

December 31, 2018

The Honorable Thomas V. "Mike" Miller, Jr.
President
Senate of Maryland
State House, H-107
Annapolis MD 21401

The Honorable Michael E. Busch
Speaker
Maryland House of Delegates
State House, H-101
Annapolis MD 21401

Re: Reports required by Financial Institutions Article § 2-104.1(h) and § 2-104.1(f)(2) (MSAR # 11711 and 11712)

Dear President Miller and Speaker Busch:

The Financial Consumer Protection Act of 2018, effective October 1, 2018, and codified in pertinent part at Financial Institutions Article § 2-104.1 *et. seq.*, requires that the Commissioner of Financial Regulation designate an individual to serve as a Student Loan Ombudsman. The Student Loan Ombudsman is to serve as a liaison between student loan borrowers and student loan servicers. According to Financial Institutions Article § 2-104.1(h) and § 2-104.1(f)(2), on or before January 1 of each year, the Commissioner and the Ombudsman are to provide reports to the General Assembly in accordance with § 2-1246 of the State Government Article. The Commissioner's report is to cover:

- (1) The implementation of the student loan ombudsman position; and
- (2) The overall effectiveness of the student loan ombudsman position.

The Ombudsman's report is to cover:

- (1) The establishment of the student loan ombudsman position including the establishment of policies and procedures for compiling both complaints and student loan servicer designees; and
- (2) It's findings, analysis and recommendations regarding disclosed complaint data and data trends, and necessary statutory, regulatory and legal changes to ensure that the student loan servicing industry is fair, transparent and equitable for Maryland borrowers.

It is important to note that because of the overlapping nature of the topics required in each report, the Commissioner has decided to combine both reports into one. Accordingly, the attached report is respectfully submitted for your information and consideration.

Sincerely,

/Antonio P. Salazar /

Antonio P. Salazar
Commissioner of Financial Regulation

/ Sean J. McEvoy /

Sean J. McEvoy
Student Loan Ombudsman

cc: Office of the Governor
James E. Rzepkowski, Acting Secretary, Department of Labor, Licensing and Regulation
Sarah Albert, Department of Legislative Services (5 copies)

STATE OF MARYLAND
OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION

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**PART I: REPORT OF THE COMMISSIONER
ON THE IMPLEMENTATION AND EFFECTIVENESS OF
MARYLAND'S STUDENT LOAN OMBUDSMAN PROGRAM**

INCLUDING

**PART II: REPORT OF THE STUDENT LOAN OMBUDSMAN
FOR THE YEAR ENDING**

December 31, 2018

Presented to:

The Honorable Thomas V. "Mike" Miller, Jr.
President
Senate of Maryland
State House, H-107
Annapolis, MD 21401

The Honorable Michael E. Busch
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Antonio P. Salazar
Commissioner of Financial Regulation

Sean J. McEvoy
Student Loan Ombudsman

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**PART I:
REPORT OF THE COMMISSIONER ON THE IMPLEMENTATION AND
EFFECTIVENESS OF MARYLAND’S STUDENT LOAN
OMBUDSMAN PROGRAM**

OFFICE MISSION

The Office of the Commissioner of Financial Regulation (“Office”) supervises the activities of the financial services industry in Maryland under its regulatory authority and through periodic on-site examinations and off-site monitoring programs. The mission of the Office is to ensure that the citizens of Maryland are able to conduct their financial transactions through safe, sound, and well-managed institutions that comply with Maryland law, including various consumer protection provisions, while providing a flexible, yet sound regulatory environment that promotes fair competition, encourages innovative business development, and supports the economy of Maryland.

STUDENT LOAN OMBUDSMAN PROVISIONS

The Financial Consumer Protection Act of 2018, effective October 1, 2018, and codified in pertinent part at Financial Institutions Article § 2-104.1 *et. seq.*, (the “Act”) provides that the Commissioner of Financial Regulation shall designate an individual to serve as the Student Loan Ombudsman. The Student Loan Ombudsman is to serve as a liaison between student loan borrowers and student loan servicers.

