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NEW YORK STATE LEGISLATURE

SENATE STANDING COMMITTEE ON BANKS
SENATE STANDING COMMITTEEE ON CONSUMER PROTECTION

Protecting Student Loan Borrowers in New York State

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Hearing Room B – Legislative Office Building

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Thank you for this opportunity to testify at today's hearing on protecting student loan borrowers in New York State. We applaud the Senate Committee on Banking and the Committee on Consumer Protection for focusing on the United States Department of Education Inspector General report on the oversight of student loan services, and for examining ways in which New York State might be able to protect student loan borrowers.

Empire Justice Center is statewide not-for-profit law firm providing consultation, expert advice, and co-counseling on issues that impact legal services clients throughout the state, including student loan debt. Empire Justice has historically represented low-income persons in consumer protection matters including mortgage foreclosure, debt collection, rent-to-own scams, and student loan discharge cases, among other issues.

Empire Justice started providing assistance to students regarding their education loans when the degree granting for-profit college, Everest Institute (part of Corinthian College), located in Rochester, NY, closed on April 27, 2015. At the time of closing, the school had about 300 students including about 70 students who were heavily solicited by and transferred to the for-profit school of Bryant and Stratton. Following the closing of Everest, our office received dozens of requests for assistance from former Everest students who were adversely impacted by the closure. Two lawyers in the Rochester office worked with these students.

<u>Recommendations Based on Our Corinthian Experience</u>

Based on our experience working with the former Corinthian/Everest students, the student loan servicer's ability and capacity to address the individual circumstances of students is critical. We are concerned that the lack of information and a full understanding of all legal options may result in students making uninformed choices and impair their credit many years in the future. Relaying information to students can be challenging. Many Everest students didn't have independent access to a computer. These students were using computers at school and did not own their own computers. From this experience, we estimated about fifty percent of the students don't own their own computer. Even fewer own their own printers. They rely on free public access such as a library to get web based information. Having to rely on web based information is both an inconvenience and an added burden to students. Having to rely on public transportation to access web based information posed an additional burden

Loan Servicers need to use Regular mail to communicate with impacted students: The loan servicers use and seem to rely on conveying information by email. While a lot of students may get email through a smartphone, it is difficult to open attachments and process detailed information through the phone screen. Loan servicers should be sending information by regular mail to students.

Students need access to a central Phone Hotline: Another challenge for students who do not own computers is determining the identity of their loan servicers. The U.S. Department of Education's website provides information and students can navigate it for this information. Students without computer access face the same problem described above. We urge the creation of one central hotline or number for students to call to ascertain the name of their loan servicer and basic information about their rights, options and remedies.

Importance of accurate information: We have also learned that students receive inaccurate information from their loan servicers, particularly regarding whether or not they are eligible to apply for a closed-school or other specific discharge. Loan servicers often provide false and/or incorrect information. Students informed us that servicers advise students who are attending a new school and transferring credits that the students are ineligible to apply for a discharge. In fact, students are only ineligible if they subsequently attend a "comparable program." That question is too nuanced for a loan servicer to provide advice on. Personnel working directly with students must be properly trained and quality control measures must be in place to ensure that all students receive accurate advice from their student loan servicers.

Students should have access to records: Students should be given access to all of their previous school's records through their loan servicer. We have seen clients denied discharges that they are entitled to because the student could not get their school records after Everest closed.

Lessons Learned from Mortgage Loan Servicing

Empire Justice Center's consumer lawyers have been working on mortgage lending issues, some of us having been involved in this work for over fifteen years. In addition to representing homeowners in default and foreclosure, we have been integrally involved in administrative and legislative advocacy efforts to stop abusive lending practices and to improve mortgage servicing. Many of the lessons learned from mortgage servicing are transferable to student loan servicing. Following are some of the bigger lessons learned:

- **Enforceable regulations are critical**. One of the biggest take-aways from the mortgage servicing experience is that we cannot rely on industry behavior to change voluntarily, or through market competition alone. Servicers do not voluntarily comply with regulations when there is not follow up enforcement. Loan servicing can be strengthened through many means including greater consumer education and clearer disclosures but education and disclosers are not a substitute for strong laws and regulations that the industry must adhere to. In addition, a rigorous enforcement regime is needed that includes a private right of action.

