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DRIVING INEQUITY:

Are IDR’s Documentation Requirements Hurting Borrowers of Color?

By: Joanna Pearl

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About the Author

Joanna Pearl is a Student Loan Justice Fellow at the Student Borrower Protection Center and the former Enforcement Chief of Staff and Acting Principal Deputy Enforcement Director for the Consumer Financial Protection Bureau. She most recently served as Chief Operating Officer at Public Rights Project, a nonpartisan nonprofit that empowers state, local, and tribal governments to fight for civil rights and economic and environmental justice for their communities. Joanna previously worked as an Associate at Pillsbury Winthrop Shaw Pittman LLP, where she focused on commercial litigation and employment counseling and defense. Joanna began her career in state government as Legislative Assistant and Chief of Staff to Representative Jay R. Kaufman in the Massachusetts State House of Representatives. She is a graduate of Yale College and Harvard Law School.

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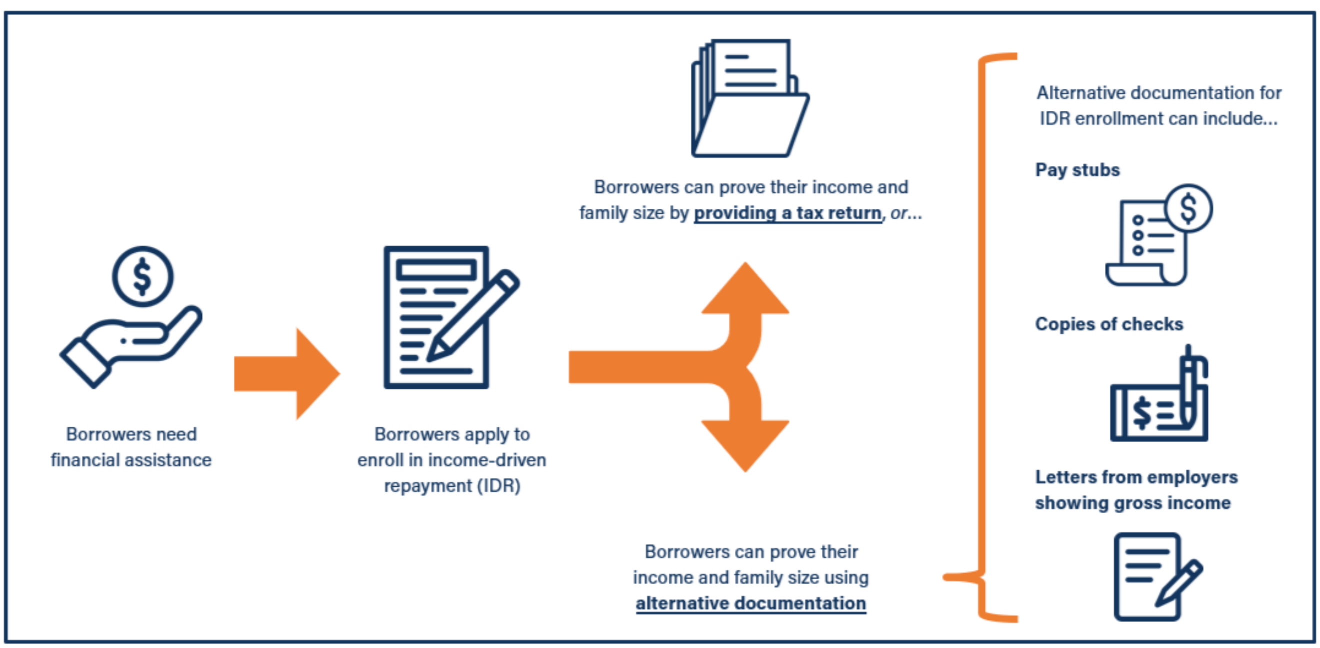
Introduction

Student loan borrowers are struggling. Right now, 45 million borrowers[1] owe more than $1.7 trillion in student debt.[2] Even before the COVID-19 pandemic, an estimated 20 percent of borrowers were in default on their student loans,[3] and the picture is more bleak for borrowers of color. For example, Black students who graduate with bachelor's degrees default at five times the rate of white graduates and are more likely to default than white college dropouts.[4]

When borrowers are unable to afford the standard payments on their federal student loans, they have several options to avoid delinquency. They may request a temporary pause on payments (through deferment or forbearance) or apply for one of the income-driven repayment (IDR) plans offered by the U.S. Department of Education. And to obtain an IDR plan, borrowers must submit an application documenting income and family size by either (1) providing a tax return or (2) working with their student loan servicers to submit alternative documentation of their annual income.[5]

Figure 1: To enroll in IDR, borrowers must apply and show proof of income using IRS data or "alternative" documentation



There is no publicly available data about the IDR application process and how these two options for demonstrating income compare. As a result, many questions about how these programs are serving borrowers evade clear answers: How many IDR applicants use alternative documentation of income (ADOI) to prove their income? How quickly are their applications processed, relative to borrowers supplying tax returns? How many borrowers need payment relief but never apply because the documentation process is too burdensome? How many borrowers run into a dead end after being thwarted in attempts to prove their income? And importantly, how do outcomes for borrowers of color compare to those for white borrowers?

Even with data lacking, there is reason for concern that, like so many other aspects of the student lending industry,[6] the IDR application process is failing those borrowers who need help the most and, in particular, borrowers of color. For example, recent research shows that Black borrowers are twice as likely as white peers to fall behind on federal student loans without accessing IDR, contributing to disparities in delinquency and default,[7] a phenomenon that scholars associate with measurable disparities across race in the quality of student loan servicing that borrowers are offered.[8] Federal fair lending enforcement officials have similarly noted the presence of "disparities in outcomes" across race related to differences in student loan servicing quality.[9]

There is reason for concern that, like so many other aspects of the student lending industry, the IDR application process is failing those borrowers who need help the most and, in particular, borrowers of color.

This paper considers the role that ADOI plays in creating disparities in access to IDR. It begins by considering the information that does exist about IDR and whether ADOI is indeed giving borrowers a viable alternative method to document income and obtain payment relief. The paper then looks at parallels to and lessons that can be drawn from the borrower experience with the Home Affordable Modification Program (HAMP), a federal program born out of the Great Recession and designed—like IDR—to help struggling borrowers avoid default. Finally, the paper offers recommendations to policymakers and enforcers seeking to ensure that student borrowers can access payment relief in an effective, fair, and equitable way.

