Maine Law Review

Volume 72 | Number 2 | Article 3

June 2020

Reimagining State Banking Regulators: How the Principles Underlying the Consumer Financial Protection Bureau Can Serve as a Blueprint for a New Regulatory Federalism

Seth Frotman
Executive Director of the Student Borrower Protection Center

REIMAGINING STATE BANKING REGULATORS: HOW THE PRINCIPLES UNDERLYING THE CONSUMER FINANCIAL PROTECTION BUREAU CAN SERVE AS A BLUEPRINT FOR A NEW REGULATORY FEDERALISM

By Seth Frotman[1]

---

[1] Seth Frotman is Executive Director of the Student Borrower Protection Center. Until August 2018, he served as Student Loan Ombudsman and Assistant Director of the Consumer Financial Protection Bureau — the top federal consumer financial regulator for the $1.6 trillion student loan market. The following article is an adaptation of testimony delivered by Frotman to the California General Assembly in 2019. The author would like to thank Michael Pierce, Benjamin Levi Kaufman, and Bonnie Latreille.

ABSTRACT

With hundreds of millions of Americans owing more than $14 trillion in combined household debt, a robust consumer financial protection framework is necessary to protect consumers when accessing critical credit markets. America relies on a complimentary system of regulatory federalism to uphold these protections, premised on robust state oversight and enforcement. However, the current implementation of this system is failing to meet the needs of this moment. Since the Great Recession, federal policymakers and regulators have devoted significant energy and resources to strengthen the oversight and accountability mechanisms of the consumer finance market—but these efforts have largely overlooked the need for comprehensive reform at the state level.

This article analyzes the nation's consumer financial protection framework through the lens of the student debt crisis. After the last financial crisis, policymakers and regulators promised the American people, "never again." And yet, tens of millions of consumers teeter on the edge of a $1.6 trillion student debt cliff. The nation's response to the student debt crisis provides key insights into both the shortfalls and opportunities for progressive consumer protections at every level of government.

Drawing on the lessons learned from the systemic failures that necessitated the creation of the Consumer Financial Protection Bureau, along with the Bureau's subsequent successes, this article defines the principles upon which states can revolutionize consumer protections across all consumer finance markets through the creation of state consumer bureaus—thereby completing the unfinished work of financial reform.

INTRODUCTION

On January 1, 2020, Maine became the tenth state in the country to license and oversee student loan servicers–the private-sector financial companies at the heart of the $1.6 trillion student loan market.[2] With this change in law, Maine lawmakers gave state regulators their first real insight into whether some of the nation's largest financial services firms were abiding by basic protections guaranteed under state and federal consumer laws.

---

[2] The bill was first introduced in May 2017 and vetoed. L.D. 1507 (128th Leg. 2017); *Gov. LePage Vetoes Vitelli Bill to Curtail Predatory Lending Practices*, ME. SENATE DEMOCRATS, http://www.mainesenate.org/gov-lepage-vetoes-vitelli-bill-to-curtail-predatory-lending-practices/ [https://perma.cc/P63X-J7HW](last visited Mar. 3, 2020). It was then reintroduced in March 2019, *Vitelli Introduces Student Loan Bill of Rights to Prevent Predatory Lending Practices in Maine*, MAINE SENATE DEMOCRATS, http://www.mainesenate.org/vitelli-introduces-student-loan-bill-of-rights-to-prevent-predatory-lending-practices-in-maine/ [https://perma.cc/SL4P-RKN3] (last visited Mar. 3, 2020), and ultimately passed. *Governor Mills Signs Student Loan Bill of Rights into Law*, ST. ME OFF. GOVERNOR JANET T. MILLS, https://www.maine.gov/governor/mills/news/governor-mills-signs-student-loan-bill-rights-law-2019-06-20 (last visited Mar. 3, 2020); *see also Hinshaw Releases Third Edition of "Student Loan Servicing Regulations: 50 State Guide on Laws and Legislation"*, HINSHAW, https://www.hinshawlaw.com/newsroom-news-third-edition-50-state-guide-student-loan-regulations.html [https://perma.cc/2R7N-X5KN] (last visited Mar. 3, 2020).

This legislation and the protections it guarantees were a long time in the making. From the start of 2017, the year that the first iteration of this legislation was introduced, to the start of 2020 when it was enacted, Mainers incurred an additional $638 million in student loan debt.[3] Over the intervening 32 months, nearly 200,000 Mainers were forced to repay their loans in a market replete with predatory actors and bad practices.[4] This slow march to providing critical consumer protections was not unique to Maine.

In New York, it took two and a half years from the introduction of the state's first student loan oversight bill until its enactment in October 2019.[5] In New Jersey, the legislative fight took four years.[6] In Colorado, it took twenty-eight months.[7] Across each of these states, tens of thousands of borrowers took on billions of dollars in new student debt even as they were forced to wait on the protections they deserved.[8] In fact, since the start of 2015 when Connecticut became the first state to pass legislation modernizing state law and empowering state regulators to oversee and supervise the student loan servicing industry,[9] the national student loan market added:

- $371.3 billion in outstanding student loan debt, a 29% increase;[10]

---

[3] Fed. Res. Bank of N.Y., *State Level Household Debt Statistics 2003-2019*, N.Y. FED. CONSUMER CREDIT PANEL/EQUIFAX (Mar. 2019), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/area_report_by_year.xlsx [https://perma.cc/3EEF-GPN8].

[4] U.S. Dep't of Educ., *Federal Student Loan Portfolio by Borrower Location*, STUDENTAID.GOV (Dec. 31, 2019), https://studentaid.gov/sites/default/files/fsawg/datacenter/library/Portfolio-by-Location.xls [https://perma.cc/SJ72-QT95]. Fourteen percent of Maine student loan borrowers are now delinquent or in default on their loans. *See Consumer Credit Explorer*, FED. RES. BANK OF PHILA., https://www.philadelphiafed.org/eqfx/webstat/index [https://perma.cc/B649-BP72] (last visited Apr. 26, 2020).

[5] The first servicing bill in the New York legislature was introduced on May 3, 2017. *NY A07582*, BILL TRACK 50, https://www.billtrack50.com/BillDetail/875040 [https://perma.cc/F584-TEVZ] (last visited Apr. 26, 2020). The bill became effective on
on October 9 2019. *S01958 Summary*, N.Y. ST. ASSEMBLY, https://nyassembly.gov/leg/?bn=S01958&term=2019 [https://perma.cc/3Y2T-2KPX] (last visited Apr. 26, 2020); *see also* Kirsten Keefe, *New York's Student Loan Servicing Act of 2019*, EMPIRE JUST. CTR., https://empirejustice.org/wp-content/uploads/2019/05/Policy-Matters-Article-Student-Loan-Servicing-Act-2019.pdf [https://perma.cc/ZEE5-LHK6] (last visited Apr. 26, 2020).

[6] The first servicing bill was introduced in the New Jersey legislature on November 16, 2015. Assembly No. 4707, 216th Leg. (N.J. 2015). The law became effective November 27, 2019. Senate No. 455, 218th Leg. (N.J. 2018).

[7] The first servicing bill was introduced in the Colorado legislature on April 21, 2017. *HB17-1352 Regulate Student Education Loan Servicers*, COLO. GEN. ASSEMB., (Co. 2017). The bill was signed into law in May 2019, and became effective in August 2019. S.B. 19-002, 2019 Reg. Sess. (Co. 2019). [https://perma.cc/4JDH-Q87X].

[8] Author's analysis of historic state-by-state data produced by the U.S. Department of Education's Office of Federal Student Aid (on file with author). For the most recent state-by-state snapshot of outstanding student debt, *see* U.S. Dep't of Educ., *supra* note 4; Fed. Res. Bank of N.Y., *supra* note 3.

[9] H.B. 6915, Jan. Sess. (Conn. 2015).

[10] *Consumer Credit – G.19*, BD. OF GOVERNORS OF THE FED. RES. SYS., https://www.federalreserve.gov/releases/g19/current/ [https://perma.cc/9LPY-3WVW] (last visited Mar. 5, 2020).

- 1.8 million more borrowers overall, a 4% increase;[11]
- More than $7000 in debt per borrower, on average, a 24% increase;[12] and
- Over two million more borrowers in default on a federal student loan.[13]

And yet, only a fraction of the states in our nation have taken the necessary steps to police abuses by the companies that handle loans for tens of millions of Americans in communities across the country.[14] As of April 2020, almost thirty-three million student loan borrowers continue to live in a state that lacks effective oversight over the key players in the second largest consumer debt market in this country.[15]

The student debt crisis is the nation's first real test of whether we have learned the necessary lessons of the Great Recession.[16] Too often, and in too many ways, we are failing this test. From breakdowns in student loan servicing that mirror the worst abuses of the mortgage crises,[17] to subprime student lenders making loans designed to fail,[18] to student loan debt collectors who abuse the court system to compel payments from the most vulnerable borrowers,[19] it often appears as if we are

---

[11] *Federal Student Aid Portfolio Summary,* STUDENTAID.GOV, https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls [https://perma.cc/7XB3-FRZQ] (last visited Mar. 5, 2020).

[12] Average balances are calculated based on information on the number of borrowers and the total outstanding balance of student debt from the New York Fed's snapshot. *2018 Student Loan Update*, FED. RES. BANK OF N.Y., https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/sl_update_2018.xlsx [https://perma.cc/ZD9K-YWPP] (last visited Mar. 5, 2020).

[13] Nat'l Student Loan Data Sys., *Direct Loan Portfolio by Loan Status*, STUDENTAID.GOV, https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls [https://perma.cc/UMU6-QUQF] (last visited Apr. 26, 2020).

[14] *See* Student Loan Servicing Act, ch. 824, No. 2251, 2016 Cal. Stat. 90; An Act Concerning A Student Loan Bill of Rights, Pub. Act No. 15-162, 2015 Conn. Acts 656 Reg. Sess.; Regulate Student Education Loan Servicers, SB19-002, 2019 Colo. Sess. Laws; Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act, 21-571, Vol. 65 D.C. Reg. 32 (Dec. 7, 2016); An Act Concerning Education, Pub. Act 0540, 2017 Ill. Laws 10; An Act to Establish a Student Loan Bill of Rights to License and Regulate Student Loan Servicers, L.D. 995, 2019 Me. Laws 431; An Act establishing the Office of the Student Loan Ombudsman, No. 4707, 2019 N.J. Laws 200; S01958, 2019 N.Y. Laws 1958; Student Loan Bill of Rights Act, H.B. 5936, 2019 R.I. Pub. Laws 33; An Act Relating to Establishing a Student Loan Bill of Rights, S.B. 6029, 2018 Wash. Sess. Laws. Washington S.B. 6029, 65th Leg, Reg. Sess. (Wash. 2018).

[15] *See* U.S. Dep't of Educ., *supra* note 4 (calculated as the total number of federal student loan borrowers minus those who live in Connecticut, the District of Columbia, California, Illinois, Washington, Rhode Island, Colorado, New York, New Jersey, Maine and Virginia).

[16] See generally Seth Frotman, Broken Promises: How Debt-financed Higher Education Rewrote America's Social Contract and Fueled a Quiet Crisis, 4 UT. L. REV. 811 (2018) [hereinafter Broken Promises].

[17] *See e.g.*, Gretchen Morgenson, *A Student Loan System Stacked Against the Borrower*, N.Y. TIMES (Oct. 9, 2015), https://www.nytimes.com/2015/10/11/business/a-student-loan-system-stacked-against-the-borrower.html [https://perma.cc/T6QR-3AGM].

[18] *See e.g.*, Chris Arnold, *Student Loans a Lot Like the Subprime Mortgage Debacle Watchdog Says*, NPR (Dec. 9, 2019), https://www.npr.org/2019/12/09/785527874/student-loans-a-lot-like-the-subprime-mortgage-debacle-watchdog-says [https://perma.cc/TS8M-EJVN].

[19] *See, e.g.*, Stacy Cowley & Jessica Silver-Greenberg, *As Paperwork Goes Missing, Private Student Loan Debts May Be Wiped Away*, N.Y. TIMES (July 17, 2017)

destined to repeat the same mistakes that left millions of homeowners in financial ruin barely more than decade ago. The only thing that has changed is the type of debt and the date on the calendar.

But the shortcomings run deeper than the prevalence of bad practices by a handful of predatory companies. The student debt crisis forces us to reassess the effectiveness of the entire regulatory infrastructure and the institutions that purport to protect the financial futures of hundreds of millions of our fellow citizens. This moment demands a probing analysis of the effectiveness, robustness, and nimbleness of our financial regulatory system. And it calls upon us to answer a simple question: will we continue to allow a rapacious financial services industry to outmatch the government effort intended to constrain it? Unfortunately, in many ways the answer is yes.

The student debt crisis, and the response to it, have opened new cracks in the veneer of our regulatory system. Those cracks have revealed the anachronistic nature of many state laws and state regulators, exposing weaknesses in the oversight they attempt to provide over the consumer financial sector at large. As this Article discusses in detail, the escalating student debt crisis offers a case study in the lumbering response by lawmakers and regulators—a pattern that is all too common in statehouses across the nation.

State lawmakers have created a regulatory system and passed a patchwork of state laws–in pieces, over time–by layering on new functions and authorities in the aftermath of each increasingly acute financial crisis.[20]

This process is cumbersome and legislative action frequently is too late to head off the problems lawmakers seek to solve. Further, these tools and authorities are often enacted in a manner that makes them operate rigidly and in isolation from each other, restraining regulators who may wish to act as new financial products are developed and new risks emerge. Taken together, it is clear that we have created a system that is easy to game and fails to deliver protections for consumers at the scale that meets the size of the challenges we face.

This is devastating not only for the citizens in the individual states in which these regulators operate, but for our system of regulatory federalism–a system that depends on state regulators to serve as the first line of defense against threats to our broader financial system and the American economy at large.[21] In short, if states are not up

https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html [https://perma.cc/5UUS-ZLZ8]; Natalie Kitroeff, *The Lawsuit Machine Going After Student Debtors*, BLOOMBERG BUSINESSWEEK (June 3, 2015), https://www.bloomberg.com/news/articles/2015-06-04/the-student-debt-collection-mess [https://perma.cc/EP47-X8DP].

[20] *See, e.g.*, THE CONFERENCE OF STATE BANK SUPERVISORS, REENGINEERING NONBANK SUPERVISION 16 (2019), https://www.csbs.org/sites/default/files/chapter_two_-_overview_of_state_nonbank_supervision_2.pdf [https://perma.cc/ME3K-V2TY] ("[J]urisdictional coverage (who the states have authority over) can be complicated and not all states have the same jurisdiction.").

[21] *See* EMMETTE S. REDFORD, DUAL BANKING: A CASE STUDY IN FEDERALISM 1-3 (1966), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3137&context=lcp [https://perma.cc/UE4Z-7AVY]; Maria T. Vullo, *Superintendent, N.Y. State Dept. of Fin. Services, Remarks at the CSBS Fintech Forum* (Apr. 10, 2018), https://www.csbs.org/maria-t-vullo-financial-

to the task, the federal financial regulatory structure is not up to the task.[22]

This Article seeks to analyze the shortcomings of this system through the lens of the student debt crisis and offers a roadmap for a new framework—one that not only better protects student loan borrowers, but guides a reimagining of the role of state financial regulation at large.

