AN EXAMINATION OF STATE EFFORTS TO OVERSEE THE $1.5 TRILLION STUDENT LOAN SERVICING MARKET

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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WITNESSES

TUESDAY, JUNE 11, 2019

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

AN EXAMINATION OF STATE EFFORTS TO OVERSEE THE $1.5 TRILLION STUDENT LOAN SERVICING MARKET

Tuesday, June 11, 2019

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 2128, Rayburn House Office Building, Hon. Al Green, [chairman of the subcommittee] presiding.

Members present: Representatives Green, Beatty, Lynch, Velazquez, Perlmutter, Tlaib, Casten, Dean, Garcia of Texas, Phillips; Barr, Posey, Zeldin, Loudermilk, Davidson, Rose, and Steil.

Ex officio present: Representatives Waters and McHenry.

Also present: Representatives Porter and Pressley.

Chairman GREEN. Good morning, everyone. The Oversight and Investigations Subcommittee will come to order.

The title of today's hearing is, "An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market." I would like to make a brief comment on behalf, I believe, of the ranking member and myself. A good many persons make inquiries about attendance at hearings, and I would like to let those who are listening know that Members may not be here because they may be in other hearings, but the Members do pay attention to these hearings, and they have a good sense of timing such that they can be here to ask questions when appropriate.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee may participate in today's hearing for the purposes of making an opening statement and questioning witnesses.

The Chair now recognizes himself for 4 minutes for an opening statement.

Section 1035 of the Consumer Financial Protection Act of 2010 established a student loan ombudsman with the Consumer Financial Protection Bureau (CFPB) to provide timely assistance to borrowers, compile and analyze data on borrower complaints, and prepare an annual report. Despite this statutory mandate, the CFPB has not issued an annual report on student loan complaints since October 2017. The position of Student Loan Ombudsman has been vacant since Seth Frotman resigned in August of 2018, asserting

in his letter of resignation that the CFPB has abandoned the very consumers it is tasked with protecting.

According to the Federal Reserve, Americans owe over $1.5 trillion in student loan debt, an increase of over $100 billion since 2017. Students graduating from a 4-year college in 2016 owed on average $29,650 each in student loans. Those pursuing professional degrees or graduate studies can expect to amass student loans in the hundreds of thousands of dollars. The macroeconomic impacts of such a massive debt burden are quantifiable and ought to be a resounding wakeup call to everyone within the sound of my voice.

Federal data shows that rising student loan debt is to blame for a decline in homeownership among individuals ages 24 to 32. In addition to often becoming a roadblock to the American Dream, student loan debt creates significant financial hardships, and the costs only multiply once a borrower falls behind on payments, resulting in lower credit scores, higher cost of credit, and a loss of access to numerous Federal benefits.

To facilitate borrower repayment, the U.S. Government relies on student loan servicers. These servicers are for-profit financial service providers hired at taxpayers' expense. Servicers are charged with processing payments, keeping records, communicating with borrowers, and providing counseling on report options. But the research shows that borrowers face dramatically different financial outcomes solely due to which servicer the government assigns to them. It seems to be that the luck of the draw can make a difference in one's life.

What's worse, recent investigations by the U.S. Government Accountability Office (GAO), the Inspector General of the Department of Education, the Consumer Financial Protection Bureau, and numerous State law enforcement agencies reveal a disturbing picture of an industry that is rife with misconduct, errors, and negligence that become a monetary cost to the borrowers. Far beyond the occasional improperly-imposed late fee, too often these upstream servicing failures are the precursor to preventable defaults. As a result, the data show that borrowers of color experience worse financial outcomes, including default rates, than other student loan borrowers. Black and Latino borrowers also have higher rates of late repayment of student loans than white borrowers: 49 percent; 41 percent; and 32 percent, respectively.

Through the voices of today's witnesses, we will learn more about this powerful unaccountable industry that is financed by lucrative government contracts and gain insights into the lasting financial injuries that misleading and dishonest loan servicing practices cause to borrowers.

At this time, I will now yield 4 minutes to the ranking member of the subcommittee, Mr. Barr.

Mr. BARR. Good morning. And first, I want to thank Chairman Green for holding a hearing on such an important topic. The growth of student loan debt is indeed a crisis in our country. According to the Institute for College Access and Success, the Class of 2018 averaged almost $30,000 in debt per student. And many students have taken on debt that far exceeds that figure, sometimes reaching as high as several hundred thousand dollars.

Recently, a constituent came to my office who was a medical resident. She had borrowed through college, through medical school, and through residency. And along with her new husband, together in the aggregate their student loans were reaching a million dollars. And I am sure we have all heard from constituents who are dealing with student debt by postponing things like marriage and buying a home, so this is a complex problem, and we cannot address the higher education crisis without an honest conversation about the causes.

Since 2010, when President Obama nationalized the student lending industry, the Department of Education has become the largest consumer lender in our country. New loans are disbursed faster than outstanding loans are being repaid, and student loan debt has reached an all-time high of $1.5 trillion. The number of Federal borrowers since the government's takeover is up 51 percent. A significant portion of that debt is at risk of default, and because Democrats nationalized student lending back in 2010, taxpayers are left holding the bag. Now as a result of the government takeover of student loans, the government owns or guarantees 93 percent of all outstanding student loans.

So we must address major issues facing the current system. There are currently no underwriting standards to measure the level of risk for student loans. The Federal Government must become a more responsible lender, and schools must be honest about the costs and the value of their degrees so that students can make decisions that will set them up for long-term success. Schools that help students graduate with high-quality career prospects and low debt should be rewarded, and students must have access to data and advice that will help them to be responsible consumers of education.

We are here today to address a small aspect of the student loan servicing companies. I think these companies would be the first to admit that they should always strive to do better with respect to advising student borrowers of all their options. But for the most part, these companies are simply abiding by the terms of their contracts with the Department of Education. The servicers do not set the terms of the loan. The servicers do not set interest rates for the loan. The servicers do not even choose which loans they service. All of those decisions are made by the Federal Government.

The servicers are simply contractors. They perform functions that are specifically enumerated in their contracts with the Department of Education. So if we want them to behave differently, then we need to focus our energy on adjusting the companies' relationship with the Federal Government by reconsidering the terms of their contracts. Once again, the loan servicers do not set interest rates nor loan terms. They don't advise students on how much to borrow or where to go to school. They don't set the cost of tuition. They don't help students choose their majors or decide whether to go to graduate school.

If we are going to talk about the growth of student debt in this country, then those are the issues we need to discuss. We need to look at the student debt crisis holistically, and that means working with the committees of jurisdiction in Congress and the Administration to identify meaningful reform. This is not an issue that can

be addressed solely at the Federal level. Steps must also be taken by the schools and the States to combat rising tuition costs. It should be no surprise to anybody that when the Federal Government intervenes with mass subsidization, costs run out of control. What you subsidize is what you get, and we are getting a lot more debt because the government is subsidizing it.

I welcome our witnesses, and I thank them for appearing today and for all their work in this area. I yield back.

Chairman GREEN. Thank you. I will now extend a warm welcome to each of our witnesses. And I am pleased to introduce to the subcommittee at this time Joanna Darcus, Massachusetts Legal Assistance Corporation Racial fellow at the National Consumer Law Center; Joe Sanders, student loan ombudsman and supervising assistant attorney general in the Consumer Fraud Bureau of the Illinois Attorney General's Office; Nicholas Smyth, assistant director for consumer financial protection, and senior deputy attorney general in the Office of the Attorney General of Pennsylvania; Arwen Thoman, the director of the student loan assistance unit in the Massachusetts Attorney General's Office; and Scott Buchanan, the executive director of the Student Loan Servicing Alliance.

I would like to welcome all of you, and thank you for being here. You will each be recognized for 5 minutes to give an oral presentation of your testimony. And without objection, your written statements will be made a part of the record. Once the witnesses finish their testimony, each member of the subcommittee will have 5 minutes within which to ask questions.

On your table are three lights. Green means go, yellow is the 1-minute marker, which means that you are running out of time, and red means you are out of time. The microphones are quite sensitive, so please make sure you speak directly into them. The witnesses' opening statements will begin now, and we will start with Ms. Darcus. You are now recognized for 5 minutes to present your opening statement.

STATEMENT OF JOANNA K. DARCUS, STAFF ATTORNEY, NATIONAL CONSUMER LAW CENTER (NCLC)

Ms. DARCUS. Chairman Green, Ranking Member Barr, and members of the subcommittee, the National Consumer Law Center thanks you for giving us this opportunity to testify today. Through our Student Loan Borrowers Assistance Project, my colleagues and I represent individual clients and also train and support attorneys who represent student loan borrowers nationwide. We offer this testimony on behalf of NCLC's low-income clients because there has never been a more important time to focus on student loan servicing.

In this country, student loan debt affects people at every stage of life. More education is supposed to translate into more opportunities, but students who take on debt to afford that education may struggle to realize that promise. These borrowers need the help of a competent and efficient servicer. Too often, however, borrowers languish in distress, struggle to make ends meet, and wait to pursue life goals while paying unaffordable student loan bills. Many unnecessarily experience the perils of otherwise preventable de-

faults because they do not receive the high-quality, timely assistance that could have made a difference.

This is a well-documented problem. The largest servicers of Federal student loans have a history of widespread servicing failures that create obstacles to repayment, raise costs, cause distress, and drive borrowers to default. Despite clear benefits to the financial health of borrowers and their families, many eligible borrowers are not enrolled in income-driven repayment (IDR) plans. On these plans, borrowers may make small or even zero-dollar monthly payments. IDR is a sustainable option that provides a path to forgiveness of any remaining balance after 20 or 25 years.

Instead of IDR, however, servicers steer many borrowers into forbearances and deferments. These options are profitable for servicers and costly for borrowers. An NCLC client had this experience as she struggled to make her student loan payment after completing a medical assistant program at a for-profit school in Massachusetts. For 5 years, she dutifully contacted her servicer and submitted documentation of her finances. Despite clear eligibility for a zero-dollar IDR payment, she was never enrolled in an IDR plan. Instead, each year her servicer directed her into some kind of forbearance.

When this borrower came to NCLC, she had never even heard of IDR options. Though she was still in good standing on her loans during that time, she would have been better off on IDR. She would have earned credit toward eventual loan forgiveness and been spared the additional interest capitalization that resulted from each forbearance. The worst part of this story is that our client's experience is far from unique. State enforcement actions targeted at this type of misbehavior derive from similar stories. Several State attorneys general, including those represented here today, have sued servicers for these and other failures related to IDR.

Student loan servicing oversight is imperative because the stakes are so high for all borrowers, and racial disparities in student loan outcomes reveal particular harms to borrowers of color. With less wealth than their white peers, black students are more likely than other racial groups to borrow and to borrow more for their education. Research shows that black and Latinx borrowers experience higher rates of default than black borrowers. Upon default, borrowers can face devastatingly powerful debt collection activity.

Effective servicing is supposed to be a bulwark against default and its consequences. Fairness and justice require that borrowers have the ability to enforce their rights when breached by servicers, yet few borrowers have the ability to seek redress when servicers violate their rights. Robust public enforcement at the State and Federal levels is necessary to provide relief to borrowers harmed by systemic servicer misconduct and to prevent future harms. The States have stepped up to protect their residents. Now, borrowers need and deserve to have the Federal Government provide stronger oversight and for servicers to provide better assistance.

Thank you for the opportunity to testify today. I look forward to your questions.

[The prepared statement of Ms. Darcus can be found on page 51 of the appendix.]

Chairman GREEN. Thank you, Ms. Darcus. Mr. Sanders, you are now recognized for 5 minutes for your oral statement.

STATEMENT OF JOSEPH SANDERS, STUDENT LOAN OMBUDSMAN AND SUPERVISING ASSISTANT ATTORNEY GENERAL, CONSUMER FRAUD BUREAU, ILLINOIS ATTORNEY GENERAL'S OFFICE

Mr. SANDERS. Chairman Green and Ranking Member Barr, thank you for the subcommittee's interest in the important topic of student loan servicing, and thank you for inviting me to testify.

As we heard from Joanna, student loan debt has increased exponentially over the last 10 years, and many students are struggling with repayment. Student loan servicers are among the companies tasked with assisting students in identifying appropriate repayment options, among other functions. In recent years, State attorneys general have investigated and brought enforcement actions against multiple student loan servicers.

My office conducted an investigation of Navient Corporation, one of the largest student loan servicers. The investigation revealed a plethora of student loan servicing abuses, including a deceptive practice referred to as forbearance steering. Our office reviewed hundreds of phone calls between Navient representatives and students. That review revealed that when students who were behind on their payments contacted Navient for assistance, the company steered them into successive forbearances to increase the overall cost of their loans instead of telling students about other repayment options that may have been more appropriate, such as income-driven repayment. We found that Navient used an incentive compensation plan to pay employees more for shorter call times, thereby reducing the company's costs. For borrowers, though, short calls often mean that they are put into the wrong repayment plan.

Forbearances are a temporary pause in payments that can be set up in minutes over the phone. They are not beneficial for borrowers if continued over the long term, though, because interest continues to accrue and can be added to the principal balance of the loan. Income-driven repayment plans, by contrast, are relatively complex, and it takes time to analyze whether borrowers qualify. These plans, however, offer affordable monthly payments and ultimately lead to loan forgiveness.

A former Navient employee gave us a view of forbearance steering from inside the company. He described feeling pressured to reduce call time, often getting pulled aside and talked to because his calls were too long when he took the time to see if borrowers' payments could be reduced. Our office sued Navient in January of 2017, alleging that these issues, among others, constituted unfair and deceptive practices pursuant to the Illinois Consumer Fraud Act. Navient moved to dismiss our lawsuit. Navient's primary argument in its motion to dismiss our case and other State law enforcement actions is that State laws outlining consumer fraud are preempted by the Higher Education Act.

Many courts have rejected this argument. Indeed, in every State law enforcement action where a court has ruled on a motion to dismiss filed by Navient, the State has prevailed. There have been

some Federal court decisions, however, finding that these types of consumer fraud claims are preempted by the Higher Education Act.

The Department of Education developed a set of servicing standards to protect students from these types of abuses. In April 2017, however, the Department withdrew those protections. Illinois thankfully also took action to protect our student loan borrowers. Our State passed the Student Loan Servicing Rights Act, which went into effect this year. The Act provides an array of protections for students. It restricts forbearance steering, requires that student loan servicers first offer income-driven repayment options to struggling borrowers, and requires servicers to create repayment specialists who are specifically trained to assess financial circumstances in order to effectively counsel students. The Act also creates a student loan ombudsman tasked with developing outreach efforts and responding to complaints.

I was appointed to serve as ombudsman this year, and, through May, I have received over 300 complaints and over 200 calls related to student loans. What I have seen is that borrowers lack basic information about their loans and options. Many are unaware whether their loans are Federal or private, and many are unaware of the existence of income-driven repayment plans. Borrowers continue to struggle with servicing abuses and need increased protections.

Servicing failures like these create more problems for student loan borrowers as predatory companies seek to fill this information void. For example, servicers' failure to provide accurate information on repayment options has contributed to some schools engaging consultants to push students into forbearance in order to keep the school's cohort default rate down. If too many students default on their Federal loans within the first 3 years of repayment, schools may lose their ability to participate in Federal student aid. To keep defaults down, some schools hire companies that encourage students with delinquent loans to enter forbearance. As the GAO recently reported, these companies often push students into forbearance instead of other more beneficial plans, like income-driven repayment.

In conclusion, if student loan servicers were providing proper repayment information to student loan borrowers in need, these scams would not have victims to take advantage of. Thank you for your attention to this topic. I look forward to answering any questions you may have.

[The prepared statement of Mr. Sanders can be found on page 64 of the appendix.]

Chairman GREEN. Thank you, Mr. Sanders. Mr. Smyth, you are now recognized for 5 minutes for your oral statement.

STATEMENT OF NICHOLAS SMYTH, ASSISTANT DIRECTOR FOR CONSUMER FINANCIAL PROTECTION AND SENIOR DEPUTY ATTORNEY GENERAL, PENNSYLVANIA OFFICE OF ATTORNEY GENERAL

Mr. SMYTH. Chairman Green, Ranking Member Barr, and members of the subcommittee, thank you for inviting me to testify today. My name is Nicholas Smyth, and I am a senior deputy attorney general from Pennsylvania.

In July 2017, Attorney General Josh Shapiro established the office's first-ever Consumer Financial Protection Unit and hired me to lead it. General Shapiro tasked us with focusing special attention on for-profit college and student loan servicers because the student loan debt crisis touches nearly every resident of our Commonwealth. The average student loan for new graduates in Pennsylvania is nearly $37,000, the second highest in the country. About 2 million Pennsylvanians, almost 1 in 5 adults, have student debt.

This subcommittee is right to focus its attention on the crisis in student loan servicing because the government contractors that service Federal loans have caused needless financial harm to millions of families across the country. They have failed to carry out the programs Congress created to give borrowers more affordable payment plans for their loans.

My testimony will focus on one particular servicer of Federal loans, Navient, which has 1,000 employees in Pennsylvania. Our office sued Navient in 2017. The consumer bureaus in 4 other States have other sued Navient. Our 9-count complaint is linked in my written testimony.

Among other things, we allege that Navient's deceptive practices and predatory conduct harms student borrowers and puts their own profits ahead of the interests of millions of families across Pennsylvania and the country who are struggling to repay student loans. Navient's conduct cost borrowers an additional $4 billion in unaffordable interest that Navient added to their loan principal as a result of multiple forbearances.

As you heard from Mr. Sanders and Ms. Darcus, income-driven repayment plans are a generally much better option than forbearance. Borrowers who enroll in forbearance face significant costs, including accumulation of unpaid interest, which is added to the loan's principal balance at the end of the forbearance, missing out on low or zero-dollar payments that could count towards loan forgiveness, and the borrower's monthly payment can dramatically increase after the forbearance period ends.

We alleged in our complaint that during the 5 years from January 2010 to March 2015, Navient enrolled over 1½ million borrowers into 2 or more consecutive forbearances. Navient's own numbers show that these consecutive and unnecessary forbearances added nearly $4 billion in interest, which works out to an average of $2,700 per borrower from forbearances. As alleged in our complaint, Navient and its agents were incentivized to push forbearances instead of IDR because it was faster and more profitable for Navient, even though it unfairly penalized borrowers. Forbearances get the borrower off the phone quickly without any paperwork and allow the Navient agent to move on to the next call.

In short, an entire generation is being held back by the shackles of student loan debt, and these debts are growing instead of shrinking in part because Navient is not helping borrowers enroll in the payment plans that are best for them, despite representing that it is the expert in the area and would assist borrowers. For borrowers facing financial hardship, IDR plans are generally much better. It is Navient's job to help borrowers figure out which repayment plan is best for them, but despite publicly assuring borrowers that it will help them identify and enroll in an affordable, appropriate repay-

ment plan, Navient has routinely steered borrowers experiencing long-term financial hardship into forbearance.

I will illustrate how IDR works with an example. Imagine a family with a Federal loan balance of $40,000 with an income of $63,000 a year. This family would pay $403 per month on their Federal loans for 10 years under the standard repayment plan. Under an IDR plan, that family would pay half of that, only $203 a month, and would qualify for forgiveness of any remaining loan balance after 20 years of payments. And if the family works in public service, such as teachers or police, they could earn forgiveness after just 10 years of those $203-a-month payments. Now, imagine the household income drops to $39,000. All of a sudden this family is eligible for zero-dollar monthly payments under IDR. These zero-dollar payments still count towards forgiveness in 10 or 20 years.

Now, imagine if the family had called Navient following the income drop, and instead of IDR, as our complaint alleges, Navient steered them into a 6-month forbearance. Instead of qualifying for zero-dollar payments and eventual forgiveness, the family will still pay nothing, but they will not receive credit toward forgiveness. Many Pennsylvanians have suffered from this steering, and we tell some of their stories in the complaint. One told us she had worked in the public sector since 2006, qualifying her for the 10-year loan forgiveness under the Public Service Loan Forgiveness (PSLF) Program. However, when she asked Navient about PSLF in 2007, their employees gave her misinformation that deterred her from enrolling. She didn't find out until 7 years later that they had given her the wrong information, and had Navient been truthful in 2007, she may have qualified for forgiveness as soon as 2017.

I thank you for the opportunity to testify today, and I would be happy to answer any questions.

[The prepared statement of Mr. Smyth can be found on page 69 of the appendix,]

Chairman GREEN. Thank you, Mr. Smyth. Ms. Thoman, you are now recognized for 5 minutes to present your oral statement.

STATEMENT OF ARWEN THOMAN, DIRECTOR, STUDENT LOAN ASSISTANCE UNIT, MASSACHUSETTS ATTORNEY GENERAL'S OFFICE

Ms. THOMAN. Chairman Green, Ranking Member Barr, and members of the subcommittee, thank you for inviting me to testify on State efforts to protect student loan borrowers. My name is Arwen Thoman. I am director of the Massachusetts Attorney General's Student Loan Assistance Unit. On behalf of Attorney General Maura Healey and borrowers from Massachusetts, I appreciate the opportunity to speak on the critical issue of Federal student loan servicing.

Attorney General Healey established our Student Loan Assistance Unit in 2015. In the last fiscal year, the unit received over 3,000 hotline calls, nearly 1,000 written help requests, and generated savings and refunds of $1.5 million for student loan borrowers. Each day, we are on the front lines of the student crisis, helping borrowers to find more affordable repayment plans and working to move loans out of default in order to end involuntary collection activities that cause serious harm to our residents.

If I can offer the subcommittee one takeaway, it is that student loan borrowers and their families deserve much better from the Federal Government and the private companies hired to service Federal student loans. Every day we speak with borrowers who have found their way to our office in despair. We routinely hear that borrowers are worried about their ability to start a family, to buy a home, or achieve even a very basic minimal standard of living. Many have been struggling with student loan debt for years and, in some cases, for decades. Each borrower's story is unique, but the patterns and their distress and their mistreatment are painfully clear. Given the social and economic vulnerabilities of many student loan borrowers, the inordinate complexity of the Federal loan system, and the mounting scale of student loan debt across the nation, the role of student loan servicers is more important than ever.

Although we have worked hard at the State level to improve servicer treatment of borrowers through direct advocacy and enforcement of our State's consumer laws, we believe that more Federal oversight and action is necessary to protect borrowers and address the harm caused by inappropriate servicing practices. This Federal oversight must not be concentrated solely in the hands of the U.S. Department of Education, which also serves as the lender, and has historically turned a blind eye to many of the problems associated with student loan servicing.

Effective servicing is essential to avoiding the consequences of Federal loan default. Default occurs when a borrower is 270 days past due. Default carries severe penalties and can lead to many years of crushing student loan debt. When borrowers default, collection fees exceeding 20 percent of the loan balance are assessed. Moreover, borrowers face administrative wage garnishments, tax refund interceptions, and offsets to their Social Security and veterans' benefits. Unlike nearly every other category of unsecured debt, Federal student loans are generally non-dischargeable in bankruptcy, and there is no statute of limitations on collection. They can remain with the borrower for life.

Here is just one example of a complaint that we received concerning a defaulted Federal student loan: "My wages are being garnished, but myself and my husband are living in a motel, and they are taking out too much. I am not going to be able to afford where we are staying right now. I explained that I am going to be homeless, but they said there was nothing they could do about it."

The consequences of default and the long horizon on Federal student loan collection create a heightened responsibility for us all to ensure that servicers are helping borrowers to successfully and affordably manage repayment. Unfortunately, we consistently see servicers that fail to provide the help that borrowers need.

As detailed in my written testimony, servicing problems that we frequently encounter include failures to enroll borrowers in income-driven repayment payment plans that reduce payments and lessen the likelihood of spiraling debt and default; failures to help borrowers maintain the benefits of those plans through annual recertification of income; failures to provide adequate guidance so that borrowers can effectively pay down loan principal; and failures that obstruct the Public Service Loan Forgiveness Program.

We have also observed the rise of predatory student loan debt relief companies that take advantage of distressed borrowers who turn to them when student loan servicers have failed to help. Congress has taken significant steps to help borrowers avoid ruinous student loan debt by creating affordable repayment plans and forgiveness programs. However, all of these programs rely on servicers. They are the gatekeepers. They are the companies contracted by the government to connect student loan borrowers with the help those borrowers need. And when servicers fail to act in borrowers' best interests, communicate effectively, or respond to questions accurately, our students and their families suffer serious consequences.

