THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

Written Testimony of Arwen Thoman
Director, Student Loan Assistance Unit
Insurance and Financial Services Division
Office of Massachusetts Attorney General, Maura Healey

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

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Chairman Green, Ranking Member Barr, and Members of the Committee, thank you for inviting me to testify on state efforts to protect student loan borrowers. My name is Arwen Thoman. I am the Director of the Massachusetts Attorney General's Student Loan Assistance Unit and also serve as Deputy Director of the Attorney General's Insurance and Financial Services Division. On behalf of Attorney General Maura Healey and borrowers from Massachusetts, I appreciate the opportunity to speak on the critical issue of federal student loan servicing.

Attorney General Healey established our Student Loan Assistance Unit in 2015. In the last fiscal year, the Unit received over 3,000 hotline calls, nearly 1,000 written help requests, and generated savings and refunds of $1.5 million for student loan borrowers. Each day, we are on the frontlines of the student debt crisis, helping borrowers apply for income-driven repayment or loan discharges; working to move loans out of default and into affordable repayment plans; and trying to end wage garnishments, tax refund interceptions, and benefit offsets that cause serious financial and emotional distress to our residents.

If I can offer the Committee one takeaway, it is that student borrowers and their families deserve much better from the federal government and the private companies hired to service their loans. Every day, we speak with borrowers who have found their way to our office in desperation. We routinely hear that borrowers are worried about their ability to start a family, buy a home, or achieve a reasonable standard of living. Many have been struggling with student loan debt for years and in some cases, for decades. Each borrower's story is unique, but the patterns in their distress and mistreatment are painfully clear.

Given the social and economic vulnerabilities of many student loan borrowers, the complexities of the federal loan system, and the mounting scale of student loan debt across the country, the role of student loan servicers is more important than ever.

In my testimony, I will highlight the serious consequences of defaulting on a federal student loan, four servicing problems that we see frequently in this office, and the problem of predatory “debt relief” companies that take advantage of distressed borrowers who turn to them when student loan servicers have failed to help. Although we have worked hard at the state-level to improve servicer treatment of borrowers through enforcement of our state’s consumer laws, we believe that more federal oversight and action is necessary to protect borrowers and to address the harm caused by inappropriate servicing practices. This federal oversight must not be concentrated solely in the hands of the U.S. Department of Education, which is also typically the lender.

I. Effective servicing is essential to avoiding the serious consequences of default.

Although federal student loans offer many benefits and protections over private student loans, including interest rate caps, a variety of income-driven repayment plans, and the potential for loan forgiveness, the consequences of defaulting on federal student loans or making ill-advised repayment decisions are severe, and can lead to many years of crushing debt.

When borrowers default on federal student loans, they can face collection fees exceeding twenty percent of the loan balance. Moreover, defaulted federal student loans are collected through involuntary measures and without advance consideration of the borrower’s ability to pay. These measures include administrative wage garnishment and Treasury offsets to tax refunds, Social Security retirement and disability benefits, and even veterans benefits. Below are some excerpts from complaints we have received that demonstrate some of the dire predicaments of student loan borrowers who face involuntary collection:

- *The US Department of the Treasury has been taking $150 to $175 from my monthly SSDI deposit for over a year. Today (1/8/19), the US Department of Education has sent me a letter of 15% wage garnishment from my part-time job. I work 15 hrs/week or less as a home health aide at $11/hr.*

- *Today I found out that the US Dept of Ed, took my federal tax return and applied it to the loan. I needed that money to pay for a new start with my kids. When I asked about a hardship deferment, they told me I could only apply if I was being evicted from my home. I'm not. Now I made a little over 20,000 last year and have 2 kids.*

- *My wages are being garnished. But myself and my husband are living in a motel. And they are taking out too much. I am not going to be able to afford where we are staying right now. I explained that I am going to be homeless but they said there was nothing they could do about it.*

Credit score damage associated with federal student loan default can also prevent borrowers from getting jobs and housing. Unlike nearly every other category of unsecured debt, federal student loans are rarely dischargeable in bankruptcy and there is no statute of limitations on collection. They can remain with the borrower for life. The severe consequences of federal student loan default and the long horizon on collection creates a heightened responsibility for us all to ensure that servicers are helping borrowers successfully manage repayment and avoid default.

