CRL
Center for Responsible Lending

SYSTEM REBOOT

Challenges & Opportunities at the State Level for Higher Education During COVID-19 & Beyond

Whitney Barkley-Denney, Senior Policy Counsel
Cheye-Ann Corona, Senior Policy and Government Affairs Associate

November 2020

www.responsiblelending.org

About the Authors

Whitney Barkley-Denney is Senior Policy Counsel, based in Durham, North Carolina, where she works with state legislatures, attorneys general, and governors to fight predatory lending, exploitative student loan practices, and unscrupulous debt collectors. Whitney is also co-leader of CRL's campaign on student loan debt.

Prior to CRL, Whitney worked on a range of election law issues as Director of the Michigan Election Law Project and Field Director for Election Protection 2008, coordinating law students and attorneys to monitor polls for election irregularities during the 2008 presidential campaign. Whitney clerked for the Lawyers Committee for Civil Rights Under Law, serving in the Voter Protection Division, working to enforce the 1964 Voting Rights Act. She accepted a fellowship from Equal Justice Works/AmeriCorps to do foreclosure assistance work with the Mississippi Center for Justice, developing legal and policy expertise in foreclosure, consumer lending, and for-profit colleges. In 2013, 2014, and 2017, Whitney was appointed to the U.S. Department of Education's Federal Rulemaking Committee on Gainful Employment and Programmatic Integrity, helping to set federal financial policy for students.

Whitney attended The College of Charleston, in Charleston, South Carolina, and graduated from the University of Michigan Law School, being named 2009 Woman Law Student of the Year by the National Women Lawyers Association.

Cheye-Ann Corona is a Senior Policy and Government Affairs Associate for Western States, working on issues related to small dollar and student lending. Cheye-Ann joined our Oakland office from Washington, D.C., where she worked on federal policy reforms ranging from issues related to homeownership, economic inequality, labor, education, and financial services.

Cheye-Ann has dedicated the past 10 years of her career to advocating for public policy reforms that provide economic, political, and social mobility for communities of color. Prior to joining CRL, Cheye-Ann served as a Senior Legislative Assistant to Congressman Al Green, a senior member of the U.S. House Committee on Financial Services. She was also a Graduate Housing Fellow with the Congressional Hispanic Caucus Institute with placements at the U.S. Department of Housing and Urban Development and the U.S. House Committee on Financial Services. During this time, Cheye-Ann published a policy brief in the *Harvard Journal of Hispanic Policy* focused on evaluating the Obama-era Promise Zones Initiative on urban revitalization with recommendations to acknowledge demographic shifts, center cultural relevancy, and encourage affordable housing and asset-based development.

Cheye-Ann graduated from the University of California, Los Angeles (UCLA) with a B.A. in International Development Studies and a dual master's degree in Urban Planning and Latin American Studies.

Acknowledgments

The authors would like to thank Yasmin Farahi, Lisa Stifler, and Julia Barnard for their work shaping, reviewing, and encouraging this report.

Introduction

The COVID-19 crisis has profound financial impacts on families across the country and on the economy overall. With businesses shuttered (including 40% of Black businesses)[1] and record-breaking unemployment claims filed since March 2020,[2] it is hard to overstate the financial instability and hardship this global pandemic has produced. And it will only get worse. The federal government's response to the COVID-19 global pandemic has failed to meet the needs of Americans who are forced to choose between staying healthy and working in essential, often low-paying, jobs. Even as the recovery lags, the Senate has failed to pass a second stimulus package that would bring economic relief to millions of impacted Americans. Inaction by our national leaders could sabotage the wealth-building opportunities for a generation. This is especially true for people of color and low-income communities that disproportionately rely on higher education for social and economic mobility. The next generation pursuing higher education will be dually challenged as instruction increasingly takes place online and within a changing economic landscape defined by an unknown recovery timeline.

Although this is the first global pandemic we have seen in over a century, it is not the first economic recession or downturn the United States has encountered in recent history. Many lessons can be learned from the Great Recession of 2008. Although that crisis was different in nature, examining our recent past can give us a road map for policy solutions that avoid repeating failures and unintended consequences. For the purposes of this policy brief, we will be illuminating the intersections between higher education financing, racial inequality, wealth creation, and the student debt crisis. We provide an analysis of factors driving the student loan crisis as well as policy recommendations for reform and warnings for states seeking to protect student loan borrowers in the COVID-19 era and beyond.

Lessons from the Great Recession

After the shockwaves of the 2008 recession, states made drastic cuts to their support for institutions of higher education.[3] Nationally, per-pupil funding fell from $9,248 in 2008 to a low of $6,888 in 2012.[4] In response to falling state support, colleges and universities turned to tuition dollars to fill the gaps, pushing the burden of paying for higher education onto students and their families. By 2018, 10 years after the crash and nine years after the official end of the recession, per pupil spending remained about 13% lower than 2012 funding when adjusted for inflation.[5] In fact, education spending in most states has never returned to pre-2008 levels. These factors, paired with a decrease in state grant aid, foreclosures, job loss, and downturns in the market have fractured family balance sheets and created an entire generation of students who needed to borrow more than ever before to attend college.

Additionally, as a result of the Great Recession, there was an explosive enrollment in for-profit colleges. At the height of the recession, for-profit college enrollment grew 24%.[6] This increase in enrollment was due to state disinvestment from higher education, high unemployment rates, an increase in the amount of money available through the Pell Grant, and aggressive marketing and recruiting tactics by for-profit colleges. Where many saw retraining opportunities as a path to the middle class, unscrupulous for-profit colleges used the economic crisis to reel in borrowers with the promise of fast degrees and a near-immediate ability to make more money. Unlike underfunded community colleges, where waitlists for essential classes was the norm, for-profit colleges were constantly starting new classes, often allowing new enrollees to begin their course work within a week or less.

Together, the disinvestment from higher education and explosive growth of for-profit education helped to entrench and expand the racial wealth gap. As we will discuss below, borrowers of color took out more student debt to pay for degrees that cost them more than they were worth.