Overview of Income-Driven Repayment and Alternative Documentation of Income

IDR Exists for Struggling Federal Student Loan Borrowers Seeking More Affordable Payments

The Department of Education currently offers four IDR options to borrowers seeking to lower their monthly student loan payments.[10] IDR is available to both borrowers of federally owned Direct loans and borrowers of privately or federally owned loans made under the Federal Family Education Loan Program. Under each IDR plan, the monthly payment amount is established as a percentage of the borrower's discretionary income.[11] Depending on the borrower's income and family size, they may even be eligible to make monthly payments of zero dollars.[12] Each IDR plan has a defined repayment period (ranging from 20 to 25 years), after which any remaining loan balance is forgiven. And borrowers enrolled in IDR who work in public service jobs are generally eligible for loan forgiveness after 10 years through the federal Public Service Loan Forgiveness (PSLF) program.[13]

IDR is the principal avenue through which federal student loan borrowers can lower their monthly repayment obligations while continuing to make progress toward repaying their loans. And policymakers remain committed to this approach for easing individual student debt burdens: then-candidate Joe Biden's higher education agenda featured a significant expansion of IDR as a central component.[14] Delivering on this commitment, the Department of Education recently included an overhaul of both IDR and PSLF in its first higher education rulemaking agenda under President Biden.[15]

Borrowers Must Navigate Several Hurdles to Access IDR, Especially When Using ADOI

To secure lower monthly payments and get on the path to debt forgiveness, a struggling borrower must enroll in an IDR plan by applying either to their student loan servicer or, in certain circumstances, online on a self-help website administered by the Department of Education. Servicers play a central role in managing IDR plans by making determinations about borrower eligibility, evaluating documentation, and communicating with borrowers.[16] Indeed, while Department of Education regulations set the policy and broad parameters for each

IDR plan, the student loan servicers that process these government-held loans act as gatekeepers[17] to IDR and are the entities actually administering it.

The IDR application requires borrowers to certify their family size and demonstrate their annual income, by providing either (1) their IRS tax return or (2) alternative documentation of income.[18] Borrowers may need to submit ADOI because they did not file a federal income tax return for either of the two most recent tax years or because their income has changed since filing their last tax return. And a significant number of borrowers select this latter option: In 2016, one large servicer stated that about 50 percent of borrowers do not rely on tax return data for their IDR application, but instead self-certify zero income or provide alternative income documentation.[19]

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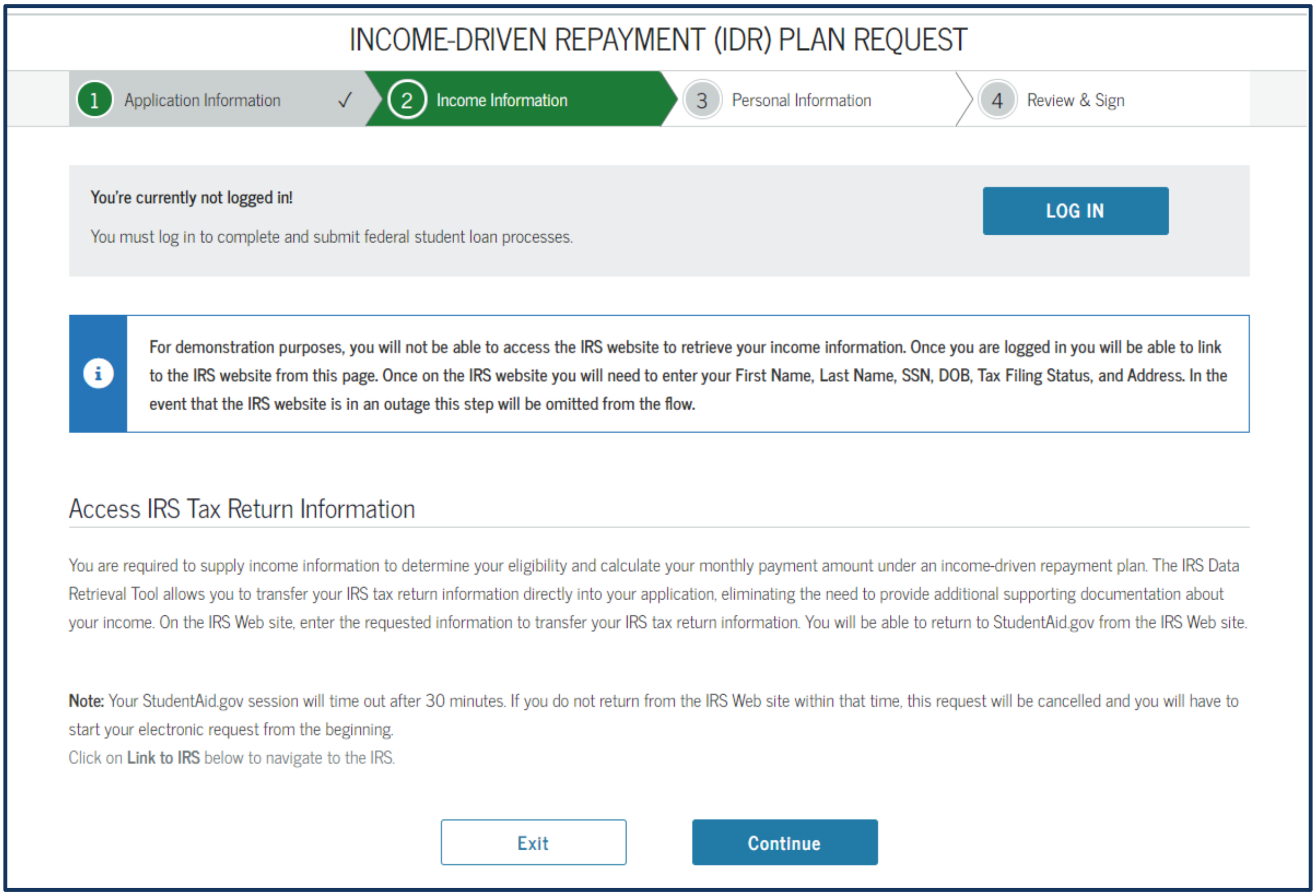
Borrowers applying online may choose to have their tax information transmitted directly from the IRS, without exiting the Department of Education's online application, which streamlines their application process.

But borrowers needing to use ADOI—those who, for example, have had a spouse lose a job or who have had a recent reduction in hours—must send documentation to their servicer separately, even when they apply online, creating an extra step for them. And this additional step is document intensive: borrowers who use ADOI must document all the taxable income[20] they and their spouse have. The Department of Education instructs borrowers to provide recent[21] paystubs or letters from employers; to provide at least one document for each source of income; to write down the frequency with which they receive the income; and, if documentation is unavailable or the borrower wishes to provide an explanation, to attach a signed statement explaining each source of income.[22] All told, borrowers who have to apply for IDR with ADOI are required to exert significantly more effort—identifying, gathering, and transmitting documents—than those who can opt to share their information directly from the IRS.

Figure 2: ED's online tools allow borrowers to have tax information transmitted directly from the IRS[23]



Student loan servicers, in turn, review IDR applications and accompanying documentation; assess borrower eligibility; and engage with borrowers. As discussed in the next section, communication between servicers and borrowers related to IDR and especially ADOI is often fraught.

