

## Testimony of Mike Pierce

Executive Director of the Student Borrower Protection Center  
Before the Senate Committee on Banking, Housing, and Urban Affairs  
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Chairman Brown, Ranking Member Toomey, Members of the Committee, thank you for the opportunity to testify today. I would also like to thank and acknowledge the heart wrenching testimony of the borrowers who bravely spoke on Tuesday.

My name is Mike Pierce and I am the executive director of the nonprofit Student Borrower Protection Center (SBPC) and co-founder of the Student Loan Law Initiative at the University of California, Irvine School of Law. SBPC is a national nonprofit organization engaged in advocacy, policymaking, and litigation strategy to protect borrowers' rights, rein in industry abuses, and advance economic opportunity for the next generation of students. Before I helped start our organization in 2018, I spent seven years as a regulator for the student financial services industry at the Consumer Financial Protection Bureau.

In just a few weeks, it will be ten years since the Senate Banking Committee held the first Congressional hearing focused solely on student debt. Since that time, much remains the same—but for many, the situation is far worse.

The story of the student debt crisis in the years prior to the pandemic is one marked by widespread economic distress, government inaction, endemic corruption, and a shocking range of abuses by some of the largest financial companies in the world. Today, policymakers have paused much of the student loan system in the face of this profoundly broken status quo—a critical, if temporary, lifeline for tens of millions of people.<sup>1</sup>

But even with this momentary room to breathe, student loan borrowers across the country remain exposed to the ballooning burden of student loan debt and its severe economic fallout. For the past decade, rising levels of student debt produced fewer homeowners<sup>2</sup> and more

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<sup>1</sup> U.S. Dep't of Educ. Off. of Fed. Student Aid, *COVID-19 Emergency Relief and Federal Student Aid*, <https://studentaid.gov/announcements-events/covid-19> (last visited May 2, 2022); Calif. Pol. Lab & Student Loan Law Initiative, *Who Benefits from the Student Loan Payment Pause* (Mar. 2022); <https://www.capolicylab.org/who-benefits-from-the-student-loan-payment-pause-and-what-will-happen-when-it-ends/>.

<sup>2</sup> See, e.g., Meta Brown & Sydnee Caldwell, *Young Student Loan Borrowers Retreat from Housing and Auto Markets*, Fed. Res. Bank of N.Y. (Apr. 17, 2013), <http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html> (finding that homeownership rates of 30-year-old student loan borrowers decreased by more than 5 percent compared with homeownership rates of 30-year-old non-borrowers, and finding that over the analyzed time period student borrowers were less likely to hold auto debt than nonborrowers).

renters,<sup>3</sup> brittle household balance sheets<sup>4</sup> burdened by less savings<sup>5</sup> and more credit card debt,<sup>6</sup> the dwindling hope of a secure retirement,<sup>7</sup> and the growing threat of intergenerational student borrowing.<sup>8</sup>

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<sup>3</sup> Fed. Res. Bank of N.Y., *Press Briefing On Household Debt, With Focus On Student Debt* 36–47 (Apr. 3, 2017), <https://www.newyorkfed.org/medialibrary/media/press/PressBriefing-Household-Student-Debt-April32017.pdf#page=39> (finding that college attendees with student debt have lower homeownership rates than college attendees without student debt and that higher debt balances are associated with lower homeownership rates).

<sup>4</sup> See, e.g., Justin Weidner, *Does Student Debt Reduce Earnings?*, Princeton U. (Nov. 2016), [https://scholar.princeton.edu/sites/default/files/jweidner/files/Weidner\\_JMP.pdf](https://scholar.princeton.edu/sites/default/files/jweidner/files/Weidner_JMP.pdf) (finding that “student debt is permanently scarring, as graduates with debt experience no faster income growth than their unburdened peers. Debt induces graduates to enter employment faster and select jobs in unrelated fields, leading to lower income levels and growth rates.”).

<sup>5</sup> See, e.g., Daniel Cooper & J. Christina Wang, *Student Loan Debt and Economic Outcomes*, Fed. Res. Bank of Bos., *Current Pol’y Persp.* No. 14-7 (Oct. 2014), <https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/economic/cpp1407.pdf> (“In addition, the distribution of total wealth excluding student debt liabilities is lower for homeowners with student debt than for homeowners without student loan debt (again conditional on at least some college attendance). This wealth disparity remains even after controlling for a wide range of demographic and other factors.”).

<sup>6</sup> See, e.g. Consumer Fin. Prot. Bureau, *New research report on student loan repayment and broader household borrowing* (June 29, 2018), <https://www.consumerfinance.gov/about-us/blog/new-research-report-student-loan-repayment-and-broader-household-borrowing/>.

<sup>7</sup> See, e.g., Consumer Fin. Prot. Bureau, *Snapshot of older consumers and student loan debt* 14 (Jan. 2017), [http://files.consumerfinance.gov/f/documents/201701\\_cfpb\\_OA-Student-Loan-Snapshot.pdf](http://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf) (finding that borrowers nearing retirement “had a lower median amount in their employer-based retirement account or an Individual Retirement Account (IRA) than consumers without student loan debt”); Joe Valenti, *A Look at College Costs Across Generations*, AARP (May 2019), <https://www.aarp.org/content/dam/aarp/ppi/2019/05/a-look-at-college-costs-across-generations.doi.10.26419-2Fppi.00063.001.pdf> (finding that student loan borrowers may need to work two to seven years longer than non-borrowers to achieve the same retirement savings); Joseph Egoian, *73 Will Be the Retirement Norm for Millennials*, NerdWallet (Oct. 23, 2013), <https://www.nerdwallet.com/blog/investing/73-retirement-norm-millennials/> (finding that a 4 year college graduate with median student loan debt of \$23,000 has about \$115,000 less in retirement savings than a 4 year college graduate with no student loans by the time they reach age 73); Mikhail Zinshteyn, *Saddled With Debt, Recent Grads Can’t Save*, AARP (May 29, 2019), <https://www.aarp.org/money/credit-loans-debt/info-2019/recent-grads-delay-saving.html>.

<sup>8</sup> See, e.g., William Elliot & Melinda Lewis, *Student Debt Effects on Financial Well-Being: Research and Policy Implications*, 29 J. Econ. Surveys 614 (2015), <http://onlinelibrary.wiley.com/doi/10.1111/joes.12124/full> (finding that student loan debt can delay asset accumulation for years and can decrease a family’s net worth by 63 percent); Daniela Kraiem, *The Cost of Opportunity: Student Debt and Social Mobility*, 48 Suffolk U. L. Rev. 689, 699 (2015) (“Students with unmanageable debt are more likely to be low-income, female, black, and have dependent members such as children or elderly parents.”); William Elliot & Melinda Lewis, *Student Loans Are Widening The Wealth Gap: Time To Focus On Equity*, Assets & Educ. Initiative, U. Of Kan. 7 (2013), <https://aedi.ssw.umich.edu/sites/default/files/publications/publication-cd-reports-r1.pdf> (“However, despite our collective belief in an American dream of equitable opportunities for all, higher education today increasingly reinforces patterns of relative privilege, particularly as students rely more and more on student loans to finance college access.”).

Worse, administrations of both parties over decades have failed to confront the disparate effects of this crisis.<sup>9</sup> A conclusive and growing body of evidence confirms that rising levels of student debt and distress disproportionately deny access to the American Dream for people of color,<sup>10</sup> in particular Black women.<sup>11</sup> The extent of this inequity is catastrophic, widening the racial wealth gaps caused by centuries of systemic racism.<sup>12</sup>

Administrations of both parties have ignored the stark reality that the student debt crisis is principally a failure of public policy—one made far worse by widespread lawlessness across the student loan industry.<sup>13</sup> For decades, the largest student loan companies have run roughshod over people with student debt, deceiving borrowers about their rights to loan forgiveness<sup>14</sup> and affordable payments,<sup>15</sup> driving borrowers into default<sup>16</sup> and financial devastation.<sup>17</sup>

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<sup>9</sup> See, e.g., Student Borrower Prot. Ctr., *Disparate Debts: How Student Loans Drive Racial Inequality Across Cities* (2020), <https://protectborrowers.org/disparate-debts/>; see also Katherine Welbeck, *Race: Examining Legal Remedies for Disparate Student Debt Outcomes*, Consumer Fin. L. Q. Rep. (2020), <https://ssrn.com/abstract=3712516>.

<sup>10</sup> See, e.g., The Educ. Trust, *Jim Crow Debt: How Black Borrowers Experience Student Loans* (Oct. 2021); [https://edtrust.org/wp-content/uploads/2014/09/Jim-Crow-Debt\\_How-Black-Borrowers-Experience-Student-Loans\\_October-2021.pdf](https://edtrust.org/wp-content/uploads/2014/09/Jim-Crow-Debt_How-Black-Borrowers-Experience-Student-Loans_October-2021.pdf); see also Dalié Jiménez & Jonathan Glater, *Student Debt Is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 Harv. C.R.-C.L. L. Rev. 131, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3475224&dgcid=ejournal\\_html\\_email\\_education:law:ejournal\\_abstractlink](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475224&dgcid=ejournal_html_email_education:law:ejournal_abstractlink); Ashley Harrington & Mark Huelsman, *Introduction to Delivering on Debt Relief* (Dec. 2020), <https://protectborrowers.org/wp-content/uploads/2021/02/Delivering-on-Debt-Relief-Final.pdf>.

<sup>11</sup> See, e.g., The Education Trust, *How Black Women Experience Student Debt* (2022), <https://edtrust.org/resource/how-black-women-experience-student-debt/>.

<sup>12</sup> See, e.g. *Stalling Dreams: How Student Debt is Disrupting Life Chances and Widening the Racial Wealth Gap*, Inst. on Assets and Social Pol. (Sept. 2019), <https://heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disruptinglifechances.pdf>; see also Abbye Atkinson, *Borrowing Equality*, 120 Colum. L. Rev. 1403 (2020).