To avoid repeating the unequal recovery of 2010, states must protect the student loan borrowers who are essential to building neighborhoods, small businesses, and a strong middle class. To rebuild their state economies, legislatures must support the students who are the economic hope of the future. We must learn from the mistakes of the last decade and reinvest in higher education. We now know that rising student debt burdens have depressed the economy, impacting the lives of families struggling to keep up with their payments and causing them to delay purchasing a home or starting a business, causing a ripple effect throughout the larger U.S. economy.

To avoid repeating the unequal recovery of 2010, states must protect the student loan borrowers who are essential to building neighborhoods, small businesses, and a strong middle class. To rebuild their state economies, legislatures must support the students who are the economic hope of the future.

Impact of COVID-19 on Higher Education

The economic crisis caused by COVID-19 threatens higher education funding with yet another round of cuts and disinvestment.[7] Indeed, the projections for state budgets are grim. State budgets are highly dependent on state income taxes and sales taxes, and both have declined precipitously since March 2020.[8] Economists predict that some states will face revenue losses of up to 20% this year.[9] With balanced budget requirements in most states, and unexpected expenditures in state medical and unemployment systems due to the COVID-19 crisis, state budget cuts are unavoidably on the horizon. And while initial federal dollars may have helped patch budget holes, the funding was too little and too restricted to meet the full need. Indeed, despite emergency funding from the federal CARES Act, many states and institutions of higher education are already making deep cuts to their budgets as the crisis continues.[10]

On top of the funding cuts, COVID-19 has changed the face of college education, with campus shutdowns and quick transitions to online instruction forcing students to quickly rethink their housing arrangements and day-to-day lives. These changes not only require students to access reliable Wi-Fi from a personal computer, but also to figure out how to be resilient as their access to meal plans and dorm rooms evaporated almost overnight. These pressures have resulted in enrollment declines at institutions that serve low-income, working students, and students who are Black and Latino.[11] These enrollment declines and the high costs of transitioning to online instruction or safe in-person instruction are creating budget problems that will "touch every sector of higher education, [e]very size of institution, every region of the country."[12]

It is likely that ongoing budget shortfalls will lead to permanent school closures: one researcher has estimated that hundreds of institutions are at risk of permanent closure, with the pandemic driving an almost 50% increase in private colleges at risk.[13] Below, we will discuss how states should prepare to protect students who are impacted.

Higher Education and the Racial Wealth Gap

The cuts to higher education budgets and rising costs of college weigh most heavily on students whose families do not have the money to pay for college out-of-pocket or with savings. Some of these students borrow to attend college, while other students from low-income backgrounds simply forego higher education, resulting in a profound loss of future income. For those who do seek higher education, the cost is increasingly borne by the individual in the form of student loan debt.

While more than two in three students borrow to pay for the cost of college, students of color, and in particular Black students, tend to borrow higher amounts than their peers and more frequently (Figure 1).[14] This is due to the historic and ongoing systemic racism that has created a persistent racial wealth gap, leaving Black and Latino students with less family wealth to draw upon as they pursue their degrees.

Figure 1: 85% of Black Students Borrow To Cover the Cost of College, and Borrow More

	All	White	Black	Hispanic/ Latino	Asian	American Indian or Alaska Native	Native Hawaiian/ Other Pacific Islander
Average Debt for BA Recipients with Loans in 2016	$29,669	$30,093	$33,993	$25,452	$25,447	$26,380	$26,515
Share of BA Recipients with Student Loan Debt in 2016	68.9%	69.4%	84.9%	66.3%	45.1%	76.1%	89.4%

Despite borrowing at rates similar to their white peers, Latino students also struggle with student loan debt as a result of lower household incomes and significantly less wealth. They are also more likely to drop out of school because of the high price of education. In 2009, 31% of Latino student loan borrowers dropped out of college.[15] Once a student stops or drops out of college, they are much more likely to experience trouble in repayment because they have debt but no degree or credential in hand.

And after graduation, the disparate impact persists. Black student loan borrowers find themselves drowning in increasing student debt despite making regular payments, and almost half of Black graduates owe more on their undergraduate student loans four years after graduation than they did when they received their degree, compared to 17% of white graduates.[16] Given the United States' long history of intentional and specific exclusion of communities of color from opportunities to build wealth, communities of color bear the brunt of economic crises. This was true with the 2008 crisis, and the economic impacts of the COVID-19 pandemic are proving to be no different.[17] Both people of color and lower-income earners face disproportionate crisis-related job and income loss—yet have less family and community wealth to tap into.[18]

It is critical that state legislatures not deepen this wealth gap by continuing to make cuts to higher education budgets that will force Black and Latino students to borrow more and more to afford a college education, or shift these same borrowers back into for-profit schools. Legislators must understand the history that created this gap in order to avoid legislation that would entrench it further and actively promote legislation that would lessen it. Policymakers must center solutions around those most impacted, such as borrowers of color and low-income communities, and create intentional policy solutions to close the racial wealth gap, lift student loan borrowers out of debt, and hold institutions of higher education accountable for the quality of their education, so that borrowers get what they pay for.

States have a crucial role to play in protecting students by ensuring that servicers play their part and provide good information to student borrowers in repayment, overseeing institutions that have troubling track records, and preparing for school closures.

Student Loan Servicing: Ensure Student Loan Borrowers Can Successfully Repay

Student loan servicing companies, which serve as the crucial link between borrowers and successful repayment of their loans, are a critical piece of the $1.6 trillion student debt puzzle. Among their responsibilities, servicers are tasked by both federal and private contracts with collecting student loan payments, putting borrowers into the right repayment plans, addressing delinquent loans until they are placed in default, or even discharging the debt when a student is eligible under federal law. And when servicers fail, they sabotage borrowers who need information about how to make their payments more manageable, how to get out of default, and more.

When the CARES Act created automatic deferral for many federal student loan borrowers, student loan servicers were tasked with pausing payments and accurately reporting payments as on-time to credit agencies.[19] Yet, servicing errors have persisted throughout implementation, resulting in continuing wage garnishment and adverse credit reporting. One servicer provided incorrect payment information to credit reporting agencies regarding as many as five million student borrower accounts. Another servicer continued garnishing wages, despite the fact that Congress had ordered an immediate suspension of the practice weeks prior. For millions of borrowers, these implementation failures had serious and immediate impacts on their ability to take out a mortgage, secure a new lease, or get a fair, affordable loan.

