

October 25, 2022

Lindsey Johnson
President and CEO
Consumer Bankers Association
1225 New York Avenue NW, Suite 1100
Washington, DC 20005

Ms. Johnson,

The undersigned organizations write to demand that the Consumer Bankers Association (CBA) abandon the reckless, cynical political stunt of a lawsuit that it filed against the Consumer Financial Protection Bureau (CFPB) in September, 2022.¹ The CBA and its partners' specious action aims to roll back the CFPB's crackdown against ongoing racial discrimination in consumer financial markets, no shortage of which is attributable to CBA members.² The lawsuit also challenges the funding mechanism that protects the CFPB from the undue sway of corporate-funded industry groups like your own.

Of course, the thin veil of legal reasoning that the CBA and its partners delivered hardly masks your clear underlying objective: to eliminate the CFPB, strip consumers of their rights, and pave the way for financial predators to once again profit from free rein across lending markets.

Though the startling range of abuses that CBA members have committed against consumers over the past several years extends far beyond the education finance space,³ your organization's bad faith is perhaps best evidenced by the laundry list of abuses its members have committed against students.⁴ The following are only a few examples of CBA members' brazenly lawless conduct in the student finance market across nearly every one of the consumer protection statutes that Congress tasked the CFPB to enforce:

¹ <https://www.consumerbankers.com/sites/default/files/1%20-%20Cmplt%2C%20CCS%2C%20Ex%20A-G.pdf>.

² See *infra* notes 5 to 8, 16, 32.

³ <https://ourfinancialsecurity.org/2022/10/blog-big-banks-argue-discrimination-is-fair-and-its-not-satire/>.

⁴ <https://protectborrowers.org/the-system-is-broken-what-more-than-a-decade-of-litigation-reveals-about-the-state-of-the-student-loan-industry/>.



- ***CBA member Sallie Mae misallocated borrower payments to boost fee revenue, robbed servicemembers of their rights, and engaged in discriminatory educational “redlining.”***
In 2014, the Federal Deposit Insurance Corporation (FDIC) and the U.S. Department of Justice reached a settlement with CBA member Sallie Mae after the lender was found to have engaged in “unfair and deceptive practices related to student loans in violation of” the Federal Trade Commission Act and the Servicemembers Civil Relief Act (SCRA).⁵ In particular, the agencies found that Sallie Mae had illegally allocated borrowers’ payments across multiple loans in a manner that maximized late fees, deceived borrowers regarding their ability to avoid these charges, misled servicemembers about their rights under SCRA, and demanded that servicemembers pay illegally high rates on their loans.⁶ The same year, the FDIC entered into a consent order with Sallie Mae after it determined that the company had violated the Equal Credit Opportunity Act by using the cohort default rate of schools that students attended to inform credit decisioning.⁷ This conduct penalizes individual borrowers for peer-level characteristics, and law enforcement in New York had described the practice almost a decade before as amounting to educational “redlining.”⁸
- ***CBA member Discover lied on student loan borrowers’ billing statements, deceived borrowers out of thousands of dollars of tax benefits, and illegally hounded borrowers who were in default.*** In 2015, the CFPB took action against CBA member Discover and affiliates for “illegal private student loan servicing practices” that included inflating the minimum amounts it told borrowers they owed on billing statements, denying consumers information they needed to obtain federal income tax benefits, and making illegal debt collection calls to borrowers early in the morning and late at night.⁹ Discover went on both to violate this settlement and to introduce wholly new predatory practices, leading the CFPB in 2020 under Republican leadership to issue a consent order requiring Discover to pay a \$25 million civil penalty and \$10 million in consumer redress.¹⁰ Per the

⁵ <https://content.govdelivery.com/accounts/USFDIC/bulletins/b7b98d>;
<https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-chargeing>.

⁶ Id.

⁷ <https://perma.cc/YG7S-7LWC>.

⁸ <https://www.nbcnews.com/id/wbna19316230#.XjnY6xNKhOI>.

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<https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-discover-bank-to-pay-18-5-million-for-illegal-student-loan-servicing-practices/>.

