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How States Can Better Protect Prospective Students from Reverse Redlining by Institutions of Higher Education

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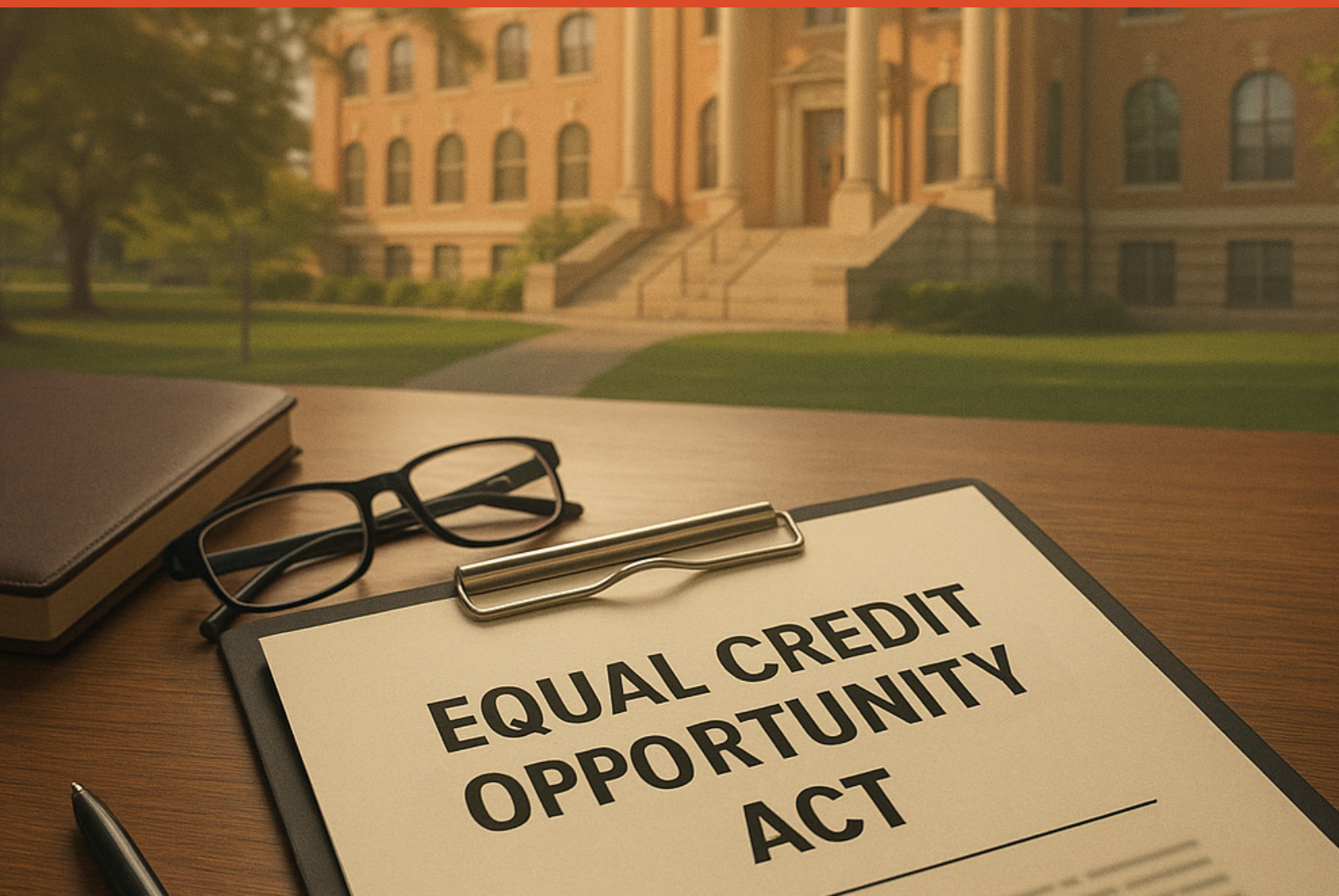

How States Can Better Protect Prospective Students from Reverse Redlining by Institutions of Higher Education

Poor-performing predatory institutions of higher education—often (but not always) for-profit—have long targeted marketing and recruiting efforts at students of color, single mothers, and other marginalized communities. While most states have credit discrimination laws in place that would prohibit these practices (known as "reverse redlining"), rarely, if ever, have those laws been applied to higher education. Following a path set by a recent class-action lawsuit, *Carroll v. Walden University*, this paper examines how states can use and improve their credit discrimination laws and regulations to root out reverse redlining in higher education. The logical application of these laws to institutions of higher education is a long overdue mechanism for redress that could eventually reshape the landscape of student lending and higher education accountability.

Reverse redlining—often referred to as predatory inclusion–is the practice of extending credit on unequal or unfair terms because of an individual's race, color, religion, sex, or other protected status.[1] By contrast, traditional redlining limits or denies access to credit based on these same characteristics. To combat redlining and reverse redlining in numerous consumer credit sectors, regulators and enforcement agencies have relied upon the federal Equal Credit Opportunity Act (ECOA), which makes it "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction . . . on the basis of race, color, religion, national origin, sex or marital status, or age."[2]

Even though student loans are the largest type of non-mortgage consumer debt—and even though ECOA is routinely used to combat predatory credit inclusion in other sectors—to our knowledge regulators and enforcement agencies have never used ECOA to combat predatory practices in student lending. At the same time, institutions of higher education have frequently targeted unfair and deceptive marketing at students of color and those from other historically marginalized communities.[3] Although much attention has been paid to the veracity and intensity of this marketing, scant attention has been paid to how marketing has been targeted and the effects of that targeting.