<sup>13</sup> See, e.g., *Consumer Fin. Prot. Bureau v. Navient Corp.*, 2017 WL 3380530 (M.D. Pa. Aug. 4, 2017); *Lawson-Ross v. Great Lakes Higher Education Corp.*, No. 18-14490 (11th Cir. 2020); *Grewal v. Navient Corp.*, No. ESX-C-172-2020 (N.J. Super. Ct. Ch. Div. Oct. 20, 2020); Consent Order, *Vullo v. Conduent Educ. Services* (Jan. 4, 2019); *Nelson v. Great Lakes Higher Education Corp.*, No. 18-1531 (7th Cir. 2019); First Amended Complaint, *People v. Navient Corp.*, No. CGC-18-567732 (Cal. Super. Ct. Nov. 1, 2018); *Mississippi v. Navient Corp.*, No. 25CH1:18-CV-00982 (Miss. Ch. Ct. Hinds Cty. July 17, 2018); *Commonwealth v. Navient Corp.*, No. 19-2116 (M.D. Pa. Oct. 5, 2017); *Marek v. Navient Corp.*, 2017 WL 2881606 (N.D. Ohio July 6, 2017); Complaint, *People v. Navient Corp.*, No. 17CH761 (Ill. Cir. Ct. Cook Cty. Jan. 18, 2017).

<sup>14</sup> See, e.g., *People v. Pennsylvania Higher Educ. Assistance Agency*, No. 1:2019cv09155 (S.D.N.Y. Oct. 3, 2019).

<sup>15</sup> See, e.g., *Consumer Fin. Prot. Bureau v. Navient Corp.*, 2017 WL 3380530 (M.D. Pa. Aug. 4, 2017).

<sup>16</sup> See, e.g., Consumer Fin. Prot. Bureau, *2014 Annual Report of the CFPB Student Loan Ombudsman 11-12* (Oct. 2014), [https://files.consumerfinance.gov/f/201410\\_cfpb\\_report\\_annual-report-of-the-student-loan-ombudsman.pdf](https://files.consumerfinance.gov/f/201410_cfpb_report_annual-report-of-the-student-loan-ombudsman.pdf) (“No Clear Path to Avoid Default...Options Are Too Little Too Late.”).

<sup>17</sup> Consumer Fin. Prot. Bureau, *Stressed out by student debt* (May 15, 2015), <https://www.consumerfinance.gov/about-us/newsroom/stressed-out-by-student-debt> (“Breakdowns in student loan servicing can be a huge impediment to staying current on student loans. For those borrowers who are struggling to make ends meet, high quality student loan servicing can be the difference between getting by and going broke.”).

Taken together, the past decade teaches us that student debt is an economic crisis in its own right, not merely a symptom of runaway college costs.

## **Student Debt & COVID-19**

This moment demands immediate and sweeping changes to ensure families with student debt can prosper and to finally deliver on the promise of higher education as a gateway to the American Dream. Failing to meet this moment will deepen economic inequality, widen the racial wealth gap, and lead to a new epidemic of student loan defaults.

In the first weeks after COVID-19 became a national emergency, Congress enacted what has proven to be the broadest effort to assist people with student debt in American history.<sup>18</sup> This student loan “payment pause” has temporarily freed the majority of people with student debt from the burden of monthly payments, interest charges, and the ever-present threat of wage garnishment.

Three different studies released earlier this year make it clear that the pause on student loan payments has been wildly successful. The first, from the University of California’s California Policy Lab and Student Loan Law Initiative, showed that the payment pause saved a typical borrower hundreds of dollars a month and allowed borrowers who entered the pandemic with the weakest credit to emerge with the largest gains.<sup>19</sup> Rather than leading to a boom in frivolous spending, the payment pause allowed 43 percent of borrowers to pay down high-cost credit card debt.<sup>20</sup> The second study, from the Federal Reserve Bank of New York, showed that those people with student debt not covered by the payment pause struggled to stay afloat during the pandemic’s darkest days—and continue to struggle today.<sup>21</sup> The third, from the Consumer Financial Protection Bureau (CFPB), showed that 15 million people exhibit risk factors indicating heightened likelihood of difficulty making payments when the pause ends, underscoring that the risk of widespread student debt distress persists into the pandemic’s third year.<sup>22</sup>

The pause on student loan payments has also proven wildly popular: nearly two-thirds of Americans, including majorities of Democrats, Republicans, and independents, continue to support the pause in student loan payments more than two years later.<sup>23</sup>

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<sup>18</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136.

<sup>19</sup> *Who Benefits from the Student Loan Payment Pause*, *supra* note 1.

<sup>20</sup> *Id.*

<sup>21</sup> Fed. Res. Bank of N.Y., *Student Loan Repayment During the Pandemic Forbearance* (Mar. 2022); <https://libertystreeteconomics.newyorkfed.org/2022/03/student-loan-repayment-during-the-pandemic-forbearance/>.

<sup>22</sup> Consumer Fin. Prot. Bureau, *Student Loan Borrowers Potentially At-Risk as Payment Suspension Ends* (Apr. 14, 2022), <https://www.consumerfinance.gov/data-research/research-reports/student-loan-borrowers-potentially-at-risk-payment-suspension-ends/>.

<sup>23</sup> Data for Progress & Student Borrower Prot. Ctr., *Student Debt Tracking Poll: March 17 to March 21, 2022* (Mar. 2022), <https://www.filesforprogress.org/datasets/2022/3/dfp-sbpc-student-loan-march-tabs.pdf>.

Moreover, contrary to emerging conventional wisdom among certain economic pundits, the payment pause has been a key bulwark for borrowers against rising inflation. The savings attributable to the extended moratorium have protected millions of people from choosing between student loan payments and necessities like food, clothing, or shelter—decisions we know that financially strained borrowers, particularly Black and Latino borrowers, would likely have been forced to make if payments had restarted.<sup>24</sup> In fact, this policy has delivered relief for borrowers without itself adding meaningfully to rising prices. Research shows that of the 8.5 percent annualized inflation visible in the most recent data, only 0.2 percentage points—that is, less than one-quarter of one-tenth of the inflation we’ve seen over the past year—is even attributable to the payment pause.<sup>25</sup>

## Setting the Debt Trap

This expansive effort to help people with student debt by pausing student loan payments represents a remarkable break with history. For more than half a century, lawmakers have raised concerns about the cost of college and the barriers those high costs present to students and families who cannot afford it.<sup>26</sup> Beginning in the 1950s—and in its current form with the passage of the Higher Education Act of 1965—student debt has been a creature of the federal government.<sup>27</sup>

Lawmakers repeatedly sought to use debt—rather than increasing grant aid to borrowers or delivering direct support to public colleges—to expand access to college under the mistaken belief that the economic gains offered by higher education would offset *any* financial costs. A dangerous conventional wisdom formed as a result: the adage that student debt is “good debt.”<sup>28</sup>

A decade ago, when this committee first met to explore the effects of rising student debt on the economy and our society, it was already clear that this conventional wisdom was dangerously wrong and had, instead, set up a generation of students to fail.<sup>29</sup> The rise of global for-profit colleges in the years surrounding the 2008 financial crisis created what some have described as

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<sup>24</sup> *Id.*

<sup>25</sup> Ben Kaufman, *No, The Student Loan Pause is Not Driving Inflation*, Student Borrower Prot. Ctr. (Apr. 21 2022), <https://protectborrowers.org/no-the-student-loan-pause-is-not-driving-inflation/>.

<sup>26</sup> Nat’l Def. Educ. Act of 1958, Pub. L. No. 85-864.

<sup>27</sup> Higher Educ. Act of 1965, Pub. L. No. 89-329.

<sup>28</sup> Obama White House Archives, *Transcript of April 20, 2012 White House Press Briefing* (accessed May 2, 2022) (“[U.S. Education Secretary Arne] DUNCAN: So again, I think the most important thing we can do is to have young people go to college and graduate. And that’s the best investment we can make. And when that debt is manageable—obviously if you have no debt that’s maybe the best situation, but this is not bad debt to have. In fact, it’s very good debt to have. And we have all kinds of data not just around jobs but around how much your earning potential throughout your lifetime goes up from high school graduate to two-years degree to four-year degree. So this is the best long-term investment we can make.”).

<sup>29</sup> Consumer Fin. Prot. Bureau, *Testimony of Rohit Chopra Before the Senate Committee on Housing, Banking, and Urban Affairs* (July 24, 2012), <https://www.consumerfinance.gov/about-us/newsroom/written-testimony-of-rohit-chopra-before-the-senate-committee-on-housing-banking-and-urban-affairs/>.

“misery factories”—saddling millions of economically vulnerable people with debt based on false promises of financial rewards.<sup>30</sup> Pumped-up job placement rates and false salary projections assuaged students’ concerns about high costs, just as ready access to student debt greased the wheels. By the time the largest of these schools began to collapse in the middle of the last decade, the scam was laid bare and law enforcement started closing in.<sup>31</sup>

A decade of research and lived experience shows us that the impacts of the student debt crisis are not limited to a few bad apples, or even the entirety of the predatory for-profit college sector. Borrowers across the country and across all of American higher education take on and struggle under historic and ever-increasing debt burdens. The consequences of this runaway debt are most visible for those who come from historically disenfranchised communities. For example, over a quarter of Black borrowers at public and private non-profit colleges experience default on their student loans,<sup>32</sup> and overall wage growth among Black college graduates actually declined in the years leading up to the pandemic.<sup>33</sup>

Ending the student debt crisis is a matter of equity and a matter of justice. Borrowers of color take on more debt, struggle to repay these debts at higher rates, disproportionately default on federal student loans, and—as a consequence of both government mismanagement and abusive industry practices—are disproportionately crushed by the government’s predatory debt collection machine.<sup>34</sup>

A 2019 study by researchers at Brandeis found that “twenty years after starting college, the median debt of [white borrowers] has been reduced by 94 percent—with almost half holding no student debt—whereas Black borrowers at the median still owe 95 percent of their cumulative borrowing total.”<sup>35</sup> And, according to a study by researchers at the Jain Family Institute, over

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<sup>30</sup> Arnold Ventures, *‘Misery Factories’: At For-Profit Colleges, a Web of Predatory Behavior* (Aug. 20, 2020),

<https://www.arnoldventures.org/stories/misery-factories-at-for-profit-colleges-a-web-of-predatory-behavior>.

