AccessLex INSTITUTE®

Empowering the Next Generation of Lawyers®

Examining Graduate Lending

Access vs. Private Lending

JUNE 2019

EXECUTIVE SUMMARY

Student loan debt has received plenty of attention over the past several years from the media, scholars and policymakers. Increased scrutiny on aggregate and individual debt, especially for graduate and professional students, has led some to question the efficacy and value of some federal loans, arguing the private sector is better equipped to handle providing access to advanced education.

But the value of federal loans is unmistakably clear: they provide access to education to those who would otherwise not be able to afford it. This goal of expanding access to advanced education, which is of no import to private lenders, is critical to maintaining America's high educational and economic standing. Having formerly been one of the largest private student loan lenders in the country, and given our focus on graduate and professional education, we show in this report that the private sector would be an inadequate substitute for the current federal investment in higher education, especially regarding maintaining access to advanced education for all students.

As Congress deliberates the value of advanced education through reauthorization of the Higher Education Act, it is critical that it is armed with complete and accurate context, data and potential effects of proposed policy changes. Proposals designed to have the federal government retreat from providing loans to those seeking graduate and professional degrees are misguided at best, and if implemented, would substantially hinder access to advanced education for those who need it most.

This report, the second of our two-part series on graduate lending, uses federal data to show, as one example, that black borrowers and Historically Black Colleges and Universities would likely be severely

harmed by a move to significantly limit or outright eliminate federal lending to graduate and professional students.

Key takeaways:

- Changes to programs that would negatively impact and target graduate and professional students (e.g., further limiting or eliminating Grad PLUS, increasing repayment amounts or time to forgiveness, etc.) would be ill-advised because these students are, by far, the best performing cohort of borrowers in the federal student loan portfolio.

- Private student loan lending is an inadequate substitute for the access-driven investment from the federal government in advanced education. Differing incentives, goals and underwriting means the private sector would be unwilling to risk sacrificing profits to provide access for many students; thus, it could not properly serve the diverse and broad demands of the American workforce.

- Black borrowers and Historically Black Colleges and Universities would likely be the most substantially harmed by privatization of graduate lending because of the difficulty many students would have obtaining privately financed credit under traditional underwriting standards.

- Addressing institutional quality and accountability cannot be intermingled with changes to federal loans. Severely limiting or eliminating federal graduate lending should not be used as an end-run around difficult-to-construct accountability systems because doing so would unnecessarily punish students.

Table of Contents

PROVIDING ACCESS IS PARAMOUNT 6

GRADUATE BORROWING PARADOX 10

DENIED! – PRIVATE MARKET AND LENDING DECISIONS 14

DENIED AGAIN! – THE EFFECT OF GRADUATE LENDING PRIVATIZATION 22

CONCLUSION 32

ENDNOTES 34

Suggested citation: Keinan Thompson and Raymond AlQaisi, *Examining Graduate Lending: Access vs. Private Lending*, AccessLex Institute, June 2019.

1

PROVIDING ACCESS IS PARAMOUNT

Expanding access to all students, no matter their background, is the fundamental foundation of the federal investment in higher education. Without this investment, we would live in a country where only the privileged few would have access to the full range of educational opportunities available. This would unnecessarily limit the expansion of the country's intellectual capital, and it would diminish the direct and compounding benefits less privileged students provide to the American public. America is best served when everyone is given the chance to contribute to its advancement.

Congress, since it passed the Higher Education Act (HEA) in 1965, has committed to creating financing programs for postsecondary students that are squarely focused on increasing access to allow for a more educated American populace.[1] The chief student-centered lever to expand access is providing financial aid to students pursuing postsecondary education. At the graduate level, this is achieved primarily through the Direct Unsubsidized Loan and the Direct PLUS (Grad PLUS) Loan.[2]

Federal funding of graduate study allows students, many of whom would otherwise be unable to do so, to access advanced education, which more middle-class jobs now require.[3] And while there are certainly ways in which the federal loan programs could be improved, proposals that expect the private sector to fill the financing void left by capping or eliminating federal loans to graduate students must be weighed against the fundamental purpose of HEA: expanding access.

Failure to reform graduate lending without ensuring that access is maintained would result in significant unintended consequences. Changes that neither align with program goals nor sufficiently account for implementation effects will create problems that are more detrimental than the purported problems the proffered changes were intended to cure. To mitigate such risks, policymakers must keep proper perspective and consider relevant data when discussing policy changes to federal graduate lending. This paper, the second of two, provides important context regarding private student loan lending and illuminates the almost certain negative consequences of limiting federal lending for graduate study.

REPORT ROADMAP

This report supplements our previous analysis showing the principal criticisms of the Grad PLUS loan—the impact of the loan's terms and its potential cost—are unsupported by data or likely exaggerated.[4] As policymakers continue to target graduate borrowers, we hope to highlight the critical function that the federal role in graduate lending plays in ensuring access to advanced education and how proposals to curtail or eliminate it have failed so far to fully explore the potential severely negative consequences for students, institutions and America writ large.

This report seeks to provide necessary context around private graduate student lending and explain how significantly paring back or ceasing graduate federal lending programs will likely disproportionally prevent historically underrepresented populations from accessing advanced education. To demonstrate the likely impact, we focus on federal lending data for black graduate borrowers. The report also aims to move the discussion about graduate borrowing beyond the current rhetoric so that policymakers and stakeholders have an accurate picture of the policy implications of retreating from the federal investment in graduate education.

We begin by briefly discussing how the goal of private student lending is fundamentally different from the government's mission. We then explain how a return to the pre-Grad PLUS era is not feasible. Following that, we illustrate how various underwriting criteria are or could be used in private student lending to determine loan eligibility. Finally, using these underwriting criteria, we focus on how minority students, specifically black graduate borrowers, would be unlikely to obtain private student loans, thereby creating a significant access issue for them and the institutions they attend.

We neither seek to shield federal lending programs or graduate borrowing from criticism nor suggest there are no potential issues on the horizon.[5] Rather, we aim to shed light on the negative consequences that would result from reducing the lending cap or eliminating federal graduate loans altogether, specifically hindering access to graduate education, especially among black students. The information presented here should help lawmakers evaluate current proposals around graduate lending, and it can be used as a guide for potential reforms during reauthorization of HEA.

A NOTE ABOUT ACCESSLEX INSTITUTE

As a nonprofit organization comprised of nearly 200 American Bar Association-approved nonprofit and state-affiliated law schools, AccessLex Institute has been committed to improving access to and maximizing the affordability and value of a law degree, and graduate and professional education more broadly, since 1983.

For nearly 30 years, we provided and serviced private and federally backed student loans, with an emphasis on lending to students engaged in graduate programs of study. After a change in federal law in 2010, we ceased offering any new student loans, but we have continued our mission to improve access, affordability and value through various initiatives including financial education, research and grant-making.

At our lending peak, known at the time as Access Group®, we were the seventh largest private student loan lender – and the largest nonprofit student loan provider – in the country. The vast knowledge and experience we gained in this field allow us to speak authoritatively about private lending. Although potential lending decisions and underwriting criteria are different for each financial institution, what we discuss below is based on decades of experience and a normalized set of industry lending standards that suggests our analysis would fairly predict the outcome of a change in graduate federal lending policies.

2

GRADUATE BORROWING PARADOX

Over the past several years, much has been made about the cost of higher education and the increase in student borrowing. The headline grabbing $1.6 trillion in outstanding student loans has moved higher education debt from the policy world into mainstream consciousness.[6] As a result, politicians have introduced or championed policies like debt-free college, income share agreements and institutional risk-sharing to constrain rising debt levels.

While many agree that some sort of policy prescription should be offered to address student debt, there is no consensus that the amount of outstanding student debt is even a problem.[7] For those who do believe it to be troublesome, there are many theories as to who or what may be driving increases in student debt. However, some policymakers and academics believe they have identified the culprit of higher education financing issues: graduate students.

