STUDENT BORROWER PROTECTION CENTER

PUSHING PREDATORY PRODUCTS

How Public Universities are Partnering with Unaccountable Contractors to Drive Students Toward Risky Private Debt and Credit

June 2021

Introduction

Reports on the student debt crisis often focus on the fact that there is over $1.7 trillion in student loan debt outstanding in the United States.[1] But that massive figure does not represent the full scope of money that students owe as a consequence of their pursuit of higher education. The truth of the matter is that nobody actually knows how much debt and credit is used to pay for college attendance. Instead, as the Student Borrower Protection Center (SBPC) has previously documented, billions of dollars used to finance higher education exist in the massive, opaque, and lightly regulated market for so-called "shadow student debt"—an umbrella term for the broad set of risky loans and credit available outside of the traditional private student loan market.[2] This debt has been instrumental as a tool to prop up some of the most predatory schools in the for-profit college sector, leaving borrowers with unaffordable debt and forcing them to grapple with a range of illegal industry practices as they try to pay it back.[3]

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The SBPC's new investigation into shadow student debt has revealed an additional troubling trend: public institutions of higher education across the country, from flagship state universities to local community colleges, are driving students to take on possibly billions of dollars of dangerous shadow student debt. This report lays out these findings with a particular focus on how Online Program Managers (OPMs)—private contractors that colleges hire to assist them in the expansion of their online course offerings—are helping public schools push students toward these dangerous forms of credit. This pattern is especially prevalent at so-called "bootcamps," short-term, non-degree granting credential programs that OPMs provide on behalf of client colleges. These programs claim to train students in topics ranging from software development to financial technology ("fintech"). In short, this report reveals that public schools are blurring the lines between lender, school, and service provider in their marketing materials while directing students to take on expensive credit with risky terms to finance attendance at OPM-backed bootcamps.

Public schools' efforts to drive students toward shadow student debt likely violate critical consumer protections, making clear that the Department of Education (ED) must respond with a level of urgency that it has so far yet to muster. Moreover, in light of the Dodd-Frank Wall Street Reform and Consumer Protection Act's (the Dodd-Frank Act or Dodd-Frank) extension of authority to the Consumer Financial Protection Bureau (CFPB/Bureau) over any firm providing "substantial assistance"[4] to a consumer finance company, OPMs' actions in this space raise the need for substantial investigation and inquiry by the CFPB. This report lays out clear steps that ED, the CFPB, and state policymakers must take to enforce the law and protect borrowers.

Background: Private Student Loans and Shadow Student Debt

While most student loans in the United States are Direct Loans originated by the Department of Education, private student loans—consisting mainly of loans made by large banks, credit unions, and other companies offering specialty credit used to finance postsecondary education[5]—are now a roughly $140 billion market.[6] These loans are usually used as a supplement to federal student aid,[7] and they have grown rapidly in tandem with federal student loans. The balance of private student loans outstanding is now larger than the payday loan market and the total balance of past-due medical debt in the U.S.,[8] with borrowers owing 71 percent more private student loan debt than they did a decade ago.[9] Moreover, this market continues to expand at a brisk pace—from 2008 to 2019, the balance of outstanding private student loans grew a full 11 percentage-points more than the balance of auto loans, 69 percentage-points more than the sum of credit card balances, and 70 percentage-points more than the mortgage market.[10]

Americans pay almost as much in interest and fees each year on private student loans as they do on overdrafts, and well over half of payments on private student loans are made by households that report facing substantial financial hardship.

Industry regularly paints a rosy picture of borrower outcomes in the private student loan market,[11] but research indicates that many borrowers—and, in particular, many borrowers of color—struggle under the weight of private education debt. For example, Americans pay almost as much in interest and fees each year on private student loans as they do on overdrafts, and well over half of payments on private student loans are made by households that report facing substantial financial hardship.[12] Recent analysis shows that nearly one-in-four Black borrowers with private student loans reports falling behind on those loans due to economic hardship, a rate nearly four times higher than that of their white peers.[13] Research additionally indicates that Black borrowers with private student loans who earn bachelor's degrees are roughly ten times more likely to have fallen behind in repayment on those loans than white borrowers with private student loans at the same level of educational attainment.[14] The situation is made worse by a unique lack of consumer protections in the private student loan space,[15] including the absence of key data concerning basic facts related to the market and borrowers' experiences within it.[16]

Additionally, away from brand-name private student loan companies and sometimes even from the legal definition of a "private education loan,"[17] the broader student finance market also includes a variety of expensive, misleadingly marketed, and lightly underwritten credit products that are used primarily to finance attendance at for-profit colleges.[18] These products include certain private student loans, personal loans, lines of open-ended revolving credit, income share agreements, unpaid balances owed directly to schools, and various other forms of debt and credit. Moreover, the multi-billion dollar market that these products constitute has traditionally been overlooked by regulators and policymakers. Accordingly, products in this market are referred to as forms of "shadow student debt."[19]

Unfortunately, it is now clear that these debts are not confined to the for-profit space. Instead, an SBPC investigation has revealed that public universities are now also driving students toward dangerous shadow student debt.

Shadow student debt carries considerable risk. Investigations into this market have identified that it involves extremely high interest rates and fees,[20] reckless underwriting including the extension of credit that lenders may know is unlikely to be repaid,[21] and aggressive debt collection practices including transcript and credential withholding.[22] Investigations into this market have revealed abuses ranging from small startups misrepresenting the costs of their loans[23] to large corporations extending revolving credit at double-digit interest rates for dubious non-accredited programs.[24] Further, a history of law enforcement actions[25] and scandals at for-profit colleges[26] points to an industry that regularly fails to comply with federal and state law,[27] and which is often instrumental in propping up for-profit colleges that do the same.[28]

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About this Report

Context and Methodology

This report uncovers new evidence of the reach of the market for shadow student debt and the scope of firms driving students toward it.

Building on previous research,[29] the SBPC has continued to investigate the shadow student debt market and companies operating in the space. Ongoing market monitoring revealed that public colleges and universities appeared to be advertising or otherwise recommending to students that they finance educational expenses for certain courses of study through firms operating in the shadow student loan market.[30]

To fully investigate this phenomenon, the SBPC accessed a comprehensive list of public Title IV schools from the Department of Education[31] and conducted exhaustive online searches using various permutations of the names of schools and the names of shadow student debt companies compiled in previous research.[32] In addition, the SBPC reviewed several contractual arrangements between schools and third-party contractors that assist in online course development and implementation, known as Online Program Managers, that other researchers made available as part of previous analysis (see further discussion of OPMs below).[33]

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The SBPC's investigation revealed that public colleges and universities across the country now offer courses under their own branding that direct students to finance their education through shadow student debt. These courses frequently (though not exclusively) exist as non-Title IV eligible bootcamps, which are short-term, non-degree granting credential programs that claim to train students in topics ranging from software engineering to data science.[34] Often aimed at students looking to change careers, including students who either already completed or never attended college, bootcamps regularly make lofty promises of high-paying jobs in the technology industry upon graduation and usually encourage students to take on shadow student debt in the process—even when these programs exist under a public school's brand.

Online Program Managers

The SBPC's investigation also revealed that instances in which public institutions were found to drive students toward shadow student debt usually (though not always) involved courses that schools offered through a contractual relationship with an Online Program Manager (OPM).

OPMs are companies that facilitate colleges' expansions of online educational offerings in exchange for a portion of the tuition revenue associated with the courses of study they manage.[35] The specific services that OPMs provide at a given school vary on a contractual basis across institutions, with OPMs in some instances simply providing a platform for school-provided teaching and in other cases OPMs developing, recruiting for, and conducting job placement services for a given course of study.[36] Arrangements between OPMs and schools can be lucrative for both sides. For example, a former Title IV college dean who contracted with an OPM to develop an online course of graduate study referred to online OPM-backed programs as a "cash cow" for schools.[37] Meanwhile, OPMs take as much as 80 percent of the tuition dollars associated with the courses they help schools introduce through so-called "revenue sharing" arrangements.[38] Recent estimates indicate that universities and colleges pay as much as $4 billion per year to OPMs, and that they will pay $10 billion per year to these firms by 2025.[39]

Many of the largest OPM firms are publicly traded corporations, and the recent history of the space has involved OPMs increasingly pivoting toward offering non-degree granting vocational bootcamps.[40] Notable examples of this trend include the $750 million 2019 acquisition of the technology education company Trilogy Education by the OPM 2U, Inc. and the $20 million 2019 purchase of Fullstack Academy by the OPM Zovio Education.[41] Both transactions were framed by the acquiring companies as efforts to expand their respective bootcamp offerings.[42]

Scholars and consumer advocates have questioned the quality of courses offered through OPMs.[43] For example, after reviewing various contracts underlying the operating agreements between universities and OPMs, researchers at the nonprofit The Century Foundation concluded that many programs offered at brand-name universities through OPMs "expose students to the same risks involved with enrolling in a for-profit college, but with even less protection than those students receive," that these programs suffer from a "lack of transparency afforded students and the public," and that school-OPM agreements can "wrest most educational control from the professors and instructors who have been hired to teach those subjects."[44] The researchers warned of instances particularly involving public colleges where students were "left with astronomical debts" for low-quality programs.[45] Indeed, the track record of outcomes for students who pursue courses of study provided by OPMs illustrates the risks that these firms produce, with borrowers regularly taking on massive debt burdens for courses that ultimately prove to be of far lower quality than advertised.[46]

