



NEW YORK STATE
DEPARTMENT^{of}
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

March 2, 2018

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary DeVos:

It has been reported that you are considering issuing guidance that could be intended to preempt states from regulating student loan servicers and debt collectors. I write to urge you to refrain from doing so. Such guidance would exceed the scope of authority Congress granted to the U.S. Department of Education (the "Department"), would disrupt states' traditional role of protecting their residents and regulating financial services providers, and would harm the very borrowers that the Department should be aiming to protect.

The New York State Department of Financial Services ("NYDFS") has reviewed the student loan servicing and debt collection industry and has identified a number of fraudulent and abusive practices, including steering borrowers into costlier repayment plans, failing to properly process payments, and assessing improper fees. Now more than ever, states must retain the ability to rein in these troubling practices in order to protect students and student debt holders within their own borders. The cost of higher education is on the rise and student debt is reaching record highs. Student loan debt is the second highest debt category in the United States after mortgage debt, accounting for 10 percent of debt balance and amounting to \$1.49 trillion in total.¹ Borrowers in New York have an average outstanding balance of more than \$36,000 in student debt.²

The regulation of non-depository financial institutions, like student loan servicers and debt collectors, has long been the province of the states. Without clear direction from Congress, federal law cannot supersede a state's traditional role in regulating such institutions. *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (quoting *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)) (omission in original). ("Where . . . the field which congress is said to have pre-empted includes areas that have been traditionally occupied by the States, congressional intent to supersede state laws must be clear and manifest."); *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995) ("Indeed, in cases like this one, where federal law is said to bar state action in fields of traditional state regulation," [the Supreme Court

¹ Federal Reserve Report on Consumer Credit as of December 2017. Released February 7, 2018. Available online at: <https://www.federalreserve.gov/releases/g19/current/default.htm>.

² Experian, *The State of Student Loan Debt in 2017*, published August 23, 2017. Available online at: <https://www.experian.com/innovation/thought-leadership/state-of-student-lending-in-2017.jsp>.

has] “worked on the assumption that the historic police powers of the States were not to be superseded by the Federal Act . . .”).

Here, Congress clearly did not intend to preempt all state regulation of the student lending industry. The Department’s authority with respect to student lending is found in the Higher Education Act (“HEA”), 20 U.S.C. § 1001 *et. seq.* No provision of the HEA empowers the Department to preempt states from regulating student loan servicers or debt collectors, nor does the HEA’s legislative history suggest that Congress intended to broadly preempt state regulation of this industry. Indeed, the Department’s own Office of the General Counsel acknowledged in a 2016 letter in response to an inquiry from a state agency that state regulation of student loan servicers and debt collectors is not preempted by federal law. The Department further stated that its contracts with student loan servicers and debt collectors generally provide that such entities must comply with both state and federal law.³ Moreover, the Dodd-Frank Act explicitly provides that covered entities must comply with state laws that provide greater protection to consumers than federal laws, and the Consumer Financial Protection Bureau’s exercise of its supervisory, regulatory and enforcement authority does not in any way preempt the states from addressing consumer protection concerns within the states.

State regulators such as NYDFS are uniquely experienced and equipped to protect state residents and to regulate student loan servicers and debt collectors. As the student debt burden steadily increases, I urge you not to take any action that would seek to prevent states from protecting borrowers from the fraudulent and abusive practices that are prevalent in the student debt servicing and collection industry.

Sincerely,



Maria T. Vullo

³ Letter from the Department to J. Bellman, January 21, 2016, available at: <https://na-production.s3.amazonaws.com/documents/Dept. of Ed Response.1.21.2016 dORyoLm.pdf> (Last viewed March 1, 2018).