The Act specifies certain activities to be undertaken by the Student Loan Ombudsman, among them:

1. Receiving and processing, in consultation with the Commissioner, complaints about student education loan servicing;
2. Referring matters that are deemed abusive, unfair, deceptive, or fraudulent to the Office of the Attorney General for civil enforcement or criminal prosecution;
3. Disseminating information about the Student Loan Ombudsman and about student education loans and servicing;
4. Analyzing and monitoring the development and implementation of federal, State, and local laws, regulations, and policies on student loan borrowers;
5. Disclosing the complaint data the Student Loan Ombudsman compiles and analyzes;
6. Making certain recommendations and a yearly report to the General Assembly; and
7. On or before October 1, 2019, establishing, in consultation with the Commissioner, a student loan borrower education course.

According to Financial Institutions Article § 2-104.1(h), on or before January 1 each year, the Commissioner is to report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on:

1. The implementation of the student loan ombudsman position; and
2. The overall effectiveness of the student loan ombudsman position.

IMPLEMENTATION OF THE STUDENT LOAN OMBUDSMAN POSITION

The Office began planning for the implementation of the Act during the summer of 2018 and took its first formal steps to implement the Ombudsman provisions on October 1, 2018. To that end, Sean J. McEvoy was designated by the Commissioner of Financial Regulation to serve as Student Loan Ombudsman effective October 1, 2018. The appointment was publicly announced by means of a press release and disclosure on the Office's website.

Mr. McEvoy is the Assistant Commissioner of Policy and Consumer Services in the Office. As Assistant Commissioner, Mr. McEvoy is responsible for, among other things, managing and supervising the Consumer Services Unit (which handles consumer complaints for the Office) as well as the supervision of the Office's outreach and data analysis functions. Mr. McEvoy will handle the duties of the Ombudsman, in addition to his regular duties, during the initial implementation of the Ombudsman position.

Anticipating the October 1, 2018 effective date of the Act:

1. The Ombudsman, examiners and staff from the Consumer Services Unit and the Office underwent initial training on laws and issues pertinent to student loans and the servicing of student loans;
2. The Office contacted various servicers of student loans and associations representing servicers of student loans to identify the individuals designated to represent the student loan servicers in communications with the Student Loan Ombudsman.
3. The Office issued an Information Bulletin on September 28, 2018 containing frequently asked questions and updated the same in November, 2018.
4. The Office began the process of establishing initial policies and procedures (a) relating to the management of and funding for the ombudsman program; and (b) for the receipt, tracking and handling of complaints and processes for the collection of data relating to complaints and inquiries filed with the Ombudsman. Revision and updating of the policies and procedures is on-going as the Office gains experience with the new ombudsman responsibilities.
5. A web portal for the Ombudsman was established as part of the Office's website. That website went live on September 28, 2018 and it can be accessed at:

www.dllr.state.md.us/finance/consumers/frslombud.shtml

Through that website, consumers can communicate with the Ombudsman via e-mail, they can file complaints, and obtain information about student loan terms and State resources for financing a college education.

Since October 1, 2018, the Ombudsman and Office staff have also undertaken the activity described below. Additional information about the Ombudsman's activities can be found in the Ombudsman's report:

1. Created a system for tracking servicers and their respective designees;
2. communicated with individual servicers and their industry trade groups to obtain information about designees and the process for providing designee information;
3. Communicated with other state ombudsman offices to learn about the implementation of their programs;
4. Communicated with officials at the U.S. Department of Education and obtained a student loan servicer contact list.
5. Commenced efforts to create outreach materials; and,
6. Handled consumer inquiries and complaints.

