

## Navient Loan Forgiveness Suit Isn't Preempted, Workers Say

By **Dean Seal**

*Law360 (March 19, 2019, 7:38 PM EDT)* -- Public service workers whose student loans were serviced by Navient Corp. told a New York federal judge Monday that their state-law claims accusing the company of misleading them about access to a federal loan forgiveness program are not preempted by the federal Higher Education Act.

Responding to a dismissal bid from the student loan servicing giant, the nine workers said Navient has misconstrued their claims as falling under the HEA's provision for state-law disclosure requirements. The alleged misrepresentations Navient made to the borrowers about their ability to eliminate student debt form the base of the proposed class action's claims, not the company's failure to comply with disclosure requirements, the workers said.

"[Navient] attempt[s] to manipulate preemption and other doctrines to shield Navient from any accountability for using — indeed, exploiting — that student debt for their own corporate profits," according to the workers' filing.

The workers said in their October lawsuit that Navient has been shirking its obligation to help federal student loan borrowers find the best repayment option and avail themselves of Public Service Loan Forgiveness, a federal program created in 2007 to incentivize public-sector employment.

Under the program, borrowers can have their federal student debts wiped clean if they work full time for the government or certain nonprofits, make 10 years' worth of loan payments on an income-driven repayment plan, and file the required paperwork along the way. But according to the workers, Navient has steered borrowers wrong with bad information — telling them they were on track for loan forgiveness when they actually weren't, for example, or telling them the program wasn't available at all.

Navient has argued that the HEA "expressly preempts" any state-law disclosure requirements for the federal loans at issue in the American Federation of Teachers-backed suit, which asserts breach of contract, unjust enrichment, negligence and a host of other state-law claims.

This attempt by the company to "sweep its misconduct under the rug and avoid accountability" mischaracterizes the HEA as a push by Congress to immunize loan servicers that scammed their borrowers, the workers said Monday. Navient did not simply fail to comply with state-law disclosure requirements; it made affirmative misrepresentations to its borrowers about their avenues for loan repayment, which are prohibited by state laws that do not clash with federal law, the workers said.

“Over and over, Navient falsely informs borrowers they are ‘on track’ for PSLF when their loan type or repayment plan do not qualify and advises borrowers not to submit their employment certification forms, preventing borrowers from pursuing PSLF,” the workers argued.

“Consequently, countless educators, health care professionals and other public employees who otherwise should be on track for PSLF have been sentenced to a lifetime of debt and lost years of qualifying payments,” they said.

Plaintiff counsel Lena Konanova told Law360 on Tuesday that the borrowers' opposition to Navient's dismissal bid "sets the record straight — Navient cannot avoid accountability to student loan borrowers under the guise of preemption."

"Federal law is supposed to make it easier for students to attend college, not provide cover to loan servicers misleading public servants," Konanova said in an email.

Counsel for Navient — which is battling lawsuits from the Consumer Financial Protection Bureau, investors and several state attorneys general over other allegedly unfair and deceptive loan-servicing practices — did not immediately respond to a request for comment

The borrowers are represented by Faith Gay, Maria Ginzburg, Yelena Konanova and Margaret Siller of Selendy & Gay PLLC and Mark Richard of Phillips Richard & Rind PA.

Navient is represented by Andrew A. Ruffino, Alexander Setzepfandt and Ashley Simonsen of Covington & Burling LLP.

The case is Hyland et al. v. Navient Corp. et al., case number 1:18-cv-09031, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Jon Hill. Editing by Janice Carter Brown.