Importantly, the growth of the OPM sector depends in part on 2011 guidance from the Department of Education creating a loophole that exempts OPMs from certain rules meant to prevent schools from incentivizing their employees and agents to maximize class enrollment in ways that can be dangerous for students.[47] These rules were passed into law decades earlier after a series of scandals in the 1980s revealed that for-profit colleges had relied on high-pressure sales tactics to meet enrollment goals, often leading "admissions counselors" to target vulnerable and unprepared students for degrees they would be unlikely to finish or benefit from.[48] Under the so-called "incentive compensation ban," schools cannot pay employees based on the number of students they recruit or receive a share of the federal student aid dollars generated by the students they help enroll.[49] However, a 2011 "Dear Colleague" letter from ED exempted OPMs from this ban if they provided "bundled services" at a given school, meaning that OPMs could take a cut of the revenue they generate if they offer services such as marketing, program application assistance, or course support in addition to recruitment.[50]

Recent prominent examples lay bare that this exemption has allowed OPMs to revive the harmful practices that the incentive compensation ban was meant to weed out.[51]

OPMs

Contractors that facilitate colleges' online course offerings, taking a cut of revenue genrated

Trilogy Education Services
- Owner: 2U, Inc.
- School partners: 49
- 2020 revenue: $279 million[1]

Fullstack Academy
- Owner: Zovio, Inc.
- School partners: 10+
- 2020 revenue: $21 million[2]

Promineo Tech
- School partners: 22
- Focus area: community colleges

Software Guild
- Owner: John Wiley & Sons Inc.
- School partners: 9

Shadow Lenders

Companies offering costly, risky debt and credit generally used to prop up for-profit schools

climb
- Origination: $100 million+
- Borrowers: 11,000+
- School partners: 140+

meritize – Get Credit For Your Merit
- Borrowers: 4,000+
- School partners: 300+
- Funds raised: $20 million

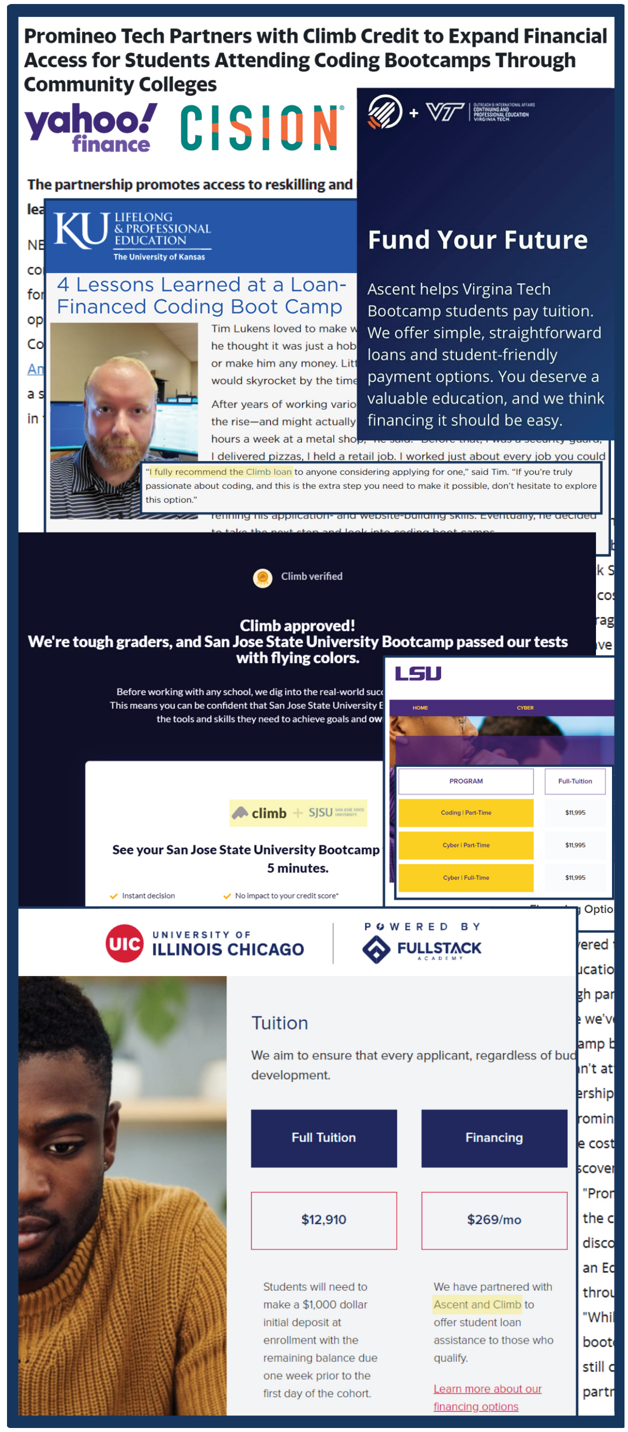
Ascent – Loans that power bright futures.
- Offers bootcamp loans as "Skills Fund"
- Bootcamps served: 400+

PayPal CREDIT
- Point-of-sale revolving credit
- Credit available: $3 billion[3]

Source: public reports, company filings
[1] Alternative Credential Segment revenue
[2] Growth Segment revenue
[3] Unused credit among account holders

Findings

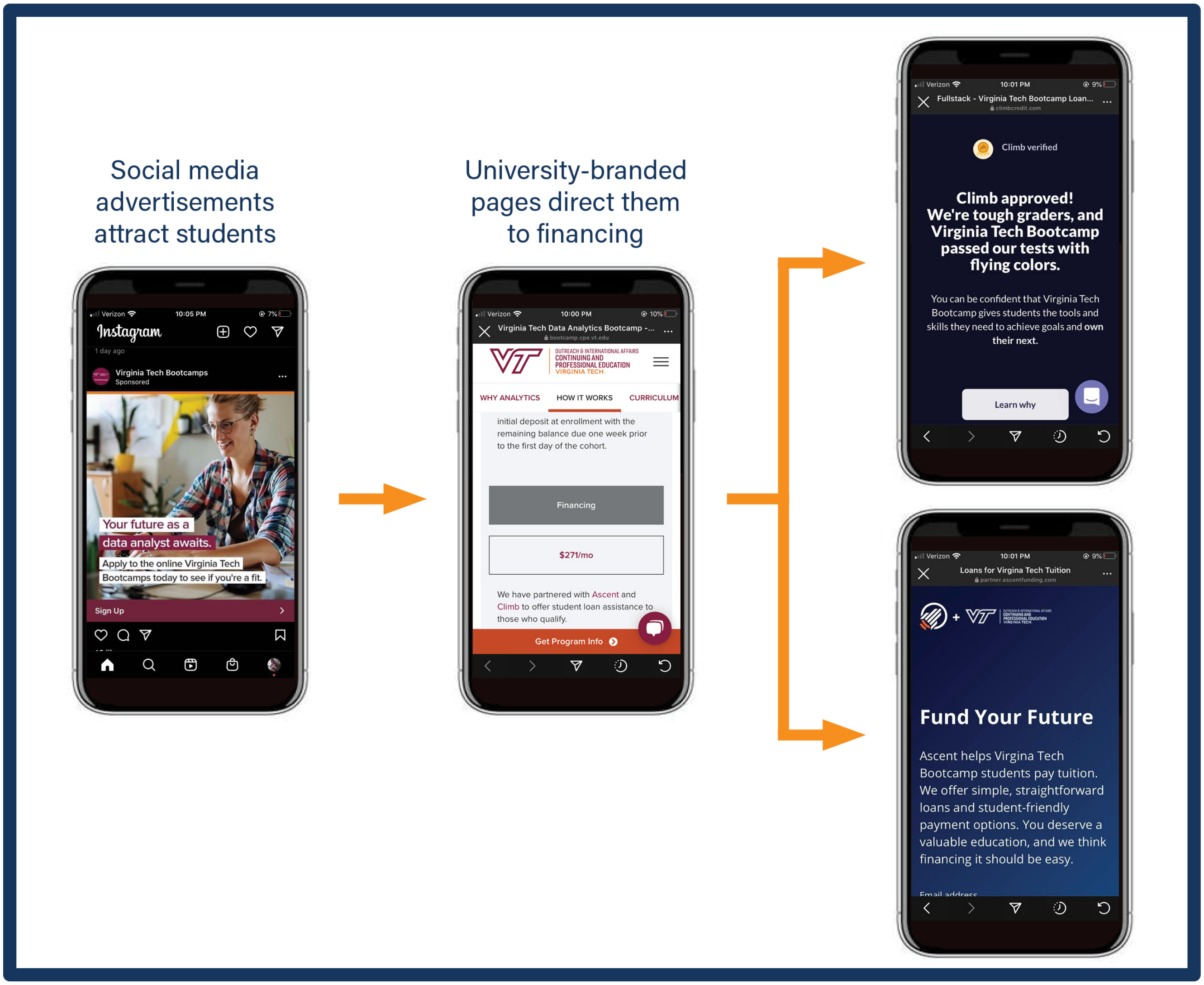
This report reveals that public colleges and universities across the country are driving students toward dangerous forms of debt and credit. In particular, the SBPC's investigation indicates that public schools are blurring the lines between lender, school, and service provider in their marketing materials while directing students to take on expensive debt with risky terms to finance attendance at bootcamps. This conduct appears to frequently involve substantial assistance from OPMs such as 2U and Zovio, and to specifically lead students toward shadow student debt companies that have track records marked by borrower harm. Both schools and OPMs benefit from revenue sharing arrangements fueled by proceeds from the credit that borrowers take on. Further, schools, lenders, and OPMs are failing to make key required disclosures related to the nature of their partnerships and students' financing options, leaving borrowers in the dark with regard to the cost of the loans they are taking on and the alternatives they may have available. These practices stand to leave borrowers saddled with unaffordable debt.