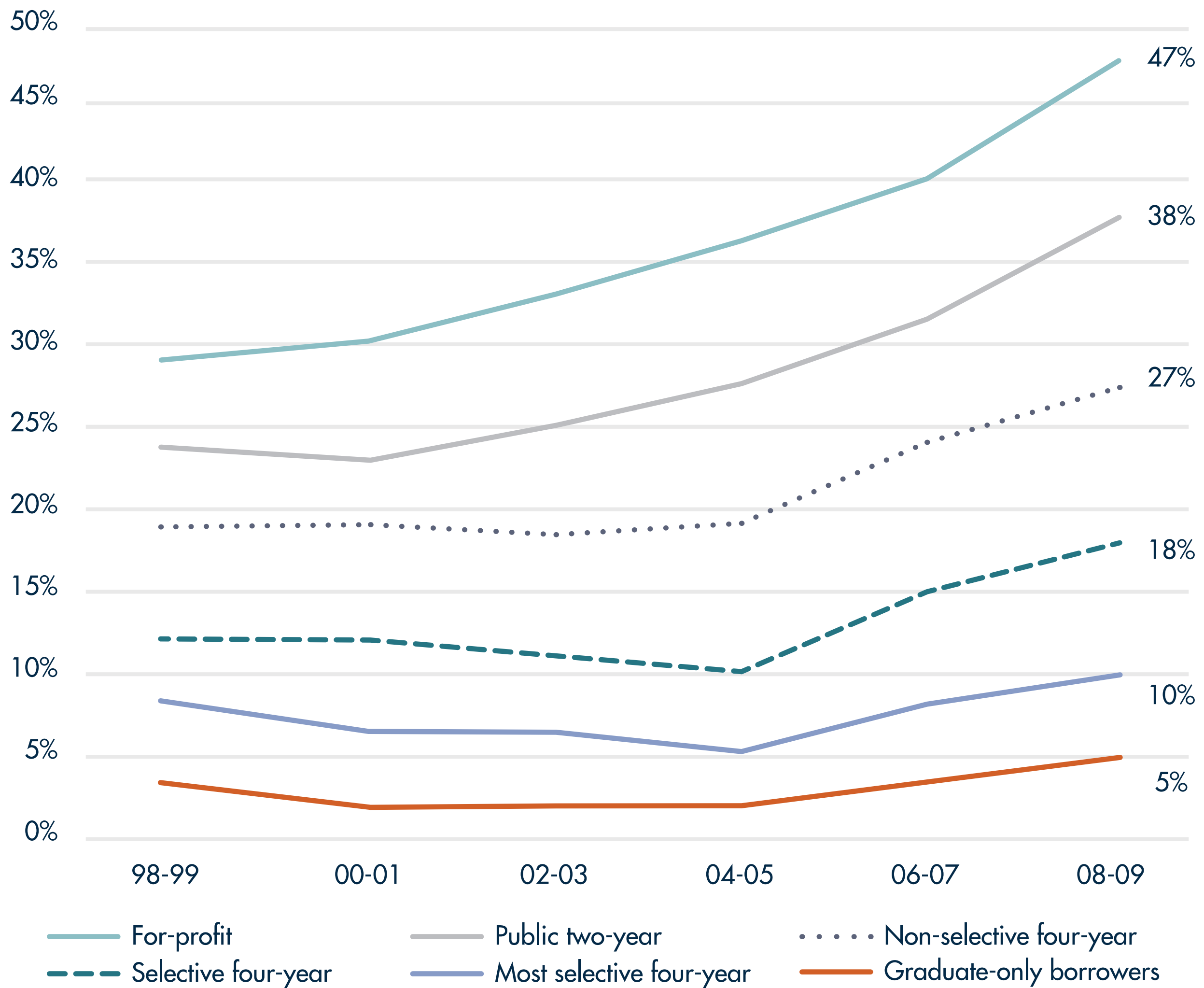
This is a perplexing contention for several reasons. Among the myriad federal higher education programs, very few are targeted specifically at graduate students, and those that exist are almost always less fiscally beneficial to students than the undergraduate offerings. For example, the federal loan exclusively for graduate students, Grad PLUS, has less favorable terms than federal undergraduate loans. Specifically, graduate borrowers pay a higher interest rate on their loans, often accounting for thousands of more dollars paid over the life of the loan than a borrower with only undergraduate debt.[8] Grad PLUS borrowers also have significantly higher federal loan origination fees.[9]

Moreover, graduate borrowers are no longer eligible for Direct Subsidized Loans, meaning almost all their federal graduate loans accrue interest while they are enrolled in school. Yet again, graduate borrowers pay thousands more over the life of their federal loans, especially those enrolled in longer programs like research doctoral or medical programs.[10] Additionally, the terms of the most recent income-driven repayment plan require graduate borrowers make qualifying payments for an additional five years, compared to those with solely undergraduate debt, before they can receive loan forgiveness.[11]

Despite all this, graduate borrowers are the best performing cohort in the federal student loan portfolio.[12] Even with higher average loan balances, higher interest rates, and higher fees than undergraduates, graduate borrowers have the highest repayment rates and the lowest default rates by a significant margin (Figure 1 and Table 1).[13,14] Moreover, as of the first quarter of 2019, the total outstanding loan volume of exclusively graduate debt, Grad PLUS, is $71.3 billion or just under 5 percent of the entire federal loan portfolio.[15] These facts make it clear that graduate borrowers are a critical asset to the federal government's loan portfolio. While shouldering the most debt, having the least favorable loan terms and repaying the most over time, graduate borrowers have been, are, and remain the highest-performing group in the portfolio, especially relative to their undergraduate and non-completing peers. It would be particularly misguided to target this group of borrowers for additional programmatic cuts.

Figure 1

FIVE-YEAR FEDERAL STUDENT LOAN DEFAULT RATES BY INSTITUTION TYPE (1998-99 TO 2008-09)



Note: Borrowers enter repayment in the stated year. Graduate-only borrowers are those who borrow only to attend graduate school. Default rates are based on defaults occurring within five calendar years from the date of entering repayment. Definition of selectivity taken from Barron's Educational Series.[16]

Source: Authors' modification of *Trends in Student Aid 2018*, Figure 2016_11B.

Nevertheless, the acute focus on graduate borrowing has led to calls and proposals to eliminate the Grad PLUS loan or severely limit federal lending to graduate students.[17] Some even suggest removing the federal government entirely from the graduate lending marketplace.[18] But how would the hundreds of thousands of graduate students finance their graduate education in the absence of federal support? The solution, some critics proffer, is to let the private sector take over completely.[19]

Table 1

MEDIAN FEDERAL DEBT BALANCE AND FIVE-YEAR DEFAULT RATE BY INSTITUTION TYPE (AY 2008-09)

	MEDIAN DEBT	DEFAULT RATE
PUBLIC TWO-YEAR	$7,830	38%
FOR-PROFIT	$8,450	47%
NONSELECTIVE FOUR-YEAR	$14,650	27%
SELECTIVE FOUR-YEAR	$17,770	18%
MOST SELECTIVE FOUR-YEAR	$18,870	10%
GRADUATE-ONLY BORROWERS	$37,660	5%

Note: Dollars in 2013 dollars, adjusted for inflation. Graduate-only borrowers are those who borrow only to attend graduate school. Default rates are based on defaults occurring within five calendar years from the date of entering repayment.

Source: Authors' reproduction of *Trends in Student Aid 2018*, Figure 2016_11B.

> Black graduate borrowers would likely be disproportionally harmed by privatizing graduate lending. Implementing that policy change would create a massive access issue for blacks who seek to advance their careers though graduate education.

Suggesting that private student loans are an adequate replacement for federal student loans, especially for graduate borrowers, seems to be premised on two main arguments.[20] First, there was a time before Grad PLUS when private loans played a role in funding graduate education, so we can simply transition back to that time. Second, the private sector has competition and lending discipline, and thus, the theory goes, privatization will result in some sort of market-based pressures being applied on institutions to either improve outcomes or lower prices.

Unfortunately, advocates for privatizing all graduate student lending do not adequately wrestle with how this policy might work in the present day. More specifically, proponents of a private student lending takeover do not address the effects, especially unintentional ones, wholesale privatization of graduate loans would have on institutions and certain populations.

For example, our analysis shows that black graduate borrowers would likely be disproportionally harmed by privatizing graduate lending. Implementing that policy change would create a massive access issue for blacks who seek to advance their careers though graduate education, thereby exacerbating the already dismal diversity rates in professions preferring or requiring advanced degrees.

This type of problem is exactly what the Higher Education Act was designed to prevent. Potential access issues illustrate why it is critical for the federal investment in graduate education to remain and why the private sector would be an inadequate substitute to try to level the playing field for access to advanced education. The current federal lending programs seek to create equity in higher education while staying true to HEA's fundamental purpose of expanding access.

