



How

State Tax Dollars

Funded a Secretive
Lobbying Group to Gut
Protections for Student
Loan Borrowers



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Our Mission

The **American Federation of Teachers** is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

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National Council of Higher Education Resources

The National Council of Higher Education Resources (NCHER) is the nation's oldest and largest higher education finance trade association, founded in 1967 as the National Council of Higher Education Loan Program (NCHELP). From the organization's founding until 2010, NCHER's members predominantly included lenders, loan servicers, debt collectors, and state-backed student loan companies that participated in an old government program that let banks and other private lenders make federal student loans.

In 2010, Congress eliminated this program and NCHER's focus changed. It is now directed by some of the largest student loan companies under contract with the U.S. Department of Education, along with some private lenders and other state-backed student loan companies.

The organization's mission, revised in 2014, is to help families and students. But its definition of this mission is not what you might expect. In its 2017 Annual Report, NCHER describes how, on behalf of student and parent borrowers, the organization "pushed back on state efforts to regulate student loan servicers" and "advocated for a greater role for the private sector in student lending."

Multiple NCHER members have been targets of enforcement actions taken by state and federal regulators in recent years. Subprime private student loans made during the housing boom performed worse than subprime mortgages. What's going on here?

An estimated 44 million Americans struggle under the weight of nearly \$1.5 trillion in student debt. More than 11 million student loan borrowers (one-fourth of all borrowers) are past due or in default on a student loan. In 2017, three times more Americans defaulted on a student loan than lost their homes to foreclosure—another sign of a growing crisis affecting households and communities across the country.

In the middle of this widespread financial distress, the private-sector student loan companies responsible for collecting these debts (known as "student loan servicers") have been accused of ripping off service members and teachers, driving older borrowers into poverty, and denying millions their rights under federal and state law. That's why state attorneys general and state legislators across the country have stepped up to create new protections for student loan borrowers and rein in a runaway student loan industry.

But this progress is under threat by a behind-the-scenes campaign to persuade U.S. Education Secretary Betsy DeVos to shield student loan companies and deny states the right to hold these companies accountable for their actions.

How Betsy DeVos and a Secretive Lobbying Organization Are Working to Undermine States' Rights

It is widely expected that in the near future, DeVos will deliver to the National Council of Higher Education Resources, a secretive Washington lobbying group, exactly what it has been seeking for months: **a devastating blow to states' ability to protect student loan borrowers.**

You've likely read about the widespread abuses by the student loan industry. You may have cheered on dozens of state attorneys general as they investigated or sued student loan companies across the country for preying on teachers and millions of other borrowers.

But you probably didn't know that almost half of the 50 states—through a state-backed student loan company—have footed a bill of more than \$2 million for this victory by predatory companies, using taxpayer dollars.

State-Backed “Zombie” Student Loan Companies

Though you've likely never heard of a state “student loan authority,” your state probably has one—for example, New York state's Higher Education Services Corp. and the Massachusetts Educational Financing Authority—and your state government backs it. For more than 40 years, state legislatures have created these private sector companies to make student loans to state residents, to sell these loans to investors, and to collect these loans when they come due.

But all that changed a decade ago, and borrowers are now paying the price.

In 2010, Congress ended the states' role in making new federal student loans. The transition to the new “direct loans” forced these state-backed student loan companies to scramble to keep their lights on. Some states took action to shut down these companies, recognizing that **taxpayers and borrowers both lose when a state backs a “zombie” student loan company.**

But other states caved to industry pressure, keeping these companies on life support. These companies also lobbied states and Congress to let them morph into student loan servicers—a special kind of debt collector that sends borrowers monthly bills, explains payment options, and collects monthly payments. This allows them to “service” new loans made by the federal government. **For the first time, many of these state-backed student loan companies handled loans for borrowers in other states—becoming some of the largest financial services companies in America.**

As these companies grew, so did their influence in Washington. State-backed student loan companies begged DeVos to help them stay in business, making play after play to grow bigger and bigger, while seeking protection from the consequences of their illegal actions.

Why haven't you heard about this? Because it's also likely that, through a state-backed student loan company, your state is a member of the National Council of Higher Education Resources, the Washington lobby group working behind the scenes to keep the federal dollars flowing and to make sure companies are never held accountable for their illegal actions.

For example, the Pennsylvania Higher Education Assistance Agency spent more than \$350,000 in recent years supporting NCHER as it lobbies against the rights of the state of Pennsylvania to protect citizens with student debt. And that's just the beginning.