This must change.

Fortunately, a recent U.S. District Court ruling gives state regulators a path to counter predatory inclusion in student lending. In *Carroll v. Walden University*, former students of Walden University alleged that the institution deliberately misrepresented the cost and duration of its Doctor of Business Administration (DBA) program and intentionally targeted those misrepresentations at Black and female students. The plaintiffs also alleged that this conduct constituted reverse redlining, in violation of ECOA. Walden unsuccessfully sought to have the case dismissed—in part arguing that there was an insufficient tie between the alleged discrimination (*i.e.*, statements about the education) and the credit transaction. The court disagreed and held that reverse redlining was actionable under ECOA where an institution intentionally targeted an alleged "predatory and fraudulent program" to Black and female students, and did so to "ensnare them in a credit transaction," in order "to enable them to enroll" in the program.[4] *Carroll* is the first time a federal court held that ECOA can be used in this context.[5]

Federal and state regulators and enforcement agencies should take two lessons from *Carroll*. First, ECOA is a powerful tool to protect students from discriminatory

recruitment, even if the only credit offered or facilitated by the institution is a federal student loan (on terms dictated by federal law). Second, states can—and should—use (and in many cases improve upon) state analogs to ECOA to combat reverse redlining in higher education. This paper focuses on the second of those lessons and roadmaps how states can use their laws and regulations—as well as ECOA itself—to hold institutions accountable and ensure equitable access to higher education financing.

I. ECOA and the *Carroll v. Walden* Decision

Enacted in 1974, ECOA has a "broad protective reach"[6] that makes it "unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction," including on the basis of race, color, religion, national origin, sex or marital status, or age.[7] By prohibiting discrimination, ECOA's aim is to "promote the availability of credit to all creditworthy applicants."[8] ECOA has both public and private enforcement mechanisms, and has been used by private litigants and enforcement agencies to remedy lending practices that target minority populations with unfair and predatory loans.[9] Private plaintiffs can obtain damages in either an individual suit, or on a class-wide basis, and may also obtain punitive damages and attorney fees.[10] As noted above, we are unaware of any instances in which federal or state governments have used ECOA to remedy or prevent discrimination or discriminatory targeting in student lending.

A. *Carroll v. Walden University:* A Roadmap for Action

In 2024, a class of former Walden University students settled an ECOA-based reverse redlining lawsuit against Walden for $28.5 million, along with an agreement by the institution to make significant programmatic changes and enhanced disclosures to future students.[11] As discussed below, this case creates an important new precedent to guide state lawmakers and regulators intent on curbing targeted, predatory advertising in higher education.

a. What is Walden University?

Walden is a for-profit online university that describes itself as a "pioneer" of distance learning.[12] Since its founding in 1970, Walden has offered doctoral programs and, according to data from the National Science Foundation, granted 867 doctorates in 2020, more than any other institution in the country.[13] From 2016–2020, Walden awarded 1,383 doctorates to Black students, more than five times the number granted by the second-ranking institution (Howard University, a Historically Black College or University, granted 266 doctorates to Black students during the same period) and 11.4% of *all doctorates* granted to Black students *in the United States.*[14]

In 2020, Walden produced 591 female doctorates, more than any other institution in the country (the institution with the second-largest number produced 350). A full 68% of Walden's doctoral recipients were women, while the median for the top fifty doctoral-producing institutions was just 44%. Among the top fifty producers of doctoral degrees, no other institution had more than 55% female graduates.[15]

> The lawsuit alleged that Walden deliberately recruited Black and female students for the DBA program with false representations about program requirements before compelling them to complete more credit hours than originally advertised.

b. The Students' Allegations

In January 2022, former students, represented by the National Student Legal Defense Network and Relman Colfax PLLC, filed a class action against Walden alleging that the university lured students into its DBA program by advertising a degree that could be earned at a reasonable cost and within a reasonable timeframe. The plaintiffs alleged, however, that Walden knew and intended that the degree would cost much more.[16]

Specifically, the lawsuit alleged that Walden deliberately recruited Black and female students for the DBA program with false representations about program requirements before compelling them to complete more credit hours than originally advertised. To do so, plaintiffs alleged that Walden employed "enrollment advisers" who falsely informed prospective students that they could finish a doctoral program in business in three and a half years, costing between $43,000 to $60,000. According to plaintiffs, students were forced through an intentionally drawn-out process that required more credits than advertised at an average cost of $34,300 more than anticipated.[17]

Plaintiffs also asserted that Walden targeted the DBA program to Black and female students through advertisements directed at disproportionately Black communities. The complaint described how Walden's advertising was tailored to appeal to Black and female students.[18]

Plaintiffs alleged that Walden's acts were both intentionally discriminatory and had a disparate impact on Black and female students under ECOA. Plaintiffs also alleged, and Walden did not dispute, that Walden was a "creditor" and that plaintiffs were "applicants" when they "applied for an extension, renewal, or continuation of student loans."[19] Nor did Walden dispute that plaintiffs and Defendants were involved in a credit transaction as it relates to federal student loans.[20]

c. The Court Rejects Walden's Motion to Dismiss

Walden sought to have all Plaintiffs' claims dismissed. With respect to ECOA, Walden argued that Plaintiffs (i) failed to connect the credit transaction with any alleged discrimination; and (ii) did not allege that the terms of the student loans themselves were discriminatory—in Walden's words, "the purported discriminatory 'scheme' here stands independent from any 'loan transaction.'"[21] The Court rejected both arguments.