I. The Student Debt Crisis As Consumer Protection Crisis

While the fallout of the student debt crisis is most frequently presented as an uncertain event in the future or a looming economic calamity on the horizon,[23] in truth, the student debt crisis is already upon on us:

- Borrowers collectively owe more than $1.6 trillion in outstanding student loans, more than Americans collectively owe in credit card debt or auto loans.[24]
- American families have seen their average student loan burden increase almost 150% since 2007.[25] In fact, the rate of student loan growth on American households' balance sheets is almost four times greater than what we saw in any other consumer credit category during that period.[26]
- Nearly 45 million Americans receive a student loan bill each month.[27]
- Student loan borrowers owe, on average, more than $35,000 apiece in student loan debt.[28]
- 3.2 million seniors owe more than $85 billion in student debt.[29]
- Almost 10 million student loan borrowers across the country are in

innovation-past-present-and-beyond [https://perma.cc/5HY2-VMQH]; *see also* Lauren Saunders, *The Role of the States Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,* NAT'L CONSUMER L. CTR., (Dec. 2010), https://www.nclc.org/images/pdf/legislation/dodd-frank-role-of-the-states.pdf [https://perma.cc/4HXV-6CGR] ("The partnership with the states is vital part of our system of federalism and our consumer protection system."); Conference of State Bank Supervisors, *The Role of State Financial Regulation* (Oct. 24, 2017), https://www.csbs.org/role-state-financial-regulation [https://perma.cc/YY35-8XS4].

[22] *See, e.g.*, *Cmte. on Banking, Housing, and Urban Affairs*, *Before the Committee on Banking Hous. and Urban Affairs*, 108th Cong. 9 (2004) (testimony of Gavin M. Gee on behalf of the Conference of State Bank Supervisors) ("State supervision and regulation are essential to our decentralized system. State bank examiners are often the first to identify and address economic problems, including cases of consumer abuse. We are the first responders to almost any problem in the financial system, from downturns in local industry or real estate markets to the emergence of scams that prey on senior citizens. We can and do respond to these problems much more quickly than the federal government.").

[23] *See, e.g.*, Allie Conti, *What a Student Loan 'Bubble' Bursting Might Look Like*, VICE (Jan. 2, 2019), https://www.vice.com/en_us/article/qvqw3x/what-a-student-loan-bubble-bursting-might-look-like [https://perma.cc/U6PF-7HQW].

[24] *See Consumer Credit – G.19* FED. RES. (Mar. 7, 2019), https://www.federalreserve.gov/releases/g19/current/default.htm [https://perma.cc/88HK-AXMJ].

[25] 2018 Student Loan Update, supra note 12.

[26] Id.

[27] Between Q4 2015 and Q4 2017, the number of student loan borrowers increased by 536,400. As of Q4 2017, there were 44.7 million student loan borrowers. *See id.*

[28] *See generally id*.

[29] *See generally id*.

default.[30]

While the burden of student debt is widely felt, the impact of this burden is shouldered disproportionately by those in our society who have historically faced the largest economic and social barriers to opportunity. Women make up half of all college students, and yet owe two-thirds of outstanding student loan debt.[31] Furthermore, the gender pay gap only serves to keep women in debt longer.[32] African-American and Latinx students borrow at higher rates than their white peers.[33] Data shows that African-American borrowers owe nearly forty-five percent more student debt than white borrowers, and that disparity will more than triple in the years that follow.[34] Yet the disparate effects of student debt do not fall solely along race and gender lines. In rural America, the impact of student debt is particularly acute–in Maine, in Appalachia, and beyond.[35]

The student debt crisis, however, is about more than debt loads and ballooning balances. It is about more than higher education policy and college affordability. The student debt crisis is a significant–perhaps the *most* significant–consumer finance issue threatening our nation today. From student loan servicers[36] to for-profit

---

[30] *See* Nat'l Student Loan Data Sys., *supra* note 13.

[31] *See* Kevin Miller, *Women's Student Debt Crisis in the United States*, AM. ASS'N. U. WOMEN (May 2017), https://www.aauw.org/research/deeper-in-debt [https://perma.cc/V8MC-TSFX].

[32] *Id*.

[33] *See* Aissa Canchola & Seth Frotman, *The Significant Impact of Student Debt on Communities of Color*, CFPB (Sept. 15, 2016), https://www.consumerfinance.gov/about-us/blog/significant-impact-student-debt-communities-color/ [https://perma.cc/3AH9-R8X6]; *see also* Sara Goldrick-Rab et al., *The Color of Student Debt: Implications of Federal Loan Program Reforms for Black Students and Historically Black Colleges and Universities*, WIS. HOPE LAB (Sept. 2, 2014), https://news.education.wisc.edu/docs/WebDispenser/news-connections-pdf/thecolorofstudentdebtdraft.pdf?sfvrsn=4 [https://perma.cc/B67F-YD94] (finding that the amount borrowed for college represents a much larger fraction of black students' family income and their future earnings than it does for their white peers).

[34] *See* Judith Scott-Clayton & Jing Li, *Black-White Disparity in Student Loan Debt More than Triples After graduation*, BROOKINGS (Oct. 20, 2016), https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/ [https://perma.cc/K8KZ-6SHY]; *see also* INST. ON ASSETS AND SOC. POLICY, STALLING DREAMS: HOW STUDENT DEBT IS DISRUPTING LIFE CHANCES AND WIDENING THE RACIAL WEALTH GAP 4 (2019) https://heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifechances.pdf [https://perma.cc/M3AT-WAX8] (illustrating data that borrowers of color disproportionately struggle in repayment, such that 20 years after starting college, typical Black borrowers still owe 95 percent of their original student debt balance, while typical white borrowers have paid down almost 95 percent of the original balance).

[35] *See* PJ Tabit & Josh Winters, *"Rural Brain Drain": Examining Millennial Migration Patterns and Student Loan Debt*, FED. RES. BD., CONSUMER & COMMUNITY CONTEXT, 7-14 (Jan. 2019), https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf [https://perma.cc/N4YS-FG5Q]; *see also* Cassidy Morrison, *Student Debt Is Keeping Doctors from Rural Areas*, WASH. EXAMINER (June 20, 2019), https://www.washingtonexaminer.com/news/student-debt-is-keeping-doctors-from-rural-areas [https://perma.cc/47EA-LP2M]; *Low Wages, Student Debt Fuel Vet Shortage in Rural Missouri*, ASSOCIATED PRESS (Aug. 25, 2019), https://www.apnews.com/0da140722da043e981f3881d1b75d6c3 [https://perma.cc/3QCT-VMSL].

[36] *See, e.g.*, Consent Order at 9, Wells Fargo Bank, N.A., CFPB No. 2016-CFPB-0013 (Aug. 22, 2016) (Respondent "maximized late fees incurred by many consumers"); Complaint at 18, Consumer Fin. Prot. Bureau v. Navient Corp., No. 3:17-cv-00101-RDM, 2018 WL 2088760 (M.D. Pa. 2018) (stating

schools,[37] from debt collectors[38] to private student lenders,[39] from private equity

---

"Navient's compensation policies for its customer service representatives have incentivized them to push numerous borrowers to forbearance without adequately exploring income-driven repayment plans with those borrowers, and in some cases, without even mentioning income-driven repayment plans at all") Complaint at 11, California v. Navient Corp., No. CGC-18-567732 (Cal. Super. Ct. 2018) (stating "Navient's compensation policies for customer service representatives incentivized this misconduct."); Complaint at 13, Massachusetts v. Pa. Higher Educ. Assistance Agency, 34 Mass.L.Rptr. 616 (Mass. Super. Ct. 2018) (No. 1784-cv-02682) ("PHEAA has wrongfully held borrowers' money that it was not entitled to collect."); Press Release, Cal. Dep't of Bus. Oversight, *California Department of Business Oversight Sues Loan Servicer PHEAA/Fedloan* (Apr. 2, 2020), https://dbo.ca.gov/2020/04/02/california-department-of-business-oversight-sues-student-loan-servicer-pheaa-fedloan/ [https://perma.cc/ZU33-T6XQ]; Press Release, N.Y. St. Off. Att'y Gen., *Attorney General James and Superintendent Vullo Announce $9 Million Settlement of Federal Student Loan Servicing Claims with Acs Education Services* (Jan. 4, 2019), https://ag.ny.gov/press-release/2019/attorney-general-james-and-superintendent-vullo-announce-9-million-settlement [https://perma.cc/9U6U-TLXM]; *see also* Seth Frotman, *Every Tool at its Disposal: The Case for a Student Loan Servicing Rulemaking*, 31 LOYOLA CONSUMER L. REV. 553 (2019) (documenting CFPB allegations of illegal servicing practices).

[37] *See, e.g.*, Consent Decree at 6, Bridgepoint Education, Inc., CFPB No. 2016- CFPB-0016 (Sept. 9, 2016); Complaint at 10, Consumer Fin. Prot. Bureau v. Corinthian Colls., Inc., No. 14-4194, 2015 WL 10854380 (N.D. Ill. 2015) (stating "[r]egardless of whether students were able to repay the private student loans, Corinthian would profit from the increased availability of Title IV monies"); Complaint at 26, Consumer Fin. Prot. Bureau v. ITT Educ. Servs., Inc., 219 F.Supp.3d 878 (S.D. Ind. 2015) (No. 1:14-cv-292) (stating "[w]hile ITT remains profitable—it reaped approximately $59 million in net income during 2013—former ITT students, having been coerced by ITT into the ITT Private Loans, face a high likelihood of defaulting"); Complaint, United States v. Educ. Mgmt. Corp., No. 07-461 (W.D. Pa. 2013); Complaint at 3, California v. Ashford Univ., LLC, No. RG17883963, 2017 WL 5903538 (Cal. Super. 2017); Press Release, *U.S. Dep't of Justice, For-Profit College Company to Pay $95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations* (Nov. 16, 2015), https://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and [https://perma.cc/H4WY-P9ZG]; Press Release, Md Off. Att'y Gen., *AG Frosh: $1.4 Million in Loans Forgiven for Nearly 1,000 Maryland Students* (Nov. 16, 2015), http://www.marylandattorneygeneral.gov/Press/2015/111615.pdf [https://perma.cc/E7ZD-GMMW].

[38] *See, e.g.*, Consent Order, Transworld Systems, Inc., CFPB No. 2017-CFPB-0018 (Sept. 18, 2017) ("In support of many of these lawsuits, [Transworld] executed affidavits that falsely claimed personal knowledge of the account records and the consumer's debt, and, in many cases, personal knowledge of the chain of assignments establishing ownership of the loans."). Complaint at 45, Consumer Fin. Prot. Bureau v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. 2018) ("Pioneer's false promises that rehabilitation would remove all adverse information regarding the borrowers' loans from their credit reports."); Complaint at 70, Illinois v. Navient Corp., No. 17-CH-00761 (Ill. Cir. Ct. 2017) ("Pioneer Credit Recovery, and General Revenue Corporation's unfair and deceptive debt collection practices."); Press Release, *Minnesota Commerce Department, Minnesota Commerce Department Announces Action Against Improper Student Loan Debt Collections* (Aug. 11, 2017), https://mn.gov/commerce/media/news/?id=17-307713 ("Minnesota Commerce [Department] . . . and regulators in four other states have reached a $500,000 joint settlement with two subsidiaries of iQor Holdings Inc. for improper debt collection practices, including making abusive and harassing phone calls to increase student loan payments.").

[39] *See, e.g.*, Consent Judgment, CFPB v. Nat. Collegiate Master Student Loan Trust, No. 1:17-cv-01323-UNA (D. Del. Sept. 18, 2017); Consent Order, Citibank, N.A., CFPB No. 2017-CFPB0021 (Nov. 21, 2017); Consent Order, Discover Bank, CFPB No. 2015-CFPB-0016 (July 22, 2015); Complaint at 10, Washington v. Navient Corp., No. 17-2-01115-1 SEA (Wash. Super. Ct. 2017) ("From 2006-2007 Sallie Mae claimed 42% of the private student loan market by pursuing an unfair and deceptive subprime lending strategy of providing expensive subprime loans to vulnerable borrowers even though Sallie Mae knew many — even *most* — of those loans would default.").

firms[40] to debt relief scams[41] — entire industries have built their profit models around taking advantage of student loan borrowers.[42] Their practices collectively add billions of dollars of additional student debt to household balance sheets, damaging the financial future of an entire generation.[43]

Throughout America, big banks and small scams hurt millions of borrowers at every single point in their financial lives–from the day a student receives her first bill until the day she pays off her last loan. Collectively, tens of millions of borrowers are trapped in a system where they have fewer rights and protections than exist in other markets–a feature recognized by regulators,[44] law enforcement officials,[45]

---

[40] *See, e.g.*, *CFPB Takes Action Against Aequitas Capital Management for Aiding Corinthian Colleges' Predatory Lending Scheme,* CFPB (Aug. 17 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-aequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme/; *AG Rosenblum Announces $192 Million Aequitas Settlement; $2.1 Million for Oregon Students* OR. DEP'T OF JUST. (Aug. 17, 2017), https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-announces-192-million-aequitas-settlement-2-1-million-oregon-students/; *see also* Charlie Eaton, Sabrina Howell & Constantine Yannelis, *When Investor Incentives and Consumer Interests Diverge: Private Equity in Higher Education*, (Nat'l Bureau of Econ. Res. Working Paper No. 24976, 2018), https://www.nber.org/papers/w24976 [https://perma.cc/KSV7-MBPT].

[41] *See, e.g.*, Complaint, CFPB v. IrvineWebWorks, Inc., No. 8:14-cv-1967 (Dec. 11, 2014); *AG Ferguson Surpasses $1 Million in Student-Borrower Recoveries*, WASH. ST. OFF. ATT'Y GEN. (Jan. 5, 2017), https://www.atg.wa.gov/news/news-releases/ag-ferguson-surpasses-1-million-student-borrowerrecoveries [https://perma.cc/F5YZ-UXVN] ("Since November 2015, Ferguson has brought lawsuits or resolved allegations against 15 out-of-state student loan adjusters for violating Washington's Debt Adjustment Act and Consumer Protection Act by charging illegal fees for debt adjusting and ignoring legal obligations to inform customers of important rights."); *CFPB Takes Action to Shut Down Illegal Student Debt Relief Scheme,* CFPB (Mar. 15, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-shut-down-illegal-student-debt-relief-scheme/; *State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams,* FTC (Oct. 13, 2017), https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown.

[42] *See, e.g.*, Testimony of Seth Frotman, Before H. Comm. Financial Services 116th Cong. (2019).

[43] *See, e.g.*, Complaint at 23, Consumer Fin. Prot. Bureau v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. 2018) (stating "[a]t the conclusion of those forbearances, Navient had added nearly four billion dollars of unpaid interest to the principal balance of their loans").

