STUDENT BORROWER PROTECTION CENTER

U.S. PIRG Education Fund

April 11, 2022

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

Re: Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services (Docket No. CFPB-2022-0003)

Dear Director Chopra,

The Student Borrower Protection Center (SBPC) and the U.S. PIRG Education Fund welcome the opportunity to comment on the vast world of opaque, non-competitive, formally or effectively mandatory, unexpected, and—perhaps most importantly—hugely costly "junk fees." In particular, the following comment serves to spotlight the devastating financial effects these fees have on students and people who use credit and debt to finance postsecondary education, and to urge swift action by the Bureau to protect students and borrowers.

The Consumer Financial Protection Bureau (CFPB) notes in its Request for Information (RFI) that the economy in general and the financial services industry in particular are increasingly dependent on exploitatively structured fee-based revenue that shields market participants from competition.[1] This finding would likely not surprise students, who have long been the targets of fee-driven profiteering[2] and who have responded in droves to the Bureau's RFI with harrowing narratives of personal loss,[3] food insecurity,[4] and long-term financial damage[5] imposed through junk fees that have lined corporate executives' pockets.[6]

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1 https://files.consumerfinance.gov/f/documents/cfpb_fees-imposed-by-providers-of-consumer-financial-products-services_rfi_2022-01.pdf ("Exploitative junk fees charged by banks and non-bank financial institutions have become widespread, with the potential effect of shielding substantial portions of the true price of consumer financial products and services from competition.").

2 https://www.huffpost.com/entry/higher-one-repay-millions_n_56802738e4b06fa688805b43; https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_foia_letter-to-department-education_record_2018-02.pdf; https://uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf; https://uspirg.org/sites/pirg/files/reports/USP_Debit-Cards-On-Campus_040419-v2.pdf.

3 *See infra* notes 62 to 104.

4 *See infra* notes 87 to 90.

5 *See infra* notes 94 to 96.

6 https://www.marketwatch.com/story/cfpb-sues-bank-alleging-deceitful-language-to-sell-overdraft-protection-2017-01-19 (noting that one bank's CEO "named a personal boat 'The Overdraft'" in 2010).

It is long past due for the Bureau to use its vast enforcement, supervision, and regulatory authorities to shine a light on the junk fees weighing down students, and to hold the companies leveraging these fees accountable for decades of unfair and abusive practices. Accordingly, the Bureau must scrutinize at least the following key types of junk fees facing students and others who took on debt and credit to finance postsecondary education.

The Long History of Predatory Junk Fees in the Campus Card Space Continues Unabated

Federal student loan borrowers are eligible to have surplus Title IV funds be disbursed through school-sponsored prepaid and debit cards linked to deposit accounts ("campus cards"). As the Department of Education (ED) described in 2015 when first instituting consumer protections around them, these cards can ideally offer students "convenient access to funds" that would otherwise likely be relayed by check or direct deposit.[7]

However, the long and sordid history of this market segment shows that campus cards are often loaded with junk fees.[8] In particular, as ED outlined in a 2015 notice of proposed rulemaking surrounding these cards, colleges had systematically entered into agreements with financial institutions to offer card accounts that were often not in the best financial interest of students, particularly as it related to their risky, high-cost, and in some cases predatory fee structure.[9] Though they were advertised as user-friendly and sometimes even bore the relevant college or university's logo, these cards could cost individual students "hundreds of dollars a year" through an assortment of junk fees including insufficient fund (NSF) fees, out-of-network ATM fees, monthly maintenance fees, overdraft fees, and more.[10]

For the favor of offering their students to these financial institutions, schools were given a multi-million dollar cut of the revenue that campus cards' junk fees generated.[11] Using terms eerily similar to those in the Bureau's present RFI, ED described these cards' fees in its 2015 rulemaking as "onerous, confusing, or unavoidable" for students.[12]

ED's 2015 rulemaking process produced a "Cash Management" regulation setting forth that, among other things, schools that permit third-party financial firms to offer accounts to students had to ensure that the terms of those accounts were "not inconsistent with the best financial interests of the students opening them."[13] But as the SBPC and the Consumer Financial Transactions Clinic at the University of North Carolina School of Law (UNC CFTC) outlined in a

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[7] https://www.federalregister.gov/documents/2015/10/30/2015-27145/program-integrity-and-improvement.
[8] *See supra* note 2.
[9] *Id*.
[10] https://files.consumerfinance.gov/f/documents/201612_cfpb_StudentBankingReport2016.pdf.
[11] *Id*.
[12] https://www.federalregister.gov/documents/2015/10/30/2015-27145/program-integrity-and-improvement#footnote-66-p67185.
[13] https://www.federalregister.gov/documents/2015/10/30/2015-27145/program-integrity-and-improvement#footnote-66-p67185.

May 2021 memorandum, both the letter and implementation of this "best financial interest" standard have proven too weak and ambiguous to meaningfully protect students.[14]

For example, a CFPB review of industry conduct in 2017—after ED's rules had already been put in place—found that campus card providers had continued to charge students more than $27 million in fees on student accounts in the 2016-2017 school year, generating $16 million in payments to schools in the process.[15] Wells Fargo led the way in these efforts, charging borrowers an average of $46.99 per account that year to generate more than $14 million in fee revenue through student accounts while kicking more than $2 million back to schools.[16] Underlying these windfalls were the same student-facing "account fees, such as overdraft fees, out-of-network ATM fees," and other charges that ED's 2015 rulemaking had apparently failed to eliminate.[17]

Similarly, a 2019 U.S. PIRG report noted that campus cards continued at the time of publication to "carry a range of fees, such as out-of-network withdrawal fees, wire transfer fees and overdraft fees that are typically around $35 each," and that paid marketing agreements between schools and financial institutions were associated with students paying 2.3 times more in fees than students at schools without these marketing agreements.[18] The Bureau has previously noted that paid marketing agreements between schools and financial institutions are often opaque and may cut against students' interests.[19]

Today, junk fees continue to pervade the campus card space.[20] A review of current campus card terms by the SBPC and the U.S. PIRG Education Fund reveals that financial institutions including Wells Fargo, PNC, U.S. Bank, TCF Bank and more are still burying borrowers under such junk fees as out-of-network ATM fees,[21] account closure fees,[22] monthly service charges,[23]

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[14] https://protectborrowers.org/wp-content/uploads/2021/05/SBPC-UNC-Legal-Memo.pdf.

[15] https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_foia_letter-to-department-education_record_2018-02.pdf.

[16] *Id*.

[17] https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-bank-marketing-deals-colleges-can-mean-costly-fees-and-risks-students/?.

[18] https://uspirg.org/sites/pirg/files/reports/USP_Debit-Cards-On-Campus_040419-v2.pdf.

[19] https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-bank-marketing-deals-colleges-can-mean-costly-fees-and-risks-students/.

[20] For a list of Cash Management contracts between schools and financial institutions, *see* https://studentaid.gov/data-center/school/cash-management-contracts.

[21] https://www.pnc.com/content/dam/pnc-com/pdf/personal/UniversityBanking/DOE_VWS.pdf; https://www.csustan.edu/sites/default/files/groups/Office%20of%20Information%20Technology/documents/wells_fargo_everyday_checking_account_disclosure_2019.pdf.

[22] https://studentbusiness.fsu.edu/sites/g/files/upcbnu1241/files/Forms/FSUCard%20Account%20Overview%20Guide.pdf.

[23] https://bankmobile.custhelp.com/app/answers/detail/a_id/2836.

balance inquiry fees,[24] and nearly universal overdraft and NSF fees.[25] In one striking example, a Truist-backed card available at Florida State University has an account closure fee of up to $30, a $3 domestic out-of-network ATM fee, a monthly $15 dormant account fee, a $36 overdraft fee, and a $12.50 transfer fee for when borrowers overdraft their account but have sufficient funds to cover their transaction in another linked account at the same institution (that is, a $12.50 charge for Truist to wire money to itself that it knows it already has).[26]

The harm and unfairness of these junk fees are evident to students, who submitted several comments to the Bureau's RFI regarding the expense and structure of campus-branded accounts. One student recalled a run-in with a school-branded account as follows:[27]

> *"As a student-employee at the University of Florida I created a checking account at the on campus bank in order to have access to my university paycheck. I overdrew my account in January one year by ~7$. . . . My university job had ended and I had to quit my Publix bagging job to focus on my senior capstone project and didn't have access to my home state bank or savings account while in Florida.*
>
> *When I [received] a check for my birthday in February I went to cash it - deposited it in the atm, checked my balance of 18$ and then walked down the street and bought myself a burrito to celebrate my day.*
>
> *[The bank] waited until I deposited that check to assess me a 35$ overdraft fee for my original overdraft on the check I deposited, taking my account balance below zero and a 2nd 35$ overdraft for buying the burrito. Because of course on their statement the first fee was charged, then the burrito purchased creating a 2nd fee. Despite me knowing when I left the bank that my balance on the ATM was 18$ in my account and the purchase [occurring] less than an hour later. And not finding out about the fees until my next statement. Then [the bank] sent my bill to collections without ever contacting me for resolution. And I as a 21 year old student had no idea where to start addressing the unfairness of their conduct towards me of waiting until I deposited the check to assess a fee and then a 2nd one when the balance didn't cover the fee.*

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[24] https://www.collegegreen.net/FTP/ALL/Disclosure.pdf#page=14.
[25] https://www.wisconsin.edu/procurement/contracts/banking/; https://www.pnc.com/content/dam/pnc-com/pdf/personal/UniversityBanking/DOE_VWS.pdf; https://studentbusiness.fsu.edu/sites/g/files/upcbnu1241/files/Forms/FSUCard%20Account%20Overview%20Guide.pdf; https://ucard.umn.edu/sites/ucard.umn.edu/files/doe_disclosure_document_u_card_final_3.pdf; https://www.csustan.edu/sites/default/files/groups/Office%20of%20Information%20Technology/documents/wells_fargo_everyday_checking_account_disclosure_2019.pdf.
[26] https://studentbusiness.fsu.edu/sites/g/files/upcbnu1241/files/Forms/FSUCard%20Account%20Overview%20Guide.pdf. Note that this card is still listed under the branding of SunTrust, which rebranded as Truist after merging with BB&T in 2019.
[27] https://www.regulations.gov/comment/CFPB-2022-0003-0887.

Today my bank balance is much higher, I still like a birthday burrito and I've never entrusted my funds to [the bank] again."

In their May 2021 memorandum, the SBPC and UNC CFTC outlined clear steps that ED could take to remedy the shortcomings of its existing "best financial interest" standard for campus cards.[28] These steps centrally included ED using the rulemaking process to specify that various junk fees such as charges for balance inquiries, declined authorizations due to NSF, overdraft, account termination, check cashing, and more are presumptively not in students' "best financial interest," while product features such as fee-free overdraft protection and free access to online statement and bill-pay options *are* in students' "best financial interest."[29] In addition, the SBPC and UNC CFTC's May 2021 memorandum recommended that ED clarify through rulemaking that paid marketing arrangements between schools and lenders are not in students' "best financial interest."[30]

Unfortunately, ED has chosen not to act in the face of ongoing, well-documented profiteering at students' expense through junk fees in the area of campus cards. In particular, ED did not include Cash Management in the set of topics covered in its 2021-2022 rulemaking agenda, meaning that it does not intend to address the massive glut of fees that students continue to face when trying to access and manage their money.[31]

The Bureau must use its expansive market monitoring and data collection authority to step up while ED sits on the sidelines.[32] In particular, to date ED has required only that schools report the mean and median of actual costs incurred by campus card accountholders, masking the substantial variation in how much students may pay in junk fees for the same product.[33] As part of its scrutiny of junk fees, the Bureau should use its broad data collection powers[34] to gather at least the following fields from schools that offer campus cards through financial third parties:[35]

- The number of student account holders;
- All fee types assessed in order of assessment frequency and overall value of fee revenue generated;

[28] https://protectborrowers.org/wp-content/uploads/2021/05/SBPC-UNC-Legal-Memo.pdf.
[29] *Id*.
[30] *Id*.
[31] https://www.federalregister.gov/documents/2021/08/10/2021-16953/negotiated-rulemaking-committee-negotiator-nominations-and-schedule-of-committee-meetings.
[32] *See also* https://protectborrowers.org/wp-content/uploads/2020/04/Coronavirus-PSL-1022c4-issue-brief-vF.pdf.
[33] 34 CFR § 668.164(e)(2)(vii)(B), (f)(2)(ii), (f)(4)(iv)(B). Regarding the uneven distribution of fee payments on student accounts, the CFPB has previously reported that "the data . . . indicates that a subset of student accountholders pay a disproportionate share of the total fees paid by accountholders at a given college." https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_foia_letter-to-department-education_record_2018-02.pdf.
[34] 12 U.S.C. § 5512(c)(4).
[35] Note that all of these fields were drawn from the SBPC and UNC CFTC's ED-facing May 2021 memorandum. *See supra* note 28.

- The number of student accounts assessed each variety of fee; and
- The number of student accounts assessed each variety of fee, where fees total up to $15, between $15 and $35, and $50 or greater.

The Bureau should tailor its data collection efforts to additionally focus on the economic fallout of the COVID-19 pandemic for students. As the SBPC and UNC CFTC put it in May 2021, COVID-19 has given rise to new risks ranging from "a potential deluge of out-of-network fees for displaced students" to a rise in "overdrafts related to economic disruption," particularly for students who have been forced by the pandemic to withdraw from their course of study."[36]

Moreover, in light of recent moves by several financial institutions to reduce or eliminate account overdraft and NSF fees and thereby to evidence these charges' lack of business necessity,[37] the Bureau should collaborate with ED to reconsider whether it remains possible to describe overdraft and NSF fees as not being inconsistent with students' best financial interests. The Bureau offered ED extensive guidance on its 2015 Cash Management rulemaking pertaining to consumer experiences and industry practices in the financial marketplace.[38] Further collaboration between ED and the Bureau is necessary to respond to and adjust regulation to fit the changing financial landscape.

Finally, building on renewed scrutiny of overdrafts in the context of campus cards, it is clear that the Bureau should also generally question whether continuing to charge overdraft and/or NSF fees against the backdrop of their widespread reduction and elimination could constitute an unfair, deceptive, and/or abusive act or practice.

The Shadow Student Debt Market is an Opaque Bastion of Harmful Junk Fees

Advocates have long warned of a "shadow" student debt market hidden outside the mainstream of federal and generally bank-based student lending.[39] Composed of income-share agreements, unpaid balances owed directly to schools, revolving credit lines used for tuition financing, "Buy Now, Pay Later" loans, and many other particularly hazardous forms of debt and credit, the

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[36] https://protectborrowers.org/its-time-for-the-department-of-education-to-protect-students-from-abusive-campus-cards/.

[37] https://finance.yahoo.com/news/fifth-third-fitb-remove-nsf-155603156.html; https://www.cnn.com/2022/02/24/investing/citi-bank-overdraft-fees/index.html; https://www.reuters.com/business/finance/bank-america-reduce-overdraft-fees-this-spring-2022-01-11/; https://www.capitalone.com/about/newsroom/eliminating-overdraft-fees/; https://finance.yahoo.com/news/trustmark-announces-changes-overdraft-services-203000965.html; https://www.sunherald.com/news/business/article260124575.html; https://www.crowdfundinsider.com/2022/04/189308-first-internet-bank-eliminates-overdraft-fees-to-improve-client-experience/; https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/.

[38] https://www.federalregister.gov/documents/2015/10/30/2015-27145/program-integrity-and-improvement.

[39] https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf.

shadow student debt market is core to the business models of many of America's most predatory for-profit schools.[40]

Undergirding the shadow student debt market is a startling array of hidden, exorbitant, inexplicable, and otherwise harmful junk fees levied against some of the most marginalized students in any area of higher education. These charges include massive loan application fees,[41] loan origination fees,[42] payment processing fees,[43] and more.[44] For example, one of the largest participants in the shadow student debt market, PayPal, charges a fee of up to $40 for each late payment on its PayPal Credit product[45] (up from $39 when advocates first wrote to the Bureau regarding PayPal Credit's dangerous role in the shadow student debt market).[46] PayPal Credit also subjects borrowers to retroactive charges at a 23.99 percent APR if they have an outstanding balance after six months,[47] effectively levying a junk fee on borrowers who are deceived by this "deferred interest" arrangement or who do not have the means to pay off their loans.

Companies in the shadow student debt market deploy a wide range of harmful tactics to collect on their high-fee lending, including actively misleading borrowers about their rights,[48] withholding borrowers' school transcripts or credentials,[49] and, in cases where the students in question are immigrants, even sometimes threatening deportation.[50] Worse, both these collections tactics and the fees on the loans underlying them are disproportionately targeted toward Black and Latino students, women, low-income people, and students at for-profit colleges.[51]

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[40] *Id*, *see also* https://protectborrowers.org/income-share-agreement-company-and-for-profit-school-sued-for-deceptive-practices-and-illegal-lending/; https://protectborrowers.org/make-school-vemo-lawsuit/; https://protectborrowers.org/pushing-predatory-products-how-public-universities-are-partnering-with-unaccountable-contractors-to-drive-students-toward-risky-private-debt-and-credit/; https://protectborrowers.org/the-cfpb-must-investigate-climb-credit-and-protect-borrowers-across-the-dangerous-high-cost-shadow-student-debt-market/; https://protectborrowers.org/150-2/; https://protectborrowers.org/point-of-fail-how-a-flood-of-buy-now-pay-later-student-debt-is-putting-millions-at-risk/.

[41] https://perma.cc/B3V5-TFDJ.

[42] https://climbcredit.com/students.

[43] https://perma.cc/H6YX-VEC4.

[44] https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf#page=21.

[45] https://perma.cc/5Y44-JU74.

[46] https://protectborrowers.org/wp-content/uploads/2020/08/PayPal-Credit-letter-Regulators.pdf#page=3.

[47] https://perma.cc/5Y44-JU74.

[48] https://protectborrowers.org/morally-bankrupt-how-the-student-loan-industry-stole-a-generations-right-to-debt-relief/.

[49] https://protectborrowers.org/withholding-dreams-why-washington-must-tie-covid-relief-for-colleges-to-relief-for-students-burdened-by-institutional-debt/.

[50] https://www.bloomberg.com/news/features/2022-02-02/underpaid-contract-nurses-who-faced-fines-lawsuits-for-quitting-fight-back?.

[51] https://protectborrowers.org/wp-content/uploads/2021/02/SBPC_Students-loans-and-racial-equity.pdf.

Compounding the damage that junk fees on shadow student debt cause, the unique lack of data reporting requirements in the student loan space as a whole are particularly acute and problematic in the shadow student debt market.[52] Though advocates have identified billions of dollars of shadow student debt through independent investigations,[53] there has not to date been an effort by a federal agency to comprehensively audit this market and understand the nature of the products within it.[54] While advocates have pointed to many of the more visible actors and risks in the space, it is no exaggeration to say that nobody actually knows how large the shadow student debt market is or how deep its dangers run. For as long as this remains the case, the junk fees that are clearly endemic to the shadow student debt market will continue to enjoy protection from the disinfecting power of sunlight.

Advocates have noted before that the Bureau already has the power to fix this.[55] In particular, Dodd-Frank affords the CFPB the authority to create a nationwide registry of nonbank providers of consumer financial products and services, including firms in the shadow student debt market.[56] As part of its review of junk fees, the Bureau must finally establish a national registry along these lines and use the registration of shadow student debt companies as a vehicle to quickly build a broad understanding of these firms' products and their fee structure.

More generally, the Bureau can and must use its robust data collection authority—which it can deploy regardless of whether it chooses to follow the specific route of building a registry of nonbank financial service providers—to gather information on the shadow student debt market. As you know, in 2017 the Bureau developed a comprehensive, first-of-its kind data collection program that would have compelled the student loan industry to produce detailed quarterly data on loan origination, balances, and performance in nearly every corner of the student loan market.[57] These ambitious plans were shelved by Trump-era political appointees acting on behalf of industry, which opposed new oversight of the student loan space.[58] However, the extensive paper trail that the Bureau generated in preparation for this data collection effort remains ready for use.[59]

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[52] https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf#page=15.

[53] https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf#page=18.

[54] Notably, certain states have recently passed laws or otherwise taken administrative action requiring all private student loan companies—including companies in the shadow student debt market—to register with a state regulator and submit certain information related to their product mix. These states include Colorado, Maine, California, and Illinois. *See* https://leg.colorado.gov/bills/sb21-057; http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0530&item=3&snum=130; https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/11/PRO-01-21-11-17-21-Invitation-for-Comments-for-Publication.pdf; https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=110&GA=102&DocTypeId=HB&DocNum=2746&GAID=16&LegID=131590&SpecSess=&Session=.

[55] https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf#page=35.

[56] 12 U.S.C. § 5514; *see also* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111- 203.

[57] https://www.consumerfinance.gov/about-us/blog/increasing-transparency-student-loan-servicing-market/.

[58] https://protectborrowers.org/wp-content/uploads/2020/04/Coronavirus-PSL-1022c4-issue-brief-vF.pdf#page=4.

[59] https://www.consumerfinance.gov/documents/2357/201701_cfpb_market_monitoring_data.xls.

As part of its inquiry into junk fees, the Bureau should revive this abandoned 2017 data collection program and tailor its attention to add a focus on (though certainly not to limit itself to) the shadow student debt market and the junk fees that products in this space impose on borrowers. The results of this data collection effort would offer groundbreaking insight for the Bureau and the public at large regarding the specific nature of the risks that lurk in the shadow student debt market, setting the stage for the elimination of junk fees and for further Bureau action to protect consumers.

Students Face Unique Harm from Overdraft Charges and Other Junk Fees Linked to Bank Accounts

Overdraft fees, account maintenance charges, and other junk fees are unfortunately common across consumer banking, and they harm a wide array of consumers.[60] However, narratives submitted in response to the Bureau's RFI make clear that the damage that bank-related junk fees inflict is uniquely destructive for college students, who are often particularly strapped for both time and resources even before incurring these costs.[61]

Current and past students commenting on the Bureau's RFI reported forgoing groceries for weeks at a time,[62] struggling to afford medicine,[63] eschewing electricity,[64] rationing "toothpaste and toilet paper,"[65] passing on the purchase of textbooks and other school supplies,[66] grappling

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[60] *See, e.g.*, https://www.responsiblelending.org/media/broken-banking-overdraft-penalties-harm-consumers-discourage-responsible-products.

[61] *See, e.g.*, https://www.regulations.gov/comment/CFPB-2022-0003-0821 ("I'm a college student, and last year I had my first job! . . . My lease ended a few weeks after classes started again, and I ended up paying my last month of rent right before I started classes. However, unbeknownst to me, my last paycheck hadn't gone in yet, and I ended up overdrawing my account. And I still didn't realize it had happened until after I got payed a month late, and I had gotten over draft fees of about $100, all because I was more focused on my classes and one inconvenient delay in my paycheck.").

[62] https://www.regulations.gov/comment/CFPB-2022-0003-0267 ("Due to the fees charged . . . I had to eat saltines and peanut butter for four days until I received the refund. After that - I had to severely cut down my already small grocery list, and I basically subsisted on ramen for about a month."); https://www.regulations.gov/comment/CFPB-2022-0003-0247 ("The bank I was with at the time hit me with a $30 fee for each one, on top of a fee for bouncing a check. . . . I struggled to eat that month."); https://www.regulations.gov/comment/CFPB-2022-0003-0655 ("I bought a $10 shirt which caused my checking account to overdraft by a few dollars. My bank had previously automatically pulled money from savings to cover checkings overdrafts -- but had ceased doing so without notifying me, and charged me a large fine. I had to skip meals that week and pick up an extra work study shift to pay it.").

