



States for Student Borrower Protection Pushing Back Against Preemption Frequently Asked Questions

1. It's time for our state to stand up for student loan borrowers, but we keep hearing that state laws are preempted and legislators' hands are tied. Is this true?

States have always overseen private-sector companies in the financial services market. This isn't new. These "police powers" are part of the historic bargain between Washington and the states as set out in the Constitution.

What really matters is *who* is being held accountable by state governments. These are private-sector student loan companies—some of the largest financial services providers in America, touching more than 1-in-5 American families. No one is advocating for state regulation of the federal government, but borrowers urgently need a cop on the beat to police these big businesses.

And these sure are big businesses. For example, the chief executive of one publicly-traded student loan company—Navient—earned just shy of 7 million dollars in 2017. This company alone has [authorized](#) the giving of hundreds of millions of dollars back to investors through share buybacks in the past two years, even as it has been accused of widespread abuses. Not sure about you, but these big companies don't sound like "the government" to me.

Much like states' efforts to crack down on debt collectors, check-cashers, and mortgage lenders, state-based efforts to rein in abuses by these private-sector student loan companies are a far cry from "regulating the federal government."

2. But doesn't the Higher Education Act preempt all state efforts to protect student loan borrowers?

Absolutely not. If Congress intended to preempt states from regulating "the field" of student loans, it would have done so. Instead, Congress, through the Higher Education Act, restricted narrow categories of state lawmaking. Don't believe us? [Listen to Congress!](#)

Specifically, the Higher Education Act tells states they cannot limit or restrict the fees and penalties some debt collectors can charge student loan borrowers or require some student loan companies to make specific "disclosures" to borrowers. That's it!

Congress "expressly" preempted these specific kinds of state laws and left all other types of student loan regulation to the states. As the Education Department's own General



Counsel [explained](#) to the State of Maryland in 2016, “the Department [of Education] does not believe that the State’s regulation of [federal student loan servicers and debt collectors] would be preempted by Federal law. Further, such regulation would not conflict with the Department’s contracts with those entities, which provide generally that loan servicers and [collectors] must comply with State and Federal law.”

3. But didn’t Betsy DeVos say something different?

Yes. But just because the Trump Administration’s political appointees say something, it doesn’t make it true. The student loan industry lobbyists begged DeVos to fight back against state oversight, so she tried to box out state governments by fiat.

These aren’t federal law.

These aren’t even federal rules proposed by a new administration.

These are merely desperate and dangerous statements from political appointees who know borrowers’ rights have been violated, and the chickens are coming home to roost.

In fact, this political maneuvering was immediately and roundly rejected by Democratic and Republican officials across the country, including a bipartisan group of [two dozen state attorneys general](#), [all 50 governors](#), and the heads of the banking agencies in [every](#) state.

4. So what is the legal basis (or other reason) for why DeVos thinks she can stop states from taking action?

The Trump Administration has argued that state action is preempted because the U.S. Department of Education “continues to oversee loan servicers to ensure that borrowers receive exemplary customer service and are protected from substandard practices.”

That’s right. Betsy DeVos seriously suggested that the U.S. Department of Education is doing such a good job, that states need not bother themselves by trying to help student loan borrowers.

This flies directly in the face of all available evidence.

We know that student loan companies routinely cheated tens of thousands of [servicemembers](#), thousands of [disabled veterans](#), millions of borrowers [struggling to keep up](#) with their loan payments, along with [teachers](#), nurses, first responders and other [public servants](#), [older borrowers](#), and countless others trapped in a broken student loan system.

Even Donald Trump’s own Treasury Department chastised the DeVos Education Department for its shoddy, sub-standard approach, [warning](#) that “federal student loan servicing currently lacks effective minimum servicing standards.”



5. If this was so cut-and-dry, wouldn't judges across the country reject DeVos's play at preemption?

Of course! And that is exactly what has happened.

In Washington, [Massachusetts](#), and [Illinois](#), courts have dismissed efforts by DeVos and the student loan industry to obstruct state actions on preemption grounds. Over the course of nearly two years, in every case where a judge has considered a state government lawsuit against a student loan servicer, these courts have upheld states' rights to protect borrowers from industry abuses.

6. What about the arguments by the Education Department and the student loan industry that state "regulation" will cause chaos for borrowers and require companies to meet 50 different sets of state rules?

This is just a red herring!

Again, it helps to look closely at what states are—and are not—trying to accomplish.

When states require companies to obtain a state license and authorize state regulators to oversee the industry, the state is telling the industry to follow *current* federal and state laws, while demanding greater accountability for industry's practices. Bills like the one in your state do not require the student loan industry to do anything it wasn't already supposed to be doing.

7. We were told that states can never oversee any federal government contractors, even when they are private companies providing financial services. Is this true?

No!

The debt collection industry—including dozens of companies that collect on student loans for the Department of Education—have obtain state licenses and been subject to routine oversight by state regulators for decades.

Until the student loan industry discovered that it could cajole the Trump Administration into shielding it from scrutiny, the [federal government](#), [consumer advocates](#), and even the largest [student loan servicers](#) had all agreed to make oversight and accountability a priority.

8. But didn't a federal court just rule that DeVos was correct, and states have no role to play here?

NO!

On November 21, 2018, the U.S. District Court for the District of Columbia [ruled](#) that one part of a DC Law could not be applied to some activities of some student loan servicers.



However, this was the first time any judge in any court has restricted states' ability to demand student loan servicers get a license to operate in a state—finding that DC's licensing requirements conflict with federal law for the servicing of some student loans, but not for others.

This ruling is likely to be appealed, but, for the moment, one state's licensing requirements won't apply to some parts of the biggest loan servicers' businesses. This is a far cry from the sweeping rebuke of state oversight sought by the student loan industry.

Even though this ruling was a setback for DC's efforts to demand accountability, the judge in this case also firmly dismissed industry's argument that states are broadly preempted from passing laws to protect borrowers.

Driving this point home, the court looked at DeVos' 2018 "interpretation" that purports to preempt all state law and found it to lack "requisite thoroughness and persuasiveness," writing that the court "cannot agree that [DeVos's interpretation] is 'well reasoned and sensible.' It is not."

9. So states can stand up for student loan borrowers and demand accountability from the student loan industry?

Damn right.