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Relief for Student Loan Borrowers Victimized by “Relief” Companies Masquerading as Legitimate Help

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# Relief for Student Loan Borrowers Victimized by “Relief” Companies Masquerading as Legitimate Help

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*Masquerading as legitimate help are companies that target forty-four million borrowers owing over \$1.6 trillion in student loan debt. “Relief” companies purport to help borrowers struggling to repay student loans but, in fact, inflict irreversible financial harm by charging borrowers unlawful fees. Often pretending to be affiliated with the U.S. Department of Education (Education Department), relief companies falsely claim they can enroll borrowers into income-driven repayment plans and forgiveness programs. Exploiting twenty-first century technologies, relief companies can now easily reach millions of borrowers by, for example, making robocalls to cellphones, posting phony five-star reviews on social media, and requiring borrowers to e-sign documents disclosing their financial information. One company alone bilked student loan borrowers out of thirty-five million dollars in unlawful fees for bogus relief.*

*This Article addresses the federal response to widespread fraud by relief companies. Borrowers can theoretically obtain free help from private companies called “loan servicers,” which are authorized by the Education Department to assist borrowers with repayment options. However, under new leadership since 2017, the Education Department has taken steps to shield loan servicers from being held accountable for alleged unlawful servicing practices. Similarly, the Bureau of Consumer Financial Protection (CFPB) has implemented several harmful changes, including closing the only federal office dedicated to assisting student loan borrowers. In light of harmful actions taken by the CFPB and the Education Department, this Article proposes that states establish ombudsmen to effectively advocate for borrowers and eliminate their susceptibility to relief companies falsely promising to help. This Article also proposes that Congress require the Education Department to implement existing technology-based solutions to prevent relief companies from taking over borrowers’ online loan accounts to conceal their fraudulent activities.*

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## INTRODUCTION

During a commencement address, nearly four hundred graduates erupted into cheers after billionaire Robert Smith announced his establishment of a thirty-four million dollar fund to pay off the student loan debt of the *entire* Morehouse College Class of 2019.<sup>1</sup> This widely reported announcement sparked hope.<sup>2</sup> Unfortunately, however, there remain over forty-four million borrowers, owing over \$1.6 trillion in student loans, who cannot expect a billionaire bailout.<sup>3</sup> With so many borrowers burdened with student loan debt, companies claiming to alleviate their financial distress can target millions of borrowers.<sup>4</sup>

Consider the experience of Chelsea Olds after she received a text message stating that she was qualified for student loan forgiveness.<sup>5</sup> Ms. Olds, a therapy assistant owing nearly \$30,000 in student loan debt, thought the text message was from the federal government.<sup>6</sup> Following a brief communication by phone, Ms. Olds received an email message from an employee at AmeriTech Financial, Inc. (AmeriTech), informing her that her student loan payments would be reduced and, after twenty-five years of payments, any remaining debt would be forgiven.<sup>7</sup>

After clicking on a link provided in the email message, Ms. Olds watched a video of a speech by President Barack Obama about forgiveness of federal student

1. Danielle Douglas-Gabriel, *Robert F. Smith's Morehouse Pledge Is Getting a Lot Bigger*, WASH. POST (Sept. 20, 2019, 10:58 AM), [https://www.washingtonpost.com/local/education/robert-f-smiths-morehouse-pledge-is-getting-a-lot-bigger/2019/09/20/1ab08e6e-ce6f-11e9-b29b-a528dc82154a\\_story.html](https://www.washingtonpost.com/local/education/robert-f-smiths-morehouse-pledge-is-getting-a-lot-bigger/2019/09/20/1ab08e6e-ce6f-11e9-b29b-a528dc82154a_story.html) [https://perma.cc/XDM6-NPLR]; Bo Emerson, *Morehouse Commencement Speaker to Pay Off Class of 2019's Student Loans*, ATLANTA J.-CONST., May 20, 2019, at A1; Dalvin Brown, *'I'm So Salty': Twitter Reacts to Robert. F. Smith's Vow to Cover Morehouse Grads' Debt*, DAILY AM., May 20, 2019 (reporting that 396 graduates would have their student loan debts paid off by Mr. Smith).

2. See, e.g., Brown, *supra* note 1.

3. *Examining Legislation to Protect Consumers and Small Business Owners from Abusive Debt Collection Practices: Hearing Before the H. Comm. on Fin. Servs.*, 116th Cong. (2019) (statement of Rohit Chopra, Comm'r, Federal Trade Commission); see also *Consumer Credit - G.19*, BD. OF GOVERNORS OF THE FED. RESRV. SYS., <https://www.federalreserve.gov/releases/g19/current/> [http://web.archive.org/web/20200531160119/https://www.federalreserve.gov/releases/g19/current/] (May 7, 2020) (May 2020 figures). Most outstanding student loan debt is guaranteed by the federal government. See Christopher K. Odinet, *The New Data of Student Debt*, 92 S. CAL. L. REV. 1617, 1627, 1631 (2019).

4. See, e.g., Susan Tompor, *Don't Believe the Pitch for Student Loan Forgiveness*, USA TODAY, July 16, 2019, at B6.

5. See Declaration of Chelsea Olds in Support of FTC Motion for Preliminary Injunction at 1, *FTC v. Am. Fin. Benefits Ctr.*, No. 4:18-cv-00806-SBA (N.D. Cal. Mar. 5, 2018) [hereinafter Chelsea Olds's Declaration].

6. *Id.*

7. *Id.*

loan debt.<sup>8</sup> Further persuaded by this video, Ms. Olds was confident in her decision to sign up for AmeriTech's program by electronically signing several documents, which, among other things, disclosed her sensitive financial information.<sup>9</sup> Thereafter, AmeriTech withdrew from Ms. Olds's bank account \$255 for the first month, \$235 each month for the next six months, and then \$99 each month for the following six months.<sup>10</sup>

Then in July 2017, Ms. Olds received a past-due notice from Nelnet, Inc., the loan servicing company authorized by the U.S. Department of Education (Education Department) to collect her student loan payments.<sup>11</sup> She contacted Nelnet and explained that her payments were current because she had made them through AmeriTech.<sup>12</sup> The employee then gave Ms. Olds the "shock" of her life—not a single payment to AmeriTech had gone to Nelnet.<sup>13</sup> After contacting AmeriTech and being unsuccessful in getting a refund, Ms. Olds had to face reality.<sup>14</sup> She had been duped. Not only was she out of roughly \$1,800, but her student loan balance had also increased due to the capitalization of interest, and her stress level was exacerbated.<sup>15</sup> Ms. Olds is one of over 40,000 borrowers across the nation duped into paying sixty million dollars to AmeriTech for phony relief programs.<sup>16</sup>

Ms. Olds's experience raises two pressing questions: (1) Are there legitimate federal programs that reduce loan payments and forgive student loan debt, and (2) do companies like AmeriTech have the authority to enroll borrowers in those programs? The answer to the first question is that the Education Department has numerous federal programs under which qualified borrowers can obtain reduced monthly payments and forgiveness of student loan debts.<sup>17</sup> The answer to the

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8. *Id.*

9. *Id.*

10. *Id.* (stating that her first payment was \$255).

11. *Id.* at 1–2.

12. *Id.* at 2.

13. *Id.*

14. *Id.*

15. *Id.*

16. *See* Order Granting Motion for Preliminary Injunction, *FTC v. Am. Fin. Benefits Ctr.*, No. 4:18-cv-00806-SBA (N.D. Cal. Dec. 5, 2018) [hereinafter *American Financial Inj. Order*]; Updated Joint Case Management & Proposed Order at 6, 8, *FTC v. Am. Fin. Benefits Ctr.*, No. 4:18-cv-00806-SBA (N.D. Cal. Nov. 20, 2018). Brandon Frere, the owner of AmeriTech, was arrested in 2018 as he attempted to board a flight headed to Mexico, then pled guilty to charges of wire fraud and money laundering in December 2019. Press Release, U.S. Att'y's Off., Dep't of Just., Sonoma County CEO Pleads Guilty to Charges Stemming from \$25-65 Million Student Loan Repayment Services Scam (Dec. 20, 2019), [hereinafter *DOJ Press Release*], <https://www.justice.gov/usao-ndca/pr/sonoma-county-ceo-pleads-guilty-charges-stemming-25-65-million-student-loan-repayment> [<https://perma.cc/H6P7-LFJV>].

17. Mr. Foss, while in his capacity as Program Specialist in the Office of Federal Student Aid within the Education Department, described several federal loans and numerous federal repayment plans and forgiveness programs. *See* Declaration of Ian Foss in Support of FTC's Motion for Preliminary Injunction at 4, *FTC v. Am. Fin. Benefits Ctr.*, No. 4:18-cv-00806-SBA (N.D. Cal. Mar. 5, 2018) [hereinafter *Ian Foss's Declaration*].

second question is that companies purporting to provide debt relief (relief companies) have absolutely no authority to certify that borrowers are qualified for such programs and no authority to actually enroll borrowers in them.<sup>18</sup>

This Article asserts that relief companies, using the existence of legitimate programs available to student loan borrowers, combine old-fashioned fraudulent misrepresentations with twenty-first century technology to deceive borrowers with false promises of debt relief. Loan servicers, including the company servicing Ms. Olds's loan, are actually the legitimate companies that can help borrowers manage student loan debt.<sup>19</sup> Besides processing monthly payments and handling billing-related matters, loan servicers are supposed to assist borrowers by helping them to select and enroll in legitimate federal repayment plans.<sup>20</sup> However, over the years, numerous reports have credibly accused loan servicers of committing widespread unlawful practices, including steering borrowers' loans into forbearances.<sup>21</sup> In 2018 and 2019, the Bureau of Consumer Financial Protection (CFPB)<sup>22</sup> and several state attorneys general filed separate enforcement actions against several loan servicers for committing unlawful deceptive and abusive practices.<sup>23</sup> It is, therefore, unsurprising that many borrowers are struggling to make

18. *Id.* at 15 (stating that only companies hired through a competitive process by the Education Department have the authority to service and collect payments on federal loans).

19. *See Who's My Student Loan Servicer?*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/repayment/servicers> [<https://perma.cc/9LE4-QDF3>] (last visited Sept. 28, 2020); *supra* note 18 and accompanying text. The Education Department's Office of Federal Student Aid has regulatory oversight over federal student loan servicers. *See* ARNE DUNCAN, JAMES W. RUNCIE & JAY HURT, FED. STUDENT AID, ANNUAL REPORT 2012, at 3 (2012), <http://www2.ed.gov/about/reports/annual/2012report/fsa-report.pdf> [<https://perma.cc/3DY5-JYVR>]. Currently, ten private companies have contracts with the Education Department authorizing them to service federal student loans. *See Who's My Student Loan Servicer?*, *supra* (identifying the loan servicers and providing links to the homepage for each servicer).

20. *See Who's My Student Loan Servicer?*, *supra* note 19.

21. OFF. OF INSPECTOR GEN., U.S. DEPT OF EDUC., ED-OIG/A05Q0008, FEDERAL STUDENT AID: ADDITIONAL ACTIONS NEEDED TO MITIGATE THE RISK OF SERVICER NONCOMPLIANCE WITH REQUIREMENTS FOR SERVICING FEDERALLY HELD STUDENT LOANS 13 (2019), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf> [<https://perma.cc/4PNT-67AM>]; *see, e.g.*, Ken Sweet, *Report: Oversight of Student Loans Lax*, CHI. TRIB. (Feb. 19, 2019), [https://digitaledition.chicagotribune.com/tribune/article\\_popover.aspx?guid=78a58482-8f6a-4d9a-9fa8-59d72603621b](https://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=78a58482-8f6a-4d9a-9fa8-59d72603621b) [<https://perma.cc/VJ9T-5WLE>]; Jeff Blumenthal, *Bank Notes: Navient Tops Consumer Complaint List Among Student Loan Servicers*, PHILA. BUS. J. (Jan. 15, 2019, 9:36 AM), <https://www.bizjournals.com/philadelphia/news/2019/01/14/navient-student-loan-complaints-navi-lendedu.html> [<https://perma.cc/GVE9-LVXV>].

22. The CFPB is an independent federal agency that was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to ensure "that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. §§ 5511(a), 5491(a). One of the primary functions of the CFPB is to collect, investigate, and respond to consumer complaints. 12 U.S.C. § 5511(c)(2). The CFPB was created in the wake of the financial crisis because no single federal agency was primarily focused on consumer protection. *See* Kelly T. Cochran, *The CFPB at Five Years: Beyond the Numbers*, 21 N.C. BANKING INST. 55, 55–56 (2017) (describing why the CFPB was formed and explaining its major functions).

23. After completing investigations initiated during President Barack Obama's administration, the CFPB and several states sued Navient Corp., the nation's largest student loan servicer for alleged

payments and are in need of help but are unsure where to find it.<sup>24</sup> As a result, loan servicers are partially at fault for borrowers falling prey to debt relief scams.<sup>25</sup>

While numerous articles have tackled the student loan crisis by focusing on various issues, including the soaring cost of higher education,<sup>26</sup> this Article exposes how more than 100 student loan debt relief companies exploit the void left by loan servicers to target millions of borrowers, especially those earning income at or near the poverty level.<sup>27</sup> Because relief companies have no contractual relationship with the Education Department, they do not actually have the authority to enroll borrowers with student loan debts into various federally created repayment plans and forgiveness programs.<sup>28</sup> Moreover, because relief companies usually charge upfront fees for their so-called services, these companies invariably violate relevant

deceptive practices. *See e.g.*, Complaint for Permanent Injunction and Other Relief at 9, Consumer Fin. Prot. Bureau v. Navient Corp., No. 3:17-cv-00101, 2017 WL 191446 (M.D. Pa. Jan. 18, 2017) [hereinafter Consumer Fin. Prot. Bureau v. Navient Complaint]; Complaint at 28, Illinois v. Navient Corp., No. 2017CH00761, 2017 WL 374522 (Ill. Cir. Ct. Jan. 18, 2017) [hereinafter Illinois v. Navient Complaint]. For further discussion regarding the enforcement actions filed against Navient and others, see *infra* notes 202–42 and accompanying text.

24. *See, e.g.*, *An Examination of State Efforts to Oversee the \$1.5 Trillion Student Loan Servicing Market: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Fin. Servs.*, 116th Cong. app. 78 (2019) (statement of Arwen Thoman, Director, Student Loan Assistance Unit, Massachusetts Att’y Gen.’s Off.) (stating that borrowers often contact the Massachusetts’s Office of the Attorney General and express their confusion regarding student loan balances remaining high despite years of making payments to the loan servicers).

25. *See id.* at 11 (“[P]redatory debt relief companies take advantage of distressed borrowers who turn to them when student loan servicers have failed to help.”).

26. *See, e.g.*, Cody M. Allen, *Paying the Debt: The Government’s Obligation to our Servicemembers and Its Duty to Simplify the Various Benefits Provided to Servicemembers with Student Loans*, 26 AM. BANKR. INST. L. REV. 179 (2018); Jonathan D. Glater, *Student Debt and the Siren Song of Systemic Risk*, 53 HARV. J. ON LEGIS. 99, 104-05 (2016) (“[T]he commentaries express concern that rising student indebtedness is precarious and unsustainable . . .”); Rafael I. Pardo & Michelle R. Lacey, *The Real Student-Loan Scandal: Undue Hardship Discharge Litigation*, 83 AM. BANKR. INST. L. REV. 229 (2009).

27. *See* Richard Read & Teddy Nykiel, *Feds Point Fingers as ‘Debt Relief’ Companies Prey on Students*, NERDWALLET (June 14, 2017), <https://www.nerdwallet.com/blog/loans/student-loans/debt-relief-companies-prey-student-borrowers/> [<https://perma.cc/VRF8-2BNG>] (maintaining a watch list of companies suspected of perpetrating student loan relief scams by regularly searching court records for lawsuits and negative ratings by the Better Business Bureau); FTC v. All. Document Preparation, 296 F. Supp. 3d 1197, 1203 (C.D. Cal. 2017) (alleging that defendants “are targeting vulnerable, low-income debtors and are convincing them to pay rates up to 5% of their yearly income for a service freely offered by student loan provider [*i.e.*, servicer]”).

28. *See, e.g.*, Off. of the Att’y Gen. v. Strategic Student Sols. LLC, No. 50-2017-CA-005788, 2018 WL 6652962, at \*2 (Fla. Cir. Ct. Nov. 26, 2018) (entering judgment against defendants for violating Florida law because, among other things, defendant “had no special business relationship” with the Education Department); District of Columbia v. Student Aid Ctr., Inc., No. 2016 CA 003768 B, 2017 WL 9532847, at \*2 (D.C. Super. Ct. Nov. 29, 2017) (imposing nearly \$418,000 in monetary damages on defendants who falsely represented they could secure lower payments and debt forgiveness for borrowers).

state and federal laws that forbid the charging of such fees.<sup>29</sup> As a result, relief companies are not considered legitimate debt relief companies in this Article.<sup>30</sup>

As explained in Part I of this Article, relief companies step into the thicket of borrower confusion and promise relief to borrowers by committing old-school fraudulent practices (e.g., oral misrepresentations) to mislead consumers into signing up for phony relief.<sup>31</sup> By engaging in a high-level mimicry strategy, relief companies pretend to be legitimate governmental or nonprofit organizations,<sup>32</sup> misrepresent their ability to secure for borrowers lower payments and loan forgiveness, and misrepresent their ability to reverse the consequences of borrowers' defaulting.<sup>33</sup>

Relief companies combine fraudulent misrepresentations with twenty-first century technologies to target millions of borrowers.<sup>34</sup> While modern technology may be employed to defraud consumers in a myriad of situations,<sup>35</sup> relief companies act as digital predators by successfully weaponizing technology to defraud thousands of student loan borrowers.<sup>36</sup> As demonstrated in Part II of this Article, relief companies no longer have to target consumers by simply relying on communications via "snail mail" and landline telephones.<sup>37</sup> Relief companies weaponize modern technology by making millions of robocalls with prerecorded

29. See *Strategic Student Sols.*, 2018 WL 6652962, at \*2 (finding defendants violated Florida law when they charged fees ranging from \$166 to \$233 as part of a "strategic" misrepresentation that consumers' loan payments would then decrease); *All. Document Preparation*, 296 F. Supp. 3d at 1210 (holding that defendants, which purportedly offered student loan relief services, violated Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(5)(i) (2018), by charging upfront, one-time fee of \$499 before doing any services). Companies that charge upfront fees should signal a red flag that a scam is afoot. That is because loan servicers cannot charge borrowers with federal student loans fees to get assistance with enrolling in repayment plans or certifying borrowers for loan forgiveness programs. See Ian Foss's Declaration, *supra* note 17, at 15.

30. See *infra* notes 202–242 and accompanying text (describing common fraudulent misrepresentations made by relief companies).

31. See *infra* notes 202–242 and accompanying text.

32. See, e.g., *All. Document Preparation*, 296 F. Supp. 3d at 1205 (issuing an injunction where, among other things, "[d]efendants intentionally misled consumers, whether through direct statements or through implication, to believe that [d]efendants were associated with the Department of Education, the Federal Government, or with consumer's existing student loan servicers").

33. See *id.*; *infra* notes 202–242 and accompanying text.

34. See *infra* Sections II.A–G.

35. In the "Grandparent Scam," scammers use technology to, for example, send a text message that is purportedly from a grandchild to a grandpa or grandma and ask that money be wired to him or her in order to post bail to be released from jail. See *Family Emergency Scams*, FTC, <https://www.consumer.ftc.gov/articles/0204-family-emergency-scams> [<https://perma.cc/R7WB-55DF>] (last visited Sept. 28, 2020).

36. See *infra* Sections II.A–G.

37. See, e.g., Tompor, *supra* note 4 (reporting that relief companies target consumers with robocalls); *Review of the FY2020 Budget Request for the FCC & FTC: Hearing Before the Subcomm. on Fin. Servs. & Gen. Gov't of the S. Comm. on Appropriations*, 116th Cong. (2019) [hereinafter *FTC Hearing*] (statement of Joseph Simons, Chairman, FTC) (testifying that advances in technology permit "bad actors to place millions or even billions of calls, often from abroad, at very low costs, and in ways that are difficult to trace").

advertisements and sending millions of messages via text and email.<sup>38</sup> Relief companies also effectively use technology by advertising through optimized online search results, promoting phony relief on social media platforms, and creating websites with fake sponsorship.<sup>39</sup> Finally, relief companies effectively use modern technology to require borrowers to electronically sign documents disclosing sensitive personal and financial information.<sup>40</sup> These companies mislead borrowers into believing such information will be used to work with their servicers to get the best results for borrowers.<sup>41</sup> However, like Ms. Olds above,<sup>42</sup> borrowers discover too late that the information is actually used to continue to charge their debit or credit cards and hide the fact that no debt reduction or forgiveness is being obtained on behalf of borrowers.<sup>43</sup>

Part III posits that comprehensive federal and state legislation are necessary to curb student loan relief scams even though borrowers with certain loans have not had to make payments since spring 2020. During the recently declared COVID-19 pandemic, the United States Congress passed legislation that affords temporary relief to borrowers *only* if they have federal student loans owned by the Education Department, and it suspends their loan payments, stops the accrual of interest, and bans certain collection practices against them.<sup>44</sup> Part III contends that

38. Consider again Ms. Olds, who erroneously concluded that text message about loan forgiveness was from the government. *See* Chelsea Olds's Declaration, *supra* note 5. The enforcement action against AmeriTech revealed several instances where the company led borrowers to believe that it was the Education Department. *See* American Financial Inj. Order, *supra* note 16, at 15–16 (alleging that defendants also claimed to work with the Education Department); Declaration of Chelsea Carbonneau in Support of FTC Motion for Preliminary Injunction at 2, *FTC v. Am. Fin. Benefits Ctr.*, No. 4:18-cv-00806-SBA (N.D. Cal. Mar. 2, 2018) (stating that a company employee told her that they were affiliated with the Education Department). For further discussion of scam-related text messages, see *infra* notes 130–161 and accompanying text. *See also* *Legislation to Stop the Onslaught of Annoying Robocalls: Hearing on H.R. 3375 Before the Subcomm. on Comm'n's & Tech. of the H. Comm. on Energy and Com.*, 116th Cong. 10 (2019) (statement of Margot Saunders, Senior Counsel, National Consumer Law Center) (urging Congress to put further restrictions on telemarketing because “robodialing and robotexting technology” allows companies to annually target consumers with billions of calls and text messages).

39. *See infra* notes 135–177 and accompanying text.

40. *See infra* notes 178–195 and accompanying text.

41. *See infra* notes 178–195 and accompanying text.

42. *See* Chelsea Olds's Declaration, *supra* note 5, at 1–2.

43. *Id.*; *see also infra* notes 178–189 and accompanying text.

44. *See* The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 3513, 134 Stat. 281 (2020). This act is commonly known as the CARES Act and was enacted on March 27, 2020. The CARES Act does not provide any student loan relief to roughly seven million borrowers with private loans, which are owed to banks and other creditors, and with Perkins loans, which are owed to individual colleges and universities. *See* Danielle Douglas-Gabriel, *Education Department Clarifies Trump Executive Order on Student Loans*, WASH. POST (Aug. 21, 2020, 2:09 PM), <https://www.washingtonpost.com/education/2020/08/21/education-department-clarifies-trump-executive-order-student-loans/> [https://perma.cc/6ABG-WZTL] (describing the details of the Education Department's extension of temporary relief through 2020, thereby allowing qualified borrowers to skip loan payments until 2021). The pause on payments was set to expire September 30, 2020; however, President Trump signed a memorandum that extends it until December 31, 2020. *See* Meghan Lustig, *Update on Coronavirus Relief for Student Loan Borrowers*, U.S. NEWS & WORLD

comprehensive legislation is needed to deter scams because so-called relief companies continue to scam student loan borrowers during the pandemic, loan servicers continue to fall short of their contractual obligations to help borrowers obtain affordable monthly payments, and the Education Department refuses to hold the servicers accountable for their failures and has taken several actions deemed harmful to borrowers.<sup>45</sup> Legislative action is also necessary because the CFPB, under new leadership, has implemented several harmful changes, including shuttering the Office for Students and Young Consumers (OSYC), the only federal office dedicated to affording protection to student loan borrowers.<sup>46</sup>

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REP. (Sept. 2, 2020, 10:47 AM), <https://www.usnews.com/education/blogs/student-loan-ranger/articles/update-on-coronavirus-relief-for-student-loan-borrowers> [https://web.archive.org/web/20200902232932/https://www.usnews.com/education/blogs/student-loan-ranger/articles/update-on-coronavirus-relief-for-student-loan-borrowers]. Even though the CARES Act has suspended collections against borrowers with federal student loans owned by the Education Department, a pending class-action lawsuit accuses Secretary Betsy DeVos and the Education Department of repeatedly violating the new law by, among other things, unlawfully garnishing borrowers' wages and intercepting their tax refunds. *See* Complaint, *Barber v. DeVos*, No. 1:20-cv-1137-CJN, 2020 WL 2094077 (D.D.C. April 30, 2020).

45. For a recently filed complaint alleging unlawful practices perpetrated by a student loan debt relief operation, see Complaint, *Bureau of Consumer Fin. Prot. v. GST Factoring, Inc.*, No. 8:20-cv-01239 (C.D. Cal. July 13, 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_gst-factoring-et-al\\_complaint\\_2020-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_gst-factoring-et-al_complaint_2020-07.pdf) [https://perma.cc/RFB5-R98L]. For an understanding of recent litigation charging the largest student loan servicer with unlawful practices, see *Pennsylvania v. Navient Corp.*, 354 F. Supp. 3d 529, 537 (M.D. Pa. 2018), *aff'd*, 967 F.3d 273 (3d Cir. 2020) (denying a motion to dismiss filed by Navient Corporation, the loan servicer formerly known as Sallie Mae, and concluding that Pennsylvania had sufficiently alleged that Navient committed unlawful practices, including steering borrowers into forbearance, which resulted in larger debt balances due to the accrual of interest). For further discussion of pending enforcement actions filed against loan servicers, see *infra* notes 202–241 and accompanying text. In fact, the Education Department and its Secretary, Betsy DeVos, were fined \$100,000 under a civil contempt court order for their failure to stop unlawfully collecting on loans owed by former students who were defrauded by the for-profit Corinthian Colleges (now defunct). *See* *Calvillo Manriquez v. DeVos*, 411 F. Supp. 3d 535, 538–39 (N.D. Cal. 2019) (finding the Education Department and Secretary DeVos in civil contempt for violating a preliminary injunction order when they “notified at least 3,000 Corinthian borrowers that their loans were entering repayment,” “provided adverse reports to credit reporting agencies for 847 Corinthian borrowers[,] and collected on the loans of 1,808 Corinthian borrowers through wage garnishment or offsets from tax refunds.”). For further discussion of actions taken by Secretary Betsy DeVos to reverse Obama-era protections, see *infra* notes 245–289 and accompanying text.

46. Jill E. Habig & Joanna Pearl, *Cities as Engines of Justice*, 45 *FORDHAM URB. L.J.* 1159, 1175–76 (2018) (describing actions constituting dramatic retrenchment from consumer protection by the CFPB under the leadership of Mick Mulvaney, who was appointed by President Donald Trump as the CFPB's interim director); Glenn Thrush and Stacy Cowley, *Mulvaney Demotes Student Loan Unit in Consumer Bureau Reshuffle*, *N.Y. TIMES*, May 10, 2018, at B4 (reporting that Mick Mulvaney announced his decision to shutter the OSYC at the bottom of a memo sent to the CFPB staff and stated that the OSYC would “be folded into the office of ‘Financial Education’”). Seth Frotman, who was then the CFPB's ombudsman and the head of the OSYC, resigned in protest after the OSYC was closed. *See* Yuka Hayashi, *U.S. News: CFPB Official Resigns*, *WALL ST. J.*, Aug. 28, 2018, at A4; *Turns His Back on Student Borrowers, Closes Office of Students and Young Consumers*, *CONSUMER ACTION* (May 9, 2018), [https://www.consumer-action.org/press/articles/mick\\_mulvaney\\_turns\\_his\\_back\\_on\\_student\\_borrowers1](https://www.consumer-action.org/press/articles/mick_mulvaney_turns_his_back_on_student_borrowers1) [https://perma.cc/9TS9-YKB2]; *infra* notes 334–367 and accompanying text (describing Mr. Mulvaney's actions that are harmful to consumers in general and student loan borrowers in particular).

To deter student loan relief scams, this Article proposes, in Part IV,<sup>47</sup> that each state creates an office similar to the former OSYC, headed by an advocate or ombudsman to assist borrowers.<sup>48</sup> The state-created ombudsman should have expansive duties that include receiving complaints about relief companies, assisting borrowers in obtaining legitimate debt management help, and reporting relief companies to authorities charged with enforcing consumer laws.<sup>49</sup> Admittedly, on the federal level, no bipartisan consensus exists for regulating student loan servicers and requiring them to actually assist borrowers struggling with student loan debt.<sup>50</sup>

Instead of waiting for a consensus on how to regulate loan servicers, Part IV argues that Congress should pass bipartisan proposed laws that are aimed at curbing the practices of debt relief companies. For example, student loan borrowers, like Ms. Olds, would benefit from recently enacted legislation directing the Federal Communications Commission to issue rules requiring telecommunication providers to use the latest technologies to block robocalls.<sup>51</sup> Moreover, Congress should pass legislation that would make it a felony for an unauthorized person to obtain borrowers' information to access their online student loan accounts.<sup>52</sup> Congress should also require the Education Department and loan servicers to implement multifactor authentication technology systems to prevent relief companies from taking over borrowers' online accounts to further their deception.<sup>53</sup> Under such requirements, individuals operating companies like AmeriTech would not be able to take over borrowers' student loan accounts to conceal their fraudulent charges for phony relief programs.<sup>54</sup>

#### I. RELIEF COMPANIES MAKE TYPICAL FRAUDULENT MISREPRESENTATIONS TO ENTICE CONSUMER BORROWERS

Relief companies are forced out of the shadows and on to the center stage of the student loan crisis, where they attempt to take advantage of millions of student loan borrowers. The federal government backs the vast majority of the \$1.6 trillion in student loan debt, and, unlike borrowers with private loans, borrowers with

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47. See *infra* notes 431–482 and accompanying text.