Efforts to hold servicers accountable at the state level are especially crucial, as the current administration has abdicated its responsibilities to protect students and has repeatedly failed to hold bad servicers accountable for their errors.

These errors once again highlight the need for states to step up and protect student loan borrowers by overseeing the companies responsible for servicing their loans. Eleven states and the District of Columbia already have a "Student Loan Borrower Bill of Rights" enshrined in law, and more than one-third of outstanding student loan debt in the country is now held by borrowers from states where enhanced consumer protections are in place or are being implemented for student loan borrowers.[20] Despite the progress that has been made, student borrowers in every state deserve to have their loans handled fairly and effectively.

Student Loan Borrower Bill of Rights Basics

A Student Loan Borrower Bill of Rights Should Prohibit Servicers from:

- Directly or indirectly defrauding or misleading borrowers;
- Misapplying payments or providing inaccurate information to a borrower, a credit bureau, or governmental agency; or
- Refusing to communicate with an authorized representative of a borrower.

And Require Student Loan Servicers to:

- Provide timely responses to questions from borrowers;
- Apply payments that are more or less than the required payment amount as the borrower prefers; and
- Adhere to certain responsibilities when the loan is sold, assigned, or transferred.

While these provisions provide the baseline for state Student Loan Borrower Bills of Rights, most of the recent wave of bills, including those in Virginia, Colorado, Maine, Rhode Island, and New Jersey, include requirements that servicers must evaluate a borrower for an income-driven repayment plan before placing them in forbearance or default, if such a plan is available to a borrower. Through income-driven repayment plans, borrowers who are struggling to make their payments—which are often disproportionate to their incomes—have their payments adjusted to reflect what is affordable based on their income. Critically, after successful completion of income-driven repayment plans, the remaining debt is forgiven, relieving borrowers of their student loan debt burden.

The ability to participate in an income-driven plan is crucial for borrowers struggling to pay their debts, and servicers are responsible for determining whether a student is eligible for such a plan and actually placing them in that plan.

The ability to participate in an income-driven plan is crucial for borrowers struggling to pay their debts, and servicers are responsible for determining whether a student is eligible for such a plan and actually placing them in that plan. Borrower complaints, however, commonly include reports of issues with their servicers in trying to access these plans. Types of complaints include lost paperwork, unnecessary delays in enrollment and annual recertification, and being misinformed about their options, such as eligibility for forgiveness programs like Public Interest Loan Forgiveness. Requiring servicers to evaluate every borrower for these plans before placing them in forbearance or deferment is incredibly important for borrowers who often have not been made aware of these other repayment plans or have not been placed in an income-driven plan by servicers, despite requesting one.

For Profit Colleges: Increase State Oversight of Unscrupulous Schools

As noted above, for-profit colleges saw explosive growth following the Great Recession. This growth was driven by three factors. First, as older learners returned to college and trade schools after large-scale layoffs, they were drawn to promises of quick training and credentials, classes that began almost immediately, and easy access to programs that required no remediation. Second, an increase in Pell Grant funds made higher education more attainable for millions of Americans. And finally, state cuts in support to community colleges led to longer wait lists, over-crowded classes, and the elimination of some programs, making for-profit education attractive to adults who needed to quickly re-enter the workforce.

Unfortunately, the promises of for-profit colleges proved to be empty. When compared to those who attend public and nonprofit private colleges, borrowers who attend for-profit colleges are less likely to graduate, more likely to default on their student loan debt, and less likely to be employed in the field they studied. Over 52% of borrowers who first entered higher education in the 2003–2004 undergraduate cohort at for-profit institutions defaulted by 2016, compared to just over 17% for borrowers of the same cohort that first enrolled in four-year public colleges.[21] And because for-profits tend to enroll more Black and Latino students, their bad outcomes fall disproportionately on those groups.

For-profits also spend less money on instruction than other types of institutions, while spending more on marketing and recruitment. One study indicated that for-profits spend only 22.9% of tuition dollars on instruction.[22] Of the 10 education advertisers spending the most online, seven are for-profit institutions, and six-month spending on advertising for these seven schools averaged $11.8 million.[23] This spending typically intensifies in moments of economic crisis, as it has during the COVID-19 crisis.[24]

After years of falling enrollment, the COVID-19 crisis has provided a lifeline for for-profit institutions as their enrollments soar.[25] In the early data for this school year, for-profit colleges are the only sector to see both their graduate and undergraduate enrollment increase in the fall of 2020.[26] If history is any guide, for-profit enrollments will continue to grow throughout this economic crisis.

In the early data for this school year, for-profit colleges are the only sector to see both their graduate and undergraduate enrollment increase in the fall of 2020.

States should stay vigilant and increase oversight of these schools, ensuring that student loan borrowers are protected from colleges that make promises they cannot keep.[27] States should also closely monitor conversions and purchases of for-profit colleges and pass legislation to ensure schools who convert to nonprofit status are operating as nonprofits and not using that designation to evade regulatory oversight. Purchases of for-profit institutions by public colleges, such as Purdue University's purchase of Kaplan University[28] and the University of Arizona's recent purchase of Ashford,[29] give for-profit institutions a veil of nonprofit legitimacy, leading prospective students to believe that their education will be delivered by institutions with a long legacy of success rather than a scandal-ridden for-profit school.

Other examples, such as the recent attempt by Grand Canyon University to convert to nonprofit status, have been rejected altogether. Grand Canyon University, a for-profit college that enrolls more than 100,000 students, had their attempt to convert to nonprofit status rejected by the Department of Education, because the Department found that too large a portion of the school's academic operations would still be under the purview of a new for-profit arm.[30] The decision by the Department of Education highlights the need for greater scrutiny at the state level of these attempted conversions to ensure that they are not merely a way to evade regulations meant to protect borrowers and taxpayers.

For-Profit Accountability Bill Basics

States can pass laws that require their approving agencies to more closely examine for-profit schools applying to operate in the state—they can set standards for instructional spending, implement basic consumer protection guardrails around loan repayment, and more.

Increased Scrutiny of For-Profit Colleges Should Include:

- Requiring that for-profit colleges spend taxpayers' money on instruction, limiting the amount of revenues they can spend on advertising.
- Requiring that for-profit colleges produce minimum outcomes by creating meaningful standards for job placement, repayment of loans, and student loan default rates.
- Requiring that for-profit colleges not enroll students in programs where the student is not eligible for employment in the field in the state where they reside.
- Preventing for-profit colleges from steering borrowers into predatory, unaffordable loans.