First, Walden argued that any alleged discrimination was outside of the scope of ECOA. According to Walden, the gravamen of Plaintiffs' allegations related to Walden's educational programs (*i.e.*, its dissertation practices), but not to any discrimination regarding the loan terms or other aspects of the credit transaction itself. In Walden's words, "an educational institution's dissertation practice 'is not a 'credit transaction' within the meaning of ECOA,' meaning Plaintiffs' ECOA claim fails as a matter of law."[22]

Second, Walden asserted that even if ECOA were applicable, because students were subject to the same loan terms, those terms were not discriminatory. According to Walden, because "the loans themselves are wholly irrelevant to the allegedly discriminatory conduct," Plaintiffs' ECOA claim must fail.[23]

The Court rejected these arguments, holding that Walden's conduct was sufficiently tied to a credit transaction.[24] As the Court explained, the plain language of ECOA prohibited Walden's conduct, as it "makes it unlawful to discriminate with respect to *any aspect* of a credit transaction."[25] Therefore, the court noted, it would be inconsistent with the broad purposes of the statute to "restrict[] [ECOA violations] to consideration of the four corners of the paper bearing a student borrower's signature."[26] Applying this standard, the Court highlighted the way in which Plaintiffs alleged that Walden "market[ed] and advertis[ed] their predatory program to a protected class; and in reliance on [Walden's] false representations, Plaintiffs entered into credit transactions and sustained considerable financial harm as a result."[27] This conduct—according to the Court—whether it was done intentionally or with a disproportionately adverse impact—was sufficient, if proven, to violate ECOA.

d. Lessons Learned from *Carroll v. Walden*

Under *Carroll*, when a school's deceptive and discriminatory conduct influences a student's borrowing decision—even if the loan terms are facially neutral, ECOA's protections apply. *Carroll* therefore creates a roadmap for state regulators to protect students from targeting by predatory institutions of higher education. By underscoring that predatory student lending schemes fall within ECOA's protections when they disproportionately harm protected groups, *Carroll* opens the door for the application of ECOA in similar cases involving student lending.

Courts and federal regulators are taking notice. In April 2023, the CFPB cited the *Carroll* decision in a Statement of Interest, explaining to a federal court in Florida presiding over a similar reverse redlining claim against an institution of higher education that "courts have recognized"

discriminatory targeting claims under ECOA when creditors target protected classes by, among other things, "misrepresenting costs to induce credit applications."[28] Four months later, that court favorably relied on *Carroll*, recognizing that ECOA could be used to challenge discriminatory lending practices in higher education, to our knowledge the second federal court to do so.[29]

II. How States Can Use Laws Prohibiting Credit Discrimination To Combat Reverse Redlining in Higher Education & Student Lending

Many states have laws prohibiting credit discrimination that are modeled after and/or are co-extensive with ECOA, some states go even further (with broader definitions of who may not engage in credit discrimination and expanded protected classes), and others are more restrictive than ECOA.[30]

This variation notwithstanding, most state credit discrimination laws address four core elements: (1) who is covered, (2) what activities are regulated, (3) what practices are prohibited, and (4) how and when victims can seek redress. In this section, we provide a series of recommendations for states to strengthen each of these elements within their credit discrimination laws in order to hold higher education institutions accountable. We conclude by recommending that states also use their authority under the Consumer Financial Protection Act to enforce ECOA itself.

A. **Who is covered:** states should clarify that institutions of higher education are "creditors" under the law.

Under the CFPB's Regulation B, the definition of a creditor includes "a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors."[31] In *Carroll,* Walden did not dispute that it was a creditor under this definition.[32] As set forth below, some states incorporate this definition, others are narrower, and some have no definition of creditor at all. We recommend that all states adopt a definition of "creditor" that is no less expansive than 12 C.F.R. § 202.2(l), and issue guidance making explicit that persons who refer applicants to creditors for federal, state, private and institutional student loans are included in that definition.

Some states already contain broad definitions that are consistent with Regulation B. For example, **Maryland** defines "creditor" as any person or entity that "regularly extends, renews, or continues credit" or "arranges for the extension, renewal, or continuation of credit."[33] Similarly, **Washington** defines creditor as "any person who regularly participates in the decision of whether or not to extend credit as well as those who regularly refer applicants to creditors."[34] Any reasonable reading of these provisions indicates that institutions of higher education are covered by these definitions, but the lack of specificity could create opportunities for institutions to argue around liability. Maryland, Washington, and other states with similar provisions should therefore strengthen their enforcement by issuing guidance stating that their definitions include persons who refer applicants to creditors for federal, state, private and institutional student loans.[35]

We conclude by recommending that states also use their authority under the Consumer Financial Protection Act to enforce ECOA itself.

