STUDENT BORROWER PROTECTION CENTER

October 28, 2021

Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Re: Examining the Technology Sector's Involvement in Postsecondary Education and Education Financing

Dear Director Chopra:

We were heartened to see your announcement on October 21, 2021 stating that the Bureau would use its market monitoring authorities under Section 1022(c)(4) of the Consumer Financial Protection Act to examine large technology companies' practices in the payments market.[1] We have long called for more expansive use of these authorities[2] as part of a coordinated effort to bring every tool at the Bureau's disposal to bear to protect people with student debt and postsecondary students in general. We strongly support the Bureau's renewed drive to proactively identify areas of consumer risk and take action.

With that same spirit in mind, we write today regarding grave concerns that troubling practices by Big Tech have already migrated into the higher education finance and postsecondary education space, warranting immediate action by the Bureau to uncover and neutralize possible borrower harm. We have previously written to the Bureau to call attention to possibly dangerous student lending practices by one of the firms addressed in your new data collection effort—PayPal.[3] Now, our own ongoing monitoring indicates that issues at the intersection of technology and consumer financial protection may be even more serious and widespread than we have previously noted.

Our research points to the following areas of heightened concern:

- **Social media companies may be illegally empowering for-profit colleges to target communities of color**. A growing body of research indicates that social media platforms may be empowering for-profit colleges to target ads toward Black and Latino users, ushering into the digital age the unfortunate history[4] of these dubious institutions preying on communities of color.[5] Facebook, for example, has already been accused by federal regulators of allowing advertisers to draw a "red line" around areas that were to be

[1] https://files.consumerfinance.gov/f/documents/cfpb_section-1022_directors-statement_2021-10.pdf
[2] https://protectborrowers.org/wp-content/uploads/2020/04/Coronavirus-PSL-1022c4-issue-brief-vF.pdf
[3] https://protectborrowers.org/150-2/
[4] https://protectborrowers.org/mapping-exploitation-examining-for-profit-colleges-as-financial-predators-in-communities-of-color/
[5] See, e.g., https://harvardcrcl.org/wp-content/uploads/sites/10/2021/04/gilman.pdf

excluded from the reach of their marketing efforts,[6] and by journalists of violating the terms of a 2019 settlement with civil rights groups concerning claims that the social network facilitated racial targeting in the housing, employment, and consumer credit markets.[7] Now, similar practices appear to be present in Facebook's handling of the for-profit college industry. For example, researchers at Harvard recently noted that in materials advertising the ability of for-profit colleges to target ads on its platform, Facebook highlighted an institution with a 68 percent Black and Latino student body finding an audience by identifying people interested in "current rap artists. . . ."[8] Similarly, these researchers also noted that Google had allowed a lead generator for for-profit colleges to bid on advertising space associated with search terms such as "scholarships for [B]lack women" and "grants for single [B]lack mothers."[9] These findings raise serious concerns about the potential for fair lending violations and algorithmically driven disparate treatment,[10] raising the need for careful scrutiny.[11]

- **Payment processors appear to be driving consumers toward increasingly risky forms of credit.** Technology companies are increasingly blurring the line between simply processing payments and driving consumers toward potentially risky credit products, particularly as it relates to education finance. When they do, it appears that these companies perform vanishingly little oversight of the often dubious schools relying on these companies' point-of-sale credit offerings. As cited above, we wrote to the Bureau in April 2020 regarding concerning practices by PayPal in the marketing and design of its point-of-sale revolving credit product, PayPal Credit, which was increasingly being used as an option to finance postsecondary education.[12] In that case, we warned that PayPal Credit involved far greater risks and costs than PayPal represented to consumers, and that the product was being used to prop up a wide range of suspicious for-profit educational institutions. Now, it appears that PayPal has not meaningfully reformed its practices[13] and that emerging Buy Now Pay Later (BNPL) companies such as Affirm have followed PayPal's example by offering untested and potentially dangerous forms of credit as a tool to finance attendance at unregulated educational institutions.[14] And while PayPal

---

[6] https://www.hud.gov/sites/dfiles/Main/documents/HUD_v_Facebook.pdf
[7] https://www.theverge.com/2020/8/26/21403025/facebook-discriminatory-ads-housing-job-credit-hud
[8] https://harvardcrcl.org/wp-content/uploads/sites/10/2021/04/gilman.pdf, citing https://perma.cc/ZWH2-CHQT
[9] https://harvardcrcl.org/wp-content/uploads/sites/10/2021/04/gilman.pdf, citing https://perma.cc/RV3M-W2HM
[10] https://twitter.com/reporterev/status/1451581054389821471
[11] See, e.g., https://www.relmanlaw.com/cases-morgan-rsht, https://protectborrowers.org/holding-for-profit-schools-accountable-for-civil-rights-violations/
[12] https://protectborrowers.org/150-2/
[13] Note that the following institutions, all of which were cited in our original letter regarding PayPal Credit, continue to advertise the availability of PayPal Credit as an option for students to finance tuition expenses: https://www.abseilon.com/phoenix/ [https://perma.cc/3LCQ-7C46], http://www.dentalassistingtn.com/costandfinancing.html [https://perma.cc/9KXS-7FZP]; https://jaxcode.com/docs/info.php [https://perma.cc/HVX2-QACL]. Note also that PayPal claimed to have been "taking action" to prevent representations from schools along the lines highlighted in our April letter. See https://www.yahoo.com/now/pay-pal-credit-for-profit-schools-213858404.html.
[14] See, e.g., https://survivalschool.us/payments-with-affirm/, https://haircation.com/finance-with-affirm/, https://www.instituteonline.com/company/financing-options, https://www.nnbw.com/news/2016/dec/22/cheetah-learning-announces-partnership-with-affirm/, https://www.theincometaxschool.com/payment-plan/, https://sinfullashes.com/affirm-financing/.

