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SLBA
Student Loan Borrower Assistance

July 18, 2017

Rep. Jennifer E. Benson
House Chairwoman, Committee on Consumer Protection and Professional Licensure
Room 42
State House
Boston, MA 02133
Sent via email to: Jennifer.Benson@mahouse.gov

Sen. Barbara A. L'Italien
Senate Chairwoman, Committee on Consumer Protection and Professional Licensure
Room 109-E
State House
Boston, MA 02133
Sent via email to: Barbara.L'Italien@masenate.gov

Re: In Support of An Act Establishing A Student Loan Bill Of Rights (S129)

Dear Chairwoman Benson and Chairwoman L'Italien:

We are writing on behalf of the National Consumer Law Center's low-income clients. The Boston-based National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of civil legal aid, government and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues.

NCLC's Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens and make loan repayment more manageable.[1]

[1] See the Project's web site at www.studentloanborrowerassistance.org. NCLC also publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including National Consumer Law Center, Student Loan Law (5th ed. 2014), updated at www.nclc.org/library.

Our policy and advocacy efforts are grounded in our direct legal assistance work with low-income clients in Massachusetts. These clients seek our assistance because they are struggling with student loan debt. In addition to our work in Massachusetts, we consult with advocates across the country representing borrowers, many with complaints against student loan servicers.

Quality Servicing Is Vitally Important For Student Loan Borrowers

Student loan servicers are the borrower's primary point of contact. If the servicer is competent and efficient, many financially distressed borrowers will be able to avoid default. The main problem with the current system is that student loan borrowers do not receive consistent quality service. In April 2017, the Consumer Financial Protection Bureau (CFPB) released a report detailing complaints filed by student loan borrowers working to repay their student loans. Specifically, borrowers and other stakeholders reported experiencing:

- A wide range of sloppy, patchwork practices by servicers that create obstacles to repayment, raise costs, cause distress, and contribute to driving struggling borrowers to default.
- Difficulty enrolling and staying in income-driven repayment plans including processing delays, inaccurate denials, lost paperwork, and insufficient information or guidance.
- Confusion about their progress toward Public Service Loan Forgiveness programs. After years of making payments, some borrowers learn that their loans are not enrolled in a qualifying repayment plan, despite borrowers telling their servicers that they were pursuing Public Service Loan Forgiveness.[2]

Unfortunately, U.S. Secretary of Education Betsy DeVos has withdrawn guidance that was intended to ensure greater consumer protections in the contracting process for student loan servicers. Further, she has announced changes to the servicing procurement process that, in the words of over 150 Congressional lawmakers in a letter to Secretary DeVos, "threaten[] to increase rates of delinquency and default, degrade the quality of customer service, and make it harder for borrowers to manage their federal loans."[3]

Student Loans Play A Major Role In The Economy

As former Deputy Secretary of the Treasury Sarah Bloom Raskin noted, "student loans serve an important economic purpose, helping students invest in their potential through higher education and generating positive spillovers from each individual's education."[4] Currently in the United States, roughly 44 million people owe more than $1.4 trillion on their student loans.[5] This makes

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[2] Consumer Fin. Prot. Bureau, CFPB Monthly Snapshot Spotlights Student Loan Complaints (Apr. 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-snapshot-spotlights-student-loan-complaints/.
[3] Letter from 150 Members of Congress to U.S. Dep't of Educ. Secretary Betsy DeVos, June 12, 2017, available at https://www.help.senate.gov/imo/media/doc/061217%20-%20Bicam%20Dem-DeVos%20Servicing%20Letter%20%20final.pdf.
[4] U.S. Dep't of Treasury, Press Center, Remarks of Deputy Secretary Raskin at the University of Maryland-Baltimore County (April 29, 2014), https://www.treasury.gov/press-center/press-releases/Pages/jl2374.aspx.
[5] *See* Federal Reserve Bank of New York, 2016 Student Loan Update (2016), *available at* https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/sl_update_2016; Board of

student loan debt the second largest source of debt in the United States, just behind mortgages.[6] Unfortunately, federal data show that more than 1 in 4 of these borrowers are delinquent or in default on their federal student loans.[7]

At NCLC, we see and hear the human toll of the tattered student loan safety net every day from the low-income borrowers here in Massachusetts who we represent. Vulnerable students attempting to better their lives and better provide for their families through education face severe consequences if they default on federal student loans. The federal government has nearly boundless powers to collect student loans, far beyond those of most unsecured creditors. It can garnish a borrower's wages without a judgment, seize tax refunds (even those including an earned income tax credit), seize portions of federal benefits such as Social Security, and deny eligibility for new education grants or loans.

Even borrowers who avoid default and repay their debts can face additional charges if they fall behind on their payments at any point. As Deputy Secretary Raskin pointed out, this can require further sacrifices to pay the monthly bills, dampening consumption and hindering the economy's recovery.[8] Research by the Federal Reserve Bank of New York suggests that burdensome student loan debt is causing borrowers to delay homeownership and live with their parents longer.[9] For borrowers facing financial hardship, competent and accurate servicing can be the difference between missing a payment and staying on track.

Quality, borrower-centric servicing is essential to improving student loan outcomes, but is often overlooked in policy debates. If the servicer is competent and efficient, many financially distressed borrowers will be able to avoid default by accessing alternative repayment plans, statutory discharges, or deferments or forbearances appropriate for their circumstances. The reality of the current servicing system, unfortunately, is far from this ideal. The main problem with the current system is that student loan borrowers do not receive consistent quality service. Unfortunately, too many borrowers never obtain options that could relieve their debt burdens and help them make fresh starts in life.

