PROTECTING RHODE ISLAND’S STUDENT LOAN BORROWERS
A REPORT PRESENTED BY THE WORKGROUP ON STUDENT LOAN BORROWER PROTECTION

OFFICE OF THE POSTSECONDARY COMMISSIONER
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A NOTE FROM THE COMMISSIONER

When the Rhode Island Senate passed Senate Resolution 2982 (2018), asking the Office of the Postsecondary Commissioner to convene a workgroup to study how the State of Rhode Island could protect student loan borrowers, my team and I immediately acted. One of our key priorities for postsecondary education in Rhode Island is making college more affordable. With 1.5 trillion dollars of outstanding student loan debt nationally, and with 1 in 5 Rhode Islanders paying off student loans, student loan debt is a growing economic concern that requires the Ocean State to ensure that there is adequate information available, as well as policies and processes in place, to protect current and future student borrowers.

Protecting student loan borrowers is a timely issue. A change in direction at the U.S. Department of Education, which funds and oversees about 90% of the student loan market, coupled with the elimination of the Students and Young Consumers unit within the Consumer Financial Protection Bureau, has enhanced the need for states to ensure consumer rights are protected. Because there are no federal standards on student loan servicing, many student loan borrowers are left to navigate an unfamiliar market with limited protection. With a growing body of evidence that borrowers are frequently provided wrong or misleading information by loan servicers, or are pushed into costlier payment plans, our workgroup found that Rhode Island confronted a clear need for action.

After months of our own research and deliberation, as well as consultation with external experts, colleagues, and counterparts in other states, I present this report, which includes our recommendations on how Rhode Island can protect its student loan borrowers now and in the future. I want to thank the members of the workgroup who contributed their time and ideas, and who demonstrated a sincere effort to examine and evaluate the recommendations. We hope that you find this report useful, and we welcome your questions and comments.

Sincerely,

Dr. Brenda Dann-Messier
Commissioner of Postsecondary Education
EXECUTIVE SUMMARY

The Office of the Postsecondary Commissioner’s Workgroup on Student Loan Borrower Protections was charged with reviewing and recommending student loan borrower protections as outlined in Senate Resolution 2982 (2018). The rationale behind the formation of this group can be seen in the steadily rising level of student loan debt taken on by Rhode Islanders, which has consequences for their quality of life, ability to contribute to the economy, and their own financial futures. This summary presents background information on student loan debt and describes how other states have acted to offer student loan debt protections to their residents.

The Rising Student Loan Debt Problem

Student loan debt has grown rapidly over the past decade. The rising costs of college have led to student debt outpacing auto loans and credit card debt to become the second highest contributor to consumer debt, after mortgages.

- As of March 2018, 44 million Americans held student loan debt amounting to $1.52 trillion.¹
- In Rhode Island, 1 in 5 people have student loan debt.²
- Rhode Islanders carry $4.37 billion in outstanding federal and private loans, as of Q4 2016.³
- Of Rhode Island higher education graduates in 2016, 61% incurred loans, with an average total debt of $31,217.⁴ This makes the average level of student loan debt held by Rhode Islanders among the highest in the country.
- Approximately 16,704 Rhode Island senior citizens have student debt, up 57% since 2012.⁵
- 13% of Rhode Island consumers have severely delinquent student loan debt.⁵

The high burden of student debt is compounded for many people when they are denied the opportunity to participate in loan assistance programs. While most student loan borrowers are legally eligible for programs such as Income Driven Repayment and Public Service Loan Forgiveness, many are unable to access these programs because they are not made aware of their eligibility, are misled about the requirements to maintain eligibility, are victims of payment errors

¹ U.S. Federal Reserve G.19 Statistical Release, "Consumer Credit"
² Federal Reserve Bank of Philadelphia - Consumer Data Explorer
³ Federal Reserve Bank of New York: State Level Household Debt Statistics (launches excel)
⁴ The Institute for College Access and Success: Student Debt and the Class of 2016
⁵ Consumer Financial Protection Bureau: Older Consumer and Student Loan Debt by State
⁶ 2019 Federal Reserve Consumers & Community Context Report
made by their loan servicers, or are directed by their loan servicers into costlier repayment options.6

Although many borrowers will not experience repayment challenges, those who do struggle to repay their loans can significantly impact the larger community. Student loan debt affects home ownership rates, a family’s ability to set aside money for emergencies, and the ability to start a business or to save for retirement, and affects choices around marriage and family planning. The U.S. Federal Reserve has found that “...higher student loan debt early in life leads to a lower credit score later in life,” and “increased student loan debt causes borrowers to be more likely to default on their student loan debt, which has a major adverse effect on their credit scores, thereby impacting their ability to qualify for a mortgage...[and] access to and cost of nearly all kinds of credit, including auto loans and credit cards.” 7

The Federally Funded Student Loan Market

The U.S. federal government, through the U.S. Department of Education, is the largest provider of student loans and has put postsecondary study within the reach of millions. Additionally, most federal student loan borrowers are entitled to participate in various assistance programs such as Income Driven Repayment and Public Service Loan Forgiveness. Under Income Driven Repayment, monthly loan payments can be lowered to a set percentage of the borrower’s income. Under Public Service Loan Forgiveness, borrowers who are employed in public service professions like teaching and law enforcement and make their loan payments consistently for ten years can have their remaining loan balance forgiven at the end of the ten-year period.

To service federal loans, the U.S. Department of Education relies on contracts with private companies called loan servicers to manage borrowers’ accounts and handle related responsibilities, like sending bills, collecting and applying payments, managing enrollment in alternative repayment plans, and communicating directly with borrowers, including those in financial distress. There are no consistent, market-wide federal standards for student loan servicing. Servicers generally have discretion to determine policies related to many aspects of servicing operations. Currently, 3 of the 10 loan servicers working with the U.S. Department of

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7 Federal Reserve Board: Student Loans and Homeownership
Education – Navient, Nelnet, and AES / FedLoan Servicing – service 97% of outstanding student loans.⁸

There is growing evidence that federal student loan servicers are failing to adequately educate and assist borrowers in managing their student loan burdens. More than 99% of borrowers who apply for Public Service Loan Forgiveness have had their applications denied – often, because servicers failed to provide full and accurate information to borrowers about how to preserve their eligibility.⁹ A 2017 audit of Navient conducted by the Federal Student Office of the U.S. Department of Education, found that Navient offered costly loan forbearance options as the sole option for about 10 percent of student borrowers the company spoke to on the phone, when other repayment plans were available. Moreover, the audit states that “in some instances, interest was capitalized when another option may have prevented it.” ¹⁰ The lack of federal regulations in this industry puts borrowers – a captive market – at a disadvantage. As long as no meaningful federal measures exist to ensure that servicers will keep borrowers properly informed and will act responsibly, consumers must look to state law for protection.

New Administration Changes

Prior administrations of the U.S. Department of Education have worked in conjunction with the Consumer Financial Protection Bureau (CFPB) to enact administrative policy changes that were responsive to borrowers’ complaints about loan servicers. These policies aimed to ensure that borrowers had access to information needed to repay loans responsibly and avoid default. The policies included protections designed so borrowers were treated fairly even if they struggled to repay their loans, and contained mechanisms to resolve servicing errors expeditiously. Such policies provided assurances that student loan servicers were held accountable for their business practices.¹¹

Over the past two years, however, several of the policies that served to strengthen consumer protections and provide economic incentives for servicers to act in the interest of the consumer have been removed.¹² The U.S. Department of Education has stopped working with the Consumer Financial Protection Bureau and has said it will block the CFPB’s efforts to protect student loan

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⁸ “Big Four Student Loan Servicers Now Three” - Credible.com
¹⁰ US Education Department - Navient Use of Forbearance Site Visit Review
¹² DeVos Dials Back Consumer Protections for Student Loan Borrowers - Washington Post
borrowers, claiming that only the U.S. Department of Education has the authority to oversee Federal student loans. In May 2018, the CFPB’s Student and Young Consumers unit, which housed the federal Student Loan Ombudsman and conducted investigations into student loan servicers, was downgraded and folded into the Office of Financial Education.

State Policy Responses

In the absence of federal regulations, states have stepped up to regulate loan servicers and protect student loan borrowers. Currently, six states (CA, CT, IL, MD, VA, WA) and Washington, DC, have passed comprehensive legislation, and nine more states, including Rhode Island (CO, ME, MA, MN, MI, NJ, NM, NY, RI), have had similar legislation introduced in their 2018 legislative sessions. Though varied from state to state, the legislation usually contains the following elements:

1) set standards for student loan servicing and reporting requirements;
2) enact licensing requirements for loan servicers; and
3) establish a student loan ombudsperson to help borrowers understand their rights and resolve complaints; ensuring that the loan repayment process is built on fair, professional, and transparent standards.

These bills provided context and direction as the Rhode Island Workgroup on Student Loan Borrower Protections conducted its research and analysis.