We hope that you will continue in your efforts to hold student loan servicers accountable and improve servicing standards. I appreciate the opportunity to share these thoughts with you today.

[The prepared statement of Ms. Thoman can be found on page 74 of the appendix.]

Chairman GREEN. Thank you, Ms. Thoman, for your testimony. Mr. Buchanan, you are now recognized for 5 minutes for your testimony.

STATEMENT OF SCOTT BUCHANAN, EXECUTIVE DIRECTOR, STUDENT LOAN SERVICING ALLIANCE

Mr. BUCHANAN. Thank you, Chairman Green, Ranking Member Barr, and members of the subcommittee for allowing me to provide testimony today to help inform this discussion about student loan servicing. I am Scott Buchanan, the executive director of the Student Loan Servicing Alliance, which represents the companies, State agencies, and nonprofits which are responsible for servicing over 95 percent of all student loans.

It is first critical to understand what a servicer does and what a servicer does not do. Servicers are on the front lines every day, talking to and working with borrowers. We send recent graduate statements and disclosure letters. We provide online interactive Web experiences, videos, and calculators. We hold Facebook chats and even Twitter parties about good repayment strategies. We provide mobile apps, and we handle tens of millions of phone calls each year.

But it is also important to remember what we don't do. The Federal servicers do not set the parameters for student eligibility. We do not set the interest rate. We do not set the repayment option requirements. We do not do debt collection and we do not own the loans. Those are matters set forth by Federal statute and regulations governing the program. Also, our role begins long after a student has chosen to take loans and exited school or graduated.

While no single repayment plan or strategy is better, both financially and in desirability for all borrowers, we have delivered some pretty impressive results. We have increased enrollment rates in IDR plans by 400 percent since 2013. Half of the direct loan portfolio is now an income-driven plan. While they were always low, complaints about student loan servicing declined by nearly 50 percent last year according to the CFPB, and represented just .6 percent of all consumer financial complaints. And we have done all

this while the number of borrowers has grown by 40 percent in the last decade alone.

It is probably also useful to address some other assertions or rhetoric that has been part of this dialogue. There has been much mischaracterization of the recent OIG report on student loan servicing, yet there are important facts that are clear in that report. The OIG report validated that every Federal loan servicer exceeded the service level agreement standard set by the Department of Energy. The report shows also that Federal loan servicers had an average real error rate of 00.49 percent. And the report shows that the Department of Education conducts extensive onsite visits, monitors service levels, and samples call recordings to validate the quality of service.

And while I am not party or privy to the ongoing State legal matters that have may have been discussed, there are some key points that should be considered relevant to this topic. The Federal Student Loan Program is just that, a clearly Federal program that is preempted from State efforts which would create conflicting requirements. Setting aside those discreetly legal matters, this means servicers are now stuck in the middle between a government disagreement between the States, multiple Federal agencies, and Congress. That conflict between others means that the resources we otherwise devote to helping borrowers access their options are being misdirected to try and get clarity.

Most importantly, though, what can we do to improve servicing? First, education. We have supported partnerships with the States that help us educate borrowers, and that may mean expanding their existing higher education authorities or creating a student loan ombudsman office who can take complaints and offer independent third-party counsel.

Second, simplification. Many borrowers face the challenge of an antiquated process to handle applications from many repayment plans, especially for IDR. We would like to work with Congress to allow data-sharing between the Department of Education and the IRS to reduce borrower paperwork. Further, we welcome support to help us get permission to implement simple modernizations to let us use pre-filled recertification forms electronically for IDR, which has proven to nearly triple the response rate for renewals.

Third, standardization. We continue to advocate for a common servicing manual that could be developed in partnership with the Department of Education and other regulators. Additionally, we have been actively helping to support an effort to standardize and modernize credit bureau reporting to help borrowers.

And finally, protection. We have also actively been supporting efforts to pass legislation to crack down on debt relief firms that scam borrowers. We would love to partner with the States and others on this fight.

Thank you, and I look forward to your questions and also working with you and others on these important issues.

[The prepared statement of Mr. Buchanan can be found on page 43 of the appendix.]

Chairman GREEN. Thank you, Mr. Buchanan. The Chair will now recognize the gentlewoman from Ohio, Mrs. Beatty, who is also the

Chair of our Subcommittee on Diversity and Inclusion. Mrs. Beatty, you are recognized for 5 minutes.

Mrs. BEATTY. First of all, thank you, Mr. Chairman, for hosting this subcommittee hearing this morning. And let me just say to not only the witnesses, thank you for being here, but, Mr. Chairman, I couldn't help but notice the audience behind our witnesses. Since I have been on this committee, this is without a doubt the youngest-looking—I don't want to make any assumptions—average age that we have had to fill this hearing room, so I think that speaks volumes to the importance of this. And I want to thank all of those millennials who are here because I am making the assumption that you either have student loans—and you are nodding. So let the record show that they are here because they are part of this wonderful America, and they, too, applaud you and are interested in this topic.

Let me just very briefly say this is very important to me. And I am really pleased that we are talking about something that is so important to not only you as young folks, not only to educators, but it is important as we look at housing, as we look at debt, as we look at financial credit scores, because debt, regardless of where you get it from, affects everything.

And when we talk about education, the numbers that are on the board in this room are very alarming to me, so I am going to be very critical of this Administration. I am going to be very critical of this Secretary of Education. And while I may not be an expert-expert, I want the record to know that I have served as an academic adviser. I have served as a college administrator, and at one time as an adviser to young college students. I developed the curriculum at that time for the largest 2-year college in the State of Ohio, which is the State I am from, on college survival skills. And even then, one of the things that we frequently heard was, how do we pay back our student loan? Here we are now some 3 decades later still dealing with this issue.

And I say, shame on this Administration. Shame on this Secretary of Education. I was critical when the appointment came. I think when you are talking about our future, you need to make sure that you have someone who has worked in education, who understands all of the principles of it. So with that, let me pose my first question to the panel.

It is my belief that most Americans who have to take out student loans to fund their education, first of all, want to pay those loans back, and many want to do it as quickly and as efficiently as possible, but have not been able to do that. So who are the borrowers relying on to get information regarding their loans, and is this Government under this Administration setting them up for failure? There is a lack of information on the Education Department's website. The Department of the Treasury has even criticized the Department of Education's lack of oversight.

So to the panelists, are they being set up for failure, or where do they go to for information? We will start with you, Mr. Smyth, and Ms. Darcus.

Mr. SMYTH. Borrowers are utterly dependent on the contractors, on the student loan servicers. The servicers make representations

that they will help borrowers identify their options, and the servicers are failing in widespread ways at this—

Mrs. BEATTY. Okay. Ms. Darcus, failing, succeeding? Whose fault is this?

Ms. DARCUS. That is correct. We pay servicers billions of dollars to do the job right. They compete for these lucrative contracts. They say that they are the experts. They claim that they can accomplish the task. But student borrower outcomes belie those claims.

Mrs. BEATTY. Okay. Mr. Buchanan, Ms. Thoman, quickly because I only have about 25 seconds?

Mr. BUCHANAN. Sure.

Mrs. BEATTY. Failing or not?

Mr. BUCHANAN. I think if you look at the actual metrics that I talked about, we are improving dramatically.

Mrs. BEATTY. I am going to rush you. Failing or not?

Mr. BUCHANAN. Not. We are working better every day.

Mrs. BEATTY. Ms. Thoman?

Ms. THOMAN. Failing.

Mrs. BEATTY. Okay. Mr. Sanders, you highlighted something great in the State of Illinois. Should we use that same thing here in the Federal Government? Would it be helpful?

Mr. SANDERS. Absolutely. I think that the protections that we have instituted in Illinois would be helpful for borrowers nationwide. And I know that there is legislation that has been introduced in the Senate that would institute some of those protections on the Federal level.

Mrs. BEATTY. Okay. Thank you, and I yield back.

Chairman GREEN. The gentlelady's time has expired. The Chair will now recognize the gentleman from Kentucky, Mr. Barr, the ranking member of the subcommittee, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman, and, again, thanks for holding this important hearing. And thank you to my friend from Ohio for recognizing so many young faces out there. I do think it is unconscionable the level of debt that so many young people today have to deal with. It is deferring homeownership. It is deferring marriage. It is deferring retirement savings. It is producing a savings crisis in this country. And it is unfortunate that Federal policy is enticing so many students to take on too much debt, especially with the degrees and the income that can be produced for repayment. I think that is something that we all have to really assess as policymakers.

Mr. Buchanan, since 2010 when President Obama nationalized the student loan system, the Department of Education has become the largest consumer lender in the country. Your association is made up of student loan servicers who are contracted by the Department of Education to ensure that borrowers repay those loans. There seems to be some confusion as to the role of servicing companies in the $1.5 trillion student debt crisis, and I am hoping you can help me clear up the confusion. Do student loan servicers advise students as to which school to attend or which degree to pursue?

Mr. BUCHANAN. We do not.

Mr. BARR. Do student loan servicers set tuition rates?

Mr. BUCHANAN. We do not.

Mr. BARR. Do student loan servicers advise a student as to how much money to borrow?

Mr. BUCHANAN. We do not.

Mr. BARR. Do student loan servicers set the terms of the loan?

Mr. BUCHANAN. We do not.

Mr. BARR. Do student loan servicers set the interest rate for the loan?

Mr. BUCHANAN. We do not.

Mr. BARR. Do student loan servicers create the forbearance or deferment option that is available to students?

Mr. BUCHANAN. We do not.

Mr. BARR. And who did create the forbearance option?

Mr. BUCHANAN. Congress did.

Mr. BARR. Thank you. So it sounds like all the factors that are driving the growth and total student debt in this country, things like lack of information available to students who are in college, high tuition rates, low graduation rates, not to mention the interest rate in terms of the loan, those are all set long before the borrower even makes contact with a loan servicing company.

Mr. BUCHANAN. That is correct.

Mr. BARR. Now, Ms. Darcus made, I think, an important point. She talked about this forbearance, and all of the witnesses are talking about this forbearance or deferment option. As I recall, Ms. Darcus' testimony was that forbearance and deferment is a profitable option for the servicers. I want to explore that a little bit with you, Mr. Buchanan. Do student loan servicers make more money, are they more profitable by placing students into forbearance status?

Mr. BUCHANAN. We are paid far less for any borrower who is in a forbearance status. In fact, the numbers are clear. We are paid, on a monthly basis, $1.05 to service a borrower who is in forbearance. We are paid $2.85 for a borrower who is in repayment.

Mr. BARR. So you are paid less if the student goes into forbearance?

Mr. BUCHANAN. That is correct.

Mr. BARR. So if student loan servicers have no financial incentive to move students into forbearance status, why are so many students moving into forbearance status?

Mr. BUCHANAN. Well, the rates of forbearance utilization have declined over the last few years. Right now, approximately 10 or 11 percent of borrowers utilize forbearance, but it is important to understand what forbearance is used for many times. When someone applies, for example, for an income-based repayment plan and that borrower is already delinquent on their accounts, many servicers apply a forbearance in order to bring that borrower current, which is useful to that borrower because if we do not use the forbearance, they will become delinquent and get reported to the credit bureaus.

Mr. BARR. And, again, Congress created the option.

Mr. BUCHANAN. That is correct.

Mr. BARR. The servicing industry did not. Mr. Smyth, I appreciated your testimony that for borrowers facing financial hardship, often, income-driven repayment plans are generally much better

than multiple forbearances. I couldn't agree with you more. Repaying the loan instead of forbearance makes a whole lot of sense to me, especially if you can. Obviously, a lot of these students are facing financial hardship. My question to you is, since your office sued because of this issue, this problem, should Congress reform the Federal Student Loan Program to repeal the forbearance option?

Mr. SMYTH. That is an interesting question. We haven't given it any thought, and I think it would be impractical for the reason that Mr. Buchanan explained, that forbearance is sometimes used to help people when they are delinquent in getting into IDR.

Mr. BARR. Right, so it is helpful. So, you are saying Congress shouldn't mandate IDR?

Mr. SMYTH. I think that it would be helpful if IDR were the default option; in other words, if there were easier steps to getting people into IDR. And I think Congress should explore prohibiting multiple consecutive forbearances, which is the significant harm that we found and that we talk about in our—

Mr. BARR. My time has expired, but I appreciate the recognition that IDR is better, but that Congress is really the responsible party here. I yield back.

Chairman GREEN. The gentleman's time has expired. The gentleman from Massachusetts, Mr. Lynch, is recognized for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman, and Mr. Ranking Member. I want to thank the witnesses for your testimony this morning. It's very helpful. Mr. Chairman, I ask unanimous consent that I might enter into the record the complaint in the case of *Commonwealth of Massachusetts* v. *Pennsylvania Higher Education Assistance Agency, d/b/a Federal Loan Servicing.*

Chairman GREEN. Without objection, it is so ordered.

Mr. LYNCH. Mr. Chairman, the complaint here lists a litany of abuses by this particular servicer that have been recounted in the testimony of our witnesses this morning, varying from not informing students that there was an income-related repayment option to, in some cases, students were not made aware that their public service entitled them to a more favorable loan repayment schedule.

Ms. Darcus, we are dealing with this whole situation, and it is so varied and so widespread, as Ms. Thoman has laid out as well. Would it be a cleaner solution for Congress just to impose a fiduciary duty on the part of the servicers so that they have to act in the best interest of the student who takes out the loan? That would seem to get at all of this rather than trying to do it piecemeal, trying to create incentives for the servicers to treat people more fairly.

Ms. DARCUS. That would be a powerful accountability tool. Many borrowers are unable to speak up for themselves because their relationship with the servicer is indirect. They don't choose their servicer, they don't choose the terms of their servicing, and they don't have a contract with their servicer that they can then try to enforce when the servicer violates their rights. Creating a duty that requires the servicer to affirmatively act on behalf and be responsible for borrower outcomes could be very powerful.

Mr. LYNCH. Thank you. Ms. Thoman, I know that you are involved in, and I thank you for your good work, and also Attorney General Healey in my State of Massachusetts, is doing terrific

work on this. You have seen, at least in the complaint, it talks about the shifting irresponsibility on the part of some of these servicers. When you nail them on one aspect of it, they seem to create a new and different type of abuse that they employ. Would creating this fiduciary duty that requires the servicer to act in the best interest of the student who takes the loan out be helpful in relation to the cases that you continue to see in Massachusetts?

Ms. THOMAN. Yes, I absolutely believe that creating a fiduciary duty for student loan servicers would be helpful. It would also need to come with a means for borrowers to enforce that obligation.

Mr. LYNCH. Right. Well, there is plenty of case law that articulates what a responsible fiduciary must do so they would be measured by that standard. Are there any other recommendations that you would like to see in terms of protecting some of these students? I have nieces and nephews who are up to their eyeballs in student debt, and it is unbelievable the amount of debt that some of these kids are carrying. We have to figure out a better way because borrowers have to put their lives on hold. They can't start a family. In many cases, they are still living at home with their parents. It is just very depressing and a heavy burden on these kids. Is there something else we could be doing here that might lift that burden?

Ms. THOMAN. I think that part of what we are all saying here is that Congress has done a lot to try to lift that burden by creating these income-driven repayment plans and public service loan forgiveness programs. I do think that those programs could in many cases be more generous towards borrowers. We could raise the amount of income that is protected so that we are not looking at 150 percent of the Federal poverty line, which I think for a single borrower in Massachusetts is less than $20,000.

Mr. LYNCH. Right.

Ms. THOMAN. The student loan servicers are also not wrong that the system is very complicated. And so to the extent we can do things to streamline, to make recertification simpler. But I do think that in large part, a framework has been created to address many of these problems, and that implementation of that framework has been very challenging for the servicers.

Mr. LYNCH. Okay. Mr. Chairman, my time has expired. I yield back. Thank you.

Chairman GREEN. The gentleman's time has expired. The gentleman from Florida, Mr. Posey, is recognized for 5 minutes.

Mr. POSEY. Thank you, Mr. Chairman, for holding this hearing. Mr. Buchanan, how many Federal loan repayment plans are there today?

Mr. BUCHANAN. Well, that is a complicated question, because for every borrower, the amount of repayment plans that they have eligibility for varies based upon when they took out those loans, what year they graduated, and when Congress gives and takes away repayment plans. But all in all, including forbearances, deferments, and 5 different flavors of income-based repayment, there are more than 55 repayment options that are available to any given borrower at a particular time. And, as I said, some borrowers may not have access to all of them, and that is the complexity of the Federal Student Loan Program.

If you ask what particular borrower has access to what loan repayment options, there is a whole laundry list of questions that have to be asked and assessed before you can even determine which of those 55 are on the short list of things they could turn to.

Mr. POSEY. Do any of the applications for the loans ask the student how they plan to repay them?

Mr. BUCHANAN. In a master promissory note, I am not familiar. I would have to look at that on the front end, which is the Department of Education originates these loans and is the lender, so they handle all of the loan disclosure up-front for originating the loans. But to my knowledge, I don't know that that is specifically called out, but I could be wrong.

Mr. POSEY. If a student wanted to pursue a Ph.D. in primitive basket weaving, where along the process would somebody tell them that it is highly unlikely they would be able to repay the loan?

Mr. BUCHANAN. Well, one would hope that that communication came before choosing to take that degree and moving forward. That is really an opportunity for, and, again, this not an area that we are involved in because this all happens long before the borrower comes to us. They have already made those choices and decisions and have gotten and hopefully graduated into the job marketplace.

But that is probably where, from a front-end perspective as the lender, the government should look at what is its level of disclosure and communication to borrowers. Schools should probably be playing a role in that conversation. And I think that is also a great opportunity for States and others to participate with individuals in their jurisdictions and be part of that education process.

At the end of the day, I think what we are all trying to do is help people make informed and better decisions, right? And we would love them to make informed, better decisions before they come to the servicing side where we have to, in essence, deal with those choices that have been made and try to put them on the best path that is available under the Federal law.

But I think working together, whether it is Congress, schools, the Department of Education, and States, and families on being informed about making good decisions before they take on debt, I think that would be very helpful.

Mr. POSEY. Does anyone know where it is mandated that the various parties that Mr. Buchanan represents are actually obligated to help students make intelligent decisions about how much they are going to borrow and be able to repay?

Ms. DARCUS. I don't believe that servicers are expected to advise borrowers about how much to borrow when they are in school. I think a lot of what we are speaking to from the borrower experience is that the cost of attending college increases in repayment due to servicer error and misconduct. I have seen borrowers who borrowed $6,000 to go to school, wind up with 6 figures of debt because of servicing errors. Forbearances, default, and issues with getting into income-driven repayment after years of struggling can make a balanced balloon even after the initial borrowing—

Mr. POSEY. So, it sounds like we need to require a financial literacy test or at least a course before somebody is allowed to apply

for a student loan. Mr. Chairman, I would like to yield the remaining of my time to the ranking member.

Mr. BARR. Thank you for yielding. Mr. Buchanan, does the student loan servicing industry have any data about the risk of default when a borrower responds to servicer outreach versus when a borrower does not interface with a servicer?

Mr. BUCHANAN. Yes, I think the data exists, and that is one of the more troubling things in this conversation. As servicers, we make mistakes from time to time. You look at the statistics, and those are not at a high level at all. But when the conversation is saying, avoid talking to your servicer, who is the expert, who is supposed to working with you, that is a real problem because if we can talk to someone who is on the cusp of default, which is the worst thing that can happen to a borrower at the end of the day in terms of consequences, 9 out of 10 times we can get them into a repayment program or a repayment option that is going to help divert that default and get them back current.

Chairman GREEN. The gentleman's time has expired. We will now move to the gentlewoman from New York, Ms. Velazquez, for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Ms. Darcus, Federal student aid began accepting and reviewing applications from borrowers seeking loan forgiveness under the Public Service Loan Forgiveness Program in the fall of 2017. As of March 31, 2019, the Department of Education has only approved 518 of the more than 73,000 borrowers who have applied under the program, and discharged only approximately $30 million in student loans. Why are these numbers so low? Why has the Department of Education not approved more borrowers for forgiveness under the Public Service Program?

Ms. DARCUS. We know that borrowers who are seeking Public Service Loan Forgiveness have a lot of hurdles in order to get there, and their servicer is supposed to walk them through that process. As the lawsuits that you have heard about and these witnesses can tell you more about exposing, there are many ways in which servicers can thwart the efforts, the very determined efforts of public servants to fulfill their responsibilities to their community, repay their loans, and get the forgiveness they deserve.

That happens when they believe that they are track on to get forgiveness because their servicer assures them they are in the right repayment plan, and that they are doing everything they need to do to comply. As you have heard today, there are affirmative misrepresentations made by servicers. They are not just forgetting to tell people information or saving time and highlighting some of the options. They are telling people they are on track when they are not. And they are—

Ms. VELAZQUEZ. Thank you. Mr. Buchanan, State attorneys general have initiated enforcement actions to protect student loan borrowers from unlawful servicing practices. Do you think those cases are without merit?

Mr. BUCHANAN. Listen, again, I am not privy to the details of those cases. Those are between the attorneys general and those entities. I think so far it is clear that there have been no rulings on the facts in those cases and on the merits of those arguments. They

are assertions, but there has been no determination that they are true, and I—

Ms. VELAZQUEZ. Okay, thank you. Reclaiming my time, Ms. Darcus, student loan borrowers with direct loans do not choose their loan servicer. Rather, the Department of Education assigns the loan to a servicer after disbursement. Can you explain why this is the case and how this came to be?

Ms. DARCUS. I think it is certainly problematic that borrowers don't have the option to vote with their feet and choose their servicers in most contexts. Yes, they are assigned a servicer, they are stuck with that servicer, and that is a problem for borrowers who are not getting the kind of service that they need. And it is also a problem because the same servicers that systematically fail those borrowers continue to get more borrowers assigned to them.

Ms. VELAZQUEZ. Do you think student loan borrowers would have better experiences with their servicer if they were able to choose their servicer, and servicers were forced to compete for borrower business?

Ms. DARCUS. That is a very good idea. We are sorely lacking competition in the servicing market, and that harms borrowers.

Ms. VELAZQUEZ. Would you support that, Mr. Buchanan?

Mr. BUCHANAN. Well, that is a policy choice. Congress previously did allow competition among servicing and let borrowers make those choices. But that was eliminated when Congress passed the Affordable Care Act and took over direct administration of the Student Loan Program, and choice was taken away. But I think that is a conversation for Congress to determine about what is the appropriate way to give people options here.

Ms. VELAZQUEZ. Okay.

Mr. BUCHANAN. We support options and making sure that borrowers have good access to quality service, absolutely.

Ms. VELAZQUEZ. Mr. Buchanan, in November 2017, the Illinois Student Loan Bill of Rights became law. Would you be supportive of or do you think this is something we should be developing on the Federal level?

Mr. BUCHANAN. As I talked about, I do agree that we need to have some common servicing standards. And we have long endorsed a common servicing manual that would be developed in cooperation between all the interested parties so we could get some agreement about what those standards are. The real challenge is when you have those conflicts at the State and Federal Government level, and when agencies at the Federal Government fight with each other about what the rules are, we sit in the middle of trying to find out what is the right way to service the loan, and we follow the guidance by the government. And so, any effort to create some common standards, I think, we would think is a valuable contribution to the dialogue.

Chairman GREEN. The gentlewoman's time has expired.

Ms. VELAZQUEZ. Not a common standard, a bill of rights. Thank you. I yield back.

Chairman GREEN. The gentlewoman's time has expired. The gentleman from Ohio, Mr. Davidson, is recognized for 5 minutes.

Mr. DAVIDSON. Thank you, Mr. Chairman. And thank you to our witnesses. I appreciate your expertise and commentary in writing

and in person. There is no doubt that the student debt crisis is indeed a crisis. It is complex, and I look forward to your input into how we might go about improving the problem and mitigating the downsides for taxpayers, but also providing the service that could be provided.