<sup>31</sup> Consumer Fin. Prot. Bureau, *CFPB Sues For-Profit College Chain ITT For Predatory Lending* (Feb. 26, 2014),

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/> (“[T]he costs of the private student loans included 10 percent origination fees and interest rates as high as 16.25 percent.”); Consumer Fin. Prot. Bureau, *CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme* (Sept. 16, 2014),

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme/> (“In July 2011, the Genesis loan interest rate was about 15 percent with an origination fee of 6 percent.”).

<sup>32</sup> Ctr. for Am. Progress, *The Continued Student Loan Crisis for Black Borrowers* (Dec. 2019); <https://www.americanprogress.org/article/continued-student-loan-crisis-black-borrowers>.

<sup>33</sup> Econ. Pol. Inst., *Wage growth is weak for a tight labor market—and the pace of wage growth is uneven across race and gender* (Aug. 2019), <https://www.epi.org/publication/labor-day-2019-wage-growth-gaps/>.

<sup>34</sup> Judith Scott-Clayton, *Shrinking Racial Gaps in Student Debt and Default: Recommendations to Congress* (Mar. 6, 2019),

<https://ccrc.tc.columbia.edu/easyblog/shrinking-racial-gaps-student-debt-default-congress.html>.

<sup>35</sup> Laura Sullivan, et. al., *Stalling Dreams: How Student Debt is Disrupting Life Chances and Widening the Racial Wealth Gap* (2019),

<https://heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifechances.pdf>.

three quarters of student loans in majority-minority zip codes have a higher balance than what was originally borrowed.<sup>36</sup>

These deeply unequal outcomes are just one symptom of the central policy failure undergirding America's \$1.7 trillion student loan system—the massive expansion and catastrophic collapse of the student loan safety net.

Beginning as far back as 1992, some people with student debt had the right to make payments based on their income and to eventually receive debt cancellation after up to 25 years of repayment—a right that was expanded in a piecemeal fashion over the succeeding decades.<sup>37</sup>

In 2007 and again and again throughout the Obama Administration, policymakers sought to assuage growing concerns about rising levels of student debt by pointing to the so-called safety of the debt itself. For example, in his 2010 State of the Union address, President Obama shared this promise with the nation, telling America's college students that “when they graduate, they will be required to pay only 10 percent of their income on student loans, and all of their debt will be forgiven after 20 years—and forgiven after 10 years if they choose a career in public service, because in the United States of America, no one should go broke because they chose to go to college.”<sup>38</sup>

### **“Economic Freedom” is Just Another Way to Say “Nothing Left to Lose”**

Despite lofty pledges by elected leaders, the U.S. Department of Education has historically behaved more like Wells Fargo than a branch of the United States government. The federal government's indifference to widespread lawbreaking by student loan companies over the past three decades has driven a widening gap between borrowers' rights under federal and state law and borrowers' experiences.<sup>39</sup>

When millions of families lost their homes to foreclosure more than a decade ago, housing advocates warned of a startlingly similar gap between homeowners' rights and their lived experiences.<sup>40</sup> As this Committee knows well, a decade ago policymakers made broad claims about Americans' rights to mortgage modification and foreclosure mitigation—promises that

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<sup>36</sup> Jain Family Inst., *Student Debt and Young America* (February 2021), <https://www.jainfamilyinstitute.org/assets/student-debt-and-young-america-jfi-feb-2021.pdf#page=23>.

<sup>37</sup> Student Borrower Prot. Ctr., *Driving Down Distress? The Principles and Incomplete History of Income Driven Repayment* (2021), <https://protectborrowers.org/wp-content/uploads/2021/09/Driving-Down-Distress.pdf>.

<sup>38</sup> Politico, *TRANSCRIPT: 2010 State of the Union Address* (2010), <https://www.politico.com/story/2010/01/obamas-state-of-the-union-address-032111>.

<sup>39</sup> See, e.g., Consumer Fin. Prot. Bureau, *Student Loan Servicing* (2015), [https://files.consumerfinance.gov/f/201509\\_cfpb\\_student-loan-servicing-report.pdf](https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf).

<sup>40</sup> See, e.g., Nat'l Consumer L. Ctr., *Testimony of Diane Thompson before the Senate Committee on Banking, Housing, and Urban Affairs* (2010), [https://www.nclc.org/images/pdf/foreclosure\\_mortgage/mortgage\\_servicing/testimony-senate-banking.pdf](https://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/testimony-senate-banking.pdf).

proved empty, as the biggest creditors in the mortgage industry ramped up the foreclosure machine and kicked millions of families out of their homes.<sup>41</sup>

This sad history is repeating itself in the student loan market. The Higher Education Act makes bold promises to Americans with student debt, including that:

- Monthly student loan payments will never be “unaffordable;”<sup>42</sup>
- Public service workers who serve for a decade will receive loan forgiveness;<sup>43</sup>
- Those whose disabilities prevent them from working will get debt cancellation;<sup>44</sup>
- Student loan payments will never be a life-long burden for low-income people;<sup>45</sup> and
- The government will discharge debts for those who have been defrauded by a predatory school and those who have faced a school closure.<sup>46</sup>

Yet despite these promises, before the pandemic more than one million student loan borrowers defaulted each year—the equivalent of a new default every 26 seconds.<sup>47</sup> Officials of both parties routinely call the state of the student loan system “broken,”<sup>48</sup> a “mess,”<sup>49</sup> and “corrupt.”<sup>50</sup>

When President Biden took office, he inherited a student loan system that was failing each of these student loan borrowers. By the middle of 2021:

- The Government Accountability Office (GAO) found that the Public Service Loan Forgiveness (PSLF) program, which was established nearly 14 years ago, has only canceled the loans of 124 members of the military, even as hundreds of thousands of borrowers have served.<sup>51</sup> Today, even after sweeping reforms by the Biden

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<sup>41</sup> For further discussion, see Nat’l Consumer L. Ctr., *HAMP Policy Analysis* (accessed May 2, 2022), <https://www.nclc.org/loan-servicing-and-modifications-and-foreclosure-assistance-programs/home-affordable-modification-program-hamp/hamp-policy-analysis-2.html>.

<sup>42</sup> See, e.g., 20 U.S.C. § 1098e.

<sup>43</sup> 20 U.S.C. § 1087e(m).

<sup>44</sup> 20 U.S.C. § 1087.

<sup>45</sup> See, e.g., 20 U.S.C. § 1087e(d)(D).

<sup>46</sup> 20 U.S.C § 1087e.

<sup>47</sup> Student Borrower Prot. Ctr., *New Data Show Student Loan Defaults Spiked in 2019 – A Warning to Industry and DeVos Amid Economic Fallout* (2019), <https://protectborrowers.org/every-26-seconds>.

<sup>48</sup> CBS News, *Secretary of Education Miguel Cardona on why “fixing a broken” student loan system is a priority for Biden administration* (2021), <https://www.cbsnews.com/news/secretary-of-education-miguel-cardona-student-loan-system/>.

<sup>49</sup> Nat’l Pub. Radio, *Exclusive: How the most affordable student loan program failed low-income borrowers* (2022); <https://www.npr.org/2022/04/01/1089750113/student-loan-debt-investigation>.

<sup>50</sup> Office of Sen. Elizabeth Warren, *Warren Statement on Department of Education’s Decision to Collect \$22.3 Million from Student Loan Giant Navient After Years of Predatory Behavior* (2021), <https://www.warren.senate.gov/newsroom/press-releases/warren-statement-on-department-of-educations-decision-to-collect-223-million-from-student-loan-giant-navient-after-years-of-predatory-behavior>.

<sup>51</sup> See Gov. Accountability Off., *Public Service Loan Forgiveness* (2021), [https://www.gao.gov/products/gao-21-65?utm\\_medium=social](https://www.gao.gov/products/gao-21-65?utm_medium=social); see also Consumer Fin. Prot. Bureau, *Remarks of CFPB Student Loan Ombudsman Seth Frotman before the Judge Advocate General School* (2017), [https://files.consumerfinance.gov/f/documents/201710\\_cfpb\\_Frotman-Remarks-JAG-School.pdf](https://files.consumerfinance.gov/f/documents/201710_cfpb_Frotman-Remarks-JAG-School.pdf). (“....more than 200,000 servicemembers collectively owe more than \$2.9 billion in student debt.”).



Administration, just 1,500 military borrowers have had their debts canceled.<sup>52</sup>

- The National Consumer Law Center published data under the Freedom of Information Act showing that, as of January 2021, only 32 borrowers had successfully navigated the income-driven repayment (IDR) plans and received cancellation.<sup>53</sup> Eighteen months later, that number has barely budged—the Government Accountability Office found that just 132 people have had debts canceled, out of more than 4 million with decades-old debts.<sup>54</sup>
- The government identified more than 500,000 people with disabilities who are eligible to have their debts immediately canceled based on data provided by the Social Security Administration to the Department.<sup>55</sup> Here, the Biden Administration pledged to take decisive action and cancel more than 350,000 borrowers' debts,<sup>56</sup> though hundreds of thousands more remain on the hook.
- Even with recent, badly needed actions to keep the government's promise to public service workers,<sup>57</sup> these borrowers continue to face hurdles that block them from relief. With the ongoing PSLF waiver period set to expire in October, there is evidence that borrowers continue to receive unreliable or incorrect information regarding how to access relief.<sup>58</sup> Further, the Department of Education acknowledged a backlog of nearly 170,000 applications for PSLF—borrowers who may be forced to pay a student loan bill as they remain stuck in the government's red tape.<sup>59</sup>

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<sup>52</sup> Wash. Post, *Student loan forgiveness program for military borrowers slowly improves* (Apr. 2022), <https://www.washingtonpost.com/education/2022/04/22/student-loan-forgiveness-military-borrowers/>.

<sup>53</sup> Nat'l Consumer L. Ctr. & Student Borrower Prot. Ctr., *Education Department's Decades-Old Debt Trap: How the Mismanagement of Income-Driven Repayment Locked Millions in Debt* (Mar. 2021), <https://www.nclc.org/uncategorized/new-government-data-exposes-complete-failure-of-education-departments-income-driven-repayment-program.html>.

