

**Testimony of Ashley C. Harrington**

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Before the United States House Committee on Financial Services

**A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan  
Servicers Accountable**

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## I. Introduction

Good morning Chairwoman Waters, Ranking Member McHenry and Members of the United States House Committee on Financial Services. Thank you for the opportunity to provide testimony today about the need to address the servicing issues contributing to this nation's \$1.5 trillion student debt crisis. My name is Ashley Harrington, and I am a senior policy counsel at the Center for Responsible Lending. The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest community development financial institution. For thirty years, Self-Help has focused on creating asset-building opportunities for low-income, rural, women-headed, and families of color, primarily through financing safe, affordable home loans and small business loans. In total, Self-Help has provided \$6.4 billion in financing to 87,000 homebuyers, small businesses and nonprofit organizations and serves more than 80,000 mostly low-income families through more than 40 retail credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, and Wisconsin.

The growth of outstanding student loan debt over the last decade has been staggering. Today, more than 44 million people<sup>1</sup> carry over \$1.5 trillion of outstanding student loan debt, an amount that exceeds all other types of non-mortgage loan debt. Two out of three graduates in the class of 2017 borrowed federal student loan debt to finance their education.<sup>2</sup> This phenomenon is especially concerning for communities of color, as the existing wealth gap makes the burden of student loan debt particularly heavy for African American and Latino communities.

It is imperative to any policy making process to first acknowledge the *de jure* racial segregation that American institutions of higher education were built on.<sup>3</sup> The results of legal segregation in higher education have created an inequitable legacy for communities of color that persists today. Even after *Brown v. Board of Education* (1954), predominately-white institutions (PWIs) in many states resisted integration and equal treatment for nonwhite students.<sup>4</sup> In addition, institutions such as historically black colleges and universities (HBCUs) have never been adequately funded despite the high-quality opportunities they provide. HBCUs perform a critical function for African American undergraduates: Across the 21 states and territories where they are located, HBCUs comprise only 9% of four-year institutions but awarded 26% of

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<sup>1</sup> See: <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls>. Reflects totals through the end of June 2018

<sup>2</sup> See: [http://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf//HHDC\\_2018Q4.pdf](http://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf//HHDC_2018Q4.pdf)

<sup>3</sup> Pierre, 2012. History of De Jure Segregation in Public Higher Education in America and the State of Maryland Prior to 1954 and the Equalization Strategy.

<https://commons.law.famu.edu/cgi/viewcontent.cgi?article=1074&context=famulawreview>.

<sup>4</sup> Minor, J.T. 2008. "Segregation Residual in Higher Education: A Tale of Two States." American Educational Research Journal 45(4): 862-882.

all African American bachelor's degrees in 2016.<sup>5</sup> A history of unequal treatment and funding, deferred maintenance costs, and financial challenges threatens the important legacy of HBCUs.<sup>6</sup> A Government Accountability Report recently found that almost half of all HBCU buildings need repair or replacement.<sup>7</sup> Further, public HBCUs in many states have historically lagged behind public predominately-white institutions (PWIs) in per student funding.<sup>8</sup> Indeed, the racial wealth and resource gap extends to institutions of higher education.<sup>9</sup> As the funding inequities accumulate for HBCUs, and in the absence of robust federal, state, and institution-level support, students are left to fill gaps in funding with student loans. Thus, students at HBCUs tend to take on more debt than students who are not at HBCUs.<sup>10</sup>

Historically, students have benefited from public investment in higher education, from the GI Bill to the creation of the Pell Grant program. But not all students benefited equally from these social investments: African Americans students did not have access to the GI Bill and higher education institutions in many states have a long history of resistance to integration. And by the end of the 20th century, just at the time when student bodies were diversifying, policymakers were shifting the costs of higher education from the public to the individual student.<sup>11</sup> Today, this pattern persists and African American and Latino students struggle to fund their college experiences due to broad societal discrimination and, too often, are preyed upon by poor quality for-profit institutions that fail to provide reliable educational benefits.

In the past decade, the higher education landscape has become significantly more perilous for student borrowers. When state legislatures began to tighten their belts in the wake of the Great Recession, investments in public colleges and universities began to decline.<sup>12</sup> In response, public colleges and universities raised tuition, and cut student services.<sup>13</sup> As states slashed budgets and schools raised the cost of a degree, families experienced massive wealth declines

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<sup>5</sup> Saunders, K.M. & Nagle, B.T. 2018. HBCUs Punching Above Their Weight: A State-Level Analysis of Historically Black College and University Enrollment and Graduation. Washington DC: UNCF Frederick D. Patterson Research Institute. Available at <https://www.uncf.org/pages/hbcus-punching-above-their-weight>.

<sup>6</sup> Minor, J.T. (2008). "Segregation Residual in Higher Education: A Tale of Two States." *American Educational Research Journal* 45(4): 862-882.

<sup>7</sup> United States Government Accountability Office. June 2018. *Historically Black Colleges & Universities: Action Needed to Improve Participation in Education's HBCU Capital Financing Program*. Washington DC: U.S. Government Accountability Office. Available at <https://www.gao.gov/assets/700/692809.pdf>.

<sup>8</sup> Mitchell et. al., 2016.

<sup>9</sup> Mitchell, Leachman, & Masterson, 2016; Boland, William Casey & Gasman, Marybeth. 2014. *America's Public HBCUs: A Four-State Comparison of Institutional Capacity and State Funding Priorities*. Philadelphia: Penn Center for Minority-Serving Institutions. Available at [https://repository.upenn.edu/gse\\_pubs/340](https://repository.upenn.edu/gse_pubs/340).

<sup>10</sup> Saunders et. al., 2016.

<sup>11</sup> Huelsman, Mark. 2019. *Debt to Society: The Case for Bold, Equitable Student Loan Cancellation and Reform*. Washington DC: Demos. Available at <https://www.demos.org/research/debt-to-society>.

<sup>12</sup> Mitchell, Michael; Leachman, Michael; and Masterson, Kathleen. 2016. *Funding Down, Tuition Up: State Cuts to Higher Education Threaten Quality and Affordability at Public Colleges*. Center on Budget and Policy Priorities. Available at <https://www.cbpp.org/sites/default/files/atoms/files/5-19-16sfpp.pdf>.

<sup>13</sup> Ibid.

from a sinking economy.<sup>14</sup> With foreclosures, job loss, and downturns in the market fracturing family balance sheets, an entire generation of students needed to borrow more than ever before to attend college. Further, a larger number of students than ever before chose to go to college to pursue an education that could help them secure a solid future. Put simply, students of color pursue postsecondary education in a social and economic system built on racist ideologies and infused with hidden, seemingly unconscious bias that creates and perpetuates the racial wealth, income and achievement gaps.<sup>15</sup> This reality means that, on average, students of color have less familial financial support or knowledge about navigating this complex system. Within this context, students and families of color are more likely to need to borrow for higher education and in larger amounts.