3

DENIED!
PRIVATE MARKET AND LENDING DECISIONS

Policymakers seeking to eliminate federal lending to graduate students must ensure their assumptions and arguments are sound and well-grounded. Before enacting a substantial change, those advocating for a private lender takeover must understand the current market, how lending decisions are made and how a change like this would impact access.

Below we briefly explore what makes today's market unique, why the federal government and private sector's motivations are irreconcilably different and how lending decisions are or could be made. All of these would materially affect lending decisions, and as a result, the makeup of graduate school enrollment and the American economy.

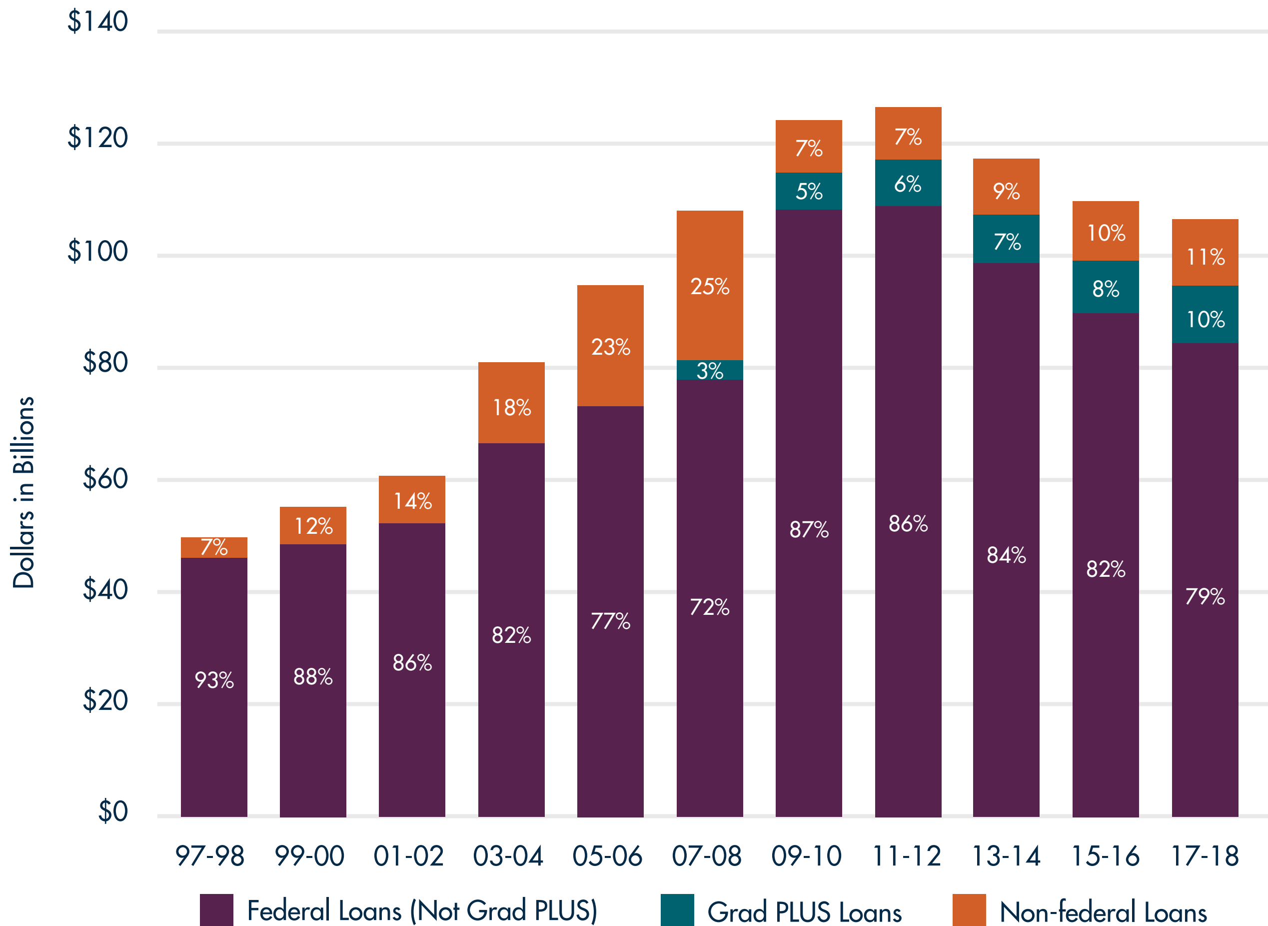
THEN VS. NOW (PRE- AND POST-GRAD PLUS)

The principal argument for eliminating federal investment in graduate education is that since private lending previously played a dominant role, at least for a relatively short period, in how students financed their graduate education, we can simply go back to that system without ill effects. But the world has changed since that time. Turning to private lending as the primary way for graduate students to pay for school is no longer a viable option because of the combination of increased education costs and a tighter credit market. The combination of these factors means there is no "going back." The elimination of federal graduate lending would place advanced education funding in territory not seen in several decades, when graduate school populations were wealthier and less diverse.

While private lending may have comprised an increasing portion of student financing leading up to the introduction of Grad PLUS, historical lending data shows that private lending never enjoyed a commanding share of the market (Figure 2).[21] Even at its peak between 2006 and 2008, non-federal loans accounted for only a quarter of student financing.[22] More importantly, of that quarter, historical lending analysis suggests that the overwhelming majority of private lending was for undergraduates, and that the graduate lending that did occur accounted for a mere 9 to 12 percent.[23]

▶ **Figure 2**

TOTAL FEDERAL AND NON-FEDERAL LOANS BY LENDING SOURCE (AY 1997-98 TO 2017-18)



Note: Dollars in 2017 dollars, adjusted for inflation. Non-federal loans include loans to students from states and institutions in addition to private loans issued by banks, credit unions and other lenders. Values for non-federal loans are best estimates and are less precise than federal loan amounts.

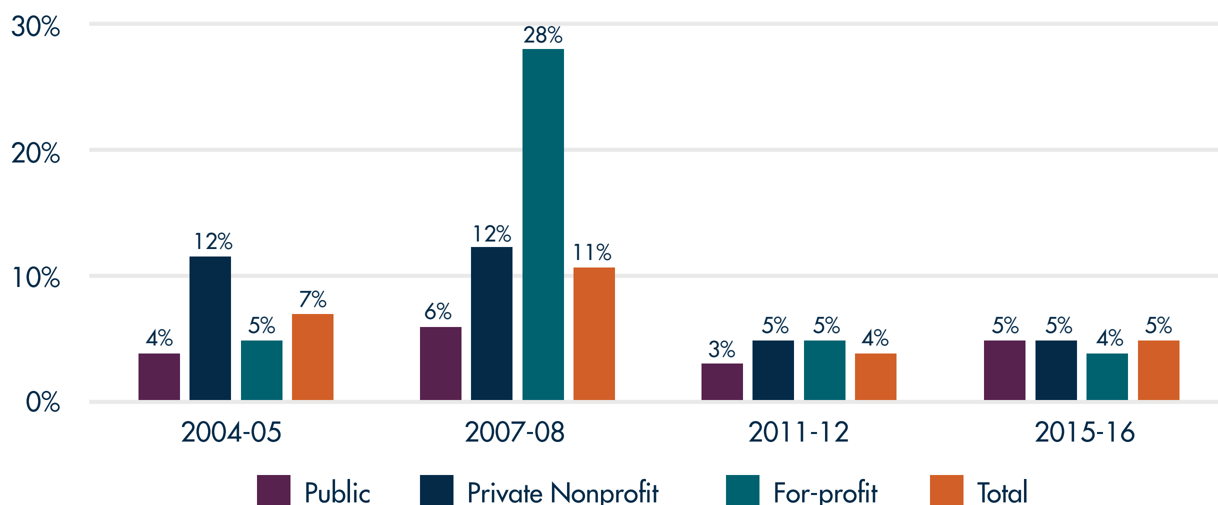
Source: Authors' modification of *Trends in Student Aid 2018*, Figure 6.

Examining graduate private lending specifically, in 2007-08 just 11 percent of graduate education costs were financed by private loans (Figure 3).[24] By academic year 2015-16, that number had dropped to just 5 percent.[25] In the same academic year, roughly 90 percent of graduate lending was provided by the federal government (Figure 2). It would be a tall order for the private sector to adequately serve all the borrowers that require financing.

