STUDENT BORROWER PROTECTION CENTER

June 30, 2021

Hon. David Uejio
Acting Director
Consumer Financial Protection Bureau
1770 G Street NW
Washington, DC 20552

Re: Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, including Machine Learning (Docket No. CFPB-2021-0004)

The Student Borrower Protection Center (SBPC) writes to you to submit a response to Question 12 of the *Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, including Machine Learning*.[1]

The use of alternative data has been touted as a means to expand credit access to consumers who have traditionally been locked out of mainstream credit markets.[2] While the growing use of consumer data such as educational background, cell phone payments, or utility bills are increasingly used in underwriting algorithms by the financial services industry, the use of alternative data presents significant risks that algorithmic bias will interfere with consumers' fair and equitable access to affordable credit.[3]

Although creating opportunities for consumers locked out of traditional credit markets is an important policy goal, research has increasingly made clear that the use of certain

[1]"*Question 12:* What are the risks that AI can be biased and/or result in discrimination on prohibited bases? Are there effective ways to reduce risk of discrimination, whether during development, validation, revision, and/or use? What are some of the barriers to or limitations of those methods?" Bd. Of Govs. of the Fed. Rsrv. Sys. *et al.*, *Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning* (Mar. 31, 2021), https://www.federalregister.gov/documents/2021/03/31/2021-06607/request-for-information-and-comment-on-financial-institutions-use-of-artificial-intelligence.

[2] Consumer Fin. Prot. Bureau, *CFPB Announces First No-Action Letter to Upstart Network* (Sep. 14, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/.

[3] *See e.g.*, *Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit: Hearing Before the H. Task Force on Financial Technology*, 116th Cong. 7 (2019) (statement of Chi Chi Wu, Staff Att'y, Nat'l Consumer L. Ctr.); *see also* Christopher K. Odinet, *The New Data of Student Debt*, 92 S. Cal. L. Rev. 1617, 1673 (2019).

data can also pose serious fair lending and discrimination risks by introducing unfair biases and perpetuating existing disparities.[4] Across consumer finance markets, the use of alternative data in underwriting raises significant fair lending as well as broad public policy concerns, as certain data might track closely with protected class characteristics such as race or gender.[5]

Without substantive federal action to ensure industry's compliance with consumer finance laws, particularly fair lending laws, new advancements in consumer finance markets run the risks of repackaging and reinforcing systemic disparities, all under the guise of innovation. Presently, a lack of robust regulatory oversight for fintech products and services in consumer finance markets has the potential to worsen disparities for consumers who have been historically underserved and locked out of mainstream credit markets.

While the SBPC broadly has concerns about algorithmic bias with the increasing use of alternative data, this comment will primarily focus on financial services providers' use of education data in credit decisioning and credit pricing. However, the policy recommendations outlined for addressing the potential for bias in algorithms that use education data are broadly applicable across other nontraditional credit factors.

SBPC Investigations Have Uncovered Algorithmic Bias and Emerging Risks Related to Companies' Use of Education Data

Discrimination resulting from the use of education data in underwriting has been documented for years.[6] The use of educational criteria such as the school attended, major, or SAT score of a credit applicant in underwriting can lead to discriminatory outcomes, and these risks can have a particularly outsized effect on communities of

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[4] *See e.g.*, Katherine Welbeck & Ben Kaufman, *Fintech Lenders' Responses to Senate Probe Heighten Fears of Educational Redlining*, Student Borrower Prot. Ctr. (July 31, 2020), https://protectborrowers.org/fintech-lenders-response-to-senate-probe-heightens-fears-of-educational-redlining/; Lauren Saunders, Nat'l Consumer L. Ctr., Fintech and Consumer Protection (2019), https://www.nclc.org/images/pdf/cons-protection/rpt-fintech-and-consumer-protection-a-snapshot-march2019.pdf; Student Borrower Prot. Ctr., Educational Redlining (Feb. 2020), https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf; Student Borrower Prot. Ctr., Inequitable Student Aid (Mar. 2021), https://protectborrowers.org/wp-content/uploads/2021/03/SBPC_Inequitable-Student-Aid.pdf; Aryn Bussey, *Educational Redlining? The Use of Education Data in Underwriting Could Leave HBCU and MSI Graduates in the Dark*, Student Borrower Prot. Ctr. (July 24, 2020), https://protectborrowers.org/educational-redlining/.

[5] *Id.*

[6] *See e.g.*, Associated Press, *Cuomo Charges 'Redlining' in Student Loan Probe*, NBC News (June 19, 2007), https://www.nbcnews.com/id/wbna19316230#.XjnY6xNKhQI; Bussey, *supra* note 4. (Advocates have referred to the discriminatory practice of denying protected class consumers equal access to financial products based on their educational backgrounds as "educational redlining.")

color, reinforcing systemic barriers to financial inclusion for Black and Latino consumers.[7]

In 2007, the New York Attorney General said that educational redlining posed considerable risks to communities of color and warranted immediate attention from lawmakers.[8] Further, the attorney general noted that the use of education criteria in underwriting decisions runs the risk of creating a tiered credit market based on non-individualized factors; a practice that would favor applicants for the "prestige" of their educational institutions rather than their individual creditworthiness.[9] Since that time, multiple federal enforcement agencies—including the Consumer Financial Protection Bureau ("CFPB" or "the Bureau")—have commented on this issue. In one case, the Federal Deposit Insurance Corporation (FDIC) found that the use of certain educational factors by Sallie Mae Bank violates anti-discrimination laws.[10]

The SBPC has built upon this previous work to call attention to the continued risks and harms associated with the use of educational criteria in underwriting decisions:

- **The Use of Education Data in Underwriting Raises Significant Fair Lending Concerns and May Lead to Educational Redlining.** In February 2020, the SBPC released *Educational Redlining* (See Appendix 1), an investigative report that documented the concerning use of education data through the use of mystery shopping on creditors' websites.[11] The report highlighted how the use of information about applicants' education history, including the identity or sector of the college or university an applicant attended, when determining access to and the cost of credit could adversely affect consumers who attended minority-serving institutions (MSIs) or community colleges.[12] Considering the disparate access to higher education in the United States, the use of education data in underwriting is particularly concerning as the risks associated with its use can have a particularly outsized effect on communities of color, reinforcing systemic barriers to financial inclusion for Black and Latino consumers.[13]

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[7] *Supra* note 4.
[8] Associated Press *supra* note 6.
[9] *Id.*
[10] See Consumer Fin. Prot. Bureau, *Private Student Loans* (Aug. 29, 2012), https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf; Sallie Mae Bank, Salt Lake City, Utah, FDIC-13-0366b & FDIC-13-0367k (2014) (consent order, order for restitution, and order to pay civil money penalty), available at https://www.fdic.gov/news/press-releases/2014/salliemae.pdf;
[11] *See* Student Borrower Prot. Ctr., Educational Redlining, *supra* note 4.
[12] *Supra* note 6. (Advocates have referred to the discriminatory practice of denying protected class consumers equal access to financial products based on their educational backgrounds as "educational redlining.")
[13] *See* Bussey, *supra* note 4.

Some lenders have also been shown to offer less favorable rates for students attending MSIs, such as Historically Black Colleges and Universities (HBCUs).[14] Additionally, Black and Latino students remain underrepresented at the nation's most selective colleges and universities.This pattern makes the risks associated with educational redlining even more concerning considering the outsized role that MSIs—HBCUs, Hispanic Serving Institutions (HSIs), tribal colleges, and more—play in expanding access to higher education for students who have historically been excluded.[15]

Regulators, lawmakers, civil rights organizations, and consumer advocates have all raised concerns along these lines.[16] Despite the great weight of voices—including an inquiry from five U.S. Senators—calling for more oversight of discrimination that may stem from the use of education data, the Bureau has yet to use the full weight of its authorities to curb discrimination that may result from educational redlining.[17] The Federal Trade Commission (FTC) additionally released a bulletin in April 2020 that "warned companies that big data analytics could result in bias or other harm to consumers." The significance of the risks associated with using educational criteria in underwriting calls for the Bureau to take clear and decisive action to address the legal concerns and far-reaching economic consequences presented by the use of education data. Also noteworthy, following the SBPC's investigation, one fintech lender discontinued the use of one form of educational criteria and normalized their data inputs to reduce adverse effects for students attending MSIs.[18]

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[14] *See* Student Borrower Prot. Ctr., Educational Redlining, *supra* note 4; Student Borrower Prot. Ctr., Inequitable Student Aid, *supra* note 4.

[15] Michael L. Lomax, *Six Reasons HBCUs Are More Important Than Ever*, Medium (Dec. 14, 2015), *reprinted in* United Negro College Fund, https://uncf.org/the-latest/6-reasons-hbcus-are-more-important-than-ever (last visited Apr. 3, 2020); Sean Seymour & Julie Ray, *Grads of Historically Black Colleges Have Well-Being Edge*, Gallup (Oct. 27, 2015), https://news.gallup.com/poll/186362/grads-historically-blackcolleges-edge.aspx.

[16] Sallie Mae Bank *supra* note 10; Associated Press *supra* note 6; Student Borrower Prot. Ctr., Educational Redlining, *supra* note 4; Press Release, NAACP Legal Def. and Educ. Fund, LDF and Student Borrower Protection Center Send Letter to Financial Technology Firm over Equal Credit Opportunity Act and Fair Housing Act Violations (July 30, 2020), https://www.naacpldf.org/press-release/ldf-and-student-borrower-protection-center-send-letter-to-financial-technology-firm-over-equal-credit-opportunity-act-and-fair-housing-act-violations/; Andrew Smith, FTC Bureau of Consumer Prot.,Using Artificial Intelligence and Algorithms (Apr. 8, 2020), https://www.ftc.gov/news-events/blogs/business-blog/2020/04/using-artificial-intelligence-algorithms.

[17] *See* Student Borrower Prot. Ctr., Educational Redlining, *supra* note 4; Letter from Sherrod Brown, U.S. Senator, Ohio, *et al*., to Dave Girouard, CEO, Upstart Network, Inc. (Feb. 13, 2020), available at https://www.warren.senate.gov/imo/media/doc/2020-02-13%20Senate%20letter%20to%20Upstart.pdf;

[18] Press Release, NAACP Legal Def. and Educ. Fund & Student Borrower Prot. Ctr., *LDF and Student Borrower Protection Center Announce Fair Lending Testing Agreement with Upstart Network* (Dec. 1, 2020), https://www.naacpldf.org/wp-content/uploads/FINAL-SBPC-LDF-Release-.pdf.

- **Disparities Driven by Educational Criteria are Inherent in the Income-Share Agreement (ISA) Business Model, Raising Significant Fair Lending Concerns.** The CFPB should be particularly concerned with the fair lending risks posed by the ISA industry's reliance on educational redlining. An ISA is a consumer financial product wherein a consumer pledges a portion of their future income in exchange for funds most often used to pay for postsecondary education.[19] ISA providers often base their pricing on a student's school or major choice.[20] However, this central feature of ISAs presents fair lending risks as income, college selection, and choice of major are all closely correlated with race and gender.[21]

  The SBPC released an investigative report, *Inequitable Student Aid* (See Appendix 2), in March 2021 detailing possible fair lending risks in business practices by Stride Funding, an education finance firm that originates and markets ISAs.[22] The SBPC's investigation found that Stride Funding's lending model may violate federal fair lending law by penalizing students who attend MSIs such as HBCUs.[23] The company prices its ISAs in ways that could generate significant cost disparities for students attending MSIs, even in some instances where an MSI had a higher-ranking than a given non-MSI.[24] The SBPC and NAACP Legal Defense and Educational Fund wrote a joint letter to Stride expressing concerns that the lender's algorithm that determines pricing and marketing for the companies ISAs might violate Equal Credit Opportunity Act (ECOA) due to the disparate effects on protected class borrowers.[25]

  The potential fair lending risks present in the SBPC's investigation of Stride Funding are not solely associated with Stride Funding, but rather a feature of the ISA market more broadly.[26] As noted in *Credit by Any Other Name*, an SBPC

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[19] *See generally*, *Income Share Agreements*, Student Borrower Prot. Ctr., https://protectborrowers.org/income-share-agreements-2/.
[20] *Id.*
[21] Student Borrower Prot. Ctr., Inequitable Student Aid, *supra* note 4; Dowse B. Rustin IV, Neil E. Grayson, & Kiersty M. Degroote, Am. Enter. Inst., Pricing Without Discrimination (2017), https://www.aei.org/wp-content/uploads/2017/02/Pricing-Without-Discrimination.pdf.
[22] Student Borrower Prot. Ctr., Inequitable Student Aid, *supra* note 4.
[23] *Id.*
[24] *Id.*
[25] Demand Letter from NAACP Legal Def. and Educ. Fund & Student Borrower Prot. Ctr. , Potential Discrimination in Stride Funding's ISA Algorithm (Mar. 25, 2021), https://protectborrowers.org/wp-content/uploads/2021/03/2021-03-25-FINAL-Demand-Letter_Stride.pdf.
[26] See, e.g.,Stephen Hayes & Alexa Milton, *Solving Student Debt or Compounding the Crisis? Income Share Agreements and Fair Lending Risks*, Student Borrower Prot. Ctr. (Jul. 28, 2020), https://protectborrowers.org/wp-content/uploads/2020/07/SBPC_Hayes_Milton_Relman_ISA.pdf.("[T]here

fellows report, "ISAs constitute "credit" within the meaning of the relevant federal consumer protection statutes and therefore are already subject to federal regulation and enforcement."[27] Accordingly, the CFPB must take a more active role to make clear that ISAs are regulated as credit products.

- **Industry's Use of Educational Criteria in Underwriting is Expanding to Involve Increasingly Concerning Alternative Metrics.** Firms across the education finance landscape have begun looking beyond students' choice of school and/or major—the traditional boundary of data used in underwriting—to inform credit decisioning. As these firms have incorporated additional and more novel types of information into their underwriting models, cause for concern has only grown. For example, in response to the findings mentioned above regarding possible educational redlining by a fintech lender,[28] the company in question revealed that the "primary" educational characteristic considered in its model was a cohort-level average standardized test score for students at the applicant's school of choice.[29] Given the extensive body of research indicating that standardized tests are methodologically flawed and biased against students of

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is a significant inherent risk that any ISA pricing scheme that incorporates education- based variables would perpetuate disparities based on protected class. *See* attached in Appendix 3.

To illustrate, imagine that a General Communication major and a Computer Science major both graduate in May 2021 and go on to careers in secondary education, teaching at the same high school and making the same salary. Based on Purdue University's publicly available comparison tool, if they each took out an ISA for $10,000, the General Communication major would be required to pay 3.85 percent of her income for a maximum of 112 monthly payments, while the Computer Science major would pay only 2.32 percent of his income for a maximum of only 88 monthly payments.82 In 2017, only 12.5 percent of Computer Science graduates at Purdue were female, while 72 percent of General Communication majors were female. In such a scenario, the General Communication major would end up paying significantly more over the length of the agreement. If you assume that both make $45,000 per year (ignoring raises, for simplicity's sake) the General Communication major would pay a total of $16,170, while the Computer Science major would pay just $7,656.

