

AFT Student Debt Agenda

Building on significant success passing student debt legislation many states in 2019, state affiliates have many options and opportunities to move state legislation to address the growing national student debt crisis. Several policy resources ([NSCL](#) on student loans and debt, [NCSL](#) on free tuition programs) provide overviews of the issues and legislative remedies and may be a resource for states looking for legislation to address the student debt crisis.

The greatest state legislative momentum on student debt has been in loan servicer regulation, with 12 states already having passed state licensure of student loan servicers, and reducing license suspensions due to default, where the tide has turned significantly since 2017 and all but 5 states have passed legislation eliminating licensure suspensions. Other important offensive issues include mandating PSLF notification for public service qualifying employers and expanding PSLF access/eligibility to contingent faculty. One important defensive battle we want to warn affiliates about relates to Income Share Agreements (ISAs): the private equity industry is pushing for state regulation to legitimize and grow ISAs as an industry; this is dangerous and should be opposed wherever it crops up.

Loan Servicer Regulation

Working with the Student Borrower Protection Center, we want to support states' efforts to strengthen their regulatory oversight capacity for student loan servicers (like Navient), ensuring that they are licensed and regulated just like other financial services providers. Licensing fees pay for the state's increased regulatory oversight and staffing, including but not limited to ombudsman positions where they exist. In prior cycles, several states created student loan ombudsman positions. The effectiveness of those positions depends entirely on who fills them, leading SBPC and other advocates to shift focus away from ombudsman positions to winning loan servicer licensing as a first step in as many states as possible. To date, 12 states have passed legislation requiring loan servicers to obtain state licensure, submitting them to state consumer protection regulation.

The most ambitious state legislation regulating servicers is CA's AB 376, which would expand the state's regulatory authority and give student loan borrowers a private right of action to sue servicers engaged in misconduct. Given the dismissal of CA borrowers' claims in *Hyland v. Navient*, this legislation is important and timely. CA AB 376 garnered significant, broad support, but was made a 2-year bill at the end of session. CFT plans to add its name to the sponsor list for AB 376 moving into 2020. The successful passage of AB 376 would set a new logical step to improve upon recently enacted state servicer licensing already passed in more than 12 states. The following states passed new or improved servicer licensing legislation in 2019:

- Colorado, [SB2](#)
- Maryland, [HB0594](#)
- Nevada [AB383](#) Ombudsman only
- New Jersey, [S1149/A455](#)
- New York, [S01508C](#) - Executive Budget

- Rhode Island [SB737](#)
- Washington, [SB6029](#)

States that introduced but did not pass servicer licensing legislation in 2019 include New Mexico [HB172](#), Oregon [HB2588](#), Pennsylvania [SB400](#), and Virginia [SB1112](#). Oregon and New Mexico both intend to reintroduce this legislation in 2020, and two AFT affiliates in OR (AFT OR, OFNHP) already plan to endorse it.

Expanding Public Service Loan Forgiveness Eligibility

Contingent faculty in CA and likely other states are routinely excluded from the PSLF program because of the difficulty in getting their hours counted properly to reach the required 30 hours per week threshold. Specifically, contingent faculty have only been allowed to count instructional or classroom hours toward their hours worked for PSLF eligibility, and not count prep time, office hours, grading or any other non-instructional time. Higher ed institutions resist expanding this due to implications for paying benefits, but in CA appear willing to accept this specific adjustment for how hours are calculated for PSLF eligibility. The CFT passed legislation, [AB463](#), to expand PSLF eligibility for contingent faculty by changing the formula used to calculate hours worked for PSLF to include credits for non-classroom time by establishing a multiplier on course hours. In moving legislation on this issue in other states, modifying the following provisions would strengthen CA's bill:

- Expand notification to all public and non-profit institutions, not just community colleges
- Define "unreasonably delay" to be something like 2 weeks
- Increase the multiplier from 3.35 to 3.5
- Include non-instructional hours in the multiplier; we may lose it in negotiations, but grading, grade input, syllabus creation, etc all take longer than credited

AB463 builds on years of effort by CA community college locals to win similar language in collective bargaining agreements, but CBA language only helps contingent faculty when all colleges have it.

