STEPPING UP

States Move to Hold Student Loan Servicers Accountable

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Executive Summary

Today, 44 million Americans are saddled with student loan debt. They currently owe over $1.5 trillion—an amount which has more than doubled over the last decade. The causes of this exploding debt burden are many: increasing tuition, stagnant wages, the shifting role of federal government in student lending, divestment from higher education, and the growth in predatory for-profit colleges. Poor servicing practices, particularly placing borrowers in consecutive forbearances instead of appropriate income-driven repayment (IDR) plans, have also contributed to this explosive growth.

Today, 44 million Americans are saddled with student loan debt. They currently owe over $1.5 trillion—an amount which has more than doubled over the last decade.

In this paper, we examine why and how states have stepped and should step up to address this crisis. With rollbacks on protections and enforcement at the federal level and widespread concerns about student loan debt and poor servicing practices, states are increasingly exercising their traditional police powers, implementing reforms to ensure their borrowers are treated fairly by student loan servicers. Having learned from pioneering states who led the way beginning in 2015, a new wave of state legislation passed in the 2019 legislative season provides strong consumer protections. These protections include common sense standards for servicers and increased avenues for meaningful enforcement against any actor engaged in harmful servicing practices in the states.

With these reforms being implemented, nearly 30% of outstanding student loan debt in the country is now held by borrowers from states where enhanced consumer protections are in place or are being implemented for student loan borrowers. As more states step up to ensure that consumers are treated fairly during the repayment of their student loans, they will be playing a crucial role in shaping the lives of millions of borrowers and the overall health of our economy.

The Role of Servicers in the Student Loan Debt Crisis

One critical piece of the $1.5 trillion student debt puzzle are student loan servicing companies, which serve as the crucial link between borrowers and successful repayment of their loans. Among their responsibilities, servicers are tasked by both federal and private contracts with collecting student loan payments, putting borrowers into the right repayment plans, addressing delinquent loans until they are placed in default, or even discharging the debt when a student is eligible under federal law.

Poor servicing not only hurts borrowers, but the economy of the United States as a whole. Being placed in the right repayment program can allow struggling borrowers to pay back their student loan debt while continuing to care financially for themselves and their families. When borrowers unnecessarily default, they not only face credit consequences, but late fees and collection fees that make getting out of debt extremely more difficult. Further, taxpayers are paying twice to collect the loan—first for the failed servicing and then for the debt collection.

What Is Student Loan Servicing?

Student loan servicing companies' names will ring familiar to anyone who has a student loan. They include Navient, Nelnet, FedLoan Servicing, and others. Other entities engaged in servicing student loans include state guaranty agencies, such as ECMC or the Pennsylvania Higher Education Assistance Agency (PHEAA). Servicers collect student loan payments and are responsible for putting borrowers into repayment plans, addressing delinquent loans before they are placed in default, and even discharging debt when a student is eligible under federal law. Student loan servicers play a similar role to servicers in other lending sectors, such as mortgage servicers. As states seek to address student loan servicing abuses, such protections must cast a wide net in their definition of student loan servicing.

Though definitions vary across states, the definition used in most recent state laws, like those of New Jersey[1] and Colorado,[2] is modeled on federal regulations. "Servicing" means:

(i)(A) Receiving any scheduled periodic payments from a borrower or notification of such payments, and

(B) Applying payments to the borrower's account pursuant to the terms of the postsecondary education loan or of the contract governing the servicing;

(ii) During a period when no payment is required on a postsecondary education loan,

(A) Maintaining account records for the loan and

(B) Communicating with the borrower regarding the loan, on behalf of the loan's holder; or

(iii) Interactions with a borrower, including activities to help prevent default on obligations arising from postsecondary education loans, conducted to facilitate the activities described in paragraph (i) or (ii) of this definition.[3]

Audits and borrower complaints have shown that servicers are failing to fulfill their contractual obligations consistently and often fail to comply with basic consumer protection standards, resulting in long-term negative consequences for borrowers who do not have a choice regarding who is servicing their loans. Indeed, between March 2012 and February 2017—the time period during which the Consumer Financial Protection Bureau (CFPB) took complaints about student lending—there were tens of thousands of complaints about loan servicers. Other federal agencies have reported on poor servicing practices as well. An audit conducted by the US Office of the Inspector General found that, from 2015–2017, Federal Student Aid rarely enforced servicer compliance with their contracts and did not follow policy when evaluating servicer performance.[4] The failure of servicers to do their job and follow basic standards contributes to the growing student loan debt burden, as their practices result in unnecessarily longer and larger debt loads. These problems also echo servicing concerns that surfaced during the foreclosure crisis a decade ago. In response, policy reforms at the state and federal level, as well as industry improvements, have now dramatically changed mortgage servicing.