Similar disparities in cost can be seen in some ISA programs even when you assume starting salaries that reflect differences in pay across industries. For example, the University of Utah's publicly available comparison tool shows that a Social Work major (86 percent of whom are women, and 33 percent of whom are domestic students of color) taking out a $10,000 ISA and earning the average income trajectory the school projects for Social Work majors, resulting in a starting salary of $34,808, would end up paying a total of $18,183 over the course of their agreement. Meanwhile, it shows that a Mechanical Engineering major (only 11 percent of whom are women, and 19 percent of whom are domestic students of color) also taking out a $10,000 ISA and earning the projected income for Mechanical Engineering majors, resulting in a starting salary of $54,750, would pay just $15,528.") (citations omitted).

[27] *See e.g.*, Student Borrower Prot. Ctr., Credit by Any Other Name (July 2020), https://protectborrowers.org/wp-content/uploads/2020/07/Pearl.Shearer_Credit-By-Any-Other-Name.pdf;

[28] *See* Student Borrower Prot. Ctr., Educational Redlining, *supra* note 4.

[29] Welbeck & Kaufman *supra* note 4. (Note that this statistic is no longer used in the way that Upstart initially described, and that Upstart has modified its model in part to address concerns raised by the SBPC and NAACP LDF.); *See also* Relman Colfax, *Fair Lending Monitorship of Upstart Network's Lending Model (Apr. 14, 2021),* https://www.relmanlaw.com/cases-406.

color,[30] there is reason for extreme concern that the use of standardized test scores in underwriting stands to unfairly disadvantage Black and Latino credit applicants, especially those who attended MSIs. Further, creditors ranging from private student loan companies such as Meritize[31] to ISA lenders such as Avenify[32] now actively market or otherwise disclose that they consider applicants' grades in their lending model. These firms are aided by data vendors such as MeasureOne, which market to lenders the purported ability to analyze creditworthiness based on students' grades.[33] The CEO of MeaureOne even remarked, "Having good grades points to people with personality traits that lend themselves to good behaviors.[34]" Representations along these lines are extremely worrying in light of the well-documented phenomenon of college grades tracking closely with race.[35] Indeed, careful scrutiny is necessary given the significant and likely potential for lenders' march toward ever more untested and apparently dangerous alternative education-based metrics to generate disparate outcomes.

The CFPB Must Prioritize Equity and Stamp Out Algorithmic Bias Through Rigorous Oversight

Federal regulators have a critical role to play in reducing algorithmic bias through rigorous oversight. The country's top consumer watchdog has a duty to hold industry accountable for new technologies that may limit fair and equitable access to credit. As discussed above, there are numerous examples of the ways in which lax regulatory oversight and enforcement of algorithmic bias can adversely affect protected class consumers. The CFPB should undertake the following steps to reduce the risks of discrimination and algorithmic bias in the fintech industry.

- **The CFPB's Office of Innovation Must Prioritize Equity.** The Office of Innovation's website states that the office's mission is to "promote innovation,

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[30] *See e.g.*, The African American Policy Forum, Standardized testing (last visited July 1, 2021) https://web.archive.org/web/20200530083217/https://aapf.org/standardized-testing.
[31] *See e.g.*, Meritize, Homepage (last visited July 1, 2021), https://www.meritize.com/students/ [https://perma.cc/7WGY-66BM];SixUp, College Loans for Students Based on Academic Achievement (last visited July 1, 2021), https://sixup.com/ [https://perma.cc/HV4F-NLNK].
[32] Avenify, *how do I apply for funding?*, (last visited July 1, 2021), https://avenify.zendesk.com/hc/en-us/articles/360049437053-How-do-I-apply-for-funding— [https://perma.cc/SB7U-448B].
[33] Brian Rinker, *Can college grades predict credit risk? This S.F. startup thinks so.* (Dec. 23, 2019), https://www.bizjournals.com/sanfrancisco/news/2019/12/23/can-college-grades-predict-credit-risk-this-sf.html [https://perma.cc/T3SP-XRN3].
[34] *Id.* (quoting MeasureOne CEO Elan Amir as saying, "Having good grades points to people with personality traits that lend themselves to good behaviors.")
[35] See Jason M. Fletcher & Marta Tienda, *Race and Ethnic Differences in College Achievement: Does High School Attended Matter?* (Jan. 2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3489015/.

competition, and consumer access within financial services.[36]" Further, the office aims to fulfill it statutory mandate by:

- Creating policies and sandboxes through which we reduce potential barriers to innovation
- Engaging with stakeholders interested in promoting consumer-beneficial innovation
- Coordinating with Federal, State and international regulators[37]

There is no mention in the office's statement of creating fair and equitable access to financial services through innovation. While innovation, competition, and consumer access are important components of healthy consumer finance markets, the absence of fairness and equity in the office's stated understanding of those goals is cause for great concern, especially as the Bureau and the Biden Administration have both prioritized addressing racial inequity in the economy and consumer finance markets.[38]

In the same regard, the CFPB's Office of Innovation should make fairness and equity a stated a priority to ensure accountability and send a clear signal to industry that discrimination is illegal and will not be tolerated. A commitment to racial equity and economic inclusion requires an adherence to rigorous fair lending oversight across markets, most especially emerging markets that often tout their existence in a space lacking regulatory clarity.[39]

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[36] Consumer Fin. Prot. Bureau, *Innovation at the Bureau*, https://www.consumerfinance.gov/rules-policy/innovation/.

[37] *Id.*

[38] Exec. Order No. 13,985, 86 Fed. Reg. 7,009 (Jan. 20, 2021), available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/; Dave Uejio, *Addressing Racial Inequities in Consumer Finance Markets*, Consumer Fin. Prot. Bureau Blog (June 2, 2021), https://www.consumerfinance.gov/about-us/blog/addressing-racial-inequities-consumer-finance-markets/; Dave Uejio, *The Bureau Is Taking Much-needed Action to Protect Consumers, Particularly the Most Economically Vulnerable*, Consumer Fin. Prot. Bureau Blog (Jan. 28, 2021), https://www.consumerfinance.gov/about-us/blog/the-bureau-is-taking-much-needed-action-to-protect-consumers-particularly-the-most-economically-vulnerable/; Dave Uejio, *The Bureau is Working Hard to Address Housing Insecurity, Promote Racial Equity, and Protect Small Businesses' Access to Credit*, Consumer Fin. Prot. Bureau Blog (Feb. 4, 2021), https://www.consumerfinance.gov/about-us/blog/the-bureau-is-working-hard-to-address-housing-insecurity-promote-racial-equity-and-protect-small-businesses-access-to-credit/.

[39] *See e.g.*, Student Borrower Prot. Ctr., Credit by Any Other Name (July 2020), https://protectborrowers.org/wp-content/uploads/2020/07/Pearl.Shearer_Credit-By-Any-Other-Name.pdf; Letter from Student Borrower Prot. Ctr., to Blake Paulson, Acting Controller, Off. of the Comptroller of the Currency (Apr. 20, 2021), available at https://protectborrowers.org/wp-content/uploads/2021/04/Letter_MentorWorks_OCC.pdf.

- **The CFPB Should Not Grant No-Action Letters for Compliance with the Equal Credit Opportunity Act.** The CFPB should discontinue its No-Action Letter (NAL) policy for compliance with ECOA. The Bureau granted its first No-Action Letter in 2017.[40] This NAL provided "that Bureau staff has no present intent to recommend initiation of supervisory or enforcement action against Upstart with respect to the Equal Credit Opportunity Act." The Bureau stated that its goal for the NAL was to "facilitate consumer-friendly innovations where regulatory uncertainty may exist for certain emerging products or services."[41]

  The CFPB should revisit its No-Action Letter policy to ensure that a NAL in no way signals less vigorous ECOA compliance. If the Bureau is truly committed to its recent statements regarding racial equity, there should be no circumstance in which the agency lessens its supervisory and enforcement duties to ensure companies' compliance with ECOA. Fair and equitable access to credit is critical for all consumers, but especially critical for the Bureau to rigorously enforce and supervise companies for discrimination against communities that have historically been, and continue to be, and locked out of credit markets. The Equal Credit Opportunity Act was created to prevent discrimination and promote more equitable consumer finance markets.[42] Accordingly, there are serious concerns about waiving any protections that could lead to disparate outcomes for protected class consumers. As is clear by the Bureau's history of enforcement actions against companies for violations of ECOA, these protections are critical to holding industry accountable and preventing more instances where consumers receive disparate access to credit.[43]

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[40] Consumer Fin. Prot. Bureau, *supra* note 2.

[41] *See* Letter from Sherrod Brown, U.S. Senator, Ohio, *et al*., to Dave Girouard, CEO, Upstart Network, Inc. (Feb. 13, 2020), available at https://www.warren.senate.gov/imo/media/doc/2020-02-13%20Senate%20letter%20to%20Upstart.pdf; NAACP Legal Def. and Educ. Fund, *supra* note 16; Letter from Edward Blatnik, Acting Assistant Dir., Off. of Innovation, Consumer Fin. Prot. Bureau, to Alison Nicoll, Gen. Couns., Upstart Network, Inc. (Nov. 30, 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_upstart-network-inc_no-action-letter_2020-11.pdf. (As noted above, the lack of rigorous oversight could have potentially led to consumer harm, and despite concerns raised by Congress and advocates, as noted above, the CFPB renewed Upstart's NAL in 2020.).

[42] 12 C.F.R. § 1002.1 (2021).

[43] *See generally* Consumer Fin. Prot. Bureau, *CFPB and American Express Reach Resolution to Address Discriminatory Card Terms in Puerto Rico and U.S. Territories* (Aug. 23, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-american-express-reach-resolution-address-discriminatory-card-terms-puerto-rico-and-us-territories/; Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau And Department Of Justice Action Requires Bancorpsouth To Pay $10.6 Million To Address Discriminatory Mortgage Lending Practices* (June 29, 2016), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-department-justice-action-requires-bancorpsouth-pay-106-million-address-discriminatory-mortgage-lending-practices/; Consumer Fin. Prot. Bureau, *CFPB and DOJ Order Hudson City Savings Bank to Pay $27 Million to Increase Mortgage Credit Access in Communities Illegally Redlined* (Sept. 24, 2015),

A recent report from the Government Accountability Office (GAO) found that "[a]s of February 2019, [the Bureau] stopped reporting on performance goals and measures specific to fair lending supervision and enforcement—such as the number of completed examinations and the percentage of enforcement cases successfully resolved."[44] This significantly limited the agency's ability to meet key components of its mission with regard to fair lending.[45]

The GAO's findings provide further support for the Bureau to engage in increased fair lending oversight, not less. Waiving any ECOA compliance runs afoul of efforts to meaningfully assess the potential harms posed by emerging credit products and the use of alternative data. The 2018 reorganization of the Bureau's Office of Fair Lending, in addition to the Office of Innovation's lack of stated prioritization for fair and equitable access to credit, raises significant alarms. A NAL that provides cover to companies for potential violations of fair lending laws strictly runs counter to the agency's commitment to racial equity and its duty as the nation's top consumer watchdog.[46]

- **The CFPB Should Publish Regular Reports on AI & Algorithmic Bias as Part of its Commitment to Racial Equity.** The CFPB regularly publishes reports monitoring the state of markets, as well as its regulatory and enforcement action in those markets. With the pace of growth in fintech markets, the Bureau should prioritize regular reporting from the Office of Innovation. Further, the Office of Innovation must make clear its commitment to racial equity in consistency with the Bureau's broader equity goals. Regular reporting, particularly with a focus on equity and the risks of algorithmic bias is a critical first step. Additionally, the Bureau should encourage more transparency from the financial services industry on the use of alternative data and the risks of algorithmic bias. Consumers and communities of color, especially those that are Black and Latino, have historically and continue to be locked out of or underserved by traditional credit markets. While many fintech firms often tout their technology as innovative means to increase access to marginalized

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https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-order-hudson-city-savings-bank-to-pay-27-million-to-increase-mortgage-credit-access-in-communities-illegally-redlined/.

[44] U.S. Gov't Accountability Off., GAO-21-393, Fair Lending: CFBP Needs to Assess the Impact of Recent Changes to Its Fair Lending Activities (2021), available at https://www.gao.gov/assets/gao-21-393.pdf.

[45] *Id.*

[46] *See* Student Borrower Prot. Ctr., Educational Redlining, *supra* note 4. (Additionally, Congress should consider amending the Dodd-Frank Wall Street Reform and Consumer Protection Act to prohibit agencies from waiving Equal Credit Opportunity Act (ECOA) compliance for any company seeking a No-Action Letter (NAL).)

communities, the Bureau must make it clear that it intends to work more intently to address these issues.

- **The CFPB Should Create an Interagency Working Group to Combat Discrimination in the Fintech Market.** The Bureau's Office of Innovation should prioritize bolstering its expertise on fair lending, markets, and artificial intelligence and machine learning to provide resources and expertise to other federal and state agencies to better tackle bias and discrimination across emerging markets and technology. The legal structure that underpins the fintech market cuts across government agencies' responsibilities. Further, the creation of an interagency working group and ongoing collaboration between federal and state actors would help expand the capacity and subject matter expertise of these authorities to protect consumers from discriminatory practices.

The use of alternative data such as education data in underwriting runs the risks of repackaging systemic biases, codifying long standing economic exclusion in the name of innovation. The emergence and rapid growth of fintech products in a relative absence of comprehensive federal regulation raises significant concerns all across consumer finance markets. The Bureau must create clear regulatory guidance and engage in rigorous oversight to address the potential for algorithmic bias and discrimination in the fintech market.

Sincerely,

Student Borrower Protection Center

Appendix 1

STUDENT BORROWER
PROTECTION CENTER

EDUCATIONAL REDLINING

Student Borrower Protection Center

February 2020

PROTECTBORROWERS.ORG

With new advances in financial products and services come age-old risks of discrimination. Without caution, the fintech revolution could perpetuate a system that has historically locked communities of color out of mainstream credit markets.

Table of Contents

Executive Summary

- Across the financial services sector, "alternative data" has been touted by established consumer lenders and new entrants alike as a tool to expand access to credit for historically underserved communities, including people of color. This report examines one subset of this data—education data, an umbrella term describing information related to a consumers' higher education—when determining access to credit and the price of consumer financial products.

- The use of education data in underwriting raises significant fair lending concerns, and its widespread adoption could reinforce systemic barriers to financial inclusion for Black and Latinx consumers. Further, the use of education data can exacerbate inequality across the American economy. Where the effects of these practices have negative economic consequences for borrowers from historically marginalized communities, these practices are known as "Educational Redlining."

- The following report, *Educational Redlining*, includes a detailed discussion of these practices and describes the specific risks posed to borrowers, communities, and the economy when consumer lenders rely on education data when determining access to credit and the cost of credit.

- This report features two case studies that examine the effects of these practices on hypothetical, similarly situated consumers using publicly available information about the lending practices at two consumer lenders—Wells Fargo and the financial technology company Upstart. These case studies show:

  - **Borrowers who take out private loans to pay for college may pay a penalty for attending a community college**. Wells Fargo charges a hypothetical community college borrower an additional $1,134 on a $10,000 loan when compared to a similarly situated borrower enrolled at a four-year college.

  - **Borrowers who refinance their student loans through a company using education data may pay a penalty for having attended an HBCU.** When refinancing with Upstart, a hypothetical Howard University graduate is charged nearly $3,499 more over the life of a five-year loan than a similarly situated NYU graduate.

