



March 8, 2021

Commissioner Manuel P. Alvarez
California Department of Financial Protection and Innovation
2101 Arena Boulevard
Sacramento, CA 95834

Dear Commissioner Alvarez,

The undersigned groups collectively represent the Campaign for California Borrowers' Rights, a coalition of advocacy organizations fighting to protect student loan borrowers.¹ As the Department of Financial Protection and Innovation (DFPI) seeks to use its new authorities pursuant to the California Consumer Financial Protection Law, we appreciate the opportunity to comment on how DFPI can better protect consumers throughout the student loan market.

Today, nearly four million Californians owe approximately \$150 billion in student debt.² These borrowers live in every corner of the state and are from every walk of life—young and old,³ urban and rural.⁴ The breadth of the challenges that California borrowers face cannot be understated. Their student debt casts a shadow over everything they do—affecting their ability to buy homes, save for retirement, get married, start families, pursue certain careers, start businesses, and more.⁵ Unfortunately, rampant abuses and consumer harm across the entirety of the student loan market only serve to exacerbate their struggles.

Millions of student loan borrowers across the country, including right here in California, are suffering the fallout from the student debt crisis. Borrowers with disabilities are having their Social Security benefits seized because their student loan servicer failed to inform them of

¹ *A Campaign for California Borrowers' Rights* (2021), <https://www.californiaborrowers.org/>.

² *Id.*

³ Persons over the age of 60 are the fastest growing cohort of student loan borrowers. As in 2017, there were more than 317,000 student loan borrowers over the age of 60. *Older consumers and student loan debt by state*, Consumer Financial Protection Bureau (Aug. 2017), https://files.consumerfinance.gov/f/documents/201708_cfpb_older-consumers-and-student-loan-debt-by-state.pdf.

⁴ More than 80,000 student loan borrowers live in rural parts of California. *Consumer Credit Explorer*, Fed. Reserve Bank of Phila. (2019), <https://www.philadelphiafed.org/surveys-and-data/community-development-data/consumer-credit-explore>; *Portfolio by Location*, U.S. Dep't of Educ., Fed. Student Loan Portfolio (2019), <https://studentaid.gov/data-center/student/portfolio/>.

⁵ See generally Seth Frotman, *Broken Promises: How Debt-financed Higher Education Rewrote America's Social Contract and Fueled a Quiet Crisis*, 2018 Utah L. Rev. 4 (2018), <https://dc.law.utah.edu/ulr/vol2018/iss4/1/>.

available discharge options.⁶ Older borrowers are having their retirement jeopardized because lenders are arbitrarily denying cosigner release.⁷ Systematically disenfranchised borrowers are targeted with high-cost, high-risk financial products used to prop up predatory for-profits schools.⁸ Borrowers of color are having their wages garnished as collectors employ abusive tactics to pursue default judgments against them for debt they may not even owe.⁹

DFPI has an opportunity to change this. But to do so, it must recognize that what plagues higher education finance is not limited to some small set of actors or one sector of schools; the companies repeatedly featured in headlines are not merely outliers in an otherwise benevolent system. In recognition of this fact, consumer finance experts worked with California policymakers to ensure DFPI was empowered with the authority to oversee, regulate, and enforce a robust consumer protection agenda. This agenda must prioritize protecting student loan borrowers at every point in which they interact with the broader student finance market, including private student lenders, campus banking products, student loan servicers, debt collectors, lead generators, credit reporting agencies, for-profit schools, and specialty nonbank entities ranging from cohort default manipulation companies¹⁰ to guaranty agencies¹¹ to specialty CRAs.¹²

DFPI must use every tool at its disposal to cover the waterfront of the student loan market, thereby ensuring that every sector has oversight and accountability. Areas of concern include but are not limited to:

- As DFPI seeks to define the scope of the student loan market, it is vital that the market definition includes every financial product students use to fund their postsecondary education—including where such products seek to evade the definition of “loan” in an

⁶ *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief*, Gov’t Accountability Office (2016), <https://www.gao.gov/products/gao-17-45>.

⁷ See *AG Ferguson: Judge Rules National Student Loan Servicer Navient Broke The Law In Servicing Student Loan Debt*, Wash. State Office of the Att’y Gen. (Mar. 5, 2021), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-judge-rules-national-student-loan-servicer-navient-broke-law>.