[63] https://www.regulations.gov/comment/CFPB-2022-0003-1042 ("God forbid I don't calculate how much food and necessities like toilet paper and medication cost down to the last penny. If I make even a $1 or less error on costs, then I'm in the hole for $35 until my next paycheck, which means even less for necessities.").

[64] https://www.regulations.gov/comment/CFPB-2022-0003-0578 ("I was getting through the weeks with candles for light as to not up my electric bill, ramen for dinner because its 25 cents a bag, and more blankets than you can imagine to avoid heating my place comfortably.").

[65] https://www.regulations.gov/comment/CFPB-2022-0003-0563.

[66] https://www.regulations.gov/comment/CFPB-2022-0003-0136 ("I'm an undergraduate student, and overdraft fees have threatened my ability to buy necessary textbooks for class. I'm very careful about my

with eviction,[67] facing deep personal humiliation,[68] and more due to the cascading effects of junk fees from bank accounts. These junk fees include overdraft charges borne in moments of crisis or confusion,[69] account maintenance fees prompted by declining balances,[70] ATM fees that borrowers shoulder to access their own money,[71] processing fees that leave students feeling that they are "being chipped away at,"[72] account dormancy fees that penalize borrowers for not moving money frequently enough,[73] and more.[74]

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finances, and move money from my savings to checking account to make sure I don't carelessly spend. Even so, because of the order in which these transactions are organized by the bank, I have had to pay $30 for being $1 or $2 overdrawn. These fees are completely unreasonable and hurt low-income and marginalized people the most.").

[67] https://www.regulations.gov/comment/CFPB-2022-0003-0677 ("I didn't start my job for another two weeks, and had to wait two weeks after that for my first paycheck. Because of that, I barely scraped by my next month's rent, and it turned out I was three dollars and change short. It pulled from my account anyway and then charged me $30 when it overdrafted, so I was late on rent and owed $75 extra dollars, and then owed the overdraft fee on top of it. By the time I got my first paycheck, my landlord was already threatening to file eviction paperwork, and I only barely avoided that by the skin of my teeth. Had my transaction just been denied, I could've found the couple dollars and resubmitted it on time. Overdraft fees almost cost me my apartment.").

[68] https://www.regulations.gov/comment/CFPB-2022-0003-0798 ("Having my entire week meal budget of 40 dollars be taken away because I overdrafted 1.5 dollars from my checking account is absolutely inhumane and humiliating."); https://www.regulations.gov/comment/CFPB-2022-0003-0523 ("[T]hat $25-$35 overdraft fee meant I could not afford food for the week. I called Bank of America and cried to them on the phone and the fee waived. It was humiliating, and I was already at an all time low in my daily life.").

[69] *See, e.g.*, https://www.regulations.gov/comment/CFPB-2022-0003-0113 ("I am a student in college, studying at a SUNY school on a scholarship. I have student loans taken out enough to keep my paychecks from a student job leaving me tight on cash for the next semester and then some. I have had several paychecks go directly to payments, food, and a phone bill before I even saw a dollar into my own account, and often I have seen that OVERDRAFT fee glaring at me from my bank account. If I am already working and studying with every penny, how is it that the bank can take advantage of my poverty and put me further into debt with a $35 overdraft fee on top of everything else?").

[70] *See, e.g.*, https://www.regulations.gov/comment/CFPB-2022-0003-0477 ("When I was a college student I would routinely have less than $20 in my bank account. The bank would charge me a monthly fee for 'maintenance' since I didn't have enough money in my account. If I accidentally overdrew my account, they would charge me $30, which obviously I didn't have, and the charges would pile up, all for me overspending by $2 on groceries.").

[71] *See, e.g.*, https://www.regulations.gov/comment/CFPB-2022-0003-0496 ("I am a student working low wage jobs to survive, and if I need cash and can't get to my hometown an hour away, where my bank is, I have to go to walmart to get it. This is because on top of whatever $2-3.00 fee an atm might charge, I also will get hit with a $4.00 charge from my bank for using an ATM other than theirs. This is incredibly frustrating . . . .").

[72] https://www.regulations.gov/comment/CFPB-2022-0003-0853.

[73] https://www.regulations.gov/comment/CFPB-2022-0003-0252 ("But the next time I do go in, it turns out I'm overdrawn by more than $200. Because the bank charged me 2.99 for not using the account, which overdrew the account. And then they charged me $30 every 3 days.").

[74] https://www.regulations.gov/comment/CFPB-2022-0003-0474 ("Wells Fargo got $80 in service and late fees from me that month. $80 could cover a month's worth of groceries for me. In the winter months, this could cover my monthly electric bill. It could cover the cost of an oil change and a full tank of gas. But instead, this money went to line the pockets of an international bank."); https://www.regulations.gov/comment/CFPB-2022-0003-0591 ("I've been hit with them many times, especially when I was still a student and didn't have much money. I got charged for drawing from savings too many times (~$15), stopping a check (~$30), and even not having enough money in checking."); https://www.regulations.gov/comment/CFPB-2022-0003-0527 ("I deposited the check at my bank and

Junk fees related to bank accounts can cost borrowers tens or hundreds of dollars[75] even when they are triggered by mistakes that take place on the order of pennies,[76] and even when they are caused by operational errors outside of students' control.[77] In some cases, junk fees can prevent students from graduating.[78] And perhaps most perversely, comments submitted to the Bureau show that bank-based junk fees often arrive not *despite* but *precisely because* a student has one or many jobs, with the cost of commuting to and from work prompting disastrous account charges.[79]

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some weeks later saw a huge fee for a bounced check on my next statement. I was very careful with my money and knew I hadn't bounced a check. Only when I went to my bank and spoke to someone did I learn the fee was from my friends bounced check. I argued that someone else's lack of funds shouldn't create a fee for me but I got nowhere.").

[75] https://www.regulations.gov/comment/CFPB-2022-0003-0218 ("I am a student who cannot work out of the house during the COVID-19 pandemic. Since I was laid off in March 2020, I have not been able to hold stable employment despite many, many hours of applications, skills trainings, and interviews. Needless to say, my financial standing is very poor. During this time, I have been charged over $700 in overdraft fees that occurred mostly due to charges that were out of my control.").

[76] https://www.regulations.gov/comment/CFPB-2022-0003-0080 ("I unknowingly overdrew the account by $0.20. I was living at school, my school address is where they sent my debit card. They did not send notice of an overdraft fee to this address. Nor did I receive any email or telephone notification. Before I knew it, the fee went from $35 to $100. For a $0.20 overdraft.").

[77] https://www.regulations.gov/comment/CFPB-2022-0003-0814 ("When I was in college, I got overdraft fees because the temp agency I was working for bounced a paycheck to me and that meant my rent check, grocery check, and phone bill all bounced as well. For a college student, that $75 fees out of pocket meant I lived on straight ramen noodles for 2 weeks; I was the working poor."); https://www.regulations.gov/comment/CFPB-2022-0003-0796 ("One time I had a bill come through early, as they do sometimes, and my paycheck was still in a pending status. So the bank charged me an overdraft fee of $35, my bill bounced and was recharged, at which point the bank overrode my 'do not pull from savings in case of overdraft' preference, and tried to pull from my savings (that didn't have enough to cover the bill), which incurred me a second $35 overdraft fee with an additional $15 fee for pulling from my savings. My paycheck didn't clear until the following day, so at midnight I was charged an additional day overcharge fee of $35, netting me a total $120 charge because a bill cleared a day early and my paycheck was still pending. The bank refused to drop any charges and I had to be put on a payment plan because I was a student living at the college entirely on scholarship and my on-campus job and didn't have $12 sitting around, much less $120.").

[78] https://www.regulations.gov/comment/CFPB-2022-0003-0589 ("In 2009 - 2011, Bank of America charged my at-the-time partner crippling overcharge fees on multiple occasions while we were college students. We could only dispute these fees in person, which was very difficult and disruptive. We both lived hundreds of miles from our families and the only support we had was from student loans. We frequently went without school supplies and nutritious food because of these fees. Due in part to these actions, neither of us graduated.").

[79] https://www.regulations.gov/comment/CFPB-2022-0003-0242 ("Now I have had two times in my life that overdraft fees were utterly detrimental to my life. The first was when I was a full time student in college and doing an internship. I overdrafted on gas trying to get to work leading to them to charge me 23 dollar overdraft fee which lead to me not being able to afford a text book when I needed it. Next during the pandemic both my jobs laid me off and trying to get my bank to work with me was awful as they hit me with overdraft fees and fees for not adding money to my account each month as I had been."); https://www.regulations.gov/comment/CFPB-2022-0003-1178 ("I had an unpaid required internship. The internship was a full time job and unpaid. . . There were many times I would accidentally overdraft my account (gas in my car would be a frequent culprit) and the fees continued to keep me feeling stuck. I was working so hard to better myself, to become a skilled helper, and in trying to do that, I was being charged $25 for over drafting by $6.00 and other small amounts. This needs to change! Big corporate banks don't need to continue to siphon profits off people who are struggling.").

Worryingly, submissions to the Bureau's docket make clear that junk fees linked to bank accounts impose the greatest harm on students who are already the most marginalized on campus and in society at large. Among the most harrowing narratives submitted to the Bureau regarding banks' junk fees are those from first-generation college students,[80] students who work to support parents,[81] disabled students,[82] students for whom higher education is a pathway out of poverty,[83] students who have been laid off from badly-needed jobs,[84] and female students of

[80] https://www.regulations.gov/comment/CFPB-2022-0003-1343 ("As a student, I've had to struggle with my bank numerous times because I was charged an overdraft fee for a transaction that overcharged less than a dollar, or worse, a transfer fee between my own savings and checking because my savings balance dipped below an arbitrary $100 minimum. I'm a first-generation, low-income student who was working multiple student jobs on top of my full-time classes; these arbitrary fees were extremely stressful and unnecessary."); *see also supra* note 65 https://www.regulations.gov/comment/CFPB-2022-0003-0563 ("I'm a low income, [first] generation student who is trying to earn a college degree. Needless to say, money is tight. My bank being unexpectedly overdrawn made it so I couldn't afford necessities such as toothpaste and toilet paper in the past. The fees on my credit card simply didn't make sense.").

[81] https://www.regulations.gov/comment/CFPB-2022-0003-0689 ("When I opened an account with Credit One, I was hit with all kinds of monthly "maintenance fees" that were only vaguely defined in the contract. These fees ended up being far more than their minimum required monthly payment. It quickly became impossible to keep up with. When I called to ask about it, I was simply told 'just pay more money' when making my monthly payments. I'm a college student who works full-time in retail to financially support for my two retired parents. I can't keep running around in circles with these banks like this. I have a family to take care of.").

[82] https://www.regulations.gov/comment/CFPB-2022-0003-0175 ("As a disabled student whose only income is via SSI, overdraft fees and other junk fees disproportionately affect me and those like me who have low or inconsistent [income]. . . . For people struggling with food insecurity in particular, junk fees that exhaust limited finances can be literally dangerous.").

[83] https://www.regulations.gov/comment/CFPB-2022-0003-0101 ("I grew up not having a lot of money. My mom did as much as she could working on a state salary in Missouri, but I remember times when we would have to drive to my grandma's house to shower because the water was off. I'm 23, fresh out of college, and live on my own now, which means that for a couple of years at the very least, I have had even less money to fall back on than my mom had. And it's incredibly embarrassing to have to scramble for money, selling clothes, books, housewares, or even some of the things you treasure most, because one of your bank accounts was overdrawn by fifty cents, they NEGLECTED TO NOTIFY YOU, and when you check your account a couple days later, that fifty cents has turned into over a hundred dollars.

A hundred dollars that you can't afford to lose, because maybe you have to pay rent, bills, medical debt, student loans, groceries… do you see what I'm getting at here? Instead of freezing the account and notifying the consumer whenever an account has gone negative, so many banks (I'm looking at you, US Bank — you say you'll notify consumers, and then you don't) simply quietly collect money from the people who need it most. People who can't afford to fight these fees, because they don't have the time or money. It's predatory, is what it is.

There were times in my first college apartment where I sat in my room and sobbed over unexpected overdraft fees — or even account maintenance fees, and transfer fees — and my group of friends would all scramble for $10 of their own money to try to help. The practice of these bank fees is incredibly unethical, and they are designed so that most of the people that are seriously affected by them stay that way, falling into hundreds of dollars of debt for an overdraft that was originally no more than two or three dollars. It causes significant financial and emotional distress, and the only people that benefit from it are the big money at the banks.").

[84] https://www.regulations.gov/comment/CFPB-2022-0003-0516 ("Once, I was working for a restaurant that closed down one day, with little warning. . . . We didn't receive our final paychecks, and all of us were either college kids or new parents. While looking for permanent work, I was doing odd jobs. Now, in

color already skeptical of a financial system that was not built with their interests in mind.[85] It should be unsurprising that students specifically discussed bank-based junk fees as "a way of punishing people for being poor."[86]

As an indication of precisely how harmful banks' junk fees are for students, it is difficult to understate the extent to which public narratives submitted in response to the Bureau's RFI connected these fees to student malnutrition and food insecurity. The following consumer narratives illustrate this tragic pattern:

- Alisha:[87] "I still remember what it was like to be a student working three jobs and taking 16-19 hour course loads . . . I remember what it was like to try and find the cheapest ways to hide nutrients in my ramen **so i would stop passing out at work**. I remember what it was like to have my car break down three times in a month, eating away my entire pay for that month and leaving me to scramble for tuition and rent[.] I also remember the day those car bills hit - they happened to be at the same time as my rent, credit card, and tuition. I was a few dollars shy, I think less than $20, of paying the entire amount. So the account over drafted. And for each of the bills that attempted to charge that day (four in total), I was hit with a $25 overdraft fee. For those who are not good at math, that is $100 in overdraft fees to a starving student - **literally struggling with the effects of malnutrition** - because I was shy less than $20 in total."

- Alicia:[88] "We had a mixup once while I was in college where a bill got paid and then a second bill came through a few hours later, the day before part of my student loan disbursement hit the account, and the bank's sequential overdraft fees from each of those bills combined with me buying lunch before an exam which overdrafted a 3rd time

Colorado, students are not eligible for food stamps /SNAP benefits, or a few other aid programs, even though I lived off campus, so I was completely alone. I went overdraft after I had to pay rent. The overdraft fees were $32 per day. The problem was, one day I'd have only $25 to $30 paid in odd jobs, so I was still overdraft an extra $32 the next day. Then people wouldn't pay me for work, or they paid in a check that bounced, or they paid in food since they didn't have money but needed help. After a week and a half, I was still over $100 in overdraft fees alone, no matter now hard I worked or how much I paid it down, and I was living off a 10lb bag of pancake mix I got from the local food bank. . . . I didn't fully recover for over a month, and it took me pawning a piece of jewelry that my grandma gave me just to get out of the overdraft fees. Poverty is violence, and banks facilitate in that violence.").

85 https://www.regulations.gov/comment/CFPB-2022-0003-0700 ("I am a female college student of color. . . . Things were going well for the most part, except one night I went to pay my credit card bill and got a letter in the mail a week later telling me that I was being charged $30 for an overdraft fee from one of my bank accounts instead. Apparently I had forgotten to switch from an emergency savings account that I was trying to build up to my main bank account that had enough money to pay the bill. So for a mistake as small as that, I lost $30 from the already small emergency fund I was trying to build for my future.").

86 https://www.regulations.gov/comment/CFPB-2022-0003-0130, *see also* https://www.regulations.gov/comment/CFPB-2022-0003-0526 ("Junk fees are designed to hurt poor people. Stop making life harder for poor people."), https://www.regulations.gov/comment/CFPB-2022-0003-0102 ("Not only do they punish poor people for being poor, they enable banks to do what they did to me and trap people in a cycle of debt.").

87 https://www.regulations.gov/comment/CFPB-2022-0003-0459 (emphasis added).

88 https://www.regulations.gov/comment/CFPB-2022-0003-0620 (emphasis added).

made it so **we couldn't buy groceries for the rest of the month**. Over a scheduling error on our part which measured less than 24 hours, **we went hungry for weeks**."

- CK:[89] "As a student, I worked three part time jobs to help pay for my university and cost of living. I was a librarian assistant on campus, research assistant to a professor, and had an internship with the county. At Christmas I had carefully budgeted to buy presents for my parents and little brother, but accidentally overcharged my card by about $2 dollars when checking out. My bank charged me an overdraft fee of $35 for the mistake. That charge affected my ability to afford healthy groceries in the coming month, and **I started the new semester hungrier and less nourished than any student should be**."

- Kimberly:[90] "[B]ecause I didn't know I'd overdrafted and couldn't easily check my account balance, this led me to more overdrafts - four in total, all costing $35 each. . . . **So I skipped meals, asked friends for food and favors and money I would pay back when I could**. As soon as that $140 was squared away - two weeks of work at my job, and two weeks of me **skipping meals and bumming off of friends** - I closed my account and never looked back."

Harm from bank-based junk fees on the scale that these students describe arises in part because these particular fees often trigger each other in succession, setting off a devastating domino effect that turns small missteps into protracted periods of financial ruin.[91] This harm is particularly notable in cases where unexpected overdrafts lead consumers' balances to fall below required minimum levels in a linked account, generating insufficient balance fees in a terrifying double-whammy.[92] However, it also arises in other contexts. One recent graduate provided the Bureau the following story of a bank-based junk fee triggering another:[93]

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[89] https://www.regulations.gov/comment/CFPB-2022-0003-0514 (emphasis added).
[90] https://www.regulations.gov/comment/CFPB-2022-0003-0614 (emphasis added).
[91] *See, e.g.*, https://www.regulations.gov/comment/CFPB-2022-0003-1071 ("One time while I was in college, I was buying a case for a phone I had gotten right before moving. The case itself was just a $8, and the shipping was free. I thought I had enough in my account at the time, and I did, until later that same day my account was charged a maintenance fee of just another few dollars, that combined with the cost of the case, overdrew my account by about 30 cents. The next day and every day after that, I was charged $35 by my bank due to it being overdrafted, which I simply did not have at the time since I was a student with no income. I was given no notification that my account was overdrawn, and only noticed that it was, 4 days later. My balance when I checked was -$97."); *see also supra* note 73 https://www.regulations.gov/comment/CFPB-2022-0003-0252; *see also supra* note 77 https://www.regulations.gov/comment/CFPB-2022-0003-0796.
[92] *See, e.g.*, https://www.regulations.gov/comment/CFPB-2022-0003-0891 ("I am a student living in the state of California, and have personally been impacted by the fees imposed by these financial institutions very negatively. My bank charges $25 as an overdraft fee, and also has a minimum balance of $1500 somewhere in my account in order for me to not be hit with monthly $25 fees. There have been many times that I accidentally went a dollar or two under the minimum balance, didn't notice by the time the end of the month rolled around, and had to pay a fee on it. It's annoying because that only compounds the issue: my money isn't safe, because unless I get $25 during the month, I will be hit with another fee. I can't understand why the institution I am trusting with my money would be so callous as to say, 'You don't have enough money, so we're going to take yours.'").
[93] https://www.regulations.gov/comment/CFPB-2022-0003-0881.

"After continuing to pay private student loans through Sallie Mae that were not and have not been paused throughout the entire pandemic, my typical autopay increased by $0.97 one month that I did not catch until it was withdrawn from my account. Working in the public sector I quite literally live penny to penny, so this put my checking account at -$0.55. Upon noticing immediately, I transferred the maximum amount I could through instant transfer from my savings thinking I had caught the error quick enough to avoid a $35.00 overdraft fee. I was not, and I was charged $35.00 for over drafting and being -$0.55 which made my balance $-20.05 (meaning I also lost that money from my savings account), and then was charged with another $35.00 charge because my account was negative. In one day, I went from -$0.55 to -$55.05. It was completely predatory, and it required me to quite literally not buy groceries in my next paycheck so that I could get out of the red in my checking account."

As this comment hints at, the harms that bank-related junk fees generate do not end when students secure a diploma. Instead, they follow new alumni into the unique postgraduate period wherein many recent students have still yet to establish firm financial footing. One commenter recalled that she "had checking and savings accounts with Wells Fargo Bank, because that bank had a branch next to the college, and they advertised to me and the other new students on campus when I was a freshman," but that after graduation the bank's "strategy of deliberately skimming fees from its customers" such as "Customer Service Fees" and overdraft fees interfered with her success "renting a room, paying for car insurance and gasoline so I could drive to work, and [buying] groceries."[94] Another commenter to the RFI recalled how an overdraft tripped her up just as she was entering her post-collegiate financial life, saying:[95]

"I lived for a while paycheck to paycheck after leaving school, unable to find employment in my chosen field, and when I overdrafted my account by $0.86 I was fined $30 a day later and was issued a warning by my bank that they would continue to charge me $15 every day until my account was settled above zero. I had to make the humiliating decision to reach out to friends and family for financial assistance, being days away from payday and unable to accept a possible $50 cut to my paycheck."

Further commenters reported retreating from financial markets for the rest of their lives due to the financial and psychological toll that junk fees levied on them while they were students.[96]

Moreover, fitting within the Bureau's framing of junk fees both thriving and being particularly damaging in part due to their anticompetitive nature,[97] borrowers offering comments in response

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[94] https://www.regulations.gov/comment/CFPB-2022-0003-0711.
[95] https://www.regulations.gov/comment/CFPB-2022-0003-0580.
[96] https://www.regulations.gov/comment/CFPB-2022-0003-0114 ("When I was young and first trying to take care of myself as an adult, I over drafted often, costing me hundreds of dollars I didn't have as a poor college student. . . . I've never had a credit card, because I knew I wouldn't be safe from predatory fees if I ever did. I'm almost 40 now.").
[97] https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-init

to the RFI repeatedly noted how banks' junk fees reduced their choices as consumers and stifled their ability to shop across products and service providers.[98] For example, discussing how a fear of bank fees stopped him from moving within the market from one product to another, a commentator said, "I don't want to have to learn an entire new rule book when I haven't even learned the basic one yet. So maybe I'm missing out on something that would be a solid economic investment because it looks entirely too complicated from the outside."[99]

Speaking more generally, one commenter offered the following narrative:[100]

> *"Both as a student and a recent grad, I researched banks, for where I could start building my savings, and credit cards, for building credit. For both of these I found it very difficult to price compare among different companies. So many have home pages or ads/mailers that say no fees with a little asterisk that says for the first year or some other exception that means there are hidden fees. And that's before you get to late fees or incorrectly cashing a check fees. I've been fortunate enough to not often incur fees, but I have invested large chunks of time in researching fees. I've also given up on certain options because I can't find the fee information. It's been a pain to struggle to find the fee information, especially when I was worried about my financial situation."*

Yet another commenter noted that he had attempted to leave his bank "to make a better personal choice" and avoid junk fees only to have his new bank be bought by his old one, leaving him precisely where he started.[101] This outcome touches on the additional secular

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iative-to-save-americans-billions-in-junk-fees/ ("This new 'fee economy' distorts our free market system by concealing the true price of products from the competitive process.").

[98] *See, e.g.*, https://www.regulations.gov/comment/CFPB-2022-0003-0819 ("I am a college student, and I am constantly needing to move money around to afford groceries/put money into savings/get gas/pay off credit cards - and I must do so with the burden of unnecessary bank fees looming over me, preventing me from deciding what to do with my own money. I fully support the banning of these junk fees.").

[99] https://www.regulations.gov/comment/CFPB-2022-0003-0325.

[100] https://www.regulations.gov/comment/CFPB-2022-0003-0664.

