STUDENT BORROWER PROTECTION CENTER

March 31, 2023

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

RE: Proposed Rule for a Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders (Docket No. CFPB-2022-0080)

Dear Director Chopra,

The Student Borrower Protection Center (SBPC) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposal for a registry of nonbank covered persons subject to certain agency and court orders. This proposal marks an exciting step forward for consumer protection, and its full implementation will help the CFPB achieve many of the aims for which Congress created the agency in the first place.[1] In particular, this registry will help eliminate regulatory blindspots, promote collaboration across the consumer protection community, and turn past lessons around runaway corporate malfeasance into supervisory practices that stop financial predators in their tracks.

The CFPB's registry proposal is particularly welcome in the marketplace for student financing, which has historically been marked by a unique lack of consumer protections despite being riddled with firms that have long track records of predatory conduct.[2] Consider the following examples:[3]

- In 2019, the student loan giant **SoFi** entered into a consent order with the Federal Trade Commission (FTC) related to allegations that it lied about the savings available through its refinancing products.[4] The FTC noted that in "television, print, and internet

[1] https://digitalcommons.mainelaw.maine.edu/cgi/viewcontent.cgi?article=1733&context=mlr
[2] https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf; https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf#page=21; https://www.regulations.gov/comment/CFPB-2015-0021-0376; https://www.regulations.gov/comment/CFPB-2015-0021-0379; https://www.regulations.gov/comment/CFPB-2015-0021-6929; https://www.regulations.gov/comment/CFPB-2015-0021-0861; https://www.regulations.gov/comment/CFPB-2015-0021-0975
[3] Note that several of these examples involve banks. As discussed below, we believe that the CFPB should revise its registry proposal to include banks.
[4] https://www.ftc.gov/news-events/news/press-releases/2019/02/ftc-approves-final-order-sofi

advertisements," SoFi "inflated the actual savings" borrowers had historically attained via refinancing—"sometimes even doubling it"—by misleadingly leaving "large categories of consumers" out of their calculations.[5] Then, in early 2023, SoFi was caught engaging in a scheme to redirect consumer deposits away from honest banks and into its own coffers by misrepresenting that it offered access to a financial product that did not exist, prominently misconstruing the extent of deposit insurance offered by SoFi to SoFi depositors, and misusing in advertisements the Federal Deposit Insurance Corporation's (FDIC) name and logo.[6]

- The massive student loan creditor and servicer **Navient** has been subject to a stunning range of enforcement actions and settlements over the last several years, both on its own and while it still existed as its predecessor, **Sallie Mae**. Most recently, these enforcement actions have included allegations from 39 state attorneys general that Navient engaged in a wide range of unfair and predatory servicing practices that caused millions of borrowers to pay billions of dollars in unnecessary interest charges on their loans, including steering borrowers away from likely more affordable income-driven repayment plans that they were entitled to access under the law.[7] As you know, the CFPB has made and is still litigating similar claims.[8] Navient additionally reached a nearly $100 million settlement in 2014 with the FDIC related to allegations that it unfairly drove borrowers toward unnecessary fees and overcharged tens of thousands of servicemembers in violation of their rights.[9] The same year, the FDIC and the Department of Justice (DOJ) entered into a consent order with Sallie Mae after the agency determined that the company had violated the Equal Credit Opportunity Act by using the cohort default rate of students' schools to inform whether it would lend to them.[10] This conduct penalizes individual borrowers for peer-level characteristics, something that law enforcement in at least one state has described as amounting to educational "redlining."[11]

- In 2015, the CFPB entered into a consent order with **Discover Bank** and imposed almost $20 million in penalties and fines on the company related to findings that it had

[5] Id.
[6] https://protectborrowers.org/wp-content/uploads/2023/03/SoFi-Letter-March-22-2023.pdf
[7] https://navientagsettlement.com/Home/portalid/0
[8] https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/
[9] http://content.govdelivery.com/accounts/USFDIC/bulletins/b7b98d; https://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement
[10] https://perma.cc/YG7S-7LWC.
[11] https://www.nbcnews.com/id/wbna19316230#.XjnY6xNKhQI.

overstated student loan borrowers' minimum amounts due on billing statements, denied consumers information that they needed to access certain federal tax benefits, and engaged in illegal debt collection tactics.[12] Discover went on to violate that order both by engaging in many of the same behaviors that led to it and by failing to provide all of the consumer redress that it required. In response, the CFPB entered into a *new* consent order with Discover in 2020, noting that in the meantime the company had withdrawn "payments from more than 17,000" student loan borrowers' accounts "without valid authorization" and had cancelled or failed to withdraw payments from "more than 14,000 consumers without notifying them."[13]

