

MEMORANDUM OF SUPPORT FOR S.362 and A.3155

BILL TITLE: Relates to protections for private education loan borrowers and cosigners

INTRODUCED BY: Senator Kevin Thomas
Assembly Member Kenneth Zebrowski

STATEMENT OF SUPPORT: Consumer Reports strongly supports S.362 and A.3155, which would create critically needed consumer protections for New York private student loan borrowers and cosigners, and ensure that private student loan companies operate fairly and transparently.

The nation is currently facing a student loan debt crisis, as more than 44 million Americans owe at least \$1.7 trillion in student loan debt backed by the federal government,¹ plus another \$128 billion in private student loans.² New York student loan borrowers hold an estimated \$100 billion in outstanding education debt, of which \$10.6 billion is private student loan debt.³

Since the recovery from the 2008 financial crisis, the private student loan market has been expanding in the United States, growing more rapidly than lending for other financial services such as mortgages, auto loans and credit cards. Borrowers with private student loans have far fewer protections than borrowers of federal student loans. Typically, these loans have less favorable terms and carry few safeguards when borrowers experience financial distress. This situation puts New York private loan borrowers at greater risk for delinquency and default, which can have lifelong consequences.

Private student loan companies have engaged in a wide range of unfair practices, including preventing co-signers from obtaining releases and withholding documentation and information from them;⁴ using robo-signed documents to pursue collection judgments that are not substantiated;⁵ putting loans in “auto-default” to collect the entire balance of the loan when co-signers die or file for bankruptcy;⁶ and making predatory loans at for-profit schools.⁷

¹ Miller, B., et al, “Addressing the \$1.5 Billion in Student Loan Debt,” Center for American Progress, 6/12/19, available at: <https://www.americanprogress.org/issues/education-postsecondary/reports/2019/06/12/470893/addressing-1-5-trillion-federalstudentloandebt/> See also US Federal Reserve, Consumer Credit G.19, available at <https://www.federalreserve.gov/releases/g19/current/default.htm> (accessed on April 19, 2021).

² Kaufman, Ben. “Private Student Lending,” Student Borrower Protection Center, 4/30/20, p.7., available from: https://protectborrowers.org/wp-content/uploads/2020/04/PSL-Report_042020.pdf

³ Specifically, there are 705,615 private student loan borrowers in NY who owe an estimated total of \$10.6 billion in private student loan debt, for an average of \$15,014 per PSL borrower (personal communication from Ben Kaufman, Student Borrower Protection Center to Chuck Bell, Consumer Reports/NYRL, 4/16/21; see also: Student Borrower Protection Center news release, 3/26/21, available at: <https://protectborrowers.org/new-york-legislative-event/>

⁴ Consumer Fin. Prot. Bureau, Annual Report of the CFPB Student Loan Ombudsman 23–24 (Oct. 2017) (describing continuing difficulties of cosigners with the process of seeking releases), available at www.consumerfinance.gov; Consumer Fin. Prot. Bureau, Mid-Year Update on Student Loan Complaints (June 2015) (finding that 90% of private student loan borrowers who applied for cosigner release were rejected), available at www.consumerfinance.gov

⁵ Smith, Robin and Emily Green Kaplan. “Going to School on Robo-signing: How to Help Borrowers and Stop the Abuses in Private Loan Collection Cases” (April 2014). National Consumer Law Center. Available at <https://www.studentloanborrowerassistance.org/wpcontent/uploads/2013/05/robo-signing-2014.pdf>

⁶ Consumer Fin. Prot. Bureau, Mid-Year Update on Student Loan Complaints (April 2014) available at www.consumerfinance.gov. ⁷ Butrymowicz, S. and Kolodner, M., *Left in the Lurch by Private Loans from For-Profit Colleges*, New York Times, 3/25/21, available at: <https://www.nytimes.com/2021/03/25/business/for-profit-colleges-private-loans.html>

One large entity that holds securitized private student loans, the National Collegiate Student Loan Trust (NCSLT) has aggressively pursued judgments against New York borrowers, filing over 2,400 cases against borrowers alone in the last six years, even though it lacks documentation that the borrowers it is suing actually owe the loans in question.⁷ Collection efforts disproportionately focused on communities of color, with over 44% of lawsuits filed in the majority non-white Kings, Queens and Bronx Counties. Because most borrowers are not represented by legal counsel, creditors often obtain collection judgments based on incomplete and unsubstantiated information, inflicting significant financial harm on borrowers that could be avoided with better loan servicing practices.

S. 362 and A.3155 would create comprehensive protections for private student loan borrowers, by establishing strong, fair ground rules that would ensure that private student loan companies and services treat borrowers and loan cosigners fairly.

S.362 and A.3155 would:

- Require private student loan debt collectors to disclose certain information about the debt in the first communication with the borrower and/or cosigner and require debt collectors to have documentation substantiating the debt before collecting or attempting to collect it.
- Stop lenders and debt collectors from obtaining judgments against borrowers for time-barred or unsubstantiated debt using robo-signed documents.
- Ban the use of auto-defaults in private loans.
- Create guardrails to ensure that cosigners are informed of options to be released from the loan and get full access to the loan account information.
- Allow private student loan borrowers who become totally and permanently disabled to discharge their loans.
- Enable borrowers to directly challenge unfair and abusive practices by creating a strong private right of action to allow borrowers to enforce the provisions of this act and bring class action lawsuits to hold predatory student finance companies accountable. It would also allow the Superintendent of Financial Services or the Attorney General to bring an action.

Consumer Reports strongly urges you to support S.362 and A.3155 to improve state oversight of private student loans, and protect borrowers from unfair, deceptive, and predatory tactics by private student loan companies. This pro-consumer legislation will boost New York's economy by helping private student loan borrowers and co-signers avoid unnecessary delinquency and default. The bill will also allow borrowers to better defend themselves against unfair loan servicing and collection practices.

For more information, contact:

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⁷ Student Borrower Protection Center, Young Invincibles, Community Service Society of NY, and New Yorkers for Responsible Lending, *Dubious Debts: Ending an Era of Illegal Private Student Loan Debt Collection Practices*, March 2021, available at: https://protectborrowers.org/wpcontent/uploads/2021/03/Dubious-Debts_2021.pdf