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MEMORANDUM IN SUPPORT OF HB 1500-FN

NAME OF BILL: **An Act establishing a Student Loan Bill of Rights and a Student Loan Ombudsman**

SPONSORS: **Representatives Willis Griffith, Craig Thompson, Patricia Cornell and Samantha Fox**

STATEMENT OF SUPPORT: Consumer Reports strongly supports the proposed Student Loan Bill of Rights (HB 1500-FN), which authorizes the commissioner of the banking department to designate a student loan ombudsman with the department, and license and provide oversight over student loan servicers, who are currently unregulated. The bill also prohibits servicers from engaging in unfair and deceptive practices. In light of the continuing student loan crisis, it is critical for the New Hampshire legislature to take action to protect student loan borrowers.

The nation is currently facing a serious student loan crisis. Student debt is the second highest source of household debt, following only debt tied to home ownership (mortgages and home equity debt).[1] More than 42 million Americans owe at least $1.5 trillion in student loan debt and $137 billion of that debt is in default.[2] In 2018, New Hampshire student loan borrowers held an average of $36,776 in student debt; 76% of college graduates statewide were in debt, the highest percentage in the country.[3] New Hampshire borrowers hold an estimated $6.8 billion in outstanding debt, an amount that has doubled over the last 10 years.[4] Student loan servicers, who are the primary links between lenders and borrowers, have the power to either help borrowers remain current on their accounts, or allow them to fall into default. As explained below, because that power is unchecked and servicers do not always have borrowers' best interests in mind, it is imperative that the New Hampshire Banking Department license and regulate student loan servicers:

1. *Studies show that servicers routinely fail to tell borrowers about available relief, including income-driven repayment plans and disability discharges, and instead allow borrowers to fall into default, resulting in garnishment, tax seizures, and other hardships*. A 2015 report by the Government Accountability Office (GAO) found that 70 percent of borrowers in default actually qualified for a lower monthly payment through income-

1 "Total Household Debt Rises For 16th Straight Quarter," News Release, Federal Reserve Bank of New York, 8/14/18, available at: https://www.newyorkfed.org/newsevents/news/research/2018/rp180814

2 Consumer Federation of America, New Data: More Than 1.1 Million Federal Student Loan Defaults in 2016, March 14, 2017, *available at* http://consumerfed.org/press_release/new-data-1-1-million-federal-student-loan-defaults-2016/. See also US Federal Reserve, Consumer Credit G.19, January 2018, available at: https://www.federalreserve.gov/releases/g19/current/default.htm

3 *Student Debt and the Class of 2018*, The Institute for College Access and Success (TICAS), September 2019, available at: https://ticas.org/wp-content/uploads/2019/09/classof2018.pdf

4 Dubail, Jean. *New Hampshire Student Loan Debt Nearly Doubles in 10 Years: Report*, Patch.com, January 7, 2019, available at: https://patch.com/new-hampshire/concord-nh/nh-student-loan-debt-nearly-doubles-10-years-report

driven repayment plans that cap monthly payments at a percentage of earnings, yet servicers failed to provide sufficient information for borrowers to enroll.[5] Servicers benefit financially from this tactic to the detriment of borrowers.[6]

2. *Borrowers report that servicers provide inaccurate information or actively obstruct relief when borrowers apply for an income-driven payment program, instead pushing them into temporary forbearance and deferment options, which ultimately work against the borrowers' best interests*.[7]

3. *Borrowers find that loan servicers are unable to provide accurate information or records*.[8] This includes being able to obtain accurate information about payment history, including how payments were allocated between principal and interest; getting access to original loan documents and records from when the loan was originated; and getting accurate, actionable information from customer service representatives.

4. *Many older borrowers are struggling with student debt payments in New Hampshire, and would benefit from a Student Loan Ombudsman and increased state oversight of the servicing industry.* From 2012 to 2017, the number of older borrowers over 60 with student loan debt in New Hampshire grew by 73%, growing from 13,680 to 23,616 people – approximately 10,000 additional people. In that same period, the amount of debt held by older borrowers over 60 in New Hampshire increased from $416 million in $807 million -- an increase of 94%.[9]

5. *Despite their vital role in the lives of more than 42 million student loan borrowers and in managing an estimated $1.5 trillion dollars in student loans,* ***there is currently no effective federal supervision of student loan servicers*****.** The Higher Education Act does not expressly address oversight of education loan servicers, and there are no industry-wide regulations governing their activities. States have a longstanding and well-established role in protecting consumers against unfair and deceptive practices when it comes to financial products, loan servicing and debt collection. In her short time as Secretary of Education, Betsy DeVos has swiftly rescinded the Obama administration's efforts to set reasonable and consistent standards to protect borrowers.[10] This underscores the need for state action to fill the current void. If states do not act,

5 United States Government Accountability Office, Report to Congress, Federal Student Loans: Education Could Do More to Help Ensure Borrowers Are Aware of Repayment and Forgiveness Options, 13, August 2015, *available at* https://www.gao.gov/assets/680/672136.pdf.