The SBPC's investigation uncovered the following:

- **Public schools are pushing students toward shadow student debt—all while blurring the line between lender, school, and service provider.** Public colleges ranging from flagship state universities[52] to local community colleges[53] are driving students to finance their education through shadow student debt. In particular, in dozens of examples, public colleges and universities are currently listing specific shadow lenders as a recommended option for students to finance attendance at non-degree granting programs.[54] This phenomenon is especially prevalent at bootcamps offered with the support of an OPM and presented under a public school's branding through marketing housed on a school's web domain.[55] For example, in a co-branded page advertising a coding bootcamp offered through the OPM Trilogy, the University of Texas at San Antonio lists various lenders including Meritize and Climb Credit in a graphic with the header "Options To Help You Invest In Your Future."[56] In another case, Colorado State University lists the lenders Climb Credit and Ascent on a webpage it uses to advertise bootcamps offered through the OPM Fullstack Academy as "Financing Options."[57] Given that the recommendation of a certain lender appears on a university-branded page, borrowers are likely to assume that the school itself is endorsing the product and company in question.[58]

Public schools are also pushing shadow student debt without the help of an OPM. For example, a career training program advertised by the University of California, Berkeley and hosted on a "berkeley.edu" web domain markets an income share agreement (ISA) for a career training program.[59] A similar ISA that the SBPC has previously reported on[60] is advertised by the University California, San Diego to finance attendance at various programs available through its extension school.[61] ISAs are an emerging but dangerous type of shadow student debt that ties monthly payment amounts to borrowers' income,[62] and the firms that offer them are known to rely on an array of abusive and illegal practices.[63] Similarly, public colleges are advertising the availability of expensive revolving credit, including funding available through PayPal Credit,[64] as an avenue to finance courses of education.[65] In these instances, such as in the case of Indiana University,[66] schools sometimes appear to represent that revolving credit through PayPal Credit is the only credit option available for students interested in financing educational expenses.[67]



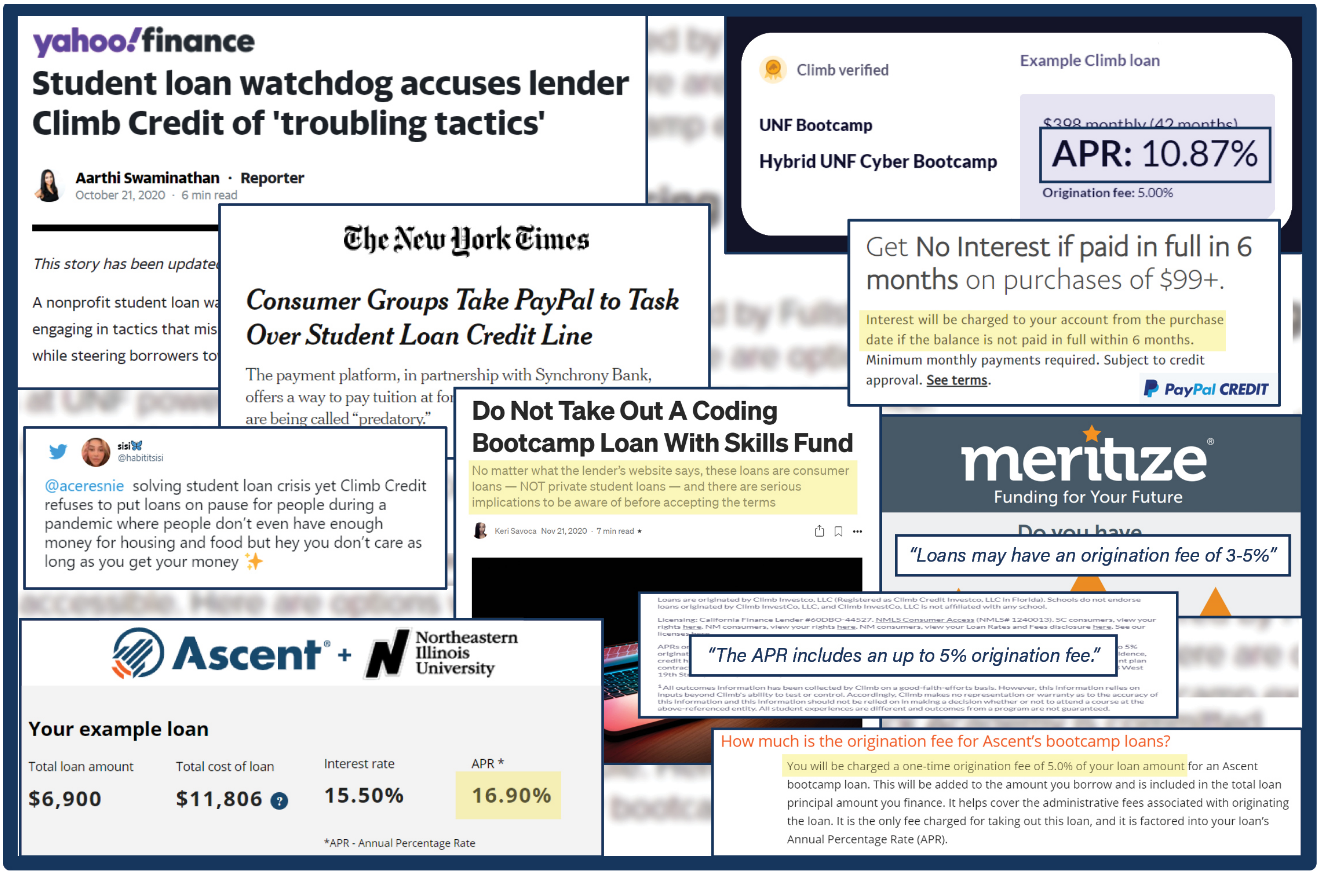
- **The shadow student debts that public schools are driving students toward are extremely expensive and risky.** As is typical in the shadow student debt market,[68] the products that public schools are driving students toward regularly involve double-digit APRs,[69] excessive fees,[70] and other terms likely to be particularly dangerous for borrowers.[71] For example, a Climb Credit loan for a coding bootcamp available at the community college Sierra College[72] and facilitated by the OPM Promineo comes at a 14.44 percent APR with a five percent origination fee.[73] Note that, according to at least one industry media source, "most private student loan lenders do not charge origination fees."[74] Similarly, the "example loan" available for online OPM-backed bootcamps at 11 or more large public universities[75] through the shadow debt company Ascent involves a five percent origination fee and an APR that ranges up to 16.98 percent.[76]

However, expense is not the only worrying aspect of these loans, as additional terms hidden lurking in the fine print are likely to confuse or harm borrowers. For example, Ascent discloses in the fine print on its own website that its loans are structured as personal loans and not as student loans, meaning among other things that interest on the loans is not tax-deductible and that they cannot be refinanced in the same way as a private student loan.[77] However, these disclosures are not consistently made on the webpages of the public schools advertising Ascent's loans for OPM-facilitated coding bootcamps.[78] Evidence is already available that borrowers have been confused and harmed by this lack of full information.[79] Further, PayPal Credit products such as the one advertised by Indiana University claim to be "interest-free" for borrowers' first six months in debt,[80] but the fine print of the product's terms and conditions reveal that this offering is actually part of a dangerous "deferred interest" arrangement.[81] This means that if borrowers do not pay off their entire balance within six months, a 23.99 percent rate of interest is retroactively charged on their loans as if they had carried a balance on their credit card from the day of origination.[82] Contractual mechanisms such as this one have previously drawn scrutiny from regulators including the CFPB.[83] In addition, reports from consumers indicate that shadow student debts generally lack meaningful protections for borrowers facing economic hardship such as that brought on by the economic fallout of the COVID-19 pandemic.[84]

The products that public schools are driving students toward regularly involve double-digit APRs, excessive fees, and other terms likely to be particularly dangerous for borrowers.

Finally, income share agreements, the products touted by the University of California, Berkeley and the University of California, San Diego, have a well-documented history of deploying deceptive business practices,[85] profiting off of disparate impacts that harm students of color,[86] inserting illegal fees into their contracts,[87] blocking borrowers from accessing their rights,[88] and, most importantly, claiming that they are not a loan or form of credit and therefore do not need to comply with key state and federal consumer protection laws.[89] The University of California, Berkeley's ISA appears to follow along the trend of claiming not to be a loan, as while little detail is provided about the product's terms, Berkeley's marketing materials state that its ISA is "a new alternative to a traditional student [sic] loans."[90] Similarly, the

University of California, San Diego has specifically referred to its ISA offerings as an effort to "Solve Student Loan Debt."[91] Marketing materials for another ISA available at the University of Utah describe the product by saying, "[i]t is not a traditional loan or grant, and there is no principal balance or interest rate."[92]



- **Public schools and OPMs appear to have preferred lender arrangements with companies offering shadow student debt but are failing to meet key transparency requirements related to these partnerships and students' financing options.** The SBPC's investigation revealed that several public schools appear to be engaged in so-called "preferred lender arrangements" with creditors operating in the shadow student debt market,[93] as the schools appear to be endorsing specific lenders' products in exchange for the assurance that those firms will lend to students attending certain programs at those schools.[94] This pattern is especially prevalent and visible at public schools offering bootcamps facilitated through OPMs. For example, available evidence points to nearly a dozen instances in which schools with bootcamps facilitated by the OPM Fullstack Academy, a subsidiary of Zovio, include on the webpages marketing these programs that Fullstack "partners" with the shadow student debt companies Climb

Credit and Ascent to help students finance bootcamp attendance.[95] Similarly, at least two blog posts hosted on public colleges' websites for bootcamps facilitated by 2U specifically praise loan options for students available through Climb Credit,[96] while tweets from at least two public colleges have mentioned Climb Credit and Ascent by name as financing options.[97] Borrowers observing these recommendations are likely to assume that schools have vetted these options as the best or the only financing options available, even when that may not be the case.

Borrowers are being left entirely in the dark by public colleges regarding the full suite of financing options they have available, the quality of the options being advertised under their school's branding, and how their colleges came to recommend particular creditors.

