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Via Electronic Mail – Devon Phelps at devon.phelps@dfi.wa.gov
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Re: Comments on proposed rules implementing SB 6029, c 62, Laws of 2018

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In the last decade, student loan debt has exploded, directly impacting the lives of millions of Americans and leaving its mark on the entire economy. There are now over 800,000 student loan borrowers in Washington state alone. Collectively, these borrowers owe over $24 billion. [1] With the cost of higher education continuing to rise at alarming rates and college education becoming a requirement for more and more jobs, many more will soon be joining their ranks.

Burdened by extraordinary student loan debt and stagnant wages, a generation of Americans are delaying or forgoing opportunities to build wealth, such as purchasing their first homes or starting their own businesses.[2] These trends exacerbate the already wide racial wealth gap. Student loan debt is also hampering older Americans' ability to retire with adequate financial support.

Unfortunately, while pursuing a higher education is widely-accepted as a pathway to higher incomes and better opportunities, many Washingtonians are finding their student loan payments unaffordable. In fact, more than one in ten student loan borrowers in Washington have a student loan debt in collections.[3] Delinquency and default can have serious, long-term effects on borrowers.[4] Defaulting on a student loan harms a borrower's credit score, making it more difficult to access jobs and housing, as employers and landlords routinely conduct credit checks when assessing applicants. For seniors, it could mean garnishment of their Social Security income, locking them into a lifetime of poverty.

Clearly, Washington residents' lives and potential for economic prosperity is inextricably tied to how the state chooses to address this crisis.

Student loan servicers are a critical link between borrowers and the repayment of their loans. For federal student loans, servicers are the gateway to determining whether students are placed in the relief plans available to them under federal law. When servicers do not do their job, students cannot reasonably repay their loans.

As servicers have an unavoidable role in this cycle of debt and repayment, it is essential that they are operating in the best interest of student loan borrowers. Unfortunately, servicers have frequently been shown to operate contrary to this notion, employing practices that benefit both themselves and lenders at the expense of borrowers. In fact, a recent U.S. Department of Education audit found that Navient Corp., the nation's third-largest student loan servicing company, may have failed to let students know of all available options and put people in higher-cost repayment plans, potentially affecting tens of thousands of people struggling with student loan debt.[5] Recent rollbacks in servicing standards at the federal level have made it even easier for servicers to exploit these borrowers.

While the abusive practices of student loan servicers become increasingly apparent, student loan borrowers are receiving little assistance from the federal Department of Education. In fact, the U.S. Department of Education is currently taking steps to roll back existing protections against abusive student lending practices.

Fortunately, through its passage of the student education loan servicing provisions of the Consumer Loan Act, the Washington legislature took a significant first step in reigning in some of the abusive practices employed by student loan servicers.

Responding to widespread concerns about student loan debt and poor servicing practicing affecting resident borrowers, states have been focusing their traditional consumer protection oversight tools on student loan servicers. In addition to Washington, several other states have passed legislation to ensure state oversight of student loan servicing practices. These states include Connecticut, California, and Illinois. In efforts to avoid this oversight, student loan servicers and the U.S. Department of Education have made misguided claims that states do not have any authority in this area.

Enforcement and regulation of consumer protection laws, including through actions brought by states against student loan servicers, are "well within the scope" of historic state police powers.[6] In fact, the Attorney General of Washington, Robert W. Ferguson, has affirmed the right of the states to oversee and enforce student loan laws, joining 29 other state attorneys general in signing a letter stating, in part:

> Given the states' experience and history in protecting their residents from all manner of fraudulent and unfair conduct, they play an essential role in consumer protection in student loans and education. States are uniquely situated to hear of, understand, confront, and, ultimately, resolve the abuses their residents face in the consumer marketplace. Abuses in connection with schools or student loans are no different. As with other issues facing their citizens, state regulators bring a specialized focus to, and appreciation for, the daily challenges experienced by students and borrowers. Far from interfering with the Department and other federal efforts to rein in abuses, the record overwhelmingly demonstrates that state laws and state enforcement complement and amplify this important work.[7]

The Washington State Department of Financial Institutions (DFI) is tasked with promulgating regulations to implement the student education loan servicing provisions of the Consumer Loan Act. As this rulemaking process continues, we will be submitting further comments to DFI.

Thank you for the opportunity to comment on the proposed rules. We support Washington's efforts to curtail abusive student loan servicing practices, and we look forward providing additional information related to the implementation and rulemaking process to ensure that Washington students are protected in the most meaningful way possible under state law.

If you have any questions or require additional information, please contact:

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[1] https://www.atg.wa.gov/studentloanresources
[2] National Association of Realtors, Student Loan Debt and Housing Report, Oct. 2017, https://www.nar.realtor/research-and-statistics/research-reports/student-loan-debt-and-housing-report
[3] Urban Institute, Debt Collection in America: Student Loan Debt, May 2018, https://apps.urban.org/features/debt-interactive-map/
[4] The Institute for College Access & Success, "The Self-Defeating Consequences of Student Loan Default," Oct. 2018, https://ticas.org/sites/default/files/pub_files/ticas_default_issue_brief.pdf

[5] AP Exclusive: Audit points to deceptive practices by Navient, Nov. 20, 2018, https://apnews.com/eeebf667026a420c9893220215e542cb

[6] *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 146, 150 (1963); *see also First Resort, Inc. v. Herrera*, 860 F.3d 1263, 1283 (9th Cir. 2017) (Tashima, J., concurring); *Cliff v. Payco Gen. Am. Credits, Inc.,* 363 F.3d 1113, 1126 (11th Cir. 2004)

[7] Sign On Letter to Congress re Student Loan Preemption, Mar. 15, 2018, https://ag.ny.gov/sites/default/files/ag_letter_student_loan_preemption.pdf