II. Servicers consistently fail to provide the help that borrowers need.

Unfortunately, we consistently see servicers that fail to help borrowers in important ways. Four servicing problems that we frequently encounter in our office include 1) failures to enroll borrowers in income-driven repayment plans that reduce borrower payments and lessen the likelihood of default; 2) failures to help borrowers maintain the benefits of those plans; 3) failures to provide adequate guidance to enable borrowers to pay down loan principal; and 4) failures that obstruct the Public Service Loan Forgiveness program.

1. Servicers fail to enroll eligible borrowers in affordable repayment plans that would help prevent default or spiraling debt.

Given the financially devastating consequences of defaulting on federal student loans, enrolling borrowers in affordable repayment plans is an essential servicing function. Some of the borrowers we work with in the Student Loan Assistance Unit could have avoided default if their federal loan servicer had adequately explained income-driven repayment options and the associated potential for loan forgiveness. Others could have avoided unaffordable payments or escalating loan balances by enrolling in income-driven repayment plans, rather than repeatedly being steered into forbearance by their loan servicer.[1] Still others could have reduced their interest costs by enrolling in income-driven repayment plans instead of more costly extended repayment plans.

Under most income-driven repayment plans, borrowers can limit their student loan payments to 10-15% of that income which exceeds 150% of the federal poverty line, with the potential for forgiveness of any remaining balance after 20 or 25 years of qualifying payments.[2] Borrowers with incomes of less than 150% of the federal poverty line are eligible to forgo monthly payments, which makes enrollment essential for the very poor.

All too often, as state Attorneys General and the Consumer Financial Protection Bureau have alleged in lawsuits against Navient, servicers have failed to appropriately counsel borrowers about income-driven repayment options or adequately explain the benefits and features of these plans. It appears that servicers prioritize keeping down the costs of servicing over the interests of borrowers. Simply put, counseling borrowers about affordable repayment options takes time. It is much faster and therefore much cheaper for servicers to repeatedly offer short-term forbearances or enroll borrowers in extended repayment plans, even though these options frequently do not meet borrowers' needs or set borrowers on a path to affordable and sustainable loan repayment.

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[1] Forbearance is a temporary postponement of payments. Forbearance is intended to deal with a short-term financial problem and not a long-term inability to pay. Interest that accrues during forbearance is often added to the borrower's loan balance through capitalization.

[2] For a single borrower in the contiguous United States, 150% of the federal poverty line is currently $18,735.

2. **Servicers fail to help borrowers maintain the benefits of income-driven repayment plans.**

When borrowers do manage to enroll in income-driven repayment plans, many subsequently fail to provide the income and family size information that is required each year to maintain affordable monthly payments and avoid accrued interest from being added to their balances. The annual process of submitting information in order to continue making income-driven payments is called "recertification." Failure to timely recertify unwinds many of the benefits of enrolling in an income-driven plan.

Student loan servicers often contribute to or are directly responsible for recertification failures. Some servicers have used cryptic and confusing communications to notify borrowers of the need to recertify, the deadlines for doing so, and the consequences of failing to meet these deadlines. For example, servicers have often sent emails directing borrowers to log into a separate online account without explaining why borrowers should do so. Navient has sent emails with subject lines that stated: "New Document Ready to View" and "Your Navient account information," with the body of the email stating that "A new education loan document is available online. Please log in to your account to view it." Borrowers are given no indication of whether this is an important notification or simply a marketing message. Similarly deficient emails have been used by other servicers.

Other challenges to recertification abound. Servicers often set recertification deadlines that are not compliant with governing regulations, or that are so close to the end of the borrower's expiring income-driven repayment schedule that any error or paperwork deficiency will inevitably result in the capitalization of unpaid accrued interest and an unaffordable increase in monthly payments. These payment increases often force borrowers into forbearance and hinder their progress toward loan forgiveness. In some cases, servicers have caused recertification failures by changing what they consider to be acceptable income documentation from one year to the next. There have also been cases in which servicers have simply failed to process recertification requests or delayed in doing so, as evidenced by our office's resolution with Xerox Education Services (also known as ACS).

3. **Servicers fail to provide adequate guidance to help borrowers pay down loan principal.**

Servicers often fail to adequately explain the consequences of making late or irregular payments, and do not provide borrowers with a simple way to effectively pay down loan principal ahead of schedule. Such guidance is especially important given that promissory notes require servicers to handle payments in ways that borrowers do not expect.

Student loans are subject to simple daily interest, which means that each day, interest accrues on the outstanding principal balance. The allocation of a borrower's payment to principal and interest is therefore dependent on the number of days that have elapsed since the borrower's last payment. When borrowers pay late, their interest accrual is larger and less of their payment is applied to principal, increasing the costs of their loans.