As we have had the dialogue, and Mr. Posey addressed earlier that no one could answer, how do we do the underwriting? That is because the people who actually do the underwriting aren't in the room, so we are holding up the servicers as if they have a fiduciary duty when they don't actually do any of the underwriting. We don't price in the risk of default based on major, based on college or university selected, or based on aptitude. We don't base the loan on creditworthiness unless we happen to do it on a co-signed loan where the family's creditworthiness is really there. And so, we keep loaning money to students regardless of these decisions.

Last Congress, it became controversial for a minor reform to the Higher Education Act to advise people about the risk of default, and then to have some consequence for the universities that do have higher default risk. It was a deal-killer because the politics were so bad. As a history major, I don't know that I favor the idea that the government picks what your major is, but certainly we shouldn't be indifferent to the default risk, particularly if we are going to hold someone to a fiduciary responsibility for the performance of the borrower in repaying that loan.

Lastly, I would say in my commentary portion here that as we talk about what to do for the students, the idea that we would take out these loans with no real intent to repay them is called fraud. So we shouldn't allow or support fraud, and we shouldn't go down a path that makes it so unbearable for them to pay the debt. I just want to highlight that it begins up-front by knowing how much debt to take on.

We are here only focusing on the back end, so I don't know that we are looking at the problem in a way that will holistically help us solve it. But with that, Mr. Buchanan, what can be done about the components of an interest risk, the time value of money and the default risk? What can servicers do about that?

Mr. BUCHANAN. Well, no, I appreciate this, and I appreciate all of the comments. And you get into the complexities and I know everyone has acknowledged that we are not fiduciaries. But at the end of the day, I think we are trying to look out for, what is the best option for borrowers. And what our real job is to say, all right, let's take your situation. Let's meet you where you are. You have made choice, decisions. Things have happened in your life, and those are complications that can impact your ability to repay, and our job is to say, let's regularly communicate. Let's stay in touch and talk about that as it changes.

So I think anything we can do to increase the amount of contact that we have with the borrower. And keep in mind, one of the challenges when you are managing north of 50 repayment plans is that when a borrower calls up and wants to talk to us, very seldom do they want to stay on the phone to talk through 55 repayment options. So part of our job is to do all this other disclosure along the way. That is why we have these websites and other things and calculators.

Mr. DAVIDSON. Thank you for that. Reclaiming my time, the point is that these decisions have already been made. You can try to ameliorate the consequences of decisions that have already been made. And as a system, the higher education regime in the country has highly incentivized 4-year degrees, and the concern I have is that this isn't always the best fit. Sometimes, people don't find that that is the case until they are far along and far in debt, and now they are looking at other degrees, many of which have a better path for ability to service debt, that have better demand for employability.

And I just want to commend some of the trade schools, particularly Butler Tech, our community college, that are there, that are innovative in the 8th District of Ohio, offering students a path to a career and a vocation that has high employability and a great, great chance. And I just wonder lastly, Mr. Buchanan, how could we go about providing that up-front advice? Does the government need to do it, do the universities need to do it, or, as you alluded to, could we return to the private sector making sound underwriting decisions?

Mr. BUCHANAN. I think all of those are options, and I think this is a complicated problem and there are no simple answers to this. And I think we have to have everyone engaged, whether it is institutions that are being creative and innovative, talking about the value of what they are offering, whether it is about bringing families in, in high schools and counseling before people make decisions or look at financial aid packages, colleges and universities, the financial aid offices continuing to do better jobs on disclosures, making them transparent. Those are all things we should all be doing.

Mr. DAVIDSON. Thank you. My time has expired. Thank you.

Chairman GREEN. The gentleman's time has expired. The Chair now recognizes the gentlewoman from Michigan, Ms. Tlaib, for 5 minutes.

Ms. TLAIB. Thank you, Mr. Chairman. You are right, Mr. Buchanan, there is not really a simple answer to all of it. However, I think what needs to be at the forefront and is simple to me is that this is people who are buying an education, not a Lamborghini, not some sort of luxurious something. This is a responsible decision, I think, that they are making, which may be informed or not informed. And as a person that when you enter, you look at the tuition for a minute, but the point is you want your bachelor's degree. You want your degree at the end, and that is really what the focus is when young people get in there. And then afterwards, they expect the government and the quasi-governmental relationship they might have with private companies to do what is in the best interest of their future.

Michigan borrowers have some of the highest student loan debt in this country. Many residents are pulled into courts—I have talked to residents directly about this—and later having to pay double what they owe due to student fees and interest rates and even attorney fees. In 2017, the CFPB sued Navient for incentivizing employees to encourage borrowers to postpone forbearances, an option where the interest rate accrued and collected. They collected over $4 billion in interest.

The Department of Education often encourages the debtor to talk to their loan servicers for advice and help. I am a person who called and they said, call your servicer. However, in response to the lawsuit filed, Navient, the servicer, stated in their response to the complaint that they "don't have to provide good advice to borrowers," and that they have "no affirmative duty to do so."

A question for you, Mr. Buchanan, the Federal Government spent about $700 million in 2017 on debt collections for a little fewer than 7 million borrowers in default. Navient is a member of your organization. Do you agree that servicers have no responsibility to the borrower to give good advice, even when more than half of its accounts come from the Department of Education?

Mr. BUCHANAN. First of all, servicers don't do debt collection, so the litigation and all that about borrowers, that is not something that we have any involvement with. We serve borrowers up until the time in which they default, so I couldn't speak to the debt collection component, but—

Ms. TLAIB. But do you believe that many of the members of your alliance have a duty, a responsibility to give good advice?

Mr. BUCHANAN. As I think folks on both sides of the aisle and the panel today talked about, there is not a legal fiduciary responsibility. But I absolutely believe—

Ms. TLAIB. Well, it is interesting, Mr. Buchanan, because I have only been here for 5 months, and it seems like any corporation, it is like they wait for us to force them to do what is right. It is almost common, like, okay, you have to give good advice. You have this contract with the Department of Education. Your responsibility is to help these folks who have loans and guide them through the process. I almost feel like if we don't spell out, "Do what is right, this is your responsibility", for me, it is like a "duh" moment. Like, "Duh, you have to give advice to those who are calling you. I don't care how long it takes. At the end, that person on the other end of the line wants to be able to pay as close to what they borrowed as possible, and they want that kind of advice."

The question I have is for many of the attorneys general here, folks from the attorneys general offices as well as Ms. Darcus. Thank you all for being here. One of the things I am wondering is what other things are you doing on the State level and the local level to push back against abusive and profit-driven practices? And what are some of the predatory practices of loan servicers and debt collectors you have seen in your State that hasn't been discussed in this hearing right now?

Ms. THOMAN. Speaking for Massachusetts, we have seen an inordinate number of student loan borrowers who have been victimized by for-profit schools that made false promises of employment, 90 percent employment rates. We talk about underwriting standards here, but in many instances, some of the Federal student loan servicers in sort of a prior incarnation of their existence made loans to many of these students, in part because they were interested in Federal student loan volume. And so, the abuse of these for-profit school borrowers and the role of these companies in creating that system is very significant and should not be overlooked.

Mr. SMYTH. Speaking for Pennsylvania, we have sued the U.S. Department of Education twice for the gainful employment rule

and the borrower defense rule, two important rules that they are attempting to roll back. Gainful employment would have made important disclosures to borrowers up-front and would have actually shut down programs where default rates were very high. So, it would have gotten at some of the underwriting problems that people have been talking about. But the DeVos Department of Education is attempting to repeal those rules.

Ms. TLAIB. We had a committee hearing—

Chairman GREEN. The gentlelady's time has expired.

Ms. TLAIB. Thank you, Mr. Chairman.

Chairman GREEN. The gentleman from Tennessee, Mr. Rose, is recognized for 5 minutes.

Mr. ROSE. Thank you, Mr. Chairman. I think an important fact that we need to keep in mind as we have this discussion today, and it is an important discussion, is that in 2011 when the Federal Government took over the Student Loan Program, we did so under the false premise that over 10 years, we were going to create $61 billion that we were going to take from the Student Loan Program and use it to pay for a flawed national healthcare plan that many of us call Obamacare. In fact, as we know, that hasn't worked out. In fact, most recent reports show that we are nearing the point where the program is actually going to cost, and clearly we have created a burgeoning student loan problem in our country.

And as a small businessman and first-time elected officeholder in Tennessee, this is just the sort of shenanigan that the voters in the 6th District of Tennessee are upset about when they see the performance of Congress, and how when we attempt to federalize programs like this and remove the private sector incentives to make responsible lending decisions, and we create just these sorts of crises.

Shifting now, several of you have testified that your agencies have brought lawsuits against Federal student loan servicers for various reasons. Mr. Smyth, you mentioned in your opening statement ongoing litigation. I want to make sure that I understand where we are in the process of this litigation. You are an attorney, I believe, and I am trained as an attorney as well, and I just have a question. Have things changed in this country or are individuals and corporations presumed innocent until proven guilty in a lawsuit?

Mr. SMYTH. Well, in the criminal context, they are presumed innocent, yes. This is not a criminal lawsuit, but there has not been a judgment yet, sir.

Mr. ROSE. But even in civil cases, it is the responsibility of the plaintiff to prove the case and prove the facts of the case, isn't that right?

Mr. SMYTH. That is correct.

Mr. ROSE. Isn't it true that in the case you made reference to, the defendant has not had their day in court to defend themselves yet?

Mr. SMYTH. That is right. That is why I referred to allegations in my testimony.

Mr. ROSE. So your office has made allegations against a servicer, the servicer has disputed those allegations, and the court, to date, has not made any decision based on the facts in that case.

Mr. SMYTH. That is correct, but many of the things that I said were based on the facts that we know from documents that Navient has provided to us. So, for example, the $4 billion in interest, I have the document right here that Navient provided that supports that allegation.

Mr. ROSE. So your statements today remain unproven allegations and no court has determined whether or not they are true?

Mr. SMYTH. That is correct.

Mr. ROSE. It seems to me that this is yet another example of Director Cordray's regulation by enforcement ideology where once again the CFPB, under Director Cordray, demonstrated a proclivity for self-promotion instead of consumer protection. Mr. Smyth, if the CFPB is so focused on student borrower protection, why was there no rule proposed in dealing with private student lending?

Mr. SMYTH. I can't speak for the CFPB.

Mr. ROSE. Mr. Buchanan, given the lawsuits that are currently in process, as they have not actually made any rulings on the facts at present, what solutions are servicers proposing, from your experience, that will make a difference today for some of these struggling student loan borrowers?

Mr. BUCHANAN. Yes. As I talked about sort of in my opening statement, my written statement goes into some more detail, and I would love to work with the committee on those things. But if you look at it, there is a lot of opportunity to take the process that we have to deal with today. So the process, for example, on income-based repayment or public service loan forgiveness is dictated by the Department of Education, and we want to work with them, and we have been providing feedback pretty regularly. And that is how a lot of things actually have changed and improved. You see the IBR uptake that has increased pretty dramatically. We have worked through improving the recertification process with the Department.

And some simple things like allowing sort of data-sharing between the IRS and the Department of Education. Today, if someone wants to stay in income-driven repayment, they have to go to a separate website at the U.S. Department of Education. They have to re-fill out that form. They have to resubmit documentation to the IRS to ask for the same thing they asked for last year and redo all that, and that is a hurdle for us in keeping people current. So those kinds of process simplifications are things that I think we all at this table hopefully could agree upon, are things that we ought to be working on.

It is also making sure that we have consistent credit reporting so that when someone has an issue, that they are treated properly.

Mr. ROSE. Thank you, and I yield back.

Chairman GREEN. The gentleman's time has expired. The gentleman from Illinois, Mr. Casten, is recognized for 5 minutes.

Mr. CASTEN. Thank you, Mr. Chairman. Thank you to all the members. Mr. Buchanan, what is the typical servicing fee paid to your members on a given loan?

Mr. BUCHANAN. For a loan that is in repayment, it is about $2.85 a month per borrower.

Mr. CASTEN. Is that calculated per loan volume? Is there, like, a percent of loan volume, or is it just per loan?

Mr. BUCHANAN. It is per borrower. Not per loan, but at the per-borrower level.

Mr. CASTEN. Okay. And is it my understanding that as loans go into default, that rate falls?

Mr. BUCHANAN. That is correct. It declines. We are incentivized to keep a borrower in current repayment in one of these income-based repayment plans or standard repayment. And our compensation declines as that loan gets more and more distressed, encouraging us to keep the loan active. And, in fact, we talked earlier about forbearance utilization. That is paid the least of all of these things relative to a loan that is right at the end—

Mr. CASTEN. Okay. But when they go into forbearance, you would ensure that they do not go into default. I think a lot of the people here have mentioned that putting in forbearance keeps the default rates low.

Mr. BUCHANAN. It can help, yes.

Mr. CASTEN. Okay. So, therefore, you make more money by putting people into forbearance and keeping them out of the default rate because you earn more money on your overall portfolio.

Mr. BUCHANAN. I don't think that would be the calculus that is involved in this. I think what we are trying to do is to make sure, so when they are in delinquency and getting ready to default—

Mr. CASTEN. Sir, just if I may, I spent 16 years as a CEO.

Mr. BUCHANAN. Yes.

Mr. CASTEN. You provide incentive compensation to employees that makes you more profitable. The fact that there are incentives that are driving people to do this, and, look, I have no problem with profits. Profits are a beautiful thing. They drive human behavior. The idea that there are incentives to employees to push people into forbearance, and that you have no profit incentive to do that strains a little bit of credibility. I am not saying there is not a problem there, but I am saying we have to acknowledge if you are making more money by keeping people out of default, and if forbearance is the way to keep people out of default, let's acknowledge that. That is all I am asking.

Mr. BUCHANAN. The rate of forbearance is relatively low here, and it is used, in general, for pretty short periods of time. And I am unaware of any servicer who provides compensation to put someone into forbearance. We try to make these calls efficient and effective so we can get people as quickly as possible to the best outcomes for them.

Mr. CASTEN. Well, let me pivot, if I could, to some of the other witnesses. The challenge I have is that there is—as I said before, the pursuit of profits is a wonderful motivator of human behavior. It is neither moral nor amoral. It is just pursuit of profits. The challenge we have as regulators is to try to make sure that profit incentive is tied to the public interest. And the challenge that we have on this committee is that so often people deny that there is any conflict. That makes our job as regulators tougher. It is particularly difficult in this moment when the Secretary of Education is actively defanging it.

And I am extremely proud to come from Illinois where the efforts that you have led, Mr. Sanders, through your ombudsman and through the Student Loan Bill of Rights, one of the best programs

in the countries. Can you just talk a little bit about what challenges you have in this moment with the Trump Administration and Secretary DeVos culling back on obligations that are not being done federally that you have to step up and fill?

Mr. SANDERS. Absolutely. So, the Office of the Attorney General in Illinois has been active in the student lending space for many years. We will continue to be active going forward. I think that the big change that we have seen is that we don't have a partner on the Federal level in protecting students. In many ways, we have an opponent. So instead of sharing information with State attorneys general to determine ways to help borrowers, we have the Department of Education issuing a notice of interpretation saying that States can't enforce their own laws, that they can't access the information that law enforcement needs to determine if they are in violation of our laws.

And we have to spend our time fighting against the Federal Government. So, for example, that notice of interpretation has been discredited by several courts, but it takes our time and effort away from helping student borrowers when we have to fight roadblocks that are thrown up like that.

Mr. CASTEN. Would any of the rest of you from the States care to comment on what that hassle means for the burdens borne by students who are in default, or former students?

Mr. SMYTH. It certainly delays our lawsuit. We also faced delays in getting borrower data from Navient in the context of our discovery and our lawsuit. And we had to go to our judge and ask him to force Navient to turn over the borrower data. The excuse that Navient gave was that the Federal Privacy Act prevented them from turning over the data, but that was not correct legally. And they only made that excuse because of the Department of Education telling them that they could do that.

Mr. CASTEN. Thank you.

Chairman GREEN. The gentleman's time has expired. The Chair will now recognize the gentleman from Georgia, Mr. Loudermilk.

Mr. LOUDERMILK. Thank you, Mr. Chairman. Thank you all for being here. This is an interesting panel that we have here, and it is an interesting subject. However, I would like to get to the root of the problem, and the root of the problem I see is the astronomical costs of education these days. It is unbelievably high, and I don't know that we are really addressing that situation here. We saw this in Georgia years ago.

It used to be that in the university system of Georgia, they had to keep their tuition rates competitive enough that a working-class family could afford to send their children to college with minimal outside support. What changed in Georgia was a public funding program to ensure every child gets a chance to go to college, and when that went through the legislature, the cost of education skyrocketed, and it is has remained high ever since.

I recently was speaking to a group about the need that we have for students to go into technical fields and the jobs that are available there. And after I got done speaking, a young lady came to me and she said, "Let me tell you what happened to me and my sister. We both graduated about the same time. She went to college. I decided to go into a technical field, went to technical college, and

graduated. Now, 4 years later, about the same amount of money I have made, she now has in student debt because of the cost of actually going to college." And I think our government involvement is part of the problem why we are seeing this. It is a natural effect. You have this free public money out there, so now we are going to get that and we can raise our rates. I don't think we are going to get a handle on this until we can actually do something about the astronomical cost of going to college.

But with that aside, Mr. Buchanan, I know that we are talking about servicing these loans here today. And from what I know about any major loan that you are taking out, when you look at the costs these students are accruing this early in their life is unbelievable. But with any other significant loan that we take on, I mean, car loans, the amount you are borrowing is much less than most of these students are borrowing. There are rigorous truth-in-lending disclosure statements for those. There are rigorous truth-in-lending disclosure statements for buying a home, or for commercial loans. Are there such requirements for student loans, or do these students really know what they are getting into?

Mr. BUCHANAN. Well, again, I can provide some context having been in the higher education space for 20 years or so on what is going on. That is not a servicer role or function, but I think it is important for borrowers to be well-educated upfront about what the consequences are of the choices that they are going to make, for good and for bad. College is an investment, and the idea is that we let people borrow money so they can increase their earning power over time. And when that works well, it works very well.

And I think by having people understand the repayment plans that they are going to select, the interest rate, all that is being set up, up-front, and fixed by statute, and then understanding that if you do take advantage, and we talk a lot about income-driven repayment plans, and those could be very beneficial for some borrowers. For some borrowers, they can increase the total cost of borrowing pretty materially over the life of that loan, and that is based upon the borrower's individual situation. And so having a borrower be disclosed of what those situations could look like—listen, having an informed borrower before they make choices is always the best kind of borrower.

Mr. LOUDERMILK Do we need to do anything to ensure better disclosures for these loans?

Mr. BUCHANAN. I think that is a policy question for the front-end of lending. But I think having disclosures, and if you look to the private sector there is a lot of disclosure that goes on there. Is there an opportunity? Again, we have talked a lot about harmonization and simplification. Is there an opportunity to harmonize with what is done on the private student loan marketplace? I think that is something that ought to be looked at and considered.

Mr. LOUDERMILK. Are there any requirements to assess the student's ability to repay the loans?

Mr. BUCHANAN. I'm sorry?

Mr. LOUDERMILK. Is there any requirement we have to assess the ability of the borrower, the student, their ability to repay the loan?

Mr. BUCHANAN. No, currently the Federal Government, when it makes loans, does not assess an ability to repay.

Mr. LOUDERMILK. And I can understand part of that because it is a student, and they are usually not employed. But I also look at this, if the student is academically inclined and they are going to get a nuclear engineering degree, their likelihood, the ability to pay it back is much higher than someone who may just be getting a literary arts degree or something that may not pay as well. But we don't take any of that into consideration?

Mr. BUCHANAN. That is correct. The government does not.

Mr. LOUDERMILK. All right. I yield back.

Chairman GREEN. The gentleman's time has expired. The Chair now recognizes the gentlewoman from Texas, Ms. Garcia, for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Mr. Chairman, and thank you so much for bringing attention to this critical crisis. And I, too, like my colleague, Mrs. Beatty, want to acknowledge the different look that we are getting behind the panel table. And I might add that not only is it younger, it is also absolutely more diverse, and it is good to see so many young women there watching.

And I wanted to start with a little focus on that because, Ms. Darcus, you mentioned the impact of some of these practices and the default rate on African-American students. And it is strikes me that no mention was made of Latino students and, more importantly, too, young women because, by and large, not only are we not included, but at the end of the tunnel when we graduate, we may get hired and not get equal pay for equal work, which means our ability to repay is also diminished somewhat because of inequities in salary and training and promotion. So do you have any data with regard to other people of color and also women?

Ms. DARCUS. Yes, the data are still developing. We need more information that is disaggregated by these characteristics, like race and gender. But I can tell you that like black borrowers, Latino borrowers also report higher rates of late payment. They struggle to repay in part because of that, the racial wealth gap. And my research also shows that Latino borrowers, like black borrowers, experience higher rates of default.

We also know that women carry about two-thirds of outstanding student loan debt. So when we are thinking about who is bearing the burden, who might be struggling in repayment, we are thinking about people of color. We are thinking about women. And that is in part because of the legacy of discrimination on the basis of race and on the basis of sex in this country, and the ongoing gaps in earnings and in wealth. And we are actually seeing that student loan debt widens those gaps into chasms. So we have to be very—

Ms. GARCIA OF TEXAS. So you would say there is a disproportionate impact on people of color and women?

Ms. DARCUS. Yes.

Ms. GARCIA OF TEXAS. There is? And that would be true all across America, not particular to any region or State?

Ms. DARCUS. Yes.

Ms. GARCIA OF TEXAS. Okay, thank you. Now, I want to go on to Mr. Sanders, and thank you to all the representatives here from attorneys general offices. It is great that they are doing some good work. I just wish that my attorney general was at the table with you, but regrettably I can't say Texas is doing what some other

States are doing. Mr. Sanders, you pointed out that the colleges sometimes engage in their cohorts management services companies that will steer the student to forbearance because they are concerned about the default rate in their colleges. I find it so troubling that a college or any public institution would actually try to find a group that would do that more to decrease their default rating. Could you just explain that a little bit further? I am running out of time, but also why they would do it? Is it that they are being reviewed on the basis of that, because obviously this may be another scandal in the making.

Mr. SANDERS. I am happy to answer the question. It is a good one. So under Federal law, if schools have too many borrowers default within the first 3 years of repayment, they could lose access to Federal student aid.

Ms. GARCIA OF TEXAS. Only that particular aid where the student default rate is high or all student aid?

Mr. SANDERS. Depending on how long the violation goes on, it could be all student aid. So with the existence of income-driven repayment plans, defaults should approach zero. There will be some borrowers that we can never reach, but with income-driven repayment, if you are not making any money, you can make a zero-dollar payment, so everybody has the ability to qualify for these. If servicers were providing better information, schools wouldn't have to engage these low-rent consultants that only have one goal, which is to push people into forbearances.

Ms. GARCIA OF TEXAS. Well, I find it very troubling. And, Mr. Chairman, I am sorry I ran out of my time because I really think that this whole idea that colleges are maybe doing this just to protect their own interests is very, very troubling.

Chairman GREEN. The gentlelady's time has expired. The Chair now recognizes the gentleman from Wisconsin, Mr. Steil, for 5 minutes.

Mr. STEIL. Thank you very much, and thank you for holding today's hearing. I am very concerned about where we are at with student debt, but I think what we are missing sometimes is what the underlying cause is, which is the cost of the underlying product of the education. And so, Mr. Sanders, you mentioned at the beginning of your testimony that students are often unaware of the basics of the loans that they are taking out. And, Mr. Smyth, you noted that Pennsylvania has the second-highest student debt in the nation. I think that is very telling. Do you know what the cost is for an in-State student in Pennsylvania to attend Penn State?

Mr. SMYTH. It is extremely high. The average 4-year tuition for a public university in Pennsylvania is the third-highest in the country after only Vermont and New Hampshire. So you are absolutely right, the cost is far too high. I think it is about $30,000 or $27,000.

Mr. STEIL. So, just tuition and fees, before we get even into living expenses, tuition and fees on the website: $18,454. Mr. Sanders, do you know the cost of in-State tuition for a student at the University of Illinois at Urbana?

Mr. SANDERS. I don't know the answer off the top of my head.

Mr. STEIL. Tuition and fees is roughly, they estimate it at $16,000 to $21,000, depending on exactly what school you are in.