We should raise PSLF eligibility expansion in any states with adjunct representation that are looking for legislation to support contingent faculty and address student debt. AFT HE/Chris Hicks suggests the following states: IL, OR, WA, and WI, but may also be good in PA, NY, etc.

Notification of Public Service Loan Forgiveness

Several states have advanced legislation to require relevant public service employers to inform and assist qualified employees with information about public service loan forgiveness. Eligible employers may include either public employers or non-profit employers, but only UT appears to have passed legislation applying to both. While notification is not a substitute for direct support in settings like AFT's student debt clinics, it is a step in the right direction.

In 2019 Utah passed comprehensive PSLF notification legislation, [HB213](#), applying to all public service employees except those who work for federal or tribal employers. Colorado also passed PSLF notification legislation, [SB57](#), applying to all public employers and recommending non-profit employers

also notify. CA passed [AB463](#), which mandates community college's notify employees of PSLF eligibility and expands eligibility hours for contingent faculty. Missouri appears to have passed PSLF notification legislation in 2016 relating to public employees (SB997). In Texas, PSLF notification legislation [HB74](#) was introduced, but did not pass.

This is worth pursuing in any state interested in tackling the student debt crisis legislatively and would universally help AFT members, nearly all of whom work for public service employers.

State Loan Forgiveness Programs

For decades, states have passed legislation using state-funded student loan repayment or forgiveness programs to recruit and retain hard to fill positions, such as medical personnel and teachers. For teachers, these programs have incentivized hard to fill subjects, low income schools, remote geographic regions, and more recently enhanced criteria to encourage teachers of color. In several recently well publicized cases, states are creating forgiveness/repayment programs to keep graduates of state schools in state – Maine passed legislation recently and NH is considering. At least one state is using these programs to address rural to urban migration, attempting to use loan forgiveness to incentivize living in rural areas.

One recent encouraging trend is legislation creating programs that assist recent graduates “get on their feet” by helping students with loan payments for the first years after graduation. NY passed SB 2006 in 2015 creating its [“Get on your Feet” program](#) with the following as key eligibility criteria:

- Must live and work in NYS
- Must have attended an in-state high school and college or university, and attained no higher than an undergraduate degree
- Must have federal loans and be current on repayment
- Must enroll in an Income Driven Repayment plan
- Must earn less than \$50k

This program is relatively low-cost because the state pays only the income-driven repayment (IDR) amount on lower, capped incomes, and it does have restrictive resident criteria, but it does have the benefit of ensuring that new graduates are set up in IDR programs right after graduation, getting them on the path to loan forgiveness, and payments made by NYS under the program qualify toward Public Service Loan Forgiveness.

The Trifecta

The most effective legislative path to get more borrowers on track with loan forgiveness may be a combination of the following: borrower bill of rights, PSLF notification, and a program like NY's Get on Your Feet. In combination, these have the best chance of getting the largest number of students enrolled in Income Driven Repayment plans early by incentivizing graduates through a program like Get on Your Feet, which is available to all borrowers regardless of whether they work for PSLF-eligible employers. In addition, mandatory PSLF notification will ensure that those who do work for PSLF-eligible

employers learn about their eligibility early in their work career and can get on track. Finally, the BBOR or robust licensing provides redress if borrowers experience servicer misconduct, through an ombudsman or expanded AG oversight and in the case of CA's proposed BBOR, giving borrowers a private right of action to sue if they experience financial harm as a result of servicer misconduct.

State Private Loan Refinance Programs

Several states have enacted or are exploring programs that allow the state to refinance state borrowers' student loan debt. Last session, Illinois passed [SB1524](#), which creates a state student loan refinance program, which is focused on refinancing private loans. Our allies at SBPC generally favor these programs as long as they offer lower interest loans and as long as states also move to enact a higher standard of consumer protections for borrowers than available in their private loans, and model those standards on the consumer protections for federal loans. In 2018, Maryland passed SB186, creating the "Smart Buy" program. New Hampshire passed SB139 last session to study these programs. Washington, Connecticut, Missouri and Wisconsin all introduced legislation this session or last session, but did not pass it.

