October 10, 2018

Hon. Gary Gensler, Chair
Financial Consumer Protection Commission
3E State Office Building
Annapolis, MD 21401

Re: Student Loan Servicing

Dear Mr. Gensler,

In 2018, The Center for Responsible Lending[1] (CRL) supported HB 1642: Commissioner of Financial Regulation – Student Education Loans – Ombudsman and Licensing of Servicers, a commonsense proposal that would have ensured that student loan servicers help students repay their loans, rather than cause student loan debt to balloon for individual borrowers due to abuses by student loan servicers. CRL is grateful to this Commission for continuing the important work of investigating the emerging student loan crisis.

The work of this Commission comes at a critical time – at the federal level, the U.S. Department of Education is actively rolling back student protections, bolstering the need for state action. In late August, Seth Frotman, former Student Loan Ombudsman for the Consumer Financial Protection Bureau, noticed his resignation in a letter claiming that the Bureau "has turned its back on young people and their financial futures." [2]

Because of lack of federal oversight, Maryland is well-positioned to protect its student loan borrowers. Maryland has long been at the forefront of consumer protections, and this proposal will continue the trend of the state as a national leader in protecting its residents against predatory financial practices.

1. Abuses by student loan servicers prolong and deepen the problem of student loan debt.

In the last decade, student loan debt has exploded, with education borrowing outpacing all other consumer loan debt.[3] Estimates now put outstanding student loans at about $1.5 trillion,[4] and a recent

[1] The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization which is dedicated to protecting homeownership and family assets by working to eliminate abusive financial practices. We strive to promise responsible lending and access to fair terms of credit for low-wealth families. CRL is an affiliate of Self-Help Credit Union, which is the nation's largest community development financial institution with a mission of helping underserved people and communities build wealth and assets.
[2] Resignation letter from Seth Frotman to CFPB Director Mick Mulvaney: https://apps.npr.org/documents/document.html?id=4784891-Frotman-Letter
[3] Lee, Donghoon. "Household Debt and Credit", Federal Reserve Bank of Maryland (2014), https://www.newyorkfed.org/medialibrary/media/newsevents/mediaadvisory/2013/Lee022813.pdf.
[4] Federal Reserve, https://www.federalreserve.gov/releases/g19/current/default.htm. Reflects totals through the end of June 2018.

study from the Federal Reserve of New York has found that that student loan debt is causing a generation of Americans to delay purchasing their first home.[5]

In Maryland, most students have no choice but to borrow for college. According to an April 2018 poll commissioned by CRL, 37% of Marylanders say that someone in their household currently has student loan debt, including 52% of those between the ages of eighteen and forty. Among those with student loan debt, a full 28% say they still owe $50,000 or more on their student loans. Worse still, 44% of those with student loan debt declare they are struggling, unable to make monthly payments or neglecting other bills to make their student loan payments. More specifically, 57% of women reported struggling with student loan debt.[6]

While conversations continue in Maryland and nationally about how to address affordability in higher education in the future, the $1.5 trillion in outstanding loan debt is and will continue to be collected by companies known as servicers. One the many lessons learned from the foreclosure crisis following the Great Recession is the importance of protecting against abusive servicer practices. For federal student loan borrowers, student loan servicers are a critical link between borrowers and the repayment of their loans. Servicers are charged with evaluating borrowers for income-driven repayment programs, discharges, and other plans that can help them manage their monthly payments. Failure to properly serve borrowers, however, has led to delinquencies, defaults, and even an increase in outstanding student loan debt nationally.[7] When servicers do not do their job, students cannot reasonably repay their loans.