- In 2016, the CFPB took action against noted corporate recidivist[14] **Wells Fargo** for illegal and predatory student loan servicing practices that included "failing to provide important payment information to consumers, charging consumers illegal fees, and failing to update inaccurate credit report information."[15] CFPB research would later indicate that Wells had also extracted millions of dollars of deceptively structured junk fee revenue from students through campus prepaid and debit card products.[16] Facing public accountability along the lines of what the registry contemplated here would help bring, Wells Fargo eventually eliminated some of its junk fees on campus cards,[17] though others remain.[18]

- In 2015, the Federal Reserve Board required the large campus debit card provider **Higher One** to pay roughly $25 million in fees and penalties to address claims that it had deceptively driven students toward its own, high-cost accounts at the expense of potentially preferable alternatives, and that it had failed to provide students a range of other key information in support of its own bottom line.[19] Higher One was eventually

[12] https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-discover-bank-to-pay-18-5-million-for-illegal-student-loan-servicing-practices/
[13] 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/
[14] https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=410061
[15] https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices/
[16] https://pirg.org/edfund/resources/debit-cards-on-campus/
[17] https://pirg.org/media-center/statement-on-wells-fargos-response-to-debit-cards-on-campus-report/
[18] https://protectborrowers.org/advocates-call-on-cfpb-to-eliminate-the-junk-fees-harming-students/
[19] https://www.federalreserve.gov/newsevents/pressreleases/enforcement20151223a.htm

acquired by Customers Bank and rebranded as **BankMobile**.[20] In 2022, the CFPB cited BankMobile for a host of deceptive fee-extracting practices, including misleading students away from more preferable accounts that may have been available to them—the same practice that Higher One had already been accused of years before.[21]

- In 2017, the CFPB took action against **Citibank** for a wide range of "student loan servicing failures that harmed borrowers."[22] According to the resulting consent order, 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 . . . ."[23] 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.[24]

- A 2017 CFPB lawsuit alleged that a series of student loan securitization vehicles called the **National Collegiate Student Loan Trusts** (NCSLTs) and their associated debt collector, **Transworld Systems**, "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."[25] Advocates have documented how the NCSLTs disproportionately target their debt collection lawsuits toward communities of color across the country,[26] likely in an effort to recoup loan losses that have earned these investment vehicles the title of the "worst-performing student loan investment vehicles ever created by Wall Street."[27]

[20] https://m.canadianinsider.com/customers-bancorp-inc-completes-acquisition-of-student-checking-and-refund-disbursement-business
[21] https://www.insidehighered.com/news/2013/11/06/higher-one-agrees-15-million-settlement-resolve-charges-over-fees
[22] https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-citibank-student-loan-servicing-failures-harmed-borrowers/
[23] Id.
[24] Id.
[25] https://www.consumerfinance.gov/enforcement/actions/national-collegiate-student-loan-trusts/.
[26] 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.
[27] Id.

- A long list of for-profit colleges have been subject to a startling range of enforcement actions and orders related to predatory conduct. Many of these schools are still operating, including **Berkeley College,** which settled with New York City's Department of Consumer and Worker Protection in 2022 regarding allegations that the school "committed deceptive practices related to its admissions, financial aid, and debt collection procedures;"[28] **Perdoceo**, which agreed to wipe out almost $500 million in loans as part of a settlement with 49 state attorneys general after it misled students about the cost of attendance at the school and relevant graduation rates;[29] **DeVry University**, with whom the FTC settled for $100 million in 2016 for deceiving prospective students with ads that exaggerated employment success rates and income levels after graduation;[30] and the **University of Phoenix,** which reached a $191 million settlement with the FTC in 2019 related to the school's use of deceptive ads that falsely promised job opportunities with specific companies such as Twitter and Microsoft.[31] But whereas these schools and school chains continue operations, several others eventually closed and left students stranded after repeated bouts of orders, settlements, and other enforcement actions. These institutions include **Bridgepoint Education** (recently known as Zovio), whom the CFPB sued in 2016 for "deceiving students into taking out private student loans that cost more than advertised"[32] before it closed in 2022; **Education Management Corporation**, which reached a nearly $100 million settlement in 2015 with the DOJ and several states related to claims that it violated the False Claims Act by lying about its compliance with the Higher Education Act before closing in 2018;[33] **Corinthian Colleges**, which settled with California's attorney general in 2007 regarding claims that it engaged in false advertising,[34] was sued by California in 2013 for allegedly deceiving students and engaging in securities fraud,[35] and was sued by the CFPB in 2014 for engaging in a "predatory lending scheme"[36] before abruptly shutting down in 2015; and **ITT Technical Institute**, which settled with California in 2005 after the state alleged that the school

