May 17, 2021

FROM: Maine Center for Economic Policy and Student Borrowers Protection Center

RE: Work Session memo, LD 1645

We are pleased to provide some additional information related to protecting private student loan borrowers from predatory practices.

Preemption:

Some people testified that the proposed bill is broadly subject to federal preemption. This is unequivocally incorrect. It is well established that states have authority to regulate the handling of bank-made loans. The National Bank Act prohibits states from licensing and examining of national banks, and provides limited preemption for certain origination terms. However, federal regulation and case law consistently support the ability of states to regulate the manner in which the consumer engages with the repayment of a bank-made loan.

Moreover, to the extent the National Bank Act preempts any state action, the provisions of the bill are explicitly permitted. One person testifying in opposition to the legislation cited section 12 C.F.R. § 7.4008 of the federal code in arguing that this legislation was preempted. That same section goes on to state: "*State laws that are not preempted. State laws on the following subjects are not inconsistent with the non-real estate lending powers of national banks . . . (1) contracts . . . (4) Rights to collect debts . . .*" 12 C.F.R. §§ 7.4008(e)(1), (4).

The provisions of this bill include providing safeguards for when borrowers seek to exercise their contractual right to cosigner release, prohibiting collection of a debt when a disability discharge application is pending, and requiring loan holders to prove they own the debt before seeking to collect. All of these provisions fall squarely within the express authority of states described above.

Registry/Reporting Requirements:

The student finance company registry described in the legislation is a data collection/market monitoring tool, not a new licensing and oversight regime.

The private student loan market is much broader than traditional private student lenders. There also exists a "shadow" student finance market of non-traditional lenders and third-party actors that still interact with student loan borrowers and handle student loans, but do not fall into the existing definitions of "private student lender."

Existing Maine law does not require consistent reporting from these shadow actors operating in the private student loan market, and therefore we do not have a full picture of what entities are making loans to Mainers. LD 1645 creates a state registry to collect data on the student lending activity in Maine, including shadow student finance companies, so that policymakers have greater insight into exactly what companies are collecting money from residents of Maine.

Private student lenders operating in Maine will annually report the following data about their lending activity to the state:

- College attended by students taking out the loan and how many loans were made to students at that school
- Number of loans made statewide
- Default rate by school
- Sample promissory notes

These provisions mimic reporting requirements in the federal student loan market and are currently being pursued in several other states, including Illinois, New Jersey, and Colorado. Relevant agencies in these other states have indicated that they will satisfy reporting requirements by including these reporting metrics in the annual public reporting already required by state student loan ombuds laws. Maine can similarly streamline the reporting process by including this data in the annual report required by the Student Loan Ombudsman in Maine's Bureau of Consumer Finance.

Several people testified that because state-chartered banks are overseen by the Bureau of Financial Institutions (BFI), they should report their student loan metrics to that bureau. First, as discussed during the hearing, no Maine-chartered banks currently engage in direct student lending, therefore they do not need to report anything. Second, if these entities did make private student loans, they are suggesting that banks and credit unions report their loan information to BFI and then the BFI would share it with the Bureau of Consumer Finance Superintendent. This approach would be overly burdensome and require additional resources from the state.

Truth in Lending Act (TILA):

Some testimony indicated that LD 1645 may conflict with state Truth in Lending laws and requested that this legislation be added as an amendment to TILA. To be clear, LD 1645 supplements disclosure requirements but in no way conflicts with TILA.

Truth in Lending requirements under federal law explicitly create a floor for limited disclosures around interest rates on private student loans at origination. This bill requires specific disclosures around cosigner release requirements, both at origination and during repayment, which in no way affects the interest rate and prepayment disclosures required by TILA. In fact, some lenders in this space already make these disclosures at origination.

We do not believe that these disclosure requirements should be included as an amendment to state Truth in Lending requirements. Maine's Truth in Lending law mimics federal law and as such, lenders can take advantage of specific safe harbors offered under federal law by adopting model forms offered by the Consumer Financial Protection Bureau. By amending the law to include the additional disclosures proposed by this bill, lenders could no longer use the model forms, thereby increasing their exposure to risk. Additionally, Maine institutions are already exempt from certain provisions of the federal Truth in Lending Act pursuant to 12 C.F.R. § 1026.29. Further amendments to the law might trigger another review of the CFPB's existing carve out under Regulation Z for Maine institutions.

Additionally, the content of the disclosures required by this bill are fundamentally different than those intended by Truth in Lending laws. Specifically, Truth in Lending laws are intended to cover provisions related to the total cost of the loan—interest rates, APR, etc. The disclosures required by LD 1645 are specifically related to process—*how* a borrower or cosigner can go about applying for cosigner release or disability discharge. These processes vary by lender, and this legislation does not intend to make all lenders adhere to a uniform policy. As such, it would be inappropriate to include these disclosure requirements as an amendment to Truth in Lending laws.

Exemption for state-chartered banks and credit unions:

We do not recommend exempting state-chartered banks and credit unions. Currently, no state banks make private student loans and this legislation is unlikely to affect them. However, several state-chartered credit unions in Maine offer student loans through partnerships with shadow student finance companies. This legislation will not end these partnerships or change the terms on which they lend to students—it merely requires increased transparency around who is receiving the loans.

Several people testified that banks and credit unions should receive an exemption because they were similarly exempted under the student loan servicer license law. This is a misleading comparison. Banks and credit unions rarely service their own student loans and therefore there was no need to include them in the servicer licensing law. For example, University Credit Union handles the servicing of its private student loans through American Education Services. The student loan servicing law only regulated issues related to servicing, and as such, it would have been inappropriate to include banks and servicers. However, LD 1645 covers issues separate from servicing. For example, cosigner release and disability discharge are issues traditionally handled by the lender/loan holder, not the servicer. As such, in order for those provisions to be effective, the lender/loan holder must be included within the scope of the bill.

Currently, more than half a dozen states are pursuing similar legislation, including New Jersey, Colorado, New York, Nevada, Connecticut, Illinois (registry only) and the District of Columbia. Some testimony pointed to Colorado's legislation and suggested that Maine provide a similar exemption of banks and credit unions. However, it is worth noting that Colorado only exempted banks and credit unions due to state constitutional limitations that are unique to Colorado. To date, no other state has provided similar exemptions.

In fact, when Connecticut ran similar legislation last year, the Credit Union League supported it because, in their own words, "student loan borrowers deserve to be able to trust their lenders."

Thank you for the opportunity to provide this additional input.