[44] *See, e.g.*, CONSUMER FIN. PROTECTION BUREAU, STUDENT LOAN SERVICING 103 (2015) https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf [https://perma.cc/UC2U-TEN5] ("[P]olicymakers have undertaken broad-based legislative and regulatory efforts to strengthen applicable federal consumer financial laws protecting consumers in the servicing of mortgages and credit cards. However, for student loan borrowers, there is no existing, comprehensive federal statutory or regulatory framework providing consistent standards for the servicing of all student loans."); Letter from Conn. Dep't of Banking Counsel Bruce H. Adams to the Consumer Fin. Prot. Bureau in response to a Request for Information Regarding Student Loan Servicing (July 13, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0381&attachmentNumber=1&contentType=pdf.

[45] *See, e.g.*, Letter from Lisa Madigan & Bob Ferguson to CFPB in Response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0376 (July 13, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0376&attachmentNumber=1&contentType=pdf ("Unlike in similar financial service industries, there is little regulation of specific student loan servicer conduct, such as the handling and application of payments.").

lawmakers,[46] scholars,[47] and consumer advocates.[48]

To understand the contours of modern-day student loan law and regulation, we must first explore how we got here. For decades, the higher education finance sector was marked by a fragmented oversight regime in which competing regulators at varying levels of government were supposed to oversee the different segments and players in the higher education finance market.[49] Bank lenders would have one regulator.[50] Non-bank lenders another.[51] Servicers and debt collectors, in some cases, yet another.[52] In reality, the demands of student loan borrowers were often overshadowed by regulators' emergent need to oversee larger markets or address "higher priorities."[53] Furthermore, in the first decades of the 21st century, the substantial growth of non-bank financial institutions meant that much of student finance could operate in the shadows outside of regulators' purview–the state regulatory infrastructure that purported to fill in federal regulators' blind spots lacked the reach to oversee even the largest players. All of this was compounded by regulators' lack of statutory authorities to promulgate timely and robust regulations

[46] *See, e.g.*, Steve Fenberg & Faith Winter, Opinion, *Colorado Will Lead the Effort to End the Student Debt Crisis*, COLO. SUN (Apr. 11, 2019), https://coloradosun.com/2019/04/11/student-debt-steve-fenberg-faith-winter/ [https://perma.cc/HPP7-YXN8]; Letter from Congresswoman Susan Davis to Director Cordray in Response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-0379 (July 13, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-0379&attachmentNumber=1&contentType=pdf ("[I]t is important the Bureau also put in place strong rules for all borrowers, regardless of loan type or who owns their loans. As a prime example, the Bureau should look to our work in the CARD Act to help inform how they should best protect borrowers.").

[47] *See, e.g.*, Letter from Alan White et al., to the CFPB in Response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-6929 (July 23, 2015), https://www.regulations.gov/document?D=CFPB2015-0021-6929.

[48] *See*, *e.g.*, *Comment to CFPB Regarding Student Loan Servicing*, CFPB-2015-0021-6840 NAT'L CONSUMER L. CTR. (Sept. 29, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021- 6840&attachmentNumber=1&contentType=pdf ("The absence of clear borrower protections contrasts with other consumer credit areas such as credit cards and mortgages."); Letter from Consumers Union to the CFPB in Response to a Request for Information Regarding Student Loan Servicing, CFPB-2015-0021-7592 (Jul. 15, 2015), https://www.regulations.gov/contentStreamer?documentId=CFPB-2015-0021-7592&attachmentNumber=4&contentType=pdf ("The Bureau rightly notes that other kinds of consumer debt come with protections related to repayment and servicing. By contrast, for people who took out loans to get an education, there are fewer protections and the system is often tough to navigate – as a result, these borrowers may be at the mercy of their servicers."); *see also Broken Promises*, supra note 16.

[49] CFPB, STUDENT LOAN SERVICING: ANALYSIS OF PUBLIC INPUT AND RECOMMENDATIONS FOR REFORM 141 (2015) https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf [https://perma.cc/YL8T-EVDK] ("Historically, state and federal regulatory agencies have largely overseen student loan servicers as service providers to or as affiliates of financial institutions under their purview. This may have fragmented oversight responsibilities and inadvertently created barriers for regulators and law enforcement agencies seeking to understand and improve practices for all student loan borrowers.").

[50] *Id.* at 140-42.

[51] Id.

[52] Id.

[53] See generally id. at 141.

that could have protected borrowers both as they took out loans and then as they tried to pay them back.[54] Finally, regulators were often left with little ability to hold student loan companies accountable when they violated borrowers' rights, or for borrowers themselves to seek help when companies treated them unfairly.[55]

Perhaps most importantly, policymakers fell back on the dangerously misguided notion that one of the nation's largest creditors, the United States Department of Education, could be a constructive partner in overseeing the private companies in the student loan market.[56] Instead, policymakers failed to recognize the importance of strong *independent* oversight free from conflicts, competing policy priorities, or budgetary calculus. Looking back, the results are striking: two decades of lax oversight, questionable policy decisions, and a long series of actions that allowed borrowers' rights to be subordinated to the demands of the student loan industry.[57] Into this perfect storm, over ten million new borrowers were added in just the last decade.[58]

II. Enter the Consumer Financial Protection Bureau, Whither the Consumer Financial Protection Bureau

The nation's student debt crisis is inextricably linked to the global economic meltdown of the late 2000s.[59] First, and most clearly, a toxic mix of Wall Street-

---

[54] *See* CFPB, JOINT STATEMENT OF PRINCIPLES ON STUDENT LOAN SERVICING 3 (2015), https://files.consumerfinance.gov/f/201509_cfpb_treasury_education-joint-statement-of-principles-on-student-loan-servicing.pdf [https://perma.cc/C4UP-GZ6X] ("Student loan servicers, whether for-profit, not-for-profit or government agencies, should be accountable for serving borrowers fairly, efficiently and effectively. If servicers fall short and violate federal or state consumer financial laws, the HEA, contractual requirements, or federal regulations, then borrowers, federal and state agencies and regulators, and law enforcement officials should have access to appropriate channels for recourse, as authorized under law.").

[55] *See generally* Frotman, *Every Tool at Its Disposal*, *supra* note 36, at 571 ("Federal higher education law does not provide borrowers with a private remedy to address breakdowns when they occur. Despite far-reaching and powerful protections against economic distress, including income-driven repayment and debt cancellation options, student loan borrowers continue to struggle and default at near-historic levels. Observers have attributed this persistent distress, in part, to the limited mechanisms available to consumers when a student loan servicer fails to effectively and timely facilitate access to borrowers' repayment rights.").

[56] *See generally* Broken Promises, supra note 16, at 838-40.

[57] *See*, *e.g.*, Ben Kaufman, *Setting the Record Straight: ED's Failures in Student Borrower Protection*, STUDENT BORROWER PROT. CTR. DOMINO BLOG (Nov. 26, 2019), https://protectborrowers.org/setting-the-record-straight-eds-failures-in-student-borrower-protection/ [https://perma.cc/A5ZG-PC79].

[58] Federal Student Aid Portfolio Summary, supra note 11.

[59] *See Student Loan Debt Crisis: How Did We Get Here?*, CBS NEWS (Apr. 30, 2019), https://www.cbsnews.com/news/student-loan-debt-crisis-how-did-we-get-here/ [https://perma.cc/7EC7-GHXT] ("The explosion in the amount of student debt held by Americans was fueled by the financial crisis a decade ago, and economists warn the burden on borrowers threatens the economy as a whole as consumers struggle to repay their loans."); Rohit Chopra, *Prepared Remarks by Rohit Chopra Before the Federal Reserve Bank of St. Louis*, CFPB (Nov. 18, 2013), https://www.consumerfinance.gov/about-us/newsroom/student-loan-ombudsman-rohit-chopra-before-the-federal-reserve-bank-of-st-louis/ [https://perma.cc/RT8A-7XC2] ("Rising student debt burdens may prove to be one of the more painful aftershocks of the Great Recession, especially if left unaddressed"); *see also, e.g.*, Jillian Berman, *How the Great Recession Turned America's Student-Loan Problem into a $1.5 Trillion Crisis*, WALL ST. J.:

funded student loan debt left millions of borrowers on the hook in the years leading up to the crisis and remains an albatross around their financial lives a decade later.[60] Second, beneath the surface, the Great Recession also wreaked havoc upon state government balance sheets–precipitating the slashing of state higher education budgets that continue to drive ballooning levels of student debt owed by students enrolled in college today.[61] Third, the overhaul of the federal financial regulatory system and the creation of the Consumer Financial Protection Bureau ("CFPB" or "Bureau") is both a clear legacy of the financial crisis[62] and arguably the most

---

MARKETWATCH (Oct. 7, 2018), https://www.marketwatch.com/story/3-ways-the-great-recession-turned-americas-student-loan-problem-into-a-crisis-2018-09-06 [https://perma.cc/ZR9E-7RSY].

[60] *See* Stacy Cowley & Jessica Silver-Greenberg, *As Paperwork Goes Missing, Private Student Loan Debts May be Wiped Away*, N.Y. TIMES: DEALBOOK (Jul. 17, 2017), https://www.nytimes.com/2017/07/17/business/dealbook/student-loan-debt-collection.html#:~:text=As%20Paperwork%20Goes%20Missing%2C%20Private%20Student%20Loan%20Debts%20May%20Be%20Wiped%20Away,-A%20City%20College&text=Tens%20of%20thousands%20of%20people,because%20critical%20paperwork%20is%20missing ("Tens of thousands of people who took out private loans to pay for college but have not been able to keep up payments may get their debts wiped away because critical paperwork is missing. The troubled loans, which total at least $5 billion, are at the center of a protracted legal dispute between the student borrowers and a group of creditors who have aggressively pursued them in court after they fell behind on payments."); *see also* Shahien Nasiripour, *Wall Street is Fighting a CFPB Deal Over Billions in Defaulted Student Loans*, BLOOMBERG (Nov. 8, 2017), https://www.bloomberg.com/news/articles/2017-11-08/wall-street-is-fighting-a-cfpb-deal-over-billions-in-defaulted-student-loans [https://perma.cc/V4DR-TTGP] ("It seemed like the kind of case regulators had resolved countless times before: Debt collectors are accused of using flawed documentation and lawsuits to collect unpaid loans. A fine is levied, a promise to reform is made, and everyone moves on. Not this time. A maelstrom of banks, insurers, debt collectors, and hedge funds enveloped the U.S. Consumer Financial Protection Bureau when it tried to settle allegations of shoddy collection practices on billions of dollars in student loans. A novel settlement proposal between the regulator and a private equity firm meant to clear up the matter has Wall Street warning of expensive consequences for future student borrowers.").

[61] *See, e.g.*, *A Lost Decade in Higher Education Funding,* CTR. ON BUDGET & POL'Y PRIORITIES, https://www.cbpp.org/research/state-budget-and-tax/a-lost-decade-in-higher-education-funding [https://perma.cc/5X4X-VY6U] (last visited Apr. 26, 2020) ("A decade since the Great Recession hit, state spending on public colleges and universities remains well below historic levels, despite recent increases."); *New Report Finds State Funding for Higher Education Has Only Halfway Recovered in the Decade Since the Great Recession*, SHEEO, https://sheeo.org/new-report-finds-state-funding-for-higher-education-has-only-halfway-recovered-in-the-decade-since-the-great-recession/ [https://perma.cc/XXA2-EMPA] (last visited Apr. 26, 2020) ("[I]t's clear that a heavy reliance on tuition revenue has become the new norm for how state higher education systems are funded."); Bo Zhao, *Consequences of State Disinvestment in Public Higher Education: Lessons for the New England States,* NEW ENGLAND PUB. POL'Y CTR. (Feb. 2019), https://www.bostonfed.org/publications/new-england-public-policy-center-research-report/2019/consequences-of-state-disinvestment-in-public-higher-education.aspx [https://perma.cc/JQ9Y-7ANB] ("Research in this report shows that reductions in state appropriations have resulted in higher tuition and fees, greater student loan debt.").

[62] *See, e.g.*, Raj Date, *Lessons Learned from the Financial Crisis: The Need for the CFPB*, CFPB (Sept. 15, 2011), https://www.consumerfinance.gov/about-us/newsroom/lessons-learned-from-the-financial-crisis-the-need-for-the-cfpb/ [https://perma.cc/R6UM-H3WQ] ("Prior to the crisis, no single agency had effective tools to regulate and oversee the whole consumer finance market, and consumer protection was not anyone's top priority. The result was a system where no one was sufficiently accountable for

important consumer protection development in the twenty-year history of the modern student loan market.[63] Responding to the systematic breakdowns of a regulatory system that failed to halt widespread illegal practices, leading to trillions in lost wealth, Congress passed a once-in-a-generation realignment of the nation's financial oversight framework.[64] This included the creation of the CFPB.[65] In the eyes of its framers, the CFPB would be a new federal agency tasked with protecting the hundreds of millions of consumers in this country.[66] Congress specifically designed the Bureau with the tools, resources, and authorities to achieve such an ambitious goal.[67]

---

getting the job done. At the Consumer Financial Protection Bureau, we've been given that important responsibility.").

[63] *See* Andrew Kreighbaum, *Small Agency, Big Impact*, INSIDE HIGHER ED (Sept. 28, 2016), https://www.insidehighered.com/news/2016/09/28/consumer-financial-protection-bureau-plays-outsize-role-regulator-profits-and-loan [https://perma.cc/9ZLR-8JPA] ("In the latter half of the 2000s, it became commonplace for regulators and policy analysts to refer to the "Wild West" landscape of student lending, especially private student loans. A decade later, the Consumer Financial Protection Bureau has announced itself as the new sheriff in town to the student loan industry and the for-profit colleges that fueled it.").

[64] *See, e.g.*, BD. OF GOVERNORS OF THE FED. RESERVE SYS., FLOW OF FUNDS ACCOUNTS OF THE UNITED STATES (2009), https://www.federalreserve.gov/releases/z1/20090312/z1.pdf ("For 2008 as a whole, household net worth fell $11.2 trillion."); *see also Remarks by Deputy Secretary Sarah Bloom Raskin at the National Foundation for Credit Counseling 50th Annual Leaders' Conference*, U.S. DEP'T OF THE TREASURY (Sept. 28, 2015), https://www.treasury.gov/press-center/press-releases/Pages/jl0186.aspx ("The financial crisis exposed the real dangers from having a system with misaligned incentives and shoddy oversight of complex markets. Those fundamental flaws took a toll on a crucial wealth-building asset—the home—and in their wake we were left with households with damaged balance sheets and a slow, uneven recovery—indicative of a slow rebuilding of household wealth. We need to ensure that we design a credit system that can be navigated and that functions efficiently for all participants in all economic environments."); *Treasury Deputy Secretary Neal Wolin Written Testimony before the Senate Banking Committee on "Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act"*, U.S. DEP'T OF TREASURY (Sept. 30, 2010), https://www.treasury.gov/press-center/press-releases/Pages/tg881.aspx [https://perma.cc/SX5B-XUP2] ("The Act builds a stronger financial system by addressing major gaps and weaknesses in regulation that helped cause the financial crisis that led to the recession. It puts in place buffers and safeguards to reduce the chance that another generation will have to go through a crisis of similar magnitude.").