Times have changed since the introduction of Grad PLUS in 2006, and the higher education population of more than a decade ago simply does not reflect the current student body.[26] And because employers are demanding a more diverse workforce with a higher level of formal education,

Figure 3

PERCENTAGE OF GRADUATE STUDENTS WHO HAD PRIVATE EDUCATION LOANS (AY 2004-05 TO 2015-16)



Note: Percentage of graduate students at for-profit schools who borrowed private education loans in AY 2004-05 is authors' calculation based on available data.

Source: National Postsecondary Student Aid Study (NPSAS) 2004, 2008, 2012 and 2016.

private student loan lenders would need to serve most, if not all, of the students who currently rely on federal loans to maintain the current level of access to graduate education. However, advocates of private lending have not explained how the private sector would be able to generate the capital to support the private student loan risk attached to such an access-driven pool of borrowers. The answer is that this capital would be unavailable and would cause irreparable disruption to advanced education and the American workforce.

Another reason why private lending in the pre- and post-Grad PLUS eras is different is because the cost of education has risen at the same time that credit has gotten tighter. In the first report in this series, we demonstrated that tuition increases have not been the result of the availability of Grad PLUS loan dollars.[27] Rather, rises in tuition are the result of textbook economic factors like the increase in demand for college education and increases in the costs of delivering a higher education driven by labor and other expenses.

Thus, in terms of raw dollars, graduate school is simply more expensive today than it was in 2005-06 (Table 2). This means that more money must be lent to borrowers now, either by the federal government or by private lenders, to finance graduate education. While this makes little difference regarding loan approval in federal lending programs, private student loan lenders could certainly use requested loan amounts to deny an applicant even though institutional costs are outside applicants' control.

Prior to the Great Recession, credit across all sectors was much more readily available than it is now. In the immediate aftermath of the financial crisis in 2008, lenders enforced much more demanding

Some may argue that prior to Grad PLUS, there actually were more private loans than data shows because private lenders participated in the Federal Family Education Loan (FFEL) program. They argue that even though the loans were federally-backed, they were made and serviced by private lenders, and thus private student loans likely accounted for a significant percentage of education loan disbursements.

Although private lenders played a central role in FFEL loans, the program's terms made those loans materially different from a standard private student loan. Because there was both an interest rate subsidy and a guarantee against default from the federal government that substantially reduced the credit risk to a private lender for nonperforming loans, FFEL loans did not exhibit the type of market-based signals and discipline that policymakers and advocates seek from a private sector takeover. Thus, it is not appropriate to look to the FFEL loan program as indicative of private lender behavior, then or now.[28]

lending standards and restricted the flow of credit dramatically.[29] This lasted for several years and only recently has credit begun to loosen again.[30] However, investors and lenders in some industries, leery of repeating the mistakes of the past, still have not returned to pre-Great Recession levels and may never do so.[31]

These same trends were mirrored in the private student loan space. According to the Consumer Financial Protection Bureau (CFPB), from 2005 to 2007, underwriting standards loosened, and "during this period, lenders were more likely to originate loans to borrowers with lower credit scores than they had previously been."[32] But after 2008, private lenders enacted stricter lending policies requiring more cosigners and "increased overall credit scores within their portfolios by tightening credit standards and reducing lending to nonprime borrowers."[33]

The combined factors of private lenders never having a commanding share of the student loan market, increased cost of attendance and reduced availability of credit make present-day lending a unique time in higher education financing, for which there is little precedent. Thus, it is erroneous to claim that we can "go back" to a utopian era of private student loan lending that arguably never existed.

INCENTIVE STRUCTURES (ACCESS VS. PROFIT)

Lawmakers must also consider that on a more fundamental level, the missions of the federal government and private student lenders could not be further apart. The purpose of the HEA is to expand access to higher education to all students in America. The various student aid programs that exist were designed with the goal of ensuring that a student who wants to advance his or her education can do so without regard to background or circumstance. Equity and access are at the heart of HEA lending programs.

The goal of private student lenders is to make money or, in the case of state-based and non-profit lenders,

Table 2

AVERAGE TUITION AND FEES FOR FULL-TIME GRADUATE STUDENTS (AY 2005-06 TO 2015-16)

	PUBLIC IN-STATE	PUBLIC OUT-OF-STATE	PRIVATE NONPROFIT
2005–06	$7,780	$18,370	$21,530
2007–08	$8,520	$19,090	$21,770
2009–10	$9,620	$20,790	$22,700
2011–12	$10,280	$21,240	$23,000
2013–14	$10,760	$22,020	$24,140
2015–16	$11,100	$22,590	$25,160

Note: Prices are weighted by full-time equivalent graduate enrollment. Figures are in constant dollars.

Source: Integrated Postsecondary Education Data System (IPEDS), 2005-15.

to make enough money to sustain themselves and continue working toward their organizational missions. Leaders of for-profit companies have a legal fiduciary duty to their board, shareholders and other investors to operate in a manner designed to provide a return on investment; therefore, their lending policies will reflect that reality. Individual well-being, institutional diversity and other societal goals are of little or no concern to most private lenders except to the extent such ideals further the primary objective.

In contrast to the federal government, private lenders' principal method of achieving their goal is to limit access to their capital. Doing so lessens the risk of loss and increases profitability. Similarly, as underwriting dictates, private lenders consider applicants' backgrounds and circumstances because those measures tend to have predictive value as to whether borrowers will repay their student loans. These lending policies and effects are tailored toward private lenders' core mission: to maximize the value of the company.

Some argue the private sector's capital-limiting framework could bring market discipline to the federal loan portfolio.[34] There is no doubt that the efficiency and effectiveness of the federal programs could be enhanced by adopting some private lending best practices. But the fundamental dichotomy would remain: HEA is designed to expand, not contract, access to advanced education.

To be clear, there is nothing wrong with making money. It is simply incongruent with the intended purpose of federal lending in HEA. Advocating for replacing federal loans to graduate borrowers with private loans does not reconcile the two entities' distinct end goals, and, in fact, clearly illuminates the differences. Failure to recognize the differences means the resulting unintended consequences will be vast and severe.

WILLINGNESS AND ABILITY TO REPAY

If policymakers are envisioning a significant role for private graduate lending, it is critical they understand how lenders make lending decisions. Depending on the underwriting criteria used, it becomes algorithmic to determine who receives a loan and who does not, the amount of the loan and the associated terms. Lawmakers should examine underwriting criteria and focus on who is unlikely to receive private loans to determine whether those results conflict with the HEA's mission of expanding access to higher education.

Student loans differ from most other consumer loans because, by definition, they are unsecured—that is, there is usually no readily available collateral (students typically lack substantial assets and lenders cannot repossess one's education) and payments are not usually due until long after the loan is made. Because of this, private student loans are inherently riskier than auto loans or credit cards. As a result, underwriting criteria, typically focusing on one's willingness and ability to repay, is likely to be more stringent, especially for larger graduate loans.

Willingness to repay underwriting is focused solely on how a borrower has handled repaying their financial obligations in the past. Although not exclusively, the primary tool to assess a borrower's willingness to repay a debt is to review a borrower's or cosigner's credit report and score. Examining

> Lawmakers should examine underwriting criteria and focus on who is unlikely to receive private loans to determine whether those results conflict with the HEA's mission of expanding access to higher education.

borrowers' past performance (e.g., on-time payments, credit balances, defaults, legal actions, etc.) is fairly predictive of future repayment habits on new debt, thus lenders use this method often because it is formulaic and efficient. This is the type of underwriting most consumers come to expect. However, because student loans are different than other typical consumer loans, especially in edge-case lending decisions, lenders may require additional information to better judge loan eligibility.

In private student loan lending, there is additional value in determining a borrower's *ability to repay*. This differs from willingness to repay in that it assesses additional evidence to determine if a borrower, even after having demonstrated positive repayment outcomes, will have the means to repay a student loan. This supplemental information tends to focus on institutional or programmatic outcomes (e.g., school reputation, graduation and job placement rates, etc.), the borrower's academic credentials or activities, or anything else that can help a lender determine if a borrower's future income will be enough to repay the student loan obligation on time and in full.

At its core, ability to repay is an assessment tool that tries to determine whether the combination of the borrower and the program will deliver a positive return on the educational investment. This is the market-based discipline that advocates of private student lending seek to introduce to the federal lending portfolio. While this may make some sense on its face, it should be noted that private lenders use this underwriting criterion, not because of charity or concern for the individual and the quality of the institution, but rather as an important mechanism to determine whether the borrower will repay the loan and the lender will make a profit. This, again, conflicts with the purpose of federal investment in higher education: expanding access.