- **High quality customer service is imperative.** Front line staff who are communicating with borrowers must be well-trained, extremely knowledgeable and adequately supervised. We repeatedly saw that customer service personnel were not adhering to the policies of the mortgage servicer. Some mortgage servicers did a deplorable job in the training and oversight of their staff. Homeowners were given wrong information and the run-around.

- **"Single point of contact" needs to work.** This was a great concept that finally emerged in the enacted regulations for mortgage servicing, only to be quickly thwarted by some servicers in practice. The theory is imperative – the borrower should be able to call their servicer and talk with someone who has knowledge, or ready access to knowledge of the borrower's specific situation. The borrower should never have to start at square one and explain their circumstances after the initial time they call the servicer. Mandating investment by servicers of a unified customer database system should be a first start where call notes and history can be logged and accessed all at once.

- **Loss mitigation must be mandatory and based in reality.** It wasn't until the Homeowner Assistance Modification Program (HAMP) that loss mitigation really became a substantive component of mortgage servicing. Prior to that, servicers may have offered repayment plans or modest modification proposals but the options were never based on the amount owed or on what was realistically affordable to the homeowner. Student loan repayment is also frequently a long-term endeavor, as in the case of mortgages. It is inevitable that a certain proportion of borrowers will experience hardship at some point. Therefore, it is critical that student loan servicers be required to develop strong loss mitigation departments that can handle the volume. It is also critical that strong standards and guidelines for loss mitigation be set forth in law or regulation, similar to what has been set forth in HUD guidelines for FHA insured mortgage loans.

- **Payment guidelines have to be outlined and detailed.** As we saw in the mortgage industry, without clear regulations, servicers can implement convoluted payment structures at will, much to the disadvantage of borrowers. Regulations must set forth rules, timelines and limits for crediting payments, handling partial payments, and the charge of late fees and all other fees. These rules need to be uniform across servicers and made clear to borrowers so borrowers with loans serviced by multiple parties are not confused.

- **Loan transfers amongst servicers must never adversely impact the borrower.** Servicers should bear the burden and inconveniences that come when a loan is transferred from one servicer to another. This must be a seamless process for the borrower. All records, communication logs, and loss mitigation discussions and decisions must fully transfer to the new servicer. The best way to insure this is to instill into regulation strict penalties for the servicers when things go wrong when a loan is transferred.

- **Overriding principles of Fairness must be part of any regulations.** The greatest lesson learned from the mortgage servicing fiasco of the past decade is that borrowers' circumstances change, as does industry's. Thus, it is imperative to instill strong, overriding tenets of fairness in all regulations. Servicers must be required to act in good faith, and to treat borrowers fairly and justly. Loss mitigation must be based on the borrower's circumstances and ability to repay. Servicers cannot unjustly profit from borrowers' distress. Compensation structures for servicers must be consistent with these principles.

- **Limited English proficiency students.** Similar to mortgage servicing, protocol must be developed to provide information and direct assistance to student loan borrowers in the language in which they are most comfortable, particularly when the student was targeted in their native language and attended a program in which the instruction was in a language other than English.

<u>Default Can Mean Devastation</u>

Delinquency and default have devastating impacts on consumers. First, student loans that go unpaid usually follow one through life. Unlike virtually any other kind of debt, student loans are never written off, nor can be discharged through bankruptcy except in very rare circumstances. Reports have increased regarding senior citizens who are still strapped by student loan debt taken out decades earlier. The harsh penalties, prescribed by federal law, include:

- Loss of eligibility to receive deferment, forbearance, or income-based repayment plans, regardless of need;
- Loss of eligibility for financial aid to pursue additional postsecondary education, which may be before a borrower who enrolled in low-quality program is able to secure gainful employment to repay student loan debts;
- Negative credit reporting, affecting a borrower's ability to buy or keep a car, housing, or a credit card. In some instances, student loan default forces borrowers into other subprime credit markets;
- Administrative wage garnishment, carried out by the federal government;

- Placement of a lien against a home, car, or other assets;
- Federal offset of Earned Income Tax Credits, social security income, disability benefits, and veterans' benefits.