One Maryland resident, who has Navient as a student loan servicer, made the following complaint to the Consumer Financial Protection Bureau (CFPB) recently:

Navient XXXX, XXXX symbol XXXX, is the worst company ever. They make it a business to rip off their customers. First, I am a on time payment customer. Just this month I receive a bill telling me that my loans are in deferment. This is obviously not the case as I have been making full principal and interest payments for the past year. Also I have graduated college in XXXX, so this makes no sense... Had I not noticed this, 1) One of my loans I would be paying interest only and NEVER paying principal. According to the contract I signed this would not be the case because as stated from years XXXX to XXXX I am on a full principal & interest payment plan. This lines their pockets with cash and me the consumer does not get out of debt. Talk about unfair business practices. 2) My second loan is in a worse situation. According to them the loan is in "In School Fixed Payment Plan '' which is a euphemism for NEGATIVE AMORTIZATION. Tell me again how this happened??...Finally, this is not the first time this has happened. This is the third time they have incorrectly represented payments.

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[5] Bleemer, Zachary, Meta Brown, Donghoon Lee, Katherine Strair, Wilbert van der Klaauw, "Echoes of Rising Tuition in Students' Borrowing, Educational Attainment, and Homeownership in Post-Recession America", Federal Reserve Bank of New York (July 2017) https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr820.pdf?la=en.

[6] https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/gonzales-poll-student-loan-debt-apr2018.pdf

[7] Press Release, Consumer Financial Protection Bureau, "CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment: Navient, Formerly Part of Sallie Mae, Illegally Cheated Borrowers Out of Repayment Rights Through Shortcuts and Deception", (January 2017) https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/.

This is just one of over 555 complaints against the nation's largest student loan servicer filed with the CFPB by Maryland borrowers.[8] According to a lawsuit filed by the Consumer Financial Protection Bureau against Navient failed every type of borrower at every level of repayment. One of the key abuses the CFPB alleges is that Navient placed borrowers into forbearance even though the borrowers were eligible for income-driven repayment plans, which would have tied their monthly payments to their incomes. In forbearance, a borrower pays nothing for a set number of months – while the interest on their loans continues to compound. Though this solution is appropriate for a borrower who needs a few months to get back on their feet, it is not a solution for borrowers who need long term help. Indeed, by placing borrowers in forbearance after forbearance, Navient added an additional $4 billion in compounded interest added to the loan debt of just 500,000 students.[9]

In their response to the CFPB's complaints, Navient made quite a revealing statement: "The servicer acts in the lender's interest… and there is no expectation that the servicer will 'act in the interest of the consumer.' Navient followed up on this statement in court, telling a federal judge in Pennsylvania that any reference to helping borrower's successfully pay their loans "[is] friendly talk, it's puffery, but it is not the stuff of a legal obligation to now become your financial counselor".[10] These statements make it abundantly clear why former students are having difficulty working with their servicers to get their loans paid off, and why states must act to ensure the best interest of students and servicers are aligned.[11]

Delinquency and default can have serious, long-term effects on borrowers. Defaulting on a student loan harms a borrower's credit score, making it more difficult to access jobs, housing, and insurance in the future. For federal student loans, the federal government has extraordinary powers of collection. They can garnish not only a defaulted borrower's wages without court proceedings but also their tax returns and social security payments.

It does not have to be this way. An array of options are available to federal student loan borrowers – from income driven repayment plans to discharges for disability. Unfortunately, as the CFPB's lawsuit against Navient exposes, student loan servicers routinely fail to advise borrowers of these options – instead keeping their customers in high-cost payment plans that are doomed to fail.

2. The federal rollback of existing protections bolsters need for state action.

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[8] Consumer Financial Protection Bureau, Complaint Database, https://data.consumerfinance.gov/dataset/Consumer-Complaints/s6ew-h6mp#column-menu (last accessed February 15, 2018); https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2706120 (last accessed 2/15/2018)

[9] Press Release, Consumer Financial Protection Bureau, "CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment: Navient, Formerly Part of Sallie Mae, Illegally Cheated Borrowers Out of Repayment Rights Through Shortcuts and Deception", (January 2017) https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/.

[10] Cowley, Stacy, "How a Potential $1 Billion Student Loan Settlement Collapsed After Trump Won," New York Times (Oct. 7, 2018), https://www.nytimes.com/2018/10/07/business/student-loans-navient.html.

