No. 18-1531

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NICOLE D. NELSON,

Plaintiff-Appellant

v.

GREAT LAKES EDUCATIONAL LOAN SERVICES, INC., and DOE DEFENDANTS 1-10,

Defendant-Appellee

Appeal from The United States District Court
For the Southern District of Illinois
3:17-cv-00183-NJR-SCW
The Honorable Judge Nancy J. Rosenstengel

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

The undersigned counsel for Defendant-Appellee furnishes the following statement in compliance with Circuit Rule 26.1:

1. The name of every party that the undersigned attorney represents in the case:

   Great Lakes Educational Loan Services, Inc.

2. The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this Court:

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INTRODUCTION

This appeal attacks the federal government's ability to create and run a student loan program. The federal government, as lender of nearly three-quarters of all student loans, contracts with student loan servicers such as Great Lakes Educational Loan Services, Inc. ("Great Lakes") to service these loans under the William D. Ford Federal Direct Loan Program (the "Direct Loan Program"), 20 U.S.C. § 1087a, *et seq*. The federal government also has provided second-line reinsurance (after guarantors) for millions of federal student loans issued by private lenders under the Federal Family Education Loan Program (the "FFEL Program"), 20 U.S.C. § 1071, *et seq*. Under both the Direct Loan Program and the FFEL Program, student loan servicers must provide specific disclosures to borrowers at various stages of the loan servicing process in accordance with the statutory provisions Congress set forth in the Higher Education Act of 1965 (the "HEA"), codified at 20 U.S.C. §§ 1001–1155, and further augmented by the U.S. Department of Education in its implementing regulations. These required disclosures give borrowers the information the federal government believes they need to make informed decisions regarding their student loans. Consistent with the federal government's authority as the lender (or reinsurer) and regulator, Congress specifies that federal law expressly preempts state-law disclosure requirements. 20 U.S.C. § 1098g.

Although framed as claims addressing unfair, deceptive, and fraudulent practices regarding her federal student loans, Nelson's claims can ultimately be reduced to an assertion that Great Lakes failed to provide her with information about her loans that the HEA and its implementing regulations do not require be disclosed. In other words, by asserting state law tort claims against Great Lakes, Nelson is attempting interpose her own policy preferences for those of Congress and the Department of Education. Her argument is that Great Lakes should be held

liable for failing to adhere to her own particular conception of appropriate disclosures under the HEA. Because these state law causes of actions would impose upon Great Lakes disclosure obligations foreign to federal law, 20 U.S.C. § 1098g's express preemption clause preempts them.

The District Court thus correctly dismissed all of Nelson's claims, which alleged constructive fraud, negligent misrepresentation, and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, because 20 U.S.C. § 1098g expressly preempts them. Appellant's Short Appendix ("Appellant's SA") 14. Even if Nelson's claims were not expressly preempted, however, they would be preempted under both the conflict and field preemption doctrines.[1] There is simply no place for individual borrowers to second-guess the federal government in its role as the create, lender or reinsurer, and regulator of the federal student loan program and impose upon student loan servicers additional or different disclosure requirements beyond those the federal government has mandated.

JURISDICTIONAL STATEMENT

Great Lakes represents that Nelson's jurisdictional statement is complete and correct.

STATEMENT OF THE ISSUE

1. The Federal Government, as the creator, lender or reinsurer, and regulator of federal student loan programs, has set forth the disclosures that must be provided to student loan borrowers. Nelson's state-law claims are tantamount to a complaint that Great Lakes should have provided her and others disclosures beyond those the federal government requires. Are Nelson's claims expressly preempted by 20 U.S.C. § 1098g—which provides that federal disclosure requirements preempt state law—or, alternatively, under

[1] Because the District Court determined that federal law expressly preempts Nelson's claims, the court did not determine whether her claims are preempted due to a conflict with federal law or Congress' occupation of the field of the servicing of federal student loans. *See* Appellant's SA 14.

the doctrines of conflict or field preemption given the federal government's unique and extensive interest in its federal student loan programs?

STATEMENT OF THE CASE

Nelson's claims arise out of Great Lakes' servicing of her and others' federal student loans. The following statement of the case explains relevant aspects of the federal student loan industry under the HEA that are important to understand the federal government's unique and encompassing role as the creator, lender or reinsurer, and regulator of federal student loans.

The Federal Student Loan Industry under the HEA

The federal statutory scheme governing student loans originated in 1965 with Congress' passage of the HEA, which is administered by the Department of Education. Congress passed the HEA "[t]o strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education." Higher Education Act, Pub. L. No. 89-329, 79 Stat. 1219 (1965). Through federal student loan programs established pursuant to the HEA, Congress intends to "keep the college door open to all students of ability, regardless of socioeconomic background." *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1030 (9th Cir. 2009) (internal quotation marks omitted).

Federal Student Loan Programs

To effectuate these goals, Congress created two main federal student loan programs: the FFEL Program and the Direct Loan Program. These federally funded or reinsured student financial aid programs for college and post-secondary vocational training are established and governed by Title IV of the HEA. 20 U.S.C. § 1070, *et seq*. Both the FFEL Program and the Direct Loan Program are entitlement programs. Student loan servicers, such as Great Lakes, service loans issued under both programs.

The FFEL Program, authorized as part of the HEA in 1965, uses a model in which loans are made by banks and other private lenders, insured by guaranty agencies, and then reinsured by the federal government. *See* FFEL Program Lender and Guaranty Agency Reports, U.S. Dep't of Educ., available at https://studentaid.ed.gov/sa/about/data-center/lender-guaranty. Hence, entitlements under the FFEL Program accrue to lenders and guaranty agencies.

Subsequently, Congress authorized the Direct Loan Program. The program, which was originally a pilot program as part of the Higher Education Amendments of 1992, S. 1150, 102nd Cong. (1992) (enacted), was fully authorized through the Student Loan Reform Act of 1993 as part of the Omnibus Reconciliation Act of 1993. H.R. 2055, 103rd Cong. (1993) (enacted). In contrast to FFEL Program loans, Direct Loans are made and owned by the federal government. *See* Loans, U.S. Dep't of Educ., *available at* https://studentaid.ed.gov/sa/types/loans. As a result, entitlements under the Direct Loan Program accrue to individual borrowers.

Although the FFEL Program and the Direct Loan Program orginally operated as parallel programs after the Direct Loan Program's inception in 1992, the federal government has since mandated that there will be no more new federal loans created under the FFEL Program and consolidated all federal lending under the Direct Loan Program. This process began with Congress' adoption of the Ensuring Continued Access to Student Loans Act of 2008 ("ECASLA"), Pub. L. 110-227, in response to the disruptions in financial markets in 2008. H.R. 5715, 110th Cong. (2008) (enacted). Extended in 2009, ECALSA gave the Department of Education authority to purchase—and thereby put the federal government in the place of the loan originator—FFEL Loans until the end of the 2009-2010 academic year. Using its authority under ECASLA, the Department of Education purchased from private lenders approximately 3.91 million FFEL Loans with an outstanding balance of over $94 billion. Appellee's

Supplemental Appendix ("Appellee's SA") 101 n.3 (Statement of Interest by the United States, *Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency* at 10–21, No. 1784CV02682 (Mass. Sup. Ct.)). Next, Congress passed the Health Care and Education Reconciliation Act in 2010, Pub. L. 111-152. *See* H.R. 4872, 111th Cong. (2010) (enacted). The legislation included the Student Aid and Fiscal Responsibility Act ("SAFRA"), which effectively ended the FFEL Program by mandating that no new FFEL Loans be made after June 30, 2010. By passing SAFRA, Congress removed banks as the intermediary lender between the federal government's guarantees and student borrowers and required all future federal student loans to be made directly to students through the federal government pursuant to the Direct Loan Program. Congress determined that the Direct Loan Program is more cost effective and therefore best served the interests of student and taxpayers because, while the FFEL Program causes taxpayers to absorb the risk to private lenders of student loan defaults, the Direct Loan Program would save the government billions of dollars.[2] *See* 156 CONG. REC. H1914 (Mar. 21, 2010) (statement of Rep. Petri); 156 CONG. REC. H1882 (Mar. 21, 2010) (statement of Rep. Miller); 156 CONG. REC. S2079–80 (Mar. 25, 2010) (statement of Sen. Leahy); 156 CONG. REC. S2087–88 (Mar. 25, 2010) (statement of Sen. Durbin). Because the FFEL Program loans are no longer available to student loan borrowers, Health Care and Education Reconciliation Act, Pub. L. 111-152, § 2201, *et seq*. (Mar. 30, 2010); *see also* 20 U.S.C. § 1071(d), over 90 percent of new student loans today are made through the Direct Loan Program. *Trends in Student Aid 2017*, College Board, Oct. 2017, at 18, *available at*

[2] Congress included SAFRA as part of the Health Care and Education Reconciliation Act in part to offset the projected costs associated with the Affordable Care Act and allow the bill's budget scoring to be in the black. The U.S. Congressional Budget Office estimated that SAFRA, by terminating the FFEL Program and replacing it with increased lending under the Direct Loan Program, would reduce mandatory spending by $61 billion over the subsequent ten years. U.S. Congressional Budget Office, *Cost estimate for the amendment in the nature of a substitute for H.R. 4872*, 6–8, *available at* https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/costestimate/amendreconprop.pdf.

https://trends.collegeboard.org/sites/default/files/2017-trends-student-aid_0.pdf. Today, the federal government owns and manages over 85 percent of all outstanding federal student loans. *See* Federal Student Aid Portfolio Summary for the second quarter of FY 2018, U.S. Dep't of Educ., *available at* https://studentaid.ed.gov/sa/about/data-center/student/portfolio (showing the total volume for Direct Loans, FFEL Loans, Perkins Loans, and all federal student loans); Location of Federal Family Education Loan (FFEL) Program Loans, U.S. Dep't of Educ., *available at* https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/LocationofFFELPLoans.xls (breaking down the FFEL Program portfolio). *See also* Federal Student Aid Posts New Reports to FSA Data Center, U.S. Dep't of Educ. (Apr. 6, 2018), *available at* https://ifap.ed.gov/eannouncements/040618FederalStudentAidPostsNewReportstoFSADataCenter.html (noting that as of December 31, 2017, the federally managed portfolio of student loans is $1.16 trillion or 84 percent of the outstanding federal student loan portfolio of $1.38 trillion).