[65] *See e.g.*, *Hearing on the Creation of a Consumer Financial Protection Agency*, 111th Cong., (2009), https://www.govinfo.gov/content/pkg/CHRG-111shrg54789/pdf/CHRG-111shrg54789.pdf [https://perma.cc/5DFQ-CTTW] ("[W]e are taking an important step in our efforts to modernize our financial regulatory system . . . . That is why the first piece of the Administration's comprehensive plan to rebuild our regulatory regime."); BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM ET AL., JOINT IMPLEMENTATION PLAN 301-326 OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT (Apr. 2011), https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-joint-implement-plan-dodd-frank-sec-301-326.pdf.

[66] *See, e.g., Data Point: Credit Invisibles,* CFPB, https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf [https://perma.cc/7B4J-X2TX] ("Our estimates suggest that approximately 188.6 million Americans have credit records at one of the NCRAs that can be scored by the commercially-available model that informs our analysis. This represents over 80 percent of the adult population."); *see also* Elizabeth Warren, *Unsafe at Any Rate*, DEMOCRACY J. 5 (Summer 2007), https://democracyjournal.org/magazine/5/unsafe-at-any-rate/ [https://perma.cc/GR7W-794K].

[67] *See* Leonard J. Kennedy, et al., *The Consumer Financial Protection Bureau: Financial Regulation for the Twenty-First Century*, 97 CORNELL L. REV. 1141, 1142 (2012) ("The recent financial crisis, the

First, the Bureau would be "independent" and shielded from undue political influence as it undertook its mission.[68] Second, the Bureau would have only one mission: administering and enforcing the nation's consumer protection statutes.[69] It would not have the dual mandate of ensuring the "safety and soundness" of the financial institutions it oversaw, which too often left consumer financial protection deprioritized and trumped by the concerns of protecting banking sector profits.[70] Third, the Bureau would have authority over both the largest depository and non-depository institutions, cinching closed a hole in the regulatory patchwork that

---

worst since the Great Depression, was partly the result of federal regulatory failure. The consequences were catastrophic. Congress responded by passing the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which included the creation of a new regulatory agency charged with ensuring that 'all consumers have access to markets for consumer financial products and services that are 'fair, transparent, and competitive.'"); Patricia A. McCoy, *Inside Job: The Assault on the Consumer Financial Protection Bureau*, 103 MINN. L. REV. 253, 254 (2018) ("When Congress created the CFPB, the drafters of the Dodd-Frank Act paid close attention to the architecture of consumer financial protection. That structure reflects a conscious decision to correct the regulatory failings of the past."); Christopher L. Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review*, 90 TULANE L. REV. 1057, 1060 (2016) ("In the wake of this financial catastrophe, the public demanded, and the United States Congress delivered, the most transformative financial reform since the 1930s. While the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) included many changes, its centerpiece was the creation of the new Consumer Financial Protection Bureau (CFPB or Bureau.").

[68] *See* Hosea H. Harvey, *Constitutionalizing Consumer Financial Protection: The Case for the Consumer Financial Protection Bureau*, 103 MINN. L. REV. 2429, 2430 (2019) ("Furthermore, because its design-features include insulation from congressional appropriation review and for-cause executive removal power, the agency is largely protected from outside influence, except perhaps during the nomination process of its singular director."); *see also* Michael Barr, *Why the CFPB is Constitutional*, DEMOCRACY (Apr. 24, 2017), https://democracyjournal.org/briefing-book/why-the-cfpb-is-constitutional/ [https://perma.cc/UMS8-7LMZ] ("Congress sought to make the consumer bureau truly *independent*—to minimize the risk that the agency would be 'captured' by the financial firms it regulates through pressure on Congress or on the President.").

[69] 12 U.S.C. § 5491 (2018); *see also* Megan Slack, *Consumer Financial Protection Bureau 101: Why We Need a Consumer Watchdog*, THE WHITE HOUSE (Jan. 4, 2012), https://obamawhitehouse.archives.gov/blog/2012/01/04/consumer-financial-protection-bureau-101-why-we-need-consumer-watchdog [https://perma.cc/R4P2-JEMR] ("CFPB will be the single, consumer-focused regulating authority, consolidating the existing authorities scattered throughout the Federal government under one roof.").

[70] *See, e.g.*, *Creating the Consumer Bureau,* CFPB, https://www.consumerfinance.gov/about-us/the-bureau/creatingthebureau/ [https://perma.cc/XPN3-J5XH] (last visited Apr. 26, 2020) ("In June 2009, President Obama proposed to address failures of consumer protection by establishing a new financial agency to focus directly on consumers, rather than on bank safety and soundness or on monetary policy."); ADAM J. LEVITIN, THE CONSUMER FINANCIAL PROTECTION AGENCY 4 (2009), https://www.pewtrusts.org/~/media/assets/2009/08/6/pewlevitancfpa.pdf [https://perma.cc/F2V6-ERYC] ("For federal banking regulators, there is a conflict between their primary mission—bank safety-and-soundness—and the consumer protection mission. Safety-and-soundness ultimately means profitability because only profitable financial institutions can be safe and sound. Unfair, deceptive, and abusive practices, however, can be highly profitable; that is the only reason to engage in them. If they are even mildly profitable, the regulatory and reputational risk would make the practice not worthwhile. Placing the two missions together in a single agency ensures that one will trump the other, and historically consumer protection has not won out, except when the most egregious practices are at stake.").

previously left trillion-dollar markets with little federal oversight.[71] Finally, the Bureau would have broad jurisdiction over "consumer financial products or services," as well as the ability to use any of its authorities—including supervision, enforcement, or rulemaking—to intervene in any and each market that fell within its purview.[72]

The Bureau's authorizing law enabled it to police markets for the expansive array of consumer financial products at the center of hundreds of millions of Americans' lives, ranging from mortgages to money orders,[73] credit cards to credit reporting,[74] and prepaid cards to payday loans.[75] As described below, Congress also granted the new Consumer Bureau expansive authority to regulate the student loan market.[76] The Bureau's work has touched all aspects of the student loan market, ranging from banks to nonbanks, and lenders to servicers, even including both student loan debt collectors and the companies that run for-profit schools.[77] It has

---

[71] *See* THE FINANCIAL CRISIS INQUIRY REPORT, NAT'L COMM'N ON THE CAUSES OF THE FIN. AND ECON. CRISIS 414 (2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf ("For example, high-risk, nontraditional mortgage lending by nonbank lenders flourished in the 2000s and did tremendous damage in an ineffectively regulated environment, contributing to the financial crisis."); *see also* Michael S. Barr, *Financial Reform: Making the System Safer and Fairer*, RSF: THE RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 3 at 1, 3-4 (2017).

[72] 12 U.S.C. § 5491 (2018); *see also* Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review, supra* note 67, at 1071 (discussing CFPB's broad authority: "At the Bureau, our bigger and more flexible toolbox includes research reports, rulemaking, market guidance, consumer education and empowerment, and ability to supervise and examine both large banks, and many nonbank institutions."); Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 REV. BANKING & FIN. L. 321, 322 (2013) (analyzing Bureau's broad authorities); STAFF OF H. COMM. ON FIN. SERVS., 115TH CONG., CONSUMER FINANCIAL PROTECTION BUREAU IN PERSPECTIVE 10 (2017) https://financialservices.house.gov/uploadedfiles/cfpb_staff_report.pdf [https://perma.cc/NS8U-64FG] ("Title X of the Dodd-Frank Act established the Consumer Bureau as the first ever independent Federal agency provided with rulemaking, supervisory, and enforcement authorities over the offering and provision of consumer financial products and services.").

[73] *See* 12 C.F.R. § 1003 (2015); 12 C.F.R. § 1026 (2013); 12 C.F.R. §1090 (2014).

[74] *See* 12 C.F.R. § 1026 (2016); 12 C.F.R. § 1041 (2017).

[75] *See* 12 C.F.R. § 1090 (2013).

[76] Seth Frotman, *Every Tool at its Disposal: The Case for a Student Loan Servicing Rulemaking*, 31 LOY. CONSUMER L. REV. 551, 551-52, 560-61 (2019) (analyzing the Bureau's jurisdiction over the student loan market).

[77] *See, e.g., CFPB Orders Discover Bank to Pay $18.5 Million for Illegal Student Loan Servicing Practices*, CFPB (Jul. 22, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-discover-bank-to-pay-18-5-million-for-illegal-student-loan-servicing-practices/ [https://perma.cc/45CU-4AWX] (discussing banks); *CFPB Takes Action Against Citibank for Student Loan Servicing Failures That Harmed Borrowers*, CFPB (Nov. 21, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-citibank-student-loan-servicing-failures-harmed-borrowers/ [https://perma.cc/J97L-3TQJ] (discussing servicers); *CFPB Takes Action Against Student Financial Aid Services, Inc. for Illegal Recurring Billing Scheme,* CFPB (Jul. 23, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-financial-aid-services-inc-for-illegal-recurring-billing-scheme/ [https://perma.cc/L7HU-TRCK]; *Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices*, CFPB (Sept. 12, 2016), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices/ [https://perma.cc/3PYN-H2XY] (discussing lenders).

taken enforcement action against those who broke the law, from small scammers to large financial institutions like Wells Fargo, Discover, and Navient.[78]

From when it opened its doors in 2011 until late 2017, when Director Richard Cordray resigned, the CFPB returned more than $12 billion to defrauded consumers, including $750 million to student loan borrowers.[79] And more than any one headline in an individual enforcement action, the Bureau's success demonstrated that with independence, ample resources, and the right tools and authorities, a financial regulator could step in to fill the gaps that had once left student loan borrowers on the outside of the regulated financial system.

Unfortunately, from December 2017 onward, the Bureau's political leadership undermined a significant amount of this work.[80] The Bureau removed a student loan servicing rulemaking from its unified regulatory agenda that would have provided enhanced protections and disclosures for all student loan borrowers.[81]

The Director chose to no longer supervise the largest companies managing over a trillion dollars in student debt, caving to political pressure from the United States Department of Education.[82] The Bureau withdrew its proposed plans to monitor and shine a light on the largest players in the student loan servicing market.[83] Since Trump Administration officials assumed control of the CFPB, the few enforcement actions against student loan companies were marked by little restitution and were

[78] *See, e.g.*, Complaint at 18, *In re* Wells Fargo Bank, N.A., CFPB No. 2016-CFPB-0013, 9 (Aug. 22, 2016) ("Respondent[ ] . . . maximized late fees incurred by many consumers."); *In re* Discover Bank, CFPB No. 2015-CFPB-0016, 1 (July 22, 2015); Complaint, CFPB v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. Jan. 8, 2017).

[79] *See* CFPB, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN 2-3 (Oct. 2017), https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf [https://perma.cc/87ZG-DK6M]; *see also Hearing Before the H. Fin. Servs. Comm.* 116th Cong. 2 (2019) (statement of Seth Frotman), https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-frotmans-20190307.pdf [https://perma.cc/9U7U-J2LN].

[80] See, e.g., Hearing Before the H. Fin. Servs. Comm., supra note 79, at 3; Joint Statement: Nation's Top Student Loan Watchdog Post Remains Vacant 150 Days After CFPB Director Promised to "Quickly" Fill the Role, AMS. FOR FIN. REFORM (Aug. 2, 2019), http://ourfinancialsecurity.org/2019/08/joint-statement-nations-top-student-loan-watchdog-post-remains-vacant-150-days-cfpb-director-promised-quickly-fill-role/ [https://perma.cc/LE2H-SRBV].

[81] *See* Michael Stratford, *CFPB Gives up on Plans to Regulate Student Loan Servicers*, POLITICOPRO (May 9, 2018), https://subscriber.politicopro.com/education/article/2018/05/cfpb-gives-up-on-plans-to-regulate-student-loan-15 servicers-526274.

[82] *See* Chris Arnold, *Exclusive: Turf War Blocked CFPB from Helping Fix Student Loan Forgiveness Program*, NPR (Oct. 15, 2019), https://www.npr.org/2019/10/15/769326896/exclusive-turf-war-blocked-cfpb-from-helping-fix-student-loan-forgiveness-progra [https://perma.cc/E6NL-E5HT]; *Student Debt Crisis v. CFPB and Dep't of Educ.*, DEMOCRACY FORWARD https://democracyforward.org/lawsuits/student-debt-crisis-v-cfpb-education/_[https://perma.cc/V7BQ-AEWE] (last visited Mar. 14, 2020); *Senators Press CFPB to Dig Into Problems with Public Service Student Loan Program*, NPR (Oct 17, 2019), https://www.npr.org/transcripts/771021135?storyId=771021135&ft=nprml&f=771021135?storyId=771021135&ft=nprml&f=771021135 [https://perma.cc/R7XA-THZV].

[83] Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau: Hearing Before H. Comm. Of Fin. Servs., 116th Cong. 5 (2019).

narrowly focused on smaller entities in the sector.[84]

Even as the Bureau has engaged in a hasty and ideologically driven retreat from its duties in the student loan marketplace, the scope of the student debt crisis has continued to expand. For example, student loan defaults have increased by double digits,[85] the pace of lawsuits alleging illegal practices by student loan companies continues to intensify,[86] and the struggles of tens of millions of student loan borrowers only gained more prominence.[87]

III. STATES MUST ACT

Stepping into this void are state policymakers – legislators, law enforcement

---

[84] *See Consumer Financial Protection Bureau Settles with Conduent Education Services*, CFPB (May 1, 2019), https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-conduent-education-services [https://perma.cc/CV39-GK2D]; *see also CFPB Law Enforcement Plummets Under Trump Administration,* CONSUMER FED'N OF AMERICA (Mar. 11, 2019), https://consumerfed.org/press_release/16137/ [https://perma.cc/37BP-TERK]; MAJORITY STAFF OF THE COMM. ON FIN. SERVS., 116TH CONG., SETTLING FOR NOTHING: HOW KRANINGER'S CFPB LEAVES CONSUMERS HIGH AND DRY 7 (2019); *CFPB Law Enforcement Plummets Under Trump Administration,* CONSUMER FED'N OF AM. (Mar. 11, 2019), https://consumerfed.org/press_release/16137/. *But see* Jana Bernelio, *New York AG: Student Loan Servicer Agrees to $9m Settlement for Misleading Borrowers*, CNY CENTRAL (Jan. 4, 2019), https://cnycentral.com/news/local/new-york-ag-student-loan-servicer-agrees-to-9m-settlement-for-misleading-borrowers.

[85] Nat'l Student Loan Data Sys., *Direct Loans Entering Default,* STUDENTAID.GOV https://studentaid.gov/sites/default/files/DLEnteringDefaults.xls [https://perma.cc/B4KS-S52M] (last visited June 7, 2020).

