Memorandum of Support

NYS Department of Financial Services Private Education Debt Registry
A.5286 (Epstein)/S.5056(Thomas)

Empire Justice Center strongly supports A.5286/S.5056 which requires all private education creditors operating in New York State that are not already licensed or chartered by the Department of Financial Services (DFS) to annually submit information on their private education debt activity. Unlike federal student loans, private loans do not have consistently available data related to trends in originations, terms and conditions of debts, demographics of borrowers, default rates, etc. Making information about private and other student loan debt of New Yorkers available to policymakers and the public instills transparency and will lead to a better understanding of what New Yorkers are dealing with to inform regulations and ensure student debt borrowers are adequately protected.

Information about New Yorker’s federal student loan debts and borrower wellbeing are readily available from the federal government.¹ Little is known, however, about the privately held education debts that New Yorkers owe. These debts may take the form of traditional student loans made by Wall Street banks, or may be shady financial products made by predatory lenders. Still, other debts are owed directly to the schools that students attend. The State currently has no comprehensive data about what entities own these debts, how much is owed, the paperwork and process by which they accrue, or the variety of collection practices borrowers experience.

A.5286/S.5056 would remedy this problem by requiring lenders and owners of these private education debts to annually report on their portfolios and collection practices to DFS and would cover both traditional private “student loans” and less traditional private “education debts” that do not take the form of a loan. The reporting requirements are basic, including data related to:

- Recent lending activity, including the number of New Yorkers who received a private student loan, the amount owed, the schools New Yorkers attend using these loans, and the number of loans with co-signers;
- The general default rate and default rate by school and the number of New Yorkers who have been sued to collect on these debts; and
- Schools’ in-house private education debt and collection practices.

Importantly, nothing in the bill would change any industry practices. It is merely a sunlighting bill to ensure that New York State policymakers and the public have the data they need to determine what additional policy interventions may be appropriate.

Private education debts, which may take the form of credit or a past-due account at a student’s school, have real ramifications on New Yorkers’ lives. Although the State lacks comprehensive data about these debts, education debt creditors’ collection tactics reflect the severity of low-income New Yorkers’ struggles in this industry. Across the country and in New York, creditors are flooding state courts with debt collection actions. Non-loan education debts are also susceptible to collection activity. (The NYS Office of the Attorney General routinely files cases on behalf of the State University of New York system.) These debts may be loans owed to the school but may also be the result of financial aid packages falling apart, library fees, or even unpaid parking tickets. Schools themselves take action to collect these private education debts, both in and out of court.

Empire Justice Center is a statewide legal services organization that provides support and training to legal services and other community-based organizations and engages in legislative and administrative advocacy. We work on a range of consumer law issues including higher education and student lending. In 2022, Empire Justice Center joined Community Services Society of New York’s Education Debt Consumer Assistance Program (EDCAP) and hired a student debt counselor to provide free, unbiased, one-on-one counseling to borrowers in the Capital District. We do a significant amount of outreach to get the word out about our services; the data mandated by A.5286/S.5056 will enable us to better target our outreach and reach more people to prevent consumer abuse.

One client we counseled owed approximately $132,000 in Parent PLUS loans with the U.S. Department of Education for her daughter. She was a state employee for almost eight years and was actively working towards Public Student Loan Forgiveness (PSLF). The client’s daughter stopped paying her portion of the monthly payment. In August 2022, a private lender advised the client to refinance with them to lower her monthly payment. Due to a lack of education on private student loans and predatory lending tactics, the client co-signed the new private loan, which put her in a far worse financial position: the client lost all of her credit towards PSLF, made herself ineligible for income-driven repayment plans, and prematurely put herself back into repayment after being in the COVID-19 forbearance.

Current New York State law does not require private student loan companies, including loan originators and subsequent purchasers of debt, to be licensed by the state unless the interest rate on the loan exceeds 16 percent, which is not common in student lending. This means that most private student loan companies are not regulated or otherwise overseen in any way by New York State. School-based private education debts, too, generally operate below the radar of financial regulators and policymakers because all the data is held exclusively by the schools who own and collect these debts.

Student debt ranks second (to mortgage debt) as the largest current form of debt in the U.S. and it is rapidly growing. As a simple sun-lighting bill, A.5286/S.5056 will provide regulators, policy makers and the public a more accurate picture of the amount and nature of student debt owed by New Yorkers by requiring private education loan companies and schools to provide information using a uniform reporting about the debts they create, hold, and collect. The bill will not change these companies' practices, and merely instills transparency leading to more informed decision-making for regulators and lawmakers.

For these reasons, Empire Justice Center strongly supports the passage of A.5286/S.5056 into law. This bill is a non-invasive and common sense approach, leading to better knowledge and information regarding student loan debt issues in New York State.

For more information:
Kirsten Keefe, Senior Attorney, kkeefe@empirejustice.org
Jordan Daniels, Student Debt Counselor, jdaniels@empirejustice.org
March 2023