States can pass bills to oversee the conversion process. This year, California passed a bill that would require their attorney general to verify that any nonprofit college that operated as a for-profit at any time since 2010 meets certain criteria before the conversion is accepted by their state oversight committee.[31] These criteria include:

- Ensuring the nonprofit acquired the for-profit institution's assets for a fair value.
- Ensuring that any agreements for goods or services do not exceed their fair value.
- Requiring the nonprofit to conduct, or direct, all of its own "core functions."
- Ensuring the new nonprofit has not entered into any contracts, loans or leases with a term greater than three years with the former for-profit institution's owners and managers.

Protect Borrowers Whose Schools Close

Even before the COVID-19 crisis, many institutions of higher education were facing financial challenges. The enrollment frenzy caused by the 2008 recession has long ended, and many schools that are tuition dependent—often small private schools without large endowments—do not have sufficient cash reserves to withstand even small declines in enrollment and attendance. For small public institutions, a decade of disinvestment by state legislatures combined with rising tuition that may price out local students has led lawmakers to consider merging campuses or even consolidating schools to keep the doors open. Indeed, the authors of a new book on college closure, *The College Stress Test,* predict that 20% of the nation's colleges face severe financial risk in 2020.[32]

With large-scale school closures becoming a real possibility, states must be prepared to ensure that students and their families are protected from the fallout. A school that closes abruptly can leave borrowers in the position of having incomplete degrees and outstanding credits that do not easily transfer to another school. In the past, schools have literally locked their doors, denying former students access to important documentation, like transcripts, that allow those borrowers to continue their education.

School Closure Bill Basics

To Protect Students in the Event of School Closures, States Should:

- Require all schools that operate in the state and large online schools that enroll students in the state to provide to the higher education oversight commission a close-out plan, which describes what steps the school would take to avoid a disorderly closure.
- Require all for-profit schools to have bonds in place that students can access if the schools close, requiring the higher education oversight commission in the state to immediately refund all non-federal loan money that students enrolled at the time of the closure paid to the school.
- Enhance the ability of the higher education oversight commission in the state to obtain student transcripts from closed schools.[33]

Some institutions also withhold transcripts to compel the repayment of a debt owed to the school. Any school that closes should be required to immediately discharge all the debt owed to them by student borrowers, allowing those borrowers to apply those dollars towards rebuilding their lives.

Other states are already working to move similar Orderly School Closure bills through their legislatures. Such legislation will be helpful in addressing this pre-existing crisis that the COVID-19 pandemic is likely to exacerbate. Students and their families facing a school closure deserve transparency, honesty, and real guidance as they navigate their futures.

Beyond the concrete steps of the legislation described above, state lawmakers and regulators should be aware of other challenges in higher education policy, including the proliferation of online education, and alternative, private education financing such as income-share agreements—both areas that are rife with predatory actors.

Monitor for Quality of Online Education

As COVID-19 upends brick-and-mortar higher education and moves more students online, guardrails to ensure quality in online education are more important than ever. Prior to the COVID-19 crisis, 34% of all higher education students (a total of more than 6.6 million students) were enrolled in online courses, up from 8% of students in the 1999–2000 academic year.[34] Research and recent history have established that online education has a disappointing track record, problematic online programs are particularly concentrated at for-profit institutions, and accreditors have not demonstrated that they can adequately oversee the quality and consistency of online programs.[35]

For-profit institutions offering online education often tout their programs and the financing that pays for them as "innovative and accessible," highlighting the potential of online education to provide a low-cost but high-quality degree. The campaigns often target the communities who have traditionally been locked out of the higher education system: people of color, low-income communities, and female heads of households. Unfortunately, extensive research has established that online education has simply not delivered on its promise of expanded access to low-cost, high-quality higher education, and in some cases, research has shown that these programs are downright predatory.[36]

Extensive research has established that online education has simply not delivered on its promise of expanded access to low-cost, high-quality higher education, and in some cases, research has shown that these programs are downright predatory.

The negative impacts of poor-quality online education on low-income and communities of color are far-reaching. A 2019 focus group study by the Center for Responsible Lending found that for-profit online programs negatively affect low-income students, especially Black Americans, veterans, and female heads of households. Negative impacts of poor-quality distance-only education include high rates of poor educational performance,[37] high rates of non-completion,[38] and poor labor market outcomes,[39] including lower wages for online-only degree earners.[40]

Federal and state policymakers have been slow to adequately regulate fully online education, leaving too many students and borrowers without a way to measure the quality of the school in which they hope to enroll. And with the new reality of the COVID-19 economy, many people who are financially impacted may choose to enter distance learning programs to train for a new career, only to incur debt for a meaningless degree. With loosening standards at the federal level, states need to fill the gap to protect the interests of consumers and ensure students do not amass student loan debt to pay for an online education that does not ensure a financially sound future.[41, 42]

Questions to Ask about Online Education in Your State

In the last several years, states have attempted to rectify the lack of oversight of for-profit colleges by joining the National Council for State Authorization Reciprocity Agreement (NC-SARA). However, NC-SARA is not a sufficient mechanism for regulating for-profit schools and leaves many gaps in the regulatory process that predatory schools are quick to exploit, resulting in inadequate oversight and accountability for distance education. As a result, legislatures across the country will need to grapple with how they address the quality of online education and ensure that students who spend money to attend an online school benefit from the degree.

Legislators Should Be Prepared To Ask Detailed Questions Regarding Online Education, Including:

- How will students interact with their instructors? How much of the course is live instruction? How much is pre-recorded?
- Will instructors be available to answer questions and give real-time instruction to students?
- Does the school have the proper and relevant programmatic accreditation that will allow students to sit for licensing exams?
- How will complaints be handled? Will oversight be housed in the student's home state, or the corporate home state of the school?
- Will the state be able to enforce their own laws against the school, even if those laws differ from laws regulating nonprofit or brick-and-mortar schools?

