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BACK TO SCHOOL: SHEDDING LIGHT ON RISKS AND HARM IN THE PRIVATE STUDENT LENDING AND SERVICING MARKET

HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER
PROTECTION

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING THE RISKS AND HARM IN THE PRIVATE STUDENT LENDING AND SERVICING MARKET

SEPTEMBER 17, 2024

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BACK TO SCHOOL: SHEDDING LIGHT ON RISKS AND HARM IN THE PRIVATE STUDENT LENDING AND SERVICING MARKET

TUESDAY, SEPTEMBER 17, 2024

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION,
Washington, DC.

The Subcommittee met at 2:30 p.m., via Webex and in room 538, Dirksen Senate Office Building, Hon. Raphael G. Warnock, Chair of the Subcommittee, presiding.

OPENING STATEMENT OF CHAIR RAPHAEL G. WARNOCK

Chair WARNOCK. Good afternoon. This Subcommittee will come to order. Welcome to today's hearing of the Senate Banking Subcommittee on Financial Institutions and Consumer Protection.

Today's hearing is in a hybrid format, but our Members and our witnesses are all here in person. We are grateful for their presence and your willingness to participate.

Today, this Subcommittee will examine the consumer protection risks and harms of private student loans, including the roles of lenders, both banks and nonbanks, that are operating in this space. We will also examine ongoing challenges that millions of Americans are still experiencing with their student loan servicer.

Today's hearing will be the first time in a decade that the Senate Banking Committee has focused on private student loans, a growing and opaque financial option that students are using to help pay for the rising cost of college. Collective student debt continues to rise with the Federal Reserve finding Americans collectively owe more than $1.74 trillion in debt to the Federal Education Department or to private lenders. $1.74 trillion. This number has risen every year, except for 2023. And of that total, $133 billion is owed to private lenders in the form of private student loans, including more than $5.6 billion in the State of Georgia.

The Biden-Harris administration has recognized the weight that an excessive student loan burden can have on Americans and, to date, the Biden-Harris administration has announced nearly $170 billion in relief for almost five million borrowers. However, these are only federally backed student loans, and borrowers continue to report issues with their private loans. While we are not expecting the CFPB's Educational Loan Ombudsman's annual report until next month, information we already have shows that the CFPB re-

ceived more than 15,000 complaints from September 1, 2023, to August 30, 2024, related to private student loans and Federal student loan servicing.

My staff and I have analyzed some of these complaints from borrowers. And when looking through the complaints, you are struck by the sheer scope and magnitude of the problem. Private lenders and servicers routinely misled or deceived borrowers, and the stories are frustrating and heartbreaking. Confusing processes, poor customer service, and just a genuine failure of many lenders and servicers to work with struggling borrowers. With numbers that high, it's easy to forget that there is an entire life and a story behind each of these complaints. These are real people with families, and these are real consequences.

I'll share just one example from a borrower in Atlanta, Georgia, who holds private student loans. This person had attended a for-profit college that has been found guilty of misleading students about the employment and the earning rates of their graduates. Because of this fraud, the individuals' loans should have been eligible to be discharged. However, their lender denied their discharge. Think about that. This person was a victim of lies on the front-end of the process. They had already selected a school based on untruths about that institution, and then they were deceived into enrolling and taking out a loan based upon a false premise.

Not only did their lender refuse to cancel their fraudulent loans, which the law requires, they then refused to share information on how to file an appeal or respond in any way to this Georgian in need. Real people, real problems, real consequences.

And so I also submit this packet of horror stories from borrowers with private loans collected by the Project for Predatory Student Lending for the record. And without objection, this is so ordered.

There are more than $10 billion in private education loan originations last year, an increase from $6 billion in 2011. Private student loans are currently estimated to be more than 7 percent of the total student loan market. And although private student loans represent a relatively small portion of the student debt landscape, borrowers seem to have more and more issues with them. Taking data from October 2022 through September 2023, the CFPB Student Loan Ombudsman report found one in four complaints filed to the CFPB about student loan issues was from borrowers with a private student loan. So think about that: only 7 percent of student loan volume are private student loans, but those private student loans make up 25 percent of loan complaints. That indicates a serious consumer protection problem in private student lending.

Today's hearing will also touch on some of the ongoing challenges with student loan servicers, generally private companies that collect payments from and provide customer service for both Federal and private student loan borrowers, and it could not come at a more timely moment.

Just last week, the CFPB announced Navient, a giant student loan servicer, would be banned from servicing Federal student loans again and forced to repay $100 million to borrowers the company harmed. Navient also must pay a $20 million penalty. While this settlement still must be finalized by the court, it sends a

strong message to other servicers that they cannot profit from harming student borrowers.

In April, my colleague, Senator Elizabeth Warren, held a hearing highlighting harmful practices by the student loan servicer MOHELA. This hearing highlighted a decades-long pattern of mismanagement and misconduct that harmed millions of borrowers nationwide. Because of institutional failures of servicers, like Navient and MOHELA, borrowers faced real-world consequences, including paying more than they should have, not being directed toward loan forgiveness programs, or even having their accounts mismanaged to the point that their credit scores lowered, making it harder for them to buy a home and build wealth.

I believe that when we center the people, we make better public policy. So as we approach today's hearing, I think it's important for us to center the experiences of student loan borrowers and bring ourselves back to when we were looking at different colleges, I remember that experience, and trying to make likely the biggest financial decision of our lives up to that point. This is a real issue for all students, but, as a first-generation college graduate myself, I know what it's like to face that and face those questions.

The process is complex and, often, these days, deliberately opaque. Many nontraditional students have to navigate this financial maze without the help or support of a parent, and they may, in some cases, be busy parents themselves. These are massive financial decisions, the equivalent of a mortgage, and sometimes a risky bet on their futures with massive consequences that may follow them for decades. We owe it to students to ensure that those bets pay off and that the game isn't rigged against them by predatory, unfair, deceptive, or even abusive behavior from private student loan lenders and student loan servicers. We owe students who are just trying to get ahead, trying to be productive citizens, better.

I hope today's hearing helps improve transparency around student lending and that it brings accountability for the private lenders and student loan servicers that have too often misled and harmed borrowers. Indirectly, they harm us all.

Thank you. And I will now turn to my colleague, Senator Lummis, for her opening statement.

OPENING STATEMENT OF SENATOR CYNTHIA M. LUMMIS

Senator LUMMIS. Thank you, Mr. Chairman. I'm sitting in for Senator Tillis, who was called away in a family emergency. And so thank you for tolerating my presence as your sidekick today, and thank you, witnesses, for being here.

You know, when I came to Congress initially in the U.S. House in 2009, there was an entity in Wyoming called the Wyoming Student Loan Corporation. And it was extremely successful in servicing student loans and helping keep their delinquency rate around 5 percent and their failure to pay rate down around 2 percent. It was incredible, and it was because they'd catch students when they just were starting to miss payments or pay partially and they would work with them to help them budget and keep on track with their student loans.

The Wyoming Student Loan Corporation was dissolved as part of Obamacare because, during Obamacare, that's when the current

student loan situation was pretty much taken over by the Federal Government. So Wyoming's Student Loan Corporation was dissolved, its employees went away, and the Federal program has not been as successful as Wyoming Student Loan Corporation was. So we're back at a point where Wyoming has done a better job, the Federal Government is doing a dismal job, and now we're picking up the pieces.

We're meeting today to examine the student loan market, particularly the markets and servicers for private loans. But I want to add some important context for this hearing. Based on the prepared testimony of two of the witnesses here today, Professor Jiménez and Ms. Canchola Bañez, you may use this hearing to voice support for universal free higher education, and you're well within your rights to do so. I respect you for being forthcoming with your beliefs. But I want to stress that I really oppose this point of view. The student loan system and our education system more broadly is already plagued by many issues. Universal free higher education would accelerate these chronic problems.

Take for insurance the Biden-Harris administration student loan executive actions. The Biden-Harris administration has used executive actions to invent legally dubious student loan forgiveness, modify income-driven repayment plans, extend and reextend a 41-month long repayment pause during COVID, and other debt relief measures.

Combined, the Biden-Harris administration has cost the U.S. taxpayer $870 billion to $1.4 trillion in higher education expenses. In just 4 years, Biden has exceeded the $744 billion the Federal Government spent over the cumulative span on higher education from 1962 to 2019. In other words, from when I was 8 years old until the present, all the money that was spent in that period of time was spent by the Biden administration in just 4 years. That's lighting money on fire.

Turning to the focal point of this hearing more directly, the conversation around private student lending misdirects attention from the more significant structural issues within our student loan system, the Government system. These issues include rising tuition costs and the shortcomings of Federal student loan programs. From the outset, it's critical to note that the private student loan market accounts for only 8 percent of outstanding loans, and a super majority of loans are Federal loans. Additionally, many of the laws and regulations in place to safeguard consumers against financial harm, including the Truth in Lending Act, provisions against unfair, deceptive, or abusive acts or practices, and many others not only apply to the Federal loan market or, rather, the private loan market but exceed the requirements on Federal student loans.

Any assertion that the private loan market writ large is some sort of Wild West out there without rules and safeguards is simply untrue. While individual cases of malfeasance certainly exist in the private loan market, as they do in any market, private lenders fill a crucial gap in higher education financing and equip borrowers with the tools to meet the barriers to education in place today. Demonizing private lending ignores the reality that loan servicers offer tailored solutions for borrowers when Federal programs fall short. Put simply, private loan lenders provide more information

about their products to borrowers, offer loans with greater constraints and risk-based metrics, and deter over-borrowing to a much greater degree than Federal public loans.

The Biden administration's politically motivated and legally dubious student loan forgiveness schemes have complicated the student loan landscape, increasing confusion and failing to address the root causes of skyrocketing tuition. Loan servicers have had the rules of the programs and the terms of their contracts rewritten and rewritten again by the Biden administration month after month. No organization could effectively operate in such a climate.

Instead of focusing on private lenders, Congress should look to improving student financial literacy, simplifying financial aid offers, and promoting transparency around student outcomes. That's why I worked with Senator Barrasso to introduce the Transparency in Student Lending Act, which would require institutions of higher education to disclose annual percentage rates, standard terms, and fees on Federal loans to borrowers before disbursements.

The Federal student loan system is unsustainable and, without meaningful reform, these political piecemeal executive actions will continue to exacerbate the problem, not resolve it. Private lending is not the root cause of the student debt crisis but a market-demanded supplement.

Mr. Chairman, thank you. I look forward to questioning the witnesses about this important topic, and I yield back to you.

Chair WARNOCK. Thank you very much, Senator Lummis, for your opening statement. Now let us turn to our witnesses. Testifying today will be Aissa Canchola Bañez, the policy director from the Student Borrower Protection Center. Next, I want to welcome Dr. Beth Akers, a senior fellow at the American Enterprise Institute. And, finally, our third witness is Professor Dalié Jiménez, professor of law at UC Irvine School of Law, director of the Student Loan Law Initiative and co-principal investigator at the Debt Collection Lab and the Financial Distress Research Project. We appreciate your testimony, and I look forward to our discussion.

Ms. Bañez, I will turn first to you.

STATEMENT OF AISSA CANCHOLA BAÑEZ, POLICY DIRECTOR, STUDENT BORROWER PROTECTION CENTER

Ms. CANCHOLA BAÑEZ. Thank you very much. Chairman Warnock, Ranking Member Lummis, Members of the Committee, thank you for the opportunity to testify today. My name is Aissa Canchola Bañez, and I am the policy director for the Student Borrower Protection Center. Our mission is to alleviate the burden of student debt for millions of borrowers across the Nation. It's an honor to take part in this hearing today, the first in more than a decade solely focused on the harms of the student loan market.

Combating the student debt crisis is a critical racial and economic justice issue. Originally created as a tool for social and economic mobility, student loans were supposed to grant all families, regardless of race and economic status, the chance to unlock the promise of a higher education. But for too many student debt has become a life sentence, holding borrowers back from buying a home, starting a small business, and even starting or growing a family.

Yet, the national headlines have overlooked the smaller, yet growing, levels of private student lending and the companies that profiteer off of keeping families and students in debt. It's estimated that Americans owe more than $134 billion in outstanding private student loan debt. While this amounts to, roughly, 8 percent of the total student loan market, it's now larger than the payday loan market and the balance of all outstanding past-due medical debt.

While other consumer finance markets, like mortgage and credit cards, have robust data transparency, the absence of comprehensive data in the private student loan space has too often left borrowers, policymakers, and advocates in the dark. This has allowed for significant gaps in protections for the millions of Americans forced to take on private student loan debt and has made it harder for policymakers and law enforcement officials to protect borrowers.

Lobbyists push claims that private student loan repayment rates and borrower outcomes are largely positive, failing to capture the lived experiences of borrowers, especially those from historically disenfranchised communities. For example, research has found that nearly half of Black private student loan borrowers with bachelor's degrees reported falling behind on a student loan payment, a rate ten times higher than their White peers. Students attending for-profit schools are more likely to rely on private student loans, more likely to face poor labor market outcomes, and more likely to struggle in repayment. And CFPB complaints show that older consumers who now make up the fastest-growing segments of private student loan borrowers are showing signs of higher rates of distress compared to their younger borrowers.

When private student loan borrowers fall behind, they are left at the mercy of their lenders and struggle to access relief and justice. During the COVID–19 pandemic, private student loan borrowers were excluded from Federal relief and left to fend for themselves, and this is due to the lack of comprehensive consumer protections for private student loan borrowers. These borrowers have limited options to modify their payments during periods of distress and cosigners struggle to access promised release even after years of repayment. They also face challenges accessing relief from their lenders after being defrauded by their school and even after successfully having their loans discharged in bankruptcy.

CFPB complaints further affirm these ongoing challenges that borrowers face. Last year, a quarter of all student loan complaints related to private student loans.

But, unfortunately, this is only the tip of the iceberg. In recent years, we've seen a growing and lightly regulated market of so-called shadow student debt. These products have proliferated, seeking to capitalize on students and families struggling to cover the skyrocketing cost of college. Shadow student debt consists of personal loans, lines of credit, buy now pay later debt, income share agreements, institutional debts owed directly to schools, and several other financial products tied to education and workforce training. Many of these products stem from the desire by policymakers and schools to embrace innovative ways to help students and families pay for college, but a series of investigations and lawsuits reveal that this debt and credit exposed borrowers to high fees, harsh

contract terms, and abusive collection tactics that empower profiteers and push families further into debt.

It is long past time to shed light on the risks and harms of this market and rein in the abusive practices that have been allowed to go on for far too long. For families crushed by student debt, the stakes could not be higher. Proposals, like the right-wing Project 2025, seek to keep borrowers drowning in debt. But don't take my word for it. Take theirs. Page 285 calls for the elimination of the Department of Education. Page 354 calls for making it even harder for defrauded borrowers to have their loans discharged. Page 361 calls for the elimination of the Public Service Loan Forgiveness Program and income-driven repayment cancellation after 20 years. And page 353 calls for the complete privatization of student lending programs.

These policies will wreak havoc on borrowers, throw more Americans into the private market, and lock our most vulnerable students out of higher education altogether. Thank you.

Chair WARNOCK. Thank you, Ms. Canchola Bañez. Next, we will hear from Dr. Akers, Dr. Beth Akers.

STATEMENT OF BETH AKERS, SENIOR FELLOW, AMERICAN ENTERPRISE INSTITUTE

Ms. AKERS. Good afternoon, Chairman Warnock, Senator Lummis, and distinguished Subcommittee Members. Thank you for the opportunity to testify today on the issues and concerns facing private student loans and servicers, as well as the state of Federal student lending.

At present, there are more than $1.74 trillion in student loans outstanding in the U.S. economy. This is a massive amount of money that represents serious liabilities for millions of borrowers across the United States who are grappling with the process of repayment. This massive amount of outstanding debt also represents a tremendous liability to taxpayers. This is the result of President Biden's efforts to cancel student loans, which, if allowed to be implemented, will transfer that enormous liability away from borrowers who took on the debt and on to taxpayers, many of whom never enrolled in college.

In contrast, private student loans make up just a small share of that outstanding debt. At present, $133 billion of that total amount were borrowed from private lenders. The Federal student loan program and the associated portfolio of outstanding loans are in complete disrepair due to efforts from the Biden administration to cancel student loans, despite no legal pathway to do so. But the private student loan industry is a well-functioning consumer credit market. Borrowers with private student loans are largely successful in repaying their debts. Recent reports from industry suggests that the vast majority of borrowers are in good standing on their loans, and, as we all know, repayment rates on Federal student loans are poor.

A loan program that fails to collect the debt it issues should hardly be considered a loan program. Instead, the Federal loan program is functioning as a convoluted and opaque system of subsidies that encourage inflationary pricing from institutions and discourages thrift among borrowers.

Private student loan origination and servicing both for Federal and private loans hasn't been perfect. Lending institutions and those that service loans are fallible, but private entities supporting student lending in any capacity don't deserve the ire of lawmakers looking for a quick fix or even a scapegoat for what is happening more broadly in student lending. In fact, there are many ways in which the private loan market could offer a model for how the Federal loan program could be reformed to operate more effectively and efficiently.

The private student loan market is highly regulated, as it should be. Young people who use student loans at high rates can be naive to the tradeoffs involved in different financial instruments, so it's imperative that lenders comply with high standards when it comes to consumer education and disclosure requirements. Private lenders are currently held to standards that exceed the disclosure requirements that are mandated in the Federal lending program. This likely contributes to the success in repayment seen among private student loans.

That said, there is room for improvement. For example, we should reconsider the treatment of private student loans in bankruptcy. Student loans are somewhat remote from eligibility for discharge during bankruptcy. Discharge of student loans does happen during some bankruptcy proceedings, but the standards for eligibility are opaque and too strict.

I anticipate that the tone of the hearing today will reflect a general skepticism about private-sector participation in student lending. There seems to be a persistent sense among left-leaning observers that profit-seeking has no place in education at any level. In contrast, I believe that growing the role of the private sector could offer a solution to many of the challenges we are currently facing and have written as much, particularly in the arena of graduate student lending in a recent report.

Servicers of Federal student loans are often villainized by those concerned with the plight of borrowers holding Federal student debt, but the actions taken in recent years by the Biden administration have taken a difficult job and made it practically impossible. Like all of us, servicers and Federal student lenders make mistakes, some more than others. But if our goal is to put in place a lending program that is likely to succeed administratively, then the steps taken to complicate and manipulate the lending program, often on short notice, are definitely steps in the wrong direction.

I'm deeply concerned on behalf of taxpayers about the exorbitant expense of these recent interventions and concerned on behalf of Americans about the lawless nature in which the Administration is attempting to enact them. But I am mostly deeply concerned about the trajectory for higher education in the U.S. The way that the Biden administration has intervened in the marketplace for higher education has effectively deteriorated any incentives that college and universities previously had to charge prices that are in line with the value that they provide. Likewise, students who were previously incented only to borrow what they needed and expected to repay would be wise to exploit the taxpayer-funded subsidies that are, unfortunately, now free for the taking.

I'm grateful that the Subcommittee has taken the time to delve into these issues facing higher education and look forward to future action taken by Members of this Committee to pass legislation that would rectify the challenges we face. I thank you again for the opportunity to be here today and share my testimony, and I look forward to your questions.

Chair WARNOCK. Thank you. Next, we will hear from Professor Jiménez.

STATEMENT OF DALIÉ JIMÉNEZ, PROFESSOR OF LAW AND DIRECTOR, STUDENT LOAN LAW INITIATIVE, UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW

Ms. JIMÉNEZ. Chairman Warnock, Senator Lummis, and Members of the Subcommittee, thank you for the opportunity to speak to you today. My name is Dalié Jiménez. I'm a professor at the University of California Irvine School of Law, where I co-lead the UC Student Loan Law Initiative.

Over the last decade, the private student loan industry has transformed. After declining during the financial crisis, the industry is back and reinventing itself in ways that demands our close attention. New financial products have emerged, offering alternatives to traditional loans, but they come with added risks that we're only beginning to understand. Many are offered by schools that provide dubious value in return for costly credit.

One concerning practice is the explosion of tuition payment plans often marketed on school websites as, quote, not a loan and promising, quote, no debt. This is misleading. These plans include enrollment fees, late fees, and other charges. Some avoid Truth in Lending disclosures by structuring themselves as short-term credit while others simply disregard the law.

Students wishing to avoid debt may choose these plans over Federal loans, not realizing they are sacrificing important protections and still incurring a debt. In some cases, they may be automatically enrolled if their financial aid is delayed. In 2022, we found students at California public institutions were saddled with almost $400 million in institutional debts in just the first 2 years of the pandemic.

When students can't repay these debts, the consequences escalate quickly. Institutions impose interest, prevent reenrollment, or withhold transcripts, hindering students from continuing their education or securing employment. These punitive actions are not just wrong, they're sometimes illegal. For example, despite laws banning transcript withholding due to debt, many schools continue to this practice, even stating on their websites that they withhold transcripts today.

I also want to highlight the rise of shadow student debt typically associated with vocational programs and boot camps. We're seeing an explosion of schools promising to, quote, change your life in a few months. Students are urged to finance these programs by pledging a share of their future earnings, as high as 14 percent of their pre-tax income, for several years. Despite CFPB action against some of these income-share providers, new ones continue to emerge. These programs disproportionately target women, minori-

ties, and those who started but did not complete college, groups that already face significant barriers to economic advancement.

In my last few minutes, I want to highlight how abuses in our legal system exacerbate the challenges faced by student borrowers. Since 2005, private lenders have enjoyed special protection, making their loans difficult to discharge in bankruptcy, causing confusion because not all student debt is entitled to this treatment. Lenders may exploit this confusion by settling already discharged claims and forcing borrowers to waive future rights, as I have found in my research. Congress should treat student loans like other consumer debts, making them dischargeable when a bankruptcy judge has ordered it.

Struggling borrowers often face State court lawsuits. Even when debt collectors fail to comply with legal requirements, judges grant them judgments, often adding high fees and interest. These abuses of the legal system compound borrowers' financial hardships and trap them in cycles of debt.

It's crucial that we proactively address potential risks to consumers with private student loans. I urge the CFPB to take a more hands-on approach in this market. Specifically, they should create a registry of financial services firms involved in private student lending. We don't know enough. This would include the traditional lenders you're familiar with, as well as new entrants, like I've been talking about. And they should issue market-monitoring orders to the largest providers of both traditional and shadow student debt to gather information. By these actions and others I outline in my written testimony, we can better understand the risks and protect students and their families from unfair, deceptive, or abusive practices.