What Is a Guaranty Agency?

Guaranty agencies perform student loan servicing functions as a core part of their business model, contacting borrowers and advising them about repayment options. Prior to 2010, the federal government guaranteed loans against default as part of the Federal Family Education Loan Program (FFELP), and guaranty agencies insured loans against default. Following the end of FFELP in 2010, all loans were made through the Direct Loan program, but guarantee agencies remain involved in guaranteeing existing FFELP loan portfolios. These agencies have expanded into servicing other types of loans, including federal loans made through the Direct Loan program. For example, one of the largest student loan servicers in the country, Pennsylvania Higher Education Assistance Agency (also known as PHEAA, which includes FedLoan Servicing) is also a guaranty agency. Based on misleading claims, ECMC (another guaranty agency) has been seeking exemptions from state student loan reforms, saying it should not be subject to oversight requiring that servicers treat student loan borrowers fairly. They have largely been unsuccessful, as the majority of states with student loan servicing reforms capture state guaranty agencies in their definition and scope of oversight and enforcement.

In 2016, then Under Secretary of Education Ted Mitchell rolled out a set of policy directives called the Student Aid Bill of Rights that instructed the Department of Education employees negotiating servicer contracts to include important consumer protections and incentives in the new contracts.[5] Unfortunately, in one of her first acts as Secretary of Education, Betsy DeVos reversed those guidelines.[6] The contract negotiators would no longer be asked to hold student loan servicers to high standards of consumer protection. Despite the crisis that student loan debt presents to 44 million borrowers, their communities, and our economy, the current Department of Education refuses to adequately hold servicers accountable or manage servicers in a way that serves the best interests of students.

Early in 2017, the Consumer Financial Protection Bureau, the Illinois attorney general, and the Washington attorney general announced lawsuits against Navient Corporation, which was at the time the largest student loan servicer in the country.[7] The lawsuits alleged that the servicers routinely undermined borrowers by misapplying payments, reporting incorrect information to credit bureaus, and placing borrowers in plans that caused their debt to balloon. The Bureau's complaint confirmed what many student loan borrowers had experienced: loan balances increasing after being placed into consecutive forbearances rather than an income-driven repayment plan, payments being misapplied, and even disabled veterans being denied credit after their student loan servicing company failed to correctly report the discharge of their loans to the credit bureaus. As of 2019, there are five lawsuits from state attorneys general against Navient that allege unfair and deceptive practices, with Mississippi, California, and Pennsylvania in addition to the ongoing lawsuits In Illinois and Washington.

"Enrollment in multiple consecutive forbearances imposed a staggering financial cost on this group of borrowers. At the conclusion of those forbearances, Navient had added nearly four billion dollars of unpaid interest to the principal balance of their loans."

–*CFPB v. Navient Corp. et al,* No. 3:17-cv-00101 (M.D. Pa. filed Jan. 18, 2017).

Documents released as part of the litigation have borne out these claims. At least prior to 2011, former Navient call center employees have testified that they not only never offered income-driven repayment to distressed borrowers, they didn't even know the option existed.[8] Indeed, training documents from Navient show that call center employees are not taught to evaluate those who cannot make any payments for IDR, despite the fact that IDR plans allow students facing significant financial burdens to pay $0 a month while still being considered to be in active repayment.[9]

> **"There is no expectation that the servicer will act in the interest of the consumers."**
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> –Navient Corporation in *CFPB v. Navient Corp. et al.*

This is not surprising when considering the Navient compensation structure, which prioritizes dealing with callers quickly, rather than accurately resolving their issues. According to former employees, Navient so prioritized speed over accuracy that they instructed call center employees to keep calls to seven minutes or less. Employees alleged that keeping calls short was a serious part of one's performance review, with call times reviewed daily or weekly and spreadsheets created to encourage a competitive environment among the employees.[10]

A Brief History of How and Why States Are Stepping Up

> **"States, as Justice Louis Brandeis opined, are meant to be the laboratories of democracy. State legislators are best positioned to respond the needs of their constituents to include ensuring consumer protections are in place as they relate to student loan servicers. The right of states to protect their residents from predatory practices is a bedrock principle of American government."**
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> –Multi-State Legislator Letter to Education Secretary Betsy DeVos[11]

Recent federal efforts to reduce oversight of servicing and rollback protections for student borrowers demonstrate the importance of state-level protections. With their traditional police powers, states have the authority to ensure that servicers are not engaging in unfair and abusive practices. States have responded in recent years to widespread concerns about student loan debt and poor servicing practices by implementing a regulatory framework that allows them to ensure that their borrowers are treated fairly by their servicers.

