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May 13, 2021

Senator Heather Sanborn, Chair
Representative Denise Tepler, Chair
Joint Standing Committee on Health Coverage, Insurance, and Financial Services
100 State House Station
Augusta, ME 04333

RE: LD 1645, An Act to Establish Protections for Private Student Loan Borrowers and a Registry of Lenders

Dear Senator Sanborn, Representative Tepler, and members of the Committee,

The Bureau of Financial Institutions (“BFI”) is neither for nor against LD 1645, An Act to Establish Protections for Private Student Loan Borrowers and a Registry of Lenders, but would like to supplement testimony offered by the Bureau of Consumer Credit Protection (“BCCP”) and describe the bill’s impact on Maine-chartered banks and credit unions.

Inconsistent with existing statutory scheme. Including banks and credit unions in the bill would be a departure from the existing statutory scheme found in Article 14 of Title 9-A, which establishes the student loan bill of rights and the student loan ombudsman position within the BCCP. Both state and federal banks and credit unions and their holding companies are exempt from the licensing and regulations found in current Article 14. However, the proposed Articles 15 and 16 do not exempt state chartered financial institutions from licensing and regulatory requirements in a similar manner. The carve out occurred, in part, because banks and credit unions are already chartered and supervised.

Preemption. The proposed bill is subject to federal preemption, meaning that its requirements and regulations would apply to local Maine-chartered financial institutions but not their federal counterparts. The definitions of “Student Financing Company” in § 15-101(3) and “Private Education Lender” in § 16-101(5) of the bill carve out nationally-chartered banks, federal credit unions, and their holding companies from the requirements of the bill to the extent the bill is preempted by federal law. Such a carve out is likely because of express preemption in federal law stating that a “*national bank may make non-real estate loans without regard to state law limitations concerning: Licensing, registration...or reports by creditors...terms of credit, including the schedule for repayment of principal and interest... term to maturity of the loan, including the circumstances under which a loan may be called due and payable upon the passage of time or a specified event external to the loan....*” See 12 C.F.R §7.4008(d)(1 -2).

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Because much of LD 1645 is likely preempted, the bill would create an uneven playing field between federal and Maine-chartered financial institutions, a result this Committee has sought to avoid in the past.

Further, even if the bill is not preempted, enforcement by state regulatory agencies would be challenging. Federal law indicates that “*State officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions, except in limited circumstances authorized by federal law. See 12 C.F.R. § 7.4000(a)*”

Enforcement authority. If State-chartered banks and credit unions are not excluded from the bill, BFI suggests that the violations section be amended to allow BFI, the primary regulator of state-chartered institutions, to serve in the enforcement role. This would be consistent with the general enforcement scheme of Title 9-A, the Maine Consumer Credit Code.

In conclusion, Maine’s local state-chartered banks and credit unions are supervised and examined by the Bureau of Financial Institutions. BFI has authority to stop unfair and deceptive practices as well as issue cease and desist orders. The bill seems focused on nonbank private student lenders, not Maine’s local financial institutions. State-chartered banks and credit unions do limited private student lending in Maine and BFI is aware of few, if any, complaints by student borrowers against Maine-chartered financial institutions.

Thank you for consideration. The Bureau is happy to provide additional information as needed to the Committee.

Very Truly Yours,

Lloyd P. LaFountain III

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