[101] https://www.regulations.gov/comment/CFPB-2022-0003-0077 ("My husband and I, after about 10 years of being together, feel financially stable for the first time in our lives. As a student, working to put himself through college at minimum wage jobs in rural Ohio, he would often lose $110 every two weeks through overdraft or other late fees. He might run out of money, need a few more days until his paycheck to pay a bill, or have an unexpected expense. This would trigger $35 a day in late fees or overdrafts, usually multiple times. I'm one instance, before the rule was outlawed, his bank pulled his rent check first, in order to hit him on four overdraft fees for much smaller items. While the amount he was over was less than $100 in total (the small bills were gas, food to get him through 2 more days, etc.), the fees were $140. In another instance, he didn't even overdraft, but fell below the bank's $5 minimum account requirement. His $4.00 turned into -$31 ($35 for too low of a balance), trigger another $35 fee (-$66) for overdraft or negative balance, followed by two more $35 fees until he was paid that Friday.
This practice by banks abuses the most vulnerable in our communities. He was poor, in a rural town, and being abused by his parents with whom he wasn't living but who still claimed him as a tax dependent (they had kicked him out for being gay).
I also remember getting a pay card as one of the first forms of payment for one of my first jobs, before I had a checking account. Because I didn't have an account, the company wouldn't issue a check — they only did direct deposit. While I don't remember all of the particulars, the card had a fee for pretty much anything, from $1 to $5. Checking your balance, making more than one withdrawal, requesting a new card — all fee-based. So unless I wanted to have my entire paycheck in cash, a dangerous prospect for

anticompetitive trend of bank consolidation that the Bureau has pointed to before, a tendency that clearly bolsters banks' ability to levy junk fees.[102] Finally, students commented in response to the RFI that they were given the runaround by banks' customer service agents when trying to move accounts or change account settings to evade junk fees.[103] Conduct along these lines has previously drawn careful scrutiny by the Bureau.[104]

Above and beyond any consideration it may give to junk bank account fees in general, the Bureau must also carefully evaluate and take decisive action to address the widespread damage that these dubious costs have on college attendees and recent graduates. As the comments cited above make clear, these junk fees can spell starvation and lasting financial damage for people already facing unique economic hardship.

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The Bureau's RFI on junk fees marks an important step forward in efforts to promote competitive, transparent financial markets that deliver quality products for consumers. The thousands of comments that people from all walks of life have submitted in response to the RFI point to a nation sick of unexpected, inescapable, inexplicable, and hugely expensive fees plaguing their economic lives.[105] The Bureau should carefully evaluate the areas of concern and recommendations discussed here as it proceeds in its efforts to protect borrowers.

Notably, since the Bureau launched its RFI, defenders of the status quo have trotted out the same tired arguments deployed whenever bad financial behavior comes under the microscope:

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theft, I needed to use this card. Oh, and while the first withdrawal was free, because it was a specialty pay card, I would still get hit with an ATM's own fees, so it really wasn't free.
. . . . And even if a new entrant comes into the market, they are often bought out in a never-ending quest to become consolidated.
For example, I left PNC Bank for National City as a young adult, trying to make a better personal choice. PNC bought National City just a few years later, so I was stuck with them again. They have gone on to acquire a handful more regional banks and financial institutions. The options in my area now are either a national mega bank, or one regional bank. There are a couple credit unions and one very small local bank. This is not enough choice for a region with over a million residents.").

[102] https://www.consumerfinance.gov/about-us/blog/how-should-regulators-review-bank-mergers/.

[103] https://www.regulations.gov/comment/CFPB-2022-0003-0102 ("In 2019 my bank charged me overdraft fees every single month for 9 months because I didn't have enough money in my account to pay off my entire credit card balance. My account was set to autopay the full balance: I had never set it up this way, and when I attempted to change it to the minimum payment via their app and online portal, I would get a notification that there was an error and that setting wasn't reachable. When I tried to call to change it, I got put on hold and then disconnected every time.").

[104] https://www.consumerfinance.gov/about-us/newsroom/debt-deja-vu-for-students/ ("Student borrowers have reported servicing detours and dead ends that bear an uncanny resemblance to the problems homeowners have faced. And as with the mortgage market, there are reports that military families also got the runaround.");
https://www.consumerfinance.gov/about-us/blog/report-illustrates-how-big-three-credit-reporting-companies-are-giving-consumers-the-runaround/ ("A recent Consumer Financial Protection Bureau (CFPB) report reveals that the [nationwide consumer reporting agencies] are failing to substantively respond to most consumer complaints filed with the CFPB—and harming consumers and businesses in the process.").

[105] https://www.regulations.gov/docket/CFPB-2022-0003/document.

that without the ability to nickel and dime the public, financial institutions will pull back innovation and reduce consumer choice.[106]

In response, the SBPC and the U.S. PIRG Education Fund point to the following narrative submitted to the RFI by a commenter named Falcon Yates:[107]

> *"When I was an undergraduate (several years ago, in Alabama), my checking account overdrafted three times, over a weekend, on transactions of less than $20 total. I was charged nearly $100 in overdraft fees. I had to go to my bank and beg them through tears to refund me the money because I was a student and I wasn't even making that much money in a whole week. They only refunded me half of it and made sure I knew they were doing me a huge favor by doing so. . . . I told them it was the last straw, after also getting charged fees for things like 'using my debit card' and 'not doing enough transactions per month' and 'not having at least $1500 in my account'.* ***They told me they had no choice but to charge me all those fees because the government was making it ~so hard~ for them to make money by imposing all these regulations. Even as a twentysomething I knew this was nonsense.****"*

The SBPC and the U.S. PIRG Education Fund stand in agreement with Mr. Yates that, in his case and more generally as it pertains to spurious defenses of junk fees, these arguments are nonsense.

Sincerely,

Student Borrower Protection Center
U.S. PIRG Education Fund

CC:

Hon. Miguel Cardona, Secretary, Department of Education

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[106] https://www.uschamber.com/finance/the-cfpb-is-attempting-to-limit-innovation-and-consumer-choice; *see also* https://www.ballardspahr.com/Insights/Blogs/2022/03/Podcast-CFPB-Inquiry-Into-Junk-Fees-What-It-Means-For-Consumer-Financial-Services-Providers; https://bpi.com/bpi-refutes-key-misconceptions-in-response-to-cfpb-review-of-bank-fees/; https://bpi.com/wp-content/uploads/2022/03/BPI-CFPB-JunkFeesRFI-response-2022.03.31.pdf.
[107] https://www.regulations.gov/comment/CFPB-2022-0003-0357 (emphasis added).

Appendix A:

SBPC/UNC CFTC Memorandum on Campus Debit and Prepaid Cards and the Best Financial Interest Standard

MEMORANDUM

May 7, 2021

TO: Student Borrower Protection Center

FROM: Sarah Baker, Stefan Maletic, Brendan Morrissey, and Sydney Teng
Consumer Financial Transaction Clinic at the University of North Carolina School of Law

RE: **Campus Debit and Prepaid Cards and the Best Financial Interest Standard**

I. Introduction

Students may take out federal student loans in excess of tuition costs to cover essentials like books, housing, and other costs of living.[1] These student loan borrowers are then eligible to have the surplus Title IV funds disbursed either by paper check, direct deposit into a personal bank account, or, as is becoming increasingly common, school-sponsored prepaid cards and debit cards linked to deposit accounts.[2] By permitting disbursement of funds via prepaid or debit cards ("campus cards"), the Department of Education ("Department") sought to ensure that borrowers had "convenient access" to their loan funds, did not incur "unreasonable and uncommon financial account fees," and were not otherwise driven to "particular financial account[s]."[3]

[1] Collectively, this amount is referred to as the cost of attendance. 20 U.S.C. § 1087ll. *See also 2018-2019 Federal Student Aid Handbook*, 3 Fed. Student Aid 41, 41-54 (Aug. 2019), https://fsapartners.ed.gov/sites/default/files/attachments/2019-10/1920FSAHbkVol3Ch2.pdf.
[2] 34 C.F.R. § 164.
[3] Program Integrity and Improvement, 80 Fed. Reg. 67,126, 67,126 (Oct. 30, 2015) (codified at 34 C.F.R. pt. 668).

Unfortunately, many of the unscrupulous practices that permeated the credit card and student loan markets—and ultimately gave rise to federal reforms via the CARD Act[4] and the Student Loan Sunshine Act[5]—have migrated to the campus card space.[6] For example, profit-driven partnerships between financial institutions and colleges often led to student aid recipients being charged "onerous, confusing, or unavoidable fees in order to access their student aid funds or otherwise use the account."[7] After numerous investigations, audits, and legal actions by federal officials,[8] the Department promulgated regulations in 2015 to outline standards for companies partnering with schools operating in the cash management space.[9] However, as ongoing consumer harm in the campus card market illustrates, unclear standards and definitions including in subregulatory guidance regarding the obligations of institutions of higher education

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[4] Pub. L. No. 111-24, 123 Stat. 1734 (2009); *see also The State of Lending in America and Its Impact on U.S. Households*, Center for Responsible Lending (Dec. 12, 2012), https://www.responsiblelending.org/sites/default/files/uploads/5-credit-cards.pdf.

[5] *See* Higher Education Opportunity Act, Pub. L. No. 110-315, pt. G, 122 Stat. 3078, 3271–324 (2008) (codified as amended in scattered sections of 20 U.S.C.). In 2008, Congress enacted the Higher Education Opportunity Act, which incorporated the primary elements of the Student Loan Sunshine Act, establishing requirements for schools and for student lenders to address improper financial arrangements related to student lending and financial aid. For further discussion see Matthew Keenan, *Student Loan Sunshine Act Comes to the Floor*, NANCY PELOSI SPEAKER HOUSE, https://www.speaker.gov/newsroom/student-loan-sunshine-act-comes-to-the-floor (May 9, 2007).

[6] *See* Seth Frotman, Assistant Dir. and Student Loan Ombudsman, Consumer Fin. Prot. Bureau, Remarks to the National Summit on College Financial Wellness at The Ohio State University (June 17, 2016) (text available at https://files.consumerfinance.gov/f/documents/20160617_cfpb_Frotman-OSU-Wellness-Summit-Remarks.pdf) [hereinafter Frotman, Remarks].

[7] Program Integrity and Improvement, 80 Fed. Reg. at 67,126; *see also* Michael Stratford, *Wells Fargo Drops Some Fees on Campus Debit Cards After Criticism*, POLITICO (Apr. 4, 2019), https://www.politico.com/story/2019/04/04/wells-fargo-campus-debit-cards-1322573.

[8] Press Release, FDIC, FDIC Announces Settlement with WEX Bank and Higher One for Deceptive Practices Related to Debit Cards for College Students (Dec. 23, 2015) (on file with author); Jason Lange & Sarah N. Lynch, *Higher One Must Repay Millions to Students Over 'Deceptive' Financial Aid Practices*, THE HUFFINGTON POST (Dec. 27, 2015), https://www.huffpost.com/entry/higher-one-repay-millions_n_56802738e4b06fa688805b43; *College Credit Card Agreements*, CFPB Ann. Rep. to Congress (Dec. 2014); *see also* Rich Williams & Edmund Mierzwinski, *The Campus Debit Card Trap: Are Bank Partnerships Fair to Students?*, U.S. PIRG EDUC. FUND (May 2012), https://uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf; Meryl Compton & Kaitlyn Vitez, *Debit Cards on Campus: Putting Students' Financial Well-Being at Risk*, U.S. PIRG EDUC. FUND & FRONTIER GROUP (Apr. 2019), https://uspirg.org/sites/pirg/files/reports/USP_Debit-Cards-On-Campus_040419-v2.pdf.

[9] *See infra* pp. 4–5.

are holding back the Department's rules from realizing their goal of protecting student borrowers.

This memorandum reviews the history and details of the Department's 2015 rulemaking, surveys the contemporary status of industry conduct in the campus card market, and proposes clear steps that the Department can take to protect students with campus cards. In particular, the memorandum outlines a more protective interpretation of the "best financial interest" standard—the standard by which colleges are meant to negotiate agreements with third-party financial institutions—which is currently too ambiguous to adequately protect borrowers. A model "Dear Colleague Letter," attached as an exhibit to this memorandum, illustrates a path by which the Department may more fully implement these proposed updates to its 2015 rulemaking.

II. Students Harmed: Abuses in Student Campus Cards

In its notice of proposed rulemaking, the Department outlined the abuses that led to the promulgation of the current regulatory framework governing campus cards.[10] In an effort to generate new revenue streams and bolster profits, colleges were entering into agreements with financial institutions to offer accounts that were often not in the best financial interest of the student.[11] These agreements involved campus cards, at times branded with a college's or university's logo, that were marketed as a way for students to conveniently receive financial aid

[10] Program Integrity and Improvement, 80 Fed. Reg. 28,484, 28,484 (proposed May 18, 2015) (codified at 34 C.F.R. pt. 668).

[11] Doug Lederman, *'Deceptive Practices' in Loan Industry*, Inside Higher Ed (Mar. 16, 2007), https://www.insidehighered.com/news/2007/03/16/deceptive-practices-loan-industry; Frotman, Remarks, *supra* note 6. Colleges have financially exploited students to attempt to bring in profits through preferred lender lists, kickbacks, and high-cost loans to students. *See* Nancy Solomon, *Probe Targets College Financial Aid Kickbacks*, NAT'L PUB. RADIO (Apr. 5, 2007), https://www.npr.org/templates/story/story.php?storyId=9396739. Credit card companies would pay colleges to market their campus cards to students in exchange for a share of the profits based on how much debt the students accumulated. *See Problem Credit Card Practices Affecting Students: Hearing Before the S. Comm. on Fin. Inst. and Consumer Credit of the H. Comm. on Fin. Servs.* 110th Cong. (2008); Erica Williams, *Students Need Help Combating Credit Card Debt*, Center for American Progress (June 26, 2008), https://www.americanprogress.org/issues/economy/news/2008/06/26/4483/students-need-help-combating-credit-card-debt/.

disbursements.[12] While these agreements provided financial gains for the school, it was often at great cost to the students in the form of excessive account fees.[13] These agreements, and many of their resulting harms, still exist today.[14]

A number of reports by federal regulators and federal and state law enforcement officials identify several concerning practices surrounding agreements between schools and financial parties.[15] First, some providers and schools strongly signaled to students that signing up for providers' accounts was required to receive federal student aid.[16] Second, providers gained access to private student information unrelated to the receipt of financial aid before recipients even opened accounts.[17] Third, and most directly harmful to students, aid recipients were charged "onerous, confusing, or unavoidable fees in order to access their student aid funds or to otherwise use the account."[18] In response, the Department updated its regulations in 2015 to address these concerns.[19] However, lackluster implementation has allowed these harms to continue, especially in the form of abusive fee practices.[20]

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[12] *Student Banking*, CFPB Ann. Report to Cong. (Dec. 2016).
[13] *Id*. ("[T]he Consumer Financial Protection Bureau's research has found that some young consumers spend hundreds of dollars a year in overdraft fees on student accounts. . .").
[14] *See generally* Letter from Cheryl Parker Rose, Assistant Dir., Office of Intergovernmental Affs., to Wayne Johnson, Chief Strategy and Transformation Officer, U.S. Dep't of Educ. (Feb. 5, 2018), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_foia_letter-to-department-education_record_2018-02.pdf (summarizing harmful practices in campus card arrangements after studying almost 600 agreements at the beginning of the 2017 academic school year).
[15] See, e.g., *Perspectives on Financial Products Marketed to College Students*, CFPB (Mar. 26, 2014), https://www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-cfpb-presentation.pdf; Frotman, *supra* note 6; *Student Banking*, CFPB Ann. Report to Cong. (Dec. 2016); Press Release, CFPB, CFPB Releases Safe Student Account Scorecard (Jan. 14, 2015) (on file with author); Press Release, CFPB, CFPB Warns Colleges About Secret Campus Credit Card Contracts (Dec. 16, 2015) (on file with author); *Safe Student Account Toolkit*, CFPB (Dec. 2015), https://files.consumerfinance.gov/f/201512_cfpb_safe-student-account-toolkit.pdf; Kathy Chu, *Cuomo examining pacts between colleges, banks,* ABC News (Mar. 18, 2008), https://abcnews.go.com/Business/story?id=4462186&page=1.
[16] Program Integrity and Improvement, 80 Fed. Reg. at 67,126.
[17] *Id.*
[18] *Id.*
[19] *See infra* pp. 5-6.
[20] *See infra* Part IV.

III. Legal Authority

The Higher Education Act of 1965 ("HEA") governs higher education institutions that participate in student financial assistance programs.[21] Title IV of the HEA provides financial assistance to students attending higher education institutions through programs and services designed to benefit them in their postsecondary education.[22] The Secretary of Education is responsible for the "development and promulgation of policy and regulations to the programs of student financial assistance under subchapter IV [of HEA]."[23] Further, under 34 C.F.R. § 668, the Secretary of Education "establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV . . . ."[24]

More generally, the Department is responsible for overseeing federal student aid, which annually disburses billions of dollars intended to benefit students, to ensure that the program operates as effectively and efficiently as possible.[25] Multiple statutory provisions vest the Department with broad rulemaking authority to effectuate the purposes of the program.[26] As the statute makes clear, foremost among those purposes is ensuring that students actually receive the awards Congress authorized.[27] Given that these provisions and many more demonstrate an overriding purpose of ensuring that students receive their Title IV funds, it is the Department's responsibility to use its rulemaking authority to ensure Title IV does not operate as a means to benefit third parties while inhibiting students' access to the full amounts of their awards.[28]

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[21] 20 U.S.C. § 1002(a).
[22] *Id.* § 1070(a).
[23] *Id.* § 1018(b)(1).
[24] 34 C.F.R. § 668.1.
[25] Program Integrity and Improvement, 80 Fed. Reg. at 67,128.
[26] *See, e.g.,* 20 U.S.C. §§ 1094(c)(1)(B); 1221e-3; 3474.
[27] Program Integrity and Improvement, 80 Fed. Reg. at 67,128.
[28] *Id.* at 67,128–29. The Department consistently interprets that it has broad discretion to regulate any entity that engages with Title IV funds, not only colleges and student loan companies. *Id.* at 67,145.

Through these authorities, the Department can regulate campus cards and the higher education institutions that facilitate them.[29]

In 2015, in response to growing outrage over the industry practices for campus card accounts, the Department promulgated a "Cash Management" rule to provide greater protections for students.[30] The rule addressed campus cards that distribute Title IV funds to students, including accounts used by schools to directly distribute funds to students, and school-sponsored accounts marketed to students outside of the financial aid process. Specifically, the Department established that institutions that permit third party financial companies to offer accounts to students must ensure that the terms of these accounts "are not inconsistent with the best financial interests of the students opening them."[31] The "best financial interests" rule applies to both institutions that contract with third parties to distribute Title IV student assistance funds via accounts ("T1 arrangements") and institutions that contract with third parties to market school-sponsored accounts directly to students ("T2 arrangements").[32]

Higher education institutions in both T1 and T2 arrangements can satisfy the "best financial interests" rule if: (1) the institution provides documentation that it "conducts reasonable due diligence reviews" at least biannually to determine whether the arrangement's fees are, "considered as a whole, consistent with or below prevailing market rates;" and (2) contracts between institutions and third parties to market or offer accounts have provisions that allow for termination of the contract based on poor student feedback or information provided in the above

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[29] *See also id.* at 67,128 ("We disagree with the commenters who argued that these regulations are outside of our purview under title IV of the HEA. . . . Multiple statutory provisions vest the Department with broad rulemaking authority to effectuate the purposes of the [federal student aid] program.") (citing 20 U.S.C. §§ 1094(c)(1)(B); 1221e–3; 3474).
[30] *See id.* at 67,126–27.
[31] 34 C.F.R. § 668.164(e)(2)(ix), (f)(4)(viii).
[32] *Id.* § 668.164(e)(2), (f)(2).

referenced review that the arrangement's fees are "not consistent with or are above prevailing market rates."[33]

The Department has also distributed several Dear Colleague Letters to offer guidance and clarification on specific technical and reporting issues that arose related to the Cash Management rules.[34] For example, in 2016, the Department issued guidance on bank fee reporting and cost disclosure requirements related to institutions with T1 and T2 arrangements.[35] Specifically, the Department detailed how institutions should "comply with the disclosure provisions under 34 C.F.R. § 668.164(e)(2)(vii), (e)(2)(viii), (e)(3), (f)(4)(iv), (f)(4)(v), and (f)(5) that require an institution to publicly post information on its website related to the number of student accountholders and the costs they incur."[36] Furthermore, the Department makes "Electronic Announcements" that offer guidance on Cash Management.[37] These Electronic Announcements address issues ranging from a series of questions and answers regarding Cash Management to T1 and T2 contract data reporting formatting.[38] Despite extensive communications with institutions to ensure robust implementation of the reporting and disclosure requirements, the Department

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[33] *Id.* § 668.164(e)(2)(ix), f(4)(viii). In 2016, the Department issued technical corrections to amend the cash management rulemaking. *See* Program Integrity and Improvement; Corrections, 81 Fed. Reg. 20,250, 20,250–51 (Apr. 7, 2016) (codified at 34 C.F.R. pt. 668). In the original rule, for example, institutions could only share students' personally identifiable information with T1 account providers to support direct payments of Title IV funds; The 2016 the corrections permitted institutions and third parties to share this information to make any payment to a student. *ED Corrects Cash Management Rules*, NACUBO (Apr. 15, 2016), https://www.nacubo.org/News/2016/4/ED-Corrects-Cash-Management-Rules (citing 34 C.F.R. § 668.164(e)(2)). The technical corrections also required that institutions under T1 arrangements submit the contract data to the Department, as well as publish it on its own website. These measures were designed to account for technical oversight in the original rulemaking and to increase transparency for these transactions.
[34] *Cash Management Information – Dear Colleague Letters and Electronic Announcements*, FEDERAL STUDENT AID, https://ifap.ed.gov/cash-management-information-dear-colleague-letters-and-electronic-announcements.
[35] U.S. Dep't of Education, Institutional Reporting of Fee Information under the New Cash Management Regulations (Sept. 7, 2016).
[36] *Id.*
[37] *Cash Management Information*, *supra* note 34.
[38] *See id.*

has not articulated the underlying requirements that schools must follow to comply with the "best financial interest" standard.

IV. Current Implementation Efforts Have Left Students Susceptible to Harm

The Department of Education has made strides in fostering a more equitable environment for student financial accounts, especially in its 2015 rulemaking.[39] Since then, however, banks and colleges have evolved their approach to student financing in ways that appear to violate the requirements established in 2015, often at the expense of students.[40] Thus, a comprehensive examination of the drivers of this harm is warranted, particularly if the Department wishes to realize the full potential of its own 2015 cash management rule and truly protect the "best financial interests" of student account holders.

The current implementation of the "best financial interests" standard has left widespread and costly gaps for students. The current approach does not sufficiently address fee consistency,[41] or whether fees are charged for appropriate services.[42] Nor does it meaningfully address Paid Marketing Agreements, which are often the root-cause of abuses in student finances.

Moreover, the current understanding of "best financial interests" has left the Department unwilling to provide adequate oversight and enforcement measures to address abusive practices

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[39] *See generally* 34 C.F.R. § 668.

[40] *See, e.g.* CFPB *infra,* note 49 at 8 (finding that Wells Fargo unlawfully charged fees averaging $46.99 in the surveyed period, which is above the market rate). Colleges are required to charge fees "at or below the prevailing market rate" of $35. 34 C.F.R. § 668.164(e)(2)(ix)(a).