Other states define "creditor" more narrowly, by listing specific types of covered entities (none of which include higher education). For example, **Illinois** limits application of its credit discrimination law to "financial institutions" which are defined narrowly as "any bank, credit union, insurance company, mortgage banking company or savings and loan association."[36] **Iowa** only covers certain entities licensed by the state's superintendent of banking, which include banks and credit unions but not institutions of higher education.[37] These states and others with similarly narrow provisions should incorporate the definitions in 12 C.F.R. § 202.2 and issue guidance to ensure coverage over institutions of higher education.

B. **Which activities are regulated**: states should amend their laws or otherwise make clear that federal, state, private and institutional student loans are covered credit transactions under state law.

Under Regulation B, credit is "the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor."[38] A "credit transaction" is "every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures)."[39] In *Carroll,* the Court found—and Walden did not dispute—that federal student loans were a "credit transaction" under this definition.[40]

State credit discrimination laws vary in how broadly they define "credit" and "credit transaction," with some containing definitions similar to Regulation B and others far narrower. For instance, **Washington** outlaws discrimination in connection with any "credit transaction" and takes a broad approach by defining credit as a "right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor."[41] Similarly, **Maryland** defines credit as the right granted by a creditor to a debtor to defer payment of a debt, incur a debt and defer its payment, or purchase property or services and defer payment for it."[42] Both definitions appear to include student loans but neither explicitly mentions education financing as a covered transaction.

Some states don't define "credit" at all. For example, **Minnesota** prohibits discrimination "in the extension of personal or commercial credit," but offers no statutory or regulatory definition of what "credit" actually means.[43] **Arkansas**, which protects the "right to engage in credit and other contractual transactions without discrimination" likewise provides no definition outlining the scope of that protection.[44] These states and others that ban credit discrimination without defining credit should amend their laws to provide a definition of credit that is at minimum co-extensive with Regulation B.

Other states limit their credit discrimination laws to cover only real estate transactions. For example, **Alabama** and **Arizona** each ban discrimination in real estate transactions but have no stand-alone credit discrimination statute protecting consumers in other types of credit transactions.[45] **Washington D.C.** also limits protection against credit discrimination to transactions involving "real property."[46] State laws in this category almost certainly offer no protection for student loan borrowers facing discrimination.

In short, although many state laws contain definitions that are co-extensive with Regulation B and would cover student loans, others fail to explicitly include—or define—covered transactions or, worse, restrict protections solely to real estate. Without stronger provisions, these states risk allowing discrimination in student lending to persist unchecked by state laws.

C. **What practices are prohibited**: states should make explicit that institutions can violate credit discrimination laws even if the loan terms are not discriminatory.

State credit discrimination laws vary in how they define and identify prohibited discriminatory practices. Some states focus explicitly on discriminatory terms within the credit agreements themselves, while others emphasize discrimination related to the amount or use of credit provided.

For example, **Washington** prohibits discrimination by creditors who "restrict the amount or use" of credit or "impose different terms or conditions" based on protected characteristics.[47] Similarly, **Minnesota** forbids discrimination both in "the extension" and "the requirements for obtaining" credit.[48] By contrast, **Florida** broadly outlaws discrimination in the "granting" of credit but does not clearly define the actions considered discriminatory.[49]

These varying approaches fail to clearly address discriminatory practices such as those uncovered in *Carroll.* As described above, Walden argued that because all students were subject to the same non-discriminatory student loan terms, "the loans themselves are wholly irrelevant to the allegedly discriminatory conduct" such that Plaintiffs' ECOA claim must fail. In response, the Court explained that "in keeping with the ECOA's broad discrimination purpose,"

the definition of credit transaction "includes every aspect of an applicant's dealings with a creditor, suggesting that the ECOA applies to 'more than one aspect of the transaction.'"[50]

States should similarly clarify that violations of their credit discrimination laws are not restricted to consideration of the four corners of the loan, but rather apply broadly to the marketing and advertising predatory programs. This would reinforce *Carroll's* lesson that targeting protected populations through misleading practices constitutes unlawful discrimination, regardless of whether loan terms differ on their face.

D. How and when plaintiffs can seek redress: states should eliminate burdensome exhaustion requirements, extend statutes of limitation, and eliminate caps on damages.

Many state discrimination laws limit access to the courts through burdensome exhaustion requirements and short statutes of limitation, while others limit the amount of damages plaintiffs can recover. To increase access and expand relief, these limiting provisions can and should be changed.

Exhaustion requirements. Many states require individuals who believe they were the victim of an unfair practice to exhaust administrative remedies prior to filing a case in court. For example, **Washington** requires individuals to first file a complaint with the Washington Human Rights Commission.[51] Only after a finding of reasonable cause and a final ruling by an administrative judge may an individual bring a case in civil court.[52] **Rhode Island** also requires victims of credit discrimination to first file an administrative complaint with the Rhode Island Human Rights Commission.[53] Only if the Commission fails to secure a settlement within 120 days may complainants proceed to state court.[54] Similarly, **New Mexico** mandates filing a complaint with its Human Rights Commission and permits appeals of adverse commission decisions to state court.[55] Such administrative requirements impose additional time and financial burdens on victims, who are often members of vulnerable populations who lack access to counsel. Removing these requirements would reduce barriers to enforcement and help ensure accountability for predatory lenders.