Evidence suggests that most private student loan lenders use willingness to repay underwriting criteria to make lending decisions.[35] In fact, some lenders have expressed concerns about utilizing ability to repay metrics for fear of potentially violating discrimination laws.[36] Still, it is important for policymakers to understand that underwriting criteria can be whatever the lender chooses so long as it does not run afoul of federal or state laws or regulations. Understandably, a lender will use whatever underwriting standards the financial institution deems appropriate for the company to meet its profitability pool and fiscal objectives. This makes perfect business sense but runs counter to the goal of expanding access to advanced education.

4

DENIED AGAIN!

THE EFFECT OF GRADUATE LENDING PRIVATIZATION

Lenders will not lend to anyone who they believe will not repay a loan. While some defaults are inevitable, lenders do complex analyses to ensure that their firms are profitable. Lenders will design their lending criteria in a way that maximizes the quality of the approved applicant pool to meet their fiscal goals. Applicants who do not meet the standard, regardless of future potential, will be denied a loan. It's that simple.

Because most private student lenders use willingness to repay underwriting to make lending decisions, it is worth exploring who might be denied loans if federal graduate lending were to be capped or eliminated. While each individual lending determination would be based on each applicant's unique situation, there is data that can tell us who might be most ripe for denial. Thus, we examine two main factors in the willingness to repay criteria: how much do borrowers owe and what are their repayment trends.

> Black graduate students seeking to borrow and institutions serving large minority populations would likely be the most negatively impacted by the removal of federal lending from the graduate space.

Black graduate students seeking to borrow and institutions serving large minority populations would likely be the most negatively impacted by the removal of federal lending from the graduate space. Reviewing federal loan data shows that other populations would be negatively affected as well by student loan privatization; however, the evidence is clear that black students' access to advanced education would be the most severely hampered.

BLACK BORROWERS ARE MOST RIPE FOR LENDING DENIALS

Black students would likely be the most harmed by privatization of graduate student loans because they typically carry the highest loan balances, and the limited data we have on repayment suggests they struggle to repay their loans more than any other racial subpopulation. Using data from the National Postsecondary Student Aid Study (NPSAS), we examined borrowing habits of graduate borrowers who completed their program in academic year 2015-16 and found that black graduates rely the most on federal student loans and tend to have the highest debt balances upon graduation.

Borrowing Trends

Compared to peers of other races, black graduate students are the most likely to borrow and rely on federal student loans. In 2016, 80 percent of black graduates borrowed federal loans to fund their graduate education (Table 3). The difference is just as stark when examining by race and degree type—79 percent of black master's graduates borrowed; 81 percent of black research doctoral graduates borrowed; and 90 percent of black professional degree graduates borrowed federal loans.

▶ Table 3

PERCENT OF GRADUATES WHO BORROWED FEDERAL LOANS FOR GRADUATE EDUCATION BY RACE AND DEGREE (AY 2015-16)

	BORROWED	DID NOT BORROW
All Degrees		
White	57%	43%
Black	80%	20%
Hispanic/Latino	72%	28%
Asian	43%	57%
Total	**60%**	**40%**
Master's		
White	54%	46%
Black	79%	21%
Hispanic/Latino	71%	29%
Asian	39%	61%
Total	**58%**	**42%**
Research Doctoral		
White	54%	46%
Black	81%	19%
Hispanic/Latino	71%	29%
Asian	21%	79%
Total	**57%**	**43%**
Professional		
White	75%	25%
Black	90%	10%
Hispanic/Latino	76%	24%
Asian	64%	36%
Total	**75%**	**25%**

Source: NPSAS 2016, PowerStats.

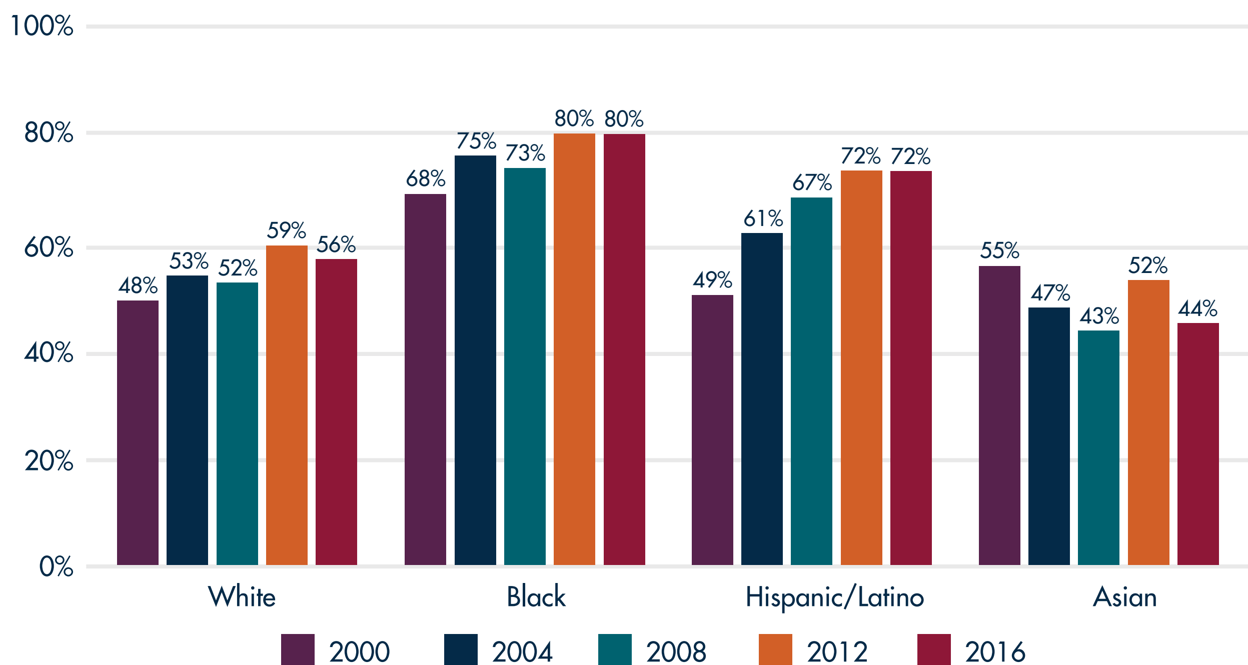
The reliance on federal loans has increased over time for black and Hispanic/Latino graduates. From 2000 to 2016, the percentage of black and Hispanic/Latino graduates who borrowed federal loans for graduate education grew considerably—black and Hispanic/Latino graduates increased their reliance on federal loans by 12 and 23 percentage points, respectively (Figure 4). Even with the significant jump in reliance on federal loans by Hispanic/Latino borrowers, black borrowers still top them by 8 percentage points. Overall, black graduates borrowed an average cumulative federal debt 17 percent higher than their white peers ($70,207 for black graduates and $59,997 for white graduates), and their median debt was 33 percent higher ($51,250 for black graduates and $38,473 for white graduates) (Table 4).

Black master's graduates had borrowed, at the median, $15,000 more than white graduates and on average graduated with $10,000 more in federal student loan debt. Similarly, black research doctoral graduates borrowed on average over $30,000 more than their white peers, and black median debt is nearly double that of white graduates ($113,054 for black graduates and $59,682 for white graduates) (Table 4).

The disparity between races in federal student loan debt taken for a professional degree is even more pronounced. Black graduates who borrowed left school with a median debt level of over $70,000 more in loans than their white peers ($207,205 for black graduates and $130,741 for white graduates). On average, blacks had nearly $60,000 more in debt ($198,982 for black graduates

Figure 4

PERCENT OF GRADUATES WHO BORROWED FEDERAL LOANS FOR GRADUATE EDUCATION BY RACE (AY 2000 TO 2016)



Source: National Postsecondary Student Aid Study (NPSAS) 2000 to 2016, TrendStats.

and $140,603 for white graduates) (Table 4). Even accounting for higher debt due to higher tuition in professional school, these disparities are striking.

