Written Testimony of Student Borrower Protection Center
at a Public Hearing before the
House Committee on Commerce and Energy
on HB 203
"*A BILL to amend and reenact § 6.2-2600 of the Code of Virginia, relating to financial institutions; qualified education loan servicers; definitions*"

AGAINST

January 25, 2022

Chair Byron and members of the House Committee on Commerce and Energy.

My name is Winston Berkman-Breen, and I am Policy Counsel and Deputy Advocacy Director for the Student Borrower Protection Center. The SBPC is a national non-profit policy organization committed to ending the student debt crisis. Prior to joining the SBPC, I was the Student Loan Ombudsperson for the State of New York housed in its financial regulator. I am testifying today in opposition to HB 203 "A BILL to amend and reenact § 6.2-2600 of the Code of Virginia, relating to financial institutions; qualified education loan servicers; definitions."

The provision of code that this bill would amend is the Virginia Student Borrower Bill of Rights law, enacted in 2020 as the result of a multi-year coordinated campaign on behalf of Virginia borrowers and their families, and which only took effect last year. The Student Loan Borrower Bill of Rights both requires student loan servicers to be licensed by the Commonwealth to allow for greater oversight of this industry, and creates new consumer protections for student loan borrowers. These new and critical protections are a direct response to consumer complaints and government investigations related to the outsized role that student loan servicers have played in the ongoing student loan debt crisis.

However, the same actors that contributed to the student loan crisis and prompted the Commonwealth to enact these new consumer protections now seek to undermine them. Specifically, although this bill would make a seemingly minor amendment—exchanging the existing word "or" for the word "and" in the law—the bill's effect would be to carve out an entire subset of the student loan servicing industry known as guaranty agencies from the law's current coverage. This subset of servicers have a track record of consumer abuses, and must remain under close supervision. We therefore urge the Committee to maintain Virginia's Student Borrower Bill of Rights as it was passed into law, and to vote against this bill.

The CFPB's definition and Virginia's law were specifically written to cover companies and activities that these amendments would carve out.

The General Assembly chose to adopt its current definition for "servicing" in the Student Borrower Bill of Rights, despite industry opposition, in order to cover guaranty agencies. The distinction of the work "or" and "and" has no effect on other types of servicers. This is because guaranty agencies have a well-documented track record of harming student loan borrowers, and so their conduct was specifically included in the definition to ensure their coverage by the law.

As financial guarantors for federal student loans, these companies engage in a specific subset of student loan servicing known as "default aversion"—the practice of contacting borrowers who are delinquent on these privately-held, federally-backed loans and to advise them about repayment options. Default aversion, when successful, helps borrowers get out of delinquency and avoid default; it also helps the guarantor avoid having to pay an insurance claim in the event of a loan default by the borrower, giving the guarantor a financial stake in the borrower's repayment success.[1]

Guarantors engaged in default aversion readily meet the definition of covered servicers under Virginia's Student Borrower Bill of Rights,[2] which borrows this definition from the federal definition of "student loan servicing" promulgated by the federal Consumer Financial Protection Bureau ("CFPB") in 2013, as discussed below.[3]

The component of the Commonwealth's current definition of "servicing" that incorporates guaranty agencies' default aversion work is found in paragraph three of the definitions for both "Qualified education loan servicer" and "Servicing."[4] Critically, as drafted, each of the three paragraphs for each of these defined terms serve as independent bases for coverage, *i.e.*, engaging in any one of the three enumerated activities is sufficient to count as servicing and trigger coverage by the law. This is because the word "or" is used to separate the second and third paragraphs, which denotes the standalone importance of each paragraph. Replacing this "or" with an "and," as this bill proposes, would fundamentally change the nature of these definitions by redefining "servicing" as the engagement in all three activities together, rather than any one activity itself. This is the guaranty agencies' intent with this proposed amendment, as they often engage in the third enumerated form of servicing, default aversion, but not

[1] *See generally*, Mike Pierce, *What it means to be a student loan servicer: Guaranty Agency edition*, Student Borrower Prot. Ctr. (Mar. 29, 2019), https://protectborrowers.org/what-it-means-to-be-a-student-loan-servicer-guaranty-agency-edition/ (Last viewed Aug. 3, 2021).
[2] *See* Chapter 26 of Title 6.2, § 6.2-2603.
[3] *See* 12 CFR § 1090.106
[4] *See* § 6.2-2600.

necessarily while also engaging in the definition's other two prongs simultaneously. In short, with the Student Borrower Bill of Right's use of the word "or," guaranty agencies are covered servicers, but were that word changed to "and," these companies would evade coverage and oversight by the Commonwealth.