[86] *See, e.g.*, Stacy Cowley, *New York Sues Student Loan Servicer for 'Abusive' Acts*, NY TIMES (Oct. 3, 2019), https://www.nytimes.com/2019/10/03/business/student-loans-forgiveness-pheaa.html [https://perma.cc/J7AS-ZQK8]; *see also* Danielle Douglas-Gabriel, *American Federation of Teachers Sues Betsy DeVos over Public Service Loan Forgiveness Program*, WASH. POST (Jul. 11, 2019), https://www.washingtonpost.com/education/2019/07/11/american-federation-teachers-sues-betsy-devos-over-public-service-loan-forgiveness-program/ [https://perma.cc/46HE-9LLK]; Stacy Cowley, *California Will Be Fourth State to Sue Navient Over Student Loans*, NY TIMES (June 28, 2018), https://www.nytimes.com/2018/06/28/business/navient-student-loans-california.html.

[87] *See, e.g*., Hua Hsu, *Student Debt is Transforming the American Family*, THE NEW YORKER (Sept. 2, 2019), https://www.newyorker.com/magazine/2019/09/09/student-debt-is-transforming-the-american-family [https://perma.cc/9JGQ-MS4M]; *see also* Lance Frank, *As Student Loan Debt Hits Record Levels, Some Americans Are Putting Off Home Buying and Retirement – Will They Be Able to Get Out from Under Crippling Loans?*, CBS NEWS (Apr. 30, 2019), https://www.viacomcbspressexpress.com/cbs-news/releases/view?id=52571[https://perma.cc/2MN8-UT5V]; Diana Hembree, *New Report Finds Student Debt Burden Has 'Disastrous Domino Effect' on Millions of Americans*, FORBES (Nov. 1, 2018), https://www.forbes.com/sites/dianahembree/2018/11/01/new-report-finds-student-debt-burden-has-disastrous-domino-effect-on-millions-of-americans/#20638e8012d1[https://perma.cc/J7RF-S47Y]; Christopher Ingraham, *7 ways $1.6 trillion in student loan debt affects the U.S. economy*, WASH. POST (June 25, 2019), https://www.washingtonpost.com/business/2019/06/25/heres-what-trillion-student-loan-debt-is-doing-us-economy/ [https://perma.cc/XXQ7-W7ZK]; Harameet Kaur, The Student Loan Debt is $1.6 Trillion and People are Struggling to Pay It Down, CNN (Jan. 19, 2020), https://www.cnn.com/2020/01/19/us/student-loan-slow-repayment-moodys-trnd/index.html [https://perma.cc/AY6T-X5SS]; Elissa Nadworny, *These Are the People Struggling the Most to Pay Back Student Loans*, NPR ME. PUB. (July 9, 2019), https://www.npr.org/2019/07/09/738985632/these-are-the-people-struggling-the-most-to-pay-back-student-loans [https://perma.cc/BHS7-X2KG].

officials, and banking regulators – accelerating efforts to tackle the crisis that began in earnest only a few years earlier.

For more than a hundred years, the American financial system has recognized the critical role that states play in overseeing financial markets.[88] Every state's police power is founded on the need to protect the general well-being of its citizens,[89] including the power to oversee the companies responsible for the financial futures of those citizens.[90] As the United States Supreme Court explained four decades ago, "banking and related financial activities are of profound local concern . . . . [S]ound financial institutions and honest financial practices are essential to the health of any State's economy and to the well-being of its people."[91]

The impact of student debt on the lives and livelihoods of borrowers is no longer possible to ignore or deny. Research shows that student loan borrowers are less likely to buy homes,[92] start families,[93] or save for retirement.[94] They are less likely

---

88 *See*, *e.g*., Alejandro Komai & Gary Richardson, *A Brief History of Regulations Regarding Financial Markets in the United States: 1789 to 2009* 4 (NBER, Working Paper 17443, Sept. 2011), https://www.nber.org/papers/w17443.pdf [https://perma.cc/D9W3-QSA2].

89 *See, e.g*., CONF. ST. BANK SUPERVISORS, REENGINEERING NONBANK SUPERVISION 5 (2019), https://www.csbs.org/sites/default/files/chaptertwo-overview_of_state_nonbank_supervision_2.pdf [https://perma.cc/Z453-2QR6] ("A principle of the U.S. federalist system is the preservation of state police powers to ensure the health, safety, and general public welfare of state citizens . . . .While financial services and regulation has evolved over the past 200 years, state authority to ensure state citizens are safe from predatory or unsafe practices has been a crucial tenet of the federalist financial regulatory system.").

90 *See, e.g*., Mehrsa Barandaran, *Banking and the Social Contract*, 89 NOTRE DAME L. REV. 1283, 1293 (2014).

91 Lewis v. BT Inv. Managers, Inc., 447 U.S. 27, 38 (1980).

92 *See, e.g*., Meta Brown & Sydnee Caldwell, *Young Student Loan Borrowers Retreat from Housing and Auto Markets*, FED. RES. BANK OF N.Y.: LIBERTY STREET ECON. (Apr. 17, 2013), https://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html (illustrating the potential for lost asset accumulation opportunities, homeownership rates of 30-year-old student loan borrowers decreased by more than 5 percent compared with homeownership rates of 30-year-old non-borrowers); Chakrabarti, et. al., *Press Briefing on Household Debt, with Focus on Student Debt,* FED. RES. BANK OF N.Y., 36–47 (Apr. 3, 2017), https://www.newyorkfed.org/medialibrary/media/press/pressbriefing-household-student-debt-april32017.pdf [https://perma.cc/RY3P-B2AR] (finding that college attendees with student debt have lower homeownership rates than college attendees without student debt and that higher debt balances are associated with lower home ownership rates).

93 *See, e.g*., Jessica Dickler, *Student Loan Debt Is a Hurdle for Many Would-Be Mothers*, CNBC (May 22, 2018), https://www.cnbc.com/2018/05/22/student-loan-debt-is-a-hurdle-for-many-would-be-mothers.html.

94 *See*, *e.g*., CFPB, SNAPSHOT OF OLDER CONSUMERS AND STUDENT LOAN DEBT 14 (2017), http://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf [https://perma.cc/J58D-4X9C] (reporting that borrowers nearing retirement "had a lower median amount in their employer-based retirement account or an Individual Retirement Account (IRA) than consumers without student loan debt"); Joseph Egoian, *73 Will Be the Retirement Norm for Millennials*, NERDWALLET (Oct. 23, 2013), https://www.nerdwallet.com/blog/investing/73-retirement-norm-millennials [https://perma.cc/4D9Z-LU8A] (finding that a four-year college graduate with median student loan debt of $23,000 has about $115,000 less in retirement savings than a four-year college graduate with no student loans by the time they reach age 73).

to start businesses or serve their communities.[95] The impact doesn't end there — it ripples across neighborhoods, across communities, and across states. There are few markets more consequential to the well-being of any state than the student loan market. Research now shows the effects of student debt on communities and the economy–including stymying asset accumulation,[96] driving income, racial, and gender inequality,[97] and preventing residents from establishing long-term ties to their communities.[98]

Policing abuses in the student loan market should be a core part of state governments' approach to financial regulation for the same reason: when the student loan market fails, communities struggle. Over the last half decade, states have met demands for state action head-on. State policymakers have done more to protect

---

[95] *See, e.g.*, Brent W. Ambrose, et. al., *The Impact of Student Loan Debt on Small Business Formation*, (FRB of Philadelphia Working Paper No. 15-26, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2417676 [https://perma.cc/V5Q4-YTQ7]; Brandon Busteed, *Student Loan Debt: Major Barrier to Entrepreneurship*, GALLUP (Oct. 14, 2015), https://news.gallup.com/businessjournal/186179/student-loan-debt-major-barrierentrepreneurship.aspx [https://perma.cc/6GSF-F3S4].

[96] *See, e.g.*, Brown & Caldwell, *supra* note 89. *See generally* William Elliott & Melinda Lewis, *Student Debt Effects on Financial Well-Being: Research and Policy Implications*, 29 J. ECON. SURVS. 614, 614 (Aug. 8, 2015), [https://perma.cc/BNY2-4T54] (finding that student loan debt can delay asset accumulation for years and can decrease a family's net worth by 63 percent).

[97] *See, e.g.*, Richard Fry, *Young Adults, Student Debt, and Economic Well-Being*, PEW RES. CTR. (May 14, 2014), https://www.pewsocialtrends.org/wp-content/uploads/sites/3/2014/05/ST_2014.05.14_student-debt_complete-report.pdf ("[H]ouseholds headed by a young, college-educated adult without any student debt obligations have about seven times the typical net worth ($64,700) of households headed by a young, college-educated adult with student debt ($8,700)."). Additional research shows that an average student debt load ($53,000) for a dual-headed household with bachelors' degrees from four-year universities leads to a lifetime wealth loss of nearly $208,000. Robert Hiltonsmith, *At What Cost?: How Student Debt Reduces Lifetime Wealth*, DĒMOS (Aug. 2013), http://www.demos.org/sites/default/files/imce/AtWhatCostFinal.pdf [https://perma.cc/429S-52BV]; *see also* Daniel Cooper & J. Christina Wang, *Student Loan Debt and Economic Outcomes*, FED. RES. BANK OF BOS., no. 14-7, 2014, at 22, https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/economic/cpp1407.pdf. Furthermore, women and borrowers of color are disproportionately affected by student debt. *See* AM. ASS'N OF UNIV. WOMEN, *supra* note 31 (showing that on average, women have higher student loan balances than men); *see also* Canchola & Frotman, *supra* note 33 (noting that student loan borrowers of color are more likely to attend for-profit colleges and face unique obstacles while completing a degree, that data shows that over 90% of African-American and 72% of Latino students leave college with student loan debt, compared to 66% of white students and 51% of Asian-American students, and that upon entering repayment, research suggests higher rates of student loan defaults and delinquencies in zip codes populated primarily by minorities with higher income levels and education); Emily Rauscher & William Elliott, *The Relationship Between Income and Net Worth: A Virtuous Cycle for High – but Not Low – Income Households*, 20 J. POVERTY, Jan. 2016, at 1 (finding that a college graduate with heavy student loans will achieve the nation's median net worth slower than a college graduate without that debt, and concluding that financing higher education through student loans can put college graduates who begin school with few assets even further behind their wealthier peers).

[98] See Alvarro Mezza et al., Can Student Loan Debt Explain Low Homeownership Rates for Young Adults?, 1 FED. RES. CONSUMER & CMTY. CONTEXT 2, 5 (2019); PJ Tabit & Josh Winters, "Rural Brain Drain": Examining Millennial Migration Patterns and Student Loan Debt, 1 FED. RES. CONSUMER & CMTY. CONTEXT 7, 7 (2019), https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf [https://perma.cc/YAM5-E58B].

student loan borrowers in the past five years than in the fifty years prior. Since 2015, ten states have passed laws updating their banking regulators' supervisory and licensing authority to include student loan servicers, providing a key building block to engage in regular oversight and take early action to identify and halt illegal practices that plague the student loan industry.[99] In that same five year period, state law enforcement agencies filed more than half a dozen lawsuits against the largest student loan servicers in the country.[100] In parallel, regulators utilized their supervisory authorities to highlight and stamp out illegal activities.[101] Beyond individual lawsuits against the largest companies in the student loan market,

---

[99] For a comprehensive list of the state legislation, *see supra* note 14.

[100] *See, e.g*., Press Release, Xavier Becerra, Cal. Att'y Gen., Attorney General Becerra Charges Navient Corporation, Largest Student Loan Servicer, with Deceitful Practices and Debt-Collection Misconduct in Lawsuit (June 28, 2018), https://oag.ca.gov/news/press-releases/attorney-general-becerra-charges-navient-corporation-largest-student-loan [https://perma.cc/9RPS-VCTF]; Press Release, Bob Ferguson, Wash. Att'y Gen., AG Ferguson Files Suit Against Sallie Mae Offshoot Navient Corp., Announces Student Loan Bill of Rights Legislation (Jan. 18, 2017), https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-suit-against-sallie-mae-offshoot-navient-corp-announces-student [https://perma.cc/3M2U-96K7]; Press Release, Maura Healey, Mass. Att'y Gen., AG Healey Secures $2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer (Nov. 22, 2016), https://www.mass.gov/news/ag-healey-secures-24-million-significant-policy-reforms-in-major-settlement-with-student-loan [https://perma.cc/CCL9-EM89]; Press Release, Maura Healey, Mass. Att'y Gen., AG Healey Sues to Protect Public Service Loan Forgiveness (Aug. 23, 2017), https://www.mass.gov/news/ag-healey-sues-to-protect-public-service-loan-forgiveness [https://perma.cc/9SM7-VDPV]; Press Release, Jim Hood, Miss. Att'y Gen., AG Hood Launches Lawsuit Against Student Loan Lenders (July 24, 2018), http://www.agjimhood.com/releases/ag-hood-launches-lawsuit-against-student-loan-lenders/ [https://perma.cc/H782-VUCT]; Press Release, Letitia James, N.Y. Att'y Gen., Attorney General James and Superintendent Vulla Announce $9 Million Settlement of Federal Student Loan Servicing Claims with Acs Education Services (Jan. 4, 2019), https://ag.ny.gov/press-release/2019/attorney-general-james-and-superintendent-vullo-announce-9-million-settlement [https://perma.cc/2YE5-UUNW]; Letitia James, N.Y. Att'y Gen., AG James Sues Student Loan Servicer for Mismanaging Loan Forgiveness Program (Oct. 3, 2019), https://ag.ny.gov/press-release/2019/ag-james-sues-student-loan-servicer-mismanaging-loan-forgiveness-program [https://perma.cc/98US-TZWH]; Press Release, Lisa Madigan, Ill. Att'y Gen., Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses (Jan. 18, 2017), http://www.illinoisattorneygeneral.gov/pressroom/2017_01/20170118.html [https://perma.cc/Y4FB-CZVF]; Press Release, Josh Shapiro, Pa. Att'y Gen., Case Update: Attorney General Shapiro Announces Another Win in Lawsuit Against Nation's Largest Student Loan Company (Dec. 18, 2018), https://www.attorneygeneral.gov/taking-action/updates/case-update-attorney-general-shapiro-announces-another-win-in-lawsuit-against-nations-largest-student-loan-company/18 [https://perma.cc/6JL8-GKLM].

[101] *See, e.g.*, Consent Order, *In re* TFC Credit Corp. of Cal. (NMLS #1708442, Banking Comm'nr, Hartford, CT, May 28, 2019); Consent Order, *In re* Tuition Options & EDVANTAGE (N.Y.S. Dept. of Fin. Servs., Aug. 14, 2019); *see also*, Press Release, Letitia James, supra note 100; Press Release, Linda A. Lacewell, Fin. Servs. Superintendent, N.Y. Dept. of Fin. Servs. DFS Superintendent Linda A. Lacewell Announces Settlement with National Student Loan Servicer of For-Profit Schools (Aug. 15, 2019), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1908151 [https://perma.cc/AMU9-NRX6]; Minnesota Commerce Department announces action against improper student loan debt collections, *supra* note 38 ("Minnesota Commerce [Department] . . . and regulators in four other states have reached a $500,000 joint settlement with two subsidiaries of iQor Holdings Inc. for improper debt collection practices, including making abusive and harassing phone calls to increase student loan payments.").