In most cases where states have passed legislation to regulate the servicing of federal student loans, the servicing companies have responded with lawsuits claiming that states cannot enact such regulations due to federal preemption. While the arguments by the servicers vary, they generally contend that because the federal government selects the servicers of federal student loans, any actions by states to regulate those servicers are unconstitutional. At the time this report is being published, those lawsuits are ongoing. The decisions so far have generally been favorable to the states, with one exception. In Student Loan Servicing Alliance v. District of Columbia, the U.S. District Court overturned the ability of states to enact licensing regimes that would allow for loan servicers selected by the federal government to be banned from operating in a state. The decision was silent on the ability of states to otherwise regulate federal student loan servicers by enacting loan servicing standards or seeking financial penalties or restitution for misbehavior.
RECOMMENDATIONS

The following series of recommendations emerged from the workgroup’s assessment of the statutory and regulatory environment in Rhode Island, as well as from scrutiny of best practices in other states. These recommendations describe the components of a strong state statute aimed at providing clear standards for student loan servicing and enforcing consumer protections for Rhode Island’s current and future student loan borrowers.

There are two key differences between our recommendations and legislation from other states and from prior legislation introduced in Rhode Island. First, we recommend that the tasks of a student loan ombudsperson are absorbed into existing agencies rather than vested in a new standalone officer. The workgroup was able identify existing agency practices and services that could be adapted to aid student loan borrowers. This would make it possible to achieve the intended goals of proposed legislation, without the need to establish and fund a new full-time position. Second, we do not recommend including a licensing requirement that would likely be incompatible with the ruling in the Student Loan Servicing Alliance v. District of Columbia case, and instead we propose a registration system that is more likely to survive a potential legal challenge. The registration system would not permit the state to ban federal student loan servicers from operating within Rhode Island, but it would require them to meet certain obligations or face financial penalties.

The workgroup’s 8 recommendations are:

1. **Registration**: All student loan servicers operating in Rhode Island should be required to register with the Department of Business Regulation or face financial penalties. The Rhode Island Department of Business Regulation should serve as the primary entity that registers student loan servicers, collects registration fees, and maintains contact information for the registered servicers and other information deemed relevant by the Department.

2. **Standards**: Legislation should establish minimum standards for the servicing of student loans, including requirements for servicers to notify borrowers about the status of their loans, their progress toward repayment, and their eligibility for any and all loan assistance programs, including income-based repayment plans, loan deferments, and loan forgiveness programs. The legislation should forbid unfair and deceptive practices by servicers. The
legislation should also require servicers to maintain records of all communications with Rhode Island borrowers.

3. **Enforcement**: The Rhode Island Attorney General’s Office and the Rhode Island Department of Business Regulation should develop a system to investigate potential violations of the servicing standards, issue financial penalties for noncompliance, and seek financial restitution for borrowers.

4. **Borrower Assistance**: The Rhode Island Attorney General’s Office and the Rhode Island Department of Business Regulation should develop a system to collect and process borrower complaints, refer complaints for investigation, and offer assistance finding appropriate counselors to borrowers in distress.

5. **Borrower Assistance**: The Rhode Island Department of Business Regulation should collect registration fees into a restricted receipt account, the proceeds of which should be used for:
   a. educating student loan borrowers on their rights and responsibilities as borrowers, and on strategies for managing their student loans;
   b. building expertise on student lending within relevant state agencies; and
   c. executing a communications strategy to inform borrowers of where to bring complaints.

6. **Borrower Assistance**: The Rhode Island Office of the Postsecondary Commissioner and the Office of the General Treasurer should collaborate to build a website that will educate student loan borrowers about their rights and responsibilities as borrowers, and about strategies for managing their student loans. The website should be funded from the restricted receipt account.

7. **Oversight**: The Rhode Island Attorney General’s Office, Department of Business Regulation, Office of the General Treasurer, and the Office of the Postsecondary Commissioner should meet quarterly for one year after passage of legislation to ensure sound implementation. Each year thereafter, the group should meet annually to review data on consumer complaints and their resolutions, and evaluate the servicer registration process.
Cross-State Policy Approaches

The workgroup’s recommendations were informed by a cross-state policy analysis that considered the six states that have implemented related legislation to protect student loan borrowers and regulate student loan servicers. Among those states, their approaches most closely aligned on the issue of the licensing of student loan servicers. The largest differences in their approaches centered on the location of the ombudsperson. Through further investigation and discussion with state leaders in Connecticut and Illinois, members of the Rhode Island workgroup learned that the rationale for these differences often lay with existing practices.

For example, in Connecticut the licensing component was easy to implement within the state’s Department of Banking, as this entity already licenses a number of financial institutions and has not only the statutory authority, but also the personnel to handle audits and investigations related to licensing. In Illinois, the state’s Attorney General’s office was already taking complaints from student loan borrowers and had authority to intervene on behalf of a consumer based on that state’s Deceptive Trade Practices Act, which made that office a logical fit for the ombudsperson to reside.

Studying these differences in state approaches led our workgroup to review the related practices and statutory authority in Rhode Island. The workgroup contemplated how Rhode Island policy could be designed to complement existing structures within state government and adequately deliver on the intended outcome of the legislation to benefit Rhode Island’s student loan borrowers.
Rhode Island Legislative History

In the Rhode Island General Assembly, a Student Loan Borrower’s Bill of Rights has been introduced in the House of Representatives in each of the last three legislative sessions. The bill has been considered in the House Finance, Corporations, and Health, Education, and Welfare committees. The major difference across these bills as introduced concerned which state agency would be responsible for housing the student loan ombudsman.

2018
House Bill No. 7881
BY McNamara, Vella-Wilkinson, Bennett, Casimiro, Ackerman
ENTITLED, AN ACT RELATING TO EDUCATION -- THE STUDENT LOAN BILL OF RIGHTS
(Authorizes the creation of the position of student loan ombudsman within the office of the commissioner of postsecondary education.)
(LC4801/1)
02/28/2018 Introduced, referred to House Finance
05/11/2018 Scheduled for hearing and/or consideration (05/15/2018)
05/15/2018 Committee recommended measure be held for further study

2017
House Bill No. 6056
BY McNamara, Amore, Regunberg, Casimiro, Vella-Wilkinson
ENTITLED, AN ACT RELATING TO EDUCATION -- THE STUDENT LOAN BILL OF RIGHTS
(Authorizes the creation of the Student Loan Ombudsman within the Department of Business Regulation. The Ombudsman’s duties would be to assist student loan borrowers with issues pertaining to their loans.)
(LC2306/1)
03/31/2017 Introduced, referred to House Corporations
04/07/2017 Scheduled for hearing and/or consideration (04/11/2017)
04/11/2017 Committee recommended measure be held for further study

2016
House Bill No. 7081
BY McNamara, Maldonado, Corvese, Regunberg, Shekarchi
ENTITLED, AN ACT RELATING TO EDUCATION -- THE STUDENT LOAN BILL OF RIGHTS
(Authorizes the creation of the Student Loan Ombudsman within the Division of Higher Education Assistance. The Ombudsman’s duties would be to assist student loan borrowers with issues pertaining to their loans.)
(LC3031/1)
01/08/2016 Introduced, referred to House H.E.W.
02/26/2016 Scheduled for hearing and/or consideration (03/02/2016)
03/02/2016 Committee recommended measure be held for further study
## APPENDIX

### Workgroup Membership List

<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Representative Gregg Amore</td>
<td>Rhode Island House of Representatives</td>
</tr>
<tr>
<td>Sara Cabral</td>
<td>Rhode Island Department of Business Regulation</td>
</tr>
<tr>
<td>Representative Terri Cortvriend</td>
<td>Rhode Island House of Representatives</td>
</tr>
<tr>
<td>Commissioner Brenda Dann-Messier</td>
<td>Office of the Postsecondary Commissioner</td>
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<tr>
<td>Senator Louis DiPalma</td>
<td>Rhode Island Senate</td>
</tr>
<tr>
<td>Beth Dwyer</td>
<td>Rhode Island Department of Business Regulation</td>
</tr>
<tr>
<td>Dan Egan</td>
<td>RI Association of Independent Colleges &amp; Universities</td>
</tr>
<tr>
<td>Senator Dawn Euer</td>
<td>Rhode Island Senate</td>
</tr>
<tr>
<td>Abby Godino</td>
<td>Office of the Postsecondary Commissioner</td>
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<tr>
<td>Charles Kelly</td>
<td>Rhode Island Student Loan Authority</td>
</tr>
<tr>
<td>Treasurer Seth Magaziner</td>
<td>Office of the General Treasurer</td>
</tr>
<tr>
<td>David Marzilli</td>
<td>Office of the Attorney General</td>
</tr>
<tr>
<td>Senator Harold Metts</td>
<td>Rhode Island Senate</td>
</tr>
<tr>
<td>Tom Pearce</td>
<td>Office of the Postsecondary Commissioner</td>
</tr>
<tr>
<td>Kelly Rogers</td>
<td>Office of the General Treasurer</td>
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<tr>
<td>Charon Rose</td>
<td>Office of the General Treasurer</td>
</tr>
<tr>
<td>Noel Simpson</td>
<td>Rhode Island Student Loan Authority</td>
</tr>
<tr>
<td>Paula Szulc</td>
<td>Office of the Postsecondary Commissioner</td>
</tr>
</tbody>
</table>
Student Debt