ADOI may not be Adequately Serving Borrowers of Color

Shortcomings of IDR's Current Design

There is startlingly little publicly available information about how the IDR application process and ADOI in particular are serving borrowers. Despite calls for increased transparency in the student loan servicing industry,[24] neither student loan servicers nor the Department of Education make available data that would allow such analysis.[25] Since 2015, however, the Consumer Financial Protection Bureau (CFPB or the Bureau) has offered insight into failures of the IDR process by sharing input from commenters and consumers, anonymized results of their supervisory findings, and future priorities.

In response to a 2015 request for information about the student loan servicing industry, the Bureau heard from commenters that the IDR application process regularly presents a frustrating and consequential administrative run-around. For example, one commenter wrote: [26]

> "Most recently, now that I'm on the IBR repayment plan, for the past 6 months, they have made error after error after error in rejecting my income verification forms despite them being correct; they have now continued to keep me in forbearance even after a supervisor told me 2 months ago I was all clear and had nothing to worry about. Everyone answering their phone calls tells me something different."

Commenters described servicers' failure to accurately detail which documents are required to qualify for IDR using ADOI, frequently losing ADOI documents, and repeatedly asking borrowers to provide documents already submitted.[27] The Bureau concluded that these failures resulted in borrowers being unable to access payment relief.

In August 2016, the CFPB issued a report analyzing problems with the IDR application process as revealed in consumer complaints. Borrowers complained to the Bureau

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about delays in the IDR application process; having applications rejected because of missing information or because their servicer lost paperwork and failed to communicate about these problems; and experiencing these same administrative obstacles during the annual IDR recertification process.[28]

One borrower described the impact of IDR application delays as follows:[29]

> "[My servicer] still [has] not completed the processing of my application . . . . This delay . . . is creating a hardship on me, as it is lengthening the amount of time I remain in debt and delays my final repayment date back as many months as [my servicer is] unable to get me into the new repayment plan. I am also enrolled in the Public Service Loan Forgiveness program, so the "clock" on my maximum 10-year repayment time span has essentially stopped. . . ."

The CFPB estimated that IDR-related mistakes and delays could cost a consumer thousands of dollars over the life of a loan.[30]

Later that year, the CFPB reported it had identified these same issues through its supervisory function. Examiners determined that one or more student loan servicers were denying or failing to approve IDR applications that should have been approved on a regular basis.[31] The Bureau cited this as an unfair practice and directed corrective measures.

Available information about the IDR application experience, in sum, reveals a process characterized by delays by and frustrations with servicers, reminiscent of the consumer experience with mortgage servicers following the financial crisis.[32]

The IDR Experience for Borrowers of Color

The failures of IDR's current design disproportionately and negatively impact borrowers of color. Borrowers of color take on more student debt and struggle more to pay it off than white borrowers do.[33] The risk of default on student loans is higher for borrowers of color—especially Black borrowers—than it is for their white counterparts.[34] And this difference is not fully explained by the underlying and persistent racial wealth gap.[35]

While Black borrowers use IDR at higher rates than other cohorts of borrowers, they still default at higher rates.[36] Recent analyses have shown that greater percentages of Black and Latino borrowers have fallen behind on at least one federal student loan without enrolling in IDR than their white peers.[37] This suggests that the number of Black and Latino borrowers who need relief from their student loan payments is greater than the number of these borrowers who actually enroll in IDR. And the gap between need and access is larger for Black and Latino borrowers than it is for white borrowers.

A recent study of struggling student loan borrowers determined that the incidence of borrowers making suboptimal debt management choices also varies across student gender and ethnicity: specifically, non-white students and male students are more likely to persist with loans in long-term forbearance than to switch to more advantageous repayment arrangements like IDR or loan deferment.[38] Loan forbearance is designed to be temporary relief for students facing short-term hardship, but it is rarely a good option for borrowers over the long term because unpaid interest continues to accumulate during the forbearance period. Long-term enrollment in forbearance can "dramatically increase" a borrower's loan obligation.[39] IDR tends to be significantly better for borrowers with longer-term financial hardship because it allows them to avoid or reduce the costs associated with forbearance and eventually secure loan forgiveness.[40] This study found that most students facing long-term difficulty continue in forbearance for months—or even years—rather than switching to more favorable plans.[41] And the authors determined that non-white borrowers and male borrowers were less likely to move to IDR than their white and female peers.

All of this paints a picture of IDR programs that aren't serving all the borrowers that need help and one in which borrowers of color are being disproportionately left out. The CFPB acknowledged these troubling trends when, in 2017, it shared concerns that systemic failures in student loan servicing might have racial implications.[42]

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How many of the problems observed with IDR are attributable to ADOI is not clear from the available data, but Sections IV and V discuss additional reasons that ADOI itself requires closer examination.

Lessons from the Mortgage Market

One doesn't have to look back far in consumer finance history to find a cautionary tale of racial disparities and consumer harm that serves as a warning for the ADOI process. In response to the financial crisis, federal policymakers created the Home Affordable Mortgage Program (HAMP) in 2009 to help borrowers to avoid foreclosure by modifying loans to a level that was affordable and sustainable.[43] Like IDR, HAMP created a standard modification structure for struggling borrowers and relied on servicers to receive, review, and assess the completeness of documentation; determine borrower eligibility; and communicate with borrowers.[44] Although there were differences between HAMP and IDR, reflective of the differences between mortgage and student lending in general, the similarities described below counsel policymakers today to study the effectiveness and impact of ADOI. While much of the data analyzed for this paper relates to IDR participation generally, HAMP applications provide an instructive parallel to ADOI. The problems encountered with HAMP, discussed below, suggest that ADOI in particular deserves attention as a potentially exclusionary element of the IDR application process.

The Home Affordable Mortgage Program

Like IDR, HAMP was created by the federal government in response to a crisis to help borrowers successfully continue paying off their loans.[45] As with IDR, federal policymakers defined a subset of loans eligible for HAMP modifications.[46] As with IDR, loan servicers were the gatekeepers to HAMP modifications for borrowers. And, as with IDR where a borrower must use ADOI, borrowers were required to submit a series of documents to their servicers to demonstrate eligibility. Borrowers with eligible mortgages had to submit HAMP applications and document for their servicer their current income, assets, and expenses, as well as any specific hardship circumstances.[47] The HAMP application process was often long, paper intensive, and frustrating for borrowers.