If you look at what is going on in Massachusetts, Ms. Darcus or Ms. Thoman, do you know the cost for an in-State student to attend UMass Amherst, for an in-State student?

Ms. THOMAN. I believe it is around $20,000.

Mr. STEIL. On the website, for an in-State student, tuition and fees, before we get into housing and living expenses, $15,887. Before I came to Congress, I served on the University of Wisconsin Board of Regents. To attend the University of Wisconsin-Madison, a flagship in the State, tuition and fees, $10,555, significantly less than your 3 States. What did we see last year in the State of Wisconsin for overall debt? It decreased. Why? Because we are controlling the underlying cost of the product. That is absolutely critical.

And when States are able to control the underlying cost of their tuition, and, in particular, for in-State students, you legislate that ability to control the costs, and you have a real impact on students' borrowing rates. But when you can't legislate, you litigate. And what we are seeing is States with high costs of in-State tuition where they are having high costs of student debt then trying to go out and litigate their way politically out of the problem rather than addressing the underlying cost structure that we are placing on students.

So in the University of Wisconsin system where I was a regent, what we did is we held the line on tuition. So dollar for dollar for the last 6 years in the State of Wisconsin, the cost of tuition to attend the University of Wisconsin-Madison, the University of Wisconsin-Whitewater, the University of Wisconsin-Parkside, or any of the campuses in the entire State of Wisconsin in the UW system was flat dollar for dollar. What does that do? That actually drives down the cost of tuition against inflation, and makes college more affordable, and actually reduces the total debt burden that students are taking out.

But when you can't legislate that in, we take this litigation path to go after it and to try to find out where are there these disruptions in the market. And I am very open-minded to trying to find opportunities to improve the process. One of the things I think would be interesting is, do you any of you, by a show of hands, answer calls that come to your cell phone from an unknown number?

[No response.]

Mr. STEIL. May the record reflect that no one raised their hand. Including myself, I don't answer the phone from an unknown number. If it is a known number, I am happy to pick up. If it is an unknown number, I usually let it go. If we look at our Federal law the student loan servicers are obligated to operate under, they can't text you. They can't do all these modern mechanisms to let people know that they might be late. There are real opportunities for us to explore real solutions to the problem to, God forbid, legislate rather than litigate the problem.

I know Mr. Buchanan has had a number of items where you have identified ways to improve the process to legislate an improvement rather than to drive forward a litigation approach where, one, the States are unable or unwilling to control the underlying cost of the product, and then, two, we are holding hearings on the litigation side rather than sitting down and looking for significant improvements on ways that we can actually be productive

in collecting the student debt, and then, on a go-forward basis, how we actually control the underlying cost of the product, which will have a real impact on students who don't need to take out the debt in the first place.

I appreciate the time. Thank you very much. I yield back.

Mr. PERLMUTTER [presiding]. The gentleman yields back. I will now recognize myself for 5 minutes. Mr. Steil made some very good points about the costs going in. In Colorado, our tuition is $12,000, so not much more than yours, and managed fairly well. But he started at the beginning of the process. I am going to the end of the process.

Ms. Thoman, in your opening, you talked about non-dischargeability of the debt. And I practiced bankruptcy for a long time before I got here, generally representing the creditor side. In fact, I represented one of the lenders who was mentioned by Mr. Lynch, the Pennsylvania Higher Education Assistance Authority (PHEAA), on these kinds of things. One of the things that happened that dramatically changed, I think, the landscape was to make these student loans almost impossible to discharge. And if I am not mistaken, we have seen a balloon in the student debt since that time in 2005.

Can you talk to me, and, Mr. Buchanan, I want to you to jump in on this, too. What would be the effect generally on the system if we allowed these debts to be discharged?

Ms. THOMAN. I think it would be positive for many participants in the system. There are many borrowers who have been victimized by schools, who are simply in no position to repay these debts, and are often in no position to navigate these more complicated income-driven repayment plans and the associated processes.

Mr. PERLMUTTER. Mr. Steil talked about, we immediately go to litigation, but sometimes you can't. There is no way to get out of this, and you take a drastic remedy of bankruptcy. People don't do this lightly. So, Mr. Buchanan, if we in the Congress, because we changed the law in 2005, if we were to reinstate what it was pre-2005, what effect do you think that would have on the market generally, because the comments I have heard is that it would cause the rates to go up. How does the association look at it?

Mr. BUCHANAN. Again, we are on the servicing side, so we are not on the lending side.

Mr. PERLMUTTER. Right.

Mr. BUCHANAN. And the Federal Government owns the asset, so the cost of bankruptcy dischargeability is borne by the Federal Government under a Federal loan. So I think that is a question of, does the Federal Government, from a cost perspective, think that is an appropriate subsidy or benefit to provide to the loan?

Mr. PERLMUTTER. And the reason I even bring this back up is because we have tried a number of different paths: forbearance; reducing interest rates; and providing credits for service rendered by public employees. We have come up with a dozen different things to try to reduce what seems to be just this dramatic increase in student debt in America. So as servicers, I assume that you have thought about what would happen if Congress changed it back. What has been your view of it?

Mr. BUCHANAN. Yes, I think that would be something that, listen, I think there are a lot of borrowers who get into distress. And at the end of the day, we are trying to say if someone has an option, what is the best option for them. And I think, looking at an appropriate sort of assessment of bankruptcy reform is always something that should be on the table. And, highlight, though, the evolution over time, and that is sort of, I think, where Congress is sort of, you know, prior to 2002, forbearance was a process that had to have written documentation. And then negotiated rulemaking with servicers, the National Consumer Law Center all agreed, let's make it far easier to do verbal forbearance.

So those things need to evolve over time as we identify pockets of individuals who are not being best served by the current system. But that is also a function of time because the amount of people, the people who are going into higher education. The great success of putting more and more individuals who historically were prevented from getting higher education means we need to change the process constantly, and that is where we are always looking to share that information with our regulators, the Department of Education, and I am sure they will share it with you about things we can do to improve.

Mr. PERLMUTTER. Mr. Smyth, so staying on the same theme, and I have about 30 seconds. the law says to discharge requires undue hardship, and I remember PHEAA was pretty tough on what "undue hardship" meant as we would proceed through the bankruptcy court. Has that changed? You don't represent PHEAA, you are with the attorney general's office, but how do you guys look at that?

Mr. SMYTH. I definitely can't speak for PHEAA, but I think "undue hardship" is far too high a line, and we should certainly consider allowing student loans, both private and Federal, to be dischargeable in bankruptcy.

Mr. PERLMUTTER. Thank you, and my time has expired. I now recognize Ms. Dean for 5 minutes.

Ms. DEAN. Thank you, Mr. Chairman. I am pleased to be here to hear all of your testimony on this important issue. And I want to just say at the outset that I look through a couple of lenses, and one is as a mom, a parent, and a grandparent to college-educated kids, and hopefully college-educated grandchildren. I am also a former university professor for 10 years in Philadelphia, as well as a former State legislator who dealt with the issue of higher education funding.

And I just want to say in response to some of the testimony or questioning or statements from the other side, this is not an either/or situation. We can agree that the cost of education is extraordinarily high in this country, and we can agree that we should do something about that, regardless of where we find that funding. But it is not either/or, so I am puzzled by the lack of curiosity by those on the other side of the aisle who only want to speak about that as though there is no possibility of harm to consumers on the other side. So that is where I want to start.

First of all, Mr. Smyth, I come from Pennsylvania, as you know. I really appreciate the work of our Attorney General Josh Shapiro and what he is doing to protect borrowers and consumers at many

levels. Would you help me with the scope of the problem? In your testimony, you identified that Navient, between 2010 and 2015, enrolled over 1.5 million borrowers in 2 or more consecutive forbearances. Their own numbers show that these forbearances added nearly $4 billion in interest to those consumers. Is that Pennsylvania borrowers only?

Mr. SMYTH. That is nationwide.

Ms. DEAN. Nationwide, $4 billion. Can you specifically show how that direct harm happens? What was the practice that led to that massive harm to consumers, direct dollar-for-dollar harm to consumers, not to mention credit ratings and other anxiety and everything else that goes along with that?

Mr. SMYTH. Sure. That $4 billion in extra interest comes from multiple consecutive forbearances. We have been talking a lot about forbearances and how they can be harmful. There are occasions when somebody may truly have a short-term need. Say they lose a job, but they know they are starting another job in 2 months and they will be making enough money then to go back to their standard repayment plan. In that case, perhaps a forbearance makes sense for a couple of months.

Ms. DEAN. Sure.

Mr. SMYTH. But we are talking about multiple consecutive forbearances where people are in forbearance for 12 months, 18 months. We have even seen people in forbearance for 3 or 4 years. And at that point, there is no way that the servicer can argue that this borrower is in short-term financial distress. They are in long-term distress, and they should have been put into an income-driven repayment plan much earlier in the process, if not at the very beginning. So that 1½ million borrowers who are in 2 or more consecutive forbearances, had $4 billion in extra interest added to their loan principal as a result of those forbearances.

Ms. DEAN. Were they given clear notice that by doing this over and over again, they were just adding to their interest? I mean, clear notice, plain-English notice.

Mr. SMYTH. I can't speak to every single one of them, but as I said, I think certainly at the end of the first forbearance, they would have had to talk to Navient again, and Navient would have said, okay, let's put you into another forbearance, is that okay? And we have found through reviewing caller recordings and in our investigation that Navient often did not mention income-driven repayment plans at all.

Ms. DEAN. Right.

Mr. SMYTH. And sometimes they would mention it in a very cursory way without properly explaining it to the borrower.

Ms. DEAN. In your complaint, in the Pennsylvania complaint, it is alleged that Navient and its agents were incentivized to push forbearances instead of IDR. Can you explain that?

Mr. SMYTH. Sure. So Navient mentioned average call time for their agents at their call centers, and they rewarded people with bonuses for keeping their average call time low, among other metrics.

Ms. DEAN. What kind of bonuses?

Mr. SMYTH. A couple hundred dollars, gift certificates, that sort of thing.

Ms. DEAN. And if I interrupted you, was there more to that practice?

Mr. SMYTH. There is actually a really good podcast. Michael Lewis did a podcast about this where he interviewed a woman who worked at the call center in Wilkes-Barre, Pennsylvania. And she described the 7-minute rule where basically you were expected to get off the phone with a borrower in 7 minutes, and if you did a forbearance, you could achieve that goal. But if you started talking to the borrower about IDR, there was no way you were going to meet that metric, and Navient would eventually fire you if your average call times were too high. So the people serving the borrowers well were being pushed out the door, and the agents who were doing a bad job and hanging up on borrowers and not telling them about IDR were promoted and rewarded.

Ms. DEAN. Again, I just am puzzled that the other side isn't curious or upset about $2,700 per borrower added to the top.

Chairman GREEN. The gentlelady's time has expired.

Ms. DEAN. Thank you, Mr. Chairman.

Chairman GREEN. The Chair now recognizes the ranking member of the subcommittee for a unanimous consent request.

Mr. BARR. Thank you, Mr. Chairman. I would ask unanimous consent that we enter into the record four articles: one from the Consumer Bankers Association that reports 98 percent of private student loan borrowers are successfully repaying loans, whereas 1 in 5 Federal student loan borrowers are seriously delinquent or in default; a letter from the Credit Union National Association urging attention to the benefits to borrowers through more private loans; a Wall Street Journal article reporting that despite the CFPB's allegation that Navient had a profit motive to place borrowers into forbearance, in fact, the Department of Education pays loan servicers 63 percent less for accounts in forbearance than those in income-based plans; and finally, an article that reports that despite the CFPB lawsuit, Navient, in fact, informed borrowers about income-based repayments, but borrowers opted for forbearance regardless.

Chairman GREEN. Without objection, it is so ordered.

The Chair now recognizes the gentlewoman from California, Ms. Porter, for 5 minutes.

Ms. PORTER. Thank you. Mr. Buchanan, do servicers act in the best interest of consumers?

Mr. BUCHANAN. We absolutely work every day to provide them all the options that are available to them. And those options, what is best for them, is really a choice among consumers because at the end of the day, each of those options is going to have a different consequence depending upon what job they take, what life choices they make.

Ms. PORTER. Just one second. So servicers act in the best interest of consumers? Navient, your former employer, a member of the organization that you are here to represent today, is arguing in court that there is no expectation that the servicer will act in the best interest of the consumer. Did I mishear you?

Mr. BUCHANAN. Are you asking a question about the legal definition of "fiduciary duty?"

Ms. PORTER. No, I asked you a question. I asked you if servicers act in the best interest of consumers, and you said, and I quote from 10 seconds ago, "yes." I am now reading to you from arguments that Navient is making in court. "There is no expectation that the servicer will act in the interest of the consumer." And further, servicers "do not owe borrowers any specific fiduciary duties based upon their servicer-borrower relationship." Would you like to revise your prior answer to the question I started with? Do servicers act in the best interest of the consumer?

Mr. BUCHANAN. Servicers work for the government to provide the options that are available, and we disclose them clearly.

Ms. PORTER. I am asking you, do you—

Mr. BUCHANAN. We don't make the choice of what the—

Ms. PORTER. I am reclaiming my time, please. I am going to ask the question again. Do servicers act in the best interest of consumers?

Mr. BUCHANAN. I believe by executing what we are asked to do by the Federal Government, if that is what is in the best interest of students, then that is what we do is we—

Ms. PORTER. So you act in the best interest of the government, which you believe to be in the best interest of consumers.

Mr. BUCHANAN. We work for the government. That is correct.

Ms. PORTER. Okay. So, Mr. Buchanan, I read your testimony, and in it I understood you to say you are "proud of your work." You are "proud to talk about the success and making a difference for consumers." So I wanted to try to summarize and get a handle on some other statements and make sure I understand your testimony. Would you agree or disagree that recent media reports about servicing are inaccurate, and that those claims are counter to the commitment of servicers to help borrowers?

Mr. BUCHANAN. I believe there is a lot of rhetoric that has mischaracterized, pretty meaningfully, what we do in the performance of what we have achieved, yes. I would talk about sort of the success rates of improving IDR and other things that have been—

Ms. PORTER. Reclaiming my time, would you agree that you expect your lawyers to follow all laws, regulations, and individual rules and policies, and you expect your lawyers to follow the laws?

Mr. BUCHANAN. I don't have any lawyers myself, but if you mean sort of the legal departments of servicers, I think that is the expectation.

Ms. PORTER. Okay.

Mr. BUCHANAN. And we do comply with the Federal law that is applicable here.

Ms. PORTER. Okay. Would you agree that servicers have been accused, including by some of the other witnesses, of intentionally assessing inappropriate fees and costs to borrowers?

Mr. BUCHANAN. I believe there have been assertions.

Ms. PORTER. Okay.

Mr. BUCHANAN. I don't think they have asserted fees because we don't charge fees—

Ms. PORTER. Would you agree that those allegations are not true?

Mr. BUCHANAN. I'm sorry. Repeat the question?

Ms. PORTER. Would you agree that those allegations are simply not true?

Mr. BUCHANAN. I don't believe the facts are consistent with those allegations as best as I have seen. But, again, I am not privy to the litigation here, so there may be facts I am unaware of. But all evidence and all performance metrics from the servicer perspective to—

Ms. PORTER. Mr. Buchanan, I am running out of time. With apologies to Brandi Carlile, my favorite artist, I have been to this movie and I have seen how it ends, and the joke is on them, the American people. The statements that I just read to you are all from the testimony of Countrywide during the mortgage crisis when I sat where these folks sit as a witness and listened to the witness from Countrywide say that the media reports are inaccurate, that they expect their lawyers to follow the law, that there has not been an intentional assessment of inappropriate fees and costs.

I already have Netflix, so I don't need another crappy reboot. These are the exact same arguments that we have heard before. You sound just like Mr. Mozilo, and you are doing the same exact kind of harm to our economy. Thank you.

Chairman GREEN. The gentlelady's time has expired. The Chair now recognizes the gentlewoman from Massachusetts, Ms. Pressley, for 5 minutes.

Ms. PRESSLEY. Thank you, Mr. Chairman, and thank you for this critically important conversation this morning. And I want to thank our witnesses for joining us today and recognize Ms. Thoman and Ms. Darcus for your work on behalf of struggling student loan borrowers throughout the Commonwealth. The testimony shared today underscores the severity of the student debt crisis taking place in our country. This crisis has placed an unprecedented financial burden and caused a tsunami of hurt on an entire generation of young people, hindering their ability to purchase a home, start a family, and even to save for retirement.

Across the Commonwealth of Massachusetts, more than 855,000 borrowers owe $33 billion in student debt. Last year alone, student loan debt in Massachusetts increased by $1 billion. Despite the fact that this crisis has reached record proportions, this Administration has either failed to act or has intentionally worked to undermine State efforts to protect borrowers. Back in March, I asked CFPB Director Kraninger if she believed that there was a student debt crisis in our country. She refused to answer my question, a shocking, but not surprising, response from the person running the sole agency charged with protecting student loan borrowers in the financial marketplace. So I am glad to be at this hearing to talk about the steps that State policymakers and State attorneys general have made to protect borrowers.

The student debt crisis is a racial and economic justice issue as well. Ms. Darcus, tackling student debt is both a racial and economic justice issue, so how is student debt exacerbating the racial and gender wealth gap?

Ms. DARCUS. We see that in order to afford a college education these days, people of color disproportionately rely on debt to make it through. So when we look at what is happening in repayment,

it is disheartening to see that the very same people who are trying to take advantage of the promise of education to achieve better economic outcomes for their families to experience the economic mobility that education is supposed to promise, end up getting bogged down. The cost of that education increases through servicer misconduct and error, and they disproportionately experience default. And since women bear so much student loan debt, we are also cognizant that they carry a special burden that we should be looking at for our outcomes based on gender and repayment as well.

Ms. PRESSLEY. Okay. Picking up on that, so Federal student loan borrowers have a right—all of them—to an affordable monthly payment, regardless of their loan balance through income-driven repayment, or IDR, correct?

Ms. DARCUS. Yes.

Ms. PRESSLEY. Okay. And research is showing that when a borrower is able to get into and stay in an IDR plan, she is significantly less likely to default on her student loan, correct?

Ms. DARCUS. Yes.

Ms. PRESSLEY. Okay. So despite the fact that Federal student loan borrowers have a right to an affordable payment, research has shown that black and Latinx borrowers face significantly more challenges as they try to access these repayment plans. So this reflects many of the disparate impact terms we see in mortgage redlining abuses. Ms. Darcus, can you share some of the real-world consequences when a low-income borrower falls into default?

Ms. DARCUS. Unfortunately, the default triggers a world of hurt for clients like mine, many of whom are people of color and women. They can have their wages garnished. They can have their tax refunds, including the earned income tax credit, seized. And what we end up seeing is that the limited income and wealth that exists in communities of color get siphoned off through these government debt collection activities, and that means that the racial wealth gap is growing due to student loans.

Ms. PRESSLEY. So, do you believe this is evidence of potential discriminatory behavior or misconduct in the student loan market?

Ms. DARCUS. We definitely have to look at the disparate impact in student loan outcomes based on race and gender. And so we have to look at is discrimination happening in servicing because the outcomes are stark. People of color fare worse.

Ms. PRESSLEY. All right. Thank you. Ms. Thoman, the Massachusetts AG's Office under the leadership of Attorney General Maura Healey has worked diligently to increase oversight over these servicers. In 2017, your office brought a suit against the Pennsylvania Higher Education Assistance Agency (PHEAA) for their egregious servicing failures that ultimately caused many borrowers to lose eligibility for the Public Service Loan Forgiveness Program. Can you briefly explain the major findings of your case?

Ms. THOMAN. Our allegations include that PHEAA has denied borrowers the opportunity to make qualifying payments for public service loan forgiveness and income-driven repayment forgiveness by failing to properly and timely process applications for income-driven repayment plans. We have also alleged that the company failed to properly count borrowers' public service loan forgiveness qualifying payments. Further, we have alleged that they have

failed to properly process TEACH grant certification forms, leading grants that were given to teachers to be converted to loans. Finally, we have alleged that PHEAA has collected amounts not legitimately due and owing, and failing to refund them to borrowers.

Chairman GREEN. The gentlelady's time has expired.

Ms. PRESSLEY. Thank you, Mr. Chairman. Thank you.

Chairman GREEN. The Chair now recognizes himself for 5 minutes. Ms. Darcus, is it true that the Department of Education is withholding information and encouraging others to withhold information that is relevant and is, in fact, being done to the detriment of the borrowers?

Ms. DARCUS. Those are the reports that I have heard, and you have heard testimony today from Mr. Smyth, for instance, who explained that their work in the Navient case has been held up by the Department's efforts to prevent the servicer from disclosing important information.

Chairman GREEN. Thank you. Mr. Smyth, would you care to comment, please?

Mr. SMYTH. Yes. The Department of Education is telling servicers not to turn over information regarding Federal loans, and that is hampering our efforts and the efforts of other States.

Chairman GREEN. I regret to see this happening, but it does not surprise me given that the Trump Administration by and through the President himself refuses to honor subpoenas, refuses to encourage witnesses to testify, and, in fact, encourages witnesses not to testify. It seems that the Trump cover-up mentality is permeating other areas of the government to the extent that consumers are going to be harmed. Regrettably, this mentality is something that we will have great difficulty dealing with unless we decide that we are going to deal with the chief executive officer who is the chief sponsor of the cover-up mentality.

Let's move on. There have been those today who seem to think that poor people, many of whom happen to be people of color, make bad decisions when they acquire loans. Is it true that most poor people need the loans to get the education so as to extricate themselves from the adversities of poverty? Mr. Smyth, would you care to comment?

Mr. SMYTH. It is true that poor people, if they wish to attend college, must take out loans because generally their families have very little savings to help with college. And State legislatures have reduced the amount of money that they have put into the public university systems over the past decade, so families are having to borrow more now than they ever have before.

Chairman GREEN. Thank you. Ms. Darcus, is it true that if you are poor and the loan is the only option for you, and the amount is what is necessary for you to get an education, that you really don't have any option other than to take out the loan? What other options do people with little wealth have?

Ms. DARCUS. You are right to point out that these aren't really good choices, debt or education. You have to get both in order to get either at this point. So while they were financing higher education through debt, it is not surprising that the people who have the least means rely on that debt more. We need a system where

we are not relying on people who have very little to take on the most in order to get the education that they seek.

Chairman GREEN. I heard a colleague across the aisle indicate that we should get to the root of the problem. Well, the root of the problem doesn't start with the birth of a poor person today. It doesn't start with the adversities that they encounter today. It starts with a system of systemic discrimination, invidious discrimination, that has been in place in this country from its inception. If you differ with me, kindly raise your right hand?

[No response.]

Let the record reflect that we have no hands raised, and the Chair concludes that the comment made is correct. If we want to truly get to the root of the problem, is it fair to say that we have to deal with systemic, invidious discrimination? If you agree, kindly extend a hand into the air.

[Hands raised.]

Let the record reflect that all have extended hands into the air. And let the record further reflect that my time has expired, but my desire to end invidious discrimination will only expire when I expire.

I want to thank the witnesses for their testimony and for devoting the time and resources to travel here and share their expertise with this subcommittee. Your testimony today has helped to advance the important work of providing meaningful oversight of the CFPB and the student loan servicing industry.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Without objection, the hearing is now adjourned.

[Whereupon, at 12:12 p.m., the hearing was adjourned.]

A P P E N D I X

June 11, 2019

House Committee on Financial Services: Subcommittee on Oversight and Investigations Hearing

Hon. Emanuel Cleaver

An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market

Tuesday, June 11, 2019

Mr. Chairman, thank you for holding today's hearing on a topic that increasingly concerns me. In the summer of 2017, I held a town hall on student loan debt to hear from constituents of the Fifth Congressional District – from prospective students and their families to graduates and parents of graduates who are still paying off parent plus loans years later. Overwhelmingly, they were concerned about the ability to pay off their loans and about negligent or nefarious practices by loan servicers.

Last summer, a GAO report update initiated by myself, Sanford Bishop, and current House Education and Labor Chairman Bobby Scott, found that Department of Education needs to undertake further efforts to provide oversight of contracted federal loan servicers.