  - **Borrowers who refinance student loans may pay a penalty for having attended an Hispanic-Serving Institution (HSI).** When refinancing with Upstart, a hypothetical graduate who receives a Bachelor's Degree from New Mexico State University, an HSI, is charged at least $1,724 more over the life of a five-year loan when compared to a similarly situated NYU graduate.

- Based on this analysis, SBPC has issued the following recommendations to Congress, federal and state regulators, and the consumer lending industry to address potential violations of federal and state fair lending laws and to mitigate the effects of these practices on economic inequality:

  - **Congress must enhance oversight.** Congress should examine the use of education data by consumer lenders, including monitoring for potential disparities caused by this practice and its effects on economic inequality. Further, Congress should investigate regulators' oversight over the companies engaged in these practices. This should include scrutiny of the Consumer Financial Protection Bureau's handling of the No-Action Letter awarded to Upstart—a regulatory safe harbor that may be shielding the company from violations of federal fair lending laws.

  - **Federal and state regulators must take immediate action to halt abuses.** Federal and state regulators should prioritize oversight over lenders that use education data when underwriting or pricing consumer loans and take immediate action where industry practices violate fair lending laws.

  - **The financial services industry must strengthen transparency when lending based on education data.** Firms in the financial services industry that use alternative data should immediately publish data demonstrating the effects of such practices on individual borrowers, empowering lawmakers, regulators, and the public to understand the effects of these practices on consumers.

About this Report

Credit is a key ingredient in the generation of economic opportunity, and it plays a "remarkably consequential" role in the expansion of economic mobility among marginalized populations.[1] And yet, consumers of color continue to face obstacles when seeking access to affordable credit. Research shows that African American and Latinx consumers at every income bracket are more likely to either be offered less credit than requested or denied credit outright than their similarly situated white peers.[2] While racial disparities in credit can be traced back to systemic discrimination underlying American society and the U.S. financial system,[3] evidence suggests that traditional credit scoring models perpetuate these disparities because "even the most basic lending standards . . . 'impact' racial and ethnic groups differently."[4]

"As more financial services companies look to adopt this approach, policymakers, regulators, and fintech companies must heed caution. The use of alternative data may further marginalize the very communities it purports to help."

Financial technology (fintech) firms have touted the use of "alternative data" as a method for overcoming biases entrenched in traditional credit underwriting models that often exclude consumers with limited credit profiles.[5] These companies assert that creditworthiness can be gauged through factors like social media use, educational attainment, and work history.[6] After including these alternative inputs in underwriting models, companies market their products as providing expanded access to credit to marginalized communities.[7] However, as this report demonstrates, such statements fail to present policymakers, regulators, and law enforcement officials with full context for the potential risks associated with using alternative data.

As more financial services companies look to adopt this approach, policymakers, regulators, and fintech companies must heed caution. The use of alternative data may further marginalize the very communities it purports to help.

In 2019, Student Borrower Protection Center (SBPC) fellow Aryn Bussey documented the risks associated with one category of alternative variables for credit underwriting: education data.[8] Companies using education data have looked to SAT scores, sector of the institution of higher education attended (*e.g.*, for-profit, private nonprofit, public), college majors, and more as proxies for likelihood of repayment.[9] Bussey's analysis reviewed the myriad of concerns of policymakers, academics, advocates, and law enforcement related to the use of education criteria in underwriting.[10] This report builds on Bussey's work, further examining those risks, and provides two case studies highlighting disparities in outcomes when companies use education data in underwriting decisions.

Specifically, in this report, we examine the extent to which a consumer's choice of college, including attendance at a community college or Minority-Serving Institution (MSI), impacts their cost of credit. We analyze sample rate quotes from lenders that advertise the use of education criteria in credit decisions and provide case studies for two lending products: a newly originated private student loan from Wells Fargo and private student loan refinancing products offered by Upstart. Offered rates were compared across postsecondary institutions with all other inputs held constant.[11] Our findings from our broader analysis and the highlighted case studies are consistent: holding all else constant, borrowers who attend community colleges, Historically Black Colleges and Universities (HBCUs), and Hispanic-Serving Institutions (HSIs) will pay significantly more for credit because of people's assumptions and prejudices regarding those who sit next to them in the classroom.

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Introduction

The fintech industry is rapidly changing the way that consumers participate in credit markets. Researchers estimate that the credit market excludes 45 million consumers because classic underwriting models deny credit to those with little or no scorable credit history.[12] Fintech companies increasingly seek to serve this population by incorporating new forms of data into underwriting models. In doing so, these companies claim they can offer lower cost products that are more widely available.[13]

Should this claim be realized, this approach would be encouraging, as expanded access to affordable credit is critical to improving economic opportunity and creating fairer financial markets for traditionally marginalized consumers. However, as this report shows, the use of alternative data in underwriting to predict credit risk may ultimately do just the opposite—disparately affecting marginalized consumers and exacerbating economic inequality.

Traditional underwriting algorithms use a consumer's past payment performance to predict repayment behavior and determine creditworthiness.[14] As a result, these models are somewhat limited in their ability to assess the creditworthiness of young consumers and others who lack extended payment histories.[15] Additionally, critics contend that classical score-based credit models overlook consumers with repayment histories concentrated outside of mainstream credit products.[16] Fintech companies have sought to fill this gap and expand their base of potential customers by looking beyond these extant input variables. Fintech lenders use new input variables—commonly referred to as alternative data—in underwriting algorithms to process data "in ways that reveal correlations between seemingly irrelevant data points about a borrower and that borrower's ability to repay."[17]

This report focuses on one specific class of input variables increasingly used by fintech lenders—education data. Education data includes a range of variables tied to a consumer's postsecondary education, including institutional sector and selectivity, college major, and even assessment scores. As University of Oklahoma College of Law professor Christopher Odinet explains, fintech firms "are ever-expanding their online lending activities to help students finance or refinance educational expenses. These online companies are using a wide array of alternative, education-based data points—ranging from applicants' chosen majors, assessment scores, the college or university they attend, job history, and cohort default rates— to determine creditworthiness."[18]

However, while the fintech industry argues that education data allows for expanded and more inclusive underwriting, this report illustrates how its use may lead to disparate outcomes for certain consumers.[19] Specifically, the use of education data in underwriting risks discriminating against borrowers of color and exacerbating income equality across the population at large. As National Consumer Law Center staff attorney Chi Chi Wu testified before Congress:

> The use of education and occupational attainment reinforces inequality, given that a consumer's educational attainment is most strongly linked with the educational level of his or her parents. Use of educational or occupational attainment would probably top the list of mobility-impeding data, and would ossify the gaping racial and economic inequality in our country.[20]

With new advances in financial products and services come age-old risks of discrimination, thereby perpetuating a system that has historically locked communities of color out of mainstream credit markets. Accordingly, non-individualized input variables that risk reinforcing systemic disparities and discrimination demand greater scrutiny from policymakers and law enforcement. Education data is no exception.

For example, people of color have historically been and continue to be denied equitable access to higher education, particularly at elite institutions.[21] By considering the college or university attended by the consumer, a lender may capture disparate patterns in college attendance across class and race, thereby introducing bias in the underwriting process.[22] The resulting credit decision risks producing discriminatory results. As Bussey explains:

> [A]lthough degree attainment is on the rise for many racial and ethnic groups, research shows there is a shortage of minority students, particularly African-American and Latino students, at selective institutions of higher education. Only nine percent of Black students, eight percent of Indigenous American students, and twelve percent of Latino students attend America's most elite public universities. When credit terms are tied to attendance at supposedly "elite" institutions, it can unfairly impact borrowers of color. Widespread adoption of educational criteria to determine creditworthiness will further stratify socioeconomic barriers to economic opportunity and mobility for Black and Brown consumers.[23]

Education Data Use Risks Redlining

Discrimination resulting from the use of education data in underwriting is not new. For the last century, borrowers of color have been subjected to discriminatory credit terms simply because of where they live.[24] Despite fair lending laws prohibiting this type of practice, modern-day redlining based on geography continues to stymie economic opportunity for consumers of color.[25] Similar to the effects of discrimination based on geography, the use of educational data in underwriting risks redlining people of color out of the American Dream once again.

For example, in 2007, then-New York Attorney General Andrew Cuomo launched an inquiry to determine whether lenders' use of certain criteria discriminated against student loan borrowers based on their enrollment at a specific institution of higher education.[26] Cuomo noted the potential for educational redlining when warning that students attending minority-serving institutions (MSIs), such as historically black colleges and universities (HBCUs), may pay much higher interest rates.[27] Cuomo's investigation into one large lender found that its use of education data in underwriting led to interest rate spreads of up to six percent when compared to similarly situated borrowers simply because of the school attended by the applicant.[28]

Since Cuomo's inquiry, regulators and researchers have further documented how the use of education criteria in underwriting decisions is likely to disproportionately affect protected classes.[29] This outcome is particularly troublesome where lenders consider the selectivity of an institution in underwriting. First, despite perceptions of institutional prestige and future earnings, researchers have repeatedly found that institutional selectivity does not broadly correspond with increased earnings, finding only a "slight effect, if any at all."[30] Second, as previously discussed, the use of education data risks perpetuating the deep-rooted discrimination that pervades America's higher education system. And finally, potentially discriminatory factors are unjustified where "nondiscriminatory [factors] . . . are already highly predictive of likelihood of repayment."[31]

Accordingly, it is imperative to understand and protect against the potential for discrimination against subsets of borrowers.[32]

The Community College Penalty

Community colleges play a critical role in the higher education ecosystem by providing a local pathway to postsecondary learning for a broad range of students, particularly low-income, first generation, and underrepresented minority students.[33] For example, while 37 percent of Latinx college students attend a public four-year or private nonprofit four-year institution, 56 percent of Latinx students attend public two-year institutions.[34] Similarly while only 39 percent of white students attend a two-year public college and 56 percent attend a four-year institution, 44 percent of black students attend a two-year public college, a proportion larger than the percent of black students attending a four-year institution.[35]

In theory, affordable, accessible post-secondary education should help mitigate the racial wealth gap and improve economic mobility. However, the increased use of education data in underwriting models threatens to do the opposite. As the following case study illustrates, rather than providing community college students with affordable credit, consumer lenders instead enforce a community college penalty. Our case study shows that, in one example of a private student loan product marketed by a large bank, borrowers attending community colleges might be charged higher interest rates and offered shorter repayment terms than otherwise identical peers at four-year schools. This penalty risks disparately impacting borrowers of color and necessarily involves judging people's individual creditworthiness based on nonindividualized factors.

In the following case study, we use publicly available information about the terms and conditions of Wells Fargo's private student loan offerings, comparing hypothetical Wells Fargo customers enrolled at select community colleges with similarly situated Wells Fargo customers enrolled at select four-year institutions. The findings of this case study highlight how this approach to pricing can adversely affect students at community colleges, and in turn, students of color.

Case Study: Wells Fargo

Wells Fargo Bank offers a series of private student loan products for higher education financing.[36] The following study analyzes two of these product offerings: the *Wells Fargo Collegiate* student loan, a private student loan available to all undergraduate students attending four-year schools,[37] and the *Wells Fargo Student Loan for Career & Community College*, a private student loan available specifically to students attending two-year schools, career-training programs, and other non-traditional schools.[38]

Methodology

To determine how community college attendance affects private student loan product pricing, we modeled hypothetical applicants attending community colleges and four-year colleges. Applicants are identical in every respect, except for the institution of higher education attended.

Using input information for each hypothetical applicant, we submitted inquiries for private student loan product offers using Wells Fargo's publicly available "Today's Rates" tool.[39] We then compared the terms presented in the respective outputs from Wells Fargo. Because Wells Fargo reports a range of interest rates for each of its various student loans, we based our analysis on the average of the interest rates quoted for each credit product. We applied those averages to a model paydown sequence for a $10,000 loan to find implied monthly payments and total payments across the loan term. We assumed that the loan has no origination fee, that the loan was disbursed in equal halves in August and January of the student's final year of study, and that a six-month grace period followed the student's graduation.

In the example below, we highlight the outputs for hypothetical applicants attending two institutions: Chapman University, a four-year university in Orange, California, and Los Angeles ORT College, a community college in Los Angeles, California. We opted to highlight these two institutions based on their proximity,[40] but note that the findings were consistent across hypothetical applicants.

Findings

This section explores the rate and cost variation offered to borrowers of a *Wells Fargo Collegiate Loan* and *Wells Fargo Career & Community College Loan*.

Bank Lender: Wells Fargo

Product: Private Student Loan

LOAN AMOUNT $10K

Borrower Profile

Chapman University

(*Private 4-Year University*)

Major: Computer science

Occupation: Financial analyst

Annual income: $50,000

LOAN OFFERS

Loan Interest Rate: 8.22%

Total Cost: $19,171

Los Angeles ORT College

(*Community College*)

Major: Computer science

Occupation: Financial analyst

Annual income: $50,000

LOAN OFFERS

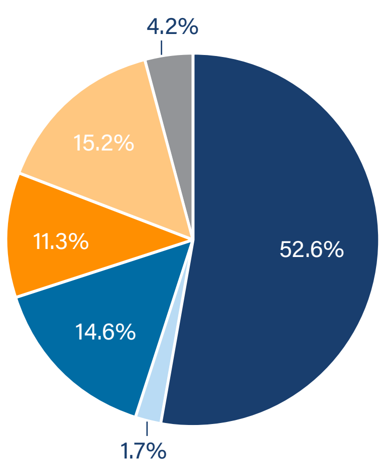
Loan Interest Rate: 10.87%

Total Cost: $20,305

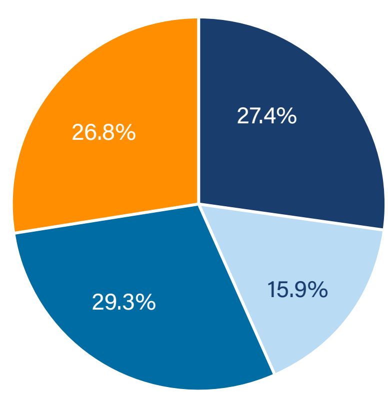
Community College Penalty: +$1,134

Student Populations

Chapman University



Los Angeles ORT College



■ White ■ Black/African American ■ Latinx/Hispanic ■ Asian ■ Other/Unknown ■ Non-Resident Alien

Demographic data from the U.S. Dep't of Education

- **Wells Fargo charges higher interest rates on its community college loan than its four-year undergraduate loan for similarly situated borrowers.** Using the average of reported rates, a borrower with a community college loan would pay $1,134 more on a $10,000 loan than a borrower with the four-year undergraduate loan. Over the life of a $10,000 loan, a community college borrower would pay approximately $16,829 with the lowest rate offering and $24,200 with the highest rate offering. In comparison, a four-year undergraduate loan borrower would pay $14,749.40 with the lowest rate offering and $24,335 with the highest rate offering. Even with identical credit profiles, community college borrowers would pay a higher price for credit than students at four-year institutions.

- **Wells Fargo offers shorter loan repayment terms, regardless of the borrower's creditworthiness, for its community college loans.** Wells Fargo offers a 12-year repayment term on its Career & Community College Loan. In contrast, Wells Fargo offers a 15-year repayment terms on its Collegiate Loan. However, a borrower with the community college loan would still pay more overall due to the higher interest rates they face. Both loan products offer the same terms for in-school deferment and grace periods.