Private student loans can be a stop gap, but they're not a sustainable solution if what we care about is equitable access to education. If what we want is everyone who wants an education, who wants to improve their lives, has an opportunity to do so, regardless of their background, regardless of how they were born, regardless of their wealth, their credit score, or the wealth of their family or the color of their skin, if that's what we want, if we want an educated populace, we have to invest in education directly, not through loans, not by putting the risk on students to pick a program to improve their lot in life when the labor market may be stacked against them.

We must directly invest in education. We have to address the entrenched disparities affecting marginalized communities. Thank you for your time and attention, and I welcome your questions.

Senator WARREN. Thank you, Professor Jiménez. Now we're going to go to questions, and Senator Lummis is going to start.

Senator LUMMIS. Thank you, Madam Chairman. And I understand that Ms. Jiménez was one of your students when you were teaching, and it's always lovely to have those relationships reestablished here in Washington. So congratulations to both of you.

Dr. Akers, private student loans account for only about 8 percent of the outstanding student loan payments, so how can they be the primary cause of the student debt crisis?

Ms. AKERS. In fact, I don't think they're the primary cause of the student loan crisis.

Senator LUMMIS. So should we be focusing instead on flaws in the Federal loan programs and tuition costs?

Ms. AKERS. I think there's plenty that we could be talking about that are issues in the Federal student loan program that would go a lot farther in helping more Americans who are, in fact, truly struggling today. So I do believe that the focus today is misguided in talking about the private student loan market.

Senator LUMMIS. OK. So name the top two, as you see it, in terms of issues you think are more dispositive.

Ms. AKERS. My core concern at this point is the trajectory of higher education pricing and borrowing based on the recent interventions. That is, we have made it so people can borrow without responsibility of repaying, which means that, as institutions, there's no responsibility to charge prices that are in line with value and there's no responsibility for borrowers to borrow loans that they anticipate repaying. This puts us on a real downward spiral, and we have major interventions that will be necessary to undo the damage that's been done.

Senator LUMMIS. What do you think would be the benefits of looking at improving financial aid transparency?

Ms. AKERS. I think it's a fantastic step. I mean, it's a piece of a broader puzzle. We know that when people are enrolling in college they have relatively little information about the decisions that they're making; and, yet, they're signing on the dotted line anyway. Some of that is because we're made a culture of celebrating college as this golden ticket to financial prosperity that I think has done a disservice, so we need to encourage people to be more skeptical about the degrees that they're paying for and also put in front of them the information that would help them understand whether or not they're making a strong investment in their future.

Senator LUMMIS. Do you think we should scale back Federal lending programs?

Ms. AKERS. I have major concerns about the, essentially, limitless nature of borrowing in the graduate student loan program. So if I were to be given the ability to make changes myself, that's where I would start and scaling back the amount of debt that's available to graduate students.

Senator LUMMIS. And you alluded to this in response to my last question, ideas for promoting accountability among colleges to prevent these runaway tuition costs.

Ms. AKERS. So, right now, we have colleges who have continued access to Federal student aid, that's Pell grants, that's access to loan dollars, who are continually putting students out into the world after their enrollment without the ability or really the preparation to earn an income that would make their loans affordable to repay. We need to hold colleges to a higher standard. My feeling is that the Federal Government needs to look at the earnings outcomes, the employment outcomes, at institutions, at programs of study, and demand that institutions who are not producing results for their students no longer have access to those Federal student aid programs, so, essentially, cutting off Federal dollars to institutions that are not serving students.

Senator LUMMIS. OK. Turning back to the student and perhaps their families, parents or other responsible people, working to-

gether, how can Congress work to help ensure that students and families are making informed responsible decisions about how much debt they can carry and whether the career path they're considering is going to help them pay back that loan eventually?

Ms. AKERS. There was a big step forward during the Obama administration on transparency around data and student outcomes. I think we need to eliminate the restrictions on the unit record data system that would allow us to have even better data to tell how previous students at different institutions and programs of study have fared. And so I can certainly imagine a bipartisan path forward that would be lifting that restriction and making transparency better for students and their families.

Senator LUMMIS. One of the really difficult things in the ranching business that I grew up in is students that go to veterinary schools, the tuition is really high. And if you go into small animal, your dogs and cats and other small animals, in an urban area, you're probably going to get good return and be able to pay back your loan. If you're doing large animals in rural America, you're not. You're not going to make very much money.

And so I do think it's important that there be mechanisms when Federal dollars are involved to help advise people that there are certain career paths that are just not going to pay in a way that allows one to have a decent lifestyle and still repay their student loans.

The other thing that's going to be interesting as we go forward is the effects of artificial intelligence because we know now that AI is going to have a greater effect on white collar jobs than on blue collar jobs and in a good way. The assistance that's going to come from artificial intelligence to help people read diagnostics in health care is going to transform the ability of physicians and health care providers to make critical diagnoses, whereas the blue collar worker who is actually repairing that diagnostic machine is always going to be needed. And so those are the kind of things we probably also need to be looking at going forward.

I do want to thank the witnesses so much for being here. And once again, congratulations, Student Jiménez. Your professor is very proud of you. I yield back, Madam Chairman.

Senator WARREN. Thank you very much. Thank you, Senator. So for nearly a decade, I've led investigation after investigation into student loan servicer Navient for its appalling mistreatment of borrowers. In 2015, I called on the Department of Education to crack down on Navient for cheating military families. In 2017, I raised the alarm about Navient's $155 million expansion into the private student loan market. In 2019, I urged the department to fire Navient. And those are just the highlights. Oh, and in 2021, in the first banking Subcommittee hearing that I chaired, I questioned Navient's CEO about the servicer's failed record.

Later that year, Navient finally left the Federal student loan system, and I was proud to help deliver that long overdue win for borrowers. But that was not the end of the road.

Ms. Canchola Bañez, you're an expert on the student loan system. After Navient exited the Federal student loan system, were borrowers free from misconduct?

Ms. CANCHOLA BAÑEZ. Unfortunately, no, Senator. And you're right. The ending of Navient's Federal contract was a huge win for borrowers and would not have been possible without your fierce advocacy and fight on behalf of borrowers. But, unfortunately, Navient has remained a player in the private student loan space and continues to do so to this day. In fact, today, it manages private student loans for more than 2½ million borrowers.

Senator WARREN. So in the early 2000s, Navient, which was then known as Sallie Mae, conspired with fraudulent for-profit schools to push predatory private loans onto students who Navient knew were likely to default. Thirty-nine State attorneys general later sued and Navient agreed to cancel $1.7 billion of predatory loans, but there was a catch. The settlement only applied to borrowers who had already defaulted. So Navient got away with spending only $50 million in relief, having promised $1.7 billion, and they left tens of thousands of borrowers eating dirt.

This year, I launched an investigation into Navient's failure to cancel the rest of these predatory private loans. And in response, Navient told me that it was, quote, committed to addressing valid school misconduct claims. Ms. Canchola Bañez, you work with student loan borrowers every day, so I just want to ask, I'm going to ask you to put this one together. On a scale of 1 to 10, how would you rate Navient's cancellation process for these predatory loans so far?

Ms. CANCHOLA BAÑEZ. I would rate it a zero, Senator.

Senator WARREN. Wait. The scale was 1 to 10, so you're going for zero even so.

Ms. CANCHOLA BAÑEZ. I'm going zero. Absolutely.

Senator WARREN. OK. Explain why.

Ms. CANCHOLA BAÑEZ. You know, we've seen the Department of Education try to streamline these types of cases for misconduct and providing relief for borrowers with Federal student loans. Navient had the opportunity to create an automatic accessible process to provide this relief for private student loan borrowers. Instead, it created a process that's incredibly complex and that everyday borrowers struggle to access.

Senator WARREN. So there's the deal, right? They could have just canceled the way they promised. It would have been easy. But they make a lot more money if they make it really hard for people to cancel.

Now, just last week, in response to my investigation, Navient provided data about its cancellation process for the first time. Navient told me that it sent applications to about 4,000 borrowers even though at least 65,000 of its borrowers attended for-profit colleges. Even more shocking, of the 1,000 applications that it has processed so far, Navient has rejected 800.

In defending the predatory student loans it made, Navient CEO said, and I quote, private student loans are made in good faith. Now, Professor Jiménez, you are an expert in consumer protection law. Is that a fair characterization of Navient's record on private student lending?

Ms. JIMÉNEZ. Not at all. Not at all, Senator. Navient knew that it was making loans to people who couldn't repay. Their CEO, in 2007, is alleged to have said in court documents that he said,

quote, if the borrower can create condensation on a mirror, they need to get a loan this year. They knew what they were doing. Navient now has the responsibility to discharge these loans and to do it as quickly as possible for the millions of students who are suffering.

Senator WARREN. Republican extremists want to return to the days where borrowers were just at the mercy of predatory servicers, like Navient. The Biden-Harris administration has a different vision. Last week, after years of dogged work, the Consumer Financial Protection Bureau entered into a historic settlement with Navient, delivering $100 million of relief to cheated borrowers and permanently banning Navient from the Federal student loan system. It is long past time for Navient to do the right thing by their countless defrauded borrowers and cancel out these loans for the private student loan borrowers, as well.

I want to thank you for being here, and I want to thank the Chairman for holding this hearing. It's very important, and I'm going to give you back your seat.

Chair WARNOCK. Thank you. Thank you very much, Senator Warren. Recognizing now Senator Scott.

Senator SCOTT. Thank you, sir.

Chair WARNOCK. The newly wedded Senator Scott.

Senator SCOTT. Yes, sir. Yes, sir. Extending my time beyond the 5 minutes in order to respond to the statement about me being newly married, I will say that this ring here weighs more than it appears to weigh. A weight of responsibility. That's a great sign actually because, in fact, you take up the marriage process and ceremony, the wedding itself, and you come to the conclusion it's a weighed responsibility and I thank God Almighty that I've had the opportunity to engage in it at 58 years young. It will take me a little while to get to my 50th anniversary, but that's OK by me. I'll be 108. Thank you so much, Chair Warnock.

It's a simple concept. You take out a loan, you pay it back. I'm not sure where the confusion is on that. Frankly, I think the cost of higher education may be debatable whether it's good or bad, but one thing is without question: the ROI on your college education is pretty darn strong in America. And, frankly, the desire to see colleges move toward free, interesting concept, you look at States like Tennessee where you can get your first 2 years of college free at their local college community schools, and those assets or those credits transfer to the 4-year schools. In South Carolina, if you go to some of our local community colleges, those credits transfer to Clemson and Carolina or to other public schools in the State. That's an easy way for States to do what I believe is a State and local responsibility: manage the resources within their States and not put that onus on the backs of the Federal Government.

Ms. Akers, thoughts?

Ms. AKERS. I tend to agree with you. The average net cost of enrollment at community college is negative based on the existing subsidies to higher education at this point. I think, in fact, the ROI is, on average, very large and positive. So, in fact, people who get in and go through college and finish their degree are getting a fantastic deal, not to say we shouldn't have safeguards for people who borrower and don't get that return. But, on average, the system

should work well if we were supporting it with policies that, in fact—we're buying into the idea that we would have a lending program in place.

Senator SCOTT. The low-delinquency rate for private loans, less than 4 percent, compared to over 12 percent for Federal loans, demonstrates their effective role in managing financial risk. Do you agree with that statement and would you——

Ms. AKERS. Yes. So part of the problem of the Federal student loan program is that, by design, there is no underwriting that takes place. What that means is that we have decided that we're going to make everyone eligible for the same amount of credit, regardless of their prospects of being able to pay in the future. The advantages that private student loans have is that, in fact, they don't make the decision, so it's the underwriting that ensure that these loans are, in fact, affordable. We haven't done that and, if there is a predatory lender in this space, I think there's an argument to be made that it's the Federal Government.

Senator SCOTT. Thank you. Another question for you, Ms. Akers. Wouldn't it make more sense for us to focus on comprehensive reforms, like improving financial aid transparency, scaling back Federal lending programs, and promoting accountability among colleges to prevent runaway tuition costs?

Ms. AKERS. Absolutely. I feel like we are at a point today where we have dissolved the functioning of the program because of all of the incremental reform. We're overdue for a reauthorization of the Higher Education Act that should basically refine and simplify the program, put in place a single lending program, tough accountability standards on colleges, maybe even an expansion of the Pell grant program, but basically reinvest in this idea that people are borrowing to be able to make investments themselves that they can pay back to taxpayers in the future.

Senator SCOTT. I think it was 2010 when Congress passed legislation that capped a borrower on the public student loans at 10 percent of their income. Based on that 10-percent cap, plus I think it was a 15-year or 20-year ultimate repayment window, the fact of the matter is that already in existence is a system where the average borrower will likely not pay back what they've borrowed. That unpaid balance doesn't just disappear like magic. It actually goes on the backs and shoulders of other folks.

Ms. AKERS. In fact, I think it's a misnomer to talk about student loan forgiveness or student loan cancellation. In fact, we should be using the terminology that this is a transfer of debt to taxpayers who are now on the hook to pay for these unpaid balances.

Senator SCOTT. The way I look at it, and I've said this several times, I'm the first college graduate in my family, and I thank God that I've had the opportunity to go to college and to graduate. I think about the whole student loan debacle brought to us by the Biden administration of recent, trying to cancel a trillion dollars' worth of student loan debt, the one thing I keep asking myself, why is it OK for my mother who never made more than 20 bucks an hour to be responsible to carry a part of the burden for people who make six figures annual salaries. I don't understand the fundamental unfairness of transferring to someone something they never

signed for or transferring away from someone that they actually signed up for.

Ms. AKERS. I think that's absolutely the case. And probably my fellow witnesses here at the table would be quick to point out that not everybody who has gone to college is, in fact, in that position of financial privilege. But it's worth revisiting what you just put on the table, that, in fact, there were existing programs that ensure that anybody who had a student loan 10 years ago that was unaffordable to them did not have to repay it. So, in fact, there was fairness in the previous system. I would argue and agree with you today that we are moving away from fairness.

Senator SCOTT. Thank you.

Chair WARNOCK. Thank you, Senator Scott. I think I'd like to push further on this question about repayment, bankruptcy, and related issues. Congress wrote the U.S. bankruptcy law, in part, to help people get a fresh start from loans and other financial obligations when borrowers cannot pay. Declaring bankruptcy is not an option undertaken lightly, and it does come with lasting consequences, like the ability to access credit in the future.

Professor Jiménez, you've written extensively about the 2005 Federal bankruptcy law that generally blocks people with student loans from discharging these debts in the normal bankruptcy process. Can you help us understand what Congress was thinking when it chose to strip bankruptcy rights away from people with student loans almost 20 years ago?

Ms. JIMÉNEZ. Yes. Thank you. The alleged concern, as much as you can find on the record, was that students would get loans, graduate, and then file bankruptcy as quickly as possible. This was a boogeyman that was not based on facts at all. There has never been any evidence of widespread abuse by student debtors in bankruptcy ever. Any individual cases that have been pointed out to were actually found because the bankruptcy judges threw out the bankruptcy. That's the system working as it should. Student loans do not need special protection in bankruptcy.

And at the time the provision was added, banks promised they would bring down the cost of student loans for everyone. I wrote two papers, as you mentioned, about this with economists at the CFPB, and we found that this just wasn't true. Students didn't save any money at all on the cost of private student loans, and banks just took the windfall and moved on.

Chair WARNOCK. Thank you so much. I think that adds color and insight to this conversation, and it's particularly concerning when you think that it didn't save anything for borrowers in general. But it's particularly concerning with private student loans because it's not like taxpayers are on the hook for these debts if they're not repaid. So with all due respect to my colleague, in the case of private student loans, it's not his mother who would be taking on his debt. This 2005 provision was simply Congress doing the bidding of rich lenders, rather than centering students.

In the decade since CFPB released its 2012 report on private student loans, has there been any effort to restore bankruptcy rights for these borrowers?

Ms. JIMÉNEZ. There have been a couple of bills. I think I testified at a hearing for one 5 years ago, but that's as far as we've gone.

Chair WARNOCK. Thank you. I believe it's time for Congress to repeal this harmful 2005 provision, and I'd welcome my Republican colleagues to join us in this effort. I know my colleagues, Senators Durbin and Warren, have been working on this issue for years, and I look forward to sponsoring and working with them to pass legislation to repeal this harmful provision. It's past time.

Study after study has shown that students of color, especially Black students, disproportionately borrow more often to pay for college, have to borrower larger amounts, and have a harder time repaying their loans due to institutional disparities in wealth. A 2021 report from the Center for American Progress found White households with high school degrees, White households with high school diplomas, have $150,000 more in wealth, on average, than Black households with a college degree.

Routinely, in this Committee, I highlight generational wealth through home ownership. However, there is more to building wealth than owning a home, especially if you're too deep in student debt to buy the home in the first place.

Professor Jiménez, who is most likely to be harmed by abusive practices from student loan servicers or misleading or opaque marketing language from private student loan lenders?

Ms. JIMENEZ. It's absolutely the people who needed to borrow to go to school, and they needed to borrow because we decided that borrowing is the way that we will invest in higher education in this country at the same time that we essentially require, the labor market requires people to go to college in order to get ahead. And those people are much more likely to be Black, Brown, and also female.

Chair WARNOCK. So is it fair to say that these abusive practices actually widen the racial wealth gap?

Ms. JIMÉNEZ. Absolutely. Absolutely. And what's been proposed here by my colleague, Dr. Akers, would only ensure that this continues. If the Federal Government moves away from funding higher education, which it could do by loans like it's doing now or it can do in a different way, as in actually directly investing grants, if we leave it up to the private market, then the loans will be given, if they are given at all, with bad terms to the people who come from disadvantaged backgrounds.

Chair WARNOCK. Thank you so much. And, again, as a first-generation college student and college graduate, I'm wondering how a private lender would have assessed my risk and ability to pay.

With that, I turn to Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. And thank you to the Chairman and Ranking Member for having this hearing. I appreciate the comments so far from the panelists.

I'm curious do you all agree with the fact that there is happening right now harmful and predatory practices in the private student loan market? Do you all agree with that? In the private market. Yes? Does anybody disagree with that? OK. I agree with that, as well. And as somebody who was a former attorney general, I saw it. And you just have to go into your State and talk to so many people that see the harmful practices.

Now, with that said, is there room improvement in the Federal loan process? Absolutely. I agree with that, as well.

One thing I want to talk about, though, and I do think there is a need for Federal student loans, as well, and one of them is the Public Service Loan Forgiveness Program. There are benefits to the Public Service Loan Forgiveness Program. One of them is what the Ranking Member talked about when she talked about the lack of some veterinarians in rural communities. How do we incentivize them to go to these rural—I know in my rural communities a lot of lack of professionals, health care professionals, as well. One way to incentivize is student loan forgiveness, and I think it does work.

What I'm curious about, however, and I know for Public Service Loan Forgiveness Program, after 10 years of dedicated service, public service, it could be you're in a rural community giving a public service or you're an urban area firefighter, you're a health care worker, you're a military member, right, there is an opportunity to get that service, if you work 10 years, that loan forgiven. However, if you are doing a public service job and you have a student loan from the private market, that cannot be forgiven. Isn't that correct, Ms. Canchola Bañez?

Ms. CANCHOLA BAÑEZ. That is correct, Senator.

Senator CORTEZ MASTO. And is there concern about the transparency in that? Do you think students understand that? Do you think individuals, when they're going and obtaining these loans, is there enough transparency that they understand the distinction between the two?

Ms. CANCHOLA BAÑEZ. There certainly is not enough transparency, and we saw this very prominently when the Biden-Harris administration announced its PSLF waiver back in 2021. SBPC heard from numerous borrowers just completely shocked, floored, that their private student loans did not qualify for PSLF. And it was life-changing for them. Maybe they had taken on this loan under the assumption that it would qualify for PLSF or were given some of this information.

In fact, there is a Federal lawsuit currently that alleges that call center representatives at the student loan servicing giant MOHELA were actively steering Federal student loan borrowers into refinancing with a private company by the name of Laurel Road. This company conveniently works with MOHELA to service those refinanced loans, as well, and the plaintiff in this lawsuit was a public service worker who ultimately lost eligibility for PSLF by refinancing. She was misled to believe that her eligibility would remain. She didn't figure it out until it was too late, and she lost her complete pathway to relief for her student loans.

Senator CORTEZ MASTO. Perfect example. Harmful predatory practices in the private sector, correct?

Let me jump to another area that I think is just as important, and, Ms. Jiménez, let me talk to you about it. In order to understand the impact private education loan lenders are having on our students, we have to understand the scope of the marketplace, and I know you have a lot of data there. Can you elaborate on the transparency or lack thereof in the private student loan marketplace? And what data are we missing? What do we need to know to help to shed light on this and bring this transparency and education to individuals?

Ms. JIMÉNEZ. We need a lot. We need a lot. In 2012, the CFPB did a report on private student loans, and that's the last time we had a comprehensive look at the industry. And it has changed a lot since then, so over 12 years. We have estimates, 133, 134, 94, billion dollar estimates of the market. And it also depends on what you define as a private student loan. We've been talking about shadow student debt. Those shadow student loans are not accounted when we're talking about the delinquency rates, the low delinquency rates that have been quoted.

So we need a lot more information than we have now just to understand what we're looking at.

Senator CORTEZ MASTO. Well, and it's true. In school year 2022, over $10 billion in private student loans were out there for students. $10 billion. $10 billion industry. And we know whenever there is money involved, there's going to be some sort of harmful or predatory activity happening.

I appreciate the conversation. One final thing, to our incredible Chairman, one thing I want to highlight is, unfortunately, it seems to be that our military are always the targets because of the benefits that they get, and they seem to be at the top of the list of those that want to prey on them. One of the things that Senator Moran and I have done is to introduce a piece of legislation called the Ensuring Military Access to Higher Education Benefits Act of 2024, which automatically would enroll former and current servicemembers in PSLF so they are not taken advantage of for the very reasons that Ms. Canchola Bañez talked about. I would welcome all of my colleagues to join both Senator Moran and I on that piece of legislation.

Thank you again.

Chair WARNOCK. Well, thank you so very much, Senator Cortez Masto. And Georgia is a big military State, so I share your concern in that regard.

Much of what we've covered today has focused on the need for greater transparency, and so let me just ask the question directly as we prepare to close. I'll start with Ms. Bañez. What sort of data would be helpful for Congress, regulators, and the public to have in order to get the clearest picture of the state of the market and to properly hold lenders accountable? We could close with that question to you.

Ms. CANCHOLA BAÑEZ. Of course. We need comprehensive data that spans bank lenders, nonbank lenders, new entrants across a multitude of origination, long-term outcomes, as well as debt collection practices, to really be able to do this apples-to-apples comparison that borrowers, that advocates, that policymakers really need in order to spot harmful trends in real time.