OVERALL EFFECTIVENESS OF THE STUDENT LOAN OMBUDSMAN POSITION

The Act requires that the Commissioner report on the “overall effectiveness” of the student loan ombudsman position. As envisioned when the Act was introduced, the student loan ombudsman position was to be one part of a multi-part framework addressing the topic of student loan servicing. By the time the Act was finally adopted by the General Assembly, the only provision dealing with the topic of student loan servicing was the creation of the ombudsman position. As such, the measurement of the “overall effectiveness” of the student loan ombudsman position can only be accomplished within the context of the resources, responsibilities, and authorities given to the Ombudsman in the Act as it was passed. It should be noted also that the Ombudsman and the related program have only been in place for one calendar quarter as of the date of this report. Because of that short time, there is little experience with which to base conclusions on the overall effectiveness of the student loan ombudsman position. With that context, however, some comments on the overall effectiveness of the student loan ombudsman position are possible at this time.

The Act provided that operations of the ombudsman position could be funded from the Non-Depository Special Fund. The ombudsman position has effectively utilized the resources that have been made available by the Office and the Department of Labor, Licensing and Regulation to establish a structure and presence. The Ombudsman is off to a good start in meeting the position’s primary obligations of receiving, reviewing, and attempting to resolve complaints from student loan borrowers.

The Department has actively promoted the ombudsman position through the issuance of a press release, establishment of a dedicated website and e-mail address, and has been working to develop outreach materials. The initial efforts should serve the ombudsman position well in promoting its resources to the public and community of student loan borrowers.

Third, as noted above, the Ombudsman has established a system to capture the contact information of the designees of student loan servicers and has been very effective in working with the industry to communicate the statutory requirements and to obtain the required information from servicers.

In sum, due to the short time that the position has been in existence the Student Loan Ombudsman:

- A. is in the early stages of developing materials and programs that will meet the requirements of assisting student loan borrowers in understanding their rights and responsibilities under the terms of their student education loans, including development of the student loan borrower course envisioned by the Act,
- B. has not received enough data to make any meaningful conclusions about student loan servicing practices in the State, and,
- C. has only been able to undertake informal analysis and monitoring of developments on student loan borrowers at the local, state and federal levels.

The Ombudsman’s Report as required by Financial Institutions Article § 2-104.1(f)(2) is presented in the following pages.

**PART II:
STUDENT LOAN OMBUDSMAN’S REPORT ON THE ESTABLISHMENT
OF THE STUDENT LOAN OMBUDSMAN POSITION**

The Ombudsman’s report is to cover:

- (1) The establishment of the student loan ombudsman position including the establishment of policies and procedures for compiling both complaints and student loan servicer designees; and
- (2) Its findings, analysis and recommendations regarding disclosed complaint data and data trends, and necessary statutory, regulatory and legal changes to ensure that the student loan servicing industry is fair, transparent and equitable for Maryland borrowers.

OMBUDSMAN’S MISSION

On May 15, 2018, Governor Larry Hogan signed into law the *Financial Consumer Protection Act of 2018* (2018 Md. Laws 732) (“Act”). The Act established a Student Loan Ombudsman (“Ombudsman”) to be designated by the Commissioner of Financial Regulation (“Commissioner”). The Act requires the Ombudsman to monitor student loan servicing activity in Maryland and sets forth various duties of the Ombudsman.

The Ombudsman position exists primarily to provide student loan borrowers with a state-level office that can assist them in resolving their complaints about student loan servicers (“servicers”). The Ombudsman will provide information about student loan processes and act as a liaison between student loan borrowers and student loan servicers to attempt to facilitate solutions to problems and to have mistakes corrected. Additionally, the Ombudsman will gather information about the state of student loan servicing in Maryland to inform the public and legislature and will produce an annual report disclosing the complaint data the Ombudsman compiles and analyzes and provide recommendations to the General Assembly about those findings. If abusive, unfair, deceptive, or fraudulent actions are identified, the Ombudsman may refer them to the Maryland Office of the Attorney General for civil enforcement or criminal prosecution.

The Act also requires student loan servicers operating in Maryland to: (a) designate an individual to represent the student loan servicer in communications with the Ombudsman, and (b) provide the designee’s name, phone number, and e-mail address to the Ombudsman.