48. See *infra* notes 310–313 and accompanying text (discussing the OSYC's activities prior to being shuttered).

49. See *infra* notes 464–475 and accompanying text.

50. See, e.g., Nick Simpson, *CBA Writes House Financial Services Committee on Student Lending*, CONSUMER BANKERS ASS'N (Sept. 12, 2019), <https://www.consumerbankers.com/cba-media-center/media-releases/cba-writes-house-financial-services-committee-student-lending> [https://perma.cc/6EWW-Y89Q] (discussing the Consumer Bankers Association's letter to Congress on student loan reforms ahead of a House Financial Services Committee hearing on the matter).

51. See *infra* notes 352–365 and accompanying text (discussing a new law that requires telecommunication companies to use technologies to detect and deter robocalls).

52. See *infra* notes 371–389 and accompanying text.

53. See *infra* notes 408–427 and accompanying text (discussing author's proposed system that detects suspicious activities and prevents anyone from making changes to a borrower's online student loan account until the borrower makes direct contact with the loan servicer).

54. See *infra* notes 408–427 and accompanying text.

federal student loans can take advantage of various affordable payment plans and forgiveness programs.<sup>55</sup> But, similar to parasitic fish mimicking different types of benign “cleaner” fish, relief companies mimic different types of legitimate entities to defraud millions of borrowers struggling to pay back their federal student loans.<sup>56</sup> Such behavior by relief companies includes the following: misrepresenting themselves as legitimate governmental organizations, claiming falsely the ability to secure affordable payments for borrowers, misleading borrowers into believing they are qualified to obtain loan forgiveness, claiming falsely that borrowers must sign up immediately to obtain relief, and, finally, misrepresenting their ability to reverse the consequences of borrowers’ defaulting.<sup>57</sup> In 2017, the Federal Trade Commission (FTC)<sup>58</sup> launched a coordinated federal-state law enforcement partnership, called Operation Game of Loans, and it has resulted in the filing of over thirty-six federal and state enforcement actions and the shutting down of more than two dozen relief companies.<sup>59</sup> These enforcement actions will be used to describe below the common misrepresentations made by relief companies.<sup>60</sup> Later, in Part II, this Article describes how relief companies weaponize modern technology to target millions of borrowers with their misrepresentations.<sup>61</sup>

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55. More than ninety percent of all student loan debt is issued or guaranteed by the federal government. See Kevin Wack, *Students Leaving Money on Table in Not Using Government Loan: Report*, AM. BANKER (Sept. 19, 2018, 11:33 AM), <https://www.americanbanker.com/news/students-leaving-money-on-table-in-not-using-government-loans-report> [<https://perma.cc/ZU4D-MJ7U>]; Odinet, *supra* note 3, at 1630–31 (stating that the standard repayment plan requires a borrower to make equal monthly payments for ten years and summarizing various income-based payment plans that permit much lower payments and allow up to 30 years of payments).

56. See, e.g., Ed Yong, *Fake Cleaner Fish Dons Multiple Disguises*, NAT’L GEOGRAPHIC (Oct. 24, 2009), <https://www.nationalgeographic.com/science/phenomena/2009/10/24/fake-cleaner-fish-dons-multiple-disguises/> [<https://perma.cc/9CBN-3DRC>] (describing how the fangblenny fish has multiple disguises that mimic “the helpful wrasse [cleaner fish],” and then “get[s] close enough to mount quick attacks on larger fish, biting off scales and skin”); Sarah Jane Alger, *Hiding in Plain Sight*, SCITABLE BY NATURE EDUCATION: ACCUMULATING GLITCHES (Sept. 16, 2013), [https://www.nature.com/scitable/blog/accumulating-glitches/hiding\\_in\\_plain\\_sight](https://www.nature.com/scitable/blog/accumulating-glitches/hiding_in_plain_sight) [<https://perma.cc/9DX6-SHLT>] (stating that the “bluestriped fangblenny doesn’t simply look like another species, but it can change its look to resemble any of three different species,” in order to position itself to bite another fish). For further discussion of tactics employed by relief companies to appear legitimate, see *infra* notes 62–71 and accompanying text.

57. See *infra* notes 62–108 and accompanying text.

58. The Federal Trade Commission Act (FTC Act) gives the FTC enforcement authority over “unfair or deceptive acts or practices.” 15 U.S.C. § 45(a)(1) (2006).

59. See Press Release, Fed. Trade Comm’n, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams (Oct. 13, 2017) [hereinafter FTC’s Operation Game of Loans], <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown> [<https://perma.cc/S5JG-6KAJ>] (stating that the Operation Game of Loans is a federal and state partnership that includes 11 states along with the District of Columbia and summarizing several enforcement actions).

60. *Id.*

61. See *infra* Sections II.A–G.

*A. Disguise Themselves as Legitimate Governmental and Nonprofit Organizations*

Relief companies mislead borrowers by purporting to be legitimate governmental and nonprofit organizations. For example, relief companies frequently claim to actually be the Education Department<sup>62</sup> or to be directly or indirectly affiliated with it.<sup>63</sup> To further their appearance of legitimacy, relief companies also use names that are similar to governmental agencies, such as “First Student Aid,”<sup>64</sup> or claim to be legitimate nonprofit organizations that help borrowers.<sup>65</sup> Relief companies frequently use domain names for their websites with an ending suffix, such as “.us” or “.org” to appear to be a governmental or nonprofit entity.<sup>66</sup> They also prominently feature logos consisting of laurel leaves and a shield, thereby resembling logos used by several federal agencies.<sup>67</sup>

To convince young borrowers that they are legitimate, many relief companies make specific references to former President Barack Obama, thereby tapping into his popularity among young adults.<sup>68</sup> In 2011, President Obama announced the “Pay As You Earn” initiative to help borrowers obtain affordable loan payments.<sup>69</sup>

62. *See Beware: You Never Have to Pay for Help with Student Loans*, FED. STUDENT AID, <https://studentaid.gov/resources/scams#beware-of-student-loan-debt-relief-companies> [https://perma.cc/E97S-2NDD] (last visited Sept. 29, 2020) (providing borrowers with warning signs that a company is operating a student loan relief scam).

63. *See, e.g.*, Complaint at 10, *Illinois v. Nat’l Student Loan Rescue, Inc.*, No. 2016-CH-03196, 2016 WL 1028957 (Ill. Cir. Ct. Mar. 4, 2016) (alleging that a relief company claimed to “work[] specifically” with FedLoan Servicing, an actual loan servicer authorized by the Education Department); *District of Columbia v. Student Aid Ctr., Inc.*, No. 2016 CA 003768 B, 2017 WL 9532847, at \*1 (D.C. Super. Ct. Nov. 29, 2017); *FTC v. All. Document Preparation*, 296 F. Supp. 3d 1197, 1205 (C.D. Cal. 2017) (finding that defendants misled borrowers into believing that the defendants were affiliated with the borrowers’ loan servicers).

64. *See, e.g.*, *All. Document Preparation*, 296 F. Supp. 3d at 1201 (explaining that loan relief companies used names such as First Student Aid, similar to its legitimate counterpart: Office of Federal Student Aid).

65. *See, e.g.*, Richard Read, *Company Insider Struggles with Student Loan Debtors’ Misery*, NEWS HERALD (June 14, 2017, 9:00 AM), <https://www.newsherald.com/business/20170614/company-insider-struggles-with-student-loan-debtors-misery> [https://perma.cc/YX6Q-5E6M] (reporting about the revocation of nonprofit status of a loan relief company that was shut down for operating a fraudulent for-profit student loan relief scam).

66. *Consumer Fin. Prot. Bureau v. IrvineWebWorks, Inc.*, No. SACV 14-1967 JVS, 2016 WL 1056662, at \*1, \*8–9 (C.D. Cal. Feb. 5, 2016).

67. Complaint at 5–6, *Minnesota v. Student Aid Ctr., Inc.*, No. 27-CV-15-11307S (D. Minn. July 1, 2015) [hereinafter *Minn. v. SAC Complaint*]; *see also* Complaint at 9, *Texas v. Student Loan Relief, LLC*, No. D-1-GN-17-005516, 2017 WL 4390722 (W.D. Tex. Oct. 2, 2017) (alleging that defendants bolster their claims of expertise with misrepresentations such as “[w]e currently work with more than 300 different programs”).

68. *See, e.g.*, *Minn. v. SAC Complaint*, *supra* note 67, at 5.

69. *See* Press Release, Off. of the Press Sec’y, The White House, Fact Sheet: “Help Americans Manage Student Loan Debt” (Oct. 25, 2011), <http://www.whitehouse.gov/the-press-office/2011/10/25/fact-sheet-help-americans-manage-student-loan-debt> [https://perma.cc/V4AB-CWT8]; *Information About the New Pay-As-You-Earn Proposal*, FED. STUDENT AID, <http://studentaid.ed.gov/PORTALSWebApp/students/english/PayAsYouEarn.jsp> [https://web.archive.org/web/20120618034733/http://studentaid.ed.gov/PORTALSWebApp/students/english/PayAsYouEarn.jsp] (last visited July 20, 2020).

Because this initiative was covered extensively by the media and is now a legitimate repayment plan for federal loans,<sup>70</sup> some borrowers evidently thought many companies were legitimately part of the Education Department and authorized to offer an Obama-related loan repayment program.<sup>71</sup>

*B. Misrepresent Their Ability to Secure Affordable Loan Payments for Borrowers*

Once relief companies are successful in appearing to be entities authorized to offer legal programs, these companies falsely claim borrowers are “pre-qualified,” “approved,” or “eligible” for various legal repayment plans that lower borrowers’ payments.<sup>72</sup> Some companies take it a step further by cleverly wording aspects of their repayment plan to avoid liability for deceptive practices.<sup>73</sup>

Consider as an example American Financial Benefits Center, operating as AmeriTech, which advertised that it could secure for borrowers a “fixed payment” repayment plan.<sup>74</sup> Under legitimate federal repayment programs, a borrower’s income and family size must be supplied annually to maintain enrollment in various repayment plans.<sup>75</sup> Because those figures usually change often over time, a borrower’s payments would not remain fixed for the duration of a student’s repayment.<sup>76</sup> Therefore, no company could lawfully guarantee a borrower a fixed-payment plan until the loan is repaid in full.<sup>77</sup>

Although relief companies usually promise lower payments, reduced accrued interest, or similar loan-related results, in actuality, many relief companies do nothing<sup>78</sup> or else use the borrowers’ information to either put their loans into

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70. See, e.g., Alison Damast, *Obama’s New ‘Pay as You Earn’ Plan a Windfall for MBAs*, BLOOMBERG BUSINESSWEEK, Nov. 2, 2012 (describing President Obama’s plan to provide student loan forgiveness after 20 years); see also 34 C.F.R. § 685.209(a)(2) (2018).

71. See, e.g., *District of Columbia v. Student Aid Ctr., Inc.*, No. 2016 CA 003768 B, 2017 WL 9532847, at \*3 (D.C. Super. Ct. Nov. 29, 2017) (holding defendants liable for nearly \$418,000 in monetary damages where, among other things, defendants misrepresented their affiliation with the Education Department by marketing debt relief through the “Obama Student Loan Forgiveness Program”).

72. See *Off. of the Att’y Gen. v. Strategic Student Sols. LLC*, No. 50-2017-CA-005788, 2018 WL 6652962, at \*2 (Fla. Cir. Ct. Nov. 26, 2018) (finding defendant charged borrowers upfront fees to provide the same services available to borrowers through the Education Department free of charge).

73. See, e.g., *FTC v. Am. Fin. Benefits Ctr.*, 324 F. Supp. 3d 1067, 1078 (N.D. Cal. 2018) (denying defendants’ motion to dismiss based FTC allegations that defendants violated federal law by, among other things, misrepresenting their ability to secure fixed payments for borrowers).

74. *Id.* at 1072 (alleging that defendants collected upfront fees ranging from \$600 to \$800 to enroll borrowers in programs with fixed payments).

75. *Id.* at 1077.

76. *Id.*

77. See *id.* at 1077–81 (denying defendants’ motion to dismiss); see, e.g., *American Financial Inj. Order*, *supra* note 16, at 3 (granting preliminary injunction where defendants told borrowers that they would get fixed lower payments).

78. See, e.g., *FTC v. Good EBusiness, LLC*, No. 2:16-CV-01048-ODW-JPR, 2016 WL 3704489, at \*5–6 (C.D. Cal. July 12, 2016) (holding that a monetary award equal to consumer injury is proportional to the seriousness of the defendants’ conduct where the defendant violated federal law by,

forbearance or consolidate them.<sup>79</sup> In either situation, the borrowers do not know about the requested forbearances or consolidations and, therefore, do not realize that their loan balances will increase—thereby making borrowers worse off financially.<sup>80</sup>

A few relief companies sometimes submit, on behalf of borrowers, applications for enrollment in income-driven repayment (IDR) plans.<sup>81</sup> However, submission of IDR enrollment applications is just part of an elaborate ruse by relief companies to convince borrowers that they will secure lower payments for them.<sup>82</sup> For example, according to federal and state authorities, Consumer Advocacy Center, Inc. (CAC) and several related entities submitted IDR applications that falsified borrowers' relevant data, including annual income, family size, and marital status, in order to get borrowers qualified for artificially low monthly payments.<sup>83</sup> Once the loan servicers approved of the IDR applications, CAC was then able to offer proof to borrowers that their monthly payments had been lowered.<sup>84</sup> However, borrowers did not benefit from their enrollment in IDR plans<sup>85</sup> because CAC, thereafter, kept all the borrowers' monthly payments.<sup>86</sup>

### *C. Mislead Borrowers into Believing They Qualify for Loan Forgiveness or Debt Elimination*

Besides misleading borrowers about lowering their payments, relief companies falsely represent an ability to obtain loan forgiveness for borrowers or eliminate most of their student loan debt.<sup>87</sup> For example, Kathryn Hamblen, a nurse practitioner employed at a rural clinic in Illinois, believed Student Consulting Group's promise to obtain loan forgiveness for her and, thereafter, made payments

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among other things, charging upfront fees—ranging from \$500 to \$800—for purported debt relief services without contacting the borrowers' lenders).

79. See, e.g., *id.* at \*5.

80. See, e.g., *id.*

81. See, e.g., Complaint at 10–11, *Consumer Fin. Prot. Bureau v. Consumer Advoc. Ctr., Inc.*, No. 8:19-cv-01998 JVS, 2019 WL 5721909 (C.D. Cal. Oct. 21, 2019) (joining the lawsuits as plaintiffs are state attorneys general from Minnesota and North Carolina and the city attorney from the City of Los Angeles).

82. See, e.g., *id.* at 14.

83. *Id.* at 4, 14.

84. See *id.* at 14.

85. *Id.* at 11, 14 (alleging that after submitting IDR applications, defendants changed each borrower's email address "in order to temporarily divert all email correspondence from the consumer's to the [borrower's] student-loan servicer").

86. *Id.* at 11.

87. Marcus E. Howard, *Minnesota Attorney General Lori Swanson Sues Company Allegedly Promising Student Loan Debt 'Forgiveness'*, STAR TRIB. (July 1, 2015, 9:46 PM), <http://www.startribune.com/attorney-general-sues-company-allegedly-promising-student-loan-debt-forgiveness/311248281/> [<https://perma.cc/4AUK-RKNN>]; *Minn. v. SAC Complaint*, *supra* note 67, at 5–6; *Complaint for Permanent Injunction and Other Equitable Relief* at 12, *FTC v. Good EBusiness, LLC*, No. 2:16-CV-01048 (C.D. Cal. Feb. 16, 2016) (promising loan forgiveness).

to the company for almost two years.<sup>88</sup> Under the legitimate Public Service Loan Forgiveness (PSLF) program, borrowers must make payments to their loan servicers while employed in public service positions for ten years to receive forgiveness of student loan debt remaining at the end that period.<sup>89</sup> Student Consulting Group had only used Ms. Hamblen's loan account information to get the servicer to consolidate her student loans, thereby causing her debt to increase.<sup>90</sup> Ms. Hamblen could have requested a consolidation from the loan servicer on her own for free.<sup>91</sup> When relief companies indiscriminately consolidate all loans, such consolidation usually results in higher debt for the borrower.<sup>92</sup> Student Consulting Group, therefore, did not provide any meaningful service.<sup>93</sup> Moreover, because of the company's actions, Ms. Hamblen still needed to get certified by a legitimate loan servicer so that she could start the ten-year clock for purposes of obtaining loan forgiveness.<sup>94</sup>

*D. Claim Falsely That Borrowers Must Act Quickly to Obtain Debt Relief*

To persuade borrowers to sign up quickly for their forgiveness and debt reduction programs, relief companies create a sense of urgency to act immediately and promise to obtain fast and easy results.<sup>95</sup> For example, a group of defendants

88. See, e.g., Complaint for Injunctive and Other Relief at 12–13, *Illinois v. Student Consulting Grp., Inc.*, No. 2015-CH-07260, 2015 WL 2338768 (Ill. Cir. Ct. May 4, 2015) [hereinafter Student Consulting Group Complaint].

89. See 20 U.S.C. § 1087e(m) (2012). For an in-depth discussion of the PSLF program, see Gregory Crespi, *The Public Service Loan Forgiveness Program: The Need for Better Employment Eligibility Regulations*, 66 BUFF. L. REV. 819 (2018).

90. Student Consulting Group Complaint, *supra* note 88, at 13; see, e.g., Second Amended Complaint at 14–15, *New York v. Debt Resolve, Inc.*, 387 F. Supp. 3d 358 (S.D.N.Y. 2019) (No. 18-9812) [hereinafter Debt Resolve Complaint] (alleging that consolidation not only causes the borrower's total loan balance to increase but "may also cause the loss of certain benefits associated with the original loans").

91. See, e.g., *Beware: You Never Have to Pay for Help with Student Loans*, *supra* note 62; *FTC v. All. Document Preparation*, 296 F. Supp. 3d 1197, 1206 (C.D. Cal. 2017) (stating that many consumers are "upset" when they discover they could get assistance for free and that "[e]ven if a borrower is aware of the ability to freely enroll in the Department of Education's programs, [d]efendants attempt to dissuade them from doing so by severely overstating the difficulty of the application process"); Press Release, Fed. Trade Comm'n, *FTC Cracks Down on Debt Relief Schemes Targeting Student Loan and Mortgage Borrowers* (May 25, 2016), <https://www.ftc.gov/news-events/press-releases/2016/05/ftc-cracks-down-debt-relief-schemes-targeting-student-loan> [https://perma.cc/7QJT-6K3E] (stating that a Florida-based company told borrowers that it could eliminate at least 50% to 70% of a borrower's loan balance).

92. See, e.g., Debt Resolve Complaint, *supra* note 90.

93. See, e.g., Student Consulting Group Complaint, *supra* note 88, at 4–5.

94. See *id.* at 12–13.

95. Anna Helhoski & Teddy Nykiel, *How to Spot Student Loan Scams*, NERDWALLET (July 28, 2020), <https://www.nerdwallet.com/article/loans/student-loans/how-to-spot-student-loan-scam> [https://perma.cc/H29W-NRB3]; see Lesley Fair, *Game of Loans: The Stark Truth About Student Loan "Debt Relief" Claims*, FED. TRADE COMM'N: BUS. BLOG (Oct. 13, 2017, 11:50 AM), <https://www.ftc.gov/news-events/blogs/business-blog/2017/10/game-loans-stark-truth-about-student-loan-debt-relief-claims> [https://perma.cc/6N55-2A3U].

posing as the Education Department invoked fear of the consequences of the presidential election of Donald Trump in November 2016 to convince borrowers to act quickly.<sup>96</sup> The defendants urged borrowers to call back within twenty-four hours by falsely stating that all student loan forgiveness programs would stop immediately as soon as Trump took office.<sup>97</sup> Given President Trump's immediate post-inauguration actions, including the controversial appointment of Betsy DeVos as the Secretary of the Education Department,<sup>98</sup> relief companies could have convinced consumers that they needed to act quickly and sign up for the program.<sup>99</sup> As evidence of the defendants' success, the defendants originally agreed to pay the FTC a settlement amount of nine million dollars, representing gross revenues they received from perpetrating unlawful debt relief scams.<sup>100</sup>

*E. Misrepresent Their Ability to Reverse the Consequences of Borrowers' Default*

Targeting borrowers who have already missed loan payments, some companies falsely represent that they can reverse the negative consequences of a borrower defaulting on his or her student loan.<sup>101</sup> The Education Department has a legitimate loan rehabilitation program for borrowers to make certain payments to cure loan defaults.<sup>102</sup> Lacking any authority whatsoever, relief companies nevertheless bait borrowers by promising that they can improve borrowers' credit scores,<sup>103</sup> stop garnishment of borrowers' wages, and even stop the IRS from intercepting borrowers' tax refunds.<sup>104</sup> For example, Minnesota's enforcement action against Student Aid Center identified several victims, including a borrower living in Blaine, Illinois, who had defaulted on \$67,000 in student loan debt.<sup>105</sup> He

96. See Complaint for Permanent Injunction and Other Equitable Relief at 12, *FTC v. A1 DocPrep Inc.*, 296 F. Supp. 3d 1197 (C.D. Cal. 2017) (No. LA17CV07044-SJO(JCx)), 2017 WL 4551515 [hereinafter A1 DocPrep Complaint].

97. See, e.g., *id.*

98. See Emma Brown, *With Historic Tiebreaker from Pence, DeVos Confirmed as Education Secretary*, WASH. POST (Feb. 7, 2017), [https://www.washingtonpost.com/local/education/senate-to-vote-today-on-confirmation-of-betsy-DeVos/2017/02/06/fd4b7e9c-ec85-11e6-9662-6eedf1627882\\_story.html?noredirect=on](https://www.washingtonpost.com/local/education/senate-to-vote-today-on-confirmation-of-betsy-DeVos/2017/02/06/fd4b7e9c-ec85-11e6-9662-6eedf1627882_story.html?noredirect=on) [https://perma.cc/F5K5-FPAQ]. For a discussion of the harmful actions taken by Secretary DeVos, see *infra* notes 245–289 and accompanying text.

99. See generally *FTC v. All. Document Preparation*, 296 F. Supp. 3d 1197 (C.D. Cal. 2017) (quoting the defendant's transcript, in which the defendant claimed that “[t]he fastest option is also the cheapest option”).

100. See Stipulated Order for Permanent Injunction and Monetary Judgement, *FTC v. A1 DocPrep Inc.*, No. 2:17-cv-07044 (C.D. Cal. Nov 16, 2018).

101. See Complaint for Injunctive and Other Relief at 4, *Illinois v. Interactiv Educ., LLC*, No. 15-CH-118, 2015 WL 10890661 (Ill. Cir. Ct. May 4, 2015); see also Student Consulting Group Complaint, *supra* note 88, at 5 (alleging that relief company falsely claimed to restore consumers' eligibility for financial aid so that they can, for example, apply for federal loans to attend graduate school).

102. See *Illinois v. Navient* Complaint, *supra* note 23, at 71.

103. Complaint for Injunctive and Other Relief at 15, *Illinois v. FDATR, Inc.*, No. 2017-CH-13732, 2017 WL 4611807 (Ill. Cir. Ct. Oct. 13, 2017).

104. *Id.* at 14.

105. See *Minn. v. SAC* Complaint, *supra* note 67, at 13 (identifying the victim as K.C.).

agreed to pay an upfront fee of \$99, along with a monthly program fee, after a Student Aid Center representative told him that the company could stop wage garnishments, restore his loan to current status, and discharge \$20,000 of his debt.<sup>106</sup> After making two payments, his paycheck was once again garnished by the debt collector.<sup>107</sup> The relief company's promises were therefore completely false.<sup>108</sup>

## II. RELIEF COMPANIES WEAPONIZE MODERN TECHNOLOGY TO DUPE CONSUMER BORROWERS

Having provided the reader with an overview of the common fraudulent representations made by relief companies, this Part of the Article demonstrates how relief companies can reach millions by weaponizing modern technology against them. Roughly twenty years ago, relief companies had to spend substantial amounts of money and time on hiring a workforce to target student loan borrowers through the U.S. mailing system and landline telephones.<sup>109</sup> Through modern technology, however, relief companies can inexpensively (1) make millions of robocalls with prerecorded advertisements;<sup>110</sup> (2) send millions of messages via email and cell phone text;<sup>111</sup> (3) advertise through optimized online search results;<sup>112</sup> (4) create websites with memorable domain names and content;<sup>113</sup> (5) promote phony relief on social media platforms;<sup>114</sup> (6) “scrape” borrowers’ social media to target them individually;<sup>115</sup> and (7) require borrowers to sign documents, which disclose sensitive financial information, electronically.<sup>116</sup>

### *A. Make Millions of Robocalls That Advertise Student Loan Relief Programs*

Because the cost of telecommunication services has become relatively inexpensive, one person alone can easily and quickly make millions of calls to phone numbers in the United States to perpetrate fraud.<sup>117</sup> The Telephone Consumer

106. *Id.*

107. *Id.*

108. *See id.*

109. *See generally* FTC Hearing, *supra* note 37.

110. *See infra* notes 120–129 and accompanying text.

111. *See infra* notes 130–134 and accompanying text.

112. *See infra* notes 135–140 and accompanying text.

113. *See infra* notes 141–147 and accompanying text.

114. *See infra* notes 148–161 and accompanying text.

115. *See infra* notes 162–177 and accompanying text.

116. *See infra* notes 178–195 and accompanying text.

117. *See, e.g.,* Stuart L. Pardo, *Good Intentions and the Road to Regulatory Hell: How the TCPA Went from Consumer Protection Statute to Litigation Nightmare*, U. ILL. J.L. TECH. & POL'Y 313, 315 (2018); Interview by Svetlana S. Gans, with Joseph Simons, Chairman, Federal Trade Commission, ANTITRUST SOURCE, Feb. 2019, at 1, 5 (stating that it is “cheap and easy” for fraudsters to make robo-calls anonymously and from overseas); Alina Selyukh, *Man Accused of Making Millions of Robocalls Faces Biggest-Ever FCC Fine*, NPR: THE TWO-WAY (June 22, 2017, 5:05 PM), <https://www.npr.org/sections/thetwo-way/2017/06/22/533970545/man-accused-of-making-millions-of-robocalls-faces-biggest-ever-fcc-fine> [<https://perma.cc/F2JV-9SP6>] (discussing one man who made millions of robocalls in a little over three months).

Protection Act (TCPA) prohibits calls, commonly referred to as robocalls, when the caller uses an automatic telephone dialing system (ATDS) or uses a prerecorded voice to deliver a message without first obtaining the recipient's prior written consent.<sup>118</sup> With limited exceptions, unsolicited robocalls that market services and goods are illegal.<sup>119</sup>

Robocalls offering debt relief, including relief from student loans, are among the most common types of calls on the list of robocall complaints.<sup>120</sup> In an enforcement action against a group of defendants doing business under various names, including "Student Loan Help Direct" and "Select Student Loan Help," the FTC alleged that the defendants made numerous unsolicited telemarketing calls, in which they promised significantly reduced payments.<sup>121</sup>

Similarly, an FTC enforcement action was filed against James Christiano and several corporations and individuals for allegedly facilitating the transmission of billions of illegal robocalls, selling an array of services, including student loan relief.<sup>122</sup> The magnitude of the calls alone is concerning, but the defendants allegedly made millions of robocalls to numbers on the National Do Not Call Registry!<sup>123</sup>

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118. See 47 U.S.C. § 227(b)(1)(A). Scammers often combine spoofing technology with robocalling technology to target consumers but they are not the same. See *infra* notes 124–129 and accompanying text. The FTC and the Federal Communications Commission receive the most consumer complaints about robocalls. See *FTC Hearing, supra* note 37, at 17; FED. TRADE COMM'N, NATIONAL DO NOT CALL REGISTRY DATA BOOK 2018: COMPLAINT FIGURES BY YEAR (2018), <https://www.ftc.gov/policy/reports/policy-reports/commission-staff-reports/national-do-not-call-registry-data-book-fy-9> [<https://perma.cc/QBZ4-ZMP4>] (reporting that in 2018, the FTC received more than 3.7 million complaints about robo-calls); CONSUMER & GOVERNMENTAL AFFS. BUREAU, FED. COMM'NS COMM'N, CG DOCKET NO. 17-59, REPORT ON ROBOCALLS (2019) [hereinafter FCC REPORT ON ROBOCALLS], <https://docs.fcc.gov/public/attachments/DOC-356196A1.pdf> [<https://perma.cc/M2T5-HTDB>] (reporting that in 2018 the FCC received 232,000 complaints regarding unwanted calls, including robocalls). Billions of robocalls are made annually in the United States. See Gary Guthrie, 2019: *The Year of the Robocall*, CONSUMERAFFAIRS (Jan. 17, 2020), <https://www.consumeraffairs.com/news/2019-the-year-of-the-robocall-011720.html> [<https://perma.cc/GB7E-HDN9>] (reporting that the 58.5 billion robocalls made in 2019 was a 22% increase from the number of robocalls made in 2018).

