

Borrower's Bill of Rights: States Step Up to Protect Student Loan Borrowers

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Introduction

In her first months on the job, Education Secretary Betsy DeVos took steps that put the financial futures of the 32 million borrowers who hold a federal student loan directly from the government at risk. She rescinded key protections that ensured federal borrowers would get high-quality customer service—something they too often do not get today. Student loan servicers are companies meant to provide that customer service aspect, to “handle the billing and other services,” and “assist [borrowers] with other tasks related to [their] federal student loan,” as the U.S. Department of Education’s Federal Student Aid Office [puts it](#). Instead, the student loan servicing industry continues to offer a [poor track record](#) of service for students, families, and veterans. Rollbacks in consumer protections already started by the DeVos Education Department underscore the need for action to protect borrowers, as there is no sign this problem will get better.

In the absence of federal leadership on loan servicing, states must step up to protect their student borrowers from servicers that act more like debt collectors than loan counselors. Fortunately, there is something they can do: create a Borrower’s Bill of Rights. Currently, individuals in other lending markets—those holding mortgages for example—have broader market protections than an individual with a student loan. A Borrower’s Bill of Rights is legislation that allows a state to also enshrine these standard consumer protections for student loan borrowers.

Safeguard Rollbacks At The Federal Level

In one of her first moves as Secretary of Education, Betsy DeVos [rolled back](#) protections for student loan borrowers. In April, she [rescinded memos](#) from the

Obama administration requiring servicers to provide high-quality assistance to borrowers. This [included](#) holding companies accountable for borrowers receiving bad service and helping borrowers find more affordable ways to repay their loans.

The policy memos were a direct response to borrower complaints that servicers failed to notify them when their loans shifted to another servicer, often failed to correctly process payments, and for borrowers in distress, servicers frequently failed to inform them of options to lower their payments. Some parts of the memos also directly addressed concerns servicers had about a lack of clear rules around how to apply payments when borrowers pay more than the minimum amount.

An additional area of concern is how the Department of Education will restructure its contracts with servicers. Earlier this year the Department announced a plan, which they've now backed away from, that would have given one company the ability to service all federal loans. After outcry from the Hill and advocates, the Department appears to have changed course from this single-company model. However, there is still concern that when the Department offers contracts in the future to companies to service student loans, borrowers' interests will not be put first.

The Department has [indicated](#) that it will not consider a company's past behavior when awarding a contract to service student loans. This matters because it gives companies few incentives to improve their service for borrowers. For instance, Navient, formerly affiliated with Sallie Mae and the largest servicer of student loans in the United States, is the CFPB's [most-complained-about](#) American company for November 2016-January 2017. Navient [has been fined](#) for defrauding service members in the past, and [is currently being sued](#) by the Consumer Financial Protection Bureau (CFPB) for allegedly defrauding student loan borrowers. As long as companies like Navient continue to receive contracts from the Department of Education to service federal loans with little federal oversight, there remains a need for oversight and enforcement elsewhere. There's a lot states can do to address this problem.

Borrower Protections At The State Level: The Borrower's Bill Of Rights

State legislators, many hearing from their constituents, or managing student debt loads themselves, began exploring ways to protect borrowers at the state

level in recent years. The first significant piece of state legislation to address these concerns in a comprehensive way is the Borrower's Bill of Rights (BBOR). This state legislation gives students and their families additional rights and protections as they navigate the loan repayment process.

In 2015, Connecticut became the [first state](#) to pass a Borrower's Bill of Rights into law. Because of the bill, the state established a student loan ombudsman in the Connecticut Department of Banking, paid for by fees levied on student loan servicers. In the state, student loan servicers [must now register](#) with the Department of Banking, and the ombudsman is tasked with helping students resolve complaints with these servicers and with their universities. The [ombudsman](#) also compiles data on borrower complaints and develops a student borrower education course to help improve financial literacy among college students. The Connecticut bill has remained the blueprint for proposals in 13 states and the District of Columbia.

The core of a Borrower's Bill of Rights is the use of a state's licensing authority to enshrine consumer protections for borrowers. These proposals by the legislatures come in different forms, but many have similar provisions. They ensure student loan borrowers receive levels of service that are standard for other financial contracts, but are not currently guaranteed by federal law. They create a legal mechanism for states to use if borrowers in their state do not get the assistance mandated. And they create an independent advocate to help borrowers get relief.

What Makes Up A Borrower's Bill Of Rights (BBOR)

1. Servicer state licensing. States currently use their licensing authority to regulate mortgage lenders and federal debt collection agencies that operate within state authority. A BBOR codifies the inclusion of student loan servicers under that authority. Once student loan servicers are covered by state authority, the state can establish licensing requirements for them that set standards of practice.

2. Standards for servicing. A BBOR should establish minimum standards for timely payment processing by loan servicers, and require servicers to correct errors in payment processing in a timely manner. A BBOR should also require that loan servicers disclose alternative repayment plans for the loans they hold. This is [especially important](#) for borrowers struggling with monthly payments, or who are in delinquency or default, and may be eligible to enroll in income-driven repayment programs.

3. Data reporting. Once covered by state authority, states may also create regular reporting requirements for student loan data to appropriate state agencies. Reporting requirements generate crucial data that regulators can use to detect servicing issues. Reporting should include the number of borrowers, outstanding loan balances, loan type, enrollment in alternative repayment programs, and other key information. This information should be made publicly available.