[28] https://www.nyc.gov/site/dca/consumers/DCWP-Settles-Claims-with-Berkeley-College.page
[29] https://www.nytimes.com/2019/01/03/business/student-debt-career-education-corporation.html
[30] https://www.ftc.gov/news-events/news/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc
[31] https://www.ftc.gov/news-events/news/press-releases/2019/12/ftc-obtains-record-191-million-settlement-university-phoenix-resolve-ftc-charges-it-used-deceptive
[32] https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices/
[33] https://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and
[34] https://www.ocregister.com/2007/08/01/corinthian-to-pay-65-million/
[35] https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-files-suit-alleged-profit-college-predatory
[36] https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme/

improperly siphoned certain state grants,[37] faced a CFPB lawsuit in 2014 for having "exploited its students and pushed them into high-cost private student loans that were very likely to end in default,"[38] and was sued by the state of Massachusetts in 2016 for engaging in "unfair and harassing sales tactics and misleading students about the quality" of its programs,[39] all before closing its doors in 2016.

- The **Pennsylvania Higher Education Assistance Agency** (PHEAA), which once managed one-in-ten dollars of non-mortgage consumer debt in the United States,[40] settled with then-Massachusetts attorney general Maura Healey in 2021 regarding claims that the company engaged in unfair and deceptive practices in its role as a federal student loan servicer, including by using tactics that directed borrowers away from accessing Public Service Loan Forgiveness (PSLF).[41] In addition, New York's attorney general settled with PHEAA in 2022 for similar claims, including that it drove borrowers away from likely more affordable income-driven repayment plans that they are legally entitled to under the law and that are necessary to access for borrowers who intend to pursue PSLF.[42]

Of course, the firms enumerated above are only a sample of the companies that have been caught taking advantage of students and student loan borrowers. By boosting transparency, facilitating the CFPB's use of the full range of its tools, and easing cooperation across state and federal agencies, the registry proposed here will help keep the broad sweep of predatory firms in the student loan market and beyond at bay.

We encourage the CFPB to stand by this strong plan, and we offer the following suggestions for how it can be even further strengthened:

The Proposed Registry Should Reach Even Further in Incorporating Key Lessons on How to Hold Bad Actors Accountable

As you have noted before, far too many financial companies have become all too comfortable regularly violating the law and writing off as a cost of doing business the minimal fines and

[37] https://www.chronicle.com/article/itt-educational-services-says-it-will-pay-725-000-to-settle-california-complaint/
[38] https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/
[39] https://www.huffpost.com/entry/massachusetts-sues-itt-te_b_9610440
[40] https://protectborrowers.org/demanding-justice-in-the-bluegrass-state/
[41] https://www.mass.gov/news/ag-healey-secures-first-of-its-kind-relief-in-settlement-with-major-student-loan-servicer
[42] https://ag.ny.gov/press-release/2022/attorney-general-james-secures-student-debt-relief-thousands-new-yorkers

settlements that may subsequently arise.[43] A critical lesson of the 2008 crisis that led to the CFPB's creation was that unless regulators act decisively to hold financial firms accountable as soon as they demonstrate a willingness to skirt statute, these companies will only continue to do so.[44] Moreover, as the CFPB noted in the proposal discussed here, the record shows that allowing companies to repeatedly violate the law imposes costs across entire financial markets as bad actors look to offload the expense of fines and other legal expenses onto the public.[45]

Accordingly, unlike other financial regulators in the past and present,[46] the CFPB has proven since its inception that it does not tolerate repeat offenders.[47] The CFPB's proposed registry is among the strongest measures it has formulated yet in support of that view. By creating a central, transparent, catch-all repository of relevant agency actions and orders, the CFPB can afford consumers and members of the law enforcement community an unparalleled tool to compare financial institutions' past actions with their current conduct. Indeed, it is possible that having such a registry in place might have made the eventual repeat offenders cited above less willing to continue carrying on their harmful practices.

Specifically as it pertains to incorporating lessons from past crises into current policymaking, the CFPB should take the following steps to further improve its registry proposal:

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43 https://www.consumerfinance.gov/about-us/newsroom/reining-in-repeat-offenders-2022-distinguished-lecture-on-regulation-university-of-pennsylvania-law-school/

44 Id.

45 https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=31 ("Companies that repeatedly violate the law do more than just deprive consumers of protections in the marketplace. They may also charge their customers more in order to cover the costs of any fines or other costs resulting from the company's legal violations. In other words, consumers may end up subsidizing corporate malfeasance.")