I would also suggest that, you know, Congress consider legislating a national education debt registry, as my colleague, Dr. Jiménez, had mentioned before, so that we can capture everybody who is operating in this space and be able to really track and protect borrowers in the way that we need to be doing.

Chair WARNOCK. Well, thank you so much. We could say so much, but we're out of time. So with that, all questioning has concluded. Thank you for all of our witnesses for being with us today.

Thank you again to Senator Lummis for filling in, and Senator Tillis sends his regrets.

Today's hearing brought light to the ongoing risks and the harms of private student loans and student loan servicing. What did we learn today? We learned that it's clear, it's clear we need more data to understand how to better protect borrowers in the private student lending market. We learned that Congress needs to pay more attention to what is going on. And I hope we don't have to wait another decade for the next Committee hearing on this critically important issue. And we have learned that the CFPB under the Biden-Harris administration has been and should continue to be a hero in this story. It has, under the leadership of Director Chopra, enforced the law and protected borrowers. I hope the CFPB can continue doing this great work in the next Administration after President Biden leaves office, but this Committee has a responsibility to ensure the Bureau has the tools and the personnel it needs to continue its work to protect borrowers no matter who is elected in November.

The hearing also helped center a focus on the current harms that student loan servicers continue to inflict on borrowers. I hope the CFPB's latest announcement borrowing Navient from servicing Federal student loans and today's hearing send a clear message to other servicers: you cannot deceive, mislead, or otherwise abuse student loan borrowers without serious consequences.

For Senators who wish to submit questions for the record, those questions are due 1 week from today. For our witnesses, you will have 45 days to respond to any questions.

Again, thank you, everybody. And with that, this hearing is adjourned.

[Whereupon, at 3:37 p.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF AISSA CANCHOLA BAÑEZ

POLICY DIRECTOR, STUDENT BORROWER PROTECTION CENTER

SEPTEMBER 17, 2024

Testimony of Aissa Canchola Bañez
Policy Director, Student Borrower Protection Center
Before Senate Banking Committee
Subcommittee on Financial Institutions and Consumer Protections
September 17, 2024

Chairman Warnock, Ranking Member Tillis, and Members of the Committee, thank you for the opportunity to testify today.

My name is Aissa Canchola Bañez, and I am the policy director of the Student Borrower Protection Center (SBPC). SBPC is a national nonprofit organization focused on eliminating the burden of student debt for millions of Americans. We engage in advocacy, policymaking, and litigation strategy to rein in industry abuses, protect borrowers' rights, and advance racial and economic justice.

Before my time at the SBPC, I spent nearly a decade on Capitol Hill, supporting policymakers in crafting and advancing policies to address the growing student loan debt crisis, better support student loan borrowers, and help make college more affordable for working families across this country. I also proudly served in the Office for Students and Young Consumers at the Consumer Financial Protection Bureau (CFPB), working in partnership with impacted communities to spot harmful trends in student lending and identify the unique ways that student debt was harming families.

It is an honor to participate in this critically important hearing today—which marks the first time in **more than a decade** that the United States Senate is holding a hearing solely focused on the crisis of private student lending across our country.

For too long, private student loan debt has been overlooked due to the colossal size of the federal student loan debt market. National headlines on the scope and harm of the student debt crisis have primarily focused on this larger market, underrepresenting the problems of the smaller—yet substantial and growing—levels of private student lending across our communities. This has allowed for significant gaps to develop in protections for the millions of borrowers forced to take on private student loan debt, hindering the ability of policymakers and law enforcement officials seeking to ensure compliance with the law. Consequently, predatory actors have flown under the radar as they exploit borrowers at every stage of the student loan lifecycle, from origination through repayment and even into collections.

It is absolutely crucial that federal policymakers prioritize the millions of Americans crushed under the weight of private student loan debt and rein in the predatory actors and practices that push working people further into economic distress.

The Private-Sector Financial Firms at the Center of the Student Loan System and the Economy

A growing body of research has documented the burden student debt poses on individual borrowers, their families, their communities, and the U.S. economy at large.[1] At every step, private companies rake in windfalls off of the backs of these borrowers. These companies take many forms across the higher education sector and the student loan market—banks like Sallie Mae,[2] Citizens Bank,[3] Key Bank,[4] and PNC,[5] nonbank financial firms like Navient,[6] Maximus, and Accenture,[7] nonbanks-turned-banks like

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[1] *See, e.g.,* 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 home ownership rates); Justin Weidner, *Does Student Debt Reduce Earnings?*, Princeton U. (Nov. 2016), 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."); 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."); 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 (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.

[2] *Student Loans*, Sallie Mae, https://www.salliemae.com/student-loans/ (accessed on Sept. 12, 2024).

[3] *Private Student Loans*, Citizen, https://www.citizensbank.com/student-loans/private-student-loans.aspx (accessed on Sept. 12, 2024).

[4] *Refinance Student Loans*, Laurel Road, https://www.laurelroad.com/refinance-student-loans (accessed on Sept. 12, 2024).

[5] *Private Student Loans*, PNC, https://www.pnc.com/en/personal-banking/borrowing/private-student-loans.html (accessed on Sept. 12, 2024).

[6] *Navient*, Navient, https://navient.com/ (accessed on Sept. 12, 2024).

[7] *Federal Services,* MAXIMUS, https://maximus.com/federal (accessed September 13, 2024), and *Accenture Federal Services*, Accenture, https://www.accenture.com/us-en/industries/accenture-federal-services (accessed September 13, 2024).

Nelnet and SoFi,[8] debt collectors,[9] brokers of student data,[10] smaller subprime lenders,[11] and more. In addition, over the past decade, many of the largest investment and private equity firms in the world, like Carlyle, Blackstone, KKR, and Apollo, have become major holders of private student loans, buying up legacy loan portfolios from Wells Fargo,[12] Discover,[13] and Truist banks.[14]

These private firms often play a variety of roles across the student loan system—originating private student loans,[15] designing tuition payment plans and other financial products in partnership with college financial aid offices,[16] securitizing private student loans[17] and older federal loans backed by the U.S. Department of Education,[18] and serving as federal contractors collecting on student debts owed to the U.S. government.[19] The largest of these firms often serve many, if not all, these functions and more—touching tens of millions of Americans' financial lives as they consider how to pay for college, when and if they can complete their education, how they can begin to repay their student loans, and when they are looking for advice about accessing protections under the law, affordable repayment terms, and refinancing and other options to get out of debt.

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[8] *Nelnet*, Nelnet, https://nelnetinc.com/ (accessed on Sept. 12, 2024).; *SoFi*, SoFi, https://www.sofi.com/ (accessed on Sept. 12, 2024).

[9] *Home*, Ascendium Education Group, https://www.ascendiumeducation.org/ (accessed on Sept. 12, 2024); *ECMC*, ECMC, https://www.ecmc.org/ (accessed on Sept. 12, 2024).

[10] *Home*, National Student Clearing House, https://www.studentclearinghouse.org/ (accessed on Sept. 12, 2024).

[11] *See, e.g., Stride Funding*, Stride Funding, https://www.stridefunding.com/ (accessed on Sept. 12, 2024).

[12] Hannah Levitt, *Wells Fargo to Sell Student Loan Book to Apollo, Blackstone*, Bloomberg (Dec. 18, 2020), https://www.bloomberg.com/news/articles/2020-12-19/wells-fargo-to-sell-student-loan-book-to-apollo-blackstone.

[13] *Discover Financial Services Announces Agreement to Sell Private Student Loan Portfolio*, Discover Financial Services (July 17, 2024), https://investorrelations.discover.com/newsroom/press-releases/press-release-details/2024/Discover-Financial-Services-Announces-Agreement-to-Sell-Private-Student-Loan-Portfolio/default.aspx.

[14] *Carlyle buys $415 mln student loan portfolio from Truist*, Reuters (Jan. 24, 2024), https://www.reuters.com/business/finance/carlyle-buys-415-mln-student-loan-portfolio-truist-2024-01-24/.

[15] Consider, for example, the Nelnet family of companies which include private student lender Nelnet Bank, private-label loan servicer Firstmark, federal student loan servicing contractor Nelnet, and tuition payment plan facilitator Nelnet Campus Commerce. For further discussion *see*, Nelnet Inc.,*2023 Annual Report*, (2023), https://s21.q4cdn.com/368920761/files/doc_downloads/2024/1278742_Nelnet_Annual_Report_2023_DIGITAL-ARS-Filing.pdf.

[16] *CFPB Report Finds College Tuition Payment Plans Can Put Student Borrowers at Risk*, Consumer Fin. Prot. Bureau (Sep. 14, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-college-tuition-payment-plans-can-put-student-borrowers-at-risk/.

[17] *Navient Private Education Refi Loan Trust 2024-A*, Navient, https://navistoprdncusinv001.blob.core.windows.net/abs/Navient-Student-Loan-Trusts/2024/2024-A/NAVIENT-PRIVATE-EDUCATION-REFI-LOAN-TRUST-2024-A.pdf.

[18] For further discussion of the market for student loan asset-backed securities (SLABS), *see* Structured Finance Association, *Learning Curve: Unpacking Shifts in Student Loan ABS* (May 2024), https://structuredfinance.org/wp-content/uploads/2024/05/SFA-Research-Corner_Learning-Curve_Unpacking-Shifts-in-Student-Loan-ABS-1.pdf.

[19] For further discussion, *see* Consumer Financial Protection Bureau, *Issue Spotlight: Return to Repayment* (2024), https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-federal-student-loan-return-to-repayment/.

This story of the student debt crisis is also a story about corporate power, greed, regulatory capture, and the hollowing out of public goods and services. **It did not need to be this way.**
For half a century, these private companies have pushed lawmakers and regulators to embrace the financialization of higher education.[20] Rather than providing universal access to free public education, policymakers have allowed higher education to become a largely private financial transaction—individual families cobble together vouchers, grants, federal student loans, and private credit with the hope that it will be enough to pay for college. This shift, from treating higher education as a shared societal responsibility to an individual burden, is precisely the opposite of how we conceptualize and fund K-12 education. This shift largely occurred at the same time that many marginalized communities gained access to higher education for the first time.

As more and more Black, brown, and female students demanded access to more degrees and credentials, relatively fewer and fewer public resources were marshaled to help them make ends meet. Nationally, per-student state funding for higher education remains below 2001 levels, and 27 states currently spend less per student than they did in 1980.[21] Meanwhile, the voucherized federal financial aid system has not kept pace with rising costs. The federal Pell Grant currently covers barely one-quarter of the cost of attending a public four-year college, the lowest level since its inception,[22] forcing students to turn to federal and private student loans to simply meet the cost of attendance, or not attend altogether.

Research shows that one of the most significant risks to college completion is the lack of liquidity available to current students.[23] The price of higher education includes far more than tuition, particularly for students at public four-year and community colleges.[24] Students' lack of financial resources results in widespread food insecurity, tenuous access to stable housing, and even homelessness,[25] while many are often forced to work long hours or multiple jobs, which jeopardizes their ability to make it to class, engage in their studies, or complete their degree. Students in higher education are also often locked out of other safety net programs that could help them meet their needs, forcing them further into debt or facing short- and long-term financial ruin.[26] And at every step, private firms find and exploit the weak spots in

[20] *See* Charlie Eaton, *Bankers in the Ivory Tower* (2022); Ryann Leibenthal, *Burdened: Student Debt and the Making of an American Crisis* (2024).
[21] *See* Table 3.2, State Higher Education Finance report, State Higher Education Executive Officers Association (2023), https://shef.sheeo.org/report-2/?report_page=enrollment-and-state-funding#education-appropriations.
[22] *How Congress Can Strengthen the Pell Grant Program to Make College More Affordable for Millions of Americans*, The Institute For College Access and Success (Aug. 2024), https://ticas.org/wp-content/uploads/2023/08/How-Congress-Can-Strenthen-the-Pell-Grant-Program-and-Make-College-More-Affordable-for-Millions-of-Americans.pdf.
[23] *See* Stephanie Marken & Zach Hrynowski, *Cost Leading Reason College Students Are Stopping Out*, Gallup (June 2024), https://news.gallup.com/poll/646088/cost-leading-reason-college-students-stopping.aspx.
[24] *Trends in College Pricing and Student Aid 2023*, The College Board, https://research.collegeboard.org/trends/college-pricing.
[25] *New Federal Data Confirm that College Students Face Significant—and Unacceptable—Basic Needs Insecurity*, The Hope Center (Aug. 2023), https://hope.temple.edu/npsas.
[26] *See* Leslie Rios, Carrie Welton, and Mark Huelsman, *The State of State Choices: A national landscape analysis of postsecondary eligibility restrictions and opportunities in SNAP, CCDF, and TANF*, The Hope Center (May 2024), https://hope.temple.edu/public-benefits-eligibility-students; Amy-Ellen Duke-Benfield, *Exploring How Public Benefits Can Help Support Postsecondary Students From Low-Income Backgrounds*, Postsecondary Value Commission (2021), https://files.eric.ed.gov/fulltext/ED617071.pdf; Lilah Burke, *Work Rules For Benefits*

the financial lives of the most precarious students—pushing for-profit short-term programs paid for with high-rate debt, exotic subprime private student loans, short-term credit and debt instruments, and even bait-and-switch tuition payment plans that turn into long-term debts.

These are the predictable results of a system and a set of policies that fail to invest in students, families, and public goods. Public investment in higher education that meets the moment and the needs of students is essential if we are going to eradicate some of the most predatory actors in the higher education and student loan systems.

The remainder of this testimony will focus on the market for private debt and credit across the higher education sector and the risks and challenges students and borrowers face. It will touch on traditional private student loans, exotic shadow student debt like Buy Now, Pay Later credit and income-share agreements (ISAs), workplace debt tied to training and owed to big corporations, and debts owed directly to colleges and universities.

Before exploring each of these types of debt or credit in turn, it is essential to highlight the growing role one firm now plays at the center of both the federal and private student loan markets: the Higher Education Loan Authority of Missouri or MOHELA.

MOHELA has repeatedly drawn negative headlines and oversight, including from the Senate Banking Committee, for its systematic abuse of its customers with federal student loans.[27] These abuses are myriad and ongoing, but are not limited to the federal student loan market. In private litigation, MOHELA has been accused of steering its federal student loan borrowers towards private refinancing options with lenders whose private student loans MOHELA also services.[28] Subprime private student loans serviced by Knowledge Finance, a subsidiary of MOHELA, are widely understood to have been made via deception and fraud and have been the subject of litigation in courtrooms across the country.[29]

Programs Deter Low-Income Americans From Going To College, The Hechinger Report (June 24, 2023), https://hechingerreport.org/work-rules-for-benefits-programs-deter-low-income-americans-from-going-to-college/.

[27] *See, e.g.,* U.S. Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Economic Policy, *MOHELA's Performance as a Student Loan Servicer* (April 2024), https://www.banking.senate.gov/hearings/mohelas-performance-as-a-student-loan-servicer; *see also* Student Borrower Prot. Ctr. and American Fed. of Teachers, *The MOHELA Papers* (2024), www.mohelapapers.org.

[28] *See* Caldiero v. Missouri Higher Education Loan Authority, 3:24-cv-00315, (M.D. Penn.), https://www.courtlistener.com/docket/68300876/caldiero-v-missouri-higher-education-loan-authority/.

[29] Consider, for example, the downfall of scandal-plagued ISA firm Vemo Education, Inc. Vemo facilitated ISAs at scam for-profit schools like MakeSchool, Inc, and large public colleges like Purdue University. After collapsing under the weight of mounting lawsuits, ISAs facilitated by Vemo Education were transferred to nonbank subprime student lender Stride Funding, serviced exclusively by MOHELA subsidiary Knowledge Finance. *See* Stride Funding, *Welcome to Stride* (accessed September 13, 2024), https://www.stridefunding.com/welcome-kf ("What Happened to Vemo? Vemo will be closing their business and will fully shut down as of July 1, 2022. Students held in Vemo's portfolio have been transferred to Stride for continuation of the servicing of their ISAs.") *and* ("How will I interact with my new servicer? You will receive an email from your new servicer, Knowledge Finance, to create a login and to confirm your account details. From there you will begin to make your new payments on this platform rather than making payments to Vemo."). For further discussion of Vemo Education's business practices, *see also* Student Borrower Prot. Ctr., *Selling Out Students* (2023),

The recent growth of MOHELA's private student loan business comes after more than a decade of deals with banks and fintech lenders from Wall Street to Silicon Valley.[30] The pace of these deals continues to accelerate, as the once-small state-backed financial firm strives for market dominance. In just five weeks, MOHELA will become one of the largest market participants in the *private* student loan market.[31] As we sit here today, MOHELA is onboarding millions of borrowers in Navient's portfolio of private student loans—including loans made to students at for-profit colleges through deception and fraud that have also drawn scrutiny from members of this committee.[32]

Less than one week ago, Navient entered into a blockbuster settlement with the CFPB, accepting a permanent ban from servicing and buying federal student loan debt.[33] It also agreed to a range of conduct requirements intended to remedy a decade of its own unlawful private student loan servicing. MOHELA's executives will now be responsible for carrying out Navient's obligations under the terms of this settlement—holding the financial futures of Navient's private student loan customers in their hands.

MOHELA's continued, rapid growth in spite of widespread, well-documented illegal practices should raise alarms for policymakers. A decision by the U.S. Department of Education to fire MOHELA is necessary but not sufficient to address this firm's legacy of mismanagement and abuse—the firm and its executives must face justice and borrowers must be made whole.

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https://protectborrowers.org/selling-out-students-a-case-study-in-brand-name-schools-partnering-with-for-profit-scammers-to-make-a-buck/.

[30] *See, e.g.*, *MOHELA is committed to providing SoFi members a first-rate customer experience*, MOHELA (accessed September 13, 2024), https://sofi.mohela.com/; *MOHELA is committed to providing Laurel Road customers a first-rate customer experience*, MOHELA (accessed September 13, 2024), https://laurelroad.mohela.com/; and *Say Hello to MOHELA*, Navient (accessed September 13, 2024), https://navient.com/loan-servicing/mohela/.

[31] *See* Forbes, *Navient Outsources Servicing Of 2.7 Million Student Loans To Its Rival MOHELA—Is Your Loan Affected?* (February 2024), https://www.forbes.com/advisor/student-loans/navient-transfers-servicing-of-student-loan-portfolio/ and Navient, *Say Hello to MOHELA* (accessed September 13, 2024); ("Loan Servicing Transition Updates: On October 21, 2024, MOHELA will begin servicing your student loans instead of Navient.).

[32] For further discussion of Navient's portfolio of private student loans and the ongoing risks these loans pose to former for-profit college students, *see* U.S. Senator Elizabeth Warren, *Warren, Dean, Over 30 Lawmakers Urge Navient to Reform Flawed Process to Cancel Student Loans Pushed onto Borrowers Attending Fraudulent, For-Profit Colleges* (August 2024), https://www.warren.senate.gov/newsroom/press-releases/warren-dean-over-30-lawmakers-urge-navient-to-reform-flawed-process-to-cancel-student-loans-pushed-onto-borrowers-attending-fraudulent-for-profit-colleges.

[33] *CFPB Bans Navient from Federal Student Loan Servicing and Orders the Company to Pay $120 Million for Wide-Ranging Student Lending Failures*, Consumer Fin. Prot. Bureau (September 12, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-navient-from-federal-student-loan-servicing-and-orders-the-company-to-pay-120-million-for-wide-ranging-student-lending-failures/.

The Opaque and Growing Private Student Loan Debt Market and the Risks for Borrowers

Estimates indicate that there are more than $133 billion in private student loans in the U.S. originated by banks, credit unions, and other mainstream private lenders.[34] Today, private student loan debt makes up roughly 8 percent of the total outstanding student loan debt.[35]

This topline estimate likely understates the amount of outstanding debt associated with paying for college or other training after high school. As discussed further below, families rely on a broad range of financial products outside of the traditional bank-based student loan market, taking on "shadow student debt" to make ends meet.[36]

While a relatively small percentage of the overall student loan debt is owed by private student loan borrowers, these loans are notable for their lack of consumer protections relative to other products, particularly federal student loans.[37] Importantly, private student loan borrowers are not eligible for the same cancellation options, such as Public Service Loan Forgiveness and Total and Permanent Disability discharge.[38] They are also not guaranteed flexible repayment options, such as deferments, forbearances, and Income-Driven Repayment.[39] Moreover, the CFPB has found that private student loan borrowers have limited options to modify their payments during periods of financial distress,[40] and that cosigners (which are generally required) struggle to access promised release from these debts even after years of repayment.[41] Despite making up a relatively smaller percentage of the overall student loan debt market, the CFPB reported that one-in-four student loan-related complaints received between September 1, 2022, through August 31, 2023, concerned private student loans.[42] These troubling complaint trends suggest that

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[34] As of the second quarter of 2024, SBPC estimates that there is approximately $133.30 billion in outstanding private student loans from traditional private student lenders. SBPC calculations are 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 Sep. 4, 2024), 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 Sep. 4, 2024), https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls.

[35] *Report of the CFPB Education Loan Ombudsman*, Consumer Fin. Prot. Bureau (Oct. 2023), https://files.consumerfinance.gov/f/documents/cfpb_annual-education-loan-ombudsman-report_2023.pdf.

[36] For further discussion *see*, Student Borrower Prot. Ctr., *Shadow Student Debt* (2020), https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf; and *Report on the Economic Well-Being of U.S. Households,* Federal Reserve Board of Governors (2019) https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf ("Although most education debt is in the form of student loans, this is not always the case. Twenty-three percent of people with outstanding debt from their education indicated that at least part of this debt was on a credit card.")

[37] For further discussion, *see* 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).

[38] National Consumer Law Center, Student Loan Law § 16.2.1 Comparing Private Loans and Federal Loans (7th ed. 2023), updated at www.nclc.org/library.

[39] *Id.*

[40] *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.

[41] *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.

[42] *Supra* note 35.

private student loan borrowers continue to face significant challenges getting the support they need when experiencing financial distress.

Further, 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.[43]

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.[44] While industry-funded analyses claim that private student loan repayment rates and borrower outcomes are largely positive,[45] these market-level analyses fail to capture the lived experiences of borrowers in critical segments of the market, especially those from historically disenfranchised communities. 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.[46] When considering Black borrowers with Bachelor's degrees, that rate rises to almost *half* of Black borrowers with private student loans, and the disparity in hardship rises to almost *10 times* higher than the proportion for white borrowers with Bachelor's degrees.[47]

These outcomes suggest inequitable financial opportunities across the private student loan market. On one extreme, certain private student loan companies are targeting super-prime, wealthy, or high-earning-potential borrowers for loans and refinancing. At the other end, predatory players that are less represented in market-level data target vulnerable populations with products that feature high fees and interest rates.