119. See 47 U.S.C. § 227(b)(1)(A)(i) (exempting calls made during an emergency or *with* the recipient's prior express consent). Legitimate companies, including student loan servicers, can violate federal law by making unlawful robocalls. For example, over the years, Navient Solutions, LLC, formerly Sallie Mae and the largest loan servicer, has been sued several times for making millions of unlawful robocalls. See, e.g., Complaint & Demand for Jury Trial at 2, *Coleman v. Navient Sols., LLC*, No. 2:19-cv-14123-RLR (S.D. Fla. Apr. 5, 2019); Tony Romm, *Robo-calls, at Record High, Could Get a Lot Worse*, WASH. POST, July 13, 2018, at A17 (reporting that Navient has lobbied for fewer restrictions on robo-calling and that it settled for \$2.5 million in a class-action lawsuit alleging that it made repeated unlawful robo-calls to consumers' smartphones).

120. See FED. TRADE COMM'N, *supra* note 118.

121. See *FTC v. Good EBusiness, LLC*, No. 2:16-cv-01048-ODW-JPR, 2016 WL 3704489, at \*3 (C.D. Cal. Jul. 12, 2016).

122. Complaint for Civil Penalties, Permanent Injunction and Other Relief, *FTC v. Christiano*, No. 8:18-cv-00936, 2018 WL 2463244 (C.D. Cal. May 31, 2018) [hereinafter *FTC v. Christiano Complaint*].

123. *Id.* at 22–23 (alleging that the defendants' software facilitated in excess of 93 million outbound calls to phone numbers listed on the DNC Registry).

To make it more likely that financially distressed borrowers will answer the robocall (by pressing “1” to be connected to a live person), some relief companies use spoofing technology.<sup>124</sup> This technology allows the company to conceal its true identity by blocking its actual number from a caller ID display and then exhibiting someone else’s phone number (e.g., the IRS’s number) on consumers’ phones.<sup>125</sup>

The FTC charged the previously mentioned Mr. Christiano and his codefendants with using a more effective type of spoofing, known as “neighbor spoofing,” to make robocalls.<sup>126</sup> With this type of spoofing, the company uses a telephone number that has a local area code and three-digit exchange (e.g., 614-545-XXXX) that are the same as a consumer’s phone number so that the consumer thinks the call is coming from someone in his or her city or town.<sup>127</sup> Consumers are more likely to answer a call from an unknown *local* number than other types of unknown numbers because that local number looks familiar.<sup>128</sup> The FTC alleged that Mr. Christiano and his codefendants violated federal law when they used neighbor spoofing to make fifty-four million robocalls marketing phony student loan relief and other services.<sup>129</sup>

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124. *Id.* at 19–20.

125. *Id.* at 13; *see, e.g.*, Rachel DePompa, “*It Can Be Dangerous*”: Scammers Up Their Robocalls Game, NBC12 (Aug. 20, 2018, 2:27 PM), <https://www.nbc12.com/story/38919782/it-can-be-dangerous-scammers-up-their-robocalls-game/> [<https://perma.cc/8S5S-V52P>] (interviewing the owner of a real estate company who complained that his business phone number had been used in spoofed robo-calls by another company marketing student loan scams).

126. FTC v. Christiano Complaint, *supra* note 122, at 3, 18–19. In 2019, the FTC was successful in obtaining a settlement against Mr. Christiano and his codefendants that shut down their operations and imposed liability in the amount of \$1.35 million. *See* Press Release, Fed. Trade Comm’n, FTC Crackdown Stops Operations Responsible for Billions of Illegal Robocalls (Mar. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-crackdown-stops-operations-responsible-billions-illegal> [<https://perma.cc/N7V5-MMCU>]; *see* Stipulated Final Order for Permanent Injunction and Civil Penalty Judgment at 6, FTC v. Christiano, No. 8:18-cv-00936 DOC (C.D. Cal. Mar. 26, 2019).

127. FTC v. Christiano Complaint, *supra* note 122, at 18–19.

128. *Id.*; Press Release, Fed. Commc’ns Comm’n, Consumer Alert: Protect Yourself Against ‘Neighbor Spoofing,’ Scam Callers Placing Phone Calls That Appear to be Local (Mar. 8, 2018), [https://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2018/db0308/DOC-349632A1.pdf](https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0308/DOC-349632A1.pdf) [<https://perma.cc/B7JP-ZZRF>] (“[S]cammers use such [neighbor] spoofing to increase the likelihood that consumers pick up the phone and to increase the consumer’s trust in the call.”); *see also* FCC REPORT ON ROBOCALLS, *supra* note 118, at 6 (predicting a dramatic increase in the number of “neighbor spoofing” calls).

129. FTC v. Christiano Complaint, *supra* note 122, at 18–19 (alleging that, of the millions of robocalls sent using neighbor spoofing technology, nearly 8,000 complaints were made to the FTC from consumers harassed by such calls). Relief companies that rely on robocalling and call-spoofing technologies invariably violate the Telephone Consumer Protection Act when they make robocalls, spoof caller ID systems, and call telephone numbers on the National Do Not Call (DNC) Registry. *See, e.g., id.* at 4–5; *see also* 47 U.S.C. § 227(b)(1)(B) (making it unlawful for any person “to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes . . . .”); 16 C.F.R. § 310.4(a)(8) (2019) (making it unlawful to use technology to spoof caller ID systems to conceal from consumers the actual numbers from which the defendants were calling); *id.* § 310.4(b)(1)(iii)(B) (prohibiting sellers and telemarketers from initiating an outbound telephone call to numbers on the DNC Registry).

*B. Send Unsolicited Email and Text Messages That Target Student Loan Borrowers*

Besides targeting financially distressed borrowers with millions of spoofed robocalls, some companies send millions of email and cell phone messages to target vulnerable consumers.<sup>130</sup> For instance, an FTC complaint alleged that A1 DocPrep Inc. (A1), doing business under several names, including Project Uplift Students, sent email messages claiming to be from the Department of Education and promising loan forgiveness.<sup>131</sup> A1 also sent millions of unsolicited text messages, including the following: “Your Student loan may be forgiven today, but Donald Trump may stop that[,] call now at 888-307-0680.”<sup>132</sup>

While A1’s message may appear suspect on its face,<sup>133</sup> some borrowers may have had difficulty discerning whether a text message was from a fraudulent relief company or from a legitimate loan servicing company that is authorized to collect student loan debt on behalf of the government. This is because loan servicers and other companies with federal contracts (through the Education Department) have the legal right to pursue debt collection by making calls and sending text messages to a borrower’s cell phone.<sup>134</sup>

*C. Optimize Online Search Engines to Lead Borrowers to Companies’ Websites*

When text messages are insufficient to target consumers, companies can pay for advertisements to appear at the top of search engines, like Google or Bing, to target consumers with student loan relief scams.<sup>135</sup> For instance, Student Aid Center successfully targeted borrowers nationwide by paying Google for optimized search results based on users searching with certain key phrases.<sup>136</sup> If, for example, a

130. See, e.g., A1 DocPrep Complaint, *supra* note 96, at 7–8.

131. *Id.*

132. *Id.* at 13; see also Press Release, Fed. Trade Comm’n, Remaining Operators of Student Debt Relief Scheme Settle FTC Charges (Nov. 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/remaining-operators-student-debt-relief-scheme-settle-ftc-charges> [https://perma.cc/C33T-DMYH] (reporting that A1 and its co-defendants settled with the FTC by agreeing to a judgment exceeding \$9 million).

133. See A1 DocPrep Complaint, *supra* note 96, at 7.

134. See generally *Stauffer v. Navient Sols., LLC*, 241 F. Supp. 3d 517 (M.D. Pa. 2017) (holding that student loan servicer did not violate the TCPA and relying in part on the Federal Communications Commission’s interpretation that consent will be “deemed to be granted” based on the consumer providing the creditor with his or her number in connection with debt-related transaction).

135. See, e.g., *Minn. v. SAC Complaint*, *supra* note 67, at 5; Motion for Partial Summary Judgment at 23, *Washington v. Student Aid Ctr., Inc.*, No. 16-2-11955-7, 2017 WL 6039589 (Wash. Super. Ct. June 29, 2017) [hereinafter Wash. S.J. Motion]; Sandra Guy, *Madigan Files Lawsuits Against Companies She Says Prey on Students*, CHI. SUN-TIMES (May 4, 2015, 7:23 PM), <https://chicago.suntimes.com/2015/5/4/18561166/madigan-sues-companies-she-says-prey-on-students> [https://perma.cc/5UJV-Z93B] (describing how Ruth Varela, a 34-year-old single mother of three children and Illinois resident, searched on Google for help and found a relief company that duped her into paying an upfront fee of \$399 and several monthly payments of \$79).

136. See Complaint for Permanent Injunction and Other Equitable Relief at 6–7, *FTC v. Student Aid Ctr., Inc.*, 281 F. Supp. 3d 1324 (S.D. Fla. May 23, 2016) (No. 1:16-cv-21843-FAM) [hereinafter *FTC v. Student Aid Ctr. Complaint*]; see, e.g., *FTC v. Student Aid Ctr., Inc.*, 281 F. Supp. 3d 1324, 1330–31 (S.D. Fla. 2016).

consumer searched for “student loan forgiveness,” Student Aid Center’s website appeared at the top as a sponsored search result on Google, and the consumer would see a hyperlink titled “Obama Loan Forgiveness.”<sup>137</sup> Student Aid’s advertising strategy that labeled clickable links as “Obama Loan Forgiveness” targeted young borrowers,<sup>138</sup> who comprise a substantial percentage of the forty-four million student loan borrowers.<sup>139</sup> Student Aid Center’s keyword searches made it more likely that searchers would click on the link to its website because it appeared at the top of the results page.<sup>140</sup>

#### *D. Create Websites with False Testimonials and Approval of Others*

Once consumers click on the link to a relief company’s website, they encounter professional-looking webpages that, often, feature testimonials or representations from purported customers.<sup>141</sup> For instance, the defendants, operating a website with the domain name “aidingstudents.com,” included a purported testimonial from an entrepreneur,<sup>142</sup> who claimed the company saved him \$250 per month.<sup>143</sup> Similarly, websites for Student Aid Center claimed that it had helped thousands and featured young-looking individuals with captions such as “Forgiveness for Teachers” and “Forgiveness for Nurses.”<sup>144</sup>

In addition to having positive testimonials at their websites, some relief companies include pictures and logos at their websites to create the inference that

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137. See, e.g., Minn. v. SAC Complaint, *supra* note 67, at 5; see also *Student Aid Ctr., Inc.*, 281 F. Supp. 3d at 1330–31 (affirming the denial of defendants’ motion to dismiss where the FTC sufficiently alleged that the defendants made telemarketing calls to consumers who responded responding to the defendants’ advertisements on the Internet, social media, and radio).

138. See, e.g., Tom Rosentel, *Young Voters in the 2008 Election*, PEW RSCH. CTR. (Nov. 13, 2008), [http://pewresearch.org/pubs/1031/young\\_voters-in-the-2008-election](http://pewresearch.org/pubs/1031/young_voters-in-the-2008-election) [<https://perma.cc/8VNT-7W7N>] (reporting that 66% of voters under the age of 30 voted in the first presidential election of Barack Obama).

139. *Millennials at Risk for Loan Defaults in Next 12 Months: UBS*, REUTERS (Apr. 26, 2017, 11:15 AM), <https://www.reuters.com/article/us-usa-millennials-defaults/millennials-at-risk-for-loan-defaults-in-next-12-months-ubs-idUSKBN17S2JZ> [<https://perma.cc/H4R8-LM93>].

140. See *Rosetta Stone Ltd. v. Google, Inc.*, 676 F.3d 144, 150–51 (4th Cir. 2012) (describing how companies pay for ads and sponsored links to appear at the top of a results page based on a set of keyword searches and stating that searchers are more likely to click on links appearing at the top of the results page).

141. See, e.g., Complaint for Permanent Injunction and Other Equitable Relief at 6, *FTC v. Student Debt Doctor, LLC*, No. 0:17-cv-61937-WPD (S.D. Fla. Oct. 2, 2017).

142. See Complaint for Permanent Injunction and Other Equitable Relief at 8–9, *FTC v. Impetus Enter.*, No. 8:18-cv-01987-JLS-KES (C.D. Cal. Nov. 6, 2018) [hereinafter *FTC v. Impetus Complaint*]; see, e.g., Press Release, Fed. Trade Comm’n, *FTC Seeks to Add New Defendants in Student Debt Relief Case* (Feb. 7, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-seeks-add-new-defendants-student-debt-relief-case> [<https://perma.cc/9PV3-GTKP>].

143. *FTC v. Impetus Complaint*, *supra* note 142, at 9.

144. See Plaintiff Motion & Memorandum in Support of Motion for Summary Judgment at 7, *FTC v. Student Aid Ctr., Inc.*, No. 1:16-cv-21843-FAM (S.D. Fla. Aug. 4, 2018) [hereinafter *Plaintiffs’ Motion Against SAC*]; *FTC’s Operation Game of Loans*, *supra* note 59.

reputable organizations approve of their debt relief programs.<sup>145</sup> For instance, websites for “Aiding Student Relief” claimed that the Wall Street Journal and Forbes Magazine featured its services.<sup>146</sup> Likewise, websites for Student Aid Center prominently featured the logos of several television networks, implying that its programs had obtained positive media coverage “as reported on” CNN, ABC, Fox, and NBC News.<sup>147</sup>

*E. Advertise via Social Media Platforms to Target Borrowers*

In addition to attracting borrowers to their websites, relief companies effectively target financially distressed borrowers through Facebook and other social media platforms.<sup>148</sup> Once again, Student Aid Center is notable because it targeted consumers via advertising on social media, including Instagram.<sup>149</sup>

Similarly, Alliance Document Preparation and several related companies (Alliance defendants)<sup>150</sup> primarily advertised using Facebook to target borrowers that had attended for-profit schools such as DeVry University, IIT Tech (now defunct), University of Phoenix, and The Art Institutes.<sup>151</sup> One Facebook ad instructed borrowers to call to see if they qualified “for loan forgiveness due to the recent litigation against The Art Institutes.”<sup>152</sup> This marketing strategy referred to a legitimate regulation, known as the borrower defense to repayment rule, implemented during President Obama’s administration to allow attendees of alleged unscrupulous for-profit schools to apply to the Education Department for a

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145. See *FTC v. Impetus Complaint*, *supra* note 142, at 21–22; see Press Release, Fed. Trade Comm’n, *FTC Halts Deceptive Student Debt Relief Scheme that Bilked Consumers Out of Millions* (Nov. 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/ftc-halts-deceptive-student-debt-relief-scheme-bilked-consumers> [https://perma.cc/U2LT-EMRQ].

146. *FTC v. Impetus Complaint*, *supra* note 142, at 21–22.

147. See *Plaintiffs’ Motion Against SAC*, *supra* note 144, at 7; see also *FTC v. Student Aid Ctr. Complaint*, *supra* note 136, at 8; *Complaint for Injunctive and Other Relief* at 4, *Illinois v. Interactiv Educ., LLC*, No. 15CH118, 2015 WL 10890661 (Ill. Cir. Ct. May 4, 2015) (alleging that “defendants advertise[d] on multiple television stations, including, but not limited to, ESPN Networks, BET Networks, MTV, and Bounce TV”).

148. See, e.g., *Consumer Fin. Prot. Bureau v. IrvineWebWorks*, No. 8:14-cv-01967-JVS-DFM, 2016 WL 1056662, at \*1 (C.D. Cal. Feb. 5, 2016) (granting the CFPB’s motion for partial summary judgment against defendants that maintained social media accounts that falsely claimed they worked with the U.S. Department of Education).

149. See *FTC v. Student Aid Ctr., Inc.*, 281 F. Supp. 3d 1324, 1333 (S.D. Fla. 2016) (denying defendants’ motion to dismiss on several counts); Pam Zekman, *2 Investigators: Scam Artists Target Millennials with Offers of College-Debt Relief*, CBS CHI. (Nov. 17, 2016, 10:10 PM), <https://chicago.cbslocal.com/2016/11/17/2-investigators-scam-artists-target-millennials-offering-college-debt-relief/> [https://perma.cc/UE7P-BZQ4] (reporting that Student Aid Center advertises on social media sites like Facebook).

150. *FTC v. All. Document Preparation*, 296 F. Supp. 3d 1197, 1201 (C.D. Cal. 2017) (issuing an injunction against the relief company).

151. *Complaint for Permanent Injunction and Other Equitable Relief* at 9, 11, *All. Document Preparation*, 296 F. Supp. 3d 1197 (No. 2:17-cv-07048-SJO-KS) [hereinafter *FTC v. All. Document Preparation Complaint*] (alleging that “in exchange for the promised student loan debt relief, Defendants have charged illegal upfront fees of as much as \$1000”).

152. *Id.* at 11.

discharge of their student loan debts.<sup>153</sup> Consequently, some for-profit alumni erroneously concluded that the Alliance defendants could obtain a debt discharge for them.<sup>154</sup>

Some companies exploit young borrowers' trust in social media by posting fake reviews.<sup>155</sup> For instance, Jamie Bussey, while searching online, found reviews about Consumer Assistance Project (CAP)<sup>156</sup> and attempted to figure out if the company was legitimate.<sup>157</sup> She uncovered positive reviews and erroneously concluded that CAP was legitimate.<sup>158</sup> The reviews she uncovered were almost certainly fake<sup>159</sup> because a former CAP supervisor testified that CAP not only paid Google for targeted advertisements based on keyword searches but also created and posted *fake* five-star-rated reviews on Facebook.<sup>160</sup> Falling for the fake reviews, Ms. Bussey paid \$250 as an upfront fee and \$198 per month for two years before she found out the company had only put her loan in deferment status.<sup>161</sup>

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153. See 34 C.F.R. § 685.206(c)(2) (2016); see also *Calvillo Manriquez v. DeVos*, 345 F. Supp. 3d 1077, 1085–86 (N.D. Cal. 2018) (granting in part plaintiff's motion for summary judgment and ordering the U.S. Department of Education to cease attempts to collect on federal student loan debt incurred by borrowers who attended Corinthian Colleges, the defunct, because it had violated privacy laws by using borrowers' Social Security Administration data to calculate loan forgiveness); Press Release, U.S. Dep't of Educ., U.S. Dep't of Educ. Announces Final Regulations to Protect Students and Taxpayers from Predatory Institutions (Oct. 28, 2016), <https://www.ed.gov/news/press-releases/us-department-education-announces-final-regulations-protect-students-and-taxpayers-predatory-institutions> [<https://perma.cc/5Q79-QP4Q>].

154. *FTC v. All. Document Preparation* Complaint, *supra* note 151, at 12. The defendants settled after a federal court issued a preliminary injunction against them. See *All. Document Preparation*, 296 F. Supp. 3d at 1198; Press Release, Fed. Trade Comm'n, Student Debt Relief Operators Agree to Settle FTC Charges (Sept. 28, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/student-debt-relief-operators-agree-settle-ftc-charges> [<https://perma.cc/MU37-G2RL>] (alleging that the defendants were unjustly enriched over \$19 million from its relief scheme targeting alumni of for-profit schools through social media).

155. See Read, *supra* note 65.

156. *Id.*

157. *Id.*

158. *Id.*

159. See Stipulated Order for Permanent Injunction and Monetary Judgment, F.T.C. File No. 152 3086 (Jan. 24, 2017), [https://www.ftc.gov/system/files/documents/cases/170124\\_consumer\\_assistance\\_permt\\_inj.pdf](https://www.ftc.gov/system/files/documents/cases/170124_consumer_assistance_permt_inj.pdf) [<https://perma.cc/89BJ-YHLE>].

160. See Read, *supra* note 65 (describing a favorable Facebook review from “Kym Zaring,” who claimed the company was able to wipe out over \$60,000 in student loan debt).

161. *Id.* (stating that Robert Greenberg, who trained CAP's employees, marveled at how successful the fake Facebook reviews were in driving up “membership” fees); see also Leticia Miranda, *People Are Falling For These Wild Student Forgiveness Scams*, BUZZFEED NEWS (Aug. 12, 2016, 1:10 PM) <https://www.buzzfeednews.com/article/leticiamiranda/student-debt-relief-scams-are-getting-worse> [<https://perma.cc/SD6F-5CFS>] (reporting that a 31-year-old mom in Kentucky paid for fraudulent services after she saw a positive review posted by a friend on Facebook for a company called Liberty Tax and Student Loan Defense); Benjamin Cox, *Student Loan Company Ordered to Stop Doing Business in Kentucky*, JD SUPRA (Nov. 8, 2016), <https://www.jdsupra.com/legalnews/student-loan-company-ordered-to-stop-26865/> [<https://perma.cc/XME7-2D5S>] (reporting that the Kentucky Attorney General sued this Florida-based company and obtained a court order banning it from doing business in Kentucky).

*F. Scrape Borrowers' Social Media Information to Target Borrowers by Name*

Besides posting fake reviews on social media, some relief companies “scrape” social media profiles to personally target borrowers. This disturbing practice came to light in the FTC’s lawsuit against Brandon Frere (Frere), American Financial Benefits Center, and related defendants.<sup>162</sup> Consider the following account by two consumers. In early 2018, Gloria Holmes, a Tennessee resident, received in the mail what she described as a “strange postcard,”<sup>163</sup> which had a photo of Ms. Holmes and had her first and last name in cursive.<sup>164</sup> Across the top were the words “STUDENT LOAN PAYMENT REDUCTION AND FORGIVENESS.”<sup>165</sup> She recognized the photo immediately because she had previously posted it on her Facebook account.<sup>166</sup> The postcard also contained the name “American Financial,” stated a loan balance of \$30,000, identified the loan type as “Federal Student Loan,” contained an account reference number, and included a toll-free number.<sup>167</sup> At the time she received the postcard, Ms. Holmes remembered that she had previously made her Facebook settings “private.”<sup>168</sup> As a result, she wondered how American Financial obtained her photo and her loan information.<sup>169</sup> She recalled that she had not searched for help with her student loans.<sup>170</sup> Alarmed by it all, Ms. Holmes stated, “I felt scared that a random company had gone through my [private] Facebook account. [I]t made me feel like I was being stalked.”<sup>171</sup> She contacted the company and voiced her complaint about the postcard to “Scott,” who retorted, “Everything we do is legal. [You have] a beautiful family.”<sup>172</sup>

Like Ms. Holmes, Melissa Bussewitz,<sup>173</sup> a New York resident, also received a postcard, which had on it a photograph of her and her daughter reflected in a “creepy man’s glasses.”<sup>174</sup> The postcard had a photo of the two women superimposed over sun eyeglasses worn by the actor Laurence Fishburne as depicted in a popular science fiction movie called “The Matrix.”

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162. See American Financial Inj. Order, *supra* note 16.

163. See Declaration of Gloria Holmes in Support of FTC’s Motion for Preliminary Injunction, FTC v. Am. Fin. Benefits Ctr., No. 4:18-cv-00806-SBA (N.D. Cal. Apr. 19, 2018) [hereinafter Declaration of Gloria Holmes].

164. *Id.*

165. *See id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. See Declaration of Melissa Bussewitz in Support of FTC’s Motion for Preliminary Injunction at 1, FTC v. Am. Fin. Benefits Ctr., No. 4:18-sv-00806-SBA (N.D. Cal. Apr. 19, 2018).

174. *Id.*

Realizing that the photo came from her Facebook profile, Ms. Bussewitz filed a complaint against the company with the Better Business Bureau stating that she felt the postcard was “a gross invasion of privacy.”<sup>175</sup>

Ms. Bussewitz and Ms. Holmes concluded American Financial was not legitimate because it scraped their social media accounts.<sup>176</sup> But, over 40,000 borrowers apparently thought American Financial was offering legitimate services and were eventually duped into paying roughly sixty million dollars for phony relief.<sup>177</sup>

*G. Require Borrowers to E-Sign Documents That Disclose Sensitive Personal and Financial Information*

Further leveraging modern technology, relief companies routinely get borrowers to sign contracts and other documents, which require the disclosure of sensitive information, electronically.<sup>178</sup> Relief companies require such disclosures so that they can fraudulently debit the borrowers’ bank accounts<sup>179</sup> or charge their credit cards<sup>180</sup> for bogus upfront fees.

Student Consulting Group obscured what it was actually doing by having borrowers e-sign a contract<sup>181</sup> that included a “power of attorney” form so that the company could ostensibly act on the borrower’s behalf.<sup>182</sup> However, the ultimate goal was to secure borrowers’ agreement allowing electronic debits to withdraw monthly payments from the borrowers’ bank accounts.<sup>183</sup>

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175. *Id.*

176. *Id.*; Declaration of Gloria Holmes, *supra* note 163.

177. *See* American Financial Inj. Order, *supra* note 16, at 4, 11 (defendants alleging that they have “helped a total of 41,805 borrowers”).

178. *See infra* notes 179–195 and accompanying text; FTC’s Operation Game of Loans, *supra* note 59 (stating that relief companies deceived customers into providing Social Security numbers and Federal Student Aid identification information).

179. *See, e.g.*, Complaint for Permanent Injunction and Other Equitable Relief, *FTC v. Elegant Sols., Inc.*, No. SACV19-01333-JVS-KESx (C.D. Cal. July 8, 2019) (alleging that borrowers e-sign documents that allowed the defendants to debit borrowers’ bank accounts for unlawful upfront fees ranging from \$100 to \$500).

180. *See* Updated Joint Case Management & Proposed Order, *supra* note 16, at 3 (alleged that the defendants unlawfully charged borrowers’ credit cards for monthly payments (up to \$99)).

181. *See* Student Consulting Group Complaint, *supra* note 88, at 9 (alleging that “[d]efendant requires consumers to provide personal and financial information including: name, address, driver’s license number, employer’s name and location, two personal references, annual income, tax filing status, spouse information, and the consumer’s unique NSLDS pin code”).

182. *Id.* at 10.

183. *Id.* The previously mentioned CAC also had borrowers e-sign contracts that purportedly put borrowers’ payments into third-party trust accounts, to be paid to CAC only after the company had performed satisfactory service. *See* Complaint at 15, *Consumer Fin. Prot. Bureau v. Consumer Advoc. Ctr.*, No. 8:19-cv-01998 JVS, 2019 WL 5721909 (C.D. Cal. Oct. 21, 2019). However, authorities alleged that the purported trust accounts were actually controlled by entities related to CAC and the deposited money was eventually paid out to the defendants without borrowers obtaining the promised debt relief service. *Id.*

Because some borrowers lack the money to pay hefty upfront fees,<sup>184</sup> a few relief companies have concocted a financing scheme to collect upfront fees.<sup>185</sup> Equitable Acceptance Corporation (EAC), a finance company, was recently exposed as a central figure in four separate enforcement actions against relief companies.<sup>186</sup> Different corporate entities and individuals assumed the primary role in baiting consumer borrowers with promises of relief; however, a cash-strapped borrower would eventually be asked to e-sign a document packet, which, among other things, included an agreement that resulted in a new loan from EAC.<sup>187</sup>

Besides e-signing documents that result in borrowers unwittingly obtaining new loans, borrowers routinely e-sign documents that require their disclosure of their federal student loan account information.<sup>188</sup> This loan account information includes the borrower's account number, username, and password, all of which enabled relief companies to gain access to the borrower's online accounts through the National Student Loan Data System (NSLDS).<sup>189</sup> Federal law protects a borrower's account information on the NSLDS, and the Education Department only allows authorized entities access to that information; relief companies are not authorized entities.<sup>190</sup>

184. *See, e.g.*, Minn. v. SAC Complaint, *supra* note 67, at 10 (charging borrowers fees ranging from \$500 to \$1,500); FTC v. All. Document Preparation, 296 F. Supp. 3d 1197, 1210 (C.D. Cal. 2017) (holding that defendants violated Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(5)(I) (2018), by charging upfront one-time fee of \$499 before doing any services).

185. *See* Lesley Fair, *FTC Sues Marketers of Student Loan "Debt Relief" – and Financer Who Helped It Happen*, FED. TRADE COMM'N: BUS. BLOG (Sept. 12, 2019, 12:35 PM), <https://www.ftc.gov/news-events/blogs/business-blog/2019/09/ftc-sues-marketers-student-loan-debt-relief-financer-who> [<https://perma.cc/J54P-KPHU>] (describing how consumers were misled into paying fees by getting financing through a third-party lender).

186. *See, e.g.*, *People v. Debt Resolve, Inc.*, 387 F. Supp. 3d 358, 369 (S.D.N.Y. 2019) (describing EAC's financing of upfront fees charged to borrowers by various relief companies, holding that the attorney general had sufficiently pled that EAC played a "direct role in the fraudulent scheme") (emphasis in the original).

187. *See, e.g.*, Complaint for Permanent Injunction and Other Equitable Relief at 16, FTC v. Student Advocates Team, LLC, No. 8:19-cv-1728 (C.D. Cal. Sept. 11, 2019) (alleging that EAC violated several laws, including the Truth in Lending Act, by failing to disclose finance charges for loans ranging from \$1,300 to \$1,400 and obligating the borrowers to make monthly payments ranging from \$39 to \$49 to EAC); *see also* Complaint at 16, FTC v. Manhattan Beach Venture, LLC, No. 2:19-cv-07849 (C.D. Cal. Sept. 11, 2019) (alleging same); Amended Class Action Complaint at 2, *Williams v. Equitable Acceptance Corp.*, No. 1:18-cv-07537-NRB (S.D.N.Y. Jan. 15, 2019) [hereinafter *Williams' Am. Complaint*]; Memorandum in Opposition to Equitable Acceptance Corp.'s Motion to Dismiss the RICO Claims in the Amended Class Action Complaint at 9, *Williams v. Equitable Acceptance Corp.*, No. 1:18-cv-07537 (S.D.N.Y. Apr. 15, 2019) (explaining that after plaintiff told the relief company that she did not have any money to pay its upfront fee, plaintiff unwittingly e-signed documents that resulted in her agreeing to borrow that fee amount from EAC at an annual percentage rate of 21 percent).