Both the FFEL Program and the Direct Loan Program represent significant federal obligations. FFEL Loans constitute $295.5 billion or approximately 21 percent of federal student loans. *See* Federal Student Aid Portfolio Summary for the second quarter of FY 2018, U.S. Dep't of Educ., *available at* https://studentaid.ed.gov/sa/about/data-center/student/portfolio. Direct Loans constitute over $1.1 trillion or approximately 78 percent of federal student loans.[3] *Id.* In total, the federal student loan industry has grown to over $1.4 trillion in outstanding student loans, which is approximately 92 percent of all outstanding student loans in the country. *See id.*; Federal Reserve, Statistical Release: Consumer Credit – G.19 (July 9, 2018), *available at* https://www.federalreserve.gov/releases/g19/current/g19.pdf (showing $1.524 trillion in

[3] The remaining percentages of federal student loans come from Perkins Loans, which are loans made by some institutions to their neediest students using federal funds.

outstanding student loans as of March 2018). Indeed, promissory notes issued to student borrowers constitute over 45 percent of the financial assets of the federal government. Federal Reserve, Financial Accounts of the United States – Z.1 (last updated June 7, 2018), *available at* https://www.federalreserve.gov/releases/z1/20180607/html/levels_matrix.htm.

Great Lakes' Role as a Student Loan Servicer within Federal Student Loan Programs

Great Lakes services federal student loans issued under both the FFEL Program and the Direct Loan Program. Like other servicers, they are responsible for a range of loan services, including, among other things, processing Income-Driven Repayment ("IDR") applications and reenrollment applications, maintaining account records, sending statements and other account notices, processing payments, processing paperwork associated with a myriad of payment statuses, operating incoming and outgoing call centers, and even facilitating temporary cessation of payments. These services help borrowers avoid the consequences of delinquency and default and allow for more efficient and effective collection of these federal obligations before default. *See, e.g.*, Appellee's SA 26–59, ("Great Lakes Servicing Contract"), *available at* https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing (detailing servicer responsibilities for servicing Direct Loans under the federal contract); 20 U.S.C. § 1071, *et seq*. (statutory scheme governing the FFEL Program); 34 C.F.R. Part 682 (regulations for the FFEL Program).

The Department of Education highly regulates these servicer activities. Servicer responsibilities include the HEA's and the Department of Education implementing regulations' requirements that servicers make certain a whole range of federally required disclosures to borrowers throughout the life of the loan, including before disbursement of the student loan, before repayment, during repayment, and during various stages of delinquency. 20 U.S.C. §

1083; 34 C.F.R. § 682.205.[4] For example, Nelson's report of her financial hardship during repayment triggered Great Lakes to make specific disclosures to her required under 20 U.S.C. § 1083(e)(2) and 34 C.F.R. § 682.205(a)(4)—including a description of the repayment plans available to her, a description of the requirements for obtaining forbearance on her loans, and a description of available options to avoid defaulting on her loans. In providing these disclosures, Great Lakes—like other servicers—works, on behalf of the federal government, with the borrower to help her assess multiple repayment options and successfully repay the loan. *See* Appellant's SA 17 (First Amended Class Action Complaint ("Compl.") ¶ 1). Servicers are thus representatives of the federal government to student borrowers.

For each newly issued federal student loan, the federal government directly loans the borrower money. The government then contracts with a student loan servicer—like Great Lakes—for the servicing of the loan after selecting that servicer through a process that requires the Secretary of Education to award contracts based on allocation metrics to servicers that have "extensive and relevant experience," "demonstrated effectiveness," and "a history of high quality performance." 20 U.S.C. § 1078f; Appellee's SA 60–72 (Great Lakes Servicing Contract).[5] Under federal contracts for servicing Direct Loans, the government pays servicers on a per student loan borrower basis that is based on the borrower's repayment status. *See*

[4] Contrary to the representations of *Amici Curiae* National Consumer Law Center on page 12 of its brief, 20 U.S.C. § 1083 and 34 C.F.R. § 682.205 apply to servicers of both FFEL Loans and Direct Loans. Although 20 U.S.C. § 1083 addresses disclosures a servicer of FFEL Loans must make and regulations for the Direct Loan Program do not specify the types of disclosures a servicer of loans under that program must provide, 20 U.S.C. § 1097e(p) states that the disclosure requirements in § 1083 apply to Direct Loans as well.

[5] *See also* Explanation of Allocation and Performance Measure Methodology, U.S. Dep't of Educ., *available at* https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/servicer/06302017/ExplanationQuarterEnd063017.pdf (explaining that the U.S. Department of Education distributes new federal student loans to servicers based on performance metrics that incentivize servicers to keep the borrowers they service current—that is, out of delinquency and default—and satisfied).

Appellee's SA 16, 77 (Great Lakes Servicing Contract). Servicers are paid substantially less if a borrower is not on track toward repayment of her loans, such as when a borrower becomes delinquent or the loan is placed in forbearance. *See id*. (presenting common pricing scales where the unit price decreases significantly the longer the delinquency). In fact, the Department of Education's Federal Student Aid office ("FSA") alters allocation metrics to encourage best practices and incentivizes competing servicers to try different means to discover the best avenues for achieving FSA's goals. *See* Explanation of Allocation and Performance Measure Methodology, U.S. Dep't of Educ., *available at* https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/servicer/06302017/ExplanationQuarterEnd063017.pdf (explaining that the Department of Education distributes new federal student loans to servicers based on performance metrics that incentivize servicers to keep the borrowers they service out of delinquency and default). There is no mechanism in these contracts, however, that pays servicers more money per borrower under the allocation metrics. The most a student loan servicer can receive from a single student loan borrower, who may have multiple loans of different types, is $34.20 per year. *See* Appellee's SA 77 (Great Lakes Servicing Contract) (showing that the maximum per month a servicer may be paid is $2.85 per borrower, allowing a potential annual compensation of $34.20).

As a result of its commanding share of the market, its regulatory oversight, and the termination of the FFEL Program in favor of the Direct Loan Program, the federal government has a unique and essentially unilateral ability to determine who services federal student loans, how those loans are serviced, and how much student loan servicers are compensated. Against this backdrop, Nelson has asserted that Great Lakes should be liable under Illinois law for allegedly over-emphasizing the forbearance option, despite no allegation that Great Lakes

violated any applicable federal disclosure requirements. As explained below in the Argument section of this brief, Nelson's claims, which impinge on the federal government's decision to create federal student loans and highly regulate their servicing, are preempted under all three types of federal preemption.

SUMMARY OF THE ARGUMENT

In her lawsuit against Great Lakes, Nelson is attempting to interpose state tort law to regulate the servicing of federal student loans, an area of law that the federal government extensively regulates as the lender and reinsurer of these loans. She claims that the disclosures the federal government requires servicers to make under its student loan programs are insufficient. This is not for her to decide. Nelson's claims are preempted under all three types of federal preemption: express, conflict, and field.

First, because the essence of her claims consists of alternative state-law disclosure requirements to the already comprehensive federal disclosures student loan servicers must provide to borrowers, federal law expressly preempts these claims under 20 U.S.C. § 1098g. The facts of this case are analogous to those in other cases where courts have determined that federal law expressly preempts restyled improper state-law disclosure requirements. Second, subjecting student loans servicers to state tort liability for the manner in which they interact with borrowers would create a substantial obstacle to Congress' objectives in establishing and regulating the federal student loan programs by forcing student loan servicers to choose between minimizing state tort liability and following federal servicing requirements. For that reason, federal law also preempts Nelson's claims under conflict preemption. Finally, through the passage of ECASLA and SAFRA, Congress, through the Department of Education, has occupied the field of regulating

the servicing of federal student loans. Nelson's claims are thus preempted under field preemption.

