

**Congress of the United States**  
Washington, DC 20510

August 13, 2018

Mr. Jeffrey R. Noordhoek  
Chief Executive Officer  
Nelnet, Inc.  
121 South 13<sup>th</sup> Street  
Lincoln, Nebraska 68508

Dear Mr. Noordhoek:

We understand that Nelnet, Inc. (Nelnet) has recently indicated to the California Department of Business Oversight (DBO) that your subsidiary, Great Lakes Educational Loan Services, Inc. (Great Lakes), does not intend to comply with the provisions of our state's *Student Loan Servicing Act* based on the assumption that state law does not apply to Great Lakes' student loan servicing operations.<sup>1</sup> We are alarmed by this position and believe that you should immediately reconsider.

Consumer protection has long been a responsibility shared by the federal government and the states, both within the student loan market and across the financial sector. This is not solely our position. A bipartisan group of state attorneys general has noted that "there is no principled reason" or "any justification to seek to interfere with the traditional police power of states to protect their own residents from abuses in the marketplace."<sup>2</sup> The organization representing all of our nation's governors has opposed preemption in student loan servicing<sup>3</sup> and the organization representing all of the nation's banking regulators have indicated that "preemption by regulatory fiat runs counter to the Congressionally mandated state-federal balance in financial regulation and exceeds the Department's authority."<sup>4</sup>

Three federal and state courts have considered the question of student loan preemption directly in the past 18 months, each of which has concluded that, as a matter of law, the *Higher Education Act* does not preempt state oversight of federal student loan servicers.<sup>5</sup> And, your contract with the U.S. Department of Education stipulates that:

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<sup>1</sup> Letter from Ms. Hiruth Haile, Senior Compliance Officer, Nelnet, Inc., to Ms. Jan Lynn Owen, Commissioner, California Department of Business Oversight. June 28, 2018. <https://go.usa.gov/xUnMP>

<sup>2</sup> *Id.*

<sup>3</sup> National Governors Association. Release: Governors Voice Concerns Over New Student Borrower Proposal. March 12, 2018. <https://www.nga.org/cms/govs-voice-concerns-over-new-student-borrower-proposal> (citing *Written Statement of the National Governors Association On Federalism Implications of Treating States as Stakeholders To The House Committee on Oversight and Government Reform* (February 2018), <https://oversight.house.gov/wp-content/uploads/2018/02/National-Governors-Association-Statement.pdf>)

<sup>4</sup> Letter from John Ryan, President and CEO, Conference of State Bank Supervisors, to the Honorable Betsy DeVos, Secretary of Education. March 2, 2018. <https://www.csbs.org/csbs-opposes-department-education-plan-preempt-state-authority-student-loans>

<sup>5</sup> See, *Commonwealth of Massachusetts v. PHEAA*, Case No. 1784CV02682 (Mass Sup. Ct. 2017); *State of Washington v. Navient Corporation et. al.*, Case No. 17-2-01115-1 (King Co Superior Ct 2017); *People of Illinois v. Navient Corporation et. al.*, 2017 IL No. 17 CH 00761.

*The contractor(s) will be responsible for maintaining a full understanding of all federal and state laws and regulations and FSA requirements and ensuring that all aspects of the service continue to remain in compliance as changes occur.*<sup>6</sup>

We do not believe your assertion that state regulation does not apply to student loan servicing conducted by Great Lakes has basis in federal statute or is consistent with Congressional intent. While Nelnet notes that its decision to ignore state law with respect to Great Lakes is aligned with the U.S. Department of Education's recent notice of legal interpretation on "preemption" published in the Federal Register (83 FR 10619), you, your board, and your shareholders should be aware that this notice has no force of law.

We strongly opposed Secretary DeVos' decision to issue this notice out of concern that this incorrect legal interpretation would empower the student loan industry to ignore lawful directives from state governments—creating new legal risks and increasing costs for borrowers, taxpayers, and industry. We believe Nelnet's recent decision regarding Great Lakes is evidence that this high-stakes brinksmanship is quickly becoming standard practice. Student loan borrowers deserve better.