¹⁰

<https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-with-student-lo>



terms of the 2020 consent decree, Discover “violated the 2015 Order’s requirements in several ways” including by failing to provide the full amount of consumer redress it had previously agreed to, then additionally engaged “in unfair acts and practices by withdrawing payments from more than 17,000 consumers’ accounts without valid authorization and by cancelling or not withdrawing payments for more than 14,000 consumers without notifying them.”¹¹

- ***CBA member Wells Fargo deployed a host of illegal servicing practices while discriminating against DACA recipients and loading students’ prepaid campus cards with junk fees.*** In 2016, the CFPB found that CBA member Wells Fargo was engaging in “illegal private student loan servicing practices that increased costs and unfairly penalized certain student loan borrowers,”¹² including by undertaking unfair and deceptive practices related to payment allocation, payment aggregation, and the assessment of late fees. In particular, the CFPB found that Wells Fargo allocated student loan borrowers’ payments in a way that maximized fees to the bank, failed to give consumers effective choices that they were entitled to about how the company should have been applying their payments, and declined to fix inaccuracies as required under the law related to borrowers’ credit reports.¹³ Consumers then sued Wells Fargo in 2017¹⁴ and 2019¹⁵ for denying student loans and other financial products to immigrants who were granted work visas under Deferred Action for Childhood Arrivals (DACA), leading to a \$20 million settlement.¹⁶ Finally, the U.S. Department of Education (ED) found in 2017 that Wells Fargo had violated several regulations that protect students who choose to have surplus Title IV funds be disbursed through bank-branded prepaid debit cards.¹⁷ Per a memo outlining ED’s determinations on the matter, Wells Fargo failed to maintain “convenient fee-free” access for students to their surplus Title IV financial aid funds as

[an-servicers-discover-bank-the-student-loan-corporation-and-discover-products-inc-for-violating-a-bureau-consent-order-and-other-unlawful-practices/](#).

¹¹ Id.

¹²

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices/>.

¹³ https://files.consumerfinance.gov/f/documents/2016-CFPB-0013Wells_Fargo_Bank_N.A.--_Consent_Order.pdf.

¹⁴

<https://www.reuters.com/article/us-wells-fargo-immigration/immigrants-denied-credit-by-wells-fargo-may-sue-bank-judge-says-idUSKBN1AK1VK>.

¹⁵ <https://www.americanbanker.com/news/wells-fargo-sued-for-denying-loan-to-dreamer>.

¹⁶ <https://www.law360.com/articles/1343067/wells-fargo-s-20m-daca-discrimination-deals-win-final-ok>.

¹⁷ <https://studentaid.gov/sites/default/files/wells-fargo-bank-final-program-review-determination.pdf>.



was required under the law, and instead directed students to shoulder huge, repeated fees to withdraw their cash.¹⁸

- ***CBA member Citi underhandedly maximized the interest charges it could extract from borrowers, unfairly bringing them out of beneficial deferment periods and violating the SCRA in the process.*** In 2017, the CFPB took action against CBA member Citi for a wide range of “student loan servicing failures that harmed borrowers.”¹⁹ Per the CFPB, Citi “misled borrowers into believing that they were not eligible for a valuable tax deduction on interest paid on certain student loans,” then “incorrectly charged late fees,” “added interest to the student loan balances of borrowers who were still in school and eligible to defer their loan payments,” and “misled consumers about how much they had to pay in their monthly bills”²⁰ In addition, Citi “failed to disclose required information after denying borrowers’ requests to release loan cosigners,” possibly trapping parents and grandparents into debt well into retirement.²¹ Finally, in 2012 Citi paid \$2.3 million to settle a class action lawsuit brought by members of the Minnesota National Guard claiming that the company had applied predatory forbearances in a manner that violated the SCRA.²²
- ***CBA member SoFi played deceptive games with data on borrower savings to inflate the advertised benefits of its loans.*** In 2018, the Federal Trade Commission (FTC) took action against CBA member SoFi for “misrepresenting how much money student loan borrowers have saved or will save from refinancing their loans with the company. . . .”²³ In particular, the FTC alleged that SoFi inflated the average savings it touted in marketing campaigns by excluding “large categories of consumers” from the calculation of these

¹⁸ Id; note that a recent CFPB report cited several CBA members for additional predatory conduct in the campus cards space, including the deployment of a wide range of junk fees. See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-high-fees-on-student-banking-products-endorsed-by-colleges/>;

¹⁹ https://protectborrowers.org/wp-content/uploads/2022/04/SBPC_US-PIRG-EF_Junk-Fees.pdf#page=2.

¹⁹

<https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-citibank-student-loan-servicing-failures-harmed-borrowers/>.

²⁰ Id.

²¹ Id.

²² <https://www.law360.com/articles/319987/citibank-pays-2-3m-to-end-suit-over-military-student-loans>.