ARGUMENT

Nelson's state law tort claims, although framed in terms of claims for deceptive, unfair, and fraudulent practices, challenge the manner in which Great Lakes interacts with student loan borrowers—an area that the federal government necessarily regulates pursuant to the HEA, its implementing regulations, and its federal-contracting authority. Federal law preempts these claims under express, conflict, and field preemption. *See* U.S. Const. art. VI, cl. 2. (the Supremacy Clause of the U.S. Constitution, which states that "the Laws of the United States . . . shall be the supreme Law of the Land"); *Bible v. United Student Aid Funds, Inc*., 799 F.3d 633, 652 (7th Cir. 2015) (articulating the three types of preemption).

I. STANDARD OF REVIEW

Great Lakes agrees with Nelson that *de novo* is the proper standard of review of the District Court's decision that federal law expressly preempts Nelson's claims. *Bausch v. Stryker Corporation*, 630 F.3d 546, 559 (7th Cir. 2010), which Nelson cites in her statement on the standard of review, explains that where some claims survive the pleadings stage, courts are to refrain from dismissing the entire complaint and instead are to allow the case to proceed under the original complaint based on an understanding as to the proper scope. Where, as here, all allegations are preempted and subject to dismissal, the Court should not refrain from dismissing the entire Complaint.

II. THERE IS NO PRESUMPTION AGAINST FEDERAL PREEMPTION AS TO THE SERVICING OF FEDERAL STUDENT LOANS.

As a result the federal government's decision to create and heavily regulate the federal student loan programs, no presumption against federal preemption should apply as to the

regulation of federal student loan servicing. *See Chae v. SLM Corp.*, 593 F.3d 936, 944 (9th Cir. 2010) (considering the presumption, but holding that the HEA preempted various state law claims against student loan servicers because "it is our duty to consider carefully what Congress was trying to accomplish in the HEA and whether these state law claims create an 'obstacle' to the congressional purposes"); *cf. Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001) (refusing to apply any presumption against federal preemption because "the relationship between a federal agency and the entity it regulates is inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law"). Although consumer protection has, broadly speaking, been an area within state police powers, states have not traditionally regulated the servicing of federal student loans, which has always been strictly a federal area of federal concern. *See California v. ARC America Corp.*, 490 U.S. 93, 101 (1989) (noting that the presumption against preemption only applies "in areas traditionally regulated by the States"); *see also* Appellee's SA 96, (the Department of Education's notice entitled "Federal Preemption and State Regulation of the U.S. Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers" (the "Preemption Notice"), 83 Fed. Reg. 10619, 10620 (published Mar. 9, 2018)) (stating that the Preemption Notice was issued "to clarify its view 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").

The federal government's role in establishing the federal student loan programs and assuming direct control over the regulation of these student loans demonstrates that federal student loan servicing is not within the traditional sphere of state law that is subject to the presumption against preemption. *See Hillman v. Maretta*, 569 U.S. 483, 490 (2013) (explaining

that because "[t]he regulation of domestic relations is traditionally the domain of state law," "[t]here is therefore a 'presumption against pre-emption' of state laws governing domestic relations"); *but see id.* at 491 (noting that "family law is not entirely insulated from conflict pre-emption principles, and so we have recognized that state laws 'governing the economic aspects of domestic relations . . . must give way to clearly conflicting federal enactments'" (quoting *Ridgway v. Ridgway*, 454 U.S. 46, 55 (1981))). Moreover, the Supreme Court has explained that where a federal statute contains an express preemption clause that concerns an area outside of the State's historic police powers, the Court "do[es] not invoke any presumption against pre-emption but instead 'focus[es] on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.'" *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S.Ct. 1938, 1946 (2016) (quoting *Chamber of Commerce of United States of America v. Whiting*, 563 U.S. 582, 594 (2011)).

III. THE DISTRICT COURT CORRECTLY DETERMINED THAT FEDERAL LAW EXPRESSLY PREEMPTS NELSON'S CLAIMS.

The HEA contains an express preemption clause, 20 U.S.C. § 1098g, that preempts state law disclosure requirements. *See Altria Group, Inc. v. Good*, 129 S.Ct. 538, 543 (2008) ("Congress may indicate pre-emptive intent through a statute's express language."). 20 U.S.C. § 1098g states in full:

> 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.[6]

Nelson's claims, which would compel Great Lakes to make disclosures in addition to those already required by the HEA and its implementing regulations, run afoul of this clause. As a result, the District Court correctly dismissed Nelson's claims.

[6] The Direct Loan Program and the FFEL Program fall within Title IV of the HEA and thus are subject to the express preemption provision in 20 U.S.C. § 1098g.

A. The Nature of Nelson's Claims.

The crux of Nelson's claims is that Great Lakes' alleged practice of over-emphasizing the forbearance option is a deceptive, fraudulent, and/or unfair business practice because it is allegedly more favorable to Great Lakes' business while potentially harmful to student loan borrowers. *See e.g.*, Appellant's SA 18–19, 40–41 (Compl., ¶¶ 6–7, 138140). She and amici assert that 20 U.S.C. § 1098g cannot expressly preempt these claims because such a result would eliminate borrowers' ability to sue servicers for their fraudulent, unfair, and deceptive practices. *See, e.g.*, Appellant's Opening Br. 11, 13; Br. of Amicus Curiae The National Consumer Law Center, *et al.*, 14–15; Br. of Amicus Curia Center for Responsible Lending and United States Public Interest Research Group Education Fund, Inc. 24–25; Br. of Amicus Curiae Lisa Madigan, Att'y General of Illinois 9–10. These assertions overstate the breadth of Nelson's claims and scope of this appeal. Nelson's claims are, at their essence, restyled improper-disclosure claims that fall within the purview of 20 U.S.C. § 1098g. This statute does not expressly preempt all state law tort claims against student loan servicers for fraudulent, unfair, and deceptive practices; it expressly preempts claims such as Nelson's.

The District Court correctly ascertained the nature of Nelson's claims: that Great Lakes should have provided Nelson and others with more information than what is required under the HEA and implementing regulations. Appellant's SA 11. Nelson asserts three counts in her Complaint: (1) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act; (2) constructive fraud; and (3) negligent misrepresentation. Appellant's SA 38–48 (Compl. ¶¶ 126–85). Within these counts, she contends that Great Lakes engaged in numerous unfair acts and practices and breached its fiduciary duties to borrowers through alleged omissions that led her and others into forbearance on their loans. All these allegations are rooted in Great Lakes'

alleged legal duty under state law to provide more information to borrowers than required under federal law.

Nelson's first count, a claim for a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, is that Great Lakes misrepresented or omitted a material fact. *See* 815 Ill. Comp. Stat. 505/2 (imposing liability based on an intent that a consumer rely on a misrepresentation or omission of a material fact). As the following table demonstrates, despite their phrasing, the allegations supporting this count pertain to information Nelson contends Great Lakes omitted:

Allegation as Asserted in the Complaint	Nature of Allegation
Holding Great Lakes' representatives out to be experts in student loan servicing issues or offering "expert" help. Appellant's SA 38–39 (Compl., ¶ 130(a)).	Omission because Great Lakes' representatives should have revealed that they were not experts.
Holding themselves out as working on Nelson's and others' behalves when they worked for the benefit of Defendants. *Id.* ¶ 130(b).	Omission because Great Lakes' representatives should have revealed that they were working on behalf of Great Lakes.
Holding themselves out as understanding all student loan options, and offering those options to student loan borrowers. *Id.* ¶ 130(c).	Omission because Great Lakes' representatives should have revealed that they did not understand all student loan options or offer all options to borrowers.
Offering forbearance as a recommended or best option to student loan borrowers who could have enrolled in potentially more favorable repayment plans. *Id.* ¶ 130(d).	Omission because Great Lakes' representatives should have revealed that forbearance may not be the best option for all borrowers.
Failing to provide borrowers all of their options or discussing income-driven repayment plans before enrolling borrowers in forbearance. *Id.* ¶ 130(e).	Omission because Great Lakes' representatives should have revealed other options, including income-driven repayment plans.
Failing to follow up with borrowers after a first forbearance and explaining or alerting student loan borrowers to other, potentially more advantageous repayment options. *Id.* ¶ 130(f).	Omission because Great Lakes' representatives should have revealed other options, including income-driven repayment plans.
Steering borrowers into forbearance without explaining or identifying other repayment options based on scripts. *Id.* ¶ 130(g).	Omission because Great Lakes' representatives should have revealed other options, including income-driven repayment plans.

At their core, Nelson's allegations in this count attack Great Lakes' alleged underlying practice of over-emphasizing to borrowers the forbearance option. Nelson, however, does not assert any Illinois prohibition against this. Rather, Nelson is merely asserting that Great Lakes omitted information Nelson contends it should have revealed under state law by challenging the alleged misleading methods used to further this practice. *Id.* ¶¶ 130–31.

