

United States Senate

WASHINGTON, DC 20510

February 27, 2020

The Honorable Kenneth L. Marcus
Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Assistant Secretary Marcus:

We write to understand how the U.S. Department of Education's Office of Civil Rights (OCR) plans to address alarming racial disparities in our federal student loan system through vigorous enforcement of the nation's civil rights laws. OCR has a responsibility to investigate the roles that institutions of higher education and federal student loan contractors play in contributing to the racial disparities students of color experience in student borrowing and in student loan outcomes. We urge OCR to issue new policy guidance to actors throughout the higher education system, particularly student loan servicers and debt collectors, regarding their responsibilities under federal civil rights law.

OCR is responsible for vigorously enforcing the country's civil rights laws prohibiting discrimination in programs or activities that receive federal funding from the U.S. Department of Education ("the Department"), including discrimination on the basis of race, color, and national origin prohibited by Title VI of the Civil Rights Act of 1964.¹ These civil rights laws extend to all colleges and universities that receive funding from the Department, including federal student aid funding.² OCR has a responsibility to investigate whether any colleges are engaged in practices or activities that contribute to significant racial disparities in student borrowing or outcomes.

Racial disparities in our higher education system exist in access, enrollment, and completion, but predatory behavior by for-profit colleges both takes advantage of, and exacerbates, the effects of these disparities. For-profit colleges disproportionately target students of color and often leave them deep in debt while providing little educational value in return. In fact, the entire business model for many for-profit colleges is to maximize the federal taxpayer dollars they receive from students' aid, while delivering a poor education. This business model hits students of color hardest, who comprise nearly half of for-profit college undergraduate students.³ The record of

¹ 42 U.S. Code 2000d

² 34 C.F.R. Part 100

³ Arbet, C.A. & Horn, L. (2017, February). "A profile of the enrollment patterns and demographic characteristics of undergraduates at for-profit institutions." U.S. Department of Education. Online at: <https://nces.ed.gov/pubs2017/2017416.pdf>.

for-profit colleges' predatory practices, higher average tuition costs, and poor job prospects that many students face after leaving makes for-profit college enrollment numbers especially concerning. For example, 95 percent of Black students who attended a for-profit college borrowed student loans, and an alarming 75 percent of Black students who did not complete their program at a for-profit defaulted on their loans.⁴ OCR has a responsibility to investigate these disparate outcomes to determine whether for-profit colleges are operating in accordance with federal civil rights laws that protect students of color.

OCR also has a responsibility to examine the role federal student loan contractors play in contributing to racial disparities in student loan outcomes that students of color face after they leave their institution of higher education. OCR has a statutory mandate to investigate discrimination in "any program or activity receiving federal financial assistance" from the Department.⁵ According to OCR's regulations, federal financial assistance includes "any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance."⁶ The provision of federal financial assistance does not end when students' loans are originated—it includes the servicing and collection of payments by federal contractors. As such, any thorough investigation of racial disparities in the student loan system must include the actions of Office of Federal Student Aid contractors, including student loan servicers and debt collectors.

The Department has at its fingertips evidence of massive racial disparities in the federal student loan system. In 2017, the Department's National Center for Education Statistics released startling data showing that *half* of Black student borrowers who first started college in the 2003-04 academic cohort defaulted on their federal student loans within 12 years.⁷ These data revealed that Black students were on average nearly 20 percent more likely to borrow federal student loans, often needed to borrow more money, and less likely to be able to pay down this debt, ultimately resulting in a significantly larger student debt burden than their peers.⁸ These data also revealed that the median Black student in that cohort owed 13% *more* than what they originally borrowed 12 years after starting college compared to the median white borrower.⁹

New Department data released just last fall showed that these disparities have not improved.¹⁰ These data showed that Black student borrowers who started college in 2011-12—notably after policymakers made income-driven repayment (IDR) widely available to borrowers—have continued to face high default rates.¹¹ According to the Department's new data, despite using IDR at a much higher rate than other borrowers with the same level of education, Black student