Finally, the Ombudsman will also disseminate information about this mission and establish, in consultation with the Commissioner, a student loan borrower education course before October 1, 2019.

BACKGROUND

As of 2017, student loan debt in the United States exceeded \$1.45 trillion, \$1.37 trillion of which was federal debt financed by the U.S. Department of Education and the remaining \$113.1 billion of which was considered private or institutional debt. Over the past 10 years, the market for student loan debt has expanded by 141.6% from \$600 billion in 2007 to \$1.45 trillion today while the number of borrowers in that time has increased by 51.7% from approximately 29 million to more than 44 million. The average

federal loan debt at graduation per student borrower has also increased by 72.2% from \$18,000 in 2007 to \$31,000 in 2017¹.

State averages for student debt load at graduation range from a low of \$18,850 in Utah to a high of \$38,500 in Connecticut. In Maryland, 56% of students graduate with debt from attending a third level educational institution and on average Maryland students graduate with \$27,672 in debt².

As a result, student loan debt is now the second highest consumer debt category in the United States, behind mortgage debt, and is higher than both credit card debt and auto loans. The student loan delinquency (or default) rate over the last 4 years has averaged around 10.7% (90+ days delinquent) and remains higher than the delinquency rates for other types of household debt*.

Economists are concerned that this debt burden on borrowers could constrain current and future consumer consumption and limit economic growth as potentially burgeoning levels of student debt negatively impact personal credit scores and the ability for borrowers to access other types of debt such as mortgages, auto loans and credit card debt which are utilized in the formation of households.

In addition to the overall debt burden of student loans, concerns have been raised from various sources over the servicing of such loans. The most significant concerns involve the borrowers' inability to obtain accurate information about their loans and about their options for repayment, particularly if they encounter difficulty in making payments. The Student Loan Ombudsman in the Bureau of Consumer Financial Protection ("BCFP") reviewed servicers' practices and, as described below, has reported in its Annual Reports on issues it identified relating to the servicing of student loans.

FEDERAL, STATE AND LOCAL DEVELOPMENTS

Activity of the Bureau of Consumer Financial Protection

The Dodd-Frank Wall Street Reform and Consumer Protection Act established a student loan ombudsman within the BCFP. Since 2011 the BCFP Ombudsman has investigated complaints regarding student loan servicers and acted as an impartial liaison between borrowers and the student loan industry.

The 2016 and 2017 BCFP Ombudsman's annual reports found that the majority of borrowers' complaints were related to difficulties dealing with their servicers. Complaints identified in the BCFP Ombudsman's reports include: difficulty repaying a loan, difficulty with credit reporting, difficulty with getting a loan, egregious and deceptive behavior on the part of servicers, including misapplying payments, putting students in forbearance, not directing students towards the proper repayment plan, and other misdirection that has led to confusion and oftentimes inability for the borrower to repay their loans.

Other pending action of note started in September 2017 when the BCFP brought an enforcement action against certain trusts holding securitized student loans. BCFP alleged that the trusts violated consumer financial protection laws in connection with the collection of the outstanding student loan balances. The case, Consumer Financial Protection Bureau v. The National Collegiate Student Loan Master Trust, was brought in the United States District Court for the District of Delaware. The defendants in that case are a group of 15 Delaware statutory trusts and involve more than 800,000 student loans that were

¹ Source: The Federal Reserve Bank of New York's Center for Microeconomic Data *Quarterly Report on Household Debt and Credit*, (2nd Quarter August 2018).

² Source: The Institute for College Access and Success: 13th Annual Report on Student Debt and the Class of 2017 (September 2018)

originally made to students by private banks. That case is currently on-going and in November, 2018, a decision by the Court questioned whether the trusts were subject to the BCFP's jurisdiction and permitted many parties to the securitization process, including the insurers of the loans and the loan sub-servicers, to intervene in the case.