Statute of limitations. States laws vary in the statutes of limitations governing credit discrimination claims, which are often shorter than the five-year limitation set by ECOA, not to mention the typical four year duration of postsecondary programs.[56] For instance, **Minnesota** and **Maryland** require claims to be filed within one year of the alleged discriminatory act.[57] **Washington** does not specify a statute of limitations for private lawsuits but mandates that administrative complaints be filed within six months.[58] In **New Mexico**, complainants must be filed within 300 days of the discriminatory conduct.[59] By contrast, **Michigan** has a six year limitations period and **Illinois** and **New Jersey** each have two years.[60] Making state statutes consistent with ECOA's five-year provision would provide a more realistic timeframe to uncover misconduct, which would enhance access to justice and ensure greater consistency in enforcement.

Damages caps. Some states limit the damages victims of credit discrimination may recover. For example, **Maryland** caps recoveries for actual and punitive damages at $10,000,[61] and limits recovery in credit discrimination class actions to the lesser of $100,000 or 1% of a creditor's net worth.[62] Taking a different approach, **Minnesota** permits compensatory damages—including for mental anguish—up to three times actual damages, with no cap on punitive damages.[63] **Washington** places no monetary cap but limits recovery strictly to actual damages and attorney fees.[64] Removing recovery caps would both help victimized borrowers and strengthen consumer protections by deterring discriminatory lending practices.

E. State Attorneys General can enforce ECOA

In addition to improving their own credit discrimination laws, states should enforce ECOA. Section 5552 of the Consumer Financial Protection Act (CFPA) provides state attorneys general the authority "to enforce provisions of this title . . . and to secure remedies under provisions of this title . . . or remedies otherwise provided under other law."[65] Because ECOA is one of the 18 "enumerated consumer laws" covered by this provision,[66] states have the authority to bring actions under the CFPA that are predicated on violations of ECOA.[67]

Although scant cases squarely address state enforcement of ECOA, courts have upheld state enforcement of the CFPA and its 18 "enumerated consumer laws" pursuant to § 5552. In *Pennsylvania v. Navient Corporation*, the Third Circuit held that nothing in § 5552 bars states from bringing parallel enforcement actions, rejecting the defendant's argument that the federal government has exclusive enforcement authority.[68] More recently, in *Pennsylvania by Shapiro v. Mariner Financial, LLC*, a federal district court reaffirmed the constitutionality of § 5552 to allow states "to vindicate their 'fundamental right to protect their citizens and prevent harmful conduct from occurring in their jurisdictions'" as well as to "'pick up slack when the [F]ederal Government fails to enforce and regulate.'"[69] Multiple other courts have upheld the authority of states to independently enforce the 18 "enumerated consumer laws" pursuant to § 5552.[70] And at least one state has successfully used this authority to enforce ECOA.[71]

States can therefore play a key role in addressing discriminatory lending practices when federal oversight falls short. This is especially so now, as the federal government is limited by President Trump's April 28, 2025 Executive Order requiring all federal agencies to "deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability," including ECOA.[72]

State enforcement of ECOA would also help states overcome many of the substantive and procedural limitations under their laws (discussed above), including narrow definitions of "creditor" and "credit transaction," short statutes of limitation, and burdensome exhaustion requirements that don't exist under ECOA.

III. CONCLUSION

Poor-performing predatory institutions of higher education—often (but not always) for-profit—have long targeted marketing and recruiting efforts at students of color, single mothers, and other marginalized communities. These efforts have caused substantial harm, exacerbating systemic racial and economic disparities that reinforce generational wealth gaps.

While most states have credit discrimination laws in place that would prohibit these practices, rarely, if ever, have those laws been applied to higher education. Following the path set by *Carroll v. Walden University*, we have presented a roadmap for how states can use and improve their credit discrimination laws—as well as use ECOA itself—to root out reverse redlining in higher education. The logical application of these laws to the higher education space is a long overdue mechanism for redress that stands to improve equity, fairness and accountability across higher education lending.

Endnotes

1 *See, e.g., Hargraves v. Cap. City Mortg. Corp.*, 140 F. Supp. 2d 7, 20 (D.D.C. 2000), *on reconsideration in part*, 147 F. Supp. 2d 1 (D.D.C. 2001) ("Redlining is the practice of denying the extension of credit to specific geographic areas due to the income, race, or ethnicity of its residents. . . . Reverse redlining is the practice of extending credit on unfair terms to those same communities.") (internal quotations & citations omitted).

2 15 U.S.C. § 1691.

3 *See generally* Stephen Hayes & Andrea Lowe, "Combating Exploitive Education: Holding For Profit Schools Accountable for Civil Rights Violations" (Dec. 2020).

4 The court also held that reverse redlining was a cognizable theory of intentional discrimination under Title VI of the Civil Rights Act of 1964, and that plaintiffs adequately alleged facts concerning Walden's targeted advertising towards Black students and misrepresentation of the cost of the DBA program.

5 To our knowledge, the federal government has never brought a reverse redlining action under ECOA against an institution of higher education and, prior to the *Carroll* decision (described in detail below), students attempted it only once. In *Morgan v. Richmond Sch. of Health & Tech., Inc.,* No.11-cv-01066 (D.D.C) ("*RSHT*"), plaintiffs alleged that, in violation of ECOA, the defendant for-profit college engaged in reverse redlining by using various marketing strategies to target African Americans and low-income neighborhoods in the Richmond, Virginia area (the school's student body was 75% African American even though the area population was only 30% African American). *RSHT* resulted in a $5 million class settlement prior to any decision on the merits. *See generally* https://www.relmanlaw.com/cases-morgan-rsht.