In 2015, Connecticut became the first legislature to pass the "Student Loan Bill of Rights," a bill that required student loan servicers to be licensed by the state, created an Office of the Student Loan Ombudsman, and prohibited student loan servicers from engaging in actions that would violate certain bedrock principles of consumer protection.[12] The bill's author and sponsor, Representative Matt Lesser, noted at the time that the Student Loan Bill of Rights represented a shift from thinking about student loans as an issue of higher education "to a systemic problem for the financial sector of the economy." Other states took notice, and California,[13] Illinois,[14] and Washington, DC[15] followed and enacted new laws in 2016.

More states became interested in exerting their traditional police powers to protect student loan borrowers, as they were faced with constituents struggling to gain their financial footing as they dealt with their student loan debt. Predictably, the industry groups that lobby on behalf of servicers and state guaranty agencies stepped up their efforts to protect servicers' interests. In late February of 2018, after months of lobbying by student loan servicers (including the CEO of Navient), the Department of Education under DeVos released a Notice of Interpretation, outlining the Department's misguided belief that state student loan servicing laws are preempted by federal law.[16] The document outlines the department's belief that federal law completely preempts all state laws that impact federal loan servicing—not only state licensing regimes but even prohibiting servicers from misleading borrowers and asserting other general principles found in each state's laws prohibiting companies from engaging in unfair and deceptive acts and practices.[17] Notably, the interpretation has been given virtually no legal weight and has been found to be unpersuasive by multiple courts. When coupled with inaction at the federal level, the interpretation had the clear effect of establishing the Department of Education as a foe of student loan servicing reform.

In fact, in a letter sent to Democratic lawmakers in July of 2019, Department of Education Undersecretary Diane Jones took the department's notice of preemption even further, arguing that the department was under no obligation to share borrower information with state law enforcement or oversight agencies.[18]

Despite the attempt by the department and servicers to thwart state interests, Washington still passed a version of the Student Loan Bill of Rights during the 2018 legislative season, and the power of states to regulate the abusive practices of student loan servicers remained clear. In fact, a bi-partisan group of

30 state attorneys general affirmed the right of the states to oversee and enforce student loan laws. They signed a letter that stated 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.[19]

A poll done by the Center for Responsible Lending and the Maine Center for Economic Policy in October 2018 reaffirmed that state policymakers were right to be deeply concerned about the impact of student loans on their residents. The poll showed that student loan borrowers move out of state to find jobs that pay enough to help repay their debts. In Maine, more than 40% of those polled knew someone who had left the state in order to pay for their student loan debt.[20]

The poll also revealed the significant ripple effects of student debt. The majority of student loan borrowers who were polled reported that they had struggled with payments, reduced the amount they were saving for retirement, and were unable to purchase a car. More than 30% of respondents reported that they had put off paying rent or their mortgage to pay a student loan, failed to pay another bill, or even have been unable to afford food or clothing.

A similar poll from Maryland, which the Center for Responsible Lending commissioned with the Maryland Consumer Rights Coalition, found that borrowers overwhelmingly (85%) support licensing and oversight of student loan servicers in their state.[21]

In 2019, bills were filed across the country, as new states followed the lead of Connecticut and others and even added new protections to complement initial efforts. The new enhanced versions of these student loan bills of rights expanded on the principles from earlier state efforts by not only requiring student loan servicers to be licensed by the state and enumerating certain prohibited acts, but also by creating affirmative duties for servicers. Importantly, several state bills included a private right of action, enabling borrowers to enforce these new servicing laws. New York,[22] Colorado,[23] Maine,[24] Rhode Island,[25] and New Jersey[26] passed these comprehensive bills, while Maryland passed an update to their 2018 bill that added prohibited acts, affirmative duties, and a private right of action.

Summary of State Servicing Reforms

Having learned from the experiences of the pioneering states and in response to decreasing federal oversight, the new wave of legislation passed in the 2019 legislative season provides consistently stronger consumer protections for student loan borrowers. These bills provide robust, common sense standards for servicers and increased avenues for meaningful enforcement against any actor engaged in harmful servicing practices in the states. This section summarizes the current landscape of state servicing reforms laws and examines the most important elements in detail.

