Pennsylvania Attorney General Josh Shapiro

Testimony submitted to the U.S. House Committee on Financial Services, Subcommittee on Oversight and Investigations

For the hearing entitled

"An Examination of State Efforts to Oversee the $1.5 Trillion Student Loan Servicing Market"

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Presented by
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Chairman Green, Ranking Member Barr, Members of the Committee, thank you for inviting me to testify today. My name is Nicholas Smyth, and I am a Senior Deputy Attorney General from Pennsylvania.

In July 2017, Attorney General Josh Shapiro established the Office's first-ever consumer financial protection unit and hired me to lead it. General Shapiro tasked us with focusing special attention on for-profit colleges and student loan servicers because the student loan debt crisis touches nearly every resident of our Commonwealth. The average student loan debt for new graduates in Pennsylvania is nearly $37,000 – second most in the country, and first among larger states. About 2 million Pennsylvanians – nearly one in five adults – have student debt.

This committee is right to focus its attention on the student debt crisis and, in particular, the crisis in student loan servicing, because the government contractors that service Federal loans have caused needless financial harm to millions of families across the country. My testimony will focus on one particular servicer of Federal loans, Navient, which has 1,000 employees in Pennsylvania. Our office sued Navient in Federal Court in October 2017. Our filing followed three lawsuits filed by the CFPB, Illinois, and Washington State, and it preceded two others filed by California and Mississippi. Our nine-count complaint is available on our website.[1]

Among other things, we allege Navient misled borrowers who were struggling to repay their loans, costing borrowers who were struggling to pay $4 billion in additional interest charges. This is the amount of interest that Navient added to the loan principal for borrowers who were put into multiple consecutive forbearances.

Forbearances are temporary postponements of payments that are *sometimes* appropriate for borrowers who have a *short-term* financial hardship. For most borrowers struggling to make payments, an income-drive repayment plan (IDR) is better than a forbearance. Borrowers who enroll in forbearance face significant costs, including: (1) accumulation of unpaid interest, which is added to the loan's principal balance at the end of the forbearance; (2) missing out on low or $0 payments that could count towards loan forgiveness; and (3) the borrower's monthly payment can dramatically increase after the forbearance period ends.

We allege in our complaint that, during the five years from January 2010 to March 2015, Navient enrolled over 1.5 million borrowers in two or more consecutive forbearances. Navient's own numbers show that these consecutive forbearances added nearly $4 billion of interest, which works out to an average of about $2,700 per borrower from unnecessary forbearances.

As alleged in our complaint, Navient and its agents were incentivized to push forbearances instead of IDR because it was faster and less costly for Navient.

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[1] https://www.attorneygeneral.gov/wp-content/uploads/2018/01/PA-v.-Navient-Complaint-2017-10-6-Stamped-Copy.pdf

Forbearances get the borrower off the phone quickly, without any paperwork, and allow the Navient agent to move on to the next call.

This $4 billion in interest that Navient added to loan balances harms these individuals by reducing their ability to save and spend as they see fit; it also harms our Commonwealth's larger economy because it diminishes these consumers' purchasing power, forcing them to delay buying a home, creating a business, or starting a family.

In short, an entire generation is being held back by the shackles of student loan debt, and these debts are growing instead of shrinking, in part because Navient is not helping borrowers enroll in the payment plans that are best for them, despite representing that it is the expert in the area and would assist borrowers.

For borrowers facing financial hardship, income-driven repayment plans are generally much better than multiple forbearances. Congress created the first IDR plan in 1993 with the goal of reducing the burden of student loan payments. To review IDR plans, any borrower can go to the Repayment Calculator on studentloans.gov, put in their Federal loan balances, family size, and income, and learn what their payments will be under the various IDR plans. But it's not the consumer's job to figure out on their own what IDR plan is best. It's Navient's job. But despite publicly assuring borrowers that it will help them identify and enroll in an appropriate, affordable repayment plan, Navient has routinely disregarded that commitment and instead steered borrowers experiencing long-term financial hardship into forbearance.

Navient promised borrowers to help evaluate their repayment options. As alleged in our complaint, it told them on its website, "Our representatives can help you by identifying options and solutions, so you can make the right decision for your situation." It said, "We can help you find an option that fits your budget, simplifies your payment, and minimizes your total interest cost." I'll illustrate how IDR works with two examples.

Example 1: $0 payments and credit for loan forgiveness

Imagine a family of four, married filing jointly, with a Federal loan balance of $40,000. Their combined adjustable gross income (AGI) is $63,000 which was about the median household income in the Commonwealth of Pennsylvania in 2017. This family of four would have to pay $403 per month on their Federal loans for ten years under the standard repayment plan. Under an IDR plan, that family would pay half that - only $203 per month. This means the family could get credit for making a payment each month towards loan forgiveness and, under the Pay As You Earn IDR plan, would qualify for forgiveness if they haven't already paid off their loans after 20 years of payments. And if the parents work in public service - such as teachers, nurses, or police officers - they would be eligible for forgiveness after just 10 years if they successfully enrolled in Public Service Loan Forgiveness.