RHODE ISLAND OFFICE OF THE POSTSECONDARY COMMISSIONER WORKING GROUP MEETING

9.18.18
The student debt problem

$1 \text{ trillion} \text{ in growth in a decade}
Market Overview
Market overview

Share of student loan market, in billions

- Perkins Loan, $7.6
- FFELP Loan, $295.0
- Private Loan, $113.0
- Direct Loan, $1,104.0
Key industry participants

Lending
- Department of Education
- Private

Servicing
- TIVAS
- NFPs
- In-house
- Third-party
## Key industry participants

<table>
<thead>
<tr>
<th>Servicing Volume as of 06/30/2016</th>
<th>Volume of Loans DL/PSL/FFEL</th>
<th>% of $1.44T Student Loan Market (% of Top 5 Companies)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PHEAA</td>
<td>$321,300,000,000</td>
<td>23.57% (29.31%)</td>
</tr>
<tr>
<td>Navient</td>
<td>$318,400,000,000</td>
<td>23.35% (29.05%)</td>
</tr>
<tr>
<td>Great Lakes</td>
<td>$225,000,000,000</td>
<td>16.50% (20.53%)</td>
</tr>
<tr>
<td>Nelnet</td>
<td>$192,200,000,000</td>
<td>14.10% (17.54%)</td>
</tr>
<tr>
<td>MOHELA</td>
<td>39,200,000,000</td>
<td>2.87% (3.58%)</td>
</tr>
<tr>
<td><strong>TOTAL (Top 5 companies)</strong></td>
<td><strong>$1,440,000,000,000</strong></td>
<td>Top 5 servicers handle 75%+ of all loans</td>
</tr>
</tbody>
</table>

($1,096,000,000,000)$
The student debt problem

Over the last ten years:

- 20 million more people took out student loans
- Borrower balances have increased by 300%
- Monthly payments have increased by 50%
- Student debt grew from 5% to 11% of household debt
# The student debt problem

<table>
<thead>
<tr>
<th>8 million</th>
<th>Federal student loan borrowers in default</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.5 million</td>
<td>Federal student loan borrowers in delinquency</td>
</tr>
<tr>
<td>4x</td>
<td>The default rate of African American borrowers compared to white borrowers</td>
</tr>
<tr>
<td>65,000</td>
<td>Student loan borrowers in poverty and subject to Social Security benefits offsets</td>
</tr>
</tbody>
</table>
Concentrated distress among certain borrowers

Recent analyses of Department of Education data shows:

- Women make up 50% of college students, but owe 2/3 of all outstanding student debt
- 10% of borrowers are receiving federal benefits, but not making student loan payments (indicating eligibility for IDR)
- Distress is pervasive among borrowers of color. Latino borrowers default at twice the rate of their white counterparts. African American borrowers with bachelor’s degrees default at four times the rate of their white counterparts.
- For-profit colleges are just one driver. 75% of borrowers who did not complete a for-profit program defaulted within 12 years of leaving school. Nearly half of all African American borrowers defaulted within 12 years of leaving school, including borrowers who attended public/private non-profit (not only a for-profit problem).
Borrower outcomes – Rhode Island

<table>
<thead>
<tr>
<th>$4.37 billion</th>
<th>Outstanding student debt in Rhode Island</th>
</tr>
</thead>
<tbody>
<tr>
<td>$31,217</td>
<td>Average debt at graduation for a Rhode Island borrower</td>
</tr>
<tr>
<td>1-in-5</td>
<td>Rhode Islanders with student debt</td>
</tr>
<tr>
<td>16,704</td>
<td>Rhode Island senior citizens with student loan debt</td>
</tr>
</tbody>
</table>
Student loan delinquency rates
RI borrower complaints

Over 180 complaints about student loans

“I began to repay my loan thinking I would eventually qualify for the Public Service Loan Forgiveness (PSLF) program. After working in a [school district] for 7 years and making 84 payments (out of 120 payments) needed for the PSLF Program, I was told that I was in the ‘wrong’ repayment plan the whole time, and they would not be able to count these payments towards the PSLF...”
RI borrower complaints

“Loan with Access Group that is serviced by XXXX. All accounts are paid timely, but the companies have misapplied payments and refuse to make correction. Proof of payment has been provided by mail and email multiple times. . . . I made my scheduled payment but received notice that payment was not received. Contacted the company and gave proof of payment. Within a week started receiving phone calls that the loan amount was due. . . . The problem now continues to happen every month. I have spoken with both companies. I have mailed them proof of payment. I have emailed representative copies of my bank statements and proof of payment to both companies. I have asked if there is anything I can do differently to help them. **They just keep misapplying payments and incorrectly claiming payment is due.** I still get a phone call nearly every week from the company and just received another notice of being delinquent with fees and late payment. Payments have been made timely and continue to be made timely.”
RI borrower complaints

“This account has been settled and now has a zero balance. The loan company still has not updated my credit report and is still showing that the loan is in a defaulted status.”
The role of the federal government
Federal laws

Higher Education Act
  - Right to income-driven repayment plan
  - Right to Public Service Loan Forgiveness

SCRA
FCRA
Military Lending Act
ECO
Gramm-Leach-Bliley Act
UDAAP
  - E.g., Right to effective choice in payment allocation
Federal Oversight

- Department of Education
  - Contracts
  - On-site reviews

- CFPB
  - Supervision
  - Enforcement

- FTC
  - Debt relief taskforce
  - Authority in FFELP market
Industry response to federal enforcement actions

There is no expectation that the servicer will ‘act in the interest of the consumer.’ - Navient’s motion to dismiss in CFPB v. Navient

Withholding discovery, citing Privacy Act
NYT – *The next financial calamity is coming...*
The role of states
Mortgage Licensing
Student loan servicer licensing

*Washington passed in 2018
Payday Licensing
Debt Collection Licensing
Student loan servicer licensing

*Washington passed in 2018
State law enforcement of consumer protection

____ v. Navient

- Washington
- Illinois
- California
- Mississippi

*Massachusetts v. PHEAA*

*Massachusetts v. ACS*
State approaches to student loan oversight

- Licensing
- Examinations
- Ombudsman
- Borrower Bill of Rights
Case Study - Connecticut

- An Act Concerning a Student Loan Bill of Rights

- Department of Banking
  - Licensing & fee structure (NMLS)
  - Budget-neutral approach
  - Unfunded Ombudsman

- PHEAA v. Connecticut
Case Study – District of Columbia

- Student Loan Borrower Bill of Rights

- Department of Insurance, Securities, and Banking
  - Licensing & fee structure
  - Budget-neutral approach
  - Imprecise drafting pitfalls

- SLSA v. DC
Case Study - California

- Student Loan Servicing Act
- Department of Business Oversight
  - Licensing & fee structure (NMLS)
  - Exam program
- Borrower Bill of Rights
Case Study - Virginia

- Split Ombuds/Servicing bills
- Ground-level support
  - SCHEV
  - Ombudsman
  - Local support for refi program
Other issues to consider

- Federal preemption of state oversight
  - Department of Education interpretation
  - State attorneys general response
  - Case law/court holdings
- Privacy Act
  - Supervision
  - Enforcement
- FTE Allowances
- Subject Matter Expertise
<table>
<thead>
<tr>
<th>State/Jurisdiction</th>
<th>Legislation Passed or Introduced as of May 2018</th>
<th>Effective Date</th>
<th>Entities Included</th>
<th>Ombudsman Office</th>
<th>Education Course</th>
<th>Licensing Agency</th>
<th>Licensing Exemptions</th>
<th>Licensing Registry</th>
<th>Fees</th>
<th>Expiration</th>
<th>Distinct Bill of Rights</th>
<th>Other Offices / Agencies</th>
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<tbody>
<tr>
<td>California</td>
<td>Student Loan Servicing Act</td>
<td>1/1/2008</td>
<td>Licensing, Reporting, Enforcement</td>
<td>Department of Business and Consumer Affairs</td>
<td>Student Loan Servicing</td>
<td>Department of Business and Consumer Affairs</td>
<td>- Loan servicer must have a valid business license.</td>
<td>NA</td>
<td>NA</td>
<td>Must be enforced</td>
<td>NA</td>
<td>NA</td>
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<td>Connecticut</td>
<td>Act Concerning Student Loan Bill of Rights</td>
<td>8/1/2003</td>
<td>Licensing, Reporting, Mediation, Ombudsman</td>
<td>Department of Community and Family Services</td>
<td>Student Loan Servicing</td>
<td>Department of Community and Family Services</td>
<td>- Loan servicer must have a valid business license.</td>
<td>NA</td>
<td>NA</td>
<td>Must be enforced</td>
<td>NA</td>
<td>NA</td>
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<tr>
<td>Florida</td>
<td>Student Loan Servicing/Collection Act</td>
<td>6/13/2003</td>
<td>Licensing, Reporting, Compliance, Ombudsman</td>
<td>Department of Financial Institution</td>
<td>Student Loan Servicing</td>
<td>Department of Financial Institution</td>
<td>- Loan servicer must have a valid business license.</td>
<td>NA</td>
<td>NA</td>
<td>Must be enforced</td>
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<td>NA</td>
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<td>Illinois</td>
<td>Student Loan Servicing/Collection Act</td>
<td>9/13/2003</td>
<td>Licensing, Reporting, Mediation, Compliance, Ombudsman</td>
<td>Department of Financial Institution</td>
<td>Student Loan Servicing</td>
<td>Department of Financial Institution</td>
<td>- Loan servicer must have a valid business license.</td>
<td>NA</td>
<td>NA</td>
<td>Must be enforced</td>
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<td>5/12/2005</td>
<td>Licensing, Reporting, Compliance, Ombudsman</td>
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<td>Student Loan Servicing</td>
<td>Department of Financial Institution</td>
<td>- Loan servicer must have a valid business license.</td>
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<td>Maine</td>
<td>Student Loan Servicing/Collection Act</td>
<td>10/1/2007</td>
<td>Licensing, Reporting, Compliance, Ombudsman</td>
<td>Department of Financial Institution</td>
<td>Student Loan Servicing</td>
<td>Department of Financial Institution</td>
<td>- Loan servicer must have a valid business license.</td>
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<td>Must be enforced</td>
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<td>Licensing, Reporting, Compliance, Ombudsman</td>
<td>Department of Community Services</td>
<td>Student Loan Servicing</td>
<td>Department of Community Services</td>
<td>- Loan servicer must have a valid business license.</td>
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## Ombudsperson Responsibilities – Cross-State Policy Analysis