Success for a borrower seeking a HAMP modification also looked similar to that of a borrower pursuing IDR: if a borrower's application was accepted and they successfully completed a trial modification period, their servicer would reduce their monthly mortgage payment.[48]

The Impact of HAMP on Borrowers of Color

There is broad consensus on the racially disparate impact of the foreclosure crisis. People of color were hurt more than their white peers by the Great Recession[49] and have faced a more difficult road to rebuild after it.[50] HAMP itself has also been identified as a program that better served white borrowers than it did borrowers of color.[51]

In 2010, the National Community Reinvestment Coalition (NCRC) conducted a survey of distressed homeowners seeking assistance from its Housing Counseling Network. NCRC found that white HAMP-eligible borrowers were almost 50 percent more likely to receive a modification than African-American HAMP-eligible borrowers. Only 24.3 percent of African-American respondents and 32.3 percent of Hispanic or Latino respondents received some kind of modification. In contrast, 36.4 percent of HAMP-eligible white borrowers received a modification.[52] NCRC also found that loan servicers foreclosed on delinquent Black or African-American borrowers more quickly than on delinquent white or Hispanic borrowers. While NCRC did not cover a nationwide sample in its survey, it appropriately read the results to "suggest the need to address barriers impeding eligibility and equitable access."[53]

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In 2011, the California Reinvestment Coalition (CRC) also found disparities in the experience of borrowers seeking HAMP modifications along racial and ethnic lines.[54] Studying data from the U.S. Treasury Department on HAMP loan modification applications and responses to a survey of housing counselors serving borrowers in California, CRC observed that servicers more frequently denied modifications to or canceled trial modifications of borrowers of color than those of white borrowers as a result of "incomplete requests." More borrowers of color, they determined, were dropping out of the HAMP application process as a result of the paperwork burden than their white counterparts.[55]

In a 2014 report, the Government Accountability Office (GAO) assessed the Treasury Department's oversight of the internal fair lending controls for four large HAMP servicers. The GAO analyzed HAMP loan-level data for these servicers and identified statistically significant differences in their portfolios related to (1) denials and cancellations of HAMP trial modifications and (2) in the potential for redefault after permanent modifications.[56] Studying available HAMP data through April 2013, the GAO found that, for all four servicers, non-Hispanic African-Americans had a statistically significant higher trial modification denial rate compared to non-Hispanic whites because, according to the servicers, their debt-to-income ratios were less than 31 percent, meaning that

HAMP modifications weren't required. The GAO also looked at denials of trial modifications in instances where borrowers had not provided complete information to the servicer and found that those denial rates were significantly higher for Hispanics than for non-Hispanic white borrowers. Finally, the GAO found that non-Hispanic African-Americans had a statistically higher rate of redefault than non-Hispanic white borrowers.[57]

The GAO could not determine the cause of these disparities and noted that further analysis was necessary, so it recommended Treasury review the internal controls of these four servicers to ensure compliance with fair lending law.

Scholarly analysis of HAMP and its impact on borrowers of color is not uniform,[58] and further research is warranted on HAMP's role in deepening the racial inequities already exacerbated by the foreclosure crisis. Further, studies can only assess how borrowers who applied for HAMP fared in the application process. There is no way to know, for example, how many borrowers chose not to seek mortgage modifications because the process itself was so daunting or because they were simply unaware of the available protections against foreclosure. Indeed, regulators and enforcers are still grappling with how to ensure fairness in mortgage servicing.[59] But what these analyses do make clear is that, however well intentioned, the success of programs such as HAMP and IDR with ADOI in providing equitable relief to borrowers may continue to be elusive. As discussed in more detail below, structural reforms that are conscious of the historical shortfalls with these programs may offer an alternative and superior path forward.

Where do IDR and ADOI go Wrong?

One hypothesis for why IDR using ADOI—like HAMP—may disadvantage borrowers of color is that admission into these programs is contingent on surpassing a burdensome administrative hurdle. Myriad studies have shown how administrative burden is negatively correlated with access to social programs.[60] That is, when entrance into programs requires a cumbersome application process, many eligible recipients fail to secure the benefits and protections for which they are eligible under the law. This phenomenon has been observed in the context of IDR. More recent research, however, suggests that administrative burden alone does not account for discrepancies in the use of IDR by race.

Scholarship is rich with examples of how administrative burden across a variety of industries creates a harmful barrier to entry, in some cases rising to the level of "administrative exclusion:" nonparticipation attributable to how a program is run rather than an applicant's preferences or their substantive eligibility status.[61] Prospective applicants may not be aware of how to apply or get started; they may be deterred by the excessive paperwork required or worn down by having to re-submit repeatedly lost documentation; and they may find the experience unduly stressful.[62] Research has shown that administrative burdens limit access to food assistance benefits,[63] unemployment insurance,[64] and Medicaid.[65] Each of these programs requires prospective beneficiaries to apply and demonstrate their need according to a specific—and often extensive—administrative process, which creates a burden. As a result, the rate of successful enrollment and persistence in these programs is far below the near-universal participation rates for programs like Social Security and Medicare.[66]

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Research has also shown that administrative burdens fall hardest on people of color. Requiring applicants to "prove" their eligibility with intensive documentation has been shown to exclude people of color in the context of immigration, voting, and benefits access.[67] This same impact exists in areas like unemployment insurance. For example, during the Great Recession, despite the fact that unemployment rates were much higher for Black workers than other racial groups, Black workers had the lowest rates of receipt of unemployment insurance benefits: 23.8 percent compared to 33.2 percent among non-Hispanic white workers.[68]

Conversely, decreasing the administrative burden for access has been shown to increase the take-up of social programs. For example, when California adopted an Electronic Benefit Transfer debit card for food stamp benefit disbursement, participation in the program increased substantially.[69] Similarly, when prospective college students were given guidance to complete applications for federal financial aid for postsecondary school, their applications and actual college enrollment numbers increased substantially.[70]

One study has shown this is true in the very context of IDR enrollment. In 2017, a major student loan servicer provided pre-populated IDR applications that could be signed and returned electronically to a randomly-selected group of distressed borrowers.[71] Data from that experiment shows that IDR enrollment rates for those borrowers increased by 34 percentage points relative to borrowers in a control group. Those borrowers also experienced a drop in monthly payments, a significantly reduced likelihood of default, and an increase in credit card spending, reflecting increased liquidity. Removing administrative burden has concrete and positive consequences.

Recent scholarship suggests, however, that lowering administrative burden, while an important element of increasing access to IDR, may not be sufficient to eliminate racial discrepancies. The study discussed in Section III on borrowers persisting in disadvantageous long-term forbearance also tested possible reasons that non-white borrowers and male borrowers more frequently make suboptimal choices for their debt repayment. The authors compared rates at which borrowers move from forbearance to IDR with the rates at which they move from forbearance to deferment status, a move that poses no additional administrative burden.[72] They found that non-white borrowers and male borrowers were equally unlikely to move to IDR as to deferment, suggesting that borrower aversion to the administrative paperwork required by the IDR application cannot fully explain the divergence in behavior based on race or gender. Rather, the authors posit that servicer behavior explains the differences in borrower enrollment in IDR. Specifically, they conclude that "in-group altruism" on the part of individual servicing representatives explains the observed borrower patterns.[73] That is, because servicer representatives are primarily female and white, they are more likely to assist distressed borrowers who are also female and white, and this helpful treatment results in those borrowers disproportionately moving to better payment plans.[74]

Recommendations

Whatever precise mix of servicer gatekeeping and administrative exclusion is the root cause of the apparent racial discrepancies in access to IDR, particularly for those borrowers applying with ADOI, the experience of borrowers should raise alarm bells for policymakers and enforcers alike. The shortcomings of HAMP further counsel that the design of ADOI—a document-intensive process through which borrowers are required to prove to a loan servicer that they are eligible for government assistance—deserves in-depth investigation. This section presents four recommendations for policymakers and enforcers:

- **The Department of Education should bring to bear its expertise in civil rights as it embarks on rulemaking to improve IDR.**[75] Specifically, the Department's Office of Civil Rights (OCR) should engage in this policymaking, as promoting equal access to IDR is a civil rights issue squarely in line with OCR's mission of "ensur[ing] equal access to education and promote educational excellence throughout the nation through vigorous enforcement of civil rights."[76] Potentially racially disparate outcomes for student borrowers who apply for IDR using ADOI require analysis. The Department of Education should be actively looking for ways to lower the barriers to entry to IDR for borrowers—including lessening the administrative burden of application—and OCR can help do this with a civil rights frame.