188. *See, e.g.*, Minn. v. SAC Complaint, *supra* note 67, at 16–17.

189. *Id.*

190. *Id.*; *see also Beware: You Never Have to Pay for Help with Student Loans*, *supra* note 62 (warning borrowers that the Education Department and its authorized loan servicers will never ask for a borrower's password or other log-in information).

Relief companies routinely obtain borrowers' loan account information, change their passwords and contact information (e.g., email address), and then take control of their loan accounts.<sup>191</sup> For example, Brandon Frere, the owner of American Financial, was *criminally* charged with wire fraud as a result of his practice of taking over borrowers' loan accounts.<sup>192</sup> After obtaining borrowers' login information, Mr. Frere used American Financial and related companies to remove borrowers' email addresses and replace them with AFBC.Confirmation@afcenter.com as the contact email address for 199 borrowers with one single loan servicer.<sup>193</sup> By replacing the borrowers' email address, Mr. Frere was able to conceal his fraudulent activity for a long time.<sup>194</sup> For instance, Mr. Frere used American Financial to keep one consumer's student loan in forbearance for fifteen months and, due to the accrual of interest, his outstanding loan balance increased from approximately \$70,000 to \$75,000.<sup>195</sup>

Based on the foregoing, American Financial and other relief companies effectively deploy various forms of modern technology to defraud borrowers of millions. As explained in the next section, justification exists for federal and state lawmakers to enact new legislation to curb student loan relief scams.

### III. JUSTIFICATION EXISTS FOR PASSAGE OF NEW LEGISLATION TO DETER STUDENT LOAN RELIEF SCAMS

While federal and state authorities have been successful in shutting down about three dozen relief companies,<sup>196</sup> lawmakers need to do more to protect borrowers from student loan relief scams.<sup>197</sup> As discussed below, three main arguments exist to justify the enactment of additional regulation to afford greater protection to borrowers from relief scams. First, until loan servicers are held liable in one of the numerous pending cases filed against them, loan servicers cannot be trusted to self-regulate.<sup>198</sup> Second, the Education Department, under new leadership

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191. See Criminal Complaint at 13, *United States v. Frere*, No. 3:18-mj-71724-SK, 2018 WL 8062211 (N.D. Cal. Dec. 5, 2018) [hereinafter *Frere* Crim. Complaint]; see, e.g., Student Consulting Group Complaint, *supra* note 88, at 9; *Minn. v. SAC* Complaint, *supra* note 67, at 11–13 (alleging that after defendant took over borrowers' accounts, borrowers stopped getting emails from their loan servicers while the company debited borrowers' bank accounts for bogus relief).

192. See *Frere* Crim. Complaint, *supra* note 191, at 2 (charging Brandon Frere for committing wire fraud in violation of 18 U.S.C. § 1343); DOJ Press Release, *supra* note 16 (reporting that Mr. Frere pled guilty to charges of wire fraud and money laundering); *infra* notes 369–387 and accompanying text (discussing a federal proposed law that would impose criminal liability on relief scammers).

193. See *Frere* Crim. Complaint, *supra* note 191, at 12.

194. See *id.* at 6 (alleging that “from at least 2014 through November 2018, FRERE used the Companies to operate a debt relief enterprise”); see also *infra* notes 215–245 and accompanying text (explaining the negative consequences, including accrual of interest, while a loan is in forbearance).

195. See *Frere* Crim. Complaint, *supra* note 191 at 9.

196. See, e.g., FTC's Operation Game of Loans, *supra* note 59.

197. For an analysis of a federal bill aimed at stopping relief scams, see *infra* notes 366–428 and accompanying text.

198. See *infra* notes 202–241 and accompanying text.

since 2017, has taken actions that are harmful to borrowers.<sup>199</sup> Third, the Consumer Financial Protection Bureau (CFPB), also under new leadership, has implemented several harmful changes, including shuttering the only office dedicated to fulfilling several statutorily mandated duties that protect student loan borrowers.<sup>200</sup>

*A. Borrowers Are Vulnerable to Relief Scams as Long as Loan Servicers Are Not Held Accountable*

In theory, borrowers can obtain, *for free*, debt management assistance from their loan servicers;<sup>201</sup> however, investigations by federal and state authorities credibly accuse loan servicers of engaging in widespread unlawful practices.<sup>202</sup> One could write a book about these practices, but only a brief summary of them is provided below.

For several years, borrowers have submitted tens of thousands of complaints about loan servicers to the CFPB and state attorneys general.<sup>203</sup> Borrower complaints include loan servicers incorrectly processing borrowers' payments and steering borrowers into forbearance periods instead of into appropriate repayment plans.<sup>204</sup>

199. *See infra* notes 245–289 and accompanying text.

200. *See infra* notes 296–332 and accompanying text.

201. U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-663, FEDERAL STUDENT LOANS: EDUCATION COULD DO MORE TO HELP ENSURE BORROWERS ARE AWARE OF REPAYMENT AND FORGIVENESS OPTIONS (2015), <https://www.gao.gov/assets/680/672136.pdf> [<https://perma.cc/GW44-VVC7>].

202. *See, e.g.*, CONSUMER FIN. PROT. BUREAU, STUDENT LOAN SERVICING: ANALYSIS OF PUBLIC INPUT AND RECOMMENDATIONS FOR REFORM 12–13 (2015), [http://files.consumerfinance.gov/f/201509\\_cfpb\\_student-loan-servicing-report.pdf](http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf) [<https://perma.cc/YVC3-GXR2>].

203. *See, e.g.*, CONSUMER FIN. PROT. BUREAU, ANNUAL REPORT OF THE CFPB STUDENT LOAN OMBUDSMAN 2 (2017) [hereinafter CFPB ANNUAL REPORT], [http://files.consumerfinance.gov/f/documents/cfpb\\_annual-report\\_student-loan-ombudsman\\_2017.pdf](http://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf) [<https://perma.cc/F4ZA-UPSB>] (reporting that, as of August 31, 2017, the CFPB had received 50,700 complaints from student loan borrowers about loan servicers).

204. *See, e.g.*, CONSUMER FIN. PROT. BUREAU, MID-YEAR UPDATE ON STUDENT LOAN COMPLAINTS 3 (2015), [http://files.consumerfinance.gov/f/201506\\_cfpb\\_mid-year-update-on-student-loan-complaints.pdf](http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf) [<https://perma.cc/44XQ-V35M>]; CONSUMER FIN. PROTECTION BUREAU, STAYING ON TRACK WHILE GIVING BACK: THE COST OF STUDENT LOAN SERVICING BREAKDOWNS FOR PEOPLE SERVING THEIR COMMUNITIES 18 (2017) [hereinafter STAYING ON TRACK], [http://files.consumerfinance.gov/f/documents/201706\\_cfpb\\_PSLF-midyear-report.pdf](http://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf) [<https://perma.cc/CSZ7-6UM7>]. From 2014 to 2017, borrower complaints about servicers have been received, tracked, and summarized in an annual report published by the CFPB's student loan ombudsman. *See, e.g.*, CFPB ANNUAL REPORT, *supra* note 203, at 20 (“Since 2012, the Bureau has repeatedly documented how private student loan borrowers complain that their repayment efforts are sidelined due to servicing errors.”). Pursuant to its authority, the CFPB designated “a Private Education Loan Ombudsman” to assist consumers with private student loans and to prepare annual reports addressing complaints and other student lending issues. 12 U.S.C. § 5535(a), (c), (d) (2012). The CFPB's Ombudsman is statutorily obligated to assist borrowers in resolving complaints with their loan servicers. *Id.*

While several loan servicers have been sued for unlawful practices,<sup>205</sup> Navient Solutions, Inc. (Navient), formerly known as Sallie Mae, is highlighted below because it is the largest loan servicer,<sup>206</sup> and its alleged unlawful practices are industry-wide.<sup>207</sup> After receiving thousands of complaints and conducting a three-year investigation of student loan servicing practices,<sup>208</sup> the CFPB filed in 2017 an enforcement action against Navient for engaging in numerous practices alleged to be unfair, deceptive, and abusive.<sup>209</sup> Moreover, the state attorneys general from California, Illinois, Mississippi, Washington, and Pennsylvania also filed lawsuits against Navient and its debt-collection subsidiaries (collectively, Navient) for violating state and federal consumer protection laws.<sup>210</sup> Similarly, Navient's investors filed a class-action lawsuit against the company claiming that it misled

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205. In a pending lawsuit filed by the Commonwealth of Massachusetts against the Pennsylvania Higher Education Assistance Agency (PHEAA), the second largest loan servicing company, the Commonwealth alleged that PHEAA violated the federal Consumer Financial Protection Act as well state law by engaging in several unlawful payment processing practices against Massachusetts student loan borrowers. *See Massachusetts v. Pa. Higher Educ. Assistance Agency*, No. 1784CV02682-BLS2, 2018 WL 1137520, at \*9 (Mass. Super. Ct. Mar. 1, 2018) (finding that PHEAA, also known as FedLoan Servicing, had “not met its difficult and heavy burden of proving that its alleged misconduct is affirmatively authorized by federal law” and, therefore, denying PHEAA’s motion to dismiss). In 2019, New York Attorney General Letitia James announced a settlement of a lawsuit filed against ACS Education Services, now Conduent Education Services, for allegedly steering borrowers’ student loans into forbearance or deferment, instead of in appropriate repayment plans. *See Steven Harras, N.Y. Regulators Order Student Loan Servicer to Pay \$9M over Loan Practices*, CQ ROLL CALL WASH. BANKING BRIEFING, Jan. 8, 2019.

206. *Consumer Fin. Prot. Bureau v. Navient Complaint*, *supra* note 23 (stating that “Navient services the loans of more than 12 million borrowers, including over 6 million customer accounts under a contract with the U.S. Department of Education, and more than \$300 billion in federal and private student loan”).

207. *See, e.g., Memorandum at 6, Lord Abbett Affiliated Fund, Inc. v. Navient Corp.*, 363 F. Supp. 3d, 476 (D. Del. 2019) (No. 16–112-GMS) (alleging in investors’ lawsuit that “Navient engaged in a widespread and continual practice of concealing from investors” alleged unlawful practices related to the servicing of private student loans); *Second Amended Class Action Complaint for Violation of the Fed. Secs. Laws at 84, In re Navient Corp. Sec. Litig.*, No. 17-8373 (D.N.J. Mar. 18, 2019) (citing to several negative media reports about Navient and alleging that its “pervasive practice of placing borrowers into forbearance materially impacted its financial results”).

208. Under the Consumer Financial Protection Act, the CFPB has investigatory powers. *See* 12 U.S.C. § 5562 (2019).

209. *See Consumer Fin. Prot. Bureau v. Navient Complaint*, *supra* note 23. The CFPB has both supervisory and enforcement authority over student loan servicers. 12 C.F.R. §§ 1090.100, 1090.102, 1090.106 (2014).

210. *Complaint, Washinton v. Navient Corp.*, No. 17-2-01115-1 SEA (Wash. Super. Ct. Jan. 18, 2017) [hereinafter *Wash. v. Navient Complaint*]; *Complaint for Permanent Injunction and Other Relief, Commonwealth v. Navient Corp.*, No. 3:17-cv-01814-RDM (M.D. Pa. Oct. 5, 2017) [hereinafter *Penn. v. Navient Complaint*]; *Complaint for Permanent Injunction, Civil Penalties, Restitution, and Other Equitable Relief, California v. Navient Corp.*, No. CGC-18-567732, 2018 WL 3199474 (Cal. Super. Ct. June 29, 2018) [hereinafter *Cal. v. Navient Complaint*]; *Mississippi v. Navient Corp.*, No. 25CH1:18-cv-00982 (Miss. Ch. Ct. July 17, 2018) [hereinafter *Miss. v. Navient Complaint*]; *Illinois v. Navient Complaint*, *supra* note 23. State attorneys general have the authority to enforce the federal consumer protection laws that unfair, deceptive and abusive acts and practices. *See* 12 U.S.C. § 5552(a)(1).

investors regarding various investigations indicating that Navient had engaged in several unlawful loan servicing practices.<sup>211</sup>

Chief among the allegations is that Navient incentivized its employees to intentionally steer borrowers into forbearance periods instead of enrolling them into several legitimate loan repayment programs available to borrowers with federal student loans.<sup>212</sup> From at least five years, the CFPB alleged that Navient enrolled over 1.5 million borrowers' loans into consecutive forbearances of two or more periods for twelve or more months.<sup>213</sup> Because the loans continued to accrue interest while in forbearance, the CFPB alleged that this forbearance scheme resulted in the accrual of nearly four billion dollars in interest.<sup>214</sup>

Navient benefitted from the accrued interest, but it was harmful to borrowers.<sup>215</sup> If, for example, a borrower with a \$30,000 federal loan spent three years in forbearance, that borrower would have to pay \$6,742 more than a borrower with a standard ten-year repayment plan whose loan was never put in forbearance.<sup>216</sup> The four billion dollars in accrued interest could have been avoided, perhaps entirely, if Navient had enrolled borrowers into income-based repayment plans that were appropriate for their situations.<sup>217</sup>

Navient's alleged forbearance practice also prevented borrowers from benefiting from an interest subsidy.<sup>218</sup> Borrowers that have a subsidized federal loan and that are enrolled in an income-driven repayment plan qualify to have the government pay accrued interest not covered by their monthly payments for up to three years of consecutive enrollment.<sup>219</sup> Because that accrued interest is paid in full by the federal government, it is not added to the principal balance of the loan.<sup>220</sup> Depending on the borrower's principal balance, this interest subsidy could amount

211. See *Lord Abbett Affiliated Fund, Inc. v. Navient Corp.*, 363 F. Supp. 3d 476 (D. Del. 2019); *In re Navient Corp. Secs. Litig.*, No. 1:17-cv-08373, 2019 WL 7288881, at 4 (D.N.J. Dec. 30, 2019) (denying Navient's motion to dismiss a proposed investor class-action suit and finding that the plaintiffs had pled facts showing that Navient and its top executives concealed negative information, including that a FSA audit revealed Navient's failure to comply with servicing standards).

212. See *Lord Abbett Affiliated Fund, Inc.*, 363 F. Supp. at 492–93 (describing the testimony of confidential witnesses who indicated that supervisors were directly involved in a widespread practice of awarding bonuses to incentivize “low-level” employees to put borrowers into forbearance); *Consumer Fin. Prot. Bureau v. Navient Complaint*, *supra* note 23, at 17–22 (explaining how employees were incentivized to limit customer calls to just under six minutes and, thereby, put borrowers loans into forbearance); *Illinois v. Navient Complaint*, *supra* note 23, at 36; *Cal. v. Navient Complaint*, *supra* note 210, at 13.

213. *Consumer Fin. Prot. Bureau v. Navient Complaint*, *supra* note 23, at 20–23.

214. *Id.* at 23.

215. *Id.* at 23.

216. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-163, FEDERAL STUDENT LOANS: ACTIONS NEEDED TO IMPROVE OVERSIGHT OF SCHOOLS' DEFAULT RATES, at Highlights (2018).

217. *Consumer Fin. Prot. Bureau v. Navient Complaint*, *supra* note 23, at 23.

218. *Id.* at 24–25.

219. See 34 C.F.R. § 685.209(a)(2)(iii) (2018).

220. See *Consumer Fin. Prot. Bureau v. Navient Complaint*, *supra* note 23, at 13.

to savings in the thousands of dollars.<sup>221</sup> Thus, Navient's alleged forbearance scheme deprived borrowers of the benefit of having their accrued interest paid for while enrolled in income-driven repayment plans.<sup>222</sup>

Moreover, Navient's alleged forbearance practice prevented borrowers from qualifying for loan forgiveness programs.<sup>223</sup> When a borrower's loan is put into forbearance, instead of into an income-based repayment plan, the borrower is not making any payments and, therefore, cannot satisfy the mandatory payment requirements to obtain loan forgiveness.<sup>224</sup> As a result, to satisfy the relevant period to obtain forgiveness, the borrower who spent three years in forbearance (described in the example above), would not only owe \$6,742 in added interest on the \$30,000 loan balance but would also have to spend three more years making payments in a qualified payment plan.<sup>225</sup>

In addition to alleged unlawful forbearances, Navient and other loan servicers have been accused of rampant unlawful payment processing practices that misapply and misallocate borrowers' payments,<sup>226</sup> thereby causing borrowers to suffer financial harm.<sup>227</sup> For instance, borrowers accused Navient of misallocating borrowers' payments, meaning that Navient allegedly ignored borrowers' instructions, which were often given in writing, and allocated payments in an arbitrary, unfair, and often illogical manner.<sup>228</sup> For example, in the lawsuit filed by

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221. *Id.* at 23.

222. *Id.*

223. Borrowers enrolled in an income-based or income-driven plan can obtain: (1) loan forgiveness after 20 to 25 years of qualifying payments in an income-driven repayment plan, or (2) loan forgiveness after 10 years of qualifying payments as a public servant enrolled in the federal Public Service Loan Forgiveness (PSLF) program. *Pennsylvania v. Navient Corp.*, 354 F. Supp. 3d 529, 536 (M.D. Pa. 2018); see *infra* notes 233–241 and accompanying text (describing obstacles allegedly put in place by loan servicers to prevent most borrowers from obtaining forgiveness through the PSLF program).

224. *Pennsylvania v. Navient Corp.*, 354 F. Supp. 3d at 537.

225. *Id.* at 537 (denying Navient's motion to dismiss and finding that Pennsylvania had sufficiently alleged that Navient unlawfully steered borrowers into forbearance, the consequences of which included "addition of interest to the principal [of a borrower's loan] and lost months that would have otherwise counted toward forgiveness").

226. See, e.g., *Illinois v. Navient Complaint*, *supra* note 23, at 54; *Wash. v. Navient Complaint*, *supra* note 210, at 27–29. According to the CFPB, Navient's processing failures occurred for multiple reasons, including that it "(1) did not disclose its payment allocation methodology, (2) failed to read borrowers' allocation and application instructions, and (3) failed to implement borrowers' instructions properly." See *Consumer Fin. Prot. Bureau v. Navient Corp.*, No. 3:17-CV-00101, 2017 WL 3380530, at \*7 (M.D. Pa. Aug. 4, 2017) (denying Navient's motion to dismiss); *Massachusetts v. Pa. Higher Educ. Assistance Agency*, No. 1784CV02682-BLS2, 2018 WL 1137520, at \*9 (Mass. Super. Ct. Mar. 1, 2018) (denying PHEAA's motion to dismiss and noting that PHEAA had failed to cite any federal law that permits it to misapply and misallocate payments).

227. See, e.g., *Pennsylvania v. Navient Corp.*, 354 F. Supp. 3d at 539 (denying Navient's motion to dismiss and summarizing Pennsylvania's allegations that Navient's payment processing errors "have resulted in: (1) borrowers and cosigners incurring improper late fees and increased interest charges, and (2) the furnishing of inaccurate negative information to consumer reporting agencies").

228. See *Consumer Fin. Prot. Bureau v. Navient Complaint*, *supra* note 23; *Illinois v. Navient Complaint*, *supra* note 23, at 12; *Wash. v. Navient Complaint*, *supra* note 210, at 27–29.

the State of Washington, one borrower stated that she had set up payments to be deducted automatically from her bank account and allocated among six loans, but Navient allocated payments on *only five* of the six loans.<sup>229</sup> This allocation method caused the borrower to be treated as delinquent on the sixth loan even though that was incorrect due to Navient's misallocation.<sup>230</sup>

Besides being harmed by loan servicers' alleged unlawful allocation practices, borrowers have encountered significant hurdles when applying for and attempting to obtain loan forgiveness through the federal Public Service Loan Forgiveness (PSLF) program.<sup>231</sup> The program will forgive a borrower's balance after ten years of eligible payments if the borrower was employed full-time by an eligible governmental or nonprofit entity.<sup>232</sup> The PSLF program was created by Congress in 2007 to grant borrowers with public service jobs relief from student loan debt in exchange for a decade of payments and employment in public service.<sup>233</sup> Both Navient as well as the Pennsylvania Higher Education Assistance Agency (PHEAA), well-known as FedLoan Servicing and the administrator of the PSLF program, have been sued for allegedly preventing and hindering borrowers' ability to enroll in the PSLF program and to maintain eligibility for it.<sup>234</sup>

Disturbing data exists regarding the lack of success in borrowers obtaining loan forgiveness through the PSLF program.<sup>235</sup> The first date that borrowers could have actually received loan forgiveness through the PSLF program was October 1, 2017.<sup>236</sup> In 2018, the Education Department finally admitted that *less than one percent* of borrowers whose PSLF applications were processed received loan forgiveness.<sup>237</sup> Specifically, only ninety-six out of roughly 28,000 borrowers who had enrolled were actually granted loan forgiveness under the program in 2017.<sup>238</sup> Of the ninety-nine percent who were rejected, the Education Department claims that the majority did not meet eligibility criteria and that it rejected twenty-eight percent due to incomplete applications.<sup>239</sup> Moreover, despite there being nearly thirty-three million

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229. Wash. v. Navient Complaint, *supra* note 210, at 28.

230. *See id.* (alleging that this misallocation of payments happened several times and that Navient made repeated collection calls to borrower and her co-signor).

231. *See infra* notes 236–242 and accompanying text; STAYING ON TRACK, *supra* note 204, at 4, 27–43 (stating that loan servicers have engaged in practices that “delay, defer, or deny access to” the PSLF program and detailing complaints from borrowers).

232. STAYING ON TRACK, *supra* note 204, at 21.

233. *See Crespi, supra* note 89, at 823–24.

234. *See, e.g.,* Complaint, New York v. Pa. Higher Educ. Assistance Agency, No. 19-cv-9155, 2019 WL 5095707 (S.D.N.Y. Oct. 3, 2019); Complaint, Morris v. Pa. Higher Educ. Assistance Agency, No. 2:18-cv-00031-CDJ, 2018 WL 345341 (E.D. Pa. Jan. 8, 2018) [hereinafter Morris Complaint] (“PHEAA was . . . the second most complained about loan servicer in April 2017.”).

235. *See infra* notes 236–242 and accompanying text.

236. *See Federal Student Aid Posts New Reports to FSA Data Center*, FED. STUDENT AID (2018), <https://ifap.ed.gov/eannouncements/091918FSAPostsNewReportstoFSADataCenter.html> [<https://perma.cc/8HNJ-VT99>].

237. *Id.*

238. *Id.*

239. *Id.*

borrowers who could be eligible for the PSLF program as of 2018, only 900,000 of those individuals were successful in verifying their employment at a public service organization.<sup>240</sup> The lawsuits against Navient and FedLoan alleged that their unfair and deceptive practices prevented borrowers from completing applications to enroll in the PSLF program and to maintain their participation in it.<sup>241</sup>

Because loan servicers make money based, in part, on the amount of the outstanding loans, lawsuits alleged that loan servicers had no incentive to actually help borrowers achieve loan forgiveness.<sup>242</sup>

Unfortunately for borrowers, President Trump's election and his controversial appointment of Betsy DeVos as the Education Secretary emboldened loan servicers to request that she "reduce unnecessary and burdensome requirements."<sup>243</sup> As discussed in the next section, Secretary DeVos has acted to shield loan servicers from accountability<sup>244</sup> and has, thereby, left borrowers more likely to be receptive to debt relief scams.

### *B. Under New Leadership, the Education Department Has Abandoned Borrowers*

Since Secretary DeVos's tie-breaking confirmation as head of the Education Department,<sup>245</sup> she has been sued by numerous class-action litigants and state attorneys general for taking numerous actions considered harmful, including continuing to unlawfully garnish the wages of certain student loan borrowers during the COVID-19 pandemic.<sup>246</sup> However, only a few relevant actions are discussed

240. Press Release, Student Borrower Prot. Ctr., AFT and SBPC Launch Joint Investigation into Mismanagement and Industry Abuses in Federal Public Service Loan Forgiveness Program (Dec. 20, 2018), <https://protectborrowers.org/aft-and-sbpc-launch-joint-investigation-into-mismanagement-and-industry-abuses-in-federal-public-service-loan-forgiveness-program/> [https://perma.cc/BWH4-26KG].

241. See, e.g., Consumer Fin. Prot. Bureau v. Navient Complaint, *supra* note 23, at 43; Massachusetts v. Pa. Higher Educ. Assistance Agency, No. 1784CV02682-BLS2, 2018 WL 1137520, at \*9 (Mass. Super. Ct. Mar. 1, 2018).

242. See, e.g., Consumer Fin. Prot. Bureau v. Navient Complaint, *supra* note 23, at 43; Morris Complaint, *supra* note 234, at 2 ("[H]elping borrowers get out of debt sooner directly conflicted with FedLoan's own financial interest in keeping loans active for as long as possible to continue collecting monthly servicing fees.").

243. See Paul Davidson, *Student Loan Guidelines Changed Again: Education Chief Halts Obama-era Overhaul of Collection Process*, USA TODAY, Apr. 14, 2017, at B2.

244. See, e.g., Deirdre Fernandes, *State AGs Spar with DeVos on Loan Debt: Healey Says Secretary Sides with Collectors Over Students*, BOS. GLOBE, Mar. 10, 2018, at A1.

245. Brown, *supra* note 98.

246. See, e.g., *supra* note 44 and accompanying text (mentioning the class-action lawsuit filed against Secretary DeVos for allegedly violating the CARES Act by, among other things, garnishing the paychecks of borrowers with qualifying federal student loans during the COVID-19 pandemic and unlawfully intercepting their tax refunds); *Borrowers Are Still Having Their Paychecks Seized over Defaulted Student Loans, Even Though the CARES Act Was Supposed to Stop Wage Garnishment*, *Lawsuit Says*, FINANCIALPRESS (Aug. 8, 2020), <https://financialpress.com/staging/2020/08/08/borrowers-are-still-having-their-paychecks-seized-over-defaulted-student-loans-even-though-the-cares-act-was-supposed-to-stop-wage-garnishment-lawsuit-says/> [https://perma.cc/M3WQ-AKCU] (summarizing the status of a class-action lawsuit where plaintiffs allege that Secretary DeVos and the Education Department have unlawfully garnished the paychecks of almost 2,900 borrowers four

below to demonstrate that Secretary DeVos's actions have financially harmed student loan borrowers.<sup>247</sup>

Over two years ago, Secretary DeVos made several announcements that purported to at first delay, and ultimately prevent, a regulation commonly referred to as the Borrower Defense Rule (BDR) from going into effect.<sup>248</sup> The BDR was adopted in 2016, after the collapse of for-profit Corinthian Colleges.<sup>249</sup> The BDR was created to establish a process through which borrowers could apply for discharge of their student loan debts incurred to attend for-profit schools that had misrepresented their post-graduation rates of employment.<sup>250</sup> After attorneys general from nineteen states and the District of Columbia sued Secretary DeVos, a federal court ruled in late 2018 that her decision to delay the rule was arbitrary and capricious and, therefore, not lawful.<sup>251</sup>

While this 2018 court ruling signaled victory, borrowers relying on the BDR to obtain a debt discharge are still waiting.<sup>252</sup> As of March 2019, over 140,000 applications submitted to the Education Department by borrowers were still pending.<sup>253</sup> In June 2019, nearly 160,000 former students of for-profit colleges sued Secretary DeVos for failing to process their BDR applications.<sup>254</sup> Thereafter,

months into the pandemic and are unlawfully holding onto the tax refunds of up 22,000 borrowers); *see also* Steph Solis, *Massachusetts Attorney General Maura Healey Has at Least 43 Lawsuits Against the Trump Administration*, MASS LIVE (June 6, 2019) (describing numerous lawsuits filed by Massachusetts Attorney General Maura Healey against President Trump and Trump-appointed heads of agencies, including Secretary DeVos).

247. *See id.*; ETHAN LUTZ, MIKE LITT & ED MIERZWINSKI, U.S. PIRG EDUC. FUND, POSITIONED TO PROTECT: HOW STATE AND LOCAL AUTHORITIES CAN FILL THE CFPB VOID (2018) [hereinafter PIRG REPORT], [https://uspig.org/sites/pirg/files/reports/positionedto\\_protect\\_Word\\_finalwcover.pdf](https://uspig.org/sites/pirg/files/reports/positionedto_protect_Word_finalwcover.pdf) [<https://perma.cc/9R7Y-ATAV>] (describing several multi-state lawsuits filed by attorneys general against Secretary DeVos and explaining how states can take action to protect consumers); *see also* Complaint at 24, *Maryland v. U.S. Dep't of Educ.*, No. 1:17-cv-02139 (D.D.C. Oct. 17, 2017), [http://www.marylandattorneygeneral.gov/news%20documents/Complaint\\_Gainful\\_Employment.pdf](http://www.marylandattorneygeneral.gov/news%20documents/Complaint_Gainful_Employment.pdf) [<https://perma.cc/4KKQ-W3WK>] (noting allegations by the attorneys general of seventeen states and the District of Columbia that Secretary DeVos's "illegal delays and refusal to enforce [a 2014 regulation known as the Gainful Employment] Rule harm current and prospective students").

248. *See* ALAN ZIBEL, PUBLIC CITIZEN, UNIVERSITY OF GREED 31–33 (Rick Claypool, Julie Murray & Robert Weissman eds., 2018), <https://www.citizen.org/wp-content/uploads/migration/university-of-greed-public-citizen-education-report-2018.pdf> [<https://perma.cc/C5MR-8XPP>].

249. *See* *Bauer v. DeVos*, 325 F. Supp. 3d 74, 80–81 (D.D.C. 2018).

250. *Id.* at 82.

251. *Id.* at 110 (granting summary judgment in favor of the state plaintiffs and in favor of two student borrowers).

