



126 Sewall Street  
Augusta, Maine 04330-6822  
Phone: (207) 626-7058  
Fax: (207) 621-8148  
www.mejp.org

# Maine Equal Justice

## People Policy Solutions

**Michael Kebede**  
Consumer Rights Advocate  
(207) 626-7058, ext. 213  
mkebede@mejp.org

### **Testimony of Michael Kebede, Consumer Rights Advocate, Maine Equal Justice, *in favor of LD 995***

Good afternoon Senator Sanborn, Representative Tepler, and members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services. My name is Michael Kebede and I am the Consumer Rights Advocate of Maine Equal Justice. We are a civil legal services organization and we work with and for people with low income seeking solutions to poverty through policy, education and legal representation. Thanks for the opportunity to offer testimony to you in support of LD 995.

Maine Equal Justice supports the passage of this bill. In particular, we strongly support the provisions of this bill that let individuals harmed by the actions of a student loan servicer to bring private lawsuits on their own behalf. We believe that private lawsuits would be critical to ensuring that individuals harmed by servicers have a quick and direct way to enforce the rights that this bill would guarantee.

#### **What LD 995 Would Do**

You have already heard what Student Loan Bill of Rights does generally – regulate servicers. My testimony will be restricted to a narrow feature of the bill: its provision allowing certain individuals to sue servicers for engaging in one or more of the bill's prohibited servicing practices. This list of prohibited practices includes:

- (i) defrauding or misleading borrowers;
- (ii) misrepresenting what a borrower owes;
- (iii) misapplying a borrower's loan payment;
- (iv) misreporting a borrower's balance or payment history to a credit reporting agency;
- or
- (v) failing to evaluate a borrower's eligibility for an income-based repayment plan before enrolling the borrower in forbearance or default.

This bill would allow not just borrowers, but also co-signers to sue servicers directly. Co-signers are oft-forgotten victims of illegal servicing practices. They typically include parents and grandparents, whose precarious retirement finances could be harmed by illegal servicing practices.

#### **Private Lawsuits Against Servicers Are Currently Not Allowed**

A range of state and federal statutes currently regulates student loan servicers. But no court has found that those statutes allow a borrower in Maine to sue a student loan servicer. The most important federal statute regulating student loan servicers is the unfair, deceptive, or abusive acts

provision of the Dodd-Frank Act. *See* 12 U.S.C. §§ 5531(a), 5536(a)(1)(B). The federal Consumer Finance Protection Bureau and state attorneys general may sue servicers based on that provision, but borrowers and co-signers may not.

Maine's equivalent – the Uniform Deceptive Trade Practices Act – does not apply to servicers. 10 MRS §1212. The Maine Unfair Trade Practices Act might apply to servicers, but no court has so far ruled that it does. 10 MRS §213(1). Borrowers in Maine thus do not have a way to sue a student loan servicer to enforce their rights.

### **Without Private Lawsuits Against Student Loan Servicers, the Student Loan Bill of Rights Would be Inadequately Enforced**

Without private lawsuits, victims of servicers would have almost no way to directly enforce the rights secured by the Student Loan Bill of Rights.

The Consumer Rights Division of the office of the Attorney General and other consumer protection agencies in the Maine do invaluable work on behalf of Mainers. But the State of Maine does not have the resources necessary to monitor, identify, and prosecute all violations of this bill. The Attorney General's greater concern with systemic, big-picture issues than on individual cases, makes it ill-suited to suing servicers for individual violations. Government lawsuits against servicers<sup>1</sup> – and a 2017 audit by the federal Department of Education<sup>2</sup> – show that the current level of enforcement by government agencies is not sufficient to prevent the servicer abuses that this bill seeks to prevent.

Importantly, the government's eagerness to enforce the law typically changes after major elections. Even if government lawyers could and did address every individual abuse perpetrated by student loan servicers – which they cannot and do not do – federal and state enforcement activities sharply slowdown or speed up after every major election. Private lawsuits against servicers would make enforcement activities less political and more constant.

If LD 995 became law, borrowers or co-signers would be able to sue student loan servicers directly—at no cost to the State of Maine. Borrowers or co-signers who succeed in lawsuits against servicers would be entitled to any actual damages, a money award equal to three times the total amount the borrower paid, attorneys' fees, court costs, and—in egregious cases—punitive damages. §14-108(4)(B).

### **Private Lawsuits Against Student Loan Servicers Would Make Servicers More Responsible and Boost Maine's Economy**

#### **A. Make Servicers More Responsible**

Student loan servicers are large corporate bureaucracies that service billions of dollars of debt. Take one example: Navient, a frequent target of government lawsuits. Navient employs more than 6,000 people in ten states and counts more than 12 million borrowers as its customers. Navient services \$300 billion in student debt, an sum of about six times the GDP of the State of Maine.

The actions of student loan servicers can be ruinous for borrowers. Higher and more frequent payments are good for the servicer, even if the borrower does not owe those payments. Misreporting a borrowers' payments or principal to a credit reporting agency might mean the borrower is denied for a mortgage application or car loan. No immediate negative consequences exist for this behavior.

In contrast, helping borrowers enroll in income-based repayment costs servicers time and money. These practices are often lucrative for servicers, but almost always damaging to borrowers. Private lawsuits against servicers would help correct this imbalance.

Over the past century, we have learned that lawsuits change behavior. Tort litigation has made many corporations more responsible. All the warning signs on your devices, recalls of your cars, and safety features that are now standard in thousands of gadgets are not exclusively the result of regulation; many are the result of litigation. As with products, so with institutions.

Permitting borrowers and co-signers to sue servicers on their own behalf would make student loan servicers more responsible.

### **B. Boost Maine's Economy**

Part of the money that borrowers would save if servicers were more responsible would be spent in the local economy. Take one activity that LD 995 proposes to prohibit: steering borrowers away from income-driven repayment plans. The difference for a borrower between paying loans under the default-repayment plan and paying them under an income-driven repayment plan could be an extra income of thousands of dollars per year.

That extra income would likely be spent in Maine. After polling 400 Mainers with student debt, the Maine Center for Economic Policy found that 25% of them skipped rental or mortgage payments to make student loan payments. More than 40% said they knew of someone who "moved to another state in order to take a job that will help them afford payments."<sup>3</sup> More than half said they were delaying major purchases, like buying a car, and a quarter that they were delaying having children—all because of student debt. Although not fully calculated, the consequences for Maine's economy would be significant.

### **Allowing Private Lawsuits Against Servicers is a Reasonable Solution**

LD 995 would not allow borrowers to sue the state or federal government. It would not prevent the Attorney General from suing a student loan servicer. It would not prevent a regulatory agency from imposing penalties on a servicer that violates its duties to borrowers.

It simply provides a mechanism through which borrowers and co-signers harmed by student loan servicers may be made whole and given the power to ensure that the protections of this bill are fully enforced.

For the foregoing reasons, I strongly urge you to vote *ought to pass*.

Thank you for giving me the opportunity to testify. I welcome questions.