The HBCU/HSI Penalty

Minority-Serving Institutions (MSIs), including Historically Black Colleges and Universities (HBCUs) and Hispanic-Serving Institutions (HSIs), play a significant role in expanding access to higher education. For example, in addition to serving underrepresented minorities, HBCUs and HSIs are also more likely to enroll women and older students.[41] However, as one researcher notes, these institutions "exist at the intersection where the American Dream of unbridled possibilities meets the American Nightmare of persistent racial-ethnic subordination."[42]

HBCUs, HSIs, and the students they serve face obstacles that make student debt almost an inevitability for attendees. For example, these institutions notably receive less funding than non-minority serving institutions.[43] Additionally, students attending HBCUs and HSIs take on more student debt, on average.[44]

As the following case study illustrates, fintech lenders' use of education data may impose an "HBCU/HSI penalty" on borrowers—a financial burden that has measurable, immediate economic consequences even for graduates who have already managed to overcome the obstacles described above. Our case study shows that borrowers who graduated from HBCUs or HSIs may be charged higher interest rates and origination fees than borrowers who graduated from non-minority serving institutions, thereby risking disparately impacting borrowers of color.

In the following case study, we use publicly available information about the rates offered to applicants seeking to refinance student loan debt with Upstart Network (Upstart), comparing hypothetical Upstart customers who graduated from HBCUs or HSIs, with similarly situated Upstart customers who graduated from select four-year institutions and non-minority serving institutions. The findings of this case study highlight how the use of alternative data in underwriting can adversely affect certain consumers of color in the education finance market even after they have already graduated.

Case Study: Upstart

Upstart is an online lending platform that provides financing for a range of personal loans.[45] According to the company, its platform is intended to "improve access to affordable credit while reducing the risk and cost of lending" to its partners.[46] In addition to using traditional underwriting criteria, Upstart also incorporates nontraditional factors such as educational attainment and employment history.[47] As with most fintech lenders, Upstart's underwriting algorithm is proprietary, but Upstart has publicized its use of alternative data in lending decisions.[48]

In September 2017, the Consumer Financial Protection Bureau (CFPB) issued its first No-Action Letter (NAL) to Upstart.[49] The NAL "signifies that [the CFPB] has no present intent to recommend initiation of supervisory or enforcement action against Upstart with respect to the Equal Credit Opportunity Act."[50] In accordance with the NAL, Upstart has reported lending and compliance information to the CFPB, such as approval decisions, mitigation of consumer harm, and expansion of access to credit for underserved populations.[51]

Methodology

To determine how the choice of institution attended affects the pricing of private student loan refinancing products, we modeled hypothetical applicants with degrees from schools across various institutional sectors, including two- and four-year colleges with HBCU, HSI, and non-MSI designations. Inputs for prospective applicants were identical in every respect, except for the institution attended by the applicant.

Each hypothetical applicant is a 24-year-old New York City resident with a bachelor's degree.[52] Each applicant works as a salaried analyst at a company not listed among those offered by Upstart. Applicants have been employed by their current employer for five months, earn $50,000 annually, and have $5,000 in savings. Applicants have no investment accounts or additional compensation and have not taken out any new loans in the past three months. Each applicant requested a $30,000 student loan refinancing product.

Using the above input information for each hypothetical applicant, we submitted inquiries for a private student loan refinancing product using Upstart's publicly available rate comparison tool.[53] We then compared the terms presented in the respective outputs.

In the example below, we highlight the outputs for hypothetical applicants attending three institutions: New York University (NYU), a non-MSI; Howard University, an HBCU; and New Mexico State University-Las Cruces (NMSU), an HSI. We opted to highlight these three institutions based on their varied MSI designations,[54] but note that the findings were consistent across hypotheticals.

Findings

This section explores the rate and cost variation offered for private student loan refinancing products to otherwise identical borrowers who attended different colleges. Results are based on applicants seeking $30,000 to refinance student loans, to be repaid over three- or five-year terms.

Holding all other inputs for prospective applicants constant, we find that a hypothetical refinancing applicant who attended Howard University, an HBCU, would pay more than an applicant who happened to have attended NYU. In this example, borrowers who attended the HBCU pay higher origination fees and higher interest rates over the life of their loans. Similar results are observed for applicants who attended NMSU, an HSI. In effect, borrowers who attend certain MSIs are penalized simply because of where they went to college.

Fintech Lender: Upstart Network, Inc.

Product: Private Student Loan Refinance

LOAN AMOUNT $30K

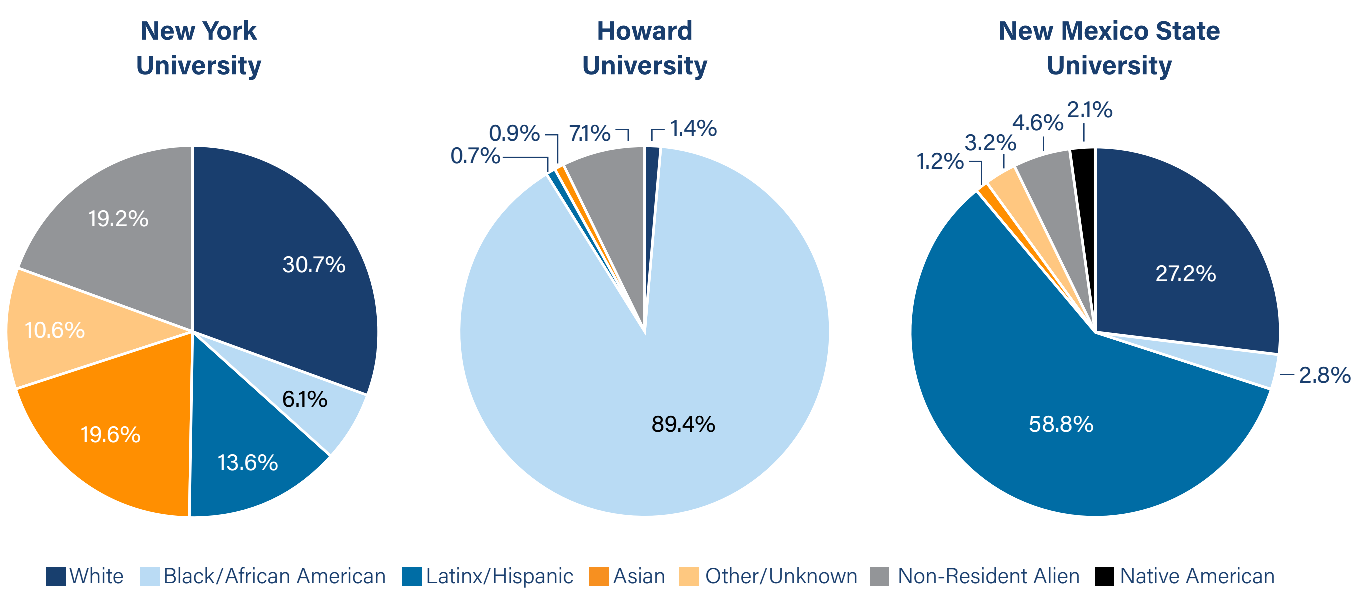
Borrower Profile

New York University (*Non-MSI*)	Howard University (*HBCU*)	New Mexico State University (*HSI*)
Major: Computer science	Major: Computer science	Major: Computer science
Occupation: Financial analyst	Occupation: Financial analyst	Occupation: Financial analyst
Annual income: $50,000	Annual income: $50,000	Annual income: $50,000
LOAN OFFERS	LOAN OFFERS	LOAN OFFERS
Loan interest rate: 16.34% APR	**Loan interest rate: 21.29% APR**	**Loan interest rate: 19.23% APR**
Origination fee: $1,231	**Origination fee: $1,960**	**Origination fee: $1,862**
Total Cost: $42,288	**Total Cost: $45,785**	**Total Cost: $44,011**

HBCU Penalty: +$3,499

HSI Penalty: +$1,724

Student Populations



Demographic data from the U.S. Dep't of Education

- **Howard University graduates are charged $3,499 more than similarly situated NYU graduates.** Over a three-year repayment term, the NYU graduate would pay $35,093, while the Howard graduate would pay $35,676. The disparity increases over a five-year repayment term (another repayment term offered by Upstart), with the NYU and Howard borrowers paying $42,287 and $45,785, respectively.

- **Howard University graduates are charged an additional $729 in origination fees than similarly situated borrowers who attended NYU.**[I] In this example, Howard borrowers would pay $1,960 to originate a loan with a five-year repayment term, whereas the NYU borrowers would pay $1,231 to originate a loan for the same repayment term. Likewise, for a three-year loan term, Howard borrowers would pay $1,624 in origination fees, as compared to $1,292 for NYU borrowers.

- **New Mexico State University (NMSU) graduates are charged nearly $1,724 more than otherwise identical NYU graduates.** Over a five-year repayment term, a NMSU graduate with a $30,000 student loan refinancing product would pay $44,011 in lifetime loan costs, while the otherwise identical NYU graduate would pay $42,287. This includes the NMSU graduate being charged $632 more in origination fees.

I Note that all loan applicants are modeled as requesting a $30,000 loan refinancing product, which includes all relevant origination fees already added to the loan amount. These origination fees vary across applicants, with Upstart quoting different fee amounts for different applicants. This variance implies that while the overall loan amounts compared here are the same, the proportion of the refinancing product actually applied to underlying student loans differs, with borrowers who face higher origination fees applying less of their $30,000 refinancing product to their outstanding student loans. The present estimates of disparities in the cost of refinancing are floor estimates, and students charged higher origination fees (that is, borrowers at HBCUs and HSIs) would need to take out larger loans to refinance the same dollar value of student loans.

Recommendations

The following recommendations to Congress, regulators, and industry highlight opportunities to address the issues outlined in this report. The industry practices discussed in detail above potentially violate a range of federal and state fair lending and consumer protection laws. More broadly, these practices may further perpetuate inequality, creating new barriers to building wealth for families across the country.

By taking immediate action, stakeholders can address the serious legal issues and far-reaching economic consequences presented by the use of education data in consumer lending.

Recommendation 1: Congress should scrutinize the use of education data in consumer lending and the No-Action Letter issued by the Consumer Financial Protection Bureau to Upstart.

In 2007, then-New York Attorney General Andrew Cuomo explained to Congress that the use of education data in consumer lending posed significant risks to borrowers of color, warning that the specter of "educational redlining" warranted immediate attention from lawmakers.[55]

The findings of this report demonstrate the prescience of Cuomo's warning. Big banks and fintech "innovators" are embracing education data when making new consumer loans. In doing so, these companies may be unlawfully discriminating against people of color and exacerbating economic inequality. Given the economic consequences potentially posed by a market-wide embrace of education data in consumer lending, Congress should deploy its full suite of investigatory, oversight, and legislative tools to protect consumers.

As part of this coordinated, market-wide oversight, Congress should investigate the CFPB's handling of the 2017 No Action Letter awarded to Upstart. As described above, in 2017 the CFPB issued its first No-Action Letter (NAL) to fintech lender Upstart, pledging not to enforce federal fair lending laws so long as the company provides regular data about the company's business practices to the Bureau. The preceding case study, constructed using Upstart's own marketing materials, plainly illustrates the potential for racial disparities in credit pricing as a result of Upstart's lending practices. As Upstart expands the licensing of its underwriting algorithm to other financial services companies, scrutiny of these practices is even more important.

Congress should immediately demand the following historical data from Upstart to assess whether CFPB's 2017 NAL is consistent with the law and meets the needs of consumers, industry, and the marketplace:[III]

- Upstart's overall loan approval (expressed in dollars lent as well as consumers served) and denial rates for loans made using non-individualized education data (*e.g.*, school, school sector, major) in the underwriting process.
- Upstart's loan approval and denial rates where a consumer indicates that he or she attended an institution of higher education enrolling populations with significant percentages of undergraduate minority students.[56]
- Upstart's loan approval and denial rates where a consumer indicates that he or she attended an institution of higher education other than one enrolling populations with significant percentages of undergraduate minority students.[57]
- Upstart's loan approval and denial rates where a consumer indicates that he or she attended a community college.
- Upstart's loan approval and denial rates where a consumer indicates that he or she attended an institution of higher education other than a community college.
- Upstart's interest rate spread (25th percentile, median, 75th percentile) for loans made using non-individualized education data (*e.g.*, school, school sector, major) in the underwriting process.
- Upstart's interest rate spread (25th percentile, median, 75th percentile) where a consumer indicates that he or she attended an institution of higher education enrolling populations with significant percentages of undergraduate minority students.[58]

III To date, little public information has been produced by the CFPB about Upstart's disclosures to the Bureau under its NAL agreement. The limited disclosures made by the CFPB appear to have been based on a simulation, comparing Upstart's approach to underwriting and pricing against a hypothetical model that relies on FICO score. This approach is seriously flawed. It fails to isolate the effects of educational data on protected classes of borrowers when similarly-situated Upstart customers are compared to one another. The flaws in this design suggest a path forward for Congressional investigators—by demanding the production of data that allows for an apples-to-apples comparison across Upstart's existing portfolio of customers, including data on approvals and denials specific to each college or university attended by an Upstart customer, Congress can more accurately assess whether Upstart's approach to underwriting or pricing loans has a disparate impact. ***See*** Consumer Financial Protection Bureau, *An update on credit access and the Bureau's first No-Action Letter* (August 2019), https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter.

- Upstart's interest rate spread (25th percentile, median, 75th percentile) where a consumer indicates that he or she attended an institution of higher education other than one enrolling populations with significant percentages of undergraduate minority students.[59]

- Upstart's interest rate spread (25th percentile, median, 75th percentile) where a consumer indicates that he or she attended a community college.

- Upstart's interest rate spread (25th percentile, median, 75th percentile) where a consumer indicates that he or she attended an institution of higher education other than a community college.

Should information produced by Upstart demonstrate that the company's practices have a disparate impact on protected classes with respect to the cost of credit, or offer evidence that Upstart's approach to consumer lending perpetuates economic inequality, Congress should immediately clarify to the CFPB that these outcomes are inconsistent with the intent behind the No-Action Letter Program. Further, Congress may wish to consider new legislation to prohibit the CFPB from waiving the Equal Credit Opportunity Act (ECOA) for any companies seeking a No-Action Letter in the future, narrowing the scope of CFPB's authority to issue these types of letters.

Recommendation 2: Federal and state financial regulators should prioritize oversight of the use of education data in underwriting to ensure lenders comply with fair lending laws.

Federal and state financial regulators supervise compliance with and enforce fair lending laws. Regulated financial institutions include both large banks like Wells Fargo and nonbank specialty consumer lenders like Upstart. Based on the findings of this report, federal and state financial regulators should prioritize the oversight of consumer lending where regulated entities use education data in underwriting or pricing credit.

Federal financial regulators, including prudential regulators and the CFPB, should examine the use of education criteria in lending decisions by big banks and nonbank consumer lenders. Federal regulators, including the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the Federal Trade Commission (FTC), and the CFPB, oversee or enforce laws that may apply to the use of education data in consumer lending. In particular, these regulators may enforce ECOA, which prohibits certain types of discrimination in the extension of credit.[60] As the first case study in this report demonstrates, large regulated financial institutions may use education data when determining access to credit or pricing financial products, despite the fair lending compliance risks it creates for these financial institutions.[61] This report offers ample evidence to suggest Wells Fargo's consumer lending practices, in particular, create risks for protected classes of consumers.