appeared to represent after our April letter that the possibly harmful use of PayPal Credit to finance education was going on without its knowledge,[15] Affirm's presence in education finance appears to be an aspect of a concerted business strategy developed over many years.[16] This development points to the acceleration of a concerning trend: the entrance of ever riskier and more costly forms of financing into the higher education space, particularly in the areas already most likely to generate consumer harm.[17] Technology companies' conduct in this space clearly merits careful, immediate attention by the Bureau.

- **Tech companies may be intentionally structuring credit offerings and otherwise developing business strategies in the higher education space to attempt to avoid existing consumer protections.** A hallmark of tech companies' entrance into education finance appears to be an effort to structure credit products and develop marketing materials in ways that might facilitate the evasion of existing state and federal consumer financial protections. Fintech companies such as ISA providers have long and erroneously argued that their products are not a loan or form of credit, and that they therefore need not comply with existing laws and regulations surrounding credit, loans, and private education loans in particular.[18] Despite action by the Bureau to affirm that these claims are false,[19] these deceptive claims are still widely prevalent in the market.[20] Now, firms in the BNPL space appear to be deploying a similar playbook of trying to avoid or simply ignoring the law. For example, an investigation we recently conducted revealed that schools and private creditors were failing to meet key disclosure obligations related to statutorily defined "Preferred Lender Arrangements" (PLAs) they had entered into with schools, breaching a clear ban on co-branding between lenders and institutions of higher education, violating prohibitions on revenue sharing and kickbacks between schools and lenders, and putting borrowers at risk through a series of additional black-letter violations of the law.[21] Various BNPL companies appear to have adopted this practice,[22] all while—as the Bureau has pointed out—carrying their own unique lack of consumer protections even beyond those seen in prior examples, such as formally lacking a dispute resolution mechanism in the law.[23] Moreover, when not engaging in these

---

[15] https://www.yahoo.com/now/pay-pal-credit-for-profit-schools-213858404.html (Quoting one PayPal representative who asserted that if a for-profit school "is found to be using inaccurate or misleading messaging or characterization about PayPal Credit products without our prior knowledge or consent, we will quickly move to terminate the use of our services.")
[16] https://www.businesswire.com/news/home/20150714006296/en/Affirm-Expands-into-Education-Financing
[17] See generally, https://protectborrowers.org/shadow-student-debt-report/
[18] https://protectborrowers.org/credit-by-any-other-name-how-federal-consumer-financial-law-governs-income-share-agreements/
[19] https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-lender-for-misleading-borrowers-about-income-share-agreements/
[20] See, e.g., https://www.purdue.edu/backaboiler/disclosure/contract.html ("THIS IS NOT A LOAN OR CREDIT. THIS IS NOT AN ASSIGNMENT OF WAGES."); https://www.meratas.com/faq ("An ISA is not a loan, and does not create any debt."). Note that the latter example involves a firm that has previously faced legal action at the state level in part stemming from insistence that ISAs are not loans. See https://protectborrowers.org/sbpc-statement-on-california-dfpi-consent-order-with-income-share-agreements-servicer-meratas/.
[21] https://protectborrowers.org/new-report-finds-public-universities-are-driving-students-toward-risky-private-student-loans/
[22] See, e.g., https://ce.arizona.edu/classes/legal-nurse-consultant-training-course
[23] https://www.consumerfinance.gov/about-us/blog/should-you-buy-now-and-pay-later/

practices on their own through ISAs or BNPL products, tech companies are effectuating them as investors in companies that do. Well-known Silicon Valley names from Stripe[24] to Salesforce[25] have invested in companies that appear in our research to be evading the law and harming consumers. The Bureau must use all the tools at its disposal to uncover and eliminate these widespread public risks.

As you undertake the important work of upholding consumer protections in an era of rapidly changing markets, we encourage you to act quickly to ensure that the worst practices already visible across the technology sector do not negatively affect people's financial lives. We look forward to working with you on these and many other pressing matters.

If you have any questions, please contact Ben Kaufman (ben@protectborrowers.org), Head of Investigations and Senior Policy Advisor.

Sincerely,

Mike Pierce
Executive Director
Student Borrower Protection Center

[24] https://www.crunchbase.com/organization/lambda-school/company_financials
[25] https://www.crunchbase.com/organization/guild-education/company_financials