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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

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[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

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[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

[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]

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[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.

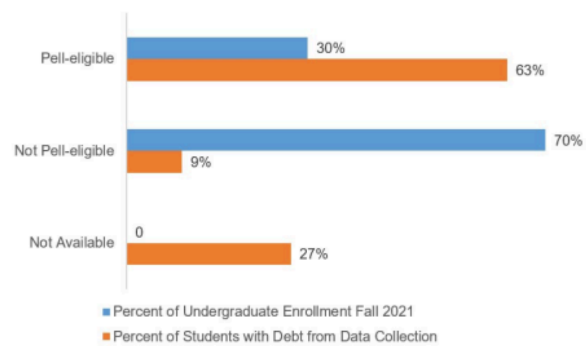
For example, although low-income students—as measured by their eligibility for a federal Pell Grant—make up only 30 percent of enrollment at Virginia's two-year public colleges, they comprise 63 percent of those students who owe debts to those schools.[105]

[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	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



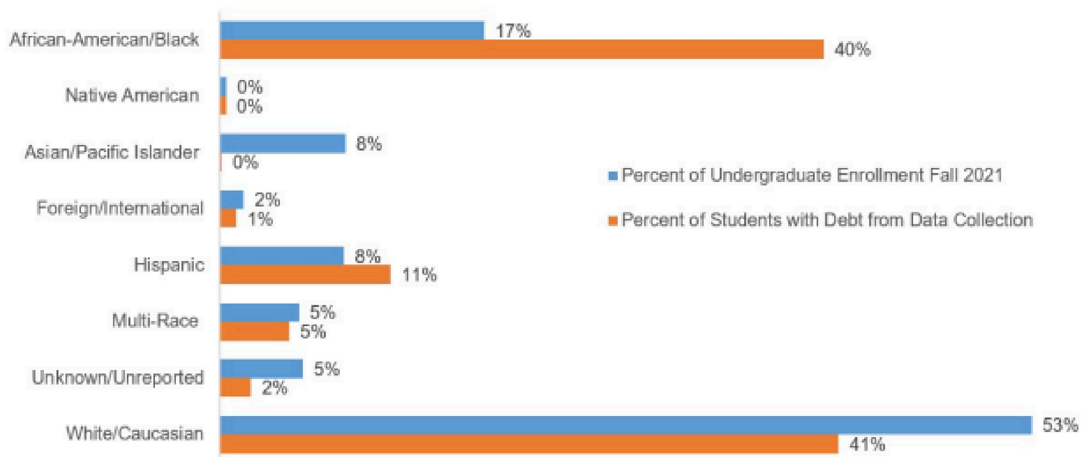
At those same schools, Black and Latino/a students comprise 17 percent and 8 percent of enrolled undergraduates, respectively, but make up 40 percent and 11 percent of those students who owe debts to their schools.[106] In addition, the average balance among Black students who owe an institutional debt 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	Averag e 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]

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[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.