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Submitted to the Joint Committee on Consumer Protection and Professional Licensure

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Regarding S. 112, H. 627, An Act Establishing a Student Tuition Recovery Fund

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My name is Amanda Mangaser Savage. I am an attorney with the Project on Predatory Student Lending at the Legal Services Center of Harvard Law School. The Legal Services Center provides representation to hundreds of low-income clients across Massachusetts in a number of areas of civil law.

The Project on Predatory Student Lending represents low-income student loan borrowers who have been harmed by the predatory practices of for-profit schools. Through our work on behalf of our clients, we are familiar with the unfair and deceptive practices employed by many for-profit schools, including deceptive advertising, unrelenting recruiting, the absence of promised academic and career development support, and draconian contracts purporting to waive our clients' right to seek relief in court.

Our clients come to us with crushing and unaffordable student loan debt in the form of federal, private, and institutional student loans. Their debt often results from enrollment in programs that they never completed, in service of credentials they never obtained. Others complete programs only to find no realistic possibility of obtaining the promised employment opportunities that induced them to incur the debt.

As our clients know all too well, the collection of student loan debt is more punitive than that of almost any other kind of debt: there is no statute of limitation on the collection of federal student loans;<sup>1</sup> the Department of Education has the ability to collect federal student loans by garnishing wages and seizing tax refunds and public benefits without going to court;<sup>2</sup> and both federal and private student loan debts are extremely difficult to discharge through bankruptcy.<sup>3</sup>

The Commonwealth's creation of a Student Tuition Recovery Fund would benefit our clients immensely. Quite simply, federal debt relief under existing statutory programs has been illusory for most of our clients. Some find themselves ostensibly outside the scope of discharge provisions that have been narrowly interpreted by the Department of Education. Others have waited years for the Department to adjudicate their defenses to repayment,<sup>4</sup> all while their debt has continued to mount and the federal government has continued to collect. In the words of one student: "I have raised my rights to borrower defense to repayment over and over, for almost two years now. But the government keeps collecting. I am in disbelief. I am beginning to wonder if borrower defense to repayment is real." For many of our clients, sending a discharge application to the Department of Education is tantamount to submitting that application to a black box.<sup>5</sup>

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<sup>1</sup> See 20 U.S.C. § 1091a .

<sup>2</sup> See 34 C.F.R. §§ 34.1-34.30, 682.410 (establishing procedures for wage garnishment); *id.* §§ 30.20-30.31, 30.33 (establishing procedures for offset of benefits and tax refunds).

<sup>3</sup> See 11 U.S.C. § 523(a)(8) (exempting an educational loan from discharge unless it would "impose an undue hardship on the debtor or the debtor's dependents"); see also, e.g., *In re Hicks*, 331 B.R. 18 (Bankr. D. Mass. 2005) (refusing to discharge student loans under "totality of the circumstances" test for undue hardship).

<sup>4</sup> Student loan borrowers have the right under federal law and regulation to raise the illegal conduct of their schools as a defense to the repayment of their loans, through "borrower defense" claims. 20 U.S.C. § 1087e(h); 34 C.F.R. § 685.206(c); 81 Fed. Reg. 75,926 (Nov. 1, 2016) (to be codified at 34 C.F.R. pts. 30, 668, 674, 682, 685, 686).

<sup>5</sup> Even where defense to repayment applications have been approved, for many borrowers, the promised relief has yet to materialize. See Letter from Richard J. Durbin, Patty Murray, Charles E. Schumer, Sherrod Brown, and Elizabeth Warren, United States Senators, to Betsy DeVos, Sec'y, United States Dep't of Educ. (May 17, 2017).

Whereas federal student loan relief is at least theoretically available, our clients have virtually no recourse with respect to their private student loan debt. For-profit schools have a disproportionately high share of private student loan borrowers,<sup>6</sup> many of whom are unaware of the differences between private and federal student loans.<sup>7</sup> Our clients frequently report that financial aid employees elide these differences, which are critical for borrowers who subsequently face financial hardship. Private student loans lack important borrower protections that come with federal student loans, such as income-based repayment, discharge, and deferment and forbearance rights. In the absence of these protections, financially distressed private student loan borrowers are ultimately “at the mercy of their creditors,” who are often unwilling to assist.<sup>8</sup>

Every day, our clients bear the cost of the unfair and deceptive practices of predatory for-profit schools.<sup>9</sup> Their credit has been destroyed, hindering their ability to rent an apartment, save money, or consider buying a car or home. Debt collectors pursue them and their families. A Student Tuition Recovery Fund will help mitigate these harms by providing a measure of relief when other avenues fail.

Thank you for your consideration of this testimony. If you have any questions or comments, please contact me at 617-390-2710 or [asavage@law.harvard.edu](mailto:asavage@law.harvard.edu).

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<sup>6</sup> The Inst. for Coll. Access and Success, *Private Loans: Facts and Trends* (2016), [http://ticas.org/sites/default/files/pub\\_files/private\\_loan\\_facts\\_trends.pdf](http://ticas.org/sites/default/files/pub_files/private_loan_facts_trends.pdf).

<sup>7</sup> See Consumer Fin. Prot. Bureau, *Private Student Loans 70* (2012), [http://files.consumerfinance.gov/f/201207\\_cfpb\\_Reports\\_Private-Student-Loans.pdf](http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf).

<sup>8</sup> Nat’l Consumer Law Ctr., *Student Loan Law 257* (2015).

<sup>9</sup> For example, one of our clients with six-figure private student loan debt makes monthly payments to stay out of default and to protect his mother, who co-signed his private loans. Because these payments cannot cover the interest due, his debt continues to grow through negative amortization.