Additionally, I have re-introduced the Student Loan Disclosure Modernization Act – along with Rep. Banks – to modernize the Plain Language Disclosure Form to make it easier for student loan borrowers to understand before they take out a new loan. Under current law, the Department of Education (ED) is required to disclose to students a long list of terms and conditions of federal student loans to help educate them about the obligations they are incurring. The form, written in small print, can be at least six pages long, and contain over 6,000 words.

Presently the total student loan debt in America has exceeded $1 trillion, and more than 1 million people default on their loans each year According to Federal Reserve Bank of New York, Americans now owe more in student debt than any other non-mortgage debt, such as credit cards or auto loans. Almost one quarter of all Americans in repayment were behind in their payments last year. This has further implications for borrowers and for the economy. Federal Reserve researchers point to the decline of homeownership among millennials is partially due to the increased weight of student loan debt. As stated in a recent Bloomberg article from January 2019, "higher student loans, early in life, lead to lower credit scores later in life, making it harder for former students to take out mortgages".

This is an issue that Congress and the Administration must address. The Consumer Financial Protection Bureau (CFPB) as well as the Department of Education have critical roles and responsibilities, which are not being met. The position of Student Loan Ombudsman within the Consumer Bureau has been vacant since August of 2018, and the Bureau has not issued an annual report on student loan complaints since 2017. The office for students and young consumers previously helped return more than $750 million to student loan borrowers across the country, until it was folded into the Bureau's office of financial education. Chairman Green, I thank you for your attention to this problem and encourage you and other congressional committees to increase the oversight efforts of the student loan servicing market.

S·L·S·A
STUDENT LOAN SERVICING ALLIANCE

Testimony of
C. Tapscott "Scott" Buchanan
Executive Director
Student Loan Servicing Alliance

Hearing on "An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market"
before the U.S. House of Representatives,
Committee on Financial Services,
Subcommittee on Oversight and Investigations

Tuesday, June 11, 2019
Rayburn House Office Building, Room 2128

Thank you, Chairman Green, Ranking Member Barr, and members of the Subcommittee, for allowing me to provide testimony today to help inform this discussion about student loan servicing, servicers' unique role, and also discuss how we can all work together to continue to improve student loan servicing. I am Scott Buchanan, Executive Director of the Student Loan Servicing Alliance (SLSA). SLSA is a non-profit trade association in Washington DC that focuses exclusively on student loan servicing issues. Our servicer members are responsible for servicing over 95% of all federal student loans, and the vast majority of private loans as well. Our membership is a mix of companies, state agencies, non-profits and our service partners who are all focused on providing the customer service function during repayment of student loans for private loan holders, but also the largest student loan holder: the United States federal government.

Background on the student loan programs

There is currently almost $1.6 trillion in total outstanding student loans – and over $1.4 trillion of that is federal loans. In other words, federal loans make up over 90% of all student loans. The vast majority of those federal loans are currently serviced by nine contractors to the Department, all of whom are SLSA members. These nine contractors include a state agency, six not-for-profit agencies, and two companies. Most of these loans are Direct Loans, made by the Department of Education using funds from the U.S. Treasury. Less than $200 billion are loans in the FFELP Program (which are loans made by banks and guaranteed by the federal government), which has been winding down since 2010 after Congress passed legislation making the Department of Education the sole originator of all new federal loans. These federal, but privately funded, loans are serviced by 20 SLSA members. A little more than $100 billion (less than 8%) are private loans, made by banks and other private lenders, with no federal backing. Most of these are also serviced by SLSA members.

The role of a servicer – While there has rightfully been much discussion about the critical issues facing the 44 million student loan borrowers, there has been less discussion about the mechanics and facts surrounding how the loan program works and what the responsibilities are of servicers in the lifecycle of a student loan. I think that is most helpful as a starting point to discuss servicing and how we can continue to improve it. It is first critical to understand what a servicer does and what a servicer does not do. Servicers are on the front lines every day talking to and working with borrowers and being their first and best conversation to understand and navigate their options. We send recent graduates letters and statements outlining their repayment options. We provide online interactive web experiences, where videos and calculators help break down and simplify what different choices will mean in practice. We have dedicated or trained representatives who work with those in the military. We hold facebook chats and twitter parties about good repayment strategies. We provide mobile apps and custom websites, so borrowers can interact with us at home or in their favorite coffee shop. And most importantly we talk with borrowers on tens of millions of phone calls each year. And those phone calls are handled by thousands of employees scattered across the United States, many of whom themselves have loans or children with loans, who are specially trained to get people from A to Z to answers.

But it's also important to remember what we don't do. The federal servicers do not set the parameters for student loan eligibility, do not set the interest rate on a student loan, do not determine what

repayment options are available to a borrower, do not earn the interest or return off a student loan, do not set fees or penalties, do not set payment application rules or process, don't handle default debt collection, and do not own the loans. Those are matters set forth by the statute and regulations governing the program, and by the guidance and contract terms put forward by the Department of Education. Servicers take very seriously, as demonstrated by the actual metrics and facts of our performance, our role to help borrowers be as successful as possible in repaying their loans so the federal student loan program can continue to serve future generations of students – the millions of future college students whom the Higher Education Act was enacted to assist.

While what we do is often misunderstood, so is the timing of when we step in to help borrowers. Our role begins after Congress has set interest rates and repayment plans, after a student has chosen a school, after the college has set the price and determined what other aid it will offer, after the borrower has decided how much they wish to borrow, after the loan has been originated and disbursed, and usually meaningfully begins after a student has graduated - or sometimes when they have left school for other reasons. That is when we start our job with regular communication with the borrower to help them access the options that are available so they can make the best choice amongst the repayment plans that Congress has provided. That communication is not a one-time event, and no single interaction in isolation characterizes the work that we do or the scope of what we share. Our efforts are a continuum of activity, ranging from letters, emails, phone calls, websites, and sometimes chat or text, in order to meet borrowers where they are and most prefer to interact – and over time and multiple interactions – in order to make available the tools for them to effectively manage their student loan obligations. As a borrower's life situation changes, we also change our efforts with them to try and identify - from what information they choose to share - what options are available now, that may not have been available before. Has their job situation changed? Has their family expanded? Has their income level risen? And then, what do they want to accomplish? Every borrower has a different view of what steps will be in their best interest. Some want to pay down their student loans slower because they have other debt at higher interest rates. Some want to pay them down faster because they want to become debt free as soon as possible. Some want just a little time to get beyond a financial hurdle this month. Some want a long-term solution that aligns with the career path they think they will have, where maybe their income will rise meaningfully over time or maybe where they are taking a public service job where their income may be less than another. It is a fact that no single repayment plan or strategy is best – both financially and in desirability – for all borrowers. In this way, every borrower is different, and servicers are on the front lines of trying to help a borrower understand and navigate amongst the often complex intricacies of those choices they must make. We're proud of that work and I'm proud to talk about our success in making a difference:

- Servicers have increased enrollment in IDR plans by 400% since 2013 and nearly 1/3 of all borrowers are in a repayment plan based on income. Half of the direct loan portfolio volume is in an income-driven repayment plan.
- While they were always low, according to the CFPB unverified complaints about student loan servicing – valid or not – declined by nearly 50% and represented just 00.6% of all complaints about potential consumer issues. Further of those received, more than 85% were about issues that had nothing to do with any servicing error.

- And these outcomes have been achieved while the number of borrowers that we are asked to support has grown by 40% in the last decade alone.

While better understanding who we are, what we do, and what we've accomplished helps provide a good framework for discussion, it is probably useful to also address some other assertions or rhetoric that has been a part of the dialogue where some more context will help move us towards real suggestions to improve student loan servicing for borrowers.

Rhetoric versus Reality

OIG Report - Federal loan servicers are subject to extensive oversight by the Department of Education, who contracts directly with them in order to provide servicing functions for the federal student loan program. One of the entities that performs additional assessment and review is the Office of the Inspector General (OIG). While there has been much mischaracterization of the recent OIG report on student loan servicing, there are important facts which are clear:

1. The OIG reported validated the fact that every federal loan servicer exceeded the Service Level Agreement standards set by the Department of Education.
2. The OIG report found that, in May 2017 just as an example, that federal loan servicers had an average real error rate (dealing with relevant information discussed) of 00.49%.
3. The OIG report also validated that the Department of Education conducts extensive on-site visits, desk audits, compliance and reporting on service levels, and monthly call recording reviews of random samples for evaluation on multiple factors of quality of service.

While the OIG and ED did not agree on the end characterizations of the report and may disagree on what the standards should be in the future, these facts above are true. And contrary to the narrative some have suggested by using misleading mixing of numbers, these facts show that servicers are not only meeting the standards set and have extensive oversight, but they have an extremely low error rate by any reasonable measure.

That's a positive starting point, and servicers agree that we should always be working to do even better and our job continues to be to use this feedback to find new and better ways to keep errors low and continue training of our staff to handle the various and complicated repayment options – all while finding new ways to better educate borrowers.

State Litigation and Legislation – While I am not a party nor privy to the details of ongoing legal matters that several states Attorneys General have decided to pursue with federal loan servicers, there are some key conceptual and overarching points that should be considered on the topic that are also applicable to state legislation on these matters.

1. The federal student loan program is just that – a federal program that is set by Congress, overseen by the Department of Education, and administrated by direct contractors of the federal government – where the courts have clarified, especially in the now settled DC District Court case of SLSA vs. Taylor, that state efforts to legislate or litigate are generally pre-empted.

2. Setting aside those discretely legal matters, this means servicers are now stuck in the middle of a governmental disagreement between the states, multiple federal agencies, and Congress about who should in fact be determining the rules and processes that servicers should follow, even though today we work directly for the Department of Education and must follow its guidance.
3. Yet, as I will give specificity to later, we want to work with states to partner on many areas to help borrowers across the country. We continue to work actively to improve legislation, so it aligns with the federal standards and re-emphasizes the protections that borrowers already have. We are also working to educate legislators and regulators on the nuance of student loan servicing, and how to create consistent requirements that are both practically feasible but also actually have a real benefit to borrowers. We completely agree that transparency and borrower education are areas in which we can partner with states.

This underlying disagreement between others over who dictates servicing standards, which has driven many state level activities, is challenge for servicers to harmonize with federal law, regulation, and contracts - and has direct consequences for borrowers and taxpayers. To do our job well, servicers must be clear about what the standards and expectations are for servicing federal student loans so we can be clear with borrowers. Creating for our highly mobile borrowers and us a patchwork of changing requirements and potentially conflicting regulations on an inherently national and federal program means that communicating with borrowers clearly as they leave college and move where life takes them, becomes problematic.

Costs to Borrowers and Taxpayers – Conflicting litigation and potential conflicting regulation, of which we may indirectly be a party due to the disagreement between government entities, means that the resources we otherwise devote to helping borrowers access their options are being misdirected to try and get to clarity. And those resources are needed more than ever as the number of student loan borrowers grows, so we can help them but also protect them.

As student loan servicers, we are paid approximately 1/5 of what a mortgage servicer is paid on average to handle a consumer loan that is often far simpler to service in terms of payment options or complexity, and so resources are constrained. While it a policy decision of how much and where the federal government wants to invest in the student loan program, when that investment is drained to manage potentially conflicting regulations and litigation that reflect policy disagreements between different agencies and governments, that takes away time and energy that otherwise should be devoted to borrowers.

In addition to the resources being redirected to address these disagreements and potential conflicts, the disappointing rhetoric around student loan servicing has also meant that real harm is happening to borrowers. This is not some hypothetical or indirect harm, but instead one that is directly affecting millions of borrowers. Scammers who call themselves "debt relief" companies have sprung up and are now contacting federal student loan borrowers, making fraudulent claims about their ability to help a borrower, inserting themselves between that borrower and us – their real servicer - and then charging that borrower fees and sometimes even tricking the borrower into taking another loan to cover those fees. We have been working with the FTC, the CFPB, and even bipartisan co-sponsors in Congress to try

and protect borrowers from this harm. We will continue to do that, but when the false narrative that student loan servicers are not acting responsibly keeps getting repeated, it continues to encourage these entitles that are actually doing harm.

Ways to Improve Loan Servicing

While much of my testimony has been so far about pointing out facts and explaining some of the ways in which we can correct the narrative on student loan servicing, I believe it is critically important that today's discussion be rooted in what we can do to improve federal student loan servicing in ways that benefit borrowers directly. While many broader considerations of the federal student loan program are under the jurisdiction of the Education and Labor Committee, there are several steps we would love to work with this committee and its members on improving student loan servicing:

1. *Education* - Consistent with the specific topic of this hearing, we have advocated that states should create additional resources that can be made available to all borrowers in their state to help further educate them on their options and how to resolve issues. In some states this may mean leveraging their existing higher education authorities and providing new investment. In others this may mean creating a Student Loan Ombudsman's office who can take complaints and offer independent third-party counsel to validate and echo the messages of servicers.
2. *Simplification* – Many borrower (and servicers) face the challenge of an antiquated process to handle applications for many repayment plans, especially for IDR plans. We would like to work with the subcommittee to support changes legislatively and at the agency level that would allow for data-sharing between the IRS and ED (which would be both simplify the process, but also result in meaningful taxpayer costs savings on efforts ED supports) through Sec. 6103 of the IRS code. Further we look forward to getting approval to implement such simple modernizations as allowing servicers to reach out to borrowers with pre-filled recertification forms electronically, a strategy that has been proven to nearly triple the response rate of renewals. These two simple items would quickly and cheaply make the process to stay in IDR far easier for borrowers immediately.
3. *Standardization* – We have continued to advocate for a Common Servicing Manual that could be developed in partnership with ED, other regulators, and servicers that would provide clear documentation that all stakeholders can turn to and rely upon that would make clear the common practices that are expected on many topics. This would provide transparency, but also serve as a framework to allow future changes in expectations, and then drive change orders and investment needed to make those changes as the loan program evolves. Additionally, SLSA has been actively helping to support an effort to standardize and modernize credit bureau reporting, which we would welcome partnering with this subcommittee, ED, and others in order to implement as quickly as possible, so borrowers are ensured consistent treatment codified by industry best practices.
4. *Protection* – We have also been actively supporting efforts, lead in the House by Representatives Stevens and Smucker in a bipartisan manner with their introduction of HR2888, to pass legislation that would make it a criminal offense to misuse Department of Education loan access or attempt to defraud millions of borrowers by these debt relief scammers. Further, our existing

partnership with the FTC, the CFPB, and Congress to address this matter, could be further supported by states in helping us root out and end these efforts to actively harm federal student loan borrowers.

These are just some examples of recommendations and proposals that go beyond the public narrative today and instead get to core issues that can be addressed, and should be, that will have direct and material benefit to millions of federal student loan borrowers.

Summary

The challenges that we all face in improving higher education outcomes are real. College costs have risen more than 700 percent since 1983, according to data from the federal government. That's more than healthcare and five times more than inflation. Costs have increased for a wide variety of reasons, but many state governments have reduced their financial support of public colleges and universities, significantly driving family costs up.

And while costs have risen, families are still working to navigate the financial aid process, the tough decision about what institution best fits their needs, and creating a workable family plan, so that when students graduate they are set up to be as successful as possible and manage their loans. And, as a number of recent studies reveal, many people borrow money for college but don't finish it, leaving them in debt without a degree – and without any of the financial benefits a degree provides. These are real – but complicated - challenges.

And while student loan servicers are not directly involved in any of these early parts of the puzzle that must also be solved, we have recently been the subject of focus of conversation and so we want to educate people about our role and also be part of creating viable solutions in the world we know well. We process payments, inform borrowers about options, and we need to be focused on getting better every day. While servicers sometimes make mistakes that must be fixed, any honest and data-driven assessment of the real and material issues that most borrowers face show that they are often outside the direct control of servicers. The facts are also clear that our employees are working hard every day and helping borrowers achieve improved outcomes. But servicers have our unique role to play in this broader effort.

Scrutiny and discussion certainly can help raise awareness of repayment options and ensure borrowers have information about the options they have in managing their loans. But when that discussion shifts to misdirection away from informed debate about the actual causal factors or what that rulebook that federal policymakers write ought to say, then that is no longer constructive. The issues surrounding student loans are complex and Congress needs to take a holistic approach to addressing the rising costs of college, college financing options including student loans, financial literacy, and college completion. In focusing on our role in this, servicers want to work with Congress to ensure that everyone has a fair, understandable, and standardized student loan repayment process, often through legislative - or even process - improvements like the examples I shared today.

I look forward to working with you and others to continue an honest and real dialogue about the critical and complicated work of improving the higher education system, including student loan servicing, so it works for students, families, and leads to the successful outcomes for all.

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Student Loan Borrower Assistance

Testimony submitted to the

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of the U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

regarding

"An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market"

June 11, 2019

Presented by
Joanna K. Darcus, Staff Attorney at the National Consumer Law Center

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Chairman Green, Ranking Member Barr, and Members of the Committee, the National Consumer Law Center (NCLC) thanks you for inviting us to testify today. Before I joined NCLC, I was a legal aid lawyer in Philadelphia. There, I provided free legal help to people who struggled to manage various types of consumer debt, including hundreds of low-income clients dealing with student loans.

Upon arriving at NCLC, I joined our Student Loan Borrower Assistance Project and continued to represent individual clients. In addition to that work, my colleagues and I train and

support attorneys who represent student loan borrowers nationwide. We offer this testimony on behalf of NCLC's low-income clients.[1]

There has never been a more important time to focus on student loan servicing issues. The scale of the federal student loan servicing industry and the impacts of its actions are vast. Americans now owe more in student loan debt than they do for auto loans, credit cards, or any other non-mortgage debt.[2]

When my clients and other student loan borrowers describe what the debt means for them, there is a common refrain: student loan debt constrains their options and choices. More education was supposed to translate into more opportunities, but that is not necessarily the reality for many.[3] Student loan debt has become a key factor for many people who are considering when or whether to start small businesses, purchase homes, or start families.[4] Student loan debt is also increasingly a factor not only for people who are entering the workforce for the first time, but also for those who are seeking to exit the workforce and enter retirement.[5]

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[1] The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. Since 1969, we have worked with thousands of legal services, government, and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC's Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates, and provides direct legal representation to student loan borrowers. We work with other advocates across the country representing low-income clients. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable. See the Project's web site at www.studentloanborrowerassistance.org.

[2] *See* Fed. Reserve Bank of N.Y., Household Debt and Credit Report: Q1 2019 (May 2019).

[3] *See* Julie Margetta Morgan & Marshall Steinbaum, The Student Debt Crisis, Labor Market Credentialization, and Racial Inequality: How the Current Student Debt Debate Gets the Economics Wrong, Roosevelt Institute (Oct. 2018).

[4] *See* William Elliott & IlSung Nam, Is Student Debt Jeopardizing the Short-Term Financial Health of U.S. Households?, Federal Reserve Bank of St. Louis *Review*. Sept./Oct. 2013. Vol. 95, Issue 5 at 405-24; *see also* Springer, Is Student Debt Keeping Americans Away from Marriage? Research Shows That Modern Couples Are Choosing to Cohabit and Pay Off Debts Before Marriage." ScienceDaily (Sept. 26, 2018).

[5] *See* Lori A. Trawinski, Susanna Montezemolo & Alicia Williams, The Student Loan Debt Threat: An Intergenerational Problem, AARP Public Policy Institute (May 2019).

Despite the debt, some student loan borrowers find ways to pursue their careers and personal goals. One first-generation, Black college graduate wrote to us and explained that taking on student loan debt was the only way college was possible for him. He went on to explain the impact of the debt:

> [M]y debt load is such that if I was repaying on "standard" 10-year payment plan I wouldn't be getting married a month from now and likely would postpone decisions about having children. It's true that I currently make what some would consider "a lot" of money but the circumstances that come with growing up in poverty don't dissipate immediately once someone earns a reasonable income.
>
> All of that to say, that having an income-driven repayment plan has made it such that I have not and do not plan to default and am able to repay my loans and still thrive in other parts of my life. I see it [as] my responsibility to repay [my] debt but doing so should[n]'t mean I'm struggling financially; the only way that's possible for me in the short- and long-term is IDR + public service loan forgiveness.

This borrower's student debt story hinges on the existence and accessibility of income-driven repayment. He got into a repayment plan that works for his budget and gives him the ability to make long-term plans—financial and otherwise. Yet other borrowers struggle to manage their debt and live full lives. Those borrowers contact us, too, and one wrote:

> We attend college at the urging of our society, promising a solid foundation for life—steady employment so that we can contribute to our communities, buy homes, maybe have families and live happily. Unfortunately, for too many (myself included), my education has not provided me with any of these opportunities. I and many college-educated adults I know struggle to make ends meet far after graduation—this seems unjust.

Our work with individual clients has taught us that many borrowers struggle to repay because they never learn about or access the benefits of the federal loan program that would make smooth repayment feasible.

With the assistance of a competent and efficient servicer, financially distressed borrowers may avoid default by accessing flexible repayment plans, loan cancellation programs, or deferments or forbearances—mechanisms that temporarily stop

payments—appropriate for their circumstances. Federal data shows that nearly a quarter of the more than 43 million federal student loan borrowers are in distress on their loans.[6] These borrowers need high-quality, timely assistance. Unfortunately, as has been extensively documented, the student loan servicing industry has long been rife with misconduct.

The four largest servicers of federal student loans have a documented history of "widespread servicing failures" that "create obstacles to repayment, raise costs, cause distress" and "driv[e] borrowers to default."[7] According to an October 2014 report by the Consumer Financial Protection Bureau ("CFPB"), misbehavior in the student loan servicing industry included allocating payments to maximize late fees, misrepresenting minimum payments, charging illegal late fees, failing to provide accurate tax information, misleading consumers about bankruptcy protections, and making illegal debt collection calls.[8]

Despite clear benefits to the financial health of borrowers and their families, many eligible borrowers are not enrolled on income-driven repayment ("IDR") plans.[9] IDR plans require borrowers to pay only a set percentage of their discretionary income toward their student loans, and can result in a small or even zero dollar monthly payment for borrowers.[10] Remaining on an IDR plan provides these borrowers with sustainable loan repayment and a path to forgiveness of any remaining balance after twenty or twenty-five years of IDR payments.[11]

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[6] *See* U.S. Dep't of Educ., Federal Student Aid, Data Center, Federal Student Loan Portfolio; *see also,* Consumer Fin. Prot. Bureau, Student Loan Servicing. Analysis of Public Input and Recommendations for Reform (Sept. 2015).
[7] Consumer Fin. Prot. Bureau, CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers (Sept. 29, 2015).
[8] Consumer Fin. Prot. Bureau, Supervisory Highlights: Fall 2014 (Oct. 28, 2014)
[9] U.S. Gov't Accountability Office, Federal Student Loans: Education Could Do More to Help Ensure Borrowers are Aware of Repayment and Forgiveness Options, Report No. GAO-15-66 (Aug. 2015).
[10] 20 U.S.C. §§ 1087e(d)(1)(E) (applicable to Direct Loans), 1098e (FFEL). *See* 34 C.F.R. §§ 682.215 (FFEL), 685.221 (Direct Loans).
[11] *Id.*

At present, the financial incentives for servicers are not aligned with the best interests of student loan borrowers.[12] Though IDR is beneficial to borrowers, entering borrowers into IDR plans is time-intensive and expensive for servicers. As a result, servicers systematically fail to invest the necessary resources in ensuring that borrowers understand and successfully access the most affordable and sustainable repayment plan. Instead, servicers steer many borrowers into forbearances and deferments, which are profitable for the servicer and costly to the borrower. Some servicers have misrepresented that borrowers, including our clients, have no other repayment options.

An NCLC client had this experience as she struggled to afford her student loan payments after completing a medical assistant program at a for-profit school in Massachusetts. For the first five years after she graduated from her program, she dutifully contacted her servicer and submitted documentation of her financial hardship. Nevertheless, despite clear eligibility for a zero dollar IDR payment, she was never enrolled in an IDR plan. When this borrower came to NCLC, she had never even heard of IDR options. Instead, each year when she called her servicer to discuss her financial situation and options, she was directed into a number of forbearances.

Though she remained in good standing on her loan during that time, she would have been better off on an IDR plan, getting credit toward eventual loan forgiveness. She will have to stay in repayment for five additional years because of the time wasted in forbearances. Further, because the interest that accrued on her loans during her forbearances was capitalized (meaning it was rolled into the principal balance of the loan and is now factored into future computations of interest), the loan balance has grown and will continue to increase a faster rate.