It is no coincidence that the General Assembly chose to include guaranty agencies in their bill to protect student loan borrowers. In 2020, the CFPB began to investigate the Commonwealth's own guaranty agency, Education Credit Management Corporation ("ECMC"), for its scheme "to cause student-loan borrowers to incur collection costs in a manner that violates [federal law]."[5] The CFPB is also investigating Ascendium Education Solutions, another guaranty agency, for improperly incurring and charging fees.[6] There is clearly an ongoing need to supervise this industry, which historically falls within state oversight.

Additionally, it makes sense for the Commonwealth to oversee these servicers. From a borrower perspective, guaranty agencies are indistinguishable from other servicers. The intent with Virginia's Student Borrower Bill of Rights was to give the Commonwealth insight into servicing as it is provided to consumers. As the CFPB notes:

> a guaranty agency may contact a borrower and urge the borrower to bring the loan current. As part of these efforts, the agency may suggest forbearance, deferment, or various repayment plans. The agency may provide the borrower information that will help the borrower assess his or her eligibility for various options. The Bureau believes borrowers perceive these communications no differently from communications that the borrower has received from the servicer of the borrower's loan.[7]

If the purpose of the Student Borrower Bill of Rights is to ensure that the Commonwealth has authority to oversee the private actors that contact and interact with borrowers with respect to their student loans, it is critical to that mission that guaranty agencies are included in that oversight. This bill, however, would carve them out.

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[5] *Petition to Enforce Civil Investigative Demands* at 2, *Consumer Fin. Protection Bureau v. Educ. Credit Mgmt. Corp.*, 21-mc-00019 (D. Minn. Mar. 4, 2021).
[6] Consumer Fin. Prot. Bureau, *Decision and Order on Petition by Ascendium Education Solutions, Inc., to Set Aside or Modify Civil Investigative Demand*, In re Ascendium Educ. Solutions, Inc., 202-MISC ASCENDIUM-0001 (Dec. 16, 2020).
[7] Consumer Fin. Prot. Bureau, *Defining Larger Participants of the Student Loan Servicing Market*, Dkt. No. CFPB-2013-0005 at 38 (Dec. 2013), https://files.consumerfinance.gov/f/201312_cfpb_student-servicing-rule.pdf.

The law, as written, conforms with the federal definition of student loan "servicing."

Nearly a decade before Virginia enacted the Student Borrower Bill of Rights, the federal government began to oversee the private companies that service federal and private student loans. In 2013, the CFPB conducted a rulemaking to define the scope of a rule establishing an oversight regime for non-bank student loan servicing. In doing so, it was also lobbied by representatives of guaranty agencies and found these arguments unpersuasive, issuing rules in December 2013 that specifically reasoned "when a guaranty agency provides default aversion services, it plays a role that is, from the borrower's perspective, likely to be indistinguishable from the role of a servicer."[8] The CFPB's servicing definition is still in effect and is available at 12 C.F.R. 1090.106.

In adopting the CFPB's definition of "servicing," which has been widely adopted by other states in their legislation to license and regulate this industry, Virginia incorporated the CFPB's various rationales for including guaranty agencies as servicers subject to supervision. In short, the definition of student loan servicer in Virginia's law, with its use of the word "or" rather than "and," intentionally aligns with federal law.

This is the latest attempt by a subset of student loan servicers to evade regulation and oversight.

This bill is part of an ongoing and largely unsuccessful campaign by guaranty agencies to convince states across the country to abandon their historic consumer protection role in the student loan market. Instead of heeding these false warnings, the Committee should uphold Virginia's Student Borrower Bill of Rights.

In addition to opposing the Student Borrower Bill of Rights when it was passed in the Generally Assembly, guaranty agencies sought to undermine the law during the regulatory process by challenging the State Corporation Commission's authority to promulgate rules pursuant to the new law.[9] Although the regulator ultimately ruled against these private industry interests and approved rules to effectuate the General Assembly's intent that student loan borrowers in the Commonwealth be protected, these same actors sued the state in federal court in another effort to evade oversight.[10]

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[8] *Id.*
[9] *See* Docket, Va. State Corp. Comm'n, Case No BFI-2021-0007, https://scc.virginia.gov/DocketSearch#caseDocs/141857.
[10] *See* Nat'l Assoc. Of Student Loan Admin. V. Face et al., Case 3:21-cv-00440-MHL.