Scope Should Be Broad and Cover All Entities

The strongest approach states can take is to ensure that their laws cover a broad scope of servicing activities, regardless of the actors engaged in that activity. The Connecticut Student Loan Bill of Rights has a wide scope, providing oversight and enforcement for all servicers, including banks and guaranty agencies.[27] This broad scope stands out among state laws because it ensures that no matter what form the entities performing this important role take, they will be subject to the protections afforded borrowers in the state. Including guaranty agencies is critical because they are engaging in student loan servicing activity. For example, one of the largest student loan servicers in the country, Pennsylvania Higher Education Assistance Agency which also includes FedLoan Servicing, is a guaranty agency. They are also subject to lawsuits by two state attorneys general that allege that their servicing practices resulted in tens of thousands of borrowers losing loan forgiveness they had been guaranteed.

Despite Connecticut's strong law in 2015, other states have increasingly excluded banks from their student loan servicing legislation, exempting them from both licensing requirements and oversight through examination and enforcement. While banks are currently doing a small percentage of servicing of student loans in the country, the possibility of servicing companies pursuing bank charters could change this significantly in the future. Nelnet, one of the nine student loan servicers currently contracted to service federal loans, has previously pursued a bank charter and has indicated that it may do so again in the future.[28] Therefore, states such as California that have excluded banks from supervision may need to revisit and strengthen their student loan servicing oversight system by broadening its scope of coverage. A broad scope is necessary to ensure that borrowers in states with otherwise strong protections benefit from the responsibilities and tools available through their state laws, both now and in the future.

Servicer Responsibilities Should Include Prohibited Acts and Affirmative Duties

Early efforts by states to reform student loan servicing practices did not include the expanded requirements governing servicers' interactions with borrowers that are included in the most recent wave of legislative reforms. The first reform bill from Connecticut did, however, include prohibited acts outlining behaviors in which servicers may not engage. Connecticut's bill required that no student loan servicer should:

- Direct or indirectly defraud or mislead borrowers;
- Knowingly or recklessly misapply payments or provide inaccurate information to a borrower, a credit bureau, or governmental agency; or
- Refuse to communicate with an authorized representative of a borrower.

These prohibited acts continue to be included in today's reform bills, together formalizing the expectation that student loan servicers will not engage in the most basic fraudulent and deceptive practices.

As states and advocates have learned more about the range of issues students are facing during the repayment of their loans, more recent legislation has included comprehensive affirmative duties that further shape the relationship between servicers and borrowers. As a result, these new laws not only prohibit certain practices but also require servicers to affirmatively engage borrowers in specific ways, including:

- Providing timely responses to questions from borrowers;
- Applying payments that are more or less than the required payment amount as the borrower prefers; and
- Requiring adherence to certain responsibilities when the loan is sold, assigned, or transferred.

As a result, these new laws provide stronger protections to their states' student loan borrowers.

Guided by the experiences of their constituents, state legislators have recognized the critical role a borrower's repayment plan has on their ability to make progress on their loans and remain out of delinquency and default. Most of the recent wave of bills, including those in Colorado, Maine, Rhode Island, and New Jersey (see examples of New Jersey's servicer responsibilities and prohibited acts in the Appendix), include requirements that servicers must evaluate a borrower for an income-driven repayment plan before placing them in forbearance or default, if such a plan is available to a borrower. Through income-driven repayment plans, borrowers who are struggling to make their payments—which are often disproportionate to their incomes—have their payments adjusted to reflect what is affordable based on their income. Critically, after successful completion of income-driven repayment plans, the remaining debt is forgiven, thus relieving borrowers of their student loan debt burden rather than prolonging it.

The ability to participate in an income-driven plan is crucial for borrowers struggling to pay their debts, and servicers are responsible for determining whether a student is eligible for such a plan and actually placing them in that plan. Borrower complaints, however, commonly include reports of issues with their servicers in trying to access these plans. Types of complaints include lost paperwork, unnecessary delays in enrollment and annual recertification, and being misinformed about their options, such as eligibility for forgiveness programs such as Public Interest Loan Forgiveness. Requiring servicers to evaluate every borrower for these plans before placing them in forbearance or deferment is incredibly important for borrowers who often have not been made aware of these other repayment plans or have not been placed in an income-driven plan by servicers, despite requesting one.

State Student Loan Servicing Laws

	Scope		Oversight			Servicer Conduct			Ombudsman
State	Covers Banks	Covers Guaranty Agencies	Establishes Licensing Structure	Includes Enforcement by Supervision	Private Right of Action Available	Includes Prohibited Acts	Includes Affirmative Duties	Requires IDR Evaluation Before Default[1]	Establishes Public-Facing Student Loan Ombudsman or Advocate Position
Connecticut	X	X	X	X		X			X
Illinois			X	X		X	X		X
California			X	X		X	X		
District of Columbia		X	X	X					X
Washington		X[2]	X	X		X	X		X
Virginia									X
Maryland[3]		X		X	X	X	X		X
New York		X	X	X	X	X	X		
Colorado		X	X	X	X	X	X	X	X
Maine		X[4]	X	X	X	X	X	X	X
Rhode Island		X	[5]	X	X	X	X	X	
New Jersey		X	X	X	X	X	X	X	X
Nevada									X

1 Some states, including Illinois and Washington, provide for some protections regarding Income-Driven Repayment (IDR), but do not require that borrowers be evaluated for IDR prior to default.