²³

<https://www.ftc.gov/news-events/news/press-releases/2018/10/online-student-loan-refinance-company-sofi-settles-ftc-charges-agrees-stop-making-false-claims-about> .



averages.²⁴ Notably, “[m]ost of these excluded customers actually pay more money each month—hundreds of dollars, on average—as a result of their loan with [SoFi].”²⁵

- ***CBA members including U.S. Bank, Bank of America, JPMorgan Chase, and Citizens Bank facilitated the growth of a “lawsuit machine” that continues to prey on former students.*** In the years leading up to the 2008 financial crisis, many of the largest consumer banks in America were party to a “rent-a-bank” scheme that aimed to trap students at for-profit schools in massive, unaffordable private student loans.²⁶ Twelve billion dollars of these debts were originated by banks—many of them CBA members—and sold into a series of investment vehicles called the National Collegiate Student Loan Trusts (NCSLTs).²⁷ These loans were generally extremely expensive and risky, and they were frequently made to students at predatory for-profit colleges.²⁸ Almost half of the student loan collateral underlying these trusts ultimately fell into default, earning the NCSLTs the title of the “worst-performing student loan investment vehicles ever created by Wall Street” and generating devastating outcomes for the hundreds of thousands of student loan borrowers who fell behind on their debts.²⁹ Worse, as the trusts went bust and related paperwork went missing, the NCSLTs and their trustees turned to deploying an “assembly line” of lawsuits against vulnerable borrowers that relied on many of the worst “robosigning” techniques last seen in the run up to the mortgage crisis of the 2000s.³⁰ A 2017 CFPB lawsuit alleged that the NCSLTs “brought debt collection lawsuits for private student loan debt that the companies could not prove was owed or was too old to sue over; that they filed false and misleading affidavits or provided false and misleading testimony; and that they falsely claimed that affidavits were sworn before a notary.”³¹ In addition, advocates have found that the NCSLTs continue to disproportionately target their debt collection lawsuits against communities of color.³²

²⁴ Id.

²⁵ https://www.ftc.gov/system/files/documents/cases/162_3197_sofi_draft_admin_compl_10-26-18_rc_not_rec.pdf.

²⁶ <https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html>.

²⁷

<https://www.bloomberg.com/news/articles/2017-11-08/wall-street-is-fighting-a-cfpb-deal-over-billions-in-defaulted-student-loans>.

²⁸ <https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html>.

²⁹ Id.

³⁰ <https://www.nytimes.com/2017/11/13/business/dealbook/student-debt-lawsuits.html>.

³¹ <https://www.consumerfinance.gov/enforcement/actions/national-collegiate-student-loan-trusts/>.

³² <https://protectborrowers.org/wp-content/uploads/2021/12/Maryland-NCSLT.pdf>;
https://protectborrowers.org/wp-content/uploads/2021/03/Dubious-Debts_2021.pdf;
<https://protectborrowers.org/wp-content/uploads/2021/08/Co-Opting-CA-Courts.pdf>.

The dizzying range of illegal, predatory, and discriminatory conduct described above lays bare CBA and its partner organizations' true intentions in suing the CFPB. The agency has simply proven to be too effective at enforcing vital consumer protections and holding lawbreakers accountable for CBA and its members to tolerate its existence any longer. Accordingly, rather than turn inward and examine why its members have proven demonstrably incapable of obeying the law, CBA has determined that the CFPB must be eliminated.

This cynical charade cannot continue. It is long past time for CBA to rise to the occasion, take responsibility for the decades of financial hurt and harm that its member organizations have inflicted on our most vulnerable consumers, and finally commit itself to compliance with the law. This process can begin only when CBA has walked away from the shameful publicity stunt that the September 2022 lawsuit cited above constitutes.

Sincerely,

Student Borrower Protection Center
Americans for Financial Reform Education Fund
The Debt Collective
Center for Responsible Lending
Student Debt Crisis Center

CC:

Andrew Cecere; Chairman, President, and Chief Executive Officer; U.S. Bancorp
James Dimon, Chairman and Chief Executive Officer, JPMorgan Chase
Jane Fraser, Chief Executive Officer, Citigroup
Roger Hochschild, President and Chief Executive Officer, Discover Financial Services
Brian Moynihan, Chairman and Chief Executive Officer, Bank of America
Anthony Noto, Chief Executive Officer, SoFi Technologies
Charles Scharf, President and Chief Executive Officer, Wells Fargo & Company
Bruce Van Saun, Chairman and Chief Executive Officer, Citizens Bank
Jonathan Witter, Chief Executive Officer, SLM Corporation