ConsumersUnion

MEMORANDUM IN SUPPORT OF ARTICLE VII BUDGET LEGISLATION, TED PART W, SUBPART A (STUDENT LOAN SERVICERS)

February 12, 2018

STATEMENT OF SUPPORT: Consumers Union, the advocacy division of Consumer Reports, strongly supports the provisions in Article VII, TED Part W, Subpart A which will enhance and strengthen state oversight over student loan servicing in New York. In light of the serious ongoing student loan crisis, in which many students are carrying high levels of debt, and are encountering many barriers and obstacles to enrolling in appropriate repayment plans, it is critical for the New York legislature to take action to protect student loan borrowers.

The United States is currently facing a serious student loan crisis, as more than 42 million Americans owe at least $1.4 trillion in student loan debt, and $137 billion of that debt is in default.[1] In New York alone, student loan debt has more than doubled during the last decade, growing to $82 billion.[2] Student loan servicers, which 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. Because so many New York borrowers have loans, and federal oversight has been highly lax and inconsistent, we strongly urge the legislature to ensure basic rights for borrowers repaying student loans.

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 study by the Government Accountability Office (GAO) found that 70 percent of borrowers in default actually qualified for a lower monthly payment through income-driven repayment plans that cap monthly payments at a percentage of earnings, yet servicers failed to provide sufficient information for borrowers to enroll.[3] Servicers benefit financially from this tactic to the detriment of borrowers.[4]

---

[1] 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

[2] Office of the State Comptroller, "Student Loan Debt in New York State," 1, September 2016, available at: https://www.osc.state.ny.us/reports/highered/student_loan_debt.pdf

[3] 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.

[4] 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

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*.[5]

3. *Borrowers find that loan servicers are unable to provide accurate information or records*.[6] This includes being able to access 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. *Despite their vital role in the lives of more than 42 million student loan borrowers and in managing an estimated $1.4 trillion dollars in student loans,* ***there is currently no effective federal supervision of student loan servicers*****.** At the same time, 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 addition, the Department of Education has drawn its regulations regarding servicers quite narrowly to *avoid* wide-ranging state preemption, as noted in a recent letter from 26 attorneys general to Secretary DeVos.[7] Enforcement of laws and standards regarding student loan servicing can be a joint state-federal responsibility, but at a minimum states can and must retain broad powers to act, especially in the breach of federal action. 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.[8] This underscores the need to for state action to fill the current void. If states do not act, customers of student loan servicers will continue to have virtually no consumer protections.

5. *When New Yorkers with student loans are made aware of affordable repayment options, they will have more disposable income to support themselves and their families, rent and purchase homes, and contribute to local and statewide economies.*[9]

---

[5] Id.
[6] Id. at 64-66; 69.
[7] Letter from Attorney General Eric Schneiderman and 25 other state attorneys general to Secretary Betsy DeVos, October 23, 2017, discussing 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
[8] Cowley, Stacy and Jessica-Silver Greenberg, *DeVos Halts Obama-Era Plan to Revamp Student Loan Management*, NEW YORK TIMES, April 14, 2017, *available at* https://nyti.ms/2nNpNQK.
[9] See Office of State Comptroller, *supra*, at 9.

6. *States are beginning to take effective action to protect student loan borrowers*. Connecticut, California, Illinois, 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. Other states, including Maine, New Jersey, Virginia and Washington are also advancing student loan servicing legislation.

The proposed provisions in the Article VII Budget legislation will help reign in rampant student loan servicing abuses. This important proposed legislation would fill the gap in federal loan servicing standards and help New York state's student loan borrowers make better decisions about loan repayment. The provisions in Part W, Subpart A include:

- Licensing and regulating student loan servicers who service the loans of New York 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 Financial Services.

Consumers Union strongly urges you to support the student loan servicing provisions in the Article VII budget legislation, and protect New York residents from unfair, deceptive and predatory tactics by student loan servicers. Please vote to protect the interests of New York student loan borrowers, who urgently needs the state's help and assistance in this critical area.

For more information, contact:

Chuck Bell, Programs Director
Consumers Union
101 Truman Avenue
Yonkers, NY 10703
(914) 378-2507
(914) 830-0639 mobile
www.ConsumerReports.org
www.ConsumersUnion.org
cbell@consumer.org