⁴ Miller, B. (2017, October 16). "New federal data show a student loan crisis for African American borrowers." available at: <https://www.americanprogress.org/issues/education/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers/>

⁵ 42 U.S. Code 2000d; 42 U.S. Code § 2000d-1

⁶ 34 CFR § 100.13(f)

⁷ Woo, J.H., Bentz, A.H., Lew, S., Velez, E.D., & Smith, N. (2017). "Repayment of student loans as of 2015 among 1995-96 and 2003-04 first-time beginning students." U.S. Department of Education. Online at: <https://nces.ed.gov/pubs2018/2018410.pdf>.

⁸ Miller, B. (2017, October 16).

⁹ *Id.*

¹⁰ National Center for Education Statistics, (2019) "Beginning Postsecondary Students Longitudinal Study," available at <https://nces.ed.gov/surveys/bps/>.

¹¹ *Id.*

borrowers continued to have a higher default rate than their peers, regardless of the type of institution they attended.¹² In fact, one analysis of these data concluded that “[w]ithin six years of starting college, one-third of all Black or African American borrowers who had entered repayment defaulted on their loans, compared to just 13 percent of their white peers.”¹³

These persistent racial disparities also affect Latinx and Native student borrowers.¹⁴ The same recently-released data from the Department reveal that one-fifth of all Latinx student borrowers had defaulted on their loans, compared to just 13 percent of their white peers.¹⁵ Data from other sources suggest that nearly one-third of Latinx student borrowers at all institution types are in serious delinquency,¹⁶ and that over 40 percent of Native student borrowers default on their federal student loans.¹⁷

In September of 2019, the New York Federal Reserve released data comparing the default rates in Majority-white zip codes and Majority-minority zip codes in the country’s ten most segregated metropolitan areas.¹⁸ This research found that in Majority-minority zip codes, the percentage of residents in default was nearly double than in Majority-white zip codes.¹⁹ This trend was consistent across all examined metropolitan neighborhoods, regardless of which area of the country they were located.²⁰

OCR has a statutory and moral obligation to examine the root causes of these severe racial disparities. Research suggests there are multiple contributors to the significant racial disparities in student borrowing and student loan outcomes faced by students of color, including the country’s substantial racial and ethnic gaps in income and wealth²¹ and racial discrimination in the labor market.²² However, there has been no public examination by OCR into how the very

¹² Miller, B. (2019, December 2). “The Continued Student Loan Crisis for Black Borrowers.” Available at: <https://www.americanprogress.org/issues/education-postsecondary/reports/2019/12/02/477929/continued-student-loan-crisis-black-borrowers/>

¹³ *Id.*

¹⁴ Center for Responsible Lending, The Leadership Conference Education Fund, NAACP, National Urban League, and UnidosUS. (2019, September) “Quicksand: Borrowers of Color & the Student Debt Crisis.” Available at: <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-quicksand-student-debt-crisis-jul2019.pdf>

¹⁵ Miller, B. (2019, December 2).

¹⁶ Center for Responsible Lending, The Leadership Conference Education Fund, NAACP, National Urban League, and UnidosUS. (2019, September)

¹⁷ Campbell, C. (2018, October 16). “The Forgotten Faces of Student Loan Default.” Available at: <https://www.americanprogress.org/issues/education-postsecondary/news/2018/10/16/459394/forgotten-faces-student-loan-default/>

¹⁸ Federal Reserve Bank of New York (2019, September 24) Available at: https://www.newyorkfed.org/medialibrary/media/research/microeconomics/topics/student-debt/2019_CMD_BookerResponse

¹⁹ *Id.*

²⁰ *Id.*

²¹ Kahn, S., Huelsman, M., & Mishory, J. (2019, September) “Bridging Progressing Policy Debates: How Student Debt and the Racial Wealth Gap Reinforce Each Other.” Available at: https://rooseveltinstitute.org/wp-content/uploads/2019/08/RI_Student-Debt-and-RWG-201909.pdf

²² Hamilton, D., Darity, W., Price, A.E., Shridharan, V., & Tippet, R. (2015, April). “Umbrellas don’t make it rain: Why studying and working hard is not enough for Black Americans.” The New School, The Duke University Center for Social Equity, and The Insight Center for Community Economic Development. Online at: http://www.insightcced.org/wp-content/uploads/2015/08/Umbrellas_Dont_Make_It_Rain_Final.pdf; Traub, A.,

provision of student loans—from the practices of predatory colleges to the practices of student loan servicers and debt collectors—contribute to the racialized outcomes of the student loan program.

