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HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN
SERVICES, EDUCATION AND RELATED AGENCIES

Hearing Entitled “Protecting Student Borrowers: Loan Servicing Oversight”

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I. INTRODUCTION

Chair DeLauro, Ranking Member Cole and members of the Subcommittee, thank you for inviting me to testify today on the issue of protecting student borrowers by oversight of loan servicers. My name is Shennan Kavanagh. I am an Assistant Attorney General of the Massachusetts Attorney General’s Office and the Deputy Chief of its Consumer Protection Division. On behalf of Attorney General Healey, I appreciate the opportunity to speak on this issue and to share our work over advocating for student borrowers in Massachusetts through enforcement actions, investigations and direct borrower assistance.

Students make a significant financial investment in their education, not only because of the high cost of higher education in this country, but also because of the time commitment they make towards their studies in what would otherwise be their working years. We have all heard the statistics on student loan debt – over \$1.5 trillion dollars owed nationally. Everyone has an interest in ensuring that students are able to repay their debt – the students, their families, their schools and the taxpayers.

There is widespread misconduct in the student loan servicing industry, undermining borrowers' ability to repay their debts. Published reports like the recently released audit report of the U.S. Department of Education's Office of the Inspector General,¹ public and private lawsuits, and publicly available consumer complaints detail systemic overcharges and unfair and deceptive acts and practices by student loan servicers which will continue indefinitely if left unchecked. Through Attorney General Healey's enforcement and advocacy initiatives, some of which I describe below, we have uncovered many instances of servicer misconduct and have obtained refunds, account corrections and other relief for thousands of student borrowers in Massachusetts.

Servicers have legal obligations to borrowers in performing the day-to-day management of loan accounts and as borrowers' primary point of contact for information about their loans. Notably, despite the critical role servicers play in borrowers' financial lives, usually over the course of decades, borrowers do not get to choose which company services their loans. This reality impedes borrowers' ability to effectively advocate for themselves in the face of misconduct. Unlike most American businesses, student loan servicers simply do not need to compete to provide state-of-the-art call centers, complaint handling assistance, account correction systems, and other fundamental consumer service mechanisms in order to keep their customers.

State and federal consumer protection laws thus are a primary source of protection for student borrowers. State oversight of student loan servicers' compliance with consumer protection laws is imperative to ensuring that borrowers are able to repay their loans under applicable contracts, and in accordance with the federal laws and regulations that govern the programs in which their loans are made. Over the last several years, state agencies like Attorney

¹ Report, U.S. Department of Education Office of the Inspector General, "Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans" (February 12, 2019).

General Offices have played a crucial role in the effort to protect borrowers against unfair and deceptive practices by student loan servicers. This work should be lauded, not obstructed. We are filling a gap in student borrower protection through our enforcement and advocacy initiatives, which compliments the work performed by our federal partners. Any actions taken to limit states' authority to protect students severely impacts the interests of student borrowers, the states, and federal taxpayers.

II. DISCUSSION

State Enforcement Agencies Play A Critical Role In Protecting Student Borrowers

State enforcement agencies have a well-established role in protecting their residents from unfair and deceptive acts and practices, including by financial service companies. Massachusetts has among the strongest consumer protection laws in the country. Our Consumer Protection Act prohibits “unfair and deceptive acts and practices in trade or commerce.”² As our highest court has explained, “[The Massachusetts Consumer Protection] statute does not define unfairness...[as] ‘there is no limit to human inventiveness in this field.’”³

The Massachusetts Attorney General’s Office has been at the forefront of student loan servicing enforcement actions and advocacy. Among other initiatives, in the last four years, we have brought some of the first enforcement actions against student loan servicers including the Pennsylvania Higher Education Assistance Agency, doing business as FedLoan Servicing, (“PHEAA”) and Xerox Education Systems, (now Conduent, Inc.). We were among the first Attorney General’s Offices to establish a designated Student Loan Assistance Unit (the “SLAU”), which provides direct assistance to borrowers to resolve a variety of issues with their servicers. We have uncovered numerous practices that, in our view, have harmed student

² Massachusetts General Laws c. 93A, § 2(a).

³ *Commonwealth v. Fremont Investment & Loan*, 452 Mass. 733, 742-43 (2008) (citations omitted).

borrowers and violated Massachusetts and federal law.