Nelson's counts for constructive fraud and negligent misrepresentation involve the same basis factual allegations. In Count II, Nelson alleges that Great Lakes' breached its fiduciary duty to Nelson and others because its representatives: (1) mispresented, concealed, or omitted the detrimental effects of entering or continuing in forbearance; (2) omitted other alternative repayment options; (3) held themselves out as experts; (4) held themselves out as having all student loan borrowers' information; and (5) held themselves out as working the borrowers' best interests. Appellant's SA 42–43 (Compl. ¶¶ 149, 154). These allegations presuppose that Great Lakes has a duty to opine upon the "best" option for each borrower (an inherently subjective assessment), which is another way of alleging that it was an omission for Great Lakes not to recommend the "best" subjective repayment option for each borrower. Similarly, Count III alleges that Great Lakes negligently, rather than fraudulently, misrepresented and omitted the same information alleged in the previous counts and negligently failed to reveal that Great Lakes had a policy of emphasizing that borrowers should enter into forbearance. Appellant's SA 46–47 (Compl. ¶¶ 172–73). These allegations are merely asserting that Great Lakes negligently omitted information Nelson contends it should have revealed.

In sum, Nelson's allegations boil down to her belief that Great Lakes misleadingly omitted information it should have disclosed. If Great Lakes had revealed the information Nelson alleges it should have, then there would be no tort liability under Nelson's theory.

B. Disclosures Required under the HEA and Its Implementing Regulations.

The federal government, as the creator, lender or reinsurer, and regulator of federal student loans, decides what, if any, disclosures servicers must give borrowers. Although Nelson's state tort law allegations would, if vindicated, necessitate that Great Lakes provide borrowers with specific information or face liability for the omission of such information, the HEA and its implementing regulations do not require that Great Lakes provide the information Nelson demands.

20 U.S.C. § 1083 of the HEA and 34 C.F.R. § 682.205, its implementing regulation, require that borrowers receive disclosures at various stages of the loan repayment process, including before disbursement of the student loan, before repayment, during repayment, and during delinquency. Specifically, when a borrower such as Nelson experiences financial hardship[7] and calls her servicer regarding repayment options, 20 U.S.C. § 1083(e)(2) and 34 C.F.R. § 682.205(a)(4) require that the servicer provide:

> (A) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;
>
> (B) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and
>
> (C) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

None of the omissions that form the foundation of Nelson's claims are based on a failure to provide these disclosures. In fact, Nelson does not allege that Great Lakes failed to make disclosures required under the HEA and its implementing regulations. Rather, Nelson contests the alleged omission of alternative information than what is required to be disclosed pursuant to 20 U.S.C. § 1083(e)(2) and 34 C.F.R. § 682.205(a)(4).

[7] Nelson alleges that she "changed jobs," which resulted in her receiving "considerably less income," and also was unemployed for a few months. Appellant's SA 33–34 (Compl., ¶¶ 89, 101).

C. The Information That Nelson's State Tort Law Claims Would Require Great Lakes to Reveal to Borrowers Constitutes Disclosures Expressly Preempted Under 20 U.S.C. § 1098g.

Nelson argues that Congress limited express preemption to only those State laws that require servicers to affirmatively disclose to borrowers the "standardized provision of the core terms of the loan transaction." Appellant's Opening Br. 18, 22. Not only is this limited definition contrary to the text and context of the HEA, but the information Nelson contends Great Lakes should have provided arguably falls within aspects of Nelson's limited definition of "disclosure."

1. *The text and context of the HEA confirms that "disclosures" within 20 U.S.C. § 1098g pertain to information provided to borrowers having difficulty making loan payments.*

Neither 20 U.S.C. § 1098g nor other sections of the HEA define "disclosure" or "disclosure requirement." Lacking a definition within the statutory scheme, the District Court considered both the definition of "disclosure" in Black's Law Dictionary and how the term is used in 34 C.F.R. § 682.205. Appellant's SA 9–10. From these sources, the court correctly determined that Congress intended 20 U.S.C. § 1098g "to preempt any state law requiring lenders to reveal facts or information not required by federal law." Appellant's SA 10. Because Nelson's state law tort claims would require Great Lakes to reveal facts or information not required under the HEA and its implementing regulations, the court determined that federal law preempts them.

Black's Law Dictionary defines "disclosure" as "[t]he act or process of making known something that was previously unknown; a revelation of facts." BLACK'S LAW DICTIONARY (10th ed. 2014). In the context of federal student loan servicing, disclosure under this definition means facts provided from the servicer to the borrower that the borrower previously did not

know. Based on this definition, Nelson argues that a disclosure requirement "involves an affirmative 'revelation of facts,' and not the individualized guidance offered by Great Lakes." Appellant's Opening Br. 19. However, the elements of Nelson's tort law claims require that Great Lakes omitted material facts[8]—in other words, Nelson's claims would impose liability unless there is an affirmative "revelation of facts." The core of Nelson's claims is that the guidance purportedly offered by Great Lakes to borrowers experiencing difficulty making payments omitted facts that should have been disclosed.

The HEA's use of the term "disclosure" also demonstrates that the term covers the revelation of more than just standardized information about the core terms of a transaction. 20 U.S.C. § 1083 and 34 C.F.R. § 682.205 provide the disclosure requirements for lenders and servicers of federal student loans. The headings for their subsections include "Disclosures at or prior to repayment," "Required disclosures during repayment," and "Required disclosures for borrowers who are 60-days delinquent in making payments on a loan." Of particular note, the headings for 20 U.S.C. § 1083(e)(2) and 34 C.F.R. § 682.205(a)(4) specify that the information servicers must provide to borrowers having difficulty making payments are disclosures. The heading for 20 U.S.C. § 1083(e) is "Required disclosures during repayment," and the heading for 34 C.F.R. § 682.205(a)(4) is "Required disclosures for borrowers having difficulty making

[8] The Illinois Consumer Fraud and Deceptive Business Practices Act imposes liability for "[u]nfair methods of competition and unfair or deceptive acts or practices, including . . . the concealment . . . of any material fact, with the intent that others rely upon the concealment . . .." 815 Ill. Comp. Stat. 505/2. Constructive fraud under Illinois law is "anything calculated to deceive, including acts, omissions and concealments involving a breach of legal or equitable duty, trust or confidence resulting in damage to another." *Duffy v. Orlan Brook Condo. Owners' Ass'n*, 981 N.E. 2d 1069, 1078 (Ill. App. Ct. 2012). Negligent misrepresentation under Illinois law requires: "(1) a false statement of material fact, (2) carelessness or negligence in ascertaining the truth of the statement by the party making the statement, (3) the intention to induce the plaintiff to act, (4) the plaintiff's action in reliance on the truth of the statement, (5) damages resulting from the reliance, and (6) the party making the statement is under a duty to communicate accurate information." *Patterson v. Midland States Bank*, No. 5-12-0140, 2014 WL 235482, at *4 (Ill. App. Ct. Jan. 21, 2014).

payments." This is undeniable evidence that Congress intended "disclosures" to cover the reveal of information beyond the standardized information about the core terms of a loan transaction by requiring servicers to provide a description of repayment plans, requirements for obtaining forbearance, and options available to avoid default.[9]

Therefore, reading "disclosure requirements" to exclude the information required by 20 U.S.C. § 1083(e)(2) and 34 C.F.R. § 682.205(a)(4) and include only standardized information about the loan transaction's core terms runs directly counter to the scope of "disclosures" Congress requires under the HEA.[10] Although Nelson may be correct that Congress did not intend that all communications between a borrower and a servicer are "disclosures," and state tort law could play a role in curbing misinformation servicers provide to borrowers outside of the disclosure context, Congress chose to preempt state-law disclosure requirements such as those at issue here that would require servicers to provide additional information to borrowers having difficulty making payments beyond what is required in 20 U.S.C. § 1083(e)(2) and 34 C.F.R. § 682.205(a)(4).[11]

[9] In contrast, the disclosures required by 20 U.S.C. § 1083(a), as Nelson notes, *see* Appellant's Opening Br. 19–21, include the principal amount of the loan, the amount of any charges, and the interest rate—*i.e.*, standardized information about the core terms of the loan transaction.

[10] Because the context of 20 U.S.C. § 1098g confirms that "disclosure" is not limited to the standardized core terms of the loan transaction, there is no need to examine the statute's legislative history. Nevertheless, Nelson's discussion of 20 U.S.C. § 1098g's relationship to the Truth in Lending Act ("TILA") is inapposite. The fact that in enacting 20 U.S.C. § 1098g Congress may have been concerned about lenders and servicers being required to provide duplicative disclosures under TILA does not answer what Congress meant when it expressly preempted state law disclosure requirements. Nothing in the legislative history addresses the scope of preempted state disclosure requirements.

[11] Put another way, Congress, through 20 U.S.C. § 1083 and 34 C.F.R. § 682.205's required disclosures, expounded the material facts that servicers must reveal to borrowers. By providing that alternative disclosure requirements under state law are expressly preempted, Congress indicated that any additional information in the context of these disclosures is not material and thus not actionable under state tort law.

2. The District Court's definition of "disclosure" comports with the Department of Education's understanding of this term.