This divergence is exemplified by the experiences of students who attend for-profit schools. These students represent only a subset of the private student loan market, but they are much more likely to rely on private student debt to finance their education, and they often face extremely poor labor market

[43] *Private Student Lending*, Student Borrower Prot. Ctr. (Apr. 2020), https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf at 15.
[44] *Id.*
[45] *See Latest Edition of Enterval Private Student Loan Report Highlights Steady Private Student Loan Repayment Trends*, Enterval Analytics (Augusts 2024), https://www.enterval.com/media/files/enterval/press-releases/enterval-psl-press-release-august-2024.pdf?v=20240822T134932; see also MeasureOne, *Vast Majority of Students and Families Successfully Managing Private Student Loans According to Latest MeasureOne Private Student Lending Research Report*, PR Newswire (Dec. 2019), https://www.prnewswire.com/news-releases/vast-majority-of-students-and-families-successfully-managing-private-student-loansaccording-to-latest-measureone-private-student-lending-research-report-300978406.html.
[46] 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/.
[47] *Id.*

outcomes after graduation.[48] The combination of these factors leaves them poised to struggle in repayment.

We see a similar divide among older private student loan borrowers who represent the fastest growing segment of student loan borrowers, in part due to the extraordinarily high rates of cosigners on private student loans.[49] As of 2024, over 92 percent of undergraduate private student loans were cosigned.[50] Nationwide, there have been thousands of complaints to state and federal regulators from cosigners who are unable to access documentation on their cosigned loan, receive accurate information on loan payment processing or notice of loan delinquency, or were denied their right to a cosigner release. According to a CFPB report, student loan servicers rejected 90 percent of borrowers who applied for cosigner release.[51] CFPB complaints data from older consumers from September 1, 2020, through August 31, 2021, affirm further indications of higher rates of private student loan distress among older consumers in comparison to younger consumers.[52] Through stringent payment requirements, limited notice of eligibility, and unscrupulous company practices, private student loan servicers created insurmountable challenges for older borrowers seeking cosigner release.[53] Several state attorneys general have sued over these provisions, and Navient was found liable for unlawfully denying cosigners applying to be released from private student loans.[54]

The dangers of these products matter in part because growth in this market had historically been accelerating just as the pace of federal student loan debt's onward march was finally slowing.[55]

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[48] *See* Richard Fry & Anthony Cilluffo, *A Rising Share of Undergraduates Are from Poor Families, Especially at Less Selective Colleges*, Pew Res. Ctr. (May 22, 2019), https://www.pewsocialtrends.org/2019/05/22/a-rising-share-ofundergraduates-are-from-poor-families-especially-at-less-selective-colleges/; *see also* Stephanie Riegg Cellini & Nicholas Turner, *Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data*, 54 J. Hum. Resources 342, 345 (2019) ("Examining the distribution of average annual earnings effects and average annual debt payments reveals that the vast majority of for-profit students experience both higher debt and lower earnings after attendance, relative to the years before attendance.").

[49] *See Private Student Loan Report*, Enterval Analytics (Aug. 2024), https://www.enterval.com/products/enterval-private-student-loan-report/; *see also* Consumer Fin. Prot. Bureau, *Private Student Loans* (Aug. 29, 2012), https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

[50] *Id.*

[51] *CFPB Finds 90 Percent of Private Student Loan Borrowers Who Applied for Co-Signer Release Were Rejected*, Consumer Fin. Prot. Bureau (June 18, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-90-percent-of-private-student-loan-borrowers-who-applied-for-co-signer-release-were-rejected/.

[52] *Report of the CFPB Education Loan Ombudsman* 18, Consumer Fin. Prot. Bureau (Oct. 2021), https://files.consumerfinance.gov/f/documents/cfpb_education-loan-ombudsman-annual-report_2021.pdf.

[53] *Mid-Year Update on Student Loan Complaints* 10, Consumer Fin. Prot. Bureau (June 2015), https://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf.

[54] *See, e.g.*, Office of the Attorney General, State of Washington, *AG Ferguson: Judge rules national student loan servicer Navient broke the law in servicing student loan debt* (Mar. 5, 2021), https://www.atg.wa.gov/news/news-releases/ag-ferguson-judge-rules-national-student-loan-servicer-navient-broke-law.

[55] *See generally Private Student Loans*, Student Borrower Prot. Ctr. (2020), https://protectborrowers.org/130-billion-psl-market/; *see also CFPB Estimates $88 Billion in Medical Bills on Credit*

Prior to the pandemic, the private student loan market grew 71 percent over the decade following the great recession, outpacing the mortgage, auto, and credit card markets over the same period in terms of annualized expansion.[56] The total volume of outstanding private student loan debt has remained stable, post-pandemic.[57] **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.**[58]

Private and federal student loan originations are trending in opposite directions. Over the second half of the decade prior to the pandemic, new annual private student loan issuance grew 42 percent while the amount of new yearly federal student lending shrunk by more than 16 percent.[59] More recent data show that both private and federal student loan originations declined in the immediate aftermath of the pandemic; however, new private student loan originations are poised to reach their highest levels in more than a decade this year.

While federal student loans remain a major burden, the divergence within the private student loan market points to an emerging reality wherein private credit and its dangers are playing a growing role in students' financial lives. Meanwhile, it has been more than a decade since the main federal regulator of private student loans, the CFPB, exhaustively studied and reported on this market.[60]

Private Student Loan Borrowers are Left at the Mercy of Their Lenders and Struggle to Access Relief

To make matters worse, private student loan borrowers who struggle have few avenues for relief or recourse. While federal action to mitigate the financial distress brought on by the coronavirus pandemic helped to prevent a mass wave of delinquencies and defaults among federal student loan borrowers, borrowers with private student loans were excluded from this relief and left at the mercy of their private lenders.[61] Despite public statements from private student loan companies promising borrowers a pathway toward relief from unaffordable monthly payments, it remains unclear whether borrowers were ever able to access this relief.[62]

Reports, Consumer Fin. Prot. Bureau (2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-estimates-88-billion-in-medical-bills-on-credit-reports/.

[56] *Id.*

[57] *See Private Student Loan Report*, Enterval Analytics (Aug. 2024), https://www.enterval.com/products/enterval-private-student-loan-report/; *See also* SBPC estimate of private student loan market volume, supra note 34.

[58] *Id.*

[59] *Id.*

[60] *Supra* note 49.

[61] *Private Student Loan Oversight Amid the Coronavirus Pandemic*, Student Borrower Prot. Ctr. (April 2020), https://protectborrowers.org/private-student-loan-oversight-amid-the-coronavirus-pandemic/.

[62] *See*, e.g., State of California, *California Provides Expansion of Student Loan Relief: Most Private Loan Servicers Agree to Help* (Mar. 2020), https://dfpi.ca.gov/2020/04/23/california-provides-expansion-of-student-loan-relief-most-private-loan-servicers-agree-to-help/; and *see, contra, Supervisory Highlights COVID-19 Prioritized Assessments Special Edition*, Consumer Fin. Prot. Bureau (Winter 2021), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-23_2021-01.pdf, ("Multiple

While the Biden-Harris Administration has made unprecedented progress in alleviating the burden of federal student loan debt by cancelling nearly $170 billion for nearly 5 million borrowers, borrowers with private student loans have been ineligible for this relief.[63] For former students defrauded by a for-profit college, the contrast between the treatment of federal and private student loan debts is particularly sharp. Since 2021, the Biden-Harris Administration has worked to discharge nearly $29 billion in federal student loan debt for more than 1.6 million borrowers who were defrauded by their schools or attended a school that suddenly closed its doors.[64]

While private student loan borrowers are ineligible for these federal categories of relief, they do have rights under the Federal Trade Commission's "Holder-in-Due-Course Rule" (Holder Rule) to contest the repayment of private student loans that were borrowed based on fraudulent representations.[65] Despite growing evidence of fraud and abuse in the for-profit college sector, including in high-profile legal settlements by state and federal agencies, CFPB complaints indicate that private student loan borrowers who were defrauded by their schools are often denied recourse by their private student loan company or servicer—even when they cite the same evidence that led to the discharge of their federal student loan debt.[66] Private student loan companies have also been found sharing misleading information with borrowers claiming that there is no pathway for loan discharge due to fraudulent misrepresentations.[67]

When private student loan borrowers attempt to seek justice and hold private student loan companies and servicers accountable, they face particularly difficult hurdles. 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.[68] Many private student loans cannot be discharged in bankruptcy.[69]

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servicers failed to routinely discuss all available repayment options with borrowers requesting payment assistance.").

[63] U.S. Department of Education, *Biden-Harris Administration Approves Additional $1.2 Billion in Student Debt Relief for 35,000 Public Service Workers* (July 2024), https://www.ed.gov/news/press-releases/biden-harris-administration-approves-additional-12-billion-student-debt-relief-35000-public-service-workers.

[64] *Id.* ("$28.7 billion for more than 1.6 million borrowers who were cheated by their schools, saw their institutions precipitously close, or are covered by related court settlements.").

[65] 16 C.F.R. Part 433.

[66] *See*, e.g. Senator Elizabeth Warren, *Over 30 Lawmakers Urge Navient to Reform Flawed Process to Cancel Student Loans Pushed onto Borrowers Attending Fraudulent, For-Profit Colleges* (Aug. 2024), https://www.warren.senate.gov/newsroom/press-releases/warren-dean-over-30-lawmakers-urge-navient-to-reform-flawed-process-to-cancel-student-loans-pushed-onto-borrowers-attending-fraudulent-for-profit-colleges; For further discussion, *see*, Student Borrower Prot. Ctr., *Income Share Agreements and the FTC's Holder Rule* (Mar. 2021), https://protectborrowers.org/wp-content/uploads/2021/05/SBPC_Holder_Rule_Final.pdf; *see also* Student Borrower Prot. Ctr., *Delivering Distress: How Student Loan Companies Cheat Borrowers Out of Their Rights* (Oct. 2023) at p.53, https://protectborrowers.org/wp-content/uploads/2023/10/Delivering-Distress-Report.pdf.

[67] *Id. See also supra* note 35.

[68] *Arbitration Study*, Consumer Fin. Prot. Bureau (2015), https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf at 31.

[69] 11 U.S.C § 523.

The Growing Shadow Student Debt Market

Hiding behind America's $1.75 trillion mountain of federal and mainstream private student loan debt sits a growing, 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.[70] 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 consumer financial products tied to higher education and workforce training. 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.[71] Shadow student debt keeps disgraced colleges afloat, ranging from questionable for-profit vocational "bootcamps"[72] to massive for-profit school chains whose scandals were guideposts to the last decade of the student debt crisis.[73]

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[70] *Shadow Student Debt*, Student Borrower Prot. Ctr. (2020), https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf.

[71] *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), 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-millionsat-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/.

[72] *Id.*

[73] *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); *CFPB Takes Action Against Aequitas Capital Management for Aiding Corinthian Colleges' Predatory Lending Scheme*, Consumer Fin. Prot. Bureau (Aug. 17, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-aequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme/; *CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme*, Consumer Fin. Prot. Bureau (Sept. 16, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme/.

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 online 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.[74] Climb Credit was also at the center of private litigation alleging that it had entered into an unlawful "preferred lender" arrangement as part of a coding bootcamp run by 2U.[75]

- For-profit education services companies known as "online program managers"—private companies like **2U, Zovio, Promineo, 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.[76]

- 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.[77] Earlier this year, the Federal Trade Commission brought an enforcement action against CareerStep, a so-called career training provider, for deceiving and cheating members of the military; the firm still uses Affirm as its preferred provider of student financing.[78]

- Established private student lenders such as **Sallie Mae and Navient and third-party loan servicers like the Pennsylvania Higher Education Assistance Agency (PHEAA)** 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

[74] *The CFPB Must Investigate Climb Credit and Protect Borrowers Across the Dangerous, High-Cost Shadow Student Debt Market*, Student Borrower Prot. Ctr., https://protectborrowers.org/the-cfpb-must-investigate-climb-credit-and-protect-borrowers-across-the-dangerous-high-cost-shadow-student-debt-market/.

[75] *See*, e.g. *A Hidden Risk of Online Higher Education*, Student Borrower Prot. Ctr. (2024), https://protectborrowers.org/a-hidden-risk-of-online-higher-education/.

[76] *Pushing Predatory Products: How Public Universities are Partnering with Unaccountable Contractors to Drive Students Toward Risky Private Debt and Credit*, Student Borrower Prot. Ctr. (June 2021), https://protectborrowers.org/wp-content/uploads/2021/06/SBPC_OPM.pdf.

[77] *Point of ~~Sale~~ Fail: How a Flood of "Buy Now, Pay Later" Student Debt is Putting Millions at Risk*, Student Borrower Prot. Ctr. (Mar. 2022), https://protectborrowers.org/wp-content/uploads/2022/03/SBPC_BNPL.pdf.

[78] *See* Federal Trade Commission, *Career Step to Pay $43.5 Million in Cash and Debt Cancellation to Resolve Charges It Used Deceptive Advertising to Lure Servicemembers and Their Spouses* (2024); https://www.ftc.gov/news-events/news/press-releases/2024/07/career-step-pay-435-million-cash-debt-cancellation-resolve-charges-it-used-deceptive-advertising?utm_source=govdelivery; and CareerStep, *Payment Options* (accessed September 13, 2024), https://www.careerstep.com/help/payment-options/ (permalink: https://perma.cc/6FGE-XFUF), ("Affirm is a new way to pay over time with no late fees, penalties, or surprises.").

bankruptcy.[79] Earlier this year, the CFPB brought an enforcement action against PHEAA for PHEAA's role in this scheme.[80]

- Companies peddling **income share agreements** have proven central to a seemingly unending line of fly-by-night bootcamp frauds and scams,[81] all while deploying discriminatory pricing models,[82] making deceptive marketing claims,[83] loading contracts with harmful and illegal trap terms and fees,[84] unduly servicing unenforceable debt,[85] and denying in the first place that their product is

[79] *Morally Bankrupt: How the Student Loan Industry Stole a Generation's Right to Debt Relief*, Student Borrower Prot. Ctr. (Jan. 2022), https://protectborrowers.org/wp-content/uploads/2022/01/SBPC_Morally-Bankrupt.pdf.
[80] Consumer Financial Protection Bureau, *CFPB Sues Student Loan Servicer PHEAA for Pursuing Borrowers for Loans Discharged in Bankruptcy* (2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-student-loan-servicer-pheaa-for-pursuing-borrowers-for-loans-discharged-in-bankruptcy/.
[81] *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 Swaninathan, *For-Profit Coding School Sued Over Allegedly 'predatory' Student Contracts*, Yahoo (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 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/.
[82] *Inequitable Student Aid: A Case Study of Disparate Lending Practices and Educational Redlining Tactics in the Market for Income Share Agreements*, Student Borrower Prot. Ctr. (Mar. 2021), https://protectborrowers.org/wp-content/uploads/2021/03/SBPC_Inequitable-Student-Aid.pdf.
[83] *Advocates File Complaint with Federal Trade Commission, Urge Enforcement Action Against Vemo Education for Its Deceptive Marketing of Income-Share Agreements to Students,* Student Borrower Prot. Ctr. (June 1, 2020), https://protectborrowers.org/vemo-release/.
[84] 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/.
[85] 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/.

even a form of debt or credit.[86] Earlier this year, the CFPB banned the **coding bootcamp BloomTech** (formerly Lambda School) and its founder Austen Allred from the student lending industry for engaging in a years-long predatory lending scheme and defrauding current and former students.[87]

- 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.[88]

Underlying all of these shameful practices is the tendency of companies in the shadow student debt market to target and profit off of Black and Latino/a students, low-income students, veterans, and women, just like the predatory colleges these lenders prop up.[89] 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.[90] 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.[91] 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.[92]

Even though the loans held by NCSLT were made by the biggest banks more than 15 years ago and sold to investors before the financial crisis, they remain an ongoing locus of harm to borrowers and their families. In the past year alone, the Consumer Financial Protection Bureau has brought public enforcement actions against NCSLT and its contracted student loan servicer, the PHEAA for cheating

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[86] 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.

[87] *CFPB Takes Action Against Coding Boot Camp BloomTech and CEO Austen Allred for Deceiving Students and Hiding Loan Costs*, Consumer Fin. Prot. Bureau (April 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-coding-boot-camp-bloomtech-and-ceo-austen-allred-for-deceiving-students-and-hiding-loan-costs/.

[88] *PayPal's Partnerships With Over 150 For-Profit Schools Drive Students to Take on High-Cost Education Debt, Advocates Warn*, Student Borrower Prot. Ctr. (Aug. 2020), https://protectborrowers.org/150-2/.

[89] *Letter to the Consumer Fin. Prot. Bureau Re: Prioritizing the Student Debt Crisis as a Civil Rights Crisis,* Student Borrower Prot. Ctr. (Feb. 8, 2021), https://protectborrowers.org/wp-content/uploads/2021/02/SBPC_Students-loans-and-racial-equity.pdf at 4.

[90] For further discussion of direct-to-consumer private student lending, *see supra* note 49.

[91] 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.

[92] 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 at 11.

former students out of their rights.[93] These actions extend beyond the unlawful conduct first outlined in CFPB's landmark lawsuit against the trusts in 2017—a case that remains active in federal court seven years later.[94]

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 couple of the emerging trends and practices standing on the horizon of the student debt crisis:

- **Employers are increasingly using shadow student debt as a twisted new form of non-compete clause.** 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.[95] 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 and trap workers in low-paying jobs with poor working conditions. This year, the Federal Trade Commission finalized a new rule banning both non-compete agreements and "functional noncompete" agreements like TRAPs across much of commerce.[96] These predatory contracts have also been the target of multiple federal and state enforcement actions in 2024 alone.[97]

[93] *CFPB Takes Action to Require National Collegiate Student Loan Trusts and Pennsylvania Higher Education Assistance Agency to Pay More than $5 Million for Student Loan Servicing Failures, Consumer Fin. Prot. Bureau* (2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-require-national-collegiate-student-loan-trusts-and-pennsylvania-higher-education-assistance-agency-to-pay-more-than-5-million-for-student-loan-servicing-failures/.

[94] Consumer Financial Protection Bureau v. National Collegiate Master Student Loan Trust, 1:17-cv-01323, (D. Del.).

[95] For further discussion of TRAPs as a form of shadow student debt, *see* Student Borrower Prot. Ctr., *Trapped at Work* (2022), https://protectborrowers.org/trapped-at-work-how-big-business-uses-student-debt-to-restrict-worker-mobility/; and Consumer Fin. Prot. Bureau, *Consumer risks posed by employer-driven debt,* Issue Spotlight (July 2023), https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-consumer-risks-posed-by-employer-driven-debt/.

[96] 89 FR 38502 (note that this rule has been enjoined, pending appeal).

[97] *See*, e.g., U.S. Department of Labor Office of the Solicitor, *Department of Labor seeks court order to end IT staffing agency practices that exploit workers through a system akin to modern-day indentured servitude* (2024); https://www.dol.gov/newsroom/releases/sol/sol20240710; and Attorney General of Pennsylvania, *AG Henry*

- **Campus card providers continue to levy predatory junk 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 hidden, exploitative, and unavoidable junk fees.[98] 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.[99] The U.S. Department of Education is preparing new rules to ban the highest and most egregious junk fees in this market, but these rules are not yet final and students remain vulnerable.[100]

Over the last several years, the growth of institutional debt has begun to garner necessary attention at the national and state level—shedding light on the problematic ways that colleges and universities are taking on a growing role as creditors and leveraging overly punitive debt collection tools to prey on students.[101]

While data is limited, research estimates 6.6 million individuals owed $15 billion in institutional debts[102]—a troublingly underregulated private debt market that continues to grow. Institutional debt refers to any debt that students or former students owe directly to schools rather than the government or private lenders and can range from library fines to parking tickets to unpaid fees and tuition. Although often overlooked or underappreciated as a form of student debt, these private education debts are as legally enforceable as student loans owed to banks or to the federal government. Schools across the country have been found engaging in a variety of collection activities while seeking repayment of these debts. In California, researchers found that schools resort to withholding a student's diploma or transcript, preventing re-enrollment, and even placing students in private collections or subjecting them to tax benefit offsets.[103]

It is also important to note that these debts do not merely arise due to a student's refusal or inability to come up with the money. Research suggests that institutional debt most commonly arises when students

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Reaches Settlement with PetSmart over its Past Practice of Requiring Certain Pennsylvania Employees to Enter into Repayment Agreements for "Free" Training (2024), https://www.attorneygeneral.gov/taking-action/ag-henry-reaches-settlement-with-petsmart-over-its-past-practice-of-requiring-certain-pennsylvania-employees-to-enter-into-repayment-agreements-for-free-training/.

[98] *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/bcfp_foia_letter-to-department-education_record_2018-02.pdf.

[99] *Id.*

[100] *See*, U.S. Department of Education, *Negotiated Rulemaking on Program Integrity: Cash Management* (2023-2024), https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/cash-management-non-consensus.pdf.

[101] *Withholding Dreams*, Student Borrower Prot. Ctr. (Jan. 2021), https://protectborrowers.org/wp-content/uploads/2021/01/Withholding_Dreams_SBPC.pdf.

[102] Julia Karon, James Dean Ward, Katherine Bond Hill & Martin Kurzweil, Ithaka S+R, *Solving Stranded Credits* (Oct. 5, 2020), https://sr.ithaka.org/wp-content/uploads/2020/10/SR-Report-Solving-Stranded-Credits-100520.pdf.

[103] 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/.

relying on the federal "Title IV" federal aid programs, such as Pell Grants, withdraw from an academic program before they are able to complete. When a student withdraws early from school before completing a semester, a school must repay a portion of that student's Title IV funds to the federal government using a formula proportional to the amount of class time the student completed—a federal government policy known as "Return to Title IV." Most institutions—across two-year, four-year, and for-profit schools—created policies that then charge students for the amount of the Title IV aid returned to the federal government as part of their refund policies, which creates a balance on the student's account. These balances may be a few thousand dollars, for which the student should never have been responsible. Suddenly, students intending to pay off their education over time with loans and grants find themselves owing debts immediately due to their school.

Thankfully, states have begun to take action. In an attempt to better understand institutional debt and its impact on students and families, a study commissioned by the Virginia General Assembly in 2022 required public institutions in the state to report on their institutional debt and collection practices, including demographic data.[104] To our knowledge, this is the first and only report of its kind to draw on actual debt and demographic data, rather than extrapolation. The results make clear that these debts—similar to other private student loan debt—are not borne evenly across the enrolled student population and disproportionately burden low-income students, and Black and Latino/a students.