There is recent precedent for the CFPB and other regulators to consider the use of non-individualized education data as a fair lending compliance risk for financial institutions. In 2012, the CFPB studied the use of schools' Cohort Default Rate (CDR) in private student lending, finding that, "[g]enerally . . . lenders' consideration of CDR in either school eligibility or underwriting and pricing criteria may reduce credit access and increase costs disproportionately for minority borrowers."[62]

Following publication of the 2012 report, the CFPB incorporated this finding into its examination procedures by instructing examiners to consider the use of CDR when evaluating both bank and nonbank private student lenders for compliance with ECOA. Shortly thereafter, the FDIC took an enforcement action against Sallie Mae Bank for violating ECOA by using this particular piece of education data in underwriting and pricing private student loans.[63]

Based on the evidence presented in this report, other regulators should adopt the same approach as the FDIC—prioritizing scrutiny of these practices across the financial services sector and taking enforcement actions where appropriate.

States should prioritize action to stamp out educational redlining when overseeing consumer lending by banks and nonbanks. Since 2017, the CFPB has ceased to bring new enforcement actions policing discrimination in the financial sector, drawing criticism from state law enforcement officials, civil rights groups, and Members of Congress for failing to appropriately administer the nation's fair lending laws.[64] Fortunately for consumers, the Dodd-Frank Act empowers state attorneys general and state banking regulators to enforce these laws with respect to the companies they regulate. This authority presents an opportunity for state officials to scrutinize the use of education data in consumer lending within their states, stepping in where the CFPB has recently failed to act.

In addition, states may enforce and administer a wide range of state civil rights and anti-discrimination statutes. Evidence suggests that some states are already beginning to scrutinize these entities for violations of state law. As part of any expanded state oversight effort, state regulators and law enforcement should scrutinize Upstart's practices for compliance with these state fair lending laws in the context of the CFPB's Upstart No-Action Letter.

Recommendation 3: Consumer lenders, including banks and fintech specialty lenders, should regularly publish information on underwriting decisions and pricing that relies on education data.

Banks and specialty lenders such as Wells Fargo and Upstart that use education data in their underwriting decisions should make available data on the impact of these criteria on access to credit (including both approvals and denials) and on pricing of loans for consumers. This information should track access and pricing both for borrowers who attend minority-serving institutions and for borrowers who attend non-minority serving institutions. This additional information about credit decisioning and pricing should be made available to the public at large, including stakeholders inside and outside of government, through publication on the lender's website and disclosure at the time of application. For this public disclosure to be effective, it should include data that allows for comparison across a company's existing portfolio of customers, including data on approvals and denials specific to each college or university attended by an applicant for credit.

By embracing new transparency with respect to the effects of education data on lending, market participants can empower borrowers to shop for financial products with an accurate understanding of the costs and risks associated with each product. Further, such transparency efforts will empower federal and state regulators to perform more effective oversight over the industry.

Conclusion

Communities of color have historically been locked out of mainstream credit markets. But while companies tout the use of education-based criteria in underwriting as a means to broaden credit access for marginalized consumers, the use of such factors may actually undermine equitable access to credit. Indeed, by creating situations where protected classes of consumers are offered less favorable credit terms, the use of education data in credit underwriting decisions can reinforce systemic barriers to economic opportunity.

Discrimination in consumer credit markets is not new. But as this analysis shows, the use of education data in underwriting could charge borrowers more for a loan simply for choosing the most accessible path for pursuing the American Dream. Is this what is meant by a mission of 'innovation'? Access to credit should not simply mean 'more people getting more loans.' It is imperative to examine the variance in the cost of those loans. Otherwise, expanded access to credit will not expand equity.

With mortgage redlining, borrowers are given worse loans simply because of who their neighbor is. Now, with educational redlining, borrowers are given worse loans simply because of who is sitting next to them in the classroom. Just as law enforcement took action against mortgage redlining, they must do the same with education redlining. Innovation should not re-package age-old discrimination. Rather, true innovation should provide a means to equitably broaden credit access for historically marginalized communities.

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9 *See id.*

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Appendix 2

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INEQUITABLE STUDENT AID

A Case Study of Disparate Lending Practices and Educational Redlining Tactics in the Market for Income Share Agreements

March 2021

Introduction

Income share agreements (ISAs) are a risky[1] but increasingly prevalent[2] form of credit used to finance attendance at colleges, coding bootcamps, and various other educational and vocational training institutions.[3] Under an ISA, students pledge a predetermined portion of their future income in exchange for present-day tuition funding.[4] Over $250 million in ISAs were originated in 2019,[5] and market participants expected $500 million in ISAs to be originated in 2020 before the COVID pandemic began.[6] Though industry-wide data are unavailable, the association between ISAs and the types of for-profit career training programs known to take advantage of economic downturns[7] implies that the volume of ISAs originated in 2020 may have ultimately been much larger.[8]

[1] *See, e.g.*, Tariq Habash & Ben Kaufman, *As Coronavirus Crisis Rages, ISA Companies Ramp Up to Reap the Reward*, Student Borrower Prot. Ctr. (May 5, 2020), https://protectborrowers.org/coronavirus-isa/; Press Release, Student Borrower Prot. Ctr., Advocated File Complaint with Federal Trade Commission, Urge Enforcement Action Against Venmo Education for its Deceptive Marketing of Income-Share Agreements to Students (Jun. 1, 2020), https://protectborrowers.org/vemo-release/; Jen Mishory & Anthony Walsh, *ISA Industry Relies on Age-Old Strategy to Ignore Existing Regulations*, The Century Found. (Aug. 7, 2020), https://tcf.org/content/commentary/isa-industry-relies-age-old-strategy-ignore-existing-regulations/; Jen Mishory, *Private ISA Student Loans Highlight Consumer Protection Challenges*, The Century Found. (Aug. 22, 2019), https://tcf.org/content/commentary/private-isa-student-loans-highlight-consumer-protection-challenges/.

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[5] Spencer Israel, *What Was Missing from the Income Share Agreement Market? A Marketplace.*, Benzinga (Nov. 9, 2020 11:13 AM), https://www.benzinga.com/government/20/11/18217678/what-was-missing-from-the-income-share-agreement-market-a-marketplace [https://perma.cc/2HC3-TB3Y].

[6] *Id.*

[7] Peter S. Goodman, *In Hard Times, Lured Into Trade School & Debt*, N.Y. Times (Mar. 13, 2020), https://www.nytimes.com/2010/03/14/business/14schools.html.

[8] *See generally* Habash, *supra* note 1.

Because ISAs are priced in part based on the school and program a student chooses to attend[9]—two factors closely associated with race[10]—legal experts have increasingly voiced fears that they may pose a risk of generating disparate impacts on members of protected classes and perpetuating "educational redlining" practices that harm people of color, women, and members of other historically marginalized groups.[11]

New data indicates that Stride Funding, Inc. ("Stride Funding") may be engaging in these practices, highlighting broader risks inherent to ISAs as a form of credit and to the consideration of borrowers' educational backgrounds as a component of credit decisioning. Stride Funding is a private company involved in the marketing and origination of ISAs.[12] Stride Funding's founder recently claimed that the company expects to lend to 1,800 students in the next year through its ISA product[13] and that the company plans "to have 100,000 [ISAs] funded" by 2025.[14] These loans are offered "mostly to STEM grad students like people studying to be engineers, nurses and physicians' assistants."[15] Stride Funding's founder has also claimed that "80% of [Stride's] borrowers are women and 75% are underrepresented minorities."[16]

[9] *See generally* Stephen Hayes & Alexa Milton, *Solving Student Debt or Compounding the Crisis? Income Share Agreements and Fair Lending Risks*, Student Borrower Prot. Ctr. (Jul. 28, 2020), https://protectborrowers.org/wp-content/uploads/2020/07/SBPC_Hayes_Milton_Relman_ISA.pdf.

[10] Tomás Monarrez & Kelia Washington, *Racial & Ethnic Representation in Postsecondary Education*, Urban Inst. (Jun. 18, 2020), https://www.urban.org/research/publication/racial-and-ethnic-representation-postsecondary-education; Lisa Dickson, *Race & Gender Differences in College Major Choice*, Research Gate (May 2009), https://www.researchgate.net/publication/229050752_Race_and_Gender_Differences_in_College_Major_Choice.

[11] *See generally* Aryn Bussey, *Educational redlining? The use of educational data in underwriting could leave HBCU & MSI graduates in the dark*, Student Borrower Prot. Ctr. (Jul. 24, 2019), https://protectborrowers.org/educational-redlining/.

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[13] *Profile: Tess Michaels, Founder Stride Funding Los Angeles, Cal.*, Forbes, https://www.forbes.com/profile/tess-michaels/?sh=4cbe3310306f [https://perma.cc/5XCM-KWCA].

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[16] *Id.*

An investigation by the Student Borrower Protection Center (SBPC) has uncovered evidence that Stride Funding's lending model may violate federal fair lending law by penalizing borrowers of color for attending minority-serving institutions (MSIs) such as Historically Black Colleges and Universities (HBCUs). Specifically, Stride Funding's own data reveals that a student attending an MSI can expect to pay significantly more for the same ISA than an otherwise-identical peer who attends a comparable school that is not an MSI. This finding often holds even when the MSI is the higher ranked school.

An investigation by the Student Borrower Protection Center has uncovered evidence that Stride Funding's lending model may violate federal fair lending law by penalizing borrowers of color for attending minority-serving institutions.

Innovation in education finance cannot simply be a veil for age-old discrimination. The present findings highlight the substantial risks that emerge when lenders consider a credit applicant's educational history and how pronounced those risks are in the market for ISAs.

Background

Alternative Data and Fair Lending Risk

Financial services firms have long touted the use of nontraditional or "alternative" data (e.g., consumers' cell phone or utility bill repayment histories) in underwriting as a purported method to expand access to credit.[17] However, policymakers,[18] academics,[19] advocates,[20] and law enforcement officials[21] have warned that such data can introduce or amplify disparate impacts that companies' lending models may have on protected classes.

In 2020, the SBPC published a report highlighting that the use of one type of alternative data—information about credit applicants' educational history, referred to as "educational criteria"—can "penalize borrowers of color and community college students."[22] The report documented the results of an investigation involving mystery shopping on the website of a prominent fintech company and a large bank, both of which consider educational criteria when making lending decisions. This investigation found that at one company, a graduate of an HBCU

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[17] *See e.g.*, *Alternative Data See Beyond Traditional Credit*, Equifax, https://www.equifax.com/business/alternative-data/ [https://perma.cc/Y2PY-NKQY].

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[21] Notice & Request for Info., No. CFPB-2017-0005 CFPB (Feb. 14, 2017), https://files.consumerfinance.gov/f/documents/20170214_cfpb_Alt-Data-RFI.pdf; Fed. Trade Comm'n, Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues (Jan. 2016), https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf.

[22] *See* Press Release, Student Borrower Prot. Ctr., New Report Finds 'Educational Redlining' Penalizes Borrowers Who Attended Community Colleges & Minority-Serving Institutions, Perpetuates Systemic Disparities (Feb. 5, 2020), https://protectborrowers.org/new-report-finds-educational-redlining-penalizes-borrowers-who-attended-community-colleges-and-minority-serving-institutions-perpetuates-systemic-disparities/; Bussey, *supra* note 11.

could pay "$3,499 more over the life of a five-year loan" than an otherwise identical student who did not attend an HBCU.[23]

The SBPC's 2020 report underscored the serious consumer risk associated with the use of educational criteria in consumer lending: in addition to generating disparate outcomes for protected classes, the practice involves judging individuals' creditworthiness based on their group identity, even though financial outcomes typical for students of a given institution or program may not reflect the creditworthiness of any specific individual who attends that institution or program. For borrowers who are members of protected classes, these practices may result in diminished access to credit or a need to pay more than similarly situated white peers for the same loan.

For borrowers who are members of protected classes, these practices may result in diminished access to credit or a need to pay more than similarly situated white peers for the same loan.

Awareness of the phenomenon of educational redlining is not new. In 2007, the state of New York alleged that a student loan company had charged students with high credit ratings who attended non-selective institutions higher interest rates than borrowers with worse credit scores who attended more selective institutions.[24] Reflecting on the case, representatives from the New York State Attorney General's Office stated, "[j]ust as lenders in the mortgage industry once made judgments about credit lending in entire neighborhoods as a whole, so too are lenders making generalized judgments about student and parent risk based on a student's school neighborhood."[25] As state law enforcement saw it, such a use of non-individualized educational credit factors runs the risk of creating a tiered credit market that cements existing disparities across socioeconomic strata, race, and gender—favoring applicants for the "prestige" of their educational institutions rather than their individual creditworthiness.[26]

Similarly, the Consumer Financial Protection Bureau (CFPB) warned in 2011 that there could be grave fair lending risks associated with the use of the cohort default rate (CDR) of the institution in which a student is enrolled to

[23] *Id.*

[24] *Cuomo charges 'redlining' in student loan probe*, NBC News (Jun. 19, 2007 2:45 PM), https://www.nbcnews.com/id/wbna19316230#.XjnY6xNKhQI [https://perma.cc/F62B-EQUU?type=image].

[25] Karen W. Arenson, *Some Lenders Are Setting Rates College by College*, N.Y. Times (Jun. 19, 2007), https://www.nytimes.com/2007/06/19/us/19loans.html?_r=1&oref=slogin.

[26] *See* supra note 22.

generate an "eligibility cutoff" for the purpose of credit decisioning.[27] CDR measures the proportion of student loan borrowers from a given college who enter repayment on federal student loans in a certain period and who ultimately default on their loans during that period.[28] Even though "CDR was not specifically intended to assist private lenders in eligibility, underwriting, and pricing decisions," the CFPB noted that private creditors were increasingly using CDR to inform lending decisions by simply not lending to students attending institutions with CDRs beyond certain "eligibility cutoff" levels.[29] The CFPB warned that this practice is likely to be problematic, as "racial and ethnic minority students are disproportionately concentrated in schools with higher CDRs."[30] Later, in 2014, the FDIC took action against the student lender Sallie Mae in part for using CDRs to price private student loans, a practice the FDIC determined to be in violation of the Equal Credit Opportunity Act (ECOA).[31]

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[27] CFPB, Private Student Loans 78 (Aug. 29, 2019), https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf. Note also that Congress specifically directed the CFPB to consider the use of cohort default rates in underwriting by private student loan companies. Dodd-Frank Wall Street Reform & Consumer Protect. Act, 12 U.S.C. 5301 § 1077(D)–(F), https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf#page=702.

[28] CFPB, *supra* note 27.

[29] *Id.*

[30] For example, the CFPB found that "African-American and Hispanic students were almost twice as likely as students generally to attend schools with a CDR above 8% than schools with a rate below the threshold." Reliance by lenders on program-level CDR cutoffs to determine individual credit applicants' access to and cost of credit could therefore result in educational redlining. As the CFPB put it, "use of CDR to determine loan eligibility, underwriting, and pricing may have a disparate impact on minority students by reducing their access to credit and requiring those minority students who meet the lenders' eligibility thresholds to pay higher rates than are otherwise available to similarly creditworthy non-Hispanic White students at schools with lower CDRs." *Id.*

[31] In the Matter of Sallie Mae Bank, FDIC-13-0366b (May 13, 2014), https://www.fdic.gov/news/press-releases/2014/salliemae.pdf [https://perma.cc/YG7S-7LWC].