The situation is made worse by schools' failure to make various required disclosures that borrowers rely on to make informed, safe decisions. For example, exhaustive searches conducted as part of the methodology described above revealed that several of the schools driving students toward shadow student debt are not disclosing key details around the types of products available to borrowers.[98] This includes details that they are required to disclose under the law.[99] In particular, in every example uncovered, it does not appear that institutions are meeting their obligation to publicly explain the nature and rationale behind their preferred lender arrangements.[100] These findings mean that borrowers are being left entirely in the dark by public colleges regarding the full suite of financing options they have available, the quality of the options being advertised under their school's branding, and how their colleges came to recommend particular creditors.[101]

- **The shadow student debt companies that public schools are driving students toward have dubious track records.** The public schools addressed in this report are driving students toward companies known to deploy questionable business practices likely to harm borrowers. For example, well over a dozen public universities advertise the availability of loans from Climb Credit on their websites or on websites under their branding.[102] Climb Credit's own website lists several additional public institutions at which the company claims its loans are available.[103] However, the SBPC's research has previously revealed that Climb Credit may have misrepresented the cost of its loans in violation of consumer financial law,[104] misstated the career qualifications made available by courses offered through partners,[105] made inaccurate representations around the income growth of graduates from partner programs,[106] and priced loans using methodology that may violate the Equal Credit Opportunity Act.[107]

Similarly, the SBPC's investigation revealed that several public universities advertise the availability of loans from Ascent,[108] a subsidiary of the firm Goal Structured Solutions (GSS).[109] GSS is best known as the administrator of the National Collegiate Student Loan Trusts, the scandal-plagued[110] student loan securitization vehicles that have been found to target people of color in courtrooms across the country[111] and to have deployed illegal "robo-signing" tactics last seen in the run-up to the subprime mortgage crisis as a means to defraud defaulted borrowers.[112]

Finally, various public schools are marketing loans from PayPal Credit as a means to finance programs of study.[113] These schools are driving students toward a firm that has been caught misleading borrowers about interest accrual terms in their loan contracts,[114] forcing borrowers to forgo their right to seek justice in the courts when they are harmed,[115] and deploying extremely aggressive debt collection tactics such as reserving the right upon a borrower's unexpected death to "request payment of the full amount due right away" from the estate of the deceased borrower.[116]

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hand. I will be happy to cast my vote in favor of it. women who are providing a college education. The provisions designed to gateway to the future for working families and for businesses, will be within

"The bill also ensures that private lending is done on the fairest and most transparent terms. It prevents kickbacks and co-branding that may allow steering of students to specific lenders . . . . These are very important steps."

— Senator Chris Dodd
Floor debate on the Higher Education Opportunity Act of 2008

Mr. DODD. Mr. President, let me return the compliment by commending our colleague from Maryland, who has taken on the Herculean task in the ab- about interest rates, terms and conditions of their private loans, and prohibits documented private student lending practices that have harmed looked at to be sure that every blank was filled in and every "t" was crossed and every "I" was dotted. Our disappointment was that they were then

- **OPMs provide key financial services to schools—and substantial value for creditors—with regard to the execution of student financing.** Though OPMs' role is generally described as pertaining to recruitment, enrollment, and course facilitation,[117] the SBPC's extensive review of the contracts between public colleges and OPMs reveals that OPMs are intricately involved in matters related to student financing. Specifically, the SBPC's investigation indicates that OPMs play a key role in receiving, refunding, and otherwise managing student payments for OPM-facilitated programs.[118] In turn, OPMs substantially assist both schools and shadow student debt companies in administering student financing.

The depth of the assistance OPMs offer schools is exemplified in the 2018 contract between the OPM Trilogy and the University of California, Los Angeles (UCLA) related to "coding and technology related . . . boot camps" Trilogy facilitates through UCLA's extension school.[119] The contract positions Trilogy as a key payment manager, stipulating that "[f]or all enrollment except private loan and VA (if applicable), students will enroll and pay [Trilogy] via the landing page.[120] This management role extends to the handling of refunded student funds, as the contract lists one of Trilogy's responsibilities as involving "[c]ollaboration with [UCLA] on refund amounts different than standard [UCLA] refund policy, issu[ing] refunds to non-private loan or VA (if applicable) students and invoic[ing UCLA] for portion of the refund."[121] Concerning non-Title IV students, the contract additionally requires Trilogy to refer "all students who are interested in University of California private loan certification or VA benefits (if applicable) to [the UCLA] Financial Aid Office,"[122] giving Trilogy a key role in directing students toward financing. The contract even adds that Trilogy will help prepare certain tax documents of students, mandating that Trilogy will "collaborate with [UCLA] to issue 1098-Ts for students in the PROGRAM."[123] Form 1098-T is a federal tax form that "reports, among other things, amounts paid for qualified tuition and related expenses" and that allows borrowers to qualify for certain tax credits.[124] Each of these contract terms amounts to the provision of important services related to student financing by the OPM, and they recur across several contracts between colleges and OPMs.[125]

The SBPC's extensive review of the contracts underlying agreements between public colleges and OPMs reveals that OPMs are intricately involved in matters related to student financing.

In other cases, the financial services that OPMs provide schools are even clearer. For example, the OPM Promineo has built co-branded websites for community colleges and university clients across the country,[126] many of which explicitly direct students to use credit cards to make down payments to their school of choice at the time of enrollment and offer detailed steps eligible borrowers can take to secure outside funding to successfully pay their school.[127] In one case, the webpage Promineo made to advertise a bootcamp at the College of Southern Nevada—making extensive use of the College of Southern Nevada's branding but being hosted on Promineo's web domain—states "$3,595 due at the time of registration in the form of a Visa or MasterCard.* . . . Students who are unemployed or underemployed may be eligible for financial support to pay for the course through the Nevada One-Stop Career Center. . . . * Contact the program office if you are being sponsored by a third-party such as vocational rehabilitation, One-Stop Career Center, workers' compensation insurance, etc."[128]

OPMs also provide equally substantial services for creditors. In particular, beyond assistance in loan management, several examples indicate that OPMs act as key lead generators for companies in the shadow student debt market.[129] As described above, this lead generation can take the form of OPMs listing specific shadow student loan companies on marketing websites co-branded with schools. However, it can also take place more subtly through partnerships between OPMs and creditors in instances where students are advised to contact their school's financial aid office instead of being directed to a specific lender on a bootcamp's website. For example, a webpage for a Trilogy-facilitated data science bootcamp at the University of North Carolina at Charlotte does not market any specific student loan company's products, but it does indicate that "[a]fter acceptance into the program, you will connect with admissions to discuss which financial option works best for you."[130] Meanwhile, Climb Credit's website makes clear that it has a specific loan product intended for "University of North Carolina at Charlotte Boot Camps financing,"[131] and there is evidence that students are taking on these loans for the University of North Carolina at Charlotte's bootcamp.[132] In this case and more generally across the instances where schools advise students to contact their financial aid offices regarding private financing options, any partnership between the company facilitating a student's program and a lender is likely to be extremely valuable to that lender.

Potential Violations of the Law and Legal Implications

The SBPC's investigative findings raise significant questions regarding the specific nature of the partnerships between public schools, OPMs, and shadow student debt companies. In turn, these findings point to substantial concerns related to the legal obligations that those relationships entail and the consequences for noncompliance with those responsibilities. Simply put, it appears that many of these relationships run afoul of critical consumer protection statutes and place OPMs within the oversight authority and enforcement jurisdiction of the Consumer Financial Protection Bureau.

Violations of Preferred Lender List Requirements

It is clear from the findings outlined above that public schools are offering specific companies in the shadow student debt market preferential treatment. These schools are marketing and helping to fulfill the lending of these firms' products, with OPMs acting as substantial intermediaries to assist with the advertising and orchestration of student financing. Conduct along these lines bears striking similarity to behavior that grew out of back-room deals that have previously led to scandals in the student loan market, such as when the New York Attorney General's Office uncovered that private student loan companies had created elaborately intermingled and legally dubious relationships with school administrators in exchange for those officials' promise to direct students to their loans.[133]

In response to those revelations, Congress enacted legislation codifying limitations on and borrower protections related to preferred lender arrangements between schools and private student loan companies, including extensive disclosure and transparency measures.[134] As discussed above, schools with preferred lender arrangements must publish a formal list enumerating those arrangements[135] and the rationale behind engaging in a preferential relationship with that specific firm.[136]

Our findings appear to indicate that schools, OPM, and lenders are not meeting the transparency requirements clearly enumerated under the law. This is especially troubling given that the OPM business model relies on revenue sharing arrangements, raising the question of whether OPMs at best suffer from the same conflicts and poorly structured incentives that marked the private lender scandals discussed above, and at worst are reliant on business conduct that is illegal.