States Fill the Void as Betsy DeVos Rolls Back Protections

To address the rampant problems occurring in student loan servicing, in the last few years states across the nation have begun to create new oversight of student loan servicers to discover and address problems posed by these companies in their states. Connecticut became the first state to adopt such policies in 2015, requiring

student loan servicers to become licensed and meet certain requirements to do business in the state. These requirements included commonsense prohibitions against defrauding student loan borrowers, engaging in unfair or deceptive practices, or misrepresenting or omitting any material information in connect with the student loan.

Shortly after Connecticut passed its “Student Loan Bill of Rights,” Maryland lawmakers requested guidance from the U.S. Department of Education on whether these laws could be pre-empted by federal law. In January 2016, the department wrote the officials: If “the state determines that loan servicers or private collection agencies are ‘collection agencies’ under [Maryland law], the department does not believe that the state’s regulation of those entities would be pre-empted by federal law. Further, such regulation would not conflict with the department’s contracts with these entities, which provide generally that loan servicers and PCAs must comply with state and federal law.” (Appendix A)

With guidance provided by the department, the American Federation of Teachers and our state affiliates worked with lawmakers in California, Illinois and the District of Columbia to pass and enact similar laws, with more than a dozen other states considering similar legislation.

These bills received bipartisan support in every state in which they passed. Most commonly, the only opponents were NCHER, the Education Finance Council (another industry trade group funded by many of the same state-backed student loan companies), and perhaps the student loan servicers themselves. NCHER considered this opposition to be of great importance to its members, and this was highlighted in NCHER’s 2016-2017 Annual Report.

Failing to prevent these bills from passing, NCHER began urging the Trump Department of Education, now led by DeVos, to end the fight between states and loan servicers. In July 2017, NCHER urged the department to “issue regulatory guidance that clearly states that federal student loan servicers and guaranty agencies are governed by the department’s rules and requirements and those of other federal agencies, and pre-empt state and local laws and actions that purport to regulate the activities of participants in the federal student loan programs, including federal contractors.”

NCHER’s public letters and lobbying urging DeVos to challenge states on the grounds of pre-emption didn’t go unnoticed or unchallenged.

A bipartisan group of 26 state attorneys general—including those in Illinois, Iowa, Kentucky, Maine, Massachusetts, New York, North Carolina, Tennessee, Texas and Vermont, which all have state-backed student loan companies that are NCHER members—wrote to DeVos in October 2017. They called on her “to reject an ongoing campaign by student loan servicers and debt collectors to secure immunity for themselves from state-level oversight and enforcement.”

Despite this, it appears that in March 2018, DeVos will deliver exactly what NCHER and its members have publicly pleaded for. The department plans to issue federal guidance into the Federal Register, though such a memo would not have the force of law. **Secretary DeVos’ memo is an indication to NCHER and industry actors that the department is firmly on the side of student loan servicers—echoing their concern that these state laws place too much regulatory burden on them—and will support their claims in court.**

When Massachusetts Attorney General Maura Healey sued the Pennsylvania Higher Education Assistance Agency in August 2017, the Justice Department, representing the Education Department, argued in a court filing in January 2018 that federal law, including the Higher Education Act, pre-empted Healey’s state-law claims. Following this filing, FedLoan Servicing requested the case be dismissed, which was denied by Suffolk County Superior Court Judge Kenneth Salinger on Feb. 28, 2018.

It's not particularly surprising to find a Washington lobby group urging federal regulators to pre-empt state regulation—it was incredibly common in the lead-up to the mortgage crisis. But what is different about NCHER is where many of its members find their funding: state taxpayer dollars.

State Tax Dollars Used to Lobby Against States' Rights

As of March 2018, NCHER's membership included 24 state-backed student loan companies. **Every year, hundreds of thousands of state tax dollars flow to the state-backed companies that pay NCHER to lobby against the states' own interest.**

Through Freedom of Information Act (FOIA) requests, the American Federation of Teachers found that from 2010 to 2017, 17 of these state-backed loan companies paid at least \$2.09 million in annual membership fees and conference registration to NCHER, on average nearly \$116,000 per state over this time period. Six of NCHER's state-backed members (Alaska, the University of Illinois system, New Mexico, New York, Utah and Vermont) have failed to provide responsive information for more than 30 days.