- **The CFPB should address student loan servicer behavior using its rulemaking power.**[77] As with mortgages, servicers in the student loan industry wield tremendous power over the borrower experience. Servicers act as "gatekeepers to the myriad features of student loans, particularly federal student loans, that purport to make these financial products safe for consumers."[78] As it did for mortgage servicers, the Bureau should write clear rules for student loan servicers that curb the type of behavior hurting borrowers in the IDR application process. By setting standards for application processing, establishing timelines, and requiring communication with borrowers, rulemaking can address the unnecessary delays and paperwork burdens that currently characterize an IDR application. Clear and consistent standards would also limit both preferential and discriminatory treatment by servicing representatives that currently characterize IDR applications and especially those using ADOI.

- **Federal and state enforcers and regulators should examine, investigate, and take appropriate action to look at disparities in access to IDR and particularly those resulting from borrower use of ADOI.** The CFPB has the authority to enforce the Equal Credit Opportunity Act (ECOA) and, in 2016, announced that it planned to prioritize fair lending compliance as part of its oversight of the student loan industry.[79] It should make good on that promise. The Bureau can also investigate and, where appropriate, take enforcement action to address abuses by student loan servicers. Disparate treatment of borrowers falls squarely with the Bureau's enforcement mandate. State attorneys general can also act independently of the Bureau to address discriminatory servicer behavior by bringing ECOA actions under 12 U.S. Code § 5552. With the end of the COVID-19 forbearance looming in February 2022, this oversight is more important than ever.

- **Federal and state regulators should prioritize market monitoring focused on the servicing practices that govern IDR access and persistence.** Using existing authority to collect and publish data about company-specific practices at financial services firms, state and federal regulators should focus on the student loan servicing industry and, in particular, practices related to enrollment and persistence in IDR, including the processing of ADOI.[80] In 2017, the Bureau took public comment but never finalized a market monitoring proposal that covered these practices but did not explicitly consider borrowers' race or gender.[81] In 2020, California enacted a law that gives its Department of Financial Protection and Innovation the authority to do similar market monitoring of student loan servicers, but explicitly authorizes regulatory scrutiny of "[t]he extent, if any, to which the risks of a student loan or the servicing of a student loan disproportionately affect traditionally underserved consumers."[82] By shining a light on diversity in market participants' handling of IDR enrollment and recertification, new collected data can help shape regulators' enforcement, oversight, and rulemaking priorities and allow independent financial regulators to better advise the U.S. Department of Education as to the risks posed by student loan industry practices.

Conclusion

IDR was created to help struggling student borrowers modify their loan payments and ultimately get out from under crushing debt. But as currently designed, IDR's application process for borrowers who have to use ADOI has yet to live up to this promise for many who need relief. There is reason to believe borrowers of color are faring worse than their white peers. The deeply unequal recovery from the COVID-19 pandemic adds new urgency to understanding and solving this problem as a wave of job losses, reductions in hours, and other unanticipated changes in income force more and more student borrowers to navigate this process while facing an uncertain economic future. Policymakers should look to lessons from the mortgage crisis in writing rules to improve IDR and standardize the servicing practices surrounding it. And enforcers should ensure compliance by servicers with existing fair lending law and regulation by exercising their oversight and enforcement power.

Endnotes

[1] *Federal Student Loan Portfolio*, Fed. Student Aid, https://studentaid.gov/data-center/student/portfolio (last visited Sept. 25, 2021).

[2] *Consumer Credit*, Federal Reserve Board (Sept. 8, 2021), https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html.

[3] *Student Loan Default Has Serious Financial Consequences*, The Pew Charitable Trusts (April 7, 2020), https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2020/04/student-loan-default-has-serious-financial-consequences.

[4] Judith Scott-Clayton, *The Looming Student Loan Default Crisis Is Worse than We Though*t, Brookings (Jan. 10, 2018), https://www.brookings.edu/wp-content/uploads/2018/01/scott-clayton-report.pdf.

[5] Borrowers are required to demonstrate income when first applying for IDR and when renewing their enrollment annually. Concerns about IDR expressed in this paper apply equally to initial application and renewal of IDR plans.

[6] Ben Kaufman, *New Data Show Borrowers of Color and Low-Income Borrowers Are Missing Out on Key Protections, Raising Significant Fair Lending Concerns*, Student Borrower Prot. Ctr. (Nov. 2, 2020), https://protectborrowers.org/new-data-show-borrowers-of-color-and-low-income-borrowers-are-missing-out-on-key-protections-raising-significant-fair-lending-concerns/; Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, Ctr. for Am. Progress (Dec. 2, 2019), https://www.americanprogress.org/issues/education-postsecondary/reports/2019/12/02/477929/continued-student-loan-crisis-black-borrowers/.

[7] Kaufman, *supra* note 6.

[8] Kimberly Cornaggia and Han Xia, *Who Mismanages Student Loans and Why?* (July 27, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3686937.

[9] Danielle Douglas-Gabriel, *Government Watchdog Investigating Discrimination in Student Loan Servicing*, Wash. Post, Apr. 14, 2017, https://www.washingtonpost.com/news/grade-point/wp/2017/04/14/government-watchdog-investigating-discrimination-in-student-loan-servicing/ ("'We're looking at disparities in outcomes … and we believe there may be some,' Patrice Alexander Ficklin, director of the office of fair lending at the CFPB, said on a call with reporters Friday.")

[10] They are: the Income-Contingent Repayment Plan (ICR Plan), the Income-Based Repayment Plan (IBR Plan), the Pay As You Earn Repayment Plan (PAYE plan), and the Revised Pay As You Earn Repayment Plan (REPAYE plan). *See Income-Driven Repayment (IDR) Plan Request*, Fed. Student Aid, https://studentaid.gov/app/ibrInstructions.action (last visited Sept. 25, 2021). *See also Income-Driven Repayment*, Student Borrower Prot. Ctr., https://protectborrowers.org/income-driven-repayment/ (last visited Sept. 25, 2021).