6 *Carroll v. Walden Univ., LLC*, 650 F. Supp. 3d 342, 361, 363 (D. Md. 2022) (internal quotations omitted).

7 15 U.S.C. § 1691(a)(1).

8 12 C.F.R. § 202.1 (b); *see also Capitol Indem. Corp. v. Aulakh,* 313 F.3d 200, 202 (4th Cir. 2002) ("The animating principle of the ECOA and its state analogues is to prevent discrimination against those applying for credit. As such, they contain broad anti-discrimination provisions[.]").

9 *See, e.g., Hargraves v. Cap. City Mortg. Corp.,* 140 F. Supp. 2d 7, 22-23 (D.D.C. 2000), *on reconsideration in part*, 147 F. Supp. 2d 1 (D.D.C. 2001) (applying ECOA in the mortgage context); *U.S. ex rel. Cooper v. Auto Fare, Inc.,* No. 3:14-CV-00008-RJC, 2014 WL 2889945, at *1 (W.D.N.C. Apr. 16, 2014), *report and recommendation adopted,* No. 3:14-CV-0008-RJC, 2014 WL 2889993 (W.D.N.C. June 25, 2014) (applying ECOA to auto loans); *Consumer Fin. Prot. Bureau v. Colony Ridge Dev., LLC,* No. 4:23-CV-04729, 2024 WL 5183711 (S.D. Tex. Sept. 13, 2024) (applying ECOA to a land sales scheme targeting Hispanic borrowers).

10 15 U.S.C. § 1691e(a).

11 Zach Montague & Erica L. Green, *'A Rip-Off': Students Secure a Final Settlement Against Walden University,* New York Times (Oct. 17, 2024), https://www.nytimes.com/2024/10/17/us/politics/walden-university-class-action-settlement.html; *see also Carroll* Dkt. 92-2 (settlement agreement) ¶15 (describing nonmonetary relief in the Settlement Agreement) & Dkt. 104 (Order Approving Proposed Class Action Settlement and Certification of Class).

12 *Carroll,* Dkt. 47 (Am. Compl.) ¶¶ 47-48.

13 National Center for Science and Engineering Statistics, Survey of Earned Doctorates. Doctorate recipients, by ethnicity, race, and citizenship status: 2010–20 (Table 8) (Nov. 30, 2021), https://ncses.nsf.gov/pubs/nsf22300/data-tables.

14 National Center for Science and Engineering Statistics, Survey of Earned Doctorates. Doctorate recipients, by ethnicity, race, and citizenship status: 2010–20 (Table 9) (Nov. 30, 2021), https://ncses.nsf.gov/pubs/nsf22300/data-tables.

15 *Id.* ¶ 54 (citing National Center for Science and Engineering Statistics, Survey of Earned Doctorates. Doctorate recipients, by ethnicity, race, and citizenship status: 2010–20 (Table 3) (Nov. 30, 2021), https://ncses.nsf.gov/pubs/nsf22300/data-tables).

16 *Carroll v. Walden Univ., LLC*, 650 F. Supp. 3d 342, 352 (D. Md. 2022).

17 *Carroll,* Dkt. 47 (Am. Compl.) ¶¶ 16, 22.

18 *Id.* ¶ 153 ("The combination of Walden's local advertising statistics—laser focused on metropolitan areas with above-median Black populations—and the prominence of Black people in all forms of Walden's advertising leaves little doubt that Walden intentionally targets Black people for its DBA program."); *see also Id.* ¶¶ 30-33; 145-152 (targeting Black students); 163-166 (targeting female students).

19 *Carroll*, 650 F. Supp. 3d at 359 ("The parties do not dispute that Defendants fall within the definition of a 'creditor' and Plaintiffs fall within the definition of 'applicant.'").

20 *Id.*

21 *Carroll,* Dkt. 38 (Walden's Reply in Support of Motion to Dismiss) at 12.

22 *Carroll,* Dkt. 35-1 (Walden's Motion to Dismiss) at 21; *see also* Dkt. 38 at 10 (arguing that "the loans themselves are wholly irrelevant to the allegedly discriminatory conduct"). A "credit transaction" under ECOA means "means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of credit worthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures)." 12 C.F.R. § 202.2 (l).

23 *Carroll,* Dkt. 38 at 10; *see also id.* ("Neither the statute nor its implementing regulations, however, extend the ECOA to alleged discrimination that is so attenuated from the credit transaction at issue.").

24 *Carroll*, 650 F. Supp. 3d at 360.

25 *Id.* (emphasis added).

26 *Id.* at 361.

27 *Id.* at 363.

28 *Roberson v. Health Career Inst. LLC,* No. 22-CV-81883-RAR, Dkt. 58-1 at 1 (CFPB Statement of Interest) (S.D. Fla. Aug. 3, 2023).