Scrutiny from the CFPB

In the wake of the Great Recession, Congress passed Dodd-Frank, overhauling the regulatory structure that undergirds the American financial system. At the center of these reforms, Dodd-Frank established the CFPB and armed the new agency with an explicit mandate to focus on risks posed to consumers, irrespective of the type of financial entity that poses these risks.[137]

To achieve this goal, Congress authorized the CFPB to determine whether private-sector firms were "covered persons" under the act based on whether firms perform one of several enumerated market functions or act as a service provider to such a firm.[138] As described at the time, Congress knew that creating "an agency that only had the authority to address the problems of the past, such as mortgages, would be too short-sighted. Experience has shown that consumer protections must adapt to new practices and new industries."[139]

As the foregoing analysis describes, the complex contractual arrangements between schools and OPMs and the ambiguous relationships between schools and lenders demand close scrutiny by federal and state regulators, particularly the CFPB. When approaching the obvious risks these arrangements pose to students and their families, the Bureau should consider functions performed by each of these parties and overlay the Dodd-Frank

Act on each set of specific functions. In their simplest form, the lenders described above—as firms engaged in "extending credit"—are definitionally "covered persons" under the Dodd-Frank Act.[140] However, the CFPB's coverage of the issues described above is not limited to lending and lenders. For example, the Bureau should scrutinize different permutations of the OPM-school-lender triad as follows:

- **Schools and OPMs engaged in "brokering" a consumer financial product.** Schools, whether public, private non-profit, or for-profit, routinely facilitate students' access to federal student loans and a range of private financial products, including private student loans and other types of debt and credit. Where a school or school official acts as an intermediary between a student and a lender and receives compensation from the lender, the school may be engaged in "brokering" that product, as described in the Dodd-Frank Act.[141] Where an OPM performs these functions on behalf of a school and independently engages in the same practices, it may similarly be engaged in "brokering" a consumer financial product.[142] As a result, the OPM, the school itself, or both could independently fall under the purview of the CFPB and be subject to oversight by the agency.[143]

- **Schools and OPMs as providers of "financial advisory services."** Similarly, schools and school officials routinely counsel borrowers about financial aid options, including loans and other extensions of credit. The financial aid process itself may constitute "providing financial advisory services . . . to consumers on individual financial matters" as described in the Dodd-Frank Act.[144] As discussed above, in some circumstances schools leverage their established financial aid process when students attend online programs managed by an OPM. In other circumstances, an abbreviated financial aid process is managed entirely by the OPM, which directs revenue from students back to the school. Depending on the delegation of duties between the school and the OPM, one or both parties may be engaged in the provision of "financial advisory services" and fall under the purview of the CFPB.[145]

- **OPMs, schools, and lenders as service providers.** The Dodd-Frank Act offers an expansive definition of a "service provider," establishing the CFPB's enforcement and supervisory authority with respect to a range of firms that do not meet the statutory definition of a "provider of a consumer financial product or service."[146] Specifically, Title X of the Dodd-Frank Act defines a service provider as "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service."[147] The Dodd-Frank Act offers illustrative examples of covered activities provided by service providers, each of which has obvious parallels to the practices described in the preceding sections of this report.

- **Schools and OPMs as participants in the design, operations, or management of a consumer financial product or service.** First, the Dodd-Frank Act describes a company that "participates in designing, operating, or maintaining the consumer financial product or service."[148] The CFPB should carefully examine the range of financial products and services provided by each party and consider the circumstances under which another party is a participant in the design or operations of that product or service—a line of inquiry that, for example, could begin with scrutiny of OPMs that offer comprehensive, self-contained online programs that use schools' branding and direct revenue back to schools, but provide no meaningful opportunity for schools to engage directly with students other than by leveraging schools' financial aid system.

- **Schools and OPMs as processors of transactions related to consumer financial products and services.** The Dodd-Frank Act also describes "processes transactions relating to the consumer financial product or service" as an illustrative example.[149] Here the relationship between schools, lenders, and OPMs is particularly murky and worthy of attention. As described above, some students are able to pay certain OPM-operated programs directly for services and may utilize co-branded or endorsed private lending products that are incorporated into the transaction itself.[150]

The preceding is not intended to be an exhaustive list of circumstances under which the Bureau has oversight or enforcement authority over the school-OPM-lender relationship. For example, CFPB has the ability to enforce a statutory ban on revenue sharing arrangements between schools and creditors.[151] As mentioned, lenders agree under these deals to offer loans to a given school's attendees in exchange for that school's recommendation of the creditor's products to its students. It is notable how similar these banned arrangements are to those that OPMs rely on as a central tenet of their business model. Moreover, where a school is participating in the Title IV federal student aid system, the Bureau's execution of its authority over various types of private lenders may have immediate implications for Title IV schools' compliance with the Higher Education Act itself, particularly regulations discussed above related to preferred lender arrangements between schools and creditors.[152]

Recommendations

The findings and associated potential legal consequences outlined above point to a need for immediate intervention by regulators, law enforcement, and policymakers. The following recommendations constitute a badly needed minimum set of steps that these entities can take to protect borrowers nationwide from predatory lenders:

- **The CFPB must carefully scrutinize practices by OPMs that drive students toward shadow student debt.** Given the apparently large role that OPMs play in the execution of student financing and the substantial services that they offer lenders and schools in the delivery of financial aid, it is imperative that the CFPB further examine these firms and their conduct. Publicly available information indicates that OPMs—and in particular the large and often publicly traded firms that dominate the space—are likely covered persons subject to the CFPB's jurisdiction. This means that the Bureau likely has the authority to utilize its supervision and enforcement tools in the space, including by conducting routine oversight through examinations or, where appropriate, pursuing litigation.

  The Dodd-Frank Act provides the Bureau broad authority through its enforcement tools, as well as the ability to assess through information gathering whether an institution is a covered person.[153] Given the significant risks that borrowers face as a result of these firms' efforts to drive students toward shadow student debt, as well as the larger concerns stemming from OPMs' failure to comply with such additional consumer protections as preferred lender list requirements, the Bureau would be well situated to aggressively utilize its authority to scrutinize OPMs' compliance with federal consumer law.

- **The Department of Education must enforce requirements around preferred lender arrangements and hold schools accountable for noncompliance.** It is clear that schools and OPMs are guiding students toward risky forms of debt without offering those borrowers or policymakers the full scope of information that these firms are required to under the law. The Department of Education already has tools at its disposal to hold schools and lenders accountable and to protect borrowers. The present findings indicate that the Department has engaged in little oversight and has not taken basic steps to implement these statutory obligations. ED must strictly enforce compliance with disclosure requirements related to preferred lender arrangements between private education loan companies and Title IV institutions in the context of shadow student debt. Schools and lenders cannot continue operating under the impression that these disclosures do not apply because a given program exists as a non-degree granting bootcamp, because a program is facilitated by an OPM, or because a lender that a school clearly offers favored status happens to operate in the market for shadow student debt. In doing so, the Department should consider whether ongoing noncompliance with these disclosure obligations may violate a school's program participation agreement and therefore jeopardize its eligibility for Title IV aid. Further, the Department should reconsider the 2011 guidance that provided the regulatory carveouts necessary for the revenue sharing arrangements at the center of the OPM sector. In the meantime, the Secretary of Education should be tracking relationships between Title IV schools and lenders as third-party servicer contracts—a tool that the Department already has at its disposal to compel extensive disclosures and hold schools' business counterparties accountable for borrower harm—and enforcing disclosure requirements already on the books for preferred lender arrangements.[154]

- **States must enact comprehensive registration laws to drive transparency and accountability for student financing companies.** States across the country are working toward enacting laws requiring all companies that finance students' educational expenses to register with state regulators and publish key information about their businesses and credit portfolios.[155] Whereas existing state licensing and registration laws can create oversight gaps that empower predatory actors to evade scrutiny, these more comprehensively designed laws act as a catch-all for the various types of debt and credit students use to pay for postsecondary schooling. In doing so, these laws create the scaffolding for a holistic system of oversight and regulation capable of protecting borrowers. States must hasten adoption of these laws while prioritizing the enforcement of existing state statutes to bring predatory firms and dangerous practices out of the shadows.

Conclusion

Public education is a public good, and public universities exist to deliver it. No student who turns to an institution of higher education to pursue a better life should find themselves driven toward dangerous credit products. If vocational programs including bootcamps are valuable for students, communities, and the country's workforce needs, public colleges should be providing them in a way that drives long-term student success. Instead, it appears that schools are outsourcing basic aspects of their work while driving students into unaffordable and dubious debts.

It is time for the Department of Education to follow through on its obligations to protect students from risky lending, for regulators including the CFPB to take on dangerous practices, and for public universities to be held accountable for driving students toward potentially predatory debt.

Endnotes

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[4] 12 U.S.C. § 5536(a)(3).

[5] Student Borrower Prot. Ctr., Private Student Lending 17 (Apr. 2020), https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf.

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[8] Student Borrow Prot. Ctr., *supra* note 5, at 7.

[9] *Id.*

[10] *Id.*

[11] *See, e.g.*, Press Release, MeasureOne, Latest MeasureOne Private Student Loan Report Finds Pandemic-Related Forbearance (Dec. 9, 2020), https://www.prnewswire.com/news-releases/latest-measureone-private-student-loan-report-finds-pandemic-related-forbearance-301189414.html.

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[13] 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/.

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[15] 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/.

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[17] 12 C.F.R. § 1026.46.

[18] *See generally* Student Borrower Prot. Ctr., *supra* note 3.

[19] *Id.*

[20] *Id.* at 19.

[21] *Id.* at 21.

[22] *Id.* at 23.

[23] Benjamin Roesch & Ben Kaufman, *The CFPB Must Investigate Climb Credit and Protect Borrowers Across the Dangerous, High-Cost Shadow Student Debt Market*, Student Borrower Prot. Ctr. (Oct. 21, 2020), https://protectborrowers.org/the-cfpb-must-investigate-climb-credit-and-protect-borrowers-across-the-dangerous-high-cost-shadow-student-debt-market/.

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[25] Student Borrower Prot. Ctr. *supra* note 3, at 31-32.

[26] *Id.* at 40 n.xxxv.

[27] *Id.* at 31-32.

[28] *Id.*

[29] *See, e.g.*, Margaret Mattes, The Century Found., The Private Side of Public Higher Education (Aug. 2017), https://tcf.org/content/report/private-side-public-higher-education/; Stephanie Hall & Taela Dudley, The Century Found., Dear Colleges: Take Control of Your Online Courses (Sept. 2019), https://tcf.org/content/report/dear-colleges-take-control-online-courses/.

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[32] Student Borrower Prot. Ctr., *supra* note 3, at 16.

[33] *See supra* note 29.

[34] *See* Career Karma, State of the Bootcamp Market Report 2021 (2021), https://careerkarma.com/blog/bootcamp-market-report-2021/.

