively. Data on file with the authors.

people have disproportionately struggled under the weight of the pandemic and its economic fallout.[41]

These illegal practices and the predatory companies that perpetuate them impose billions of dollars in needless student debt, interest, and fees on borrowers.[42] As research increasingly bears out, this massive burden comes with ripple effects that touch every area of borrowers' lives. People with student loan debt earn less,[43] generate less wealth,[44] and are forced to put off key lifetime financial milestones such as getting married,[45] buying a home,[46] or saving for retirement.[47] And as nefarious actors across the student loan space target unscrupulous practices toward communities of color, Black and Latino borrowers are left to face an unequal

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41 *Have You Taken a Moment to Contemplate the Jaw-Dropping Charges Happening in the ARM Industry*, Inside ARM (Feb. 4, 2021), https://www.insidearm.com/news/00047044-have-you-taken-moment-contemplate-jaw-dro/ ("Many companies in the industry had their best year ever in 2020."); Maria Godoy, Daniel Wood, *What Do Coronavirus Racial Disparities Look Like State by State*, NPR (May 30, 2020), https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state.

42 *See, e.g.*, Press Release, Consumer Fin. Prot. Bureau, CFPB Projects that One-in-Three Rehabilitated Student Loan Borrowers Will Re-Default within Two Years (2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-projects-one-three-rehabilitated-student-loan-borrowers-will-re-default-within-two-years/ (stating that program implementation failures may cost consumers $125 million in unnecessary interest charges alone); Press Release, Consumer Fin. Prot. Bureau, CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every State of Repayment (2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment ("From January 2010 to March 2015, the company added up to $4 billion in interest charges to the principal balances of borrowers who were enrolled in multiple, consecutive forbearances. The Bureau believes that a large portion of these charges could have been avoided had Navient followed the law.").

43 *See, e.g.*, Justin Weidner, *Does Student Debt Reduce Earnings?*, Princeton Dep't of Econ. (Nov. 2016), https://scholar.princeton.edu/sites/default/files/jweidner/files/Weidner_JMP.pdf (finding that "student debt is permanently scarring, as graduates with debt experience no faster income growth than their unburdened peers. Debt induces graduates to enter employment faster and select jobs in unrelated fields, leading to lower income levels and growth rates.").

44 *See, e.g.*, Daniel Cooper & J. Christina Wang, *Student Loan Debt and Economic Outcomes*, Fed. Res. Bank of Bos., *Current Pol'y Persp*. (Oct. 2014), https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/economic/cpp1407.pdf ("In addition, the distribution of total wealth excluding student debt liabilities is lower for homeowners with student debt than for homeowners without student loan debt (again conditional on at least some college attendance). This wealth disparity remains even after controlling for a wide range of demographic and other factors.").

45 *See, e.g*., Robert Bozick and Angela Estacion, *Do student loans delay marriage? Debt repayment and family formation in young adulthood*, 30 Demographic Res. 69, 1865-1891 (June 13, 2014), https://www.demographic-research.org/volumes/vol30/69/30-69.pdf; Dora Gicheva, *Student loans or marriage? A look at the highly educated*, 53 Econ. of Educ. Rev. 207-216 (2016).

46 *See, e.g.*, Meta Brown & Sydnee Caldwell, *Young Student Loan Borrowers Retreat from Housing and Auto Markets*, Fed. Res. Bank of N.Y. (Apr. 17, 2013), http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html (finding that homeownership rates of 30-year-old student loan borrowers decreased by more than 5 percent compared with homeownership rates of 30-year-old non-borrowers, and finding that over the analyzed time period student borrowers were less likely to hold auto debt than nonborrowers); Fed. Res. Bank of N.Y., *Press Briefing On Household Debt, With Focus On Student Debt* 36–47 (Apr. 3, 2017), https://www.newyorkfed.org/medialibrary/media/press/PressBriefing-Household-Student-Debt-April32017.pdf#page=39 (finding that college attendees with student debt have lower homeownership rates than college attendees without student debt and that higher debt balances are associated with lower home ownership rates).