[41] *See, e.g. Student Banking at a Glance*, BB&T https://www.bbt.com/content/dam/bbt/bbtcom/pdf/personal/banking/at-a-glance/personal/student-checking-al-dc-fl-ga-md-sc-tn-va-wv.pdf. BB&T's student banking terms allow up to six $36 overdraft fees per month, which can result in a potential spike of $216 in monthly fees.

[42] *See, e.g., Account Summary for TCF Campus Checking,* TCF Bank https://www.tcfbank.com/-/media/project/dotcom/tcfbank/files/personal/campus-connections/campus-account-summary.pdf (assessing $2 per balance inquiry at out of network ATMs, $3 for paper account statements, and $37 for instances of insufficient funds, when the bank does not pay for the item).

between colleges and banks. The Department's approach to implementing the "best financial interests" standard has allowed schools to permit banks to limit their data records to aggregate and vague information.[43] Thus, banks fail to provide specific data regarding the bank fees actually charged to student accounts—data that the Department can use to ensure such accounts are in the best financial interest of the student in practice. The Department could, under its current regulatory authority, compel schools to produce this specific fee data to the government and share it with students and the public, much like it already compels other contractual disclosures.[44]

a. Implementation Has Been Insufficient to Enforce Consistent, Reasonable Fees Levied on Student Accounts

The Department can do more to ensure that, pursuant to the "best financial interests" standard, banks charge students consistent fees and only for reasonable services. The current regulations require that fees charged to students are, "as a whole," at or below prevailing market rates.[45] Significantly, this gap allows banks to charge fees that sharply vary on a month-to-month basis, provided that they "as a whole" stay below market rates.[46] This can be especially harmful to students, because as the CFPB has noted, even "[s]mall, unexpected expenses like account fees can cause problems for some students."[47] Additionally, the gap allows banks to

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[43] *See, e.g*. Banking Account Agreement, FLORIDA STATE UNIV., https://studentbusiness.fsu.edu/student-accounts/banking-account-agreement (displaying only the number of accounts held, and information on mean and median account fees without further detail).
[44] *See* 34 C.F.R. § 668.164(e)(2)(vii), (e)(2)(viii), (e)(3), (f)(4)(iv), (f)(4)(v), and (f)(5) (detailing disclosure requirements concerning the terms and conditions of the proffered student accounts and the underlying contract that the school forms with banks to offer those accounts).
[45] *Id.* § 668(e)(2)(ix)(A).
[46] *See, e.g., Checking Account Disclosures*, SUNTRUST https://studentbusiness.fsu.edu/sites/g/files/upcbnu1241/files/Forms/Checking%20Account%20Disclosures%20-%20FSUCard.pdf (allowing for fee fluctuations without providing a corresponding limit or range for monthly fees).
[47] Seth Frotman & Rich Williams, *Does Your College Sponsor an Affordable Bank Account?* CFPB https://www.consumerfinance.gov/about-us/blog/does-your-college-sponsor-affordable-bank-account (Sep. 22, 2017). *See also* CHRISTINE BAKER SMITH, #REALCOLLEGE 2020: FIVE YEARS OF EVIDENCE ON CAMPUS BASIC

unreasonably levy fees for services that should arguably be free, such as non-client check cashing[48] or balance inquiries.[49] The Department can and should take action to effectively address the types of service fees banks charge students and the rates at which they charge them.

The current imperative to merely conduct "reasonable due diligence reviews" fails to meaningfully address abusive fee structures in agreements between schools and third-party companies. A 2019 US PIRG report explored these regulatory gaps, uncovering fees that rose into the hundreds of dollars.[50] When account fees spike to that level, students can experience "financial shocks." Former Consumer Financial Protection Bureau ("CFPB") Student Loan Ombudsman Seth Frotman noted that these shocks could "be the difference between staying in school or being forced to drop out for financial concerns."[51] Typically, market rate overdraft fees are roughly $35 per charge.[52] In a 2016 survey of 573 agreements, however, the CFPB found that some banks charged well above average rates despite the school's duty to conduct reasonable due diligence reviews into fee arrangements.[53] For example, in this 2016 analysis, Wells Fargo, across 304,227 active campus card accounts, charged an average fee of $46.99 over the surveyed 12-month period between 2016 and 2017.[54]

NEEDS INSECURITY THE HOPE CTR. https://hope4college.com/wp-content/uploads/2020/02/2019_RealCollege_Survey_Report.pdf.

[48] *PNC Virtual Wallet Student Features and Fees*, PNC BANK http://pnc.com/content/dam/pnc-com/pdf/personal/Checking/summary-virtual-wallet-student.pdf (noting a fee for 2% of the check's value will be charged when cashing a check greater than $25 for a payee who does not have a PNC Bank account).

[49] *See, e.g., TD Student Check Account Guide,* TD BANK https://www.tdbank.com/accountguides/Student.pdf (explaining that there is a $3.00 fee "[f]or each withdrawal, transfer, and balance inquiry conducted at a non-TD ATM").

[50] *See Compton & Vitez*, *supra* note 6, at 25.

[51] *Id.* (quoting Jillian Berman, "*Wells Fargo and Other Banks Charged College Students $27 Million in Fees, Buried CFPB Report Reveals*," MARKETWATCH (12 December 2018), https://www.marketwatch.com/story/after-controversy-trump-administration-releases-report-showing-deals-between-bankscolleges-cost-students-27-million-2018-12-10.

[52] *See, e.g., TD Bank Overdraft Services,* TD BANK https://www.td.com/us/en/personal-banking/overdraft-services; *Overdraft Services,* WELLS FARGO https://www.wellsfargo.com/checking/quickstart/overdraft-services.

[53] Letter from Cheryl Parker Rose, *supra* note 14, at 15.

[54] *Id.* at 8.

b. Implementation of the Regulation has Failed to Provide Colleges Enough Control Over Future Changes to Agreements with Banks

The current "best financial interests" standard, as implemented, is insufficient in its coverage of T1 and T2 agreements between schools and third-party financial companies. For instance, despite the Department's broad discretion to regulate and oversee the management of Title IV funds,[55] banks are not currently required to notify or seek approval from schools for fee increases levied upon students after those banks reach agreements with colleges. Even with the Department's requirements mandating that colleges conduct "reasonable due diligence reviews" to ensure rates offered are at or below the prevailing market rate,[56] vendors do not have to provide notice to universities that they are changing their terms and conditions.[57] This omission frustrates schools' reasonable due diligence responsibilities because they cannot comprehensively assess fee rates. And even in the face of this information imbalance, schools are not required to include express contractual provisions that require fee-increase notice, nor do they proactively implement a cap on fee increases.

c. The Department Has Not Required Colleges to Build Robust Data Reporting Requirements Regarding Student Account Fees into Their Agreements with Banks

To date, the Department has not articulated specific data reporting requirements concerning the bank fees actually assessed to students.[58] Currently, third parties are only

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[55] 34 C.F.R § 668.162(a) ("The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution.").
[56] *Id.* § 668.164(e)(2)(ix)(a).
[57] *See id.* § 668.164(e)(2)(iii) (requiring only that colleges inform students of the terms and conditions of their financial accounts "before the account is opened").
[58] In addition to the lack of quantitative data detailed in this section, the current regulation only states that campus card agreements contain a "provision for termination of the arrangement by the institution based on complaints received from students," but takes no further steps to incorporate this qualitative information in reasonable due

required to provide schools with information regarding the "mean and median of actual costs" incurred by accountholders.[59] While these disclosures give institutions a broad, general view of the fees their student population may face, data regarding means and medians do not paint a complete picture. The current reporting requirements do not require a list of the exact number of students who pay fees above or below the median rate, or the exact fees they pay. Nor do they require data about the most common fee types assessed. Put simply, the current reporting requirements "do not permit a detailed analysis of the distribution of fees across student accountholders."[60] More detailed data would include information about students' account utilization, which would allow colleges to better understand how account fees will affect students.[61] This shortcoming deprives schools and students of valuable information they could use to better understand and ultimately avoid burdensome fees in the future.

Indeed, more specific data would enable colleges to address marginal cases where students are charged disproportionately high fees. The CFPB report reviewing the 2016-2017 academic year found that "a majority of students paid no fees when using sponsored accounts."[62] However, the report went on to note that "the data also indicates that a subset of student accountholders pays a disproportionate share of the total fees paid by accountholders at a given college."[63] This lack of information obscures the reality felt by many students who fall outside of the fee-free majority and end up paying "the vast majority of account fees."[64]

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diligence reviews. *See id.* § 668.164(e)(2)(ix), f(4)(viii). Such student complaints are a vital source of individual account-level data.

[59] *See id.* § 668.164(e)(2)(vii)(B), (f)(2)(ii), (f)(4)(iv)(B).

[60] Letter from Cheryl Parker Rose, *supra* note 14, at 5–6.

[61] *See* U.S. Dep't of Education, *Title IV Institutions Reporting Cash Management Contracts* (accessed Sept. 30, 2016), https://studentaid.ed.gov/sa/about/data-center/school/cash-management-contracts.

[62] Letter from Cheryl Parker Rose, *supra* note 14, at 9.

[63] *Id.* at 10.

[64] *Id.*

d. The Department Has Not Sufficiently Addressed the Harms Associated with Paid Marketing Agreements

Last but certainly not least, the Department's efforts to date have been insufficient to protect students' "best financial interests" against the pecuniary interests of the colleges they attend. As presently defined, "best financial interests" allows schools to enter into Paid Marketing Agreements ("PMAs") with third-party financial companies, which in practice are almost unilaterally against the best interests of students. In PMAs, third-party companies pay schools for the opportunity to market directly to their students, which results in notably higher student fees than the fees assessed against students at schools that do not have PMAs.[65] For instance, students at schools with a PMA paid 2.3 times as much in fees as students at schools without a one ($15 on average vs. $34.34 on average).[66] Wells Fargo is perhaps one of the most flagrant offenders regarding PMAs; in a 2019 survey, the U.S. PIRG found that out of 95 surveyed schools with paid marketing agreements, students at schools that had PMAs with Wells Fargo paid fees averaging $44.84 across those schools.[67] At the least, PMAs represent the root-cause of many abuses in student financing, and as such warrant further targeted regulatory attention.

V. Proposed Implementation Solutions

a. Alternative Interpretations Regarding Paid Marketing Agreements

A regulatory implementation that is mindful of students' "best financial interests" would categorically proscribe PMAs and would be a significant step that the Department could take to ensure that 2015 Cash Management goals are met.

[65] *See Compton & Vitez*, *supra* note 6, at 4.
[66] *Id.* at 18.
[67] *Id.*

In lieu of outright proscription, an implementation of "best financial interests" that more closely enforces extant rules which require reporting of "[t]he total consideration . . . monetary and non-monetary, paid or received by the parties" in PMAs would better inform students of conflicts of interests that may run counter to their financial wellbeing. Moreover, the Department could interpret "best financial interests" as meaning that "total consideration . . . paid or received" cannot mean excessive compensation, or that the school has a fiduciary duty to its students. In the alternative, the Department could interpret this standard to set a benchmark based on the typical fee-free structure offered to most students nationwide and penalize schools for non-compliance when entering into an agreement that leaves students on a specific campus financially worse-off than the average student using a typical fee-free product.

Indeed, reading in such an implementation would be consistent with duties created for financial advisors in the Securities and Exchange Commission's "Regulation Best Interest." Financial advisors have a fiduciary duty to their clients and, among other things, must disclose any potential conflicts of interest to their clients. Here, student debt is a financial instrument, similar to those facilitated by financial advisors. Colleges entering into PMAs, as demonstrated above, create a direct conflict of interest between the college's monetary stake in those agreements and the financial wellbeing of their students. At the very least, that conflict should be liberally disclosed.

An implementation of the "best financial interest" standard that compels bold, clear disclosures of how much money colleges receive from banks under PMAs would at least notify students that colleges have a clear profit motive in promoting certain banks. Regardless of which avenue is taken, the Department must implement the "best financial interest" standard more boldly in the area of PMAs.

b. Issue a Dear Colleague Letter with the Following Recommendations

For the foregoing reasons, the Department should issue the following guidance in a Dear Colleague Letter. A model draft Dear Colleague is attached to this memorandum. The below guidance discusses primarily fees, but also models outright proscription of PMAs. Other solutions concerning PMAs discussed in Section V.A could be used in the alternative.

Reasonable Due Diligence: Annual Summary of Fees

When conducting "reasonable due diligence reviews," higher education institutions should request annual summaries of fees from third-party companies. Schools are reminded that they already must publish several of the below data points. 668.164(e)(2)(vii)(B), (f)(2)(ii), (f)(4)(iv)(B). These reports will document the amount of fees actually assessed to students in the previous academic year, including the following annual metrics:

- Number of student account holders
- Average and median fees paid (annual total) by a student account holder
- All fee types assessed in descending order of assessment frequency
- Average and median fees paid by a student for each fee imposed
- Number of student accounts assessed any fee
- Number of student accounts assessed any fee, where fees total up to $15, between $15 and $35, and $50 or greater

Best Financial Interest: Fee Evaluation

When conducting "reasonable due diligence reviews," higher education institutions should consider both fee rates and fee types. For example, the Department considers that the following safe account features are in the "best financial interest" of student loan borrowers, and thus should be provided free of charge:

- Card-based electronic account
- Deposit insurance
- Direct deposit
- Online and mobile banking / bill pay
- Electronic statements

- Fee-free overdraft protection or, alternatively, no charge for declined authorizations due to insufficient funds (“NSF”)
- Money orders / e-checks (two free per month)
- Use of in-network and out-of-network ATMs (at least three free per month for the latter)

Additionally, the Department does not view monthly maintenance fees favorably and encourages higher education institutions to seek out account terms with no monthly maintenance fees or easily obtainable fee waivers. For example, many financial companies offer free checking accounts provided that the account holder maintain a low minimum balance.

Similarly, the “best financial interests” of students dictate that fees never be assessed for the following student account holder activities:

- Point-of-sale purchases
- Declined authorizations due to NSF, or, alternatively, fee-free overdraft protection (if overdraft protection is offered)
- Account termination
- Prepaid card reload
- Account inactivity while enrolled as a student and for a sufficient grace period thereafter
- Check cashing
- Balance inquiries
- Accessing customer services

Finally, the Department considers “reasonable due diligence reviews” to include a forward-looking analysis. As such, third-party companies must provide forecasts of possible or planned fee increases and provide notice to institutions so that they may have adequate time to assess how the increases will affect their student population. Institutions should also actively solicit and consider any student feedback or complaints regarding the campus card arrangements during “reasonable due diligence reviews.”

Best Financial Interest: Fee Structure Transparency

Higher education institutions must require third-party companies to disclose the terms of their T1 and T2 account arrangements. 34 C.F.R. § 668.164(d)(4)(i)(B)(2). To make sure that these disclosures meet the “best financial interests,” schools should require that third-party companies provide a single, simplified fee table that lists all fees that a student could possibly incur in a T1 or T2 arrangement. The fee table should display the fee amount, code term for the fee as it appears on the student's statement (e.g., NSF), and a short, plain statement explaining what conditions trigger the fee.

Best Financial Interest: Eliminate Paid Marketing Agreements

Higher education institutions must already publish their contracts with third-party companies that provide T1 and T2 arrangements, including any form of compensation received by the school. 34 C.F.R. § 668.164(e)(2)(ii)(C)(2)(ix), (f)(4)(iii)-(iv). These compensated arrangements and revenue-sharing provisions present an inherent conflict of interest or "inconsistenc[cy]" between the school's own pecuniary interest and the students' "best financial interests." *Id.* Accordingly, the Department views these paid agreements as incompatible with the "best financial interests" of students.

VI. Conclusion

By implementing "best financial interests," along with its related "reasonable due diligence" requirement, to better address the issues discussed herein, the Department would better serve its aim "to promote student achievement."[68] By clarifying its expectations around the implementation and effectuation of key language in current regulations, the Department and schools alike will be able to address the ways third-party companies use fees to take advantage of students. An interpretation that provides for guaranteed free account services and requires more reporting and transparency around fee assessment will help higher education institutions ensure that their students have access to financial products that are in their "best financial interests."

[68] *About ED*, U.S. DEP'T OF EDUC., https://www2.ed.gov/about/landing.jhtml (last visited Apr. 17, 2021).

Colleges and regulators will be able to better review and monitor banking agreements for financial abuses. Students will be able to anticipate and plan around fees associated with their accounts. And further, core account features will be available free of charge. Finally, eliminating paid T1 and T2 arrangements will fundamentally reposition the students' "best financial interests" as the center of third-party contract negotiations. At the very least, the Department should clarify that it expects schools to act as the fiduciary agent of its students when entering Paid Marketing Agreements with banks.

The Department need not monitor these deals alone. Prior to 2017, the CFPB, which regulates the banks and other financial services firms that cut deals with schools, published an annual "Student Banking" report that examined the prevalence of these deals and the fees charged to students.[69] The CFPB should resume this annual analysis and coordinate closely with the Department to ensure that both schools and financial firms are closely monitored when providing student financial products and services.

In 2015, the Department made meaningful strides towards improving the state of student campus cards. Today, by re-examining the most abusive bank practices, regulators can intelligently implement existing regulations in a way that truly serves the "best financial interests" of students.

[69] *Student Banking*, CFPB Ann. Report to Cong. (Dec. 2016); *see also* Berman, *supra* note 50.

Appendix B:

SBPC Report on Shadow Student Debt

STUDENT BORROWER
PROTECTION CENTER

SHADOW STUDENT DEBT

JULY 2020

In the shadow of the student loan market sits a hidden web of credit and debt taken on by students to pay for college. These high-cost, high-risk financial products are used to prop up predatory for-profit schools across the country. Over the past decade, financial services firms have partnered with these schools to drive students and families to take on billions of dollars of shadow student debt.

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Introduction

Earlier this year, the Student Borrower Protection Center published a report highlighting risks to consumers posed by the traditional private student loan market, finding that this market had grown rapidly and that these loans caused financial distress for many of the most vulnerable borrowers.[i] In addition to $1.5 trillion in outstanding federal student loans, American borrowers now owe at least $140 billion in private student loans.[ii] These traditional private student loans are made by banks and other established private lenders. They have been the subject of warnings by financial regulators and tracked by independent financial analysts for nearly a decade. Together, federal and traditional private student loans form the foundation of what is commonly thought of as the student loan market.

The following report describes in detail how this debt has proliferated—identifying more than a dozen specialty financial services firms operating at thousands of schools across the country and targeting the most vulnerable students in the American higher education system.

In the shadow of the student loan market sits a hidden web of credit and debt incurred by students to pay for college. These high-cost, high-risk financial products are typically extended directly, backed by schools, or brokered by school financial aid officials in partnership with nonbank lenders, banks, and credit unions. Even though these debts are not federal student loans and many may not meet the legal definition of a private student loan, from the perspective of students and families, these debts incurred to finance higher education are student debt.[1]

The following discussion offers a detailed look at the web of "shadow student debt" built over the past decade by the lenders identified in this report, often in partnership with some

1 The "traditional private student loan market" refers only to the set of debts legally recognized as private student loans through the narrow definition set forth in the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z. However, as discussed here, there are many forms of debt and credit—such as certain personal loans and all open-end credit—that are incurred by students to pay for higher education but which do not meet the regulatory definition of a "private education loan." This report aims to take a holistic view of student debt, analyzing the effects of various types of credit and debt—including, but not limited to, traditional private student loan debt—on students and families. *See* 12 C.F.R. § 1026. Readers should also note Regulation Z was written in response to requests from for-profit colleges themselves for a regulatory structure susceptible to this type of gamesmanship by industry. *See Letter from Carole A. Valentine, Vice President, Student Finance, Kaplan Higher Education to Jennifer J. Johnson, Secretary*, Board of Governors of the Fed. Res. Sys. (May 26, 2009), *available at* https://www.federalreserve.gov/SECRS/2009/May/20090529/R-1353/R-1353_052609_21086_378364340222_1.pdf ("Students entering into payment plans and retail installment contracts are simply being permitted to pay money due and owing to their schools in multiple installments instead of all at once. They are not receiving any funds, so they do not need a last chance to evaluate their decision to borrow.").

of the most predatory for-profit schools in America. The findings and analysis presented in this report are the products of a year-long investigation conducted by the Student Borrower Protection Center (SBPC) into these lenders and schools.

Figure 1: Players and Practices that Prop Up Predatory For-Profit Schools

The SBPC's investigation reveals that, over the past decade, students across the country have taken on billions of dollars in debt that has largely escaped the view of lawmakers and the public. As the following report explains, shadow student debt is often a result of predatory lending and features extremely high interest rates and fees. Once students take on these debts, they face servicing and collection abuses that leave them in persistent financial distress. Over the past decade, law enforcement actions against for-profit schools have implicated some of the firms that drive students to take on shadow student debt, but these firms have largely avoided direct scrutiny. The following report describes in detail how this debt has proliferated—identifying more than a dozen specialty financial services firms operating at thousands of schools across the country and targeting the most vulnerable students in the American higher education system.

By identifying, investigating, and regulating shadow student debt, government officials also have an unprecedented opportunity to dismantle a key cog that continues to prop up the predatory for-profit school system.

As described in the final section of this report, lawmakers, law enforcement officials, and regulators at every level of government can take immediate action to protect students and families from abuses by the firms driving borrowers to take on shadow student debt. By identifying, investigating, and regulating shadow student debt, government officials also have an unprecedented opportunity to dismantle a key cog that continues to prop up the predatory for-profit school system.

Sources of Information & Methodology

In preparing this report, the SBPC first identified private-sector financial services firms implicated in several high-profile federal and state law enforcement actions taken against some of the largest operators of for-profit schools over the past decade.[iii] This review was also informed by documents and records produced during the closures of certain for-profit schools.[iv] The SBPC also reviewed documents and records produced by the U.S. Department of Education in response to several open records requests related to the use of third-party vendors by institutions of higher education participating in the Federal Student Aid program. The SBPC supplemented these sources by reviewing consumer complaints submitted to the Consumer Financial Protection Bureau and other public complaint forums, as well as information provided by legal services attorneys, researchers, policy experts, and individual borrowers. Finally, the SBPC reviewed conference and promotional materials produced by the largest trade associations representing for-profit colleges. Based on these sources of information, the SBPC identified more than a dozen finance companies with business models that pose significant risks to students and families—firms that extend credit or facilitate debt incurred by students at for-profit schools.

The documents and records reviewed by the SBPC offer unique insight into the web of debt and credit built to support for-profit schools, propping up predatory companies while driving students deeply into debt.

The SBPC then reviewed publicly available materials produced by these finance companies, including public websites, school-facing marketing materials, and borrower-facing contracts and disclosures. The SBPC supplemented this review of publicly available materials by conducting an internet search to identify additional schools that advertise partnerships with these finance companies. Finally, the SBPC queried state higher education licensure databases to supplement the review of schools partnering with these finance companies and the National Mortgage Licensing System (NMLS) to review state lending, servicing, and collections licenses by these firms.

These sources of information provided the basis for the findings, analysis, and commentary presented in the following report. The documents and records reviewed by the SBPC offer unique insight into the web of debt and credit built to support for-profit schools, propping up predatory companies while driving students deeply into debt.

Shadow Student Debt

Part One: Identifying Shadow Student Debt

A decade ago, students at for-profit schools largely depended on big banks for financing, borrowing billions of dollars of traditional private student loans each year. Many of these private student loans were quickly sold by lenders to investors, fueling the rapid growth of the private student loan market.[v] Through this scheme, which mirrored many of the worst practices by subprime mortgage lenders, private student lenders offloaded the risk of future loan defaults while banking short-term profits from this lucrative form of student lending.[vi] For predatory for-profit schools, driving students to take on private student loans also enabled them to maintain access to a much larger pot of federally backed loans and grants.

