March 25, 2021

VIA ELECTRONIC MAIL

Tess Michaels (tess@stridefunding.com)
Chief Executive Officer
Stride Funding, Inc.
P.O. Box 660675, PMB 70567
Dallas, TX 75266

Re: Potential Discrimination in Stride Funding's ISA Platform

Dear Ms. Michaels,

We write on behalf of the NAACP Legal Defense & Educational Fund, Inc. (LDF) and the Student Borrower Protection Center (SBPC) to express serious concerns that the algorithm Stride Funding, Inc. (Stride) uses to price and market income share agreements (ISAs) violates the Equal Credit Opportunity Act (ECOA). Testing through Stride's own platform shows that Stride's pricing model offers significantly worse financial products to people attending historically Black colleges and universities (HBCUs) and other minority-serving institutions (MSIs) than to those who attend predominantly white institutions (PWIs) and other non-MSIs. Particularly given how the economic fallout of the ongoing COVID-19 pandemic has disproportionately hurt Black Americans, the need for equitable access to consumer financial products and services is more important than ever. We write now to explore the possibility of coming to an amicable resolution to cure Stride's platform of its discriminatory impact.

BACKGROUND[1]

Stride markets its ISAs to students as "innovative alternative[s] to student loans."[2] Currently, it appears that Stride has executed ISAs with approximately

[1] The facts as set forth herein are based on our investigation to date, including analysis done by the SBPC. A full set of the SBPC's findings is attached as Exhibit A to this letter. We reserve the right to supplement this information as our investigation continues.
[2] Stride Funding, https://www.stridefunding.com/ (last visited Mar. 18, 2021).

1,800 students—the vast majority of whom are underrepresented minorities.[3] Stride further acknowledges that its ISAs are priced algorithmically based on a number of factors including an applicant's credit report[4] and the particular college or university an applicant attends.[5] The particular school an applicant chooses may also impact the payback period of the ISA they receive.[6] In general, it appears that higher prices will be charged for applicants deemed "riskier"—those whose prospects of repayment are, according to the algorithm, likely lower.[7]

The SBPC tested Stride's pricing platform in January 2021 by submitting applicant information for hypothetical borrowers who were identically situated in all respects but for the educational institution they attended.[8] The SBPC collected the rates and ISA terms quoted by Stride's algorithm, then compared the rates and ISA terms received by hypothetical applicants attending HBCUs and other MSIs to those attending comparable non-MSIs.[9] The SBPC supplemented these findings with additional testing.[10]

The results of the SBPC's tests are highly concerning. Applicants attending MSIs were charged anywhere from 2% to 39% more than their identical counterparts who chose to attend comparable non-MSI schools—forcing students to face potentially multi-thousand-dollar penalties if they choose to attend an HBCU or other MSI.[11] In one example, Stride reported it would charge a student studying computer science at Tuskegee University, an HBCU, over $2,800 more for the same

[3] *Profile for Tess Michaels, 30 Under 30 Education*, Forbes, https://www.forbes.com/30-under-30/2021/education/ (last accessed Mar. 23, 2021).
[4] *Why ISAs?*, Stride Funding, https://www.stridefunding.com/students (in explaining how credit history is used, Stride reports, "We don't use FICO scores, and only look at your credit history to make sure your other obligations are manageable").
[5] *Id.* (explaining how rates are calculated, noting that prices "depend on a number of factors including academic program, college or university").
[6] *Id.* (stating that payback period "generally lasts 5-7 years based on your school [and other factors]").
[7] Andrew Ceonzo & David Kalafian, *Streamlining Higher Education: Aligning Costs and Student Outcomes* 9 (2021).
[8] Student Borrower Protection Ctr., Inequitable Student Aid 24–25 (Mar. 2021). Hereafter, this report is referred to as "Ex. A."
[9] *Id.* As SBPC's report explains in further detail, schools were deemed "comparable" by looking at proximity and "relative similarity in various metrics for student outcomes, including graduation rates, retention rates, and student loan repayment rates." *Id.* at 25.
[10] *Id.* at 24–25.
[11] *Id.* at 13–22.