Even after graduation, African American and Latino people face substantial job discrimination and earn far less than their white counterparts.<sup>16</sup> African Americans can also face more difficulty paying off debt and building savings to withstand future financial shocks because of this income gap. Given these disadvantages, these students tend to take longer to pay their loans back compared to their white counterparts.<sup>17</sup> In fact, recent research shows that, rather than helping communities of color build wealth, a college education actually deepens the wealth gap due to the high costs and structural issues in our system.<sup>18</sup> For example, young African-Americans take on 85% more student debt than their white counterparts for their education and that difference in indebtedness increases by almost 7% per year after leaving school.<sup>19</sup> Despite these facts, for most students, especially students of color, the pursuit of higher education is not a choice. Indeed, postsecondary education is a necessity, not a luxury, for today's workforce.<sup>20</sup>

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<sup>14</sup> 2013 Update: The Spillover Effects of Foreclosures. Center for Responsible Lending (August 2013). Available at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2013-crl-research-update-foreclosurespillover-effects-final-aug-19-docx.pdf>.

<sup>15</sup> The federal National Advisory Commission on Civil Disorders ("Kerner Commission") discussed two "separate and unequal" societies (one black, one white). Fifty years later, we are still struggling with this reality despite the availability of reforms. Fred Harris and Alan Curtis, "The Unmet Promise of Equality," *The New York Times* (Feb. 28, 2018) <https://www.nytimes.com/interactive/2018/02/28/opinion/the-unmet-promise-of-equality.html>.

<sup>16</sup> Quillian, Lincoln; Pager, Devah; Hexel, Ole; & Arnfinn H. Midtbøen. 2017. "Meta-analysis of field experiments show no change in racial discrimination in hiring over time." *Proceedings of the National Academy of Sciences of the United States of America* 114(41): 10870-10875; Gaddis, S. Michael. 2015. "Discrimination in the Credential Society: An Audit Study of Race and College Selectivity in the Labor Market." *Social Forces* 93(4): 1451-79.

<sup>17</sup> Schultz, Sarah. 2017. "A Blueprint for Higher Education Equity." Washington DC: Young Invincibles. Available at <https://younginvincibles.org/reports-briefs/blueprint-higher-education-equity/>.

<sup>18</sup> Houle and Addo, 2018. "Racial Disparities in Student Debt and Reproduction of the Reproduction of the Fragile Black Middle Class." *Sociology of Race and Ethnicity* 1-16

<sup>19</sup> Id.

<sup>20</sup> Over 95% of jobs created since the Great Recession have gone to those with at least a bachelor's degree. See Anthony Carnevale, et al., "America's Divided Recovery: College Haves and Have-Nots" (2016) <https://cew.georgetown.edu/cew-reports/americas-divided-recovery/>. By 2020, 65% of all jobs will require some form of postsecondary education. Anthony Carnevale, et al., "Recovery: Job Growth and Education Requirements Through 2020." (2014) [https://cew-7632.kxcdn.com/wp-content/uploads/2014/11/Recovery2020.FR\\_Web\\_.pdf](https://cew-7632.kxcdn.com/wp-content/uploads/2014/11/Recovery2020.FR_Web_.pdf).

Women graduate, on average, with \$2,700 more in student loan debt than men, and because of the gender pay gap, they earn about 26% less, so paying off their debt takes significantly longer.<sup>24</sup> This is especially true for women of color. African-American women graduate with almost 50% more student debt than white and Latina women at 4-year institutions.<sup>25</sup> Approximately 57% of African American women and 42% of Latina women who were repaying student loans reported that they were unable to meet essential expenses within the past year compared to 34% of all women.<sup>26</sup>

Further, while student loan debt is often seen as a Millennial issue, the crisis leaves no age group untouched. The AARP is increasingly concerned about student loan debt affecting the financial stability of older Americans.<sup>27</sup> In fact, \$66.7 billion of total outstanding student loan debt was owed by 2.8 million borrowers age 60 and older in 2015.<sup>28</sup> Nationally, the median student loan balance of older borrowers increased by more than \$1,000, and the total outstanding student debt held by borrowers over age 60 increased by more than 50 percent between 2012 and 2017.<sup>29</sup> According to the Government Accountability Office, the increase in student loan debt among seniors has led to more seniors spending their would-be golden years struggling to make ends meet because of the federal government's ability to garnish seniors' social security income for repayment of federal student loan debt.<sup>30</sup>

As a result of their need to borrow more, alongside targeting and financial deception by for-profit institutions and often abusive servicers, a disproportionate percentage of students of color and the majority of black students are unable to pay student debt and will default.<sup>31</sup> Delinquency and defaults on student loans occur disproportionately for students of color as well as for women. A degree is not a shield from racial disparities: African American bachelor's degree graduates' default at five times the rate of white bachelor's degree graduates and are more likely to default than whites who never finish a degree.<sup>32</sup> Latino bachelor's degree

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<sup>24</sup> American Association of University Women. (2018). Women's student debt crisis in the United States. Retrieved from <https://www.aauw.org/research/deeper-in-debt/>.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Trawinski, Lori, Montezemolo, Susanna, & Williams, Alicia. 2019. *The Student Loan Debt Threat: An Intergenerational Problem*. Washington DC: AARP Public Policy Institute. Available at <https://www.aarp.org/ppi/info-2019/the-student-loan-debt-threat-an-intergenerational-problem.html>.

<sup>28</sup> Office for Older Americans & Office for Students and Young Consumers. 2017. *Snapshot of Older Consumers and Student Loan Debt*. Consumer Financial Protection Bureau. Available at <https://www.consumerfinance.gov/data-research/research-reports/snapshot-older-consumers-and-student-loan-debt/>.

<sup>29</sup> Michael Stratford, Why the AARP is worried about student loans, Politico, June 7, 2018, <https://www.politico.com/agenda/story/2018/06/07/student-loans-debt-aarp-000666>.

<sup>30</sup> Government Accountability Office. 2016. *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief*. Available at <https://www.gao.gov/assets/690/681722.pdf>.

<sup>31</sup> Scott-Clayton, Judith. 2018. "The looming student loan default crisis is worse than we thought." Washington, DC: Brookings Institution. Available at <https://www.brookings.edu/wp-content/uploads/2018/01/scott-clayton-report.pdf>.

<sup>32</sup> Brookings Institution, The looming student loan default crisis is worse than we thought, January 10, 2018, <https://www.brookings.edu/wp-content/uploads/2018/01/scott-clayton-report.pdf>

graduates' default at twice the rate of their white peers.<sup>33</sup> Even those who can pay are struggling. Today, nearly half of African American graduates with a bachelor's degree owe more on their undergraduate student loan after four years than they did at graduation, compared to 17% of white graduates and approximately 23% of Latinos.<sup>34</sup> This derails their financial and personal lives and subjects them to harsh collection practices that can keep them from achieving the wealth gains promised by a college education. Meanwhile, their debt keeps growing due to unlimited interest accrual and no statute of limitations on student debt.

The interplay between student loan payments and other major life investments and responsibilities is well documented. Research from the National Association of Realtors shows that the usual student loan borrower delays the purchase of their first home by an average of seven years because of student loan debt.<sup>35</sup> Thus, this has serious implications for the housing market as well. Moving forward, the market for new homeownership will be predominately borrowers of color, and long-term student loan debt threatens to shrink the available pool of buyers. Unless bold, new actions are taken, a generation will be trapped in debt undertaken to try to advance their lives.