In the case of the largest private lender, Sallie Mae, these private student loans were allegedly offered as a "loss leader" in exchange for preferred access to students at for-profit schools who could also borrow Sallie Mae federally guaranteed loans.[vii] As a result, the company could afford to lend private loans to students without regard for their creditworthiness and with a clear understanding that a substantial share of these borrowers would default on these predatory private student loans.[viii] The Illinois Attorney General, in a predatory lending lawsuit filed against the company, quoted comments by Sallie Mae's then-CEO, who boasted that the company would lend to anyone:[ix]

> *"If the borrower can create condensation on a mirror, they need to get a loan this year."*
>
> **- Sallie Mae CEO Thomas Fitzpatrick (2007)**

These loans proved ruinous for many for-profit school students driven into debt. Predatory private student loans frequently featured extremely high interest rates and origination fees, leading modest starting balances to balloon into five- and six-figure debts. These loans also drove former students to struggle with excessive debts relative to their incomes—a byproduct of the poor value of these predatory schools. More than a decade later, the borrowers saddled with these debts continue to face abusive student loan servicing tactics and aggressive practices by debt collectors and debt buyers.[x]

In the years following the 2008 financial crisis, investor demand for loans made to students at for-profit schools collapsed and, in response, large commercial lenders either completely withdrew from the subprime student loan market or sharply curtailed this lending.[xi] At the same time, the role of private lenders originating federal student loans came to an end.[xii]

The largest for-profit schools quickly created new lending schemes to fill this void, backing their own predatory loans with high anticipated default rates to ensure that prospective students could continue to finance their programs with debt. As described in the following sections of this report, for-profit schools weaned themselves off of bank-made loans, and their replacements quickly became a target for law enforcement officials.[xiii] As the Consumer Financial Protection Bureau described when announcing its 2014 lawsuit against Corinthian Colleges:[xiv]

> ***"Corinthian Colleges deliberately inflated tuition prices to be higher than federal loan limits so that most students were forced to rely on additional sources of funding. The Corinthian schools then relied on deceptive statements regarding its education program to induce students into taking out its high-cost private student loans . . . [with an] interest rate [that] was about 15 percent with an origination fee of 6 percent . . . more than 60 percent of Corinthian school students defaulted on their loans within three years."***

FOR-PROFIT SCHOOLS PUSH SHADOW STUDENT DEBT

Over time, many for-profit schools sought out new lending partners and implemented different sets of tactics to ensure students could obtain private financing. These schools continue to embrace shadow student debt as a key pillar of the modern for-profit school business model.[xv]

These products are used by two types of for-profit colleges to ensure prospective students are able to quickly enroll and begin class, even when students lack the ability to pay some or all of the cost of tuition up front. Each type of school uses shadow student debt for different reasons, driven by the school's structure and revenue needs.

- **For-Profit Schools that Participate in the Federal Student Aid Program.** Large and small for-profit schools frequently drive students to incur shadow student debt to avoid running afoul of federal accountability metrics. Following a series of scandals driven by fraudulent for-profit schools three decades ago, Congress required schools in this sector to bring in at least 15 percent of their revenue from sources other than Federal Student Aid.[xvi] In 1998, Congress revised this requirement into its current form—requiring for-profit schools to obtain at least one dollar in revenue from other non-federal sources for every nine dollars it receives from federal grants and loans, known as the "90/10" rule.[xvii] Shadow student debt is one of the ways for-profit schools can evade this key federal law intended to shield borrowers and taxpayers from excess risk.[xviii] Many of the financial products described in this report are marketed to schools specifically as a mechanism to sidestep the 90/10 rule.[xix] For example, when the for-profit school Career Point College shuttered its doors and filed for bankruptcy, the trustee to the bankruptcy uncovered evidence that showed the student financing firm American Student Financial Group (ASFG) employed a separate company under its control to use Career Point College funds to finance loans to the school. In doing so, ASFG took no risk in extending credit to students, and Career Point College was able to represent that it remained compliant with the 90/10 rule.[xx]

Figure 2: Empowering For-Profit Schools to Avoid Accountability[2]

Evading Oversight

"Get **help meeting government regulations** and requirements including . . . **90/10 rules, and more.**"

https://perma.cc/2D27-QKVX

"For those struggling with 90/10, **we will help make certain your school meets its 10% goal** of non-government subsidized loans."

https://bit.ly/31VP8e4

"**Does your school have 90/10 challenges?** TuitionFlexPLUS℠ offers schools the option to sell their payment plans on a forward purchase commitment basis. The purchase criteria is established up front so schools can forecast their cash flows in advance."

https://perma.cc/5AM6-GR5Y

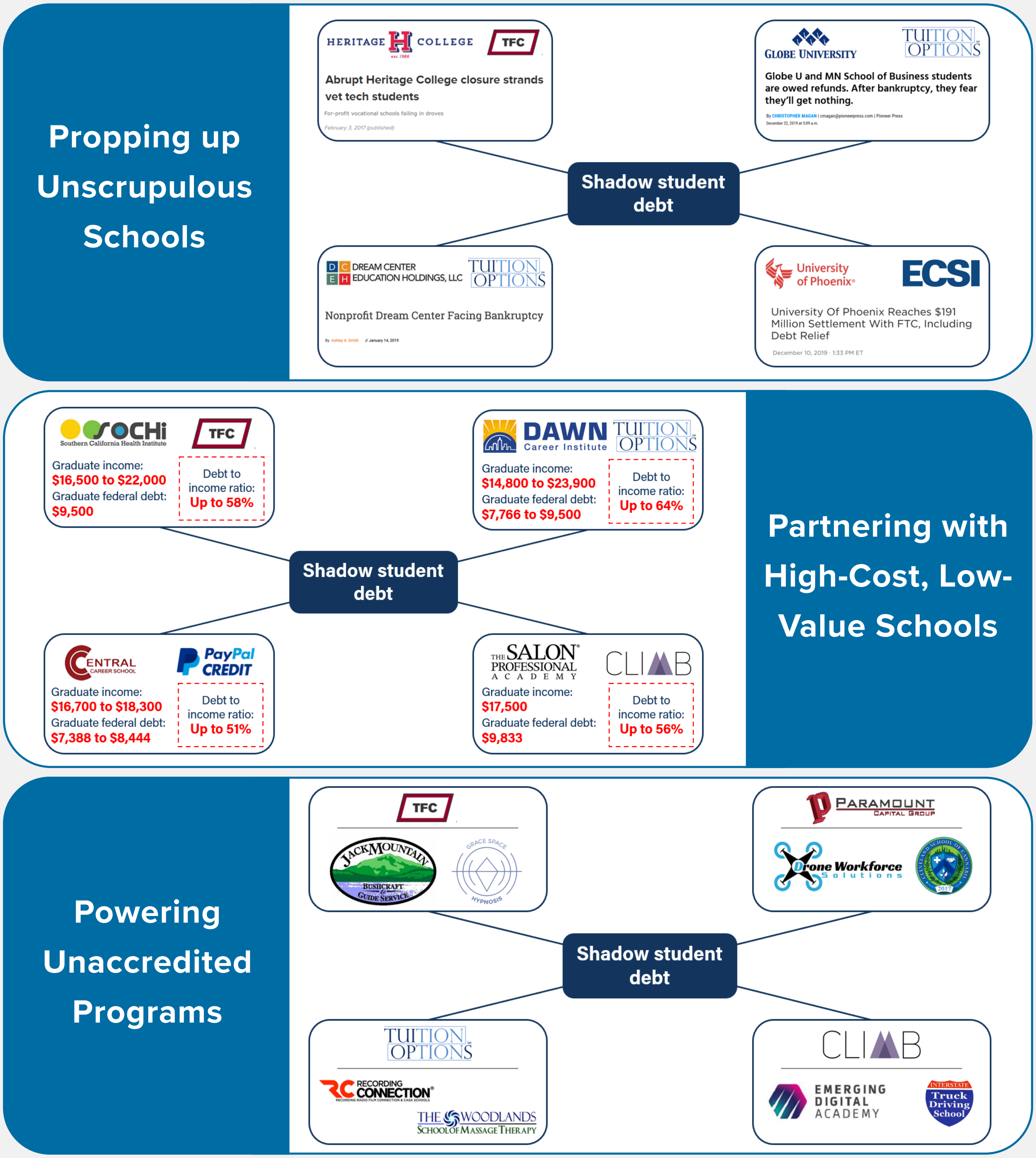
2 Emphasis added throughout graphic. For further discussion, see pages 9-11. For complete citatations, see endnotes xviii, xix.

- **For-Profit Schools that Rely Solely on Private Sources of Financing.** Many for-profit schools, particularly smaller programs that offer training or degrees in fields such as truck driving, cosmetology, or massage therapy, do not participate in the Federal Student Aid program and are not subject to its accountability measures. Students that attend these programs often need financing to cover the full cost of attendance, and these schools routinely partner with lenders to deliver this financing to students. Even short-term programs can cost tens of thousands of dollars and, when students do not have the resources to pay up front, debt is typically the only option. These high-cost, high-risk credit or debt products allow these largely unaccredited career training programs to obtain revenue immediately while placing the future risk of a loan default with the lender or other owner of the loan.

These high-cost, high-risk credit or debt products allow these largely unaccredited career training programs to obtain revenue immediately while placing the future risk of a loan default with the lender or other owner of the loan.

At one or both of these types of for-profit schools, students may face a wide range of abuses caused by the school itself or by a partner financial services company. Specifically, the SBPC's investigation focused on schemes that drive students into shadow debt in three specific but potentially interrelated circumstances that present a high likelihood of harm: 1) when the school itself is engaged in deception, fraud, or other abuses, 2) when the cost of financing a school or program leaves students with a debt-to-income ratio that makes it impossible to attain any degree of economic security, or 3) when shadow student debt is used to finance a program that lacks accreditation, authorization, or another key measure of program quality.[xxi]

Spotlight: Shadow Debt Drives the For-Profit College Machine[3]



3 Graduate income and federal debt levels are medians for each school as reported in the Department of Education's College Scorecard. Debt-to-income ratios are calculated using those medians. For further discussion, see pages 11, 19-21.

TYPES OF SHADOW STUDENT DEBT

The SBPC's investigation uncovered a wide range of credit and debt deployed by financial services firms in partnership with the schools that drive students and families to take on shadow student debt. These products can generally be grouped into three broad categories encompassing the most common types of shadow student debt. Financial companies frequently partner with schools to facilitate credit or debt in multiple of the following categories:

Figure 3: Types of Shadow Student Debt

Schools as Exclusive Partners

Schools partner with firms, blurring the line between educational and financial institutions.

Third-Party Lending

Lenders offer students access to credit products that are not co-branded and where the school has no financial stake.

Debts owed Directly to Schools

Students owe debts directly to schools for unpaid bills, which often accrue interest and may be serviced or collected by private firms.

- **Schools as Exclusive Partners.** The SBPC's investigation also identified arrangements where credit products are designed to serve as financing for a specific school or program. These products are either developed and offered in partnership with the specific school, or the school itself serves as lender. Unlike the credit products described below, which are clearly marketed to students by third-party firms and independently underwritten by these lenders, this category of shadow student debt blurs the line between the financing provider and the school.[4] For example, one for-profit institution, the DWS Drone School, advertises a financing plan facilitated by the specialty student financing firm Paramount Capital Group as a "partnership to provide private funding for students," obscuring the relationship between the school and the private-sector firm providing the financing.[xxii] Similarly, an "institutional" financing program backed by another large specialty student financing company, TFC Tuition Financing, at the for-profit Southern California Health Institute (SOCHi) is introduced to students with the promise: "SOCHi works with TFC Tuition Financing to facilitate and monitor a payment plan to help finance your education."[xxiii]

4 *See, e.g.*, *New Financial Aid for Students*, The Masthead: News from Westlawn Institute of Marine Technology (Dec. 2007), https://perma.cc/4ZQS-NDAP (captured July 8, 2020) (note that the school itself is described as the one able "to provide financial aid to students"); *Announcing Our "TuitionFlex Program"*, ProTrain, https://perma.cc/TP44-3TAY (captured July 8, 2020) (in which the school, ProTrain, describes an Education Loan Source-facilitated program as "the ProTrain 'TuitionFlex Program"); *School Catalog*, Inst. for Therapeutic Massage, 9, https://perma.cc/Q5FF-72KP (captured July 13, 2020) (in which the school describes that the school itself "provides several financing options to assist you in funding your education").

- **Third-Party Lending.** Lenders, including specialty student financing firms and fintech lenders, offer students at for-profit colleges access to credit products made independently of the schools themselves. The SBPC's investigation found that individual schools will often identify and promote these specialty lenders to their students on school websites and through financial aid materials.[5] For example, Climb Credit, a company that often operates as a lender explicitly endorsed by schools, offers financing to students attending short-term programs such as unaccredited bootcamps.[xxiv] Similarly, the financial technology company PayPal, through a subsidiary branded as PayPal Credit, offers credit to students attending higher education programs that do not allow them to borrow federal student loans.[xxv]

- **Debts Owed Directly to Schools.** In contrast to the preceding categories of shadow student debt, both of which are structured as extensions of credit, students may also find themselves indebted to schools or firms without ever taking out a student loan during the financial aid process. In these cases, students enroll in a postsecondary program and sign a contract with the school that identifies a set of pre-defined costs assumed by the student, including tuition and fees. Students are then permitted or encouraged to begin classes without paying some or all of this cost up-front. This may happen without students' knowledge or understanding; however, any unpaid balance becomes a debt that the student must eventually repay.[xxvi] In some cases, students are charged interest and fees on these debts, which may be initially treated as short-term credit and converted into installment loans after-the-fact.[6] Schools often outsource the management and collection of these unpaid student accounts to firms that specialize in the collection of this type of shadow student debt.[xxvii] For example, at institutions operated by the now-bankrupt for-profit college company Dream Center

Students may also find themselves indebted to schools or firms without ever taking out a student loan. . . . This may happen without students' knowledge or understanding.

5 *See, e.g.*, *Financial Aid*, California Smog & Automotive Institute, https://perma.cc/AX9F-LS78 (captured July 6, 2020) (advertising TFC Tuition Financing under the header of "Financial Aid" on a school's website); *AIT Loan Payments*, Roadmaster Drivers School, https://perma.cc/9SX2-6WV5 (captured July 6, 2020) (advertising Paramount Capital Group and other lenders on a school's website); *Tuition and Fees*, The Woodlands School of Massage Therapy, https://perma.cc/4ST9-35XV (captured July 6, 2020) (advertising Tuition Options on a school's "Tuition & Fees" page, and linking to a loan application); *Financial Assistance Programs*, KCI EMT Training, https://perma.cc/VVG4-ENXL (captured July 1, 2020) (advertising PayPal Credit as a means to pay for an EMT training school); *see also* Climb Credit, *Climb Credit Announces $9.8 Million Series A Funding Round Led by Third Prime and New Markets Venture Partners*, Cision PR Newswire (June 26, 2019), https://perma.cc/4XUN-GKSK (captured June 22, 2020).

6 *See, e.g.*, *Montoya v. CRST Expedited Inc.*, 404 F. Supp. 3d 364, 379 (D. Mass. 2019) ("The contract states that the driver [trainee] acknowledges CRST advanced, in accordance with the pre-employment agreement, 'the payment of certain tuition, lodging, transportation and other expenses and fees incurred by' the driver. . . . Additionally, the driver employment contract states that if the driver breaches or is terminated, then the driver will owe and immediately must pay to CRST: (i) $6,500, (ii) the amounts advanced by CRST not yet repaid via paycheck deductions, and (iii) interest 'at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by applicable federal and state usury laws.'"); *see also CRST Class Action Lawsuit*, Optime Administration LLC, https://crstlawsuit.com/ (*updated* June 9, 2020) ("The Court has ruled that CRST charged a usurious interest rate in violation of Iowa law when it sent debt collection letters to drivers that included an 18% interest rate."); *Course Catalog*, Veterinary Allied Staff Education, https://perma.cc/ME3M-CBPZ (captured July 5, 2020)

Education Holdings, students were encouraged to continue to take classes even as these students accumulated outstanding debts owed directly to the school for expenses not covered by Federal Student Aid. These debts were managed and collected by the shadow finance firm Tuition Options. When schools shut down after loss of accreditation, and the Dream Center entered receivership, Tuition Options continued collecting on students' obligations, which were treated by the receiver as assets on the insolvent company's balance sheet.[xxviii]

SHADOW STUDENT DEBT IS PERVASIVE

The recent growth of shadow student debt is rooted in schemes by predatory schools to exploit students' desires for a better life, only to bury them in debt. Yet there remain significant gaps in any public accounting of the shadow student debt marketplace. The SBPC's findings suggest this lack of transparency is by design—by operating in an intentionally opaque manner, predatory firms can sidestep or obstruct meaningful oversight and make it difficult to estimate the size and scope of these debts.

The schools and firms that drive students to take on shadow student debt touch millions of students across the country and have extended billions of dollars in debt over the past decade.

The SBPC estimates that the schools and firms that drive students to take on shadow student debt touch millions of students across the country and have extended billions of dollars in debt over the past decade.

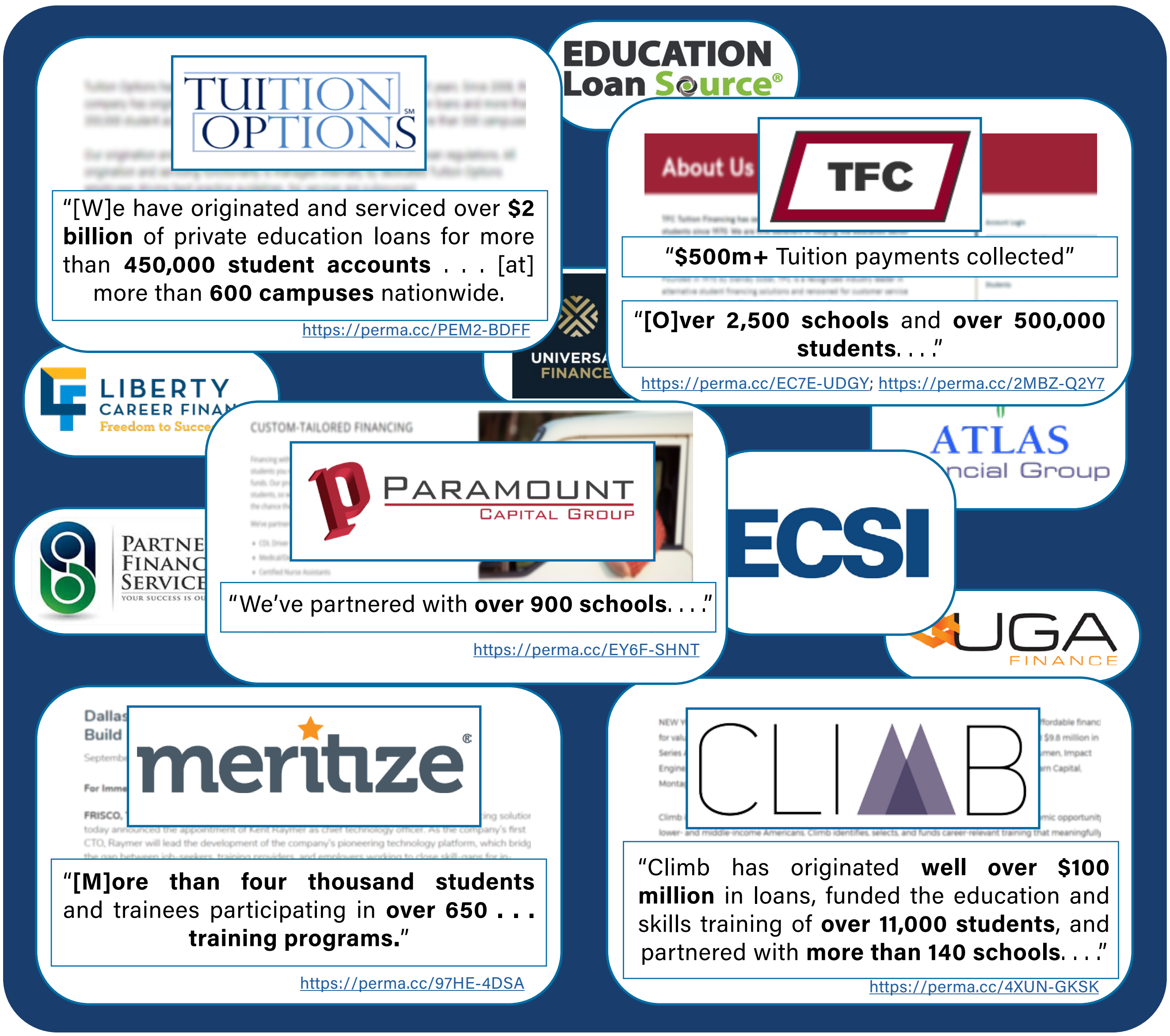
- **Companies that drive students to take on shadow student debt operate at thousands of schools in every corner of the country.** The SBPC's investigation identified more than a dozen unique private-sector firms that drive students to take on shadow student debt.[7] For example, one shadow lender, TFC Tuition Financing, describes working with "over 2,500 schools and over 500,000 students since 1970," collecting "$500+ million" on behalf of school partners.[xxix] Tuition Options, a different financing firm, describes having "originated and serviced over $2 billion of private [financing] for more than 450,000

("If the student is unable to make the full payment by the end date all credentials will be held by Veterinary Allied Staff Education, LLC until payment is made in full. Additionally, an interest rate will accrue on the unpaid balance and the student will be required to complete a Tuition Payment Plan or a Retail Installment Agreement. The Retail Installment Agreement is required only when a student is unable to make full payment prior to completion of the program, this allowance is only offered on a case-by-case basis and is not considered to be a form of Financial Aid. The terms and conditions of the Agreement are set by the institution and in agreement with the student."); *Enrollment Agreement*, The Art Institute of California (Apr. 1, 2013), https://perma.cc/F6AG-U3G7 (captured July 5, 2020) ("Interest on Outstanding Balance. Students who have entered into a line of credit with the school may be subject to interest being charged based on their method of payment. Students that agree to have their balance paid off within each term or students who are financing their entire education with financial aid will not be charged interest. All Other Payment arrangements are subject to interest being charged if applicable.") (emphasis in original).

7 *See, e.g.*, TFC Tuition Financing, https://www.tfctuition.com/students/; Paramount Capital Group, https://www.paracap.com/; Tuition Options, https://www.tuitionoptions.com/schools-information-center/; *Career Training Smart Option Student Loan*, Sallie Mae, https://www.salliemae.com/student-loans/career-training-smart-option-student-loan/; Atlas Financial Group, http://www.atlasloan.com/; Education Loan Source, http://educationloansource.com/; Partners Financial Services, https://www.partners-mo.com/; Climb Credit,

student accounts" and currently working with "more than 600 campuses nationwide."[xxx] Similarly, the shadow finance company Climb Credit explains that it has "originated well over $100 million in loans [for] . . . over 11,000 students."[xxxi] Taken together, these three firms alone represent that they have extended more than $2.6 billion in student debt and credit. As discussed further in the subsequent sections of this report, there is no way to independently verify these claims, leaving lawmakers, regulators, and the public to trust these firms' public representations to assess the size of the marketplace for shadow student debt.