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<td>Receive and Review Complaints</td>
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<td>Refer complaints</td>
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<td>x</td>
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<td>compile/analyze data on complaints</td>
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<td>Rights and Responsibilities</td>
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<td>Review loan history w/ consent</td>
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<td>Review and recommend legislation, etc.</td>
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<td>take action to assist borrowers</td>
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<td>take any other action</td>
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<td>disclose complaint data (ID bad SLS)</td>
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<td>Develop borrower bill of rights</td>
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<td>Examine SLS every 3 years (at cost to SLS)</td>
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<td>VA</td>
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</table>
### Additional Information on Issues Raised During September 2018 Borrower Protection Workgroup Meeting

#### Preemption Clause – Higher Education Act
- **Higher Education Act Express Preemption Clause (20 U.S.C. § 1098e)**
  - Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) [and 42 U.S.C. 2751 et seq.] shall not be subject to any disclosure requirements of any State law.

- **Department of Education’s Interpretation of Federal Preemption and State Regulation**
  - The Department’s view is “that State regulation of the servicing of Direct Loans impedes uniquely Federal interests, and that State regulation of the servicing of the FFEL Program is preempted to the extent that it undermines uniform administration of the program.”

#### Dodd-Frank – State Regulators’ Authority
- **Memo from the American Bar Association: State Regulators’ Dodd-Frank Enforcement Authority**
  - “Under Dodd-Frank Section 1042 (12 U.S.C. § 5552), a state attorney general or state regulator is authorized to bring a civil action to enforce provisions of Dodd-Frank Title 10 or regulations issued under it, including the Dodd-Frank prohibition of unfair, deceptive or abusive acts or practices (UDAAP)”

  - **Final Rules – CFPB Regulations Under Dodd-Frank Title 10**

- **R.I.G.L. § 6-13.1 Unfair Trade Practice and Consumer Protection Act**
  - Gives Rhode Islanders a private right of action in state courts if they are victims of unfair or deceptive acts or practices (UDAPs)

#### Informational Links
- **Mapping Student Debt Project** (referenced in CFPB Sept. 2018 slide deck)
- **Student Debt and the Class of 2016** & newly released data on **Class of 2017** (referenced in CFPB Sept. 2018 slide deck)
- **CFPB Complaint Database** (referenced in CFPB Sept. 2018 slide deck)
- **List of Servicers Licensed in CT**

#### Actions from Rhode Island
- **Letter to Secretary DeVos on state-level oversight, signed by 25 Attorneys General, including AG Kilmartin**
- **Letter from Treasurer Magaziner to SEC regarding shareholder proposal submitted to Navient for annual meeting**
Relevant Litigation

The table below shows a number of ongoing cases relevant to student loan borrowers, student loan servicers and state regulators. All but one are cases that have been brought against a loan servicer by a state Attorney General. Many of these cases make their claim on illegal, unfair and deceptive acts by student loan servicers, yet have broader implications for federal preemption and state authority. These cases are active and still moving through the courts, but it is worth noting that in 5 of these cases, the loan servicers made an unsuccessful motion to have the case dismissed on the basis of federal preemption.

Given the timeliness and relevancy of these cases to the charge of our workgroup, we will continue to monitor these cases.

<table>
<thead>
<tr>
<th>Litigation</th>
<th>Status Update</th>
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<tbody>
<tr>
<td>Illinois v. Navient</td>
<td>Judge denied Navient’s Motion to Dismiss</td>
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<tr>
<td>January 2017 – Circuit Court of Cook County, Illinois</td>
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<tr>
<td>Washington v. Navient</td>
<td>Judge denied Navient’s Motion to Dismiss</td>
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<tr>
<td>January 2017 – King County Superior Court</td>
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<tr>
<td>Consumer Financial Protection Bureau v. Navient</td>
<td>Judge denied Navient’s Motion to Dismiss</td>
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<tr>
<td>January 2017 – District Court for the Middle District of Pennsylvania</td>
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<tr>
<td>Massachusetts v. Pennsylvania Higher Education Assistance Agency (PHEAA)</td>
<td>Judge denied PHEAA’s Motion to Dismiss</td>
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<tr>
<td>August 2017 – Massachusetts Superior Court</td>
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<tr>
<td>Pennsylvania v. Navient</td>
<td>Judge denied Navient’s Motion to Dismiss</td>
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<tr>
<td>October 2017 – District Court for the Middle District of Pennsylvania</td>
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<tr>
<td>PA Higher Education Assistance Authority (PHEAA) v. CT Department of Banking</td>
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<tr>
<td>April 2018 – U.S. District Court for the District of Columbia</td>
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<tr>
<td>California v. Navient</td>
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<tr>
<td>June 2018 – Superior Court for the State of California</td>
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</table>
Q & A with Carmine Costa, Director of the Consumer Credit Division, CT Department of Banking

Q: Can you talk about the impetus of the student loan borrower protections work in Connecticut and where things are today?
A: This legislation, the first of its kind, was the invention of a legislator who is well versed in this consumer issue and worked hard to get a bill passed. The Department of Banking was not involved from the beginning or with the legislative process. Prior to the passing of the Student Loan Bill of Rights, the DBR took complaints and facilitated communication between borrowers and loan servicers, although had no real authority to regulate servicers. The licensing piece was relatively easy to implement through the National Mortgage Licensing System (NMLS); it just took time. Currently CT licenses about 39 servicers, including private, quasi-public and federal loan servicers. The biggest issue with the CT legislation is that there was no appropriate position for the ombudsperson and so that position remains unfilled. In CT, because of the work the DBR was already doing, the ombudsperson’s role primarily encompassed outreach and education.

Q: Can you talk about the fees? Were they designed to cover the FTE costs associated with the Ombudsman?
A: Currently, we collect licensing application and investigation fees, but it is not enough to cover the salary of the ombudsman. It would cover maybe 15 – 20% of a salary. A law was passed to collect assessment fees but our current Commissioner of Banking has decided against doing so since our department’s revenues get swept into the general fund and would not necessarily be allocated to FTEs or measures to protect borrowers.

Q: Does the CT Treasurer have a role in this work? How about the Attorney General?
A: The Treasurer does not have a role. In CT, the Attorney General provides legal counsel for all state agencies – so in that way they have had a role in this work. More recently, PHEAA, a loan servicer, sued Connecticut’s department of banking, our banking commissioner and the federal Department of Education and the Attorney General is representing us.

Q: What type of enforcement does the Department of Banking employ? What are the triggers that would initiate an action? Are there other consumer protections statutes that come into play?
A: The Department of Banking enforces compliance with the established rules and standards that govern the financial institutions that they license. A compliance violation would trigger an action that starts with negotiations to resolve the matter through a consent agreement but can ride to an administrative hearing resulting in a decision to either revoke or suspend the license. Regarding other statutes, the Attorney General could take action on violations through the Unfair and Deceptive Practices Act.

Q: How are complaints brought to the attention of the Department of Banking? Are investigators actively seeking out violations?
A: Complaints are brought directly to us by consumers. The Department of Banking looks to identify compliance in the initial examination of books and records, and any subsequent reviews, but does not actively seek out violations.
Q: Does the CT Student Loan Bill of Rights outline everything in statute, or has the Department of Business Regulations written administrative rules and regulations? What practices would you include if you had the opportunity?

A: The Department of Business regulations is following the language written in the statute, and not administrative rules or regulations. The state of California included a sensible provision to require servicers to maintain a portal that would allow borrowers to log in and see their entire account history online at any time. Beyond that, I would defer to the examiners regarding the most useful servicing standards to put in place.