The *Higher Education Act* does not provide a statutory basis to "preempt the field" of student loan oversight. Courts across the country have affirmed this position for decades.<sup>7</sup> In your decision not to seek a license for Great Lakes, it appears that you have chosen to rely on a narrow provision of federal statute which applies to state-required disclosures (20 U.S.C. 1098g) and upon the legal doctrine of "conflict preemption," which courts must interpret narrowly in the absence of an explicit statutory basis.<sup>8</sup> We believe your legal interpretation and that of the U.S. Department of Education rejects a broad bipartisan consensus among state governors, law enforcement officials, banking regulators, and lawmakers.

We are deeply concerned by Nelnet's disregard for the rights of states and student loan borrowers. Absent a clear instruction from Congress to be able to shield your company from regulators, Nelnet and Great Lakes must comply with state law. As you are aware, student loan servicers were required to file an application with our state's DBO by July 1, 2018. We urge you

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<sup>6</sup> U.S. Department of Education. Contract ED-FSA-D-0012 Great Lakes Educational Loan Services, Inc. (See: item C.1.4.3) <https://www2.ed.gov/policy/gen/leg/foia/contract/greatlakes-061709.pdf>

<sup>7</sup> See, e.g., *Clif v. Payco Gen. Am. Credits, Inc.*, 363 F.3d 1113, 1126 (11th Cir. 2004) ("enactment of the HEA does not 'occupy the field' of debt collection practices..."); *Chae v. SLM Corp.*, 593 F.3d 936, 941-42 (9th Cir. 2010) ("[F]ield preemption does not apply to the HEA."); *Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc.*, 168 F.3d 1362, 1369 (D.C. Cir. 1999) ("Federal education policy regarding [FFELP] lending is not so extensive as to occupy the field").

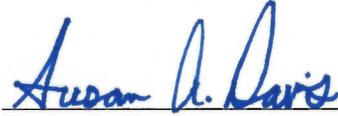
<sup>8</sup> See, Bipartisan State Attorneys General Letter to Betsy DeVos on Preemption (October 2017), [https://ag.ny.gov/sites/default/files/devos\\_letter.pdf](https://ag.ny.gov/sites/default/files/devos_letter.pdf) ("Absent a 'clear and manifest' indication that Congress intended to supersede state law, federal law cannot preempt 'the historic police powers of states.'" *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). "Because consumer protection law is a field traditionally regulated by the states, compelling evidence of an intention to preempt is required in this area." *General Motors Corp. v. Abrams*, 897 F.2d 34, 41-42 (2d Cir. 1990); see also *Castro v. Collecto, Inc.*, 634 F.3d 779, 784-785 (5th Cir. 2011) (Because "states have traditionally governed matters regarding contracts and consumer protections" there is no preemption "absent a showing that this was 'the clear and manifest purpose of Congress.'" Here, the overwhelming evidence supports the opposite conclusion: that Congress did not intend to displace state regulation in connection with student loans.").

to reconsider your current position and to submit the required application for a license for Great Lakes to the DBO under the California *Student Loan Servicing Act* as soon as possible in order to be in full compliance with your Department of Education contract.

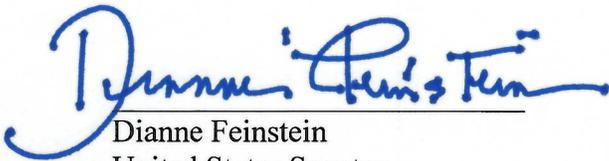
Sincerely,



Kamala D. Harris  
United States Senator



Susan A. Davis  
Member of Congress



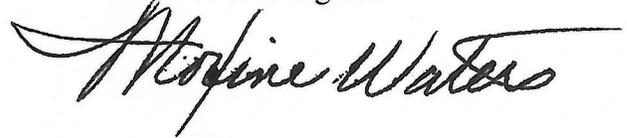
Dianne Feinstein  
United States Senator



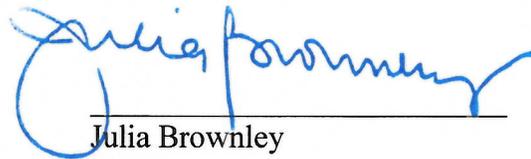
Mark DeSaulnier  
Member of Congress



Mark Takano  
Member of Congress



Maxine Waters  
Member of Congress



Julia Brownley  
Member of Congress