Given these factors, there is a real need for meaningful policy changes that help those most impacted by the student debt crisis. These changes will have impact beyond individual students and will boost the overall economy. A critical component of this is servicing reform and the creation of a borrower-centered student loan system that ensures consumer protections for all borrowers and strong accountability at all stages of repayment. To that end, my testimony today will:

- Describe the current state of the education loan market and the systemic failures that make it hard for borrowers to succeed in repayment and add to the growing student debt crisis;
- Highlight the failures of the current Department of Education to protect student borrowers and the efforts of states and advocates to mitigate them; and
- Provide recommendations for statutory requirements and improvements to ensure loan servicers and private collections agencies meet basic consumer protection standards and help, rather than prevent, students pay off their loans and pursue the intended benefits of higher education.

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<sup>33</sup> Id.

<sup>34</sup> Brookings Institute, Black-white disparity in student loan debt more than triples after graduation, Oct. 2016, <https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/>

<sup>35</sup> National Association of Realtors, Student Loan Debt and Housing Report, Oct. 2017, <https://www.nar.realtor/research-and-statistics/research-reports/student-loan-debt-and-housing-report>.

## II. The important role of student loan servicing

### A. *Background on the current system*

Though the federal government is the lender for the vast majority of student loans—over 90%—it has outsourced the work of managing these loans to private student loan servicers. These same servicers also handle student loans made by private lenders such as Discover and Sallie Mae. Currently there are nine primary student loan servicers, with four of these, Navient, FedLoan Servicing, Great Lakes and Nelnet dominating the market. Most students do not have a choice of who services their loans, and therefore cannot “vote with their feet” if they are unhappy with their servicer by switching to another.

Once students graduate or leave school, they begin to pay on their federal loans after a six-month grace period. Borrowers may enroll in one of several repayment plans depending on their circumstances, ranging from the standard repayment plan with level payments over 10 years, graduated payment and extended term plans, and income-driven repayment options that lower the monthly payment but extend the term over a longer period of 20 to 30 years.<sup>36</sup> While reforms to these option are needed,<sup>37</sup> the importance of income-driven repayment (IDR) plans cannot be overstated. Their purpose is to provide borrowers access to affordable and reasonable student loan payments by tying loan repayment to post-college earnings (generally 10% of discretionary income) and forgiving any balance on the loan after 20 to 25 years, depending on the type of loan. Enrollment in IDR has been shown to significantly reduce delinquency and default. According to data from the Department of Education, among borrowers enrolled in the standard ten-year repayment plan, 18% are not currently making payments on their loans, whereas for borrowers enrolled in one of the five income-based repayment plans, the delinquency rate is just 8%.<sup>38</sup>

These differences in student loan distress between plans are significant in their impact. Defaults can cause borrowers to spiral into poverty by harming a borrower’s credit score and making it more difficult to access jobs and housing, as employers and landlords routinely conduct credit checks when assessing applicants. In some states, defaulted borrowers could lose their drivers’ licenses and specialty work licenses related to their employment. Defaulted borrowers can have their wages garnished and tax refunds offset. For seniors, defaulting could mean garnishment of their Social Security income, reducing funds available for basic living needs such as food, shelter, and medications.

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<sup>36</sup> See: <https://studentaid.ed.gov/sa/repay-loans/understand/plans>

<sup>37</sup> CRL and other civil rights groups advocate for streamlining IDR options down to one plan with payments based on 8% of discretionary income and a repayment term of not more than 15 years. See: Center for Responsible Lending, the National Association for the Advancement of Colored People, UnidosUS, the National Urban League, and the Leadership Conference on Civil and Human Rights. 2019. Quicksand: Borrowers of Color & the Student Debt Crisis. Durham, NC: The Center for Responsible Lending. Available at <https://www.responsiblelending.org/research-publication/quicksand-borrowers-color-student-debt-crisis>.

<sup>38</sup> See: <https://www.forbes.com/sites/prestoncooper2/2018/08/07/income-based-repayment-reduces-student-loan-delinquency-but-dont-oversell-it/#3301fbc937d0>



Because student loan servicers link federal loan borrowers and their repayment options, they play a crucial role in helping struggling borrowers stay out of default and on track to repay their loans. Among other responsibilities, these servicers are tasked with collecting student loan payments, educating borrowers about repayment plans, and processing applications and annual re-certifications for income-driven repayment plans. Servicers are in a position to know if a borrower is in distress when they make late payments, and when borrowers contact them to ask about their options. Savvy borrowers may inform themselves of their repayment options, but most borrowers rely on their servicers to help them navigate a confusing system. Despite the fact that servicers are in the best position to proactively help enroll borrowers in IDR and prevent default, borrowers are still confused – which indicates that servicers can do more to assist student borrowers in repayment.<sup>39</sup>

### ***B. Loan servicers are not helping borrowers manage their student debt***

It's increasingly clear that servicers have consistently failed to fulfill their obligations, engaging in a variety of abusive practices that have long-term negative consequences for borrowers. Audits and borrower complaints have shown that servicers are failing to fulfill these obligations consistently, resulting in long-term negative consequences for borrowers who usually do not have a choice in who is servicing their loans. Indeed, from the time the Consumer Financial Protection Bureau (CFPB) began taking complaints about student lending in late 2011 until February 2017, there were tens of thousands of complaints about loan servicers. Other federal agencies have reported on poor servicing practices as well. An audit conducted by the US Office of the Inspector General found that, from 2015 – 2017, Federal Student Aid rarely enforced servicer compliance with their contracts and did not follow policy when evaluating servicer performance. The failure of servicers to do their job contributes to the growing debt burden as their practices result in unnecessarily longer and larger debt loads.

Documented complaints by borrowers received by the CFPB reflect servicers misapplying payments, reporting incorrect information to credit bureaus, giving incorrect information about Public Service Loan Forgiveness and placing borrowers in pause payment plans, such as deferment and forbearance, that over time cause student's debt to balloon and lead to delinquencies and defaults.<sup>40</sup> Student loan servicers are notorious for putting borrowers into deferment or forbearance when income-driven repayment plans are more suitable and less costly for borrowers. In fact, the CFPB initiated a lawsuit in January 2017 against Navient, then the nation's largest servicer of student loans, for cheating and mistreating student loan

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<sup>39</sup> In a series of focus groups with struggling student loan borrowers, the New America Foundation found that few borrowers had enrolled in IDR. Those who were unfamiliar with IDR were “confused, perplexed, and often suspicious” of the option. The researchers found that “[t]here was a general lack of awareness about income-based repayment plans, and even those who were using them seemed to be confused about plan details.” See: <https://www.newamerica.org/education-policy/edcentral/studentloansaredifferent/>

<sup>40</sup> See: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-snapshot-spotlights-student-loan-complaints/>

borrowers, including routinely failing to put many of their millions of borrowers into the income-driven repayment plans they were entitled to by law. These practices led to up to \$4 billion in extra interest and fees being added to the principal balances of already indebted student loan borrowers.<sup>41</sup>

Unfair and substandard servicing practices also open the door to scammers purporting to advise borrowers about their options and mislead them into thinking they need to pay large upfront fees to enroll in free income-driven repayment plans or to consolidate their loans. State attorneys general and the CFPB have sued fraudsters taking advantage of borrowers – but the practice will continue to flourish as long as student loan servicers fail to adequately communicate with and assist borrowers.