Consistent with the District Court's definition of "disclosure" and the language in the federal government's disclosure scheme, the Department of Education interprets 20 U.S.C. § 1098g to preempt more than just State law disclosure requirements addressing the core terms of the loan transaction. In its Preemption Notice, the Department points out that Congress "carefully crafted" a "disclosure regime specifying what information must be provided" in the context of the FFEL Program and the Direct Loan Program. Appellee's SA 97 (Preemption Notice, 83 Fed. Reg. at 10621). In light of this scheme, the Department "interprets 'disclosure requirements' . . . to encompass informal or non-written communications to borrowers." *Id.* The Preemption Notice further explains that state-law prohibitions on misrepresenting a servicer's business practices, such as the Nelson's claim that Great Lakes misrepresented its practice of leading borrowers into forbearance, is the same thing as a state-law requirement that alternative disclosure be made. *Id.*; *see also id.* (quoting the District Court in this case in stating that "Congress intended [section] 1098g to preempt any State law requiring lenders to reveal facts or information not required by Federal law"). Therefore, "[t]o the extent that State servicing laws attempt to impose new prohibitions on misrepresentation or the omission of material information, those laws would also run afoul of the express preemption provision in 20 U.S.C. 1098g." *Id.* In accordance with this interpretation, Nelson's claims alleging that Great Lakes misrepresented its business practices in communicating with Nelson and others are preempted because they require that alternative disclosures are made.

Although deference to the Department of Education's preemption analysis is not required for this Court to affirm the District Court because the plain language and context of 20 U.S.C. § 1098g demonstrates that the statute expressly preempts Nelson's claims, this Court should

nevertheless defer to the Department's interpretation. Because the Preemption Notice interprets the disclosure requirements in 20 U.S.C. § 1083 and 34 C.F.R. § 682.205 at issue in this case, and is not plainly erroneous or inconsistent with the text of the statute and regulations at issue, the Department of Education's interpretation regarding express preemption should be controlling upon this Court and entitled to significant deference. "[A]n agency's interpretation of its own *regulations* is controlling unless plainly erroneous or inconsistent with the regulations being interpreted." *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 165 (2007) (internal quotations omitted; emphasis added); *see also Auer v. Robbins*, 519 U.S. 452, 461-63 (1997); *Bowles* v. *Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945). This substantial deference, known as "*Auer*" Deference, requires a court to defer to the agency's interpretation "unless an alternative reading is compelled by the regulation's plain language or by other indications of the [agency's] intent at the time of the regulation's promulgation." *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994) (quoting *Gardebring v. Jenkins*, 485 U.S. 415, 430 (1988)). Because, as described above, no alternative reading is compelled by 20 U.S.C. § 1098g's plain language and context, the Preemption Notice is entitled to "*Auer*" Deference.[12]

Moreover, courts are to give interpretational deference to a federal agency's interpretation regarding preemption. *See Wyeth v. Levine*, 555 U.S. 555, 576–77 (2009) (reasoning that agencies have unique understanding of statutes that they administer and an

[12] Even under "*Skidmore*" Deference—discussed by Nelson and amici—this Court should defer to the Preemption Notice. "*Skidmore*" Deference recognizes that an agency's interpretation "constitute[s] a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) ("The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."). Even if this Court were to determine that the Preemption Notice is subject to "*Skidmore*," and not "*Auer*," Deference, because the Preemption Notice is well-reasoned, persuasive, reflects the Department of Education's unique position as the creator, lender or reinsurer, and regulator of federal student loans, and adheres to the Department's historical interpretation of the HEA's preemptive effect, this Court should defer to it.

attendant ability to make informed determinations about how state requirements may pose an obstacle to accomplishment and execution of Congress' purposes and objectives). In the student loan context, the *Chae* court deferred to the Department of Education's interpretation regarding preemption in the student loan context because "[the agency's] position about the [FFEL Program's] purpose of uniformity is in harmony with the evidence of congressional intent". 593 F.3d at 949–50. Here, the Department's interpretation relies on a detailed examination of the purpose and intent of the federal student loan programs and extensively cites case law, including the District Court's decision in this case. *See* Appellee's SA 95–97 (Preemption Notice, 83 Fed. Reg. at 10619–21.

Contrary to arguments advanced by amici, the Department's interpretation is not inconsistent with its earlier pronouncements. Rather, it is also the culmination of positions it has taken in previous cases, such as in *Chae* and *Massachusetts v. Pennsylvania Higher Education Assistance Agency, d/b/a FedLoan Servicing*, No. 1784-CV-02682 (Mass. Super. Ct., filed Jan. 8, 2018), where it expressed its position why certain State laws were preempted. *See, e.g.*, Brief for Plaintiff-Intervenor-Appellee, *Chae v. SLM Corp.*, 593 F.3d 936 (9th Cir. 2010) (No. 08-56154), 2009 WL 2444650, at *6 (in addressing express preemption, the Department of Education specified in its brief as an intervenor in Chae that "additional requirements [to the detailed disclosures in 20 U.S.C. § 1083 and 34 C.F.R. § 682.205] are barred whether they are enacted legislatively or implied judicially in the context of a tort suit"); *see also* Appellee's SA 95–96 (Preemption Notice, 83 Fed. Reg. at 10619–20) (noting that the Department's interpretation in the Preemption Notice conforms with previous pronouncements in *Chae* and *Pennsylvania Higher Education Assistance Agency*). This view on preemption traverses multiple presidential administrations and comports with Congress's command that the Department of

Education, in promulgating regulations for the federal student loan programs, "[e]stablish a set of rules that will apply across the board." *Chae*, 593 F.3d at 947.

The two earlier pronouncements cited by the Illinois Attorney General's amicus brief are not on point. Br. of Amicus Curiae Lisa Madigan, Att'y General of Illinois 16–17. First, the Department of Education's statement in 2010 about States retaining the primary role against fraudulent or abusive practices concerns practices by "postsecondary institutions," not student loan servicers. *See id.* at 16 (quoting *Final Regulations, Program Integrity Issues*, 75 Fed. Reg. 66932, 66865 (Oct. 29, 2010)). Unlike servicers, who act on behalf of the federal government often pursuant to federal contracts, postsecondary institutions have traditionally been regulated by the States. Second, the Attorney General's quotation of the Department's Office of General Counsel's letter is taken out of context. The quoted sentence states in full that "[i]f the State determines that loan servicers or [private collection agencies] are "collection agencies" under [the Maryland Collection Agency Licensing Act], the Department does not believe that the State's regulation of those entities would be preempted by Federal law." Letter of Vanessa A. Burton to Jedd Bellman, Assistant commissioner, Maryland Dep't of Labor, Licensing and Regulation 2 (Jan. 21, 2016), *available at* https://goo.gle/J1KB3e. In other words, the quotation concerned federal preemption as to state laws governing the collection of student loans, not the disclosure of information relating to the servicing of student loans. The letter makes no statement addressing 20 U.S.C. § 1098g or its preemptive scope. Similarly, the arguments about inconsistency in the amicus brief filed by the Center for Responsible Lending and the United States Public Interest Research Group Education Fund, Inc. reference statements made in the debt collection context and outside of the context of express preemption of state disclosure

requirements. Br. of Amicus Curiae Center for Responsible Lending and the United States Public Interest Research Group Education Fund, Inc. 9–14.

Therefore, this Court should defer to the Department of Education's Preemption Notice as to how state law affects the regulatory scheme for student loan servicing and, specifically, the preemptive effect of 20 U.S.C. § 1098g. As the next subsection notes, the Department's position correctly interprets *Chae* and other cases holding that 20 U.S.C. § 1098g expressly preempts claims such as Nelson's.

D. The Express Preemption of Nelson's Claims is Consistent with the Holdings in Cases in Other Jurisdictions.

Although there is no precedent in this Circuit, courts in other jurisdictions have held that 20 U.S.C. § 1098g expressly preempts improper-disclosure claims characterized by plaintiffs as claims addressing servicers' fraudulent, deceptive, and unfair practices.

The seminal case is *Chae* out of the Ninth Circuit. There, the plaintiffs, student loan borrowers, sued Sallie Mae, the servicer of their FFEL Loans, for alleged fraudulent and deceptive conduct. 593 F.3d at 940–41. They based these allegations on three practices Sallie Mae used in servicing student loans. *Id.* The plaintiffs first challenged Sallie Mae's use of the "daily simple interest" method of calculating interest that applies a borrower's payment on the date the payment is received rather than the date the payment is due, meaning that interest accrues based on the number of days since the last payment. *Id.* at 940. They alleged that their loan contracts require Sallie Mae to instead use an "installment method," where the total amount of interest is fixed and does not vary based on the date payment is received. *Id.* The plaintiffs also challenged Sallie Mae's practices of assessing late fees and of setting the first repayment date on specific loans. *Id.* at 940–41. They argued that these practices violate California's Unfair Competition Law and Consumer Legal Remedies Act, and contract law. *Id.* at 941.

The Ninth Circuit first addressed whether 20 U.S.C. § 1098g expressly preempts any of the plaintiffs' claims. The court noted that two of plaintiffs' claims under California's Unfair Competition Law alleged that Sallie Mae employed "'unfair' and 'fraudulent' business practices by using billing statements and coupon books that trick borrowers into thinking that interest is being calculated via the installment method when Sallie Mae instead uses a simple daily calculation." *Id.* at 942 (citing Cal. Bus & Prof. Code § 17200). Plaintiff's claim under the Consumer Legal Remedies Act alleged that "the billing statements and standardized loan applications 'misrepresent[] that the Student Loans confer rights, remedies, and obligations' which do not exist, thereby constituting an unfair or deceptive practice." *Id.* (citing Cal. Civ. Code § 1770(a)).