Educational Redlining and Income Share Agreements

The risk of educational redlining is pronounced in the ISA space.[32] ISAs are consumer contracts wherein a student pledges a portion of his or her future income in exchange for money used to pay for college.[33] ISA providers will generally vary the terms of their product (including the proportion of income that a borrower must pay back, the income threshold that determines when a borrower must begin repayment, and the number of payments a borrower must make to fulfill their obligations) based on the student's institution and/or major of choice.[34] This design is intended to prevent adverse selection in the ISA market, as applying uniform ISA terms to all borrowers could lead only students who expect relatively low incomes after graduation to take up the product while students who expect to earn more (and who would be most lucrative to lenders) would prefer more traditionally structured private student loans.[35]

[32] *See* Am. Enter. Inst., Pricing Without Discrimination Alt. Student Loan Pricing, Income-Share Agreements, & The Equal Credit Opportunity Act (Feb. 2017), https://www.aei.org/wp-content/uploads/2017/02/Pricing-Without-Discrimination.pdf ("[W]ith AltFinance, which prices loans based on a student's perceived likelihood of repayment, and ISAs, in which an investor obtains repayment based on a student's future income, the risk of Equal Credit Opportunity Act (ECOA) claims is significant"); Fed. Res. Bank of Philadelphia, Modern Income-Share Agreements in Postsecondary Education: Features, Theory, Applications (Dec. 2019), https://www.philadelphiafed.org/-/media/frbp/assets/consumer-finance/discussion-papers/dp19-06.pdf ("Any financial contract with the potential for a high degree of market segmentation in payment terms is susceptible to overt or inadvertent discriminatory practices. ISA terms are selected in light of projected future earnings, but these earnings are highly correlated with a number of demographic characteristics."); Mike Koczal, *Human Capital Contracts Would Discriminate on Gender, Race & Class*, Roosevelt Inst. (Jan. 19, 2016), https://rooseveltinstitute.org/2016/01/19/human-capital-contracts-would-discriminate-on-gender-race-and-class/ ("You can't say that ISAs would tease out the minor pay differences that would come from marginal higher education choices without also noting that they would focus like a laser on the pay differences that come from structural discrimination.").

[33] *Supra* note 4.

[34] Supra note 9.

[35] *See, e.g.*, Kevin J. Mumford, Purdue Uni., Student Selection into an Income Share Agreement 26 (Feb. 2020), https://www.krannert.purdue.edu/faculty/kjmumfor/papers/Mumford%20Income%20Share%20Agreement%20Selection.pdf [https://perma.cc/UVT8-4BTD] ("If there were a single income share percentage applied to all students at the university, I believe there would be strong adverse selection by major and year in school.").

Given that income, [36] college selection,[37] and students' choice of major[38] are all closely associated with race, allowing ISA products to be priced based on a borrower's program of study or institution attended as a proxy for future income potential opens the door for educational redlining and other fair lending violations.[39] As described in an analysis published by the American Enterprise Institute, "there is a significant risk that evaluating students on these factors tends to generate disparate impact on protected classes. Because some of the best predictors of student performance and future income are familial factors, such factors will disparately affect traditionally underserved communities."[40] Put more simply in a recent blog post by a leading scholar of consumer finance, the practice of varying the cost of an ISA based on a student's institution or major means that "students at an HBCU or MS[I] (minority-serving institutions) or Gesthemane Christian College or the Ploni Almoni Rabbinical Academy could be offered different terms than the students at Big Time State or at Olde New England College, irrespective of any actuarial differences. Similarly, computer science majors could be offered a different rate than, say psychology majors or Chicano studies majors, irrespective of any actuarial differences."[41]

Given that income, college selection, and students' choice of major are all closely associated with race, allowing ISA products to be priced based on a borrower's program of study or institution attended opens the door for educational redlining and other fair lending violations.

[36] Valeria Wilson, *Racial disparities in income & poverty remain largely unchanged amid strong income growth in 2019*, Econ. Policy Inst. (Sep. 16, 2020 10:49 AM), https://www.epi.org/blog/racial-disparities-in-income-and-poverty-remain-largely-unchanged-amid-strong-income-growth-in-2019/.

[37] Monarrez, *supra* note 10.

[38] Dickson, *supra* note 10.

[39] *Supra* note 32; *see also* Student Borrower Prot. Ctr., *Emerging Risks Virtual Conference Series Panel #2: Fair Lending, Discrimination, & ISAs*, YouTube (Jul. 31, 2020), https://www.youtube.com/watch?v=6J7l2eVcg4s&feature=emb_logo (then-FTC Commissioner Rohit Chopra saying, "our student debt market is definitely broken, and it needs a massive overhaul. And I'm not sure that new products like Income Share Agreements will be an antidote, especially if they worsen existing disparities. . . . However elaborate the financial product, discrimination is discrimination, and regulators need to be vigorous in rooting it out to protect those we've designated as in need of defense against discrimination").

[40] Am. Enter. Inst., *supra* note 32.

[41] Adam Levitin, *How NOT to Regulate ISAs*, Credit Slips (Aug. 1, 2019 8:36 PM), https://www.creditslips.org/creditslips/2019/08/how-not-to-regulate-isas.html.

In fact, one need not speculate regarding whether ISAs could be priced in such a way as to generate disparate outcomes for protected classes, as recent analysis indicates that such products may already be present in the market.[42] For example, fair lending experts recently noted that the advertised cost of an ISA offered at the University of Utah was thousands of dollars higher for students in majors with relatively more female students and students of color.[43]

Table 1: Majors and advertised ISA cost at the University of Utah[44]

	MAJORS THAT ARE NOT LARGELY WHITE AND MALE		MAJORS THAT ARE LARGELY WHITE AND MALE	
	LATIN AMERICAN STUDIES	**SOCIOLOGY**	**FINANCE**	**MINING ENGINEERING**
Major: Percent Female	63%	66%	15%	15%
Major: Percent Domestic Students of Color	50%	43%	17%	18%
ISA: Percent of Income to be Paid	4.90%	4.63%	3.49%	3.27%
ISA: Required Number of Payments	112	106	80	74
ISA: Advertised Total Cost	**$18,426**	**$18,183**	**$15,528**	**$15,383**

Though ISAs are often framed as "novel"[45] and "innovative,"[46] pricing disparities such as those depicted above indicate that these products may simply be a vehicle for age-old discriminatory practices.

[42] *Supra* note 9.

[43] *Id.*

[44] *Id.*

[45] *Income-Share Agreements Are a Novel Way to Pay Tuition Fees*, Economist (July 19, 2018), https://www.economist.com/finance-and-economics/2018/07/19/income-share-agreements-are-a-novel-way-to-pay-tuition-fees [https://perma.cc/B54W-XCW8].

[46] *Income Share Agreement*, Univ. of Utah, https://isa.utah.edu/ [https://perma.cc/32HA-XQVD].

The Applicability of Consumer Protection and Fair Lending Law to ISAs

A defining feature of the marketing of ISAs is industry's insistence that the contracts are not student loans[47] or not even a form of credit[48] and that they therefore fall outside of the legal structures that may be used to address the potential disparate impacts described above.[49] However, legal experts increasingly agree that ISAs are simply another form of consumer credit that falls squarely within the purview of ECOA, the Truth in Lending Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Consumer Financial Protection Act of 2010,[50] meaning that they fall under the CFPB's supervisory, enforcement, and rulemaking authority.[51] As the authors of a recent analysis described the issue, "ISAs are just another type of student loan. To obtain an ISA, as with a student loan, students apply to a company to obtain money for their education in exchange for a promise to repay the company in the future . . . . The fact that borrowers can pay back their ISAs as a percentage of their post-graduate income is nothing special—in fact, payment plans based on a percentage of income are available to the vast majority of students repaying federal student loans and a growing number with private student loans. The thing an ISA most resembles in the world is a student *loan*."[52] ISAs "therefore are already subject to federal regulation and enforcement."[53]

If this is the case, it is possible that ISAs could be challenged under existing civil rights laws. Civil rights lawyers have already begun charting a course for challenges along these lines.[54] In a recent publication, for example, two

[47] Mitch Daniels, *Opinion: Here Is a Powerful Alternative to Student Loans*, Wash. Post (Nov. 28, 2019, 3:00 AM), https://www.washingtonpost.com/opinions/income-share-agreements-are-a-powerful-alternative-to-student-loans/2019/11/27/5290d0ee-0be3-11ea-97ac-a7ccc8dd1ebc_story.html.

[48] Lambda, Inc., *Income Share Agreement*, https://lib.openlaw.io/web/default/template/Lambda%20Income%20Share%20Agreement%20%28LISA%29%20%28Tokenized%29 [https://perma.cc/256D-G6WE] ("[T]his Agreement is not 'credit' . . . .").

[49] Joanna Pearl & Brian Shearer, Student Borrower Prot. Ctr., *Credit by Any Other Name: How Federal Consumer Financial Law Governs Income Share Agreements* (July 21, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3661989.

[50] *Id.*

[51] Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301, §§ 5481-5603.

[52] Pearl & Shearer, *supra* note 49 (emphasis in original).

[53] *Id.*

[54] Student Borrower Prot. Ctr., Solving Student Debt or Compounding the Crisis?: Income Share Agreements and Fair Lending Risks (July 2020), https://protectborrowers.org/wp-content/uploads/2020/07/SBPC_Hayes_Milton_Relman_ISA.pdf.

experts working in fair lending law noted that ISA companies' practices "echo allegations of discriminatory targeting in reverse redlining case law," that "features of ISAs could raise risks under traditional disparate impact analysis," and that "in addition to ECOA, various other statutory vehicles exist for challenging discrimination in ISA programs" including "state and local fair lending laws, state and local public accommodations statutes, and federal funding and education antidiscrimination laws. . . ."[55] As the legal foundation for fair lending claims against ISA providers solidifies, it becomes all the more important for researchers and law enforcement officials to identify firms in the ISA space deploying tactics that may pose fair lending risks.

[55] *Id.*

Stride Funding

To highlight the potential for ISA providers to engage in educational redlining, the SBPC examined the products offered by Stride Funding, a company that provides ISAs to students attending a variety of postsecondary institutions.[56] Stride Funding claims to set the cost of its ISAs based on "a number of factors including academic program, college or university, and when a student will start earning an income."[57] It is not clear whether Stride Funding uses other educational criteria such as the average SAT score for a given institution to inform its underwriting.[58] Stride Funding notes that it does check applicants' credit scores "to make sure your other obligations are manageable," but the company states, "[w]e do not base our approval on a particular credit score."[59] As discussed above, Stride Funding lends "mostly to STEM grad students like people studying to be engineers, nurses and physicians' assistants,"[60] and Stride Funding's founder has claimed that "80% of [Stride's] borrowers are women and 75% are underrepresented minorities."[61]

The SBPC conducted extensive mystery shopping on a random sample of Title IV schools, analyzed the relationship between school and program characteristics and Stride Funding's marketing of its ISA offerings, and supplemented its findings with specific illustrative comparisons of ISA cost quotes provided by Stride Funding through its online ISA price estimation tool for specific programs and schools. Further methodological detail is available in Appendix A.

[56] *Supra* notes 1, 5-6 and accompanying text; *see also Paying for College with a Stride Funding ISA*, Scholarships360, https://scholarships360.org/financial-aid/stride-funding-isa/ [https://perma.cc/3KYN-3888].

[57] *Why ISAs?*, Stride Funding, https://www.stridefunding.com/students [https://perma.cc/SSB8-MNLF].

[58] *See* Katherine Welbeck & Ben Kaufman, *Fintech Lenders' Responses to Senate Probe Heighten Fears of Educational Redlining*, Student Borrower Prot. Ctr. (July 31, 2020), https://protectborrowers.org/fintech-lenders-response-to-senate-probe-heightens-fears-of-educational-redlining/.

[59] *Why ISAs?*, Stride Funding, https://www.stridefunding.com/students [https://perma.cc/XRF3-XYDR].

[60] *Tess Michaels*, *supra* note 15.

[61] *Id.*

The results of this investigation include the following:

- **Stride Funding's own data reveals that a student at an HBCU can expect to pay more for one of Stride Funding's ISA products than an otherwise-identical peer who does not attend an HBCU.** Students choosing whether to attend an HBCU should not have to weigh their desire to enroll in the school of their choosing against the risk that doing so could lead them to face thousands of dollars of additional charges for financial products. With Stride Funding, however, that risk may be a reality.

  Table 2 contains price quotes provided by Stride Funding for an undergraduate computer science major seeking funding to be disbursed in June 2021 with a projected graduation date of June 2022. Everything about this credit applicant was held constant to generate the following price quotes except for the school the credit applicant reportedly attended. All price quotes were provided directly from Stride Funding. Given that most college students choose which institution to attend in large part based on a school's proximity,[62] the following comparisons are structured as one-to-one matchings between relatively nearby schools that a student may reasonably choose between. This comparison structure is intended to more closely approximate the real-life choices and credit consequences prospective students face when considering where to go to college. Comparison schools were selected based on proximity and relative similarity in various metrics for student outcomes. See Appendix A for additional detail.

  Students choosing whether to attend an HBCU should not have to weigh their desire to enroll in the school of their choosing against the risk that doing so could lead them to face thousands of dollars of additional charges for financial products. With Stride Funding, however, that risk may be a reality.

  Stride Funding's own data reveal that someone choosing between each of these nearby pairs of schools could expect to pay hundreds or thousands of additional dollars for the same amount of financing through Stride Funding if they attend an HBCU. For example, Tuskegee and Auburn may be only roughly

[62] *See generally* Abigail Wozniak, *Going Away to College? School Distance as a Barrier to Higher Education*, EconoFact (Mar. 22, 2018), https://econofact.org/going-away-to-college-school-distance-as-a-barrier-to-higher-education [https://perma.cc/TGK9-XK5Y]; *see also* Nicholas Hillman & Taylor Weichman, Am. Council on Educ., Education Deserts: The Continued Significance of "Place" in the Twenty-First Century (2016), https://www.acenet.edu/Documents/Education-Deserts-The-Continued-Significance-of-Place-in-the-Twenty-First-Century.pdf [https://perma.cc/QXB8-W6VQ] (showing that the median student in the U.S. attends a college only 13 miles from home).

20 miles apart,[63] but the quoted cost of a $10,000 Stride Funding ISA for a computer science major attending these two schools is separated by over $2,800 in additional charges for Tuskegee students.[64]

The comparisons above are not isolated examples. Across a range of majors and schools, the SBPC identified disparities in Stride Funding's stated pricing for students at HBCUs. See Appendix B.