46 https://www.washingtonpost.com/business/2019/09/26/repeat-offenders-corporate-misdeeds-often-settled-with-deferred-prosecution-agreements/

47 See, e.g., https://www.consumerfinance.gov/about-us/blog/a-new-tool-for-protecting-the-military-community/, https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-portfolio-recovery-associates-to-pay-more-than-24-million-illegal-debt-collection-practices-reporting-violations/, https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-ny-attorney-general-sue-repeat-offender-moneygram-for-leaving-families-high-and-dry/, https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-wells-fargo-to-pay-37-billion-for-widespread-mismanagement-of-auto-loans-mortgages-and-deposit-accounts/, https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-titlemax-to-pay-a-10-million-penalty-for-unlawful-title-loans-and-overcharging-military-families/, https://www.consumerfinance.gov/about-us/newsroom/cfpb-charges-transunion-and-senior-executive-john-danaher-with-violating-law-enforcement-order/, https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-regions-bank-pay-191-million-for-illegal-surprise-overdraft-fees/, https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-ace-cash-express-for-concealing-no-cost-repayment-plans-and-improperly-withdrawing-consumers-funds/, https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-pawn-lenders-for-cheating-military-families/

- ***The CFPB should stand by and expand the proposed registry's centralized, public nature.*** The CFPB notes in its proposal (and critics of the proposal object[48]) that many of the public orders that the registry considered here would cover are already available across certain websites, databases, and public forums such as the Nationwide Multistate Licensing System & Registry.[49] But just as the last financial crisis imparted the lesson that navigating financial markets should not require an advanced degree in financial economics,[50] examining the risks that might be associated with a given financial company should not necessitate professional sleuthing skills. Having a single, public registry would—exactly as the CFPB states in its proposal[51]—improve transparency for consumers, researchers, and even investors; serve as a key informational resource across federal and state agencies; help the CFPB understand emerging risks across entire markets; and help the CFPB itself prioritize and coordinate across its various functions. This is precisely the type of elegant, structural remedy necessary to weed out repeat offenders.

  The CFPB should not stop there. Instead, it should expand its definition of "covered orders" for the purposes of the registry to reach back for at least ten years before the effective date of the proposed rule. As currently drafted, that definition would extend only to January 1, 2017, seven years from the anticipated date of the rule's implementation.[52] The CFPB should provide consumers with at least the same level of visibility into consumer finance companies' misconduct at the opening of its registry as it intends to maintain on a go-forward basis (that is, considering non-terminated orders relevant for ten years or more).

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48 https://www.ballardspahr.com/-/jssmedia/Main/Podcast-Transcripts/CFM0608.pdf?rev=5279c0ab2aaa4a579168c2a7d7626c5c&hash=DBEAE16AFB83D8912BE59CC630A534BA

49 https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=52. Of course, this is not even to address—as the CFPB does in its proposal—that "No government agency appears to maintain a publicly available repository of such orders and other related information with respect to particular entities as they relate to consumer financial products and services," and that "while certain State regulators publish certain public enforcement actions to the NMLS, such publication does not extend to all of the orders and all of the agencies that are addressed by the proposal, including orders issued by Federal agencies," as well as to all industry sectors covered by this proposal. See https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=53

50 https://democracyjournal.org/magazine/5/unsafe-at-any-rate/

51 https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=53

52 https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=99

- ***The CFPB should stand by and expand its proposal to require executives at certain companies to personally attest each year to a review of the company's conduct.*** As drafted, the CFPB's registry proposal would require certain covered companies subject to orders in the registry to submit a written attestation each year signed by a senior executive outlining the efforts that person has taken to review the company's actions related to the relevant order.[53] This provision of the registry will be among the most important contributors to its success, as it will establish clear, individually attributable accountability mechanisms to prevent recidivism. Past crises across financial markets have demonstrated the importance of creating straightforward chains of command and responsibility along these lines. After accounting scandals at Enron and WorldCom, for example, Congress passed the Sarbanes–Oxley Act of 2002, which generally establishes (among other changes) that the CEO and CFO of a public company are directly responsible for the accuracy of its financial reports and internal control structure.[54] Analogously personal attestation requirements for the CFPB's proposed registry will likely have a powerful deterrent effect on possible corporate misconduct. The agency should stand by its plan to create them.