| Agency Name | Dues Paid Between 2010 and 2017 |
|--|---------------------------------|
| Alaska Commission on Postsecondary Education | Failed to respond |
| Florida Department of Education— OSFA | \$ 121,460 |
| Georgia Student Finance Commission | \$ 117,225 |
| Illinois Student Assistance Commission | \$ 136,482 |
| University of Illinois System | Failed to respond |
| Iowa College Student Aid Commission | \$ 83,000 |
| Kentucky Higher Education Assistance Authority | \$ 47,400 |
| Louisiana Office of Student Financial Assistance | \$ 82,617 |
| Massachusetts Educational Financing Authority | \$ 88,646 |
| Finance Authority of Maine | \$ 106,175 |
| Michigan Guaranty Agency* | \$ 126,700 |
| Missouri Department of Higher Education | \$ 118,332 |
| Missouri Higher Education Loan Authority | \$ 180,996 |
| North Carolina State Education Assistance Authority* | \$ 88,650 |
| Bank of North Dakota | \$ 54,763 |
| New Jersey Higher Education Student Assistance Authority | \$ 147,043 |
| New Mexico Student Loans | Failed to respond |
| New York State Higher Education Services Corp. | Response pending |
| Oklahoma College Assistance Program | \$ 120,150 |
| Pennsylvania Higher Education Assistance Agency | \$ 360,120 |
| Tennessee Student Assistance Corporation | \$ 95,375 |
| Texas Higher Education Coordinating Board | \$ 42,125 |
| Utah Higher Education Assistance Authority | Failed to respond |
| Vermont Student Assistance Corporation | Failed to respond |

* Only provided annual membership fees, no other related expenses.

Even as these state-backed loan companies pour hundreds of thousands of dollars every year into NCHER, it's unclear whether they themselves strongly believe in NCHER and the positions it takes. The responsive documents illuminate the sometimes difficult relationship between state-backed student loan companies and NCHER.

In one email exchange between staff at the Illinois Student Assistance Commission in September 2011 (Appendix B), in which they were discussing approving the organization's membership dues, the secretary described why they were paying twice as much as they had expected. "Well, unfortunately, it is in the NCHER [NCHER] bylaws (yes they have them) that state's [sic] secondary markets have to pay dues," wrote Debbie Calcara.

John Sinsheimer, interim executive director of the Illinois Student Assistance Commission, responded: "Regretfully, I approve."

Conclusion

Under the guidance of Education Secretary Betsy DeVos, the Department of Education has abdicated its responsibility to protect student loan borrowers and provide meaningful oversight of its contracted student loan services. Now that the primary regulator has abandoned its most basic commitment to more than 40 million student loan borrowers, it is incumbent on states and state attorneys general to take immediate action to clean up the mess left behind and prevent a financial catastrophe on the scale of the mortgage crisis. **The draft memo that is expected to be submitted to the Federal Register does not have the force of law, and states must continue to create new oversight to protect student loan borrowers.**

As state legislators and attorneys general continue to push for these new protections, we urge them to investigate whether tax dollars are funding the opposition against them and demand that these state-backed student loan companies end their membership in NCHER.

Appendix A



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

January 21, 2016

Jedd Bellman
Assistant Commissioner
State of Maryland
Department of Labor, Licensing, and Regulation
Office of the Commissioner on Financial Regulation
500 North Calvert, Street, Suite 402
Baltimore, MD 21202

Re: Student Loan Servicers

Dear Mr. Bellman:



In your December 30, 2015 letter to the Secretary of Education, you requested the Department of Education's thoughts or comments as to whether third-party student loan servicers collecting on behalf of the Department under the Direct Loan program are subject to the Maryland Collection Agency Licensing Act ("MCALA"), Annotated Code of Maryland, Business Regulations Article Section 7-101, et seq.

The Department contracts with a number of entities that perform servicing activities related to non-defaulted student loans held by the Department ("loan servicers"). Those loan servicers perform various activities on behalf of the Department related to loans made under three loan programs: the Federal Family Education Loan Program, title IV, part B of the Higher Education Act of 1965 ("HEA"), as amended; the Federal Direct Loan program, title IV, part D of the HEA; and the Perkins Loan program, HEA title IV, part E. The loan servicing contracts are publically available at the following website: <https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing>.

Loan servicers perform a variety of functions. For example, they assist borrowers to select repayment plans, send monthly bills to borrowers, process requests for deferment or forbearance of repayment, respond to correspondence from borrowers, and process applications for loan discharge or consolidation. Servicers also report information about loans to credit reporting agencies and send letters and make other contacts with borrowers who have missed payments to remind them of their obligations.

