



Office of the Commissioner

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**Written Testimony of
FTC Commissioner Rohit Chopra***

**Before the U.S. House of Representatives
Committee on Financial Services**

**“Examining Legislation to Protect Consumers and Small Business Owners from Abusive
Debt Collection Practices”**

September 26, 2019

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee, thank you for holding this hearing on abusive debt collection, especially as it relates to the millions of Americans battling their student loan debt.

Since the eruption of the financial crisis and its decimation of the U.S. economy a decade ago, unemployment has come down and the stock market has soared. But the headlines obscure the serious cracks in our economy. Stagnant wages and rising costs mean that many Americans are walking on an economic tightrope, where even a tiny jolt can send them into freefall. According to multiple estimates, there are more than 70 million Americans with past-due bills in collections.

Too often, our system treats these individuals as if they are morally bankrupt or free riding. The reality is much different. Many are battling medical bills that they may not even owe due to a bureaucratic stalemate between their insurance company and their hospital. Others fell behind on utility bills or other household expenses after losing a shift at work. Many small businesses looking to weather a slow season were ensnared by lending schemes that ended up destroying them. And many simply finished school at the wrong time, entering the workforce with a job that barely puts them on a path to paying off their student debt.

Prior to serving as a Federal Trade Commissioner, I was proud to be appointed by the Secretary of the Treasury as the Consumer Financial Protection Bureau’s first Student Loan Ombudsman, where I led the agency’s work on behalf of student loan borrowers. During my time at the CFPB, we published widely cited reports detailing the devastating impact of student loan debt and pursued an aggressive enforcement agenda against lawbreaking companies in the student loan industry.

* This testimony reflects my own views and not necessarily those of the Commission or any other individual Commissioner.

For example, in 2012, my colleague Holly Petraeus, then the head of the CFPB's Office of Servicemember Affairs, and I published a report about unfair treatment of military families by student loan companies.¹ Under federal law, active-duty members of the military receive certain protections when companies collect on student debt. The report spurred an investigation into Navient, formerly known as Sallie Mae, and the Justice Department obtained \$60 million from Navient for violating the Servicemembers Civil Relief Act in a nationwide military family scam. The Justice Department's complaint described Navient's unlawful servicing and collection practices as "intentional, willful, and taken in disregard for the rights of servicemembers."² The CFPB also sued Corinthian Colleges and ITT Educational Services, two publicly traded for-profit colleges that coerced students into high-rate private loans. Corinthian engaged in illegal debt collection conduct when it strong-armed struggling borrowers to squeeze more money out of them. The CFPB was able to obtain hundreds of millions of dollars in debt cancellation for the victims, and Corinthian and ITT are no longer in business.

I later served as a special adviser to the Secretary of Education, where I saw firsthand how much influence and power that Wall Street and government contractors like Navient have over our student loan system. The Department of Education had wide latitude to revoke subsidies and contracts after findings of legal violations, but the Department's student loan arm went to great lengths to protect the status quo.

The Department of Education's student loan arm is one of the largest financial institutions in the world, managing \$1.5 trillion in debt. There are roughly nine million Americans in default on a federal student loan, with many more in serious delinquency. And the federal government makes sure they know it. The government hires a squadron of financial institutions to aggressively pursue borrowers by slamming their credit, levying hefty fees, and even humiliating them with their employer through wage garnishments. Student loan companies should be helping borrowers get back on their feet by advising them on all of their options for managing their student debt. But, all too often, these companies steer borrowers in a direction that most benefits their bottom line. For example, in 2015, the CFPB found that companies collecting on defaulted federal student loans misrepresented key aspects of the student loan rehabilitation program and overstated how the program would improve a borrower's credit report.³

And here's the irony: when student loan borrowers make mistakes, they pay dearly for them. They may not be able to pass an employment verification check or even rent an apartment. But, when student loan companies make mistakes and violate the law, the Department of Education

¹ CONSUMER FIN. PROTECTION BUREAU, THE NEXT FRONT? STUDENT LOAN SERVICING AND THE COST TO OUR MEN AND WOMEN IN UNIFORM (2012), https://files.consumerfinance.gov/f/201210_cfpb_servicemember-student-loan-servicing.pdf.

² Press Release, DOJ, Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014), <https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging>.

³ CONSUMER FIN. PROTECTION BUREAU, SUPERVISORY HIGHLIGHTS (2015), https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf ("In one or more examinations of debt collectors performing collection services of defaulted student loans for the Department of Education, examiners identified collections calls, scripts and letters containing various misrepresentations to consumers").

often covers for them and continues lavishing them with valuable government contracts and subsidies. This is not a recent phenomenon – it has been going on for years under multiple administrations.