  However, the CFPB proposes that this attestation requirement should apply only to "supervised registered entities" with receipts of $1 million or more per year.[55] This limitation will almost certainly exempt many extremely risky but relatively small student loan companies that have recently become pervasive, such as coding bootcamps that offer institutional lending programs[56] and fintech startups that provide exotic and often predatory student financing at dubious schools.[57] The record shows that these companies regularly disregard orders from state law enforcement,[58] setting the stage for likely recidivism if they should eventually grow out of being startups. These companies are also necessarily less likely to have sophisticated internal controls, making an annual

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[53] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=12
[54] https://www.congress.gov/bill/107th-congress/house-bill/3763
[55] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=117
[56] See, e.g., https://www.mass.gov/news/ag-healey-secures-89000-for-students-from-online-for-profit-coding-bootcamp-to-resolve-claims-of-high-pressure-enrollment-failing-to-provide-proper-disclosures
[57] https://dfpi.ca.gov/2021/08/05/california-dfpi-enters-groundbreaking-consent-order-with-ny-based-income-share-agreements-servicer/. Note that SBPC has no information to indicate that either of the examples cited in this sentence actually have revenues below $1 million, but rather that it is possible given their startup status that they do, and in any case that their past misconduct is reflective of the type of behavior seen across the bootcamp and private student lending spaces, particularly among smaller firms.
[58] See, e.g., https://www.bppe.ca.gov/enforcement/actions/1819150_lambda_abate.pdf; https://www.bppe.ca.gov/enforcement/actions/2021129_flockjay_abate.pdf; https://www.bppe.ca.gov/enforcement/actions/1718011_make_school.pdf.

attestation all the more valuable. The CFPB should therefore obligate all relevant companies—regardless of their yearly revenues—to attest to review of their conduct after a covered order arrives.

The CFPB notes in its proposal that compliance with the proposed attestation provision will impose a burden on firms with less than $1 million in annual revenue.[59] This point is, of course, factually correct. However, the CFPB is simply wrong to conclude that the burden of compliance outweighs students' and the public's right to have small scammers be held accountable. Moreover, the CFPB fails to consider that a small company being unable to cover the cost of assuring that it is working to remedy past failures—whether because of a lack of internal capacity or because the number of orders it is subject to has risen quickly—should itself be a red flag. Finally, the CFPB ignores that its supervisory authority for nonbanks extends over *all* private education loan providers, without regard to their scale.[60] The agency offers no substantive explanation for why the reach of the registry considered here should not be similarly expansive.

Accordingly, in its final rule, the CFPB should eliminate proposed § 1092.201(o)(4), which would restrict annual attestation obligations to exclude companies with less than $1 million in annual receipts.

- ***The CFPB should enumerate specific penalties for violations of the requirements that stem from its registry proposal.*** In general, the CFPB does not offer detail on the penalties that it will impose in instances where covered entities fail to comply with the registration obligations contemplated here. The agency notes that in cases where a company states a good-faith basis to believe that it is not covered by the registry, it will "*not* bring an enforcement action against that person. . . ."[61] This statement appears to imply that those companies that do fail to meet registration requirements without claiming a valid exemption *will* face an enforcement action. However, the CFPB leaves ambiguous specifically what redress it will seek in these cases. In its final registry proposal, the CFPB should enumerate specific monetary penalties for each day that a covered company fails to comply with its registration requirements, and those penalties should be extremely large. The CFPB should also specify that should a firm both fail to register and, subsequent to that failure, violate federal consumer financial law, the failure

[59] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=118
[60] https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf#page=614
[61] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=160 (emphasis added)

to register will be considered as an aggravating factor when the agency assesses additional civil money penalties in any and every future matter.

The Proposed Registry Should Go Even Further in Closing Dangerous Oversight Gaps

A key lesson of the 2008 financial crisis was that any supervisory regime structured around discrete consumer products will inevitably be riddled with blindspots.[62] Under the regulatory framework that prevailed before Dodd-Frank, for example, companies regularly weaved their way around definitions of specific financial offerings and corporate structures so as to play regulatory agencies "off against one another to shop for the least restrictive."[63] In response, Congress empowered the CFPB to have comprehensive jurisdiction over the full sweep of "consumer financial products or services" and imbued the new agency with supervision, enforcement, and rulemaking tools that would cover as much of the regulatory waterfront as possible.[64] Congressional staff have repeatedly underscored the particular importance of the CFPB's broad remit as a pathway for it to comprehensively protect consumers.[65]

The registry proposed here is yet another important step forward for the CFPB as it seeks to eliminate important oversight gaps, particularly given the historical opacity of the nonbank space. As you have noted before, nonbanks play an increasingly important role in consumer financial markets, but supervisors and law enforcement have been slow to keep up with their growth.[66] Meanwhile, many nonbank consumer finance companies have vigorously insisted not just that they fall outside of the CFPB's jurisdiction, but that they do not land within *any* regulator's ambit.[67] Remedying this status quo, as the CFPB notes in its proposal, the registry would allow the agency learn about "nationwide trends and gaps in nonbank covered persons' compliance with consumer protection laws" so that "the Bureau can target its various functions—including consumer education—to ensure that consumers understand the risks and