OCR has many tools at its disposal to address alarming racial disparities in student borrowing and student loan outcomes faced by students of color. These tools include investigating potential violations of Title VI of the *Civil Rights Act of 1964*²³ by entities involved in the provision of federal student aid and issuing technical assistance to colleges, universities, servicers, and debt collectors regarding their responsibilities under the federal civil rights laws that OCR enforces. Moreover, if OCR uncovers evidence of violations of the *Equal Credit Opportunity Act*²⁴—which prohibits companies from discriminating on the basis of race, color, and national origin in the provision of credit products, including federal student loans—by student loan servicers and debt collectors, OCR can and must refer such evidence to federal agencies that enforce the *Equal Credit Opportunity Act*.

The nation's civil rights laws are clear: racial discrimination in the provision of federal student loans is illegal. OCR not only has a role to play in addressing racial disparities in our federal student loan system; it has an obligation because these disparities exacerbate this country's racial wealth gaps and damage the financial lives of millions of student loan borrowers of color. As such, we request that OCR:

- Detail all current and ongoing activities to address alarming racial disparities in student borrowing and student loan outcomes, including any relevant enforcement actions OCR has taken since the beginning of the Trump Administration in January 2017;
- Launch a comprehensive investigation into the roles that predatory colleges and the student loan industry play in contributing to racial disparities in student borrowing and student loan outcomes, including recruitment and loan counseling practices, servicing and debt collection practices (including the charging of fines and fees on defaulted loans), and access to repayment plans and debt cancellation options for borrowers of color;
- Develop a new plan to address racial disparities, which should include new policy guidance to all entities involved in federal student aid programs regarding their current responsibilities under federal civil rights law, and any recommendations to Congress for how to legislatively address racial disparities in student borrowing and student loan outcomes.

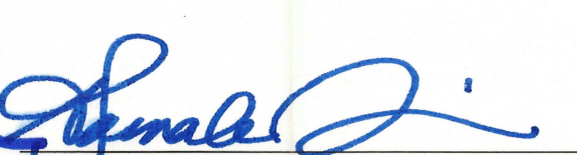
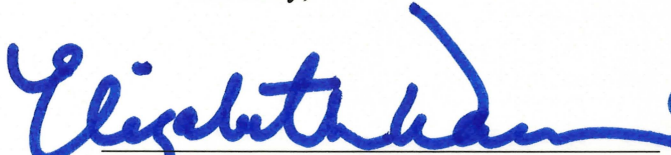
Sullivan, L., Meschede, T., & Shapiro, T. (2017, February 13). "The asset value of Whiteness: Understanding the racial wealth gap." Demos and The Institute of Assets and Social Policy, Brandeis University. Online at: http://www.demos.org/sites/default/files/publications/Asset%20Value%20of%20Whiteness_0.pdf.

²³ 42 U.S.C. § 2000d et seq.

²⁴ 15 U.S.C. § 1691 et seq

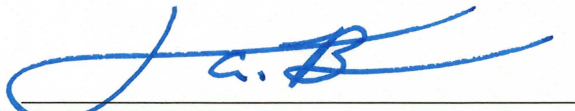
We ask for a response from OCR by March 26, 2020. It is critical that OCR take responsibility for addressing this country's racial disparities in student borrowing and student loan outcomes in order to protect students of color. Thank you for your attention to this important matter.

Sincerely,



ELIZABETH WARREN
United States Senator

KAMALA D. HARRIS
United States Senator



CORY BOOKER
United States Senator