Student loan default is not just a bad investment; it represents an educational, career, and financial crisis in the life of a borrower and his or her family. Individuals usually have a one-shot chance at higher education. Student loans can trap young people from moving forward in life because of the heavy financial burden. Young people are reportedly holding off on buying homes, waiting to marry and start families, and not saving for the future like generations before them were able to because of student loans. Finally, if students don't benefit from the schools they choose early on in life, they may not be eligible for additional loans, or have the ability otherwise – because of funding or because of life circumstances – to move on to other educational opportunities.

Some unnecessary defaults can be avoided by improving the servicing process to give borrowers a fair shot at paying down their loans. There has been little oversight of the student loan servicing industry and some servicers commit a myriad of wrongs. Servicers often provide bad information and may steer borrowers into forbearance agreements when an Income Based Repayment plan (IBR) would be better for them, fail to communicate when they need to recertify an IBR or when their loan is paid in full, or tell borrowers their loan can never be discharged through bankruptcy. There are also issues with servicers failing to properly credit a borrower's account when an overpayment is made in an attempt to pay off their loan early, or misallocate partial payments in a way that harms the borrower. Issues have also arisen with the automatic pay feature that borrowers are encourage to use including taking payments out early from bank accounts, or charging interest if the scheduled date lands on a date the bank is closed.

Many students default, however, because they did not receive a fair shot at an education that would enable them to repay their loans and improve their lives. The high concentration of student loan defaults within New York State's for-profit education sector suggests that many students in in this sector are signed-up for loans that they have little chance of ever repaying. For these students, servicing may help to avoid the worst consequences of default, but stronger protections are necessary to prevent students from being burdened with unaffordable student loan debts in the first place.

The New York State Comptroller's 2016 report, "Student Loan Debt in New York State" found that within three years of graduation, students who attend proprietary or "for-profit colleges" are three times more likely to default on student loans compared to students who attend private nonprofit colleges.[1] For these reasons, in addition to the student loan servicing rules in the Transportation, Economic Development and Environmental Conservation (TED) Bill, Part L empowering the Superintendent of the Department of Financial Services (DFS) to license and regulate student loan servicers, we support the For-Profit College Accountability Act set forth in Part E.

Conclusion

Throughout New York State, there is lack of services for students with education loan issues. Our offices at Empire Justice Center increasingly receive calls from student loan borrower. Apart from the limited work our Rochester office has done with Corinthian/Everest students, we lack the resources to assist students more generally. We also do not have any state-based agencies to refer students to for assistance. There are a handful of lawyers in New York City handling student loan cases on a regular basis but this is the exception, not the regular practice of legal aid offices statewide.

[1] Office of the State Comptroller, "Student Loan Debt in New York State" at 8, September 2016, https://www.osc.state.ny.us/reports/highered/student_loan_debt.pdf.

If a homeowner is facing foreclosure, we have a system of non-profit housing counseling and legal service providers available to homeowners in every part of the state funded and trained to assist them through the process and work on their behalf with their mortgage servicer. For student loan borrowers, there is no system in place or agencies funded to lead on these issues. In addition, our state regulatory scheme over student lending is much more complex and intertwined. Unlike mortgage lending and servicing activities which are generally overseen and regulated by the single New York State Department of Financial Services, a mix of state agencies may each oversee pieces of the student lending world. Access to assistance and state regulatory systems need to change.

Thank you for the opportunity to submit comments regarding the importance of strong regulations for student loan servicing. The number of student borrowers in distress today, the changing US economy, and the financial realities of young Americans at the beginning of their careers makes this a matter of the highest urgency.