By simultaneously advancing legislation in the General Assembly to rewrite the Student Borrower Bill of Rights, in a way that would benefit guaranty agencies only and no other covered servicers, these same industry actors are attempting a second–or perhaps third–bite at the apple. The General Assembly has already heard arguments in favor of adopting a narrower definition of servicing, which it rejected, and should not entertain this continued effort, particularly given that it is a blatant attempt to weaken much-needed state oversight and consumer protections.

Now is not the time to rollback protections for student loan borrowers.

Virginia, as with the nation, is experiencing a student loan debt crisis. Approximately 1.03 million borrowers in the Commonwealth owe a collective $43.5 billion in student loan debt,[11] with an increase in student loan debt of 175% between 2007 and 2017.[12] As of 2020, nearly 13% of Virginia borrowers were delinquent on their debts.[13] These borrowers should have received help from their loan servicers to return to good standing and to enter an affordable payment plan, however, we know that these same industry actors tasked with helping borrowers instead caused them substantial harm.

There are also unique, once-in-a-generation disruptions taking place in the federal student loan ecosystem that are likely to cause significant borrower confusion. As several student loan servicers have announced that they are ending their contracts with the U.S. Department of Education to service loans, millions of borrowers' accounts will be transferred to new companies.[14] Additionally, after over two years of paused payments, beginning in May, millions of borrowers across the country and in the Commonwealth will be required to resume making

[11] Student Borrower Protection Ctr., *Virginia: Student Debt by the Numbers*, https://protectborrowers.org/wp-content/uploads/2020/05/VA-2020.pdf (Last viewed on July 27, 2021).
[12] Student Borrower Protection Ctr., *Virginia: 2019 State of Student Loan Debt,* https://protectborrowers.org/wp-content/uploads/2019/01/Virginia-2019-State-of-Student-Debt.jpg (Last viewed on July 27, 2021).
[13] *Virginia: Student Debt by the Numbers.*
[14] *See* Student Borrower Protection Ctr., *Borrowers Need the Department of Education to Answer These 14 Key Questions and Many More as PHEAA Exits Federal Student Loan Servicing* (July 9, 2021), https://protectborrowers.org/borrowers-need-the-department-of-education-to-answer-these-14-key-questions-and-many-more-as-pheaa-exits-federal-student-loan-servicing/.

monthly payments.[15] Finally, with seemingly one[16] announcement after another[17] about investigations and settlement agreements related to unlawful student loan servicing practices, it is critical that states, including Virginia, vigilantly oversee these companies during this tumultuous time.

Guaranty agencies' default aversion practices can be determinative of borrower success, especially for those at the greatest risk of falling behind. But as the CFPB noted, when not conducted in compliance with applicable law, default aversion can exacerbate those risks or create others. For example, the CFPB's investigation into ECMC found that it was withholding information about loan rehabilitation options and keeping borrowers in default longer than necessary in order to maximize collection fees.[18] Now, just a year after the Student Borrower Bill of Right's effective date and when the need for this servicer oversight is perhaps greater than ever, is not the time for the General Assembly to roll back these critical protections.

Conclusion

We urge the Committee to oppose HB 203. This bill would unnecessarily and unhelpfully undo borrower protections that were hard fought and are in line with national standards, and would do so at a time when these protections are particularly important. Thank you. I would be happy to answer any questions.

Please contact Winston Berkman-Breen, Deputy Advocacy Director and Policy Counsel, at winston@protectborrowers.org, if you have any questions or would like to discuss this comment further.

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[15] Press Release, U.S. Dep't of Educ., *Biden-Harris Administration Extends Student Loan Pause through May 1, 2022* (Dec. 22, 2021), https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-may-1-2022.

[16] Press Release, Va. Office of the Att'y Gen., *Attorney General Herring Secures $1.85 Billion from Student Loan Servicer Navient* (Jan. 13, 2022), https://www.oag.state.va.us/media-center/news-release-archives/2276-january-13-2022-herring-secures-1-85-billion-from-student-loan-servicer-navient.

[17] Press Release, U.S. Dep't of Justice, *Loan Servicer Agrees to Pay Nearly $8 Million to Resolve Alleged False Claims in Connect with Federal Education Loans* (Jan. 14, 2022), https://www.justice.gov/opa/pr/loan-servicer-agrees-pay-nearly-8-million-resolve-alleged-false-claims-connection-federal.

[18] *Petition to Enforce Civil Investigative Demands* at 12, *Consumer Fin. Protection Bureau v. Educ. Credit Mgmt. Corp.*, 21-mc-00019 (D. Minn. Mar. 4, 2021).