252. *See* Danielle Douglas-Gabriel, "Don't You Have a Heart?": Senate Democrats Press DeVos on Backlog of 140,000 Student Debt-Relief Claims, WASH. POST, Mar. 28, 2019 (explaining the "backlog of claims from defrauded student-loan borrowers").

253. *Id.* During her congressional testimony, Secretary DeVos stated that she "believed" applications were approved but did not provide any data to back up her belief. *Id.*

254. *See* Press Release, The Project on Predatory Student Lending, Legal Svcs. Ctr. of Harvard L. Sch., For-Profit College Students File Lawsuit to Force Betsy DeVos to Follow the Law and Cancel their Student Loan Debt (June 25, 2019), <https://predatorystudentlending.org/news/press-releases/>

Secretary DeVos and the Education Department were both held in contempt and ordered to pay a \$100,000 fine for repeatedly defying (16,000 times) an injunction prohibiting them from collecting loan payments from student borrowers defrauded by Corinthian Colleges.<sup>255</sup> In April 2020, Secretary DeVos, without admitting wrongdoing, settled a class-action lawsuit by agreeing to issue final decisions on dischargeability in nearly 170,000 BDR applications within eighteen months and to cancel debt for approved applicants within twenty-one months.<sup>256</sup>

Bent on limiting future borrowers' ability to discharge debt incurred at for-profit schools, Secretary DeVos proposed the "Institutional Accountability" (IA) regulation, which replaces the BDR, imposes on borrowers a substantial burden of proof, and thereby severely limits debt dischargeability.<sup>257</sup> Congress, in a bipartisan vote, passed legislation to block DeVos's IA regulation from taking effect, but in May 2020, President Trump vetoed Congress's attempt to block this new rule, thereby angering several constituents, including veterans seeking protection from shady for-profit schools.<sup>258</sup>

defrauded-for-profit-college-students-file-lawsuit-to-force-betsy-devos-cancel-student-loan-debt-borrower-defense/ [https://perma.cc/P6EM-DB9G].

255. *Calvillo Manriquez v. DeVos*, 411 F. Supp. 3d 535, 540 (N.D. Cal. 2019). Magistrate Judge Sallie Kim stated, "Given that there are over 16,000 borrowers who have suffered damages from Defendants' violation of the preliminary injunction and given that there may be some administrative expenses to remedy the harm, the Court finds the amount [of \$100,000] reasonable." *Id.* The magistrate judge had previously granted the injunction after 110,000 student loan borrowers filed a class-action suit seeking relief from the Education Department's debt collection. *See id.* at 537–39. The judge agreed with the borrowers that the Education Department had unlawfully limited loan forgiveness to them by determining forgiveness eligibility using nonpublic earnings data from Social Security Administration, in violation of federal privacy law. *See id.*

256. *See* Settlement Agreement at 5–7, *Sweet v. DeVos*, No. 3:19-cv-03674-WHA (N.D. Cal. Apr. 10, 2020), <https://www.courthousenews.com/wp-content/uploads/2020/04/DeVosBorrowerDefense-SETTLEMENT.pdf> [https://perma.cc/6GGJ-GKH7].

257. *See* 34 C.F.R. § 685.206 (2019) (discharging student debt requires proving, by a preponderance of the evidence, "that an institution at which the borrower enrolled made a representation with knowledge that the representation was false, or with reckless disregard for the truth"); Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 84 Fed. Reg. 49788 (Sept. 23, 2019) (requiring a borrower seeking to discharge student loan debt to prove, by a preponderance of the evidence, "that an institution at which the borrower enrolled made a representation with knowledge that the representation was false, or with reckless disregard for the truth"); Laura Camera, *Senate Rebukes Betsy DeVos, Trump Administration in Vote on Student Debt Relief Rule*, U.S. NEWS & WORLD REPORT, Mar. 11, 2020 (reporting that DeVos believed the BDR rule was "too lenient" and that she made it a high priority to rewrite the rule to limit relief to student loan borrowers).

258. *See* Camera, *supra* note 257 (reporting that DeVos's proposed rule was viewed as "too extreme" for both Republicans and Democrats). Adam S. Minsky, *Veterans' and Consumer Groups "Heartbroken" After Trump Vetoes Student Loan Relief Bill*, FORBES (May 30, 2020, 9:44 AM), <https://www.forbes.com/sites/adamminsky/2020/05/30/veterans-and-consumer-groups-heartbroken-after-trump-vetoes-student-loan-relief-bill/#654546e77ecf> [https://perma.cc/8F97-PRGL] (reporting that current military members and veterans are frequently targeted by for-profit schools, which have much higher rates of defaults for borrowers with federal student loans); Press Release, Michael Rose, Nat'l Ass'n for Coll. Admission Counseling, NACAC Expresses Disappointment Over Presidential Veto of Borrower Defense Resolution (June 2, 2020), [https://www.nacacnet.org/news-publications/newsroom/press-releases/borrower\\_defense/](https://www.nacacnet.org/news-publications/newsroom/press-releases/borrower_defense/) [https://perma.cc/L68L-7AXS] (stating

By implementing her new rule to substantially limit debt dischargeability, Secretary DeVos demonstrates that she has sided with for-profit schools.<sup>259</sup> Recall that a previously discussed relief company actually targeted borrowers who had incurred debt to attend for-profit schools.<sup>260</sup> By arbitrarily and capriciously taking actions to prevent borrowers from discharging debts via the BDR application process, Secretary DeVos has prevented borrowers from receiving millions of dollars in legitimate debt relief.<sup>261</sup> Secretary DeVos's actions are not surprising based on her comment that the Obama-era BDR process allowed borrowers to "raise [their] hand" to get "free money."<sup>262</sup>

Not only has Secretary DeVos taken actions that hinder borrowers seeking a debt discharge under the BDR, but she has also taken actions to prevent federal authorities from holding loan servicers accountable for alleged unlawful practices harmful to borrowers.<sup>263</sup> For instance, in 2017, the Education Department canceled plans previously announced under President Obama's administration to develop and impose on loan servicers a set of servicing standards that would afford borrowers greater protections.<sup>264</sup> Moreover, the Education Department terminated

that Secretary DeVos's new "rule makes it difficult for students who were defrauded by certain colleges or universities to have their federal student loans forgiven, leaving them with significant debts and little to no means to repay them").

259. Furthering her alliance with the for-profit industry, DeVos appointed Julian Schmoke to head the Student Aid Enforcement Unit, which was founded during the Obama administration to "more aggressively combat fraud and deceptive practices at colleges and universities." Michael Stratford, *Trump Administration Selects Former DeVry Official to Lead College Enforcement Unit*, POLITICO (Aug. 30, 2017, 4:13 PM), <https://www.politico.com/story/2017/08/30/julian-schmoke-jr-trump-education-department-college-enforcement-242176> [https://perma.cc/F8SN-XKMQ] (reporting on the hiring of a former dean at DeVry University and potential conflicts of interest due to DeVry's agreement to pay \$100 million to settle allegations of deceptive practices made during the Obama Administration); Valerie Strauss, *Students Gouged By For-Profit Schools Could Soon Be Out of Luck*, WASH. POST (Oct. 31, 2017), <https://www.washingtonpost.com/news/answer-sheet/wp/2017/10/31/students-gouged-by-for-profit-schools-could-soon-be-out-of-luck-thanks-to-betsy-devos/> [https://perma.cc/8P6T-YWYH] (reporting that the Student Aid Enforcement Unit has ceased investigating for-profit schools suspected of unfair and deceptive practices); see also Cory Turner, *Students Call College That Got Millions in Coronavirus Relief "A Sham"*, NPR (May 12, 2020, 11:20AM), <https://www.npr.org/2020/05/08/851629409/students-call-college-that-got-millions-in-coronavirus-relief-a-sham> [https://perma.cc/P42K-3JEX] (demonstrating how Secretary DeVos, during the 2020 pandemic, has made it possible for a for-profit college to obtain \$17 million in federal assistance under the CARES Act, up to half of which can be spent however the institution wishes).

260. See *supra* notes 150–154 and accompanying text (discussing the FTC enforcement action filed against Alliance Document Preparation).

261. See *Bauer v. DeVos*, 325 F. Supp. 3d 74, 82 (D.D.C. 2018).

262. Andrew Kreighbaum, *DeVos: Borrower-Defense Rule Offered "Free Money,"* INSIDE HIGHER ED (Sept. 26, 2017), <https://www.insidehighered.com/quicktakes/2017/09/26/devos-borrower-defense-rule-offered-%E2%80%99free-money%E2%80%99> [https://perma.cc/UPN7-ZQEE].

263. See ZIBEL, *supra* note 248, at 34–39.

264. See John L. Culhane, Jr., *State AGs Criticize ED Withdrawal of Obama Student Loan Servicing Policy Direction*, BALLARD SPAHR LLP: CONSUMER FIN. MONITOR (Apr. 26, 2017), <https://www.consumerfinancemonitor.com/2017/04/26/state-ags-criticize-ed-withdrawal-of-obama-student-loan-servicing-policy-direction/> [https://perma.cc/78EY-VTUX].

its “memoranda of understanding,” which permitted it to share student loan information with the CFPB, which in turn allowed the CFPB to investigate loan servicers for potentially unlawful behavior.<sup>265</sup> Since 2017, the Education Department has refused to share student loan information with the CFPB.<sup>266</sup> Secretary DeVos then issued to student loan servicers guidance stating that federal student loans were covered by federal privacy law.<sup>267</sup> Based on this guidance, loan servicers have refused to produce any student loan information requested by the CFPB.<sup>268</sup> As a result of these actions, Secretary DeVos has weakened the CFPB’s ability to investigate loan servicers for unlawful, unfair, abusive, or deceptive practices.<sup>269</sup>

Secretary DeVos’s decision to withhold information also impacts state enforcement authorities in pending lawsuits.<sup>270</sup> Prior to her appointment, the Education Department shared student loan information with state authorities.<sup>271</sup> Recall that in addition to the CFPB, attorneys general from several states sued loan servicers for violating state consumer protection laws, which prohibit unfair and deceptive acts and practices.<sup>272</sup> In a 2019 letter to Secretary DeVos, attorneys general from twenty-one jurisdictions requested that she reverse her position,<sup>273</sup> but she has refused to do so.<sup>274</sup>

Besides refusing to disclose student loan information under the guise of privacy concerns, Secretary DeVos has not taken any steps recommended by the Office of the Inspector General (OIG) to hold loan servicers accountable.<sup>275</sup> Within

265. See *Department of Education Terminates Student Loan Sharing Agreements with CFPB, Announces Expanded Focus on Enforcement and Consumer Protection*, BUCKLEY: INFOBYTES BLOG (Sept. 8, 2017), <https://buckleyfirm.com/blog/2017-09-08/department-education-terminates-student-loan-sharing-agreements-cfpb-announces-expanded-focus-enforcement-and-consumer-protection> [<https://perma.cc/6ZJH-7W54>]; Danielle Douglas-Gabriel, *Attorneys General Say Trump Administration Is Withholding Critical Student Loan Information*, WASH. POST (Apr. 5, 2019, 3:58 PM), <https://www.washingtonpost.com/education/2019/04/05/attorneys-general-say-trump-administration-is-withholding-critical-student-loan-information/> [<https://perma.cc/5BCP-C2XT>].

266. Douglas-Gabriel, *supra* note 265.

267. See *id.*; Letters from Att’y Gen. to Betsy DeVos, Sec’y, U.S. Dep’t of Educ. (Apr. 4, 2019), <https://ncdoj.gov/Files/News/Final-AG-Letter-to-ED-4-14-19.aspx> [<https://perma.cc/DP3N-3Z6E>] [hereinafter Letters from AGs] (Attorneys General of California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, and Washington).

268. See *supra* notes 266–267.

269. See ZIBEL, *supra* note 248, at 37.

270. See *id.*

271. *Id.*

272. See *supra* notes 202–241 and accompanying text.

273. See Douglas-Gabriel, *supra* note 265.

274. *Id.* (contending that Secretary DeVos has taken “a significant step away from the interests of consumers and toward” loan servicers who seek to use the Privacy Act as a shield as they resist being held accountable for their actions).

275. See *Protecting Student Borrowers: Loan Servicing Oversight: Hearing Before the Subcomm. on Dep’ts of Lab., Health and Hum. Servs. of the H. Comm. on Appropriations*, 116th Cong. (2019) (statement of Bryon Gordon, Assistant Inspector General for Audit, Department of Education, Office

the Education Department, the Office of Federal Student Aid (FSA) has regulatory oversight over loan servicers.<sup>276</sup> But in 2019, the OIG reported that based on its audit of FSA's internal reports about loan servicers, sixty-one percent of 343 internal reports revealed noncompliances by loan servicers.<sup>277</sup> The two major noncompliances were loan servicers failing to inform borrowers of available repayment options and loan servicers incorrectly calculating income-driven payment amounts for borrowers to pay.<sup>278</sup> The OIG report concluded that FSA rarely used its authority to hold servicers accountable for instances of noncompliance.<sup>279</sup> Consequently, "FSA did not provide servicers with an incentive to take actions to mitigate the risk of continued servicer noncompliance that could harm students."<sup>280</sup>

The OIG's scathing findings came after Secretary DeVos took actions to impede current litigation by state enforcement authorities against loan servicers.<sup>281</sup> In 2018, Secretary DeVos issued a Notice of Interpretation (Preemption Interpretation) in which she claimed state consumer protection laws are preempted by the Higher Education Act of 1965 (HEA).<sup>282</sup> A careful reading of DeVos's Preemption Interpretation reveals that it lacks substantive legal arguments.<sup>283</sup> That is because DeVos's Preemption Interpretation failed to cite to any specific HEA provisions or regulations that were purportedly in conflict with long-standing state consumer protection laws to justify her preemption assertion.<sup>284</sup>

While the loan servicing industry applauded Secretary DeVos's Preemption Interpretation, a bipartisan group of state attorneys general and a group of state governors sent letters urging Secretary DeVos to allow them to defend their student-residents against unlawful practices by the industry.<sup>285</sup> Most importantly,

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of Inspector General), <https://docs.house.gov/meetings/AP/AP07/20190306/109005/HHRG-116-AP07-Bio-GordonB-20190306.pdf> [<https://perma.cc/K4DW-HK63>]. The OIG is an independent audit and investigative unit within the Education Department. *Id.*

276. *Id.*

277. *See* OFF. OF THE INSPECTOR GEN., *supra* note 21, at 2.

278. *Id.* at 10.

279. *See id.*

280. *Id.* at 2.

281. *See* Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers, 83 Fed. Reg. 10,619 (Mar. 12, 2018).

282. *Id.*

283. *See* Letter from AGs, *supra* note 267 (explaining why the AGs believe Secretary DeVos' preemption assertion is not grounded in law).

284. In a lawsuit filed by the student loan servicing industry against the District of Columbia, the court rejected the industry's contention that Secretary DeVos' Preemption Interpretation should be given legal weight. *See* Student Loan Servicing All. v. District of Columbia, 351 F. Supp. 3d 26, 51 (D.D.C. 2018) (explaining that it "lacks requisite thoroughness and persuasiveness because it fails to specify the regulations that it is interpreting . . . . Thus, the Court gives no deference to [it] . . . .").

285. *See* Letter from Eric Schneiderman, N.Y. Att'y Gen., Douglas S. Chin, Haw. Att'y Gen., Xavier Becerra, Cal. Att'y Gen., Stephen H. Levins, Exec. Dir., Haw. Off. of Consumer Prot., Cynthia H. Coffman, Colo. Att'y Gen., Lisa Madigan, Ill. Att'y Gen., George Jepsen, Conn. Att'y Gen., Curtis Hill, Ind. Att'y Gen., Matthew P. Denn, Del. Att'y Gen., Tom Miller, Iowa Att'y Gen., Karl A. Racine, D.C. Att'y Gen., Derek Schmidt, Kan. Att'y Gen., Andy Beshear, Ky. Att'y Gen., Josh Stein, N.C. Att'y

the United States Court of Appeals for the Seventh Circuit, in a well-reasoned opinion, held that the HEA does not preempt state law claims based on alleged misrepresentations by the loan servicer.<sup>286</sup> Therefore, loan servicers will not be successful in relying on DeVos's Preemption Interpretation to avoid liability under state consumer protection laws.<sup>287</sup>

The point in raising the preemption issue is to demonstrate that by continuing to side with the loan servicing industry and failing to exercise oversight over the industry, Secretary DeVos allows loan servicers to persist in perpetrating alleged unlawful practices while simultaneously making millions in profits off the backs of borrowers.<sup>288</sup> Moreover, the Education Department is continuing to foster an environment where some borrowers will be receptive to ads by relief companies,<sup>289</sup>

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Gen., Maura Healey, Mass. Att'y Gen., Ellen F. Rosenblum, Or. Att'y Gen., Janet T. Mills, Me. Att'y Gen., Peter F. Kilmartin, R.I. Att'y Gen., Brian E. Frosh, Md. Att'y Gen., Herbert H. Slatery, III, Tenn. Att'y Gen., Lori Swanson, Minn. Att'y Gen., Ken Paxton, Tex. Att'y Gen., Timothy C. Fox, Mont. Att'y Gen., Mark R. Herring, Va. Att'y Gen., T. J. Donovan, Vt. Att'y Gen., Bob Ferguson, Wash. Att'y Gen., to Betsy DeVos, Sec'y, U.S. Dep't of Educ. (Oct. 23, 2017), [http://www.illinoisattorneygeneral.gov/pressroom/2017\\_10/The-Honorable\\_Betsy\\_DeVos.pdf](http://www.illinoisattorneygeneral.gov/pressroom/2017_10/The-Honorable_Betsy_DeVos.pdf) [<https://perma.cc/3YJM-H8VY>] (including the signatures of Republican Attorneys General from Texas, Indiana, and Tennessee); Press Release, Nat'l Governors Ass'n, Governors Voice Concerns Over New Student Borrower Proposal (Mar. 12, 2018), <https://www.nga.org/news/press-releases/governors-voice-concerns-over-new-student-borrower-proposal> [<https://perma.cc/RX3W-GFCS>]; *see also* Letter from John Ryan, President & CEO, Conf. of State Bank Supervisors, to Betsy De Vos, Sec'y, U.S. Dep't of Educ. (Mar. 2, 2018), [https://webcache.googleusercontent.com/search?q=cache:6OVfj8XDZKk\]:https://www.csbs.org/csbs-opposes-department-education-plan-preempt-state-authority-student-loans+&cd=1&hl=en&ct=clnk&gl=us](https://webcache.googleusercontent.com/search?q=cache:6OVfj8XDZKk]:https://www.csbs.org/csbs-opposes-department-education-plan-preempt-state-authority-student-loans+&cd=1&hl=en&ct=clnk&gl=us) [<https://perma.cc/9M87-XV85>].

286. The Court held that there was no conflict between the HEA's lending-disclosure requirements and state consumer protection laws. *Nelson v. Great Lakes Educ. Loan Servs.*, 928 F.3d 639, 642 (7th Cir. 2019) ("When a loan servicer holds itself out to a borrower as having experts who work for her, tells her that she does not need to look elsewhere for advice, and tells her that its experts know what options are in her best interest, those statements, when untrue, cannot be treated by courts as mere failures to disclose information [required under the HEA]. Those are affirmative misrepresentations, not failures to disclose. Great Lakes chose to make them. A borrower who reasonably relied on them to her detriment is not barred by § 1098g [of the HEA] from bringing state-law consumer protection . . . and tort claims against the loan servicer."); *see also Student Loan Servicing All.*, 351 F. Supp. 3d at 51 (refusing to give deference to DeVos's Preemption Interpretation "because it fail[ed] to specify the [HEA] regulations that it is interpreting"); *Pennsylvania v. Navient Corp.*, 967 F.3d 273, 291–92 (3d Cir. 2020) (holding that the district court "correctly concluded that the Commonwealth's complaint alleges Navient made numerous affirmative misrepresentations, and claims based thereon are not expressly preempted by the [Higher] Education Act").

287. The Commonwealth of Massachusetts filed an enforcement action against PHEAA, also known as FedLoan Servicing, alleging that it violated state consumer protection law. *Massachusetts v. Pa. Higher Educ. Assistance Agency*, No. 1784CV02682-BLS2, 2018 WL 1137520, at \*9 (Mass. Super. Ct. Mar. 1, 2018). In that case, the Education Department filed a Statement of Interest that PHEAA relied on, to no avail, for a preemption argument. *Id.* at \*9.

288. *See* Letter from Eric Schneiderman, N.Y. Att'y Gen. et al., *supra* note 285.

289. *See, e.g., An Examination of State Efforts to Oversee the \$1.5 Trillion Student Loan Servicing Market: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Fin. Servs.*, *supra* note 24 (statement of Joe Sanders, Student Loan Ombudsman and Supervising Assistant Att'y Gen., Consumer Fraud Bureau, Illinois Att'y Gen.'s Office) (discussing Secretary DeVos's termination of plans from President Obama's administration to impose standards on servicing companies, stating that

such as National Student Loan Rescue, LLC.<sup>290</sup> This company baited borrowers by claiming that it worked “specifically” with the loan servicer to lower their payments and claiming that it could rescue borrowers from the collection practices of the legitimate servicing companies.<sup>291</sup> Another group of defendants operating under the name “Premier Student Loan Center” baited borrowers by making robocalls containing messages highlighting some of Secretary DeVos’s failures.<sup>292</sup>

In summary, the lawsuits against relief companies demonstrate how they exploit the gap left by loan servicers. If Secretary DeVos and the Education Department would exercise oversight to make loan servicers fulfill their contractual obligation to assist borrowers with loan repayment options,<sup>293</sup> borrowers would have no need to seek relief elsewhere.

### *C. The CFPB, Under New Leadership, Has Implemented Harmful Changes*

In addition to Secretary DeVos’s actions to shield loan servicers from accountability, new leadership at the CFPB implemented several changes deemed harmful to student loan borrowers.<sup>294</sup> In November 2017, President Trump made another controversial move by appointing as the acting director of the CFPB, John “Mick” Mulvaney,<sup>295</sup> who prior to his appointment, had been an outspoken critic of the CFPB and had once called it a “sick, sad joke.”<sup>296</sup> During his thirteen months in the position, Mr. Mulvaney’s major changes include dismissing all members of

“[s]ervicing failures . . . create more problems for student loan borrowers as predatory companies seek to fill the student loan servicing information void”).

290. *Id.* at 1–3 (citing several lawsuits filed by Illinois Attorney General against relief companies, including National Student Loan Rescue).

291. *See, e.g.*, Complaint at 10, *Illinois v. Nat’l Student Loan Rescue, Inc.*, No. 2016-CH-03196, 2016 WL 1028957 (Ill. Cir. Ct. Mar. 4, 2016) (alleging that that the company falsely claimed to “work[] specifically” with FedLoan Servicing, an actual loan servicer authorized by the Department of Education).

292. *See supra* notes 81–86 and accompanying text; Complaint, *Abramson v. Consumer Advoc. Ctr., Inc.*, No. AR-18-001258, 2018 WL 9537488 (Pa. Ct. C.P. July 13, 2018); Complaint, *Consumer Fin. Prot. Bureau v. Consumer Advoc. Ctr.*, No. 8:19-cv-01998 JVS, 2019 WL 5721909 (C.D. Cal. Oct. 21, 2019) (alleging defendants collected \$71 million in advanced fees nationwide).

293. *See supra* notes 289–293 and accompanying text.

294. *See, e.g.*, Complaint at 1–3, *Laws.’ Comm. for C.R. Under L. v. U.S. Off. of Mgmt. & Budget*, No. 1:19-CV-01149 (D.D.C. Apr. 22, 2019), <https://lawyerscommittee.org/wp-content/uploads/2019/04/2019-04-22-Complaint.pdf> [<https://perma.cc/H52S-7XCG>] (describing how Mick Mulvaney’s reorganizing of the CFPB’s Office of Fair Lending and Opportunity stripped that office of its enforcement authority to protect consumers from discriminatory lending practices); *see* Preeti Varathan, *Trump Says the CFPB Has “Devastated” Financial Institutions. The Numbers Tell a Different Story*, QUARTZ (Nov. 28, 2017), <https://qz.com/1139254/trump-says-the-cfpb-has-devastated-financial-institutions-the-numbers-tell-a-different-story/> [<https://perma.cc/6A8E-DF6D>].

295. *See* Patricia McCoy, *Inside Job: The Assault on the Structure of the Consumer Financial Protection Bureau*, 103 MINN. L. REV. 2543, 2574–75 (2019) (describing the controversial aspects of Mr. Mulvaney’s appointment, including how he physically seized control of the CFPB’s premises and ousted then Deputy Director, Leandra English after the resignation of Richard Cordray, the first CFPB Director).

296. *Id.* at 2574.

the statutorily created Consumer Advisory Board,<sup>297</sup> dropping investigations into payday lenders,<sup>298</sup> delaying a new payday lending regulation,<sup>299</sup> and scaling back enforcement actions.<sup>300</sup>

Mr. Mulvaney's changes that directly impact student loan borrowers include his decision to jettison previously announced plans by Richard Cordray, the CFPB's first director, to propose rules that would regulate student loan servicers.<sup>301</sup> This decision, along with Secretary DeVos's decisions to lessen regulatory "burdens" on loan servicers,<sup>302</sup> means that borrowers cannot look to federal regulators to impose responsible servicing standards on loan servicers.

Besides shelving proposed rulemaking, Mr. Mulvaney froze nearly all enforcement activities.<sup>303</sup> While the FTC continues to be actively involved in pursuing fraudulent relief companies via its federal-state partnership (called Operation Game of Loans),<sup>304</sup> the CFPB has barely filed any lawsuits against relief companies since 2017.<sup>305</sup> Furthermore, under Mr. Mulvaney's leadership, the CFPB filed a scant number of new actions against loan servicers despite the fact that data from 2018 show borrowers continue to submit a large number of complaints about loan servicers.<sup>306</sup> In direct contradiction to the CFPB's authority under the

297. See Chris Arnold & Avie Schneider, *Mick Mulvaney Effectively Fires CFPB Advisory Council*, NPR (June 6, 2018, 5:30 PM), <https://www.npr.org/2018/06/06/617612219/mick-mulvaney-effectively-fires-cfpb-advisory-council> [<https://perma.cc/SQ4R-7SJA>]; 12 U.S.C. § 5494(a), (c) (2018) (requiring the creation of the Consumer Advisory Board).

298. See Kate Berry, *CFPB's Mr. Mulvaney Looks to Rein in 'Tyranny' of Agency He Runs*, AM. BANKER (Apr. 2, 2018, 3:33 PM), <https://www.americanbanker.com/news/cfpbs-mulvaney-looks-to-rein-in-tyranny-of-agency-he-runs> [<https://perma.cc/JN8Q-SCRM>] (stating that Mr. Mulvaney had already dropped six enforcement actions against payday lenders that were filed during Richard Cordray's leadership).

299. See Yuka Hayashi, *States Target Consumer Issues as Federal Oversight Eases*, WALL ST. J. (Apr. 5, 2018, 5:30 AM), <https://www.wsj.com/articles/states-target-consumer-issues-as-federal-oversight-eases-1522920601> [<https://perma.cc/6LXH-CPET>].

300. See Berry, *supra* note 298; *Enforcement Actions*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/> [<https://perma.cc/5JRE-H624>] (last visited Sept. 14, 2018).

301. See McCoy, *supra* note 295, at 2583–84.

302. See *supra* notes 284–285 and accompanying text.

303. See Berry, *supra* note 298.

304. See *supra* Sections I.A–D (discussing federal-state partnership that resulted in the filing of over 36 enforcement actions against relief companies and shutting down more than two dozen companies charged with operating phony relief programs). Even before this partnership was announced, the CFPB had filed enforcement actions against two relief companies. See generally Laurie A. Lucas & Christopher L. Peterson, *Developments in Federal Student-Lending Law: Harbingers of Change?*, 72 BUS. LAW. 465 (2017) (summarizing several lawsuits, including lawsuits filed against College Education Services and Student Loan Processing).

305. See Yuka Hayashi, *Mick Mulvaney's Year at CFPB Has Pleased Financial Industry, Which Wants More*, WALL ST. J. (Nov. 25, 2018, 1:43 PM), <https://www.wsj.com/articles/mick-mulvaney-year-at-cfpb-has-pleased-financial-industry-which-wants-more-1543158000> [<https://perma.cc/FFM7-9AZ9>] (“The CFPB has announced nine enforcement actions since [Mulvaney] took over, down from 47 in the bureau’s final year . . . under Obama-appointed leadership.”).

306. See *Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau: Hearing Before the H. Comm. on Fin. Servs.*, 116th Cong. (2019) (statement of Seth Frotman,

Dodd-Frank Act, Mr. Mulvaney announced that the CFPB has supervisory authority over companies that service *private* student loans, instead of over Navient and other large servicers that handle federal student loans.<sup>307</sup> Such a hands-off approach leaves borrowers to fend for themselves when attempting to get help from loan servicers and vulnerable to false promises of help from relief companies.

Consider for a moment the success of the CFPB before Mr. Mulvaney assumed leadership.<sup>308</sup> The CFPB had appointed a private student loan ombudsman (the CFPB Ombudsman) in accordance with the Dodd-Frank Act,<sup>309</sup> and opened the Office for Students and Young Consumers (OSYC) to address concerns unique to that population.<sup>310</sup> The OSYC, under the leadership of the CFPB's Ombudsman, was successful in receiving, analyzing, and resolving thousands of complaints by borrowers against their loan servicers and instrumental in uncovering evidence of the rampant alleged unlawful practices by loan servicers handling both private and federal loans.<sup>311</sup>

After his arrival, Mr. Mulvaney, as widely reported by the media, acted in opposition to the CFPB's Ombudsman and was accused of interfering with the enforcement action pending against Navient by derailing a potential settlement agreement.<sup>312</sup> Without any explanation, Mr. Mulvaney suddenly closed the OSYC in May 2018 and purportedly made it a "unit" in the Office of Financial

Executive Director, Student Borrower Protection Center), <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-frotmans-20190307.pdf> [<https://perma.cc/HY6Z-CUZJ>]; Jim Probasco, *Which Companies Had the Most Student Loan Complaints in 2018?*, INVESTOPEDIA (Jan. 8, 2019), <https://www.investopedia.com/cfpb-student-loan-complaints-for-2018-4582821> [<https://perma.cc/SDH5-X28S>] (noting that "the CFPB received nearly 10,000 student-loan-related complaints" in 2018).