[11] Nasiripour, Shahein, "Student Debt Giant Navient to Borrowers: You're on Your Own: The servicer says publicly it wants to help you pay debt. In a government lawsuit, it has a different message," Bloomberg, (2017) https://www.bloomberg.com/news/articles/2017-04-03/student-debt-giant-navient-to-borrowers-you-re-on-your-own.

The U.S. Department of Education is currently taking steps to roll back existing protections against student loan servicing abuses. In March 2017, the Department withdrew the servicing standards created by the previous Administration, which put in place safeguards against companies with history of fraudulent and illegal practices. In addition to withdrawing their consumer-friendly servicing standards, the Department removed the requirement for "high-touch servicing" from its guidelines for student loan servicers hoping to renew their contracts. Eliminating high-touch servicing means that those borrowers most at risk of default will not get the extra counseling they need to navigate all of the available options for repaying their loans on affordable terms.

Further, in the last few months Acting CFPB Director Mick Mulvaney has dismissed the concerns of struggling student borrowers, casting their attempts to access federal repayment programs as avoiding their payment obligations. Mulvaney, an ally of Navient and other student loan servicers, said during a CNBC radio interview that student loan advocates were "teach(ing) an entire generation of people that the first major loan they take out, they don't have to pay back."[12]

When the federal government fails to protect students, states must act to fill the void. Indeed, even with all the roll backs to student loan protections, the Department of Education explicitly stated that student loan servicers of federal student loans must abide by state servicing rules, laws, and regulations.[13]

3. Establishing state-level oversight of servicers is a commonsense approach to ensure servicers help students repay, rather than delay, their student loan debt. HB1642 was the bill to do just that.

Last year, Maryland began the important work of providing state oversight to student loan servicers with HB1642, a bill that, despite having the support of 80% of Maryland's voters, failed to advance past this body. A bill providing state-level oversight of servicers is the first step Maryland can take to protect its residents against abusive student loan servicing practices. HB1642 would have addressed some of the worst abuses of student loan servicers by prohibiting many of the behaviors documented by the Consumer Financial Protection Bureau and providing the state with the necessary authority to enforce these state-level protections.

Connecticut passed the first bill aimed at reducing the harms caused by student loan servicers in 2015. HB1642 is a more comprehensive bill that reflects lessons learned related to preemption threats and further ways to strengthen the Connecticut law to provide for affirmative responsibilities that student loan servicers must take and to provide stronger enforcement provisions.

Perhaps most importantly, HB1642 was strengthened by not only prohibiting certain practices but also requiring servicers to affirmatively engage with borrowers in specific ways, including timely responses to questions from borrowers, applying payments that are more or less than the required payment amount

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[12] Lovelace, Jr., Berkley, "Mick Mulvaney Worries About the 'Moral' Consequences of Failing to Pay Back Student Loans," CNBC (Sept. 12, 2018), https://www.cnbc.com/2018/09/12/cfpb-acting-director-mick-mulvaney-worries-about-student-loan-debt.html.

[13] Solicitation ED-FSA-17-R-0001, updated May 19, 2017, question 35 states: "The contractor will be required to comply with all applicable State laws governing loan servicing activities performed under the contract, including State licensing/regulatory provisions applicable to student loan servicers (see Attachment A, Requirement 20018.000). In preparing their proposals, offerors should take into account the need to comply with all such State requirements. To the extent there are any direct conflicts between the requirements of the contract and of State laws, the Department will assist as appropriate to help resolve such conflicts. In the event of a conflict between Federal and State laws, Federal law takes precedence."

as the borrower prefers, and abiding by certain responsibilities when a loan is sold, assigned, or transferred.

Not only did HB 1462 represent a commonsense and tested approach to confronting student loan servicing issues, it incorporated the lessons learned in the years since Connecticut's law passed, resulting in a more comprehensive bill and positioning Maryland as a model for student loan servicing legislation.

The Center for Responsible Lending urges this Commission to take a stand for Maryland student loan borrowers by supporting legislation that incorporates HB1642 and addresses abusive student loan servicing practices.