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[37] Kevin Carey, *The Creeping Capitalist Takeover of Higher Education*, HuffPost: Highline (Apr. 1, 2019), https://www.huffpost.com/highline/article/capitalist-takeover-college/.

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[44] Hall & Dudley, *supra* note 29.

[45] The Century Found., *supra* note 38.

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[47] *Program Integrity Questions and Answers – Incentive Compensation*, U.S. Dep't of Educ., https://www2.ed.gov/policy/highered/reg/hearulemaking/2009/compensation.html (last updated Feb. 2, 2012).

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[49] *See generally The Incentive Compensation Ban and Its Importance to Veterans*, Veterans Education Success (Jan. 1, 2018), https://vetsedsuccess.org/the-incentive-compensation-ban-and-its-importance-to-veterans/. Note that the present history of the incentive compensation ban is an incomplete one, and that a more detailed retelling, while generally outside of the scope of this report, remains worthwhile. The incentive compensation ban was adopted in the 1992 reauthorization of the Higher Education Act, but was later weakened under the George W. Bush Administration, which created various "safe harbors" under which schools could compensate marketing and admissions officers based on student enrollment. For example, a school could pay employees based on how many students they had enrolled if compensation adjustments were not made "more than twice in a calendar year" and were not based only on enrollment statistics. *See* David Whitman, The Century Found., The GOP Reversal on For-Profit Colleges in the George W. Bush Era (2018), https://tcf.org/content/report/gop-reversal-profit-colleges-george-w-bush-era/. The Obama Administration closed many of these loopholes and pursued lawsuits against many schools that had it alleged had violated the incentive compensation ban. *See* Doug Lederman, *For-Profits and the False Claims Act*, Inside Higher Ed (Aug. 15, 2011), https://www.insidehighered.com/news/2011/08/15/profits-and-false-claims-act. However, as discussed above, the Obama Administration's Department of Education issued subregulatory guidance through a "Dear Colleague" letter in 2011 creating a new loophole that exempts OPMs from the incentive compensation ban if they provided "bundled services," such as offering both recruiting and enrollment assistance. *See* Robert Shireman, The Century Found., The Policies That Work—and Don't Work—to Stop Predatory

For-Profit Colleges (2019), https://tcf.org/content/report/policies-work-dont-work-stop-predatory-profit-colleges/.

[50] Letter from Eduardo M. Ochoa, Assistant Sec'y of Educ. for Postsecondary Educ., Implementation of Program Integrity Regulations (Mar. 17, 2011), https://fsapartners.ed.gov/sites/default/files/attachments/dpcletters/GEN1105.pdf.

[51] In one example, the University of Southern California (USC) contracted with an OPM known as 2U, Inc. for the company to develop and implement an online master's degree program in social work, receiving 60 percent of student tuition in exchange for a suite of services including course development, marketing, and recruiting. Harriet Ryan & Matt Hamilton, *Online degrees made USC the world's biggest social work school. Then things went terribly wrong*, L.A. Times (June 6, 2019), https://www.latimes.com/local/lanow/la-me-usc-social-work-20190606-story.html. Following its incentives, 2U recruited as many students as possible—including those not likely to be prepared for it—for a program that cost up to $116,000. *Id.* ("Up to 40% of admitted students in the final years of her tenure were "conditional" admissions, meaning they lacked the minimum 3.0 GPA for full-time undergraduate study or failed to meet other stated requirements, the sources said. . . . Faculty noticed many new students had difficulty doing graduate-level work. The school provided extra tutoring and counseling programs, but problems persisted.").

[52] *UConn Coding Boot Camp*, Sch. of Eng'g, Univ. of Conn., https://bootcamp.uconn.edu/ [https://perma.cc/9UXM-R343].

[53] *18-Week Online Coding Boot Camps*, Sierra Coll., https://sierra.augusoft.net/index.cfm?method=templates.CustomTemplatePreview&ContentID=198 [https://perma.cc/5KYM-VGDT].

[54] *UTSA Data Analytics Boot Camp*, Carlos Alvarez Sch. of Bus, Univ. of Tex. at San Antonio, https://bootcamp.utsa.edu/data/ [https://perma.cc/SV3U-GLQM]; Univ. of Conn., *supra* note 52; *Financing Options*, Extended Education Boot Camps, Cal. Polytechnic State Univ., https://bootcamp-extended.calpoly.edu/financing [https://perma.cc/F4EB-PSVK]; *Financing Options*, Tech Bootcamps, La. State Univ., https://bootcamp.online.lsu.edu/financing [https://perma.cc/TP8Y-DAL8]; *Financing Options*, Tech Bootcamps, Univ. of N. Fla., https://bootcamp.unf.edu/financing [https://perma.cc/VUR2-U8E7]; *Financing Options*, Outreach Tech Bootcamps, Univ. of Okla., https://bootcamp.outreach.ou.edu/financing [https://perma.cc/Y8PL-HPF9]; *Financing Options*, Tech Bootcamps, Va. Polytechnic Inst. and State Univ., https://bootcamp.cpe.vt.edu/financing [https://perma.cc/9P3Z-AU5K]; *Coding Bootcamp*, Univ. of Ill., Chi., https://bootcamp.uic.edu/coding [https://perma.cc/39YH-8BT7]; *Financing Options*, Tech Bootcamps, Cal. State Univ., East Bay, https://bootcamp.ce.csueastbay.edu/financing [https://perma.cc/TF45-MFDX]; *Financing Options*, Tech Bootcamps, San José State Univ., https://bootcamp.sjsu.edu/financing [https://perma.cc/QY2D-PQDK];

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[55] *See, e.g.*, Univ. of Conn., *supra* note 52; La. State Univ., *supra* note 54; Cal. Polytechnic State Univ., *supra* note 54.

[56] Univ. of Tx. at San Antonio, *supra* note 54.

[57] Colo. State Univ., *supra* note 54.

[58] Note that Congress has explicitly sought to prevent this variety of outcome. *See, e.g.*, S. Rep. No. 110-7845, 7865 (2008) (Conf. Report) (statement of Sen. Chris Dodd) ("The bill also ensures that private lending is done on the fairest and most transparent terms. It prevents kickbacks and co-branding that may allow steering of students to specific lenders, and it guarantees borrowers time to consider their options and shop around for better terms without losing the loan they have been offered. These are very important steps.").

[59] *Payment Options for Experience Lab at UC Berkeley*, Experience Lab, University of California, Berkeley, https://explab.berkeley.edu/wp-content/uploads/2018/11/Experience-Lab-Payment-Options.pdf [https://perma.cc/237M-MY34].

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[61] *Income Share Agreement (ISA)*, Univ. of Cal., San Diego, https://extension.ucsd.edu/student-resources/financial-resources/ISA [https://perma.cc/7X7A-C45K].

[62] *See generally*, *Income Share Agreements*, Student Borrower Prot. Ctr., https://protectborrowers.org/income-share-agreements-2/.

[63] *Id.*

[64] *See also* Press Release, *PayPal's Partnerships with Over 150 For-Profit Schools Drive Students to Take on High-Cost Education Debt, Advocates Warn*, Student Borrower Prot. Ctr. (Aug. 21, 2020), https://protectborrowers.org/150-2/.

[65] *See, e.g.*, Kelley Sch. of Bus., Ind. Univ., *supra* note 54; Univ. of Tex. Sw. Med. Ctr., *supra* note 54. Outside the context of public colleges, see also *Tuition, Discounts, and Payment Options*, Owen Grad. Sch. of Mgmt., Vanderbilt Univ., https://business.vanderbilt.edu/business-management-certificate/tuition-financial-aid/ [https://perma.cc/6BLZ-BDCU]; *Payment Options*, Online Paralegal Studies Certification Program, Boston Univ., https://paralegalonline.bu.edu/tuition/payment-options/ [https://perma.cc/EPP9-FWSX].

[66] Ind. Univ., *supra* note 54.

[67] *Id.* ("**Flexible Payment Options:** Please take advantage of special discount offers listed below. We now accept PayPal! Students who qualify for PayPal Credit can take advantage of interest-free offers that enable you to spread payments over several months. If you need an individual payment plan, please don't hesitate to ask us.").

[68] Student Borrower Prot. Ctr., *supra* note 3, at 19-21.

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[70] *Loans*, Climb Credit, https://climbcredit.com/students [https://perma.cc/JB6M-XVNQ] ("The APR includes an up to 5% origination fee."); *Loans & Benefits*, Ascent Funding,

https://www.ascentfunding.com/faq/#1616054887213-a50e6b10-ca11 ("You will be charged a one-time origination fee of 5.0% of your loan amount "). Specific pricing for Meritize's loans for students at bootcamps is unavailable, but it does appear that the company generally does charge an origination fee. *See Funding for Your Future*, Meritize, https://medicalsalescollege.com/wp-content/uploads/2019/09/Meritize.pdf [https://perma.cc/7GUW-CGZW].

[71] Note, for example, the lack of meaningful protections for borrowers suffering from financial hardship such as that brought about by the COVID-19 pandemic. *See, e.g.*, @habititsisi, Twitter (Dec. 9, 2020, 6:47 PM), https://twitter.com/habititsisi/status/1336865167724974080 [https://perma.cc/RGB2-PZBP]. In addition, there is also evidence that ambiguity around whether the loans discussed here are legally private education loans is confusing for borrowers, leading some to unexpectedly find that their loans are personal loans ineligible for certain protections like the deductibility of interest on private student loans from federal income taxes. *See, e.g.*, Keri Savoca, *Do Not Take Out A Coding Bootcamp Loan With Skills Fund*, Medium (Nov. 21, 2020), https://kerisavoca.medium.com/do-not-take-out-a-coding-bootcamp-loan-with-skills-fund-f3053608a68c [https://perma.cc/897M-LQ9T]. Note that this example involves a borrower whose loan was an Ascent loan was taken on for a bootcamp that is not affiliated with a public university, but which is nevertheless indicative of the type of situation borrowers driven into the shadow student debt market by a public school are liable to face.

