State Law Governing Federal Student Loan Servicing Not Preempted by the Higher Education Act

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McGlinchey AlertThe U.S. District Court for the Western District of Wisconsin recently that held provisions of a state's consumer protection law governing how a loan servicer collects payments owed on a federal student loan are not preempted by the federal Higher Education Act ("HEA"). *Weber v. Great Lakes Education Loan Services,* U.S. District Court, W.D. Wis. No. 13-cv-00291-wmc. The consumer alleged that Great Lakes violated the Wisconsin Consumer Act by disclosing information affecting his reputation to his mother, communicating with his mother in a frequency and manner reasonably expected to threaten or harass the consumer and his mother, engaging in other harassing conduct by contacting the consumer's attorney, and claiming a right to collect a debt while knowing that the right does not exist. Great Lakes sought to dismiss the claims arguing that the HEA preempted the Wisconsin Consumer Act with respect to the collection of a federal loan.

The core of this decision relates to preemption and whether a state law governing servicing and collection efforts is preempted by the HEA and its regulations. Because Great Lakes did not assert that either field preemption or express preemption applied to the borrower's claims, the court analyzed whether the Wisconsin Consumer Act conflicts with the HEA and its regulation regarding loan collection. Under conflict preemption, a state law is preempted only to the extent it is impossible to comply with both state and federal requirements or if state law stands as an obstacle to the accomplishment and execution of the full purpose and objective of Congress. *See Florida Lime & Avocado Growers Inc. v. Paul, 373 U.S. 132, 142-43 (1963), Hines v. Davidowitz, 312 U.S. 52, 67 (1941).*

First, the court considered whether Great Lakes could have complied with both state and federal requirements concerning debt collection. While the HEA and its implementing regulations require servicers to engage in certain due diligence efforts to collect defaulted loans, Great Lakes could have complied with this mandate without engaging in abusive debt collection practices. The court suggests that Great Lakes could have called the borrower's mother to obtain the borrower's phone number and explain it was a debt servicing agency without violating state law "as none of this information can reasonably be characterized as having a negative effect on

Weber's reputation". Accordingly, as to the first question, the court held that because Great Lakes could have complied with both the state and federal requirements concerning debt collection, there was no conflict between Wisconsin and federal law.

Second, the district court held that a state law prohibiting abusive debt collection practices does not hinder or prohibit collection actions that are required by the HEA. The court disagreed with Great Lakes that any state law that attempts to regulate the servicing and collection of federal loans is preempted based on the Ninth Circuit Court of Appeals' decision in *Brannan v. United Student Aid Funds*, 94 F.3d 1260 (9th Cir. 1996). The district court found that Brennan was neither controlling nor persuasive. You'll recall that *Brannan* held that the HEA regulations preempt the Oregon Unfair Debt Collection Practices Act. The *Weber* court observed that the federal HEA regulations establish minimum standards for collection efforts and preemption would not extend beyond what is reasonably necessary to achieve an effective minimum standard of collection action. The court was unwilling to conclude that any and every state law that governs collection efforts is preempted by the HEA. Instead, as long as the minimum standards of the HEA regulations can be reasonably achieved without violating state law, the more restrictive state consumer protection laws will not conflict with the HEA or its implementing regulations.

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