Q: Does the CT Student Loan Bill of Rights or any statutes related to the Department of Banking mandate any mediation or intervention prior to a borrower defaulting, as is done with mortgages/foreclosures?

A: That’s a tough question – on the surface the answer is no. There is a spectrum of problems that borrowers face, and default is only one of them. Broadly, misinformation is the biggest problem for borrowers whether or not they are at risk of default.

Q: What are some examples of the misinformation given to borrowers?

A: For instance, there is the Public Student Loan Forgiveness Program which was created to forgive portions of debt of those who work for the public interest in governmental or non-profit entities. Of many thousands of people who were on track and applied for forgiveness, only a small handful of borrowers were found eligible. These borrowers could have had minor paperwork issues that weren’t communicated, could have had the wrong type of loan or repayment plan, could have had their employment certification denied, or simply got bad information from the customer service representative. In the end, there is not much transparency for borrowers to know the status of their account without relying on customer service representatives as they cannot see the full history of their account. From the servicers prospective, there is a financial incentive to keep borrowers in the system as long as possible, to keep collecting fees to increase their profits – all while keeping their investment in properly trained customer service staff low.

Q: Would you say the actions or misinformation from the servicers are intentional or negligent?

A: I can’t speculate, but I can say that so long as there are no established student loan servicing standards, servicers will continue to have discretion over their servicing practices regardless of the potential harm it causes borrowers.

Q: If you could change anything about the CT Student Loan Bill of Rights law or its implementation, what would you change?

A: Certainly an FTE appropriation for the ombudsperson would be beneficial. It would have helped to have gotten more staff training, particularly from the Consumer Financial Protection Bureau on understanding federal student loans.
OPC WORKGROUP ON PROTECTING STUDENT LOAN BORROWERS
Proposal for Consideration
December 6, 2018

PURPOSE STATEMENT
This proposal will describe in detail the 3 components of a strong legislative statute aimed at providing clear mandates for student loan servicers and accessible consumer protections for Rhode Island’s student loan borrowers. This proposal relies on the discussion conducted at the previous workgroup meetings, as well as lessons from other states leading this work.

LICENSE & SERVICING STANDARDS
Licensing student loan servicers in the way that other states have established, can be easily integrated into the work of the Department of Business Regulation’s Banking Division as outlined in R.I.G.L § 19-14 – Licensed Activities. Much of the other state’s licensing requirements and standards are already included in Chapter 19-14, and any additional requirements, servicing standards or definitions specific to student loan servicers would be added to its own section within the chapter.

Assessment of Fees
The assessment of fees for the purpose of licensing is outlined in R.I.G.L § 19-14. The most similar licensee currently, third-party servicers, pay $1,100 and additional examination fees. As of Dec 3, 2018 Connecticut reports is licensing 51 servicers, applying the application fee of $1,100 would generate $56,100.

Compliance & Examinations
When and if a licensee violates a standard in R.I.G.L § 19-14, that licensee would be subject to the current process conducted by the DBR as outlined in the state’s Administrative Procedures Act. The Department can leverage fines for violations, but cannot assess restitution on behalf of the consumer. The DBR can conduct examinations of licensees at any time but currently the examinations are not shared outside of the agency. The legislation should include authorization for the ombudsman to supply questions for any such examination as well as authorization for examination results to be shared with the Attorney General and Ombudsperson.

FOR CONSIDERATION:
- Are there other opportunities to collect fees, perhaps in a restricted account to pay for the ombudsperson?
- Do we agree that the legislation should include the authorization described above regarding examinations?
- Other considerations?
LEGAL ENFORCEMENT

A shared concern has emerged that strong student loan borrower protection legislation must give the state the opportunity to pursue legal action on behalf of an individual consumer. Since the Department of Business Regulation enforces compliance in regards to licensees, consumer protections for individuals would be addressed through the Attorney General’s office.

Unlike the Department of Business Regulations, the Attorney General is able to collect restitution on behalf of aggrieved individuals. This reinforces the need for language that authorizes the Attorney General’s office and Ombudsperson to view DBR’s examination records as it gives the attorney general the proper information to litigate a case.

R.I.G.L § 6-13.1-4 of the Deceptive Trade Practices Act limits that authority of the Attorney General to take action where the Department of Business or other regulatory body that enforces their own administrative compliance procedures. Language would be needed to direct the Ombudsperson to convene the Attorney General and Department of Business Regulation to decide the most effective recourse, in addition to language that defines the jurisdiction for the Attorney General to take action.

FOR CONSIDERATION:
Does this approach adequately address individual consumer protections?
Other considerations?

OMBUDSPERSON

The student loan ombudsperson is the cornerstone of a strong student loan borrower protections bill, as it is the connect between all parts of a strong statute. The ombudsperson plays 3 critical roles: the contact and mediator for consumer complaints, the director of borrower education and outreach, and the convener of enforcement agencies.

As the contact and mediator for consumer complaints, the ombudsperson works to resolve complaints of the consumer through mediation with the loan servicer. Being the single point for student loan borrower complaints, the ombudsperson would act as a registrar to collect data and analyze for trends that may require legislative, legal or administrative enforcement action.

The majority of consumer complaints arise on account of borrower confusion, so the ombudsperson must have the ability to educate borrowers both reactively to complaints, but also proactively through outreach and making borrowers aware of the resource.

Lastly, either as a reaction to a consumer complaint, upon observation of a troubling trend, or in light of national news of concern, the ombudsperson would convene the Department of Business Regulation and the Attorney General to discuss the appropriate route for enforcement.

FOR CONSIDERATION:
- Do we agree on the roles and duties outlined here? Are there additional roles to consider?
- Would the other components be effective without on ombudsperson, or without funding for one?
- Should we require the ombudsperson to design and implement a borrower’s education course as other states have done?
- Following the model of other states what are the pros and cons to housing the ombudsperson in each of these locations: Office of the Postsecondary Commissioner, Department of Business Regulation and the Attorney General’s office?
## OPC Workgroup on Protecting Student Loan Borrowers

### Meeting #1 – Current State of Student Loan Borrower Protections in Rhode Island and Nationally

**Location:** Office of the Postsecondary Commissioner – McKenna Conference Room 560 Jefferson Boulevard, Suite 100 Warwick, RI 02886

**Date:** Tuesday September 18, 2018

**Time:** 3:30 – 5:00 PM

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<td>3:30 – 4:00 PM</td>
<td>Welcome</td>
<td>Commissioner Brenda Dann-Messier</td>
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<td>Introductions</td>
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<td>• Resolution S 2982 and Charge</td>
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<td>• Workgroup Structure and Process</td>
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<td>National Background on Student Borrower Protections</td>
<td>Bonnie Latrelle, Consumer Finance Protection Bureau</td>
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<td>• National Student Loan Market Overview</td>
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<td>• Role for States in Federally Funded Market</td>
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<td>• Relevant Case Law</td>
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<td>4:35 – 4:50 PM</td>
<td>Discussion</td>
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<td>4:50 – 5:00 PM</td>
<td>Final Thoughts and Next Steps</td>
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### Upcoming Meetings

- **Oct. 10, 2018** - Rhode Island State Agency Roles and Responsibilities in Protecting Student Loan Borrowers
- **Nov. 15, 2018** - Review Options for Statutory & Regulatory Policy Changes in Rhode Island
- **Dec. 6, 2018** - Final Recommendations and Next Steps
Meeting 1 – September 18, 2018 – Notes

3:30 – 4:00 PM
Welcome & Introductions
In Attendance:
Representative Gregg Amore, Sara Cabral (DBR), Commissioner Brenda Dann-Messier (OPC), Beth Dwyer (DBR), Dan Egan (AICU), Abby Godino (OPC), Charlie Kelley, (RISLA), Treasurer Seth Magaziner, David Marzilli (AG), Senator Harold Metts, Bob Millerick (House Policy), Tom Pearce (OPC), Kelly Rogers (Treasurer’s office), Nicole Shaffer-Thomas (OPC), Noel Simpson (RISLA), and Paula Szulc (OPC).

Overview:
Resolution S 2982 and Charge:

- Asked to conduct a thorough review on how Rhode Island can protect Student Loan Borrowers.
- Make recommendations to Governor, Senate President, and House Speaker by January 15, 2019.
- Recommendations should consider the best agency to provide those protections, and the necessary statutory and regulatory amendments

Workgroup Structure and Process:
There will be 4 meetings, once per month until December. The topics are as follows:

1. Sept. 18, 2018 | Current State of Student Loan Borrowing in RI and Nationally
2. Oct. 10, 2018 | Agency Roles and Responsibilities in Protecting RI Student Loan Borrowers
3. Nov. 15, 2018 | Review Options for Statutory & Regulatory Changes
4. Dec. 6, 2018 | Final Recommendations and Next Steps
National Background on Student Borrower Protections

• National Student Loan Market Overview

The majority, about 90%, of student loans are federal loans originated through the U.S. Department of Education as authorized in the Higher Education Act. The Education Department oversees and contracts with private companies to perform duties known as loan servicing. Prior to the current administration, the U.S. Department of Education worked cooperatively with the Consumer Financial Protection Bureau to monitor consumer complaints and help resolve issues to improve loan servicing. The new administration has forgone that cooperation and has seemingly taken the side of loan servicers over borrowers. This has called on states to consider what they can do to protect student loan borrowers.