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[12] *See* U.S. Gov't Accountability Office, Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight: Highlights, Report No. GAO-16-523 (May 16, 2016).

Our client's experience is far from unique, and state enforcement actions targeted at this type of misbehavior tell similar stories. Several state attorneys general (including those from California, Illinois, Massachusetts, Pennsylvania, and Washington) and the CFPB have sued servicers for similar failures related to enrolling borrowers in IDR.[13]

In 2016, the U.S. Government Accountability Office ("GAO") estimated that a borrower owing $30,000 in federal loans who spent three years in a forbearance would pay $6,742 more than a borrower on a 10-year standard repayment plan who did not spend any time in forbearance.[14] The GAO further stated that encouraging "forbearance over other options that may be more beneficial, such as [IDR] plans," would continue to place some borrowers "at risk of incurring additional costs without any long-term benefits."[15]

The consequences of servicers' misconduct are significant and, at times, catastrophic for borrowers' financial lives. According to an April 2017 CFPB report based upon student loan borrower complaints, sloppy practices by servicers created obstacles to repayment, raised the costs of debt, caused distress, and ultimately contributed to driving struggling borrowers to default.[16]

As described in our client's story above, steering borrowers into deferment and forbearance can significantly increase the amount those borrowers pay and can extend the life of their loans. Importantly, however, servicer misconduct is not limited to steering borrowers into

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[13] *See* Press Release, Consumer Fin. Prot. Bureau, CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment. Navient, Formerly Part of Sallie Mae, Cheated Borrowers Out of Repayment Rights Through Shortcuts and Deception (Jan. 18. 2017); Press Release, Att'y Gen. of Cal., Attorney General Becerra Charges Navient Corporation, Largest Student Loan Servicer, with Deceitful Practices and Debt-Collection Misconduct in Lawsuit (June 28, 2018); Press Release, Att'y Gen. of Pa., Attorney General Shapiro Sues Nation's Largest Student Loan Company for Widespread Abuses (Oct. 5, 2017); Press Release, Att'y Gen. of Ill., Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses (Jan. 18, 2017); David Gutman, State AG Sues Student Loan Company, Alleging Unfair And Deceptive Practices, *Seattle Times* (Jan. 18, 2017); Press Release, Att'y Gen. of Mass., AG Healey Secures $2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer (Nov. 22, 2016).

[14] U.S. Gov't Accountability Office, Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight: Highlights, Report No GAO-16-523, 19 (May 16, 2016).

[15] *Id.* at 20.

[16] Consumer Fin. Prot. Bureau, CFPB Monthly Snapshot Spotlights Student Loan Complaints (Apr. 2017).

forbearances and deferments. As a recent *New York Times* article highlighted, one borrower working in a public service job learned after eight years that his repayment plan did not qualify for public service loan forgiveness, a program that would have forgiven his loans after ten years of repayment, even though he had repeatedly asked his servicer whether he was on track for such forgiveness. If Congress had not intervened, he would have been required to make an additional eight years of additional payments likely totaling tens of thousands of dollars, all because he was incorrectly advised about his repayment plan.[17]

Servicing errors also caused thousands of teachers to have their TEACH Grants (federal grants given to encourage teachers to teach in high need areas) converted into Federal Direct Loans. Data obtained by Public Citizen through a Freedom of Information Act request demonstrates that one servicer hired by the Department of Education ("Department") to oversee the TEACH Grant program appeared to have erroneously converted more than 15,000 TEACH Grants to loans, amounting to an error rate of 38 percent among all conversions.[18] Significant problems with respect to erroneous conversions have continued under a successive servicer as well.[19] Many teachers are hoping that a new program will offer the relief they seek, though proper servicing could have prevented the needless grant to loan conversions.[20]

Servicer misconduct like that described above leads to increased distress and default, which exposes borrowers to aggressive federal debt collection practices. Federal data show that more than one in four federal student loan borrowers are delinquent or in default

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[17] Ron Lieber, A Student Loan Nightmare. The Teacher in the Wrong Payment Plan, N.Y. Times (Oct. 27, 2017); *see also* https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service/temporary-expanded-public-service-loan-forgiveness#how-qualify (providing basic information about Temporary Expanded Public Service Loan Forgiveness).
[18] Danielle Douglas-Gabriel, "This situation . . . made my first four years of teaching so much harder": How a grant became a loan, Wash. Post, Mar 30, 2018.
[19] *See* Cory Turner & Chris Arnold, Dept. of Education Fail: Teachers Lose Grants, Forced To Repay Thousands In Loans, National Public Radio (Mar 28, 2018).
[20] *See* https://studentaid.ed.gov/sa/types/grants-scholarships/teach/teach-reconsideration (providing information about the TEACH Grant reconsideration process).

on their federal student loans.[21] In recent years, between 10% and 15% of all federal student loan borrowers have defaulted within three years of entering repayment.[22] Many of these defaults could be prevented, particularly in light of a key feature of federal student loans. Borrowers do not officially default on their loans until they have missed 270 days of payments. In this window of time, competent and effective servicers can help financially distressed borrowers avoid default and its devastating consequences by accessing flexible repayment options authorized by the HEA.

Unfortunately, unchecked servicer error and misconduct that steers borrowers into forbearances leads many borrowers to default. Although in some circumstances, forbearances and deferments can be useful, they offer borrowers only a temporary reprieve. Ultimately, when borrowers who are unable to afford standard payments are led to believe that their only option is forbearance or deferment, and their available forbearances or deferments are exhausted, default—and its consequences—may become unavoidable.

The consequences of default include damage to borrowers' credit histories, increasing the cost of access to further credit and potentially erecting barriers to accessing employment and housing. As the CFPB aptly explained in its 2015 report on student loan servicing, "the consequences of borrowers' failure to satisfy an obligation can be particularly injurious" for those borrowers who have limited credit history."[23] In addition to negative credit reporting, the federal government often siphons thousands of dollars from borrowers already experiencing financial distress through its coercive debt collection powers. These borrowers may see their student loan debt balloon due to the imposition of substantial collection fees; borrowers must

[21] *See* U.S. Dep't of Educ., Federal Student Aid, Data Center, Federal Student Loan Portfolio; *see also*, Consumer Fin. Prot. Bureau, Student Loan Servicing. Analysis of Public Input and Recommendations for Reform (Sept. 2015).
[22] U.S. Dep't of Educ., Briefing on FY 2015 3-Year Official Cohort Default Rates (Sept. 26, 2018).
[23] Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input at 140-141.

pay the private debt collection agencies hired by the government.[24]

The government can garnish a borrower's wages without so much as filing a lawsuit let alone winning one and obtaining a judgment. The government can also seize tax refunds (including the Earned Income Tax Credit) and portions of federal benefits such as Social Security retirement and disability payments.[25] The amount the government seizes using these tools often is far greater than the payments borrowers would have been required to make under an IDR plan. These punitive collection activities often push low-income households to or over the financial brink.

Quality servicing is especially critical for addressing racial disparities in student loan outcomes. Students of color face additional barriers in repaying their student debt due to structural inequities in family wealth, education, and employment. For generations, government-sanctioned policies kept African-American families from accumulating wealth through such practices as redlining, restrictive covenants, lending discrimination, and encouraging neighborhood segregation.[26]

With less wealth than their White peers, Black students are more likely than other racial groups to borrow and to borrow more for their education.[27] A 2016 analysis found that, on average, Black students graduated with about $7,400 more student loan debt than their White

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[24] *See* https://www.studentloanborrowerassistance org/collections/consequences-of-default-federal/collection-fees/.
[25] NCLC, Student Loan Law Ch. 9 (5th ed. 2015), *updated at* www.nclc.org/library.
[26] *See, e.g.,* Amy Traub, Laura Sullivan, Tatjana Meschede & Tom Shapiro, The Asset Value of Whiteness: Understanding the Racial Wealth Gap, Demos (Feb. 2017); Katie Nodjimbadem, The Racial Segregation of American Cities Was Anything But Accidental, Smithsonian.com (May 30, 2017) (explaining that these racial inequities in wealth persist today and have worsened in recent decades; a recent study noted that between 1983 and 2013, the median Black household wealth declined from $6,800 to $1,700 and the median Latino household wealth declined from $4,000 to $2,000, while the median White household wealth increased from $102,000 to $116,800); Dedrick Asante-Muhammad, Chuck Collins, Josh Hoxie & Emanuel Nieves, The Road to Zero Wealth: How the Racial Wealth Divide is Hollowing out America's Middle Class, Institute for Policy Studies and Prosperity Now (Sept. 2017).
[27] *See* Michal Grinstein-Weiss, Dana C. Perantie, Samuel H. Taylor, Shenyang Guo & Ramesh Raghavan, Racial Disparities in Education Debt Burden among Low- and Moderate-Income Households, Children and Youth Services Review, Vol. 65, 166-174 (June 2016); Mark Huelsman, The Debt Divide: The Racial and Class Bias Behind the "New Normal" of Student Borrowing, Demos (June 2015).

peers.[28] Black and Latino students are also targeted for enrollment and overrepresented in high-cost, low-quality predatory schools. These schools are notorious for encouraging students to take on greater amounts of debt while failing to provide increased employment prospects.[29] The harms caused by these schools, which are concentrated in the for-profit sector, include higher than average loan balances, higher default rates, and low completion rates. Students of color who attend these schools disproportionately suffer these harms.[30]

Discrimination in the labor market represents another barrier to repayment. Once in the workforce, graduates of color have lower wages than their White peers, even when controlling for education level.[31] These factors combine to create an environment in which borrowers of color are left with debt but insufficient means for repayment. As a result, the difference between the amount of debt carried by Black borrowers and that carried by their White peers only grows after graduation.[32] That same 2016 analysis found that the Black-White student debt gap more than tripled to a $25,000 difference in just four years after graduation.[33]

Racial disparities in default rates disproportionately expose borrowers of color to coercive, damaging debt collection activity. Research shows that Black and Latino student loan borrowers experience higher rates of default than White borrowers (49 percent, 36 percent, and 21 percent respectively).[34] Black and Latino borrowers also report higher rates of late

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[28] Judith Scott-Clayton & Jing Li, Black-White Disparity in Student Loan Debt More than Triples after Graduation, Brookings Institution (Oct 20, 2016).
[29] Leadership Conference on Civil & Human Rights, Gainful Employment. A Civil Rights Perspective 2 (Oct. 2014).
[30] *See* Judith Scott-Clayton, The Looming Student Loan Default Crisis is Worse than We Thought, Brookings Institution (Jan. 11, 2018); Peter Smith & Leslie Parrish, Do Students of Color Profit from For-Profit College? Poor Outcomes and High Debt Hamper Attendees' Futures, Center for Responsible Lending (Oct. 2014).
[31] Bureau of Labor Statistics, Median Weekly Earnings by Educational Attainment in 2014 (Jan. 23, 2015) (showing that median weekly earnings for Latino students with a Bachelor's degree are only 83 percent of what Whites earn; Black Bachelor's degree holders earn weekly median earnings that are only 79 percent of what Whites earn).
[32] Scott-Clayton & Li, Black-White Disparity.
[33] *Id.*
[34] Ben Miller, New Federal Data Show a Student Loan Crisis for African American Borrowers, Center for American Progress (Oct. 16, 2017).

payment on student loans as compared to White borrowers (49 percent, 41 percent, and 32 percent respectively).[35] Moreover, this debt becomes more burdensome over time for Black borrowers: on average, Black students who started college in 2003-04 and took on debt owed 113% of what they originally borrowed 12 years later, compared to White borrowers, who owed around 65% of their original loan balance.[36]

When applied, the impact of the Department's default collection tools extends beyond borrowers' immediate families and into their surrounding communities. Research by the Washington Center for Equitable Growth found that zip codes with higher proportions of Black or Latino residents show much higher delinquency rates on their student loans.[37] Communities of color are also disproportionately affected by the government's student loan debt collection lawsuits.[38] The government's collection practices have the disastrous effect of systematically removing wealth from communities of color through seizures of wages, tax refunds, and benefits to service student debts and huge collection fees. In effect, such practices systematically strip wealth from families and communities that are already economically disadvantaged and disproportionately of color.

It is the role of servicers to provide borrowers in distress with assistance and information about the options for staying in good standing on their loans. Since borrowers of color are more likely to experience financial distress on their loans than their White counterparts,[39] they are also more likely to be exposed to loan servicers' abusive or deceptive tactics that prevent distressed borrowers from reaching optimal options.

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[35] FINRA Investor Education Foundation, Financial Capability in the United States 2016 (July 2016).
[36] Miller.
[37] Marshall Steinbaum & Kavya Vaghul, How the Student Debt Crisis Affects African Americans and Latinos, Washington Center for Equitable Growth (Feb. 17, 2016).
[38] *See* Margaret Mattes & Persis Yu, Inequitable Judgments: Examining Race and Federal Student Loan Collection Lawsuits, National Consumer Law Center (Apr. 2019).
[39] *See* Steinbaum & Vaghul.

Indeed, an analysis of the 2016 Survey of Consumer Finances suggests that Black households would disproportionately benefit from greater access to IDR plans. A large proportion of Black Survey participants reported that they were "not making payments" because they were in forbearance, unable to afford payments, or in another loan forgiveness program.[40] Most borrowers in this position are eligible for an IDR plan and, as explained above, these plans generally provide the best long-term relief. Thus, when borrowers are systematically steered into forbearances instead of income driven plans the adverse consequences will disproportionately be borne by borrowers of color who will face increasing debt rather than enrollment in a manageable repayment plan. Because of the irreparable and long-term harm to individual borrowers and their families, federal loan servicers should be monitored and held accountable for violations of state and federal law. Without such oversight, servicing errors and misconduct will continue to contribute to the widening racial wealth gap.

Robust public oversight at the state and federal levels is necessary to provide relief to borrowers harmed by servicer misconduct and to prevent future harms. Fairness and justice require that borrowers have the ability to enforce their rights when breached by servicers. Yet few student loan borrowers have the ability to seek redress when servicers violate their rights. Those who are able to find a lawyer to assist them still face an uphill battle because the Higher Education Act ("HEA") provides no explicit private right of action to student loan borrowers who seek to enforce disclosure requirements or challenge a servicer's failure to comply with other obligations set out in federal law. Borrowers can raise state law claims, including those based on fraud and misrepresentation, but servicers assert that these claims are preempted by the HEA.

Moreover, the problems facing individual borrowers are often symptoms of systemic problems to which systemic responses are required. Though public entities cannot take on

[40] Kristin Blagg, The Demographics of Income-Driven Student Loan Repayment, Urban Institute (Feb. 25, 2018).

every case, they can make an impact when they do. Public oversight, including through litigation, can help secure widespread relief and drive change in the servicing industry. The states have stepped up their servicing oversight for the good of their residents. However, the problems they see are taking a toll on student loan borrowers nationwide. Therefore, the federal government must fulfill its oversight responsibility as well.

The CFPB is responsible for overseeing the student loan servicing market. Particularly in light of the Department of Education's historic and ongoing oversight failures and refusals to share information, there is a big role for the CFPB to fill. For borrowers' sake and to protect future students and their families, the CFPB should act quickly to install a new Student Loan Ombudsman with the authority to carry out the statutory functions of that role as rigorously as the first two people to fill it. It should resume publishing reports on the student loan servicing market. It should be a true partner to states who are identifying and addressing servicing issues. Further, the CFPB should continue to take and pursue enforcement actions against servicers who violate the law and harm student loan borrowers.

As the amount of outstanding student loan debt skyrockets along with the number of individuals and families who hold it, successful student loan repayment is on the minds of millions of Americans on a daily—if not constant—basis. Yet, as discussed above, servicer errors and abuses are widespread and have costly consequences for student loan borrowers. The states have stepped up to protect their residents, but the task of student loan servicing is not theirs alone. Borrowers need and deserve for the federal government to provide stronger oversight and for federal loan servicers to provide better assistance.

Thank you for the close attention you are paying to the student loan servicing market, and the opportunity to provide this testimony. I look forward to your questions.

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

June 11, 2019

Chairwoman Maxine Waters
House Committee on Financial Services
Subcommittee on Oversight and Investigations
2129 Rayburn House Office Building
Washington DC 20515

Re: Written Testimony for June 11, 2019 Subcommittee on Oversight and Investigations Hearing entitled "An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market"

Dear Chairwoman Waters and Ranking Member McHenry:

Thank you for your Subcommittee's interest in the important topic of student loan servicing and thank you to Subcommittee Chairman Green and Ranking Member Barr. Over the last ten years, student loan debt has increased from $700 billion to nearly $1.6 trillion.[1] Students who have acquired student loan debt are ultimately assigned to a student loan servicer.[2] That servicer is tasked with applying students' payments and assisting students with identifying different repayment options, among other functions.[3]

I. State Enforcement Actions

In recent years, State Attorneys General have investigated and brought enforcement actions against multiple student loan servicers.[4] These investigations and enforcement actions have revealed widespread problems in the servicing of students' debt. Our office conducted an

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[1] https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html
[2] https://studentaid ed.gov/sa/repay-loans/understand/servicers
[3] https://studentaid.ed.gov/sa/repay-loans/understand/plans
[4] *State of Illinois v. Navient Corp., et al.*, No. 17-CH-00761 (Circuit Court of Cook County, Jan. 18, 2017); *State of Washington v. Navient Corp., et al.*, No. 17-2-01115-1 SEA (King County Superior Court, Jan. 18, 2017); *Commonwealth of Pennsylvania v. Navient Corp., et al.*, No. 3:17-cv-1814-RDM (M.D. Pa. Oct. 5, 2017); *State of California v Navient Corp., et al.*, No. CGC-18-567732, (San Francisco Superior Court, Jun. 29, 2018); *State of Mississippi v. Navient Corp., et al.*, No. G2108-98203 (Hinds County Chancery Court, July 17, 2018); *Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency*, No. 1784-CV-02682 (Superior Court of Suffolk County, Aug. 23, 2017).

investigation of Navient Corporation, formerly Sallie Mae, Inc., one of the largest student loan servicers in the country.[5] The investigation revealed a plethora of student loan servicing abuses during 2010-2017. For example, our office reviewed hundreds of phone calls between Navient representatives and students. That review revealed that, when students who had fallen behind on making their payments contacted Navient for assistance, the company steered them into successive forbearances that increased the overall cost of their loans, instead of telling students about other repayment options that may have been more appropriate for their circumstances, such as income driven repayment plans.[6]

As detailed in our lawsuit, Navient used an incentive compensation plan to pay call center employees more for shorter call times, thereby reducing the company's cost. A former Navient employee described feeling pressured to reduce call time, often getting pulled aside and talked to because his calls were too long. For borrowers, though, incentivizing short calls often means they are put into the wrong repayment plan. Forbearances are a temporary pause in payments that can be set up in minutes over the phone. They are not beneficial for borrowers if continued over the long-term, though, because interest continues to accrue and can be added to the principal balance of the loan. Income driven repayment plans, by contrast, are relatively complex, and it takes time to analyze whether borrowers qualify. These plans, however, offer a reduction in monthly payment amount that is beneficial for borrowers experiencing long-term financial difficulty. Ultimately, these plans offer loan forgiveness, usually after 20-25 years of payments. Despite the long term benefits of income driven repayment, our investigation revealed Navient enrolling nearly one million borrowers nationwide in forbearances lasting more than two years. The length of these forbearances evidence long-term inability to repay, making income driven repayment an obvious choice.

For students who did manage to successfully enroll in income driven repayment plans, Navient failed to provide them with the information they needed to stay enrolled in these plans every year and avoid costly and unaffordable increases to their payments.[7] Navient also improperly allocated students' loan payments, leading to unnecessary late fees and delinquencies.[8]

Our office sued Navient in January of 2017, alleging that these issues, among others, constituted unfair and deceptive acts and practices pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act.[9] Navient moved to dismiss the lawsuit. The Circuit Court of Cook County denied that motion. Navient has moved to reconsider that ruling and Navient's motion to reconsider is currently pending. Navient's primary argument in its motion to dismiss our case and other state law enforcement actions is that state laws outlawing consumer fraud are preempted by the Higher Education Act governing servicing disclosures. Many courts have

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[5] https://www.nytimes.com/2019/02/14/business/student-loans-education-department.html; http://www.illnoisattorneygeneral.gov/pressroom/2017_01/20170118.html

[6] *State of Illinois v. Navient Corp., et al.*, No. 17-CH-00761, First Amended Complaint (Circuit Court of Cook County, Sept. 11, 2018), ¶¶312-359.

[7] *Id.* at ¶¶ 360-386.

[8] *Id.* at ¶¶ 387-414.

[9] *State of Illinois v. Navient Corp., et al.*, No. 17-CH-00761 (Circuit Court of Cook County, Jan. 18, 2017); 835 ILCS 505/1 *et seq.*

rejected this argument. Indeed, in every state enforcement action where a court has ruled on a motion to dismiss filed by Navient, the state has prevailed.[10] However, there have been some federal court decisions finding that these type of consumer fraud claims are preempted by the Higher Education Act.

II. Servicing Standards Efforts

The Department of Education developed a set of servicing standards that would protect students from the type of unfair and deceptive practices revealed by our investigation into Navient, and issued these standards in a memo.[11] In April 2017, however, the Department withdrew that memo.[12]

While the federal government withdrew these protections for student borrowers, Illinois took legislative action. Our state passed the Student Loan Servicing Rights Act, which went into effect in December of 2018.[13] The Act provides a wide array of protections for students. It restricts forbearance steering,[14] requires that student loan servicers first offer income driven repayment options to struggling students,[15] and requires servicers to create repayment specialists who are specifically trained to assess students' short term and long term financial circumstances in order to effectively counsel students.[16]

The Act also creates a Student Loan Ombudsman tasked with developing outreach efforts designed to assist students with their student loan debt obligations.[17] Through May of this year, the Ombudsman has received over 300 complaints and over 200 calls related to student loans. The Illinois Office of the Attorney General has maintained a Student Loan Helpline since 2015, which has received over 5,500 calls. We mediate each complaint with an identifiable dispute and we are in the process of updating our complaint tracking system to better categorize student loan servicing complaints. Student loan complaints received this year cover payment processing, co-signer release, public service loan forgiveness, temporary extended public service loan forgiveness, TEACH grants, credit reporting, disability discharge, and many other topics. Many borrowers who contact my office are unaware whether their loans are federal or private and many are unaware of income driven repayment. The complaints show that borrowers continue to struggle with servicing abuses. The Student Loan Servicing Rights Act is vital to protecting

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[10] Order Denying Motion to Dismiss, *State of Illinois v. Navient Corp , et al.*, No. 17-CH-00761 (Circuit Court of Cook County, July 10, 2017); Order Denying Motion to Dismiss, *State of Washington v Navient Corp , et al.*, No. 17-2-01115-1 SEA (King County Superior Court, July 7, 2017); Order Denying Motion to Dismiss, *Commonwealth of Pennsylvania v. Navient Corp., et al.*, No. 3:17-cv-1814-RDM (M.D. Pa. Dec. 17, 2018); Order Overruling Demurrer, *State of California v. Navient Corp., et al.*, No. CGC-18-567732, (San Francisco Superior Court, Dec. 20, 2018); Order Denying Motion to Dismiss, *Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency*, No. 1784-CV-02682 (Superior Court of Suffolk County, Apr. 17, 2018). Navient's Motion to Dismiss the lawsuit filed by the State of Mississippi is under advisement.

[11] https://www.ed.gov/news/press-releases/education-department-implement-improved-customer-service-and-enhanced-protections-student-loan-borrowers

[12] https.//www2.ed.gov/documents/press-releases/student-loan-servicer-recompete.pdf

[13] 110 ILCS 992/1-1 *et seq*

[14] 110 ILCS 992/5-30(b)

[15] 110 ILCS 992/5-30(d)

[16] 110 ILCS 992/5-30(e)

[17] 110 ILCS 992/10-5

students in Illinois from the unfair and deceptive acts and practices of the student loan servicing industry.

