



## Fact Sheet: MOHELA Claims It Is Above the Law

### **AFT files a brief rejecting MOHELA's effort to skirt accountability.**

In a new motion, AFT [filed a brief](#) rejecting an effort by the Higher Education Loan Authority of Missouri (MOHELA) to skirt accountability for its widespread harmful student loan servicing practices. The brief rebuts MOHELA's claims that it is immune from liability due to its status as a federal contractor and because it is a creature of Missouri. The motion also warns the court that MOHELA violated its federal contract.

Read the press release outlining AFT's new brief in *AFT v. MOHELA*:

<https://protectborrowers.org/mohela-claims-to-be-above-the-law-aft-claps-back-in-latest-court-filing>

Last month, MOHELA removed a consumer protection lawsuit brought against it by the AFT from the D.C. Superior Court to the federal [District Court for the District of Columbia](#). In asserting that it has colorable federal defenses to AFT's allegations, MOHELA takes the position [in its removal court filing](#) that it is above the law – claiming that its status as a federal contractor and its status as a creature of the State of Missouri entitle it to violate D.C. consumer law without consequence. Similarly, MOHELA also takes the position that the Higher Education Act, which preempts state law disclosure requirements, allows the firm to deceive and mislead its customers with impunity.

MOHELA's position that it is above the law and immune from prosecution runs counter to the stated position of the U.S. Department of Education, the terms of MOHELA's own federal contracts, and recent federal appellate decisions in the 3rd, 7th, and 11th Circuits.

In a filing submitted to the court last night seeking to dismiss AFT's lawsuit, MOHELA appears to acknowledge that the arguments it first offered to escape the jurisdiction of DC Superior Court were a bridge too far— MOHELA no longer asserts that it is immune from prosecution by virtue of its status as a federal contractor. However, it does [restate claims that it cannot be prosecuted](#) by AFT because of its special status as a creature of Missouri and because the Higher Education Act may preempt some claims made in this case. Taken together, MOHELA's new brief is an additional admission that MOHELA believes it is above the law.

AFT alleges that MOHELA engaged in a dozen unlawful servicing practices in violation of the D.C.'s law prohibiting unfair and deceptive acts and practices.<sup>1</sup> In total, AFT's lawsuit alleges that MOHELA's unlawful practices affect 8 million student loan borrowers nationwide.

### **MOHELA claims "colorable defenses": immunity and preemption.**

In response to the complaint in *AFT v. MOHELA*, filed in D.C. Superior Court last month, MOHELA removed this case to federal court, asserting that its unlawful actions were taken "under" an officer "of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act

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<sup>1</sup> AFT is represented by the Student Borrower Protection Center, the National Consumer Law Center, and Selendy Gay PLLC.

under color of such office” (shorthand as “federal officer removal”).<sup>2</sup> To satisfy one element of federal officer removal, MOHELA must show that “it has a colorable federal defense to AFT’s claims.”<sup>3</sup>

In its filing, MOHELA takes the position that three separate defenses—state sovereign immunity, derivative sovereign immunity, and preemption—are “colorable,” each of which would make it unaccountable to the public for its unlawful acts and practices.

- 1. MOHELA asserts that it is “an arm” of the State of Missouri and entitled to state sovereign immunity.** This extraordinary declaration sets MOHELA apart from its federal contractor peers. Taken on its face, MOHELA believes that it—and it alone—can violate state consumer protection laws as it pleases, while MAXIMUS, Nelnet, EdFinancial, and any other Federal Student Aid (FSA) contractor have a legal duty to comply with these laws. MOHELA has adopted this position in private litigation despite clear direction from FSA that state laws should govern all federal contractors’ servicing practices and no indication that FSA believes that state-affiliated financial services companies should be held to a lesser standard.<sup>4</sup> Taken to its end, MOHELA’s legal position is that MOHELA, as a creature of Missouri, is immune from liability for violating state consumer, worker, and civil rights laws, including bans on fraud, wage theft, and discrimination.<sup>5</sup>
- 2. MOHELA asserts that it also derives sovereign immunity from its status as a federal contractor.** MOHELA is adopting a legal position that would put nearly the entire student loan servicing industry above the law: that its status as a federal contractor should immunize it from private

