



STUDENT BORROWER
PROTECTION CENTER

States on the Frontlines

Student Borrower Legislation & Advocacy in 2021

December 2021

Table of Contents

Introduction	03
New Rights for Millions of Student Loan Borrowers	04
Even Outside of Legislative Action, States are Quickly Advancing Borrower Protections	06
2021 As a Roadmap	08
States' Hard Work Creating Student Loan Borrower Protections is Already Paying Off	09
Looking Ahead to 2022	11

Introduction

This year, in state capitals across the country, policymakers and advocates continued their critical work creating and enforcing borrower protections and industry oversight mechanisms. After four years of carrying the mantle of consumer protection and acting as a bulwark against a hostile White House, rather than step back after inauguration day, states have stepped up to both partner with the Biden administration and continue to execute a strong legislative and regulatory agenda for borrowers. The SBPC worked with partners in a dozen states to create new borrower rights across the student loan industry and to ensure these new protections are properly implemented and upheld. These victories reflect years of hard work by advocates and lawmakers and tell the next chapter in the story of states' historic leadership in borrower protection.

New Rights for Millions of Student Loan Borrowers

Despite the significant focus on the federal government and student loan debt, much of the student loan market infrastructure is established and regulated at the state level. This is true at each aspect of a borrower's experience with a loan: origination, servicing, and, in some cases, debt collection. This year, states across the country passed laws to ensure borrowers are protected at each step of the way, at times building on an existing track record but also enacting new laws and protections.

Borrower Bill of Rights

More states are adopting [Borrower Bill of Rights](#) laws. In recent years, it has become crystal clear that student loan servicer misconduct causes extreme harm to the borrowers these companies are meant to help. In over a dozen states, these laws give state regulators the authority to license the private companies that service student loans and lay out rules of the road for business practices and consumer protections. To address ongoing concerns about the student loan servicing industry, three more states—[Massachusetts](#), [Minnesota](#), and [Oregon](#)—passed Borrower Bill of Right laws, empowering their regulators to license and oversee student loan servicers. Additionally, this year [Virginia](#)'s Borrower Bill of Rights law, passed in 2020, took effect. The SBPC has been proud to partner with borrowers, advocates, elected officials, regulators, and attorneys general across the country to enact these important laws. Today, nearly 16 million student loan borrowers across the country benefit from specific state law protections against poor and predatory servicing.

Private Student Loans

Although private student loans make up a smaller portion of outstanding student loan debt than federal student loans, these products contain fewer consumer protections and are riskier than their federal counterparts. Many lenders in the private student loan market operate under state regulators' radars, especially non-bank lenders who may not meet existing requirements for states' lending licenses. To shed light on the private student loan market, [Illinois](#), [Colorado](#), and [Maine](#) passed laws to require private education loan lenders to register with the state's financial regulators and file annual reports on their lending activities. With these data, these states will be

able to better understand the scale and terms of the private lending market in their jurisdictions, identify concerning actions, and inform future policymaking. This oversight is a powerful companion to these states' existing authority over student loan servicers, through each of their Borrower Bill of Rights laws.

This year also brought critical debt collection protections for borrowers. When the lending and servicing industries fail borrowers, they can find themselves in collections on their private student loans. [California](#), [Colorado](#), and [Maine](#) passed laws to improve court procedural rules that for years have allowed unscrupulous creditors to file lawsuits against consumers, despite the fact that the [creditors regularly lack even the most basic documentation or proof of ownership of the loans on which they're suing to collect](#). With these new laws, creditors will have to actually have those basic documents in hand before dragging borrowers to court.

Even more protections are pending in states with ongoing legislative sessions. New York has pending bills to address [protections for private student loan borrowers](#) and to [curb schools' use of transcript withholding](#), a [harmful debt collection tactic](#). New Jersey has a [robust bill](#) that would both create a private student lender registry and establish a suite of private student loan borrower protections, much like Colorado's and Maine's laws. And pending in the District of Columbia is a [bill](#) to restore the District's financial regulator's full authority over student loan servicers and to introduce several of the same private student loan protections that have been enacted in other jurisdictions.

Throughout our work supporting these bills, and as this legislative roundup makes clear, even with the change in administrations in D.C., states are continuing to enact new protections for their student loan borrowers.

Even Outside of Legislative Sessions, States are Quickly Advancing Borrower Protections

In addition to these legislative victories, 2021 has been a banner year for state regulatory advocacy and action.

The California Department of Financial Protection and Innovation (DFPI) announced two consent decrees against different income-share agreement (ISA) providers, [Lambda School](#) and [Merasas, Inc.](#) Although ISA providers [routinely seek to evade regulation and oversight](#) by claiming not to be credit or loans, DFPI made clear that California's consumer protection and student loan laws apply to these products. Similarly, Colorado's Consumer Credit Code Administrator kicked off the process of applying Colorado's consumer credit laws to ISAs by holding a [public stakeholder meeting](#), during which the SBPC submitted comment, and then by [issuing proposed rules](#) that make clear that ISAs must comply with all traditional credit requirements.

[Massachusetts](#) and [Virginia](#) solicited public comment on their respective regulations for their newly licensed student loan servicers. The SBPC worked with coalition partners in both states to submit comments. In Virginia, this included addressing claims by industry to the regulator that Virginia's Borrower Bill of Rights law was preempted with respect to federal student loan servicers. In addition to the [SBPC's coalition comment](#), [state lawmakers](#), the state [Attorney General's Office](#), and the [Federal Student Aid](#) office within the U.S. Department of Education filed comments in support of the Commonwealth's law. Ultimately, in response to overwhelming advocacy in support of the Commonwealth's authority to oversee and license these servicers, the regulator rejected industry's arguments and promulgated its rules.