<sup>54</sup> Gov. Accountability Off., *Education Needs to Take Steps to Ensure Eligible Loans Receive Income Driven Repayment Forgiveness* (Apr. 2022), <https://www.gao.gov/assets/gao-22-103720.pdf>; Office of Sen. Elizabeth Warren, *Education Department Responses to Data Request by Senator Warren* (2021), <https://www.warren.senate.gov/imo/media/doc/Education%20Department%20Response%20to%20Sen%20Warren%20-%202024-8-21.pdf>.

<sup>55</sup> Nat'l Consumer L. Ctr., Student Defense, et. al, *Letter to Secretary Cardona on Total and Permanent Disability Discharge* (2021), [https://www.nclc.org/images/pdf/student\\_loans/TPD\\_Regs\\_Ltr.pdf](https://www.nclc.org/images/pdf/student_loans/TPD_Regs_Ltr.pdf); see also Social Security Admin. Off. of the Inspector Gen., *Social Security Administration Beneficiaries Eligible for Total and Permanent Disability Federal Student Loan Discharge* (Nov. 2020), <https://oig.ssa.gov/sites/default/files/audit/summary/pdf/A-06-17-50281Summary.pdf>.

<sup>56</sup> U.S. Dep't. of Educ. Off. of Fed. Student Aid, "Good News" *Social Media Graphic* (accessed May 2, 2022), <https://twitter.com/FSACOO/status/1514981946371227649>.

<sup>57</sup> U.S. Department of Education Office of Federal Student Aid, *PSLF Waiver Offers Way to Get Closer to Loan Forgiveness* (accessed May 2, 2022), <https://studentaid.gov/announcements-events/pslf-limited-waiver>.

<sup>58</sup> Student Borrower Prot. Ctr., *Warning and Demand Letter to the Pennsylvania Higher Education Assistance Agency Regarding PSLF* (Dec. 2021), <https://protectborrowers.org/letter-to-pheaa-warning-of-potential-consumer-protection-violations-related-to-pslf-implementation/>.

<sup>59</sup> U.S. Department of Education Office of Federal Student Aid, *Electronic Announcement on Public Service Loan Forgiveness Waiver* (2021),

- The Department of Education also acknowledged a backlog of more than 100,000 applications for Borrower Defense discharges—the number of unprocessed claims for debt relief due to fraud by a school climbed by more than 20,000 during the first months of the Biden Administration.<sup>60</sup>

The Biden Administration has made a meaningful effort to remedy these and many other failures plaguing the student loan system, using emergency powers granted to the Secretary of Education to temporarily overhaul pieces of the student loan safety net.<sup>61</sup>

These steps are important and can be life changing for those individuals who benefit. For example, one public service worker who benefited from debt cancellation since the Biden Administration temporarily loosened program rules in October described debt relief as life-changing: “No more student debt. I only have a car payment, that’s all I owe in the whole world. That is incredible.”<sup>62</sup> Another said, “everything is close to the bone and so often the savings account is empty...[for public school educators, debt cancellation is] like a validation: I am important, and you do want us to stick around!”<sup>63</sup>

Yet these changes remain limited and temporary, and each day, we are met with new evidence that the student loan system is unable to function properly. Just two weeks ago, the Government Accountability Office released a scathing audit of the broadest student loan safety net program, IDR, finding that for nearly a decade, government officials knew that the student loan industry was not taking the necessary steps to deliver debt cancellation to the lowest income people.<sup>64</sup> Instead of taking needed action to ensure these economically vulnerable borrowers could benefit from their rights under the law, the Department of Education under both the Obama and Trump Administrations engaged in a shocking cover-up, ignoring evidence of mismanagement and sweeping the issues under the rug.<sup>65</sup>

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<https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-06-14/federal-student-aid-posts-two-new-quarterly-portfolio-reports-fsa-data-center-and-highlights-recent-changes-public-service-loan-forgiveness-ea-id-general-21-40>.

<sup>60</sup> U.S. Dep’t of Educ. Off. of Fed. Student Aid, *Borrower Defense Data* (accessed May 2, 2022), <https://studentaid.gov/data-center/student/loan-forgiveness/borrower-defense-data>.

<sup>61</sup> U.S. Dep’t of Educ., *Press Release: Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs* (Apr. 2022), <https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs>.

<sup>62</sup> Am. Fed’n of Teachers, *Student debt: One happy ending* (Dec. 22, 2022), <https://aftvoices.org/student-debt-one-happy-ending-a7b931526f6b>.

<sup>63</sup> *Meet The Educators Whose Student Debt Has Been Forgiven*, National Education Ass’n (Jan. 20, 2022), <https://www.nea.org/advocating-for-change/new-from-nea/meet-educators-whose-student-debt-has-been-forgiven>.

<sup>64</sup> Gov. Accountability Off., *Education Needs to Take Steps to Ensure Eligible Loans Receive Income Driven Repayment Forgiveness* (Apr. 2022), <https://www.gao.gov/assets/gao-22-103720.pdf>.

<sup>65</sup> See Nat’l Pub. Radio, *supra* note 49.

This is alarming on its own terms, but it also evidences and furthers the belief shared by many with student debt that America’s system of higher education financing is itself illegitimate. In important ways, the national conversation surrounding the cancellation of student debt has only recently caught up with a reality that millions of people with student loan debt experience each day.

### **Student Loan Servicers Turned a Policy Failure into a Generational Crisis**

Over the past decade, federal and state regulators and law enforcement officials have meticulously documented a shocking range of abuses by student loan companies. As Consumer Financial Protection Bureau Director Rohit Chopra explained to this committee just last week, misrepresentations by student loan servicers have “long been a concern” given the “incentive mismatch” between servicers, whose costs are reduced if they can limit interaction with borrowers, even where borrowers are entitled under the law to be fully informed about their rights.<sup>66</sup> According to Director Chopra, this incentive mismatch is reflected in reports from servicer employees that “their job was to get the borrower off the phone as quick as possible,” even if that meant directing borrowers into costly [repayment arrangements] when that was not necessarily their best option.<sup>67</sup>

These illegal acts and practices have affected every type of borrower, with every type of loan, at every stage of repayment.<sup>68</sup> For example, over the past decade, student loan servicers have been caught by regulators:

- Illegally denying or failing to approve applications for affordable loan payments under IDR, forcing borrowers to pay more than they owe and increasing interest charges.<sup>69</sup>
- Harvesting late fees from borrowers by engaging in a scheme to maximize the number of payments counted as late payments.<sup>70</sup>

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<sup>66</sup> Youtube, *Menendez Questions CFPB Director Chopra At Banking Committee Hearing* (Apr. 2022); <https://www.youtube.com/watch?v=MTJh8lidV6k>.

<sup>67</sup> *Id.*

<sup>68</sup> See, e.g., *Consumer Fin. Prot. Bureau v. Navient Corp.*, 2017 WL 3380530 (M.D. Pa. Aug. 4, 2017); *Lawson-Ross v. Great Lakes Higher Education Corp.*, No. 18- 14490 (11th Cir. 2020); *Grewal v. Navient Corp.*, No. ESX-C-172-2020 (N.J. Super. Ct. Ch. Div. Oct. 20, 2020); *People v. Pennsylvania Higher Educ. Assistance Agency*, No. 1:2019cv09155 (S.D.N.Y. Oct. 3, 2019); *Vullo v. Conduent Educ. Services* (Jan. 4, 2019) (consent order); *Nelson v. Great Lakes Higher Education Corp.*, No. 18-1531 (7th Cir. 2019); *People v. Navient Corp.*, No. CGC-18-567732 (Cal. Super. Ct. Nov. 1, 2018) (first amended complaint); *Mississippi v. Navient Corp.*, No. 25CH1:18-CV-00982 (Miss. Ch. Ct. Hinds Cty. July 17, 2018); *Commonwealth v. Navient Corp.*, No. 19-2116 (M.D. Pa. Oct. 5, 2017); *Marek v. Navient Corp.*, 2017 WL 2881606 (N.D. Ohio July 6, 2017); *People v. Navient Corp.*, No. 17CH761 (Ill. Cir. Ct. Cook Cty. Jan. 18, 2017) (complaint).

<sup>69</sup> See Consumer Fin. Prot. Bureau, *Supervisory Highlights* (Fall 2016), [https://www.consumerfinance.gov/documents/1389/Supervisory\\_Highlights\\_Issue\\_13\\_Final\\_10.31.16.pdf](https://www.consumerfinance.gov/documents/1389/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf).

<sup>70</sup> See *id.*

- Deceiving borrowers who have made extra payments on their loans about how interest would be charged.<sup>71</sup>
- Covering up improper loan deferments and illegally failing to address the increased interest charges these errors imposed on people with student debt.<sup>72</sup>
- Engineering a scheme to deceive borrowers and maximize interest charges when borrowers used multiple deferments or forbearances over extended periods of time.<sup>73</sup>
- Lying to borrowers about whether late fees may be charged on loans held by the U.S. Department of Education.<sup>74</sup>
- Failing to inform borrowers with private student loans that pausing loan payments will forfeit other consumer protections, including the right to release a co-signer.<sup>75</sup>
- Illegally increasing borrowers' interest rates when one creditor sold student loans to a different investor, resulting in a botched servicing transfer.<sup>76</sup>
- Illegally "auto-defaulting" student loan borrowers when a loan's cosigner filed for bankruptcy, regardless of whether the borrower was current on all payments.<sup>77</sup>

In addition, federal and state law enforcement officials have taken enforcement actions and filed lawsuits against servicers, including, for example:

- In 2014, the Federal Deposit Insurance Corporation and the U.S. Department of Justice each took an enforcement action against Sallie Mae and Navient for a range of abuses, including violations of the Servicemember Civil Relief Act that resulted in \$60 million being returned to nearly 78,000 military borrowers.<sup>78</sup>
- In 2015, the CFPB took action against Discover Bank for deceiving borrowers about how much they owed each month and making illegal debt collection calls to borrowers early in the morning and late at night.<sup>79</sup>

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<sup>71</sup> See *id.*

<sup>72</sup> See Consumer Fin. Prot. Bureau, *Supervisory Highlights* (April 2017), [https://www.consumerfinance.gov/documents/4608/201704\\_cfpb\\_Supervisory-Highlights\\_Issue-15.pdf](https://www.consumerfinance.gov/documents/4608/201704_cfpb_Supervisory-Highlights_Issue-15.pdf).