4. Ombudsman establishment. Ideally, the servicer state licensing agency is also set up to house a state student loan ombudsman's office. For example, in Connecticut, the authority is housed in the Department of Banking and the student loan ombudsman is appointed by the banking commissioner. The establishment of a state student loan ombudsman, as part of a BBOR, is important to give borrowers a watchdog and resource at the state level for complaints. The ombudsman serves as a formal repository that allows borrowers who complain to have a neutral party investigate allegations and work to resolve them. In current BBOR efforts this position is based on, and meant to cooperate with, the federal student loan ombudsman housed at the Consumer Financial Protection Bureau. Ideally the state ombudsman would require student loan companies to include the ombudsman's contact information in any communication with a borrower. The ombudsman would also provide testimony before relevant state legislative committees and provide regular reports on efforts to assist borrowers based on an assessment of the complaints it receives, and give policy recommendations to resolve issues it encounters with loan servicing based on the state laws.

BBOR efforts should guarantee protections for all borrowers, regardless of graduation status, and include any type of education loan, not only student loans but also Parent PLUS loans and private loans. Some BBOR proposals currently under consideration or in effect do not include private loans issued by banks or credit unions.

Why This Is Good For Students And Borrowers

The presence of a Borrower's Bill of Rights in a state will help students and borrowers navigate the repayment process in a way that allows them to pay down debt more sustainably and address servicing issues with a state advocate by their side. Currently, governed by only federal standards, many servicers fail to inform borrowers of these important programs which help borrowers fend off financially catastrophic student loan default.

For example, for borrowers who are struggling with high monthly payments, a student loan ombudsman and BBOR could ensure that servicers are required to fully inform them of options to lower their payments, such as enrollment in an income-driven repayment program.

An additional benefit for borrowers is assistance and requirements that ensure servicers are addressing payment errors in a timely way, and that they are notifying borrowers of changes in their loans as they happen. This type of notification is standard practice in other lending markets—the mortgage market, for example—and a BBOR can allow a state to bring this financial services best practice into the student lending market.

Finally, a BBOR that includes a student loan ombudsman gives borrowers an in-state advocate that they can contact with complaints or questions and gives them one more resource for navigating repayment. This is an important benefit, as student loan repayment is complicated, and a cottage industry of “debt-relief companies” has sprung up in recent years to take advantage of borrowers who may not know their options. An in-state advocate can help get borrowers the information they need without them having to pay an exorbitant fee.

For example, if a borrower’s loan is serviced by one company, but is transferred to another, the presence of a BBOR could require that the company lets the borrower know that their loan is being transferred and ensures that any issues with payments that arise from the transfer can be quickly resolved.

States Have The Right To Protect Borrowers

A Borrower’s Bill of Rights could strengthen and complement the ability of state attorneys general to pursue enforcement actions to protect borrowers from abusive servicing. In April, several state attorneys general [expressed their concerns](#) with Secretary DeVos’ withdrawal of memos dictating servicing standards to protect student loan borrowers. In states with a student loan ombudsman established by a BBOR, the ombudsman could serve as an important partner for attorneys general to target enforcement actions at companies that engage in fraud and abuse in how they communicate with borrowers.

It should be noted that a state BBOR does not preempt federal law. The servicing industry has [claimed](#) that BBOR efforts are a preemption of federal law, however, states currently regulate mortgage lenders, federally contracted debt collectors, and other financial service companies using their licensing authority. Additionally, the Dodd-Frank financial reform act [ensures](#) that states can exercise their rights to protect their citizens against fraud and abuse by financial services companies. Federal regulations of financial services are meant to be a floor upon which states can build protections, not a ceiling for regulation. States must be allowed to fulfill their role as the frontline of consumer protection without federal interference.

Conclusion

Given the lack of protections or oversight that are being exercised at the federal level by the DeVos Department of Education, now is the time for states to use this authority to protect consumers. States must work to develop BBOR proposals that will prevent student loan servicers from defrauding and abusing borrowers, and provide recourse when fraud and abuse occurs.

Additional Resources

As of August 9, 2017, updated links to the text of existing BBOR legislation from 13 states and the District of Columbia are below.

For more information on state-level actions legislators can take to help student loan borrowers, see our 2016 report [We Can't Afford To Wait](#).

To see where Borrowers Bills of Rights and additional legislation is moving in state legislatures, visit HigherEdNotDebt.org.

About The Authors

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Appendix

STATE BILL	SERVICER LICENSING PAID FOR BY SERVICER	CREATES STATE STUDENT LOAN OMBUDSMAN	OMBUDSMAN IS APPOINTED BY	STATUS
CONNECTICUT H.B. 6915	X	X	Banking Commissioner	Passed into law in 2015
CALIFORNIA A.B. 38	X		N/A	Moving
ILLINOIS S.B. 1351	X	X	Secretary of Financial and Professional Regulation (Office of IL Attorney General)	Passed the legislature and awaiting governor signature
MAINE L.P. 1507 / S.P. 532	X	X	Superintendent Consumer Credit Protection	Carried over into next session
MARYLAND H.B. 770	X		N/A	Failed in committee, to be reintroduced next session
MASSACHUSETTS S.B. 129	X	X	Commissioner of Banks	In process
MINNESOTA H.B. 21	X	X	Commissioner of Commerce	Introduced, did not receive vote
MISSOURI H.B. 620	X	X	Higher Education Coordinating Board	Not moving
NEW JERSEY NJ A1670	X	X	Governor	In process
NEW MEXICO H.B. 318	X	X	Director of Financial Institutions	Failed in committee
NEW YORK A.B. 7582	X		N/A	In process
VIRGINIA H.B. 1915, H.B. 401	X	X	Commissioner of Financial Institutions	Failed in committee
WASHINGTON H.B. 1440 / S.B. 5210	X	X	Student Achievement Council (Office of Student Financial Assistance)	Will be reintroduced next session
WASHINGTON D.C. B21-0877 / Law 21-214	X	X	Commissioner of Insurance and Securities Regulation	Passed into law in 2017

For a more comprehensive look at these bills, visit HigherEdNotDebt.org/Blog/BBOR.