[11] The Department of Education defines "discretionary income" for each plan. For the IBR, PAYE, and REPAYE plans, a borrower's discretionary income is "the difference between [their] adjusted gross income (AGI) and 150 percent of the U.S. Department of Health and Human Services (HHS) Poverty Guideline amount for [their] family size and state." *Do you Have Questions About the Different Types of Income-Driven Repayment Plans?*, Fed. Student. Aid, https://studentaid.gov/manage-

loans/repayment/plans/income-driven/questions (last visited Sept. 25, 2021). And for the ICR Plan, "discretionary income is the difference between [the borrower's] AGI and 100 percent of the HHS Poverty Guideline amount for [their] family size and state." *Id.*

[12] *If Your Federal Student Loan Payments are High Compared to Your Income, you may Want to Repay Your Loans Under an Income-Driven Repayment Plan*, Fed. Student Aid, https://studentaid.gov/manage-loans/repayment/plans/income-driven (last visited Sept. 25, 2021) ("If your income is low enough, your payment could be as low as $0 per month.").

[13] *Public Service Loan Forgiveness (PSLF)*, Fed. Student Aid, https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service (last visited Sept. 25, 2021).

[14] *The Biden Plan for Education Beyond High School*, Biden Harris Democrats, https://joebiden.com/beyondhs/# (last visited Sept. 25, 2021).

[15] *Negotiated Rulemaking for Higher Education 2021-22*, U.S. Dept. of Educ., https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html (last visited Sept. 19, 2021).

[16] *Midyear Update on Student Loan Complaints*, Consumer Fin. Prot. Bureau (Aug. 2016), https://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf.

[17] Seth Frotman, *Every Tool at its Disposal: The Case for a Student Loan Servicing Rulemaking*, 31 Loy. Consumer L. Rev. 551, 584 (2019).

[18] 34 C.F.R. § 685.209(a)(5) (2017) (PAYE); 34 C.F.R. § 685.209(b)(3)(v) (2017) (ICR); 34 C.F.R. § 685.209(c)(4) (2017) (REPAYE); 34 C.F.R. § 685.221(e) (2016) (IBR for Direct Loans); 34 C.F.R. § 682.215(e) (2013) (IBR for FFELP Loans).

[19] Letter from Jack Remondi, President and CEO, Navient, to Monica Jackson, Office of the Executive Secretary, Consumer Fin. Prot. Bureau (June 12, 2016), https://www.regulations.gov/document/CFPB-2016-0018-0665.

[20] Including from employment, unemployment, dividend income, interest income, tips, and alimony.

[21] Documentation must be no older than 90 days from the date of the application.

[22] *See Income-Driven Repayment (IDR) Plan Request*, Fed. Student Aid, https://studentaid.gov/app/demoIdrNewApplication.action#!/idrDemo/2/postIRS (last visited Sept. 25, 2021); Income-Based Repayment Plan: Alternative Documentation of Income, OMB No. 1845-0102, U.S. Dep't of Eudc., https://www.ocap.org/Pubs_Forms/Forms/IBR_alt_income.pdf.

[23] *Income-Driven Repayment (IDR) Plan Request*, Fed. Student Aid, https://studentaid.gov/app/ibrInstructions.action (last visited Sept. 19, 2021).

[24] *See, e.g.*, Memorandum from Ted Mitchell, Under Secretary, U.S. Dep't of Educ. to James Runcie, Chief Operating Officer, Fed. Student Aid (July 20, 2016) https://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf; U.S. Dep't of the Treasury, U.S. Dep't of Educ. & Consumer Fin. Prot. Bureau, Joint Statement of Principles on Student Loan Servicing (2015), https://files.consumerfinance.gov/f/201509_cfpb_treasury_education-joint-statement-of-principles-on-student-loan-servicing.pdf; *NCLC and ACLU Sue Education Department for Race and Debt Collection Data*, Nat'l Consumer L. Ctr. (Mar. 30, 2016), https://www.studentloanborrowerassistance.org/nclc-aclu-sue-ed-race-debt-collection-data/.

[25] In 2017, the Consumer Financial Protection Bureau proposed an initiative to collect and publish this information. In response to political pressure from Trump Administration officials, this initiative was never finalized. *See Private Student Loan Oversight Amid the Coronavirus Pandemic*, Student Borrower Prot. Ctr., (2020) https://protectborrowers.org/wp-content/uploads/2020/04/Coronavirus-PSL-1022c4-issue-brief-vF.pdf.

[26] *Student Loan Servicing: Analysis of Public Input and Recommendations for Reform*, Consumer Fin. Prot. Bureau (Sept. 2015), https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

[27] *Id.* A comment submitted by the National Consumer Law Center documents the experience of a consumer who applied for IDR using ADOI and was repeatedly required to submit income documentation. Even after submitting the requested information, the consumer had to engage in "a lengthy back and forth" with her servicer before receiving the $0 IDR payment to which she was entitled. Public Comment on Request for Information: Student Loan Servicing (2015), CFPB-2015-0021-0861.

[28] *Midyear Update on Student Loan Complaints*, supra note 16.

[29] *Id.*

[30] *Id.* ("If a single application processing delay can increase a borrower's loan balance by over $1000, delays during each annual recertification process could cause a borrower's loan balance to increase by tens of thousands of dollars.").

[31] *Supervisory Highlights, Issue 13*, Consumer Fin. Prot. Bureau (Fall 2016), https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf.

[32] Consumer Fin. Prot. Bureau, *supra* note 26.

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

[34] Kristin Blagg, *The Demographics of Income-Driven Student Loan Repayment*, Urb. Wire (Feb. 23, 2018), https://www.urban.org/urban-wire/demographics-income-driven-student-loan-repayment.

[35] Judith Scott-Clayton, *What Accounts for Gaps in Student Loan Default, and What Happens After*, Brookings (June 21, 2018), https://www.brookings.edu/research/what-accounts-for-gaps-in-student-loan-default-and-what-happens-after/.

[36] Ben Miller, *The Continued Student Loan Crisis for Black Borrowers*, Ctr. for Am. Progress (Dec. 2, 2019), https://www.americanprogress.org/issues/education-postsecondary/reports/2019/12/02/477929/continued-student-loan-crisis-black-borrowers/ ("Continued high default rates, despite the use of IDR, suggest either that outcomes would be much worse without it or that there must be other solutions to better serve borrowers most at risk of default. Unfortunately, the data cannot indicate which hypothesis is correct."); *See also* Kaufman *supra* note 6.

[37] Kaufman, *supra* note 6. SBPC notes that data for other borrowers of color are limited, but available evidence suggests a similar shortfall in IDR access for Asian, Indigenous, mixed-race, and other borrowers.

[38] Cornaggia & Xia, *supra* note 8.