[62] See, e.g., https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf ("For example, high-risk, nontraditional mortgage lending by nonbank lenders flourished in the 2000s and did tremendous damage in an ineffectively regulated environment, contributing to the financial crisis.")
[63] https://www.propublica.org/article/silicon-valley-bank-failure-fdic-fed-failure
[64] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2199678
[65] https://perma.cc/NS8U-64FG ("Title X of the Dodd-Frank Act established the Consumer Bureau as the first ever independent Federal agency provided with rulemaking, supervisory, and enforcement authorities over the offering and provision of consumer financial products and services. . . . As such, the Consumer Bureau was given authority to monitor many non-depository institutions engaged in the business of offering or providing consumer products or services, institutions which were not previously adequately supervised and examined by a Federal financial services agency.")
[66] https://www.consumerfinance.gov/about-us/newsroom/cfpb-invokes-dormant-authority-to-examine-nonbank-companies-posing-risks-to-consumers/
[67] https://protectborrowers.org/credit-by-any-other-name-how-federal-consumer-financial-law-governs-income-share-agreements/

associated costs of such conduct on their use of certain consumer financial products or services."[68]

Still, the CFPB must take certain additional steps to ensure that its registry is as comprehensive as present consumer risks require. In particular, the CFPB should make at least the following revisions to its registry proposal:

- ***The registry should include banks.*** The CFPB is proposing to limit its registry to pertain only to "Nonbank Covered Persons," and to exclude depository institutions, insured credit unions, and related persons.[69] This choice is misguided. As noted above, some of the most notorious offenders in the student space are banks, including companies that have recently become banks.[70] To exempt a company from the badly needed scrutiny of the registry considered here simply because it happens to have a bank charter—let alone because it *went out and got one* after operating without one—is to create an arbitrary safe haven for predatory companies and to undermine the vision of comprehensive consumer protection that informed the CFPB's design.

  The CFPB notes that it did consider including depository institutions, insured credit unions, and related persons in its registry, but that it opted not to because it already knows "the identity and size" of these institutions, because other bank regulators already "regularly publish their consumer financial protection orders," and because the need to focus on nonbanks is more urgent.[71] None of these arguments are compelling. Regardless of whether the CFPB already knows the names and details of banks, whether other regulators already publish bank-related orders, or whether other types of finance companies present an even more pressing need for supervisory action, consumers deserve a transparent one-stop shop for information on bad industry behavior across the full set of financial products they might want to access. (Indeed, given the discussion above about the CFPB's recognition of the importance of centralizing orders that may exist across disparate websites, the second of the three arguments that the CFPB makes against including banks in its registry is particularly strange.) The CFPB should revise its proposal accordingly.

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[68] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf
[69] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=83
[70] https://www.sofi.com/press/sofi-completes-acquisition-of-gpb
[71] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=83

If the CFPB chooses not to make this revision, then at the very least it should clarify how registry requirements will pertain to student loan companies that have bank subsidiaries (such as Nelnet) or to the nonbank subsidiaries of bank holding companies (such as those contained within SoFi). In doing so, the agency should take as expansive of a view as possible regarding its registry's reach.

- ***The registry should include schools that engage in any variety of institutional lending and all orders that relate to conduct that informs their lending practices.*** The CFPB should clarify that postsecondary institutions of higher education that engage in-house lending, including through the provisioning of payment plans and/or private loans, fall within the registry. As noted above and documented through additional research by SBPC, colleges that offer institutional loans or de facto financing via payment plans have proven to be some of the most notorious repeat financial offenders in recent memory.[72] This trend is prevalent across a range of schools, from Title IV-eligible public institutions that hound students for small unpaid balances[73] to for-profit vocational training bootcamps that drive students into expensive private debt and risky income share agreements.[74]

  The CFPB appears to understand the risks present in the area of institutional lending, as it recently announced that it would begin conducting supervisory examinations of colleges that engage in the practice.[75] The agency should extend that logic to the present proposal by clarifying that the full sweep of institutional lending practices and the schools that engage in them fall within the bounds of the registry.

  Moreover, the CFPB should clarify that its registry will include all relevant orders pertaining to any of the steps that schools with institutional loan programs take to drive students into debt. As drafted, the registry covers orders related to violations of covered laws only "to the extent that the violation of law found or alleged arises out of conduct in

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

[73] https://protectborrowers.org/virginias-leading-work-to-expose-institutional-debts-reveals-massive-disparately-distributed-burdens/

[74] https://protectborrowers.org/income-share-agreements-2/, https://protectborrowers.org/pushing-predatory-products-how-public-universities-are-partnering-with-unaccountable-contractors-to-drive-students-toward-risky-private-debt-and-credit/

[75] https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/

connection with the offering or provision of a consumer financial product or service. . . ."[76] Without further clarification, this limitation could be misinterpreted to exempt orders related to misrepresentations by predatory schools about graduation rates and employment outcomes, even when those false statements are a key tool to drive students toward colleges' institutional loans.