Be Wary of Alternative Education Financing

While about 90% of student loan debt is held by the federal government, the reliance on debt to finance higher education has attracted private investors. One prominent effort to enter the student loan space is income-share agreements (ISAs), which have emerged recently as a private alternative to federal student loans. An ISA is an arrangement between a student and a school in which the school provides education to the student at no upfront cost; in exchange, the student agrees to pay back a percentage of their post-graduate income. This model has the benefit of tying future payments to income, though federal loans offer income-driven repayment plans to do the same.

Currently, ISAs are primarily used to fund for-profit online workforce development programs, such as coding boot camps. However, ISA financing is becoming increasingly popular in four-year institutions of higher education. In fact, about 10 states have considered some type of legislation or action to regulate ISAs within their state borders to ensure that new products follow basic consumer protection laws. This movement by state legislatures and state regulators signals a rise in popularity for ISAs and a growing need to address regulatory gaps and rein in bad actors in the state.

There is reason to be concerned. ISA backers repeatedly suggest that the product is not a loan, despite the fact that it is money that is taken out at no immediate cost and is repaid over time, and that ISAs should therefore be exempt from traditional oversight of financial products. This classic tactic to evade regulatory oversight should not be tolerated, and states should ensure that ISAs are treated as the loans they are. ISAs should therefore be subject to basic consumer protections laws such as the Equal Credit Opportunity Act (ECOA), which prohibits any lender from discriminating against individuals either in credit availability or pricing. Before ECOA was enacted in 1974, creditors routinely rejected applicants for credit, based on inaccurate stereotypes about women, divorcees, and people of color.

Further, ISAs often do not have fixed payments or transparent interest rates but, instead, create payment pricing based on the borrower's salary. The algorithms by which ISA providers determine the amount the borrower will pay back can often be skewed based on factors such as college major and earning potential, baking in discrimination against students in majors such as social work, nursing, and teaching or other students who are likely to face labor market discrimination.[43] Ultimately, this practice will provide the most favorable terms to exactly those borrowers who already have the greatest access to higher education: white men entering highly-paid fields. Inherent in the repayment model of ISAs is the need to predict the future value of the borrower, opening the door to ECOA violations specifically regarding the treatment of protected classes.

Among other Issues, ISAs often:

- Lack consumer protections: ISA providers claim that their products are not "loans" or "credit" under consumer protection statutes. Borrowers get no APR disclosures and may not realize the high price tag or burden of turning over a share of their future income.
- Contain arbitrary pricing: It is unclear how affordable payments will be or how defaults will be handled, and, unlike conventional student loans (private or federal) where early repayment saves costs, borrowers will have to pay extra to get out from under their ISA agreement early.
- Cover only a portion of education financing: Because ISAs often supplement additional federal or private loans, borrowers may stack debt leading to unaffordable debt for low-income borrowers and their families.
- Contain arbitration clauses and obscure collection practices: By signing ISA contracts, borrowers waive their rights to jury trials and class actions. Instead, they must resolve disputes through binding arbitration. Additionally, ISAs may use heavy-handed debt collection practices. In fact, Purdue University has written punitive debt collection practices into their income share agreements. Once students sign their ISA contract, they allow for their state tax refunds to be garnished if they do not repay. ISAs with punitive debt collection practices do not provide innovative solutions to the student debt crisis. Instead, ISAs fail to prioritize student needs and offer more of the same heavy-handed approach for which federal student loans are criticized.[44]

Questions to Ask about ISAs in Your State

It is likely states will see a rise in the number and versions of ISAs at colleges and universities, especially if state legislatures slash support for institutions of higher education. Legislators should be prepared to ask detailed questions regarding these models, including:

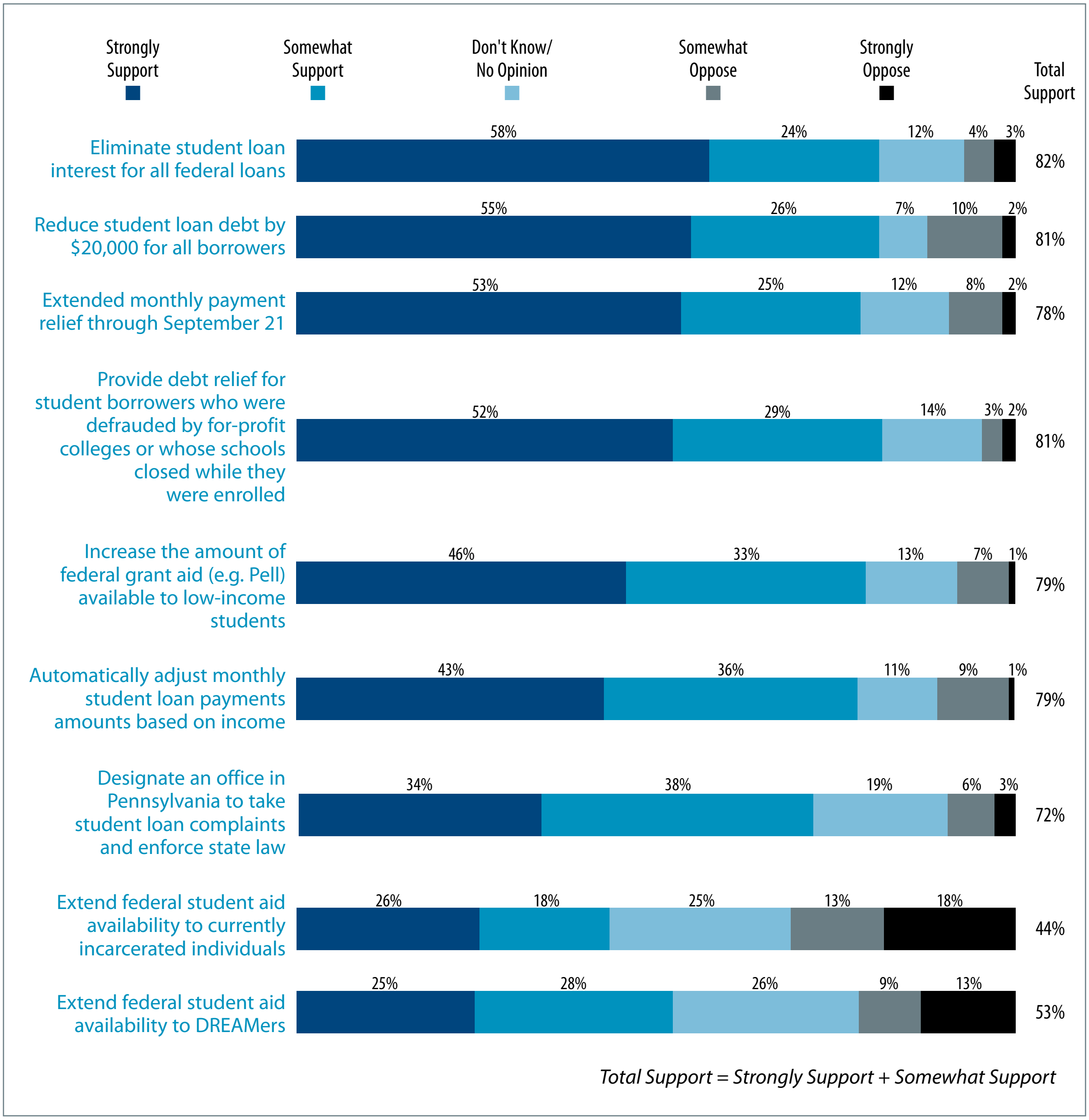
- What is the overall APR for the ISA?
- Is there transparent pricing? Or is it difficult to figure out pricing? Does the ISA provider disclose payment pricing based on a variety of salaries?
- What type of education programs will this cover?
- Is the ISA industry documenting the demographics of borrowers?
- Are their market investors making money from this product?
- Will the total cost of a degree purchased with an ISA net enough to pay for it?
- How similar is this contract to a private student loan or a federal student loan product?