2 Washington exempts "[g]uarantors of federal student loans that do not also service federal student loans" from its licensing requirements. These guaranty agencies are still subject to the student education loan servicer requirements provided they service federal loans.

3 Maryland enacted an ombudsman-only bill in 2018. In 2019, the state enacted additional measures addressing servicer conduct and providing oversight.

4 Finance Authority of Maine is exempt from licensing requirements in Maine's Student Loan Bill of Rights.

5 Rhode Island requires registration of student loan servicers.

Oversight

Public Enforcement

It is also critical for servicer reform bills to ensure that there is strong enforcement authority sufficient to address the scale of the problem. While different states have taken various approaches based on their own regulatory landscape, every state has included supervisory authority to allow oversight and examination of student loan servicers in their state without relying solely on consumer complaints. These bills have also included enforcement mechanisms for attorneys general to be able to address violations on behalf of consumers. State attorneys general and regulators can bring lawsuits, launch investigations, or reach settlement agreements with servicers who are violating state laws—all are important tools for holding servicers accountable to states' standards for their behavior.

Licensing

In many states, licensing is a critical component to enable supervision and enforcement authority for their state regulators. With the exception of Maryland, where a licensing regime is not necessary for the state to be able to oversee servicers' activities, all other states who have passed comprehensive reforms addressing student loan servicing activity have enacted a licensing regime. A number of states with laws passed in 2019 have taken a modified approach to streamlining licensing for servicers of federal student loans by allowing automatic licensure of federal loan servicers. The licensing regime in these states continues to serve an important role by allowing states to enforce penalties, including issuing letters or seeking injunctions to cease activities in violation of their states' standards for servicers' activities. While some states continue to maintain their uniform licensing regime, this is an area where a state's approach should be tailored to what is most appropriate for their regulatory landscape, while still ensuring that regulators have the tools they need to enforce their laws with strong penalties.

Private Right of Action

At the urging of advocates in their states seeking to help individual borrowers experiencing harms, all state reforms passed in 2019 also include a private right of action which will allow individuals another mechanism for enforcing their rights to be treated fairly by their servicers. Providing comprehensive enforcement mechanisms ensures that the substantive standards that states have put into place are meaningful, underscoring the need for servicer reform bills to be broad in scope, as previously discussed. Supervision and enforcement are only effective if the scope of actors covered by the servicer reform bills is broad.

Increasing Transparency about Servicing Activity

Many states have also designated a student loan ombudsperson or advocate.[29] These advocates typically accept complaints, answer questions, and mediate disputes between borrowers and servicing companies. Two states, Virginia and Nevada, have a student loan ombudsperson, but they have not yet passed comprehensive student loan servicing reform legislation. Though Maryland has now passed comprehensive student loan servicing reforms, they took a multistep approach, passing an ombudsman-only bill in 2018, and in 2019, enacting additional components of a regulatory structure for servicers that included strong prohibited acts and affirmative duties.

Each state that has passed recent reforms requires an annual report from either the state regulatory agency overseeing servicers or their student loan ombudsperson. Strong reporting requirements are an important tool for ensuring that lawmakers and the community understand the breadth of issues borrowers are facing in their relationships with their servicers and that the appropriate tools are in place to address them. As more states have passed reforms, the share of covered student loan debt has risen substantially. In fact, borrowers in states that have passed reforms hold nearly 30% of the $1.5 trillion in outstanding student loan debt. As a result, these annual reports will provide unprecedented insight into the experience of student loan borrowers across the country as they grapple with their debt burdens.

Overcoming Myths Perpetuated by Servicers

As states have considered student loan servicing reforms, servicers have offered various claims and myths in attempts to thwart state oversight. These claims have primarily included: preemption, guaranty agencies, and complaint-based oversight. However, as is explained below, none of these servicer claims should prevent states from enacting regulatory frameworks that hold servicers accountable.

