CSBS Opposes the PROSPER Act

COMMENT LETTER

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The Honorable Virginia Foxx
Chairwoman
House Committee on Education and the Workforce
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Foxx:

On behalf of the Conference of State Bank Supervisors (CSBS), I am writing to oppose the provisions[1] of the PROSPER Act (H.R. 4508) preempting state laws related to student loan servicing. The preemption provisions upset the historical federal-state balance in financial regulation, wrongfully interfere with traditional state enforcement authority, and frustrate the ability of state regulators to protect student borrowers who rely on federal student loan programs.

About CSBS

CSBS is the nationwide organization of banking and financial regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. The mission of CSBS is to support the leadership role of state banking supervisors in advancing the state banking system; ensuring safety and soundness; promoting economic growth and consumer protection; and fostering innovative state regulation of the financial services industry.

State regulators charter and supervise 79 percent of all banks in the United States. In addition, state regulators license and supervise a variety of non-bank financial services providers, including student loan servicers. CSBS, on behalf of state regulators, also operates the Nationwide Multistate Licensing System (NMLS) to license and register those engaged in mortgage, money transmission, consumer finance, debt collection, and other non-bank financial services industries.

Preemption Runs Counter to Our Federalist Commitment to Local Consumer Protection

The federal government has historically deferred to the right of each state to order its own affairs and govern its own people through its traditional police powers, including protecting residents from unfair and deceptive debt servicing and collection practices.[2] In light of this historical deference, responsibility for regulating and supervising debt collectors – like other non-bank financial services -- has historically resided at the state level.

The licensing of financial services activities is best conducted primarily at the state level, because, as a function of the inherent police power of the states, the protection of the public welfare is primarily a matter of local concern.[3] Indeed, as a reflection of their greater accountability to local concerns, every state has enacted laws to protect residents from marketplace and financial abuses—and has developed the regulatory framework, legal tools, and expertise to prevent, deter, and respond to misconduct.

States have existing regulatory and oversight regimes for federal student loan servicers to ensure they do not engage in substandard servicing practices. Moreover, in responding to complaints, a growing number of states are enacting oversight of student loan servicers. This trend reflects the very best of our federalist structure and should not be overridden, but rather embraced, as Congress has done in the past. Federal and state policymakers all share the objective of ensuring student borrowers are protected from abuse and, moreover, this objective can be better achieved if states are not preempted from curbing abusive servicing practices.

States Fill the Gap in Federal Regulation and Oversight

As noted by the Government Accountability Office, the Department of Education ("Department") has failed to provide uniform and clear guidance from servicer to servicer regarding compliance expectations.[4] Moreover, even if robust and uniform regulation of servicers existed at the federal level, the Department's oversight framework is not an adequate means for ensuring servicer compliance, in part, because the Department's methodology for incentivizing higher quality servicing practices is in no way tied to student loan servicers complying with federal borrower and consumer protection requirements.

State regulators, with boots on the ground and experience supervising student loan servicers, can help fill the breach. State licensing and regulation of student loan servicers is beneficial to the Department's efforts in overseeing servicers by closing the gap between performance monitoring and compliance monitoring, thereby helping the Department ensure servicer compliance, providing the Department with a more comprehensive and accurate perspective on the quality of servicing practices, and ensuring borrower protections are respected in practice by bringing to bear greater resources and higher standards.

Conclusion

State regulators firmly oppose the provisions of the PROSPER Act preempting state servicing laws. For the reasons cited above, we respectfully request these provisions be removed when the bill moves to the House floor for consideration.

Sincerely,

John W. Ryan
President and CEO

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1 Sec. 494E. Contracts; Matching Program.

2 See Castro v. Collecto, Inc., 634 F.2d 779, 784-785 (5th Cir. 2011) ("states have traditionally governed matters regarding contracts and consumer protections"); General Motors Corp. v. Abrams, 897 F.2d 34, 41-42 (2d Cir. 1990) ("consumer protection law is a field traditional regulated by the states").

3 See Lewis v. BT Inv. Managers, 447 U.S. 27, 38 (1980) ("both as a matter of history and as a matter of present commercial reality, banking and related financial activities are of profound local concern. . . . [S]ound financial *institutions and honest financial practices are essential to the health of any State's economy and to the well-being of its people.")*

4 See U.S. Government Accountability Office, GAO-16-196T, 2015. "Federal Student Loans: Key Weaknesses Limit Education's Management of Contractors."