Such orders are not hypothetical, and excluding them would be hugely damaging to the proposed registry's effectiveness. In 2015, for example, the Department of Education fined Corinthian Colleges almost $30 million for "misrepresenting its [job] placement rates to current and prospective students . . . ."[77] The CFPB would later outline how representations such as these were central to Corinthian's efforts to push students into its effectively institutional and hugely predatory Genesis Loan Program.[78]

Similar conduct continues to pervade the higher education landscape.[79] In March 2023, SBPC exposed how a Title IV-eligible school partnered with a for-profit coding bootcamp in a scheme to drive mainly low-income students into institutional and other debt for meaningless credentials.[80] The bootcamp, called Make School, had already been cited by California's for-profit college regulator for operating without authorization.[81] Yet it was still able to partner with a Title IV-eligible institution, Dominican University of California, in a deal that allowed students to take on federal student loans to finance attendance on top of Make School's existing institutional loan program.[82] These students likely would have benefited from prior knowledge of the bootcamp's settlement with the California regulator. Make School ultimately imploded after almost 50 former students sued the institution, claiming it had engaged in deceptive behavior that led them to take on huge debt loads for a program that fell far short of its promise.[83] Students enrolled in the joint Make School-Dominican partnership program were consequently left trapped under heavy loan burdens with little to show for it.[84] Had these students been made aware

[76] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=207
[77] https://www2.ed.gov/documents/press-releases/heald-fine-action-placement-rate.pdf
[78] https://files.consumerfinance.gov/f/201409_cfpb_complaint_corinthian.pdf
[79] See, e.g., https://protectborrowers.org/selling-out-students-a-case-study-in-brand-name-schools-partnering-with-for-profit-scammers-to-make-a-buck/, https://coag.gov/press-releases/8-21-20/
[80] https://protectborrowers.org/new-investigation-exposes-years-long-scheme-by-private-college-and-failed-coding-bootcamp-to-dupe-regulators-and-push-predatory-loans-on-low-income-students/
[81] Id.
[82] Id.
[83] https://protectborrowers.org/make-school-vemo-lawsuit/
[84] https://hechingerreport.org/when-universities-slap-their-names-on-for-profit-coding-boot-camps/

of Make School's past behavior through a tool such as the registry considered here, they may have steered clear of the doomed institution.

Accordingly, in finalizing its registry proposal, the CFPB should explicitly state that orders pertaining to the actions of schools that offer institutional loans do, in fact, "arise out of conduct in connection with the offering or provision of a consumer financial product or service."[85] Such clarity and consequent reporting by schools would be powerful for consumer protection not just for the reasons that the registry is important in general (such as because it increases transparency), but also because unlawful action by schools related to recruitment practices, institutional quality, and other misconduct can be used as a claim or defense under the Holder Rule in matters related to an underlying consumer financial product or service,[86] as well as claims for federal student loan discharge under the U.S. Department of Education's Borrower Defense to Repayment regulations.[87]

- ***The registry should include all covered orders that apply to firms' successors and assigns.*** As proposed, the CFPB's registry would exclude orders that apply to firms only as a "successor and assign" of a named party "where the order does not expressly identify the covered nonbank by name as a party subject to the order."[88] This limitation stands to put students at risk. As the case of HigherOne and BankMobile described above illustrates, the successors of badly behaved finance companies often engage in precisely the same conduct as their predecessors. Leaving the successors and assigns of named parties to otherwise covered orders out of the registry will therefore only undermine the tool's informational effectiveness. Indeed, to the extent that an order restricts an otherwise covered entity's conduct, that entity should be required to report it, full stop. It is otherwise not obvious how anyone could possibly know if an assignee is complying with a given order.

  The CFPB should revise its registry proposal to include all orders that apply to firms as a successor to a named party, regardless of whether the covered entity is named as a party to the original order.

[85] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=207
[86] https://protectborrowers.org/wp-content/uploads/2021/05/SBPC_Holder_Rule_Final.pdf
[87] https://www.ed.gov/news/press-releases/education-department-releases-final-regulations-expand-and-improve-targeted-debt-relief-programs
[88] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=91

- ***The registry should more clearly include certain student loan servicers.*** The CFPB has supervised various federal student loan servicers since 2014 as larger participants in the student loan servicing market.[89] For structural and historical reasons, several of these servicers either falsely insist that they are appendages of certain state governments,[90] or otherwise are headquartered in states whose governments incorrectly claim that these companies are an agent of the state.[91] Moreover, as noted above, state-associated servicers such as PHEAA have been the subject of repeated orders related to predatory and illegal conduct.