<sup>73</sup> See *id.*

<sup>74</sup> See Consumer Fin. Prot. Bureau, *Supervisory Highlights* (Fall 2015), [http://files.consumerfinance.gov/f/201510\\_cfpb\\_supervisory-highlights.pdf](http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf).

<sup>75</sup> See Consumer Fin. Prot. Bureau, *Supervisory Highlights* (Winter 2016), [http://files.consumerfinance.gov/f/201603\\_cfpb\\_supervisory-highlights.pdf](http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf).

<sup>76</sup> See *id.*

<sup>77</sup> See *id.*

<sup>78</sup> See, e.g., Press Release, U.S. Dep't of Justice, *Nearly 78,000 Service Members to Begin Receiving \$60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans* (May 28, 2015), <https://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement>. Further, state attorneys general have increased the volume of enforcement actions in this market, bringing high profile cases against a range of actors.

<sup>79</sup> *In Re Discover Bank, The Student Loan Corporation, and Discover Products, Inc.*, Administrative Proceeding File No. 2015-CFPB- 0016, Dkt. 1, (July 22, 2015),

- In 2016, the CFPB found that Wells Fargo was illegally harvesting late fees from student loan borrowers who paid less than the amount due each month.<sup>80</sup>
- In 2017, the CFPB took action against Navient, along with state attorneys general in Washington and Illinois for illegally steering borrowers into forbearance—a repayment option designed to assist borrowers experiencing short-term financial hardship—when borrowers have a right under federal law to enroll in repayment plans that allow for lower monthly payments over the long-term and that entitle them to eventual loan forgiveness.<sup>81</sup>
- Enforcement officials’ investigation into Navient also found that:
  - Navient failed to properly inform borrowers of the need to renew their income-driven repayment plans and failed to properly process those renewals, resulting in interest capitalization on borrowers’ loans.<sup>82</sup>
  - Navient was misreporting to credit bureaus that loans were in default when they were in fact discharged under total and permanent disability discharge, including loans owed by servicemembers with service-connected disabilities.<sup>83</sup>
  - Navient falsely represented to borrowers with cosigned loans the criteria for cosigner release and denied borrowers with the stated criteria.<sup>84</sup>
- In late 2017, the Bureau took action against Citibank for deceiving borrowers about tax-deduction benefits, incorrectly charging late fees, and, like in the Discover case, overstating the minimum amount owed.<sup>85</sup>
- In 2018, the Commonwealth of Massachusetts brought an enforcement action against the Pennsylvania Higher Education Assistance Agency, finding that the company cheated teachers and other public service workers out of their rights to have debts

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[https://files.consumerfinance.gov/f/201507\\_cfpb\\_consent-order-in-the-matter-of-discover-bank-student-loan-corporation.pdf](https://files.consumerfinance.gov/f/201507_cfpb_consent-order-in-the-matter-of-discover-bank-student-loan-corporation.pdf).

<sup>80</sup> *In Re Wells Fargo Bank, N.A.*, Administrative Proceeding File No. 2016-CFPB-0013, Dkt. 1, (Aug. 22, 2016), [https://files.consumerfinance.gov/f/documents/2016-CFPB-0013Wells\\_Fargo\\_Bank\\_N.A.--\\_Consent\\_Order.pdf](https://files.consumerfinance.gov/f/documents/2016-CFPB-0013Wells_Fargo_Bank_N.A.--_Consent_Order.pdf).

<sup>81</sup> *Consumer Fin. Protect. Bureau v. Navient Corp. et. al.*, Case No. 3:17-cv-00101-RDM, Dkt. 1 at ¶¶1-6, (M.D. PA. Jan. 18, 2017), [https://files.consumerfinance.gov/f/documents/201701\\_cfpb\\_Navient-Pioneer-Credit-Recovery-complaint.pdf](https://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf); *AG Ferguson Files Suit Against Sallie Mae Offshoot Navient Corp., Announces Student Loan Bill of Rights Legislation*, Wash. State Off. of the Att’y Gen. (Jan. 18, 2017), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-suit-against-sallie-mae-offshoot-navient-corp-announces-student>.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *CFPB Takes Action Against Citibank For Student Loan Servicing Failures That Harmed Borrowers*, Consumer Fin. Protect. Bureau (Nov. 21, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-citibank-student-loan-servicing-failures-harmed-borrowers/>.

canceled under the Public Service Loan Forgiveness program.<sup>86</sup>

- In 2019, New York law enforcement officials took action against the student loan servicer Conduent, formerly known as ACS, for steering borrowers into forbearance and other illegal servicing practices.<sup>87</sup>
- In 2020, the Bureau, then under the leadership of a Republican agency head, took another action against Discover Bank for violating the terms of its prior settlement with the agency and continuing to cheat borrowers out of their rights.<sup>88</sup>
- In 2022, following nearly three years of litigation, the Pennsylvania Higher Education Assistance Agency settled charges brought by the New York Attorney General that it cheated public service workers out of their rights to loan forgiveness and affordable loan payments.<sup>89</sup>

Consider the story of one borrower who reached out to SBPC for help after decades of struggle. “Marie” consolidated her loans in 1995 with a loan balance of less than \$9,000. More than 25 years later, her loan balance is now over \$105,000. Her servicer, American Education Services (AES) never informed her of income-driven repayment options and steered her into costly forbearances and deferments, which exacerbated the exponential growth of her loan balance.

During this time, Marie was earning an average of \$20,000 gross for a household of two and would have qualified for \$0 or very low payments under IDR. But for the underhanded practices of her loan servicer and the Education Department’s indifference to the culture of corruption that enabled them, Marie might now be eligible for debt cancellation.

The impact of abuses like those encountered by Marie have caused millions of student loan borrowers to needlessly spend additional years, and in some cases, decades trapped in unaffordable student loan debt.

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<sup>86</sup> *Commonwealth v. Pennsylvania Higher Educ. Assistance Agency*, No. 1784CV02682-BLS2, 2018 WL 1137520, Dkt. 1. (Mass. Super. Mar. 1, 2018).

<sup>87</sup> *Attorney General James And Superintendent Vullo Announce \$9 Million Settlement Of Federal Student Loan Servicing Claims With Acs Education Services*, N.Y. Att’y Gen. (Jan. 4, 2019), <https://ag.ny.gov/press-release/attorney-general-james-and-superintendent-vullo-announce-9-million-settlement-federal>.

<sup>88</sup> *Consumer Financial Protection Bureau Settles with Student Loan Servicers Discover Bank, The Student Loan Corporation, and Discover Products, Inc. for Violating a Bureau Consent Order and Other Unlawful Practices*, Consumer Fin. Protect. Bureau (Dec. 22, 2020), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-with-student-loan-servicers-discover-bank-the-student-loan-corporation-and-discover-products-inc-for-violating-a-bureau-consent-order-and-other-unlawful-practices/>.

<sup>89</sup> *Attorney General James Secures Student Debt Relief for Thousands of New Yorkers*, N.Y. Att’y Gen., (Apr. 28, 2022), <https://ag.ny.gov/press-release/2022/attorney-general-james-secures-student-debt-relief-thousands-new-yorkers>.

## Private Student Loans, “Shadow Student Debt,” Wall Street, and Silicon Valley

Beyond the trillion-dollar-plus federal student loan market, private-sector financial firms have constructed a minefield of additional risky, expensive, and predatory debt and credit that they use to target economically vulnerable students and borrowers. While the federal government’s heft in the student loan market allows it to draw the lion’s share of policymakers’ attention, a wide range of private-sector entrants backed by the money and ambition of Wall Street and Silicon Valley presage the future of the student debt crisis.

### *Private Student Loans*

Estimates indicate that there are roughly \$140 billion in private student loans in the U.S. originated by banks, credit unions, and other mainstream private lenders.<sup>90</sup> These loans are notable for their lack of consumer protections relative to other products, particularly federal student loans.<sup>91</sup> For example, the CFPB has found that private student loan borrowers have limited options to modify their payments during periods of financial distress,<sup>92</sup> and that cosigners (which are generally required) struggle to access promised release from these debts even after years of repayment.<sup>93</sup> Moreover, while other areas of consumer finance such as the mortgage and credit card markets have robust data transparency regimes, the absence of a catch-all data reporting requirement in the private student loan space means that borrowers, policymakers, and advocates know vanishingly little in real time about what is going on in this market.<sup>94</sup>

But even in the absence of comprehensive data, it is clear that the private student loan market is a unique locus for borrower harm, particularly for groups who have historically been marginalized.<sup>95</sup> For example, almost one-in-five Black borrowers with private student loans reports falling behind on at least one private student loan payment due to economic hardship, nearly four times higher than the proportion of white borrowers.<sup>96</sup> When considering only Black borrowers with Bachelor’s degrees, that rate rises to almost *half* of Black borrowers with private

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<sup>90</sup> SBPC calculations, based on data released by the Federal Reserve Board of Governors and the U.S. Department of Education. Fed. Res. Bd., *Consumer Credit G.19* (accessed May 3, 2022), [https://www.federalreserve.gov/releases/g19/HIST/cc\\_hist\\_memo\\_levels.html](https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html); U.S. Dep’t of Educ. Off. of Fed. Student Aid, *Portfolio Summary* (accessed May 3, 2022), <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls>.

<sup>91</sup> Prentiss Cox, Judith Fox, & Stacey Tutt, *Forgotten Borrowers: Protecting Private Student Loan Borrowers Through State Law*, 11 U.C. Irvine L. Rev. 43, 47 (2020).