There is a growing body of research and evidence that student loan distress is weighing on the economy, including papers from the Federal Reserve System about the negative impact on the housing market.⁴ I fear there will be continued consequences if we fail to act.⁵

As the primary regulator of the student loan and debt collection industries, the CFPB must act to address these serious problems. The CFPB has proposed a rule on debt collection, and the agency must ensure that the rules clearly address the epidemic of student loan defaults. Attached is my formal comment to the rulemaking proceeding.⁶

Policymakers and regulators must also fix the misaligned incentives that fuel these problems and ensure that companies face real consequences for their violations, just as borrowers do. Across the country, states are enacting new protections for student loan borrowers when it comes to student loan servicers and debt collectors. I welcome this action and oppose efforts by the Department of Education to preempt these laws.

Twenty years ago, Congress established the Department of Education's student loan branch, the Office of Federal Student Aid, with new powers so it could operate more like a private business. It is time for Congress to reform it, so that it puts borrowers, taxpayers, and our economy ahead of its contractors' profits. Under the Debt Collection Improvement Act, the Secretary of the Treasury is responsible for collecting certain debt owed to the federal government that is past due. The Secretary of the Treasury granted the Department of Education a permanent exemption from transferring loans to the Department of the Treasury. Congress and the Secretary of the Treasury need to revisit this exemption, given the Department of Education's record.

In addition, the Department of Education must do more to cancel student debt. Under existing law, borrowers who have been cheated by institutions of higher education can seek relief. The law also provides for a broad "compromise and settlement" authority to renegotiate debts. Current law gives the Secretary of Education clear authority to act.

If we still believe that going to college and working hard can help an individual climb the economic ladder, we have to wake up to the realities of our broken student loan debt collection

⁴ See, e.g., FED. RESERVE, VOL. NO. 1, CONSUMER & COMMUNITY CONTEXT, "RURAL BRAIN DRAIN": EXAMINING MILLENNIAL MIGRATION PATTERNS AND STUDENT LOAN DEBT (2019), https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf?mod=article_inline and FED. RESERVE BANK OF N.Y., NO. 820, ECHOES OF RISING TUITION IN STUDENTS' BORROWING, EDUCATIONAL ATTAINMENT, AND HOMEOWNERSHIP IN POST-RECESSION AMERICA (2017), https://www.newyorkfed.org/research/staff_reports/sr820.

⁵ Rohit Chopra, Consumer Fin. Protection Bureau, Keynote Remarks at the Fed. Reserve Bank of St. Louis (Nov. 18, 2013), <https://www.consumerfinance.gov/about-us/newsroom/student-loan-ombudsman-rohit-chopra-before-the-federal-reserve-bank-of-st-louis/>.

⁶ Comment of Rohit Chopra, Fed. Trade Comm'n., in the Matter of Notice of Proposed Rulemaking on Debt Collection Practices (Regulation F) (to be codified at 12 C.F.R. pt. 1006), Docket No. CFPB-2019-0022 (Sept. 18, 2019), https://www.ftc.gov/system/files/documents/public_statements/1544795/chopra_-_comment_submission_on_cfpb_proposed_debt_collection_rule_9-18-19.pdf.

system and fix it. If we do not, we will kill the dreams of too many Americans seeking to own a home, start a small business, and raise a family.

Outside of student lending, I believe the Federal Trade Commission also needs to act on abusive debt collection and lending practices, especially where the CFPB cannot. There is \$1.2 trillion in outstanding auto loan debt, as millions of families finance their primary means of getting to work, school, the doctor, and more. Technology has made it easier for lenders and debt collectors to seize cars without warning, and according to some reports, without justification. This is just one of the many issues that need government attention in this large and critical market. Yet despite receiving authority in 2010 to put commonsense rules into place to combat abuses in this market, the FTC has yet to make a proposal.

Taking out a loan as a small business owner is significantly more risky than taking out that same debt as a consumer. That is because the FTC has not banned certain predatory terms in small business loans that have long been banned in consumer loans. These terms have a significant impact on debt collection. For example, small business contracts can still contain “confessions of judgement” which essentially forces the borrower to waive any rights to defend themselves in a debt collection dispute. The FTC has unique jurisdiction to attack debt collection and discrimination issues in this market, and the agency should do so.⁷

The FTC also needs to closely study the algorithms utilized by Big Tech that promote content and ads that are profitable to tech companies and bad actors that peddle scams.⁸ We will need to closely scrutinize how debt collectors are using these companies’ mass accumulation of our personal data.

Thank you for the opportunity to testify and I look forward to working with the Committee on these critical issues.

⁷ Rohit Chopra, Commissioner, Fed. Trade Comm’n., Prepared Remarks for the Forum on Small Bus. Financing (May 8, 2019), <https://www.ftc.gov/public-statements/2019/05/prepared-remarks-commissioner-rohit-chopra-forum-small-business-financing>.

⁸ Four years ago, I wrote to Google, Facebook, and other tech companies to stop allowing scammers to advertise on their platform. Many problems remain. See Danielle Douglas-Gabriel, *Government to Google: Stop fraudsters from using your search engine for student debt scams*, THE WASHINGTON POST (June 22, 2015), <https://www.washingtonpost.com/news/get-there/wp/2015/06/22/government-to-google-stop-fraudsters-from-using-your-search-engine-for-student-debt-scams/>.