[72] Sierra Coll., *supra* note 53.

[73] *Compare Programs*, Climb Credit, https://climbcredit.com/compare/report?Course=7dbd5321-3efc-4544-8a6e-137479757e24&Location=Rocklin%2C%20CA&School=Sierra%20College%27s%20Bootcamps%20powered%20by%20Promineo%20Tech&coursesToCompare=7dbd5321-3efc-4544-8a6e-137479757e24&flow=vetting [https://perma.cc/9CK3-9KD4].

[74] Kat Tretina, *Student Loan Fees: What to Know About Federal and Private Student Loans*, Student Loan Hero (May 18, 2020), https://studentloanhero.com/featured/hidden-student-loan-fees/.

[75] *Compare Schools*, Ascent Funding, https://www.ascentfunding.com/bootcamp-loans/compare-schools/ [https://perma.cc/Q5T3-Y5E2]. Note that restricting by "online" returns Ascent loans for coding bootcamps at California Polytechnic State University, Louisiana State University, Florida Atlantic University, Northern Illinois University, the University of Oklahoma, Virginia Tech, the University of Illinois-Chicago, San Jose State University, Colorado State University, California State University, East Bay, and the University of Vermont.

[76] *Fund Your Future*, Ascent + Cal. State Univ., East Bay, https://partner.ascentfunding.com/csuebbootcamp/?_ga=2.51352941.519434035.1619375611-901947493.1617983382&_gac=1.50124500.1619099106.Cj0KCQjwvYSEBhDjARIsAJMn0lg5XAKvDRcarPL24n0jAv9Oa7nSrbv7uVXwnv910zvSYmRQtCAzMioaAtwiEALw_wcB [https://perma.cc/5K68-N2HW].

[77] *Id.*

[78] *See, e.g.*, Cal. State Univ., East Bay, *supra* note 54.

[79] Savoca, *supra* note 71.

[80] Kelley Sch. of Bus., Ind. Univ., *supra* note 54.

[81] *PayPal Credit Frequently Asked Questions*, PayPal, https://www.paypal.com/us/webapps/mpp/paypal-credit/faq [https://perma.cc/3Y5H-A2PQ].

[82] *Id.*

[83] *CFPB Orders GE CareCredit to Refund $34.1 Million for Deceptive Health-Care Credit Card Enrollment*, Consumer Fin. Prot. Bureau (Dec. 10, 2013), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-ge-carecredit-to-refund-34-1-million-for-deceptive-health-care-credit-card-enrollment/ (quoting CFPB Director Richard Cordray as saying, "Deferred-interest products can be risky for consumers in the best of circumstances" and noting that deferred interest products are "an area of concern that can pose risks for consumers."); Pet. to Modify the August 29, 2018 Civil Investigative Demand Issued to Synchrony Financial, 2018-MISC-Synchrony Financial-001, Consumer Fin. Prot. Bureau (available at https://files.consumerfinance.gov/f/documents/cfpb_petition-to-modify_synchrony-financial.pdf).

[84] *See, e.g.*, @habititsisi, *supra* note 71.

[85] Danielle Douglas-Gabriel, *Groups to FTC: Company Pushing Student Income-Share Agreements Deceives Customers*, Wash. Post (June 1, 2020), https://www.washingtonpost.com/education/2020/06/01/groups-ftc-company-pushing-income-share-agreements-student-loans-deceives-customers/.

[86] Stacy Cowley, *A Novel Way to Finance School May Penalize Students From H.B.C.U.s, Study Finds*, N.Y. Times (Mar. 25, 2021), https://www.nytimes.com/2021/03/25/business/student-loans-black-students-hbcu.html.

[87] *Income Share Agreements and TILA's Ban on Prepayment Penalties*, Student Borrower Prot. Ctr. (Mar. 30, 2021), https://protectborrowers.org/isas-and-tilas-ban-on-prepayment-penalties/.

[88] Benjamin Roesch, *Coding Bootcamps Offering ISAs May Be Unlawfully Depriving Students of the Ability to Protect Themselves from Fraud*, Student Borrower Prot. Ctr. (Mar. 11, 2021), https://protectborrowers.org/coding-bootcamps-offering-isas-may-be-unlawfully-depriving-students-of-the-ability-to-protect-themselves-from-fraud/.

[89] *Credit By Any Other Name: How Federal Consumer Financial Law Governs Income Share Agreements*, Student Borrower Prot. Ctr. (July 21, 2020), https://protectborrowers.org/credit-by-any-other-name-how-federal-consumer-financial-law-governs-income-share-agreements/; *Applying State Consumer Finance Laws to Income Share Agreements*, Student Borrower Prot. Ctr. (Aug. 4, 2020), https://protectborrowers.org/applying-state-consumer-finance-laws-to-income-share-agreements/.

[90] Experience Lab, *supra* note 59.

[91] *Ambitious UC San Diego Pilot Program Looks to Solve Student Loan Debt*, Univ. of Cal., San Diego (May 16, 2019), https://ucsdnews.ucsd.edu/pressrelease/ambitious_pilot_program_looks_to_solve_student_loan_debt [https://perma.cc/4857-HVUX].

[92] *Income Share Agreement: Frequently Asked Questions*, Utah Univ., https://isa.utah.edu/frequently-asked-questions/ [https://perma.cc/MK25-BHEG].

[93] *Preferred Lender Arrangements*, A.B.A., https://www.americanbar.org/groups/business_law/safeborrowing/student/lenders/.

[94] Note that these arrangements are defined under the Higher Education Act and implementing regulations. *See* 20 U.S.C. § 1019a; 34 C.F.R. § 601.10. Note that states also have relevant statutes and regulations regarding preferred lender arrangements, often with broader application than those of the U.S. Department of Education including to schools that do not receive federal funds. *See* Iowa Code Ann. § 261F; 940 Mass. Code Regs. 31; N.Y. Educ. Law § 620 *et seq*.

[95] *See, e.g.*, La. State Univ., *supra* note 54; Univ. of N. Fla., *supra* note 54; Univ. of Okla., *supra* note 54; Va. Polytechnic Inst. and State Univ., *supra* note 54; Cal. State Univ., East Bay; *supra* note 54; San José State Univ. *supra* note 54; Colo. State Univ., *supra* note 54.

[96] *The Road Leads to Data Analytics: How a Loan Helped John Bellard Down his Tech Path*, Univ. of N. C. at Charlotte Boot Camps: Alumni, https://bootcamp.uncc.edu/blog/the-road-leads-to-data-analytics-how-a-loan-helped-john-bellard-down-his-tech-path/ [https://perma.cc/UV68-BWJ3]; 4 Lessons Learned at a Loan-Financed Coding Boot Camp, The University of Kansas, Lifelong & Professional Education: Alumni, https://bootcamp.ku.edu/blog/4-lessons-learned-at-a-loan-financed-coding-boot-camp/ [https://perma.cc/23DA-4FW9].

[97] University of North Carolina Financial Aid (@UNCWFINAID), Twitter (Dec. 22, 2020), https://twitter.com/UNCWFINAID/status/1341398352773169156?s=20 [https://perma.cc/F37Z-MYRD]; ProTrain (@protrainedu), Twitter (Feb. 18, 2020), https://twitter.com/protrainedu/status/1229799987879579649?s=20 [https://perma.cc/M9TA-4NKD].

[98] Note that under the Higher Education Act and its implementing regulations, schools with preferred lender arrangements must compile and publish an annual list of firms that it has such agreements with (a so-called "preferred lender list") and make available to students information on the loans that each preferred lender offers. *See* Congressional Research Service, Reporting and Disclosure Requirements for Institutions of Higher Education to Participate in Federal Student Aid Programs Under Title IV of the Higher Education Act (2009),

https://crsreports.congress.gov/product/pdf/R/R40789/2. Many public schools advertising the availability of shadow student debt appear not to be complying with these preferred lender list obligations. *E.g., compare Financing Options*, Univ. of Ill. Chi*.*, https://bootcamp.uic.edu/financing [https://perma.cc/VBY3-V6HE] to *Alternative Loans*, Univ. of Ill. Chi. https://financialaid.uic.edu/types-of-aid/loans/alternative-loans/ [https://perma.cc/3XXQ-7M68]; *compare* La. State Univ., *supra* note 54 *to Private Loan Lenders*, La. State Univ., https://www.lsu.edu/financialaid/types_of_aid/private_loan_information/private_loan_lenders.php [https://perma.cc/65GD-8MCU]; *compare Financing Options*, Va. Polytechnic Inst. and State Univ., https://bootcamp.cpe.vt.edu/financing [https://perma.cc/9P3Z-AU5K] *to Lender Options*, Va. Polytechnic Inst. and State Univ., https://finaid.vt.edu/oldsite/types_of_aid/loans/alternative/Lender-Options.html [https://perma.cc/Z6KG-A53W].

[99] Congressional Research Service, *supra* note 98, at 29.

[100] Note that schools with preferred lender arrangements are required to submit annually to the Secretary of Education an annual report outlining various facts including its rationale for entering into a preferred lender agreement with each firm for which such an arrangement exists. *See* Congressional Research Service, *supra* note 98. Exhaustive searches conducted as part of the methodology described above led to the discovery of only one publicly available preferred lender list annual report by a public college or university, regardless of whether that university is engaged with an OPM to offer a bootcamp. *See* Mo. S. State Univ., Annual Report on Preferred Lender Arrangements (Oct. 2020), https://www.mssu.edu/student-affairs/financial-aid/Annual%20Report%20on%20Preferred%20Lender%20Arrangements.pdf [https://perma.cc/9SWZ-B5JX]. Note that the Student Borrower Protection Center has previously requested, but has not yet obtained, several preferred lender list annual reports from Title IV schools. *See* FOIA request number 21-01127-F from Student Borrower Prot. Ctr. to U.S. Dep't. of Educ. (Mar. 9, 2021) (available at https://protectborrowers.org/wp-content/uploads/2021/03/SBPC_PLL-FOIA.pdf).

