

Congress of the United States
Washington, DC 20515

May 16, 2018

The Honorable Betsy DeVos
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary DeVos,

We are writing to express our concern about the Department of Education's ("Department") recent interpretation of student loan servicing provisions in the Higher Education Act. The Department's interpretation, if implemented, would preempt state consumer protection laws and shield many of the largest private-sector student loan companies from oversight by state law enforcement officials and regulators.¹ The Department's interpretation attempts to create broad new legal standards not intended by Congress under the Higher Education Act and undermines state efforts to protect tens of millions of Americans with student debt.

States have a historic role in consumer protection regulation, including protecting residents from predatory, unfair, and deceptive business practices. In *Florida Lime & Avocado Growers, Inc. v. Paul* (1963), the U.S. Supreme Court held that "federal regulation of a field of commerce should not be deemed preemptive of state regulatory power." And, in *General Motors Corp. v. Abrams* (1990), the Second Circuit held that "consumer protection law is a field traditionally regulated by states, compelling evidence of an intention to preempt is required in this area." In *Medtronic Inc. v. Lohr* (1996), the U.S. Supreme Court held that "absent a 'clear and manifest' indication that Congress intended to supersede state law, federal law cannot preempt the 'historic police powers of states.'"² Finally, in *Castro v. Collecto, Inc.* (2011), the Fifth Circuit held that "states have traditionally governed matters regarding contracts and consumer protections."

For more than four years, federal and state law enforcement officials, regulators, and government watchdogs have raised significant concerns about conduct by the Department's student loan servicing contractors.^{3,4,5,6} Since 2012, the Consumer Financial Protection Bureau has received nearly 60,000 complaints about the servicing and debt collection of student loans, spurring the

¹ <https://www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan#print>

² https://ag.ny.gov/sites/default/files/devos_letter.pdf

³ U.S. Department of Justice, *Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans* (2014), <https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging>

⁴ *Bipartisan State Attorneys General Letter to Betsy DeVos on Preemption* (October 2017), www.texasattorneygeneral.gov/files/epress/The_Honorable_Betsy_DeVos.pdf; *State Attorneys General Comment Letter to CFPB on Student Loan Servicing* (2015), <https://www.regulations.gov/document?D=CFPB-2015-0021-0376>

⁵ Connecticut Department of Banking, *Comment Letter to CFPB on Student Loan Servicing* (2015) <https://www.regulations.gov/document?D=CFPB-2015-0021-0381>, Conference of State Banking Supervisors, *CSBS Letter to Education Secretary Betsy DeVos opposing "Interpretation" on preemption* (2018), <https://www.politicopro.com/f/?id=00000161-f73b-dc1c-abff-fb8d2a60000>.

⁶ <https://www.gao.gov/assets/680/677159.pdf>

independent agency to issue a warning about “widespread servicing failures” and illegal practices across the industry.⁷

We are concerned about the student loan borrowers who have been victimized by these abuses and the 44 million Americans who collectively owe nearly \$1.5 trillion in federal student loan debt. They deserve and are entitled to the full protection of our federal and state laws.

As you are aware, all 50 governors, a bipartisan coalition of 25 state Attorneys General, and the heads of all 50 of the nation’s state banking agencies have opposed the Department’s notice of interpretation to limit the power of states to protect their residents from fraudulent and abusive practices.^{8,9,10} As the National Governors Association explained:

*States have stepped up to fill the void left, we believe, by the absence of federal protections for student loan borrowers, from potential abusive practices by companies servicing student loans. With this declaration, the department moves to block state policies protecting student borrowers by establishing a federal regulatory ceiling. We are concerned the department is heading in a direction that runs counter to the principles of collaborative federalism governors presented to Congress last week.*¹¹

We agree with the leaders in our states who are closest to the alleged abuses by the student loan industry. They have warned that the Department’s recent action will drive these companies deeper into the shadows and potentially harm consumers who are struggling under the weight of our nation’s \$1.5 trillion student debt crisis.

As Speaker Ryan explained last year, “[f]ederalism does not belong to one party or the other—it is a founding principle that we all cherish... [G]overnment works best when it works from the bottom up, when it is accessible and accountable to the people it serves and is responsive to their needs.”¹²

Earlier this month at a gathering of state school officials, you expressed your continued commitment to “preparing students for successful careers and fulfilling lives.” At that time you explained that “too many folks believe they should pursue that good end by centralizing federal power and wielding it aggressively.”¹³

⁷ See, e.g. Consumer Financial Protection Bureau, *Annual Report of the CFPB Student Loan Ombudsman* (2017), https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf.

⁸ National Governors Association, *Governors Voice Concerns Over New Student Borrower Proposal* (March 12, 2018), <https://www.nga.org/cms/govs-voice-concerns-over-new-student-borrower-proposal>

⁹ *Bipartisan State Attorneys General Letter to Betsy DeVos on Preemption* (October 2017), www.texasattorneygeneral.gov/files/epress/The_Honorable_Betsy_DeVos.pdf

¹⁰ Conference of State Banking Supervisors, *CSBS Letter to Education Secretary Betsy DeVos opposing “Interpretation” on preemption* (2018), <https://www.politicopro.com/f/?id=00000161-f73b-de1c-abff-fb8d2a60000>.

¹¹ See National Governors Association, *Governors Voice Concerns Over New Student Borrower Proposal* (March 12, 2018), <https://www.nga.org/cms/govs-voice-concerns-over-new-student-borrower-proposal> (citing *Written Statement of the National Governors Association On Federalism Implications of Treating States as Stakeholders To The House Committee on Oversight and Government Reform* (February 2018), <https://oversight.house.gov/wp-content/uploads/2018/02/National-Governors-Association-Statement.pdf>)

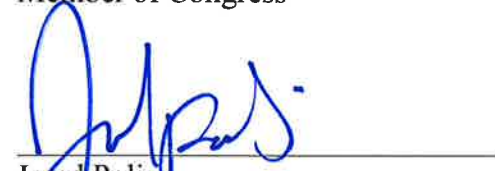
¹² <https://www.speaker.gov/press-release/speaker-ryan-statement-task-force-intergovernmental-affairs-hearing>

¹³ <https://www.ed.gov/news/speeches/devos-state-chiefs-we-can-we-must-do-better-students>


We urge the Department of Education to consider the views of the state officials closest to the effects of the student debt crisis on millions of Americans in all 50 states, and respond by withdrawing its recent interpretation.

Sincerely,


Suzanne Bonamici
Member of Congress


Jared Polis
Member of Congress


Rob Bishop
Member of Congress


Mia Love
Member of Congress