



Background on Federal Preemption & Student Loans

Federal law establishes the precedent for the federal Department of Education's (ED) management and oversight of the federal student loan programs, and federal preemption of any conflicting regulations at the state level. Recently, ED published a [notice in the Federal Register](#) clarifying the federal government's interest in this area. The Student Loan Servicing Alliance (SLSA) is providing this fact sheet to provide more background on the issue, as well as recommendations of ways states can help student loan borrowers.

The Higher Education Act (HEA) establishes the federal government's authority to regulate the federal loan program and preempt any disclosure requirements made by states.

- Higher Education Act (HEA)—20 U.S.C. § 1098g.: "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.) shall not be subject to any disclosure requirements of any State law." ([Source](#))
 - This language became law more than 35 years ago, via the Garn-St Germain Depository Institutions Act of 1982. A bipartisan group of 28 members of Congress co-sponsored the bill in the House, including several current leading Democrats, which passed the House in an overwhelming 272-91 vote. ([Source](#))

States still have authority to protect their citizens from fraud, misrepresentations and other violations of state consumer protection laws that do not conflict with or set different standards than those established by federal law.

- While under the Higher Education Act, states may not mandate different or more disclosures, Federal preemption on student loans does not prevent states from pursuing cases against fraud or deceptive communications, should those occur.

Virtually all student loans are originated and owned by the federal government.

- The federal government funds or guarantees 93 percent of all outstanding student loans—\$1.4 trillion of the \$1.5 trillion outstanding. The federal government (taxpayers) bears the risk if these loans are not repaid. ([Source](#) and [source](#))
- The federal government—not states or servicers—sets the interest rates, eligibility criteria, and repayment terms. The government hires contractors to service federal student loans following extensive rules.
 - Department of Education: "...the loan servicers are acting pursuant to a contract with the Federal government, and the servicers stand in the shoes of the Federal government in performing required actions under the Direct Loan Program." ([Source](#))
- Congress designed the federal student loan programs to be uniform across state lines for students who applied for federal loans in their home state, attend college in another state, and might now be working and paying their loans in a different state.

- Department of Education: "A requirement that Federal student loan servicers comply with 50 different State-level regulatory regimes would significantly undermine the purpose of the Direct Loan Program to establish a uniform, streamlined, and simplified lending program managed at the Federal level." ([Source](#))

Federal courts have upheld the validity of federal government preemption and recent court filings have restated the federal government's views.

- In 2010, *Chae v. SLM Corp.*, the U.S. 9th Circuit Court of Appeals concluded the creation of a patchwork of different standards across states would negatively impact the student loan program.
 - *Chae v. SLM Corp.*: "Having carefully considered the FFELP and the purposes of Congress in the HEA, we conclude, beyond any doubt, that subjecting the federal regulatory standards to the potentially conflicting standards of fifty states on contract and consumer protection principles would stand as a severe obstacle to the effective promotion of the funding of student loans." ([Source](#))
- In 2017, *Nelson v. Great Lakes Education Loan Services, Inc.*, the U.S. District Court for the Southern District of Illinois concluded Congress clearly intended for federal student loan disclosure requirements dictated by the HEA to preempt any made at the state level.
 - *Nelson v. Great Lakes*: "Rather, the question before the Court is whether Nelson is trying to force any state law disclosure requirements onto Great Lakes. Construing the statutory framework in conjunction with the plain meaning of the word 'disclosure,' it appears Congress intended § 1098g to preempt any state law requiring lenders to reveal facts or information not required by federal law." ([Source](#))
- *Massachusetts v. Pennsylvania Higher Education Assistance Agency*—Statement of Interest by the U.S. Dept. of Justice: "Here, three types of conflicts compel the conclusion that certain of Massachusetts's claims are preempted: their conflict with the HEA and federal regulations enacted by the Department, their conflict with the purposes of the HEA, and their conflict with the Department's contract with PHEAA." ([Source](#))

Despite these clear statements, states have attempted to advance efforts that conflict with federal law.

- Department of Education: "Some State servicing laws also purport to impose regulatory requirements on servicing that create additional conflicts with Federal law...These are matters specified in the laws and regulations governing the Direct Loan Program as well as the contractual arrangements between the Department and the servicer." ([Source](#))
- State Attorneys General have brought lawsuits that broadly allege that servicers engaged in "unfair and deceptive" conduct, "misrepresentation" and "steering"; however, none of the complaints allege that servicers violated federal law, federal regulations, or federal contracts governing loan origination and servicing. Instead, they claim that servicers should have made additional or different disclosures to borrowers not required by federal rules.
- Similarly, several states have enacted legislation and/or promulgated regulations prohibiting similar activities which attempt to dictate when and how federal servicers communicate with student loan borrowers.¹

¹ For example: District of Columbia: would require servicers to send a quarterly update to borrowers including payment history, outline of fees, current terms of the loan, and date of origination ([Source](#)). Illinois would set requirements for how servicers disclose federal repayment options ([Source](#)).

- The plain language and clear intent of the HEA expressly bars the enforcement of any state law governing disclosure requirements, for federal student loans.

This pattern of state-level legislation and regulation will create a confusing patchwork of policy for borrowers.

- SLSA: "Imposing conflicting information, or additional procedural requirements, on borrowers who can immediately obtain assistance with their student loans directly from their servicer is bound to cause confusion for borrowers. They may then fail to seek help from their servicer and delay a satisfactory resolution to their concerns." ([Source](#))
- *Massachusetts v. Pennsylvania Higher Education Assistance Agency*—Statement of Interest by the U.S. Dept. of Justice: "Similar problems would arise if, as Plaintiff suggests, Massachusetts law were permitted to dictate the allocation of payments among interest and principal. Such separate requirements in various states would be costly and burdensome and lead to non-uniform results." ([Source](#))
- Department of Education: "Uniformity not only reduces costs but also helps to ensure that borrowers are treated equitably and are not confused about the lending and repayment process. State-level regulation subjects borrowers to different loan servicing deadlines and processes depending on where the borrower happens to live, and at what point in time." ([Source](#))

SLSA has recommended numerous ways state officials can help student borrowers without contradicting federal regulatory guidance.

- States can create a student loan ombudsman as an additional resource to help answer borrower questions and handle complaints. ([Source](#))
- State officials, attorneys general, and institutions can play a crucial role in financial education before students borrow for college and help them avoid being taken advantage of by scams or unnecessary fees from third party debt relief offers, as reflected in a recent initiative from the North Carolina Attorney General's office. ([Source](#))
- In addition, states can work with schools to provide customized debt progress letters while a student is in school, like Indiana's successful initiative. ([Source](#))

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