47 *See, e.g.*, Consumer Fin. Prot. Bureau, *Snapshot of older consumers and student loan debt* 14 (2017), http://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf (finding that borrowers nearing retirement "had a lower median amount in their employer-based retirement account or an Individual Retirement Account (IRA) than consumers without student loan debt"); Joe Valenti, *A Look at College Costs across Generations*, AARP (May 2019), https://www.aarp.org/money/credit-loans-debt/info-2019/recent-grads-delay-saving.html.

share of these consequences. The lifelong financial consequences of these companies' actions are even more dire for the borrowers whom they drive into default—a disproportionate part of whom are borrowers of color.[48] Default means that borrowers may struggle to find a job,[49] rent a home,[50] or maintain a professional license,[51] all on top of borrowers having wages garnished,[52] tax refunds withheld,[53] and Social Security benefits offset.[54]

These are the consequences of the decades-long failure to rein in the student loan industry. As predatory actors have gone unpunished and industry has generated new and innovative ways to trick and trap borrowers,[55] the student debt crisis has grown more and more severe. For communities of color already bearing the weight of systemic discrimination, the student debt crisis is a civil rights crisis—and a key stumbling block on the path to equality.

The Nation's Top Consumer Watchdog Must Use its Rulemaking Authority to Combat Discrimination Across the Student Finance Marketplace, Protect Borrowers, and Advance Racial Equity

Student loan debt is the second largest class of consumer credit in the country, and the balance of outstanding student loan debt is rapidly growing.[56] Underlying this unprecedented burden is a broken debt-financed higher education system that punishes borrowers for pursuing the American dream, leaving borrowers who were told that higher education is a gateway to the

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[48] *Supra* note 4.
[49] *See, e.g.*, Nat'l Conf. of St. Leg., *Use of Credit Information in Employment 2015 Legislation* (2015), https://www.ncsl.org/research/financial-services-and-commerce/use-of-credit-information-in-employment-2015-legislation.aspx (showing that as of 2015, 39 states allowed employers to use credit information in employment decisions); Blake Ellis, *Employer credit checks keep jobless out of workforce*, CNN (Mar. 4, 2013), https://money.cnn.com/2013/03/04/pf/employer-credit-checks/.
[50] *See, e.g.*, Christine DiGangi, *Can You Be Denied an Apartment Because of Bad Credit?*, Yahoo Finance (Dec. 13, 2014), https://finance.yahoo.com/news/denied-apartment-because-bad-credit-130049897.html ("The most well-known consequence of having bad credit is trouble getting loans or credit cards, but a low credit score can also make it difficult to find a place to live.").
[51] *See* Jessica Silver-Greenberg, Stacy Cowley & Natalie Kitroeff, *When Unpaid Student Loan Bills Mean You Can No Longer Work*, N.Y. Times (Nov. 18, 2017), https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html; Nick Sibilla, *Defaulting on a student loan could cost you your job in these professions*, NBC News (Aug. 28, 2018), https://www.nbcnews.com/think/opinion/defaulting-student-loan-could-cost-you-your-job-these-professionsncna904476.
[52] *See* U.S. Dep't of Educ., *Collections* (last accessed Feb. 5, 2021), https://studentaid.ed.gov/sa/repay-loans/default/collections ("Your loan holder can order your employer to withhold up to 15 percent of your disposable pay to collect your defaulted debt without taking you to court. This withholding ('garnishment') continues until your defaulted loan is paid in full or removed from default.").
[53] *Id.*
[54] Gov. Accountability Off., Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief (Dec. 2016), https://www.gao.gov/assets/690/681722.pdf.
[55] *See, e.g.,* Joanna Pearl & Brian Shearer, *Credit by Any Other Name: How Federal Consumer Financial Law Governs Income Share Agreements* 12, Student Borrower Prot. Ctr. (July 2020), https://protectborrowers.org/wp-content/uploads/2020/07/Pearl.Shearer_Credit-By-Any-Other-Name.pdf; Hayes & Milton, Student Borrower Prot. Ctr, *supra* note 24; Complaint, Request for Investigation, Injunction, and Other Relief, *In re* Vemo Educ., Inc., F.T.C. (May 31, 2020), https://protectborrowers.org/wp-content/uploads/2020/05/Vemo-Complaint.pdf; Letter from Student Borrower Prot. Ctr. et al. to Kathleen Kraninger, Director Consumer Fin. Bureau (Aug. 20, 2020), https://protectborrowers.org/wp-content/uploads/2020/08/PayPal-Credit-letter-Regulators.pdf; Letter from Student Borrower Prot. Ctr. to Kathleen Kraninger, Director Consumer Fin. Bureau (Oct. 21, 2020), https://protectborrowers.org/wp-content/uploads/2020/12/SBPC_Letter-regarding-Climb-Credit.pdf.
[56] *Household Debt and Credit Report (Q3 2020)*, Fed. Res. Bank of N.Y., https://www.newyorkfed.org/microeconomics/hhdc.html (last visited Feb. 5, 2021).