307. *See* Complaint at 2, Student Debt Crisis v. Consumer Fin. Prot. Bureau, No. 2:19-cv-10048, 2019 WL 6327221 (C.D. Cal. Nov. 25, 2019) [hereinafter Student Debt Crisis v. Consumer Fin. Prot. Bureau Complaint] (describing the CFPB's supervisory authority under the Dodd-Frank Act over large market participants and alleging that the CFPB has violated the law by refusing to exercise its authority of large loan servicers accused of violating consumer protection laws).

308. The CFPB was created as the first federal agency to have as its primary mission consumer protection. *See* Edward Balleisen & Melissa Jacoby, *Consumer Protection After the Global Financial Crisis*, 107 GEO. L.J. 813, 818 (2019). To accomplish its objectives, the CFPB is "authorized to exercise its authorities under Federal consumer financial law" to ensure that "consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination." 12 U.S.C. § 5511(b)(1)–(2).

309. *See* 12 U.S.C.A. § 5535(a).

310. *See* Press Release, Consumer Fin. Prot. Bureau, CFPB Announces New Additions to Senior Leadership (Apr. 12, 2016), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-new-additions-to-senior-leadership-20160412/> [<https://perma.cc/PAM7-2EJ4>].

311. *See, e.g.*, CFPB ANNUAL REPORT, *supra* note 203, at 2, 6 (reporting that, between September 2016 and April 2017, the CFPB "handled approximately 12,900 federal student loan servicing complaints, 7,700 private student loan complaints, and approximately 2,300 debt collection complaints related to private or federal student loan debt").

312. *See* Stacy Cowley, *How a Potential \$1 Billion Student Loan Settlement Collapsed After Trump Won*, N.Y. TIMES (Oct. 7, 2018), <https://www.nytimes.com/2018/10/07/business/student-loans-navient.html> [<https://perma.cc/5V4S-FNKE>]; ZIBEL, *supra* note 248, at 31–33 (describing a letter from Navient to Mr. Mulvaney and stating that Navient "pressed the CFPB to drop" its lawsuit against Navient).

Education.<sup>313</sup> Because the OSYC was the office through which the CFPB's Ombudsman conducted several statutorily mandated duties, Mr. Mulvaney's closure in effect stripped Seth Frotman, the CFPB's Ombudsman, of his ability to perform his duties.<sup>314</sup> Because of Mr. Mulvaney's closure of the OSYC and other harmful actions, Mr. Frotman submitted a scathing letter criticizing Mr. Mulvaney's actions and resigned, in protest, from his position as the CFPB's Ombudsman.<sup>315</sup>

Mr. Mulvaney has been replaced by Kathleen Kraninger, who was narrowly confirmed as the CFPB's permanent director.<sup>316</sup> However, she appears to have no agenda that prioritizes the interests of borrowers with student loans.<sup>317</sup> Under Director Kraninger's leadership, the CFPB has done very little—filing only two new enforcement actions against a relief company and failing to file any new action against a loan servicing company, despite complaints about servicers from borrowers.<sup>318</sup>

313. See *U.S. Consumer Watchdog Sidelines Student Loan Office: Memo*, BUS. INSIDER (May 9, 2018, 1:03 PM), <https://www.businessinsider.com/r-us-consumer-watchdog-sidelines-student-loan-office-memo-2018-5> [<https://perma.cc/6KG4-NZJA>].

314. See McCoy, *supra* note 295, at 2574; Kate Berry, *Mulvaney Guts CFPB's Student Lending Office*, AM. BANKER (May 9, 2018, 4:53 PM), <https://www.americanbanker.com/news/mulvaney-guts-cfpbs-student-lending-office> [<https://perma.cc/66N2-A9FF>] (reporting that Mr. Frotman and the “unit” had been relegated to “essentially working on pamphlets and web content about student loans, rather than examining complaints that could be referred to the CFPB's enforcement division”).

315. As a result of Mr. Mulvaney's actions, academics and advocacy groups believe that he intentionally hamstringed the CFPB and has not demonstrated any commitment to protecting student loan borrowers. See McCoy, *supra* note 295, at 2574; Press Release, Ctr. for Am. Progress, CAP and Generation Progress Experts on Acting Director Mick Mulvaney Shuttering the Office of Students at Consumer Financial Protection Bureau (May 9, 2018), <https://www.americanprogress.org/press/statement/2018/05/09/450582/statement-cap-generation-progress-experts-acting-director-mick-mulvaney-shuttering-office-students-consumer-financial-protection-bureau/> [<https://perma.cc/2RXN-UZXC>].

316. See Neil Haggerty, *Senate Barely Confirms Kathy Kraninger as New CFPB Director*, AM. BANKER (Dec. 6, 2018, 2:45 PM), <https://www.americanbanker.com/news/senate-barely-confirms-kathy-kraninger-as-new-cfpb-director> [<https://perma.cc/9AW6-J4Q3>] (stating that Ms. Kraninger, who formerly worked with Mr. Mulvaney in Office of Management and Budget, did not have any work-related experience in consumer finance and was barely confirmed in a vote of fifty to forty-nine).

317. Director Kraninger testified before Congress and—despite being questioned about a variety of consumer-related issues—her answers appeared evasive and left listeners wondering, to put it mildly. See Ed Mierzwinski, *CFPB's Kraninger Provides Opaque Statement to Committee; Questions and Second Panel Will Be Critical*, U.S. PIRG (Mar. 7, 2019), <https://uspig.org/blogs/eds-blog/usp/cfpbs-kraninger-provides-opaque-statement-committee-questions-and-second-panel> [<https://perma.cc/7V7V-2ANP>]; Jim Puzanghera, *Democrats Assail New Consumer Watchdog*, L.A. TIMES (Mar. 8, 2019), [https://enewspaper.latimes.com/infinity/article\\_share.aspx?guid=6d91e70b-0546-4b61-820a-1f65c783fc14](https://enewspaper.latimes.com/infinity/article_share.aspx?guid=6d91e70b-0546-4b61-820a-1f65c783fc14) [<https://perma.cc/75CZ-7ZGY>] (reporting that when questioned before the U.S. House Financial Services Committee, Director Kraninger defended some actions taken by Mr. Mulvaney and would not commit to reversing any of his actions).

318. See, e.g., Complaint at 6, *Consumer Fin. Prot. Bureau v. Chou Team Realty, LLC*, No. 8:20-cv-00043 (C.D. Cal. Jan. 9, 2020) (alleging that defendants violated federal anti-telemarketing laws through their operation of student loan debt relief programs); see also Jim Saksa, *Democrats Ready CFPB Scrutiny as Complaints About JP Morgan, Navient Emerge*, CQ ROLL CALL WASH. BANKING BRIEFING, Jan. 8, 2019, at 1 (reporting results of an analysis of complaints submitted by student loan

To the surprise of many, Director Kraninger caused the CFPB to flip its position and side with the Department of Justice in asserting the structure of the CFPB—with a single director subject to removal only “for cause”—is *unconstitutional*.<sup>319</sup> Her change in position came after a 2019 unanimous panel decision, where the Court of Appeals for the Ninth Circuit held that the CFPB’s structure is constitutional and affirmed a district court’s order requiring a law firm to respond to a CFPB investigative demand.<sup>320</sup> Despite the objections of her staff, Director Kraninger chose to support President Trump’s position that he can, for any reason, fire her as director of the CFPB. In doing so, she has put the CFPB in a precarious position because, as argued in Supreme Court amici briefs, many believe that the CFPB itself should be eliminated.<sup>321</sup>

Evidence of the CFPB’s abdication of its duty to protect student loan borrowers popped up in May 2019 when someone from the CFPB tweeted, “If you’re having a hard time paying your student loans, you may qualify for loan forbearance.”<sup>322</sup> This tweet was in stark contrast to the CFPB’s 2017 allegations against Navient. Specifically, the CFPB sued Navient for unlawfully steering 1.5 million borrowers into multiple forbearances, causing borrowers to accrue nearly four billion dollars in additional interest, to miss out on the federal government

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borrowers to the CFPB and stating that the majority (42 percent) of the complaints were about Navient).

319. See Robert Barnes, *Supreme Court Will Decide Constitutionality of Consumer Watchdog Bureau*, WASH. POST (Oct. 18, 2019, 3:50 PM), [https://www.washingtonpost.com/politics/courts\\_law/supreme-court-will-decide-constitutionality-of-consumer-watchdog-bureau/2019/10/18/49362e68-f121-11e9-89eb-ec56cd414732\\_story.html](https://www.washingtonpost.com/politics/courts_law/supreme-court-will-decide-constitutionality-of-consumer-watchdog-bureau/2019/10/18/49362e68-f121-11e9-89eb-ec56cd414732_story.html) [<https://perma.cc/8ZNN-Y8JA>] (summarizing how Director Kraninger reconsidered her position on the constitutionality of the CFPB’s structure).

320. See *Consumer Fin. Prot. Bureau v. Seila Law LLC*, 923 F.3d 680 (9th Cir.), *cert. granted*, 140 S. Ct. 427 (2019). This case involved a challenge by a debt-collection law firm, which argued that it did not have to respond to a CFPB investigative demand on the basis that the CFPB’s single-director leadership structure is unconstitutional. *Id.* at 682. Relying on precedent from the Supreme Court of the United States, the Ninth Circuit concluded that the “for-cause removal restriction protecting the CFPB’s Director does not ‘impede the President’s ability to perform his constitutional duty’ to ensure that the laws are faithfully executed.” *Id.* at 684 (citations omitted).

321. See Kate Berry, *CFPB Critics to Supreme Court: The Agency Must Go*, AM. BANKER (Jan. 2, 2020, 9:30 PM), <https://www.americanbanker.com/news/cfpb-critics-to-supreme-court-the-agency-must-go> [<https://perma.cc/27NM-82GT>] (summarizing briefs arguing that the CFPB’s structure is unconstitutional); Melissa Angell, *Inclusiv Breaks from Other Credit Union Groups over CFPB Structure*, CREDIT UNION J. (Jan. 28, 2020, 3:47 PM), <https://www.cujournal.com/news/inclusiv-breaks-from-other-credit-union-groups-over-cfpb-structure> [<https://perma.cc/Q37L-TGSC>] (reporting that Inclusiv is the only trade association for credit unions to file an amicus brief in support of the CFPB’s structure). To defend the CFPB, the Supreme Court appointed Paul Clement, a former Republican solicitor general, to file an amicus curiae brief arguing that the CFPB’s structure does not violate the constitution. See Berry, *supra*; Brief for Court-Appointed Amicus Curiae in Support of Judgment Below, *Seila Law LLC v. Consumer Fin. Prot. Bureau*, No. 19-7, 2020 WL 353477 (U.S. 2020).

322. See Jillian Berman, *Consumer Watchdog Tweets ‘Negligent or Worse’ Advice to Student-Loan Borrowers, Advocates Say*, MARKETWATCH (May 30, 2019, 10:18 AM), <https://www.marketwatch.com/story/cfpb-tweet-offers-negligent-or-worse-student-loan-advice-advocates-say-2019-05-29> [<https://perma.cc/7GZM-KKJH>].

paying interest subsidies, and to lose time on the clock towards obtaining loan forgiveness.<sup>323</sup>

In August 2019, Director Kraninger announced her appointment of Robert Cameron as the CFPB's Student Loan Ombudsman, even though he had most recently served for several years as the deputy chief counsel for the Pennsylvania Higher Education Assistance Authority (PHEAA).<sup>324</sup> As explained previously, several pending lawsuits against PHEAA allege that it violated numerous consumer protection laws by, among other things, grossly mismanaging the Public Service Loan Forgiveness (PSLF) program.<sup>325</sup> Notably, Director Kraninger's announcement makes clear that Mr. Cameron's title is the "Private Education Loan Ombudsman," thereby prompting concerns that he will act only for a fraction of student loan borrowers, instead of for the large majority of borrowers who owe federal student loans.<sup>326</sup> When pressed for clarification regarding the scope of Mr. Cameron's duties as the ombudsman, Director Kraninger did not provide any clarification.<sup>327</sup> When asked about the CFPB's involvement in ensuring that borrowers receive forgiveness through the PLSF program, Director Kraninger stated that the program would be the responsibility of the Education Department.<sup>328</sup>

In late 2019, Student Debt Crisis (SDC), a nonprofit student advocacy group, sued Director Kraninger and the CFPB for refusing to exercise supervisory authority over PHEAA and other large companies servicing federal student loans.<sup>329</sup> Specifically, the SDC alleges that Director Kraninger and the CFPB have violated the Administrative Procedures Act by adopting a new supervisory rule *sub silentio* and are, thereby, refusing to exercise existing regulatory authority to hold companies, which service over eighty-one percent of loans held by the federal government, accountable.<sup>330</sup>

Based on the foregoing, the CFPB and the Education Department have taken actions that protect the loan servicing industry but harm student loan borrowers.

323. See *supra* notes 254–266 and accompanying text.

324. See Press Release, Consumer Fin. Prot. Bureau, CFPB Appoints Private Education Loan Ombudsman (Aug. 16, 2019), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-appoints-private-education-loan-ombudsman/> [<https://perma.cc/7NP5-5NSW>].

325. See *supra* notes 287–297 and accompanying text.

326. The Consumer Bankers Association released a statement urging Mr. Cameron to work for the benefit of all borrowers at a time when "it is clear the federal student loan program is not working . . ." See Nick Simpson, *CBA Statement on CFPB Education Loan Ombudsman*, CONSUMER BANKERS ASS'N (Aug. 16, 2019), <https://www.consumerbankers.com/cba-media-center/media-releases/cba-statement-cfpb-education-loan-ombudsman> [<https://perma.cc/G9M5-PV4Z>].

327. See Press Release, Jennifer Wexton, Congresswoman, U.S. House of Reps., Wexton Presses CFPB Director on Student Loan Ombudsman's Conflicts of Interest, CFPB's Failure to Advocate for Student Borrowers (Oct. 17, 2019), <https://wexton.house.gov/news/documentsingle.aspx?DocumentID=127> [<https://perma.cc/LY9H-YRJB>].

328. See *id.*

329. See *Student Debt Crisis v. Consumer Fin. Prot. Bureau Complaint*, *supra* note 307, at 2.

330. *Id.* at 2, 28.

As a result, borrowers remain vulnerable to student loan scams and must, therefore, look to federal and state lawmakers to afford them additional protection.

#### IV. POSSIBLE SOLUTIONS TO LIMIT THE ABILITY OF RELIEF COMPANIES TO TARGET BORROWERS

In light of actions taken by the Education Department and the CFPB, federal and state lawmakers should adopt a multifaceted approach to combating student loan relief scams.<sup>331</sup> The discussion of possible solutions begins with recently enacted legislation that would require the use of developing technology to protect all consumers from unlawful and unwanted telemarketing calls.<sup>332</sup> This legislation allows the Federal Communications Commission (FCC), via rulemaking, to afford student loan borrowers a modest, but important, remedy that fits into an overall solution that is necessary to limit the ability of relief companies to defraud borrowers.<sup>333</sup> Later, in Sections IV.B and IV.C, this Article recommends changes to pending federal and state legislation aimed specifically at protecting student loan borrowers.<sup>334</sup> By incorporating the author's suggested changes to pending legislation, lawmakers would afford student loan borrowers greater protection from relief scams.

##### *A. Borrowers Would Benefit from Pending Bipartisan Legislation That Would Require the Use of Technology to Block Robocalls and Spoofed Calls*

As revealed in the Operation Game of Loans litigation, some relief companies target borrowers with billions of robocalls, including robo-text messages,<sup>335</sup> to defraud millions from student loan borrowers.<sup>336</sup> Below is a brief explanation of the current technology that enables scammers to target consumers with robocalling and caller ID spoofing. Following that explanation is a discussion of recently enacted legislation that would require telecommunication (telecom) companies to implement new technologies to detect and block spoofed calls and robocalls.<sup>337</sup>

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331. See *infra* Section IV.B. (suggesting amendments to proposed legislation aimed specifically at preventing student loan relief scams).

332. See *infra* notes 340–365 and accompanying text.

333. See *infra* notes 350–363 and accompanying text.

334. See *infra* Section IV.B–C. and accompanying text.

335. The U.S. Court of Appeals for the Ninth Circuit upheld the FCC's interpretation that a text message is considered a "call" within the meaning of the TCPA. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009). Congress directed the FCC to "prescribe regulations to implement the requirements of" the TCPA. 47 U.S.C. § 227(b)(2).

336. See *supra* notes 123–154 and accompanying text (discussing litigation against companies that used robocalling and robo-texting to target borrowers). *Written Testimony of David Frankel: Hearing Before the S. Spec. Comm. on Aging Issues* 2 (2019) (statement of David Frankel, CEO, ZipDX LLC), [https://www.aging.senate.gov/imo/media/doc/SCA\\_Frankel\\_7\\_17\\_19.pdf](https://www.aging.senate.gov/imo/media/doc/SCA_Frankel_7_17_19.pdf) [ <https://perma.cc/T83U-EJVA>] (stating that a robocaller can dupe "[fifty] victims a day, each netting him \$100").

337. See TRANSACTION NETWORK SERVS, ROBOCALL PROTECTION WHITE PAPER: 3 THINGS YOU NEED TO KNOW FOR 2017, at 5 (2017), <https://tnsi.com/wp-content/uploads/2017/12/>

Robocalls from relief companies are among the nearly fifty-nine billion robocalls Americans received in 2019.<sup>338</sup> Almost all robocalls are unlawful; however, a small percentage of robocalls are legal for various purposes, including weather alerts.<sup>339</sup>

Relief companies, like other scammers, are able to target millions daily due to the advent of “voice over Internet protocol,” known as VoIP, which allows companies to make calls cheaply from anywhere in the world.<sup>340</sup> While many consumers have positive experiences with VoIP technology,<sup>341</sup> it allows telemarketers and fraudsters to make an enormous number of calls with nothing more than an Internet connection and a computer.<sup>342</sup> With robocalling software, a con artist can use the computer to call landline and mobile phone numbers from a computer-generated list or from “leaked databases of personal information” or “massive databases compiled from automated web searches.”<sup>343</sup> Moreover, through a complex system of mostly digital networks, robocalling software is regularly combined with technology that spoofs caller ID systems to make it appear that each call is coming from a legitimate phone number.<sup>344</sup>

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TSD\_RobocallWhitePaper\_US\_Mar17.pdf [https://perma.cc/ZUF5-KURU] (describing various protocols for blocking robocalls and also explaining “Do-Not-Originate” technology that prevents scammers for spoofing numbers that belong to governmental entities (e.g., IRS) and individuals listed in the Do Not Call Registry); THE NEW CTR., ROBOCALLS: BIG TELECOM’S BIG PROBLEMS (2019), https://newcenter.org/wp-content/uploads/2019/12/Robocalls-Big-Telecom-s-Big-Problem.pdf [https://perma.cc/PB6U-YYGM].

338. See Mike Snider, *Robocalls Rang Up a New High in 2019. Two or More Daily Is Average in Some States*, USA TODAY (Jan. 17, 2020, 1:12 PM), https://www.usatoday.com/story/tech/2020/01/15/robocalls-americans-got-58-5-billion-2019/4476018002/ [https://perma.cc/8G3W-ZJSW]; Tom Still, *Relief from Robocalls May Finally Be at Hand*, WIS. ST. J., May 12, 2019, at D3; Press Release, Kara Kebler, Associate Director, Strategic Communications, Consumer Reps., Maureen Mahoney, Pol’y Analyst, Consumer Reps., Consumer Reports Hosts Robocalls Roundtable on Capitol Hill to Seek Solutions for Nonstop, Predatory Calls, Consumers Union (Apr. 3, 2019), https://advocacy.consumerreports.org/press\_release/consumer-reports-hosts-robocalls-roundtable-on-capitol-hill-to-see-solutions-for-nonstop-predatory-calls/ [https://perma.cc/U9PZ-N9NR] (reporting that consumers “lost nearly \$9 billion to phone scams in the previous 12-month period” and that in March 2019, Americans received 4.9 billion robocalls, a record number of calls in a single month); *Do Not Call: Combating Robocalls and Caller ID Spoofing: Hearing Before the Subcomm. on Digit. Com. & Consumer Prot. of the H. Comm. on Energy & Commerce*, 115th Cong (2018) (statement of Scott Hambuchen, Executive Vice President, First Orion Corp.), https://docs.house.gov/meetings/IF/IF17/20180427/108190/HHRG-115-IF17-Wstate-HambuchenS-20180427.pdf [https://perma.cc/V7PQ-9BPC].

339. See Snider, *supra* note 338.

340. See Justin Hurwitz, *Telemarketing, Technology, and the Regulation of Private Speech: First Amendment Lessons from the FCC’s TCPA Rules*, 84 BROOK. L. REV. 1 (2018).

341. See *id.* at 29–30 (stating that individuals use VoIP technology when they chat with someone through Skype or Google Hangouts).

342. See *id.*

343. See Raymond Huahong Tu, *Why Robocalls Are Unstoppable*, PBS NEWS HOUR (Feb. 27, 2019, 12:55 PM), https://www.pbs.org/newshour/science/why-robocalls-are-unstoppable [https://perma.cc/R3RS-U8JT].

344. See *supra* notes 126–129 and accompanying text (describing “neighbor” spoofing, which makes it appear on the consumer’s caller ID display that the incoming call is local); Simon van Zuylen-Wood, *How Robo-callers Outwitted the Government and Completely Wrecked the Do Not Call List*,

Recognizing that federal laws have had little impact on the ever-increasing use of robocalling and call-spoofing, both the FTC and the FCC have, since 2012, incentivized stakeholders to develop technologies to combat illegal robocalling and call-spoofing.<sup>345</sup> Both agencies have brought enforcement actions against robocallers, and have created working groups to get input from and share among carriers and other stakeholders technological advances to curb robocalling.<sup>346</sup>

Today, major telecom carriers routinely block millions of robocalls.<sup>347</sup> Using technology, commonly referred to as “traceback,” carriers trace a call made to a consumer back, as far as possible, through different VoIP providers to the original source.<sup>348</sup> If the carrier determines that the source is a robocalling operation or is originating from a foreign country, the carrier can either block the call or allow it to come through to the consumer with a warning.<sup>349</sup>

The telecom industry has also developed a system to detect spoofed calls by relying on two technologies, one called “Signature-Based Handling of Asserted Information Using Tokens,” and the other “Secure Telephone Identity Revisited,” collectively known as SHAKEN/STIR.<sup>350</sup> Many consumers are still unaware of call-spoofing technology, and because many rely heavily on caller ID to assess

WASH. POST: MAGAZINE (Jan. 11, 2018, 5:00 AM), [https://www.washingtonpost.com/lifestyle/magazine/how- robo-call-moguls-outwitted-the-government-and-completely-wrecked-the-do-not-call-list/2018/01/09/52c769b6-df7a-11e7-bbd0-9dfb2e37492a\\_story.html](https://www.washingtonpost.com/lifestyle/magazine/how- robo-call-moguls-outwitted-the-government-and-completely-wrecked-the-do-not-call-list/2018/01/09/52c769b6-df7a-11e7-bbd0-9dfb2e37492a_story.html) [<https://perma.cc/CKR6-F7KS>]; see also *Abusive Robocalls & How We Can Stop Them: Hearing Before the S. Comm. on Com., Sci., & Transp.*, 115th Cong. \*1 (2018) (statement of Rosemary Harold, Chief, Enforcement Bureau, Federal Communications Commission), 2018 WL 1872121 (stating that “most large-scale unlawful robocall schemes employ caller ID spoofing”).

345. See Hurwitz, *supra* note 340, at 35–36; Spencer Weber Waller et al., *The Telephone Consumer Protection Act of 1991: Adapting Consumer Protection to Changing Technology*, 26 LOY. CONSUMER L. REV. 343, 390–91 (2014); Press Release, Joseph Simons, Chairman, Fed. Trade Comm’n, Remarks at USTelecom Forum: Turning the Tide on Illegal Robocalls (June 11, 2019), [https://www.ftc.gov/system/files/documents/public\\_statements/1527217/simons\\_-\\_us\\_telecom\\_robotcall\\_event\\_6-11-19.pdf](https://www.ftc.gov/system/files/documents/public_statements/1527217/simons_-_us_telecom_robotcall_event_6-11-19.pdf) [<https://perma.cc/7D53-X28C>] (discussing several FTC-sponsored competitions, all of which have been credited with companies developing hundreds of robocall-blocking apps and programs).

346. *Id.*; see FCC REPORT ON ROBOCALLS, *supra* note 118. Since 2016, the FCC has urged U.S. carriers to develop technology aimed at curbing robocalls. See Fed. Commc’n Comm’n, ROBOCALL STRIKE FORCE REPORT 4–7 (2016), <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf> [<https://perma.cc/6DD5-3K3G>]. In 2017, the FCC issued a report and an order that authorized carriers and service providers to use technology to block unwanted and unlawful robocalls, and encouraged carriers to work cooperatively to share information to expand their call-blocking capabilities. See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, 32 FCC Rcd. 9706, 9710 (2017) (Report and Order and Further Notice of Proposed Rulemaking).

347. See Howard Buskirk & Jimm Phillips, *FCC Told Challenges Remain on Technology to Fight Robocalls*, COMMC’N DAILY, July 12, 2019, at 1; Dalvin Brown, ‘Scam Likely,’ So Answer at Your Own Risk, USA TODAY, Jan. 24, 2019, at B1 (describing measures adopted by carriers to limit robocalls).

348. *Id.*

349. See van Zuylen-Wood, *supra* note 344. For example, if T-Mobile allows a suspicious call to come through, the consumer will see the phone number on display with the words “Scam Likely.” See Buskirk & Phillips, *supra* note 347.

350. See *Combating Spoofed Robocalls with Caller ID Authentication*, FED. COMMC’NS COMM’N, <https://www.fcc.gov/call-authentication> [<https://perma.cc/KKE9-G7Q2>] (last visited Sept. 29, 2020); Hurwitz, *supra* note 340, at 35–36.

legitimacy, they fall prey to scammers using spoofed robocalls.<sup>351</sup> However, using the protocol of SHAKEN/STIR, a telecom provider can determine whether a U.S.-based relief company is spoofing, for example, a governmental number (e.g., the number to the Education Department) and then block the call, thereby preventing it from reaching the consumer.<sup>352</sup>

The U.S. Senate and House of Representatives rarely agree on anything legislatively; however, federal lawmakers, with nearly unanimous votes in both chambers, passed a bipartisan bill that was signed into law by President Trump to protect consumers against unlawful and unwanted calls.<sup>353</sup> Under the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act),<sup>354</sup> the FCC has to issue (within 18 months) a rule requiring voice service providers to implement the SHAKEN/STIR protocol for authenticating calls.<sup>355</sup> The FCC also has to issue rules that establish when providers are allowed to use the protocol to block calls and establish a safe harbor to shield providers from liability when they, using the protocol, inadvertently block legitimate calls.<sup>356</sup> The TRACED Act also requires the FCC to issue, within one year of enactment, a final rule mandating that providers offer call-blocking services, *free of charge*, on an opt-in or opt-out basis to consumers.<sup>357</sup>

Under the TRACED Act, the FCC also has to finalize a rule that clarifies the definition of automatic telephone dialing systems (ATDS) through which companies make robocalls.<sup>358</sup> Such clarification is necessary because major companies have been able to skirt the TCPA to make alleged unlawful robocalls by relying on a narrow definition of ATDS.<sup>359</sup> The Act also makes it clear that text

351. See Press Release, AARP, AARP Endorses House Legislation Targeting Illegal Robocalls (July 17, 2019), <https://press.aarp.org/2019-7-17-Robocalls-TRACED-Legislation-House> [<https://perma.cc/P3HN-TPJP>] (reporting survey finding of “high consumer reliance on Caller ID”).

352. See, e.g., Press Release, Fed. Trade Comm’n, FTC Crackdown Stops Operations Responsible for Billions of Illegal Robocalls (Mar. 26, 2019); see also FCC REPORT ON ROBOCALLS, *supra* note 118, at 7 (“[T]he Commission authorized providers to block Do Not Originate (DNO) calls as well as calls where the number purporting to originate the call is invalid, unallocated, or unused.”).

353. The Senate passed by voice vote the final version of the bill after approving it by an astonishing vote of ninety-seven to one in May 2019. See Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, S. 151, 116th Cong. (2019). The House of Representatives passed the bill 417 to 3 on December 3, 2019, the same day the House Judiciary Committee opened its impeachment hearing of President Trump.

354. President Trump signed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) on December 30, 2019. See Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019).