Figure 4: A Multi-Billion Dollar Market in the Shadows[8]



https://climbcredit.com/schools; PayPal Credit, https://www.paypal.com/us/webapps/mpp/paypal-credit; Liberty Career Finance, https://libertycareerfinance.net/; Universal Finance Corporation, https://universalfinco.com/; Meritize, https://www.meritize.com/; ECSI, https://www.ecsi.net/; Wells Fargo, https://www.wellsfargo.com/student/community-college-loans/; UGA Finance, https://ugafinance.com/.

8 Emphasis added throughout graphic. For further discussion, see pages 15-17. For complete citatations, see endnotes xxix-xxxv.

- **Millions of students are vulnerable to abuses by the firms driving the growth of shadow student debt.** The SBPC's investigation examined public data on student enrollment at schools that advertise partnerships with the firms responsible for driving the growth of shadow student debt or which have agreed to discharge debts owed directly to schools as a result of a recent law enforcement action. These schools, including some of the largest operators of for-profit schools, have collectively enrolled millions of students over the past decade.[xxxii] While the share of these students who took on shadow student debt is unknown, evidence demonstrates that these schools, in partnership with financial services firms, engaged in practices that drove students to take on shadow student debt. This underscores the broad scope of a market historically subject to little scrutiny. For example, last year, the University of Phoenix entered into a consent decree with the Federal Trade Commission and agreed to discharge $141 million of debt owed directly to the school, which continues to enroll nearly 100,000 students nationwide.[xxxiii]

- **Enforcement actions against for-profit schools have uncovered billions of dollars in shadow student debt over the past decade.** Over the past decade, hundreds of thousands of students took on billions of dollars in shadow student debt incurred when attending the for-profit schools that have been targets of high-profile actions by federal and state law enforcement officials. These enforcement actions, which in many cases focused on deceptive marketing and fraud unrelated to schools' lending practices, nevertheless exposed these debts as key drivers of predatory schools' revenue.[xxxiv] An SBPC review of court filings and settlement documents reveals that students collectively owe or owed more than $2.4 billion in shadow credit and debt taken on to finance programs at schools named in a dozen recent law enforcement actions.[xxxv]

Over the past decade, hundreds of thousands of students took on billions of dollars in shadow student debt to attend predatory for-profit schools.

Together, the SBPC's review of public statements, court filings, and marketing materials demonstrate that students and families have collectively taken on more than $5 billion in shadow credit and debt.

Figure 5: Enforcement Actions and Public Documents Reveal Billions in Shadow Student Debt[9]

LOANS	SHADOW DEBT UNCOVERED
TUITION OPTIONS	**$2 BILLION**
ITT INSTITUITIONAL LOANS/CUSO + PEAKS (at time of bankruptcy settlement)	**$661 MILLION**
CORINTHIAN COLLEGES/GENESIS LOANS	**$569 MILLION**
TFC TUITION FINANCE	**$500 MILLION**
CAREER EDUCATION CORPORATION INSTITUTIONAL RECEIVEABLES	**$494 MILLION**
CORINTHIAN COLLEGES/AEQUITAS CAPITAL MANAGEMENT	**$191 MILLION**
ITT/CUSO (amount uncovered in CFPB complaint)	**$189 MILLION**
UNIVERSITY OF PHOENIX INSTITUTIONAL LOANS	**$141 MILLION**
CLIMB CREDIT	**$100 MILLION**
DEVRY UNIVERSITY INSTITUTIONAL LOANS	**$51 MILLION**
BRIDGEPOINT EDUCATION INSTITUTIONAL LOANS	**$24 MILLION**
WESTWOOD COLLEGE/APEX	**$18 MILLION**
TOTAL	**$5 BILLION**

9 A review of public statements and marketing materials shows that the largest firms identified in this report have collectively driven students to take on more than $2.6 billion in shadow student debt. *See* endnote xxxv. A review of court filings from high-profile enforcement actions against predatory for-profit schools reveals at least $2.4 billion in shadow student debt owed by students enrolled at these schools. *See* Figure 4, *supra* page 16. Taken together, the SBPC's investigation identified at least $5 billion in shadow student debt. Note that the $18 million figure for Westwood College/Apex includes only debt discharged in Illinois and Colorado.

Part Two: How Shadow Debt Harms Students

Distinct from schemes by for-profit schools to defraud students or drive them to take on unaffordable levels of debt, the SBPC's investigation reveals that the credit or debt itself may feature terms and conditions that are predatory or may be marketed through practices that violate borrowers' rights. These abuses have harmed hundreds of thousands of the most economically vulnerable students and families as shadow student debt has proliferated over the past decade.[xxxvi]

Informed by evidence of past predatory lending and illegal debt collection tactics by the firms and schools that drive students and families to take on shadow student debt, the following section offers an overview of current industry practices that present significant risks to students and families.

PRODUCTS' TERMS, CONDITIONS, AND FEATURES CONTINUE TO CAUSE HARSHIP FOR STUDENTS

The SBPC's investigation identified a range of current product terms, conditions, and features that continue to cause significant financial distress for borrowers. The issues identified in the following section may be present when students incur any of the three types of shadow student debt discussed above—credit extended independently by third party lenders, credit extended or backed by schools themselves, and debts owed to schools for unpaid account balances.

- **Extremely High Interest Rates.** The SBPC's investigation identified interest rates as high as 35 percent, placing them at three to four times the cost of the highest-priced federal student loans and beyond rates seen among many of the highest-priced credit card products.[10] For example, students enrolled at Michigan's Coast 2 Coast Truck Driving School can borrow through the school's sanctioned lending program backed by Paramount Capital Group, with interest rates ranging from 14 to 19 percent.[xxxvii] Similarly, borrowers attending Dream Center

SBPC's investigation reveals that the credit or debt itself may feature terms and conditions that are predatory or may be marketed through practices that violate borrowers' rights.

10 *See, e.g., Enroll More Students When You Partner With Climb*, Climb Credit, https://perma.cc/YJH3-DJA9 (captured June 17, 2020) ("APRs on loans range from 0.26% - 34.68%"); *PayPal Credit Terms and Conditions*, PayPal Credit, https://perma.cc/T3WA-XJS4 (captured June 30, 2020) ("Annual Percentage Rate (APR) for Purchases 23.99%"); *Tuition & Payment Info*, International Institute of Transportation Resource, Inc., https://perma.cc/B3V5-TFDJ (captured June 17, 2020) ("an interest rate of 18% per annum"); *School Programs*, Atlas Fin. Group, https://perma.cc/2EL4-G3CX (captured June 17, 2020) ("INTEREST RATE 18%-19%"). The highest priced federal student loan currently available, the PLUS loan, carries an interest rate of 5.3 percent. *See Federal Interest Rates and Fees*, Fed. Student Aid, https://studentaid.gov/understand-aid/types/loans/interest-rates (last accessed July 13, 2020). One author identifies the highest interest rate currently available on a credit card as 36%. *See What is the highest credit card interest rate?*, WalletHub, https://perma.cc/LE78-RF87 (captured July 8, 2020). The group with the highest mean effective credit card interest rates noted in the CFPB's most recent CARD Act report—deep subprime borrowers utilizing private label credit cards—saw rates averaging roughly 24 percent. *See The Consumer Credit Card Market*, Consumer Fin. Prot. Bureau (Aug. 2019), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf#page=59.

Figure 6: The Costs and Consequences of Shadow Student Debt[11]

Extremely High Interest Rates

"APRs on loans range from 0.26% - **34.68%.** The APR includes an up to **5% origination fee.**"

https://perma.cc/YJH3-DJA9

"TFC charges a non-refundable application fee of $25, a loan fee of $300 (financeable), and an **interest rate of 18% per annum.**"

https://perma.cc/B3V5-TFDJ

"APR ranges from **13.99% – 18.99%. . . .**"

https://perma.cc/MHT6-8XHB

"Maximum interest rate: **19.01%**"

https://perma.cc/79XY-MZDD

"INTEREST RATE . . . **18%-19%**"

https://perma.cc/2EL4-G3CX

schools took on debts originated and serviced by Tuition Options at 19 percent interest.[xxxviii] A student fully financing his or her attendance at Utah's Bonnie Joseph Academy of Cosmetology & Barbering program through its partnership with TFC Tuition Financing would face interest rates of up to 20 percent on as much as $21,700 in total tuition and expenses.[xxxix] Earnings information specific to Bonnie Joseph Academy graduates is not available,[xl] but annual salaries for cosmetologists typically range from $21,749 to $29,654 across states.[xli] In effect, students who supplement a federal student loan with financing recommended by Bonnie Joseph Academy through its partnership with TFC Tuition Financing could pay as much as $416 per month, or 23 percent of their gross income, toward their TFC loans each month.[xlii]

11 Emphasis added throughout graphic. For further discussion, see pages 19-20. For citatations, see *supra* note 10 and endnotes xxxvii-xxxix;

- **Excessive Fees.** The SBPC's investigation found that the companies driving students to take on shadow student debt frequently tack on additional origination and processing fees, ensuring that borrowers begin paying interest on higher starting balances and inflating the cost of this debt.[12] In contrast, these practices are atypical in the private student loan market generally, where the largest private student lenders routinely claim to never charge these types of fees.[xliii] For example, Oregon's IITR Truck School charges a $150 registration fee, a $25 application fee, and a $300 financing fee on top of an 18 percent interest rate for students borrowing through its partnership with TFC Tuition Financing.[xliv] Similarly, Bonnie Joseph Academy, discussed above, charges a $10 "processing fee" each month when borrowers make payments toward their loan.[xlv] Further, the specialty finance company Climb Credit charges up to 5 percent in origination fees on their loan products.[xlvi]

Where lenders fail to consider borrowers' ability to repay these loans, borrowers may find themselves deeply indebted with no viable path to satisfy these debts—ensuring a financial future defined by debt collection and damaged credit.

- **Dangerous Underwriting Practices.** The SBPC's investigation found cases of suspicious underwriting practices at a wide range of schools. In some cases, lenders require applicants to first be denied by other lenders, such as Sallie Mae, before they can be approved for financing.[xlvii] In other cases, companies advertise automatic approvals,[13] marketing products that do not require credit checks[14] or any underwriting in order to be approved for a loan.[15] Where lenders fail to consider borrowers' ability to repay these loans,

12 *See, e.g., Tuition Fees*, Bonnie Joseph Academy, https://perma.cc/H6YX-VEC4 (captured on June 30, 2020) ("Processing fee for in house lending 10.00 a month"); *Preferred Lender Listing*, Arizona College, https://perma.cc/QHV3-6JMW (captured on July 7, 2020) ("Origination fee at the beginning of the loan"); *2020 Student Handbook*, American Sentinel University, https://perma.cc/TL95-DPHW (captured on July 7, 2020) (noting a $250 charge to access a Tuition Options-backed payment plan).

13 *See, e.g.*, Education Loan Source, *Education Loan Source Launches Private Student Loan Program for DEXSTA Federal Credit Union*, Cision PR Newswire (July 8, 2010) https://perma.cc/9BBM-645G (captured June 30, 2020) (advertising "underwriting with 100% approval").

14 *Financial Assistance*, MT Training Center, https://perma.cc/42KT-Z7TM (captured June 30, 2020) ("No credit check and financing is guaranteed!"); *Tuition Payment Plan Information*, The Landing School, https://perma.cc/ZA2A-CBPJ (captured June 30, 2020) ("There is no credit check."); *TFC Tuition Financing*, California Association of Private Postsecondary Schools, https://perma.cc/KLR3-2FSJ (captured July 1, 2020) ("NO CREDIT CHECKS,").

15 *Financing Options*, Link 2 Life Emergency Training, Inc., https://perma.cc/6MGV-A7GX (captured July 1, 2020) ("No credit requirements! Get approved with bad credit or no credit. Everyone qualifies"); *Finance Your CDL Training With a Loan From Liberty Career Finance*, Liberty Career Finance, https://perma.cc/L275-RUNT (captured July 1, 2020) ("[W]e're often able to provide loans to students even if they have a less-than-perfect credit history, or no credit history at all. . . . Our philosophy is simple: Credit shouldn't deny anyone's freedom to succeed!"). Although federal student loans do not undergo underwriting, these loans provide student loan borrowers with options for income contingent repayment, partial financial hardship protections, and fixed interest rates set by Congress, among other protections. The traditional private student loan market does not offer these same benefits, instead relying on sound underwriting to mitigate risk. In the shadow student finance market, sound underwriting goes out the window, and lenders instead create oppressive terms to mitigate risk.

borrowers may find themselves deeply indebted with no viable path to satisfy these debts—ensuring a financial future defined by debt collection and damaged credit. For example, the for-profit Energetic Health Institute uses the shadow lender UGA Finance as a third-party lender to "guarantee approval on all student loan applications."[xlviii] In a similar fashion, North Carolina's Mountain Eagle College advertises an "exclusive financing plan" through Tuition Options where students can "get approved with bad credit or no credit. Everyone qualifies."[xlix]

FIRMS' PRACTICES AND TACTICS COMPOUND THE FINANCIAL DISTRESS CAUSED BY THESE PRODUCTS

The SBPC's investigation also revealed a series of common practices and tactics that may drive students and families to take on shadow student debt or may substantially increase the risks posed by these debts. Generally distinct from the terms, conditions, or features of the financial products themselves, these practices or tactics span the lifecycle of shadow student debt, beginning with the marketing of these debts and extending through servicing and collections.

The SBPC's investigation found that companies driving students to take on these debts frequently engaged in the following practices and tactics:

Schools and firms that drive students to take on shadow debt may use a range of tactics to obscure the fact that, in many cases, the debt incurred by borrowers is a student loan.

- **Misleading Marketing of Financial Products.** Schools and firms that drive students to take on shadow student debt may use a range of tactics to obscure the fact that, in many cases, the debt incurred by borrowers is a student loan.[16] For example, the California-based chain of for-profit veterinary schools, Veterinary Allied Staff Education, LLC, allows students to enroll in school and take classes without having paid or financed their tuition in advance.[l] When explaining this arrangement in the fine print of its course catalog, the school discloses that "an interest rate will accrue on the unpaid balance and the student will be required to complete a . . . Retail Installment Agreement. The Retail Installment Agreement is required only when a student is unable to make full payment prior to completion of the program . . . [and] is not considered to be a form of Financial Aid."[li] Similarly, Robert Fiance Beauty Schools promotes a

16 *See, e.g.*, *Payment Plans and Tuition Options*, NoVa Laser and Esthetics Training, https://perma.cc/WC72-FU3E (captured July 5, 2020) ("NVLET recognizes that there may be certain situations in which our students are unable to pay in full for their tuition and are unable to use credit or secure a loan. For these students, we've structured the following in-house financing options. . . ."); *TFC Tuition Financing*, Career Education Review, https://perma.cc/7T7F-W2QH (captured July 11, 2020) (referring to its loan offerings as "non-credit-based financing solutions"); *School Catalog 2017-2018*, California Institute of Advanced Management, https://perma.cc/7A9L-QEWN (captured June 30, 2020) (referring to its loan product as "a payment plan that will include interest").

TFC Tuition Financing product as "a non-credit based financing option for students who don't qualify for financial aid or who need to finance a portion of their tuition."[lii] However, these marketing materials go on to disclose that "loan terms can extend up to 7 years for certain programs" and that "[i]nterest rates are determined by your down payment."[liii]

- **Aggressive Debt Collection Practices.** A review of court filings and consumer complaints reveals a range of aggressive debt collection practices employed by the schools and firms that drive students to take on shadow student debt. A prime instance is the practice of transcript and credential withholding, wherein a school refuses to give students access to their diplomas if they have an outstanding debt owed to the school or if they have fallen behind on a financial obligation.[17] For example, in the disclosures included at the conclusion of its course catalog issued to students, the for-profit school First Institute describes its financing option facilitated by Tuition Options by explaining that "[i]f, following graduation, a student falls into delinquency, additional copies of their diploma and/or transcript will be withheld."[liv] Similarly, a school may take the extraordinary step of revoking a former student's professional certification in the event of a loan default. For example, when marketing its loan program to potential partner nursing schools, TFC Tuition Financing boasts that the relevant certification body "will also allow your financial team to suspend a student's certification if they default on their loan payments."[lv] In addition to transcript and credential withholding, students and borrowers who have taken on shadow student debt have been flooded with hundreds of robocalls to collect on unpaid debt. For example, allegations made in court filings reveal that Tuition Options made "more than 100" illegal robocalls after a borrower fell delinquent on a debt.[lvi]

The SBPC's investigation also uncovered evidence suggesting widespread noncompliance with existing laws and regulations designed to protect students and consumers.

- **Ignoring or Evading Consumer Protection Laws and Regulations.** The SBPC's investigation also uncovered evidence suggesting widespread noncompliance with existing laws and regulations designed

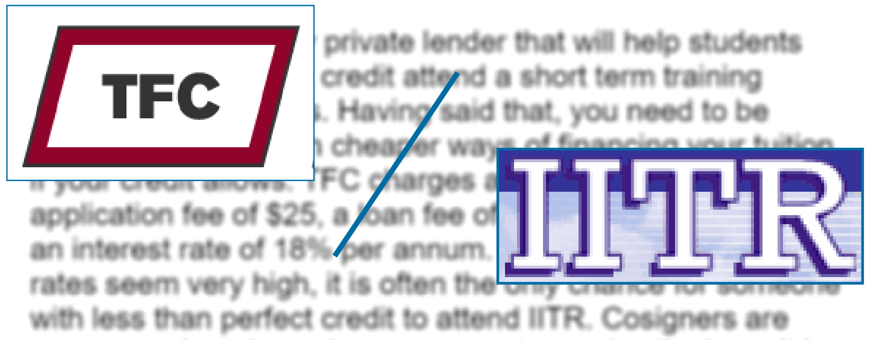
17 *See, e.g.*, *Catalogue 2018-2019*, ***"Payments and Release of Records,"*** Classic Traffic School, LLC, https://perma.cc/MSA4-VQMP (captured July 2, 2020) ("Students that owe any part of the tuition due will not be given a Certificate of Completion until full payment is received. Students entering into a loan agreement with Paramount Capital Group must make at least three agreed upon payments prior to graduation in order to receive the Certificate of Completion."); *2017 500-hour Massage Therapy Program Course Catalog & Student Handbook*, *"Late Payments,"* The Lauterstein-Conway Massage School, https://perma.cc/H7E6-AJGR (captured July 2, 2020) ("If ONE payment to TFC is more than 10 days late, you will not receive your transcripts until all non-tuition fees and at least two-thirds of your total tuition are paid. If TWO or more payments to TFC are more than 10 days late, you will not receive your transcripts until all non-tuition fees and tuition are paid in full."); *Catalog*, *"Tuition Policy,"* Cosmetica Beauty and Barbering Academy, https://perma.cc/6C5X-8JQU (captured July 2, 2020) ("The Institution reserves the right to withhold a graduate student's diploma until that student's account balance is current as per the terms of the agreement signed by the student"); *Packaging*, *"Student Authorization Form,"* Community Care College, Clary Sage College, and Oklahoma Technical College, https://perma.cc/XTJ3-4K9R (captured June 21, 2020) ("hold transcript or diploma until balance is at a $0").

to protect students and consumers. For example, some lenders appear to require prospective borrowers to enroll in autopay or direct monthly debit from the borrower's bank or credit accounts before they can be approved for a loan.[18] The Electronic Funds Transfer Act (EFTA) prohibits lenders from conditioning "the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers."[lvii] However, some lenders and schools appear to compel borrowers to pre-authorize automatic payments. For example, one for-profit school explains clearly on its website that "[a]utomatic payments (checking account or credit card) are required" when its students use financing provided by TFC Tuition Credit.[lviii] Similarly, financing firm Education Loan Source markets its "TuitionFlex" lending program to potential school partners by explaining: "[w]hen the payment is withdrawn automatically through ACH, the school is essentially first in line to be paid before the student's other monthly expenses."[lix]

18 *See e.g., Financial Aid*, Finger Lakes School of Massage, https://perma.cc/4PRY-4BPU (captured June 17, 2020) ("Automatic payments (checking account or credit card) are required . . ."); *Tuition*, Jack Mountain Bushcraft School, https://perma.cc/TQ9J-R79C (captured July 7, 2020) ("Automatic payment withdrawals are required").

Spotlight: The Cost and Consequences of Shadow Student Debt[19]

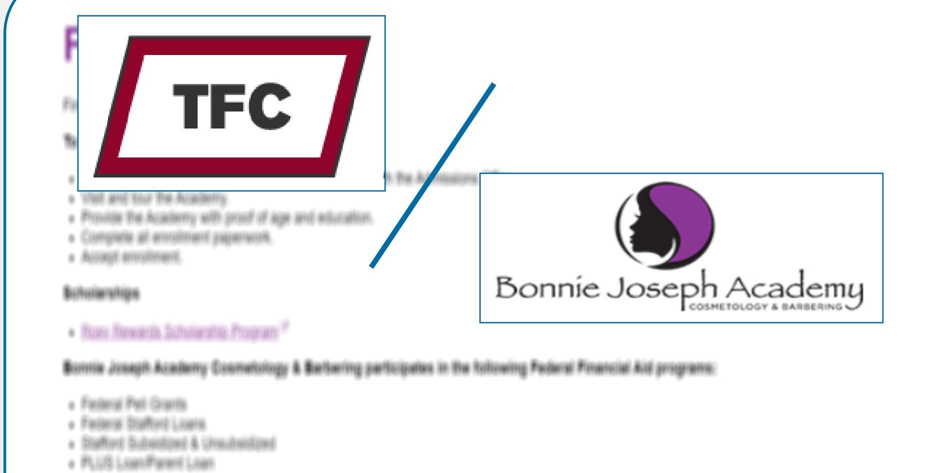
Excessive Fees



"TFC charges a **non-refundable application fee of $25, a loan fee of $300 (financeable), and an interest rate of 18% per annum**. Although **these fee's [sic] and rates seem very high**, it is often the only chance for someone with less than perfect credit to attend IITR."

https://perma.cc/B3V5-TFDJ

Excessive Fees



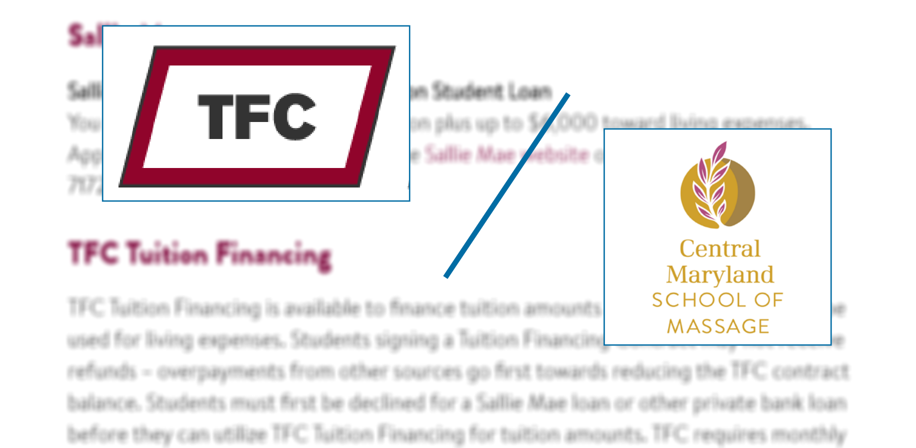
"Fees that apply are **10.00 monthly processing fees** and interest rates of 9.99-20.00% and also late fees will be assessed."

https://perma.cc/H6YX-VEC4

19 Emphasis added throughout graphic. For further discussion, see page 21. For complete citations, see endnotes xliv-xlvi.