Recently, concerns have also been raised that servicers are providing access to affordable income-driven repayment in an unequal way, with a disproportionate impact by race and sex.<sup>42</sup> Borrowers of color are also more likely than their white peers to experience servicer misrepresentation. First, historical practices preventing inter-generational wealth building mean that borrowers of color graduate with more student loan debt. Second, the over-representation of students of color in the student bodies of predatory, for-profit schools and ongoing workplace discrimination mean that borrowers of color are more likely to struggle with repayment of those loans. Servicer misrepresentations increase the costs of those loans and erect yet another barrier to wealth building, perpetuating the cycle.

### ***C. Problems with private collection agencies***

Currently, the Department of Education reassigns loans that are 365 days past due from student loan servicers to private collection agencies (federal loans are technically in default at 270 days past due).<sup>43</sup> Like all collection agencies, the priority is to recover money from struggling student loan borrowers rather than provide sustainable solutions for loan management. Additionally, student loan debt collection has been shown to be very expensive relative to the amount of recoveries, with the CFPB estimating that these agencies receive \$40 in compensation for every \$1 recovered from some borrowers whose loans are placed back into repayment through a rehabilitation program.<sup>44</sup> The Center for American Progress studied student debt collections in 2017 and found that the federal government spent about \$700 million for fewer than 7 million borrowers in default, almost the same amount it spent on loan servicing for more than 33 million borrowers not in default.<sup>45</sup>

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<sup>41</sup> See: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/>

<sup>42</sup> See: <https://www.responsiblelending.org/research-publication/protect-student-loan-borrowers-discrimination>

<sup>43</sup> See: <https://studentaid.ed.gov/sa/repay-loans/default/collections>

<sup>44</sup> See: <https://beta.washingtonpost.com/education/2019/02/28/billions-dollars-defaulted-student-loans-are-going-uncollected-lawsuit-says/>

<sup>45</sup> Ibid.

Student debt collectors have been shown to repeatedly violate debt collection and other consumer protection laws as reflected in numerous borrower complaints about such abuses.<sup>46</sup> These abuses include calling consumers multiple times per day even after being asked to stop, calling early in the morning or late at night, calling consumers' workplaces despite knowing that the employers prohibited such calls, leaving phone messages that disclosed the debtor's name and the existence of the debt to third parties, and continuing collection efforts without verifying the debt, even after consumers said they did not owe it.<sup>47</sup>

The Department of Education has announced its intent to fold debt collection duties into student loan servicing under Next Generation Financial Services Environment, or NextGen, a broad overhaul of how student loan servicing and collection are handled and contracted. It remains to be seen whether this overhaul will reduce defaults and improve service for struggling borrowers.

#### ***D. Private education loans***

In 2015 – 2016, 5% of undergraduates utilized private education loans to fund their education.<sup>48</sup> Most of this group did not maximize available federal aid. While the use of non-federal student debt began to decrease after the Great Recession, the loan volume is now trending upwards. The CFPB has identified troubling practices in private student loan servicing and origination, which can make these loans very risky for borrowers. Private student loans may have high interest rates, and borrowers have no access to relief opportunities offered on federal student loans, such as income-based repayment programs. During the run up to the financial crisis, private student loans, like mortgages, were made using questionable underwriting, trapping borrowers in unaffordable debt. For-profit colleges, in cooperation with financial institutions, have a track record of making harmful private loans to their students.

Congress instructed the CFPB to pay special attention to private loans precisely because they have a problematic history of causing long-term financial distress to borrowers. In the early 2000s, private student loans followed a path similar to mortgage lending. Securitization led to mushrooming growth of questionably underwritten, variable- and high-interest-rate loans, which suffered high default rates after the economy crashed. Many borrowers today suffer from the loans made before the market corrected.

Recent data does suggest that some lenders have improved their private student loan underwriting standards, but problems remain. Federal student loans offer greater consumer protections than private loans, yet many of the students who take out private loans do not first exhaust their federal options. This means that they are unable to access such options as

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<sup>46</sup> See Deanne Loonin and Persis Yu, National Consumer Law Center, Pounding Student Loan Borrowers: The Heavy Costs of the Government's Partnership with Debt Collection Agencies (Sept. 2014), available at <http://www.nclc.org/images/pdf/pr-reports/report-sl-debt-collectors.pdf>.

<sup>47</sup> Ibid.

<sup>48</sup> See: [https://ticas.org/wp-content/uploads/2019/08/pl\\_facts\\_trends.pdf](https://ticas.org/wp-content/uploads/2019/08/pl_facts_trends.pdf)

guaranteed income-based repayment and loan forgiveness plans, assistance for getting out of default and discharges for disability or death. Since both federal and private student loans are much more difficult to discharge in bankruptcy than other kinds of debt, these protections are crucial.

Colleges can and should play a role in helping students accurately compare private loans to federal loans. Stronger school certification processes, which ensure that students receive full information about their federal and private options, would require colleges and lenders to coordinate with one another to help students choose wisely.

Private loans taken out by students at for-profit colleges also deserve particular attention. As indicated by the CFPB's recent lawsuits against Corinthian Colleges and ITT Tech, the private student loan programs created by for-profit colleges in concert with lenders and other third parties after the credit market constricted were often based on deception and other illegal practices.<sup>49</sup> Similar programs may still be making loans with very high default rates.

### **III. The current administration has rolled back important consumer protections for student loan borrowers**

During the Obama administration, contract negotiators for student loan servicers were instructed to include important consumer protections and incentives in the contracts.<sup>50</sup> Unfortunately, the Department of Education's actions since Secretary DeVos took office in early 2017 have not addressed the existing challenges and, instead, have exacerbated a dynamic that already favored private servicing companies over student loan borrowers. Despite the crisis that student loan debt presents to 44 million borrowers, their communities, and our economy, the current Department of Education refuses to adequately hold servicers accountable. The Department of Education's actions can be sorted into three primary categories: (1) revoking existing policies that were meant to protect student loan borrowers, (2) acting to the benefit of private companies over students and taxpayers, and (3) attempting to prevent federal and state enforcement.

#### ***A. The Department of Education has revoked several policies and guidances put in place to protect student loan borrowers from servicing abuses.***

In 2016, then Under Secretary of Education Ted Mitchell rolled out a set of policy directives, called the "Student Aid Bill of Rights," that instructed Department of Education employees negotiating servicer contracts to include important consumer protections and incentives in the

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<sup>49</sup> <https://www.responsiblelending.org/media/new-cfpb-report-finds-troubling-practices-private-loan-servicing-and-origination>

<sup>50</sup> Mitchell, Ted. 2016. Policy Direction on Federal Student Loan Servicing. U.S. Department of Education. Available at [https://www.consumerfinance.gov/documents/2313/20160620\\_US-Department-of-Education\\_loan-servicing-policymemo.pdf](https://www.consumerfinance.gov/documents/2313/20160620_US-Department-of-Education_loan-servicing-policymemo.pdf).

new contracts.<sup>51</sup> In one of her first acts as Secretary of Education, Betsy DeVos reversed the guidelines for the new contracts.<sup>52</sup> The contract negotiators would no longer be asked to hold student loan servicers to high standards of consumer protection. In March 2017, the DeVos Department revoked a 2015 guidance that barred guaranty agencies from charging collection fees to borrowers who default but quickly enter repayment plans.<sup>53</sup> The decision to revoke this guidance could, in fact, cost borrowers millions.<sup>54</sup> A 2017 settlement returned \$23 million to borrowers in a case regarding collection fees that were charged after borrowers had defaulted but had quickly entered repayment plans.<sup>55</sup>

