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January 24, 2023

TO: The Honorable Ben Barnes, Chair
Appropriations Committee

The Honorable Luke Clippinger, Chair
Judiciary Committee

FROM: Philip Ziperman, Deputy Chief - Consumer Protection Division

RE: House Bill 50 – Action to Collect a Private Education Loan – Required Documents
FAVORABLE

The Consumer Protection Division of the Office of the Attorney General supports House Bill 50, sponsored by Delegate Lopez, because it will help to protect Maryland consumers from unfair, deceptive, and abusive practices in the collection of private student loans owned or collected upon by unscrupulous for-profit schools, bad-acting debt buyers, trusts, and other non-bank or non-credit union companies.¹ These protections are especially needed at this time when the people most likely to be sued for defaulting on a private student loan are the same people who are most harmed by the economic disruption caused by the COVID-19 global pandemic.

Our office, along with other Attorneys General and the Federal Trade Commission, have long been concerned about the rising numbers of debt collection lawsuits that have little, if any, evidentiary support and are filed with boilerplate allegations that lack important information such as the name of the original creditor and the current owner of the debt, the date of the default, and the amount due.² These problems are intensified for borrowers of private student loans that often have higher interest rates³ than federal student loans and do not feature affordable repayment options (such as income-based repayment plans) or rehabilitation and consolidation options when borrowers fall behind on payments, all of which are available to federal student loan borrowers, leaving students with few options when they face a change in their financial circumstances like a loss of income or a job due to COVID-19. Because the pause on all payments for federally owned student loans in the CARES Act

¹ This bill exempts banks that are governed by the Federal Deposit Insurance Act or federal or state credit unions governed by the Federal Credit Union Act.

² <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting-debtcollectionreport.pdf>.

³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-distressed-private-student-loan-borrowers-driven-into-default/>.

and the subsequent executive orders forgiving some loans entirely⁴ did not affect private student loans, borrowers of those loans have been left unprotected from aggressive debt collection tactics and lawsuits that lack evidence to support the claims filed by the holders of the student loan debt.

In addition to the aggressive contract terms that lack any of the consumer protections in federal loans, private student loans are often relied upon by students attending for-profit institutions because the price of those schools is much higher (but the quality of education and earnings potential is generally much lower) than a similar program at a UM System school, an HBCU/MSI, or a community college. Our office and other State Attorneys General have investigated multiple for-profit institutions of higher education that use illegal recruitment tactics to convince students to incur a significant amount of private student loan debt to pay for their programs by utilizing high pressure sales tactics, emotional appeals, and making unfair, deceptive, and abusive tactics. Federal and state law enforcement agencies have brought significant litigation alleging predatory lending and collection practices by large private education lenders.⁵

This bill does not alter private student loan contracts, allow consumers to avoid paying a debt that they legitimately owe, or reduce access to student loans. Instead, House Bill 50 provides desperately needed protections for Maryland student loan borrowers by ensuring that applicable creditors and collectors of private student loans possess accurate loan records and documentation for each loan and present that information to the court to prove that they are collecting the actual amount owed from the correct person. Much like the protections that were put into place in 2016 requiring debt buyers or collectors acting on behalf of a debt buyer to possess certain information before they initiate debt collection actions against consumers,⁶ HB 50 expands those protections enacted in 2016 beyond debt buyers and requires private student loan lenders and their collectors to possess, among other things, information concerning the original lender and subsequent owners, the original loan amount, the collection and payment history, the date and amount of last default, and other information about the history of the loan and any attempt to settle the debt. Requiring collectors of student loans to possess this information will help ensure that errors do not occur in the collection of the student loan debt and better enable a consumer and a reviewing court to determine whether the student loan debt is being fairly collected and if there are alternatives to repayment. Furthermore, before applicable debt collectors can obtain a judgment in a Maryland court and garnish a borrower's wages, the bill requires them to prove that they have the right to collect on the loan and submit an affidavit to establish that the statute of limitations has not expired.

The Consumer Protection Division urges the Appropriations and Judiciary Committees to give HB 50 a favorable report.

cc: Members, Appropriations and Judiciary Committees
Honorable Lesley Lopez

⁴ See <https://studentaid.gov/announcements-events/covid-19/payment-pause-zero-interest#which-loans-eligible>

⁵ See e.g., Attorney General Frosh Announces \$1.85 Billion Settlement with Student Loan Servicer Navient, <https://www.marylandattorneygeneral.gov/press/2022/011322.pdf>.

⁶ See Md. Cod Ann., Cts. & Jud. Proc. § 5-1203 and Md. Rule 3-306.