⁸ See Jillian Berman, *A \$5 billion ‘shadow debt’ market is helping keep for-profit colleges afloat, new report charges*, MarketWatch (July 20, 2020), <https://www.marketwatch.com/story/inside-the-5-billion-shadow-student-debt-market-that-helps-keep-for-profit-colleges-afloat-11595021570>.

⁹ See *The Long Legacy of Predatory Private Student Loans*, Student Borrower Protection Ctr. (Jan 2021), <https://protectborrowers.org/wp-content/uploads/2021/01/Maryland-NCSLT.pdf>.

¹⁰ See *Affirming Accountability*, Student Borrower Protection Ctr. (Dec. 2020), <https://protectborrowers.org/wp-content/uploads/2020/12/Affirming-Accountability.pdf> (describing the role cohort default rate manipulation companies in the student debt crisis).

¹¹ Mike Pierce, *What it means to be a student loan servicer: Guaranty Agency edition*, Student Borrower Protection Ctr. (Mar. 29, 2019), <https://protectborrowers.org/what-it-means-to-be-a-student-loan-servicer-guaranty-agency-edition/>.

¹² Mike Pierce, *How a Data Company at the Center of the Student Loan System is Costing Borrowers Millions*, Student Borrower Protection Ctr. (Jan 28, 2020), <https://protectborrowers.org/how-a-data-company-at-the-center-of-the-student-loan-system-is-costing-borrowers-millions/>.

attempt to avoid regulation and oversight.¹³ Data shows how the increasing prevalence of non-traditional financing options risks discriminatory outcomes,¹⁴ leaving California's most underserved communities to bear a higher burden in pursuit of the American Dream. DFPI must ensure that any effort to regulate the student loan market includes robust oversight of emerging products such as income share agreements. In particular, where such products are made or serviced by entities that are already licensed, DFPI should craft inclusive rules that establish consumer protections, broad oversight, and comprehensive market monitoring so that the entirety of financial products offered by these entities are covered.

- Currently, there are no consistent reporting requirements for the private student loan market. The lack of insight into what companies are making these loans and who they are lending to allows a seedy underbelly of shadow student lenders to exploit loopholes and evade regulatory scrutiny.¹⁵ DFPI must aggressively utilize its market monitoring authority to provide much needed transparency on the entire student loan market, including schools, loan holders, lenders, and servicers.
- DFPI has broad authority to oversee student loan companies that are responsible for managing the day-to-day aspects of repayment—the aspects that are critical to determining borrower outcomes and ultimate borrower success. Unfortunately, when these companies fail to adequately service student loan accounts, borrowers suffer the fallout. Accordingly, DFPI should use the full range of tools at its disposal to scrutinize these companies to ensure compliance with applicable federal and state law, including the recently enacted Student Borrower Bill of Rights, thereby ensuring borrowers can access their repayment protections and successfully navigate student loan repayment.
- For years, unscrupulous private student loan collectors have been emulating the worst practices of the mortgage crisis.¹⁶ Despite large scale reforms to tackle these practices in the mortgage market, no such change has occurred in the student loan market. Collectors continue to target student loan borrowers with a volume-based business model predicated on pursuing and exploiting borrowers in Black and Latino communities. DFPI should take action to end abusive collection tactics in all forms, prioritizing those that disproportionately target communities of color.

¹³ See generally *Income Share Agreements*, Student Borrower Protection Ctr., <https://protectborrowers.org/income-share-agreements-2/>.

¹⁴ See, e.g., Stephen Hayes & Alexa Milton, *Solving Student Debt Or Compounding The Crisis?: Income Share Agreements and Fair Lending Risks*, Student Borrower Protection Ctr. (July 2020), https://protectborrowers.org/wp-content/uploads/2020/07/SBPC_Hayes_Milton_Relman_ISA.pdf.

¹⁵ *Shadow Student Debt*, Student Borrower Protection Ctr. (July 2020), <https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf>.

¹⁶ 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>.

California families are facing significant challenges that demand significant solutions—solutions that can match the seriousness and scale of the harm perpetrated across the market. Diligent supervision, proactive enforcement, deliberate rulemaking, and smart data collection will demonstrate DFPI's deep commitment to demanding answers when consumers ask for help. These critical efforts will offer a path forward for student loan borrowers, and also for all Californians. We look forward to continuing this discussion at your earliest convenience to ensure the DFPI is using its authorities to the maximum extent possible to protect student loan borrowers.

Sincerely,



STUDENT
BORROWER
PROTECTION
CENTER