License Suspension with Default (LSD)

A number of states have had statutes that allow for a borrower's professional license to be revoked if they default on their student loan, which may affect nurses, teachers and any other professions requiring a professional license. In 2017, the [NYT published a story](#) about this, leading to a wave of at least 12 states passing legislation to eliminate LSDs. AFT affiliates have supported repealing these provisions, and they have passed in all AFT states where we represent nurses. Last session, Texas was the most notable AFT state that passed legislation repealing LSD. The only states with LSD legislation still on the books are Massachusetts (not enforced), Minnesota, Florida (for healthcare professionals only), South Dakota, and Tennessee. Georgia may still have LSD on the books – legislators attempted to repeal LSD last session but both bills appear to have failed. In Florida, SB356 "Keep Graduates Working Act" is an active bill. Massachusetts legislators have proposed MA [HB3620](#), which would revoke LSDs.

Additionally, Senators Warren and Rubio [introduced legislation in June, SB 3065](#) aimed at prohibiting LSDs federally. It has not moved out of Senate HELP committee.

Income Share Agreements (defensive)

The heavily private equity-owned Income Share Agreement lobby is pushing to legislate ISAs in order to legitimize them, expand their use and increase their appeal to investors. With ISAs, investors may pay colleges up front for the cost of a student attending higher education, and in exchange the student promises to pay those investors a specified share of their future income for a designated period of time.

ISAs are being promoted by the Manhattan Institute and the Pioneer Institute for Public Policy Research, the latter having [awarded a grant to Purdue University's ISA program](#) and extols ISAs as "as a viable option to alleviate the student debt crisis."

Private equity is using the [same playbook and rationale for ISAs as it used to create the payday lending industry](#), promoting ISAs as providing “access to educational opportunity” for students who otherwise may not be able to get loans and a “solution” to the student debt crisis. [This American Enterprise Institute paper](#) extols the “virtues” of ISAs.

Like payday lending, however, ISAs are better understood as a tool of predatory finance designed as an opaque product that accrues profit to investors at the expense of borrowers. Also like payday lending, the ISA industry is working diligently to exempt ISAs from all consumer protection standards by framing them as “innovative” alternative financing products that don’t fit traditional regulatory frameworks, and by claiming that these are “equity” investments, not debt products.

We should encourage affiliates to oppose legislation seeking to legitimize this industry. IL recently passed [SB1524](#), a bill creating a state student loan refinancing program (discussed below), but the bill also included language paving the way for the creation of ISAs, which is troubling. ISA legislation was introduced last year in WA ([SB5774](#)), CA ([AB154](#)), and DE (HB 180, limited to professional athletes). Already this session, 3 separate bills referencing ISAs have been introduced in MA. In June 2019 IN passed ISA enabling legislation, and IN’s Purdue University has been the most notable ISA experiment, with fighting currently going on in IN to [exempt Purdue and any affiliated products \(including ISAs\) from all consumer credit codes](#). Some states approach it differently: [New York prevents schools from charging different amounts for the same program](#), hindering ISAs by disallowing providers from collecting different amounts from students after graduation.

Universities could restrict ISA products to students who have exhausted their other financial aid options, but this has not been required by law. Some of the other problems with ISAs, highlighted in this [June 2019 letter from Sen. Elizabeth Warren to DeVos](#) in response to DOE considering creating a federal ISA program, include:

- Circumventing all consumer protection laws by claiming that they are not a loan/debt or credit product, and hence attempting to skirt all existing regulatory frameworks.
- Refusing to make the contracts ISA providers write with students publicly available, making it impossible to assess whether they conform to laws.
- Discriminatory costs, payment amounts and terms (effective interest rates) based on degree & major – STEM degrees appear to cost less (shorter payment terms, lower % of income to repay) than teaching degrees for example, based on likely earning potential. Discrimination may exist across institutions as well, with terms more favorable if you attend an Ivy vs an HBCU.
- For schools that choose to offer ISAs (where states allow it), no standards re. entrance and exit counseling with students and parents about whether federal, private or ISAs are more beneficial to them. Because ISAs are a black box, and future earnings are unknown, it will be impossible for students to make a truly informed choice, especially when students already have difficulty grasping the long term effects of federal student loans.

We should expect to see ISA legislation pop up in many of our states, and we should educate our affiliates to be prepared to respond.