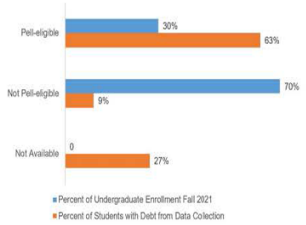
For example, although low-income students—as measured by their eligibility for a federal Pell Grant—make up only 30 percent of enrollment at Virginia's two-year public colleges, they comprise 63 percent of those students who owe debts to those schools.[105]

[104] Virginia Secretary of Education, *Report on Student Debt Collection Practices and Policies at Public Institutions of Higher Education (2022 Appropriation Act, Item 128.C),* Report Of The Secretary Of Education (Dec. 2022), https://rga.lis.virginia.gov/Published/2022/HD15/PDF.
[105] *Id.* at 16.

Pell-eligible students with debt at public two-year institutions

Student Type	Total Students with Debt	Share of Total Students with Debt	Total Debt Amount	Share of Total Debt	Average Debt Amount
Pell-eligible	9,402	63%	$7,221,639	71%	$768
Not Pell-eligible	1,369	9%	$1,121,655	11%	$819
Not Available	4,056	27%	$1,839,295	18%	$453
Total	**14,827**	**100%**	**$10,182,588**	**100%**	**$687**

Comparison of undergraduate enrollment and Pell-eligible students: public two-year institutions



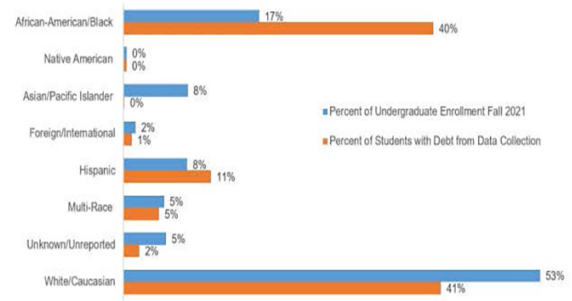
At those same schools, Black and Latino/a students comprise 17 percent and 8 percent of enrolled undergraduates, respectively, but make up 40 percent and 11 percent of those students who owe debts to their schools.[106] In addition, the average balance among Black students who owe an institutional debt to their school is more than $120 greater than the average balance among white students who do so, and the average balance among Latino/a students who owe on an institutional debt is more than $50 greater than the average balance among white students.

[106] *Id.* at 14.

Student debt by ethnicity at public two-year institutions

Ethnicity	Total Students with Debt	Share of Total Students with Debt	Total Debt Amount	Share of Total Debt	Average Debt Amount
African American/Black	5,897	40%	$4,397,713	43%	$746
Native American	59	0%	$45,834	0%	$777
Asian/Pacific Islander	20	0%	$11,232	0%	$562
Foreign/International	160	1%	$136,730	1%	$855
Hispanic	1,663	11%	$1,125,057	11%	$677
Multi-Race	680	5%	$481,312	5%	$708
Unknown/Unreported	305	2%	$212,136	2%	$696
White/Caucasian	6,043	41%	$3,772,575	37%	$624
Total	**14,827**	**100%**	**$10,182,588**	**100%**	**$687**

Comparison of undergraduate enrollment and student debt by race/ethnicity at public two-year institutions



Federal regulators have also begun to take notice. The CFPB sounded the alarms on many of the harmful debt collection tactics associated with institutional debt and began examining the in-house lending and collections practices of colleges and universities in 2022.[107] Later that year, the Bureau found that transcript withholding as a means of debt collection was an "abusive" act under the Consumer Financial

[107] *Consumer Financial Protection Bureau to Examine Colleges' In-House Lending Practices*, Consumer Fin. Prot. Bureau (Jan. 20. 2022), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/.

Protection Act of 2010 and directed lenders to cease this practice.[108] The Department of Education unveiled regulations in 2023 that went into effect in July 2024 to prohibit colleges and universities from withholding a transcript for courses paid for with federal financial aid.[109] States have also begun to enact legislation to rein in some of the overly punitive collections tactics used by schools and increase much-needed transparency.

- **California, Maryland, Washington, Oregon, and New York** now prohibit the practice of withholding transcripts,[110] and **Maine and Colorado** effectively ban the withholding of both transcripts and diplomas.[111] **Illinois** lawmakers have also passed a bill that would protect students' access to their transcripts for employment purposes,[112] and several other states have passed partial bans on the practice, including **Connecticut, Virginia, Minnesota, and Indiana.**
- Policymakers in **New York** are working to enact a comprehensive private student loan debt registry which would include data on the estimated $10 billion in private institutional debts owed by New Yorkers across the state.[113] This would make New York the first state to adopt a private debt registry bill (similar to those in **Colorado, Illinois, Connecticut, Maryland, Maine, and Louisiana)** that also incorporates information on institutional debt.
- Policymakers in **California** made unprecedented progress advancing legislation that would have required reporting and established consumer protections and common sense guardrails on the use of third-party debt collectors and tax benefit offset to collect on these debts.[114] While this legislation stalled in the California Senate, its progress demonstrates the need for more comprehensive action to increase transparency and extend critical consumer protections to this growing private debt market.

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[108] *Supervisory Highlights Student Loan Servicing Special Edition* 8, Consumer Fin. Prot. Bureau (Sept. 2022), Issue 27, Fall 2022, https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.

[109] U.S. Department of Education, *Biden-Harris Administration Releases Final Rules that Strengthen Accountability for Colleges and Consumer Protection for Students* (Oct. 2023), https://www.ed.gov/news/press-releases/biden-harris-administration-releases-final-rules-strengthen-accountability-colleges-and-consumer-protection-students.

[110] Cal. Civ. Code Title 1.6C.7, Educational Debt Collection Practices [1788.90-1788.93]; Md Code, Education, § 15-118, Transcripts and Debt, Prohibited Actions; RCW 28B.10.293, Collection of debts–conditions and limitations on institutions of higher education (Wa.); Or. Revised Statutes Section 350.210 - Prohibition against withholding transcript for student debt; S.5923-C/A6938-B, Relates to prohibited practices relating to student educational debt (N.Y.).

[111] *See*, Andrew Kenney, *Colorado College Students Will Get Access To Their Transcript And Diplomas, Even If They Haven't Paid Tuition And Other Debts*, CPR News (Apr. 25, 2022), https://www.cpr.org/2022/04/25/colorado-college-students-will-get-access-to-their-transcripts-and-diplomas-even-ifthey-havent-paid-tuition-and-other-debts/; Dan Neumann, *Students, Advocates Applaud New Law That Bans Withholding Transcripts Over Debt*, Maine Beacon (Apr. 5, 2022), https://mainebeacon.com/students-advocates-applaud-new-law-that-bans-withholding-transcripts-over-debt.

[112] Peter Hancock, *Lawmakers Pass Ban On Withholding College Transcripts*, Capitol News Illinois (Mar. 30, 2022), https://www.capitolnewsillinois.com/NEWS/lawmakers-pass-ban-on-withholding-college-transcripts.

[113] *See* S.8197/A.8913 (N.Y).

[114] *Assemblymember Pacheco Joins Coalition to Unveil the "Protecting Students from Creditor Colleges Act" on Institutional Debt*, Student Borrower Prot. Ctr. (Apr. 2023), https://protectborrowers.org/california-assemblymember-joins-students-to-unveil-ab-1160-on-institutional-debt/.

Conclusion

As the student debt crisis lurches forward into yet another decade, there is no shortage of new and evolving developments that desperately require the Committee's attention and urgent action. While dwarfed in size by the federal student loan portfolio, the expanding private student loan market poses huge dangers for borrowers, and policymakers must not underestimate these risks. Emboldened by obscurity and a dearth of consumer protections, private lenders have taken advantage of students and families desperately trying to better their lives with an education and few financial options. This must end.

Policymakers must take action to increase transparency within the private student loan market and rein in the abusive practices that have been allowed to run rampant for far too long.

Policymakers must hold the greedy companies that profiteer off the student loan debt crisis accountable. This starts by firing MOHELA and banning it from the student loan market once and for all.

In the end, we must cancel student loan debt and make college free.

For 45 million American families crushed under the weight of student loans, this moment could not be more dire.

Politically-motivated opportunistic lawsuits have taken aim at the economic stability of millions of student loan borrowers by challenging the Biden-Harris Administration's efforts to fix the broken student loan system and alleviate the crushing weight of student debt. Borrowers and their families are suffering the consequences of being treated like political pawns, unable to access affordable payments and plan for the future.

At the same time, the right-wing architects behind Project 2025 seek to keep borrowers drowning in student debt and throw millions of American families into the jaws of the private market. **Don't take my word for it, take theirs.** The extreme Project 2025 manifesto calls for:

- the elimination of the U.S. Department of Education;[115]
- the "privatization of all lending programs including subsidized, unsubsidized, and PLUS loans (both Grad and Parent);"[116]
- the removal of the Department of Education's authority to forgive debts under Borrower Defense to Repayment and the diminishment of the Department's ability to discharge federal and private student loans in instances where borrowers are defrauded by their schools; and[117]
- the elimination of the Public Service Loan Forgiveness program in its entirety, and the elimination of Income-Driven Repayment debt cancellation after 20 to 25 years.[118]

[115] The Heritage Foundation, *Mandate for Leadership: The Conservative Promise*, Project 2025 (Apr. 2023), at 285.
[116] *Id.* at 353.
[117] *Id.* at 354.
[118] *Id.* at 361.

These policies will further wreak havoc on borrowers, throw innumerable American families into a profoundly dangerous private student loan market, and will lock millions of our most vulnerable students out of the promise of a higher education altogether.

Thank you again for inviting me to participate in today's hearing, and I look forward to discussing potential solutions to help address the student loan debt crisis.

PREPARED STATEMENT OF BETH AKERS

SENIOR FELLOW, AMERICAN ENTERPRISE INSTITUTE

SEPTEMBER 17, 2024

Good afternoon, Chairman Warnock, Ranking Member Tillis, and distinguished Subcommittee Members. Thank you for the opportunity to testify today on the issues and concerns facing private student loans and servicers, as well as the State of Federal student lending.

At present there are more than 1.74 trillion dollars in student loans outstanding in the U.S. economy.[1] This is a massive amount of money that represents serious liabilities for millions of borrowers across the United States who are grappling with the process of repayment. This massive amount of outstanding debt also represents a tremendous liability to taxpayers. This is the result of President Biden's efforts to cancel student loans, which—if allowed to be implemented—will transfer that enormous liability away from the borrowers who took on the debt and onto taxpayers, many of whom never enrolled in college.

In contrast, private student loans make up just a small share of that outstanding debt. At present, 133 billion dollars of that total amount were borrowed from private lenders.

The Federal student loan program and the associated portfolio of outstanding loans are in complete disrepair due to MacGyver-esque efforts from the Biden administration to cancel student loans despite no legal pathway to do so. But the private student loan industry is a well-functioning consumer credit market.

Borrowers with private student loans are largely successful in repaying their debts. Recent reports from the industry suggest that the vast majority (97 percent) of borrowers are in good standing on their loans. And about three-quarters (72.5 percent) of them are successfully making payments. (About one-fifth of borrowers are not making payments because they are still enrolled and working toward their degrees.)[2]

Even before the COVID–19 pandemic and the subsequent modifications to student loan repayment that have undermined borrowers' likelihood of repaying their loans, repayment on Federal student loans was poor. In the 10 years preceding COVID–19—which fundamentally upset trends in repayment—during an average month in repayment status there was a 52 percent chance of payments being made.[3]

A loan program that fails to collect on the debt it issues should hardly be considered a loan program. Instead, it functions as a convoluted and opaque system of subsidies that encourages inflationary pricing from institutions and discourages thrift among borrowers.

Private student loan origination and servicing, both for Federal and private loans, hasn't been perfect. Lending institutions and those that service loans are fallible. But private entities supporting student lending, in any capacity, don't deserve the ire of lawmakers looking for a quick fix—or even a scapegoat—for what is happening more broadly in student lending. In fact, there are many ways in which the private loan market could offer a model for how the Federal loan program could be reformed to operate more effectively and efficiently.

The private student loan market is highly regulated, as it should be. Young people, who use student loans at high rates, can be naive to the trade-offs involved in different financial instruments, so it is imperative that lenders comply with high standards when it comes to consumer education and disclosure requirements. Private lenders are currently held to standards that exceed the disclosure requirements that are mandated in the Federal lending program. This likely contributes to the success in repayment seen among private student loans.

That said, there is room for improvement. For example, we should reconsider the treatment of private student loans in bankruptcy. Student loans are somewhat remote from eligibility for discharge during bankruptcy. Discharge of student loans does happen during some bankruptcy proceedings, but the standards for eligibility are opaque and too strict.

Lenders should face the liability of loans they originate not being repaid. This will encourage them, even more than they currently are, to only make loans in instances when they expect the borrower to be able to repay. This accountability is good for

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[1] Federal Reserve Board. (2024). Consumer Credit—G.19 Historical Data. *https://www.federalreserve.gov/releases/g19/HIST/cc-hist-memo-levels.html*

[2] Enterval. (2024). "Private Student Loan Semi Annual Report Ending Q1 2024". Enterval Analytics, LLC. *https://www.enterval.com/#reports*

[3] Alsalam, N., Ash, E., and Pierce, B. (2024). "Student Loan Repayment, 2009 to 2019". Congressional Budget Office. *https://www.cbo.gov/system/files/2024-09/58963-student-loan.pdf*

both the sector and student borrowers, even those who subsequently lose access to credit as a result.

I anticipate that the tone of the hearing today will reflect a general skepticism about private sector participation in student lending. There seems to be a persistent sense among left-leaning observers that profit seeking has no place in education at any level. In contrast, I believe that growing the role of the private sector could offer a solution to many of the challenges we are currently facing and have written as much, particularly in the arena of graduate student lending in a recent report. [4]

While the focus of the hearing today is on the subject of private student loans and servicers, I would be remiss not to voice my concern about the state of Federal student lending.

Servicers of Federal student loans are often villainized by those concerned with the plight of borrowers holding Federal student debt. But the actions taken in recent years by the Biden administration have taken a difficult job and made it practically impossible. Like all of us, servicers of Federal student loans make mistakes; some more than others. But if our goal is to put in place a lending program that is likely to succeed administratively, then the steps taken to complicate and manipulate the lending program, often on short notice, are steps in the wrong direction.

I am also deeply concerned, on behalf of taxpayers, about the exorbitant expense of these recent interventions. And concerned on behalf of Americans at the lawless nature in which the Administration is attempting to enact them. But I am most deeply concerned about the trajectory for higher education in the United States more generally.

The way that the Biden administration has intervened in the marketplace for higher education has effectively deteriorated any incentives that colleges and universities previously had to charge prices that are in line with the value they provide. Likewise, students, who were previously incented only to borrow what they needed and expected to repay, would be wise to exploit the taxpayer funded subsidies that are, unfortunately, free for the taking.

I am grateful that the Subcommittee has taken the time to delve into these important issues facing higher education and look forward to future action taken by Members of this Committee to pass legislation that would rectify the challenges we face. I thank you again for the opportunity to be here today to share my testimony and look forward to answering any questions.

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[4] Akers, B., Cooper, P., and Pitts, J. (2024). "How Private Student Lending Can Repair Higher Education". American Enterprise Institute. *https://www.aei.org/research-products/report/how-private-student-lending-can-repair-higher-education/*

PREPARED STATEMENT OF DALIÉ JIMÉNEZ

PROFESSOR OF LAW AND DIRECTOR, STUDENT LOAN LAW INITIATIVE, UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW

SEPTEMBER 17, 2024

Chairman Warnock, Ranking Member Tillis and members of the Subcommittee:

Thank you for the opportunity to speak to you today.

My name is Dalié Jiménez. I am a tenured professor at the University of California, Irvine School of Law, where I teach courses in consumer financial protection, contracts, bankruptcy, and secured credit.

At UCI, I co-lead the Student Loan Law Initiative, a project aimed at spurring more academic research on the issue of student debt.[3] I am also a co-principal investigator with the Princeton Debt Collection Lab, an interdisciplinary research initiative focused on studying and addressing issues related to debt collection in the United States.[4]

The views I express here are my own, however.

I'm grateful that this subcommittee is shining a light on this rapidly growing industry and financial products. In 2012, the CFPB issued the first and only comprehensive report on the private student loan industry, finding that after an explosion in the run up to the financial crisis of 2008, the industry had precipitously declined.[5] Today, it appears it be roaring back and reinventing itself, with some calling for the federal government to give it an even bigger push into growth.

I am here to tell you about some of the issues I am seeing and hearing about in the industry as it stands now, and to sound a note of **caution and a call for deeper investigation** into this industry, particularly the newer products.

The bottom line of my testimony is a plea that the Consumer Financial Protection Bureau (CFPB) take a more hands on approach to private student loans. As I will detail here, at least some issuers, buyers, and servicers of private educational debt are engaging in unfair, deceptive, and abusive practices that must be stopped. My testimony covers a great deal of ground, so I'll begin with some highlights:

(1) Today's private student loan market includes many more financial products than twelve years ago. These new products bring added risks that we are only beginning to understand. **To better understand the risks and harms in this market, the CFPB should create a registry of financial services firms and issue 1022(c)(4) orders to the largest providers of "traditional" and "shadow" student debt.**

(2) When borrowers can't repay their student loans, they often end up in bankruptcy or sued in state court. These systems are opaque and full of traps for debtors. I will detail several instances of apparent violations of consumer protection laws.

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[3] UC Student Loan Law Initiative, https://slli.org.
[4] Debt Collection Lab, https://debtcollectionlab.org/about-us.
[5] Consumer Financial Protection Bureau, Private Student Loans: https://www.consumerfinance.gov/data-research/research-reports/private-student-loans-report/ (Aug. 29, 2012).

The CFBP should proactively investigate these issues by studying court record microdata about bankruptcy and debt collection lawsuits.

I. Debts Owed to Institutions of Higher Education (IHE)

Institutions of higher education (IHE)—that is colleges, universities, technical schools, and others offering postsecondary instruction—offer students a variety of financial products that can fit under the umbrella of private student loan. They can take the form of loan from the IHE to the student, a "tuition repayment plan," an income share agreement, or a debt the student is billed for after goods or services have been provided. This is an opaque market, but one that appears to be on the rise. These products pose several consumer risks, ranging from the potential of misunderstanding/misleading representations, and imposing severe consequences such as withholding transcripts.

A. Tuition Payment Plans

IHEs that are eligible for Title IV funds (federal student aid) also tend to offer "tuition payment plans," products typically styled short-term loans without upfront interest, but which have enrollment and other fees. These loans lack protections available to federal student loans, and students may be misled by the information they are given. For example, many schools state that their tuition plans are "not a loan" and that students will have "no debt".[6] This is misleading because although they may not charge interest, all have enrollment and other fees such as late fees and returned payment fees.[7] In the case of Title IV-eligible institutions, these loans may also be difficult to discharge in bankruptcy.[8]

In 2023, the CFPB surveyed tuition payment plans at hundreds of Title IV schools characterizing many of them as being "in fact private student loans under [the Truth In Lending Act (TILA)]," although many of them seemingly lacked appropriate disclosures.[9] Over two-thirds of institutions using these products do so through a service provider.[10]

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[6] SUNY Delhi, Payment Plan, https://www.delhi.edu/mydelhi-students/student-accounts/payment-plan/index.php [perma.cc/UK4W-BQGJ]; Northeastern University, Payment Methods, Student Financial Services, https://studentfinance.northeastern.edu/billing-payments/payment-methods/ [https://perma.cc/AD24-APB2]; Georgia Southwestern State University, NELNET Payment Plan, https://www.gsw.edu/student-account/nelnet-payment-plan.html [perma.cc/EX9N-ZGCK]; City College of San Francisco, Nelnet Payment Plan, https://ccsfkb.blackbelthelp.com/it/nelnet-payment-plan/ [perma.cc/LG6G-LULW].

[7] Consumer Financial Protection Bureau, *Tuition Payment Plans in Higher Education* 12 (2023), https://www.consumerfinance.gov/data-research/research-reports/tuition-payment-plans-in-higher-education/ [hereafter *Tuition Payment Plans*].

[8] In re Chambers, 348 F.3d 650, 657 (7th Cir. 2003) (holding that "nonpayment of tuition qualifies as a loan ... where 'there is an agreement ... whereby the college extends credit'" for purposes of bankruptcy law).

[9] "... many tuition payment plans are in fact private student loans under TILA, generally as non-Title IV loans issued for postsecondary educational expenses to a borrower ... See 15 U.S.C. 1650(a)(8)." *Tuition Repayment Plans*, *supra* note 11 at 17n64.

[10] *Tuition Repayment Plans*, *supra* note 11 at 7-8. The CFPB found that while 36% of schools surveyed did not list a provider, several providers market a "white label" product that is branded by the institution and not disclosed to the student. *Id.*

The rest use a handful of private providers on a licensing basis or revenue-sharing basis: Nelnet, Transact, and TouchNet were the most popular.[11] This is a lucrative business.[12]

While they could be convenient for some students, these loans can be expensive, and the disclosures surrounding them may lead students to misunderstand the costs. The CFPB estimated that even with tuition products that did not charge interest up front, a student who borrowed $525 to be paid in four installments could incur between $69.44 to $399.44 in fees if the had trouble repaying the loan.[13] If a student fails to repay the loan as agreed, they may be surprised to learn that the school may accelerate the loan and charge interest on the balance.[14]

Students may also be forced to use or automatically enrolled in these programs because of delays in receiving aid or grants.[15] Unfortunately, many students are experiencing unprecedented delays this academic year due to issues with the FAFSA rollout and this will likely increase the use of these products.[16] In addition, students who would prefer not to take out student loans may forgo federal loans in favor of tuition repayment plans, despite limited protections offered by these products.[17]

When tuition repayment plans fail—or when students incur other debts to their institution like a library fine, parking ticket, or the obligation to return a Pell Grant—and they cannot repay, the consequences can mount quickly.[18] In 2022, I coauthored a report sounding the alarm on the rise of these kinds of debts in California.[19] My coauthors and I estimated that students attending California public institutions had been saddled with

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[11] *Id.* at 7.

[12] "Nelnet Campus Commerce provides service for over 1,000 colleges and universities worldwide and serves over 8 million students and families. Nelnet Campus Commerce generated $129 million and $113 million in revenue for the years ended December 31, 2023 and 2022, respectively." Nelnet, *10-K Annual Report* at 8 (Feb. 2024), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001258602/557a6a8e-e4fb-4760-b2e0-e121be953767.pdf. "Due to an increase in interest rates, the Company recognized $27.0 million in interest income on tuition funds held in custody for schools, an increase from $9.4 million in 2022." *Id.* at 43.

