OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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June 11, 2019

Chairwoman Maxine Waters
House Committee on Financial Services
Subcommittee on Oversight and Investigations
2129 Rayburn House Office Building
Washington DC 20515

Re: Written Testimony for June 11, 2019 Subcommittee on Oversight and Investigations Hearing entitled "An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market"

Dear Chairwoman Waters and Ranking Member McHenry:

Thank you for your Subcommittee's interest in the important topic of student loan servicing and thank you to Subcommittee Chairman Green and Ranking Member Barr. Over the last ten years, student loan debt has increased from $700 billion to nearly $1.6 trillion.[1] Students who have acquired student loan debt are ultimately assigned to a student loan servicer.[2] That servicer is tasked with applying students' payments and assisting students with identifying different repayment options, among other functions.[3]

I. State Enforcement Actions

In recent years, State Attorneys General have investigated and brought enforcement actions against multiple student loan servicers.[4] These investigations and enforcement actions have revealed widespread problems in the servicing of students' debt. Our office conducted an

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[1] https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html
[2] https://studentaid.ed.gov/sa/repay-loans/understand/servicers
[3] https://studentaid.ed.gov/sa/repay-loans/understand/plans
[4] *State of Illinois v. Navient Corp., et al.*, No. 17-CH-00761 (Circuit Court of Cook County, Jan. 18, 2017); *State of Washington v. Navient Corp., et al.*, No. 17-2-01115-1 SEA (King County Superior Court, Jan. 18, 2017); *Commonwealth of Pennsylvania v. Navient Corp., et al.*, No. 3:17-cv-1814-RDM (M.D. Pa. Oct. 5, 2017); *State of California v. Navient Corp., et al.*, No. CGC-18-567732, (San Francisco Superior Court, Jun. 29, 2018); *State of Mississippi v. Navient Corp., et al.*, No. G2108-98203 (Hinds County Chancery Court, July 17, 2018); *Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency*, No. 1784-CV-02682 (Superior Court of Suffolk County, Aug. 23, 2017).

investigation of Navient Corporation, formerly Sallie Mae, Inc., one of the largest student loan servicers in the country.[5] The investigation revealed a plethora of student loan servicing abuses during 2010-2017. For example, our office reviewed hundreds of phone calls between Navient representatives and students. That review revealed that, when students who had fallen behind on making their payments contacted Navient for assistance, the company steered them into successive forbearances that increased the overall cost of their loans, instead of telling students about other repayment options that may have been more appropriate for their circumstances, such as income driven repayment plans.[6]

As detailed in our lawsuit, Navient used an incentive compensation plan to pay call center employees more for shorter call times, thereby reducing the company's cost. A former Navient employee described feeling pressured to reduce call time, often getting pulled aside and talked to because his calls were too long. For borrowers, though, incentivizing short calls often means they are put into the wrong repayment plan. Forbearances are a temporary pause in payments that can be set up in minutes over the phone. They are not beneficial for borrowers if continued over the long-term, though, because interest continues to accrue and can be added to the principal balance of the loan. Income driven repayment plans, by contrast, are relatively complex, and it takes time to analyze whether borrowers qualify. These plans, however, offer a reduction in monthly payment amount that is beneficial for borrowers experiencing long-term financial difficulty. Ultimately, these plans offer loan forgiveness, usually after 20-25 years of payments. Despite the long term benefits of income driven repayment, our investigation revealed Navient enrolling nearly one million borrowers nationwide in forbearances lasting more than two years. The length of these forbearances evidence long-term inability to repay, making income driven repayment an obvious choice.