Stride ISA than an identical student studying the same subject at Auburn University, a nearby college that is 81 percent white.[12] This pricing disparity cannot be attributed to any differences in metrics such as graduation rates, retention rates, or loan repayment rates or institutional rankings; for example, as the SBPC found, Stride's platform often quoted students at HBCUs higher prices than it did students from lower ranked non-HBCUs.[13]

POTENTIAL LIABILITY UNDER THE EQUAL CREDIT OPPORTUNITY ACT

ECOA prohibits anyone offering a credit product—including an ISA[14]— from "discriminat[ing] against any applicant, with respect to any aspect of a credit transaction, on the basis of race . . . ." 15 U.S.C. § 1691(a)(1). "Because the language of the ECOA is broad and its antidiscriminatory purpose is overriding," the statute must be liberally construed. *Brothers v. First Leasing*, 724 F.2d 789, 796 (9th Cir. 1984); *accord Yeh Ho v. Wells Fargo Bank, N.A.*, No. 15 CV 81522, 2020 WL 820264, at *4 (S.D. Fla. Feb. 19, 2020) (ECOA "must be construed broadly to effectuate its remedial goals"). Practices may violate ECOA by intentionally discriminating against *or* having an unjustified disparate impact on protected groups. *See* 12 C.F.R. § 202.6(a) n.2.

The SBPC's testing provides strong evidence that Stride's model prices ISAs in a way that penalizes applicants who attend MSIs, and in particular HBCUs. The vast majority of students attending HBCUs are Black; as of 2018, approximately 76% of students enrolled at HBCUs identified as Black.[15] The penalty Stride

[12] *Id.* at 15; *Auburn University*, College Factual, https://www.collegefactual.com/colleges/auburn-university/student-life/diversity/ (last visited Mar. 18, 2021).
[13] Ex. A at 20–21.
[14] ECOA broadly defines credit as "the right . . . to incur debt and defer its payment or to purchase property or services and defer payment therefor." 15 U.S.C. § 1691a(d). Thus, courts have recognized that a transaction involves credit so long as an applicant incurs a "debt *or other obligation*." *Capital Indemnity Corp. v. Aulakh*, 313 F.3d 200, 203 (4th Cir. 2002). Because ISAs give students the ability to purchase educational services in exchange for a deferred payment obligation, they are plainly credit. *Cf., e.g.*, *Gunter v. Long Island Power Auth./Keyspan*, No. 08 CV 498, 2012 WL 4057410, at *9 (E.D.N.Y. Aug. 8, 2012) (discussing breadth of "credit" definition and finding that purchase of electrical service with deferred payment plan constituted credit).
[15] United States Dep't of Educ., *Fast Facts: Historically Black Colleges and Universities*, https://nces.ed.gov/fastfacts/display.asp?id=667 (last visited Mar. 23, 2020).

appears to apply to those who attend HBCUs will thus be disproportionately borne by Black borrowers.

Stride's penalties for MSI attendees not only produce inequitable, discriminatory results, but they also have no legitimate purpose. Stride's penalties for HBCUs and the SBPC's findings in relation to them crystalize this point. *First*, the SBPC's testing found that the HBCU penalty remained even after controlling for student outcome factors and external rankings.[16] Charging a student more for attending a school that promises better outcomes, solely because that school has a higher Black population and is publicly identified as an institution for the Black intellectual tradition, serves no legitimate interest—and indeed stigmatizes and devalues the very concept of Black institutions of higher learning. *Second*, treating HBCUs as "riskier" propositions for student outcomes is at odds with reality—HBCUs have long served as a pipeline for upward mobility for Black students across the country. Despite comprising just 3% of American universities, HBCUs produce approximately 20% of Black college graduates, and approximately 25% of Black graduates in the fields of science, technology, engineering, and mathematics.[17] Twenty-five percent of Black teachers graduate from HBCUs.[18] And yet tuition at HBCUs is, on average, thirty percent less than at comparable non-HBCUs.[19] As the Department of Education has recognized, HBCUs "still have an outsize role in preparing students to meet urgent national priorities in STEM fields, in filling teaching jobs, and in uplifting boys and men of color."[20] Perhaps unsurprisingly, then, Black HBCU graduates consistently score higher on markers of social, financial and physical wellbeing than their peers who attend non-