355. TRACED Act § 4(b)(1).

356. See *id.* § 4(c)(1).

357. See *id.* § 10(b).

358. See *id.*

359. See, e.g., Tony Romm, *House Lawmakers Unveil Bipartisan Anti-Robocall Bill*, WASH. POST (June 20, 2019, 8:03 AM), <https://www.washingtonpost.com/technology/2019/06/20/house-lawmakers-unveil-bipartisan-anti-robocall-bill/> [<https://perma.cc/A247-VTX4>] (discussing a lawsuit filed against Hilton Grand Vacations Company for allegedly designing an automatic dialing

messages are considered “calls” under the TCPA, thereby aligning the definition with the FCC’s broad interpretation of “calls” to protect consumers from unwanted and unlawful messages sent to wireless phones.<sup>360</sup>

The TRACED Act cannot stop all unwanted and unlawful calls.<sup>361</sup> However, if the use of this technology had been required by law four years ago, telecom carriers would have been able to block calls from Mr. Christiano and his codefendants, who spoofed millions of robocalls offering bogus debt relief.<sup>362</sup> Because the TRACED Act empowers the FCC to allow the telecom industry to deploy the latest call-blocking and call-authenticating technologies,<sup>363</sup> it will afford student loan borrowers a chance to avoid being contacted in the first place by relief companies and, ultimately, avoid being duped.

Because relief companies exploit other forms of modern technologies to access borrowers’ online student loan accounts,<sup>364</sup> as explained in the next section, additional technology-based solutions are necessary to deter relief scams.

### *B. Federal Bipartisan Legislation Would Require the Education Department to Implement Technology to Detect and Prevent Relief Scams*

Federal lawmakers have introduced several bills to address various aspects of the student loan crisis,<sup>365</sup> but only one federal bill directly deals with relief scammers and their use of technology to take over borrowers’ online loan accounts.<sup>366</sup> Because this bipartisan bill has the support of the loan servicing industry and consumer advocacy groups, it has a chance of being enacted.<sup>367</sup>

In 2019, Senators Tammy Baldwin, Mike Braun, Jeanne Shaheen, and Deb Fischer introduced a bipartisan bill entitled, Stop Student Debt Relief Scams Act (Stop Relief Scams Act).<sup>368</sup> The Stop Relief Scams Act has the following four main

system “in such a way that it narrowly avoided the government’s definition of a robocall — by having a human worker essentially just click a button”).

360. See TRACED Act § 4(b)(1).

361. See FCC REPORT ON ROBOCALLS, *supra* note 118, at 14–15.

362. See *supra* notes 124–129 and accompanying text.

363. See *supra* notes 352–359 and accompanying text.

364. See *supra* Sections I.A–D.

365. See, e.g., Rebecca Klar, *Warren Introduces Bill to Cancel Student Loan Debt for Millions*, THE HILL (July 23, 2019, 11:13 AM), <https://thehill.com/homenews/senate/454293-warren-introduces-bill-that-would-cancel-student-loan-debt-for-millions> [https://perma.cc/7384-4ZCP] (discussing bill introduced by Senator Elizabeth Warren (D. Mass.) to cancel student loan debt). A discussion of all these bills is beyond the scope of this Article.

366. See *infra* notes 410–427 and accompanying text.

367. New York has a proposed bill, but it is not a plausible solution, as it falsely assumes that there are legitimate for-profit debt relief companies. See *NCCC President Keegan’s Statement on Gov. Cuomo’s State of the State Address*, MALONE TELEGRAM (Jan. 11, 2020), [https://www.mymalonetelegram.com/localiving/nccc-president-joe-keegan-s-statement-on-2020-state-of-the-state-address/article\\_1b8ca060-0356-5267-beff-7edf3db342c3.html](https://www.mymalonetelegram.com/localiving/nccc-president-joe-keegan-s-statement-on-2020-state-of-the-state-address/article_1b8ca060-0356-5267-beff-7edf3db342c3.html) [https://perma.cc/X584-JXBE].

368. Stop Student Debt Relief Scams Act, S. 1153, 116th Cong. (2019), <https://www.baldwin.senate.gov/imo/media/doc/Stop%20Student%20Debt%20Relief%20Scams%20Act.pdf>

components: (1) making it a crime for anyone to access a borrower’s account through the information technology systems at the Education Department, (2) requiring the Education Department to create access to its systems to authorized third-party entities acting on behalf of borrowers, (3) requiring the Education Department to implement measures to detect and prevent relief scammers from accessing its systems, and (4) mandating counseling to warn borrowers about relief scams.<sup>369</sup>

The criminal penalty provision in the Stop Relief Scams Act is based partially on recommendations made by the Office of Inspector General.<sup>370</sup> In a 2018 report, the OIG recommended that Congress amend federal law to make it a crime for relief companies to fraudulently obtain access to borrowers’ online login credentials.<sup>371</sup> To date, Brandon Frere is the only individual criminally indicted for perpetrating student loan relief scams, and he is accused of using his companies to defraud nearly 42,000 borrowers out of sixty million dollars in less than four years.<sup>372</sup> The OIG recommended passage of a new criminal statute because it asserted that current criminal statutes could not be used effectively given that prosecutors must prove a minimum amount of monetary damages.<sup>373</sup>

In keeping with this recommendation, the proposed Stop Relief Scams Act makes it a crime if a person “knowingly uses an access device . . . issued to another person or obtained by fraud or false statement to access the [Education] Department information technology systems for purposes of obtaining a commercial advantage or private financial gain, or in furtherance of any criminal or tortious act . . . .”<sup>374</sup> A prosecutor would not have to prove a minimum amount of

[<https://perma.cc/JMV6-N5WN>] (signed by Baldwin (D-WI), Mike Braun (R-IN), Jeanne Shaheen (D-NH) and Deb Fischer (R-NE)).

369. *See id.*

370. *See id.* The OIG’s Technology Crimes Division has a specialized unit that investigates the “[t]heft or misuse of credentials to unlawfully access ED information technology systems, including the National Student Loan Data System and the FAFSA submission Web site.” OFF. OF INSPECTOR GEN., U.S. DEP’T OF EDUC., INVESTIGATION SERVICES, <https://www2.ed.gov/about/offices/list/oig/invtreports/isgeneralbrochureonline.pdf> [<https://perma.cc/SL74-EX8B>] (last visited Sept. 29, 2020).

371. *See* Letter from Kathleen S. Tighe, Inspector Gen., to Lamar Alexander, Chairman, U.S. Sen., Patty Murray, Ranking Member, U.S. Sen., Virginia Foxx, Chairwoman, U.S. House of Rep., and Bobby Scott, Ranking Member, U.S. House of Rep. 14 (Mar. 1, 2018) [hereinafter OIG Letter], <https://www2.ed.gov/about/offices/list/oig/misc/lettertocongressonoighearecommendation-smarch2018.pdf> [<https://perma.cc/JD7M-MWUR>] (regarding Recommendations and Investigation Services).

372. *See* Frere Crim. Complaint, *supra* note 191 (indicting Brandon Frere for committing wire fraud in violation of 18 U.S.C. § 1343). Brandon Frere formerly operated American Financial Benefits and related companies. *See* FTC v. Am. Fin. Benefits Ctr., No. 4:18-cv-00806-SBA, at \*2 (N.D. Cal. Nov. 29, 2018) (order granting preliminary injunction); *see also supra* notes 74–77, 162–177, 191–195 (describing alleged unlawful practices by Brandon Frere and his companies).

373. OIG Letter, *supra* note 371, at 11.

374. Stop Student Debt Relief Scams Act, S. 1153, 116th Cong. § 2 (2019), <https://www.baldwin.senate.gov/imo/media/doc/Stop%20Student%20Debt%20Relief%20Scams%20Act.pdf> [<https://perma.cc/JMV6-N5WN>].

financial gain, and those convicted under the proposed statute could be imprisoned up to five years and fined up to \$20,000.<sup>375</sup>

This proposed criminal statute would be effective in prosecuting individuals operating relief companies because they usually gain access to borrowers' federal loan accounts.<sup>376</sup> The proposed provision incorporates current law, which broadly defines "access device" to include someone's account information.<sup>377</sup> As previously explained, relief companies require each borrower to disclose personal information, including the borrower's username and password, to access their online loan account information at the National Student Loan Data System, which is the loan database maintained by the Education Department.<sup>378</sup> Relief companies are not entities that are authorized to access borrowers' personal information via NSLDS, but they fraudulently mislead borrowers into disclosing their login information.<sup>379</sup>

After accessing borrowers' information through NSLDS, relief companies usually take over the loan accounts by changing the borrowers' contact information and passwords.<sup>380</sup> While in control of borrowers' accounts, relief companies sometimes do nothing.<sup>381</sup> Other times, companies contact the borrowers' loan servicers and request either forbearance or a consolidation of the borrowers' federal loans.<sup>382</sup> A few relief companies submit applications with falsified information to get borrowers enrolled in income-driven repayment plans with lower monthly payments.<sup>383</sup> However, these companies keep the borrowers' monthly payments instead of sending them to the borrowers' loan servicers.<sup>384</sup> All of the foregoing actions are financially harmful to the borrowers because their loan balances will increase due to their failure to make payments to the actual loan servicers.<sup>385</sup> Until borrowers uncover the truth, relief companies charge the borrowers' credit cards or

375. *Id.*

376. *See supra* notes 211–233 and accompanying text.

377. *Id.* (incorporating the definition of access device in 18 U.S.C. § 1029(e)(1)); 18 U.S.C. § 1029(e)(1) (“[T]he term ‘access device’ means any card, plate, code, account number, electronic serial number, mobile identification number, *personal identification number*, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds . . .”) (emphasis added). This is broad enough to include a borrower's personal identification number (also referred to as Federal Aid Student ID) for their federal student loans.

378. *See, e.g., supra* notes 220–227 and accompanying text (describing Student Aid Center's practices).

379. *Id.*

380. *See* FTC's Operation Game of Loans, *supra* note 59.

381. *See, e.g.,* FTC v. Good EBusiness, LLC, No. 2:16-CV-01048 ODW-JPR, 2016 WL 3704489, at \*5 (C.D. Cal. July 12, 2016).

382. *See, e.g., supra* notes 88–94 and accompanying text (discussing Student Consulting Group, which consolidated a borrower's loan after obtaining her student loan account information).

383. *See* Complaint at 14, Consumer Fin. Prot. Bureau v. Consumer Advoc. Ctr., No. 8:19-cv-01998 JVS, 2019 WL 5721909 (C.D. Cal. Oct. 21, 2019).

384. *See id.* at 13.

385. *See supra* notes 212–233 and accompanying text.

debit their bank accounts to collect monthly fees for bogus programs.<sup>386</sup> As a result, relief companies could be convicted of a crime under the proposed Stop Relief Scams Act because they “knowingly use” an “access device” (i.e., the NSLDS username and password) issued to another (i.e., the borrower) for “private financial gain.”<sup>387</sup>

In addition to criminalizing a relief company’s unlawful access to a borrower’s loan account, the proposed Stop Relief Scams Act would require the Education Department to establish a third-party access account to the NSLDS only for an “authorized person.”<sup>388</sup> Under this provision, authorized persons include governmental entities as well as licensed attorneys representing borrowers or their parents, and such persons would have access to a borrower’s account information through a different account number.<sup>389</sup>

The third-party-access provision would make it easier for borrowers to get legitimate help from reputable attorneys; however, this provision has potential problems.<sup>390</sup> First, under this proposed provision, an authorized person would also include a “nonprofit organization, providing financial or student loan repayment counseling to a student, borrower, or parent.”<sup>391</sup> Some relief companies are actually organized under state laws as nonprofit organizations.<sup>392</sup> For example, the Texas attorney general sued a group of defendants, one of which was a Texas-based nonprofit called “Your Student Loan Relief Organization.”<sup>393</sup> The defendants were charged with numerous state-law violations, including charging borrowers up-front fees and putting their loans into forbearance without their permission.<sup>394</sup> Similarly, prior to dissolution, Consumer Assistance Project, a Florida-based nonprofit organization, was charged with targeting borrowers by highlighting its nonprofit status and misleading them into believing that their “membership” fees were

386. See FTC’s Operation Game of Loans, *supra* note 59.

387. See *infra* notes 477–483 and accompanying text.

388. See Stop Student Debt Relief Scams Act, S. 1153, 116th Cong. § 4 (2019), <https://www.baldwin.senate.gov/imo/media/doc/Stop%20Student%20Debt%20Relief%20Scams%20Act.pdf> [<https://perma.cc/JMV6-N5WN>]; FTC’s Operation Game of Loans, *supra* note 59.

389. See Stop Student Debt Relief Scams Act § 2.

390. Just because a borrower may have hired an attorney does not mean the borrower is immune from being scammed. See *Mortgage Relief Scams*, FED. TRADE COMM’N (Jan. 2018), <https://www.consumer.ftc.gov/articles/0100-mortgage-relief-scams> [<https://perma.cc/C343-SFPD>] (explaining to consumers about the warning signs of a foreclosure relief scam and providing consumers with tips about how to find a reputable licensed attorney).

391. Stop Student Debt Relief Scams Act § 4.

392. See *infra* notes 395–398 and accompanying text.

393. See Plaintiff’s Petition and Application for Temporary Injunction and Permanent Injunction at 6, *Texas v. Student Loan Relief, LLC*, No. D-1-GN-17-005516, 2017 WL 4390722 (W.D. Tex. Oct. 2, 2017).

394. See MICHAEL RIGBY, TEX. OFF. OF CONSUMER CREDIT COMM’R, LEGAL DEPARTMENT REPORT 62 (2018), <https://www.fc.texas.gov/sites/default/files/2018-08/fc-081718.pdf> [<https://perma.cc/9EZV-ZQNK>] (reporting that the defendants in *Student Loan Relief, LLC*, 2017 WL 4390722, subsequently agreed to a preliminary injunction that bans them from charging consumers for goods and services).

tax-deductible.<sup>395</sup> Therefore, a relief company can be a legally registered *nonprofit* organization under state law while simultaneously perpetrating a *for-profit* student loan relief scam. Thus, the proposed bill should be amended to require the Education Department to conduct a reasonable investigation of a nonprofit organization and determine that it is legitimate before granting it third-party access to the NSLDS.<sup>396</sup>

The proposed Stop Relief Scams Act also needs to address relief companies that will claim to have the right to access a borrower's NSLDS account on the basis that they have a "power of attorney" (POA) form completed by the borrower.<sup>397</sup> Recall that numerous relief companies make borrowers complete and e-sign the POA form granting the companies permission to contact the borrowers' loan servicers to purportedly negotiate a payment reduction or debt elimination.<sup>398</sup> Litigation against several relief companies demonstrates that this is just another means of keeping borrowers in the dark.<sup>399</sup> Generally, a POA form has to be notarized by the individual appearing in person before a notary public and signing the form.<sup>400</sup> In the Minnesota lawsuit filed against Student Aid Center, employees of the company sent to the borrowers' loan servicers completed POA forms in which borrowers' signatures had been forged.<sup>401</sup> Moreover, some of the forms had attestations by the notary who falsely represented that borrowers residing in Minnesota had actually appeared in person in the state of Florida, where Student Aid Center was located.<sup>402</sup>

Similarly, in the enforcement action filed against Consumer Assistance Project (CAP), an in-house attorney for Navient stated that, in a limited search of Navient's computer systems, he uncovered eighty-five accounts with the names "Consumer Assistance Project" or "Consumer Assistance" and with POA forms he believed to

395. See Read, *supra* note 65, at 5 (stating that the company's nonprofit status was eventually revoked by the state of Florida).

396. See Stop Student Debt Relief Scams Act, S. 1153, 116th Cong. § 2 (2019), <https://www.baldwin.senate.gov/imo/media/doc/Stop%20Student%20Debt%20Relief%20Scams%20Act.pdf> [<https://perma.cc/JMV6-N5WN>] (lacking any requirement that a nonprofit organization seeking third-party access is a legitimate entity).

397. See *id.* (stating that an authorized person includes "the attorney or other individual [who] has consent from the relevant student, borrower, or parent to access the system").

398. See, e.g., Complaint at 127, *Illinois v. FDATR, Inc.*, No. 2017CH13732, 2017 WL 4611807, at \*24 (Ill. Cir. Ct. Oct. 13, 2017) (alleging that defendants made consumers sign a "Limited Power of Attorney," where the defendants were supposed to, among other things, negotiate for borrowers to receive lower payments on their federal student loan debt); Complaint at 58, *Massachusetts v. Student Loan Relief, Inc.*, No. 18-2943A, 2018 WL 5825352, at \*10 (Mass. Super. Ct. Sept. 20, 2018) (alleging that Texas-based companies required borrowers to sign a contract and a POA and alleging that because the defendants were granted a POA, they violated their fiduciary duty to act in the best interests of the borrowers).

399. See, e.g., *supra* notes 216–218 and accompanying text.

400. See Complaint, *FDATR*, 2017 WL 4611807, at \*24 (No. 2017CH13732); Complaint, *Student Loan Relief, Inc.*, 2018 WL 5825352, at \*10 (No. 18-2943A).

401. See, e.g., *Minn. v. SAC Complaint*, *supra* note 67, at 17–19.

402. *Id.*

be fraudulent even though the forms were purportedly completed by borrowers.<sup>403</sup> Of these accounts, only one borrower had obtained a loan discharge, but Navient's attorney could not determine whether the borrower had obtained a discharge based on his or her efforts.<sup>404</sup>

Given that relief companies deceptively use POA forms,<sup>405</sup> the proposed Stop Relief Scams Act should be amended to make clear that a borrower's completed POA form does not prevent a relief company from being criminally charged with unlawfully accessing a borrower's NSLDS account.

The proposed Stop Relief Scams Act is also worthy of consideration because it would require the Education Department "to maintain common-sense reporting, detection, and prevention activities to stop potential or known debt relief scams."<sup>406</sup> However, the proposed bill does not provide any specifics about how such activities could be accomplished.<sup>407</sup> Clearly, a new system by the Education Department needs to automatically flag as suspicious any company claiming the authority to act for a borrower based on a POA form.

Because the proposed federal law would require the Education Department to develop a system of detecting and preventing debt relief scams,<sup>408</sup> this Article recommends Congress consider requiring the Education Department to implement a multifactor authentication (MFA) process, using at least four factors to detect suspicious activity and to prevent scammers from accessing borrowers' online accounts.<sup>409</sup>

Many companies in the private sector already use a four-factor MFA system that requires the following: (1) something the consumer has (e.g., smartphone), (2) something the consumer knows (e.g., password or PIN), (3) something the consumer is (e.g., a biometric characteristic such as a fingerprint), and (4) something the consumer does (e.g., behavior pattern).<sup>410</sup> As discussed above, relief companies

403. See Decl. of Joshua Harkleroad at exhibit PX06 at 1, 3, Plaintiffs' Motion for Preliminary Injunction & Supporting Memorandum of Law, *FTC v. Consumer Assistance, LLC*, No. 1:16-cv-21528 (S.D. Fla. May 19, 2016) [hereinafter "FTC Motion Against CAP"] (describing his years of employment by Navient as well as FedLoan servicing and opining that CAP's POA forms contain several red flags).

404. *Id.* at 5.

405. See *supra* notes 399–404, *infra* note 406, and accompanying text.

406. Baldwin, Braun, Shabeen, Fischer Introduce Bipartisan Legislation to Stop Student Debt Relief Scams, TAMMY BALDWIN: U.S. SENATOR FOR WIS. (Apr. 11, 2019), <https://www.baldwin.senate.gov/press-releases/stop-student-debt-relief-scams-act> [https://perma.cc/N2DJ-58QC]; See Stop Student Debt Relief Scams Act, S. 1153, 116th Cong. § 2 (2019), <https://www.baldwin.senate.gov/imo/media/doc/Stop%20Student%20Debt%20Relief%20Scams%20Act.pdf> [https://perma.cc/JMV6-N5WN].

407. *Id.*

408. *Id.* § 5.

409. See *infra* notes 412–427 and accompanying text.

410. See INT'L TELECOMM. UNION, ENTITY AUTHENTICATION ASSURANCE FRAMEWORK: RECOMMENDATION ITU-T X.1254, at 1 (2012) [hereinafter AUTHENTICATION FRAMEWORK], [https://www.itu.int/rec/dologin\\_pub.asp?lang=e&id=T-REC-X.1254-201209-S!!PDF-E&type=items](https://www.itu.int/rec/dologin_pub.asp?lang=e&id=T-REC-X.1254-201209-S!!PDF-E&type=items) [https://perma.cc/9P3X-DYLW]; Louis Columbus, *CIO's Guide to Stopping Privileged Access Abuse – Part I*, BUS. 2 CMTY. (Apr. 25, 2019), <https://www.business2community.com/strategy/cios-guide-to-stopping-privileged-access-abuse-part-i-02193903> [https://web.archive.org/web/2019042

usually get a wealth of information so they can easily pass the first two factors, especially if they hijack a borrower's cell phone number and then reset the borrower's password.<sup>411</sup> Moreover, because the large majority of consumers use the same password for multiple accounts,<sup>412</sup> a relief company could use a borrower's cell phone password and unlawfully access a borrower's information across multiple platforms.

The Education Department could require the third factor in a MFA system, which relies on a biometric characteristic (e.g., fingerprint); however, such reliance is not foolproof.<sup>413</sup> In 2014, hackers breached the records of the U.S. Office of Personnel Management and stole personal data, including fingerprints, on almost twenty-two million current and former federal employees and contractors.<sup>414</sup> A foreign government is suspected of being behind the breach, and the business community asserts that hackers armed with this information can bypass an MFA system to harm others.<sup>415</sup> Moreover, in 2017, within days of Apple's launch of the iPhone X, a foreign company was able to create 3D printed masks to circumvent the iPhone's facial recognition security system and unlock the iPhone.<sup>416</sup> Then, in 2019, an anonymous person bypassed the Galaxy S10's fingerprint sensor by

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5215312/<https://www.business2community.com/strategy/cios-guide-to-stopping-privileged-access-abuse-part-i-02193903>].

411. See, e.g., Student Consulting Group Complaint, *supra* note 88, at 9 (alleging that “[d]efendant requires consumers to provide personal and financial information including: name, address, driver’s license number, employer’s name and location, two personal references, annual income, tax filing status, spouse information, and the consumer’s unique NSLDS pin code”).

412. See Monica C. Meinert, *Better Security Through Biometrics*, A.B.A. BANKING J. (Dec. 28, 2016), <https://bankingjournal.aba.com/2016/12/better-security-through-biometrics/> [<https://perma.cc/3LCX-M5PU>] (citing a 2015 study revealing that twenty-one percent of individuals used the same password for over ten years and that an “overwhelming 73 percent of online accounts are guarded by duplicated passwords, making it that much easier for hackers to take down multiple accounts by cracking just one password”).

413. See *id.* (suggesting that, while a “biometric defense is superior to a knowledge-based one,” it could become unreliable under certain environmental conditions, including in crowded areas and dimly-lit spaces); AUTHENTICATION FRAMEWORK, *supra* note 410, at 29 (stating that fingerprints can be forged and that the authentication framework requires the ability to detect “use of artificial biometric characteristics”).

414. See Sherif Samy, *How Secure Are Biometrics?*, CREDIT UNION TIMES (Feb. 2, 2018, 7:00 PM), <https://www.cutimes.com/2018/02/02/how-secure-are-biometrics/?sreturn=2020062101144> [<https://perma.cc/6RJ6-UB3F>].

415. See *id.*; Isaac Stone Fish, *China Has Access to Grindr Activity. We Should All Be Worried.*, WASH. POST (Apr. 9, 2019, 10:25 AM), <https://www.washingtonpost.com/opinions/2019/04/09/why-we-cant-leave-grindr-under-chinese-control/> [<https://perma.cc/CT25-ZFH6>] (discussing concerns about China’s ability to access phone data after Beijing company’s acquisition of Grindr).

416. See Samy, *supra* note 414; Thomas Brewster, *Apple Face ID ‘Fooled Again’ – This Time by \$200 Evil Twin Mask*, FORBES (Nov. 27, 2017, 5:10 AM), <https://www.forbes.com/sites/thomasbrewster/2017/11/27/apple-face-id-artificial-intelligence-twin-mask-attacks-iphone-x/#2039b2eb2775> [<https://perma.cc/R8XE-QFV9>]; Angela Moscaritolo, *Hacker Beats Galaxy S10 Fingerprint Scanner With 3D Print*, PCMAG (Apr. 9, 2019), <https://www.pcmag.com/news/hacker-beats-galaxy-s10-fingerprint-scanner-with-3d-printer> [<https://perma.cc/2DJJ-AESM>].

creating a 3D-printed fingerprint.<sup>417</sup> Consequently, biometric authentication should be viewed as a layer in a MFA system, not a replacement of other methods of verification.<sup>418</sup>

The fourth factor in a MFA system uses technology to verify a person based on their behavior.<sup>419</sup> Behavioral verification is necessary because fraudsters can uncover a wealth of information about consumers by gleaning information from data breaches and consumers' digital "life print"—the information millions of online users leave behind or have available on social media platforms, unsecured websites, or online public records.<sup>420</sup> A technology-based behavioral analysis of the purported user would be able to determine, for example, if the consumer is accessing the online account via a new or previously unknown device and unknown or foreign IP address.<sup>421</sup>

Because the above-recommended MFA system relies exclusively on modern technology,<sup>422</sup> this Article proposes that the Education Department incorporate a MFA system that includes an authentication factor using written notices sent by U.S. mail to borrowers and persons closely connected to them.<sup>423</sup> When individuals complete applications for student loans, they supply the names and contact information for references, and these references are usually relatives. Also, for private student loans, lenders often require borrowers to get credit-worthy individuals, usually relatives, to agree to be cosigners to obtain private loans.<sup>424</sup> Whenever the author's proposed MFA system detects suspicious behavior (e.g., email address and password are changed), the Education Department should be required to send written notices by U.S. mail to the references and cosigners listed in the borrower's loan application or to the borrower's last known mailing address. The expected outcome is that relatives will then make direct contact with the borrower and warn her about being the possible victim of a student loan relief scam.

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417. See Moscaritolo, *supra* note 416 (describing how one researcher used a 2D printout to bypass the facial recognition feature on the OnePlus 6 phone).

418. See Tom Saunders, *Biometrics Are a Security Supplement, But No More Than That*, PAYMENTS SOURCE (Jan. 28, 2019, 9:45 AM), <https://www.paymentsource.com/opinion/biometrics-are-a-security-supplement-but-no-more-than-that> [https://perma.cc/8LUY-GGS8] (describing how someone hacked the iPhone 5's fingerprint sensor "after a high-resolution photo was taken of a fingerprint on a glass surface and used to successfully unlock the device").

419. See AUTHENTICATION FRAMEWORK, *supra* note 410, at 28.

420. See Meinert, *supra* note 412 (discussing the emergence of behavioral authentication factors, such as keystroke patterns); TELECOMMS. REPS. INT'L, INC., CYBERSECURITY POLICY REPORT (2019), 2019 WLNR 5001676 (discussing behavior factors in MFA process, such as logging in from unknown device). Recall that American Financial is accused of personally targeting borrowers by scraping information from their Facebook profiles. See *supra* notes 162–177 and accompanying text.

421. TELECOMMS. REPS. INT'L, INC., *supra* note 420.

422. See AUTHENTICATION FRAMEWORK, *supra* note 410, at 27–29 (explaining in detail a MFA system to prevent fraud occurring in the digital world).

423. See *infra* notes 426–428 and accompanying text.

424. See *Consumer Fin. Prot. Bureau v. Navient Complaint*, *supra* note 23, at 26 (stating that lenders usually require borrowers to have a co-signor in order to obtain a private student loan).

The written notice about the detection of suspicious behavior should do the following: summarize the activities deemed suspicious, inform borrowers about the loan servicer's duty to provide free help in selecting appropriate repayment options, inform borrowers about the warning signs of a fraudulent relief program, and require borrowers to contact their loan servicer directly. The notice should also summarize the various repayment plans and forgiveness programs and warn borrowers that forbearance or deferment is not an appropriate debt management solution for most borrowers. The notice should also provide contact information that connects borrowers directly to the office of their state's ombudsman and directly to the consumer complaint division of their state's office of the attorney general. Moreover, the written notice should inform the borrower that no changes will be implemented until the borrower makes direct contact with the company that is actually authorized to service the borrower's loan. Finally, the written notice should provide the borrower with a unique access code to be used as part of the verification process for the borrower to make changes, including enrolling in an appropriate repayment plan.

This written-notice-verification method through the U.S. mail system is one sensible approach to combatting relief scams. That is because the relief companies usually perpetrate their scams via telecommunications and online platforms.<sup>425</sup> Adding the written notice requirement is a tangible step to the authentication process that should prevent fraud in the long run.

At this time, the fate of the Stop Student Debt Relief Scams Act is uncertain because this proposed act was advanced by the House Education and Labor Committee and recently incorporated into an amended markup of the College Affordability Act.<sup>426</sup> Nevertheless, the above-discussed provisions of the Stop Student Debt Relief Scams Act, along with the author's suggestions,<sup>427</sup> should be enacted because they would give law enforcement a criminal statute suited for indicting relief scammers and would require the Education Department to develop systems that detect and deter student loan relief scams.<sup>428</sup>

### *C. Federal and State Lawmakers Can Empower Ombudsmen to Advocate for Borrowers*

In addition to including the aforementioned provisions requiring the Education Department to detect and deter relief scams, the comprehensive College Affordability Act currently includes provisions to deal with the "ombudsman crisis"

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425. See *supra* notes 109–200 and accompanying text (describing how relief companies use telecommunication and digital technologies to target potential borrowers).

426. See College Affordability Act, H.R. 4674, 116th Cong. § 1031 (2019); Amendment in the Nature of a Substitute to H.R. 4674 (2019) [hereinafter Proposed Amendments to CAA], <https://edlabor.house.gov/imo/media/doc/HR4674ANS1.pdf> [https://perma.cc/6P48-AABG] [hereinafter Proposed Amendments to CAA].