For students who did manage to successfully enroll in income driven repayment plans, Navient failed to provide them with the information they needed to stay enrolled in these plans every year and avoid costly and unaffordable increases to their payments.[7] Navient also improperly allocated students' loan payments, leading to unnecessary late fees and delinquencies.[8]

Our office sued Navient in January of 2017, alleging that these issues, among others, constituted unfair and deceptive acts and practices pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act.[9] Navient moved to dismiss the lawsuit. The Circuit Court of Cook County denied that motion. Navient has moved to reconsider that ruling and Navient's motion to reconsider is currently pending. Navient's primary argument in its motion to dismiss our case and other state law enforcement actions is that state laws outlawing consumer fraud are preempted by the Higher Education Act governing servicing disclosures. Many courts have

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[5] https://www.nytimes.com/2019/02/14/business/student-loans-education-department.html; http://www.illinoisattorneygeneral.gov/pressroom/2017_01/20170118.html
[6] *State of Illinois v. Navient Corp., et al*., No. 17-CH-00761, First Amended Complaint (Circuit Court of Cook County, Sept. 11, 2018), ¶¶312-359.
[7] *Id*. at ¶¶ 360-386.
[8] *Id*. at ¶¶ 387-414.
[9] *State of Illinois v. Navient Corp., et al*., No. 17-CH-00761 (Circuit Court of Cook County, Jan. 18, 2017); 835 ILCS 505/1 *et seq.*

rejected this argument. Indeed, in every state enforcement action where a court has ruled on a motion to dismiss filed by Navient, the state has prevailed.[10] However, there have been some federal court decisions finding that these type of consumer fraud claims are preempted by the Higher Education Act.

II. Servicing Standards Efforts

The Department of Education developed a set of servicing standards that would protect students from the type of unfair and deceptive practices revealed by our investigation into Navient, and issued these standards in a memo.[11] In April 2017, however, the Department withdrew that memo.[12]

While the federal government withdrew these protections for student borrowers, Illinois took legislative action. Our state passed the Student Loan Servicing Rights Act, which went into effect in December of 2018.[13] The Act provides a wide array of protections for students. It restricts forbearance steering,[14] requires that student loan servicers first offer income driven repayment options to struggling students,[15] and requires servicers to create repayment specialists who are specifically trained to assess students' short term and long term financial circumstances in order to effectively counsel students.[16]

The Act also creates a Student Loan Ombudsman tasked with developing outreach efforts designed to assist students with their student loan debt obligations.[17] Through May of this year, the Ombudsman has received over 300 complaints and over 200 calls related to student loans. The Illinois Office of the Attorney General has maintained a Student Loan Helpline since 2015, which has received over 5,500 calls. We mediate each complaint with an identifiable dispute and we are in the process of updating our complaint tracking system to better categorize student loan servicing complaints. Student loan complaints received this year cover payment processing, co-signer release, public service loan forgiveness, temporary extended public service loan forgiveness, TEACH grants, credit reporting, disability discharge, and many other topics. Many borrowers who contact my office are unaware whether their loans are federal or private and many are unaware of income driven repayment. The complaints show that borrowers continue to struggle with servicing abuses. The Student Loan Servicing Rights Act is vital to protecting

[10] Order Denying Motion to Dismiss, *State of Illinois v. Navient Corp., et al.*, No. 17-CH-00761 (Circuit Court of Cook County, July 10, 2017); Order Denying Motion to Dismiss, *State of Washington v. Navient Corp., et al.*, No. 17-2-01115-1 SEA (King County Superior Court, July 7, 2017); Order Denying Motion to Dismiss, *Commonwealth of Pennsylvania v. Navient Corp., et al.*, No. 3:17-cv-1814-RDM (M.D. Pa. Dec. 17, 2018); Order Overruling Demurrer, *State of California v. Navient Corp., et al.*, No. CGC-18-567732, (San Francisco Superior Court, Dec. 20, 2018); Order Denying Motion to Dismiss, *Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency*, No. 1784-CV-02682 (Superior Court of Suffolk County, Apr. 17, 2018). Navient's Motion to Dismiss the lawsuit filed by the State of Mississippi is under advisement.

[11] https://www.ed.gov/news/press-releases/education-department-implement-improved-customer-service-and-enhanced-protections-student-loan-borrowers

[12] https://www2.ed.gov/documents/press-releases/student-loan-servicer-recompete.pdf

[13] 110 ILCS 992/1-1 *et seq.*

[14] 110 ILCS 992/5-30(b)

[15] 110 ILCS 992/5-30(d)

[16] 110 ILCS 992/5-30(e)

[17] 110 ILCS 992/10-5

students in Illinois from the unfair and deceptive acts and practices of the student loan servicing industry.

