

United States Senate  
WASHINGTON, DC 20510

September 10, 2021

Secretary Miguel Cardona  
U.S. Department of Education  
400 Maryland Ave, S.W.  
Washington, D.C. 20202

Dear Secretary Cardona:

We write in support of your recent revised legal interpretation of Federal preemption and joint Federal-state regulation and oversight of student loans and loan servicers.<sup>1</sup> This welcome revision to the Department of Education's ("the Department") policy will significantly enhance oversight and accountability of the student loan program and its contractors by empowering state regulators to better protect borrowers and consumers.

The previous Administration's policy that state regulation of loan servicers was broadly preempted by the Federal government's oversight role was legally flawed. Federal courts repeatedly rejected this position as unsound and an unjustified departure from the Department's prior position.<sup>2</sup> The previous Administration's policy also interfered with state regulators exercising their authority to protect consumers in their states. This policy prevented states from conducting supervisory examinations of loan servicers. It also obstructed state enforcement actions by withholding from states the documents and data that they needed to hold loan servicers accountable for misconduct.<sup>3</sup>

The revised interpretation is not only legally sound, but will also have substantial benefits for borrowers. State attorneys general have been at the forefront of oversight of student loan servicers in recent years, uncovering widespread patterns of misleading and abusive conduct and winning significant settlements for borrowers in their states.<sup>4</sup> For example, Massachusetts

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<sup>1</sup> Federal Preemption and Joint Federal-State Regulation and Oversight of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers, August 12, 2021, <https://public-inspection.federalregister.gov/2021-17021.pdf>.

<sup>2</sup> Federal Preemption and Joint Federal-State Regulation and Oversight of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers, August 12, 2021, pg. 4, <https://public-inspection.federalregister.gov/2021-17021.pdf>.

<sup>3</sup> NBC News, "Inside the Education Department's effort to 'obstruct' student loan investigations," Erik Ortiz, September 9, 2019, <https://www.nbcnews.com/news/education/inside-education-department-s-effort-obstruct-student-loan-investigations-n1049576>.

<sup>4</sup> See, for example, Office of NY Attorney General Letitia James, "AG James Sues Student Loan Servicer for Mismanaging Loan Forgiveness Program," October 3, 2019, <https://ag.ny.gov/press-release/2019/ag-james-sues-student-loan-servicer-mismanaging-loan-forgiveness-program>; Office of Attorney General Maura Healey, "AG Healey Secures First-of-its-Kind Relief in Settlement With Major Student Loan Servicer," February 10, 2021,

Attorney General Maura Healey recently reached a settlement with the Pennsylvania Higher Education Assistance Agency (PHEAA) requiring an audit and correction for any Massachusetts borrower who may have been harmed by PHEAA's errors or misconduct, which could affect more than 200,000 borrowers.<sup>5</sup> The Department's revised interpretation also acknowledges that, in partnership with the Department's own oversight and the Consumer Financial Protection Bureau, state regulators play a crucial role in identifying and addressing misconduct that hurts borrowers and consumers. The revised interpretation of federal preemption will encourage stronger partnership to hold loan servicers and other student loan contractors accountable.

We urge you to apply this strong preemption framework outlined to state laws that provide additional protections to student loan borrowers, such as requiring loan servicers to be licensed or have in place complaint processing protocols. By explicitly endorsing these partnerships, the Department can further align Federal and state actions to protect and support borrowers and consumers.

Beyond this notice of interpretation, we strongly urge you to carry these preemption principles forward in your contract negotiations with loan servicers. When servicers or other contractors take positions that obstruct Federal or state oversight, they should face consequences under their current contracts and in future allocations and renewals. We strongly urge you to incorporate accountability for abusive and illegal consumer practices and for failure to cooperate with Federal and state regulators into the ongoing management of the student loan program. Future contracts must include meaningful incentives for transparency and improved service and protections for borrowers.

Thank you for your work on this important issue. We look forward to working with you to improve the student loan system so that it puts students and borrowers first.

Sincerely,



Elizabeth Warren  
United States Senator



Sherrod Brown  
United States Senator

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<https://www.mass.gov/news/ag-healey-secures-first-of-its-kind-relief-in-settlement-with-major-student-loan-servicer>.

<sup>5</sup> Office of Attorney General Maura Healey, "AG Healey Secures First-of-its-Kind Relief in Settlement With Major Student Loan Servicer," February 10, 2021, <https://www.mass.gov/news/ag-healey-secures-first-of-its-kind-relief-in-settlement-with-major-student-loan-servicer>.

\_\_\_\_\_/s/\_\_\_\_\_  
Cory A. Booker  
United States Senator

\_\_\_\_\_/s/\_\_\_\_\_  
Chris Van Hollen  
United States Senator

\_\_\_\_\_/s/\_\_\_\_\_  
Tammy Baldwin  
United States Senator

\_\_\_\_\_/s/\_\_\_\_\_  
Richard Blumenthal  
United States Senator

\_\_\_\_\_/s/\_\_\_\_\_  
Reverend Raphael Warnock  
United States Senator

\_\_\_\_\_/s/\_\_\_\_\_  
Tina Smith  
United States Senator