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TO: The Honorable William C. Smith, Jr., Chair
Judicial Proceedings Committee

FROM: Christopher J. Madaio, Assistant Attorney General - Consumer Protection Division

RE: House Bill 26 – Action to Collect a Private Education Loan - Required Documents
FAVORABLE

The Consumer Protection Division of the Office of the Attorney General supports House Bill 26, 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 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 devastation of 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-19.⁴ Because the pause on all payments for federally owned student loans in the CARES Act and the subsequent executive orders did not affect private student loans, borrowers of those loans have

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/>

⁴ Many private lenders also require student loan borrowers to obtain a co-signer (usually a parent or grandparent), who is equally responsible for the payment of the loan.

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 lenders⁵ and, in one of the most egregious instances, the National Collegiate Student Loan Trusts (“NCLST”) utilized abusive collection practices, robo-signing, and illegal pursuit of invalid debts.⁶ The NCLST owns more than 15,000 loans of Maryland borrowers that totaled more than \$190 million, and has filed 1,257 cases against Marylanders in the past five years. These cases disproportionately target communities of color in Maryland with more than half filed against borrowers in zip codes with a majority-minority population. This bill is narrowly tailored to apply only to trusts, including the NCLST, and other non-bank or credit union debt buyers and collectors because this is a significant source of abusive collection practices.

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 26 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. 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.

An amendment adopted by the House Appropriations committee clarified that documents that never existed need not be produced and personal identifying information of consumers should be redacted, thereby addressing concerns raised by the Maryland Judiciary.

The Consumer Protection Division urges the Judicial Proceedings Committee to give HB26 a favorable report.

cc: Members, Judicial Proceedings Committee
Delegate Lesley Lopez

⁵ See, e.g. *State of Washington v. Navient Corporation*, https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/20170118ComplaintRedacted.pdf
⁶https://files.consumerfinance.gov/f/documents/201709_cfpb_national-collegiate-student-loan-trusts_complaint.pdf