III. Consequences of Unchecked Misbehavior by Federal Student Loan Servicers

A. Student Loan Debt Relief Scam Companies

Servicing failures like these create more problems for student loan borrowers as predatory companies seek to fill the student loan servicing information void. For example, student loan debt relief scams have exploded in recent years. Indeed, the Illinois Attorney General has sued numerous student loan debt relief scam companies, and is investigating many others.[18] These companies prey on students who are understandably confused or frustrated with the servicing of their student loans. They typically claim to have expertise in navigating the debt relief process and adopt official-sounding names to give the impression they are legitimate.[19] The companies use high-pressure sales tactics in order to get students to sign up for their purported services.[20] They also charge high upfront fees to allegedly provide students with debt relief services, when, in fact, the document preparation services they offer are already available to students for free.[21] In some instances, companies illegally use a student's Federal Student Aid identification number to apply for and accept different federal student loan repayment options on a student's behalf without their authorization.[22] If student loan servicers were providing proper repayment information to student loan borrowers in need, these scams would not have victims to take advantage of.

B. Cohort Default Management Companies – Forbearance Steering

In addition, servicers' failure to provide accurate information on repayment options has contributed to some schools engaging consultants to push students into forbearance in order to keep the school's cohort default rate down. Under federal law, schools may lose their ability to participate in federal student aid programs if a significant percentage of their students default on their student loans within the first 3 years of repayment (the "cohort").[23] To manage these cohort default rates, some school hire companies that encourage students with delinquent student loan

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[18] *State of Illinois v. FDATR, Inc., d/b/a Federal Student Loan Relief, et al*., No. 2017-CH-13732 (Circuit Court of Cook County, Oct. 13, 2017); *State of Illinois v. National Student Loan Rescue, et al.,* No. 2016-CH-3196 (Circuit Court of Cook County, March 4, 2016); *State of Illinois v. Student Consulting Group, et al*., No. 2015-CH-7260 (Circuit Court of Cook County, May 4, 2015); *State of Illinois v. Nationwide Student Aid, et al*., No. 2015-CH-7254 (Circuit Court of Cook County, May 4, 2015); *State of Illinois v. Interactiv Education, et al*., No. 2015-CH-18 (Circuit Court of Champaign County, May 4, 2015); *State of Illinois v. Federal Student Loan Alliance, et al*., No. 2015-CH-193 (Circuit Court of Sangamon County, May 4, 2015); *State of Illinois v. Consumer Financial Resources, et al*., No. 2015-CH-194 (Circuit Court of Sangamon County, May 4, 2015); *State of Illinois v. Broadsword Student Advantage, et al*., No. 2014-CH-184 (Circuit Court of Champaign County, July 14, 2014); *State of Illinois v. First American Tax Defense, et al*., No. 2014-CH-11483 (Circuit Court of Cook County, July 14, 2014).
[19] *Id.* at ¶ 2.
[20] *Id*. at ¶ 5.
[21] *Id*. at ¶¶ 73-91.
[22] *Id*. at ¶¶ 129-135.
[23] 34 C.F.R. § 668.202

accounts to put their loans in forbearance.[24] A student who is placed into a forbearance by a cohort default management services company is no longer counted towards a school's cohort default rate.[25] Forbearance increases a student's total loan cost over time, and also reduces the usefulness of the cohort default rate as a tool to hold schools accountable for providing an education that leads to gainful employment.[26] A recent report by the Government Accountability Office identified examples of cohort default management consultants that encouraged enrollment in forbearance over other potentially more beneficial options for helping students avoid default, such as income driven repayment plans.[27] The report concluded that statutory changes designed to strengthen schools' accountability for defaults could help further protect students and taxpayers.[28]

Thank you for your attention to this topic. I look forward to answering any questions during the hearing.

Sincerely,

/s/ Joseph Sanders

Joseph Sanders
Student Loan Ombudsman
Supervising Assistant Attorney General

[24] United States Government Accountability Office, Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates, April 2018, Introduction and Findings, available at https://www.gao.gov/assets/700/691520.pdf
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] *Id*.