Attorneys General have taken other high-profile enforcement actions, including actions against the corporations that operate predatory for-profit colleges, wiping out hundreds of millions of dollars in student loan debt.[102]

On the heels of significant reforms to protect student loan borrowers, some state lawmakers have begun to propose more sweeping and comprehensive authorities to reshape the tools that states can bring to bear when working to protect borrowers. For example, California lawmakers have proposed ambitious legislation to replicate many of the Bureau's critical tools: including state-level market monitoring provisions, the nation's first comprehensive state-level student loan servicing standards, and a student borrower advocate modeled on the CFPB student loan ombudsman.[103] New Jersey legislators have proposed sweeping new reforms to the private student loan market, providing enhanced protections that prohibit predatory practices across the lifecycle of a private loan, from origination through collections.[104] Maryland legislators, with the support of Maryland's Attorney General, have introduced legislation that would create new protections to crack down on abusive student loan debt collection practices that mirror the worst of the "robo-signing" scandals of the foreclosure crisis.[105]

But even as these proposals represent a critical step forward in expanding states' ability to police the student finance market, they also expose the limitations of the state regulatory system that they seek to strengthen–relying on state agencies that are far different than the Consumer Bureau established by Congress.

The limitations of the system are most clearly evident where borrowers are left without critical protections as new risks emerge. Legislators and regulators may struggle to navigate slow-moving statehouses to seek out new authorities or tools to address these risks, even where, in some instances, they already have supervisory jurisdiction under existing laws.[106] For example, consider a state legislature that authorizes its banking agency to oversee student loan companies, only to later determine that the agency could better police the student loan market with expanded

---

[102] *See, e.g.*, Jillian Berman, *Former For-Profit College Students Will Have $168 Million in Student Debt Cancelled*, MARKETWATCH (June 17, 2019), https://www.marketwatch.com/story/former-for-profit-college-students-will-have-168-million-in-student-debt-cancelled-2019-06-14 [https://perma.cc/C569-EEBW]; Ian Stewart, *Nearly 180,000 Students Won't Have to Repay Loans from* For-Profit Higher Ed Company, NPR (Jan. 3, 2019), https://www.npr.org/2019/01/03/682057881/nearly-180-000-students-wont-have-to-repay-loans-from-for-profit-higher-ed-compa [https://perma.cc/8C2H-UHYF]; Press Release, Ellen Rosenblum, *supra* note 40.

[103] *See, e.g.*, Felicia Mello, *As Trump Rolls Back Student Loan Protections, an Obama-Era Watchdog Brings the Fight to California*, CALMATTERS (Apr. 23, 2019), https://calmatters.org/politics/2019/04/student-loans-debt-for-profit-college-trump-obama-california/ [https://perma.cc/7A8N-9FG8].

[104] S. 2359, 219th Leg., Reg. Sess. (N.J. 2020).

[105] H.B. 1562, 2020 Leg., 441st Sess. (Md. 2020); *see also* Student Borrower Prot. Ctr., The Long Legacy of Predatory Private Student Loans: Defrauding Borrowers and Lying to Courts 7 (2020) (documenting private student loan debt collection practices in Maryland).

[106] *See supra* notes 2-8 and accompanying text.

regulatory and data collection authority.[107] This process can take years and only succeeds if legislators and advocates can overcome partisan and industry opposition.[108]

The limitations of the system can also be seen in the siloed nature of recent legislative reforms built upon a system focused on narrow classes of products or providers. To date, advocacy efforts to better protect student loan borrowers have focused on enacting new legislation to provide state financial regulators with enhanced authorities over "student loan servicers."[109] This reform is both necessary and valuable, but clearly limited in scope—protecting borrowers from just one set of potential bad acts or practices that occur after they incur debt, but before the moment in which they might default.

As a consequence, in many states, even after these advocacy efforts are successful and new laws are passed, the state regulator will still lack authority over the companies responsible for handling that same borrower's account should the borrower default on his or her loans.[110] Oversight over nonbanks is typically authorized through a patchwork of narrow laws, and, in the student loan market, it is common that oversight over the collection of defaulted loans by third-party debt collectors is excluded from the scope of student loan oversight statutes.[111]

Consider, for example, the problem posed by illegal collection tactics. Where a state regulator oversees student loan servicers but lacks comparable authority over debt collectors, a bright line delineates the limits of states' oversight authority. As a result, despite ample evidence of rampant harm and illegal practices inflicted by debt collectors upon the most vulnerable borrowers,[112] and despite in some instances the

---

107 *See, e.g.*, David Lazarus, *California Braces for Battle with Trump Administration Over Student Loans*, L.A. TIMES (Mar. 6, 2018), http://www.latimes.com/business/lazarus/la-fi-lazarus-california-devos-student-loans-20180306-story.html [https://perma.cc/A5PV-E39H] ("'California led the country in enacting a licensing program for private contractors that service federal student loans,' [California Attorney General Xavier Becerra] told me. 'We are proud of this important program and of our strong student protections in general, but we also know we have a long way to go.' [He] said nearly a third of California student-loan borrowers are in default or delinquent in payments, which he called 'a clear indication of servicing failure.'").

108 *See* Kevin Wack, *Student Borrow Protection Bill Stalls in California*, AM. BANKER, https://www.americanbanker.com/news/student-borrower-protection-bill-stalls-in-california [https://perma.cc/5UEQ-7DZS] (last visited Apr. 30, 2020). *See supra notes* 2-8 and accompanying text.

109 *See, e.g.*, Andrew Kreighbaum, *States Put Stamp on Student Loan Oversight*, INSIDE HIGHER ED (July 19, 2019), https://www.insidehighered.com/news/2019/07/19/states-pass-flurry-bills-targeting-loan-servicers [https://perma.cc/LH2R-ZCZM].

110 *See* If You Default on Your Federal Student Loan, the Loan May Be Placed with a Collection Agency, Which Will Then Contact You to Obtain Payment, FED. STUDENT AID, https://studentaid.gov/manage-loans/default/collections [https://perma.cc/PN5W-3NGK] (last visited Mar. 10, 2020).

111 *See, e.g.,* Cal. Fin. Code § 28104 (West 2019) ("A 'student loan servicer' does not include a debt collector, as defined in Section 1788.2 of the Civil Code, whose student loan debt collection business, and business operations, involve collecting, or attempting to collect, on defaulted student loans, that is, federal student loans for which no payment has been received for 270 days or more, or private student loans, in default, according to the terms of the loan documents.").

112 *See, e.g.*, *Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses*, ILL. ATT'Y GEN. (Jan. 18, 2017),

debt collector being a subsidiary of the same corporate entity as the original servicer, state regulators must turn a blind eye to the risks facing student loan borrowers.[113] California and New York each illustrate this gap well. After protracted legislative efforts to pass student loan servicing legislation in 2016 in California and in 2019 in New York, borrowers in default still fall outside of the purview of state regulators, forcing lawmakers to begin anew as they aspire to cover the waterfront. These delays will add years before diligent oversight is established over the full lifecycle of a student loan.[114]

These regulatory blind spots with regard to debt collectors are just one example. Even within the student loan market, where a significant expansion of authority has occurred at the state level over the course of the past five years, states are often left without the tools necessary to demand justice when, for example, borrowers fall victim to abuses by student lenders, specialty student finance companies, credit reporting agencies, and companies promising "debt relief" and "credit repair" to borrowers in distress. Limitations in the system are also seen in oversight of other student financial products that seemingly fall just beyond the reach of state regulators. Whether due to the loopholes enshrined in legislation or a slick sales

---

http://www.illinoisattorneygeneral.gov/pressroom/2017_01/20170118.html [https://perma.cc/34YD-6WE8] ("Attorney General Lisa Madigan today filed a lawsuit against Navient Corporation, its subsidiaries Navient Solutions Inc., Pioneer Credit Recovery Inc. and General Revenue Corporation and Sallie Mae Bank, over widespread abuses across all aspects of its business, including student lending, student loan servicing and student loan debt collection."); *U.S. Department of Education to End Contracts with Several Private Collection Agencies*, U.S. DEP'T EDUC. (Feb. 27, 2015), https://www.ed.gov/news/press-releases/us-department-education-end-contracts-several-private-collection-agencies [https://perma.cc/V25Y-DTL4] ("In its review, the Department found that agents of the companies made materially inaccurate representations to borrowers about the loan rehabilitation program, which is an option that can create benefits to defaulted borrowers after they have made nine on-time payments in a period of 10 months. The five private collection agencies listed above were found to have given inaccurate information at unacceptably high rates about these benefits. In particular, these agencies gave borrowers misleading information about the benefits to the borrowers' credit report and about the waiver of certain collection fees."); *see also* DEANNE LOONIN & PERSIS YU, POUNDING STUDENT LOAN BORROWERS, NAT'L CONSUMER L. CTR. 4 (2014), https://www.nclc.org/images/pdf/pr-reports/report-sl-debt-collectors.pdf [https://perma.cc/R7J5-6KT2].

[113] *See, e.g.*, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, CFPB (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/ [https://perma.cc/DAP6-689Z] ("The Bureau also alleges that Navient, *through its subsidiary Pioneer*, made illegal misrepresentations relating to the federal loan rehabilitation program available to defaulted borrowers. Pioneer misrepresented the effect of completing the federal loan rehabilitation program by falsely stating or implying that doing so would remove all adverse information about the defaulted loan from the borrower's credit report. Pioneer also misrepresented the collection fees that would be forgiven upon completion of the program.") (emphasis added).

[114] *See, e.g.*, Kate Berry, *In Rebuke of CFPB States Look to Get Tough on Debt Collectors*, AM. BANKER (Jan. 15, 2020) [https://perma.cc/N78B-98KD];
David Lazarus, *Trump Slashed Consumer Protections Slashed Consumer Protections California Is Stepping Up*, L.A. TIMES (Jan. 9, 2020), [https://perma.cc/MNG7-7RWS] ("Significantly, the new law also would give the state oversight of debt collectors—a regulatory function now limited to federal authorities."); *NY Governor Wants to License Debt Collectors*, NBC (Dec. 19, 2019), https://www.nbcnewyork.com/news/politics/ny-governor-wants-to-license-debt-collectors/2245611/ [https://perma.cc/NWP5-9UTN].

pitch from an "innovative" business that claims its products fall outside the scope of existing protections, these practices leave borrowers without the benefit of a state regulator working to halt abuses and protect its citizens.[115]

For example, some states have chosen to carve out a special type of student loan servicer from otherwise comprehensive oversight proposals.[116] These carve-outs remain controversial, as these firms continue to be accused of engaging in aggressive "steering" practices and have frequently been the target of criticism by government watchdogs.[117] In other states, companies make high cost, risky loans to vulnerable students at predatory schools, but avoid basic transparency obligations because they fall just outside the requirements for licensure.[118] Similarly, a wave of "financial innovation" in student finance has unleashed exotic new financial products, known as "income-share agreements," that purport to be neither "credit" nor "debt," despite mirroring the structure of a private student loan in nearly all respects.[119] By extension, the backers of these products and the law firms paid to advise them have adopted the posture that because these financial products are neither debt nor credit, the firms that offer these products need not be bound by the state laws and oversight that regulate debt and credit.[120]

---

[115] Consider, for example, the emergence of "income-share agreements" as an alternative financing scheme for students seeking to pay for college. Attorneys hired by providers of these financial products have argued that they sit beyond the reach of regulators who otherwise oversee consumer lending. MORRISON & FOERSTER LLP, REGULATORY TREATMENT OF EDUCATIONAL ISAS UNDER FEDERAL AND SELECT STATE CONSUMER CREDIT STATUTES 17 (2019), https://media2.mofo.com/documents/190408-regulatory-educational-consumer-credit-statutes.pdf [https://perma.cc/8S4U-KEVG] ("Accordingly, we believe that a court should conclude that an ISA is not subject to the New York usury cap because an ISA is not a "loan" for purposes of the New York usury law.").

[116] *See, e.g.*, AB-38, Cal. Gen. Assemb. (Cal. 2018) ("This division shall not apply to any of the following . . . (6) In connection with its responsibilities as a guaranty agency engaged in default aversion, a state or nonprofit private institution or organization having an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b).").

[117] *See* Mike Pierce, *What It Means To Be A Student Loan Servicer: Guaranty Agency Edition*, STUDENT BORROWER PROTECTION CTR. (March 29, 2019), https://protectborrowers.org/what-it-means-to-be-a-student-loan-servicer-guaranty-agency-edition/ [https://perma.cc/Z288-H633]; *Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates*, U.S. GOV'T ACCOUNTABILITY OFF. (April 26, 2018), https://www.gao.gov/products/GAO-18-163 [https://perma.cc/6378-TBZS].

[118] *See, e.g.*, Press Release, Linda A. Lacewell, *supra* note 101 (noting that the New York Department of Financial Services could not take action to halt the unlicensed extension of high cost loans because the lender did not fall within its parameters and only gained jurisdiction when the entity took on retail installment obligations).

[119] *See* Mitch Daniels, *Here Is a Powerful Alternative to Student Loans*, WASH. POST (Nov. 28, 2019), https://www.washingtonpost.com/opinions/income-share-agreements-are-a-powerful-alternative-to-student-loans/2019/11/27/5290d0ee-0be3-11ea-97ac-a7ccc8dd1ebc_story.html [https://perma.cc/K6DQ-R49P] ("An ISA is dramatically more student-friendly than a loan. . . . Think of an ISA as equity instead of debt, or as working one's way through college — after college."). *But see* Adam Levitin, *What Is "Credit"? AfterPay, Earnin', and ISAs*, CREDIT SLIPS (July 16, 2019), https://www.creditslips.org/creditslips/2019/07/what-is-credit-afterpay-earnin-and-isas.html [https://perma.cc/JM6K-JNBT] ("[T]here's good reason to think that some, if not all, ISAs involve a debt and are therefore 'credit,' for various federal regulatory purposes. The most natural read of the statutes is that ISAs are credit and subject to the full panoply of federal consumer finance regulations.").

[120] *See, e.g.*, MORRISON & FOERSTER LLP, *supra* note 115.

As each of these preceding examples illustrates in isolation, borrowers are exposed to harm when gaps in the system sideline state regulators. When taken together, these examples depict a system that lacks the dexterity to regulate the modern student finance landscape. At every step, predatory actors seek to exploit a vulnerable system that is often too slow or too fragmented to take the necessary action to protect borrowers.