The Education Department has also ignored several calls to standardize servicing guidelines and hold servicers accountable for noncompliance, even though these calls came from within the Trump Administration and even within the Department itself. For instance, the Department of Education has not addressed an August 2018 report from the Treasury Department that recommended standardized guidelines for federal student loan servicers.<sup>58</sup> The Department of Education, similarly, has not adequately addressed a February 2019 internal audit that raised concerns related to the high risk of servicer noncompliance and called for more effective mitigation by FSA.<sup>59</sup> The same February 2019 audit found that FSA rarely held servicers accountable for noncompliance, and instead neglected to even track errors as long as servicers fixed them in individual instances.<sup>60</sup> The audit further reported that the agency “relied on the memories of the employees responsible for the oversight activities to recognize recurring instances of noncompliance,” and that the Department rarely held servicers accountable for their mistakes.<sup>61</sup> These details indicate that the Department of Education is neither committed to holding servicers accountable for their mistakes on an ongoing basis, nor are they committed to rewarding servicers with histories of adequate compliance.

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<sup>51</sup> Press release: Education Department to Implement Improved Customer Service and Enhanced Protections for Student Loan Borrowers, Dept of Ed. (July 20, 2016) retrieved: <https://www.ed.gov/news/press-releases/education-department-implement-improved-customer-service-and-enhanced-protections-student-loan-borrowers>

<sup>52</sup> Press release: Memorandum from Secretary of Education Betsy DeVos to FSA Chief Operating Officer James Runcie Regarding Student Loan Servicer Re compete, Dept. of Ed. (April 11, 2017) Retrieved: <https://www.ed.gov/news/press-releases/memorandum-secretary-education-betsy-devos-fsa-chief-operating-officer-james-runcie-regarding-student-loan-servicer-recompete>

<sup>53</sup> Available at <https://www.insidehighered.com/quicktakes/2017/03/17/us-rescinds-guidance-collection-fees>.

<sup>54</sup> Available at <https://www.insidehighered.com/quicktakes/2017/03/21/usa-funds-ties-education-department-adviser>; Available at <https://ifap.ed.gov/dpclatters/GEN1702.html>.

<sup>55</sup> Available at <https://www.insidehighered.com/quicktakes/2017/01/31/usa-funds-settle-suit-loan-collection-fees>.

<sup>58</sup> Available at <https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>; Available at [https://www.nasfaa.org/news-item/15846/Treasury\\_Department\\_Pushes\\_for\\_Federal\\_Loan\\_Servicing\\_Standards](https://www.nasfaa.org/news-item/15846/Treasury_Department_Pushes_for_Federal_Loan_Servicing_Standards).

<sup>59</sup> Available at <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf>.

<sup>60</sup> Available at <https://www.nytimes.com/2019/02/14/business/student-loans-education-department.html>.

<sup>61</sup> Ibid.

***B. The Department of Education has taken many opportunities to enrich private businesses at the expense of student loan borrowers***

Evidence shows that the Department of Education has repeatedly acted in ways that improperly benefit education loan servicing companies. As mentioned previously, the CFPB sued Navient in early 2017 for widespread servicing mistakes that cost borrowers almost \$4 billion in unpaid interest due to inappropriate steering of over 1.5 million borrowers into multiple forbearances instead of income driven repayment over a period of 5 years. Rather than providing critical documents related to the case to the another federal government actor, the Department provided them to Navient and withheld them from the CFPB.<sup>62</sup>

In another instance that suggests that the Department of Education was acting inappropriately in order to protect loan servicers at the expense of student loan borrowers, the Department of Education completed an internal audit of Navient in May 2017 but declined to release it to the public until November 2018, well over a year later. The states that had active lawsuits against Navient did not receive copies of the audit until it was released publicly, despite the fact that the audit was relevant to their cases against Navient for breaking state and federal consumer protection laws. Before the audit was made public, the Department of Education maintained that Navient “was not improperly steering borrowers into forbearance.” However, according to the Associated Press, the audit appeared to “support federal and state lawsuits that accuse Navient of boosting its profits by steering some borrowers into high-cost plans without discussing options that would have been less costly in the long run.”<sup>63</sup> After the audit was released publicly, Navient cited their servicing contract and claimed that they were not aware “of any requirement that borrowers receive all of their repayment options...on each and every call.”<sup>64</sup>

In some cases, possible conflicts of interest have also raised red flags about the Department of Education’s conduct vis a vis private companies. In another early action by the DeVos Department of Education (August 2017), data sharing agreements (MOUs) with the CFPB were terminated, reducing oversight of private loan servicers.<sup>65</sup> These MOUs encompassed information sharing, a critical element of CFPB enforcement efforts, and thus weakened the possibility of federal oversight of both student loan servicers and for-profit colleges. In this case, the day before the MOU termination, more than 872,000 shares of Navient were purchased and, after the termination, the stock price rose.<sup>66</sup>

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<sup>62</sup> Available at <https://www.americanoversight.org/nsldn-and-american-oversight-sue-education-department-for-navient-emails-and-records>.

<sup>63</sup> Available at <https://www.apnews.com/eeebf667026a420c9893220215e542cb>.

<sup>64</sup> Ibid.

<sup>65</sup> Available at [https://www.insidearm.com/documents/673/Letter\\_from\\_ED\\_to\\_CFPB\\_terminating\\_MOUs\\_between\\_ED\\_and\\_CFPB.pdf](https://www.insidearm.com/documents/673/Letter_from_ED_to_CFPB_terminating_MOUs_between_ED_and_CFPB.pdf).

<sup>66</sup> The AFL-CIO called on the Securities and Exchange Commission (SEC) to investigate the trades “to find out whether the stock purchases were done illegally, in violation of insider trading laws or the STOCK Act, a 2012 law that makes clear it is illegal for members of Congress or their staff to personally profit on private information

In 2014, the Obama administration began a process to simplify and streamline the student loan repayment and collection process. Because simplification would require a new servicing system, NextGen—a single website for all federal student loan borrowers, it was expected to require new and different servicing contracts that could include borrower protections and better customer service features. Based on problems with single servicers in the past, bipartisan elected officials and industry groups agreed that contracts should be awarded to multiple loan servicers on the basis of past performance.<sup>68</sup> In the spring of 2017, FSA amended the plan and weakened borrower protections, customer service features, and even called for awarding all servicing contracts to one private servicer.<sup>69</sup> After bipartisan opposition, FSA withdrew the plan entirely, and re-released a new one that includes a single online platform, returns to the idea of multiple private servicers, but does not include accountability measures.<sup>70</sup> In fact, the new plan proposes hiring a private contractor to manage compliance and oversight instead of relying on federal government oversight agencies such as the CFPB.<sup>71</sup>

Related changes in the procurement documents suggest that the Department of Education may be tipping the scales in favor of particular companies. In one example, the Department of Education declared that they would make their contractor selections based on five years of compliance instead of seven (the number cited in Obama-era procurement documents) in June 2019, which many consumer rights groups felt was a move meant to “tip the scales for Navient,” given that the new timetable would make a large law enforcement action against Navient by the CFPB too old to count in the procurement process.<sup>72</sup>

### ***C. The Department of Education has attempted to prevent federal and state enforcement***

Throughout Secretary DeVos’ tenure, the Department has undertaken several actions aimed at curtailing federal and state entities’ abilities to regulate and supervise education loan servicers and protect consumers.