In August 2018, the BCFP Ombudsman, Seth Frotman, resigned. As of the time of this report, Wendy Kamenshine is serving as Ombudsman and she issued the Ombudsman's 2018 Annual Report on November 29, 2018. That Report focuses primarily on the Ombudsman's new internal engagement and outreach initiatives, provides an update on its terminology project, describes its work on certain systemic issues, and provides an update on the issue of the manner in which non-consumers contact the Bureau by phone. The Report also contains an analysis of inquiry data. That Report is currently under review and can be found at the following link:

https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_ombudsman_annual-report_fy-2018.PDF

U.S. Department of Education Preemption Determinations

On December 30, 2015, as part of the Office of the Commissioner of Financial Regulation's ("OCFR or Office") review of whether student loan servicers were subject to Maryland's collection agency licensing and supervision provisions, OCFR staff sent a letter to The U.S. Department of Education ("ED") requesting comments and thoughts on Maryland licensing business entities servicing governmental student loan debt. In response to that inquiry, ED's Office of the General Counsel provided a letter on January 21, 2016 stating that State supervision would not be preempted by federal law and that such supervision would not conflict with ED's contracts with its student loan services as those contracts already provide for general compliance with state and federal law.

In early 2018, ED published a notice in the Federal Register stating that "State regulation of the servicing of Direct Loans impedes uniquely Federal interests" and that "a requirement that Federal student loan servicers comply with 50 different State-level regulatory regimes would significantly undermine the purpose of the Direct Loan Program to establish a uniform, streamlined, and simplified lending program managed at the Federal level." As part of this pronouncement, ED's Office of the General Counsel has reversed its statements made in the January 21st letter to the Commissioner and is now supporting ED's position of preemption. The issue of whether federal law pre-empts of state licensing and regulation of student loan servicers is at the heart of several lawsuits involving various state agencies as briefly discussed below.

Other State Activity

Connecticut, Illinois, Washington, California and Washington, D.C. have established various provisions for registering or licensing of student loan servicers. Student loan ombudsman positions have been established in California, Connecticut, Illinois, and Virginia, and Washington, D.C., and Washington State (created a position of "advocate" with authority similar to others' ombudsman). The Ombudsman has been in communication with Virginia's Student Loan Advocate who was seeking to learn more about the implementation of the Maryland program. In addition, contact was established with the Washington, D.C. Ombudsman who offered to provide information and advice on the establishment of its office.

Several states have attempted to enforce their licensing statutes in the face of ED's preemption stance and litigation has ensued. For example, in 2017, the District of Columbia enacted a law providing for the establishment of an ombudsman and establishing a licensing scheme for student loan servicers.

Thereafter, Student Loan Servicing Alliance, on behalf of student loan servicers, filed suit to block implementation of the law. The U.S. District Court for the District of Columbia issued a decision in the case on November 21, 2018 and it held that federal law pre-empted the District of Columbia's licensing scheme inasmuch as licensing related to federal student loans, but not federally insured, commercial owned student loans or purely private student loans.

As part of the decision, the District of Columbia was enjoined from enforcing the licensing of servicers with respect to the servicing of their federal student loans. Since the bulk of student loans are federal student loans, the impact of the decision is significant and its implications are currently under review. The Ombudsman is not aware of any decisions in similar cases involving other states and will continue to monitor and report on developments in this area.

ESTABLISHMENT OF THE STUDENT LOAN OMBUDSMAN POSITION

The Office of the Commissioner of Financial Regulation and the Student Loan Ombudsman have taken the following steps:

1. Sean J. McEvoy was named and appointed by the Commissioner as Ombudsman. Mr. McEvoy is OCFR's Assistant Commissioner for Policy and Consumer Services and is responsible for, among other things, managing and supervising the Consumer Services Unit (which handles consumer complaints for the Office) as well as the supervision of the Office's outreach and data analysis functions.
2. Two Financial Examiners from the Consumer Services Unit at OFCR were selected and tasked with assisting the Ombudsman with assisting, processing and investigating student loan complaints.
3. The Ombudsman, two examiners and staff from the Consumer Services Unit at OCFR underwent initial training on laws and issues pertinent to student loans and the servicing of student loans;
4. The Ombudsman contacted various student loan servicers and their member associations requesting that they identify the individuals designated to represent the various student loan servicers in communications with the Student Loan Ombudsman. In addition, the U.S. Department of Education also provided a student loan servicer contact list.
5. A list of student loan servicers was identified and a database of Student Loan Servicers with designated contacts was established.
6. A dedicated web site for the Ombudsman was established on the main OFCR website which can be accessed at: <http://www.dllr.state.md.us/finance/consumers/frslombud.shtml> by both borrowers and student loan servicers in order for both to provide their respective information.
7. To clarify the designation requirement, the Ombudsman issued an Information Bulletin to student loan servicers on September 28, 2018 containing frequently asked questions. A follow up bulletin with updated information was issued on November 2, 2018. Membership organizations also received updated information via letter.
8. Procedures for the processing of borrowers complaints and student loan servicer designee information were established.
9. A press release announcing the establishment of the position was published on October 10, 2018.
10. Other State web sites including "SmartStart" and the Maryland Higher Education Commission were linked to the Ombudsman's website and *vice versa* with the goal of promoting available and relevant state resources involving student loans.

PROCEDURES FOR PROCESSING BORROWERS COMPLAINTS AND STUDENT LOAN SERVICER DESIGNEE INFORMATION

The Ombudsman's dedicated website serves a number of functions for both borrowers and student loan servicers. Both parties can access their own dedicated pages via separate portals.

Borrowers

- 1) A resource page provides information to borrowers on how the Ombudsman can assist as well as general information and advice to help them understand their rights.
- 2) Borrowers can contact the Ombudsman directly through a dedicated phone line or email.
- 3) Borrowers can file a complaint by filling out a Student Loan Ombudsman Complaint Form and submitting it to the Ombudsman via email, mail or fax with their supporting documentation.
- 4) The Ombudsman and Financial Examiners will review all filed complaints.
- 5) Student loan servicers will be contacted by the Ombudsman to investigate the Borrower's complaint.
- 6) Customers will receive status updates, be asked to provide additional information and be informed of student loan servicer responses. Letters acknowledging receipt of the complaint and a final findings letter will be issued to Borrowers.

Student Loan Servicers

- 1) A dedicated resource page provides information, including an informational bulletin, to student loan servicers explaining how to comply with the Act.
- 2) Student loan servicers can contact the Ombudsman directly via phone or email.
- 3) Student loan servicers can complete their designee form and submit it electronically via email or mail.
- 4) Completed designee forms are entered into the OFCR database for use by the Ombudsman and Financial Examiners.
- 5) Student loan servicers will receive confirmation of their filing via email acknowledgement.

RECOMMENDATIONS

Inasmuch as the Ombudsman's position has only been operative for approximately 90 days as of the date of this report, the Ombudsman recommends allowing sufficient time of at least a year to gauge success and further needs before making additional changes to the office and imposing additional requirements. It is expected that over the upcoming fiscal year sufficient data from inquiries will be gathered and analyzed to provide recommendations for next year's annual report. In addition, the Ombudsman will continue to monitor developments at local, State and Federal levels and will report any significant findings.

ADDITIONAL STEPS FOR THE UPCOMING FISCAL YEAR

Education and Outreach

- 1) An Ombudsman brochure will be completed and available for distribution in the first quarter of 2019
- 2) In conjunction with the Commissioner and OFCR's Director of Financial Education and Community Outreach, the Ombudsman will create a strategic outreach plan and a student loan borrower education course by the second quarter of 2019.
- 3) Will continue to identify appropriate stakeholders and strategic partners in an effort to promote the position and leverage their networks.

- 4) Monitor and update the Ombudsman web site when appropriate throughout the year.

Processes and Procedures

- 1) Continue to monitor and refine internal processes and procedures to improve efficiencies in service delivery to both borrowers and student loan servicers.
- 2) Upgrade both the Student Loan Ombudsman Complaint and Student Loan Servicer Designee forms so that both can be submitted electronically via the Ombudsman web site.