[101] 110 Cong. Rec. 76,4638 (2007) (statement of Rep. George Miller) ("This bill will prevent these egregious practices from occurring in the future by reinstating trust in our schools through strict codes of conduct, guaranteeing loan options and ensuring the best loan possible, ensuring equal and timely processing of loans, giving students full and fair information when taking out and repaying loans, protecting students from aggressive marketing practices and inserting the fiduciary responsibility for all parties to these agreement").

[102] Univ. of Tex. at San Antonio, *supra* note 54; Univ. of Conn., *supra* note 52; Cal. Polytechnic State Univ., *supra* note 54; La. State Univ., *supra* note 54; Univ. of N. Fla., *supra* note 54; *Coding Bootcamp*, Univ. of Ill., Chi., *supra* note 54; Univ. of Okla., *supra* note 54; Va. Polytechnic Inst. and State Univ., *supra* note 54; Cal. State Univ., East Bay, *supra*

note 54; San José State Univ., *supra* note 54; Coll. of E. Idaho, *supra* note 54; Arapahoe Cmty. Coll., *supra* note 54; Saint Paul Coll., *supra* note 54; Ozarks Tech. Cmty. Coll., *supra* note 54.

[103] Climb Credit, *supra* note 54.

[104] Letter from Student Borrower Prot. Ctr. to Kathleen Kraninger, Director, Consumer Fin. Prot. Bureau 14 (Oct. 21, 2020), https://protectborrowers.org/wp-content/uploads/2020/12/SBPC_Letter-regarding-Climb-Credit.pdf.

[105] *Id.* at 4.

[106] *Id.* at 11.

[107] *Id.* at 17.

[108] *See supra* note 54.

[109] *Loan Program Design*, Goal Structured Solutions, https://www.goalsolutions.com/what-we-do/lending/.

[110] 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.

[111] *See, e.g.*, 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; Student Borrower Prot. Ctr., Dubious Debts: Ending an Era of Illegal Private Student Loan Debt Collection Practices (Mar. 2021), https://protectborrowers.org/wp-content/uploads/2021/03/Dubious-Debts_2021.pdf.

[112] *See* Cowley and Silver-Greenberg, *supra* note 110.

[113] *See e.g.*, Ind. Univ., *supra* note 54; Univ. of Tex. Sw. Med. Ctr., *supra* note 54.

[114] Letter from Student Borrower Prot. Ctr. to Kathleen Kraninger, Director, Consumer Fin. Prot. Bureau 5 (Aug. 20, 2020), https://protectborrowers.org/wp-content/uploads/2020/08/PayPal-Credit-letter-Regulators.pdf.

[115] *Id.*

[116] *Id.*, quoting *Get No Interest if paid in full in 6 months on purchases of $99 or more when you check out with PayPal Credit.*, PayPal, https://www.paypal.com/ppcreditapply/da/us/lander [https://perma.cc/9JT2-AKLD].

[117] Hodge, *supra* note 35.

[118] *See, e.g.*, Agreement to Offer Online Courses between Education To Go and Montgomery County Cmty. Coll. 5 (July 7, 2015) (available at http://production.tcf.org.s3.amazonaws.com/assets/OPM_contracts/MontgomeryCountyCommunityCollege_Ed2Go.pdf#page=5); Online Enrollment & Payment Services Agreement For Online Courses between Education To Go and Highland Cmty. Coll. 5, 8 (May 15, 2014) (available at http://production.tcf.org.s3.amazonaws.com/assets/OPM_contracts/HighlandCommunity%20College_Ed2Go.pdf#page=8); Amendment to the Online Course Hosting Services Agreement for Approved Content between Coursera,

Inc. and W. Va. Univ. 7 (June 11, 2015) (available at https://production-tcf.imgix.net/assets/OPM_contracts2/West+Virginia+University+%26+Coursera.pdf#page=7).

[119] Amended/Renewal of Intensive Boot Camp, contract between Trilogy Education Services and the Univ. of Cal., L.A. (Jan. 12, 2018) (available at https://production-tcf.imgix.net/assets/OPM_contracts2/UCLA+Extension+%26+Trilogy+Education+Services%2C+Inc.PDF, https://bootcamp.uclaextension.edu/coding/).

[120] *Id.* at 6.

[121] *Id.* at 4.

[122] *Id.*

[123] *Id.*

[124] *Education Credits: Questions and Answers*, Internal Revenue Serv., https://www.irs.gov/credits-deductions/individuals/education-credits-questions-and-answers (last updated Apr. 30, 2021).

[125] *See* Hall & Dudley, *supra* note 29.

[126] *Partner Bootcamps*, Promineo Tech, https://www.promineotech.com/partner-bootcamps [https://perma.cc/RC53-F9L6].

[127] *18 Week Coding Bootcamp*, Coll. of S. Nev., https://www.promineotech.com/csncodingbootcamps [https://perma.cc/E4PD-G6RK]; Sierra Coll., *supra* note 54.

[128] Coll. of S. Nev., *supra* note 127. Note that there are also examples of bootcamps housed within public colleges directing students toward tuition payments through credit cards even when the bootcamp in question is not offered through an OPM. *See, e.g.*, *Leadership Institute Bootcamps*, Alvarez Coll. of Bus., Univ. of Tex. at San Antonio, https://business.utsa.edu/executive-programs/cpe-executive-education/bootcamps/ [https://perma.cc/3G8G-UFHZ].

[129] *Supra* note 54.

[130] *The Coding Bootcamp at UNC Charlotte*, Univ. of N.C. at Charlotte, https://bootcamp.uncc.edu/coding/ [https://perma.cc/2TU3-KGVY].

[131] *See your University of North Carolina at Charlotte Boot Camps financing offer in 5 mins.*, Climb Credit, https://climbcredit.com/apply/charlotte?page=create-account&schoolId=UN5872346096869&src=codingpage [https://perma.cc/CW4K-HGV4].

[132] Univ. of N. C. at Charlotte Boot Camps, *supra* note 95.

[133] Jonathan D. Glater, *Offering Perks, Lenders Court Colleges' Favor*, N.Y. Times (Oct. 24, 2006), https://www.nytimes.com/2006/10/24/education/24loans.html.

[134] Higher Education Opportunity Act, 20 U.S.C. § 1001 et seq.; 34 C.F.R. 601.10.

[135] 34 C.F.R. § 668.14(b)(28).

[136] 34 C.F.R § 601.10(d)(1)(ii) ("(ii) Why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower").

[137] 12 U.S.C. § 5491 (granting the CFPB broad jurisdiction over "consumer financial products or services").

[138] 12 U.S.C. § 5481.

[139] S. Rep. No. 111-176, at 11 (2010).

[140] 12 U.S.C. § 5481(6)(A)(i).

[141] 12 U.S.C. § 5481(6)(A)(i).

[142] *See e.g.*, Complaint, Consumer Fin. Prot. Bureau v. ITT Educ. Srvcs., Inc., No. 1:14-cv-00292-SEB-TAB (S.D. Ind. Feb. 26, 2014) (available at https://files.consumerfinance.gov/f/201402_cfpb_complaint_ITT.pdf) ("159. The ITT Private Loans are consumer financial products. Offering, providing, and brokering the ITT Private Loans and offering and providing financial advisory services are consumer financial services. 12 U.S.C. §§ 5481(5), (15)(A)(i), and (15)(A)(viii);" For further discussion *see* Student Borrower Prot. Ctr. and UC Berkeley Law Ctr. on Consumer Law and Econ. Justice, For-Profit Schools are Covered Persons under the CFPA (Mar. 10, 2021), https://protectborrowers.org/wp-content/uploads/2021/03/SBPC_UCB_For-Profits.pdf.

[143] *See generally* Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203.

[144] 12 U.S.C. § 5481 (15)(A)(viii).

[145] For further discussion, *see* Student Borrower Protection Center and UC Berkeley Law Center on Consumer Law and Economic Justice *supra* note 142. *See also*, Complaint, Consumer Fin. Prot. Bureau v. Corinthian Colls., 2015 WL 10854390 (N.D. Ill. 2016) (No. 1:14-cv-07194), https://files.consumerfinance.gov/f/201409_cfpb_complaint_corinthian.pdf; Complaint, Consumer Fin. Prot. Bureau v. ITT Educ. Srvcs., Inc. *supra* note 142.

[146] 12 U.S.C.§ 5481(6)(A).

[147] 12 U.S.C.§ 5481(26).

[148] *Id.*

[149] *Id.*

[150] *Promineo Tech Partners with Climb Credit to Extend Financial Access for Students Attending College Coding Bootcamps Through Community Colleges*, Yahoo! Finance (Dec. 8, 2020), https://finance.yahoo.com/news/promineo-tech-partners-climb-credit-150000386.html.

[151] 15 U.S.C. § 1650.

[152] 20 U.S.C. § 1019 (b).

[153] Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203 (codified as amended in 12, 15 U.S.C.).

[154] Angela Beam, Scott Filter, & Denise Morelli, U.S. Department of Education, Title IV Third-Party Servicers (July 2016), https://fsaconferences.ed.gov/conferences/library/2016/NASFAA/2016NASFAAThirdPartyServicers.pdf.

[155] H. 2746, 102 Gen. Assemb., Reg. Sess. (Ill. 2021); Gen. Assemb. A4395, 219 Leg., 2nd Ann. Sess. (N.J. 2021); S. 530, 130th Leg., 1st Spec. Sess. (Me. 2021); S. 21-057, 73rd Gen. Assemb., 1st Reg. Sess. (Colo. 2021).