<sup>92</sup> *2017 Annual Report of the CFPB Student Loan Ombudsman*, Consumer Fin. Prot. Bureau (Oct. 2017), [https://files.consumerfinance.gov/f/documents/cfpb\\_annual-report\\_student-loan-ombudsman\\_2017.pdf](https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf).

<sup>93</sup> *Mid-Year Update on Student Loan Complaints*, Consumer Fin. Prot. Bureau (June 2015) [https://files.consumerfinance.gov/f/201506\\_cfpb\\_mid-year-update-on-student-loan-complaints.pdf](https://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf).

<sup>94</sup> Student Borrower Prot. Ctr., *Private Student Lending* (Apr. 2020), [https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report\\_042020.pdf#page=15](https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf#page=15).

<sup>95</sup> *Id.*

<sup>96</sup> Ben Kaufman, *New Data Show Dramatic Disparities for Borrowers of Color with Private Student Loans*, Student Borrower Prot. Ctr. (Oct. 14, 2020), <https://protectborrowers.org/new-data-show-dramatic-disparities-for-borrowers-of-color-with-private-student-loans/>.

student loans, and the disparity in hardship rises to almost *ten times* higher than the proportion for white borrowers with Bachelor's degrees.<sup>97</sup>

To make matters worse, private student loan borrowers who struggle have few avenues for relief or recourse. Private student loans generally contain pre-dispute arbitration clauses and class waiver provisions which limit borrowers' ability to take lenders to court for issues pertaining to their private student loans.<sup>98</sup> Many private student loans cannot be discharged in bankruptcy.<sup>99</sup>

The dangers of these products matter in part because growth in this market is accelerating just as the pace of federal student loan debt's onward march is finally slowing.<sup>100</sup> The private student loan market grew 71 percent over the last decade, outpacing the mortgage, auto, and credit card markets over the same period in terms of annualized expansion.<sup>101</sup> As a result, the private student loan market is now larger than the payday loan market and the balance of outstanding past-due medical debt.<sup>102</sup> Further, over the second half of the past decade, new annual private student loan issuance grew 42 percent while the amount of new yearly federal student lending shrunk by more than 16 percent.<sup>103</sup> While federal student loans remain a major burden, this divergence points to an emerging reality wherein private credit and its dangers are playing a growing role in students' financial lives. Meanwhile, it has been almost a decade since the main federal regulator of private student loans, the CFPB, exhaustively studied and reported on this market.<sup>104</sup>

### *Shadow Student Debt*

Hiding in the penumbra of America's \$1.75 trillion mountain of federal and mainstream private student loan debt sits a massive, opaque, and lightly regulated market for so-called "shadow student debt"—an umbrella term for the wide variety of dangerous loans and specialty credit often used as the linchpin of predatory college business models.<sup>105</sup> Shadow student debt consists of personal loans, lines of open-ended revolving credit, "Buy Now, Pay Later" debt, unpaid balances owed directly to schools, and several other products. A series of high-profile investigations and lawsuits revealed that this debt and credit exposes borrowers to high fees, harsh contractual terms, and abusive collections strategies that empower profiteers and facilitate harmful practices.<sup>106</sup> Shadow student debt keeps disgraced colleges afloat, ranging

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<sup>97</sup> *Id.*

<sup>98</sup> Consumer Financial Protection Bureau, *Arbitration Study* (2015), [https://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf#page=31](https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf#page=31).

<sup>99</sup> 11 U.S.C. § 523.

<sup>100</sup> Student Borrower Prot. Ctr., *Private Student Loans* (2020), <https://protectborrowers.org/130-billion-psl-market/>.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Consumer Fin. Prot. Bureau, *Private Student Loans* (2012), <https://www.consumerfinance.gov/data-research/research-reports/private-student-loans-report/>.

<sup>105</sup> Student Borrower Prot. Ctr., *Shadow Student Debt* (2020), <https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf>.

<sup>106</sup> See, e.g., Student Borrower Prot. Ctr., *Income Share Agreement Company and For-Profit School Sued for Deceptive Practices and Illegal Lending* (Dec. 17, 2021),



from questionable for-profit vocational bootcamps<sup>107</sup> to massive for-profit school chains whose scandals were guideposts to the last decade of the student debt crisis.<sup>108</sup>

Illustrations of shadow student debt in action and the harm it generates include the following:

- The company **Climb Credit**, which acts as a lender and lead generator for for-profit vocational training programs, including coding bootcamps, has been caught making extensive misrepresentations to borrowers and possibly engaging in illegal discrimination, in violation of federal fair lending laws.<sup>109</sup>
- The technology giant Paypal has made its high-cost digital revolving credit product, **PayPal Credit**, available as a form of student financing at a startling range of dubious for-profit schools, all while exposing borrowers to hefty fees and nearly endless contractual traps.<sup>110</sup>

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<https://protectborrowers.org/income-share-agreement-company-and-for-profit-school-sued-for-deceptive-practices-and-illegal-lending/>; Student Borrower Prot. Ctr., *Income Share Agreement Provider, For-Profit School Operator Sued by Dozens of Former Students for Illegal Lending and Deceptive Practices* (July 1, 2021), <https://protectborrowers.org/make-school-vemo-lawsuit/>; Student Borrower Prot. Ctr., *Pushing Predatory Products: How Public Universities are Partnering with Unaccountable Contractors to Drive Students Toward Risky Private Debt and Credit* (June 11, 2021),

<https://protectborrowers.org/pushing-predatory-products-how-public-universities-are-partnering-with-unaccountable-contractors-to-drive-students-toward-risky-private-debt-and-credit/>; Student Borrower Prot. Ctr., *PayPal's Partnerships With Over 150 For-Profit Schools Drive Students to Take on High-Cost Education Debt, Advocates Warn* (Aug. 21, 2021), <https://protectborrowers.org/150-2/>; Student Borrower Prot. Ctr., *The CFPB Must Investigate Climb Credit and Protect Borrowers Across the Dangerous, High-Cost Shadow Student Debt Market* (Oct. 21, 2021),

<https://protectborrowers.org/the-cfpb-must-investigate-climb-credit-and-protect-borrowers-across-the-dangerous-high-cost-shadow-student-debt-market/>; Student Borrower Prot. Ctr., *Point of Sale Fail: How a Flood of "Buy Now, Pay Later" Student Debt is Putting Millions at Risk* (Mar. 3, 2022),

<https://protectborrowers.org/point-of-fail-how-a-flood-of-buy-now-pay-later-student-debt-is-putting-millions-at-risk/>; Ben Kaufman, *A Predatory School is Dragging 290 Defrauded Students into Court in the Latest Example of the Exploitative State of the Income Share Agreement Market*, Student Borrower Prot. Ctr. (Feb. 28, 2022),

<https://protectborrowers.org/a-predatory-school-is-dragging-290-defrauded-students-into-court-in-the-latest-example-of-the-exploitative-state-of-the-income-share-agreement-market/>.

<sup>107</sup> *Id.*

<sup>108</sup> See, e.g., Consumer Fin. Prot. Bureau, *Enforcement Action: Student CU Connect CUSO, LLC*, <https://www.consumerfinance.gov/enforcement/actions/student-cu-connect-cuso-llc/> (last visited May 4, 2022); Consumer Fin. Prot. Bureau, *Enforcement Action: PEAKS Trust 2009-1 et al.*, <https://www.consumerfinance.gov/enforcement/actions/peaks-trust/> (last visited May 4, 2022); Press Release, Consumer Fin. Prot. Bureau, *CFPB Takes Action Against Aequitas Capital Management for Aiding Corinthian Colleges' Predatory Lending Scheme* (Aug. 17, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-aequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme/>; Press Release, Consumer Fin. Prot. Bureau, *CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme* (Sept. 16, 2014), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme/>.

<sup>109</sup> *The CFPB Must Investigate Climb Credit and Protect Borrowers Across the Dangerous, High-Cost Shadow Student Debt Market*, *supra* note 106.

<sup>110</sup> *PayPal's Partnerships With Over 150 For-Profit Schools Drive Students to Take on High-Cost Education Debt, Advocates Warn*, *supra* note 106.

- For-profit education services companies known as “online program managers”—private companies like **2U, Zovio, Promineo, Chegg, and Wiley**—are collaborating with shadow student debt companies like **Climb Credit, Meritize, and Ascent** to drive students into unaffordable debt to finance attendance at flashy but often low-quality job training “bootcamps” housed within Title IV schools.<sup>111</sup>
- Emerging point-of-sale lending firms, particularly those in the rapidly growing “Buy Now, Pay Later” space such as **Affirm, Afterpay, Klarna, PayPal, Sezzle, Shop Pay, Uplift, and Zip** have recently flooded the shadow student debt market, exposing borrowers to a product that lacks key consumer protections, has high hidden fees, and can hurt borrowers’ credit.<sup>112</sup>
- Established private student lenders such as **Sallie Mae and Navient** robbed a generation of borrowers in the shadow student debt market of their right to bankruptcy through a campaign of lies and misdirection, forcing as many as 2.6 million borrowers to struggle unfairly under as much as \$50 billion in shadow student debt that can be discharged through a traditional bankruptcy.<sup>113</sup>
- Companies peddling **income share agreements** have proven central to a seemingly unending line of fly-by-night bootcamp frauds and scams,<sup>114</sup> all while deploying

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<sup>111</sup> *Pushing Predatory Products: How Public Universities are Partnering with Unaccountable Contractors to Drive Students Toward Risky Private Debt and Credit*, *supra* note 106.

<sup>112</sup> *Point of Sale Fail: How a Flood of “Buy Now, Pay Later” Student Debt is Putting Millions at Risk*, *supra* note 106.

<sup>113</sup> Student Borrower Prot. Ctr., *Morally Bankrupt: How the Student Loan Industry Stole a Generation’s Right to Debt Relief* (Jan. 2022),

[https://protectborrowers.org/wp-content/uploads/2022/01/SBPC\\_Morally-Bankrupt.pdf](https://protectborrowers.org/wp-content/uploads/2022/01/SBPC_Morally-Bankrupt.pdf).