• Role for States in Federally Funded Market

CT was the first state to pass comprehensive student loan borrower bill of rights and licensing program. To date, three additional states (CA, IL, WA) and Washington, DC have also passed such legislation.

There are some lessons to be learned from these other states, for example:

• CT established an office of the student loan ombudsman, but legislation didn’t include funding, leaving the position unfilled.
• In Washington, DC, the first iteration of their Student Loan Bill of Rights was revised after a period of public comment. The first version of the DC bill required the ombudsman to also oversee housing foreclosures – which limited the pool of qualified applicants, leaving the position unfilled until that requirement was changed.
• In VA, they split their student loan bill of rights into two bills – ombudsman and licensing. The ombudsman bill passed, and we anticipate that licensing will be considered in future legislative sessions.

• For enforcement, the ombudsman is most effective when they can partner with Attorney General or other authority.

• Relevant Case Law

Many states have consumer protections laws modeled after the Federal Trade Commission Act but go further to give individuals a private right of action. There are several cases where states are asserting that loan servicers are in breach of those state consumer protection laws.

Under Dodd-Frank, federal law gives states the ability to enforce instances of unfair, deceptive, and abusive acts and practices (UDAAP). However, the Education Department is asserting that states’ enforcement and increased requirements of student loan servicers through licensing is preempted by the Higher Education Act.
### 4:35 – 4:50 PM

**Discussion**

Licensing, ombudsman, examinations, borrower bill of rights and borrower education were discussed in more detail.

**Q: Are there other analogies here? Like Fanny Mae & Freddie Mac?**

A: The most similar is a loan program through the Department of Agriculture and since there are so few of these loans, it’s not a great comparison.

**Q: How are states paying for ombudsman and licensing oversight?**

A: All of the states that have considered licensing have found it to be budget neutral. CA is bringing on FTEs that focus only on student loans. The big-4 servicers work with subsidiaries and so there are many more companies needing licenses – CT licenses about 50 companies.

**Q. What effect does the state licensing have on servicers? Is there any penalty if they do not comply with rules once they are licensed?**

A: It’s hard to say right now. There will be a preemption fight playing out in the courts. Leveraging fines and fees can be a deterrent even when the state can’t revoke the federal servicing contract. We should consider in our recommendation seeing that it is unclear whether licensing will hold legal ground.

### 4:50 – 5:00 PM

**Final Thoughts and Next Steps**

For the next meeting, come prepared to discuss the current roles and responsibilities of your agency related to consumer protection and what opportunity there is to be more inclusive of student loan borrower protections.
OPC WORKGROUP ON PROTECTING STUDENT LOAN BORROWERS
MEETING #2 - AGENCY ROLES AND RESPONSIBILITIES IN PROTECTING RI STUDENT LOAN BORROWERS

| Location:          | Office of the Postsecondary Commissioner – McKenna Conference Room  
560 Jefferson Boulevard, Suite 100, Warwick, RI 02886 |
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| 3:30 - 3:50 PM | **Welcome & Introductions**  
- Review consensus from Meeting 1  
- Review information on issues raised during Meeting 1 |
| 3:50 - 4:00 PM | **Review Cross-State Policy Analysis**                                       |
| 4:00 - 4:25 PM | **Current Agency Responsibilities**  
- Review existing consumer protections responsibilities and structures  
  - Office of the Attorney General  
  - Department of Business Regulation  
  - Office of the General Treasurer  
  - Office of the Postsecondary Commissioner  
  - Rhode Island Student Loan Authority |
| 4:25 - 4:50 PM | **Discuss Proposal for Moving Forward**  
- Identify appropriate agency(ies) for implementation  
- Identify areas for further research |
| 4:50 - 5:00 PM | **Points of Consensus and Next Steps**                                      |

**Upcoming Meetings**

- Nov. 15, 2018 - Review Options for Statutory & Regulatory Policy Changes In Rhode Island  
- Dec. 6, 2018 - Final Recommendations and Next Steps
3:30 – 3:50 PM  Welcome & Introductions

In Attendance:  Sara Cabral (DEPARTMENT OF BUSINESS REGULATION), Commissioner Brenda Dann-Messier (OPC), Tim DelGiudice (Council on Postsecondary Education), Senator Louis DiPalma, Dan Egan (AICU), Senator Dawn Euer, Abby Godino (OPC), Charlie Kelley, (RISLA), David Marzilli (AG), Senator Harold Metts, Tom Pearce (OPC), Kelly Rogers (Treasurer’s Office), Charon Rose (Treasurer’s Office), Nicole Shaffer-Thomas (OPC), Noel Simpson (RISLA), and Paula Szulc (OPC).

Observers:  Kate Bramson (Senate Policy), Kelly Carpenter (Senate Fiscal), Bob Millerick (House Policy)

Review Consensus from Meeting 1
Commissioner Dann-Messier guided a discussion around potential points of consensus that emerged from the first workgroup meeting, as a way to frame the discussion and direction of future meetings. Workgroup members agreed that their mere presence at the meeting did not reflect assent or agreement to emerging areas of consensus, nor was an official vote taken on the points of consensus that were identified.

Potential areas of consensus:

- The state has a role in protecting student loan borrowers in the absence of federal oversight and regulation of federal loan servicers.

- The policy solutions discussed at the first meeting, which included establishing the office of the student loan ombudsperson; the licensure of student loan servicers; establishing standards for federal loan servicing, and a focus on borrower education are reasonable options to present in our final recommendation

- To be impactful, the state must have aggressive means of legal enforcement and/or deterrence through civil penalties.
• To be impactful, this legislation must be accompanied by an FTE with salary and benefits for the role of the Ombudsperson.

• Monitoring active litigation playing out in courts involving preemption, states’ rights and Dodd-Frank/UDAAP will be important to determine the role of the state.
  
  o Senator DiPalma raised a question on this last point of consensus. David Marzilli, from the Attorney General’s office offered more information on federal pre-emption:
    
    o Federal preemption says states cannot pass laws that infringe on federal laws made legally through the Constitution. There are two types of preemption: express and implied. Express preemption occurs when a federal law clearly states that it is intended to preempt state law. Implied preemption occurs when a court decides that federal law preempts state law, even when not stated explicitly.
    
    o On the topic of federal law and borrower protections, courts are looking at implied preemption, of which there are two types: field and conflict preemption.
      
      ▪ Field preemption occurs when the federal law is intended to entirely occupy a field, like Federal Aviation Standards.
      
      ▪ Conflict preemption occurs when it would be impossible to comply with both state and federal law, so the Federal law supersedes. It can also occur when a state law interferes with the goals of a federal law, as we often see, for example in the borrower’s protection work, when states try to fill in open gaps within federal law.
    
    o Conflict preemption is very unclear. The other, express and field preemption, are more straightforward and easier to apply. With conflict preemption there is always a potential argument that a state is making a law against the spirit of the law of the land.

Our understanding of active litigation on this matter, tends to side with the states and not the student loan servicers. Previously, as documented in a 2016 letter to the state of Maryland, the US Department of Education was allowing states to enact supplemental consumer protection policy. That has been backtracked by the new administration. With no certainly on federal preemption as of yet, it was suggested that we consider this another research area for this workgroup.
Review information on issues raised during Meeting 1
The group reviewed the document that contained source information on pending litigation, the Higher Education Act and preemption clause, the Dodd-Frank Act and state regulator’s authority, the Privacy Act and loan service information sharing, and recent actions taken by the Rhode Island Attorney General and Treasurer.

A brief discussion concluded with an understanding that until courts act, it will be unclear where the state can operate under each federal law mentioned above.

3:50 – 4:00 PM
Review Cross-State Policy Analysis
The group reviewed the policy analysis on the 6 other states that have passed student loan borrower protections laws. The majority of these states establish an ombudsperson; what varies is the location of the office. Two states (IL, WA) place the office within the Attorney General, three others (CT, MD, DC) place it within the office of Business Regulation, and one state (VA) has placed the ombudsperson within the Office of Higher Education. This has been proposed in RI too.

The question was raised: If ombudsperson is a banking role, why would the office be in higher education? It was brought up that since these types of laws are very new across the country, that Rhode Island’s solution is likely to be unique. A concern emerged that if we blaze a new path and don’t follow the lead that other states have created, Rhode Island may become a target for legal action. It was observed, too, that without knowing more about the role of the ombudsperson, it would be hard to determine in which office it fits best.

Each state also includes some provision for licensing loan servicers, particularly with application, investigation and licensing fees. A volume-based approach has been adopted, too, in DC, where servicers are charged 50 cents per borrower served. Virginia and DC also request surety bonds of $50,000 for each operating location not to exceed $500,000. Surety bonds and other civil penalties are ways the state can ensure compliance by enforcing consequences.