The stark difference between black and white graduates' debt levels is also apparent when examining cumulative federal loan debt by degree program. For example, black Master of Business Administration (MBA) graduates borrowed nearly $19,000 more on average than their white peers. For a Doctor of Philosophy (Ph.D.) degree, blacks borrowed on average $37,000 more than their

Table 4

BORROWERS' CUMULATIVE FEDERAL LOAN DEBT FOR GRADUATE EDUCATION BY RACE AND DEGREE (AY 2015-16)

	AVERAGE	MEDIAN
All Degrees		
White	$59,997	$38,473
Black	$70,207	$51,250
Hispanic/Latino	$57,127	$41,000
Asian	$86,521	$56,868
Total	**$63,025**	**$41,000**
Master's		
White	$40,217	$31,282
Black	$50,594	$46,632
Hispanic/Latino	$41,978	$37,532
Asian	$58,992	$48,280
Total	**$43,304**	**$36,352**
Research Doctoral		
White	$73,131	$59,682
Black	$107,272	$113,054
Hispanic/Latino	$96,838	$65,897
Asian	‡	‡
Total	**$82,654**	**$68,732**
Professional		
White	$140,603	$130,741
Black	$198,982	$207,205
Hispanic/Latino	$144,921	$167,408
Asian	$151,647	$123,707
Total	**$148,722**	**$138,516**

Note: ‡ symbol indicates that available data could not provide a reliable estimate.

Source: NPSAS 2016, PowerStats.

white peers, and for a Juris Doctor degree (J.D.), a staggering $98,000 more on average than their white peers (Table 5).

Compared to peers of other races, black graduates generally borrowed the most, on average and at the median, for master's degrees at public and for-profit institutions. This holds true for research doctoral degrees and professional degrees across all institutional sectors.[37]

Across institutional sectors, degree types and most degree programs, black graduates, compared to graduates of all other races, represent the highest percentage of those who borrowed above the

▶ **Table 5**

BORROWERS' CUMULATIVE FEDERAL LOAN DEBT FOR GRADUATE EDUCATION BY RACE AND PROGRAM (AY 2015-16)

	AVERAGE	MEDIAN
Master of Business Administration (MBA)		
White	$36,598	$30,750
Black	$55,317	$44,574
Hispanic/Latino	$34,482	$31,020
Asian	‡	‡
Total	**$44,141**	**$36,779**
Doctor of Philosophy (Ph.D.)		
White	$77,925	$64,500
Black	$115,028	$123,972
Hispanic/Latino	$92,588	$74,745
Asian	‡	‡
Total	**$85,507**	**$75,389**
Law (J.D.)		
White	$100,510	$94,464
Black	$198,760	$206,700
Hispanic/Latino	$149,573	$167,408
Asian	‡	‡
Total	**$120,406**	**$111,914**

Note: ‡ symbol indicates that available data could not provide a reliable estimate.

Source: NPSAS 2016, PowerStats.

▶ **Table 6**

PERCENT OF GRADUATES WHO HAD ABOVE AVERAGE DEBT (AY 2015-16)

	WHITE	BLACK	HISPANIC/ LATINO	ASIAN
Institution Sector				
Public	11%	23%	11%	18%
Private Nonprofit	21%	28%	25%	27%
Private For-profit	26%	33%	20%	12%
Degree Type				
Master's	9%	19%	12%	13%
Research Doctoral	25%	63%	56%	9%
Professional	57%	74%	56%	52%
Degree Program				
M.S.	7%	18%	9%	‡
M.A.	8%	17%	23%	‡
M.Ed.	4%	30%	9%	‡
MBA	6%	19%	5%	24%
Ph.D.	25%	71%	29%	16%
Ed.D.	21%	68%	‡	‡
J.D.	53%	88%	47%	‡

Note: The average cumulative federal loan debt for those who borrowed is approximately $63,000. Debt is cumulative federal loan debt for graduate education. ‡ symbol indicates that available data could not provide a reliable estimate.

Source: NPSAS 2016, PowerStats.

average federal debt level.[38] For example, 71 percent of black Ph.D. graduates borrowed more than $63,000 in federal student loans for graduate education, compared with only 25 percent of white graduates (Table 6).

In the first paper in this series, we defined graduate borrowers with over $100,000 in cumulative federal loan debt for graduate education as "high-debt borrowers."[39] When examining debt by both degree type and program, black borrowers generally represent the highest percentages of high-debt borrowers, when comparing by race. Stunningly, for research doctoral degrees, 51 percent of black graduates were high-debt borrowers compared to just 15 percent of white graduates. An even more striking disparity exists when comparing high-debt borrowing for law degrees (83 percent of black graduates were high-debt borrowers compared to 31 percent of white graduates) (Table 7).

Moreover, these borrowing trends at the graduate level match those at the undergraduate level, where black undergraduates borrow more, and more often, to finance a bachelor's degree than their white peers—even at public institutions where tuition prices are the lowest.[40] This compounds the debt burden for black graduates who then borrow more to attend graduate school.

This point is illustrated by research examining the total debt of black graduates, both undergraduate and graduate, which noted that "[b]lack students were 130 percent more likely to have six-figure debt burdens than white students."[41] In fact, for the 2015-16 academic year, an estimated "150,000 black borrowers had $100,000 in debt, more than half of the number of white borrowers with the same debt level (250,000), despite white graduate student enrollment being four times [that of] black grad student enrollment."[42] It is clear that black graduates would likely be requesting large loan amounts from private lenders, which may decrease the likelihood of approval.

Table 7

PERCENT OF GRADUATES WHO HAD "HIGH-DEBT" (AY 2015-16)

	WHITE	BLACK	HISPANIC/ LATINO	ASIAN
Institution Sector				
Public	7%	8%	4%	9%
Private Nonprofit	12%	15%	15%	21%
Private For-profit	14%	19%	8%	10%
Degree Type				
Master's	3%	6%	4%	6%
Research Doctoral	15%	51%	25%	2%
Professional	47%	59%	54%	42%
Degree Program				
M.S.	2%	1%	4%	‡
M.A.	4%	6%	‡	‡
M.Ed.	1%	‡	‡	‡
MBA	1%	10%	‡	‡
Ph.D.	13%	56%	18%	‡
Ed.D.	15%	49%	‡	‡
J.D.	31%	83%	46%	‡

Note: We define "high-debt" as having over $100,000 in cumulative federal loan debt for graduate education. ‡ symbol indicates that available data could not provide a reliable estimate.

Source: NPSAS 2016, PowerStats.

Repayment Trends

Rates of repayment for graduate students generally appear high while default rates are as low as 5 percent.[43] Even analysts who are wary of high levels of graduate borrowing acknowledge that graduate students' rates of default are low.[44] However, to discern repayment and default rates for students from all subpopulations, more publicly available disaggregated data on graduate borrowers' outcomes is needed.

Yet, there is likely cause for concern about repayment among black graduate borrowers. Research at the undergraduate level shows that there are significant repayment disparities by race. Regarding progress on debt in repayment for example, black college graduates, at the median, owed more than their original principal loan balance 12 years after entering college—whereas white college graduates at the median had repaid more than half of their original balance owed at that point in time.[45]

As for student loan default rates, black bachelor's degree recipients were nearly four times more likely to be in default than their white peers.[46] Of black borrowers in repayment on their student loans in 2014, 19 percent were in default and another 33 percent were seriously delinquent on their payments (90 days or more past due).[47] In fact, black bachelor's degree recipients are more likely to default than their white peers who did not even complete their undergraduate studies, which suggests that completion alone does not accurately predict one's ability to repay a student loan.[48]

When examining these repayment trends, it is important to note that these repayment outcomes could be caused by a host of factors, many of which would be beyond black borrowers' individual control. Some scholars have highlighted underlying factors like familial resources (e.g., the wealth gap between races) and labor market outcome disparities to provide proper context for poor repayment rates among black borrowers.[49] But private lenders make lending decisions based mostly on data and would not take into account the reasons undergirding the data. If the undergraduate repayment trend data is consistent at the graduate level, using an ability to repay underwriting criteria may preclude large numbers of black graduate students from accessing the necessary capital to advance their education and careers.

It is already clear that using traditional underwriting standards would disproportionally harm low-income and minority borrowers.[50] This borrowing and repayment data, if used in either willingness or ability to repay criteria, portends significant potential roadblocks for black graduate students in obtaining private student loans for their graduate education. These combined factors make it extremely likely that blacks will be disproportionally harmed by a move to private lending in the graduate space.

Historically Black Colleges and Universities May Suffer

It is worth noting that while lending is done on an individual basis, many schools may also suffer under a shift to private lending, either because not enough of the students they serve would be approved or because lenders can opt not to lend to anyone attending the institution. Recall, ability to repay underwriting essentially judges institutional quality, and a lender has neither an obligation nor an interest in lending money that it believes it will not recoup.