<sup>114</sup> See, e.g., Zoe Schiffer & Megan Farokhmanesh, *The High Cost of a Free Coding Bootcamp*, *The Verge* (Feb. 11, 2020),

<https://www.theverge.com/2020/2/11/21131848/lambda-school-coding-bootcamp-isa-tuition-cost-free>; Vincent Woo, *Lambda School’s Misleading Promises*, *N.Y. Mag.* (Feb. 19, 2020),

<https://nymag.com/intelligencer/2020/02/lambda-schools-job-placement-rate-is-lower-than-claimed.html>;

Tomio Geron, *Tech Bootcamp students are suing over income-share agreements*, *Protocol* (Dec. 17, 2021), <https://www.protocol.com/fintech/leif-elevate-lawsuit>; Press Release, Student Borrower Prot. Ctr., *Income Share Agreement Provider, For-Profit School Operator Sued by Dozens of Former Students for Illegal Lending and Deceptive Practices* (July 1, 2021),

<https://protectborrowers.org/make-school-vemo-lawsuit/>; Aarthi Swaminathan, *For-profit coding school sued over allegedly ‘predatory’ student contracts* (July 1, 2021),

<https://news.yahoo.com/make-school-pbc-coding-sued-over-allegedly-predatory-student-contracts-161009450.html>; Ben Kaufman, *A Predatory School is Dragging 290 Defrauded Students into Court in the Latest Example of the Exploitative State of the Income Share Agreement Market*, *Student Borrower Prot. Ctr.* (Feb. 28, 2022),

<https://protectborrowers.org/a-predatory-school-is-dragging-290-defrauded-students-into-court-in-the-latest-example-of-the-exploitative-state-of-the-income-share-agreement-market/>;

Benjamin Roesch, *Coding Bootcamps Offering ISAs May Be Unlawfully Depriving Students of the Ability to Protect Themselves from Fraud*, *Student Borrower Prot. Ctr.* (Mar. 11, 2021),

<https://protectborrowers.org/coding-bootcamps-offering-isas-may-be-unlawfully-depriving-students-of-the-ability-to-protect-themselves-from-fraud/>; Maria Cid Medina, *San Francisco-Based Holberton Coding*

discriminatory pricing models,<sup>115</sup> making deceptive marketing claims,<sup>116</sup> loading contracts with harmful and illegal trap terms and fees,<sup>117</sup> unduly servicing unenforceable debt,<sup>118</sup> and denying in the first place that their product is even a form of debt or credit.<sup>119</sup>

Underlying all of these shameful practices is the tendency by companies in the shadow student debt market to target and profit off of Black and Latino/a students, low-income students, and women, just like the predatory colleges these lenders prop up.<sup>120</sup> This pattern is embodied in the history of the National Collegiate Student Loan Trusts (NCSLT), a set of trusts holding billions of dollars of both traditional private student loans and an exotic type of shadow student debt called a “Direct to Consumer” student loan—loans often made without regard to students’ ability to pay and without certification of financial need by college financial aid officials.<sup>121</sup> As borrowers across the country have defaulted on these loans, NCSLT has been caught levying a shocking range of illegal tactics to prey on borrowers of color, including deploying the harmful “robo-signing” techniques made famous in the mortgage crisis.<sup>122</sup> In Maryland, for example, nearly 60 percent of the more than 1,300 debt collection lawsuits that NCSLT filed over a roughly five-year span were levied against borrowers in majority-minority zip codes, and 26 percent of cases were filed in majority-Black Prince George’s County.<sup>123</sup>

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*School Facing Fraud Accusations from Former Students*, CBS San Francisco Bay Area (Feb. 26, 2020), <https://sanfrancisco.cbslocal.com/2020/02/26/san-francisco-based-holberton-coding-school-facing-fraud-accusations-from-former-students/>.

<sup>115</sup> Student Borrower Prot. Ctr., *Inequitable Student Aid: A Case Study of Disparate Lending Practices and Educational Redlining Tactics in the Market for Income Share Agreements* (Mar. 2021), [https://protectborrowers.org/wp-content/uploads/2021/03/SBPC\\_Inequitable-Student-Aid.pdf](https://protectborrowers.org/wp-content/uploads/2021/03/SBPC_Inequitable-Student-Aid.pdf).

<sup>116</sup> Press Release, Student Borrower Prot. Ctr., *Advocates File Complaint with Federal Trade Commission, Urge Enforcement Action Against Vemo Education for Its Deceptive Marketing of Income-Share Agreements to Students* (June 1, 2020), <https://protectborrowers.org/vemo-release/>.

<sup>117</sup> Mike Pierce & Tamara Cesaretti, *Income Share Agreements and TILA’s Ban on Prepayment Penalties*, Student Borrower Prot. Ctr. (Mar. 30, 2020), <https://protectborrowers.org/isas-and-tilas-ban-on-prepayment-penalties/>; Ben Roesch & Ben Kaufman, *Income Share Agreements and the FTC’s Holder Rule*, Student Borrower Prot. Ctr. (Mar. 11, 2021), <https://protectborrowers.org/isa-holder-memo/>.

<sup>118</sup> Ben Roesch & Ben Kaufman, *The Companies Enabling ISA Providers’ Illicit Activities Could Also Face Steep Legal Liability*, Student Borrower Prot. Ctr. (June 14, 2021), <https://protectborrowers.org/the-companies-enabling-isa-providers-illicit-activities-could-also-face-steep-legal-liability/>.

<sup>119</sup> Joanna Pearl & Brian Shearer, *Credit by any Other Name: How Federal Consumer Financial Law Governs Income Share Agreements*, Student Borrower Prot. Ctr. (July 21, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3661989](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3661989).

<sup>120</sup> Student Borrower Prot. Ctr., *Letter to the Consumer Fin. Prot. Bureau Re: Prioritizing the Student Debt Crisis as a Civil Rights Crisis* (Feb. 8, 2021), [https://protectborrowers.org/wp-content/uploads/2021/02/SBPC\\_Students-loans-and-racial-equity.pdf#page=4](https://protectborrowers.org/wp-content/uploads/2021/02/SBPC_Students-loans-and-racial-equity.pdf#page=4).

<sup>121</sup> For further discussion of direct-to-consumer private student lending, see Consumer Fin. Prot. Bureau, *Private Student Loans*, *supra* note 104.

<sup>122</sup> Stacy Cowley & Jessica Silver-Greenberg, *Behind the Lucrative Assembly Line of Student Debt Lawsuits*, N.Y. Times (Nov. 13, 2017), <https://www.nytimes.com/2017/11/13/business/dealbook/student-debt-lawsuits.html>.

<sup>123</sup> Student Borrower Prot. Ctr. & Md. Consumer Rights Coal. and Service Employees Int’l Union, *The Long Legacy of Predatory Private Student Loans* (Jan. 2021), <https://protectborrowers.org/wp-content/uploads/2021/12/Maryland-NCSLT.pdf#page=11>.

At the heart of the shadow student debt market is a simple truth: an ever-growing set of actors offering increasingly exotic forms of credit see students as a path to riches. For as long and as much as policymakers let them, they will continue to engineer increasingly extractive plots to profit at students' expense.

*The Path Ahead for Students, Borrowers, and Workers is Lined with More Debt and Distress*

Over the past decade, financial firms, colleges, and the U.S. government have worked to exploit students and people with student debt. Unfortunately, the path ahead for students, borrowers, and workers is lined with more debt and will lead to widespread financial distress. The following are just a few of the emerging firms and practices standing just on the horizon of the student debt crisis:

- **Employers are increasingly using shadow student debt as a twisted new form of non-compete clauses.** Companies in low-wage industries from trucking to nursing have recently accelerated their use of provisions in employment contracts that require workers who receive on-the-job training—often of dubious quality or necessity—to pay back the “cost” of this training to their employer if they try to leave their job.<sup>124</sup> Dubbed “Training Repayment Agreement Provisions” (TRAPs), these predatory contract terms allow employers to use the threat of massive interest and hugely inflated fees that are poorly disclosed at the time of sign-on to diminish working peoples’ negotiating power
- **Colleges are leveraging debt collection tools to prey on students in a growing role as creditors.** The phenomenon of students owing debts directly to their schools for unpaid balances, fees, and other expenses is not new,<sup>125</sup> but it exploded during COVID as a wave of withdrawals led to a return of Title IV funds that was passed on to former students in the form of debt.<sup>126</sup> Borrowers owing on institutional debt face the threat of extraordinary debt collection measures such as the withholding of their diploma, transcript, or grades, which can in turn make them unable to secure the work necessary to pay off these debts.
- **Campus card providers continue to levy predatory fees to upcharge students.** Federal student loan borrowers are eligible to have surplus Title IV funds disbursed through school-sponsored prepaid and debit cards linked to deposit accounts, referred to as “campus cards.” But these products continue to be marked by back-room deals between financial institutions and schools that have buried students under mountains of

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<sup>124</sup> Memorandum re Training Repayment Agreements, Student Borrower Prot. Ctr. (Jan. 19, 2022), [https://protectborrowers.org/wp-content/uploads/2022/01/SBPC\\_TRAs\\_ABRIDGED.pdf](https://protectborrowers.org/wp-content/uploads/2022/01/SBPC_TRAs_ABRIDGED.pdf).

<sup>125</sup> Student Borrower Prot. Ctr., *Withholding Dreams* (Jan. 2021), [https://protectborrowers.org/wp-content/uploads/2021/01/Withholding\\_Dreams\\_SBPC.pdf](https://protectborrowers.org/wp-content/uploads/2021/01/Withholding_Dreams_SBPC.pdf).

<sup>126</sup> Charlie Eaton et. al., *COVID-19 Drove Nearly 750,000 Low-Income Students to Owe \$350 million in Debt to California Public Colleges*, Student Borrower Prot. Ctr. & NextGen Pol’y (Mar. 2022), <https://protectborrowers.org/new-report-covid-19-drove-nearly-750000-low-income-students-to-owe-350-million-in-debt-to-california-public-colleges/>.

hidden, exploitative, and unavoidable fees.<sup>127</sup> For students, the imposition of these fees can make the difference for if they can afford their textbooks or even pay for food and other basic needs.<sup>128</sup>

As the student debt crisis lurches forward into yet another decade, there is no shortage of new and evolving developments that badly need the Committee's attention and action.