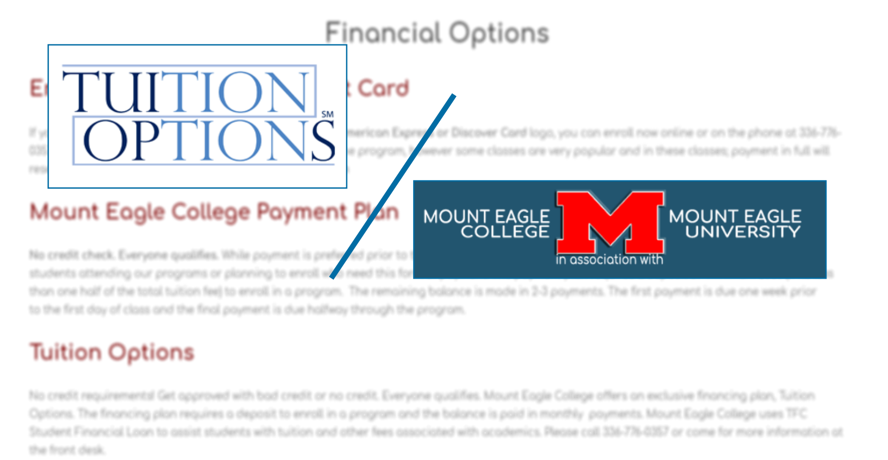
Spotlight: The Cost and Consequences of Shadow Student Debt[20]

Reckless Underwriting Practices



"Students **must first be declined for a Sallie Mae loan** or other private bank loan before they can utilize TFC Tuition Financing for tuition amounts."

https://perma.cc/Y5EN-BE2J



"No credit requirements! Get approved with bad credit or no credit. **Everyone qualifies**."

https://perma.cc/GN87-W64J

Reckless Underwriting Practices

20 Emphasis added throughout graphic. For further discussion, see pages 21-22. For complete citations, see endnotes xlvii-xlix.

Spotlight: The Cost and Consequences of Shadow Student Debt[21]

Misleading Marketing of Financial Products

Veterinary Allied Staff Education LLC

"Additionally, **an interest rate will accrue on the unpaid balance**. . . . and **is not considered to be a form of Financial Aid.**"

https://perma.cc/ME3M-CBPZ

Misleading Marketing of Financial Products

TFC

ROBERT FIANCE BEAUTY SCHOOLS

"This is a **non-credit based financing option** for students who don't qualify for financial aid or who need to finance a portion of their tuition. It is available and pre-approved for all students.

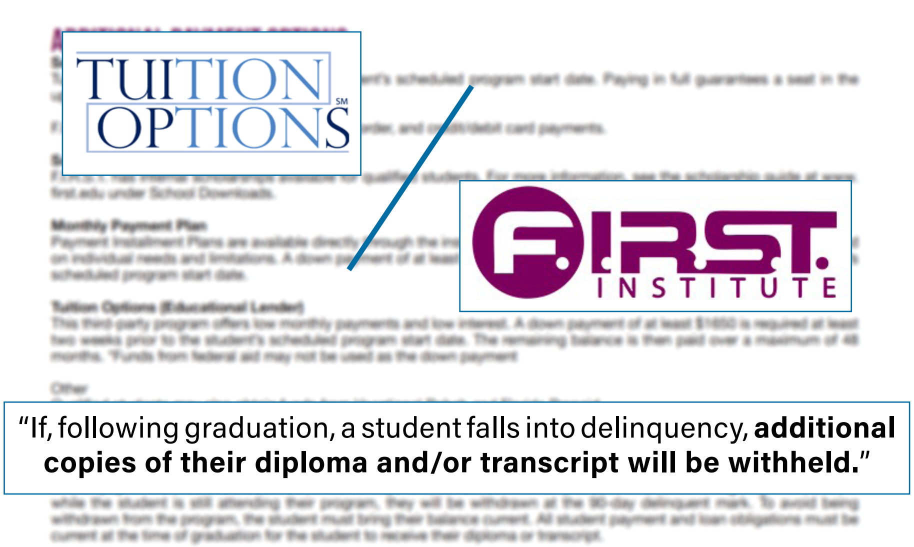
Loan terms can extend up to 7 years for certain programs."

https://perma.cc/BJU2-ABN7

21 Emphasis added throughout graphic. For further discussion, see pages 22-23. For complete citations, see endnotes l-liii.

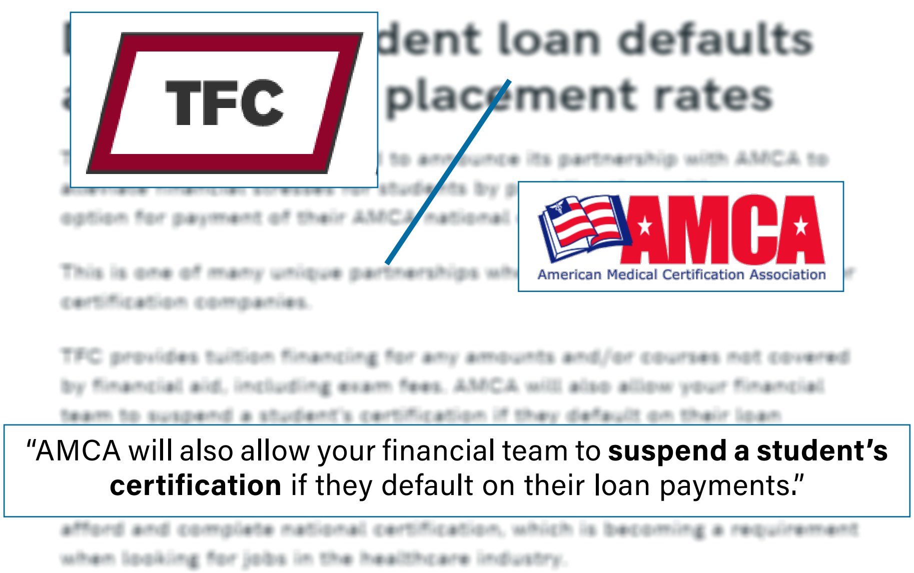
Spotlight: The Cost and Consequences of Shadow Student Debt[22]

Aggressive Debt Collection Practices



"If, following graduation, a student falls into delinquency, **additional copies of their diploma and/or transcript will be withheld.**"

https://perma.cc/V3D2-YGVD



"AMCA will also allow your financial team to **suspend a student's certification** if they default on their loan payments."

https://perma.cc/RSZ3-WK45

Aggressive Debt Collection Practices

22 Emphasis added throughout graphic. For further discussion, see page 23. For complete citations, see endnotes liv-lvi.

Spotlight: The Cost and Consequences of Shadow Student Debt[23]

Aggressive Debt Collection Practices

"A student may not be permitted to attend class until delinquent payments are brought current . . . . The authorization sections are to allow the student to hold transcript or diploma until balance is at a $0; . . . [and] **allow the school to refund any excess loan funds to the lender. . . .**"

https://perma.cc/XTJ3-4K9R

Aggressive Debt Collection Practices

"Defendant placed **more than 100 'robocalls'** to her cellphone in an attempt to collect money she purportedly owed under her student loan."

"Defendant argues that all of the claims brought by Plaintiff are **covered by the Arbitration Agreement.**"

https://perma.cc/HZ4G-R2LW

23 Emphasis added throughout graphic. For further discussion, see page 23. For complete citations, see endnotes liv-lvi.

Spotlight: The Cost and Consequences of Shadow Student Debt[24]

Evading Consumer Protection Law

"**Automatic payments (checking account or credit card) are required**, there are limits to amounts that can be financed, and a co-signer is required."

https://perma.cc/4PRY-4BPU

"When the payment is withdrawn automatically through ACH, the school is essentially first in line to be paid before the student's other monthly expenses."

https://perma.cc/NF6J-P4AS

Evading Consumer Protection Law

24 Emphasis added throughout graphic. For further discussion, see pages 22-23. For complete citations, see endnotes lvii-lix.

Part Three: A History of Lawlessness

BACKGROUND

For more than a decade, federal and state law enforcement officials built a robust evidentiary record illustrating how the for-profit school industry itself harms students, families, and communities. Through these school-facing law enforcement actions, lawmakers, regulators, and the public now have a broad understanding of how these companies drive revenue by exploiting vulnerable students.

Across these law enforcement actions, documents and records included in court filings also implicate many of the financial services firms discussed in the preceding sections of this report. These records reveal that the companies pushing shadow student debt have been critical cogs in the for-profit school scheme, propping up the worst actors and preying on these same vulnerable students.

State law enforcement officials and regulators have started scrutinizing practices and bringing the first actions against these firms for a range of violations of state consumer protection laws.

In addition to actions taken against the companies that operate for-profit schools, state law enforcement officials and regulators have started to scrutinize the practices of the financial services companies described in this report, bringing the first actions against these firms for a range of violations of state consumer protection laws.

ILLEGAL PRACTICES BY FIRMS DRIVE STUDENTS INTO SHADOW STUDENT DEBT

The following examples serve as case studies to illustrate how the schools and companies driving students and families to take on shadow student debt can run afoul of existing state laws.

- **A Lending Scheme by Two For-Profit Colleges, Facilitated by Tuition Options, Violated Minnesota Usury Law.** In 2014, the Minnesota Attorney General brought an enforcement action against two for-profit schools, Minnesota School of Business and Globe University, for operating an illegal lending scheme in the state.[lx] In this action, the State of Minnesota alleged that the schools made high-rate consumer loans in violation of Minnesota usury law, which caps the interest rate charged on certain loans at eight percent. The state also alleged that this lending constituted unlicensed consumer lending in the state. In the course of this litigation, which has spanned more than six years, court filings revealed that Tuition Options partnered with these schools to execute this scheme.[lxi] In 2019, following years of litigation and appeals, the Minnesota Supreme Court sided with the state, agreeing that the financing engineered by these schools and this firm constituted illegal consumer lending in violation of both state usury law and licensing requirements.[lxii]

- **TFC Credit Corporation Conducted Unlicensed Student Loan Servicing in Connecticut.** As of July 2020, ten states and the District of Columbia require student loan servicers to obtain state licenses.[lxiii] These laws require that any company engaging in student loan servicing in the state obtain a license from the state's financial regulator and be subject to recurring oversight for compliance with applicable consumer protection laws. In 2019, Connecticut, which was the first state in the nation to enact a student loan servicing licensing law, took an enforcement action against TFC Credit Corporation for conducting unlicensed student loan servicing in the state.[lxiv]

- **Tuition Options Operated as an Unlicensed Sales Finance Company in New York.** Many states require consumer finance companies that lend, sell, service, or collect consumer credit to obtain one of a range of applicable licenses to operate in a given state and be subject to recurring state oversight by the state's financial regulator. The private-sector firms that drive students and families to take on shadow student debt may perform one or all of these functions and may have a range of obligations under various state licensing laws. Last year, the New York Department of Financial Services took action against Tuition Options for illegally operating as an unlicensed Sales Finance Company.[lxv] In this case, Tuition Options was making unlicensed loans to students at for-profit schools, but rather than be repaid, the company accepted collateral offered by schools through various financing agreements that students would sign. Additionally, Tuition Options purchased the financing agreement used as collateral directly by the school.[lxvi] This action illustrates the complicated relationship between the schools and firms that drive students to take on shadow student debt, blurring the lines between lender, originator, loan holder, guarantor, servicer, and collector.

Figure 14: A History of Lawlessness

INSIDE HIGHER ED

Career Education Corp. Settles With States, Forgives Student Debt

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CONNECTICUT
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CONSENT ORDER: IN THE MATTER OF TFC CREDIT CORPORATION OF CALIFORNIA

"TFC acted as a student loan servicer in Connecticut without a student loan servicing license. . . ."

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Recommendations

Protecting Students and Bringing Companies Out of the Shadows

As described in detail in the preceding sections of this report, there is ample evidence that shadow student debt is causing severe financial distress for vulnerable students and families across the lifecycle of these financial products.

Students and families may be steered into predatory loans. Borrowers may be forced to pay debts bearing extremely high interest rates and fees. They may also be subject to abusive loan servicing and debt collection tactics. Many may even see these debts used as a pretext for denying borrowers' the economic benefit of their completed higher education.

There also remain significant unanswered questions regarding the volume of outstanding shadow student debt, the companies driving students to take on this debt, and the role these debts play in propping up some of the worst actors in the for-profit school sector.

The issues exposed by the SBPC's investigation demand action by lawmakers, regulators, and law enforcement officials at every level of government. To protect current and former students and their families, government officials should take the following immediate steps:

- **Enforce existing consumer protection laws.** Law enforcement officials and regulators at every level of government must enforce existing laws that prohibit many of the predatory practices identified in this report. For example, states should carefully scrutinize the interest rates charged to students for these products to determine whether shadow student debt violates state usury laws, as the State of Minnesota did in the public enforcement action discussed above.[lxvii] Similarly, the practices revealed in this report may run afoul of a wide range of other federal and state consumer laws, including prohibitions on unfair, deceptive, and abusive acts and practices. Again, enforcement officials and regulators can look to recent litigation as a roadmap: in 2014, the CFPB alleged that ITT's predatory lending scheme was an abusive practice, where the company made "expensive, high-risk loans that [it] knew were likely to default" and where it pushed "students into expensive, high-risk loans for the purpose of window-dressing . . . financial statements."[lxviii] Where schools and firms mirror these tactics—engaging in predatory lending or enabling schools to manipulate federal accountability metrics—state enforcement officials and regulators should enforce the federal prohibition on abusive practices directly using the "long-arm" provision of the Dodd-Frank Act, or use an equivalent state cause of action where available.[lxix]

- **Enforce existing state licensing and registration requirements to bring firms out of the shadows.** Many states require lenders, servicers, and debt collectors to obtain licenses or registration to operate legally within state borders. State licensing and registration acts as the gateway to effective oversight, ensuring that regulators understand which firms operate in their states and are able to hold these firms accountable when they break the law. As discussed in the preceding section of this report, companies that drive students to take on shadow student debt have been the target of enforcement actions by banking regulators in New York and Connecticut where, in both cases, these financial services firms failed to obtain required licenses.[lxx] Regulators should use this report as a roadmap, scrutinizing the practices of the companies driving students to take on shadow student debt to determine whether they have obtained necessary licenses and registration to operate as lenders, servicers, debt collectors, or other regulated financial services providers.

- **Enact new, comprehensive student financing registration laws at the state level to create unprecedented transparency and accountability.** As described in the preceding sections of this report, in many states these firms and schools have been able to evade scrutiny by exploiting gaps in existing state oversight statutes. State law enforcement officials and regulators have an opportunity to enforce existing laws, but to address the full scope of the problems identified in this report, students and their families need state lawmakers to take a holistic approach to oversight and regulation of all forms of debt and credit taken to pay for higher education. As a first step, released with the publication of this report, SBPC developed new model state legislation to require all companies that drive students into shadow student debt to register with state regulators, and make public key information about how they do business and the debts incurred by their customers. This model legislation can also act as an important supplement in states where existing licensing and registration laws capture some, but not all, of the firms and functions described in this report.[25]

- **Implement, enforce, and expand the Student Loan Sunshine Act.** In 2008, Congress passed the Student Loan Sunshine Act as part of the most recent reauthorization of the Higher Education Act, creating the first reporting and disclosure requirements where schools endorse or recommend student loans made by private lenders.[lxxi] Unfortunately, in the decade since this law was passed, many of the lenders and schools described in this report have embraced business models that attempt to sidestep these requirements, taking advantage of an Education Department willing to turn a blind eye when students are driven into predatory debts. The Education Department must immediately issue new regulations to ensure schools are honest with students about their deals with financial services firms, halting the misleading marketing

25 State lawmakers, advocates, and other stakeholders can learn more about this proposal and obtain a copy of this model legislation by visiting www.protectborrowers.org/shadowregistry. This proposal was released as part of the SBPC's States for Student Borrower Protection project, along with other model state legislation to rein in abuses across the student loan market and protect students and families from predatory schools. Readers can learn more about this project at www.protectborrowers.org/states.

tactics and other abuses described in this report. Where the Department of Education lacks authority to regulate certain for-profit schools, Congress must strengthen and modernize the Student Loan Sunshine Act to ensure that students are protected from the consequences of these back-room deals between lenders and schools. In doing so, Congress should apply these requirements to all types of debt and give students and families the right to take schools and lenders to court when they break the law.

- **Create a federal registry of all nonbank financial services firms, including the firms driving the growth of shadow student debt.** As discussed above, the private-sector firms that continue to drive students and families to take on shadow student debt have deliberately developed business practices designed to sidestep oversight by the Department of Education. Fortunately, the Dodd-Frank Act provides the CFPB with the authority, via supervision, to create a nationwide registry of all nonbank providers of consumer financial products and services, including the firms identified in this report.[lxxii] Protecting consumers in emerging markets depends on regulators' capacity to understand and respond to a rapidly changing landscape. By establishing a national registry of nonbank financial services firms and sharing information with regulators and law enforcement officials at every level of government, the Bureau can quickly build critical regulatory infrastructure necessary to monitor and oversee shadow student debt.

Conclusion

The evidence presented in this report documents the rising threat posed to students and families by shadow student debt. For-profit schools and their partners have quietly built a multi-billion-dollar market that has operated with little scrutiny. This report documents in detail the wide range of negative consequences borne by students and families as a result.

As students struggle to manage this high-cost, high-risk credit and debt, for-profit schools continue to grow with impunity—often leveraging this debt to unlock tens of billions of dollars in Federal Student Aid each year. These schools have driven billions in profits back to investors and executives, even as they continue to leave students, families, and communities shattered. Shadow student debt raises the stakes for the students who enroll at predatory schools, increasing the likelihood that the pursuit of a worthless degree will lead to a financial future plagued by persistent economic hardship.

Lawmakers, regulators, and law enforcement officials at every level of government should immediately scrutinize the players and practices identified in this report and modernize the laws necessary to protect students.

Lawmakers, regulators, and law enforcement officials at every level of government should immediately take the steps outlined above to scrutinize the players and practices identified in this report and to modernize the laws necessary to protect students. The benefits of these actions and reforms will extend far beyond the financial services sector—by exposing and halting abuses by the companies that drive students and families to take on billions of dollars in shadow student debt, officials will also remove a key cog driving the predatory for-profit college machine.

Endnotes

i. *Private Student Lending*, Student Borrower Prot. Ctr. (Apr. 2020), https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf. Note that the report referenced in this footnote identifies the total volume of outstanding private student loan debt at $130 billion. Subsequent to the publication of this report, using the same methods identified therein, the authors' project that the total volume of outstanding private student loan debt has increased to $140 billion as of July 2020.

ii. The private student loan market size can be calculated as the overall value of U.S. student debt less the overall balance of federal student debt. *Consumer Credit – G.19*, Board of Governors of the Fed. Res. Sys., https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html (last updated July 1, 2020); Dep't of Educ., *Federal Student Aid Portfolio Summary,* https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls (last accessed July 1, 2020).

iii. *Fed. Trade Comm'n v. University of Phoenix*, No. 2:19-cv-05772 (D. Ariz. filed Dec. 10, 2019); *Fed. Trade Comm'n v. Career Educ. Corp.*, No. 1:19-cv-05739 (N.D. Ill. filed Aug. 27, 2019); *In re: Bridgepoint Educ., Inc.*, No. 2015-CFPB-0016 (administrative proceeding filed Sept. 9 2016); *Consumer Fin. Prot. Bureau v. Corinthian Colleges*, No. 1:14-cv-07194 (N.D. Ill. filed Sept. 16, 2014); *Minnesota v. Minn. Sch. of Bus., Inc., et al.*, No. 27-cv-14-12558 (D. Minn. filed July 22, 2014); *Consumer Fin. Prot. Bureau v. ITT Educational Services*, No. 1:14-cv-00292 (S.D. Ind. filed Feb. 26, 2014); *U.S., et al. v. Educ. Mgmt. Corp. et al.*, No. 2:07-cv-00461 (W.D. Penn. filed Aug. 8, 2011).

iv. *Digital Media Solutions, LLC vs. South University of Ohio, LLC, et al.*, No. 1:19-cv-145 (N.D. Ohio filed Jan. 18, 2019); *Minnesota v. Minn. Sch. of Bus., Inc.*, 935 N.W.2d 124 (Minn. 2019).

v. *See generally* Consumer Fin. Prot. Bureau and U.S Dep't of Educ., *Private Student Loans* (Aug. 29, 2012), *available at* https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-u-s-department-of-education-joint-report-finds-a-cycle-of-boom-and-bust-in-private-student-loan-market/.

vi. *See generally id.*

vii. Compl. at 2, *Illinois v. Navient Corp., Sallie Mae Bank, et al.*, No. 2017CH00761 (Ill. Cir. Ct. Jan. 18, 2018), *available at* https://www.illinoisattorneygeneral.gov/pressroom/2017_01/NavientFileComplaint11817.pdf.

viii. *Id.* at 26.

ix. *Id.* at 26 (According to the complaint, then CEO of Sallie Mae, Thomas Fitzpatrick, said that his firm would lend to anybody, telling an internal meeting of executives: "If the borrower can create condensation on a mirror, they need to get a loan this year."); *Press Release, Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses*, Illinois Attorney General (Jan. 18, 2017), https://www.illinoisattorneygeneral.gov/pressroom/2017_01/20170118.html.

x. Tamara Cesaretti, *Maryland Stands Up to Predatory Student Lawsuit Machine Targeting Borrowers of Color*, Student Borrower Prot. Ctr. (Mar. 4, 2020), https://protectborrowers.org/maryland-stands-up-to-predatory-student-loan-lawsuit-machine-targeting-borrowers-of-color/.

xi. The Authors would like to thank Deanne Loonin, formerly of the National Consumer Law Center, for her comprehensive and prescient 2011 study of lending by for-profit schools. This report would not have been possible without her work. See Nat'l Consumer Law Ctr., *Piling It On: The Growth of Proprietary School Loans and the Consequences for Students* (Jan. 2011), *available at* https://www.studentloanborrowerassistance.org/wp-content/uploads/File/proprietary-schools-loans.pdf ("When the market crashed in 2008, the alliance between lenders and for-profit schools came to a fairly sudden and almost complete stop."). Of those large commercial lenders that remained following this significant retrenchment, Wells Fargo retained its position as one of the largest providers of private student loans. However, in July 2020, Wells Fargo announced that it would no longer make new private student loans to student loan borrowers, suggesting that the embattled banking giant may exit the student loan market entirely in the future. Shahar Ziv, *Wells Fargo Stopped Taking New Student Loan Applications*, Forbes (July 6, 2020), https://www.forbes.com/sites/shaharziv/2020/07/06/wells-fargo-stopped-taking-new-student-loan-applications/.

xii. The Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–152, 124 Stat. 1029.

xiii. *Consumer Fin. Prot. Bureau v. Corinthian Colleges*, No. 1:14-cv-07194 (N.D. Ill. filed Sept. 16, 2014); *Consumer Fin. Prot. Bureau v. ITT Educational Services*, No. 1:14-cv-00292 (S.D. Ind. filed Feb. 26, 2014).

xiv. *Consumer Fin. Prot. Bureau v. Corinthian Colleges*, No. 1:14-cv-07194 (N.D. Ill. filed Sept. 16, 2014).

xv. Sallie Mae and other large financial institutions continue to lend to predatory and low-quality schools. However, they do so at a significantly smaller scale than the pre-2008 period. For example, Sallie Mae offers a separate financial product known as the Smart Option Career Training student loan, which is marketed for use by students at "professional training and trade certificate courses (culinary, technical, etc.) at a non-degree-granting school." *Career Training Smart Option Student Loan*, Sallie Mae, https://www.salliemae.com/student-loans/career-training-smart-option-student-loan/ (last accessedJuly 7, 2020). However, as Sallie Mae reports in its quarterly SEC filings, this product amounts to less than 0.1% of its Private Education Loan portfolio. SLM Corp., *Quarterly Report (Form 10-Q)* at 81 (Apr. 22, 2020), *available at* https://slmcorp.gcs-web.com/static-files/70acdcf8-76e4-44db-b76f-7a93a67ffdc0.

xvi. *See* S. Rep. No. 102-58 (1991), *available at* https://drive.google.com/file/0B7aqIo3eYEUtQzRuX0JCQ3BIT3c/view; *see also Abuses in Federal Student Grant Programs Proprietary School Abuses: Hearing Before the Permanent Subcomm. on Investigations of the Comm. On Gov't Aff.*, 104th Cong. (1995), *available at* https://drive.google.com/file/d/0B7aqIo3eYEUtazBxMUpPbGxhS1E/view.

xvii. U.S. Dep't of Educ., Fed. Student Aid, *Business Officer Training 90/10 Regulation & Calculation*, *available at* https://www2.ed.gov/offices/OSFAP/training/materials/90-10slides.pdf.

xviii. *See, e.g.*, *TUITIONFlex*, Education Loan Source, https://perma.cc/5AM6-GR5Y (captured June 21, 2020) ("Does your school have 90/10 challenges?").

xix. *See, e.g.*, *id.*; *Making Education Affordable for Every Student*, TFC Tuition Financing, https://perma.cc/2D27-QKVX (captured July 7, 2020) ("Get help meeting government regulations and requirements including . . . 90/10 rules, and more."); *Paramount Capital Group*, WalletHub, https://protectborrowers.org/wp-content/uploads/2020/07/paramount-90_10-exhibit.pdf ("For those struggling with 90/10, we will help make certain your school meets its 10% goal of non-government subsidized loans."). *See supra* notes xvi-xviii.

xx. Patrick Danner, *Lawsuit: Student-loan company defrauded Career Point College*, San Antonio Express-News (Oct. 29, 2018), https://www.expressnews.com/business/local/article/Lawsuit-Student-loan-company-defrauded-Career-13345556.php.

xxi. *See, e.g.*, Edie Lau, *Abrupt Heritage College Closure Strands Vet Tech Students*, VIN News Service (Feb.