middle class—that this debt was "good debt"[57]—barely able to stay financially afloat.[58] This reality is particularly stark for the Black and Latino borrowers who bear the brunt of this debt load and its consequences, making student loan debt a key barrier to racial equity.[59]

Disparities in student debt distress have been made worse by the absence of a regulatory framework capable of protecting student loan borrowers—and especially borrowers of color—at every step in the student loan lifecycle. For years, regulators,[60] law enforcement officials,[61] lawmakers,[62] scholars,[63] and consumer advocates[64] have all documented how student loan

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[57] *See, e.g.*, Stephen Rose, *Good Debt: Why Student Loans Are Better For You Than You Think*, The Atlantic (Sep. 4, 2012), https://www.theatlantic.com/business/archive/2012/09/good-debt-why-student-loans-are-better-for-you-than-you-think/261918/.

[58] *See, e.g.,* Jeffrey P. Thompson & Jesse Bricker, *Does Education Loan Debt Influence Household Financial Distress? An Assessment Using the 2007–09 SCF Panel* 2 (Fin. & Econ. Discussion Series, Working Paper No. 2014-90, 2014), https://www.federalreserve.gov/econresdata/feds/2014/files/201490pap.pdf (finding "that student loans are correlated with financial distress in the 2007–09 SCF panel and families that hold student loans are more likely to transition to financial distress between 2007 and 2009. Families with student loans in 2007 were about 4 percentage points more likely to be 60 days late paying bills and about 5 percentage points more likely to be denied credit in 2009."); Student Borrower Prot. Ctr., *Data Point: The Secret Price of Student Debt* (May 2020), https://protectborrowers.org/wp-content/uploads/2020/05/The-Secret-Price-of-Student-Debt.pdf (finding that a typical student loan borrower could pay $29,000 in extra charges on other forms of credit through increased interest rates).

[59] Jillian Berman, 'You have a degree, but who do you know?' Why student debt is a racial-justice issue, MarketWatch (June 19, 2020), https://www.marketwatch.com/story/you-have-a-degree-but-who-do-you-know-why-student-debt-is-a-racial-justice-issue-2020-06-15; Demos & IASP, Less Debt, More Equity: Lowering Student Debt While Closing the Black-White Wealth Gap (2015), https://www.demos.org/sites/default/files/publications/Less%20Debt_More%20Equity.pdf.

[60] *See, e.g.*, Consumer Fin. Prot. Bureau, Student Loan Servicing 103 (Sept. 2015) https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf ("[P]olicymakers have undertaken broad-based legislative and regulatory efforts to strengthen applicable federal consumer financial laws protecting consumers in the servicing of mortgages and credit cards. However, for student loan borrowers, there is no existing, comprehensive federal statutory or regulatory framework providing consistent standards for the servicing of all student loans."); Letter from Conn. Dep't of Banking Counsel Bruce H. Adams to the Consumer Fin. Prot. Bureau in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0381 (July 13, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0381&attachmentNumber=1&contentType=pdf.

[61] *See, e.g.*, Letter from Ill. Att'y Gen. Lisa Madigan, et al. to the Consumer Fin. Prot. Bureau in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0376 (July 14, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0376&attachmentNumber=1&contentType=pdf ("Unlike in similar financial service industries, there is little regulation of specific student loan servicer conduct, such as the handling and application of payments.").

[62] *See, e.g.*, Letter from Congresswoman Susan Davis to Director Cordray in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0379 (July 13, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0379&attachmentNumber=1&contentType=pdf ("[I]t is important the Bureau also put in place strong rules for *all* borrowers, regardless of loan type or who owns their loans. As a prime example, the Bureau should look to our work in the CARD Act to help inform how they should best protect borrowers. . . ."); Steve Fenberg and Faith Winter, *Opinion: Colorado will lead the effort to end the student crisis*, The Colo. Sun (Apr. 11, 2019), https://coloradosun.com/2019/04/11/student-debt-steve-fenberg-faith-winter/.

[63] *See, e.g.*, Letter from Professor Alan White et al. to the Consumer Fin. Prot. Bureau in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-6929 (July 23, 2015), https://www.regulations.gov/document?D=CFPB-2015-0021-6929.