Fundamentally, ISAs do not adequately address the central failure of American higher education—its costs. State resources would be better spent addressing ways to make college more affordable to a greater number of students, regardless of their majors. Amid an uncertain future, student borrowers will need access to credit that is safe and affordable, not experimental. This is also why states and the federal government must commit to funding higher education. Otherwise, industry will continue to try and provide a solution to a funding problem that state and federal funding could have addressed years ago.

Recent polling has established broad bipartisan support for solutions such as eliminating student loan interest for federal loans, student debt cancellation, income-driven repayment reform, for-profit college accountability measures, and more. Polls in states such as Pennsylvania and North Carolina have established strong support in swing states among borrowers themselves, while national polls have established broad support among the general public (Figure 2).[45]

Figure 2: Strong Support from Student Loan Borrowers on Ambitious Policy Proposals[46]

Here are some ideas that have been proposed by lawmakers. Do you support or oppose each of the following?



Totals may not equal 100% due to rounding.

Note: 2020 poll of Pennsylvania student loan borrowers.

Student Debt Cancellation

Widespread student loan cancellation has the potential to alter the financial life course of millions of Americans. Reducing or eliminating student loan balances could expand consumers' access to important financial products, such as mortgages, and could jump-start consumer spending, wealth-building, and family formation for student loan borrowers who are relieved of a significant monthly expense.[47] Overall, approximately 7.3 million borrowers were in default by March 2019 and almost 10% of outstanding student debt ($145 billion) was in default.[48] Estimates suggest that almost 90% of the defaulters are Pell Grant recipients and that the median amount owed is less than $10,000.[49] This suggests that even a modest amount of loan debt forgiveness of $10,000 for all borrowers could have a profound impact on borrowers in default.[50]

This is particularly important as the nation struggles to recover from the twin crises of a national pandemic and its resulting recession. Borrowers need money to spend in their communities—not to send to student loan servicers—and states need that money to be kept in communities. Recessions hit consumer spending especially hard. Since state budgets rely heavily on sales taxes, the reduction in consumer spending is directly tied to state budget deficits. While state legislatures cannot cancel federal student loan debt, they can support national efforts to reduce the debt burden, and work to make sure that student loan borrowers are able to invest in their communities in ways that help support not only themselves and their families, but their states.

Conclusion

COVID-19 presents states with two crises: a pandemic that has spun out of control and the resulting economic collapse. The decisions made by state governments in this moment will have long-lasting impacts, especially on low-income communities and communities of color. States must prioritize higher education funding and protecting students and borrowers, while monitoring bad actors and avoiding alternatives that may seem promising but do nothing to address the roots of systemic inequality. If legislatures successfully address these issues, they will leave a legacy of justice, growth, and long-term economic prosperity for their constituents and the country.

Endnotes

1 Costa, P.N. August 2020. "The Covid-19 Crisis Has Wiped Out Nearly Half of Black Small Businesses." *Forbes.* Available at https://www.forbes.com/sites/pedrodacosta/2020/08/10/the-covid-19-crisis-has-wiped-out-nearly-half-of-black-small-businesses/#43fb28c14310.

2 Kochhar, R. June 2020. "Unemployment rose higher in three months of COVID-19 than it did in two years of the Great Recession" Pew Research Center. Available at https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-years-of-the-great-recession/.

3 Mitchell, M.; Leachman, M.; Masterson, K.; & Waxman, S. 2018, October 4. "Unkept Promises: State Cuts to Higher Education Threaten Access and Equity." *Center on Budget and Policy Priorities.* Available at https://www.cbpp.org/research/state-budget-and-tax/unkept-promises-state-cuts-to-higher-education-threaten-access-and.

4 Pew Research Center. June 2019. *"Lost Decade" Casts a Post-Recession Shadow on State Finances.* Available at https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/06/lost-decade-casts-a-post-recession-shadow-on-state-finances.

5 Id.

6 Butrymowicz, S. & Kolodner, M. 2020, June 17. "For-Profit Colleges, Long Troubled, See Surge Amid Pandemic." *New York Times.* Available at https://www.nytimes.com/2020/06/17/business/coronavirus-for-profit-colleges.html

7 Hubler, S. 2020, October 26. "Colleges Slash Budgets in the Pandemic, With 'Nothing Off-Limits.'" *New York Times.* Available at https://www.nytimes.com/2020/10/26/us/colleges-coronavirus-budget-cuts.html.

8 National Public Radio. August 2020. *States Are Broke and Many Are Eyeing Massive Cuts.* Here's How Yours Is Doing. Available at https://www.npr.org/2020/08/03/893190275/states-are-broke-and-many-are-eyeing-massive-cuts-heres-how-yours-is-doing.