Now, imagine one spouse loses a job, and household income drops to $39,000. All of a sudden this family is eligible for $0 per month payments under IDR. These $0

"payments" would still count towards forgiveness in 10 or 20 years. When the spouse gets another job and the income rises, the monthly payments will rise too.

Now imagine if the family had called Navient's call center following the job loss and, instead of IDR, as our complaint alleges, Navient steered them into a 6-month forbearance. Instead of qualifying for $0 payments and credit toward forgiveness, the family will still pay nothing, but interest will continue to accrue and they will not receive credit toward forgiveness. Interest will be added to the loan principal (or be "capitalized") at the end of the forbearance.

Consecutive forbearances mean that each year the family is going to have over $1,500 in interest added to their loan balance. In our complaint we allege that Navient enrolled more than 520,000 borrowers into *four or more* consecutive forbearances; in this family's case, that would increase their loan balance by over $3,000. And after the forbearances run out, payments will not count towards loan forgiveness because Navient never enrolled them in IDR.

If this family had six forbearances over three years - not uncommon according to the data - they would see their loan balance rise by nearly $5,000. After coming out of the last forbearance, the monthly payments would be $453 per month, or *$50 more* per month than the $403 monthly payment they couldn't afford to pay before. A much better alternative would be an IDR with low or $0 payments, and eventual loan forgiveness.

The allegations in the state and CFPB lawsuits are supported by the findings of the U.S. Department of Education's Inspector General (IG), which found in a 2017 audit of randomly selected calls to borrowers that Navient failed to even mention IDR plans in nearly one of ten calls. The IG wrote that many customer service representatives failed to ask questions to determine if IDR might be more beneficial to the borrower. Navient is not helping borrowers get into the payment plans that are best for them.

Example 2: the importance of the interest subsidy

Another critical benefit of IDR is the interest subsidy. There are two types of Federal loans that students can take out: subsidized and unsubsidized. Subsidized loans have special treatment in IDR plans.

Imagine a different hypothetical family of four. They have $30,000 in subsidized loans between the two parents. One parent loses a job and the family income falls to $39,000. As before, these borrowers would be eligible for $0 monthly payments under an IDR plan. Since their loans are subsidized, the over $1,500 in interest that accrues each year is automatically paid by the Federal government, for the first 3 years of enrollment

in an IDR plan. So this family would save nearly $5,000 in interest -- or even more if the rates were higher than 3.9% when they took out their loans.[2]

There are hundreds of thousands of families that missed out on the economic benefit of this interest subsidy because Navient steered them into forbearance instead of IDR. In our complaint we gave a few examples. One Pennsylvania consumer attended college between 2001 and 2006 and she took out multiple Federal loans. When she called Navient to ask for assistance with her loan payments, Navient told her that her only option for loan assistance was a forbearance, despite the fact that she qualified for an IDR plan. The forbearance was in 6 month increments and there was a fee each 6 month extension. Navient failed to adequately inform her about any fees or interest accrual when the initial forbearance was completed.

This consumer has worked in the public sector since 2006, qualifying her for loan forgiveness under PSLF. However, when she asked Defendants about PSLF in 2007, Defendants' employees gave her information that deterred her from enrolling. She alleges they told her falsely that she would have to make 120 consecutive payments while employed at a qualifying organization for ten consecutive years to qualify for forgiveness. She learned in 2014, seven years after first enquiring about PSLF, that the information given to her by the Defendants in 2007 was false. Unfortunately, since she did not enroll in 2007, none of the payments she made since 2007 could be applied to the PSLF. This resulted in seven additional years of loan payments that need to be made before her loans are forgiven under the PSFL. If Defendants had been truthful in 2007, she may have qualified to have her loans forgiven as soon as 2017.

Another Pennsylvania consumer was enrolled in a master's degree program from 1996 to 2004. Unfortunately, like many students, he did not complete the degree. Since he left the school, he has struggled to pay his loans. The consumer's student loans were in and out of forbearance for the next 11 years. Despite the fact that the consumer had demonstrated long-term financial hardship to Navient for five years by the time IDR plans became available in 2009, Navient did not enroll him in one until 2015, when he entered Income-Based Repayment with a monthly payment of $0. According to the consumer, nearly $27,000 in interest has been added to his loans since 2004.

When we are talking about families making $39,000 or less each year, every dollar counts. Families like these are making difficult financial decisions every day – child care, groceries, rent or mortgage payments, healthcare, transportation, and more. Burdening families with more debt when times get hard, especially when there is a better solution for them that Congress has already created, does nothing to help them work toward financial stability. Student loan servicers can and must do a much better job of enrolling borrowers in IDR plans. Thank you for the opportunity to testify today.

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[2] Under the REPAYE plan, the government will continue to pay 50% of accrued interest on subsidized loans after the first three years. It will also pay 50% of the accrued interest on unsubsidized loans the entire time a borrower in the program.