[64] *See, e.g.*, Letter from Nat'l Consumer L. Ctr to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-6840 (Sept. 29, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-6840&attachmentNumber=1&contentType=pdf ("The absence of clear borrower protections contrasts with other consumer credit areas such as credit cards and mortgages."); Letter from Consumers Union to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-7592 (Oct. 20, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-7592&attachmentNumber=4&contentType=pdf ("The Bureau rightly notes that other kinds of consumer debt come

borrowers have fewer rights and protections than borrowers in nearly any other consumer financial market. The Bureau itself has noted that "for student loan borrowers, there is no existing, comprehensive federal statutory or regulatory framework providing consistent standards. . . ."[65] For tens of millions of families, and in particular Black and Latino communities, the student debt crisis and its fallout are the consequences of this failure to rein in the market.

This cannot continue to be the case. As the past several decades of policymaking have made clear, as the COVID pandemic has brought into focus, and as the experiences of countless borrowers of color who struggle under the weight of student loan debt make impossible to ignore, any effort to address systemic barriers to racial equity must protect student loan borrowers. These borrowers cannot wait any longer. The Bureau must use its authority to initiate a broad-based rulemaking guaranteeing all student loan borrowers critical protections across all aspects of financing a higher education.

We cannot continue to ignore the trillion-dollar black hole in our financial markets and its role in perpetuating racial inequity. The Bureau has the authority to create the rules necessary to finally protect borrowers and hold industry accountable. Promises of future intervention cannot and will not solve the racial injustice and inequality that the failures of the student debt crisis drive on a daily basis.[66] Tens of millions of American consumers need you to act now.

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with protections related to repayment and servicing. By contrast, for people who took out loans to get an education, there are fewer protections and the system is often tough to navigate – as a result, these borrowers may be at the mercy of their servicers."); *see also* Seth Frotman, *Broken Promises: How Debt-financed Higher Education Rewrote America's Social Contract and Fueled a Quiet Crisis*, 2018 Utah L. Rev. 4 811-846 (July 2018), https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1172&context=ulr.

[65] Consumer Fin. Prot. Bureau, Student Loan Servicing (Sept. 2015), https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf; *see also* Fed. Res. Bank of St. Louis, *Rohit Chopra, Consumer Financial Protection Bureau, Keynote, November 18, 2013*, https://www.stlouisfed.org/household-financial-stability/events/past-events/generation-debt-the-promise-perils-and-future-of-student-loans/videos/keynote ("Student loans securities filings and service or performance reports are much less granular than similar mortgage reports. The drivers of pre-payment, delinquency and default in the student loan market are not well understood. Questionable accuracy of credit reporting data in the student loan industry adds further noise and uncertainty."); Written Testimony, Rohit Chopra, U.S. House of Rep., Comm. on Fin. Servs. (Sept. 26, 2019), https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-choprar-20190926.pdf ("And here's the irony: when student loan borrowers make mistakes, they pay dearly for them. They may not be able to pass an employment verification check or even rent an apartment. But, when student loan companies make mistakes and violate the law, the Department of Education often covers for them and continues lavishing them with valuable government contracts and subsidies. This is not a recent phenomenon – it has been going on for years under multiple administrations."). Note that the Bureau added student loan servicing to its rulemaking agenda in 2015, but that the political leadership of the Bureau under then-Acting Director Mick Mulvaney withdrew student loan servicing from this agenda in May 2018 during the same week in which it shuttered the Office for Students and Young Consumers. This rule was intended to provide enhanced consumer protections to student loan borrowers. *See* Michael Stratford, *CFPB gives up on plans to regulate student loan servicers* (May 9, 2018), https://subscriber.politicopro.com/education/article/2018/05/cfpb-gives-up-on-plans-to-regulate-student-loan-servicers-526274. The political leadership withdrew this planned rulemaking despite widespread recognition that student loan borrowers have fewer protections than borrowers with any other major class of consumer debt. In fact, just seven weeks after scrapping this rulemaking, the Trump Administration's own Treasury Department warned of significant risks to student loan borrowers and taxpayers because "[f]ederal student loan servicing currently lacks effective minimum servicing standards."; U.S. Dep't of the Treasury, *A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation* 125 (July 2018), https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf.

[66] Michael Stratford, *CFPB gives up on plans to regulate student loan servicers, supra* note 65.

Sincerely,

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