[13] *Tuition Repayment Plans*, *supra* note 11 at 25.

[14] *Id.* at 15.

[15] *Id.* at 20-22. *See e.g.*, Bursar, Oklahoma City Community College, https://www.occc.edu/bursar/ [perma.cc/22XU-S7XC].

[16] Jack Stripling, *What the FAFSA Just Happened?*, The Chronicle of Higher Education (Sept. 10, 2024), https://www.chronicle.com/podcast/college-matters-from-the-chronicle/what-the-fafsa-just-happened?sra=true; National Association of Independent Colleges and Universities, *Summary: Member Survey on FAFSA Delay Reveals Broad, Substantial Impact* (2024), https://www.naicu.edu/media/5t0n1awq/2024-fafsa-survey-summary.pdf.

[17] *See* Kate Sablosky Elengold, Jess Dorrance, Amanda Martinez, Patricia Foxen, and Paul Mihas, *Dreams Interrupted: A Mixed Methods Research Project Exploring Latino College Completion* (Sept. 9, 2021), https://unidosus.org/publications/dreams-interrupted-a-mixed-methods-study-assessing-latino-college-completion (investigating the issue of "debt aversion" in the Latino community and finding that "debt aversion is a reaction to America's system of debt-financed higher education … it is a reaction to debt-financed higher education set in the context of failed borrowing systems throughout our economy and the uncertainty and discrimination in the labor market").

[18] Charlie Eaton, Johnathan Glater, Laura Hamilton, and Dalié Jiménez, *Creditor Colleges: Canceling Debts that Surged during COVID-19 for Low-Income Students* (Apr. 1, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4072193.

[19] The report covered both tuition payment plans and debts that schools charge students. These include things as varied as library or parking fines as well as charges for Pell grant moneys the school returned to the Department of Education. *Id.*

$390 million in institutional debts between 2020 and 2022.[20] Outside of regular collection methods, public colleges and universities have extraordinary tools such as tax refund offsets to collect on these debts.[21] These offsets may take away funds from child and poverty tax credits, harming borrowers. This is particularly harmful for students whose debts stem from having to return Title IV funds (Pell Grants primarily) because of dropping out or getting a failing grade in a class.

Schools also take other punitive measures when students cannot repay their debts. These can be counterproductive, such as when the school prohibits the student from re-enrolling for a relatively small debt. Withholding transcripts was also a very popular method of attempting to achieve collection. As the CFPB has stated, this "is designed to gain leverage over borrowers and coerce them into making payments, as it is difficult to seek employment or transfer education credits to another school without an official transcript."[22] At least a dozen states (including New York, California, Colorado, and Virginia) ban transcript withholding through statute,[23] and both the CFPB and the Department of Education have banned it in some circumstances.[24] Nonetheless, many schools continue to state on their websites that they will withhold student's transcripts for failure to pay their school debts.[25] While we cannot know whether they *actually* do so in violation of their state's laws and regulations, stating this information on their website is misleading to students who might be making difficult choices about which debts to repay during a period of economic distress.

B. "Shadow" Student Debt and Vague Educational Programs

Some IHEs offer other loan products which they term "deferred tuition" and sometimes called "learn now, pay later" plans. Although they sound like the "buy now, pay later" short term credit products, these education credit products are structured as longer-

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[20] *Id.*

[21] *Id.* at 15. In California, private educational institutions are also currently using the state tax refund offset program to collect on their own private debts. *See* Cal. Govt. Code § 12419.9 and information on file with the author.

[22] CFPB Supervisory Examinations Find Violations of Federal Law by Student Loan Servicers and University-Owned Lenders (Sept. 29, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervisory-examinations-find-violations-of-federal-law-by-student-loan-servicers-and-university-owned-lenders/ (stating that "policies to withhold transcripts can run afoul of the law").

[23] Matthew Arrojas, Here Are the States That Ban Colleges From Withholding Transcripts, Best Colleges (updated May 8, 2024), https://www.bestcolleges.com/news/2022/05/19/states-that-ban-college-transcript-withholding-student-debt/.

[24] *Id.*; 34 CFR Part 668.

[25] California Stanislaus State, https://www.csustan.edu/tuition-fees/faqs ("your account will be placed on hold so you cannot register for additional classes, *receive transcripts* ... until your account is paid.")(emphasis added); Canton State University of New York, https://www.canton.edu/registrar/transcripts.html ("All financial obligations to the College must be cleared prior to release of a transcript."); Minnesota State University Moorhead, Payment Dates, https://www.mnstate.edu/cost-aid/tuition-fees/payment-dates/ ("The University is authorized to withhold the issuance of diplomas and official transcripts and deny further registration. Holds will remain on a student's account until their account balance is paid in full.") (describing this rule is in effect at least till Feb. 18, 2025). Post University, Tuition Payments, https://post.edu/payments/ ("An account that is not current will result in denial of registration for courses, withholding of transcripts and degrees, and/or assessment of interest equal to 1.5% monthly of the balance due, equal to 18% annually of the balance due.") *See also* Loyola University of Chicago, Policy For Obtaining a Transcript or Diploma Withheld Because of a Financial Hold (Aug. 1, 2024), https://www.luc.edu/bursar/policyforobtainingatranscriptordiplomawithheld/ (detailing specific circumstances in which the university will release transcripts when there's a financial hold).

term interest-bearing loans with interest rates in the double digits[26] or as income share agreements (ISA).[27] The risks with these loans are higher because of the types of schools that offer them.

These types of loans are more common among vocational or "boot camp" style IHEs that make lofty promises to "change your life" even when students have "little to no coding experience."[28] These boot camps promise students refunds if they don't get a job within a year, but the fine print makes that promise all but unusable.[29] The CFPB has already acted against several ISA providers for misleading disclosures, and reformed ISA contracts as well as returned funds to students.[30] The Department of Education made it clear that ISAs were loans and subject to disclosures and the prohibition against prepayment penalties.[31]

Some of the IHEs are straddling the line between "education" and career coaching/mentorship. Pathrise for example, promises to "optimize your search and advance your career" over a dozen areas like software engineering, data, marketing, and sales.[32] The product seems to involve "live workshops" and "1-on-1's" with mentors.[33] It refers to their users as "fellows" and boasts "proven outcomes" guiding "2,600 fellows every step of the way to land their dream jobs and earn industry-leading salaries."[34] Users of this service are directed to finance it through an income share loan of undisclosed terms.[35] A recent lawsuit against Pathrise and its servicers, Leif Technologies, Inc. and Leif Servicing, LLC, alleges violations of several California statutes, including operating an "unlawful, unbonded employment agency," or in the alternative "an educational program" and issuing unlawful income share agreements.[36] A similar

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[26] App Academy, https://www.appacademy.io/tuition (describing APR ranges from 9.79% - 21%); Bloom Institute of Technology Deferred Tuition, https://www.bloomtech.com/tuition/deferred-tuition [https://perma.cc/F7PG-CXKX] (APRs from 8.45% to 18.95% for what is essentially an income share agreement).
[27] Pathrise ISA, https://www.pathrise.com/isa [perma.cc/F37P-9TAN].
[28] "Change your career, change your life. Our software engineering bootcamps are designed to help people with little to no coding experience become high-earning software engineers." App Academy, https://www.appacademy.io/ [https://perma.cc/743E-QX8W] (last visited Sept. 14, 2024).
[29] https://www.careerist.com/legal/cancellation-policy [perma.cc/TF8Z-AL27].
[30] CFPB Takes Action Against Coding Boot Camp BloomTech and CEO Austen Allred for Deceiving Students and Hiding Loan Costs (Apr. 17, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-coding-boot-camp-bloomtech-and-ceo-austen-allred-for-deceiving-students-and-hiding-loan-costs/; CFPB and 11 States Order Prehired to Provide Students More than $30 Million in Relief for Illegal Student Lending Practices (Nov. 20, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-11-states-order-prehired-to-provide-students-more-than-30-million-in-relief-for-illegal-student-lending-practices/; CFPB Takes Action Against Student Lender for Misleading Borrowers about Income Share Agreements (Sept. 7, 2021), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-lender-for-misleading-borrowers-about-income-share-agreements/.
[31] U.S. Department of Education, What Colleges Should Know About Income Share Agreements and Private Education Loan Requirements (March 2022), https://blog.ed.gov/2022/03/what-colleges-should-know-about-income-share-agreements-and-private-education-loan-requirements/.
[32] https://www.pathrise.com/.
[33] Pathrise Frequently Asked Questions, https://www.pathrise.com/help [https://perma.cc/DF2P-UBD3].
[34] Pathrise Outcomes, https://www.pathrise.com/outcomes [
[35] Pathrise ISA, https://www.pathrise.com/isa [perma.cc/F37P-9TAN].
[36] The California Education Code defines "educational program" as "a planned sequence composed of a set of related courses or modules . . . that provides education, training, skills, or experience, or a combination of these . . . ." Cal. Ed. Code § 94837. The complaint argues that Pathrise also meet the California definition of a "private postsecondary institution" per Cal. Ed. Code § 94858. First Amended Complaint, *supra* note 33, at 18.

lawsuit was filed against Careerist, a company that boasts students will "Earn a tech salary up to $113K, no coding experience" in 6 months.[37]

These shadow debts can have disastrous consequences for students.[38] The costs are exorbitant, and they appear to have dubious value. While we do not have much data on who enrolls in these programs, it is all but certain that they are disproportionally used by and targeted to women and minorities.[39] They are likely also more likely to be used by those who began college but did not complete, a group that is disproportionally black, brown, and female, and has many negative outcomes.[40]

# # #

To bring much needed sunshine to these issues, the CFPB should:

(1) Issue orders pursuant to section 1022(c)(4) of the Dodd Frank to collect information from traditional private student loan providers as well as "shadow student debt" companies,[41] and
(2) Create a federal registry of nonbank financial services firms.[42]

II. Shining a Light on Abuses in the Courts

I want to talk about issues I am seeing in my research studying court dockets across the country. What I provide below are just examples of cases and issues I think the CFPB should investigate further. But more broadly, I want to make a case for why the Bureau and other regulatory agencies should be systematically examining court dockets to learn about emerging issues. Closely reviewing court documents was how a legal aid attorney discovered robo-signing irregularities across the country, leading to the national mortgage settlement.[43] As I hope the following shows, court dockets can be an additional early warning system for the CFPB and consumer finance regulators. While there is

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[37] Careerist, Start your Career in Tech, https://www.careerist.com/ [https://perma.cc/EDZ5-LX53]. The complaint alleges similar counts to the Pathrise complaint. Pasoon v. Careerist, Complaint (Jan. 15, 2024), https://perma.cc/3DAR-EU56.
[38] Student Borrower Protection Center, *Shadow Student Debt* 31-32 (July 2020), https://protectborrowers.org/wp-content/uploads/2020/12/Shadow-Student-Debt.pdf.
[39] Dalié Jiménez and Jonathan D. Glater, *Student Debt is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 Harv. Civ. R. & Civ. Lib. L. J. 131 (2020), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475224.
[40] National Student Clearinghouse Rsch. Ctr., *Some College, No Credential* (Jul. 2022), https://nscresearchcenter.org/some-college-no-credential/.
[41] These orders should include at least some of the largest public systems in the country. The last time the CFPB produced a detailed report on these issues was in 2012, as part of a request for information issued before the Bureau was an official agency. Consumer Financial Protection Bureau, "Private Student Loans Report," September 2012, https://www.consumerfinance.gov/data-research/research-reports/private-student-loans-report/. *See also* CFPB Orders Tech Giants to Turn Over Information on their Payment System Plans (Oct. 21, 2021), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-tech-giants-to-turn-over-information-on-their-payment-system-plans/.
[42] *Shadow Student Debt*, *supra* note 38at 35.
[43] David Streitfeld, *From a Maine House, a National Foreclosure Freeze*, NEW YORK TIMES (Oct. 15, 2010), https://www.nytimes.com/2010/10/15/business/15maine.html; What was the National Mortgage Settlement?, https://www.consumerfinance.gov/ask-cfpb/what-was-the-national-mortgage-settlement-en-2071/.

much to be done to improve access to state[44] and federal court data,[45] this is a tool they could use right now.

In 2020, professors Alexandra Sickler and Kara Bruce made the case that the CFPB "should adopt a more purposeful bankruptcy-directed regulatory agenda."[46] They suggested that the CFPB use its information-gathering tools such as the consumer complaint database and issue a Requests for Information to the public about consumer protection issues in bankruptcy (in coordination with the United States Trustee).[47] The 2022 Consumer Bankruptcy Reform Act proposed establishing a "Consumer Bankruptcy Ombuds," something that would go a long way.[48]

I am in wholehearted agreement with Sickler and Bruce, but want to also encourage the Bureau to think bigger.

A. Bankruptcy

Like other private companies that operate in the consumer credit markets, private student lenders issue loans to borrowers they deem creditworthy, at interest rates they set, and with requirements they control (such as having a co-signer). Nonetheless, since 2005 they have also enjoyed a level of protection in bankruptcy not afforded to most private creditors. I have written elsewhere about how this protection is unwarranted and should be eliminated, but today I want to talk about issues with private student lenders and servicers in bankruptcy.[49]

1. *Private Student Loan Lender Settling Claims that Might Have Already Been Discharged Forcing Debtors to Waive the Possibility of a Future Discharge*

Earlier this year, the CFPB sued the Pennsylvania Higher Education Assistance Agency (PHEAA) for trying to collect debts from consumers even though they had been discharged in bankruptcy.[50] The issue concerns the definition of loans that enjoy

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[44] Erika Rickard, *How Organizing, Sharing Data Can Boost Court Transparency*, Pew Charitable Trusts (Sept. 27, 2023), https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2023/09/how-organizing-sharing-data-can-boost-court-transparency.

[45] Brian Carver, *What Should be Done About the PACER Problem?*, Free Law Project (March 24, 2015), https://free.law/2015/03/24/what-should-be-done-about-the-pacer-problem.

[46] Alexandra Sickler & Kara Bruce, *Bankruptcy's Adjunct Regulator*, 72 Fla. L. Rev. 159 (2020). *See also* Alexandra P. E. Sickler, *Big Banks & Small Consequences in Chapter 13 Essay*, 39 Emory Bankr. Dev. J. 559 (2023).

[47] *Id.* at 207-09.

[48] Consumer Bankruptcy Reform Act of 2022, S. 4980, § 201(a), 117th Cong. (2022). *See also* Alexandra P. E. Sickler, *Big Banks & Small Consequences in Chapter 13 Essay*, 39 Emory Bankr. Dev. J. 559 (2023) (discussing the possibilities of such an office).

[49] Testimony of Dalié Jiménez before the Subcommittee on Antitrust, Commercial, and Administrative Law of the House Committee on the Judiciary (Jun. 25, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3005975 (citing Alexei Alexandrov & Dalié Jiménez, *Lessons from Bankruptcy Reform in the Private Student Loan Market*, 11 Harv. L. & Pol'y Rev. 175, 179 (2017) and Xiaoling Ang & Dalié Jiménez, *Private Student Loans and Bankruptcy: Did Four-Year Undergraduates Benefit from the Increased Collectability of Student Loans?*, in Student Loans and the Dynamics of Debt 211 (2015).

[50] CFPB Sues Student Loan Servicer PHEAA for Pursuing Borrowers for Loans Discharged in Bankruptcy (May 31, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-student-loan-servicer-pheaa-for-pursuing-borrowers-for-loans-discharged-in-bankruptcy/.

presumptive nondischargeability in bankruptcy.[51] While the common refrain is that "student loans are not dischargeable in bankruptcy," that phrase is wrong in two respects. First, the word "student loans" does not appear in the Bankruptcy Code. The statute refers to "education benefit overpayment," "educational ... loan", and "obligation to repay funds received as an educational benefit, scholarship, or stipend."[52] As the CFPB noted in the action against PHEAA, loans incurred "to pay for tuition at schools that do not qualify for federal Title IV funding, such as unaccredited trade or K-12 schools, loans for medical and dental residency, loans to students attending school less than half-time."[53] In addition, they noted that loans provided directly to consumers (bypassing the school's financial aid office) can fit in this category if they were made in excess of the cost of attendance.[54]

For the past year, I've been working on a study examining the effectiveness of the Department of Justice new procedures for assenting to discharge in student loans in bankruptcy.[55] As part of this work, my coauthors and I have obtained most of the documents in student loan adversary proceedings that were filed after November 2022. Many of the private loan stipulations are of a similar nature: they appear to significantly reduce the outstanding balance and often significantly reduce the interest rate to a fixed amount. So far so good. **The first concern arises because these stipulations to repay private student loan debts may be for loans that are not subject to the special treatment and were already discharged.** In that case, anything the debtor pays is absolutely not required, and the stipulation that they are doing so because bankruptcy law demands it is problematic if the creditor knows or should know that the loans have been discharged.

The second concern is that these settlements purport to prevent the debtor from ever attempting to discharge their student loan debt in the future. When those stipulations are incorporated in a court order, they may arguably meet requirements to make the debt not dischargeable in the future.[56] The most unsettling language, in a National Collegiate Student Loan Trust (NCSLT) stipulation, is very explicit about trying to do just that:

> As of the Effective Date, the Debtor fully, finally, and forever settles, waives, and releases her claim of entitlement to a discharge and/or disallowance of her Loans, and is **forever barred and enjoined from asserting** and [sic] **adversary**

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[51] *See* 11 U.S.C. § 523(a)(8).
[52] *Id. See also* Jason Iuliano, *Student Loan Bankruptcy and the Meaning of Educational Benefit*, 93 AM. BANKR. L.J. 277 (2019) (arguing that courts have misinterpreted the meaning of "educational benefit").
[53] CFPB PHEAA *supra* note 50.
[54] CFPB PHEAA *supra* note 50.
[55] Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation, U.S. Dept. of Justice (Nov. 17, 2022), https://web.archive.org/web/20221123082353/https://www.justice.gov/civil/page/file/1552681/download (here after, the "New Guidance"); Belisa Pang, Dalié Jiménez, & Matthew Bruckner, *Full Discharge Ahead? An Empirical First Look at the New Student Loan Discharge Process in Bankruptcy*, 41 EMORY BANKR. DEV. J. __ (2025) (forthcoming).
[56] 11 U.S.C. §§ 727(a)(10), 1328(a). *But see* 11 U.S.C. § 524(c) (reaffirmation of debts must happen before a discharge is entered). The debtor may also be barred from asserting the issue as a matter of collateral estoppel.

> **bankruptcy claim for discharge and/or disallowance of the Loans in any court or forum.**[57]

In this case, the debtor agreed to settle the debt for $15,000 without interest, over 150 months.[58] While $100 per month may seem like a good deal to settle $39,655.82, the complaint in the case had alleged that these were direct-to-consumer loans that were paid directly to the plaintiff-debtor and did not restrict their use. In other words, these might have been *already discharged* loans.[59] Even if they were loans subject to 523(a)(8), it is concerning that a private lender who risk priced their loans at origination would seek to bar a debtor from bankruptcy a second time, should they need to file bankruptcy again.[60]

While the language and circumstances surrounding this stipulation is quite dramatic, there were other cases with less strident language that could have a similar effect. In one case, the married debtors owed several Navient entities (Navient Corporation, Navient, CFC, Navient Solutions, LLC, Navient PC Trust and VL Funding, LLC) on nineteen different loans issued between 2002-2008.[61] In 2022, the outstanding amount was $308,030.12 for all the private loans at the time that proofs of claim were filed in their bankruptcy.[62] In their complaint, plaintiffs stated that these were all direct-to-consumer loans taken out to attend the University of Alabama.[63]

In addition to the 19 private loans over 6 years, the debtors stated that they "received federal financial aid collectively in the approximate amount of $161,510.67."[64] The total cost of attendance for an Alabama resident in the 2007-08 school year was $6,834.[65] Even assuming the previous six years' cost of attendance were as expensive as the last,

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[57] Covington v. The National Collegiate Student Loan Trust 2006-3, Stipulation, Docket No. 2:22-ap-02005 (Bankr. N.D. Ga. Feb 11, 2022), https://perma.cc/X6ZT-GY9B (emphasis added). Although the stipulation is part of the public record in the bankruptcy case, it also contains this language at ¶4:

> the terms and conditions of this Agreement, and the final negotiations regarding this Agreement are strictly confidential and shall not in the future be disclosed, other than to the Parties and their counsel, and the Debtor's close family members and financial advisors … Should the Debtor receive a subpoena in any way relating to the Agreement, the Debtor will notify counsel for NCSLT and Transworld, Michael D. Alltmont, Esq., at: [phone number], and fax a copy of the subpoena to: [fax number].

Id.

[58] *Id.* at ¶ 2.

[59] The agreement also contains this language:

> The Debtor, her heirs, executors and/or administrators represent and agree that they will not individually, or as a member of a class, commence any action or proceeding or solicit class members against either NCSLT, or NCSLT loan servicer Transworld Systems Inc., or make any claim to any agency, federal, state or local regarding the subject matter of this Agreement.

Covington Stipulation, *supra* note 57 at ¶ 5.

[60] The debtor was represented in this case, which ameliorates some of the unfairness concerns. However, there is certainly a significant power imbalance between a recently bankrupt debtor and their attorney and a large private student lender.

[61] Bosch et al v. Navient PC Trust et al, Complaint, No. 7:22-ap-70014 (Bankr. N.D. Ala. Oct 31, 2022), *available here* https://perma.cc/NKQ6-QGDD.

[62] *Id.* at ¶ 17.

[63] *Id.*

[64] *Id.* at ¶ 14-15.