[39] Consumer Fin. Prot. Bureau v. Navient Corporation, Case 3:17-cv-00101-RDM (M.D. Pa. filed Jan. 18, 2017), https://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf ("Forbearance is typically not suitable for borrowers experiencing financial hardship or distress that is not temporary or short-term. Borrowers

who enroll in forbearance face significant costs, which generally increase the longer the borrower is in forbearance. These include the accumulation of unpaid interest and the addition of that unpaid interest to the principal balance of the loan. In addition, in some cases, following a forbearance, a loan may be reamortized, where the monthly payments may be recalculated, which can lead to an increase in the borrower's monthly payment amount. As a result of these costs, long-term enrollment in forbearance can dramatically increase the total amount due each month after the forbearance period ends and over the repayment term for a borrower's federal loans.").

[40] *Id.* at ¶ 36.

[41] Cornaggia & Xia, *supra* note 8.

[42] Douglas-Gabriel *supra* note 9. (Patrice Alexander Ficklin, director of the Bureau's office of fair lending, stated: "We're looking at disparities in outcomes … and we believe there may be some").

The CFPB can address disparate outcomes in student loan servicing using the Equal Credit Opportunity Act (ECOA), which makes it "unlawful to discriminate against any applicant for credit with respect to any aspect of a credit transaction," including applying for a loan modification. 15 U.S.C. § 1691(a), *see also* https://www.consumerfinance.gov/compliance/supervision-examinations/equal-credit-opportunity-act-ecoa-examination-procedures/. The Bureau indicated it would do just that in statements about its priorities for 2017. *See* Patrice Alexander Ficklin, Fair Lending Priorities in the New Year, Consumer Fin. Prot. Bureau (Dec. 16, 2016), https://www.consumerfinance.gov/about-us/blog/fair-lending-priorities-new-year/ ("We will determine whether some borrowers who are behind on their mortgage or student loan payments may have more difficulty working out a new solution with the servicer because of their race or ethnicity."). Under the leadership of Director Kathleen Kraninger from December 2018 through January 2021, however, the CFPB did not aggressively pursue this articulated priority. *See* Letter from Student Borrower Prot. Ctr. et al. to Kathy Kraninger, Director, Consumer Fin. Prot. Bureau (June 3, 2019), https://protectborrowers.org/wp-content/uploads/2019/06/CivilRights_CFPB.pdf.

[43] Home Affordable Modification Program, https://www.hmpadmin.com/portal/resources/overview.jsp (last visited Sept. 25, 2021). HAMP expired December 30, 2016.

[44] Before HAMP, mortgage servicers offered a range of proprietary modifications, which they could continue to offer to borrowers ineligible for HAMP. This paper focuses on HAMP modifications because the HAMP application process so closely resembles that for IDR and because data on HAMP is more centrally available.

[45] *Housing Counselor Frequently Asked Questions*, Nat'l Consumer L. Ctr. (July 13, 2009), https://www.nclc.org/images/pdf/foreclosure_mortgage/counseling_resources/counseling_hamp_faq.pdf provides a fulsome overview of the HAMP modification process.

[46] *Home Affordable Modification Program (HAMP)*, U.S. Dep't of the Treasury, https://home.treasury.gov/data/troubled-assets-relief-program/housing/mha/hamp (last visited Sept. 25, 2021) ("HAMP works by encouraging participating mortgage servicers to modify mortgages so struggling homeowners can have lower monthly payments and avoid foreclosure. It has specific eligibility requirements for homeowners and includes strict guidelines for servicers.")

[47] Nat'l Consumer L. Ctr. *supra* note 45.

[48] If the servicer accepted the borrower's application, HAMP provided a standard reduction of payments to 31 percent of the borrower's income. If the servicer determined the borrower's front-end debt-to-income ratio was greater than 31 percent, it would apply prescribed modification waterfall steps to reduce the borrower's monthly mortgage payment until it represented no more than 31 percent of the borrower's gross monthly income. Servicers also applied a Net Present Value test to determine

whether the value of the loan to the investor would be greater if modified. If not, a HAMP modification was not required. *Id.* Permanent loan modifications under HAMP were only granted after consumers successfully performed under trial modifications.

[49] Debbie Gruenstein Bocian et al., *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*, Ctr. for Responsible Lending (June 18, 2010), http://www.mvfairhousing.com/ai2015/2010-06-18_Foreclosures_by_Race_and_Ethnicity.PDF (finding, in 2010, that African-American and Latino families were disproportionately affected relative to their share of mortgage originations and predicting that the crisis would be "particularly devastating to African-American and Latino families, who already lag their white counterparts in terms of income, wealth and educational attainment.").

[50] Sarah Burd-Sharps & Rebecca Rasch, *Impact of the US Housing Crisis on the Racial Wealth Gap Across Generations*, Social Science Research Council (June 2015), https://www.aclu.org/sites/default/files/field_document/discrimlend_final.pdf.

[51] Note that some studies did find positive effects in some areas for borrowers of color who accessed HAMP. *See, e.g.*, Neil Mayer & Matt Piven, Experience of People of Color, Women, and Low-Income Homeowners in the Home Affordable Modification Program, Urban Inst. (Jun. 2012), https://www.urban.org/sites/default/files/publication/25546/412597-Experience-of-People-of-Color-Women-and-Low-Income-Homeowners-in-the-Home-Affordable-Modification-Program.PDF ("African Americans' share of HAMP activity exceeds its share of candidate borrowers at every stage but the last. For them, the positive differentials they obtain at application and trial and permanent modification stages outweigh the single small negative differential in terms of sustaining modifications. . . . Among the smaller racial groups, American Indians and Alaska Natives have positive or neutral experience compared to whites at each stage except review of eligibility for trials, and we have seen that that single disadvantage is fully offset by just their positive position in trial approvals among eligibles.").

[52] *HAMP Mortgage Modification Survey 2010*, Nat'l Cmty. Reinvestment Coal. (2010), https://ncrc.org/wp-content/uploads/2010/03/hamp_report_2010.pdf.

[53] *Id.*

[54] *Race to the Bottom: An Analysis of HAMP Loan Modification Outcomes by Race and Ethnicity for California*, Cal. Reinvestment Coal. (Jan. 22, 2011), https://urbanstrategies.org/download/race-to-the-bottom-an-analysis-of-hamp-loan-modification-outcomes-by-race-and-ethnicity-for-california/.

[55] CRC believed that servicers themselves were likely the cause of these "incomplete requests," because of servicers' track record of regularly losing submitted documents and repeatedly asking borrowers for the same documents. In fact, in a prior CRC survey, 100 percent of housing counselors responded that it was "very common" for servicers to lose documents.

[56] *Troubled Asset Relief Program: More Efforts Needed on Fair Lending Controls and Access for Non-English Speakers in Housing Programs*, U.S. Gov't Accountability Off., GAO-14-117 (Feb. 2014), https://www.gao.gov/assets/gao-14-117.pdf.