Accountability Is Key To Quality Servicing

Accountability is critical to ensuring that borrowers receive quality servicing. As the CFPB aptly identified in its 2015 report on student loan servicing:

Governors of the Federal Reserve System, Consumer Credit (May 2017), *available at* https://www.federalreserve.gov/releases/g19/current/.

6 *See* Federal Reserve Bank of New York, Quarterly Report on Household Debt and Credit (May 2017), https://www.newyorkfed.org/microeconomics/hhdc.html.

7 Consumer Financial Protection Bureau, Student Loan Servicing: Analysis of Public Input and Recommendations for Reform, (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf. Default is defined as being more than 270 days behind on payment.

8 U.S. Dep't of Treasury, Press Center, Remarks of Deputy Secretary Raskin at the University of Maryland-Baltimore County (April 29, 2014), https://www.treasury.gov/press-center/press-releases/Pages/jl2374.aspx.

9 Zachary Bleemer, Meta Brown, Donghoon Lee, Katherine Strair, & Wilbert van der Klaauw, *Echoes of Rising Tuition in Students' Borrowing, Educational Attainment, and Homeownership in Post-Recession America*, Federal Reserve Bank of New York Staff Reports, no. 820 (July 2017), *available at* https://www.newyorkfed.org/research/staff_reports/sr820.

> Borrowers depend on servicers to offer an error resolution process that is accessible, effective, and transparent. Adequate customer service and error resolution is especially important in the student loan market, where the consequences of borrowers' failure to satisfy an obligation can be particularly injurious, given many borrowers' limited credit history. When errors occur and are not quickly addressed, harm to borrowers may not be limited to problems with the individual loan or loans in question. Increasingly, consumer credit profiles serve as a precondition to employment, housing, and access to credit, and consequently, servicing errors can have spillover effects on many other aspects of borrowers' lives and livelihoods.[10]

Accountability was also prominent among the principles cited in the U.S. Departments of Education and Treasury, and the CFPB's Joint Statement of Principles on Student Loan Servicing. As it stated: "Student loan servicers, whether for-profit, not-for-profit or government agencies, should be accountable for serving borrowers fairly, efficiently and effectively. If servicers fall short and violate federal or state consumer financial laws, the HEA, contractual requirements, or federal regulations, borrowers, federal and state agencies and regulators, and law enforcement officials should have access to appropriate channels for recourse, as authorized under law."[11]

Fortunately, Massachusetts Attorney General Maura Healey has been a leader in holding student loan servicers accountable. In 2016, the AGO secured a $2.4 million settlement against ACS Education Services (ACS) over allegations that it failed to properly process struggling Massachusetts students' applications for federal repayment plans intended to lower their monthly payments and engaged in harassing debt collection practices, amongst other violations of state and federal law.[12]

However, accountability also requires that borrowers have the ability to enforce their rights when breached by servicers. Strong government enforcement is an essential piece of the picture, but it is only a piece. Agencies can only act selectively and can never address the vast majority of individual violations. Additionally, because citizens are more likely than government agencies to be aware of practices that cause borrowers harm, suits by individuals can actually drive regulation and reform by exposing bad practices. For these reasons, private enforcement is an essential component of the oversight framework. Critically, Senate Bill 129 provides student loan borrowers in Massachusetts with that right.

Critical Need For Servicing Data

There is a critical need for publicly available information in order to evaluate whether student loan servicers are adequately performing their duties, and to identify ways to improve outcomes

[10] Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input 140-141 (Sept. 2015).
[11] U.S. Dep'ts of Educ. and Treasury, and Consumer Financial Protection Bureau, Department of Education, Department of Treasury and the Consumer Financial Protection Bureau Issue Joint Principles on Student Loan Servicing (Sept. 29, 2015), http://www.ed.gov/news/press-releases/department-education-department-treasury-and-consumer-financial-protection-bureau-issue-joint-principles-student-loan-servicing.
[12] MA AGO, Press Release, AG Healey Secures $2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer (Nov. 22, 2016), http://www.mass.gov/ago/news-and-updates/press-releases/2016/ag-healey-secures-2-4-million-student-loan-servicer.html.

for borrowers. Although there has been some increase in available data through the Department of Education's Data Center website and through the CFPB's supervision of the four larger servicers the Department contracted with (Great Lakes Educational Loan Services, Nelnet, FedLoan Servicing (PHEAA), and Navient), more data is needed. The licensing provision of this bill would situate Massachusetts to both to collect this data and to analyze it to ensure that student loan servicing works for all borrowers.

Conclusion

As Attorney General Maura Healey, joined by 20 attorneys general and the Office of Consumer Protection of Hawaii, said, "By revoking [] critical protections, the Department [of Education] has abdicated its responsibility to student loan borrowers."[13] The role of states to protect student loan borrowers is critical. To date, two states and Washington, D.C. have passed legislation similar to S129, and over a dozen more states have introduced legislation. Massachusetts has been a leader on protecting the rights of student loan borrowers. Massachusetts should continue to lead on this issue. Therefore, we urge you to support S129, An Act Establishing A Student Loan Bill Of Rights.

Thank you for your consideration of these comments. Please feel free to contact Persis Yu at 617-542-8010 if you have any questions or comments.

Sincerely,
/s
Persis S. Yu
Director, Student Loan Borrower Assistance Project
National Consumer Law Center

[13] Letter from 150 Members of Congress to U.S. Dep't of Educ. Secretary Betsy DeVos, June 12, 2017.