III. Consequences of Unchecked Misbehavior by Federal Student Loan Servicers

A. Student Loan Debt Relief Scam Companies

Servicing failures like these create more problems for student loan borrowers as predatory companies seek to fill the student loan servicing information void. For example, student loan debt relief scams have exploded in recent years. Indeed, the Illinois Attorney General has sued numerous student loan debt relief scam companies, and is investigating many others.[18] These companies prey on students who are understandably confused or frustrated with the servicing of their student loans. They typically claim to have expertise in navigating the debt relief process and adopt official-sounding names to give the impression they are legitimate.[19] The companies use high-pressure sales tactics in order to get students to sign up for their purported services.[20] They also charge high upfront fees to allegedly provide students with debt relief services, when, in fact, the document preparation services they offer are already available to students for free.[21] In some instances, companies illegally use a student's Federal Student Aid identification number to apply for and accept different federal student loan repayment options on a student's behalf without their authorization.[22] If student loan servicers were providing proper repayment information to student loan borrowers in need, these scams would not have victims to take advantage of.

B. Cohort Default Management Companies – Forbearance Steering

In addition, servicers' failure to provide accurate information on repayment options has contributed to some schools engaging consultants to push students into forbearance in order to keep the school's cohort default rate down. Under federal law, schools may lose their ability to participate in federal student aid programs if a significant percentage of their students default on their student loans within the first 3 years of repayment (the "cohort").[23] To manage these cohort default rates, some school hire companies that encourage students with delinquent student loan

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[18] *State of Illinois v. FDATR, Inc., d/b/a Federal Student Loan Relief, et al.*, No. 2017-CH-13732 (Circuit Court of Cook County, Oct. 13, 2017); *State of Illinois v. National Student Loan Rescue, et al*, No. 2016-CH-3196 (Circuit Court of Cook County, March 4, 2016); *State of Illinois v. Student Consulting Group, et al.*, No. 2015-CH-7260 (Circuit Court of Cook County, May 4, 2015); *State of Illinois v. Nationwide Student Aid, et al.*, No 2015-CH-7254 (Circuit Court of Cook County, May 4, 2015); *State of Illinois v. Interactiv Education, et al.*, No. 2015-CH-18 (Circuit Court of Champaign County, May 4, 2015); *State of Illinois v. Federal Student Loan Alliance, et al.*, No. 2015-CH-193 (Circuit Court of Sangamon County, May 4, 2015); *State of Illinois v. Consumer Financial Resources, et al.*, No. 2015-CH-194 (Circuit Court of Sangamon County, May 4, 2015); *State of Illinois v. Broadsword Student Advantage, et al.*, No. 2014-CH-184 (Circuit Court of Champaign County, July 14, 2014); *State of Illinois v First American Tax Defense, et al.*, No. 2014-CH-11483 (Circuit Court of Cook County, July 14, 2014).

[19] *Id.* at ¶ 2.

[20] *Id.* at ¶ 5.

[21] *Id.* at ¶¶ 73-91.

[22] *Id.* at ¶¶ 129-135.

[23] 34 C.F.R. § 668.202

accounts to put their loans in forbearance.[24] A student who is placed into a forbearance by a cohort default management services company is no longer counted towards a school's cohort default rate.[25] Forbearance increases a student's total loan cost over time, and also reduces the usefulness of the cohort default rate as a tool to hold schools accountable for providing an education that leads to gainful employment.[26] A recent report by the Government Accountability Office identified examples of cohort default management consultants that encouraged enrollment in forbearance over other potentially more beneficial options for helping students avoid default, such as income driven repayment plans.[27] The report concluded that statutory changes designed to strengthen schools' accountability for defaults could help further protect students and taxpayers.[28]

Thank you for your attention to this topic. I look forward to answering any questions during the hearing.

Sincerely,

/s/ Joseph Sanders

Joseph Sanders
Student Loan Ombudsman
Supervising Assistant Attorney General

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[24] United States Government Accountability Office, Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates, April 2018, Introduction and Findings, available at https://www.gao.gov/assets/700/691520.pdf
[25] *Id.*
[26] *Id*
[27] *Id*
[28] *Id.*

Pennsylvania Attorney General Josh Shapiro

Testimony submitted to the U.S. House Committee on Financial Services, Subcommittee on Oversight and Investigations

For the hearing entitled

"An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market"

June 11, 2019

Presented by
Nicholas F. B. Smyth, Senior Deputy Attorney General,
Assistant Director for Consumer Financial Protection

Chairman Green, Ranking Member Barr, Members of the Committee, thank you for inviting me to testify today. My name is Nicholas Smyth, and I am a Senior Deputy Attorney General from Pennsylvania.

In July 2017, Attorney General Josh Shapiro established the Office's first-ever consumer financial protection unit and hired me to lead it. General Shapiro tasked us with focusing special attention on for-profit colleges and student loan servicers because the student loan debt crisis touches nearly every resident of our Commonwealth. The average student loan debt for new graduates in Pennsylvania is nearly $37,000 – second most in the country, and first among larger states. About 2 million Pennsylvanians – nearly one in five adults – have student debt.

This committee is right to focus its attention on the student debt crisis and, in particular, the crisis in student loan servicing, because the government contractors that service Federal loans have caused needless financial harm to millions of families across the country. My testimony will focus on one particular servicer of Federal loans, Navient, which has 1,000 employees in Pennsylvania. Our office sued Navient in Federal Court in October 2017. Our filing followed three lawsuits filed by the CFPB, Illinois, and Washington State, and it preceded two others filed by California and Mississippi. Our nine-count complaint is available on our website.[1]

Among other things, we allege Navient misled borrowers who were struggling to repay their loans, costing borrowers who were struggling to pay $4 billion in additional interest charges. This is the amount of interest that Navient added to the loan principal for borrowers who were put into multiple consecutive forbearances.

Forbearances are temporary postponements of payments that are *sometimes* appropriate for borrowers who have a *short-term* financial hardship. For most borrowers struggling to make payments, an income-drive repayment plan (IDR) is better than a forbearance. Borrowers who enroll in forbearance face significant costs, including: (1) accumulation of unpaid interest, which is added to the loan's principal balance at the end of the forbearance; (2) missing out on low or $0 payments that could count towards loan forgiveness; and (3) the borrower's monthly payment can dramatically increase after the forbearance period ends.

We allege in our complaint that, during the five years from January 2010 to March 2015, Navient enrolled over 1.5 million borrowers in two or more consecutive forbearances. Navient's own numbers show that these consecutive forbearances added nearly $4 billion of interest, which works out to an average of about $2,700 per borrower from unnecessary forbearances.

As alleged in our complaint, Navient and its agents were incentivized to push forbearances instead of IDR because it was faster and less costly for Navient.

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[1] https://www.attorneygeneral.gov/wp-content/uploads/2018/01/PA-v.-Navient-Complaint-2017-10-6-Stamped-Copy.pdf

Forbearances get the borrower off the phone quickly, without any paperwork, and allow the Navient agent to move on to the next call.

This $4 billion in interest that Navient added to loan balances harms these individuals by reducing their ability to save and spend as they see fit; it also harms our Commonwealth's larger economy because it diminishes these consumers' purchasing power, forcing them to delay buying a home, creating a business, or starting a family.

In short, an entire generation is being held back by the shackles of student loan debt, and these debts are growing instead of shrinking, in part because Navient is not helping borrowers enroll in the payment plans that are best for them, despite representing that it is the expert in the area and would assist borrowers.

For borrowers facing financial hardship, income-driven repayment plans are generally much better than multiple forbearances. Congress created the first IDR plan in 1993 with the goal of reducing the burden of student loan payments. To review IDR plans, any borrower can go to the Repayment Calculator on studentloans.gov, put in their Federal loan balances, family size, and income, and learn what their payments will be under the various IDR plans. But it's not the consumer's job to figure out on their own what IDR plan is best. It's Navient's job. But despite publicly assuring borrowers that it will help them identify and enroll in an appropriate, affordable repayment plan, Navient has routinely disregarded that commitment and instead steered borrowers experiencing long-term financial hardship into forbearance.

Navient promised borrowers to help evaluate their repayment options. As alleged in our complaint, it told them on its website, "Our representatives can help you by identifying options and solutions, so you can make the right decision for your situation." It said, "We can help you find an option that fits your budget, simplifies your payment, and minimizes your total interest cost." I'll illustrate how IDR works with two examples.

Example 1: $0 payments and credit for loan forgiveness

Imagine a family of four, married filing jointly, with a Federal loan balance of $40,000. Their combined adjustable gross income (AGI) is $63,000 which was about the median household income in the Commonwealth of Pennsylvania in 2017. This family of four would have to pay $403 per month on their Federal loans for ten years under the standard repayment plan. Under an IDR plan, that family would pay half that - only $203 per month. This means the family could get credit for making a payment each month towards loan forgiveness and, under the Pay As You Earn IDR plan, would qualify for forgiveness if they haven't already paid off their loans after 20 years of payments. And if the parents work in public service - such as teachers, nurses, or police officers - they would be eligible for forgiveness after just 10 years if they successfully enrolled in Public Service Loan Forgiveness.

Now, imagine one spouse loses a job, and household income drops to $39,000. All of a sudden this family is eligible for $0 per month payments under IDR. These $0

"payments" would still count towards forgiveness in 10 or 20 years. When the spouse gets another job and the income rises, the monthly payments will rise too.

Now imagine if the family had called Navient's call center following the job loss and, instead of IDR, as our complaint alleges, Navient steered them into a 6-month forbearance. Instead of qualifying for $0 payments and credit toward forgiveness, the family will still pay nothing, but interest will continue to accrue and they will not receive credit toward forgiveness. Interest will be added to the loan principal (or be "capitalized") at the end of the forbearance.

Consecutive forbearances mean that each year the family is going to have over $1,500 in interest added to their loan balance. In our complaint we allege that Navient enrolled more than 520,000 borrowers into *four or more* consecutive forbearances; in this family's case, that would increase their loan balance by over $3,000. And after the forbearances run out, payments will not count towards loan forgiveness because Navient never enrolled them in IDR.

If this family had six forbearances over three years - not uncommon according to the data - they would see their loan balance rise by nearly $5,000. After coming out of the last forbearance, the monthly payments would be $453 per month, or *$50 more* per month than the $403 monthly payment they couldn't afford to pay before. A much better alternative would be an IDR with low or $0 payments, and eventual loan forgiveness.

The allegations in the state and CFPB lawsuits are supported by the findings of the U.S. Department of Education's Inspector General (IG), which found in a 2017 audit of randomly selected calls to borrowers that Navient failed to even mention IDR plans in nearly one of ten calls. The IG wrote that many customer service representatives failed to ask questions to determine if IDR might be more beneficial to the borrower. Navient is not helping borrowers get into the payment plans that are best for them.

Example 2: the importance of the interest subsidy

Another critical benefit of IDR is the interest subsidy. There are two types of Federal loans that students can take out: subsidized and unsubsidized. Subsidized loans have special treatment in IDR plans.

Imagine a different hypothetical family of four. They have $30,000 in subsidized loans between the two parents. One parent loses a job and the family income falls to $39,000. As before, these borrowers would be eligible for $0 monthly payments under an IDR plan. Since their loans are subsidized, the over $1,500 in interest that accrues each year is automatically paid by the Federal government, for the first 3 years of enrollment

in an IDR plan. So this family would save nearly $5,000 in interest -- or even more if the rates were higher than 3.9% when they took out their loans.[2]

There are hundreds of thousands of families that missed out on the economic benefit of this interest subsidy because Navient steered them into forbearance instead of IDR. In our complaint we gave a few examples. One Pennsylvania consumer attended college between 2001 and 2006 and she took out multiple Federal loans. When she called Navient to ask for assistance with her loan payments, Navient told her that her only option for loan assistance was a forbearance, despite the fact that she qualified for an IDR plan. The forbearance was in 6 month increments and there was a fee each 6 month extension. Navient failed to adequately inform her about any fees or interest accrual when the initial forbearance was completed.

This consumer has worked in the public sector since 2006, qualifying her for loan forgiveness under PSLF. However, when she asked Defendants about PSLF in 2007, Defendants' employees gave her information that deterred her from enrolling. She alleges they told her falsely that she would have to make 120 consecutive payments while employed at a qualifying organization for ten consecutive years to qualify for forgiveness. She learned in 2014, seven years after first enquiring about PSLF, that the information given to her by the Defendants in 2007 was false. Unfortunately, since she did not enroll in 2007, none of the payments she made since 2007 could be applied to the PSLF. This resulted in seven additional years of loan payments that need to be made before her loans are forgiven under the PSFL. If Defendants had been truthful in 2007, she may have qualified to have her loans forgiven as soon as 2017.

Another Pennsylvania consumer was enrolled in a master's degree program from 1996 to 2004. Unfortunately, like many students, he did not complete the degree. Since he left the school, he has struggled to pay his loans. The consumer's student loans were in and out of forbearance for the next 11 years. Despite the fact that the consumer had demonstrated long-term financial hardship to Navient for five years by the time IDR plans became available in 2009, Navient did not enroll him in one until 2015, when he entered Income-Based Repayment with a monthly payment of $0. According to the consumer, nearly $27,000 in interest has been added to his loans since 2004.

When we are talking about families making $39,000 or less each year, every dollar counts. Families like these are making difficult financial decisions every day – child care, groceries, rent or mortgage payments, healthcare, transportation, and more. Burdening families with more debt when times get hard, especially when there is a better solution for them that Congress has already created, does nothing to help them work toward financial stability. Student loan servicers can and must do a much better job of enrolling borrowers in IDR plans. Thank you for the opportunity to testify today.

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[2] Under the REPAYE plan, the government will continue to pay 50% of accrued interest on subsidized loans after the first three years. It will also pay 50% of the accrued interest on unsubsidized loans the entire time a borrower in the program.

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Written Testimony of Arwen Thoman
Director, Student Loan Assistance Unit
Insurance and Financial Services Division
Office of Massachusetts Attorney General, Maura Healey

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Hearing Entitled "An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market"

June 11, 2019

Chairman Green, Ranking Member Barr, and Members of the Committee, thank you for inviting me to testify on state efforts to protect student loan borrowers. My name is Arwen Thoman. I am the Director of the Massachusetts Attorney General's Student Loan Assistance Unit and also serve as Deputy Director of the Attorney General's Insurance and Financial Services Division. On behalf of Attorney General Maura Healey and borrowers from Massachusetts, I appreciate the opportunity to speak on the critical issue of federal student loan servicing.

Attorney General Healey established our Student Loan Assistance Unit in 2015. In the last fiscal year, the Unit received over 3,000 hotline calls, nearly 1,000 written help requests, and generated savings and refunds of $1.5 million for student loan borrowers. Each day, we are on the frontlines of the student debt crisis, helping borrowers apply for income-driven repayment or loan discharges; working to move loans out of default and into affordable repayment plans; and trying to end wage garnishments, tax refund interceptions, and benefit offsets that cause serious financial and emotional distress to our residents.

If I can offer the Committee one takeaway, it is that student borrowers and their families deserve much better from the federal government and the private companies hired to service their loans. Every day, we speak with borrowers who have found their way to our office in desperation. We routinely hear that borrowers are worried about their ability to start a family, buy a home, or achieve a reasonable standard of living. Many have been struggling with student loan debt for years and in some cases, for decades. Each borrower's story is unique, but the patterns in their distress and mistreatment are painfully clear.

Given the social and economic vulnerabilities of many student loan borrowers, the complexities of the federal loan system, and the mounting scale of student loan debt across the

country, the role of student loan servicers is more important than ever.

In my testimony, I will highlight the serious consequences of defaulting on a federal student loan, four servicing problems that we see frequently in this office, and the problem of predatory "debt relief" companies that take advantage of distressed borrowers who turn to them when student loan servicers have failed to help. Although we have worked hard at the state-level to improve servicer treatment of borrowers through enforcement of our state's consumer laws, we believe that more federal oversight and action is necessary to protect borrowers and to address the harm caused by inappropriate servicing practices. This federal oversight must not be concentrated solely in the hands of the U.S. Department of Education, which is also typically the lender.

I. Effective servicing is essential to avoiding the serious consequences of default.

Although federal student loans offer many benefits and protections over private student loans, including interest rate caps, a variety of income-driven repayment plans, and the potential for loan forgiveness, the consequences of defaulting on federal student loans or making ill-advised repayment decisions are severe, and can lead to many years of crushing debt.

When borrowers default on federal student loans, they can face collection fees exceeding twenty percent of the loan balance. Moreover, defaulted federal student loans are collected through involuntary measures and without advance consideration of the borrower's ability to pay. These measures include administrative wage garnishment and Treasury offsets to tax refunds, Social Security retirement and disability benefits, and even veterans benefits. Below are some excerpts from complaints we have received that demonstrate some of the dire predicaments of student loan borrowers who face involuntary collection:

- *The US Department of the Treasury has been taking $150 to $175 from my monthly SSDI deposit for over a year. Today (1/8/19), the US Department of Education has sent me a letter of 15% wage garnishment from my part-time job. I work 15 hrs/week or less as a home health aide at $11/hr.*

- *Today I found out that the US Dept of Ed, took my federal tax return and applied it to the loan. I needed that money to pay for a new start with my kids. When I asked about a hardship deferment, they told me I could only apply if I was being evicted from my home. I'm not. Now I made a little over 20,000 last year and have 2 kids.*

- *My wages are being garnished. But myself and my husband are living in a motel. And they are taking out too much. I am not going to be able to afford where we are staying right now. I explained that I am going to be homeless but they said there was nothing they could do about it.*

Credit score damage associated with federal student loan default can also prevent borrowers from getting jobs and housing. Unlike nearly every other category of unsecured debt, federal student loans are rarely dischargeable in bankruptcy and there is no statute of limitations on collection. They can remain with the borrower for life. The severe consequences of federal

student loan default and the long horizon on collection creates a heightened responsibility for us all to ensure that servicers are helping borrowers successfully manage repayment and avoid default.

II. Servicers consistently fail to provide the help that borrowers need.

Unfortunately, we consistently see servicers that fail to help borrowers in important ways. Four servicing problems that we frequently encounter in our office include 1) failures to enroll borrowers in income-driven repayment plans that reduce borrower payments and lessen the likelihood of default; 2) failures to help borrowers maintain the benefits of those plans; 3) failures to provide adequate guidance to enable borrowers to pay down loan principal; and 4) failures that obstruct the Public Service Loan Forgiveness program.

1. Servicers fail to enroll eligible borrowers in affordable repayment plans that would help prevent default or spiraling debt.

Given the financially devastating consequences of defaulting on federal student loans, enrolling borrowers in affordable repayment plans is an essential servicing function. Some of the borrowers we work with in the Student Loan Assistance Unit could have avoided default if their federal loan servicer had adequately explained income-driven repayment options and the associated potential for loan forgiveness. Others could have avoided unaffordable payments or escalating loan balances by enrolling in income-driven repayment plans, rather than repeatedly being steered into forbearance by their loan servicer.[1] Still others could have reduced their interest costs by enrolling in income-driven repayment plans instead of more costly extended repayment plans.

Under most income-driven repayment plans, borrowers can limit their student loan payments to 10-15% of that income which exceeds 150% of the federal poverty line, with the potential for forgiveness of any remaining balance after 20 or 25 years of qualifying payments.[2] Borrowers with incomes of less than 150% of the federal poverty line are eligible to forgo monthly payments, which makes enrollment essential for the very poor.

All too often, as state Attorneys General and the Consumer Financial Protection Bureau have alleged in lawsuits against Navient, servicers have failed to appropriately counsel borrowers about income-driven repayment options or adequately explain the benefits and features of these plans. It appears that servicers prioritize keeping down the costs of servicing over the interests of borrowers. Simply put, counseling borrowers about affordable repayment options takes time. It is much faster and therefore much cheaper for servicers to repeatedly offer short-term forbearances or enroll borrowers in extended repayment plans, even though these options frequently do not meet borrowers' needs or set borrowers on a path to affordable and sustainable loan repayment.

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[1] Forbearance is a temporary postponement of payments. Forbearance is intended to deal with a short-term financial problem and not a long-term inability to pay. Interest that accrues during forbearance is often added to the borrower's loan balance through capitalization.

[2] For a single borrower in the contiguous United States, 150% of the federal poverty line is currently $18,735.

2. Servicers fail to help borrowers maintain the benefits of income-driven repayment plans.

When borrowers do manage to enroll in income-driven repayment plans, many subsequently fail to provide the income and family size information that is required each year to maintain affordable monthly payments and avoid accrued interest from being added to their balances. The annual process of submitting information in order to continue making income-driven payments is called "recertification." Failure to timely recertify unwinds many of the benefits of enrolling in an income-driven plan.

Student loan servicers often contribute to or are directly responsible for recertification failures. Some servicers have used cryptic and confusing communications to notify borrowers of the need to recertify, the deadlines for doing so, and the consequences of failing to meet these deadlines. For example, servicers have often sent emails directing borrowers to log into a separate online account without explaining why borrowers should do so. Navient has sent emails with subject lines that stated: "New Document Ready to View" and "Your Navient account information," with the body of the email stating that "A new education loan document is available online. Please log in to your account to view it." Borrowers are given no indication of whether this is an important notification or simply a marketing message. Similarly deficient emails have been used by other servicers.

Other challenges to recertification abound. Servicers often set recertification deadlines that are not compliant with governing regulations, or that are so close to the end of the borrower's expiring income-driven repayment schedule that any error or paperwork deficiency will inevitably result in the capitalization of unpaid accrued interest and an unaffordable increase in monthly payments. These payment increases often force borrowers into forbearance and hinder their progress toward loan forgiveness. In some cases, servicers have caused recertification failures by changing what they consider to be acceptable income documentation from one year to the next. There have also been cases in which servicers have simply failed to process recertification requests or delayed in doing so, as evidenced by our office's resolution with Xerox Education Services (also known as ACS).

3. Servicers fail to provide adequate guidance to help borrowers pay down loan principal.

Servicers often fail to adequately explain the consequences of making late or irregular payments, and do not provide borrowers with a simple way to effectively pay down loan principal ahead of schedule. Such guidance is especially important given that promissory notes require servicers to handle payments in ways that borrowers do not expect.

Student loans are subject to simple daily interest, which means that each day, interest accrues on the outstanding principal balance. The allocation of a borrower's payment to principal and interest is therefore dependent on the number of days that have elapsed since the borrower's last payment. When borrowers pay late, their interest accrual is larger and less of their payment is applied to principal, increasing the costs of their loans.

Servicers regularly fail to help student borrowers navigate this issue. Without such help, some borrowers fall further and further behind. For example, federal student loans offer a 15-day grace period beyond the due date reflected on billing statements. Borrowers often pay after the due date but within this 15-day window, believing there are no financial consequences for doing so. In fact, this delay in making payments results in additional interest accruals and frustrates progress in paying down loan principal. Even when borrowers are not paying late, but are paying at irregular intervals (*e.g.*, paying 20 days early one month and on-time in the following month), it can hinder their progress in paying down their loans. Few servicers make adequate and sustained efforts to alert borrowers to these traps for the unwary. As a result, borrowers often contact our office confused about why their loan balances remain so high after years and years of payments.

Servicers also process payments in ways that do not serve borrowers' best interests. Borrowers typically have multiple student loans, often at differing interest rates. Some servicers use default allocation methods that apply payments across all loans in a billing group rather than to the highest interest loan. Similarly, servicers often allocate underpayments across all loans in a billing group, which may generate a late fee on each loan. These allocation methods result in extra costs for borrowers, and while borrowers can use different allocations, in practice this has often proven difficult. For example, Navient has ignored borrower instructions because these instructions were written on payment remittance slips rather than on separate pieces of paper. Although some servicers have made improvements in recent years to enable borrowers to better control the allocation of their payments, we have received many complaints that payments were not allocated as borrowers directed. Borrowers report spending hours on the phone with loan servicers trying to get these errors corrected.

4. Servicer failures obstruct the Public Service Loan Forgiveness program.

As members of this Committee know, Public Service Loan Forgiveness ("PSLF") allows public servants, such as police officers, first responders, servicemembers, nurses, social workers, and government employees to commit to public service and receive loan forgiveness after 10 years of qualifying payments. However, forgiveness under the PSLF program comes with many requirements and is only available if borrowers jump through very specific hoops. A March 2019 report from the U.S. Department of Education shows that of the 73,554 borrowers who applied for loan forgiveness under PSLF, only 864 have had their application approved.[3] There are a number of common reasons for these denials, but a root cause is the failure of servicers to assist eligible students and explain critical program requirements.