[57] *Id.*

[58] *See* Mayer & Piven *supra* note 51 ("Our consistent conclusion from these multiple analyses is that race, ethnicity, gender, and income have very little impact on homeowners' direct participation in HAMP and on the net benefits of HAMP for homeowners' overall mortgage outcomes. In terms of direct benefits, HAMP serves most racial minorities, Hispanics, women and low income people at least in the same proportion as they do their respective reference populations of whites, non-Hispanics, men, and higher income people."); *see also* Ioan Voicu et al., *Performance of HAMP Versus Non-HAMP Loan Modifications – Evidence From New York City*, Furman Center for Real Estate & Urban Policy (Oct. 2011), https://furmancenter.org/files/publications/paper_mods_performance_102311_1.pdf (finding that individual borrower characteristics beyond FICO score and neighborhood characteristics were not associated with post-modification loan performance).

[59] Janice Gray Tucker & Joshua Kotin, *CFPB Makes it Clear: Fair Servicing Is Back, For Real This Time*, Housingwire (Feb. 10, 2021), https://www.housingwire.com/articles/cfpb-makes-it-clear-fair-servicing-is-back-for-real-this-time.

[60] Donald Moynihan et al., *Administrative Burden: Learning, Psychological, and Compliance Costs in Citizen-State Interactions*, 25 J. Pub. Admin. Rsch. & Theory 43 (2014), https://academic.oup.com/jpart/article/25/1/43/885957?login=true.

[61] Evelyn Z. Brodkin & Malay Majmundar, *Administrative Exclusion: Organizations and the Hidden Costs of Welfare Claiming*, 20 J. Pub. Admin. Rsch. & Theory 827 (2010), https://academic.oup.com/jpart/article/20/4/827/1000431.

[62] Moynihan, Herd, and Harvey have defined administrative burden according to these three types of costs it creates: learning costs, compliance costs, and psychological costs. Programs like IDR and HAMP impose all of these costs, but compliance costs can be particularly high.

[63] *See, e.g.*, Pamela Herd, *How Administrative Burdens Are Preventing Access to Critical Income Supports for Older Adults: The Case of the Supplemental Nutrition Assistance Program*, 25 Pub. Pol'y & Aging Rep. 52 (2015), https://academic.oup.com/ppar/article/25/2/52/1501759; Moynihan et al., *supra* note 60; Ashley M. Fox & Wenhui Feng, *The Effect of Administrative Burden on State Safety-Net Participation: Evidence from SNAP, TANF and Medicaid* (2019), https://appam.confex.com/appam/2019/webprogram/Paper33794.html.

[64] Pamela Herd & Donald Moynihan, *How Administrative Burdens Can Harm Health*, Health Affairs (2020), https://www.healthaffairs.org/do/10.1377/hpb20200904.405159/full/ ("Only about three-quarters of those eligible for unemployment insurance actually receive benefits, with many jobless people deemed ineligible. The fraction of unemployed people receiving benefits ranges from about 10 percent in North Carolina to 57 percent in New Jersey. Notably, there are large race differences. For example, during the Great Recession of 2007–09, 23.8 percent of Black unemployed people received unemployment insurance versus 33.2 percent of White unemployed people.").

[65] *Id.* ("Medicaid take-up is often quite low. Reflecting variance in administrative burdens, Medicaid take-up rates among eligible parents range from 50 percent in Texas to 96 percent in Massachusetts.")

[66] Moynihan et al., *supra* note 60 (citing take-up rates of two-thirds for the Supplemental Nutrition Assistance Program, 30 percent to 60 percent for unemployment insurance benefits, and 50 percent to 70 percent for Medicaid).

[67] Victor Ray et al., *Racialized Burdens: Applying Racialized Organization Theory to the Administrative State* (2020), https://osf.io/8ghc9/. The authors also observe that benefits programs in states with a higher proportion of Black beneficiaries have a higher burden associated with access than states in which white people are more likely to be applicants.

[68] Austin Nichols & Margaret Simms, *Racial and Ethnic Differences in Receipt of Unemployment Insurance Benefits during the Great Recession*, Urb. Inst. (July 23, 2012), https://www.urban.org/research/publication/racial-and-ethnic-differences-receipt-unemployment-insurance-benefits-during-great-recession.

[69] Leah Shiferaw, *Food Assistance, Take-up, and Infant Health: Evidence from the Adoption of EBT* (2019), https://www.semanticscholar.org/paper/Food-Assistance%2C-Take-up%2C-and-Infant-Health%3A-from-Shiferaw/ced702c92405b082ecafb0a86dbc446378eed49d?p2df.

[70] Eric P. Bettinger et al., *The Role of Simplication and Information in College Decisions: Results from the H&R Black FAFSA Experiment* (Nat'l Bureau of Econ. Rsch., Working Paper No. 15361), https://www.nber.org/papers/w15361.

[71] Holger M. Mueller & Constantine Yannelis, *Reducing Barriers to Enrollment in Federal Student Loan Repayment Plans: Evidence from the Navient Field Experiment* (2019), https://cmepr.gmu.edu/wp-content/uploads/2019/08/MuellerYannelis.pdf.

[72] Cornaggia & Xia, *supra* note 8.

[73] *Id.*

[74] *Id.* To the extent this in-group altruism explains student borrower behavior, it would apply equally to borrowers applying to IDR using ADOI.

[75] Press Release, U.S. Dep't of Educ., *Department of Education's Office of Postsecondary Education Announces Public Hearings on Protections for Students, Loan Repayment, Targeted Loan Cancellation Programs, and Other Higher Education Regulations* (May 24, 2021), https://www.ed.gov/news/press-releases/department-educations-office-postsecondary-education-announces-public-hearings-protections-students-loan-repayment-targeted-loan-cancellation-programs-and-other-higher-education-regulations.

[76] *About OCR*, U.S. Dep't of Educ., https://www2.ed.gov/about/offices/list/ocr/aboutocr.html (last visited Sept. 25, 2021).

[77] The CFPB has authority to issue a student loan servicing rule under 12 U.S.C. § 5531 (authority to prescribe UDAAP rules) and 12 U.S.C. § 5532 (authority to prescribe disclosure rules).

[78] Frotman, *supra* note 17, at 584.

[79] Patrice Alexander Ficklin, *Fair Lending Priorities in the New Year*, Consumer Fin. Prot. Bureau (Dec 16, 2016), https://www.consumerfinance.gov/about-us/blog/fair-lending-priorities-new-year/.

[80] *See, e.g.*, 12 U.S.C. § 5512(c)(4) (market monitoring authority); Cal. Civ. Code § 1788.105 (student loan servicing market monitoring authority).

[81] Agency Information Collection Activities: Submission for OMB Review; Comment Request, CFPB-2017-0023 (Sept. 6, 2017), https://www.federalregister.gov/documents/2017/09/06/2017-18776/agency-information-collection-activities-submission-for-omb-review-comment-request.

[82] Cal. Civ. Code § 1788.105.