[65] University of Alabama, Undergraduate Cost of Attendance, https://web.archive.org/web/20080508233613/http:/cost.ua.edu/undergraduate-budget07-08.htm (captured May 8, 2008).

the couple's total cost of attendance would have been $164,016, which is roughly the amount of their federal student aid.[66]

In this case and several others, the stipulated judgment allowed the debtor to reduce the total balance due significantly, but again with the uncertainty of whether there was any money due at all. The stipulation language in these other cases is less severe than the one used by NCSLT.[67] It simply has the debtors stipulate that "the Student Loans evidenced by the Promissory Notes are non-dischargeable educational loans, pursuant to 11 U.S.C. § 523(a)(8)."[68]

This stipulation would not prevent debtors from filing bankruptcy again and including their student loans in a potential discharge. However, **after this stipulation has been entered, a later court might find that the debtors who agreed to it are precluded from raising the issue of the nondischargeability of these loans in a future bankruptcy**.[69]

Most of the private student loan stipulations I happen to observe were with a Navient entity. Just last week, the CFPB banned Navient from servicing federal student loans.[70] Navient was also "the top subject of private student loan complaints received by the CFPB" for the year ending August 31, 2023.[71]

2. *Time-Barred Debt in Bankruptcy*

In 2017, the Supreme Court appeared to the door on using the Fair Debt Collection Practices Act (FDCPA) to prevent an industry in stale claims from polluting the system. The *Midland Funding, LLC v. Johnson* decision held that filing a proof of claim for a time-barred debt in bankruptcy, without more, was not a violation of the FDCPA because Alabama law (where the case was filed) "provides that a creditor has the right to payment of a debt even after the limitations period has expired."[72] In a citation, the court

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[66] $6,834*2 borrowers*6 years*2 semesters per year. This also assumes they each attended for 6 years / 12 semesters, which is unlikely but not something we can determine from the record. Note that the 2002 total cost of attendance was $4,571. Undergraduate Cost to Attend, https://web.archive.org/web/20020403024927/http://cost.ua.edu/undergraduate-budget.html.

[67] For other cases with similar stipulations where there were allegations and evidence on the record that the loan(s) may already be discharged in bankruptcy, see Jones v. Navient - Stipulation, https://perma.cc/7W2M-QVJX and Proof of Claim, https://perma.cc/4KW5-K9R5; Watson v. Navient Stipulation, https://perma.cc/Q3SS-S6MQ.

[68] Bosch et al v. Navient PC Trust et al, Stipulation, No. 7:22-ap-70014 (Bankr. N.D. Ala. Oct 31, 2022), *available here* https://perma.cc/NKQ6-QGDD.

[69] *See* Dowling v. United States, 493 U.S. 342, 347 (1990) (citing *Ashe v. Swenson*, 397 U.S. 436 (1970)) ("when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit."). A recent paper found that nearly half of all consumer bankruptcy filings in 2023 "came from people with a prior bankruptcy record." Belisa Pang, The Bankruptcy Revolving Door (Jan. 31, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4911339.

[70] CFPB Bans Navient from Federal Student Loan Servicing and Orders the Company to Pay $120 Million for Wide-Ranging Student Lending Failures (Sept. 12, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-navient-from-federal-student-loan-servicing-and-orders-the-company-to-pay-120-million-for-wide-ranging-student-lending-failures/.

[71] Consumer Financial Protection Bureau, Report of the CFPB Education Loan Ombudsman (Oct. 2023), https://files.consumerfinance.gov/f/documents/cfpb_annual-education-loan-ombudsman-report_2023.pdf.

[72] Midland Funding, LLC v. Johnson, 581 U.S. 224, 229 (2017).

noted that the law was different in Mississippi[73] and Wisconsin[74] (where the expiration of the statute of limitations extinguishes the right as well as the remedy), although the opinion reads as if it applies nationwide.[75] Today, at least four other states have joined Mississippi and Wisconsin in invalidating at least certain kinds of claims in some circumstances: North Carolina,[76] California,[77] Connecticut,[78] Texas,[79] and New York.[80] More than a third of the population of the United States resides in these states—and *at least there*, it would be an unfair practice for debt buyers to file stale claims in bankruptcy.[81]

I am currently doing data collection for a study on stale proofs of claims in bankruptcy. I've not yet reviewed many claims but have found several that are decidedly past the statute.[82] In one case, the claim was filed in California just outside its four-year limitations period by Jefferson Capital System, LLC, a debt buyer.[83]

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[73] Miss. Code Ann. §15-1-3(1) ("The completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy. However, the former legal obligation shall be a sufficient consideration to uphold a new promise based thereon.").

[74] Wis. Stat. § 893.05 ("When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.") (codifying *Maryland Casualty Company v. Belezney*, 245 Wis. 390 (1944)).

[75] *See also* Dalié Jiménez, *Ending Perpetual Debts*, 55 Hous. L. Rev. 609 (2018).

[76] N.C. Gen. Stat. 58-70-115(4) (2009) (banning as an unfair practice debt buyers or their agents from "bringing suit or initiating an arbitration proceeding against the debtor or otherwise attempting to collect on a debt when the collection agency knows, or reasonably should know, that such collection is barred by the applicable statute of limitations."). It appears that the Supreme Court did not know about the North Carolina law.

[77] Cal. Civ. Proc. Code § 337 (2019) (When the period in which an action must be commenced under this section has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360); CA Civ Code § 1788.5 (2014) ("A debt buyer shall not bring suit or initiate an arbitration or other legal proceeding to collect a consumer debt if the applicable statute of limitations on the debt buyer's claim has expired.").

[78] Conn. Gen. Stat. § 36a-814 ("No creditor or consumer collection agency that purchased debt shall initiate a cause of action to collect the debt owed...").

[79] Texas Finance Code 392.307. "A debt buyer may not, directly or indirectly, commence an action against or initiate arbitration with a consumer to collect a consumer debt after the expiration of the applicable limitations period..." The Texas statute extinguishes the debt for purposes of "an action against" or "arbitration." *Id.*

[80] N.Y. C.P.L.R. 214-i (McKinney) ("Notwithstanding any other provision of law, when the applicable limitations period expires, any subsequent payment toward, written or oral affirmation of or other activity on the debt does not revive or extend the limitations period.").

[81] It appears that the Midland court did not have all the information. Several of these laws had been enacted by then: North Carolina (2009), California (2014 for debt buyers), and Connecticut (2016). Since then, Texas (2019), New York (2021), and California (2019 now including original creditors as well) have been added. While none of these states have the same language about extinguishing the right as well as the remedy, several of them have provisions that would certainly apply in bankruptcy.

[82] Cavalry SPV I, LLC Proof of Claim, https://perma.cc/N9RL-Q5ER (last payment date is blank; charge-off date is 3/13/2002; claim filed: 7/23/20; Florida statute of limitations; 5 years); Atlas Acquisition, LLC, (last payment: 6/30/2016; claim filed: 6/13/2023; Maryland statute of limitations: 3 years).

[83] Jefferson Capital Systems LLC Proof of Claim in California Case, https://perma.cc/M3BF-8S5H (date of last payment 04/21/2020; date of claim: 5/14/2024; applicable statutory period: 4 years). Like many of Jefferson's proofs of claims, it contains the following language: "Based on the information provided in this proof of claim, the claim may be unenforceable because it is outside of the applicable statute of limitations." It also provides an email address of someone to contact for questions and adds: "If you request, we will provide further evidence entitling us to payment on the claim. If you seek to have the claim disallowed on the basis that it is outside the applicable statute of limitations, we will consent to an order disallowing the claim within 10 business days. This process is designed to relieve you of the need to file a formal objection based on the statute of limitations. You are still entitled to file an objection to the claim subject to the Bankruptcy Code and applicable Rules." *Id.*

Unfortunately, it is impossible to know whether private student loan lenders are filing stale claims in bankruptcy by looking at bankruptcy claims alone. Federal Rule of Bankruptcy Procedure 3001(c)(3) requires information about important dates: last transaction, last payment, and charge-off be included in the Proof of Claim but only with regards only to claims "based on an open-end or revolving consumer credit agreement." In reviewing proof of claims in student loan cases, I have yet to see a claim where any of these dates are stated as part of the documents attached.[84] The ideal solution would require a change to the forms themselves, which is well outside the scope of this subcommittee.[85]

Nonetheless, the CFPB can issue an advisory warning covered entities about stale claims in bankruptcy *in states in which they do not have a right to a claim*. The language of Regulation F explicitly carves out "proofs of claim filed in connection with a bankruptcy proceeding," but this cannot square with the law in those states. The Bureau can also request information on the claims private student loan have filed in bankruptcy during supervisory activities. To the extent that they have filed time-barred proofs of claim in states where that is prohibited—especially in states where the claim has been extinguished like Mississippi and Wisconsin or in states like California that prohibit initiating a "suit ... arbitration ... *or other legal proceeding*" (like filing a proof of claim in bankruptcy)—there should be consequences.[86]

B. Default Judgments in State Court Debt Collection Lawsuits and Failure to Follow Rules and Statutes

Although much of the civil work of state courts is consumed by debt collection lawsuits, detailed data on cases and outcomes has been elusive. The Debt Collection Lab aims to bring some of this information to light by gathering, standardizing, and publishing microdata on state debt collection lawsuits.[87] We obtain data directly from state courts or scrape it from public websites. Our debt collection tracker currently has collection lawsuits filed in six states from 2020-2023, with more forthcoming. As part of our work, we have obtained court documents from states which have required plaintiffs to file additional documentation or information before obtaining a judgment. I would like to discuss what I have found to be rampant disregard of court rules and statute by plaintiffs in Connecticut which appear to include private student loan plaintiffs.

The Debt Collection Lab recently published a series of four reports examining laws that several states enacted in the last decade to protect consumers who are sued in debt

[84] *See, e.g.*, https://perma.cc/4KW5-K9R5; https://perma.cc/73D3-Z8TR; https://perma.cc/QM46-SCWE.
[85] *See* Advisory Committee on Bankruptcy Rules, Meeting of April 29-30, 2010, New Orleans, LA, https://www.uscourts.gov/sites/default/files/fr_import/BK04-2010-min.pdf.
[86] *See also* Kara J. Bruce & Alexandra P. E. Sickler, *Private Remedies and Access to Justice in a Post-Midland World Symposium*, 34 EMORY BANKR. DEV. J. 365, 382 (2017).
[87] Debt Collection Lab Lawsuit Tracker, https://debtcollectionlab.org/lawsuit-tracker. I am a co-principal investigator at the Lab.

collection.[88] These laws (or sometimes court rules) require plaintiffs to attach testimonial (in the form of an affidavit) or documentary evidence before obtaining a default judgment against a consumer. More than 70% of debt collection lawsuits are resolved by default, so these laws affect a substantial portion of all state court litigation.[89]

While most debt collection lawsuits are filed to collect on credit card debt, private student loan creditors and colleges and universities also file lawsuits in state court.[90] When they do so, they are subject to state court rules and laws. In Connecticut, those rules cover both debt buyers and original issuers of credit.[91] We reviewed 88 randomly selected cases in Connecticut small claims court and found that *none* of the debt buyer plaintiffs had fully complied with applicable rules and statutes before requesting a default judgment.[92] Despite the noncompliance, only one case was dismissed for failure to follow the rules.[93] We estimated that this meant that fewer than 5% of cases filed in Connecticut small claims were likely to fully comply with the rules.[94]

More research is certainly needed, but given this finding, we would expect that a review of private student loan cases in Connecticut, and perhaps other jurisdictions that have

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[88] Abhay Aneja, Luis Faundez, Dalié Jiménez, Claire Johnson Raba, Prasad Krishnamurthy, and Manisha Padi, *Debt Documentation Requirements in State Court and Access to Credit*, THE DEBT COLLECTION LAB, (Sept. 10, 2024), https://debtcollectionlab.org/research/debt-documentation-requirements-in-state-courts-access-to-credit; Abhay Aneja, Julia Byeon, Luis Faundez, Doug A. Lewis, Dalié Jiménez, Claire Johnson Raba, Prasad Krishnamurthy, and Manisha Padi, *More Paper in Texas: An Evaluation of Documentation Reforms in State Court*, THE DEBT COLLECTION LAB (Sept. 6, 2024), https://debtcollectionlab.org/docs/texas-debt-documentation-evaluation.pdf; Abhay Aneja, Julia Byeon, Jacqueline Cope, Luis Faundez, Dalié Jiménez, Claire Johnson Raba, Prasad Krishnamurthy, and Manisha Padi, *More Paper in Connecticut: An Evaluation of Documentation Reforms in State Court*, THE DEBT COLLECTION LAB (Aug. 9, 2024), https://debtcollectionlab.org/docs/connecticut-debt-documentation-evaluation.pdf [*More Paper in Connecticut*]; Abhay Aneja, Julia Byeon, Jacqueline Cope, Luis Faundez, Doug A. Lewis, Dalié Jiménez, Claire Johnson Raba, Prasad Krishnamurthy, and Manisha Padi, *More Paper in California: An Evaluation of Documentation Reforms in State Court*, THE DEBT COLLECTION LAB (July 15, 2024), https://debtcollectionlab.org/docs/california-debt-documentation-evaluation.pdf.

[89] Erika Rickard, *How Debt Collectors Are Transforming the Business of State Courts*, Pew Charitable Trusts (May 6, 2020), https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts.

[90] Claire Johnson Raba, *Co-Opting California Courts: How Private Creditors Have Turned the Judiciary into a Predatory Student Debt Collection Machine*, STUDENT BORROWER PROTECTION CENTER (Aug. 2021), https://protectborrowers.org/wp-content/uploads/2021/08/Co-Opting-CA-Courts.pdf.

[91] *See* Appendix A, *More Paper in Connecticut*, *supra* note 88.

[92] Because the majority of debt sold is credit cards, all but one of these plaintiffs were suing about a credit card, and none of these randomly selected cases were suing on a student loan.

[93] *More Paper in Connecticut*, *supra* note 88 at 37.

[94] "Let's suppose, for example, that the rate at which debt buyers complied with all requirements was a paltry 5%. Even in that case, which is a clear example of substantial noncompliance, we would expect to see data this bad only 1% of the time. Consequently, we can conclude that actual compliance is likely worse than 5%." *More Paper in Connecticut*, *supra* note 88 at 37.

similar rules or statutes, would result in finding significant violations that the CFPB could act upon.[95] A quick review in California turned up a potential one.[96]

In preparation for my testimony, I reviewed a handful of superior court cases filed by private student loan creditors.[97] This is not a systematic review by any means. I only use it as an example of issues that may be occurring in state court which the CFPB should review. To begin, **none of the student loan plaintiffs who sought a default judgment fully complied with the relevant rules and statute when they requested a default judgment**.[98] Unfortunately, the court dismissed only one case for a failure to comply.[99] The rest obtained a favorable judgment, either by default or stipulation.

One case was filed by Student Loan Solutions, LLC, on a 2007 Bank of America "Education Maximizer Undergraduate Loan" to attend a for-profit school that offered a 2-year "occupational degree programs in photography and graphic design/ commercial."[100] The affidavit submitted by the debt buyer was deficient in several respects, including because it fails to state that "the documents attached to it are true copies of the originals" as required by Conn. Practice Book 17-25, does not list the address of previous owners of the debt as required by Connecticut General Statute § 36a-813(b) and did not "attach documentation to the affidavit that fully substantiates the amount of the debt" as required by Connecticut General Statute § 36a-813.[101]

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[95] For a list of 13 states that have implemented similar rules, along with citations and the timing of such rules, see *Debt Documentation Requirements in State Courts and Access to Credit* Table 1, *supra* note 49. Note that this list is not exhaustive.

[96] Student Loan Solutions, LLC v. Sanchez, Complaint (Sept. 15, 2021), https://perma.cc/AXY5-HRAF (the complaint si quite confusing, but it appears to split up a student loan payment obligations into "out of stat" and "In Stat (past due)" plus "In Stat (Future Due)" payments when the last payment on the debt appears to be January 22, 2009, or perhaps May 23, 2016, and California has a four-year statute of limitations and statute prohibiting suit thereafter Cal. Civ. Code § 1788.56).

[97] To find private student loan creditors, I searched the captions of cases in small claims and superior court in Connecticut filed between January 1, 2021 and August 31, 2023 for keywords: "navient", "nelnet", "SLM", "mohela", "missouri higher", "educap", "arrowood in", "national collegiate", "student", "hidden oak", "TFC credit", "transact", "education resources", "edfinancial", "touchnet", "Massachusetts Educational", "MEFA", "ECMC", "Sofi L", "college","university", "Sofi Bank", "sallie mae", "higher e", "higher education", "education loan", "Shenandoah funding" The search was not case sensitive. This is an imperfect list, as it fails to find student loans sold to debt buyers that also purchase other types of debts (that can only be discerned from documents, not the caption of the case). Few creditors I could identify as student loan creditors file in small claims—which makes sense given the $5,000 jurisdictional limit—and so I reviewed superior court cases. This search list yielded a maximum of 479 case in 2014, but only a handful in later years (2021: 49, 2022: 37, 2023: 35). It's unclear whether these debts are being sold and cannot be found by the caption of the case, whether the portfolios are aging out of the statute of limitations and the cases are not being brought, or something else.

[98] *More Paper in Connecticut, supra* note 88 at Appendix A (detailing the relevant rules for small claims and superior court).

[99] But see Navient Private Education Loan Trust 2015-A v. Gorden, https://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=HHDCV226157686S for a case in which the judge denied the default judgment because "The affidavit of debt neither identifies nor authenticates the accompanying documents." Order Regarding Motion for Default (Jun. 29, 2023), https://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=25627290.

[100] Antonelli Institute archive at the Wayback Machine, https://web.archive.org/web/20071005031748/http://www.antonelli.edu/ (archived October 5, 2007, last accessed Sept. 12, 2024).

[101] The documents the plaintiff presented fail to explain how they arrived at the due amount of $19,806.66.

Failure to include full information on previous owners of the debt was one of the most common issues in the private student loan cases I reviewed as well as the random sample of cases we reported on.[102] But at least one of the Connecticut student loan plaintiffs also failed to file a certification that the person is not currently a servicemember as required by Connecticut Practice Book 17-21.[103]

# # #

The CFPB has an opportunity to learn both about risks and harms in the private student loan market (and others) by using court data from bankruptcy and state courts. What it learns would be useful to not only to its own understanding of the market, but through research, guidance, and reports, it would improve the public's as well. To facilitate this, **the CFPB should acquire microdata about bankruptcy and debt collection cases across the country, study it, and produce reports about it, just like it has done with credit panel data.**[104]

III. Steps Forward

Students take out private student loans for many reasons: insufficient funds to cover the cost of attendance from federal loans, ineligibility for federal loans, or lower interest rates, among others. In some cases, however, students may not realize they are taking on a loan at all.

Although dwarfed by the size of the Department of Education (ED)-held student loans, Federal Family Education Loan Program (FFELP) loans and private student loans affect millions of borrowers.[105] The large drop in student loan delinquencies reported by the Federal Reserve Bank of New York and others was of course driven mechanically by the COVID student loan payment pause.[106] Borrowers who did not consolidate their Federal Family Education Loan Program (FFELP) loans or who held private student loans did not

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[102] *See, e.g.*, Case numbers AANCV206039603S, WWMCV216021129S, HHDCV226157686S, KNLCV216050520S, HHDCV226152146S. Case docket and documents can be found by entering the full docket number on this page: https://civilinquiry.jud.ct.gov/GetDocket.aspx.

[103] Nat'l Collegiate Student Loan Trust 2006-4 v. Bessette, https://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=WWMCV216021129S. The case ultimately ended in a stipulated judgment.

[104] For an example of a report using the CFPB's Consumer Credit Panel, see Consumer Financial Protection Bureau, *Data Point: Consumer Credit and the Removal of Medical Collections from Credit Reports* (Apr. 2023), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-removal-medical-collections-from-credit-reports_2023-04.pdf.

[105] Jacob Goss, Daniel Mangrum, and Joelle Scally, *Student Loan Repayment during the Pandemic Forbearance*, FRBNY Liberty Street Economics (March 22, 2022), https://libertystreeteconomics.newyorkfed.org/2022/03/student-loan-repayment-during-the-pandemic-forbearance/ [perma.cc/3RZC-FSGK](estimating $133 billion in outstanding FFEL and $95 billion in outstanding private student loans as of March 2022). An industry analytics firm estimates the market as of Q1 2024 at $133.43B. Enterval Analytics, LLC Private Student Loan Semi Annual Report Ending Q1 2024 (Aug. 22, 2024), https://www.enterval.com/media/files/enterval/psl/enterval-private-student-loan-semi-annual-report-march-2024.pdf?v=20240822T183633 [https://perma.cc/6KRB-ZAVH].

[106] Federal Reserve Bank of New York, Quarterly Report on Household Debt and Credit 2024:Q2 (Aug. 2024) at 12, https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2024Q2.

benefit from the pause.[107] The other students who did not benefit are those indebted to their educational institutions, either in the form of tuition repayment plans or as institutional debts.[108]

Private student loans can be a stopgap for students, but if our policy goal is to ensure that every person who wants to improve their education can do so without regard to their race, ethnicity, or socioeconomic origin, we cannot rely on them.[109] Given our deeply unequal society, our wealth disparities along race, and our employment power disparities along race and gender, it is all but inevitable that risk-based pricing will lead to disparate effect on some protected group. Although lenders are obligated under fair lending laws to mitigate these disparities, loans and lending practices cannot fix the entrenched history of dispossession and discrimination that many communities have faced.[110]

To genuinely move forward, we must invest directly in education—we must invest in our collective future.[111] While loans (private or federal) might play a supportive role, they cannot be the primary means by which we enable our citizens to access education.

We need free college now.

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[107] During the pandemic payment pause especially, but even today, borrowers with FFELP loans would have benefited immensely from converting their loans to ED-held loans through Direct Loan Consolidation. FFELP lenders should have arguably communicated this to their customers. Kate Mullan, CFPB, *FFELP student loan borrowers: take full advantage of fixes to Income-Driven Repayment* (May 25, 2022), https://www.consumerfinance.gov/about-us/blog/ffelp-student-loan-borrowers-take-full-advantage-of-fixes-to-income-driven-repayment/ (noting that "Commercial FFELP servicers must provide accurate information about the IDR fix"); Student Borrower Protection Center, *Failing to Inform Borrowers About the Looming IDR Account Adjustment Deadline Likely Violates Consumer Protection Law*, https://protectborrowers.org/consumer-protection-agencies-must-ensure-student-loan-companies-inform-borrowers-about-idr-aa/.

[108] Charlie Eaton, Johnathan Glater, Laura Hamilton, and Dalié Jiménez, *Creditor Colleges: Canceling Debts that Surged during COVID-19 for Low-Income Students* (Apr. 1, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4072193.

[109] Jonathan D. Glater, *Student Debt and the Siren Song of Systemic Risk*, 53 Harv. J. on Legis. 99, 113 (2016) (noting that terms of commercial loans were a reason the federal legislature expanded federal student lending).

[110] Dorothy A. Brown, The Whiteness of Wealth: How the Tax System Impoverishes Black Americans—and How We Can Fix It (Penguin 2022); Dalié Jiménez and Jonathan D. Glater, *Student Debt is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 Harv. Civ. R. & Civ. Lib. L. J. 131, 137-39 (2020), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475224 [hereinafter *Student Debt is a Civil Rights Issue*]; Meizhu Lui, Bárbara Robles, Betsy Leondar-Wright, Rose Brewer, and Rebecca Adamson, The Color of Wealth: The Story Behind the U.S. Racial Wealth Divide (The New Press 2006); Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 Stanford L. Rev. 1093 (2019).