In construing these claims, the court noted that the plaintiffs "do not contend that California law prevents Sallie Mae from employing any of these three loan-servicing practices at issue" in the case, but rather challenge "the allegedly-misleading method Sallie Mae used to communicate with the plaintiffs about its practices." *Id.* at 942–43. Because "the state-law prohibition on misrepresenting a business practice 'is merely the converse' of a state-law requirement that alternative disclosures be made," 20 U.S.C. § 1098g expressly preempted these claims. *Id.* at 943 (citing *Cipollone v. Liggett Grp., Inc.* 505 U.S. 504, 527 (1992)).[13] In other words, the crux of plaintiffs' claims was that Sallie Mae should have disclosed that it used the "installment method" rather than the "daily simple interest" method.

[13] Nelson's reliance on *Cipollone*'s statement that federal law does not preempt the "more general obligation . . . not to deceive" is misplaced. *See* 505 U.S. at 528–29. *Cipollone* did not concern the HEA or servicer disclosure requirements. In the context of federal student loan servicing, Congress singled out state-law disclosure requirements as being expressly preempted. Based on the reasoning in *Cipollone* as applied in *Chae*, federal law expressly preempts claims based on the state tort law obligation not to deceive if it clashes with the federal disclosure scheme by imposing additional disclosure requirements on servicers.

The Ninth Circuit reached this holding despite plaintiffs' argument that they did not seek specific disclosures but rather aimed to prevent Sallie Mae "from fraudulently and deceptively misleading borrowers through the written documents." *Id.* at 943. The court rejected this argument, stating that "preemption cannot be avoided simply by relabeling an otherwise-preempted claim." *Id.* Moreover, because a "misleading" disclosure would be improper under the terms of the FFEL Program, "[a] properly-disclosed [FFEL Program] practice cannot simultaneously be misleading under State law, for state disclosure law is preempted by the federal statutory and regulatory scheme." *Id.* Therefore, plaintiff's misrepresentation claims are restyled improper-disclosure claims that are federally preempted. *Id.* at 942–43.

Based on the reasoning in *Chae*, the courts in *Brooks v. Salle Mae, Inc.*, No. FSTCV096002530S, 2011 WL 6989888, at **6–7 (Conn. Super. Ct. Dec. 20, 2011) and *Linsley v. FMS Inv. Corp.*, No. 3:11CV961 (VLB), 2012 WL 1309840, at **4–6 (D. Conn. Apr. 17, 2012) held that 20 U.S.C. § 1098g expressly preempts student loan borrower claims based on servicers' alleged violations of the Connecticut Unfair Trade Practices Act ("CUTPA"). In both cases, the plaintiffs alleged that a servicer misrepresented information—the servicer allegedly failed to inform the borrower of her other options if she was unable to comply with economic deferment requirements, refused to inform the plaintiff of other information she could submit as proof of her recent income to determine her eligibility for economic deferment, misrepresented the documentation requirements to determine eligibility for economic deferment, and misrepresented that the borrower had to pay all late fees before she could enter economic deferment in *Brooks*, and allegedly falsely represented the HEA's requirements for loan consolidation and rehabilitation in *Linsley*. 2011 WL 6989888, at **5–6; 2012 WL 1309840, at *2. Citing *Chae*, the courts determined that the plaintiffs' claims were no different than claims

that the servicers failed to make proper disclosures. 2011 WL 6989888, at *6; 2012 WL 1309840 at *5. The courts reasoned that because "[i]f properly disclosed, the information that the plaintiff sought could not simultaneously be misleading," 20 U.S.C. § 1098g expressly preempts the plaintiffs' CUTPA claims. *Id.*

Chae is analogous. Like the plaintiffs' allegation in *Chae* that Sallie Mae used unfair and fraudulent business practices to deceive borrowers into thinking that interest is being calculated via the installment method instead of the simple daily calculation used, 593 F.3d at 942, Nelson alleges that Great Lakes engaged in the unfair, deceptive, and fraudulent practice of "steering" borrowers into forbearance. In both instances, the plaintiff challenges an allegedly misleading method the servicer used to communicate the servicer's practice at issue, but does not—and cannot—allege that state law prohibits the practice. *See id.* As a result, the essence of the claims in both cases is that the servicer failed to disclose alternative information in addition that required by the HEA and its regulations. In *Chae*, the omission was that Sallie Mae should have disclosed that it uses the installment method for billing. *Id.* at 942–43. Here, the omissions relate to information that Nelson alleges Great Lakes should have disclosed when borrowers contacted its representatives when having difficulty making repayments. And in both cases, the federal government highly regulates the communications at issue—specifying the common forms to disclose the terms of the loan in *Chae*, *see id.* at 943, and disclosures that must be made when a borrower is having difficulty making repayments in this case.

Consequently, the Ninth Circuit's reasoning in *Chae* applies to this case. Just as the plaintiffs in *Chae* could not avoid preemption by relabeling their claim, Nelson cannot do the same.[14]

[14] Moreover, even if some of Nelson's allegations were construed as alleging that Great Lakes failed to disclose the information required in 20 U.S.C. § 1083(e)(2) and 34 C.F.R. § 682.205(a)(4) in interacting

E. Case Law Cited by Nelson and Amici Are Inapposite Because They Do Not Involve Disclosures.

Nelson and amici cite cases subsequent to *Chae* from other jurisdictions in support of their argument that Nelson's claims are somehow not preempted under *Chae*'s logic. None of these cases apply to the facts of this case.

Nelson first cites *Genna v. Sallie Mae, Inc.*, No. 11 Civ. 7371(LBS), 2012 WL 1339482 (S.D.N.Y. Apr. 17, 2012) in support of her contention that states can prohibit the alleged fraudulent, unfair, and deceptive practices by Great Lakes without implicating express preemption. Appellant's Opening Br. 33-34. *Genna*, however, addressed alleged affirmative misrepresentations a servicer made to a borrower during communications that were not regulated under the federal disclosure scheme. In that case, Sallie Mae consistently made affirmatively false statements to a borrower of a FFEL Loan. *Id.* at *1. Specifically, Sallie Mae told the borrower that his auto-debit payments would continue when they did not. *Id.* Instead, the borrower's loan was placed into default. *Id.* The borrower then called Sallie Mae, who informed him that his loan was being placed into forbearance during which time no payment would be due and that his request for auto-debit was being submitted. *Id.* The borrower, however, later received an email that revealed that he had not been granted forbearance, that his loan was still in default and this fact was reported to credit reporting agencies, and that he was now two months in arrears. *Id.*

The borrower brought suit for breach of the implied covenant of good faith and fair dealing, fraudulent misrepresentation, breach of fiduciary duty, negligent misrepresentation, breach of contract, and unfair business practices. *Id.* at ** 2–7. The court, in addressing express

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with borrowers having difficulty making payments, they would still be expressly preempted based on the holdings in *Brooks* and *Linsley*. Nelson, however, states that her claims are not predicated on challenging the use or adequacy of federal disclosures. Appellant's Opening Br. 36.

preemption under 20 U.S.C. § 1098g, determined that *Chae* was inapplicable because Sallie Mae's "statements at issue . . . were neither authorized by the Secretary of Education nor conformed to any explicit dictates of federal law." *Id.* at *8. Because "[t]here was nothing in the HEA that standardizes or coordinates how a customer service representative of a third-party loan servicer like Sallie Mae should interact with a customer like Genna in the day-to-day servicing of his loan outside of the circumstance of pre-litigation information collection activity," 20 U.S.C. § 1098g is irrelevant. *Id.*

Although Nelson sees similarity between *Genna* and her case, the allegations are nothing alike. The borrower in *Genna* alleged tort and contract claims based on his justifiable reliance on Sallie Mae's commitment to undertake certain actions on his behalf. *See id.* at *3 (noting that the borrower's negligent misrepresentation claim "alleges that Sallie Mae committed fraud when it falsely stated that it was granting Genna a 60–day forbearance, servicing his loan in the same manner as had [the previous servicer], and enrolling him in auto-debit"). While the communications between Sallie Mae and the borrower concerned the status of the borrower's loan, the borrower's claims contend that Sallie Mae affirmatively lied about the actions it would take. Nelson, in contrast, has not alleged that anything Great Lakes affirmatively communicated was false. This difference explains why *Genna* does not impose additional disclosure requirements on servicers, but rather simply requires that servicers not affirmatively mislead borrowers about concrete actions they will take on their accounts. In addition, the *Genna* court's observation—that day-to-day servicing activities that are not standardized or coordinated by the HEA fall outside the disclosure context—supports Great Lakes. Sallie Mae's interactions with the borrower in *Genna* were informal and not regimented by the HEA or its regulations. The borrower in *Genna* called Sallie Mae with questions about his loan and then was affirmatively

deceived by the servicer. In contrast, when Nelson and others communicated with Great Lakes regarding their economic hardship, this communication triggered required disclosures for borrowers having difficulty making payments. *See* 20 U.S.C. § 1083(e)(2); 34 C.F.R. § 682.205(a)(4). Nelson's and others' interactions with Great Lakes in this context fell outside day-to-day servicing and into standardized communication expressly regulated by the HEA and its implementing regulations through disclosure requirements.[15]

Similar to *Genna*, *Gentleman v. Mass. Higher Educ. Assistance Corp.*, 272 F. Supp. 3d 1054 (N.D. Ill. 2017), also cited by Nelson, did not involve disclosures. In *Gentleman*, the student borrower filed suit against those involved in servicing his FFEL Loan under the Illinois Consumer Fraud and Deceptive Practices Act. *Id.* at 1068–69. In holding that express preemption did not apply, the court reasoned that the plaintiff's claim was "based not on [defendant's] refusal to make disclosures, but on its alleged attempt to collect a debt that it knew, or should have known, [the plaintiff] did not owe." *Id.* at 1069. Here, there is no allegation that Nelson does not owe her student loans or that Great Lakes was attempting to collect a debt.

