

United States Senate

WASHINGTON, DC 20510

April 21, 2022

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
Washington, DC 20552

Dear Director Chopra:

We write to urge the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) to investigate the use of “training repayment agreements” (“TRAs”) between workers and businesses. TRAs raise significant concerns about consumer and worker protection. The growing use of debt contracts related to training in the workplace, particularly among lower-wage and low-middle wage workers, underscores the need for oversight to ensure compliance with consumer protection law.

We recognize the important investments that employers make in training their workers. Nonetheless, we are deeply concerned by the possibility of a growing number of consumer debts originating in the workplace—especially when the trainings from which these debts arise are routine, or where the debt is disproportionate to the cost of training. TRAs raise the troubling prospect of an economy in which employers leverage debt to bind workers to their firms, turning debt into a tool for coercion. If unchecked, the growth of TRAs will saddle more and more workers with debt simply for seeking opportunity or even for navigating a family crisis, such as an illness, that keeps them from work. Our concerns are even more serious when—as may be the case with many TRAs—employers impose debts on workers that allegedly originate in “education” or “training” with little concrete value to the worker.

As you know, TRAs require workers to pay their employers a set amount if they leave their employment within a certain period of time, ostensibly as compensation for training the workers received while employed.¹ TRAs can thereby turn workers into debtors and employers into creditors. Due to this debtor-credit relationship, when a TRA is triggered, an employer can seek a court judgment against a former worker that allows the employer to garnish wages or seize workers’ bank accounts.

TRAs can impose steep debts on workers. Employers have been documented using TRAs to try to collect sums as high as \$6,000,² \$13,500,³ \$20,000,⁴ or even \$75,000.⁵ Employers have also sought to enforce the debts against workers in a range of industries and occupations, including pilots, truckers, securities brokers, and nurses. Moreover, the scale of these debts often greatly

¹ See generally Jonathan F. Harris, *Unconscionability in Contracting for Worker Training*, 72 ALA. L. REV. 723 (2021). Some TRAs structure the amounts workers owe on separating from an employer as liquidated damages.

² Mary Pilon, *This Is the Blue-Collar Student Debt Trap*, BLOOMBERG (Aug. 14, 2017), <https://www.bloomberg.com/news/articles/2017-08-14/the-blue-collar-student-debt-trap?sref=Hs89ZntT>.

³ See Complaint, *Boutique Air, Inc. vs. Michael Wade Sticka et al.*, CGS-20-584536 (Ca. Sup. Ct. 2020).

⁴ Kevin Krause, *For Nearly Two Dozen Nurses, Leaving Parkland Early Comes at a Cost*, DALLAS MORNING NEWS (Jul. 3, 2020), <https://www.dallasnews.com/business/health-care/2020/07/03/for-nearly-two-dozen-nurses-leaving-parkland-early-comes-at-a-cost/>.

⁵ See *Bland v. Edward D. Jones & Co.*, 375 F. Supp. 3d 962, 969-71 (N.D. Ill. 2019).

exceeds the value of the training to which they are tied, as the training frequently teaches little and provides no transferrable qualifications.

TRAs are also becoming increasingly common—particularly as the strong labor market increases opportunities for workers to leave positions for better pay or improved opportunities. Some industry commentators have explicitly suggested TRAs as a way for businesses to limit turnover, especially in jurisdictions where the use of non-compete agreements is limited or restricted by state law.⁶ In other words, employers are using the threat of significant debt to keep workers in their positions and from seeking better jobs. This is the epitome of anticompetitive behavior.

Moreover, it is unclear whether employers have taken adequate steps to comply with consumer protection law in creating and collecting on TRA debts. Given that TRA debts arise out of an employment relationship in which workers may have limited practical bargaining power, strict compliance with consumer law is essential.

The health care sector illustrates many of these trends.⁷ For instance, nurses have reported signing TRAs to compensate hospitals for trainings with little or no practical use, or that are scarcely distinguishable from ordinary workplace orientations. Some hospitals require nurses to pay onerous penalties for leaving within a period of time, while claiming that these debts compensate the hospitals for workplace trainings that are in actuality meager or routine. While we appreciate the staffing challenges hospitals and other health care providers face, TRAs are not the solution. It is unconscionable that, after everything nurses have done to support our communities throughout the COVID-19 pandemic, their employers respond by burdening them with debt.

In light of TRAs' growing and concerning role in our economy, we urge the CFPB to examine the role of TRAs in our economy, and the contours of these anti-competitive agreements, so that Congress and the public may better understand how they operate. We encourage the CFPB to focus on how prevalent TRAs are in the labor market, and whether they are more common in certain industries or among certain kinds of workers. It would be helpful to understand the terms and conditions in TRAs, including the maximum periods over which workers commit to remaining employed at firms, the maximum penalties to which workers can be subjected, and whether or not workers agree to stipulate to the value of any training or education provided or referenced in the agreements. We would also like to know how many TRAs are voluntary—and *truly* voluntary at that.⁸ Given our concern about the training provided, please consider reviewing the nature, quality, and duration of any training or education to which TRAs are tied and the degree to which TRA-created debts might be disproportionate to these trainings.

⁶ See, e.g., Julie T. Kovacs, DLA PIPER, *Employee Turnover: Can Employers Recoup Investments In Their Employees?*, (Jan. 19, 2017), <https://www.labordish.com/2017/01/employee-turnover-can-employers-recoup-investments-in-their-employees/> (discussing use of TRAs to limit turnover); Philip J. Siegel, *Protect Your Investment*, PROFESSIONALROOFING (Nov. 2019), <https://www.professionalroofing.net/Articles/Protect-your-investment--11-01-2019/4566> (suggesting use of TRAs to recoup cost of roofing certification).

⁷ See Comment from National Nurses United, FTC Comment ID FTC-2021-0036-0275 (Sep. 30, 2021), <https://www.regulations.gov/comment/FTC-2021-0036-0275> (describing use of TRAs among nurses).

Harris, *supra* note 1 at 755.

⁸ Our understanding is that some TRA contracts state that referenced training is “voluntary” and not a condition of work, but that, in practice, workers are often told that the TRA is mandatory.

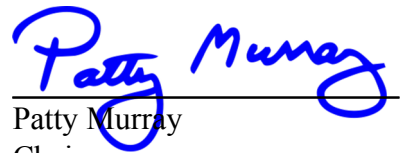
Finally, using your existing authority, please consider reviewing the collections practices regarding TRAs, especially with regard to the frequency with which TRA-created debts are referred to collection agencies or enforced in court and how they impact middle- and low-income workers and workers of color. It is imperative that Americans benefit from the full range of consumer protections when assuming and paying off these obligations, including the protections of the Truth in Lending Act, the Fair Debt Collection Practices Act, and prohibitions on unfair, deceptive, and abusive acts and practices.

Thank you for your timely attention to this matter.

Sincerely,



Sherrod Brown
Chair
Committee on
Banking, Housing,
and Urban Affairs



Patty Murray
Chair
Committee on Health,
Education, Labor, and
Pensions



Elizabeth Warren
United States Senator



Tina Smith
United States Senator



Bernard Sanders
United States Senator



Robert P. Casey, Jr.
United States Senator