### **This is the Moment to Break the Wheel of Student Debt Distress**

The well-documented, widespread abuses of federal student loan servicers, private creditors, and even the U.S. Department of Education should serve as a wake-up call for lawmakers. The student loan system remains catastrophically reliant on the giant student loan companies responsible for creating the student debt crisis. At the same time, predatory schools and lenders have seized on the disruption caused by the pandemic to prey on the most economically vulnerable students and families across the country.

Underpinning these challenges are a higher education and a financial system dangerously dependent on household debt. Everywhere from Wall Street to Silicon Valley to Washington, D.C. students and their families have been transformed into dollar signs on a balance sheet, as the promise of broad prosperity is packaged and sold in the pursuit of private profit.

I want to close by returning to the concept of student debt as a trap. Across the marketplace for financial products and services, federal and state laws prohibit lenders from offering loans with balances that grow over time, even as borrowers make monthly payments. When a payday lender builds a loan with these terms, regulators call this a "debt trap."<sup>129</sup> Yet, according to an analysis published by the SBPC last fall, this is routinely the case for people with student debt—for every two borrowers with a federal student loan who repay that debt within 12 years, three more people owe more money than they took out and are even deeper in debt 12 years later.<sup>130</sup>

This is a debt trap.

As is true in nearly every corner of our broken student loan system, the debt trap snaps shut more often for people of color, particularly Black borrowers. For every one Black borrower who manages to repay a federal student loan after 12 years, six owe more debt than they originally borrowed.<sup>131</sup> For Black borrowers, this is the expected outcome in the student loan system. Fully

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<sup>127</sup> See, e.g., Consumer Fin. Prot. Bureau, *Letter to Wayne Johnson on Campus Banking* (Feb. 5, 2018), [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcftp\\_foia\\_letter-to-department-education\\_record\\_2018-02.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcftp_foia_letter-to-department-education_record_2018-02.pdf).

<sup>128</sup> *Id.*

<sup>129</sup> See, e.g., Consumer Fin. Prot. Bureau, *Director Richard Cordray Remarks at Payday Lending Field Hearing* (Mar. 25, 2014), <https://www.consumerfinance.gov/about-us/newsroom/director-richard-cordray-remarks-at-the-payday-field-hearing/>.

<sup>130</sup> Student Borrower Prot. Ctr., *Driving Runaway Debt* (Sept. 2021), [https://protectborrowers.org/wp-content/uploads/2021/09/SBPC\\_Driving\\_Runaway\\_Debt.pdf](https://protectborrowers.org/wp-content/uploads/2021/09/SBPC_Driving_Runaway_Debt.pdf).

<sup>131</sup> *Id.*

two-thirds of Black borrowers are caught in a debt trap today—a trap that would be illegal if the lender was any actor other than the United States of America.<sup>132</sup>

Over the past decade, regulators,<sup>133</sup> law enforcement officials,<sup>134</sup> lawmakers,<sup>135</sup> scholars,<sup>136</sup> and consumer advocates<sup>137</sup> have all documented how student loan borrowers have fewer rights and fewer protections than exist in other markets. The piecemeal policies put in place to protect borrowers and address unaffordable student debt are inadequate to the challenge before this Committee today.

Decades of an abusive student loan system have left 43 million student loan borrowers suffocating under the weight of more than \$1.75 trillion of student loan debt. President Biden did

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<sup>132</sup> *Id.* For further discussion, see Eaton et. al. *Letter to Senator Warren on Student Debt* (May 2022), [https://www.warren.senate.gov/download/eaton-et-al-analysis\\_050322](https://www.warren.senate.gov/download/eaton-et-al-analysis_050322).

<sup>133</sup> See, e.g., Consumer Fin. Prot. Bureau, *Student Loan Servicing* (Sept. 2015), [https://files.consumerfinance.gov/f/201509\\_cfpb\\_student-loan-servicing-report.pdf](https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf) (“[P]olicymakers have undertaken broad-based legislative and regulatory efforts to strengthen applicable federal consumer financial laws protecting consumers in the servicing of mortgages and credit cards. However, for student loan borrowers, there is no existing, comprehensive federal statutory or regulatory framework providing consistent standards for the servicing of all student loans.”); Letter from Conn. Dep’t of Banking Counsel Bruce H. Adams to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0381 (Ju. 13, 2015), <https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0381&attachmentNumber=1&contentType=pdf>.

<sup>134</sup> See, e.g., Letter from Ill. Att’y Gen. Lisa Madigan, et. al. to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0376 (July 14, 2015), <https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0376&attachmentNumber=1&contentType=pdf> (“Unlike in similar financial service industries, there is little regulation of specific student loan servicer conduct, such as the handling and application of payments.”).

<sup>135</sup> See, e.g., Letter from Congresswoman Susan Davis to Director Cordray in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0379 (July 13, 2015), <https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0379&attachmentNumber=1&contentType=pdf> (“[I]t is important the Bureau also put in place strong rules for *all* borrowers, regardless of loan type or who owns their loans. As a prime example, the Bureau should look to our work in the CARD Act to help inform how they should best protect borrowers. . . .”); Steve Fenberg & Faith Winter, *Opinion: Colorado will lead the effort to end the student crisis*, *Colo. Sun* (Apr. 11, 2019), <https://coloradosun.com/2019/04/11/student-debt-steve-fenberg-faith-winter/>.

<sup>136</sup> See, e.g., Letter from Professor Alan White et. al. to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-6929 (July 23, 2015), <https://www.regulations.gov/document?D=CFPB-2015-0021-6929>.

<sup>137</sup> See, e.g., Letter from Nat’l Consumer L. Ctr. to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-6840 (Sept. 29, 2015), <https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-6840&attachmentNumber=1&contentType=pdf> (“The absence of clear borrower protections contrasts with other consumer credit areas such as credit cards and mortgages.”); Letter from Consumers Union to the CFPB in response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-7592 (Oct. 20, 2015), <https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-7592&attachmentNumber=4&contentType=pdf> (“The Bureau rightly notes that other kinds of consumer debt come with protections related to repayment and servicing. By contrast, for people who took out loans to get an education, there are fewer protections and the system is often tough to navigate – as a result, these borrowers may be at the mercy of their servicers.”); see also Seth Frotman, *Broken Promises: How Debt-financed Higher Education Rewrote America’s Social Contract and Fueled a Quiet Crisis*, 2018 *Utah L. Rev.* 4 811-846 (July 2018), <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1172&context=ulr>.

not break this system but he has promised to fix it. It is up to him to wield the awesome power vested in the U.S. Secretary of Education as the largest holder of consumer debt in the world, and provide widespread student debt cancellation for every federal student loan borrower.

Yet, some economic pundits are trying to tell a different story. According to these critics, American families and the broader economy are somehow worse off should Joe Biden keep his promise to cancel student debt.

These long-time opponents of student debt relief have cycled through conflicting arguments to meet the politics of the moment. Debt relief was not needed before because it is a “poor economic stimulus,”<sup>138</sup> and debt relief is now “inappropriate at a time when the economy is overheated.”<sup>139</sup> Before, debt relief was overbroad and poorly targeted<sup>140</sup> (never mind the demonstrated connection between broad debt cancellation and narrowing racial inequality).<sup>141</sup> Now debt relief is wasteful because “the median American has \$0 in outstanding student loan debt.”<sup>142</sup>

To make matters worse, many critics, including the Washington Post’s editorial board just last week,<sup>143</sup> have advanced baseless claims that this is a giveaway to the college educated, ignoring the roughly 4-in-10 people with student debt who have no degree.<sup>144</sup>

This dishonesty and divisiveness may play well to readers on Wall Street, but it rings hollow on Main Street, where Americans by a two-to-one margin want Joe Biden to cancel student debt—including a majority of voters who did not go to college and a majority of voters who have no student debt at all.

With the stroke of a pen, Joe Biden can improve the material welfare of tens of millions of people. Offering borrowers a reprieve after a devastating pandemic and economic crisis is undoubtedly good for borrowers and the economy as a whole. When tens of millions of people around the country—especially those who have faced the most financial precarity—can feed

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<sup>138</sup> Ctr. for a Responsible Fed. Budget, *Student Loan Debt is Poor Economic Stimulus* (2020), <https://www.crfb.org/blogs/canceling-student-loan-debt-poor-economic-stimulus>.

<sup>139</sup> @LHSummers, Twitter (Apr. 5, 2022, 3:24 pm), <https://twitter.com/LHSummers/status/1511424479611826179>.

<sup>140</sup> Matt Yglesias, *The Case for Student Debt Relief is Getting Weaker*, Slow Boring (Feb. 22, 2021), <https://www.slowboring.com/p/student-loans?s=r>.

<sup>141</sup> Naomi Zewde & Darrick Hamilton, *What Canceling Student Debt Would Do for the Racial Wealth Gap*, N.Y. Times (Feb. 1, 2021), <https://www.nytimes.com/2021/02/01/opinion/student-debt-cancellation-biden.html>.

<sup>142</sup> Archive.org, *Archive of @mattyglesias Tweet on Student Debt* (accessed May 3, 2022), <https://web.archive.org/web/20220407115931/https://twitter.com/mattyglesias/status/1511472044852092937>.

<sup>143</sup> *Editorial: Biden should resist canceling student debt. Here’s a better policy*, Wash. Post (Apr. 28, 2022), <https://www.washingtonpost.com/opinions/2022/04/28/biden-should-resist-canceling-student-debt/>.

<sup>144</sup> Paul Specht, *Almost 40% of borrowers with student loan debt didn’t finish their degree*, Politifact (Feb. 12, 2021), <https://www.politifact.com/factchecks/2021/feb/12/alma-adams/democrats-say-40-people-college-debt-didnt-get-deg/>.

their families and have the opportunity to build wealth, our economy is put on stronger footing for the path ahead.

Canceling student debt is just, it is equitable, it is legal, and it is the only appropriate response to decades of government mismanagement and widespread industry abuses.

Thank you for the opportunity to provide this testimony. I look forward to your questions.