As noted above, there is little information about graduate repayment. However, recent analysis of limited repayment data indicates that Historically Black Colleges and Universities (HBCU) would likely be harmed by applying an ability to repay standard to their student borrowers. Of the top 20 graduate and professional schools with the highest share of borrowers who had not reduced principal loan amounts five years after entering repayment, 12 (60 percent) of them were HBCUs.[51] While the median share of borrowers measured by the same metric at all graduate and professional schools was 20 percent, HBCUs ranged as high as 65 percent of their borrowers down to 44 percent of their borrowers having not paid down principal.[52] Even the lowest HBCU on the list was still 24 percent higher than the national average.

Although the study was not comprehensive, the repayment rates of those HBCU graduate programs strongly suggest the ability to repay criteria would not be satisfied by many students attending those institutions. Even the applicants who had the best willingness to repay track record and outstanding academic performance would likely be denied if they attended certain institutions because lenders would not be willing to bear the risk of large-scale defaults. One could envision entire categories of schools, or at least institutions that serve large minority populations, closing because of insufficient funding.

Lending Discrimination

Some may argue that widespread disenfranchisement of black borrowers is unlikely to occur because there are state and federal discrimination laws barring such a practice. While those laws may stop individual bad actors, they are unlikely to prevent an unintentional cumulative effect of dramatically reducing the number of black graduate students who are able to obtain financing for their education.

Specifically, at the federal level, the Equal Credit Opportunity Act (ECOA) prohibits any lender from engaging in intentional discrimination against enumerated protected classes (e.g., race, religion, sex, age, etc.).[53] And while not statutorily defined, federal regulators have indicated that lending policies that may have a "disparate impact" on protected classes could violate ECOA.[54]

Disparate impact could be considered lending discrimination if "a lender applies a practice uniformly to all applicants but the practice has a discriminatory effect on a prohibited basis and is not justified by business necessity."[55] Lenders could, using entirely legitimate and sound underwriting criteria, unintentionally create an environment where raising capital and other market pressures would dictate that a whole class of people be effectively shut out of pursuing advanced education.[56]

We are not suggesting that individual private student lenders would engage in intentional or disparate impact discrimination. Just the opposite: lawsuits are costly and anathema to the profit-driven mission of private lenders. But "business necessity" would dictate that borrowers who do not meet institutions' underwriting criteria would be denied.

If large loan balances and poor repayment rates are to be counted as negatives in student loan underwriting criteria, then many black borrowers would be denied. Even in a regulatory framework where disparate impact is outlawed, it could be the case that no individual private lender may be found liable of discrimination, but the cumulative effect of denials across all lenders effectively permits disparate impact nevertheless.

Lenders could, using entirely legitimate and sound underwriting criteria, unintentionally create an environment where raising capital and other market pressures would dictate that a whole class of people be effectively shut out of pursuing advanced education.

5

CONCLUSION

Federal graduate lending provides a critical financing option for all students, regardless of background or station, who are interested in obtaining an advanced degree. Given that the fundamental purpose of the Higher Education Act is to expand access to higher education, the current federal lending programs are clearly aligned with that mission and have helped to achieve HEA's goals.

In this report, we have discussed how graduate borrowers are unnecessarily targeted for programmatic cuts given their high performance as a cohort in the federal loan portfolio; how there will be no return to a golden era of private student loans; how lending decisions are made; and as a result of those lending decisions, how black graduate borrowers will likely be the most negatively impacted by privatization of federal student loans.

Some critics will argue that the negative impacts (denied borrowers and potentially closing institutions) is a good thing. Advocates say that we should not saddle borrowers with

debt they cannot afford to attend schools with poor outcomes. That is a perfectly sensible policy objective. However, the policy solution offered, to retreat entirely from graduate federal lending, is a blunt instrument that unnecessarily targets students.

The federal government has far more appropriate and effective options and tools (e.g., school accountability regimes, accreditation reform, etc.) at their disposal that could inject institutional quality controls into higher education. If the goals are to improve institutional and programmatic outcomes and potentially lower cost, then policy proposals should be squarely focused on those goals. Lawmakers should not be enticed by wholesale student loan privatization as an end-run to student or institutional accountability metrics. Given that HEA reauthorizations are infrequent at best, America cannot afford to lose an entire generation of students as the result of policy changes that do not address the stated problem.

Changes to federal graduate lending must not come at the expense of students, especially not our most critically underserved. Making it more difficult for students to secure financing for their advanced degrees, thereby reducing access and weakening America's workforce, would take us in the wrong direction. Congress must ensure that policy proposals are always grounded in the fundamental purpose of HEA: expanding access.

Keinan Thompson
kthompson@accesslex.org
@keinanthompson

Raymond AlQaisi
ralqaisi@accesslex.org
@rayalq

6

ENDNOTES

[1] *Higher Education Act of 1965*, Pub. L. 89-329, as codified and amended in 20 USC 28 §1001 et seq.

[2] Office of Federal Student Aid, *PLUS Loans*, U.S. Department of Education, **https://studentaid.ed.gov/sa/types/loans/plus**.

[3] Unless otherwise stated, throughout this report the term "graduate" is used to include both graduate and professional students and schools.

[4] Keinan Thompson and Raymond AlQaisi, *Examining Grad PLUS: Value and Cost*, AccessLex Institute, April 2019, **https://www.accesslex.org/resources/examining-grad-plus**; additional AccessLex Institute reports available at: **www.accesslex.org**.

[5] Vivien Lee and Adam Looney, *Headwinds for Graduate Student Borrowers: Rising Balances And Slowing Repayment Rates*, The Brookings Institution, October 18, 2018, **https://www.brookings.edu/research/headwinds-for-graduate-student-borrowers-rising-balances-and-slowing-repayment-rates**.

[6] The Federal Reserve, *Consumer Credit Outstanding (Levels)*, May 7, 2019, **https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html**; also Jillian Berman, *Student Debt Just Hit $1.5 Trillion*, MarketWatch, May 22, 2018, **https://www.marketwatch.com/story/student-debt-just-hit-15-trillion-2018-05-08**.

[7] Sandy Baum, *Rhetoric and Realities of Higher Education Financing*, Palgrave Macmillan US, 2016; also Beth Akers and Matthew Chingos, *Game of Loans: The Rhetoric and Reality of Student Debt*, Princeton University Press, 2016.

[8] Office of Federal Student Aid, *Interest Rates and Fees*, U.S. Department of Education, **https://studentaid.ed.gov/sa/types/loans/interest-rates**.

[9] *Id.*

[10] *Impact of the Loss of the In-school Interest Subsidy on Law Students*, AccessLex Institute, **https://www.accesslex.org/impact-of-loss-of-in-school-interest-subsidy**.

[11] Office of Federal Student Aid, *Repayment Plans*, U.S. Department of Education, **https://studentaid.ed.gov/sa/repay-loans/understand/plans**.

[12] MeasureOne, *Private Student Loan Report Q3 2018*, December 20, 2018, **https://www.measureone.com**; also Susan Dynarski, *Why Students With Smallest Debts Have the Larger Problem*, The Upshot, The New York Times, August 31, 2015, **https://www.nytimes.com/2015/09/01/upshot/why-students-with-smallest-debts-need-the-greatest-help.html**.

[13] U.S. Department of Education, *Student Loans Overview*, Fiscal Year 2019 Budget Proposal, data retrieved from National Student Loan Data System (NSLDS), 2019, **https://www2.ed.gov/about/overview/budget/budget19/justifications/index.html**.

[14] Sandy Baum et al., *Trends in Student Aid 2018*, Figure 2016_11B: Five-Year Federal Student Loan Default Rates by Institution Type over Time, The College Board, 2018, **https://trends.collegeboard.org/student-aid/figures-tables/five-year-federal-student-loan-default-rates-institution-type-over-time#Key%20Points**; also Ben Miller, *Who Are Student Loan Defaulters?*, Center for American Progress, December 14, 2017, **https://www.americanprogress.org/issues/education-postsecondary/reports/2017/12/14/444011/student-loan-defaulters**.

[15] Graduate students are eligible for Direct Unsubsidized Loans and advanced degree holders could have debt in Direct Consolidated Loans, so the total debt balance held by those with advanced degrees is likely higher than the Grad PLUS loan portfolio. However, the policy prescriptions discussed are almost always aimed squarely at eliminating or severely limiting Grad PLUS, thus that loan portfolio is the most relevant here; also Office of Federal Student Aid, *Federal Student Aid Portfolio by Loan Type*, U.S. Department of Education, data retrieved from National Student Loan Data System (NSLDS), **https://studentaid.ed.gov/sa/about/data-center/student/portfolio**.