Table 2: Comparing Stride Funding's price quotes for a $10,000 ISA for an undergraduate computer science major graduating in June 2022 with funding disbursed in June 2021 using Stride Funding's estimated starting incomes[65]

HBCU	STRIDE'S QUOTED COST FOR THE ISA	NEARBY COMPARISON SCHOOL	STRIDE'S QUOTED COST FOR THE ISA	ADDED COST FOR THE HBCU ATTENDEE	DIFFERENCE IN COST OF CREDIT FOR THE HBCU ATTENDEE
Tuskegee	$20,000	Auburn	$17,198	**+$2,802**	**+39%**
Morehouse	$18,424	Emory	$17,057	**+$1,367**	**+19%**
Howard	$17,952	Georgetown	$16,702	**+$1,250**	**+19%**
Hampton	$18,122	William & Mary	$16,889	**+$1,233**	**+18%**
Florida A&M University	$18,122	Florida State University	$16,922	**+$1,200**	**+17%**
Xavier University of Louisiana	$18,122	Tulane	$17,304	**+$818**	**+11%**
North Carolina A&T	$18,596	UNC Greensboro	$18,036	**+$560**	**+7%**
Spelman	$17,404	Emory	$17,057	**+$347**	**+5%**

[63] *Transportation*, Tuskegee Univ., https://www.tuskegee.edu/tours/visiting-tuskegee/transportation (last accessed Feb. 26, 2020).

[64] *See infra* Table 2.

[65] Stride Funding, *Funding Terms*, [https://perma.cc/S9DK-B5HX] (Computer Science, Tuskegee University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/DP7E-F42U] (Computer Science, Auburn University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/UPR3-WCAS] (Computer Science, Morehouse College) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/RWL6-K9CM] (Computer Science, Emory University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/FKH8-4XRU] (Computer Science, Howard University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/87NH-DA23] (Computer Science, Georgetown University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/7R2L-DVKR] (Computer Science, Hampton University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/ES3F-HAM3] (Computer Science, College of William and Mary) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/H2KJ-8XKW] (Computer Science, Florida

- **After graduation, HBCU alumni owing on Stride Funding's products can expect to pay substantially more for an ISA than identical people working in the same job who graduated from a non-MSI.** The preceding analysis shows the disparities that appear to arise in Stride Funding's model when the company estimates the cost of an ISA based on data it supplies regarding graduates' expected starting incomes.[66] However, that is not the only avenue through which Stride Funding's model may generate the expectation of disparities for students at HBCUs. Analysis of Stride Funding's pricing patterns reveals that the company's advertised ISA terms could lead an HBCU graduate to pay substantially more for the same amount of funding than someone with the same income and who is otherwise financially identical but who did not attend an HBCU.[67] This finding illustrates how educational redlining harms borrowers in the real world—even though the two people may be identical, the HBCU graduate could face thousands of dollars in added costs for credit.

  Consider two recent graduates: one from Morehouse and one from Emory. Both studied economics during undergrad, both graduated in the same year, and both chose to stay in Atlanta after graduation. In fact, the two took on the exact same job as financial analysts at the same firm, where they each earn the average salary for a financial analyst in Atlanta: $59,774.[68] The two recent graduates both borrowed $10,000 through a Stride Funding ISA to help finance their undergraduate education. Though they differ

Agricultural and Mechanical University) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/9FPT-E746] (Computer Science, Florida State University) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/PCZ5-78GM] (Computer Science, Xavier University of Louisiana) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/SM7A-DABB] (Computer Science, Tulane University of Louisiana) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/B3SZ-EJ24] (Computer Science, North Carolina A & T State University) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/ZBY2-8YAY] (Computer Science, University of North Carolina at Greensboro) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/3LJL-5K7W] (Computer Science, Spelman College) (accessed Jan. 12, 2021).

[66] Regarding the sourcing of Stride Funding's data on graduates' starting salaries, *see* Stride Funding, *How do we predict your future income?*, https://perma.cc/CEN3-5PST (excerpt from standard landing page stating: "Stride leverages public and proprietary data sets to predict starting salaries and raise rates across schools and majors. You are encouraged to do your own research, but some of our favorite sources include the Department of Education's College Scorecard Database, the Bureau of Labor Statistics wage database, the US Census Bureau's American Community study. Stride also uses private and proprietary databases, and we strive to ensure predictions are validated across multiple data sources").

[67] *See* Appendix A. In general, the SBPC calculated the cost of an ISA using data Stride Funding generated on the income share, minimum income threshold, repayment cap, and repayment period length of an ISA for students in various courses of study at various institutions of higher education. Assumes constant income growth at 4% per year.

[68] *Financial Analyst Salaries in Atlanta, GA Area*, Glassdoor, https://www.glassdoor.com/salaries/atlanta-financial-analyst-salary-SRCH_IL0,7_IM52_KO8,25.htm [https://perma.cc/NQU6-7F3M].

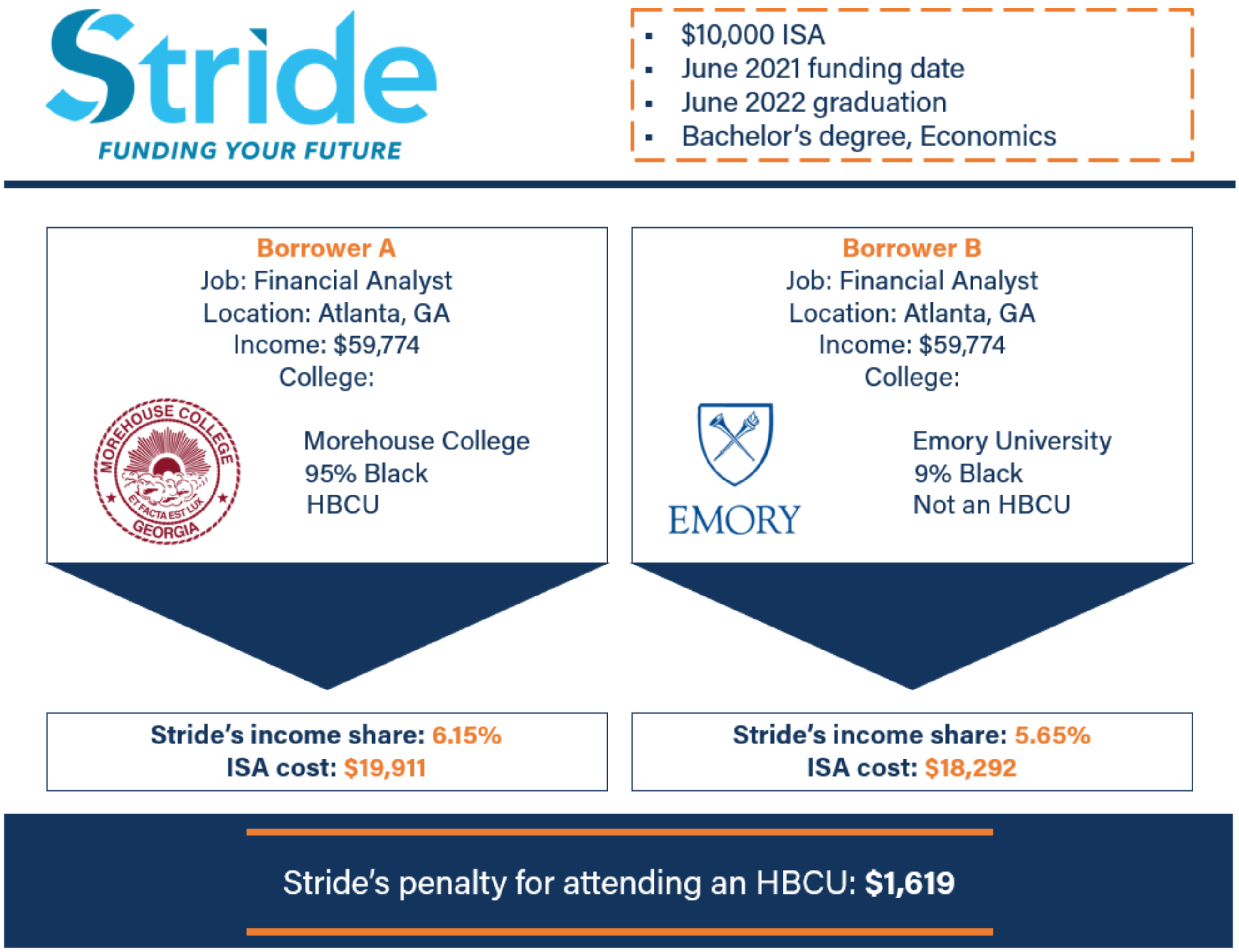
in the college they attended, the two people are identical in every discernable aspect of their financial lives.

In this case, the person who attended Morehouse, an all-male HBCU, can expect to pay $1,619 more for their ISA (equivalent to a 20 percent higher cost of credit) than the person who attended Emory based on Stride Funding's quoted pricing structure.[69] This is because Stride Funding quotes Morehouse undergraduates studying economics the price of 6.15 percent of their income for a $10,000 ISA while quoting Emory undergraduates with the same major only 5.65 percent of their income as the price for the same amount of funding.

This is not an isolated example. See Appendix C.

[69] SBPC calculation. Assumes constant income growth at 4% per year. *See* Appendix A.

Table 3: Comparing the estimated price of a $10,000 Stride Funding ISA for an undergraduate economics major graduating in June 2022 with funding disbursed in June 2021 using the same starting income across schools[70]



Perhaps even more concerningly, had the exact same Morehouse student been female, studied economics at Spelman (an all-female HBCU that is adjacent Morehouse), and applied for the same ISA,

[70] Stride Funding, *Funding Terms*, [https://perma.cc/EW35-6ALF] (Economics, Morehouse College) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/SG5B-2HBK] (Economics, Emory University) (accessed Jan. 12, 2021); *Morehouse Demographics: How Diverse Is It?*, College Factual, https://www.collegefactual.com/colleges/morehouse-college/student-life/diversity/ (last accessed Feb. 26, 2021); *Emory Student Population Stats,* College Factual, https://www.collegefactual.com/colleges/emory-university/student-life/diversity/ (last accessed Feb. 26, 2021); SBPC calculation. Assumes constant income growth at 4% per year. *See* Appendix A.

Stride Funding simply would not have offered her one.[71] Instead, she would have been met with a message saying, "unfortunately, based on the information you provided, Stride Funding is unable to fund your education at this time."[72]

- **Stride Funding's apparently disparate pricing behavior extends across other MSIs.** Stride Funding's practices may not only harm students attending HBCUs, as there is evidence that the company's pricing model may also penalize students attending Hispanic-Serving Institutions (HSIs). For example, Table 4 revisits the example of an undergraduate computer science major seeking a Stride Funding ISA to be disbursed in June 2021 with a projected graduation date of June 2022 but this time with the borrower choosing between an HSI and a nearby school that is not an HSI. The price quotes included were provided directly from Stride Funding, and everything about this potential credit applicant was held constant except for the school they reportedly attended. See Appendix A for additional detail.

  Just as in the case of students considering an HBCU, Stride Funding's own data reveals that students who attend HSIs can expect to be charged thousands of dollars more for the same amount of financing if they take on a Stride Funding ISA.

  Students at other types of MSIs may also be penalized by Stride Funding's model. For example, there is evidence that Stride Funding may be selectively targeting its high cost, high risk product toward students at tribal colleges but not to those at nearby public colleges.[73] These findings underscore the need for immediate and substantial scrutiny of Stride Funding's conduct.

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[71] Stride Funding, *Our Partners Are Here To Help!*, [https://perma.cc/92MN-C3PB] (In testing Stride Funding's model, we applied for a $10,000 Stride Funding ISA for a student studying economics at Spelman graduating in June 2022 with a funding date in June 2021. We were directed to this page declining to offer us a loan.) (accessed Jan. 12, 2021).

[72] *Id.*

[73] In one example, Stride Funding marketed its expensive ISA product as being available for undergraduates pursuing degrees in "Teaching and Teacher Education" at Diné College and Haskell Indian Nations University, two tribal colleges, but not at University of New Mexico-Main Campus or at the University of Kansas-Lawrence, two non-tribal colleges that may respectively serve as "comparison schools" as defined in Appendix A for these two tribal colleges. *See* Stride Funding, *Funding Terms*, [https://perma.cc/ND6K-58JW] (Teaching and Teacher Education, Haskell Indian Nations University) (accessed Jan. 13, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/W87P-LAX9] (Teaching and Teacher Education, Diné College) (accessed Jan. 13, 2021); Stride Funding, *Our Partners Are Here To Help!*, [https://perma.cc/X7GB-YFFA] (In testing Stride Funding's model, we applied for a $10,000 Stride Funding ISA for a student studying Teaching and Teacher Education at the University of Kansas-Lawrence graduating in June 2022 with a funding date in June 2021. We were directed to this page declining to offer us a loan.) (accessed Jan. 13, 2021); Stride Funding, *Our Partners Are Here To Help!*, [https://perma.cc/6RQM-J2VT] (In testing Stride Funding's model, we applied for a $10,000 Stride Funding ISA for a student studying Teaching and Teacher Education at the University of New Mexico-Main Campus graduating in June 2022 with a funding date in June 2021. We were directed to this

Table 4: Comparing Stride Funding's price quotes for a $10,000 ISA for an undergraduate computer science major graduating in June 2022 with funding disbursed in June 2021 using Stride Funding's estimated starting incomes[74]

HSI	STRIDE'S QUOTED COST FOR THE ISA	NEARBY COMPARISON SCHOOL	STRIDE'S QUOTED COST FOR THE ISA	ADDED COST FOR THE HSI ATTENDEE	DIFFERENCE IN COST OF CREDIT FOR THE HSI ATTENDEE
University of Houston	$17,602	Rice University	$16,689	**+$913**	**+14%**
University of Central Florida	$17,318	Rollins College	$17,065	**+$253**	**+4%**
California State —Long Beach	$17,253	Occidental College	$17,018	**+$235**	**+3%**
UC Santa Barbara	$17,270	Westmont College	$17,066	**+$204**	**+3%**
Florida International	$17,367	University of Miami	$17,247	**+$120**	**+2%**

- **Apparent pricing disparities for students at MSIs hold even when the MSI is the higher ranked school, undercutting Stride Funding's likely defense that cost differences reflect school quality.** Responding to the findings above, Stride Funding may argue that there is a business necessity for the

page declining to offer us a loan.) (accessed Jan. 13, 2021). While not dispositive, these findings raise concerns that Stride Funding could be deploying so-called "reverse redlining" tactics, wherein companies target members of vulnerable communities with inferior financial products. These tactics are unfortunately common in the higher education finance space. *See, e.g.*, Genevieve Bonadies, Joshua Rovenger, Eileen Connor, Brenda Shum & Toby Merrill, *For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate*, Harv. L. Rev. Blog (July 30, 2018), https://blog.harvardlawreview.org/for-profit-schoolspredatorypractices-and-students-of-color-a-mission-to-enroll-rather-than-educate/.

[74] Stride Funding, *Funding Terms*, [https://perma.cc/CG8K-GHTG] (Computer Science, University of Houston) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/6NP7-7E7A] (Computer Science, Rice University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/5L32-HLSQ] (Computer Science, University of Central Florida) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/F59L-UTJE] (Computer Science, Rollins College) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/SH33-6TFV] (Computer Science, California State University-Long Beach) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/6YAL-4BXG] (Computer Science, Occidental College) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/UN9B-SF2J] (Computer Science, University of California-Santa Barbara) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/3SY5-VEMV] (Computer Science, Westmont College) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/23GR-FC58] (Computer Science, Florida International University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/LS7L-NSWK] (Computer Science, University of Miami) (accessed Jan. 11, 2021).

price disparities illustrated here. In particular, as is common in the ISA space,[75] Stride Funding may contend that its pricing differentials simply reflect disparities in the quality of certain schools and programs. Available evidence suggests that is not the case. Instead, there are several instances where Stride Funding quotes a student at an MSI a higher price for the same ISA than it does for an identical student at a non-MSI that has a lower U.S. News and World Report ranking. U.S. News and World Report rankings are flawed as a proxy for true school quality and have been described by critics as amounting only to "a popularity or beauty contest."[76] However, they are used here to underscore that Stride Funding's data reveals that the company may penalize students simply for attending an MSI.