  As currently proposed, the CFPB's registry excludes "states" as defined in Dodd-Frank.[92] Out of an abundance of caution and noting student loan servicers' track record of both harming consumers and hiding behind a purported sovereign veil, the CFPB should revise its registry proposal to clarify that it will cover the full range of student loan servicers. This step will help ensure that the registry reaches at least as far as the CFPB's supervisory remit over servicers already extends.

- ***The registry should include the full sweep of service providers.*** As proposed, the registry would not pertain to any "service provider that is subject to Bureau examination and supervision solely in its capacity as a service provider and that is not otherwise subject to Bureau supervision and examination."[93] This limitation is puzzling. The CFPB appears to be well aware of the risks that third party service providers can impose on the public even when they are not engaging in conduct that would otherwise bring them under the CFPB's supervisory ambit. In 2017, for example, the CFPB cited the student data reporting company known as the National Student Clearinghouse for providing incorrect information on millions of students' in-school status to student loan companies, potentially disrupting borrowers' access to in-school loan deferment and leading them to face improper charges.[94] This particular case did not lead to a court or agency order, but if it had, any such order would have fallen out of the proposed scope of the CFPB's registry as drafted. This is the case because the CFPB does not yet otherwise supervise the

[89] https://www.consumerfinance.gov/rules-policy/final-rules/defining-larger-participants-student-loan-servicing-market/
[90] https://www.scotusblog.com/wp-content/uploads/2016/02/Oberg-cert-petition-FILED.pdf
[91] https://www.scotusblog.com/case-files/cases/biden-v-nebraska-2/
[92] https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf#page=589
[93] https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf#page=114
[94] https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervision-finds-some-student-loan-and-mortgage-servicers-illegally-fail-provide-protections-borrowers/

National Student Clearinghouse.[95] Such an outcome would amount to an unnecessary failure for the proposed registry.

The CFPB should revise its registry proposal to include all service providers covered by the agency's supervisory tool, regardless of whether they would be covered on their own.

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The CFPB's proposed registry of nonbank covered persons subject to certain agency and court orders will serve as a potent new tool for consumer financial protection. The registry will help expose bad practices to the disinfecting light of sunshine for consumers and researchers alike, streamline the CFPB's use and prioritization of its various complementary tools, promote collaboration across levels and areas of government, and more. With the additional modifications outlined here, the registry will become a key piece of the consumer protection mosaic.

Opponents of the CFPB's proposal object that its requirements will be "onerous," that the registry is "superfluous" given that the information it covers is already publicly available, and that the need to disclose settlements could make companies less willing to self-report or negotiate with government bodies.[96] These arguments fall flat. First, and perhaps most obviously, the requirements outlined in this proposal are nowhere near as onerous as the cost that corporate malfeasance imposes on consumers and entire markets. Second, it is striking to see pro-industry advocates, who frequently hide behind the argument that regulators should focus on educating consumers instead of engaging in tough oversight,[97] now fighting against a fundamentally informational consumer resource. (It is worth noting, too, that these two first criticisms are internally incoherent. If information related to covered orders is readily available, it is a mystery how that information could also be difficult for registrants to gather and submit. This is also to say nothing about how readily available information on orders should be *internally* at companies that are subject to them, as these firms would presumably have these orders at hand for their own in-house compliance purposes.) Finally, to accept any company's assertion that industry would be less forthcoming and cooperative if required to provide the information covered here risks slipping consumer protection back to the pre-financial crisis environment in which regulated

[95] https://protectborrowers.org/how-a-data-company-at-the-center-of-the-student-loan-system-is-costing-borrowers-millions/

[96] https://www.ballardspahr.com/-/jssmedia/Main/Podcast-Transcripts/CFM0608.pdf?rev=5279c0ab2aaa4a579168c2a7d7626c5c&hash=DBEAE16AFB83D8912BE59CC630A534BA, https://www.bhfs.com/insights/alerts-articles/2022/cfpb-invites-comments-on-proposed-registry-of-nonbank-financial-firms

[97] https://youtu.be/eeR2RqixZzw?t=861

entities regularly acted with impunity. The CFPB was created to bring order and oversight to the consumer finance industry; it cannot reward threats of non-cooperation with lax oversight.

We look forward to the CFPB's full implementation of its proposed registry.

Thank you for your time and consideration.

Sincerely,

Student Borrower Protection Center