MEMORANDUM CONCERNING
ARTICLE VII BUDGET LEGISLATION, PART W, SUBPART A
STUDENT LOAN SERVICERS
February 9, 2018

BUDGET PART: **Article VI Budget Legislation, Part W, Subpart A**

TITLE OF ARTICLE: STUDENT LOAN SERVICERS

Part W, Subpart A of the Proposed Budget, proposes to implement guidelines to license and supervise student loan servicers. By regulating student loan servicers, New York would protect student loan borrowers from common abuses in the student loan servicing industry. Student loan borrowers have been victimized by unfair and deceptive student loan servicing practices, and would benefit from the type of servicing protections and standards that curb some of the worse abuses found in mortgage servicing. There is currently a void in oversight of these unregulated, non-bank entities. Together with the Governor's Excelsior Scholarship, the licensing and regulation of student loan servicers would better protect student loan borrowers in New York from abuses that pervade the industry and would ameliorate some aspects of the student debt crisis.

Legal Services NYC (LS-NYC) is the largest civil legal services provider in the country with offices in the Bronx, Brooklyn, Queens, Staten Island and Manhattan. For 50 years, LS-NYC has provided critical legal help to low-income residents of New York City. Our organization works to reduce poverty by challenging systemic injustice and helping clients meet basic needs, including housing, education, health care, family stability, and income and economic security. In the student loan context, LS-NYC annually represents over one-hundred low-income New Yorkers with student loan problems. Most borrowers seek help after student loan collectors have taken their wages, social security payments or tax refunds, putting them at risk of homelessness and hunger. Many are victims of for-profit colleges and trade schools.

Although New York State has a long tradition of leading the way on consumer protection, abuses in student loan servicing have left many New York student loan borrowers victims of unscrupulous student loan servicers. The nation faces a crisis right now, as more than 42 million Americans owe at least $1.3 trillion in student loan debt and $137 billion of that debt is in default.[1] In New York alone, student loan debt more than

[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/.

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doubled during the last decade, growing to $82 billion, with an average outstanding balance of $32,000.[2] Student loan servicers, who are the primary links between lenders and borrowers, often determine whether a borrower remains current on his or her loan, or falls into default. Precisely because of this essential role, and for the reasons listed below, regulating these entities will 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]

2. *The Consumer Financial Protection Bureau reports 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*.[4]

3. *Borrowers find loan servicers unable to provide accurate information or records*.[5]

4. *Despite their vital role in the lives of more than 42 million student loan borrowers and in managing an estimated $1.3 trillion dollars in student loans, **no federal agency currently supervises student loan servicers***. Indeed, the current administration has signaled its intention *not* to regulate, and in fact has acted to rescind the prior administration's efforts to set standards to protect borrowers.[6]

5. *If New Yorkers with student loans are made aware of affordable repayment options, they will have more disposable income to support themselves and their families, purchase homes, and contribute to local and statewide economies*.[7]

6. *States are beginning to take action to protect student loan borrowers*. Connecticut, California, Illinois, and the District of Columbia have enacted bills addressing various abuses in student loan servicing that prevent borrowers from paying off their student loans. Other states, including New Jersey, Maryland, Virginia, Maine, Massachusetts and Washington are also advancing student loan servicing legislation.

Regulating student loan servicers would help borrowers by reigning in rampant student loan servicing abuses. Regulation of these servicers will help New York's student loan borrowers make better decisions about

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[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 (hereinafter "Student Loan Servicing").

[5] *Id*. at 64-66; 69.

[6] Douglas-Gabriel, Danielle, *DeVos Dials Back Consumer Protections for Student Loan Borrowers*, WASHINGTON POST, April 11, 2017, *available at* https://www.washingtonpost.com/news/grade-point/wp/2017/04/11/devos-dials-back-consumer-protections-for-student-loan-borrowers/?utm_term=.62c5e79cebdb.

[7] *See*, Office of State Comptroller, *supra*, at 9.

loan repayment and fill the void resulting from the absence of federal loan servicing standards. The proposal's provisions include:

- Prohibiting servicers from various common unfair, deceptive, and misleading tactics;
- Licensing and regulating student loan servicers who service the loans of New York residents;
- 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 possible examination by the DFS Superintendent.

These proposals promise substantial relief for New York student loan borrowers struggling with crippling student loan debt who are preyed upon by unscrupulous student loan servicers.

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