[16] Of course, university rankings are a flawed proxy for school quality. See Ex. A at 21. However, they are nevertheless useful here to the extent that they are likely to be reflective of the types of variables that may be informing Stride's model: *perceived* school quality and, intentionally or not, preexisting socioeconomic advantages among student populations. *See* John Tierney, *Your Annual Reminder to Ignore the* U.S. News & World Report *College Rankings*, The Atlantic, https://www.theatlantic.com/education/archive/2013/09/your-annual-reminder-to-ignore-the-em-us-news-world-report-em-college-rankings/279103/ (Sept. 10, 2013).
[17] Michael Lomax, *Six Reasons HBCUs Are More Important Than Ever*, United Negro College Fund, https://uncf.org/the-latest/6-reasons-hbcus-are-more-important-than-ever (last visited Apr. 3, 2020).
[18] Arne Duncan, U.S. Secretary of Educ., Opening Remarks at the 2014 National HBCU Conference (Sept. 23, 2014), *available online at* https://www.ed.gov/news/speeches/hbcu-value-proposition.
[19] Lomax, *supra* n.17.
[20] Duncan, *supra* n.18.

HBCUs.[21] To treat an HBCU graduate as less creditworthy than their otherwise identical peers at comparable other institutions has no basis in reality. In short, because Stride's use of education information in the algorithm "lacks relevance to [assessing creditworthiness], it becomes suspect." *Robinson v. 12 Lofts Realty*, 610 F.2d 1032, 1041 (2d Cir. 1979).

Certain other aspects of Stride's algorithm also raise concerns over the company's compliance with fair lending laws. For example, there is evidence that Stride's model also charges higher rates from students attending Hispanic-Serving Institutions (HSIs) as compared to those attending nearby and comparably-ranked non-HSIs. For example, students attending University of Central Florida, an HSI, appear to be charged approximately $253—or 4%—more than students attending nearby Rollins College, a non-MSI.[22] Yet the University of Central Florida has a higher overall graduation rate, retention rate, and average postgraduate salary than Rollins College.[23] Such disparities, which will disproportionately disadvantage Latinx borrowers without reflecting actual student outcomes, potentially run afoul of ECOA.

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We appreciate and share Stride's stated goal of providing access to financial products to those who have long been left out of traditional credit marketplaces. Such alternative financing models must not, however, arbitrarily disadvantage Black borrowers. And the use of educational data presents special complications, given the limits of their predictive value and the way they can exacerbate racial disparities. We welcome the opportunity to engage in a dialogue with you to learn more about how Stride can better accomplish its goals without discriminating against Black students and other students of color. Please let us know about your availability to meet and discuss these issues.

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[21] Sean Seymour & Julie Ray, *Grads of Historically Black Colleges Have Well-Being Edge*, Gallup (Oct. 27, 2015), *available online at* https://news.gallup.com/poll/186362/grads-historically-black-colleges-edge.aspx.
[22] Ex. A at 20.
[23] *Compare University of Central Florida*, U.S. Dep't of Educ. College Scorecard, https://collegescorecard.ed.gov/school/?132903-University-of-Central-Florida (last visited Mar. 18, 2021), *with Rollins College*, U.S. Dep't of Educ. College Scorecard, https://collegescorecard.ed.gov/school/?136950-Rollins-College (last visited Mar. 18, 2021).

STUDENT BORROWER PROTECTION CENTER

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