At the federal level, the Department of Education has refused to share information with the CFPB. As has been mentioned, the Department terminated two MOUs with the CFPB that encompassed information sharing and federal oversight of student loan companies and for-

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obtained in their work.”<sup>66</sup> Available at <https://www.reuters.com/article/us-usa-sec-navient/afl-cio-wants-sec-to-probe-trading-in-shares-of-loan-servicer-navient-idUSKBN1CF2UV>.

<sup>68</sup> Available at <https://www.americanprogress.org/issues/education-postsecondary/news/2017/06/14/434403/sides-agree-single-servicer-bad-move/>; Available at <https://slate.com/business/2017/04/betsy-devos-is-wasting-no-time-screwing-over-student-borrowers.html>.

<sup>69</sup> Available at <https://www.americanprogress.org/issues/education-postsecondary/news/2018/01/08/444641/education-department-proposes-major-changes-student-aid/>.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Available at <https://www.politico.com/newsletters/morning-education/2019/06/18/trump-backs-west-virginia-governor-at-odds-with-devos-448037>; Available at <https://protectborrowers.org/navient-free-pass/>.

profit colleges in August 2017.<sup>75</sup> In response to questions from Senator Warren, Director Kraninger of the CFPB wrote in May 2019 that the Department of Education was blocking the CFPB's efforts to oversee student loan servicers.<sup>76</sup> Kraininger, a Trump Administration appointee, wrote that "Since December 2017, student loan servicers have declined to produce information requested by the Bureau for supervisory examinations" related to federal student loans.<sup>77</sup>

State actors are also responsible for holding student loan servicers accountable for unfair, deceptive, and abusive practices. Thus, several state attorneys general have pursued lawsuits against student loan servicers for violations of state and federal consumer protection laws. One lawsuit from Massachusetts AG Maura Healey, alleged that PHEAA, the largest student loan servicer, overcharged student borrowers and prevented them from making qualified payments, undermining the Public Service Loan Forgiveness and Teacher Education Assistance for College and Higher Education Grant programs.<sup>78</sup> In January 2018, ED sided with PHEAA, arguing that the State of Massachusetts' claims were preempted.<sup>79</sup> Later, in March, the Department of Education attempted to declare that federal laws preempt state laws governing student loan servicers.<sup>80</sup>

#### **IV. Despite federal rollbacks, many states have enhanced protections for student loan borrowers**

The recent rollbacks at the federal level emphasize the importance of simultaneous efforts at the state level to hold servicers accountable and enforce basic consumer protections. With their traditional police powers, states have the authority to ensure servicers are not engaging in unfair and abusive practices. Just as many states had long overseen debt collectors, recognizing the impact debt collection practices can have on their residents, states responded to widespread concerns about student loan debt and poor servicing practices by implementing a regulatory framework that would allow them to ensure their borrowers were treated fairly by their servicers.

In 2015, Connecticut became the first legislature to pass the "Student Loan Bill of Rights," a bill that required student loan servicers to be licensed by the state, created an Office of the Student Loan Ombudsman, and prohibited student loan servicers from engaging in actions that

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<sup>75</sup> The public announcement occurred in a statement from Representative Virginia Foxx (R-NC), who was, at the time, the head of the House of Representatives Education and Workforce Committee.

<sup>76</sup> Available at <https://www.npr.org/2019/05/16/723568597/cfpb-chief-says-education-department-is-blocking-student-loan-oversight>.

<sup>77</sup> Available at <https://www.npr.org/documents/2019/may/042319-letter.pdf>.

<sup>78</sup> Available at <https://www.bostonglobe.com/metro/2018/01/10/feds-say-healey-can-sue-student-loan-servicer/AgBmFKpOrYySyH92J24hUM/story.html>.

<sup>79</sup> Available at [https://www.nasfaa.org/news-item/14616/Federal\\_Guidance\\_Escalates\\_Struggle\\_Between\\_ED\\_States\\_Over\\_Loan\\_Servicing\\_Oversight](https://www.nasfaa.org/news-item/14616/Federal_Guidance_Escalates_Struggle_Between_ED_States_Over_Loan_Servicing_Oversight).

<sup>80</sup> Since, multiple courts have rejected this assertion. For example, in June 2019, a federal appeals court unanimously held that student loan servicers can be sued under state law, despite DeVos's assertion that they are only held to federal law.



would violate certain bedrock principles of consumer protection. As the bill’s author and sponsor, Representative Matt Lesser, noted at the time, the Student Loan Bill of Rights represented a shift from thinking about student loans as an issue of higher education “to a systemic problem for the financial sector of the economy.” Other states took notice, and California<sup>84</sup>, Illinois<sup>85</sup>, and Washington DC<sup>86</sup> followed to enact new laws in 2016.

Early in 2017, the Consumer Financial Protection Bureau, the Illinois Attorney General, and Washington Attorney General announced a lawsuit against Navient Corporation, at the time the largest student loan servicer in the country.<sup>87</sup> The lawsuits alleged that the servicers routinely undermined borrowers by misapplying payments, reporting incorrect information to credit bureaus, and placing borrowers in plans that caused their debt to balloon. The Bureau’s complaint confirmed what many student loan borrowers had experienced – loan balances increasing after being placed into forbearance rather than an income driven repayment plan, payments that were misapplied, and even disabled veterans who were denied credit after their student loan servicing company failed to correctly report the discharge of their loans to the credit bureaus.

Faced with constituents struggling to gain their financial footing as they dealt with their student loan debt, more states became interested in exerting their traditional police powers to protect student loan borrowers. Predictably, however, the industry groups that lobby on behalf of servicers and state guaranty agencies stepped up their efforts to protect corporate interests. As mentioned above, in late February 2018, after months of lobbying by student loan servicers, including the CEO of Navient, the DeVos Administration released a Notice of Interpretation, outlining the Department’s belief that state student loan servicing laws are pre-empted by federal law.<sup>88</sup> The document outlines the Department’s belief that federal law completely preempts all state laws that impact federal loan servicing – not only state licensing regimes but even prohibiting servicers from misleading borrowers and asserting general principles found in each state’s laws prohibiting companies from engaging in unfair and deceptive acts and practices.<sup>89</sup> While the memo has been given virtually no legal weight and found to be unpersuasive by multiple courts, it had the effect of clearly establishing the Department of Education as a foe of student loan servicing reform.

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<sup>84</sup> Student loan servicers: licensing and regulation: Student Loan Servicing Act.