3, 2017), https://news.vin.com/default.aspx?pid=210&Id=7837448&useobjecttypeid=10&fromVIN-NEWSASPX=1; *Online Tuition Payment*, Dawn Career Institute, https://perma.cc/A4TD-N4V4?type=image (captured July 10, 2020; *Financial Assistance*, The Salon Professional Academy, https://perma.cc/L55L-F5VM (captured July 10, 2020).

xxii. *Drone Workforce Solutions and Paramount Capital Group Announce Funding for Drone Training*, DWS Drone School (Jan. 6, 2020), https://perma.cc/FN9N-74R2 (captured July 8, 2020).

xxiii. *Types of Aid Available*, Southern California Health Institute, https://perma.cc/SR75-3ABV (captured June 30, 2020).

xxiv. For a list of Climb's partner schools, *see What's Your Top Choice*, Climb Credit, https://climbcredit.com/compare/vetting (last accessed July 7, 2020). Climb does not specify how many schools are included in its vetting tool, but recent reports from the company indicate that it lends to students at "more than 140 schools." Climb Credit, *Climb Credit Announces $9.8 Million Series A Funding Round Led by Third Prime and New Markets Venture Partners*, Cision PR Newswire (June 26, 2019), https://perma.cc/4XUN-GKSK (captured June 22, 2020).

xxv. *Online Paralegal Studies Certificate Program*, Boston College, https://perma.cc/DJ65-NHV9 (captured June 30, 2020) (advertising PayPal Credit as a method to finance attendance at Boston University's "Online Paralegal Studies Certificate Program"); *see also Financial Assistance Programs*, KCI EMT Training, https://perma.cc/VVG4-ENXL (captured July 1, 2020) (advertising PayPal Credit as a means to pay for an EMT training school); *Tuition & Tax Credits*, Energetic Health Institute, https://perma.cc/Z2XZ-89E5 (captured June 30, 2020) ("How Can I Pay My Tuition? We accept all 4 Major Credit Cards, Cashiers Checks, Health Saving Account or PayPal Credit"); *PayPal Credit*, Central Career School, https://perma.cc/3R5K-TUN8 (captured July 1, 2020) ("PAY NOW OR PAY OVER TIME WITH PAYPAL CREDIT."); *Tuition*, Academy for Dental Assisting Careers, https://perma.cc/H49H-ET7Y (captured July 1, 2020) ("You can also apply for PayPal Credit").

xxvi. Anita Chabria, *For-Profit Film School Turned Their Hollywood Dreams into Student Debt Nightmares*, L.A. Times (Jan 22, 2020), https://www.latimes.com/california/story/2020-01-12/video-symphony-student-debt-nightmares (describing a situation in which, after losing access to Title IV funding, a for-profit college "transformed into a debt holding company" and sued students for tuition and fee amounts "including federal loan amounts the government refused to give the school after the allegations of misconduct").

xxvii. *See, e.g.*, *Custom-Designed Institutional Loan Programs*, Tuition Options, https://www.tuitionoptions.com/details-for-schools/ (last accessed July 7, 2020) (advertising "[c]omprehensive servicing and reporting functions" and "accounts receivable management").

xxviii. Order, *Digital Media Solutions, LLC v. South University of Ohio, LLC, et al.*, No. 1:19-cv-00145 (N.D. Ohio Mar. 23, 2020), *available at* https://www.courtlistener.com/docket/8514271/554/digital-media-solutions-llc-v-south-university-of-o/.

xxix. *Increase Your School's Enrollment with Better Financing Solutions*, TFC Financing, https://perma.cc/2MBZ-Q2Y7 (captured June 22, 2020); *About Us*, TFC Financing, https://perma.cc/EC7E-UDGY (captured June 22, 2020).

xxx. *Tuition Options Overview*, LinkedIn, https://perma.cc/PEM2-BDFF (captured June 27, 2020).

xxxi. Climb Credit, *Climb Credit Announces $9.8 Million Series A Funding Round Led by Third Prime and New Markets Venture Partners*, Cision PR Newswire (June 26, 2019), https://perma.cc/4XUN-GKSK (captured June 22, 2020).

xxxii. For example, some of the largest for-profit chains still operating today, including the University of Phoenix, Devry University, Ashford University, American InterContinental University (AIU) and Colorado Technical

University collectively enrolled more than 600,000 students over the past decade, driving many to take on these debts. Author's calculation based on data from the U.S. Department of Education's College Scorecard calculated as the cumulative number of undergraduates reported as enrolled each school in 2018-19 (the most recent school year for which data are available) and 2012-13, given that the average for-profit attendee spends roughly 6 years in school, to avoid double counting student. *College Scorecard*, U.S. Dep't of Educ., https://collegescorecard.ed.gov/data/; *Trends in College Pricing*, CollegeBoard at 22, https://research.collegeboard.org/pdf/trends-college-pricing-2018-full-report.pdf#page=22.

xxxiii. Stacy Cowley, *University of Phoenix Cancels $141 Million in Debt for 'Deceptive' Ads*, N.Y. Times (Dec. 10, 2019), https://www.nytimes.com/2019/12/10/business/university-phoenix-ftc-ads.html; *see also Electronic Promissory Note*, University of Phoenix Retail Installment Contract, https://www.ecsi.net/prom6z/.

xxxiv. *See, e.g.*, *In re: Career Educ. Corp.* (Iowa Att'y Gen. Jan 3, 2019), *available at* https://www.iowaattorneygeneral.gov/media/cms/CEC_AVC_FINAL_w_Sigs_and_Exhibits_8E59529F9FFF0.pdf (CEC "engaged in unfair and deceptive practices by making misleading statements to prospective students, failing to disclose material facts to prospective students"); Order for Permanent Injunction, *Fed. Trade Comm'n v. DeVry Educ. Group*, No. 2:16-cv-00579 (C.D. Cal. Dec. 15, 2016), *available at* https://www.ftc.gov/system/files/documents/cases/161215_devry_stipulationrefinalorder.pdf ("Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in the advertising, marketing, and sale of their educational products and services.").

xxxv. SBPC's review of court filings in the following investigations identified more than $2.4 billion in shadow student debt owed by students enrolled at schools targeted in public enforcement actions. *See* Order for Perm. Inj., *Fed. Trade Comm'n v. The Univ. of Phoenix, Inc., et al.*, No. 2:19-cv-05772 (D. Ariz. Dec. 20, 2019), *available at* https://www.ftc.gov/system/files/documents/cases/de_15_stipulated_order_for_permanent_injunction_and_monetary_judgment.pdf ("Ceased collection of a minimum of One Hundred Forty Million Nine Hundred Sixty-Six Thousand Eight-Hundred and Six Dollars ($140,966,806) in Covered Consumer Debt."); Order for Perm. Inj., *Fed. Trade Comm'n v. DeVry Educ. Group*, No. 2:16-cv-00579 (C.D. Cal. Dec. 15, 2016), *available at* https://www.ftc.gov/system/files/documents/cases/161215_devry_stipulationrefinalorder.pdf ("A total of Thirty Million Three Hundred Fifty-One Thousand and Nineteen Dollars ($30,351,019) in forgiveness of unpaid private student loans. . . . A total of Twenty Million Two Hundred Forty-Eight Thousand Nine Hundred Eighty-One Dollars ($20,248,981) in forgiveness of debts from accounts receivable."); Consent Order, *In re: Bridgepoint Education*, No. 2016-CFPB-0016 (Consumer Fin. Prot. Bureau Sept. 12, 2016), *available at* https://files.consumerfinance.gov/f/documents/092016_cfpb_BridgepointConsentOrder.pdf ("During the Relevant Period, thousands of Students borrowed a total of roughly $23,544,184."); Final Consent Judgment, *Colorado v. Alta Colleges Inc. & Westwood College, Inc.*, (Colo. Dist. Ct. Mar 14, 2012), *available at* https://www.stopfraudcolorado.gov/sites/default/files/press/westwood_consent_judgment.pdf ("WESTWOOD, and any agents acting on WESTWOOD's behalf or at its direction, shall credit $2,500,000.00 . . . to the outstanding balance on any and all open accounts in existence as of December 31, 2011."); Assurance of Voluntary Compliance Entered Into Between Westwood Colleges, et al. and Office of the Illinois Attorney General (Oct. 9, 2015), *available at* https://www.republicreport.org/wp-content/uploads/2015/07/Westwood-Colleges-Assurance-of-Voluntary-Compliance14.pdf; *Press Release, Attorney General Ellison's Office Notches Big Victory for Defrauded MSB/Globe Students*, The Office of the Minn. Att'y Gen. (Nov. 6, 2019), https://www.ag.state.mn.us/Office/Communications/2019/11/06_MSBGlobe.asp#:~:text=November%206%2C%202019%20(SAINT%20PAUL,)%20and%20Globe%20University's%20(Globe) ("refunds totaling $33.7 million"); Order, *Digital Media Solutions, LLC v. South University of Ohio, LLC, et al.*, No. 1:19-cv-00145 (N.D. Ohio Mar. 23, 2020), *available at* https://www.courtlistener.com/docket/8514271/554/digital-media-solutions-llc-v-south-university-of-o/ ("[F]orgive the approximately $1.6 million of outstanding DCEH Misrepresentation Period HLC Student Loans. . . . [R]eimburse the applicable HLC Students the approximately $133,279 of HLC Student Loan Collections."); Final Consent Judgment, *Hoffman v. Educ. Mgmt. Corp., et al.*, (Sup. Ct. N.J. Nov. 16, 2015), *available at* https://nj.gov/oag/newsreleases15/Hoffman_v_EMC_final-consent-judgment.pdf ("Defendants agree to forgo efforts to collect all amounts that Defendants claim is owed to EDMC .

. . which amounts totaled, as of September 1, 2015, approximately $102,800,000.00."); *In re: Career Educ. Corp.* (Iowa Att'y Gen. Jan 3, 2019), *available at* https://www.iowaattorneygeneral.gov/media/cms/CEC_AVC_FINAL_w_Sigs_and_Exhibits_8E59529F9FFF0.pdf ("CEC agrees to forgo any and all efforts to collect any amounts that are owed to CEC by such Qualifying Former Students . . . which amounts totaled, as of December 1, approximately $493,687,220."); Complaint, *Consumer Fin. Prot. Bureau v. Student CU Connect CUSO, LLC*, No. 1:19-cv-2397 (S.D. Ind. June 14, 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_student-CU-connect-cuso-llc_complaint_2019-06.pdf ("The CUSO Loan program originated approximately $189 million in student loans to ITT students."); Class Action Settlement Agreement, *In re: ITT Educational Services, Inc.*, No. 16-07207 (S.D. Ind. Sept. 4, 2019), *available at* https://predatorystudentlending.org/wp-content/uploads/2018/02/2290-1-student-settlement-motion-exhibits.pdf ("As of the Petition Date, there was approximately $30,000,000.00 in Student Receivables placed [with servicers and collection companies]. . . . In addition, ITT held, as of the Petition Date approximately $630,945,284.00 in additional Student Receivables which it had not placed with. . . any other servicer or collection agency."); Compl., *Consumer Fin. Prot. Bureau v. Corinthian Colleges*, No. 1:14-cv-07194 (N.D. Ill. Sept. 16, 2014), *available at* https://files.consumerfinance.gov/f/201409_cfpb_complaint_corinthian.pdf ("The total outstanding balance of these loans is in excess of $568.7 million."); Compl., *Consumer Fin. Prot. Bureau v. Aequitas Capital Mgmt.*, No. 3:17-cv-01278 (D. Ore. Aug. 17, 2017), *available at* https://files.consumerfinance.gov/f/documents/201708_cfpb_aequitas-complaint.pdf ("Aequitas held a portfolio of these student loans with an unpaid balance of approximately $190.5 million.").

xxxvi. *See, e.g.*, Compl., *Consumer Fin. Prot. Bureau v. Aequitas Capital Mgmt.*, No. 3:17-cv-01278 (D. Ore. Aug. 17, 2017), *available at* https://files.consumerfinance.gov/f/documents/201708_cfpb_aequitas-complaint.pdf ("Corinthian students who defaulted on Genesis Loans suffered harmful consequences including negative credit reporting, along with consequences that flow from that. Negative items on a credit report like defaults can result in difficulty in renting an apartment, denial of employment, ineligibility for other forms of financing, or eligibility only on less favorable terms than would otherwise have been available.").

xxxvii. *Tuition*, Coast 2 Coast Truck Driving School, https://perma.cc/MHT6-8XHB (captured June 17, 2020) ("APR ranges from 13.99% – 18.99%").

xxxviii. Decl. at 13, *Digital Media Solutions, LLC v. S. Univ. of Ohio, LLC*, No. 1:19-cv-145 (N.D. Ohio Jan 2, 2020), https://www.courtlistener.com/recap/gov.uscourts.ohnd.250611/gov.uscourts.ohnd.250611.515.3.pdf#page=13 (Tuition Options "Maximum Interest Rate: 19.01%").

xxxix. *Financial Aid*, Bonnie Joseph Academy, https://perma.cc/2US3-5M96 (captured June 16, 2020) ("interest rates of 9.99-20.00%"); *Tuition Fees*, Bonnie Joseph Academy, https://perma.cc/H6YX-VEC4 (captured June 30, 2020) ("Cosmetology/Barbering Course: . . . Total $21,700.00").

xl. *Bonnie Joseph Academy of Cosmetology & Barbering*, U.S. Dep't of Educ. College Scorecard, https://collegescorecard.ed.gov/school/?481456-Bonnie-Joseph-Academy-of-Cosmetology-Barbering (last accessed July 13, 2020) (listing the term "Data Not Available" under the field "Salary After Completing").

xli. *What Is the Average Cosmetologist Salary by State*, ZipRecruiter, https://www.ziprecruiter.com/Salaries/What-Is-the-Average-Cosmetologist-Salary-by-State (last accessed July 13, 2020).

xlii. Author's calculation based on a 20% nominal annual interest rate and $15,700 starting balance. Some borrowers may use TFC loans to supplement federal student aid, while others may be ineligible for federal student aid and use private credit to finance the total cost of such a program. In this example, SBPC assumed a borrower financed the full cost of this program beyond the maximum amount of unsubsidized loans available per year to federal student loan borrowers without the use of grants. *Subsidized and Unsubsidized Loans*, U.S. Dep't of Educ., Fed. Student Aid, https://studentaid.gov/understand-aid/types/loans/subsidized-unsubsidized/ (last accessed July 13, 2020). However, one need not make such an assumption. The loan is assumed to have a term of five years, a level in line with other loan programs provided through TFC. *See, e.g.*, *Federal Consumer Information Handbook & Rules and Regulation For The Culinary School of Fort Worth*, The Culinary School of Fort Worth, https://perma.cc/39YS-Z74V (captured

June 30, 2020).

xliii. Josh Mitchell & AnnaMaria Andriotis, *Banks Want a Bigger Piece of Your Student Loan*, The Wall Street Journal (Mar. 7, 2018), https://www.wsj.com/articles/banks-look-to-break-governments-hold-on-student-loan-market-1520418600 ("And unlike federal loans, most private loans don't charge an origination fee when borrowers sign up for the loan.").

xliv. *Tuition & Payment Info*, IITR Truck School, https://perma.cc/B3V5-TFDJ (captured June 17, 2020).

xlv. *Tuition Fees*, Bonnie Joseph Academy, *supra* note xxxix.

xlvi. *Climb Credit Disclosures*, Climb Credit, https://perma.cc/YJH3-DJA9 (captured June 17, 2020) ("[I]ncludes an up to 5% origination fee.").

xlvii. *Financial Aid*, Central Maryland School of Massage, https://web.archive.org/web/20180830184003/https://www.teachingmassage.com/admissions/financial-aid.php (captured Aug. 30, 2018) ("Students must first be declined for a Sallie Mae loan or other private bank loan before they can utilize TFC Tuition Financing for tuition amounts.").

xlviii. *Tuition & Tax* Credits, Energetic Health Institute, *supra* note xxv.

xlix. *Financial Options*, Mount Eagle College & University, https://perma.cc/GN87-W64J (captured June 30, 2020).

l. *Tuition, Fees and Refund* Policy, Veterinary Allied Staff Education, https://perma.cc/TF5Q-XZ4A (captured July 10, 2020).

li. *Catalog and Program Curriculum*, Veterinary Allied Staff Education, https://perma.cc/ZF7F-CQX8 (captured July 10, 2020). The authors were not able to identify the private firm, if any, that this chain of schools uses to facilitate the origination, servicing or collection of this financing based on a review of publicly available materials provided on the school's website.

lii. *Financial Aid*, Robert Fiance Beauty Schools, https://perma.cc/BJU2-ABN7 (captured June 16, 2020).

liii. *Id.*

liv. *2019 Catalog, "Graduation Requirements,"* Florida Institute of Recording, Sound, and Technology, https://perma.cc/V3D2-YGVD (captured June 16, 2020); *see also School Catalog, "Tuition Financing,"* Oak Tree Massage School, https://perma.cc/6S6C-6ZUW (captured June 30, 2020).

lv. *Decrease Student Loan Defaults And Increase Placement Rates*, TFC Tuition Financing, https://perma.cc/RSZ3-WK45 (captured June 16, 2020).

lvi. *Serrano v. Tuition Options, LLC*, No. 17-cv-24443, 2018 WL 3145809, at *1 (S.D. Fla. June 27, 2018), *available at* https://www.leagle.com/decision/infdco20180628c06; *see also* Tariq Habash, *One More Way States Can Step Up as Betsy DeVos Rolls Back Legal Protections*, Student Borrower Prot. Ctr (Feb. 14, 2020), https://protectborrowers.org/one-more-way-states-can-step-up-as-betsy-devos-rolls-back-legal-protections/.

lvii. Electronic Fund Transfer Act, 15 U.S.C. § 1693k (2020).

lviii. *Financial Aid*, Finger Lakes School of Massage, https://perma.cc/4PRY-4BPU (captured June 17, 2020).

lix. *Education Loan Source Offers New Flexible Repayment Solution*, Education Loan Source, https://perma.cc/NF6J-P4AS (captured June 21, 2020).

lx. *Press Release, Attorney General Ellison's Office Notches Big Victory for Defrauded MSB/Globe Students*, *supra* note xxxv.

lxi. *Id.* ("The Schools offered the loans to students...usually at interest rates between 12 and 18 percent...The Schools never paid out money to the student; rather, the Schools' affiliated entities… [including] Tuition Options, LLC...credited the loaned amount against the student's outstanding tuition balance at three predetermined dates during the academic year. The funds were not available to the student for any other purpose.").

lxii. *Minnesota v. Minn. Sch. of Bus., Inc.*, 935 N.W.2d 124 (Minn. 2019), *available at* https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2017/08/MN-decision.pdf.

lxiii. Seth Frotman, *States Are Leading the Fight to End the Student Debt Crisis, Student Borrower Prot. Ctr.* (June 15, 2020), www.protectborrowers.org/states/ (including Connecticut, the District of Columbia, California, Illinois, Washington, Rhode Island, Colorado, New York, New Jersey, Maine, and Virginia).

lxiv. Consent Order, *In re: TFC Credit Corp. of Cal.* (Ct. Banking Comm'n May 28, 2019), *available at* https://portal.ct.gov/-/media/DOB/Enforcement/Consumer-Credit/2019-CC-Orders/TFC-Credit-Corporation-CO.pdf?la=en.

lxv. *Press Release, DFS Superintendent Linda A. Lacewell Announces Settlement with National Student Loan Servicers of For-Profit Schools*, N.Y.C. Dep't of Fin. Services (Aug. 15, 2019), *available at* https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1908151. Companies that drive students to take on shadow student debt have also been the target of public enforcement actions for abuses related to other lines of business.

lxvi. *See, e.g.*, *id*; *In re: Paramount Capital Group, Inc.*, No. 13-498 (Att'y Gen. of N.Y. Apr. 18, 2014), *available at* https://ag.ny.gov/sites/default/files/pdfs/bureaus/health_care/new/2014-04-18%20Paramount%20Capital%20Group_DCB.pdf; *Medical Lenders Fined After Charging Interest of As Much As 55%*, CNBC (Apr. 30, 2014), https://www.cnbc.com/2014/04/30/ny-strikes-deal-to-settle-with-medical-bill-lenders-over-high-interest-rates.html.

lxvii. *Press Release, Attorney General Ellison's Office Notches Big Victory for Defrauded MSB/Globe Students*, *supra* note xxxv.

lxviii. *Consumer Fin. Prot. Bureau v. ITT Educational Services*, No. 1:14-cv-00292 (S.D. Ind. filed Feb. 26, 2014).

lxix. 12 U.S.C. § 5552.

lxx. *See* Consent Order, *In re: TFC Credit Corp. of Cal.* (Ct. Banking Comm'n May 28, 2019), *available at* https://portal.ct.gov/-/media/DOB/Enforcement/Consumer-Credit/2019-CC-Orders/TFC-Credit-Corporation-CO.pdf?la=en; *Press Release, DFS Superintendent Linda A. Lacewell Announces Settlement with National Student Loan Servicers of For-Profit Schools*, N.Y.C. Dep't of Fin. Services (Aug. 15, 2019), *available at* https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1908151.

lxxi. Higher Education Opportunity Act, Pub. L. No. 110-315.

lxxii. 12 U.S.C. § 5514; *see also* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203.

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