Preemption

One of the most common claims servicers use when opposing state servicing reform efforts is that states cannot regulate in this area because it is regulated by the federal government. When borrowers have brought state law claims alleging unfair and deceptive practices to address abusive practices by servicers, servicers have argued that the Higher Education Act (HEA) preempts their state law claims. The Department of Education has supported this interpretation, but courts have not given this interpretation much weight. Both the Seventh Circuit and a New York federal court recently rejected these arguments, allowing consumers to pursue state law claims against servicers for their abusive practices.[30] The court in *Nelson v. Great Lakes Education Loan Services, Inc.* noted that the borrower alleged "false and misleading statements that [the servicer] made voluntarily, not required by federal law."[31] Such statements included the servicer's recommendation of forbearance as the best option for a borrower facing financial hardship. These decisions make clear that states do have an important role to play in protecting borrowers against abusive servicing practices.

Guaranty Agencies

Based on misleading claims, ECMC—a guaranty agency—has been seeking exemptions from state student loan reforms, asserting that it should not be subject to oversight requiring that servicers treat student loan borrowers fairly. Guaranty agencies perform student loan servicing functions as a core part of their business model, contacting borrowers and advising them about repayment options. In fact, one of the largest student loan servicers in the country, PHEAA, is a guaranty agency. These efforts by guaranty agencies to be excluded from state student loan servicing regulations have largely been unsuccessful. The majority of states with student loan servicing reforms capture guaranty agencies in their definition and scope of oversight and enforcement.

Complaint-Based Oversight

Servicers have also argued that complaint-based oversight would be sufficient to address concerns from borrowers about their practices. However, given the enormous scope of this crisis and the reality that many borrowers do not know appropriate avenues to make a complaint, oversight based only on complaints would hamstring state regulators from being able to take action in a timely and efficient manner. Given the recent cases with Navient and others, such an approach could also undermine enforcement efforts where there is a pattern of inappropriate practices by a servicer, and corrective action is needed to prevent further damage. With millions of borrowers facing default and the cascade of negative consequences that occur as a result, it is imperative that regulators have the tools and authority necessary to identify issues and be able to take action to protect all borrowers in their state from unfair or abusive servicing practices.

For-Profit College Reforms: Another Way for States To Address the Student Debt Crisis

For-profit colleges commonly use misleading or fraudulent recruiting practices and aggressively target low-income students, veterans, and people of color, while failing to meet basic standards of educational quality. The results are worthless degrees, wasted time, and mountains of debt for their students. Student loan borrowers from for-profit colleges have higher default and delinquency rates than student loan borrowers from public and nonprofit private colleges.

For many years, state regulators have been taking action to protect their students from abusive practices by for-profit colleges, and recently states are increasingly looking at legislative and regulatory avenues to address these issues. For example, 43 state attorneys general and the attorney general of the District of Columbia worked together to reach a settlement agreement with a company that provided loans to students at the now-defunct ITT Technical Institute. The agreement resulted in $168 million in restitution and borrower relief for more than 18,000 former ITT Tech students across the country, many of whom were low-income and targets of aggressive and misleading sales tactics by the company and the school.

In 2014, the Massachusetts attorney general used regulatory authority to ensure that certain practices by for-profit colleges were recognized as unfair and deceptive trade practices in the state. Maine legislators addressed student loan servicing issues this year through the passage of their Student Loan Bill of Rights, which increases oversight of servicers and creates an ombudsperson. They also passed legislation to provide accountability measures for for-profit colleges. This new law requires for-profit colleges to meet standards for educational instruction spending, career placement and employment rates, student loan default rates, and the resolution of student complaints. It also increases reporting and state oversight.

As states increasingly recognize the role of for-profit colleges in the student debt crisis, for-profit college accountability measures such as these—both regulatory and legislative—are likely to increase.

Conclusion

As the full extent of the student debt crisis continues to unfold, states must act to ensure strong consumer protections are in place as their citizens work to get out from under the weight of their debt burdens. With the new wave of student loan servicing reform laws going into effect in the coming months, nearly 30% of student loan debt in the country will be held by borrowers from states who have implemented enhanced consumer protections for their student loan borrowers. As more states follow their lead, these reforms will result in industry-wide practices ensuring that consumers across the country are being treated fairly during the repayment of their student loans. Just as states have historically played a critical role in protecting consumers from abusive and predatory practices in other lending sectors, their approach to addressing this crisis has the potential to improve the financial stability of millions of borrowers and the health of our economy for decades to come.

New Jersey Servicer Prohibited Acts

No student loan servicer shall:

a. directly or indirectly employ any scheme, device or artifice to defraud or mislead student loan borrowers;

b. engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;

c. obtain property by fraud or misrepresentation;

d. misapply student education loan payments to the outstanding balance of a student education loan;

e. provide inaccurate information to a credit bureau, thereby harming a student loan borrower's creditworthiness;

f. fail to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;

g. refuse to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower;

h. make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the commissioner or another governmental agency;

i. fail to respond within 15 days to communications from the ombudsman, or within such shorter, reasonable period of time as may be requested by the ombudsman; or

j. fail to respond within 15 days to a consumer complaint submitted to the student loan servicer by the ombudsman. If necessary, the student loan servicer may request additional time to respond to the complaint, up to a maximum of 45 days, provided that the request is accompanied by an explanation on why additional time is reasonable and necessary.