Servicers regularly fail to help student borrowers navigate this issue. Without such help, some borrowers fall further and further behind. For example, federal student loans offer a 15-day grace period beyond the due date reflected on billing statements. Borrowers often pay after the due date but within this 15-day window, believing there are no financial consequences for doing so. In fact, this delay in making payments results in additional interest accruals and frustrates progress in paying down loan principal. Even when borrowers are not paying late, but are paying at irregular intervals (*e.g.*, paying 20 days early one month and on-time in the following month), it can hinder their progress in paying down their loans. Few servicers make adequate and sustained efforts to alert borrowers to these traps for the unwary. As a result, borrowers often contact our office confused about why their loan balances remain so high after years and years of payments.

Servicers also process payments in ways that do not serve borrowers' best interests. Borrowers typically have multiple student loans, often at differing interest rates. Some servicers use default allocation methods that apply payments across all loans in a billing group rather than to the highest interest loan. Similarly, servicers often allocate underpayments across all loans in a billing group, which may generate a late fee on each loan. These allocation methods result in extra costs for borrowers, and while borrowers can use different allocations, in practice this has often proven difficult. For example, Navient has ignored borrower instructions because these instructions were written on payment remittance slips rather than on separate pieces of paper. Although some servicers have made improvements in recent years to enable borrowers to better control the allocation of their payments, we have received many complaints that payments were not allocated as borrowers directed. Borrowers report spending hours on the phone with loan servicers trying to get these errors corrected.

4. Servicer failures obstruct the Public Service Loan Forgiveness program.

As members of this Committee know, Public Service Loan Forgiveness ("PSLF") allows public servants, such as police officers, first responders, servicemembers, nurses, social workers, and government employees to commit to public service and receive loan forgiveness after 10 years of qualifying payments. However, forgiveness under the PSLF program comes with many requirements and is only available if borrowers jump through very specific hoops. A March 2019 report from the U.S. Department of Education shows that of the 73,554 borrowers who applied for loan forgiveness under PSLF, only 864 have had their application approved.[3] There are a number of common reasons for these denials, but a root cause is the failure of servicers to assist eligible students and explain critical program requirements.

To be eligible for PSLF, loans must be made through the Direct Loan program. Loans originated through other federal programs are not eligible unless brought into the Direct Loan program through consolidation. Our office has encountered borrowers with loans made through the Federal Family Education Loan ("FFEL") program who claim that their servicer did not explain this requirement or incorrectly told them that they were on-track for forgiveness. Far too often, our office is in the awful position of informing FFEL borrowers that they have the wrong loan type and that none of their prior payments will count toward PSLF. Since forgiveness under the PSLF program requires 10 years of qualifying payments, it is often too late for these

[3] https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data

borrowers to consolidate into the Direct Loan program with any hope of receiving meaningful loan forgiveness. The result is that a program established by Congress to support student borrowers in public interest careers is inaccessible to the very students that the government intended to help. Below is a complaint that we received from one such borrower:

> *I have been employed full-time for a non-profit agency since 2001 and have been paying back my student loans throughout. My loans were initially serviced through Sallie Mae and I was told I was eligible for the public service loan forgiveness program. Last year, when I queried on what steps to take regarding the loan forgiveness, I was told I was ineligible for that public service loan forgiveness due to the type of loan I have. I find it unbelievable that after 16 years of working for full time for a non-profit (I am a clinical psychologist and work for [redacted] as a behavior consultant for the Department of [redacted]) that I am not eligible for a public service loan forgiveness. I had counted on that forgiveness as I have substantial loans and am a widowed single mother.*

Loan type is not the only obstacle to obtaining PSLF forgiveness. Borrowers must also make their payments separately, on time, in the right amount, and under specific repayment plans. Servicers fail to explain these requirements and borrowers frequently find out too late that their payments do not qualify. Below is an illustrative complaint:

> *I have been making payments on my bill for 6 years based on the public service loan forgiveness/repayment plan, but not all of my payments are counting. Federal Loan Servicing is telling me that if I made a payment before they printed a bill (my payments are due on the 12th of each month, and the bill is printed on the 20th) the payment does not count towards either public service loan forgiveness or the bill that is printed on the 12th. Although I have never been in default on my loans, I had to spend well over a half hour today on the phone to get a payment which was made on the 20th to count for the bill which is due on June 12th. Additionally, they recalculate my qualifying payments (each year) and each year I have fewer qualifying payments and the payments are unequally applied across my 10 loan despite me only making one payment at a time.*

Indeed, we have also seen borrowers whose payments were rejected as qualifying for PSLF due to payment rounding issues. One borrower, whose servicer was authorized to make the needed withdrawals from his bank account, was told that his payments did not count because that servicer had errantly withdrawn payments that were one penny short of the amount due under his repayment plan.