If a borrower defaults on his or her loan, the loan servicer transfers the loan to the Department's Debt Management and Collection System ("DMCS"). After the loan is transferred, the Department may refer it to one of a number of private collection agencies ("PCAs") under contract with the Department. Those contracts are available at: <https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/collection-agency#>.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation

PCAs perform functions specific to borrowers in default status, including negotiating repayment schedules with borrowers, assisting borrowers with rehabilitation and consolidation of their loans, and recommending that the Department pursue administrative wage garnishment or litigation against borrowers who meet criteria specified by the Department.

Neither loan servicers nor PCAs are authorized to file suit against borrowers. Instead, the U.S. Department of Justice files collection actions on behalf of the Department.

The MCALA generally regulates persons doing business as collection agencies in the State of Maryland. See BR § 7-301(a). As relevant to loan servicers and PCAs, MCALA provides that the term "Collection agency" means "a person who engages directly or indirectly in the business of: (1)(i) collecting for, or soliciting from another, a consumer claim." BR § 7-101(c)(1)(i). Collection agencies are subject to supervision and licensing by the State Collection Agency Licensing Board.

If the State determines that loan servicers or PCAs are "collection agencies" under MCALA, the Department does not believe that the State's regulation of those entities 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 PCAs must comply with State and Federal law.

We hope that this information is helpful. If you have questions or would like additional information, please contact me at vanessa.burton@ed.gov or (202) 401-6289.

Sincerely,



Vanessa A. Burton

Attorney

Division of Postsecondary Education

Appendix B

Calcara, Debbie

From: Sinsheimer, John
Sent: Wednesday, September 28, 2011 2:43 PM
To: Calcara, Debbie
Subject: RE: NCHELP Dues Invoice

Regretfully, I approve.

From: Calcara, Debbie
Sent: Wednesday, September 28, 2011 2:33 PM
To: Sinsheimer, John
Subject: FW: NCHELP Dues Invoice

John,

You had said when we put through the NCHELP dues payment that we wouldn't pay IDAPP dues. Well, unfortunately, it is in the NCHELP by-laws (yes they have them) that state's secondary markets have to pay dues, but they are actively right now working on amending the by-laws due to the change in the industry.

So, long story short – we have to pay the IDAPP dues of \$11,550 – your approval is needed and I will process.

Debora Calcara
Secretary To The Commission
500 W. Monroe Street
Springfield, IL 62704
(217) 782-2020
(217) 524-1858 Fax

PLEASE NOTE NEW E-MAIL ADDRESS: Debbie.Calcara@isac.illinois.gov

From: National Council of Higher Education Loan Programs, Inc. [<mailto:cmartin@nchelp.org>]
Sent: Wednesday, September 28, 2011 2:16 PM
To: Calcara, Debbie
Subject: NCHELP Dues Invoice

Dear Debbie-

It looks like I did send the two invoices separately this year. I believe that it was due to your request to send them individually in previous years. If you need any additional information please let me know.
Thanks!

Chris

To view your invoice

Open the attached PDF file. You must have [Acrobat® Reader®](#) installed to view the attachment.

ILLINOIS DESIGNATED ACCOUNT PURCHASE PROGRAM
OPERATING FUND CHECK REQUISITION

| | | |
|----------------------------------|-----------|--------------|
| NCHELP | DATE | 03-Oct-11 |
| 1100 CONNECTICUT AVE NW STE 1200 | AMOUNT | \$ 11,550.00 |
| WASHINGTON, DC 20036 | INV DATE | 7/1/2011 |
| | INVOICE # | |
| | A/P # | |

| | | | | COST \$\$ | |
|--------------|------------|---------|--------|-----------|----------|
| 01-0000-8910 | MEMBERSHIP | IDAPP | 1.10% | \$ | 127.05 |
| 01-0082-8910 | MEMBERSHIP | UBS | 2.20% | \$ | 254.10 |
| 01-0083-8910 | MEMBERSHIP | FRN | 72.40% | \$ | 8,362.20 |
| 01-0092-8910 | MEMBERSHIP | CITI | 17.80% | \$ | 2,055.90 |
| 01-0095-8910 | MEMBERSHIP | TAX EXM | 6.50% | \$ | 750.75 |

TOTAL COST \$ 11,550.00

SPECIAL INSTRUCTIONS:

Chk 19555

10-4-11

ST
APPROVED

SLM
REQUESTED BY

IC-IDAPP OPERATING ACCOUNT
CHELP

10/04/2011

765-3004-3

19555

| Obligation | Description | Invoice | VENDOR | Amount |
|------------|--|---------|--------|------------------------|
| 7078 | Membership 7/1/11-6/30/12 --- Total --- | | 1451 | 11,550.00 11,550.00 |



A Union of Professionals

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