4:00 – 4:25 PM
Current Agency Responsibilities
• Review existing consumer protections responsibilities and structures
  • Office of the Attorney General: Currently has a consumer protection office located at the new building in Cranston. There is also a walk-up window to accept consumer complaints. The consumer protection division has a mediation process and also takes a limited number of cases. The AG’s office often participates in multi-state cases and is accustomed to sharing resources and information to thwart the
violations of consumer protection. The office has limited experience with loan servicers, but participated in a lawsuit where a for-profit college was trying to become a nonprofit which is controversial. With the pending election and leadership change, it can’t be said what the exact role of the AG’s office is at this time.

- **Department of Business Regulation**: Currently the Department of Business Regulation Banking Division participates in the National System of Mortgage Licensing to process and monitor various banking and financial licenses. They can easily add another type of license, such as one for student loan servicers. The Department of Business Regulation handles consumer complaints related to the industries they oversee. While licensing would be an easy lift, with only 12 employees, taking on the ombudsperson role would be difficult for us given the breadth of activities uncharacteristic of the office. The Banking Division does not have any attorneys on staff, but relies on the Department of Business Regulation Legal Division for the <20 violations they take action on per year.

- **Office of the General Treasurer**: There are 4 areas where the Treasury operates regarding financial empowerment/college savings. First is management and oversight of the CollegeBound Savings account. Second, is management and oversight over the state’s pension fund. The Treasurer has become more active in voting shares at annual shareholder meetings and shareholder activism and has introduced regulations at Navient’s annual meeting trying talk about this very issue. The third area is the Treasurer serves as a board member on RISLA’s board providing governance and oversight on their student loan portfolio. Lastly, the Treasurer convenes a roundtable and is involved in ongoing financial empowerment work. The Treasurer does not have investigatory authority, but is happy to weigh in on the drafting of legislation and identifying good policy.

- **Office of the Postsecondary Commissioner**: For background, the OPC is governed by the Council on Postsecondary Education, works closely with the public institutions of higher education, and has oversight over proprietary schools in Rhode Island. The OPC is focused on ensuring student protections are clearly represented in Council and institution policies. What makes OPC a good fit for the Ombudsman position is its governance structure, and its proximity to institutions of higher education and various postsecondary stakeholders.

- **Rhode Island Student Loan Authority**: RISLA for the last 20 years has been running college planning centers in Rhode Island. To date, over 16,000 people had come for assistance to better understand their options. They have begun working with the state’s largest non-profits to educate employees on Federal
Student Loan Forgiveness programs. They internally service non-federal loans with low default rate around 2%. They work with students on financial literacy; providing entrance counseling so student don’t over borrow; and exit counseling to make sure students know their repayment options. RISLA does not service or originate loans that are involved in the large federal servicers. RISLA can be of value in educating borrowers, preferably before they take out loans and for people who leave school without getting their degree and need help with repayment.

There was discussion on helping aging parents who either have student loan debt of their own or of a dependent. Also discussed was special attention to black students and other students of color struggling with student loan debt at disproportionately high rates.

4:25– 4:50 PM  Discuss Proposal for Moving Forward (Matrix Activity)
Each member of the group was presented with a blank matrix to write in the appropriate agency(ies) to house the various roles, and ideas related to the legislation discussed. With many aspects of the legislation needing more in-depth discussion, the activity served as an anonymous check-in to build consensus. A summary of the results will be presented at the next meeting for discussion

Identify areas for further research and discussion
Identified as areas for further research were:
• Specifics around role of Ombudsman
• Continued research and monitoring around legal implications
• Identifying appropriate way to ensure cross-communication and collaboration, especially if roles and responsibilities are dispersed among various offices and departments.
• Hearing from states who have enacted borrower protections on their insights and experience

4:50 – 5:00 PM  Points of Consensus and Next Steps
Meeting concluded at 5:00 PM without time to establish points of consensus.
**OPC WORKGROUP ON PROTECTING STUDENT LOAN BORROWERS**
**MEETING #3 – REVIEW OPTIONS FOR STATUTORY & REGULATORY POLICY CHANGES IN RHODE ISLAND**
**UPDATED 11.15.2018**

**Location:**
Office of the Postsecondary Commissioner – McKenna Conference Room
560 Jefferson Boulevard, Suite 100, Warwick, RI 02886
Join by phone: 1-888-726-2010 Passcode: 449074

**Date:**
Thursday November 15, 2018

**Time:**
3:30 - 5:00 PM

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<th>Time</th>
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<tr>
<td>3:30 - 3:40 PM</td>
<td>Welcome, Introductions, Update</td>
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<td></td>
<td>• Brief review of last meeting</td>
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<td>• New timeline for final report</td>
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<td>3:40 - 3:55 PM</td>
<td>Q &amp; A Conference Call with Carmine Costa</td>
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<td>Director of Consumer Credit Division, Connecticut Department of Banking</td>
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<td>3:55 - 4:25 PM</td>
<td>Discussion</td>
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<td>• Assessment on Progress Made, Current Thinking, and Relevant Updates</td>
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<tr>
<td>4:25 - 4:50 PM</td>
<td>Discussion</td>
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<td>• Outline Desired Goals and Outcomes</td>
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<td>• Identify Research Areas for More Exploration</td>
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<td>• Direction Setting for December and January</td>
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<td>4:50 - 5:00 PM</td>
<td>Wrap up and Next Steps</td>
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**Final Meeting:**
Dec. 6, 2018 - Final Recommendations and Next Steps  *(Discuss cancelling or holding for optional meeting)*
Reschedule Final Meeting for January
### 3:30 – 3:40 PM

**Welcome, Introductions, Update**

**In Attendance:** Kelsey Baxter (RI AICU), Sara Cabral (DEPARTMENT OF BUSINESS REGULATION), Commissioner Brenda Dann-Messier, Senator Dawn Euer, Abby Godino (OPC), David Marzilli (AG), Senator Harold Metts, Treasurer Seth Magaziner, Bob Millerick (House Policy), Chad Pastorius (RISLA), Kelly Rogers (Treasurer’s office), Charon Rose (Treasurer’s office), and Paula Szulc (OPC).

**Observing:** Kate Bramson (Senate Policy), Kelly Carpenter (Senate Fiscal)

Commissioner Dann-Messier welcomed everyone to the meeting and announced that, in consultation with the Senate, OPC has decided to extend the workgroup’s reporting deadline to the end of January. The extension was made in the interest of developing the strongest proposal for the workgroup’s collective efforts, the state of Rhode Island, and student loan borrowers. The extension will allow us to hold an additional meeting to analyze all the information that has been compiled and discussed, and to inspect in-depth several strong cross-state examples that can inform our recommendation for our state.

Treasurer Magaziner offered welcome remarks and stated that he is encouraged to see strong alignment around the table, while emphasizing the need for a strong means of enforcement.

### 3:40 – 3:55 PM

**Q & A Conference Call with Carmine Costa**

**Director of Consumer Credit Division, Connecticut Department of Banking**

**Q:** Can you talk about the impetus of the student loan borrower protections work in Connecticut and where things are today?

**A:** This legislation, the first of its kind, was the invention of a legislator who is well versed in this consumer issue and worked hard to get a bill passed. The Department of Banking was not involved from the beginning or with the legislative process.
Prior to the passing of the Student Loan Bill of Rights, the Department of Business Regulation took complaints and facilitated communication between borrowers and loan servicers, although had no real authority to regulate servicers. The licensing piece was relatively easy to implement through the National Mortgage Licensing System (NMLS); it just took time. Currently CT licenses about 39 servicers, including private, quasi-public, and federal loan servicers.

The biggest issue with the CT legislation is that there was no appropriation for the ombudsperson and so that position remains unfilled. In CT, because of the work the Department of Business Regulation was already doing, the ombudsperson’s role primarily encompassed outreach and education.

**Q: Can you talk about the fees? Were they designed to cover the FTE costs associated with the Ombudsman?**

A: Currently, we collect licensing application and investigation fees, but it is not enough to cover the salary of the ombudsperson. It would cover maybe 15 – 20% of a salary. A law was passed to collect assessment fees but our current Commissioner of Banking has decided against doing so since our department’s revenues get swept into the general fund and would not necessarily be allocated to FTEs or measures to protect borrowers.

**Q: Does the CT Treasurer have a role in this work? How about the Attorney General?**

A: The Treasurer does not have a role. In CT, the Attorney General provides legal counsel for all state agencies – so in that way they have had a role in this work. More recently, PHEAA, a loan servicer, sued Connecticut’s department of banking, our banking commissioner, and the federal Department of Education, and the CT Attorney General is representing us.

**Q: What type of enforcement does the Department of Banking employ? What are the triggers that would initiate an action? Are there other consumer protections statutes that come into play?**

A: The Department of Banking enforces compliance with the established rules and standards that govern the financial institutions that they license. A compliance violation would trigger an action that starts with negotiations to resolve the matter through a consent agreement but can rise to an administrative hearing resulting in a decision to either revoke or suspend the license. Regarding other statutes, the Attorney General could take action on violations through the Unfair and Deceptive Practices Act.