Although *Genna* and *Gentlemen* are inapplicable, they demonstrate that, contrary to Nelson's and the amicus brief's assertions that the District Court's holding would swallow claims against servicers for unfair, fraudulent, or deceitful practices, state tort remains an option for borrowers so long as the claims to not impose upon servicers additional disclosure

[15] For the same reason, the reasoning in *Davis v. Navient Corp.*, No. 17-cv-00992-LJV-JJM, 2018 WL 1603871, at *6 (W.D.N.Y. Mar. 12, 2018) is inapplicable. *Davis* relied on *Genna* in asserting that "to the extent that plaintiff's claims arise from [the servicer's] unregulated conduct over the telephone, they are similar to those in *Genna*, and are not subject to express preemption." *Id.* at *3. In contrast, the disclosures Great Lakes had to provide to Nelson and others when they are having difficulty making payments is expressly regulated by the HEA and its implementing regulations.

requirements.[16] Congress, however, expressly preempted state tort law claims, such as Nelson's claims, that implicate disclosure requirements servicers make to borrowers.

IV. FEDERAL LAW PREEMPTS NELSON'S CLAIMS UNDER CONFLICT PREEMPTION.

Even if this Court were to determine that 20 U.S.C. § 1098g does not expressly preempts Nelson's claims, this Court should affirm the District Court because Nelson's claims are preempted under conflict preemption.

When a state law "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,'" that state law is preempted under the doctrine of conflict preemption. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *see also Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) ("'[T]he purpose of Congress is the ultimate touchstone' in every pre-emption case."). An obstacle occurs where state law would "undermine [a federal statute's] goals and policies." *See Volt Info. Sciences v. Stanford Univ.*, 489 U.S. 468, 477–78 (1989). In deciding whether conflict preemption applies, the Court must consider both the statute's text and its purpose and objectives. *See Crosby*, 530 U.S. at 373 ("For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed."); *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 103 (1992) ("In determining whether state law stands as an obstacle to the full implementation of a federal law it is not enough to say that the ultimate goal of both federal and state law is the same. A state law also is pre-empted if it interferes with

[16] In addition, as noted by the Ninth Circuit in *Chae*, the Department of Education "has the power to institute informal compliance procedures against a third-party servicer who is the subject of a complaint," and "may file suit against the servicer, impose civil penalties, and terminate the servicer's participation in the program." *Chae*, 593 F.3d at 943 n.6 (citing 34 C.F.R. § 682.703and 20 U.S.C. §§ 1082(a)(2), (g)(1), (h)(1)). If a servicer's "disclosures are misleading, the plaintiffs' remedy is to complain about [the servicer] to the [Department of Education] and to ask the agency to intervene." *Id.*

the methods by which the federal statute was designed to reach th[at] goal." (internal quotation marks and citations omitted)).

Congress expressed specific goals in establishing federal student loan programs. Through the FFEL Program, Congress aimed "to encourage States and nonprofit private institutions and organizations to establish adequate loan insurance programs for students in eligible institutions," "to provide a Federal program of student loan insurance," and "to guarantee a portion of each loan insured." 20 U.S.C. § 1071(a)(1)(A), (B), (D). Similarly, in creating and expanding the Direct Loan Program, Congress mandated uniformity in the "terms, conditions, and benefits" of loans made under the Direct Loan Program and the FFEL Program." Brief for Plaintiff-Intervenor-Appellee, *Chae v. SLM Corp.*, 593 F.3d 936 (9th Cir. 2010) (No. 08-56154), 2009 WL 2444650, at *6 (citing 20 U.S.C. § 1087e(a) (specifying that Direct Loans "shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers" of FFEL Loans). Congress also intended to, among other things, "replace, through an orderly transition, [the FFEL Program] with [the Direct Loan Program]," "avoid the unnecessary cost to taxpayers and borrowers and the administrative complexity associated with [the FFEL Program] through the use of a direct student loan program," and "create a more streamlined student loan program that can be managed more effectively at the Federal level." 139 Cong. Rec. S5628 (daily ed. May 6, 1993). By replacing the FFEL Program with the Direct Loan Program, Congress desired to reduce federal student loan programs' costs to taxpayers by removing the administrative complexity experienced in the FFEL Program and to streamline student lending through the Direct Loan Program. *See, e.g.*, 156 Cong. Rec. S1831 (daily ed. Mar. 23, 2010) (statement of Sen. Harkin) ("Simply put, this bill cuts out the middleman, saves $61 billion over the next 10 years, and gives it to students.").

Recognizing these goals, the Ninth Circuit in *Chae* concluded that "Congress intended uniformity within [the FFEL Program]. The statutory design, its detailed provisions for the [FFEL Program's] operation, and its focus on the relationship between borrowers and lenders persuade us that Congress intended to subject [the FFEL Program's] participants to uniform federal law and regulations." 593 F.3d at 947. The court also explained that "[i]n the rules governing the Direct Loan Program, Congress created a policy of interprogram uniformity by requiring that loans made to borrowers [under the Direct Loan Program] shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers under [the FFEL Program]. Indeed, Congress's instructions to the [Department of Education] on how to implement the student-loan statutes carry this unmistakable command: Establish a set of rules that will apply across the board." *Id.* at 945 (internal citation and quotations omitted).[17] As a result, *Chae* court determined that because Congress intended the FFEL Program to operate uniformly, California state law claims for alleged fraudulent and deceptive practices present an obstacle to the FFEL Program's uniform operation and are preempted. 593 F.3d 947–49.

Although *Chae* addressed conflict preemption in the FFEL Program context, its reasoning applies equally if not more forcefully in the context of the Direct Loan Program where there are

[17] The Fourth Circuit in *College Loan Corp. v. SLM Corp.*, 396 F.3d 588, 590 (4th Cir. 2005), cited in the amicus brief for the Center for Responsible Lending and United States Public Interest Research Group Education Fund, Inc., did not reach a contrary conclusion in stating that it was "unable to confirm" if uniformity was an important goal of the FFEL Program. The court decided *College Loan* before *Chae* and without the benefit of the position of the Department of Education, which intervened in *Chae*. *See Brannan v. United Student Aid Funds, Inc.*, 94 F.3d 1260, 1264 (9th Cir. 1996) ("Because Congress has delegated to the Secretary its authority to implement the provisions of the HEA, the Secretary 'is uniquely qualified to determine whether a particular form of state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, . . . and therefore, whether it should be preempted'" (quoting *Medtronic*, 518 U.S. at 496)). In addition, *College Loan* involved one lender seeking to enforce HEA provisions against another lender, *College Loan*, 396 F.3d at 599, and thus concerns about conflict would be less severe than in the student loan servicing context.

no private parties making or guaranteeing the loans. The Department of Education clarified in its Preemption Notice that state laws that purport to regulate student loan servicers may create numerous conflicts with federal law, undermine Congress's goal of saving taxpayer money in administering the Direct Loan Program, and impede uniform administration of the federal student loan programs. Appellee's SA 96–98 (Preemption Notice, 83 Fed. Reg. at 10620–22 (explaining that "[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")). The United States also issued a Statement of Interest in a similar case to *Chae*, specifying its position that Massachusetts's claims against a student loan servicer for violation of state law in servicing Direct Loans are preempted due to their conflict with the HEA and its implementing regulations, their conflict with the HEA's purposes, and their conflict with the Department of Education's contract with the servicer. Appellee's SA 103 (Statement of Interest by the United States, *Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency* at 10–21, No. 1784CV02682 (Mass. Sup. Ct.)) (noting that "[t]he Departments contract with [the student loan servicer] is voluminous—spanning more than 600 pages and including provisions governing [the servicer's] financial controls, internal monitoring, communications with borrowers, and many other topics").[18]

Here, exposing Great Lakes, as well as other servicers, to state law tort liability for failure to disclose information not required in the HEA and its implementing regulations stands as an obstacle to Congress' objectives in establishing the federal student loan programs. Rather than creating uniformity, servicers would have to navigate a plethora of new disclosure obligations

[18] For reasons articulated earlier in this brief, the Department of Education's statements are entitled to deference.

that vary by state. *See Chae*, 593 F.3d at 950 ("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. Such an obstacle, which we consider hostile to the purposes of Congress in this program, must bow to the overriding principles of conflict preemption and federal law supremacy."); Appellee's SA 97 (Preemption Notice, 83 Fed. Reg. at 10621) ("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."). Borrowers also would be treated differently depending on their state of residence, to the detriment of the uniformity and ease of administration sought by Congress in establishing the FFEL Program and the Direction Loan Program. Congress established the specific disclosures in 20 U.S.C. § 1083 and 34 C.F.R. § 682.205 to prevent such chaos. *See Chae*, 593 F.3d at 945 ("[P]ermitting varying state law challenges across the country, with state law standards that may differ and impede uniformity, will almost certainly be harmful to the [FFEL Program].").