Although the Pennsylvania Higher Education Assistance Agency ("PHEAA" or "FedLoan") has an exclusive contract with the U.S. Department of Education to administer the PSLF program, many other servicers are also involved in the servicing of these loans, as the loans are typically transferred to PHEAA only after a borrower expresses a written intent to pursue forgiveness under PSLF. Thus, errors made by prior servicers can feed through the system and later result in determinations that payments were non-qualifying.

PHEAA's tracking of qualifying payments and non-responsiveness to borrowers is also a major source of complaints. We often hear from borrowers that PHEAA has not clearly explained why their payments do not qualify towards forgiveness. Without such explanations, borrowers are often unable to take corrective action or resolve mistakes. Below are illustrative excerpts from some of the complaints that we have received on this issue:

- *According to my account, it states none of payments qualified and when I called MyFedloan, two representatives gave me different answers and did not provide any clarification on the status of my loan.*

- *I am having extremely difficult time with FedLoan Servicing, [m]y account has been in review for over a year. Each time I call I get a different answer. I was told that reviews can take up to six months. Next, I was told that tracking down each payment takes three months to complete. …None of the agents who answer the calls have valid information and they continue to tell you that your account is being reviewed.*

- *[W]e discussed the fact that my loans have not been credited with the number of payments that I have made. They have PSLF employment certifications on file since 2013, yet they only have 23 logged payments for my loans that entered repayment in 7/2016 through 4/2019. Upon further review, there appears to be no logged payments carried over from when Navient transferred the loan from 1/17/17.*

- *I switched to FedLoan in August of 2017 because I was close to making 120 qualifying payments toward Public Service Loan Forgiveness. I asked them to tell me how ma[n]y payments they thought qualified in May 2018. They opened a review and told me it would be 60-90 days. I still have not gotten a response [as of April 25, 2019]. I have called numerous times and was told they were prioritizing people who had applied for PSLF. I thought I was at 120 payments, so I applied in March 2019. I was denied April 19, 2019. They said I only made 33 payments. …I asked for a copy of my file – they said they couldn't send it to me until the review (started in May 2018) was completed.*

III. Inadequate loan servicing has created a cottage industry of harmful "debt relief" companies that take advantage of distressed borrowers.

The failure of federal loan servicers to adequately counsel borrowers about income-driven repayment and associated loan forgiveness opportunities has also given rise to a cottage industry of fraudulent student loan "debt relief" companies.[4] Many borrowers who have not received adequate help from their federal loan servicers are victimized by these companies, which charge hundreds or thousands of dollars in fees with promises of debt forgiveness. After being "helped" by "debt relief" companies, borrowers often find themselves in even greater

[4] The failure to process and provide borrower defense discharges based on school misconduct has also fed this industry.

financial distress. Below is one such example:

> *[Equitable Acceptance] contacted me about a student loan forgiveness program. I have been paying into this for approximately two years now. I graduated in 2013 from Baypath College, which is now Baypath University. I had thought I was doing the right thing until I spoke with FedLoans, who actually handles my student loans, and found out that my account was going into default and that the company I have been paying to for over 2 years now is not affiliated with the, and the only way I can get on a student loan forgiveness program is with them. So, now I don't know how I can recoup the money I have already paid to this company and have it apply to my legitimate student loans.*
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> *After finding out this information, I did contact Equitable Acceptance corporation within the past 6 months and they notified me that nothing was being applied to my student loans. I asked them to cease and desist from withdrawing this payment from my bank account and they have not done so. I cannot get my bank to stop the payment either.*

We have assisted hundreds of similar borrowers whose loan troubles have been exacerbated by such companies.

IV. Conclusion

Congress has taken significant steps to help borrowers avoid default and ruinous student loan debt by creating affordable repayment plans and forgiveness programs. However, all of these plans and programs rely on servicers. They are the gatekeepers. They are the companies contracted by the government to connect student loan borrowers with the help those borrowers need. And when these servicers fail to act in borrowers' best interests, communicate effectively, or respond to questions accurately, our students and their families suffer serious consequences. We hope that you will continue in your efforts to hold student loan servicers accountable and improve servicing standards. I appreciate the opportunity to share these thoughts with you today.