[https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201520160AB2251](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB2251)

<sup>85</sup> Student Loan Servicing Rights Act: <http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=3830&ChapterID=18>

<sup>86</sup> Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016:

<http://lims.dccouncil.us/Download/36411/B21-0877-SignedAct.pdf>

<sup>87</sup>Douglas-Gabriel, Danielle “Student Loan Servicer Navient Hit With Three Government Law Suits in One Day” Washington Post (Jan. 18, 2017) <https://www.washingtonpost.com/news/grade-point/wp/2017/01/18/student-loan-servicer-navient-hit-with-three-government-lawsuits-in-one-day/>

<sup>88</sup> Federal Register “Federal Preemption and State Regulation of the Department of Education’s Federal Student Loan Programs and Federal Student Loan Servicers” (March 12, 2018)

<https://www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan>

<sup>89</sup> Id.

Despite the attempt by the Department and servicers to thwart state interests, Washington and Maryland still passed some version of the Student Loan Bill of Rights during the 2018 legislative season, and the power of states to regulate the abusive practices of student loan servicers remained clear. In fact, a bi-partisan group of 30 state attorneys general affirmed the right of the states to oversee and enforce student loan laws, signing a letter stating, in part:

Given the states' experience and history in protecting their residents from all manner of fraudulent and unfair conduct, they play an essential role in consumer protection in student loans and education. States are uniquely situated to hear of, understand, confront, and, ultimately, resolve the abuses their residents face in the consumer marketplace. Abuses in connection with schools or student loans are no different. As with other issues facing their citizens, state regulators bring a specialized focus to, and appreciation for, the daily challenges experienced by students and borrowers. Far from interfering with the Department and other federal efforts to rein in abuses, the record overwhelmingly demonstrates that state laws and state enforcement complement and amplify this important work.<sup>90</sup>

A poll done by the Center for Responsible Lending and the Maine Center for Economic Policy in October 2018 revealed another cause for concern for state officials – student loan borrowers who move out of state to find jobs that pay enough to help repay their debts. In Maine, more than 40% of those polled knew someone who had left the state in order to pay for their student loan debt.<sup>91</sup>

The poll also revealed the deep ripple effects of student debt. The majority of student loan borrowers who were polled reported that they had struggled with payments, reduced the amount they were saving for retirement, and unable to purchase a car. More than 30% of respondents reported that they had put off paying rent or their mortgage to pay a student loan, failed to pay another bill, or even have been unable to afford food or clothing.

A similar poll from Maryland, which Center for Responsible Lending commissioned with the Maryland Consumer Rights Coalition, found that borrowers overwhelmingly (85%) support licensing and oversight of student loan servicers in their state.<sup>92</sup>

In the 2019 session, states worked to strengthen the bills that would be filed across the country, expanding on the principles first created by the passage of the Connecticut bill in 2015. The new versions of the Student Loan Bill of Rights not only required student loan servicers to be licensed by the state and enumerated certain prohibited acts, but also created affirmative duties for servicers and, importantly, included a private right of action, enabling borrowers to

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<sup>90</sup> Sign On Letter to Congress re Student Loan Preemption, Mar. 15, 2018,

[https://nj.gov/oag/newsreleases18/2018-0315\\_AG-Letter-to-Congress-Opposing-Student-Loan-Preemption.pdf](https://nj.gov/oag/newsreleases18/2018-0315_AG-Letter-to-Congress-Opposing-Student-Loan-Preemption.pdf)

<sup>91</sup> <https://www.mecep.org/new-poll-mainers-struggle-to-pay-down-student-debt-say-loan-servicers-are-making-matters-worse/>

<sup>92</sup> <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/gonzales-poll-student-loan-debt-apr2018.pdf>

enforce these new servicing laws. New York,<sup>93</sup> Colorado,<sup>94</sup> Maine,<sup>95</sup> Rhode Island,<sup>96</sup> and New Jersey<sup>97</sup> passed these comprehensive bills, while Maryland passed an update to their 2018 bill, adding prohibited acts, affirmative duties, and a private right of action. And Nevada took a first step towards a Student Loan Bill of Rights, passing a bill to establish the Office of the Student Loan Ombudsman.

## **V. Improvements to the student loan servicing system are essential**

### **A. *Recent litigation efforts illustrate the extent of the problem***

In courts across the country, cases filed by student borrowers and state Attorneys General illustrate a pattern of poor servicing practices that prevent borrowers from making informed decisions about repaying their loans or taking advantage of programs enacted by Congress. Fundamentally, the system is broken, with servicers seemingly only concerned about reducing costs and shortening customer service calls. Far from engaging in robust oversight, the Department of Education has sought to frustrate attempts to protect student borrowers.

Since 2017, the Consumer Financial Protection Bureau and the States of California, Illinois, Massachusetts, Mississippi, Pennsylvania, and Washington have brought actions against student loan servicers. The complaints provide a litany of abusive servicing practices.<sup>98</sup> Private litigants have also sought to enforce state consumer protection laws against servicers.<sup>99</sup> The claims range from mishandling processing related to the PSLF program, mishandling recertification for TEACH grants, to steering borrowers into forbearance, providing inaccurate information, and engaging in abusive collection practices.

As noted, the Department of Education has responded to this litigation alleging serious servicing misconduct by seeking to shield the servicers from state law (while also failing to enforce its own rules against servicers). However, several courts have rightly dismissed the Department's March 2018 notice purporting to claim that the Higher Education Act broadly preempts state law.<sup>100</sup> Unfortunately, the Department's message has empowered servicers to claim preemption, tying up state and private litigation. If servicers can shield themselves from state law, with the aid of a federal agency that cannot and does not exercise adequate

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<sup>93</sup> NY Banking Law, Article 14-A:

<sup>94</sup> Colorado Student Loan Servicers Act: [https://leg.colorado.gov/sites/default/files/2019a\\_002\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2019a_002_signed.pdf)

<sup>95</sup> The Student Loan Bill of Rights: [https://legislature.maine.gov/legis/bills/bills\\_129th/billtexts/SP028501.asp](https://legislature.maine.gov/legis/bills/bills_129th/billtexts/SP028501.asp)

<sup>96</sup> Student Loan Bill of Rights Act: <http://webserver.rilin.state.ri.us/BillText/BillText19/HouseText19/H5936A.pdf>

<sup>97</sup> An act concerning the appointment of a Student Loan Ombudsman, regulating student loan servicers, amending P.L.2005, c.1991, and supplementing Title 17 of the Revised Statutes: [https://www.njleg.state.nj.us/2018/Bills/PL19/200\\_.PDF](https://www.njleg.state.nj.us/2018/Bills/PL19/200_.PDF)

<sup>98</sup> See e.g., *Illinois v. Navient Corp.*, 17-CH-761, Illinois Circuit Ct. Cook County; *Washington v. Navient Corp.*, No. 17-2-01115-1 SEA, Wa. Sup. Ct.; *Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency*, Massachusetts Sup. Ct., Suffolk County, Case No. 1784 CV 02682; *Pennsylvania v. Navient Corp.*, No. 17-cv-1814, M.D. PA; *Consumer Financial Protection Bureau v. Navient*, No. 17-cv-00101, M.D. PA.

<sup>99</sup> See e.g., *Nelson v. Great Lakes*, *Hyland v. Navient*, *Lawson v. Great Lakes*.

<sup>100</sup> See e.g., *Nelson v. Great Lakes*, No. 18-1531, 7<sup>th</sup> Cir., June 27, 2019), *SLSA v. D.C.*, Dist. Ct. of D.C. (Dec. 2018).

oversight, then student borrowers will have nowhere to turn and will lose out on the programs created to ease repayment and to reward public service.