9 Peter G. Peterson Foundation. July 2020. *Pandemic Budget Crunch Could Force States to Slash Social Services, Education, Police Budgets, and More.* Available at https://www.pgpf.org/blog/2020/07/pandemic-budget-crunch-could-force-states-to-slash-social-services-education-police-budgets-and-more.

10 Hubler, S. 2020, October 26. "Colleges Slash Budgets in the Pandemic, With 'Nothing Off-Limits.'" *New York Times.* Available at https://www.nytimes.com/2020/10/26/us/colleges-coronavirus-budget-cuts.html.

11 Levin, D. 2020, October 22. "No Home, No Wi-Fi: Pandemic Adds to Strain on Poor College Students." *The New York Times.* Available at https://www.nytimes.com/2020/10/12/us/covid-poor-college-students.html. Early numbers from the Clearinghouse reported by about 54% of colleges show that institutions report, on average, a 4% decline in undergraduate enrollment. Further, greater losses in enrollment are evident when controlling for the highest degree level awarded by an institution. Public four-year colleges saw a 1.4% decline in enrollment, while 2-year programs saw a 9.5% decline in enrollment. The majority of these declines came from first-time traditional students, a group whose enrollment fell by 14%. Finally, in recent years, international students have been a major source of revenue for colleges and universities, as have study abroad programs that often allow schools to charge a premium for programs that cost less to administer. With an 13% decline in enrollment of international students reported, the future of these revenue sources are in question as international travel continues to be fraught.

12 Nadworny, E. 2020, April 20. "Can Colleges Survive Coronavirus? 'The Math Is Not Pretty.'" *National Public Radio.* Available at https://www.npr.org/2020/04/20/833254570/college-brace-for-financial-trouble-and-a-big-question-will-they-reopen-in-fall.

13 Seltzer, R. 2020, May 8. "Another Crack at Measuring Colleges' Financial Strength." *Inside Higher Ed.* Available at https://www.insidehighered.com/news/2020/05/08/public-and-private-measures-colleges-financial-strength-spark-more-discussion.

14 Baradaran, Mehrsa. 2017. *The Color of Money: Black Banks and the Racial Wealth Gap.* Boston, MA: Belknap Press; Hannah-Jones, Nikole. December 9, 2014. "School Segregation, the Continuing Tragedy of Ferguson." *ProPublica.* Available at https://www.propublica.org/article/ferguson-school-segregation; Kozol, Jonathan. 2005. *The Shame of the Nation: The Restoration of Apartheid Schooling in America.* New York: Crown Publishers; Massey, D. & Denton, N. 1993. *American Apartheid: Segregation and the Making of the Underclass.* Boston, MA: Harvard University Press; Rothstein, Richard. 2017. *The Color of Law: A Forgotten History of How Our Government Segregated America*. New York: Liveright Publishing Corporation.

15 U.S. Department of Education. 2016. *Digest of Education Statistics*. Table 306.30. https://nces.ed.gov/programs/digest/d16/tables/dt16_306.30.asp

16 Scott-Clayton, J. & Li, J. 2016. "Black-white disparity in student loan debt more than triples after graduation." *Brookings Institution.* Available at https://www.brookings.edu/research/black-white-disparity-in-student-loan-debtmore-than-triples-aftergraduation/.

17 Centers for Disease Control and Prevention (CDC). 2020, July 24. *Health Equity Considerations and Racial and Ethnic Minority Groups.* Available at https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html.

18 Lopez, M.H.; Rainie, L.; & Budiman, A. 2020, May 5. "Financial and health impacts of COVID-19 vary widely by race and ethnicity." *Pew Research Center.* Available at https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/.

19 The Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, is a $2.2 trillion economic stimulus bill passed by the 116th U.S. Congress and signed into law by President Donald Trump on March 27, 2020 in response to the economic fallout of the COVID-19 pandemic in the United States.

20 Barkley-Denney, W. & Farahi, Y. October 2019. "Stepping Up: States Move to Hold Student Loan Servicers Accountable." *Center for Responsible Lending.* Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-steppingup-studentloans-oct2019.pdf.

21 Scott-Clayton, J. 2018. "The looming student loan default crisis is worse than we thought." *Brookings Institution.* Available at https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/; The Institute for College Access and Success (TICAS). 2018. Student Debt and the Class of 2017. Available at https://ticas.org/content/pub/student-debt-and-class-2017; Passy, J. 2017, October 30 "Why Millennials Can't Buy Homes." Marketwatch. Available at https://www.marketwatch.com/story/student-debt-is-delaying-millennial-homeownership-byseven-years-2017-09-18.

22 Hall, S. 2019. "How Much Education Are Students Getting for Their Tuition Dollar?" *The Century Foundation.* Available at https://tcf.org/content/report/much-education-students-getting-tuition-dollar/?agreed=1.

23 Id.

24 Dudley, T. 2020, August 18. "College Marketing in the COVID-19 Economy." *The Century Foundation.* Available at https://tcf.org/content/report/college-marketing-covid-19-economy/.

25 McKenzie, L. 2020, August 17. "COVID-19: Boom or Bust for For-Profits?" *Inside Higher Ed.* Available at https://www.insidehighered.com/news/2020/08/17/covid-19s-impact-profit-colleges-still-murky-second-quarter-earnings-arrive.

26 National Student Clearinghouse Research Center. 2020, October 15. "COVID-19: Stay Informed with the Latest Enrollment Information." Available at https://nscresearchcenter.org/stay-informed/.

27 Smith, R. 2014. "Ensuring Educational Integrity: 10 Steps to Improve State Oversight of For-Profit Schools." *National Consumer Law Center.* Available at https://www.nclc.org/images/pdf/pr-reports/for-profit-report.pdf.