[16] Adam Looney and Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers And in the Institutions They Attended Contributed to Rising Loan Defaults*, The Brookings Institution, Fall 2015, **https://www.brookings.edu/bpea-articles/a-crisis-in-student-loans-how-changes-in-the-characteristics-of-borrowers-and-in-the-institutions-they-attended-contributed-to-rising-loan-defaults**.

[17] H.R. 4508 (115th), *Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER) Act*, Rep. Virginia Foxx (R-NC-5), 2018, **https://www.congress.gov/bill/115th-congress/house-bill/4508**.

[18] Preston Cooper, *Privatize Federal Graduate Student Loans*, Forbes, Jan 9, 2017, **https://www.forbes.com/sites/prestoncooper2/2017/01/09/end-federal-graduate-student-loans/#77fe5ad36c76**.

[19] *Id.*; also Mary Clare Amselem, *The Case for Private Student Loans*, The Heritage Foundation, May 23, 2017, **https://www.heritage.org/education/commentary/the-case-private-student-loans**.

[20] There is a third argument often proffered: privatization will spark ‘innovation’ in higher education. Although almost always used to support critics’ arguments for private lending, the term ‘innovation’ is often nebulous and is not consistently defined among advocates, so we do not address this in this report.

[21] Sandy Baum et al., *Trends in Student Aid 2018*, Figure 6: Total Federal and Nonfederal Loans in 2017 Dollars by Type 1997-98 to 2017-18, The College Board, 2018, **https://trends.collegeboard.org/student-aid/figures-tables/total-federal-and-nonfederal-loans-over-time**.

[22] *Id.* Non-federal loans are mostly private student loans but also includes state and institutional loans.

[23] MeasureOne, note 12.

[24] Sandy Baum et al., *Trends in Student Aid 2018*, Figure 2013_9B: Percentage of Undergraduate and Graduate Students Taking Private Education Loans 2007-08 and 2011-12, The College Board, 2018, **https://trends.collegeboard.org/student-aid/figures-tables/percentage-undergraduate-and-graduate-students-borrowing-private-loans-over-time**.

[25] This is likely due, in part, to the creation of the Grad PLUS loan program, which as a government program, tends to offer much more favorable repayment options than private student loans. However, the decrease in private student loan market share post-2008 is also a result of the tightening of credit availability during the Great Recession, thus forcing many students into the federal loan program.

[26] Jennifer Ma et al., *Trends in Higher Education: Education Pays 2016*, Educational Attainment - FIGURE 1.5A Education Level of Individuals Age 25 to 34 1940 to 2015, The College Board, 2016, **https://trends.collegeboard.org/education-pays**.

[27] Thompson and AlQaisi, note 4.

[28] For more information on why advocates of privatization do not equate FFEL with private loans, see Jason Delisle, *Private in Name Only: Lessons from the Defunct Guaranteed Student Loan Program*, American Enterprise Institute, February 2017, **http://www.aei.org/publication/private-in-name-only-lessons-from-the-defunct-guaranteed-student-loan-program**.

[29] Maximiliano Dvorkin and Hannah Shell, *Bank Lending During Recessions*, Economic Synopses, No. 2, Federal Reserve Bank of St. Louis, 2016, **https://research.stlouisfed.org/publications/economic-synopses/2016/02/05/bank-lending-during-recessions**.

[30] Maximiliano Dvorkin and Hannah Shell, *Why Did Loan Growth Stay Negative So Long after the Recession?*, On The Economy Blog, Federal Reserve Bank of St. Louis, January 11, 2016, **https://www.stlouisfed.org/on-the-economy/2016/january/negative-loan-growth-great-recession**; also TransUnion, *Q3 2018 TransUnion Industry Insights Report*, 2018, **https://newsroom.transunion.com/lenders-extending-more-loans-to-subprime-consumers--as-credit-market-continues-to-exhibit-signs-of-strength**.

[31] For a look at the housing market credit, which in many instances can mirror graduate student loan amounts, see Laurie Goodman et al., *Housing Finance at a Glance: A Monthly Chartbook*, Urban Institute, June 2017, **https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-june-2017**; also over a decade after the financial crisis, even a federal home loan program has tight credit standards, Ben Eisen, *FHA Clamps Down on Risky Government-Backed Mortgages*, The Wall Street Journal, March 25, 2019, **https://www.wsj.com/articles/fha-clamps-down-on-risky-government-backed-mortgages-11553511601**.

[32] Consumer Financial Protection Bureau, *Private Student Loans*, Report to Congress, August 29, 2012, **https://www.consumerfinance.gov/data-research/research-reports/private-student-loans-report**.

[33] *Id.* Note: CFPB's analysis included undergraduate private lending and did not focus solely on graduate lending.

[34] Cooper, note 18.

[35] Andrew Kelly and Kevin James, *Looking Backward or Looking Forward? Exploring the Private Student Loan Market*, American Enterprise Institute, June 2016, **http://www.aei.org/publication/looking-backward-or-looking-forward-exploring-the-private-student-loan-market**.

[36] *Id.*

[37] NPSAS 2016, PowerStats.

[38] According to the 2016 NPSAS survey data, a graduating borrower's average cumulative federal loan debt for graduate education is approximately $63,000.

[39] Thompson and AlQaisi, note 4.

[40] Mark Huelsman, *The Debt Divide The Racial and Class Bias Behind the "New Normal" of Student Borrowing*, Demos, 2015, **https://www.demos.org/publication/debt-divide-racial-and-class-bias-behind-new-normal-student-borrowing**.

[41] Robert Kelchen, *What Explains Racial Gaps in Large Graduate Student Debt Burdens?*, May 17, 2018, **https://robertkelchen.com/2018/05/17/what-explains-racial-gaps-in-large-graduate-student-debt-burdens**.

[42] *Id.*

[43] Lee and Looney, note 5.

[44] *Id.*

[45] Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, Center for American Progress, October 16, 2017, **https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers**.

[46] *Id.*

[47] Demos analysis of Experian credit record data, *African Americans, Student Debt, and Financial Security*, October 19, 2016, **https://www.demos.org/publication/african-americans-student-debt-and-financial-security**.

[48] Judith Scott-Clayton, *The Looming Student Loan Default Crisis Is Worse Than We Thought*, The Brookings Institution, January 11, 2018, **https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought**.

[49] Judith Scott-Clayton and Jing Li, *Black-White Disparity in Student Loan Debt More Than Triples After Graduation*, The Brookings Institution, October 20, 2016, **https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation**.

[50] Kelly and James, note 35.

[51] Jason Delisle, *Graduate Schools with the Lowest Rates of Student Loan Repayment*, American Enterprise Institute, June 14, 2018, **http://www.aei.org/publication/graduate-schools-with-the-lowest-rates-of-student-loan-repayment**.

[52] *Id.*

[53] *Equal Credit Opportunity Act*, 15 USC § 1691 et seq.

[54] Federal Deposit Insurance Corporation, *Policy Statement on Discrimination in Lending*, referencing 59 Fed. Reg. 18267, 2014, **https://www.fdic.gov/regulations/laws/rules/5000-3860.html**.

[55] *Id.*

[56] One example of borrowers suing under disparate impact under ECOA was in the class-action suit of *Rodriguez et al. v. Salle Mae*. In that case, the plaintiffs alleged Sallie Mae provided unfavorable private student loan terms to minorities as compared to white borrowers. While the case was ultimately settled before going to trial, Salle Mae challenged the legitimacy of using disparate impact to sue under ECOA, but the plaintiffs were allowed to proceed with that cause of action, **https://ecf.ctd.uscourts.gov/cgi-bin/show_public_doc?2007cv1866-85**.

AccessLex Institute®, in partnership with its nearly 200 nonprofit and state-affiliated ABA-approved Member law schools, has been committed to improving access to legal education and to maximizing the affordability and value of a law degree since 1983. The AccessLex Center for Legal Education Excellence® advocates for policies that make legal education work better for students and society alike, and conducts research on the most critical issues facing legal education today. The AccessLex Center for Education and Financial Capability® offers on-campus and online financial education programming and resources to help students confidently manage their finances on their way to achieving personal and professional success. AccessLex Institute is a nonprofit organization with offices in West Chester, PA and Washington, D.C. and with accredited financial counselors throughout the US.

AccessLex.org

© 2019 AccessLex Institute. All rights reserved. BK5001 (6/19)