In August 2017, we brought a lawsuit against PHEAA for violations of the Massachusetts consumer protection statute. PHEAA is one of the largest student loan servicers in the country and manages the federal student loan accounts of hundreds of thousands of Massachusetts residents. In 2012, the United States Department of Education, (the “Department”), awarded PHEAA an exclusive contract to manage the Public Service Loan Forgiveness (“PSLF”) and Teacher Education Assistance for College and Higher Education (“TEACH”) Grant programs. Congress created these federal programs to address the disconnect between the rising cost of higher education and society’s need for skilled workers in vital public sector jobs.

States, including Massachusetts, have a significant interest in ensuring eligible graduates have access to these federal programs. The PSLF program allows public servants – such as police officers, military personnel, nurses, social workers and government employees - to commit to public service and to manage their student loan debt by providing them with loan forgiveness after 10 years of service. The TEACH Grant program provides financial grants to students who display high academic aptitude, pursue teaching careers in low-income schools for at least 4 years and teach subjects in high-need fields, such as math, science or foreign languages. The commitment of highly educated and skilled public servants and teachers is an invaluable contribution to the general welfare of the state and local communities.

Our lawsuit against PHEAA alleges that its loan servicing failures have prevented borrowers who wish to participate in the PSLF and TEACH Grant programs from obtaining the benefits of the programs. We also allege that PHEAA has caused borrowers to get off track with their loan payments under federal repayment plans, known as “Income Driven Repayment” plans, and overcharged borrowers as a result of servicing system errors. PHEAA has raised a variety of defenses in the litigation to attempt to argue that it is not subject to Massachusetts law.

It has not been successful. For example, PHEAA claimed that its alleged misconduct could not be challenged under the Massachusetts consumer protection statute because the conduct is “otherwise permitted” by federal law. The Court rejected this argument, finding that, “PHEAA has not identified any federal law that authorizes a student loan servicer to do such things.”⁴ The Department, which is not a party to the lawsuit, weighed in on the case with a Statement of Interest, which asserted that the Commonwealth’s claims are preempted “to the extent” that they “conflict with the requirements of federal law.”⁵ As the Court noted, “[t]he Department [did] not actually argue that any of the Commonwealth’s claims [are] preempted by federal law, or that any of the alleged misconduct by PHEAA at issue here is affirmatively allowed by federal law.”⁶ The case has been allowed to move forward into discovery.

In November 2016, the Massachusetts Attorney General’s Office entered into an Assurance of Discontinuance with Xerox Education Services, Inc., (“XES”), to resolve allegations stemming from an investigation that found that XES undermined borrowers’ ability to participate in federal Income Driven Repayment (“IDR”) plans – plans designed to align borrowers’ monthly payments to their income to make the payments affordable.⁷ Our Office also found that XES violated Massachusetts’ debt collection regulations, charged improper late fees, misreported account information to the Credit Reporting Bureaus and failed to provide eligible military members benefits under the federal Service Members Civil Relief Act (“SCRA”). The Office obtained \$2.4 million dollars, significant business practice changes and injunctive relief to ensure that XES complies with both state and federal law.

⁴ *Commonwealth v. Pennsylvania Higher Education Assistance Agency*, 34 Mass. L. Rptr. 616, 2018 WL 1137520, at *9 (Super. Ct. Feb. 28, 2018).

⁵ *See, id.*

⁶ *Id.*

⁷ *In the Matter of Xerox Education Services, Inc.*, the Commonwealth’s Assurance of Discontinuance, Civil Action No. 16-3566 (Super. Ct. Nov. 21, 2016).

Our Office created a designated Student Loan Assistance Unit (the “SLAU”) in 2015, which specializes in outreach and intake to assist student loan borrowers. Staff members in that unit have significant expertise on student loan issues including in the eligibility requirements and processes associated with applying for federal programs. In 2018 alone, the SLAU has fielded over 3,000 telephone calls to its designated hotline and generated over a million dollars in savings and recoveries for student loan borrowers. The SLAU advocates for borrowers by helping them communicate with their loan servicers, obtaining information about their accounts, resolving disputes, assisting with applications for federal programs and helping borrowers understand the requirements for IDR repayment plans, PSLF and other programs. The volume of borrowers SLAU has and continues to assist and the breadth of the issues the unit handles exhibits the significant need for local resources to help borrowers.

III. CONCLUSION

These are just some examples of the work the Massachusetts Attorney General, Maura Healey, is doing to protect student borrowers. I appreciate the opportunity to share this important work with the Subcommittee and thank the Subcommittee for its careful examination of these important issues. Please do not hesitate to contact me for any additional detail or clarity, or with any questions you may have.