Potentially worse, servicers would be forced to engage in "defensive counseling"—giving borrowers a "catch-all" plethora of disclosures in anticipation of any potential state law claims they could raise. This information dump would be completely untenable and not increase borrowers' actual knowledge. Rather, servicers would have to spend time and money to ensure that they reveal information to borrowers to avoid tort liability in each state, which in turn would increase the federal government's costs and reduce its savings. The increase burden on servicers from separate disclosure requirements in various states also could potentially cause them to leave the student loan market and thus reducing necessary competition. *See, e.g.*, 156 Cong. Rec.

H1883 (Mar. 21, 2010) (statement of Rep. Miller) ("In addition, by including more high-quality servicers in the contracting process, competition will be increased thereby delivering better quality for student borrowers."). These consequences could severely impair servicers' ability to provide customer service under the terms of their contracts with the federal government and statutory and regulatory requirements, and clash with Congress' and the Department of Education's discernable objectives in establishing the federal student loan programs because of the important role servicers play in administering the programs.

Conflict preemption is even more acute where there are conflicts between state law and the provisions of contracts between the federal government and contractors, such as in the context of Direct Loans where the federal government contracts with servicers for the servicing of federal student loans. *See Boyle v. United Techs. Corp.*, 487 U.S. 500, 504, 507 (1988) (holding that federal preemption may apply even "in the absence of either a clear statutory prescription, or a direct conflict between federal and state law" in areas of "uniquely federal interests" with "significant conflict . . . between an identifiable federal policy or interest and the [operation] of state law, or the application of state law would frustrate specific objectives of federal legislation"). Federal student loans are an area of uniquely federal interests. They include obligations to and rights of the United States under its contracts with student loan servicers and the protection of the funds of the United States under both the FFEL Program and the Direct Loan Program, in addition to administering and streamlining the federal student loan programs to be cost-effective and uniform. *See id.* at 504-05 ("We have held that obligations to and rights of the United States under its contracts are governed exclusively by federal law."); Appellee's SA 95–97 (Preemption Notice, 83 Fed. Reg. at 10619–21) (articulating the unique federal interests in the servicing of federal student loans).

If Nelson's claims were allowed to proceed, they would—by establishing that state law torts based on allegations of incomplete or insufficient disclosures to borrowers are fair game—undermine these important congressional objectives in administering a federal program constituting almost half the financial assets of the U.S. government. Servicers would be placed in the flawed position of proving a negative and working preemptively (although almost certainly futilely) to identify and fill gaps in disclosures a borrower could retrospectively claim violates state law if not provided. These reasons explain why Congress chose to pass 20 U.S.C. § 1098g and expressly preempt her claims. Nevertheless, even if 20 U.S.C. § 1098g does not apply, Nelson's claims are preempted under principles of conflict preemption.

V. CONGRESS HAS OCCUPIED THE FIELD OF REGULATING THE SERVICING OF FEDERAL STUDENT LOANS MADE OR GUARANTEED BY THE FEDERAL GOVERNMENT.

Finally, Nelson's claims are also barred by field preemption. The federal government, through its actions, has occupied the field of federal student loan servicing, which prevents Nelson from bringing state law claims. Field preemption occurs where "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject, or if the goals sought to be obtained and the obligations imposed reveal a purpose to preclude state authority." *Wisc. Pub. Intervenor v. Mortier*, 501 U.S. 597, 605 (1991).

No court has yet addressed whether federal law occupies the field of regulating the servicing of federal student loans made or guaranteed by the federal government. Amici Center for Responsible Lending and United States Public Interest Research Group Education Fund, Inc. correctly note that the Ninth Circuit has refused to apply field preemption to resolve cases involving the HEA. Br. of Amicus Curia Center for Responsible Lending and United States Public Interest Research Group Education Fund, Inc. at 16 (citing and quoting *Keams v. Tempe*

Technical Inst., Inc., 39 F.3d 222, 225–26 (9th Cir. 1994) and *Chae*, 593 F.3d at 942)); *see also College Loan*, 396 F.3d at 598 ("The fact that the Secretary has promulgated extensive regulations pursuant to the HEA does not, standing alone, persuade us to the contrary. The existence of comprehensive federal regulations that fail to occupy the regulatory field do not, by their mere existence, preempt non-conflicting state law."); *Genna*, 2012 WL 1339482, at *7 (noting that no court has found that field preemption applies to the HEA). But these cases addressed whether the Congress has chosen to occupy the field of the HEA itself, not the narrower field of the servicing of federal student loans. The HEA is a comprehensive statutory scheme that authorizes numerous federal aid programs that support individuals pursuing a postsecondary education as well as institutions of higher education. Only Title IV of the HEA, 20 U.S.C. § 1070, *et seq.*, specifically authorizes and governs the major student aid programs, the Direct Loan Program and the FFEL Program. The other seven titles of the HEA address other aspects of postsecondary education and have no application to this case. Great Lakes is not asserting that the HEA preempts all state-law tort claims regarding postsecondary education or any other topic addressed by the HEA, or even every state law claim based on conduct related to the HEA (such as an affirmative misrepresentation).

Nevertheless, even if those cases establish precedent as to the applicability of field preemption to the regulation of the servicing of federal student loans, the federal government's actions over the last decade have demonstrated that while the field may not have been occupied then, it is now. Congress's decisions to pass ECASLA, through which the Department of Education purchased from private lenders approximately 3.91 million FFEL Loans with an outstanding balance of over $94 billion, and SAFRA in 2010, which ended the FFEL Program as an option for new federal student loans, evince a clear intent that the federal government take an

active and direct role in both the lending and servicing of federal student loans. Since 2010, all new federal student loans are made by the federal government and serviced by student loan servicers pursuant to federal contracts.

The precedent established in *Kearns* (1994), *College Loan* (2005), and *Chae* (2010) either predate the passage and implementation of ECASLA and SAFRA or were announced too recently after Congress passed those acts. Those cases did not benefit from observing the increasingly dominant federal interests in the servicing of federal student loans. As a result of ECASLA and SAFRA, not only do federal student loans constitute over 45 percent of the total financial assets of the U.S. government, but the federal government owns and manages over 85 percent of all outstanding federal student loans, which is now an industry that has grown to over $1.4 trillion in outstanding student loans.

As noted earlier in this brief, over 90 percent of new student loans today are made through the Direct Loan Program, and Direct Loans constitute over $1.1 trillion, or approximately 78 percent, of federal student loans. And field preemption has particular force in the context of servicing these loans made and managed by the federal government.[19] The Department of Education expounded on the dominant federal interests in the servicing of Direct Loans in stating in its Preemption Notice that "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." Appellee's SA 97 (Preemption Notice, 83 Fed. Reg. at 10621). The notice "clarify[ies] its view 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

[19] Although she does not specify it in her Complaint or Opening Brief, Nelson's loans are Direct Loans serviced pursuant to Great Lakes' servicing contract with the federal government.

administration of the program." Appellee's SA 96 (Preemption Notice, 83 Fed. Reg. at 10620); *see also Boyle v. United Techs. Corp.*, 487 U.S. 500, 504–505 (1988) (procurement of military equipment is an area of "uniquely federal interest" that preempts state regulation).

Therefore, although state law may have had a place regulating around the edges of federal student loan servicing in the past, the growth of the federal student loan programs has rendered federal interests dominate and thus has resulted in the federal government occupying the field of regulating the servicing of federal student loans.

CONCLUSION

Because, given the federal government's unique and extensive role as the creator, lender or reinsurer, and regulator of the federal student loan program, these claims are preempted expressly by 20 U.S.C. § 1098g and additionally under the doctrines of conflict and field preemption, this Court should affirm the District Court's dismissal of Nelson's claims.

CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it does not exceed 13,181 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Circuit Rule 32(b) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in 12 point Roman font, with footnotes in 10 point Roman font.

Date: August 1, 2018

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CERTIFICATE OF SERVICE

This is to certify that on this 1st day of August 2018, I electronically filed the foregoing **BRIEF OF APPELLEE GREAT LAKES EDUCATIONAL LOAN SERVICES, INC.** through the federal ECF filing system which will send notification of such filing to all parties of record registered with ECF.

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