29 *See Roberson v. Health Career Inst. LLC*, No. 22-CV-81883-RAR, 2023 WL 4991121, at *17 (S.D. Fla. Aug. 3, 2023) ("In sum, Plaintiffs allege discrimination with respect to multiple aspects of a credit transaction—including the contract terms (i.e. repayment terms), the cost of the product and the amount of credit needed to pay for it, the likely ability of students to repay the credit, the consequences of nonpayment, and the quality of educational services obtained with the credit. This is consistent with the text of ECOA, its implementing regulations, and the manner in which other courts have applied the statute.") (citing *Carroll v. Walden*).

30 *See generally* National Consumer Law Center, Treatise on Credit Discrimination, Appendix F (State Credit Discrimination Laws).

31 12 C.F.R. § 202.2(l).

32 *Carroll*, 650 F. Supp. 3d at 359 ("The parties do not dispute that Defendants fall within the definition of a 'creditor' and Plaintiffs fall within the definition of 'applicant.'").

33 Md. Code Ann., Com. Law § 12-701. Maryland's credit discrimination law is enforced by the Commissioner of the Office of Financial Regulation (OFR), which oversees the state's banking, consumer credit, and financial services laws. *See* Md. Code Ann., Com. Law § 12-706. OFR's jurisdiction includes banks, credit unions, consumer loan lenders, and student loan financing companies. *Id.* Given that institutions of higher education likely meet Maryland ECOA's definition of "creditor," lawmakers should explicitly clarify that OFR also has enforcement authority over these institutions.

34 Wash. Admin. Code 162-40-041.

35 In Maryland, such guidance should also make clear that higher education institutions fall under the jurisdiction of the Commissioner of Financial Regulations, ensuring they are subject to enforcement actions for discriminatory lending. Md. Code Ann., Com. Law § 12-703. In addition, Maryland should clarify that the ban on aiding and abetting discriminatory lending applies to third-party loan servicers and recruiters working with institutions of higher education to ensure all actors involved in reverse redlining can be held accountable. *See* Md. Code Ann., State Gov't § 20-801 ("A person may not . . . aid, abet, incite, compel, or coerce any person to commit a discriminatory act.").

36 775 Ill. Comp. Stat. Ann. 5/4-101.

37 Iowa Code Ann. § 537.2301; Iowa Code Ann. § 216.10, Iowa Code Ann. § 524.107; Iowa Code Ann. § 533.201.

38 12 C.F.R. § 202.2(j).

39 12 C.F.R. § 202.2(m).

40 *Carroll*, 650 F. Supp. 3d at 359 ("The credit transaction in this case focuses on the students and prospective students applying for financial aid and, subsequently, Defendants' processing the applications, requesting additional information, determining students' eligibility, and communicating offers to students. Therefore, the court finds that Plaintiffs and Defendants are involved in a credit transaction as it relates to the federal student loans.").

41 Wash. Admin. Code 162-40-041.

42 Md. Code Ann., Com. Law § 12-701.

43 Minn. Stat. Ann. § 363A.16. Minnesota courts, however, have held that federal case law interpreting ECOA should guide interpretations of state credit discrimination law even when ECOA is not mentioned in the state statute. See *Hunter v. Ford Motor Co*., No. CIV. 08-4980 PJS/JSM (D. Minn. July 28, 2010), report and recommendation adopted, No. 08-CV-4980 PJS/JSM (D. Minn. Aug. 23, 2010), 9 n.10 ("Minnesota courts have found that interpretations of the MHRA are guided by federal cases interpreting federal discrimination statutes to the extent they contain language that similar in many respects. This Court finds that the ECOA and Minn. Stat. § 363A.16 contain sufficiently similar language that it is appropriate to apply federal cases analyzing the ECOA to its analysis of [claims] under § 363A.16."). Minnesota courts would therefore likely follow the federal definition.

44 Ark. Code Ann. § 16-123-107.

45 *See* Ala. Code § 24-8-6. *See also* Ariz. Rev. Stat. Ann. § 41-1491.20 (banning credit discrimination in connection with "residential real estate related transactions").

46 D.C. Code Ann. § 2-1402.21. While Washington D.C.'s credit discrimination statutes specifically limit applicability to housing and property, Washington D.C. also has a statute related to education discrimination, which specifically prohibits education institutions from denying or restricting access to facilities, services, programs, or benefits based on a person's race or other protected characteristic. *See* D.C. Code Ann. § 2-1402.41.

47 Wash. Rev. Code Ann. § 49.60.176.

48 Minn. Stat. Ann. § 363A.16.

49 Fla. Stat. Ann. § 725.07.

50 *Carroll*, 650 F. Supp. 3d at 361.

51 Wash. Rev. Code Ann. § 49.60.230.

52 Wash. Rev. Code Ann. § 34.05.534.

53 34 R.I. Gen. Laws Ann. § 34-37-5.

54 34 R.I. Gen. Laws Ann. § 34-37-5.

55 N.M. Stat. Ann. § 28-1-13.

56 15 U.S.C. § 1691e(f).

57 Minn. Stat. Ann. § 363A.28; Md. Code Ann., Com. Law § 12-707.

58 Wash. Rev. Code Ann. § 49.60.030; Wash. Rev. Code Ann. § 49.60.230.

59 N.M. Stat. Ann. § 28-1-10.

60 Mich. Comp. Laws Ann. § 600.5813 (six-year SOL in Michigan); 775 Ill. Comp. Stat. Ann. 5/10-102 (two-year SOL in Illinois); N.J. Stat. Ann. § 10:5-12.11 (two-year SOL in New Jersey).