New Jersey Servicer Responsibilities

Except as otherwise provided pursuant to federal law, federal student education loan agreements, or a contract between the federal government and a student loan servicer, a student loan servicer shall:

a. Upon receipt of a written inquiry from a student loan borrower or the representative of a student loan borrower, a student loan servicer shall respond by:

(1) acknowledging receipt of the inquiry within 10 business days; and

(2) providing information relating to the inquiry, and, if applicable, the action the student loan servicer will take to correct the account, or an explanation of the student loan servicer's position that the borrower's account is correct, within 30 business days.

b. A student loan servicer shall inquire of a student loan borrower how to apply an overpayment to a student education loan. A borrower's instruction on how to apply an overpayment to a student education loan shall stay in effect for any future overpayments during the term of the student education loan until the borrower provides different instructions. For purposes of this subsection, "overpayment" means a payment on a student education loan in excess of the monthly amount due from the student loan borrower on a student education loan, commonly referred to as a prepayment.

c. A student loan servicer shall apply partial payments in a manner that minimizes late fees and negative credit reporting. If there are multiple loans on a borrower's account with an equal stage of delinquency, a student loan servicer shall satisfy the requirements of this subsection by applying partial payments to satisfy as many individual loan payments as possible on a borrower's account. For purposes of this subsection, "partial payment" means a payment on a student education loan account that contains multiple individual loans in an amount less than the amount necessary to satisfy the outstanding payment due on all loans in the student education loan account, commonly referred to as an underpayment.

d. The following requirements shall be applicable to a student loan servicer in the event of the sale, assignment, or other transfer of the servicing of a student education loan that results in a change in the identity of the person to whom a student loan borrower is required to send payments or direct any communication concerning the student education loan:

(1) as a condition of a sale, an assignment, or any other transfer of the servicing of a student education loan, a student loan servicer shall require the new student loan servicer to honor all benefits originally represented as available to a student loan borrower during the repayment of the student education loan and preserve the availability of those benefits, including any benefits for which the student loan borrower has not yet qualified;

(2) a student loan servicer shall transfer to the new student loan servicer for the student education loan all information regarding the student loan borrower, the account of the borrower, and the student education loan of the borrower. The information shall include the repayment status of the student loan borrower and any benefits associated with the student education loan of the borrower;

(3) the student loan servicer shall complete the transfer of information required pursuant to paragraph (2) of this subsection within 45 calendar days after the sale, assignment, or other transfer of the servicing of the student education loan; and

(4) the sale, assignment, or other transfer of the servicing of a student education loan shall be completed at least seven calendar days before the next payment on the student education loan is due.

e. A student loan servicer who obtains the right to service a student education loan shall adopt policies and procedures to verify that the student loan servicer has received all in-formation regarding the student loan borrower, the account of the student loan borrower, and the student education loan of the student loan borrower including, but not limited to, the repayment status of the student loan borrower and any benefits associated with the student education loan of the student loan borrower.

f. A student loan servicer shall evaluate a student loan borrower for eligibility for an in-come-driven repayment program prior to placing the borrower in forbearance or default, if an income-driven repayment program is available to the borrower.

Endnotes

1 An act concerning the appointment of a Student Loan Ombudsman, regulating student loan servicers, amending P.L.2005, c.1991, and supplementing Title 17 of the Revised Statutes: https://www.njleg.state.nj.us/2018/Bills/PL19/200_.PDF.

2 Colorado Student Loan Servicers Act: https://leg.colorado.gov/sites/default/files/2019a_002_signed.pdf.

3 12 CFR § 1090.106.

4 Reissuance of Final Audit Report, "Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans," U.S. Dept. of Ed. Office of Inspector General (March 5, 2019) https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf.

5 Press release: Education Department to Implement Improved Customer Service and Enhanced Protections for Student Loan Borrowers, U.S. Dept. of Ed. (July 20, 2016) retrieved: https://www.ed.gov/news/press-releases/education-department-implement-improved-customer-service-and-enhanced-protections-student-loan-borrowers.

6 Press release: Memorandum from Secretary of Education Betsy DeVos to FSA Chief Operating Officer James Runcie Regarding Student Loan Servicer Recompete, U.S. Dept. of Ed. (April 11, 2017) Retrieved: https://www.ed.gov/news/press-releases/memorandum-secretary-education-betsy-devos-fsa-chief-operating-officer-james-runcie-regarding-student-loan-servicer-recompete.