While the recent history of law and regulation in student finance discussed above clearly demonstrates the challenges facing tens of millions of student borrowers, it also exposes the flaws in the state-level regulatory framework across the marketplace at large. For example, similar to a private student financing firm that purportedly does not make "private education loans" as defined in federal consumer financial law, payday lenders market themselves as "mortgage loans"[121] or "open end lines of credit"[122] to skirt the protections of usury laws.[123] Similarly, "technology" companies tout that payday loan products are not "credit" and therefore usury limits do not apply.[124] Past industry efforts to skirt accountability are more than just a function of regulatory arbitrage. Much as states lack authority to perform routine oversight over student loan debt collectors, there are still states that cannot oversee mortgage servicers for compliance with basic consumer laws even a decade after a

[121] *See, e.g.*, Debbie Holmes, *Changes in Ohio Short-Term Lending Law Create New Loan Landscape*, CINCINNATI PUB. RADIO (Oct. 21, 2019), https://www.wvxu.org/post/changes-ohio-short-term-lending-law-create-new-loan-landscape#stream/0 [https://perma.cc/VM8W-MHBC] ("In 2008, Ohio voters approved a 28% interest rate cap on short-term loans. However, payday lenders used a loophole and applied for licenses under the Mortgage Lending Act. That allowed them to charge higher interest rates and add more fees. Some annual percentage rates could reach 600% or higher.").

[122] *See, e.g.*, Michael Lee Pope, *Virginia Lawmakers Play Whack-A-Mole with Predatory Lenders*, THE CONNECTION (Feb. 7, 2020), http://www.connectionnewspapers.com/news/2018/feb/09/virginia-lawmakers-play-whack-mole-predatory-lende/ [https://perma.cc/WM4D-JX6R]; *Editorial: Virginia Needs to Rein in Payday Lenders*, VA. PILOT (Jan. 17, 2019), https://www.pilotonline.com/opinion/article_5155281a-19b8-11e9-92a9-e391dde9be3b.html [https://perma.cc/7HTX-KR56] ("A loophole in Virginia's usury law allows 'open' credit lines that are exempt from interest rate caps. The law was intended to let stores offer charge cards . . . . Now loan companies use open-end 'lines of credit' to entice people who are down on their luck to run up big, seemingly never-ending debts. Another variation uses the borrower's car title as security, while in another, the borrower agrees to automatic withdrawals from a bank account, sometimes without understanding how often the withdrawal will be made.").

[123] *See generally* Jeff Guo, *Many States Have Cracked Down on Payday Loans. Here's How Lenders Still Get Away with It*, WASH. POST (Feb. 9, 2015), https://www.washingtonpost.com/blogs/govbeat/wp/2015/02/09/many-states-have-cracked-down-on-payday-loans-heres-how-lenders-still-get-away-with-it/ [https://perma.cc/KY5M-QJAG]; Astra Taylor, *Why It's So Hard to Regulate Payday Lenders*, NEW YORKER (Aug. 3, 2016), https://www.newyorker.com/business/currency/why-its-so-hard-to-regulate-payday-lenders [https://perma.cc/S9PH-AKKY].

[124] *See, e.g.*, Kevin Dugan, *Popular Cash Advance App Earnin Operating in Payday Loan 'Gray Area,' Critics Claim*, N.Y. POST (March 21, 2019), https://nypost.com/2019/03/21/popular-cash-advance-app-earnin-operating-in-payday-loan-gray-area-critics-claim/ [https://perma.cc/L696-WLNG] ("Critics say Earnin's marketing and business models resemble those of Payday 2.0, and that its tactics may be intended to skirt regulations on payday lending, which has been banned in 15 states including New York because of sky-high interest rates that can top 500 percent on an annualized basis.").

once-in-a-century financial crisis driven by abuses across this sector.[125] Exposure to risks driven by "innovators" extends beyond traditional lending and servicing, as the challenges presented by bitcoin and other cryptocurrencies have demonstrated over the past decade.[126] At the periphery of the financial system, we see our most vulnerable citizens exploited by industries that prey on those seeking the American Dream, stripping wealth from families by promising a way to "rent-to-own" that proves illusory for nearly all who pursue it.[127] Yet again in this case, we see the purveyors of these exotic products exploit gaps in the state regulatory system to avoid basic consumer financial protection and oversight, stretching back decades.[128]

In each of the preceding examples, American families face significant risks where financial services firms exploit gaps in the state financial regulatory system. Time and time again, as markets have changed, as the political and legal landscapes have shifted, and as crises have arisen, borrowers have been left behind. A product falls into a regulatory blind spot. A loan that was illegal yesterday can now be extended at triple digit interest rates. A new product gains a foothold in the market without any guardrails or protections. A regulator knows a product is hurting borrowers, but does not have the tools to help. The end result is the same – a borrower gets ripped off, a family falls behind, a neighborhood is decimated.

This paper is not intended to be an indictment of the dedicated officials at the helm of state regulatory agencies. The system is not vulnerable because of a lack of commitment or a lack of seriousness of purpose by the dedicated public servants tasked with protecting American families. Instead, faults lie in the structure of the patchwork system itself—a system that fails to give regulators the tools and authority necessary to ensure "[s]ound financial institutions and honest financial practices," despite a mandate to do so.[129] With each new crisis, this system falls further short of its intent, in the process failing American families and putting the health of the

---

[125] *See New Jersey Enacts a Law to License Mortgage Loan Officers,* MAYER BROWN (May 8, 2019), https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2019/05/new-jersey-enacts-a-law-to-licensing-mortgage-loan-servicers.pdf [https://perma.cc/B6JU-GRX8] ("Nationwide, less than 12 states do not license those who service residential mortgage loans for others.").

[126] *See, e.g.*, *Money Transmitter Act Guidance for Virtual Currency Businesses,* PA. DEP'T OF BANKING AND SECURITIES, https://www.dobs.pa.gov/Documents/Securities%20Resources/MTA%20Guidance%20for%20Virtual%20Currency%20Businesses.pdf [https://perma.cc/M6F5-93AH] (last visited Mar. 9, 2020) (noting that virtual currency exchanges are not covered under Pennsylvania's Money Transmitter Act). *But see* Nancy Scola, *Consumer Bureau Now Taking—and Expecting—Bitcoin Complaints*, WASH. POST (Aug. 11, 2014), https://www.washingtonpost.com/news/the-switch/wp/2014/08/11/consumer-bureau-now-taking-and-expecting-bitcoin-complaints/ [https://perma.cc/F3J3-AZ64].

[127] *See* James P. Nehf, *Effective Regulation of Rent-to-Own Contracts,* 52 OHIO ST. L.J. 751, 781 (1981).

[128] *See, e.g.*, Brian Highsmith & Margot Saunders, *The Rent-to-Own Racket, Using Criminal Courts to Coerce Payments from Vulnerable Families*, NAT'L CONSUMER L. CTR. 6 (Feb. 2019) https://www.nclc.org/images/pdf/criminal-justice/report-rent-to-own-racket.pdf [https://perma.cc/3MGA-696Z] ("The industry has been able to charge astronomic effective interest rates by structuring the consumer contracts to avoid the application of state laws limiting finance charges in consumer credit sales.").

[129] Hearings Before the Committee on Banking, Housing, and Urban Affairs, United States Senate, Ninety-eighth Congress, First Session, on Problems, Options, and Issues Currently Facing the Financial Services Industry and the Agencies that Regulate and Supervise These Entities, at 69 (1983).

economy in jeopardy.[130]

IV. THE STATE CONSUMER BUREAU: A VISION FOR A FINANCIAL REGULATORY SYSTEM THAT CENTERS CONSUMERS

We are not bound to accept the status quo or pursue incremental improvements to the current structure of state oversight. The rationale necessitating the creation of the CFPB at the federal level and the systemic reforms and institutional structure that led to its widespread success offers a different vision–one that can meet and conquer the challenges consumers face and can recognize the importance that credit plays in the lives of borrowers in each and every state.

States should establish dedicated consumer financial protection regulators–"state consumer bureaus." This vision recognizes the critical role states play in overseeing the financial markets in the 21st century and builds as its foundation an independent, well-resourced state regulator, with broad authority, robust tools that allow deliberate interventions to address consumer harm, and a focus that centers consumers in every aspect of its design and structure.

This vision has gained momentum in state capitals since 2017 as New York,[131] Pennsylvania,[132] and Maryland[133] have all made significant efforts to bolster state-level consumer financial protection. In 2020, the California legislature will consider the furthest-reaching proposal introduced to-date, overhauling its existing state financial regulator to mirror the structure and reach of the federal Consumer Bureau.[134]

As these states and others undertake this critical task, it is important to draw the right insights from the Bureau's successes to ensure that lawmakers shape these

---

[130] Id.

[131] *See, e.g.*, Press Release, NY Dept. of Fin. Servs, Acting Superintendent Lacewell Announces Appointment of Katherine Lemire as Executive Deputy Superintendent of Newly Created Consumer Protection & Enforcement Division SERVS.(Apr. 29, 2019), https://dfs.ny.gov/reports_and_publications/press_releases/pr1904291 [https://perma.cc/K9ZX-3XP7].

[132] *See, e.g.*, Press Release, PA Office of Attorney General, Attorney General Josh Shapiro Announces Consumer Financial Protection Unit (July 20, 2017), https://www.attorneygeneral.gov/taking-action/press-releases/attorney-general-josh-shapiro-announces-consumer-financial-protection-unit/ [https://perma.cc/36PE-M624].

[133] *See, e.g.*, Michael Dresser, *Assembly Leaders Want Maryland to Protect Consumers if U.S. Backs Down*, BALT. SUN (Jan. 26, 2018), https://www.baltimoresun.com/politics/bs-md-financial-protections-20180126-story.html [https://perma.cc/A7X8-BLFB].

[134] *See, e.g.*, David Lazarus, *Column: Trump Slashed Consumer Protections. So California Is Stepping Up*, L.A. TIMES (Jan. 9, 2020), https://www.latimes.com/business/story/2020-01-09/column-california-consumer-bureau [https://perma.cc/8RSE-CL6T]; Aarthi Swaminathan, '*A Major, Major Initiative': California Wants to Create its own Consumer Financial Protection Bureau*, YAHOO FINANCE, Feb. 10, 2020, https://finance.yahoo.com/news/california-mini-cfpb-133209881.html [https://perma.cc/E6CZ-UHPC]; Michael McCauley, *Consumer Reports Praises Governor Newsom's Plan to Create Consumer Financial Watchdog for California*, CONSUMER REPORTS, (Jan. 20, 2020), https://advocacy.consumerreports.org/press_release/consumer-reports-praises-governor-newsoms-plan-to-create-consumer-financial-watchdog-for-california/ [https://perma.cc/V6NX-SBDG]; Aarthi Swaminathan, '*A Major, Major Initiative': California Wants to Create Its Own Consumer Financial Protection Bureau*, YAHOO FIN. (Feb. 10, 2020), https://finance.yahoo.com/news/california-mini-cfpb-133209881.html.

efforts in a manner that best allows state governments to deliver. These insights are described below.

A. All state consumer financial protection laws should be consolidated at a single agency.

One of the most powerful reforms of the Dodd-Frank Act was the decision to consolidate the administration of the most essential federal consumer financial protection laws at a single agency.[135] From the Truth in Lending Act to the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act to the Fair Credit Reporting Act, the CFPB administers a wide range of laws to ensure that consumers are protected.[136] Congress also bestowed upon the CFPB broad authority to stamp out unfair, deceptive, and abusive practices by any covered person under its purview, in any market for consumer financial products or services.[137] With respect to each of these laws, the CFPB has rulemaking and supervisory authority.[138] The CFPB also shares enforcement authority with state attorneys general, state banking departments and, in some cases, other federal regulators.[139]

State consumer bureaus should enjoy the same range of authorities in order to ensure these new agencies are well-positioned to take a similar, holistic approach to regulating the consumer finance marketplace as their federal counterpart. Further, authorizing legislation for a state consumer bureau should explicitly incorporate these federal consumer financial protection statutes, declaring that any violation of any law under CFPB's purview is also a violation of state law, enforceable by the new agency.

But a state consumer bureau can and should go further than its federal counterpart. State lawmakers can recognize additional protections that were not incorporated among the enumerated statutes under Dodd-Frank, but which are still essential to protecting consumers. For example, both the Military Lending Act and the Servicemembers Civil Relief Act provide key consumer financial protections to

---

[135] *See, e.g.*, Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction,* 32 REV. BANKING & FIN. L. 321, 344 (2013) (discussing the Bureau's "enumerated statutes").
[136] *See* 12 U.S.C. § 5481(12)(q) (2012); Christopher Lewis Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review,* 90 TULANE L. REV. 1057, 1068 (2016) ("The CFPA transferred regulatory authority for 'consumer financial law' to the CFPB; it defined 'consumer financial law' to include the CFPA itself along with eighteen 'enumerated' consumer laws, including nearly all consumer credit and bank-account-related consumer protection statutes.").
[137] 12 U.S.C. § 5511(b)(2) (2019); *see, e.g.*, Peterson, *supra* note 136, at 1061.
[138] It is important to note, however, there are some divergences across the scope of the Bureau's different powers. *See, e.g.*, Levitin, *supra* note 135, at 343 ("The CFPB has rulemaking, supervision, and enforcement authority over an extremely broad swath of the consumer financial services industry, but the extent of its rulemaking, supervision, and enforcement powers do not all align.").
[139] Dodd-Frank Act, 12 U.S.C. § 5522 (2018); *see also* LAUREN SAUNDERS, ROLES OF THE STATES UNDER THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2010 1-2 (Dec. 2010) (describing the "partnership" that the Dodd Frank Act creates with the states, including the role of state attorneys general and state banking regulators in enforcing aspects of the law); *see generally* Mark Totten, *Credit Reform and the States: The Vital Role of Attorneys General After Dodd-Frank*, 99 IOWA L. REV. 115 (2013) (discussing the array of federal regulators with jurisdiction over the Equal Credit Opportunity Act).

military families, and the state should supervise covered entities for compliance with these critical laws.[140] State consumer bureaus should also have the authority to protect consumers from being harassed on their cell phones, as well as from being harmed by predatory small business loans.[141]

Most importantly, state consumer bureaus can stand up when the federal government fails. Borrowers should not be subjected to discrimination in the credit market simply because the ideologies of federal policymakers' shift.[142] States can, and should, ensure that their statutes–from state fair lending to state consumer protection laws–are stronger. For example, statutes should explicitly contain the critical mechanisms needed to hold companies accountable when they cause disparate harm to vulnerable communities.[143] Furthermore, replicating the state enforcement that exists in Dodd-Frank, lawmakers should create mechanisms, where appropriate, to allow municipalities and private individuals to enforce key protections and regulations promulgated by the state consumer bureaus and allow them to become an equal partner in protecting consumers.[144]

B. Regulators need access to a full toolbox to fix a broken consumer finance market.

From handling individual consumer complaints to performing regular supervision, from enforcement to rulemaking, creating an effective consumer bureau requires that a new agency have the full panoply of tools to hold bad actors accountable for illegal conduct.[145] The central premise behind the CFPB was not only the recognition that consumer financial protection belongs at a single government agency, but that such an agency must be able to bring the full range of

---

[140] *See* Military Lending Act, Pub. L. No. 109-364, § 670(a), 120 Stat. 2083, 2266-69 (2006) (codified as amended at 10 U.S.C. § 987 (2018)); Servicemember Civil Relief Act, 50 U.S.C. §§ 3901-4043 (2018).

