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SLBA
Student Loan Borrower Assistance

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regarding

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

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

Upon arriving at NCLC, I joined our Student Loan Borrower Assistance Project and continued to represent individual clients. In addition to that work, my colleagues and I train and support attorneys who represent student loan borrowers nationwide. We offer this testimony on behalf of NCLC's low-income clients.[1]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[13] *See* Press Release, Consumer Fin. Prot. Bureau, CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment: Navient, Formerly Part of Sallie Mae, Cheated Borrowers Out of Repayment Rights Through Shortcuts and Deception (Jan. 18. 2017); Press Release, Att'y Gen. of Cal., Attorney General Becerra Charges Navient Corporation, Largest Student Loan Servicer, with Deceitful Practices and Debt-Collection Misconduct in Lawsuit (June 28, 2018); Press Release, Att'y Gen. of Pa., Attorney General Shapiro Sues Nation's Largest Student Loan Company for Widespread Abuses (Oct. 5, 2017); Press Release, Att'y Gen. of Ill., Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses (Jan. 18, 2017); David Gutman, State AG Sues Student Loan Company, Alleging Unfair And Deceptive Practices, *Seattle Times* (Jan. 18, 2017); Press Release, Att'y Gen. of Mass., AG Healey Secures $2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer (Nov. 22, 2016).
[14] U.S. Gov't Accountability Office, Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight: Highlights, Report No. GAO-16-523, 19 (May 16, 2016).
[15] *Id.* at 20.
[16] Consumer Fin. Prot. Bureau, CFPB Monthly Snapshot Spotlights Student Loan Complaints (Apr. 2017).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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