***B. The consequences of poor servicing have already been illustrated by the foreclosure crisis***

A key lesson from the Great Recession is that skillful loan servicing could have dramatically mitigated the impact of foreclosures and their spiraling spillover effects on neighborhoods and the economy. During the foreclosure crisis, policymakers and service providers to families facing foreclosure repeatedly called for corrections to ineffective and abusive servicing. Many of the same problems we see today in student loan servicing were raised in the mortgage context—homeowners had trouble reaching their servicer by phone, and contacts did not have the authority or ability to help the homeowners. A customer might call and reach a different contact each time. Servicers misapplied payments, failed to follow processes required around notice for debtors, and failed to follow investors’ loss mitigation requirements. Servicers also lacked capacity, adequate management, and sufficient quality control. At the time of the foreclosure crisis, it was widely acknowledged that better servicing could have converted distressed mortgages into stable loans in which the mortgagee did pay something, generating revenue for investors, and contributing to a stronger, stable neighborhood. Instead, as larger numbers of mortgagees fell into distress, servicers were overwhelmed and unable to keep up with growing defaults. Worse, as one family in a neighborhood faced foreclosure, the foreclosure affected neighboring property values, eventually depressing the whole economy and foreclosures grew.

Two key lessons emerged from the mortgage crisis that should now be applied to reforming student loan servicing. First, servicer incentives, funding, and accountability matter a great deal. Servicers will focus on cost-reduction and follow incentives to push borrowers to solutions that suit the servicer. If we want servicers to work with borrowers on income-driven repayment or other payment solutions, and to follow basic procedures for applying payments, providing information, or documenting efforts, incentives and accountability must drive those efforts. Second, over time, the foreclosure crisis and ensuing response showed that it is critical to minimize the complexity of any “application” or “certification” process that helps distressed borrowers modify their loan. The mortgage market has moved to simplified processes that automatically modify loans for distressed borrowers, assuming that affordable reduced payments benefit both the borrower and investors more than the high cost of foreclosure/pursuing default.

Applying these lessons to student loan servicing is actually much simpler than it has been in the mortgage servicing context. With mortgages, loans had been pooled and securitized. Investors in the mortgage pools had conflicting interests, even more in the vast majority of cases where mortgagees had multiple loans, held in separate pools, and the first lien holder had an interest at odds with modifying the second. Here, the Department of Education is the overwhelmingly predominant investor and could provide global direction and accountability for servicers. If servicers were directed to prioritize working with borrowers to manage their debt, avoid

default, and/or modify loans, and held accountable for basic standards, they would not face the same conflicting instructions that mortgage servicers struggled with. Here are examples of ideas proposed during the mortgage crisis that could be applied more easily in the student loan servicing context:

- Loss mitigation must be conducted prior to foreclosure (default collection in the case of student loans)
- Loss mitigation agreements must be affordable for the borrowers
- Late paying customers must be referred to counseling
- Basic servicing standards should be implemented and monitored, such as requiring a response to inquiries and requests for information in a timely way and requiring servicers to report loss mitigation efforts by activity and geography;
- Default should be delayed if borrower enters a low-cost repayment plan and makes timely payments;;
- Discharge of student loans in bankruptcy should be permitted;
- Loan servicers should be paid adequately for the time-intensive work of loss mitigation and loan modification (i.e. putting borrowers in repayment plans); and
- Forgiven student loan debt should not be treated as taxable income.

## **VI. Towards a new, improved borrower-centered student loan servicing system**

Five key fixes to strengthen servicing standards and oversight could go a long way toward helping student loan borrowers and ensuring a better return on our investment in higher education.

- 1. Reform student loan servicing abuses by setting clear consumer protection standards.** These include requiring servicers to act in the best interests of borrowers, prohibiting abusive fees and practices, and ensuring that voluntary overpayments are allocated to principal. Fees should be minimized, payments processed efficiently, and errors should be resolved quickly and with documentation. Loan documents and history should be easier to understand and access. Prevent the reporting of inaccurate information to credit bureaus. Prevent fraud and abuse through debt relief scams and other predatory schemes by limiting the behavior and holding servicers liable for scams that are successful. Common sense affirmative duties and clear prohibited acts can ensure that servicers communicate with borrowers in a timely manner and that they provide consistent information.
- 2. Restructure servicer compensation to encourage and compensate servicers for spending time with borrowers at risk of delinquency and default, including enrolling borrowers in income-driven repayment.** Today, we spend more to put borrowers into collection than we do to help them get more affordable payments and stay current on their loans. Compensation rates encourage servicers to push forbearance because servicers are not compensated once a loan is in default and are compensated progressively less as a borrower gets further into delinquency.

3. **Affirm and assert the power of the CFPB and state attorneys general in servicing oversight and enforcement** by explicitly making violations of servicing standards enforceable under state Unfair, Deceptive, or Abusive Practices (UDAP) laws and the CFPB Act. Today, the Department of Education is ignoring its own duty to effectively oversee student loan servicers and simultaneously trying to block states from exercising oversight. Affirm that states have a right to oversee and sanction abusive student loan servicers. Require the Department of Education to cooperate with the CFPB and state entities. Cap general federal debt collection amounts to no more than the amount the borrower would pay under IBR.
4. **Empower borrowers to enforce their own rights and protect their own financial futures.** Ban mandatory arbitration clauses and recognize a private right of action by borrowers against student loan servicers and debt collectors who violate consumer protection laws or contract requirements. Allow discharge of student loans in bankruptcy.
5. **Increase transparency and stem the negative collateral effects of the student debt crisis.** Collect and publish data from servicers to track servicing metrics for all loans. Require regular reporting on student loan servicer performance and activity. Work to ensure that the burden of student debt is not an insurmountable barrier to other wealth-building activities such as homeownership and entrepreneurship.

## **VII. Conclusion**

Rather than lifting people out of poverty and providing access to the middle class, student debt is further entrenching the racial wealth gap and perpetuating the cycle of poverty that results from systemic lack of access to resources, capital, and affordable credit. Our short-sighted approach is leaving jobs unfilled, money wasted, and human potential squandered, threatening our national security and economic well-being.<sup>101</sup> With \$1.5 trillion in student debt and with defaults on the rise, good servicing is vital.

In 2008, we saw firsthand that individuals and taxpayers are left paying the bill when we fail to hold industry accountable for complying with basic rules of the road. The student loan debt crisis is on track to decimate our economy and our communities in much the same way the mortgage crisis did. Reforming the student loan servicing and collection system could have a major impact on the ability of students to achieve financial security, the core intent of our student loan and higher education system. Skillful student loan servicing could convert distressed loans into stable repayment plans that generate revenue and enable borrowers to contribute to stronger, more stable communities. Ineffective servicing can produce the opposite results. Rather than repeat mistakes from the mortgage crisis, we should learn from that experience and work to achieve a sounder, more effective student loan system today.

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<sup>101</sup> Council on Foreign Relations. 2012. "U.S. Education Reform and National Security," Independent Task Force Report vol. 68. Available at [https://cfrd8-files.cfr.org/sites/default/files/report\\_pdf/TFR68\\_Education\\_National\\_Security.pdf](https://cfrd8-files.cfr.org/sites/default/files/report_pdf/TFR68_Education_National_Security.pdf).