To be eligible for PSLF, loans must be made through the Direct Loan program. Loans originated through other federal programs are not eligible unless brought into the Direct Loan program through consolidation. Our office has encountered borrowers with loans made through the Federal Family Education Loan ("FFEL") program who claim that their servicer did not explain this requirement or incorrectly told them that they were on-track for forgiveness. Far too often, our office is in the awful position of informing FFEL borrowers that they have the wrong loan type and that none of their prior payments will count toward PSLF. Since forgiveness under the PSLF program requires 10 years of qualifying payments, it is often too late for these

[3] https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data

borrowers to consolidate into the Direct Loan program with any hope of receiving meaningful loan forgiveness. The result is that a program established by Congress to support student borrowers in public interest careers is inaccessible to the very students that the government intended to help. Below is a complaint that we received from one such borrower:

> *I have been employed full-time for a non-profit agency since 2001 and have been paying back my student loans throughout. My loans were initially serviced through Sallie Mae and I was told I was eligible for the public service loan forgiveness program. Last year, when I queried on what steps to take regarding the loan forgiveness, I was told I was ineligible for that public service loan forgiveness due to the type of loan I have. I find it unbelievable that after 16 years of working for full time for a non-profit (I am a clinical psychologist and work for [redacted] as a behavior consultant for the Department of [redacted]) that I am not eligible for a public service loan forgiveness. I had counted on that forgiveness as I have substantial loans and am a widowed single mother.*

Loan type is not the only obstacle to obtaining PSLF forgiveness. Borrowers must also make their payments separately, on time, in the right amount, and under specific repayment plans. Servicers fail to explain these requirements and borrowers frequently find out too late that their payments do not qualify. Below is an illustrative complaint:

> *I have been making payments on my bill for 6 years based on the public service loan forgiveness/repayment plan, but not all of my payments are counting. Federal Loan Servicing is telling me that if I made a payment before they printed a bill (my payments are due on the 12th of each month, and the bill is printed on the 20th) the payment does not count towards either public service loan forgiveness or the bill that is printed on the 12th. Although I have never been in default on my loans, I had to spend well over a half hour today on the phone to get a payment which was made on the 20th to count for the bill which is due on June 12th. Additionally, they recalculate my qualifying payments (each year) and each year I have fewer qualifying payments and the payments are unequally applied across my 10 loan despite me only making one payment at a time.*

Indeed, we have also seen borrowers whose payments were rejected as qualifying for PSLF due to payment rounding issues. One borrower, whose servicer was authorized to make the needed withdrawals from his bank account, was told that his payments did not count because that servicer had errantly withdrawn payments that were one penny short of the amount due under his repayment plan.

Although the Pennsylvania Higher Education Assistance Agency ("PHEAA" or "FedLoan") has an exclusive contract with the U.S. Department of Education to administer the PSLF program, many other servicers are also involved in the servicing of these loans, as the loans are typically transferred to PHEAA only after a borrower expresses a written intent to pursue forgiveness under PSLF. Thus, errors made by prior servicers can feed through the system and later result in determinations that payments were non-qualifying.

PHEAA's tracking of qualifying payments and non-responsiveness to borrowers is also a

major source of complaints. We often hear from borrowers that PHEAA has not clearly explained why their payments do not qualify towards forgiveness. Without such explanations, borrowers are often unable to take corrective action or resolve mistakes. Below are illustrative excerpts from some of the complaints that we have received on this issue:

- *According to my account, it states none of payments qualified and when I called MyFedloan, two representatives gave me different answers and did not provide any clarification on the status of my loan.*

- *I am having extremely difficult time with FedLoan Servicing, [m]y account has been in review for over a year. Each time I call I get a different answer. I was told that reviews can take up to six months. Next, I was told that tracking down each payment takes three months to complete. ...None of the agents who answer the calls have valid information and they continue to tell you that your account is being reviewed.*

- *[W]e discussed the fact that my loans have not been credited with the number of payments that I have made. They have PSLF employment certifications on file since 2013, yet they only have 23 logged payments for my loans that entered repayment in 7/2016 through 4/2019. Upon further review, there appears to be no logged payments carried over from when Navient transferred the loan from 1/17/17.*

- *I switched to FedLoan in August of 2017 because I was close to making 120 qualifying payments toward Public Service Loan Forgiveness. I asked them to tell me how ma[n]y payments they thought qualified in May 2018. They opened a review and told me it would be 60-90 days. I still have not gotten a response [as of April 25, 2019]. I have called numerous times and was told they were prioritizing people who had applied for PSLF. I thought I was at 120 payments, so I applied in March 2019. I was denied April 19, 2019. They said I only made 33 payments. ...I asked for a copy of my file – they said they couldn't send it to me until the review (started in May 2018) was completed.*

III. Inadequate loan servicing has created a cottage industry of harmful "debt relief" companies that take advantage of distressed borrowers.

The failure of federal loan servicers to adequately counsel borrowers about income-driven repayment and associated loan forgiveness opportunities has also given rise to a cottage industry of fraudulent student loan "debt relief" companies.[4] Many borrowers who have not received adequate help from their federal loan servicers are victimized by these companies, which charge hundreds or thousands of dollars in fees with promises of debt forgiveness. After being "helped" by "debt relief" companies, borrowers often find themselves in even greater

[4] The failure to process and provide borrower defense discharges based on school misconduct has also fed this industry.

financial distress. Below is one such example:

> *[Equitable Acceptance] contacted me about a student loan forgiveness program. I have been paying into this for approximately two years now. I graduated in 2013 from Baypath College, which is now Baypath University. I had thought I was doing the right thing until I spoke with FedLoans, who actually handles my student loans, and found out that my account was going into default and that the company I have been paying to for over 2 years now is not affiliated with the, and the only way I can get on a student loan forgiveness program is with them. So, now I don't know how I can recoup the money I have already paid to this company and have it apply to my legitimate student loans.*
>
> *After finding out this information, I did contact Equitable Acceptance corporation within the past 6 months and they notified me that nothing was being applied to my student loans. I asked them to cease and desist from withdrawing this payment from my bank account and they have not done so. I cannot get my bank to stop the payment either.*

We have assisted hundreds of similar borrowers whose loan troubles have been exacerbated by such companies.

IV. Conclusion

Congress has taken significant steps to help borrowers avoid default and ruinous student loan debt by creating affordable repayment plans and forgiveness programs. However, all of these plans and programs rely on servicers. They are the gatekeepers. They are the companies contracted by the government to connect student loan borrowers with the help those borrowers need. And when these servicers fail to act in borrowers' best interests, communicate effectively, or respond to questions accurately, our students and their families suffer serious consequences. We hope that you will continue in your efforts to hold student loan servicers accountable and improve servicing standards. I appreciate the opportunity to share these thoughts with you today.

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CBA

HELPING FINANCE THE AMERICAN DREAM SINCE 1919

June 11, 2019

The Honorable Al Green
Chairman
Subcommittee on Oversight and Investigations
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Andy Barr
Ranking Member
Subcommittee on Oversight and Investigations
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Green and Ranking Member Barr:

On behalf of the Consumer Bankers Association (CBA), I would like to share our views about the student loan market and recommendations for improving outcomes for student loan borrowers as the Subcommittee on Oversight and Investigations holds the hearing entitled "An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market." CBA serves as the voice of the retail banking industry and its membership includes private sector lenders who make the majority of private student loans to help families finance a postsecondary education.

The State of Student Loan Debt
Student loan debt in America currently totals $1.56 trillion. The federal government dominates the market with $1.44 trillion in loans. The remaining $119 billion is held by private lenders, including members of the CBA. By working with borrowers to ensure an ability to repay and clear understanding of loan terms, private lenders are setting up borrowers for success. In fact, 98 percent of private student loan borrowers are successfully repaying their loans. Unfortunately, there is a federal student loan crisis with one in five federal student loan borrowers seriously delinquent or in default and many experiencing growing loan balances post-graduation.

Know Before You Owe Federal Student Loans
Over the years, policymakers have offered multiple solutions to help borrowers with repayment. But this approach fails to address the root causes of our nation's federal student loan debt problem – the cost of college and federal over-lending. Rather than focusing exclusively on how to help borrowers after they are already heavily in debt, policymakers should hold colleges accountable for their student outcomes and create sensible safeguards to ensure sound financial decisions are made before students and parents take out federal loans.

Access to information about the true cost of a federal student loan is critical to making an informed decision about how much, if any, debt to take out to finance a postsecondary credential. Unfortunately, federal student loan borrowers must weed through more than a dozen pages of disclosures and squint to read fine print to unearth key loan terms. The federal loan disclosures, provided at disbursement, fail to provide terms specific to individual borrowers. Instead, they give broad categories of interest rates, fees, and estimated monthly payments, and they lack information on the total cost of the loans.

Federal student loan disclosures should be streamlined and improved by bringing them in line with the TILA disclosures required of private lenders. Key terms such as interest rate, fees, monthly payment, total cost of the loan, and annual percentage rate should be stated clearly and concisely in order to improve transparency and help prevent over-borrowing.

CBA encourages members of the Subcommittee to support H.R. 1161, the Student Loan Disclosure Modernization Act, introduced by Representatives Emanuel Cleaver (D-MO) and Jim Banks (R-IN), which makes some of these needed improvements. The bill would improve the Department of Education's inappropriately named Plain Language Disclosure by clearly explaining the costs and terms of federal student loans to help borrowers better understand their loan commitments and increase their prospects of successfully repaying.

Student Loan Servicing

While we strongly encourage policymakers to address the cost of college and federal over-lending, we recognize the desire by federal and state legislators to want to help those currently struggling with student loan debt. Recently, several states have implemented or are considering laws to place new requirements on student loan servicers. While the focus of these laws has been on the federal contractors of the Direct Loan program, banks are sometimes affected despite the strong performance of their private loan borrowers (as stated earlier, 98% of private loans borrowers are successfully repaying their loans). Moreover, these laws have often conflicted with federal regulatory requirements related to safety and soundness as well as supervisory oversight for CBA's federally regulated members. As a result, these laws could make it difficult for banks to serve some students, thereby reducing consumer choice and credit availability.

We urge the Subcommittee to take note of these factors and oppose state-level actions that reduce the ability of federal agencies to oversee financial institutions and create an intersecting web of conflicting state provisions. For example, legislation under consideration in California would put state officials in the position of exercising "visitorial powers" over national banks in violation of federal law.[1] Several states are considering similar legislation. Likewise, some states are considering imposing student loan servicing data reporting that would be duplicative of the private sector's voluntary reporting and would offer few benefits while creating major unnecessary costs for our members. Multiple, conflicting and duplicative requirements that national banks submit state-level reports, or produce proprietary business data or records, would violate national bank "visitorial authority" preemption principles.

CBA members fully support policies to ensure financial institutions operate in a safe manner and treat their customers honestly and fairly. In fact, national banks are regularly examined and regulated by prudential regulators to ensure safety and soundness as well as by the Consumer Financial Protection Bureau (CFPB) for compliance with consumer protection laws. However, a checkerboard of conflicting and unworkable state rules has the potential to confuse consumers and make it difficult for lenders to offer low-cost private student loans.

Thank you for your consideration of our views. CBA welcomes the opportunity to work with the Subcommittee to improve student loan borrower outcomes.

Sincerely,

Richard Hunt
President and CEO
Consumer Bankers Association

[1] 12 U.S.C. 484 and 12 C.F.R. Section 7.4(a)

Credit Union National Association
CUNA

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June 11, 2019

The Honorable Al Green
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
House of Representatives
Washington, DC 20515

The Honorable Andy Barr
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Financial Services
House of Representatives
Washington, DC 20515

Dear Chairman Green and Ranking Member Barr:

On behalf of America's credit unions, thank you for holding the hearing entitled, "An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market." The Credit Union National Association (CUNA) represents America's credit unions and the 115 million members that they serve.

Total student loan debt in the U.S. has reached $1.5 trillion and is now the second largest factor of household debt, with the average graduate saddled with nearly $40,000. Yet 43 percent of recent graduates are underemployed, unable to find full-time work in their fields of study, and often earning significantly less than expected.

While most student loans originate with the government, more and more credit unions are finding ways to support student borrowers through private loans. However, one barrier for many federal credit unions from entering the student lending sector is the 15-year loan maturity limit. Except for mortgage lending, Federally-chartered credit unions are prohibited by statute from making loans with maturity limits in excess of 15 years. Only Oklahoma has a similar restriction on state-chartered credit unions and no such constraint exists for banks. The ability to set a longer loan maturity for Federal credit union loans would provide more opportunities for education that is more affordable.

Thus, we strongly support H.R. 1661, to provide the National Credit Union Administration Board flexibility to increase Federal credit union loan maturities, and for other purposes. This legislation would provide the National Credit Union Administration with the additional flexibility to increase loan maturity limits for federal credit unions.

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our views.

Sincerely,

Jim Nussle
President & CEO

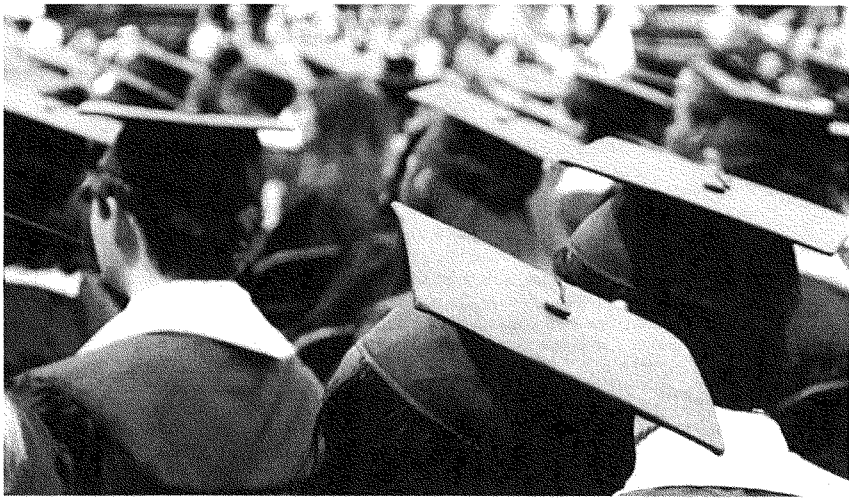
NATIONAL REVIEW

ECONOMY & BUSINESS

The Consumer Financial Protection Bureau's Student-Loan Shakedown

BY Jason Delisle

• February 27, 2019 6:30 AM



(Pixabay) This is exactly what CFPB critics warned about.

Two years ago the Consumer Financial Protection Bureau sued the student-loan-servicing company Navient, alleging the business had steered borrowers toward suboptimal repayment options. The litigation has been grinding on ever since, but new documents suggest the CFPB never had a case to begin with. The legal action is looking more and more like the kind of politically driven nuisance lawsuit that many warned would be CFPB's hallmark.

The CFPB claims that Navient — which holds a Department of Education contract to manage some of the $1.4 trillion in outstanding government-issued student loans — steered delinquent borrowers and those seeking lower payments into a forbearance, a loan status where payments temporarily drop to zero but interest still accrues. Under the government's rules, borrowers are entitled to a forbearance after simply making a phone call to Navient, and there are no eligibility criteria to verify. CFPB alleges that Navient put borrowers into forbearance to save on administrative expenses but should have put those borrowers into the income-based-repayment program instead.

Under income-based repayment, borrowers *might* qualify for a lower payment but must first submit paperwork documenting their income and family size. A borrower's income must be low relative to her debt to see a big payment reduction, while borrowers with small balances might not see any reduction (unless their incomes are near poverty, in which case payments are waived). Interest also accrues in this plan (with a minor exception), and payments are often set low enough that unpaid interest grows each month even if borrowers make on-time payments. But if a borrower still has a balance remaining after making income-based payments for 20 years (and filing paperwork annually), the government will forgive it.

The CFPB's case against Navient assumes that forbearance is always less beneficial than income-based repayment because it does not include the possibility of loan forgiveness, and that since many Navient borrowers are indeed enrolled in forbearance, Navient must have steered them to that option. Yet it is not clear that income-based repayment is the best choice for all borrowers all of the time, and, again, not all borrowers are even eligible for a lower payment. And even when income-based repayment is the best option, loan servicers cannot prevent borrowers from opting for a forbearance instead. Moreover, Congress and the Department of Education have given loan servicers few hard and fast criteria stipulating which options are best under what circumstances. Instead, they have deferred to borrowers and servicers to work it all out.

For the CFPB's case to have any merit, then, the CFPB must produce evidence that Navient steered a borrower into forbearance when income-based repayment would have been better *for that particular borrower*. It now looks like the CFPB never had such evidence. In fact, the CFPB's own witnesses, 15 borrowers the bureau says were harmed by Navient (out of the thousands the CFPB says were harmed in total), look more like witnesses *Navient* would bring to defend itself.

After the CFPB named these witnesses, Navient pulled its own detailed records for each borrower, including phone-call recordings, information the CFPB did not have when it filed the lawsuit. As Navient's recent court filings show, the company had indeed informed all of these borrowers about income-based repayment through letters, emails, and phone calls, often repeatedly, and the borrowers either opted for forbearance or turned out not to be eligible for income-based repayment. In fact, after Navient began revealing this information, the CFPB withdrew over half of its initial 32 witnesses, ending up with 15.

Those revelations alone cast serious doubt on the CFPB's case, but other facts that Navient provided about the witnesses, facts the witnesses themselves verified in depositions, are downright farcical.

One woman, whom the court documents identify as CC, is an attorney with a $450,000 household income who repeatedly lied to Navient about her financial situation in an attempt to gain access to benefits. The documents state:

During calls that year [with Navient], CC also claimed her husband had died. . . . Records show that CC and her husband — who is alive — purchased a $1 million home outside Chicago in 2012.

Needless to say, CC was not enrolled in income-based repayment because she was not eligible, although she was eligible for a forbearance. Another witness, RD, had been sent information about income-based repayment 35 times. It looks like she may not have been eligible either, which would explain why she did not enroll:

Instead, RD continued to miss payments on her student loans while consistently making payments on two luxury automobiles. Navient also attempted repeatedly to reach RD by phone when she was delinquent, but she often did not answer or hung up. Navient representatives successfully reached her on April 1, 2014 and October 17, 2014, and both times they requested income information to determine her [income-based-repayment] eligibility. On both calls, RD declined to provide this information. Instead, in August 2014, she enrolled in a forbearance online without speaking to a representative.

Could Navient have denied her the forbearance if it believed she would be better served in income-based repayment? Absolutely not. She is entitled to a forbearance under the law.

Another CFPB witness, known as KR, reminds us that some student-loan borrowers are just bad listeners (to put it kindly) and therefore do not fully understand their options. When they do not enroll in income-based repayment, it's not evidence of some sinister plot:

In one instance, on June 28, 2012, KR called the [Navient] representative a "stupid b****" before asking what options were available. The representative responded that KR "might be able to apply for Income-Based Repayment," and he interrupted her and asked for someone "more competent." After she again offered [income-based repayment] as an option, KR responded, "Look, b****, I don't want to talk to you."

How likely is KR to fill out paperwork to enroll in income-based repayment? Not very. In fact, he never did. Yet in the CFPB's eyes, he's a victim. It does not appear to matter to the CFPB that, under the government's rules, Navient cannot enroll borrowers in that program until they fill out the necessary paperwork.

There are other examples that suggest the CFPB's case is not grounded in how the federal loan program really works. Some of the CFPB's witnesses were enrolled in income-based repayment. But these borrowers had simultaneously obtained a forbearance because they deemed even the income-based payments unaffordable. Rather than steer borrowers away from income-based repayment, Navient had already enrolled these borrowers in it, but they wanted additional relief, so Navient granted them forbearances as well. Similarly, some witnesses used a forbearance to suspend payments while they worked through the income-based-repayment enrollment process. The CFPB concluded that the forbearances in these cases meant the borrowers must have been steered away from income-based repayment, failing to understand that the benefits are not mutually exclusive and often work together.Advertisement

Another witness who was enrolled in income-based repayment became ineligible when his earnings increased. He called Navient after his payments then jumped. A representative explained other options for lower payments, including forbearance. That is yet another instance of the CFPB failing to contemplate — even among its own witnesses — that borrowers could be using a forbearance because they are ineligible for income-based repayment.Advertisement

Some skeptics might wonder if these are cherry-picked examples. Not at all. In total, five witnesses were enrolled in income-based repayment, another five were ineligible for the plan, four others were informed about it repeatedly but never signed up, and the 15th witness has yet to be interviewed.

One wonders how this case can continue, or why it was allowed to proceed in the first place, if the CFPB's own witnesses are effectively testifying in favor of Navient. The only explanation must be that the CFPB enjoys such extraordinary deference under the law, before the courts, and in the eyes of a credulous press that it needs hardly any evidence at all to drag companies through years of legal battles. The Navient case is exactly what early critics of the CFPB warned us would happen.

Jason Delisle — Jason D. Delisle is a resident fellow at the American Enterprise Institute.

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U.S. Edition ▾ May 2, 2018 Today's Paper Video

The CFPB assault on Navient crumbles under discovery.

By
The Editorial Board
May 1, 2018 7:12 p.m. ET

Mick Mulvaney has been doing yeoman's work cleaning up after Richard Cordray at the Consumer Financial Protection Bureau. One mess he may have overlooked is the bureau's dubious lawsuit against student-loan servicer Navient.

Mr. Cordray spent four years scouring every nook and cranny of Navient's business. Navient produced 450,000 pages of documents, hundreds of hours of phone recordings and more than 30 written reports. Two days before President Obama left office, Mr. Cordray sued Navient for "systematically and illegally failing borrowers."

The bureau charged that Navient incorrectly put struggling borrowers in forbearance (during which interest accrues) instead of enrolling them in income-driven repayment plans that would allow some to pay nothing and discharge their balances after 20 years. In other words, Navient failed to help students qualify for maximum loan forgiveness on the taxpayer's dime.

CFPB says Navient had a profit motive to place borrowers into forbearance because it's quicker and easier than guiding them through income-based repayment plans. But the Education Department pays loan servicers 63% less for accounts in forbearance than those in income-based plans. The department also directs more accounts to servicers with high customer satisfaction rankings.

According to Navient, about half of direct government loans that it services are enrolled in income-driven plans. That's more than any other Education Department contractor save AES-PHEAA, which is specifically tasked with handling public-service loan forgiveness.

When Navient asked a CFPB official during a deposition last June to identify borrowers Navient had harmed, the official couldn't. CFPB then selected 58 borrowers from its complaint portal without vetting to serve as witnesses. Yet a February study by the NERA Economic Consulting group found the CFPB's complaint database to be unreliable.

When Navient began to research and depose alleged victims, the CFPB's claims didn't hold up. One testified that he had enrolled in an income-driven repayment plan from 2011 until 2015 but no longer qualified because his income was too high. Another said she enrolled in forbearance so she could apply for an unemployment deferment, which a Navient agent had discouraged. One even told the CFPB he had no information supporting its claims. The bureau has removed two of these witnesses and four others that Navient sought to depose.

Meantime, the CFPB has been slow-walking Navient's discovery requests. Navient served the bureau with the requests last June. Eight months later CFPB said it had identified 478,000 potentially responsive documents. But by March 6, CFPB had still only produced 800 documents, about half of which were duplicative including 180 autoreply emails to its press release announcing the lawsuit.

Mr. Cordray staffed the bureau with his ideological allies, and they're continuing to serve him faithfully. The Navient lawsuit provides Mr. Cordray another business-bashing credential as he runs in the May 8 Democratic primary for Governor in Ohio.

The left is howling at Mr. Mulvaney's proposal this week to close public access to the CFPB's complaint database. But the Navient depositions show that many of the complaints are unreliable and serve no other purpose than to give grist to trial lawyers and tarnish the reputation of law-abiding businesses.

Mr. Mulvaney should drop the lawsuit and pay Navient restitution for its litigation costs; Navient says it spent $7 million in the past two fiscal quarters alone. The CFPB should also hand over the documents Navient requested, which may reveal bad faith by the bureau and merit a Congressional investigation.