7 Douglas-Gabriel, Danielle "Student Loan Servicer Navient Hit With Three Government Law Suits in One Day" Washington Post ((Jan. 18, 2017) https://www.washingtonpost.com/news/grade-point/wp/2017/01/18/student-loan-servicer-navient-hit-with-three-government-lawsuits-in-one-day/.

8 CFPB Reply to Mot. For Summ. J. at 12.

9 CFPB Reply to Mot. For Summ. J exhibit #2.

10 CFPB Reply to Mot. For Summ. J. at 14.

11 Letter from CA Rep Mark Stone et al., California State Representative, to The Hon. Betsy DeVos, U.S. Sec. of Ed. (March 19, 2018) https://a29.asmdc.org/sites/a29.asmdc.org/files/pdf/doe-letter-re-student-loan-servicing.pdf.

12 An Act Concerning a Student Loan Bill of Rights: https://www.cga.ct.gov/2015/act/pa/2015PA-00162-R00HB-06915-PA.htm.

13 Student loan servicers: licensing and regulation: Student Loan Servicing Act https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB2251.

14 Student Loan Servicing Rights Act: http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=3830&ChapterID=18.

15 Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016: http://lims.dccouncil.us/Download/36411/B21-0877-SignedAct.pdf.

16 Federal Register "Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers" (March 12, 2018) https://www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan (this interpretation holds no force of law and does not conform with the Administrative Procedures Act).

17 Id.

18 Letter from Diane Auer Jones, Principal Deputy Undersecretary, Department of Education to Sen. Patty Murray, Senator from Washington, US Senate (June 24, 2019).

19 Sign On Letter to Congress re Student Loan Preemption, Mar. 15, 2018, https://nj.gov/oag/newsreleases18/2018-0315_AG-Letter-to-Congress-Opposing-Student-Loan-Preemption.pdf.

20 New poll: Mainers struggle to pay down student debt, say loan servicers are making matters worse, Maine Center for Economic Policy, https://www.mecep.org/new-poll-mainers-struggle-to-pay-down-student-debt-say-loan-servicers-are-making-matters-worse/.

21 Student Loan Debt Survey, Gonzales Research Maryland Poll, Gonzales Research & Media Services, April 2018, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/gonzales-poll-student-loan-debt-apr2018.pdf.

22 NY Banking Law, Article 14-A: https://www.nysenate.gov/legislation/laws/BNK/A14-A.

23 Colorado Student Loan Servicers Act: https://leg.colorado.gov/sites/default/files/2019a_002_signed.pdf.

24 The Student Loan Bill of Rights: https://legislature.maine.gov/legis/bills/bills_129th/billtexts/SP028501.asp.

25 Student Loan Bill of Rights Act: http://webserver.rilin.state.ri.us/BillText/BillText19/HouseText19/H5936A.pdf.

26 An act concerning the appointment of a Student Loan Ombudsman, regulating student loan servicers, amending P.L.2005, c.1991, and supplementing Title 17 of the Revised Statutes: https://www.njleg.state.nj.us/2018/Bills/PL19/200_.PDF.

27 Connecticut law requires banks to comply with prohibited acts, but does not require licensing of banks as student loan servicers.

28 Burns, Hilary "Nelnet Withdraws Application for Industrial Loan Charter" American Banker (Sept. 26, 2018) https://www.americanbanker.com/news/nelnet-withdraws-application-for-industrial-loan-charter.

29 Connecticut, Illinois, Washington, Virginia, Maryland, Colorado, Maine, New Jersey, Nevada, and the District of Columbia have all established a public-facing student loan ombudsman or advocate position.

30 See *Nelson v. Great Lakes Educational Loan Services, Inc.,* 928 F.3d 639 (7th Cir. June 27, 2019); *Hyland v. Navient Corp.,* 2019 WL 2918238 (S.D.N.Y. July 8, 2019).

31 *Nelson v. Great Lakes Educational Loan Services, Inc.,* 928 F.3d 639 (7th Cir. June 27, 2019).

Center for Responsible Lending

www.responsiblelending.org

The Center for Responsible Lending (CRL) is working to ensure a fair, inclusive financial marketplace that creates opportunities for all responsible borrowers, regardless of their income, because too many hard-working people are deceived by dishonest and harmful lending practices.

CRL is a nonprofit, non-partisan organization that works to protect homeownership and family wealth by fighting predatory lending practices. Our focus is on consumer lending: primarily mortgages, payday loans, credit cards, bank overdrafts, and auto loans.

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