61 Md. Code Ann., Com. Law § 12-707. Maryland's credit discrimination law includes a "bona fide error" defense, allowing creditors to avoid liability if they can demonstrate by a preponderance of evidence that the violation was unintentional despite having reasonable safeguards in place. See Md. Code Ann., Com. Law § 12-707(f). However, Maryland also separately states that any violation of federal ECOA—which does not include a "bona fide error" defense—is automatically a violation of Maryland law. Md. Code Ann., Com. Law § 12-704. Lawmakers should clarify this apparent inconsistency and consider whether the "bona fide error" defense creates a loophole permitting institutions to escape accountability by claiming that their conduct was not intentional. Eliminating this provision or tightening its criteria would reduce opportunities for institutions to evade liability for systemic predatory practices.

62 Md. Code Ann., Com. Law § 12-707.

63 Minn. Stat. Ann. § 363A.33.

64 Wash. Rev. Code Ann. § 49.60.030.

65 12 U.S.C. § 5552(a)(1) ("[T]he attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law.").

66 *See* 12 U.S.C. § 5481(12)(D); *see also Pennsylvania by Shapiro v. Mariner Fin., LLC,* 711 F. Supp. 3d 463, 472 (E.D. Pa. 2024) (explaining that "the CFPA prohibits practices not in conformity with the 18 pre-existing 'enumerated consumer laws,'" and that with section 5552, Congress "expanded the role of the States in pursuing enforcement action[s]" under these enumerated laws).

67 In 2022, the CFPB issued an interpretive rule clarifying that this authority includes state enforcement of each of the "enumerated consumer laws"—even where the CFPB is pursuing—or choosing not to pursue—its own enforcement action against the same entity. *See* Authority of States To Enforce the Consumer Financial Protection Act of 2010, 87 Fed. Reg. 31,940-01 (May 26, 2022) ("When a covered person or service provider violates any of the Federal consumer financial laws, section [5552] gives States authority to address that violation by bringing a claim under section 1036(a)(1)(A) of the CFPA."), https://www.govinfo.gov/content/pkg/FR-2022-05-26/pdf/2022-11356.pdf. This interpretive rule was rescinded by the Trump administration on May 15, 2025. *See* 90 Fed. Reg. 20,565 (May 15, 2025), https://www.govinfo.gov/content/pkg/FR-2025-05-15/pdf/2025-08641.pdf.

68 *See Pennsylvania v. Navient Corp.,* 967 F.3d 273, 284 (3d Cir. 2020) ("Here the plain meaning of § 5552 is that the Pennsylvania attorney general may bring an action to enforce the Consumer Protection Act.").

69 *Pennsylvania by Shapiro v. Mariner Fin., LLC*, 711 F. Supp. 3d 463, 473 (E.D. Pa. 2024) (quoting *Pennsylvania v. Navient Corp.,* 967 F.3d 273, 286 (3d Cir. 2020)).

70 *See, e.g., Consumer Fin. Prot. Bureau v. Ocwen Fin. Corp.,* No. 9:17-CV-80495, 2019 WL 13203852, at *9, n.4 (S.D. Fla. Sept. 30, 2019) (explaining that, pursuant to § 5552(a)(1), the Florida Attorney General has authority to enforce the Real Estate Settlement Procedures Act and the Homeowners Protection Act, both of which, like ECOA, are included in the 18 enumerated consumer laws set forth at 12 U.S.C.A. § 5481(12)); *Texas v. Colony Ridge, Inc.,* No. CV H-24-0941, 2024 WL 4553111, at *4 (S.D. Tex. Oct. 11, 2024) ("The State is authorized to bring claims alleging violations of [the Interstate Land Sales Full Disclosure Act, one of the 18 enumerated consumer laws] through its enforcement authority under the CFPA."); *Pennsylvania by Shapiro v. Mariner Fin., LLC*, 711 F. Supp. 3d 463, 472 (E.D. Pa. 2024) (explaining that the list of 18 enumerated consumer laws provided the statutory basis for the state attorney general's Truth in Lending Act claims, one of the 18 enumerated consumer laws); *Illinois v. Alta Colls., Inc.,* No. 14 C 3786, 2014 WL 4377579, at *3 (N.D. Ill. Sept. 4, 2014) (rejecting argument by a for-profit college that the Illinois Attorney General lacks independent enforcement authority because, among other things, "§ 5552 expressly authorizes states to sue on their own behalf"). *See also* State Attorneys General Amicus Brief in *NTEU v. Vought,* No. 25-cv-00381, 2025 WL 1090299 (D.D.C, filed Feb. 21, 2025) ("Congress also codified the authority of state attorneys general to enforce various federal consumer financial laws, *id*. § 5552(a), thereby enabling cooperative state and federal enforcement as well as independent state enforcement.").

71 *See United States of America v. First Nat'l Bank of Pennsylvania*, No. 1:23-cv-0088, 2024 WL 1599868 (consent order resolving ECOA claims (among others) brought by the Department of Justice and North Carolina pursuant to 12 U.S.C. § 5552(a)(2)(B)).

72 *See* Exec. Order 14,281, Restoring Equality of Opportunity and Meritocracy, 90 Fed. Reg. 17537 (Apr. 28, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/.

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