Building on the work in Virginia, in response to a [legal interpretation](#) from the U.S. Department of Education that states are not preempted from regulating and supervising federal student loan servicers, the SBPC submitted a [memo](#) applauding the Department's stance, supporting states' constitutional rights to regulate these financial services companies, and calling on the Department to provide

Even with a friendly administration in Washington—one that reaches out its hand toward states to promote “cooperative federalism”—states are flexing their authorities and stepping up to make sure their resident borrowers are protected.

more clarity on specific instances of joint federal and state oversight. The SBPC and its partners, as well as state legislators, multiple state regulators, and state attorneys general, supported the Department's promotion of "cooperative federalism" and position that states can and should work in tandem with the federal government to regulate and oversee the federal student loan market.

Even with a friendly administration in Washington, D.C.—one that reaches out its hand toward states to promote "cooperative federalism"—states are flexing their authorities and stepping up to make sure their resident borrowers are protected.

2021 As a Roadmap

Looking back at this year, we can draw several clear themes and takeaways from states' victories and actions.

First, even as the U.S. Department of Education increases its oversight over its student loan servicers and improves existing consumer protection programs, state oversight remains critical. We see this through the continued licensure and regulation of servicers by state financial regulators, as in Massachusetts and Oregon, and by states asserting the constitutionality of their consumer protection laws vis-a-vis federal contractors while affirming the Department's call for cooperative federalism. Rather than stepping back, states are continuing to step up.

Second, states are rising to the occasion to address private student loan debt, even as the majority of public attention remains on federal student loans. Although several federal and state regulators and attorneys general have brought actions against private student lenders for abusive origination, servicing, and collection tactics, more states, such as Colorado and Maine, are enumerating borrower and cosigner protections and enshrining those promotions in law, enforceable through private rights of action, with New York, New Jersey, and D.C. advancing legislation that would do the same. Still others, such as Illinois, along with Colorado and Maine, are creating registries to sunlight the private student lending industry and better understand their practices. We should expect more oversight of the private student loan market, especially as these registries shed light on more industry abuses.

Third, states are taking a proactive and broad approach in asserting their student loan borrower protections. After years of working to empower their regulators, attorneys general, and private citizens to address industry misconduct, states are flexing their new authorities. We see this most clearly with both California's and Colorado's regulatory activity around ISAs. We should expect to see more states using their existing tools to address new products and players in the student loan market.

States' Hard Work Creating Student Loan Borrower Protection is Already Paying Off

This past year was a tour de force in terms of proving the importance and value of states passing consumer protection laws focused on student loan borrowers. We are living through historic transitions in the federal student loan market, where [as many as 40 million borrowers](#) will start receiving monthly bills for their federal student loans after a nearly two-year pause, while at the same time nearly [16 million](#) of those borrowers will have their accounts transferred to a new servicer. We know from [past transfers](#) and from the servicing industry's track record more generally that errors will occur and borrowers will bear the brunt.

States have enumerated specific servicing standards and consumer protections that are based on best practices...and are flexible enough to apply to a variety of unforeseen circumstances, such as large-scale account transfers, in addition to everyday servicing. And we're already seeing this groundwork pay off.

Although historic, these are exactly the sort of events that states have prepared for by passing new borrower protections and by empowering their regulators, attorneys general, and residents to take action. States have enumerated specific servicing standards and consumer protections that are based on best practices—such as providing timely and accurate information—and are flexible enough to apply to a variety of unforeseen circumstances, such as large-scale account transfers, in addition to everyday servicing. And we're already seeing this groundwork pay off.

In November, a few weeks after the Department of Education [announced a temporary overhaul to the Public Service Loan Forgiveness program](#), one of the Department's largest contracted servicers, PHEAA, operating as FedLoan Servicing, gave out [misinformation and even improperly denied](#) borrower applications

under the new guidelines. These actions violate a whole suite of state laws specific to student loan servicing, as well as more general laws against unfair and deceptive acts and practices. Drawing on new private rights of action against improper servicing in California and elsewhere, we sent PHEAA a [demand letter](#) putting it on notice of its violations.

With regulatory action, too, we can see states exerting their new authorities. The two California DFPI actions against ISA providers enforced requirements of the California Student Loan Servicing Act and Consumer Financial Protection Law, both of which were passed in recent years with the purpose of protecting consumers. In Colorado, in its ISA rulemaking process, the Administrator of the Consumer Credit Code is basing the state's proposed rules in large part on its authority under the new Student Loan Equity Act, which was enacted earlier this year. There, the state is moving quickly to ensure its new authorities are applied appropriately to any products offered within its jurisdiction.

In passing these laws, states were not simply being prescient. They were responding to abuses that were already well documented and creating opportunities for present and future relief for borrowers and their families. This year's regulatory and private and public enforcement actions are proof of concept that these laws are working and that we must continue to build out state rights and protections for consumers.

Looking Ahead to 2022

What states accomplished in 2021 builds on prior years' hard work and is a sign of more state action to come. Already, lawmakers in several states are advancing bills to increase private student loan protections, address harmful transcript withholding policies by schools, and shore up court procedures that have allowed unscrupulous debt collectors to hijack court dockets. States are building out their student loan ombudsperson offices, establishing registries for private student lenders, and promulgating regulations based on their new authorities. Policymakers, advocates, and industry actors should take note, and expect states to continue prioritizing borrowers.



STUDENT BORROWER
PROTECTION CENTER

PROTECTBORROWERS.ORG