427. See *supra* notes 370–426 and accompanying text.

428. See Proposed Amendments to CAA, *supra* note 426, §§ 4628, 4722.

at both the CFPB and the Education Department.<sup>429</sup> As explained below, the lack of a true federal ombudsman to advocate for borrowers is an indication that federal and state lawmakers must act to protect borrowers.<sup>430</sup>

Recall that Kathy Kraninger, the director of the CFPB, raised concerns among lawmakers and the banking industry when she appointed Robert Cameron as the CFPB's Ombudsman.<sup>431</sup> This was in spite of the fact that he had most recently served long-term as chief counsel for a large loan servicer repeatedly sued for engaging in unlawful collection and servicing practices.<sup>432</sup> Mr. Cameron assumed the title "Private Student Loan Ombudsman" and has taken a very limited view of his duties.<sup>433</sup>

Similarly, the Education Department also has an Ombudsman Group in the Office of Federal Student Aid (FSA). But, under Secretary DeVos's leadership, the Ombudsman Group states that it "is a neutral, informal, and confidential resource to help resolve disputes about your federal student aid."<sup>434</sup> That Group no longer shares with the CFPB data regarding student borrower complaints as required under federal law, and CFPB Director Kraninger has chosen not to file suit against the Education Department to obtain the data.<sup>435</sup> As a result, in late 2019, Student Debt

429. See *id.* § 1031 (explaining the duties of the Borrower Advocate). However, while the bill has a section calling for "counseling," it does not actually require the type of education borrowers need to avoid fraud. See *infra* notes 440–474 and accompanying text (proposing that borrowers receive education from the CFPB's ombudsman and state-created ombudsmen or advocates).

430. See *infra* notes 440–474 and accompanying text.

431. See Kate Berry, *CFPB Names Student Loan Servicing Exec as Ombudsman*, AM. BANKER (Aug. 19, 2019, 4:05 PM), <https://www.americanbanker.com/news/cfpb-names-student-loan-servicing-exec-as-ombudsman> [<https://perma.cc/3A59-9PQ8>]; David Baumann, *Heated House Hearing for CFPB's Kraninger as Dems Go On the Attack*, CREDIT UNION TIMES (Oct. 16, 2019, 1:56 PM), <https://www.cutimes.com/2019/10/16/heated-house-hearing-for-cfpbs-kraninger-as-dems-go-on-the-attack/?sreturn=20200023110229> [<https://perma.cc/WM8T-5BWN>].

432. See Berry, *supra* note 431; Baumann, *supra* note 431.

433. Berry, *supra* note 431; see *supra* notes 382–384 and accompanying text; Stacy Cowley, *Student Loan Watchdog Job Given to an Industry Executive*, N.Y. TIMES (Aug. 16, 2019), <https://www.nytimes.com/2019/08/16/business/student-loan-watchdog-insider.html> [<https://perma.cc/9QT6-2B6H>].

434. *Feedback and Ombudsman*, FED. STUDENT AID, <https://studentaid.gov/feedback-ombudsman> [<https://perma.cc/XP8C-457L>] (last visited Sept. 29, 2020); Courtney Nagle, *What to Know About State Regulations on Student Loans*, U.S. NEWS & WORLD REPORT (Dec. 12, 2018, 11:27 AM), <https://www.usnews.com/education/blogs/student-loan-ranger/articles/2018-12-12/what-to-know-about-state-regulations-on-student-loans> [<https://web.archive.org/web/20181213133734/https://www.usnews.com/education/blogs/student-loan-ranger/articles/2018-12-12/what-to-know-about-state-regulations-on-student-loans>] (stating that the FSA Ombudsman Group is not an advocate for student borrowers).

435. See Chris Arnold, *CFPB Chief Says Education Department Is Blocking Student Loan Oversight*, NPR (May 16, 2019, 5:00 AM), <https://www.npr.org/2019/05/16/723568597/cfpb-chief-says-education-department-is-blocking-student-loan-oversight> [<https://perma.cc/E2PV-NQ4Z>]; *supra* notes 384–386 and accompanying text; see also ALLIED PROGRESS, IN FIRST YEAR ON JOB, KRANINGER PUT INDUSTRY DEMANDS AHEAD OF CONSUMER CONCERNS (2019), <http://alliedprogress.org/wp-content/uploads/2019/12/REPORT-Kraninger-First-Year-As-CFPB-Director-A-Disaster-For-Consumers-Fact-Checked.pdf> [<https://perma.cc/9BRG-LNS2>] (discussing actions

Crisis, a nonprofit student advocacy group, filed suit against Director Kraninger, Secretary DeVos, the CFPB, and the Education Department.<sup>436</sup> The SDC is asking the court to order the CFPB and the Education Department to reinstate the memoranda of understanding, requiring the Education Department to share complaint data about loan servicers to the CFPB.<sup>437</sup> Also, the SDC is seeking both a declaratory judgement that the CFPB has supervisory authority over large companies that service federal student loans and an order requiring that Director Kraninger and the CFPB essentially exercise supervisory authority over those companies.<sup>438</sup>

Several bills have been introduced on a federal level to require both the CFPB and the Education Department through their respective ombudsman offices to share data and fulfill their other regulatory duties.<sup>439</sup> The discussion below will focus on two different bills, one aimed at the CFPB's ombudsman and another aimed at the Education Department's Ombudsman Group.<sup>440</sup>

In 2019, Representatives Mary Gay Scanlon and Ilhan Omar introduced the Student Borrower Advocate Act to transform the Education Department's Ombudsman Group into the Office of the Borrower Advocate.<sup>441</sup> This bill was recently incorporated into the comprehensive College Affordability Act, and it would require the Borrower Advocate to provide "timely assistance" to borrowers.<sup>442</sup> The Borrower Advocate would have several mandates, including receiving and responding to the borrowers' complaints and attempting to help them to resolve problems with their loan servicers.<sup>443</sup> The College Affordability Act would also require the Borrower Advocate to "compile and analyze data on borrower complaints and share such data" with the CFPB.<sup>444</sup> The bill would also restrict who could be hired as the Borrower Advocate so that an industry-insider such as Mr. Cameron would be ineligible for the position.<sup>445</sup> In short, the College Affordability Act seeks to require the Education Department to have an advocate

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taken by Director Kraninger during the first year of her term and explaining why such actions are harmful for consumers).

436. See generally *Student Debt Crisis v. Consumer Fin. Prot. Bureau Complaint*, *supra* note 307.

437. See *id.* at 30.

438. *Id.* at 29–30.

439. See *infra* notes 441–473 and accompanying text; see also CFPB Student Loan Integrity and Transparency Act of 2019, H.R. 2833, 116th Cong. (2019). Representative Katie Porter introduced a bill that would have required the Education Department to share information with the CFPB, required loan servicers to provide any requested information to the CFPB or its Ombudsman, and required the CFPB to fully staff job positions in all of its units, including the Ombudsman's office.

440. See *infra* notes 441–474 and accompanying text.

441. See Student Borrower Advocate Act, H.R. 4627, 116th Cong. § 2 (2019).

442. See Proposed Amendments to CAA, *supra* note 426, at 93.

443. *Id.* at 95–96.

444. *Id.* at 96.

445. *Id.* at 94 (banning the Education Secretary from appointing anyone "employed by, or had a financial interest in, any [loan servicer or similar] entity in any of the five years preceding the date of the individual's appointment").

that is not biased in favor of the loan servicing industry and that possesses work experience that has prepared him or her to advocate for student borrowers.<sup>446</sup>

Similarly, Maxine Waters, Chairwoman of the U.S. House Financial Services Committee, introduced legislation titled the Consumers First Act to allow career professionals to continue at the CFPB.<sup>447</sup> Specifically, this bill would require adequate staffing at the CFPB and, in addition, would limit the number of positions that could be filled by political appointees.<sup>448</sup> Both provisions should ensure that competent professionals are hired and limit the hiring of individuals who are motivated to sabotage the CFPB's mission of protecting consumers.<sup>449</sup> The Consumers First Act would also require the CFPB to keep its online consumer complaint database transparent and publicly accessible,<sup>450</sup> thereby preventing a future director from shutting down the database.<sup>451</sup> This database, which now has over 1.5 million complaints, including thousands about loan servicers, is important to preserve because it is critical to holding companies accountable for recurring problems in the marketplace.<sup>452</sup>

The proposed Consumers First Act would also make the Office of Students and Young Consumers (OSYC) a statutorily-created, stand-alone office because it is also critically important to protecting student loan borrowers.<sup>453</sup> The proposed bill would not only put the ombudsman in charge of the OSYC but also give that person the title of "Assistant Director and Student Loan Ombudsman" and the

446. *See id.*

447. *See* Consumers First Act of 2019, H.R. 1500, 116th Cong. (2019); *infra* note 449 and accompanying text (discussing how political appointees are replacing professionals and undermining the work of the CFPB).

448. *See* H.R. 1500 § 5(c).

449. According to news reports, Mr. Mulvaney replaced career professionals at the CFPB with political appointees. *See* Yuka Hayashi, *At Consumer Finance Agency, a Critic Is Now the One Pulling the Levers*, WALL ST. J. (Oct. 21, 2018, 10:00 AM), <https://www.wsj.com/articles/cfpbs-wizard-of-oz-puts-trump-plans-into-practice-1540130400> [<https://perma.cc/GR4F-7F98>]; *see also* Kate Berry, *Former CFPB Official 'May Have Abused His Authority': Inspector General*, AM. BANKER (July 29, 2019, 12:42 PM), <https://www.americanbanker.com/news/former-cfpb-official-may-have-abused-his-authority-inspector-general> [<https://perma.cc/MV9M-X37G>] (quoting letter from U.S. Senators who stated: "Political appointees do not have the same hiring requirements as career staff and are often chosen for their political views, rather than their expertise.").

450. *See* H.R. 1500 § 5(d).

451. *See* David Lazarus, *Keeping a Lid on Data at CFPB*, L.A. TIMES, June 8, 2018 (reporting that Mr. Mulvaney, who threatened to shutter the database, told a banking industry audience that he does not "have to run a Yelp for financial services sponsored by the federal government").

452. *See* Kelly Thompson Cochran, *The CFPB at Five Years: Beyond the Numbers*, 21 N.C. BANKING INST. 55, 69 (2017) (describing the benefits of the complaint database as affording companies the ability to be "more responsive to customer dissatisfaction levels through proactively monitoring social media and other sources to reduce the odds of receiving a complaint via the CFPB"); *Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau Before the H. Comm. on Fin. Servs.*, 116th Cong. (2019) (statement of Linda Jun, Senior Policy Counsel, Americans for Financial Reform) (stating that companies that have been unresponsive to consumers complaining directly to the companies, respond after consumers have submitted online complaints through the CFPB's database).

453. *See* H.R. 1500 § 6.

authority to assist in all of the CFPB's supervisory, regulatory, and enforcement authority.<sup>454</sup>

In summary, the foregoing proposed bills are in step with the statutory duties of the Education Department as well as the duties of the CFPB, which was the first and only federal agency with consumer protection as its primary mission.<sup>455</sup> The proposed bills would ensure that the Education Department provides student loan data to the CFPB and ensure that the CFPB's Ombudsman would be independent and able to operate through a permanent OSYC and fulfill its duties regardless of who occupies the White House.<sup>456</sup>

Recognizing that the CFPB's Ombudsman has played a critical role in assisting thousands of borrowers, eight states and the District of Columbia have recently passed laws that, at a minimum, create a state ombudsman.<sup>457</sup> Similar to the CFPB's Ombudsman,<sup>458</sup> these new laws require the ombudsman to assist borrowers by receiving and responding to borrowers' complaints and attempting to help borrowers resolve problems with their loan servicers.<sup>459</sup> The state ombudsman is also required to compile and analyze student loan data.<sup>460</sup> In some states, the ombudsman is also required to create educational materials or courses to inform borrowers of their rights when dealing with loan servicers.<sup>461</sup>

An ombudsman position created under state laws is the right course of action in light of harmful actions taken by Trump appointees heading the CFPB and the Education Department.<sup>462</sup> This Article recommends, however, that states expand the state ombudsman's duties to include receiving complaints about relief

454. *See id.*

455. *See supra* notes 439–454 and accompanying text.

456. *Id.*

457. These new laws are referred to often as “Student Loan Borrowers’ Bill of Rights.” The District of Columbia and eight states (California, Connecticut, Illinois, Maryland, Maine, New Jersey, Nevada, and Washington) have enacted laws imposing licensing requirements on student loan servicers. *See* CONN. GEN. STAT. ANN. § 36a-25 (West 2019); An Act to Establish a Student Loan Bill of Rights To License and Regulate Student Loan Servicers, 2019 Me. Legis. Serv. 2, § 14-104 (West); CONN. GEN. STAT. § 36a-847 (2018); S.B. 1149, 218th Leg., Reg. Sess. (N.J. 2019); Assemb. B. 383, 2019 Leg., 80th Sess. (Nev. 2019); California Student Loan Servicing Act, Assemb. B. 2251, 2015–2016 Leg., Reg. Sess. (Cal. 2016); Illinois Public Act 100-0540, S.B. 1351, 100th Gen. Sess. § 10-5 (Ill. 2017); Student Loans, S.B. 6029, 65th Leg., 2018 Reg. Sess. (Wa. 2018).

458. Under current law, the statutorily created duties of the CFPB's Ombudsman are to (1) assist borrowers by attempting to help them resolve complaints about their private student loans, (2) analyze data collected from borrowers' complaints and received from the Education Department's ombudsman group, (3) make appropriate recommendations to the CFPB and others regarding the data analysis, and (4) submit annual reports regarding the activities of the CFPB's Ombudsman. *See* 12 U.S.C. § 5535(c)–(d).

459. *See, e.g.*, Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016, 2016 D.C. Sess. L. Serv. 21–214, § 1–2; An Act to Establish Student Loan Bill of Rights, 2019 Me. Legis. Serv. 2, § 14-104 (West) (requiring the ombudsman to “receive, review and attempt to resolve complaints” between borrowers and their servicers).

460. *See, e.g.*, S.B. 1351, 100th Gen. Assemb., 1st Reg. Sess. § 10-5(b) (Ill. 2017).

461. *See, e.g.*, Assemb. B. 383, 80th Leg., Reg. Sess. § 36.8 (Nev. 2019).

462. *See supra* Sections III.B–C.

companies, assisting borrowers in getting refunds from relief companies, reporting relief companies to state enforcement authorities, and educating borrowers about how to avoid relief companies.<sup>463</sup>

The state's ombudsman should also be required to coordinate with the state's attorney general to make it easy for borrowers to get connected to legitimate resources.<sup>464</sup> Many state attorneys general already make it easy for borrowers to submit online complaints about companies suspected of committing fraud.<sup>465</sup> Moreover, several attorneys general have toll-free helplines and other resources that are specifically dedicated to assisting student loan borrowers.<sup>466</sup> As a result, the state's ombudsman should be required to inform borrowers about consumer complaint submission procedures available at the office of the state's attorney general and about how they can obtain legitimate governmental help.

Regarding the mandate to educate borrowers, a state ombudsman must be required to do more than issue warning statements about relief companies because such warnings are insufficient. For years, websites for the FTC, the CFPB, and the Education Department have warned borrowers about relief scammers.<sup>467</sup> Moreover, state attorneys general, including Lisa Madigan, former Illinois Attorney

463. A provision in Maine's Student Loan Bill of Rights Act is broad enough to permit the ombudsman to educate borrowers about how to avoid relief scams. *See* 2019 Me. Legis. Serv. 2, § 14-104 (West) (requiring the ombudsman to "[a]ssist student loan borrowers to understand their rights and responsibilities under the terms of student education loans").

464. If funding of the state ombudsman's position may be limited, or nonexistent, state lawmakers can require the state ombudsman to coordinate with the state's attorney general to make it easy for borrowers to submit complaints regarding relief companies.

465. For example, borrowers in the following states can submit complaints: Illinois, Massachusetts, New York, Pennsylvania, and Washington. *Protecting Consumers: Filing a Consumer Complaint*, ILL. ATT'Y GEN. KWAME RAOUL, <https://www.illinoisattorneygeneral.gov/consumers/filecomplaint.html> [<https://perma.cc/SP9C-9WBM>] (last visited Sept. 29, 2019); *File a consumer complaint*, MASS.GOV, <https://www.mass.gov/how-to/file-a-consumer-complaint> [<https://perma.cc/WH7K-QAJ6>] (last visited Sept. 29, 2020); *Filing a Consumer Complaint*, LETITIA JAMES NY ATT'Y GEN., <https://ag.ny.gov/consumer-frauds/Filing-a-Consumer-Complaint> [<https://perma.cc/BBV3-TQ68>] (last visited Sept. 29, 2020); *Submit a Complaint*, JOSH SHAPIRO ATT'Y GEN., <https://www.attorneygeneral.gov/submit-a-complaint/> [<https://perma.cc/NH9V-ML52>] (last visited Sept. 29, 2020); *File a Complaint*, WASH. ST. OFF. ATT'Y GEN., <https://www.atg.wa.gov/fileacomplaint.aspx> [<https://perma.cc/J5HM-LK42>] (last visited Sept. 29, 2020).

466. *See, e.g., An Examination of State Efforts to Oversee the \$1.5 Trillion Student Loan Servicing Market: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Fin. Servs., supra* note 24 (statement of Joe Sanders, Student Loan Ombudsman and Supervising Assistant Att'y Gen., Consumer Fraud Bureau, Illinois Att'y Gen.'s Office) (stating that since 2015, the Illinois Attorney General has maintained a Student Loan Helpline, through which it has received in excess of 5,500 calls).

467. *See, e.g., Alvaro Puig, Avoid a Debt Relief Scam (Fotonovela)*, FED. TRADE COMM'N (June 20, 2016), <https://www.consumer.ftc.gov/blog/2016/06/avoid-debt-relief-scam-fotonovela> [<https://perma.cc/8BVD-BZUF>] (warning posted by an FTC consumer education specialist); Rohit Chopra, *Consumer Advisory: Student Loan Debt Relief Companies May Cost You Thousands of Dollars and Drive You Further into Debt*, CFPB (Dec. 11, 2014), <https://www.consumerfinance.gov/about-us/blog/consumer-advisory-student-loan-debt-relief-companies-may-cost-you-thousands-of-dollars-and-drive-you-further-into-debt/> [<https://perma.cc/P2VD-KXQV>]; *Avoiding Student Aid Scams*, Fed. Student Aid, <https://studentaid.gov/resources/scams> [<https://perma.cc/ZZ95-NE78>] (last visited Oct. 9, 2020).

General, have been warning consumers about student loan relief scams since 2014.<sup>468</sup> Yet as recently as December 2019 and January 2020, the CFPB, the FTC, and state attorneys general filed lawsuits against several different companies for perpetrating phony student loan debt relief.<sup>469</sup> Recall also that several victims used Google to search for reviews about relief companies that had contacted them and, after finding favorable reviews, erroneously concluded that the companies were legitimate.<sup>470</sup> However, the Operation Game of Loans litigation demonstrates that these favorable reviews were almost certainly fake.<sup>471</sup>

The state ombudsman should be required to create educational materials that explain how to spot the red flags of a student loan relief scam.<sup>472</sup> Specifically, the ombudsman's borrower education program could use litigation documents from the FTC's Operation Game of Loans to teach borrowers how to recognize red flags such as a company (1) requesting payment up front, (2) guaranteeing a reduction in student loan payments, or (3) claiming borrowers are preapproved for loan forgiveness.<sup>473</sup> If Ms. Olds had received this type of education, she would have been able to conclude that American Financial was not offering legitimate relief.<sup>474</sup>

Borrowers also need to be educated about the role of search engines and social media platforms in furthering scams.<sup>475</sup> Such education could have been helpful to consumers like Jackie Hampe, a resident of Iowa who searched online using the

468. See, e.g., Press Release, Ill. Att'y Gen., Madigan Files Lawsuits Over New Student Loan Debt Scam (July 14, 2014), [https://illinoisattorneygeneral.gov/pressroom/2014\\_07/20140714b.html](https://illinoisattorneygeneral.gov/pressroom/2014_07/20140714b.html) [<https://perma.cc/HQ5X-MPZV>]; Complaint for Equitable Injunction and Other Equitable Relief, *supra* note 179.

469. See, e.g., Complaint, Consumer Fin. Prot. Bureau v. Chou Team Realty, LLC, No. 8:20-cv-00043, at \*6 (C.D. Cal. Jan. 9, 2020) (alleging that Docs Done Right violated federal anti-telemarketing laws); Stipulated Final Judgment and Order, Consumer Fin. Prot. Bureau v. Chou Team Realty, LLC, No. 8-20-cv-00043-JVS-ADS (C.D. Cal. May 14, 2020) (noting that defendants, including Monster Loans, have settled, with defendants collectively owing \$18 million in monetary relief and Chou Realty individually responsible for a \$350,000 civil money penalty); *supra* notes 81–86 (alleging that in 2019 the defendants operating Premier Student Loan Center were still scamming borrowers despite a preliminary injunction having previously been entered against them).

470. Even a person with access to more advanced research, such as LexisNexis, could have been misled by a favorable review, story, or press release about American Financial. In conducting research for this Article, I found press releases by American Financial when performing a search using Lexis (with following key terms: (american /2 financial) and (student /2 loan /10 repayment or plan or forgive or forgiveness) and (brandon /5 frere)). See, e.g., Am. Fin. Benefits Ctr., *AFBC Reminder: Student Loan Repayment Is Solely on Borrower*, PR NEWSWIRE (Feb. 8, 2018, 8:00 AM), <https://www.prnewswire.com/news-releases/afbc-reminder-student-loan-repayment-is-solely-on-borrower-300595612.html> [<https://perma.cc/W5T3-ATVY>].

471. See *supra* notes 155–161 and accompanying text (describing relief company's practice of paying for fake favorable reviews to appear on Facebook).

472. A state ombudsman already has available resources to create a comprehensive course because the FTC and other agencies already have information about relief scams on their websites. See *supra* note 467 and accompanying text.

473. For a list of red flags, see Fair, *supra* note 95.

474. See *supra* notes 5–16 and accompanying text (describing how Ms. Olds erroneously concluded that a relief company was offering legitimate help).

475. See *supra* notes 155–210 and accompanying text (providing examples of how relief companies use online search engines and social media platforms to deceive borrowers).

words “Great Lakes.”<sup>476</sup> She was looking for a phone number for Great Lakes Higher Education Corp., her federally authorized student loan servicer.<sup>477</sup> The number that popped up was not for Great Lakes but for a company called Student Debt Doctor LLC, which was later shut down for operating a student loan relief scam.<sup>478</sup> Similarly, the now-defunct Student Aid Center had an Instagram account through which it uploaded photos of an aerial banner bragging about its student loan forgiveness program, which turned out to be fraudulent.<sup>479</sup> The scandals involving Facebook and the Russian trolls demonstrate that consumers could be reading online about a completely bogus relief program.<sup>480</sup> The ombudsman’s comprehensive education will do borrowers a huge service by showing them how to avoid relying on Google, Facebook, and other online platforms when searching for legitimate help.

#### CONCLUSION

“We told consumers that we would lower or eliminate their student loan debt . . . . [I]t never worked,” said a former supervisor at a now-defunct relief company.<sup>481</sup>

Baiting consumers with false promises to alleviate the burden of \$1.6 trillion in student loan debt, relief companies weaponize modern technologies. Moreover, relief companies pretend to be the legitimate entities that can help consumers enroll in income-driven repayment plans and loan forgiveness programs. Through Operation Game of Loans, federal and state authorities have obtained court-ordered injunctions shutting down several relief companies. However, many companies are still peddling bogus relief programs.

Currently, borrowers largely have to fend for themselves in an environment where leaders of both the Education Department and the Consumer Financial Protection Bureau have refused to exercise their supervisory and regulatory authority to hold accountable loan servicing companies—the *legitimate* businesses that are contractually obligated to assist student loan borrowers. Moreover, recently filed lawsuits accuse Secretary DeVos and the Education Department of unlawfully adopting a new regulation to prevent borrowers from discharging student loan debts

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476. See Richard Read & Teddy Nykiel, *Education Agency Blasted Amid Student Loan Scam Crackdown*, BUS. INSIDER (Oct. 20, 2017, 7:36 AM), <https://www.businessinsider.com/ap-education-agency-blasted-amid-student-loan-scam-crackdown-2017-10> [<https://perma.cc/H7LR-A4CB>].

477. *Id.*

478. *Id.*

479. See Plaintiffs’ Motion against SAC, *supra* note 144, at 3.

480. See Mark Walsh, *Facebook Plans to Create a Judicial-Like Body to Address Controversial Speech*, ABA: ABA J. (May 1, 2019, 12:45 AM), <http://www.abajournal.com/magazine/article/facebook-judicial-review-controversial-speech> [<https://perma.cc/8XEN-XC2A>] (summarizing several scandals, including Facebook being has been a “conduit [of fake news] for Russian meddling in the 2016 election”).

481. See Deposition Testimony of Robert Greenberg at exhibit PX01, FTC Motion Against CAP, *supra* note 403 (stating that he trained telemarketers at the relief company to “close” the deal by convincing borrowers to pay upfront fees for bogus loan relief).

incurred to attend unscrupulous for-profit schools,<sup>482</sup> and violating the CARES Act by garnishing borrowers' paychecks and intercepting their tax refunds during the COVID-19 pandemic.<sup>483</sup> Furthermore, President Trump's 2021 budget proposal, titled "A Budget for America's Future," plans to cut \$170 billion from education spending by eliminating subsidized federal student loans, reducing repayment options for borrowers, and eliminating the Public Service Loan Forgiveness.<sup>484</sup> President Trump is signaling that he does not value making college affordable and is not interested in incentivizing young people to become public servants in low-paying but fulfilling professions. As a result, the Trump administration continues to foster an environment where debt relief scams can flourish.

Federal lawmakers have an opportunity to deter relief scams by passing bipartisan legislation that would, among other things, subject scammers to criminal

482. See *supra* notes 257–258 and accompanying text (describing the Borrower Defense Rule implemented during President Obama's administration and Secretary DeVos's replacement of it with a new regulation that makes it virtually impossible for borrowers to obtain financial relief from burdensome debts accrued while attending unscrupulous for-profit schools); Complaint, Massachusetts v. DeVos, No. 20-cv-04717, 2020 WL 4004145 (N.D. Cal. Jul. 15, 2020) (alleging in lawsuit filed by attorneys general from more than twenty-one jurisdictions that Secretary DeVos's new rule is unlawful and that "[t]he logical errors, unfounded assumptions, omissions and inconsistencies that undergird the [new rule] render the entire rule arbitrary and capricious").

483. See, e.g., *supra* note 44 and accompanying text (describing the CARES Act's provisions related to providing temporary relief to borrowers with federal student loans owned by the Education Department and litigation against it for violating the new law); Press Release, Nat'l Consumer L. Ctr., U.S. Dept. of Education and Secretary DeVos Sued for Illegally Seizing Student Borrowers' Paychecks During Coronavirus Emergency (May 1, 2020), <https://www.nclc.org/media-center/u-s-dept-of-education-and-secretary-devos-sued-for-illegally-seizing-student-borrowers-paychecks-during-coronavirus-emergency.html> [<https://perma.cc/Z57S-H6LH>] (summarizing class action lawsuit brought by student loan borrowers alleging that, due to Secretary DeVos's inaction, the Education Department has continued to garnish their wages, in direct violation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act); Complaint, Barber v. DeVos, No. 1:20-cv-1137-CJN (D.D.C. April 30, 2020) (noting that despite the CARES Act requiring the Education Department to notify employers to stop wage garnishments by April 10, 2020, the class plaintiff continues to have twelve percent of her near minimum wage paychecks garnished because of Secretary DeVos's failure to notify plaintiff's employer); Complaint, Cole v. Mnuchin, No. 1:20-cv-1423 (D.D.C. May 29, 2020) (alleging in a class action lawsuit that Treasury Secretary Steven Mnuchin and Education Secretary Betsy DeVos violating the CARES Act by intercepting nearly \$19 million tax refunds owed to borrowers with federal student loan debt); see also Elura Nanos, *Betsy DeVos Sued for Deciding DACA Recipients Don't Deserve Coronavirus Funding*, LAW & CRIME (May 12, 2020, 4:44 PM) <https://lawandcrime.com/opinion/betsy-devos-sued-for-deciding-daca-recipients-dont-deserve-coronavirus-funding/> [<https://perma.cc/HJ4N-AACX>] (discussing how, during the 2020 pandemic, Secretary DeVos created additional eligibility requirements for individuals to receive federal aid under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, excluding DACA recipients and other undocumented students and going against Congress's original intent).

484. See OFF. OF MGMT. & BUDGET, A BUDGET FOR AMERICA'S FUTURE 110 (2020), [https://www.whitehouse.gov/wp-content/uploads/2020/02/budget\\_fy21.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/02/budget_fy21.pdf) [<https://perma.cc/922L-C6CU>]; Laura Mecklem & Danielle Douglas-Gabriel, *Trump Education Plan Slashes Student Loan Program in Contrast to Democrats*, WASH. POST (Feb. 10, 2020, 5:51 PM), [https://www.washingtonpost.com/local/education/trump-education-plan-slashes-student-loan-program-in-contrast-to-democrats/2020/02/10/1d64e8fa-4c3f-11ea-b721-9f4cde90bc1c\\_story.html](https://www.washingtonpost.com/local/education/trump-education-plan-slashes-student-loan-program-in-contrast-to-democrats/2020/02/10/1d64e8fa-4c3f-11ea-b721-9f4cde90bc1c_story.html) [<https://perma.cc/8RK6-9HYR>].

liability for duping borrowers into disclosing their loan account information. That federal legislation would also require the Education Department to develop and implement technological solutions to prevent scammers from taking over borrowers' online accounts. State legislatures also can afford borrowers meaningful protection by creating offices through which a student loan ombudsman is required to educate borrowers about how to avoid relief scams. Finally, state-created ombudsmen should have the authority and funding to advocate for student loan borrowers and educate them about how to get their federally authorized loan servicers to enroll them in legitimate repayment plans and forgiveness programs.