[111] *Student Debt is a Civil Rights Issue*, *supra* note 110 at 165-178.

RESPONSES TO WRITTEN QUESTIONS OF CHAIR WARNOCK FROM AISSA CANCHOLA BAÑEZ

Question for the Record Responses

Submitted to the United States Senate Committee on Banking

1. **The CFPB has repeatedly taken actions regarding private student loans. For example, in 2022 the CFPB sanctioned Edfinancial Services, a student loan servicer, for making deceptive statements to student loan borrowers and misrepresenting their forgiveness and repayment options to them. In September 2024, CFPB filed a court order to ban Navient, another student loan servicer, from servicing or buying federal student loans altogether after years of harming borrowers.**

    a. **After the CFPB undertook enforcement actions against student loan servicers like Edfinancial Services and Navient that were in violation of the law, did other student loan servicers more closely observe relevant laws?**

While the CFPB actions against Edfinancial Services (Edfinancial) and Navient were necessary and long overdue, we continue to see widespread industry mismanagement of the student loan system. Over the last couple of years, the Student Borrower Protection Center (SBPC) has been working to sound the alarms on the student loan giant at the heart of the student loan debt crisis, the Higher Education Loan Authority of the State of Missouri (commonly known as MOHELA). Earlier this year, the SBPC and the American Federation of Teachers unveiled findings from a years-long investigative report[1] *which found that MOHELA failed to perform basic servicing functions such as providing borrowers with access to correct information about their loans and options, and processing basic forms, and instead engaged in a company-wide "call deflection" scheme, which ensured that borrowers caught in a byzantine loop of misinformation and false promises were unable to resolve servicing errors.*

This past summer, the American Federation of Teachers filed a consumer protection lawsuit against MOHELA for mismanaging student loan accounts for millions of borrowers, including illegally overcharging borrowers on their monthly student loan bills, failing to timely process paperwork, and actively misleading borrowers about their

[1] Student Borrower Prot. Ctr. and American Fed. of Teachers, *The MOHELA Papers* (2024), www.mohelapapers.org.

student loan accounts.[2] *In November, two*[3] *government* [4] *offices charged with overseeing aspects of the student loan servicing industry unveiled separate reports warning that student loan giant MOHELA is systematically failing borrowers.*

While MOHELA was once a small not-for-profit student loan servicer, it is now the largest student loan servicer across the student loan industry and has now taken on millions of borrowers in Navient's portfolio of private student loans—including loans made to students at for-profit colleges through deception and fraud that have also drawn scrutiny from members of this committee. While the Bureau took steps to protect borrowers by permanently banning Navient from federal student loan servicing and purchasing and buying federal student loan debt, MOHELA will now be responsible for carrying out Navient's obligations under the terms of this settlement— holding the financial futures of Navient's private student loan customers in their hands. It is clear that policy makers and federal enforcement agencies must remain vigilant and continue to hold bad actors accountable for their widespread and well-documented illegal practices.

b. How did the actions of CFPB and student loan providers affect borrowers?

The CFPB's work to hold student loan servicers accountable for misleading borrowers and failing to do their jobs has been critical to ensuring that borrowers get the necessary information they need to manage their student loans and access debt relief options they are entitled to under federal law. In the case of the 2022 enforcement action against Edfinancial Services (Edfinancial), the CFPB sanctioned Edfinancial for misleading Federal Family Education Loan Program (FFELP) borrowers on their loan forgiveness and repayment options. As a result, EdFinancial was required to pay $1 million in civil penalties and notify all borrowers of their loan forgiveness options, including the Public Service Loan Forgiveness (PSLF) program during the course of the limited PSLF waiver period which expired in the Fall of 2022.[5] *While we do not have data on the number of*

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[2] See AFT v. Missouri Higher Education Loan Authority https://protectborrowers.org/mohela-hit-with-groundbreaking-consumer-protection-lawsuit/.

[3] *Report of the CFPB Education Loan Ombudsman,* Consumer Fin. Prot. Bureau (Nov. 2024), https://files.consumerfinance.gov/f/documents/cfpb_2024-annual-student-loan-ombudsmans-report_2024-11.pdf.

[4] See Fiscal Year 2024 Annual Report, Federal Student Aid (Nov. 2024), https://www.ed.gov/media/document/2024-fsa-annual-report.

[5] *CFPB Sanctions Edfinancial for Lying about Student Loan Cancellation,* Consumer Fin. Prot. Bureau (March 30, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sanctions-edfinancial-for-lying-about-student-loan-cancellation/

EdFinancial borrowers that were able to benefit specifically, over the period of the PSLF waiver, approximately 660,000 were able to benefit under the limited PSLF waiver.[6]

In the case of Navient, the CFPB sued the student loan company for failing borrowers at every stage of repayment and violating the Consumer Financial Protection Act, the Fair Credit Reporting Act and the Fair Debt Collection Practices Act.[7] *The lawsuit alleged that Navient unlawfully steered borrowers into costly forbearances—allowing balances to balloon rather than helping borrowers enter into income driven repayment plans that would have put them on the pathway to debt relief. These practices forced borrowers to pay more, damaged the credit of borrowers with disabilities including severely injured veterans, pushed debt relief out of reach and more. The CFPB's enforcement action formally bans Navient from the student loan servicing program and requires Navient to pay over $100 million in redress payments and other penalties. This action will certainly protect future borrowers from facing the same egregious abuses by this one student loan servicing company, but it is also critical that borrowers are made whole and that policymakers and federal and state law enforcement agencies act to prevent such systemic abuses from taking place again.*

c. In your opinion, is the CFPB missing any problems that borrowers of private student loans face due to the conduct of private educational loan servicers? If so, what actions could the CFPB take to ensure it stays informed of those cases, and what can the CFPB do to help?

It is critical that the Bureau continue to remain vigilant and engage in robust market monitoring and supervision of private student loan companies. One of the biggest challenges in doing this incredibly important job is the lack of robust transparency within the private student loan market. The CFPB should use its "market monitoring" authority under the Dodd-Frank Act to compel private student loan companies to regularly produce data on loan origination and performance in order to better spot trends and hold bad actors accountable.

2. **Your organization, the Student Borrower Protection Center has identified the rise of "shadow student debt" as a new source of risk for student loan borrowers. Shadow student debt is an umbrella term for a wide variety of loans and specialty**

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[6] U.S. Dep't of Educ. Off. of Fed. Student Aid, *Public Service Loan Forgiveness Data* (accessed November, 2024), https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data.

[7] *CFPB Bans Navient from Federal Student Loan Servicing and Orders the Company to Pay $120 Million for Wide-Ranging Student Lending Failures*, Consumer Fin. Prot. Bureau (September 12, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-bans-navient-from-federal-student-loan-servicing-and-orders-the-company-to-pay-120-million-for-wide-ranging-student-lending-failures/.

credit, including personal loans, lines of open-ended revolving credit, "Buy Now, Pay Later" debt, balances owed directly to schools, and other consumer financial products tied to higher education and workforce training.

a. What unique risks, distinct from those produced by traditional private student loans, does shadow debt pose to borrowers?

"Shadow student debt" is often marketed towards borrowers who may not qualify for traditional, bank-based private student loans. This can be true for several reasons, including that borrowers may have subprime credit scores or are attending training programs that are risky, unproven, or sit outside of traditional colleges or universities. Many different forms of shadow student debt feature very high interest rates, few or no disclosures, and unusual terms and junk fees. As a result of their less traditional structure, borrowers are led to believe that they are not entitled to the same benefits and protections of traditional loans.

b. What could Congress do to address those risks?

Congress can require that the federal government more closely track the use of all types of debt and credit taken on by students when paying for college or training. We have seen some states take steps in this direction already. For example, the State of Colorado requires lenders and schools to register with the state attorney general's office if they extend any type of credit to students and require lenders and schools to produce metrics on the terms of that credit and how many borrowers fall behind when attempting to repay. If Congress wanted to go further, lawmakers could amend the Truth in Lending Act to extend existing protections for private student loans to students who use any type of credit—this could include increasing servicing standards, prohibitions on lenders co-branding products with schools, and giving borrowers a window to cancel a loan if they get cold feet.

3. **An institutional loan is one offered directly by the institution of higher education, including for-profit and non-profit schools. The CFPB has begun to focus on potential harms to students through these institutional loans. Potential harms include placing enrollment restrictions, withholding transcripts, improperly accelerating payments, failing to issue refunds, and maintaining improper lending relationships.**

a. How common is institutional debt?

While comprehensive data is limited, research estimates[8] 6.6 million individuals owed $15 billion in institutional debts. Institutional debt is a troublingly underregulated private debt market that continues to grow. For example, researchers in California—which is home to the highest number of students enrolled in higher education—found that from 2020 to 2022 alone, nearly 750,000 California students across all public institutions of higher education accrued institutional debt, estimated to total approximately $395 million.[9] The same researchers found that the largest single source of institutional debt for students across the public higher education system in California were charges for students to repay Title IV Pell Grants, which are exclusively awarded to students based on financial need and show how institutional debts are disproportionately harming low-income students.[10]

In an attempt to better understand institutional debt and its impact on students and families, a study commissioned by the Virginia General Assembly in 2022 required public institutions in the state to report on their institutional debt and collection practices, including demographic data.[11] To our knowledge, this is the first and only report of its kind to draw on actual debt and demographic data, rather than extrapolation. The Virginia data also affirms the unequal harm of institutional debt on low-income and students of color. For example, although low-income students—as measured by their eligibility for a federal Pell Grant—make up only 30 percent of enrollment at Virginia's two-year public colleges, they comprise 63 percent of those students who owe debts to those schools.[12]

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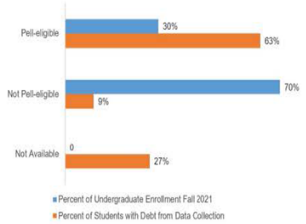
[8] Julia Karon, James Dean Ward, Katherine Bond Hill & Martin Kurzweil, Ithaka S+R, *Solving Stranded Credits* (Oct. 5, 2020), https://sr.ithaka.org/wp-content/uploads/2020/10/SR-Report-Solving-Stranded-Credits-100520.pdf.
[9] Eaton et. al., *Creditor Colleges: Canceling Debts that Surges During COVID-19 for Low-Income Students*, Student Borrower Protection Center (March 2022), https://www.luminafoundation.org/wp-content/uploads/2022/04/creditor-colleges.pdf ("Creditor Colleges Report").
[10] *Id.*
[11] Virginia Secretary of Education, *Report on Student Debt Collection Practices and Policies at Public Institutions of Higher Education (2022 Appropriation Act, Item 128.C),* Report Of The Secretary Of Education (Dec. 2022), https://rga.lis.virginia.gov/Published/2022/HD15/PDF.
[12] *Id.* at 16.

Pell-eligible students with debt at public two-year institutions

Student Type	Total Students with Debt	Share of Total Students with Debt	Total Debt Amount	Share of Total Debt	Averag e Debt Amount
Pell-eligible	9,402	63%	$7,221,639	71%	$768
Not Pell-eligible	1,369	9%	$1,121,655	11%	$819
Not Available	4,056	27%	$1,839,295	18%	$453
Total	**14,827**	**100%**	**$10,182,588**	**100%**	**$687**

Comparison of undergraduate enrollment and Pell-eligible students: public two-year institutions



At those same schools, Black and Latino/a students comprise 17 percent and 8 percent of enrolled undergraduates, respectively, but make up 40 percent and 11 percent of those students who owe debts to their schools.[13] *In addition, the average balance among Black students who owe an institutional debt to their school is more than $120 greater than the average balance among white students who do so, and the average balance among Latino/a students who owe on an institutional debt is more than $50 greater than the average balance among white students.*

b. What sorts of pitfalls could borrowers face from institutional debt?

Institutional debt refers to any debt that students or former students owe directly to schools rather than the government or private lenders and can range from institutional loans issued by the institution as well as library fines, parking tickets, unpaid fees and tuition. Although often overlooked or underappreciated as a form of student debt, these private education debts are as legally enforceable as student loans owed to banks or to the federal government. Schools across the country have been found engaging in a variety of collection activities while seeking repayment of these debts. In California, researchers found that schools resort to withholding a student's diploma or transcript, preventing re-enrollment, and even placing students in private collections or subjecting

[13] *Id.* at 14.

them to tax benefit offsets.[14] *Many of these collection tactics are unavailable to traditional creditors and can exacerbate economic inequities by preventing students from completing their higher education and securing gainful employment.*

c. Should Congress and the Administration regulate institutional loans? If so, what practices should they target, and how should they regulate them?

Congress should require that colleges and universities issuing institutional loans comply with all other applicable state and Federal consumer protection laws in order to continue participating in the Title IV program. Congress should also require all institutions of higher education receiving Title IV aid to report on the outstanding institutional debt that is owed to them by students and report on the debt collection practices they deploy in order to collect on these debts.

In July 2024, the Biden-Harris Administration formally implemented a rule to ban the practice of transcript withholding on all credits funded by Title IV of the Higher Education Act. Congress should codify a full prohibition on this practice, protect borrowers from third party collections and seeing their tax benefits offset as a result of institutional debt, and require robust reporting to increase much-needed transparency.

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[14] 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/.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR KENNEDY FROM BETH AKERS

Q.1. The CFPB recently sought to hold 15 student loan securitization trusts financially liable for restitution to borrowers because of the actions of their servicer. By going after the trusts, the CFPB is going after 401k investors, retirees, and other savers who should not have to bear this cost. Isn't it unfair and wrong to hold securitization investors financially responsible for the actions of third parties who engage in allegedly illegal behavior?

A.1. Response not received in time for publication.

Q.2. What are the ramifications of the CFPB's enforcement action against student loan trusts to the broader securitization market? Doesn't this threaten to negatively impact the availability of credit?

A.2. Response not received in time for publication.

Q.3. What can securitization investors, who play a critical role in providing capital for consumer lending, do to protect themselves from a CFPB enforcement action in the future if the CFPB seeks to hold them legally liable for actions of servicers? Would some type of safe harbor, exclusion, or exception that protects the Trusts against CFPB enforcement action strengthen the student loan securitization market?

A.3. Response not received in time for publication.

RESPONSES TO WRITTEN QUESTIONS OF CHAIR WARNOCK FROM DALIÉ JIMÉNEZ

Q.1. In 2005,[1] Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act. The Act generally blocks people with student loans from discharging these debts in the normal bankruptcy process except in cases of undue hardship on the debtor or the debtor's dependents.[2] In determining undue hardship, the Department of Justice considers the debtor's present ability to pay, future ability to pay, and whether they made a good faith effort in doing so.[3]

James Kvaal, Under Secretary of Education has stated that the undue hardship standard has been very difficult for even deserving borrowers to clear.[4] Do you agree with this characterization?

A.1. Response not received in time for publication.

Q.2. How does being able to discharge student loan debts during the bankruptcy process affect borrowers? What alternatives to the bankruptcy process do individual borrowers have?

A.2. Response not received in time for publication.

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[1] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 91-190 §220 119 Stat 59.

[2] See 11 U.S.C. §523(a)(8).

[3] Bankruptcy, Student Loan Borrower Assistance, *https://studentloanborrowerassistance.org/for-borrowers/dealing-with-student-loan-debt/loan-cancellation-forgiveness-bankruptcy/bankruptcy/*.

[4] "Justice Department and Department of Education Announce a Fairer and More Accessible Bankruptcy Discharge Process for Student Loan Borrowers", U.S. Department of Justice, Office of Public Affairs (Nov. 17, 2022), *https://www.justice.gov/opa/pr/justice-department-and-department-education-announce-fairer-and-more-accessible-bankruptcy*.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

LETTER SUBMITTED BY CBA

September 17, 2024

The Honorable Raphael Warnock
Chairman
Subcommittee on Financial Institutions and Consumer Protection
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thom Tillis
Ranking Member
Subcommittee on Financial Institutions and Consumer Protection
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Warnock and Ranking Member Tillis:

The Consumer Bankers Association (CBA) submits the following comments for the hearing entitled "Back to School: Shedding Light on Risks and Harm in the Private Student Lending and Servicing Market." CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets. CBA also represents banks that originate and hold a majority of outstanding private education loans.

Currently, there is $1.74 trillion in total outstanding student loans. The bulk of student debt is held by the federal government - $1.61 trillion or more than 92 percent of the total volume. Only $133 billion, or just under 8 percent, is private education loan debt.

Private student loans have a history of high repayment rates and very low charge-offs due to strict underwriting standards required by regulators. Federal student loans, by contrast, are a different market. Accordingly, any discussion of the private student loan market must be made with an understanding of consumers' alternatives — with a review of the federal portfolio and its performance.

CBA has been a strong proponent of ensuring student borrowers have a clear understanding of both federal and private education loans available, so they may choose the option that best suits their needs. Our members clearly disclose to borrowers the terms and conditions of student loans to ensure clear awareness of interest rates, repayment terms, interest rates, and monthly payment amounts. Our members are required to undertake strict underwriting procedures to ensure that borrowers have a proven ability to repay before a loan is extended. CBA believes federal student loans would benefit from a more robust disclosure process and enhanced transparency of loan terms to ensure borrowers have a better understanding of the debt they are assuming.

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According to the *Private Student Loan Semi-Annual Report Ending Q1 2024* (previously known as the *MeasureOne Report*) produced by Enterval Analytics, LLC (Attachment 1), roughly 97 percent of private education loan borrowers are in good standing on their loans. Breaking this down – 72.5 percent of borrowers are making payments on their loans, 19.33 percent of borrowers are currently in in-school deferment with an additional 2.9 percent of loans in grace, and finally, 1.86 percent of loans are in forbearance, a status that is equivalent to deferment/ forbearance of federal loans. Of the nearly 76 percent of loans in repayment, only 3 percent of loans are in early-state delinquency (30-89 days past due) and 1.6 percent are in late-stage delinquency (90 days or more past due).

These rates are returning to pre-pandemic performance rates. Prior to the pandemic (2017-2019), 75.46 percent of borrowers were in repayment, 18.2 percent in in school, 3.96 percent in grace and 2.38 percent in forbearance. Further, the pre-pandemic early-stage delinquency rate was 2.57 percent, and the late-stage rate was 1.57 percent. Even during the pandemic, while there was more movement in these performance metrics, with lower rates in 2021, the current and recent numbers remain consistent with the 10-year trend line in performance.

In contrast, the federal student loan portfolio's performance is significantly lower. According to the Office of Federal Student Aid,[1] prior to the pandemic, (2020 Q1) less than half of federal student loan borrowers were making a payment to their student loans. In fact, nearly 21 percent of federal student loan borrowers were either in school or grace, 15 percent were in either deferment or forbearance, and another 15 percent were in default. Of the 49 percent of federal student loan borrowers in repayment along with the 15 percent in deferment or forbearance, almost 64 percent of such borrowers were in either a standard or graduated repayment plans, meaning they were making monthly payments toward their loan. The other 36 percent of federal student loan borrowers were in some form of income-driven repayment, a federal policy that determines a borrower's monthly payment based on their income. We know from numerous studies by the Congressional Budget Office (CBO),[2] the Government Accountability Office (GAO) and others that roughly half of borrowers in these repayment programs are making a payment toward their loan, with some not covering their monthly accrued interest, while the other half have a $0 monthly payment.[3] All of these borrowers are in good standing on their loans. This demonstrates that only 40 percent of federal student loan borrowers were making any payment toward their loan.[4] That equates to about 16 million students of the roughly 40 million borrowers.

As borrowers have returned to repayment over the past year, the data on federal student loans has not significantly changed from the above picture. Technically more borrowers are in a better credit standing, as the Department of Education returned most borrowers to an on-time, in good standing status. However, over the past year, the Department of Education has implemented a policy of not reporting missed payments or any delinquencies to the credit bureaus so that the return of repayment of federal student loans also did not result in a negative impact to borrowers. A recent article by Mark Kantrowicz, a long-time observer and analyst of student loans, analyzes the current

[1] https://studentaid.gov/data-center/student/portfolio
[2] https://www.cbo.gov/system/files/2020-04/56337-CBO-working-paper.pdf
[3] https://www.cbo.gov/system/files/2020-02/55968-CBO-IDRP.pdf
[4] https://www.cbo.gov/system/files/2024-09/58963-student-loan.pdf

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Department repayment data.[5] He notes that even with the efforts of the Department of Education, "6 million borrowers are in default" and "the number of borrowers who are past due doubled [compared to before the pandemic]." These "on-ramp" efforts by the Department of Education expire at the end of the month.

CBA supports Congressional focus on the financial health of student borrowers. However, there is a stark difference between the performance of the private sector, where nearly three-quarters of borrowers are paying down their debt and roughly 97 percent are in good standing, and the federal student loan portfolio. As previously discussed, CBA's lenders are subject to strict underwriting requirements that ultimately protect borrowers from unmanageable debt. Because of this, it would be impossible and impractical for private lenders to serve the entire market. The federal loan program provides needed access to postsecondary education loans to a broader array of students than the private market may not be able to serve. CBA would have serious concerns with any proposal that would privatize the entire student loan market.

As Congress discusses the larger student loan portfolio, CBA suggests that:

- Consumers need equal protection, regardless of who they borrow from.

  The private education loan market is a highly regulated market. In addition to the previously mentioned underwriting standards, banks must comply with consumer protection laws, provisions around unfair, deceptive, or abusive acts or practices (UDAAP), and the Truth in Lending Act (TILA). The Department of Education is not bound to comply with these provisions, especially the appropriate and important disclosure requirements of TILA.

  In addition, there is a growing and emerging industry of non-bank lenders across many areas of lending, including education. CBA encourages increased oversight of these entities in a manner that is consistent with that of the banking industry, ensuring full transparency through disclosures of terms and conditions. CBA members are concerned that the unregulated non-bank entities entering this space negatively impact the private market without the necessary safeguards and transparency for borrowers that should be required.

- CBA supports better financial literacy efforts for all individuals.

  Financial literacy increases a borrower's knowledge and empowers them to make the best decisions for their long-term financial health. A federal loan program exists to help students who wants to pursue a post-secondary education, but more needs to be done to ensure borrowers have access to disclosures that provide greater transparency for a better understanding of repayment terms so they can manage their debt upon entering the workforce.

[5] Analysis Of The Restart Of Student Loan Payments In 2024 (thecollegeinvestor.com)

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Thank you for your interest and attention to student loans. We look forward to continuing to work with you as the Subcommittee explores and works on this issue.

Sincerely,

Lindsey D. Johnson
President and CEO
Consumer Bankers Association

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