Returning to the example of an undergraduate computer science major seeking a $10,000 ISA for graduation in June 2022 with a funding date in June 2021, the phenomenon of Stride Funding quoting students at higher-ranked MSIs worse ISA terms than those advertised to students at lower-ranked non-MSIs is evident. In one example, a student at Spelman, an HBCU, could expect to pay a 5 percent higher finance charge than a student at a school that Spelman is ranked 59 places above but that is almost 60 percent white.[77]

[75] Jen Mishory, *Private ISA Student Loans Highlight Consumer Protection Challenges*, The Century Found. (Aug. 22, 2019), https://tcf.org/content/commentary/private-isa-student-loans-highlight-consumer-protection-challenges/ ("To solve for this adverse selection issue, some ISA loans charge projected higher-income earners a smaller percentage of their income to participate than they do for those they project will earn lower incomes.").

[76] John Tierney, *Your Annual Reminder to Ignore the* U.S. News & World Rep.; *College Rankings*, Atlantic (Sept. 10, 2013), https://www.theatlantic.com/education/archive/2013/09/your-annual-reminder-to-ignore-the-em-us-news-world-report-em-college-rankings/279103/.

[77] *Westmont Diversity & Demographics,* College Factual, https://www.collegefactual.com/colleges/westmont-college/student-life/diversity/ (last accessed Feb. 26, 2021).

Table 5: Comparing Stride Funding's price quotes for a $10,000 ISA for an undergraduate computer science major graduating in June 2022 with funding disbursed in June 2021 using Stride Funding's estimated starting incomes[78]

SCHOOL	STRIDE'S QUOTED COST FOR THE ISA	U.S. NEWS AND WORLD REPORT RANKING	PERCENT OF SCHOOL THAT IS BLACK	PERCENT OF SCHOOL THAT IS WHITE
Howard (HBCU)	$17,952	80 (National Universities)	88%	2%
Auburn (non-HBCU)	$17,198	97 (National Universities)	5%	79%

HBCU penalty: **+$754**

Difference in cost of credit: **+10%**

The HBCU is ranked **17 places** above the non-HBCU

SCHOOL	STRIDE'S QUOTED COST FOR THE ISA	U.S. NEWS AND WORLD REPORT RANKING	PERCENT OF SCHOOL THAT IS BLACK	PERCENT OF SCHOOL THAT IS WHITE
Spelman (HBCU)	$17,404	54 (Liberal Arts Colleges)	97%	<1%
Westmont (non-HBCU)	$17,066	113 (Liberal Arts Colleges)	2%	58%

HBCU penalty: **+$338**

Difference in cost of credit: **+5%**

The HBCU is ranked **59 places** above the non-HBCU

SCHOOL	STRIDE'S QUOTED COST FOR THE ISA	U.S. NEWS AND WORLD REPORT RANKING	PERCENT OF SCHOOL THAT IS HISPANIC/LATINO	PERCENT OF SCHOOL THAT IS WHITE
UCSB (HSI)	$17,270	30 (National Universities)	26%	31%
William & Mary (non-HSI)	$16,889	39 (National Universities)	9%	59%

HSI penalty: **+$381**

Difference in cost of credit: **+6%**

The HSI is ranked **9 places** above the non-HSI

[78] *Id*; *Howard University Undergraduate Ethnic Diversity Breakdown,* College Factual, https://www.collegefactual.com/colleges/howard-university/student-life/diversity/chart-ethnic-diversity.html (last accessed Feb. 26, 2021); *Auburn University Undergraduate Ethnic Diversity Breakdown,* College Factual, https://www.collegefactual.com/colleges/auburn-university/student-life/diversity/chart-ethnic-diversity.html (last accessed Feb. 26, 2021); *Spelman College Undergraduate Ethnic Diversity Breakdown,* College Factual, https://www.collegefactual.com/colleges/spelman-college/student-life/diversity/chart-ethnic-diversity.html (last accessed Feb. 26, 2021); *University of California - Santa Barbara Undergraduate Ethnic Diversity Breakdown,* College Factual, https://www.collegefactual.com/colleges/university-of-california-santa-barbara/student-life/diversity/chart-ethnic-diversity.html (last accessed Feb. 26, 2021); *College of William and Mary Undergraduate Ethnic Diversity Breakdown,* College Factual, https://www.collegefactual.com/colleges/college-of-william-and-mary/student-life/diversity/chart-ethnic-diversity.html (last accessed Feb. 26, 2021); *College of William and Mary Undergraduate Ethnic Diversity Breakdown,* College Factual, https://www.collegefactual.com/colleges/college-of-william-and-mary/student-life/diversity/chart-ethnic-diversity.html (last accessed Feb. 26, 2021); *Howard University*, U.S. News and World Rep., https://www.usnews.com/best-colleges/howard-university-1448 (last accessed Feb. 26, 2021); *Auburn University*, U.S. News and World Rep., https://www.usnews.com/best-

Conclusion

The CFPB has noted that the use of alternative data in underwriting "could dampen social mobility, result in discriminatory outcomes, or otherwise disadvantage certain groups, characteristics, or behaviors."[79] The findings outlined here underscore the prescience of the CFPB's observation. There is ample evidence that Stride Funding's pricing model may generate disparate impacts on members of protected classes, furthering the cycle of discriminatory credit access and educational redlining that has impeded wealth-building opportunities for communities of color.

Should these practices continue, the chorus of scholars, practitioners, and other experts who warned that ISAs may serve only to provide new packaging for age-old discrimination will be proven unfortunately right.[80] In the process, a generation of borrowers aiming only to pursue higher education will be left with unaffordable, unmanageable, and unfairly originated debt.

colleges/auburn-university-1009 (last accessed Feb. 26, 2021); *Spelman College*, U.S. News and World Rep., https://www.usnews.com/best-colleges/spelman-college-1594 (last accessed Feb. 26, 2021); *Westmont College*, U.S. News and World Rep., https://www.usnews.com/best-colleges/westmont-college-1341 (last accessed Feb. 26, 2021); *University of California—Santa Barbara*, U.S. News and World Rep., https://www.usnews.com/best-colleges/university-of-california-santa-barbara-1320 (last accessed Feb. 26, 2021); *William & Mary*, U.S. News and World Rep., https://www.usnews.com/best-colleges/william-and-mary-3705 (last accessed Feb. 26, 2021); *supra* notes 65, 74.

[79] Bureau of Consumer Fin. Prot., CFPB-2017-0005, Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process (2017), https://files.consumerfinance.gov/f/documents/20170214_cfpb_Alt-Data-RFI.pdf.

[80] *Supra* note 32.

Appendix A: Methodology

In preparing this report, the SBPC utilized Stride Funding's online rate quote feature, a tool that provides prospective borrowers with price estimates for ISAs based on the applicant's degree level, school attended, course of study, funding date, and graduation date.[81]

To investigate disparities in the terms Stride Funding offers for its ISAs, we modeled credit applicants with degrees from a random sample of schools across various institutional sectors, including four-year colleges with HBCU, HSI, and non-MSI designations. Relevant inputs for prospective applicants were identical in every respect, except for the institution attended by the applicant. For our modeling to remain consistent, we selected a bachelor's degree in Nursing as a baseline major with a "funding date" of June 2021 and "an expected graduation date" of June 2022. Nursing was selected because it is the default option for course of study suggested by Stride Funding upon navigating to its online rate quote feature. The funding amount requested always remained $10,000.

We then duplicated this model at the same list of schools, this time changing the majors to include "Teaching and Teacher Education," "Computer Science," "Economics," and "History." We also ran the same model holding constant the baseline Nursing major but changed the degree type from bachelor's to master's. We continued pulling price quotes until technical limitations made us no longer able to reasonably do so.

Our sample of schools was constructed using the Department of Education's College Scorecard based on a random selection of Title IV schools that offer at least a BA in the programs in the areas of study mentioned above. Schools that fell outside of those criteria were replaced with other randomly selected schools until the resulting sample consisted only of schools relevant for our research. We also confirmed with each institution's website that the relevant programs are, in fact, offered at those schools. In general, we excluded theological seminaries, yeshivas, and art conservatories.

As a supplement to this randomly selected sample, we identified various MSIs across the country based on factors including but not limited to acceptance rates, graduation rates, retention rates, and student loan

[81] *Tell Us About Your Program*, Stride Funding, https://apply.stridefunding.com/quote/ (last accessed Feb. 26, 2021).

repayment rates, and then noted non-MSIs that might serve as reasonable comparison points. Comparison schools were selected based on proximity and relative similarity in various metrics for student outcomes, including graduation rates, retention rates, and student loan repayment rates. We then repeated the methodology described above for these schools to the extent possible, holding all inputs but the institution the applicant attended constant and noting disparities in the resultant price quote for an ISA.

The preceding analysis looked only at Stride Funding's estimates of the cost of an ISA, which are in turn based on data Stride Funding supplied regarding the expected starting income of a student in various courses of study at various schools. An important additional avenue to consider with regard to discriminatory pricing is the difference in cost that students who had the same major at different schools but who then earn the same income after graduation can expect to face for the same quantity of ISA funding. To test this, we built a proprietary ISA cost calculator that takes in data that Stride Funding generates on the income share, minimum income threshold, repayment cap, and repayment period length of a $10,000 ISA for students graduating from a given program in June 2022 with funding in June 2021 but which allows us to plug in our own assumed starting income for that student. In this model, we assume that income grows at a constant 4 percent per year and that there are no gaps in a graduate's repayment sequence. We used this calculator to compare the amount a graduate at a given starting income level would expect to pay for an ISA using Stride Funding's pricing structure if they had happened to attend different schools, including whether they had attended an MSI. Finally, we compared the results of these cost estimations across the MSIs and comparison schools identified in the process discussed above.

Appendix B: Additional pricing disparities for HBCU students using Stride Funding's starting incomes

The following are additional ISA price quotes reported by Stride Funding. In every case, the quote is for a $10,000 ISA for an undergraduate graduating in June 2022 with funding disbursed in June 2021. This table excludes instances in which a school or its comparison school does not offer the relevant program and instances where both schools' programs were rejected by Stride Funding in its ISA price quote tool. Note that Stride Funding declined to offer credit to applicants attending certain schools.

Table 6: Comparing Stride Funding's price quotes for a $10,000 ISA for an undergraduate graduating in June 2022 with funding disbursed in June 2021 using Stride Funding's estimated starting incomes[82]

MAJOR	HBCU	STRIDE'S QUOTED COST FOR THE ISA	NEARBY COMPARISON SCHOOL	STRIDE'S QUOTED COST FOR THE ISA	ADDED COST FOR THE HBCU ATTENDEE	DIFFERENCE IN COST OF CREDIT FOR THE HBCU ATTENDEE
Nursing	Tuskegee	$19,549	Auburn	$17,109	**+$2,440**	**+34%**
Nursing	Howard	$17,848	Georgetown	$16,540	**+$1,308**	**+20%**
Nursing	Florida A&M University	$17,597	Florida State University	$16,580	**+$1,017**	**+15%**
Nursing	North Carolina A&T	$18,027	UNC Greensboro	$17,442	**+$585**	**+8%**
Economics	Morehouse	$18,915	Emory	$17,438	**+$1,477**	**+20%**
Economics	Spelman	Rejected	Emory	$17,438	**N/A**	**N/A**
Economics	Howard	Rejected	Georgetown	$16,711	**N/A**	**N/A**

[82] Stride Funding, *Funding Terms*, [https://perma.cc/C4TL-4L5G] (Nursing, Tuskegee University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/G66X-4CG3] (Nursing, Auburn University) (accessed Jan. 11, 2021); Stride Funding,

Appendix C: Additional disparities for HBCU students using the same starting income

The following are estimates calculated by the SBPC of the cost of a $10,000 Stride Funding ISA based on product pricing and structure quoted by Stride Funding and applying one starting income to each ISA product. It is assumed that income grows at a constant rate of 4 percent per year and that there are no gaps in the graduate's repayment sequence. To retain consistency with the example in Table 3, starting income is held at $59,774.[83]

Funding Terms, [https://perma.cc/MPH9-JWXK] (Nursing, Howard University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/Z9L3-RPY4] (Nursing, Georgetown University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/88KF-8N8U] (Nursing, Florida Agricultural and Mechanical University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/YM5C-Y6DP] (Nursing, Florida State University) (accessed Jan. 11, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/2KBW-N8GW] (Nursing, North Carolina A & T University) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/AK8P-UYE4] (Nursing, University of North Carolina at Greensboro) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/EW35-6ALF] (Economics, Morehouse College) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/SG5B-2HBK] (Economics, Emory University) (accessed Jan. 12, 2021); Stride Funding, *Our Partners Are Here To Help!*, [https://perma.cc/92MN-C3PB] (In testing Stride Funding's model, we applied for a $10,000 Stride Funding ISA for a student studying economics at Spelman graduating in June 2022 with a funding date in June 2021. We were directed to this page declining to offer us a loan.) (accessed Jan. 12, 2021); Stride Funding, *Our Partners Are Here To Help!*, [https://perma.cc/7YAT-WYCG] (In testing Stride Funding's model, we applied for a $10,000 Stride Funding ISA for a student studying economics at Howard graduating in June 2022 with a funding date in June 2021. We were directed to this page declining to offer us a loan.) (accessed Jan. 12, 2021); Stride Funding, *Funding Terms*, [https://perma.cc/LV48-AUE2] (Economics, Georgetown University) (accessed Jan. 12, 2021).

[83] *See supra* note 66.

Table 7: Comparing the expected cost of a $10,000 Stride Funding ISA for an undergraduate graduating in June 2022 with funding disbursed in June 2021 using a $59,774 starting income[84]

MAJOR	HBCU	COST FOR THE ISA	NEARBY COMPARISON SCHOOL	COST FOR THE ISA	ADDED COST FOR THE HBCU ATTENDEE	DIFFERENCE IN COST OF CREDIT FOR THE HBCU ATTENDEE
Nursing	Tuskegee	$20,000	Auburn	$11,170	**+$8,830**	**+755%**
Nursing	North Carolina A&T	$18,616	UNC Greensboro	$18,292	**+$324**	**+4%**
Computer science	Morehouse	$19,749	Emory	$12,626	**+$7,123**	**+271%**
Computer science	Howard	$16,026	Georgetown	$11,979	**+$4,047**	**+205%**
Computer science	Xavier (Louisiana)	$19,425	Tulane	$13,436	**+$5,989**	**+174%**
Computer science	Hampton	$19,425	William & Mary	$14,083	**+$5,342**	**+131%**
Computer science	Spelman	$15,540	Emory	$12,626	**+$2,914**	**+111%**
Computer science	Tuskegee	$20,000	Auburn	$16,512	**+$3,488**	**+54%**
Computer science	North Carolina A&T	$17,807	UNC Greensboro	$16,188	**+$1,619**	**+26%**

[84] SBPC calculations. For detail on the ISA terms that Stride Funding offers graduates of each program, *see supra* notes 65, 82.