6 Consumer Financial Protection Bureau, Student Loan Servicing, Analysis of Public Input and Recommendations for Reform, 25, September 2015, *available at* http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf

7 Ibid.

8 Ibid. at 64-66; 69.

9 "CFPB Snapshot of Older Consumers and Student Loan Debt," Consumer Financial Protection Bureau, January 2017, available at: https://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf Also see: "Older Consumers and Student Loan Debt by State," CFPB, January 2017, available at: https://files.consumerfinance.gov/f/documents/201708_cfpb_older-consumers-and-student-loan-debt-by-state.pdf

10 Cowley, Stacy and Jessica-Silver Greenberg, *DeVos Halts Obama-Era Plan to Revamp Student Loan Management*, MARYLAND TIMES, April 14, 2017, *available at* https://nyti.ms/2nNpNQK.

customers of student loan servicers will continue to have virtually no consumer protections.

6. *States are NOT legally preempted by federal law from overseeing student loan servicers.* On March 30, 2018, the Department of Education issued an "interpretation" published in the Federal Register, that claims that states are preempted from regulating student loan servicers. However, federal courts have repeatedly rejected the case for broad preemption of student loan regulation.[11] Congress carefully drafted the federal Higher Education Act (HEA) of 1965 as amended to only preempt state law under a very narrow set of circumstances, where state oversight was expressly prohibited. The Department of Education has also drawn its regulations regarding servicers quite narrowly to *avoid* wide-ranging state preemption, as noted in a recent letter from 26 attorneys general to Education Secretary Betsy DeVos.[12] In addition, contracts signed by the Department of Education with loan servicers have repeatedly recognized the role that states play in oversight of student loan servicing and debt collection, and emphasized that contractors must remain in compliance with state laws. The March 30, 2018 interpretation merely states the Department of Education's current policy position as to how the agency thinks the courts should rule on the issue; it is not a regulation or a law, it is not legally binding, and it does not have a preemptive effect. In fact, every court that has been asked to consider the notice has rejected it, stating it warrants no deference per the Administrative Procedures Act (APA).

7. *New Hampshire student loan borrowers have filed numerous complaints about the poor quality of customer service and information provided by student loan servicers.* From 2011 through 2017, 298 New Hampshire student loan borrowers filed complaints with the Consumer Financial Protection Bureau about their student loans and servicing practices.[13] These complaints likely represent the tip of the iceberg, because many borrowers have no idea which agencies oversee student loan servicing, and do not know where to complain. By creating a Student Loan Ombudsman, and giving the Department of Banking the power to investigate borrower concerns, New Hampshire can help make sure that many more borrowers will get the information they need to make the right choices for repayment of their loans.

8. *States are increasingly taking action to protect student loan borrowers*. Connecticut, California, Illinois, Maine, New Jersey, New York, Rhode Island, Washington and the District of Columbia have stepped up and enacted bills addressing various abuses in student loan servicing that frustrate borrowers from paying off their student loans. Similar legislation is pending in Massachusetts and several other states.

11 Mishory, J,., and Cao, Y. *Four Things DeVos Gets Wrong About State Laws Protecting Borrowers*, The Century Foundation, 3/12/18, available at: https://tcf.org/content/commentary/four-things-devos-gets-wrong-about-state-laws-protecting-borrowers/?agreed=1

12 Letter from Attorney General Eric Schneiderman and 25 other state attorneys general to Secretary Betsy DeVos, October 23, 2017, discussing the importance of state oversight and enforcement of laws relating to student loans, available at: http://www.marylandattorneygeneral.gov/news%20documents/DeVos_10_24_17.pdf

13 Frotman, Seth. *A 50 State Look at Complaints About Student Loans*, Consumer Financial Protection Bureau, Oct. 27, 2017, available at: https://www.consumerfinance.gov/about-us/blog/50-state-look-complaints-about-student-loans/

HB 1500-FN will help reign in rampant student loan servicing abuses. The proposed legislation would fill the gap in federal loan servicing standards and help New Hampshire' student loan borrowers make better decisions about loan repayment. The bill's provisions include:

- Licensing and regulating student loan servicers who service the loans of New Hampshire residents;
- Prohibiting servicers from various common unfair, deceptive, and misleading tactics;
- Creating strong standards for the retention of records and continuing borrower benefits, in the event of sale, assignment, or other transfers; and
- Subjecting student loan servicers to examination by the Department of Banking.

This pro-consumer legislation will help New Hampshire' economy by helping student loan borrowers to avoid delinquency and default, and to enroll in repayment options that are appropriate and suitable for their financial interests. In so doing, the bill will help borrowers to both protect their credit standing, and qualify for other loans and credit, such as a home mortgage.[14]

Consumer Reports strongly urges you to support and cosponsor HB 1500-FN to improve information and assistance for New Hampshire student loan borrowers, and protect them from unfair, deceptive and predatory tactics by student loan servicers.

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14 Assisting borrowers to get enrolled in income-driven repayment and public service loan forgiveness could have a positive economic impact on New Hampshire' economy, because many student loan borrowers with high levels of debt are currently delaying household formation and home purchases. According to a national survey by Bankrate Monitor, 73 percent of respondents have delayed at least one major life milestone because of their student loan debt, including putting off buying a house (23 percent), saving for retirement (29 percent), saving for emergencies (34 percent) or paying off other debt (27 percent), Bursztynsky, J. *More people put off home buying due to student debt*, CNBC, 3/1/19, available at: https://www.cnbc.com/2019/03/01/suvery-finds-more-people-put-off-home-buying-due-to-student-debt.html