[141] *See* 47 U.S.C. § 227 (2018); *see, e.g.*, Ann Marie Wiersch & Christine Weiss, *Protecting Small-Business Borrowers*, FOREFRONT (Dec. 7, 2020), https://www.clevelandfed.org/newsroom-and-events/publications/forefront/ff-v6n03/ff-20151207-v6n03-protecting-small-business-borrowers.aspx [https://perma.cc/J32H-ZB8L].

[142] *See, e.g.*, Christopher Willis, *CFPB Hints at Possible Disparate Impact Rulemaking in Fall Agenda*, JDSUPRA (Oct. 29, 2018), https://www.jdsupra.com/legalnews/cfpb-hints-at-possible-disparate-impact-29309/ [https://perma.cc/446Z-J834]; Letter from Attorney Gen. Josh Stein et al. to Acting Director Mick Mulvaney (Sept. 5, 2018), https://ag.ny.gov/sites/default/files/ecoa_disparate_impact_letter_to_cfpb_final.pdf [https://perma.cc/L5GC-FDHG].

[143] *See*, *e.g*., Richard Loconte, DFS Takes Action to Protect New Yorkers from Unfair Auto Lending Practices as Federal Government Rolls Back Consumer Protection, DEP'T FIN. SERVS. (Aug. 23, 2018), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1808231 [https://perma.cc/TA63-UPAF].

[144] 12 U.S.C. § 5552; *see, e.g.*, Totten, *supra* note 139; Kathleen C. Engel, *Local Government and Risky Home Loans*, 69 SMU L. REV. 609, 637 (2016).

[145] *See, e.g.*, Leonard J. Kennedy, Patricia A. McCoy, & Ethan Bernstein, *The Consumer Financial Protection Bureau: Financial Regulation for the Twenty-First Century*, 97 CORNELL L. REV. 1141, 1146 (2012) ("Congress gave the CFPB six basic tools to achieve these goals: examination and supervision, enforcement, rulemaking, consumer education, collecting and responding to consumer complaints, and researching and monitoring consumer financial markets.").

legal, regulatory, and policy tools to bear to help consumers. Underpinning this insight was the recognition that this broad, complementary set of tools gives a consumer bureau the capacity to select the most effective and efficient means to protect consumers, and that this approach was the best way to prevent another crisis.

Congress also gave the CFPB wide-ranging authority to write rules to ban specific unfair, deceptive, and abusive acts and practices wherever they occur, as long as the company committing predatory acts falls under the agency's purview.[146] In effect, this gives the agency the ability to take what it learns from supervision, consumer complaints, research, and enforcement in order to apply these insights to set stronger standards for an entire industry, rather than simply halt the most egregious practices at an individual company.

By following this approach, state lawmakers can authorize a state consumer bureau to be nimble, allowing each of its tools to work in concert to effectively regulate an entire industry or market. Parallel, or even overlapping, mechanisms of accountability should not be dismissed as duplicative or superfluous. Instead, they should be considered critically important to the effective protection of consumers.

C. Agencies' jurisdiction should be broad enough to cover the entirety of the consumer financial services marketplace, without artificial limits based on what a product is called or whether a financial institution takes deposits.

One of the most significant lessons of the crisis was that all financial services firms, regardless of structure, need robust and comprehensive oversight if we wish to counter consumer harm that permeates the banking and financial sector.[147] That lesson is as true now as it was then. We have seen how banks like Wells Fargo can rip millions of people off without them ever knowing.[148] But we have also seen how nonbank financial service providers can harm people to the tune of billions of dollars.[149]

The structure of the CFPB was unique in that it recognized that consumers' financial lives do not fit neatly into categories like "bank" and "nonbank."[150] Nor

---

[146] 12 U.S.C. § 5512 (20192018); 15 U.S.C. § 45 (2018); *see* CFPB, *Unfair, Deceptive, or Abusive Acts of Practices*, CFPB CONSUMER LAWS AND REGULATIONS (Oct. 2012), https://files.consumerfinance.gov/f/documents/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf [https://perma.cc/SUE5-A7TH]; Kennedy et. al., *supra* note 145, at 1146.

[147] *See, e.g.*, Jeremy C. Kress, Patricia A. McCoy, & Daniel Schwarcz, *Regulating Entities and Activities: Complementary Approaches to Nonbank Systemic Risk*, 92 S. CAL. L. REV. 1455, 1467 (2019).

[148] *See* Consumer Financial Protection Bureau Fines Wells Fargo $100 Million Widespread Illegal Practice of Secretly Opening Unauthorized Accounts, CFPB (Sept. 8, 2016), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/ [https://perma.cc/7MT8-Y6AA].

[149] *See, e.g.*, Complaint at 23, CFPB v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. 2017) ("At the conclusion of those forbearances, Navient had added nearly four billion dollars of unpaid interest to the principal balance of their loans.").

[150] *See, e.g.*, Roosevelt Inst. Fin. & Wealth, *Real Change: Turning Up the Heat on Non-Bank Lenders*, ROOSEVELT INSTITUTE (Sept. 4, 2009), https://rooseveltinstitute.org/real-change-turning-heat-non-bank-lenders/ [https://perma.cc/9G4W-B9WF].

are consumers' lives organized by the type of product they are using. Any meaningful effort to systemically reform the consumer finance marketplace must take seriously the need for regulators to have authority over the full range of products and companies that affect their citizens' financial lives.

The CFPB's framers rejected the idea of determining the scope of the Bureau's authority based on artificial lines. In order to empower the CFPB to fulfill its mission of protecting consumers, financial services companies could no longer pick their regulator by structuring products or business units to fall outside of easily evaded definitions of product or narrow demarcations of covered entities. Instead, the new agency had the ability to take action against the full range of players in the market with regard to any financial product or service offered to consumers. As state lawmakers consider action to create a state consumer bureau, this insight is a necessary first step—lawmakers must vest in a single agency the authority to act in all corners of the consumer finance marketplace and address illegal practices with respect to all consumer financial products and services.

Further, the lawmakers crafting state consumer bureaus have the opportunity to go beyond the CFPB's specific structure, which does include several important limitations of the Bureau's purview. These blind spots should be a warning for state lawmakers–at key moments in the federal legislative process, political influence outweighed warnings of consumer harm and lawmakers excluded entire markets from the Bureau's purview as a concession to special interests' lobbying.[151]

Lawmakers should not let lobbyists draw arbitrary lines exempting markets or market participants. Additionally, lawmakers need not limit the scope of the agency's oversight based out of political concern over a specific tier or size of financial institutions while ignoring the risks these entities may pose. Lastly, while it is certain that preemption will preclude certain types of state action, lawmakers should not limit their state's consumer bureau before it even opens its doors. Instead states should empower the agencies to act as its leadership deems necessary, but also protect laws from legal challenge through carefully drafted severability or savings provisions. Recognizing that political leadership will change over time, both in Washington and in state capitals, a state consumer bureau can best meet the needs of consumers if it can operate to the fullest extent permitted under federal law, without artificial limits. Only by giving these new consumer watchdogs the broadest range of authorities to oversee all markets, for all institutions of all sizes, will state lawmakers ensure these agencies have the power to protect consumers across their entire financial lives.

D. Consumer complaints are a critical component of consumer-driven

---

[151] 12 U.S.C. § 5519 (2018); *see, e.g.*, Press Release, United States Senate Comm. on Banking, Hous. & Urban Affairs, Dodd on Efforts to Carve Out Auto Dealer Financing (May 13, 2010), https://www.banking.senate.gov/newsroom/minority/dodd-on-efforts-to-carve-out-auto-dealer-financing [https://perma.cc/NPJ8-CHXH]; Ericka Eichelberger, *Car Loans Could Be the Next Subprime Crisis. Thanks, Republicans!*, MOTHER JONES (July 22, 2014), https://www.motherjones.com/politics/2014/07/car-loans-subprime-crisis-republicans/ [https://perma.cc/39FU-P7SW].

reform.

To date, nearly two million consumers have been helped through the CFPB's complaint portal.[152] Importantly, the CFPB looked at those millions of complaints and recognized that complaints were not isolated incidents.[153] It knew that for every consumer who complained about being ripped off, often many more sat silent despite being harmed and that, through careful attention to just one complaint, the CFPB could help millions.

For six years, this approach to financial regulation was evident in every aspect of the Bureau's work. In effect, complaints were the foundation of the CFPB, driving real reform across markets. These complaints drove the prioritization of supervision and enforcement.[154] They drove the research and analysis underpinning rulemaking, and they drove strategic inter- and intra-governmental efforts. Through complaints, the CFPB was able to help tens of millions of people.[155]

Building off of this insight, state lawmakers can do more than just replicate this approach—they can improve upon it. Financial services firms, regardless of size or structure, should be required by state law to engage with the state consumer bureau in a robust complaint resolution process, where substantive answers to consumers' questions are required and guidelines around "responses" and "resolution" are clearly articulated. Furthermore, lawmakers should enshrine in statute a mandate for public access to complaints.[156] In addition to publicizing complaint information to the public at large, this information—including company responses to borrowers'

---

[152] *Consumer Financial Protection Bureau to Enhance Consumer Complaint Database*, CFPB (Sept. 18, 2019), https://www.consumerfinance.gov/about-us/newsroom/bureau-enhance-consumer-complaint-database/ [https://perma.cc/X4H3-5PAR] ("To date, the Bureau has handled more than 1.9 million complaints. More than 5,000 financial companies have responded through this process, providing timely responses to 97 percent of the more than 1.3 million complaints sent to them for response.").

[153] See, e.g., CFPB Report Finds Consumer Complaints Spurred Actions That Brought More Than $750 Million in Relief for Student Loan Borrowers, CFPB (Oct. 16, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-consumer-complaints-spurred-actions-brought-more-750-million-relief-student-loan-borrowers/ [https://perma.cc/8JFR-PL45] ("'Today's report shows that complaints by student loan borrowers led to hundreds of millions of dollars in relief and important market reforms,' said CFPB Director Richard Cordray.").

[154] *See, e.g.*, *CFPB Examination Procedures*, CFPB (Aug. 2017), https://files.consumerfinance.gov/f/documents/201708_cfpb_compliance-management-review_supervision-and-examination-manual.pdf [https://perma.cc/K2A3-8XQB]; *2017 Consumer Response Annual Report*, CFPB (Mar. 2018), https://www.consumerfinance.gov/data-research/research-reports/2017-consumer-response-annual-report/ [https://perma.cc/UNX8-BM99].

[155] *CFPB Report Finds Consumer Complaints Spurred Actions That Brought More Than $750 Million in Relief for Student Loan Borrows*, CFPB (Oct. 16, 2017) https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-consumer-complaints-spurred-actions-brought-more-750-million-relief-student-loan-borrowers/ [https://perma.cc/WT6H-38KK] ("The Consumer Financial Protection Bureau (CFPB) today released a report that shows complaints by student loan borrowers have driven actions that have produced more than $750 million in relief for student loan borrowers and strengthened the student loan repayment process for millions more.").

[156] *See, e.g.*, Sylvan Lane, *Acting CFPB Chief Mulls Taking Down Public Complaint Database*, THE HILL (Apr. 24, 2018), https://thehill.com/policy/finance/384697-acting-cfpb-chief-mulls-taking-down-public-complaint-database [https://perma.cc/2LLX-QYWV].

complaints—should also be shared as widely as possible across both federal and state law enforcement channels to ensure strategic coordination in tackling market breakdowns.[157]

E. Finally, distinct populations can bring unique insight.

Consumer-driven reform is not limited to complaints. The architects of the CFPB realized that special populations interact with consumer financial markets in unique ways, and with that often comes unique problems. From the Office for Young Consumers, to the Office for Servicemember Affairs, to the Office for Older Americans—dedicating resources to understanding the problems and experiences of these populations was a key to the CFPB's success.[158] Further, the challenges faced by these populations often forced these consumers to function as the "canary in the coalmine." When they faced breakdowns in their financial lives, it signaled a broader, emerging risk at a company, or across an entire industry.[159]

State consumer bureaus should have the tools to follow this approach, housing dedicated offices for each segment of the population, and serving as an external outreach mechanism that creates an avenue for these populations to engage with the bureau. These offices can also serve as drivers of policy change. They can coordinate the work of offices across the state consumer bureau—aligning oversight, enforcement, research, rulemaking, and more to ensure that the experiences of these special populations are centered in all of the bureau's work and to ensure that the entire agency remains focused on the needs of these constituencies.

Just as was true with respect to specific laws under a state consumer bureau's purview, state consumer bureaus would benefit from an even more expansive set of statutory authority to make sure that all uniquely vulnerable populations are represented in the bureau's structure. This could include, for example, an Office for New Americans, an Office for Rural Affairs, and an Office for Financial Inclusion. Furthermore, state consumer bureaus should be adaptable to address the needs of emerging populations not yet contemplated to guarantee that the agencies' policy perspectives–and subsequent actions–remain responsive to the needs of vulnerable people across an entire state.

CONCLUSION

As discussed in detail above, the framework outlined in this Article illustrates the opportunity for lawmakers to empower their states to stand up for consumers by advancing systemic reforms and deploying a regulatory structure to replicate and amplify the successful work the CFPB accomplished in its half-decade of

---

[157] *See, e.g.*, Dodd-Frank Act, 12 U.S.C. § 5493(b)(3)(B) (2018) ("Routing calls to states. To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph.").

[158] *See* § 5493(g).

[159] *See generally* Rohit Chopra, *Written Testimony of Rohit Chopra before the Committee on the Budget*, CFPB (June 4, 2014), https://www.consumerfinance.gov/about-us/newsroom/written-testimony-of-rohit-chopra-before-the-committee-on-the-budget/ [https://perma.cc/P79Z-SCJF].

prominence. In short, this framework not only provides the pathway to create a state consumer bureau that has the same tools, resources, and mission as its federal equivalent, but also positions this new agency closest to where people interact with the consumer financial products and services that shape their financial lives. By following this approach, state lawmakers can ensure that a state consumer bureau can do what the federal government lacks the authority to do and can push other states, and the federal government, to do better. A state consumer bureau can stand up when the federal government falls down.

It is true that some have portrayed recent efforts to modernize and strengthen state oversight of financial services firms as merely a response to the direction of the federal government and a rejection of the current administration. To some degree that is likely the case. However, if lawmakers were to dismiss efforts to create state level consumer bureaus as simply a reaction to the current political climate, it would be incredibly shortsighted. Improving state level consumer financial protection is about more than creating a backstop or alternative to federal oversight when Washington ideologies shift. The framework outlined in this Article provides states with a roadmap to create a long-lasting legacy that can center consumers' needs regardless of who sits in the White House.

This effort is about creating a mechanism to push the status quo forward, even when state leaders are ideologically aligned with the federal government–one that recognizes that the collective fate of the millions of borrowers in a given state depends on well-functioning credit markets that are not tied solely to the outcome of a single federal election. Such a mechanism is the only one capable of ensuring honest financial practices essential to the health of any state's economy. It is the only one that truly fulfills each state's most solemn mission: to promote the well-being of its people.