28 Parker, Reed 2018, March 23rd. "Purdue Global Completes Acquisition of Kaplan University" *Inside Indiana Business.* Available at: https://www.insideindianabusiness.com/story/37794414/purdue-global-completes-acquisition-of-kaplan-university

29 Mckenzie, Lindsay 2020, August 4. "University of Arizona's Big Online Push" *Inside Higher Ed.* Available at: https://www.insidehighered.com/news/2020/08/04/university-arizona-acquires-ashford-university

30 Fain, Paul 2019 Nov. 17. "Surprise for Grand Canyon's Nonprofit Conversion" *Inside Higher Ed.* Available at: https://www.insidehighered.com/news/2019/11/07/education-department-calls-grand-canyon-profit-raising-questions-about-conversion

31 California Private Postsecondary Education Act of 2009. Cal. Assemb. B. 70 (2019-2020), Chapter 153 (Cal. Stat. 2020). Available at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB70

32 Wescott, D. 2020, March 25. "Will Coronavirus Close Your College for Good?" *The Chronicle of Higher Education.* Available at https://www.chronicle.com/article/will-coronavirus-close-your-college-for-good/.

33 Some institutions withhold transcripts to compel the repayment of a debt owed to the school. Any school that closes should be required to immediately discharge all the debt owed to them by student borrowers, allowing those borrowers to apply those dollars towards rebuilding their lives.

34 U.S. Department of Education, National Center for Education Statistics (NCES). *Digest of Education Statistics 2018,* Table 311.13. Available at https://nces.ed.gov/fastfacts/display.asp?id=80; Radford, A.W. 2011, October. *Learning at a Distance: Undergraduate Enrollment in Distance Education Courses and Degree Programs.* U.S. Department of Education, National Center for Education Statistics. Available at https://nces.ed.gov/pubs2012/2012154.pdf.

35 Center for Responsible Lending. May 2020. *Comment on ED's Proposed Distance Education Rule: As More Programs Move Online, Do Not Weaken Student Protections.* Available at https://www.responsiblelending.org/research-publication/comment-eds-proposed-distance-education-rule-more-programs-move-online-do-not.

36 Protopsaltis, S. & Baum, S. 2019, January. "Does Online Education Live Up To Its Promise? A Look at the Evidence and Implications for Federal Policy." *George Mason University and the Urban Institute.* Available at http://mason.gmu.edu/~sprotops/OnlineEd.pdf.

37 Bettinger, E. & Loeb, S. 2017, June 9. "Promises and Pitfalls of Online Education." *Brookings Institution.* Available at https://www.brookings.edu/research/promises-and-pitfalls-of-online-education/.

38 Id.

39 Cellini, S.R. and Turner, N. 2018. "Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data." *National Bureau of Economic Research.* Available at https://www.nber.org/system/files/working_papers/w22287/w22287.pdf.

40 Celini and Turner found that certificate-seeking students who attended for-profits experienced lower annual wages by about 11% compared to their public-sector counterparts. These wage differences were substantially worse for female students and more than doubled for those enrolled in online for-profit programs.

41 Center for Responsible Lending. 2019, July 10. *NPRM Comment on Distance Education and Innovation Rule.* Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-state-authorization-comment-jul2019.pdf.

42 U.S. Department of Education, Distance Education and Innovation Rule. Available at https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/distanceandinnovationunofficialreg.pdf

43 Hinrichs, P. 2015, March 31. "Racial and Ethnic Differences in College Major Choice." *The Cleveland Federal Reserve.* Available at https://www.clevelandfed.org/newsroom-and-events/publications/economic-trends/2015-economic-trends/et-20150331-racial-and-ethnic-differences-in-college-major-choice.aspx

44 Morgan, J.M.; Farr, B.; and Hornung, D. 2019, January 10. "Income Share Agreements: A Student Debt Promise Falling Short of Reality." The Roosevelt Institute. Available at: https://rooseveltinstitute.org/2019/01/10/income-share-agreements-a-student-debt-promise-falling-short-of-reality/.

45 Center for Responsible Lending and Americans for Financial Reform. May 12, 2020. National Student Debt Poll. Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/poll-lakeresearch-student-loan-may2020.pdf.

46 Association of Pennsylvania State College & University Faculties, Center for Responsible Lending, and Morning Consult. August 2020. *Poll of Pennsylvania Student Borrowers.* Available at https://www.apscuf.org/issues-and-advocacy/research-fact-sheets/student-debt-and-covid-19/. This poll was conducted online between June 2–June 8, 2020 among a national sample of 415 Pennsylvania student loan borrowers. Margin of error of plus or minus 5 percentage points.

47 Fullwiler, S.; Kelton, S.; Ruetschlin, C.; & Steinbaum, M. 2018. "The Macroeconomic Effects of Student Debt Cancellation." *Levy Economics Institute.* Available at http://www.levyinstitute.org/pubs/rpr_2_6.pdf.

48 U.S. Department of Education Office of Federal Student Aid. 2019. "Federally Managed Portfolio by Loan Status." Washington DC: U.S. Available at https://nslds.ed.gov/sa/es/node/412; The Institute for College Access and Success. 2017. *Federal Student Loan Default Rate Rises for the First Time in 4 Years.* Available at https://ticas.org/content/pub/federal-student-loan-defaultrate-rises-first-time-4-years.

49 Miller, B. 2017, December 14. "Who are student loan defaulters?" *Center for American Progress.* Available at https://www.americanprogress.org/issues/education-postsecondary/reports/2017/12/14/444011/studentloan-defaulters/.

50 Center for Responsible Lending, UnidosUS, the National Association for the Advancement of Colored People, the National Urban League, and the Leadership Conference Education Fund. September 2019. *Quicksand: Borrowers of Color and the Student Debt Crisis.* Available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-quicksand-student-debt-crisis-jul2019.pdf.

Center for Responsible Lending

www.responsiblelending.org

The Center for Responsible Lending (CRL) is working to ensure a fair, inclusive financial marketplace that creates opportunities for all responsible borrowers, regardless of their income, because too many hard-working people are deceived by dishonest and harmful lending practices.

CRL is a nonprofit, non-partisan organization that works to protect homeownership and family wealth by fighting predatory lending practices. Our focus is on consumer lending: primarily mortgages, payday loans, credit cards, bank overdrafts, and auto loans.

North Carolina

302 West Main Street
Durham, NC 27701

Ph (919) 313-8500
Fax (919) 313-8595

California

1970 Broadway
Suite 350
Oakland, CA 94612

Ph (510) 379-5500
Fax (510) 893-9300

District of Columbia

910 17th Street NW
Suite 500
Washington, DC 20006

Ph (202) 349-1850
Fax (202) 289-9009