**Q: How are complaints brought to the attention of the Department of Banking? Are investigators actively seeking out violations?**

A: Complaints are brought directly to us by consumers. The Department of Banking looks to identify compliance in the initial examination of books and records, and any subsequent reviews, but does not actively seek out violations.
Q: Does the CT Student Loan Bill of Rights outline everything in statute, or has the Department of Business Regulations written administrative rules and regulations? What practices would you include if you had the opportunity?
A: The Department of Business Regulations is following the language written in the statute, and not administrative rules or regulations. The state of California included a sensible provision to require servicers to maintain a portal that would allow borrowers to log in and see their entire account history online at any time. Beyond that, I would defer to the examiners regarding the most useful servicing standards to put in place.

Q: Does the CT Student Loan Bill of Rights or any statutes related to the Department of Banking mandate any mediation or intervention prior to a borrower defaulting, as is done with mortgages/foreclosures?
A: That’s a tough question – on the surface the answer is no. There is a spectrum of problems that borrowers face, and default is only one of them. Broadly, misinformation is the biggest problem for borrowers whether or not they are at risk of default.

Q: What are some examples of the misinformation given to borrowers?
A: For instance, there is the Public Student Loan Forgiveness Program which was created to forgive portions of debt of those who work for the public interest in governmental or non-profit entities. Of many thousands of people who were on track and applied for forgiveness, only a small handful of borrowers were found eligible. These borrowers could have had minor paperwork issues that weren’t communicated, could have had the wrong type of loan or repayment plan, could have had their employment certification denied, or simply got bad information from the customer service representative. In the end, there is not much transparency for borrowers to know the status of their account without relying on customer service representatives as they cannot see the full history of their account. From the servicers prospective, there is a financial incentive to keep borrowers in the system as long as possible, to keep collecting fees to increase their profits – all while keeping their investment in properly trained customer service staff low.

Q: Would you say the actions or misinformation from the servicers are intentional or negligent?
A: I can’t speculate, but I can say that so long as there are no established student loan servicing standards, servicers will continue to have discretion over their servicing practices regardless of the potential harm it causes borrowers.

Q: If you could change anything about the CT Student Loan Bill of Rights law or its implementation, what would you change?
A: Certainly an FTE appropriation for the ombudsperson would be beneficial. It would have helped to have gotten more staff training, particularly from the Consumer Financial Protection Bureau on understanding federal student loans.
Discussion

• Assessment on Progress Made, Current Thinking, and Relevant Updates
• Outline Desired Goals and Outcomes
• Identify Research Areas for More Exploration

After hearing from Carmine Costa, the Commissioner asked Sara Cabral of the Department of Business Regulation to talk about how Rhode Island’s agency compares to its Connecticut counterpart. Ms. Cabral indicated that the Rhode Island Department of Business Regulation is set up in the same manner as Connecticut and is similarly responsible for oversight of all financial services like banks, credit unions, debt collectors and more. The RI Department of Business Regulation employs the same methods of review and examination, as well as the same hearing and settlement processes for violations, as Connecticut. Regarding the frequency of examinations of financial services, the Department of Business Regulation conducts more depository examinations than licensing examinations because of the greater risk associated with depositors. Like CT, the RI Department of Business Regulation revenues collected from settlements and fees from are swept into general revenue.

Before doing a group check in with member of the workgroup, updates were discussed from individual research. The group learned that:

• Maryland and Washington DC have recently transitioned existing FTEs to take on the role of the ombudsperson, primarily for education and outreach.
• Illinois has located its ombudsperson in its Attorney General’s office, which already handles enforcement of consumer complaints regarding loan servicers, due to existing statute.

Comments from Group Check-In on Desired Goals, Outcomes and Areas for Research:

• Workgroup should not lose focus on servicer’s responsibilities to educate borrowers.
• Servicers’ responsibilities should be clearly laid out in the statute, including explicit servicing standards that protect consumers.
• Identify from the existing borrower protections laws which states have had the most success taking on servicers and defending borrowers.
• Review RI’s current consumer protections laws and consider a discrete statute regarding servicers.
- Include in the drafting of the statute a contempt provision or administrative order to assess a civil penalty.
- Define enforcement jurisdictions in order to be proactive for consumer protections infractions and reactive for compliance violations.
- Reconcile the flow of complaints and jurisdiction of enforcement, especially to protect individuals.
- Identify ways we can share resources among partner states. For example, the Conference of State Bank Supervisors, the nationwide trade organization for bank supervisors, has a multi-state examination committee that schedules collaborative examinations of larger financial institutions.
- Consider time and costs associated with servicer examinations. A thorough audit could take 2 weeks, and could require travel and lodging. Student loan servicers are not yet scheduled as a part of the Conference of State Bank Supervisors’ multi-state examination committee, so we'll need to identify our own opportunities for collaborative examinations or other processes.
- Conceptualize in a tangible manner the role and duties of an ombudsperson – and identify the office in which it will be best situated based on the entire scope of duties. How do we determine and measure the success of an ombudsperson?
- Identify the number of complaints that have been registered from Rhode Island through Consumer Finance Protection Bureau, the Attorney General’s office, and/or the Department of Business Regulation.

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<td><strong>Direction Setting for December and January</strong></td>
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<tr>
<td>It was decided to keep the December 6th meeting on the books to address the outstanding questions and ideas outlined in the group check-in, and also to get a better handle on the statutory language coming from other states.</td>
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<td>Sara Cabral (DEPARTMENT OF BUSINESS REGULATION), David Marzilli (AG), and Abby Godino (OPC) will work together to comb through the various statutes to prepare for the December meeting. Abby will send out some options to schedule January meeting with notes.</td>
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**OPC WORKGROUP ON PROTECTING STUDENT LOAN BORROWERS**

**MEETING #4 – REVIEW OPTIONS FOR STATUTORY & REGULATORY POLICY OPTIONS**

| Location: | Office of the Postsecondary Commissioner – McKenna Conference Room  
560 Jefferson Boulevard, Suite 100 Warwick, RI 02886 |
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<tr>
<td>Date:</td>
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<tr>
<th>Time</th>
<th>Agenda Item</th>
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| 3:30 – 3:40 PM | Welcome & Introductions  
• Brief review of last meeting |
| 3:40 – 4:30 PM | Statute and Proposal Review & Discussion  
• Ombudsman Role  
• Licensing, Servicing Requirements, Fees & Compliance  
• Enforcement  
• Other Considerations |
| 4:30 – 4:40 PM | Establishing Consensus |
| 4:40 – 4:50 PM | Review Draft Outline of Report  
• Additions or Revisions |
| 4:50 – 5:00 PM | Wrap up and Next Steps |

**Final Meeting:**

Meeting 4 – December 6, 2018 – Notes

3:30 – 3:40 PM
**Welcome & Introductions**
- Brief review of last meeting

**In Attendance:** Representative Gregg Amore, Representative-Elect Terri Cortvriend, Amy Crane (Treasurer’s Office), Commissioner Brenda Dann-Messier (OPC), Beth Dwyer (DBR), Dan Egan (AICU), Senator Dawn Euer, Abby Godino (OPC), Charles Kelley (RISLA), David Marzilli (AG), Bob Millerick (House Policy), Kelly Rogers (Treasurer’s Office), Charon Rose (Treasurer’s Office), Noel Simpson (RISLA) and Paula Szulc (OPC)

**Observing:** Kelly Carpenter (Senate Fiscal), Karyn Lowe (Senate Policy)

Commissioner Dann-Messier welcomed everyone to the meeting and reminded the group that an extension from the Senate gives us until the end of January to submit our final report. The Commissioner offered an overview of the last meeting, and thanked David, Sara and Beth for helping Abby to review the language in various state platforms and come up with a policy proposal for the workgroup’s discussion.

3:40 – 4:30 PM
**Statute and Proposal Review & Discussion**
- Licensing, Servicing Requirements, Fees & Compliance

Beth Dwyer started with an overview of the current state statutes for the licensure of financial entities. Beth and Sara found, while reviewing the example statutes, that much of the licensing standards language mimics what already exists in R.I.G.L § 19-14 – Licensed Activities. Any additional requirements, servicing standards or definitions specific to student loan servicers would be added to its own section titled “Student Loan Servicers” within the chapter.

Regarding fees, the assessment of fees for the purpose of licensing is outlined in R.I.G.L § 19-14. The most similar licensee currently, third-party servicers, pay $1,100 and additional examination fees. This fee has not been adjusted in about 5 years. As of Dec 3, 2018 Connecticut reports is licensing 51 servicers, applying the application fee of $1,100 would generate $56,100.

The legislature would set the fees when considering this bill. The workgroup could recommend that the fees
go to a restricted receipt account for the purpose of funding an ombudsperson, but again, that would be up to the legislature.

Regarding compliance with the licensing requirements, the Department of Business Regulations follows the Administrative Procedures Act to enforce administrative actions.

It was asked: Has there ever been a case where the DBR conducts multi-state examinations?

- Enforcement
- Ombudsman Role

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<td>4:30 – 4:40 PM</td>
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