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<sup>2</sup> AFT v. MOHELA, *Notice of Removal* (filed August 26, 2024), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.272123/gov.uscourts.dcd.272123.1.0.pdf> (at p. 3); see generally 28 U.S.C. § 1442.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> For further discussion, see U.S. Department of Education, *Federal Preemption and Joint Federal-State Regulation and Oversight of the Department of Education’s Federal Student Loan Programs and Federal Student Loan Servicers*, Fed. Reg. Vol. 88, No. 140 (July 24, 2023), <https://www.federalregister.gov/documents/2023/07/24/2023-15436/federal-preemption-and-joint-federal-state-regulation-and-oversight-of-the-department-of-educations>. (“The contracts also include requirements that the loan servicers must comply with applicable State laws.”) See also <https://www.ed.gov/news/press-releases/biden-harris-administration-announces-framework-student-loan-servicer-accountability-protect-borrowers-nationwide> (“The Department took steps earlier this year to update its interpretation of federal preemption to clarify states’ authority to enforce state consumer protection laws to facilitate close coordination between the Department and its state partners. Such close coordination and cooperation further enhance both servicer accountability and borrower protections.”).

<sup>5</sup> In its removal filing, MOHELA cites *Biden v. Nebraska* as a determination by the Supreme Court that MOHELA is an “arm of the state” of Missouri, entitling it to sovereign immunity. The Supreme Court made no such determination. MOHELA also sought to make this argument in several other federal court cases since *Nebraska* was decided. In *Pellegrino v. Equifax et. al.* and *Walker v. MOHELA*, the federal judge in Virginia and in California, respectively, rejected MOHELA’s argument and declined to dismiss MOHELA from the private consumer protection lawsuits. *Pellegrino v. Equifax Information Services, LLC*, 1:23-cv-01166, (E.D. Va.), <https://www.courtlistener.com/docket/68132481/pellegrino-v-equifax-information-services-llc/>; *Walker v. MOHELA*, 2024 WL 3568576 (E.D. Cal. July 26, 2024), <https://www.courtlistener.com/docket/59995682/121/walker-v-higher-education-loan-authority-of-the-state-of-missouri/>. In *Joy v. MOHELA*, MOHELA’s motion to dismiss is fully briefed and awaiting a decision. *Joy v. Higher Education Loan Authority of the State of Missouri*, 4:23-cv-01590, (E.D. Mo.); <https://www.courtlistener.com/docket/68079126/joy-v-higher-education-loan-authority-of-the-state-of-missouri/>.

liability under state consumer law. In effect, according to MOHELA, the largest loan servicers in America—private companies hired to provide financial services to administer the \$1.7 federal student loan portfolio—do not have to comply with any state law that governs consumer financial products or services, including state laws that generally prohibit deception, fraud, or abuse in commerce. MOHELA’s statements appear to be in direct conflict with the terms of its contracts and the stated position of the U.S. Department of Education.<sup>6</sup> It also raises questions about whether MOHELA, in asserting a claim of sovereign immunity, has expressly violated the terms of at least one of its federal servicing contracts and can be terminated for breach.<sup>7</sup> MOHELA’s assertion is all the more troubling, given that AFT alleges that the company’s conduct undermines or conflicts with FSA’s instructions.

- 3. MOHELA asserts that the Higher Education Act preempts claims by borrowers under state consumer protection law.** Lastly, MOHELA takes the position that the Higher Education Act (HEA), its implementing regulations, and contracts made pursuant to the HEA conflict with AFT’s claims that MOHELA engaged in unlawful “billing practices,” “application processing,” and “communications” with borrowers and are therefore preempted. The Biden-Harris Administration has stood squarely on the side of student loan borrowers, mapping out a muscular vision for when borrowers and state officials can enforce state consumer protection laws against student loan servicers like MOHELA.<sup>8</sup> MOHELA’s position contradicts this vision and would leave borrowers with no way to seek redress directly from MOHELA for unfair practices like those outlined in AFT’s complaint. This defense has also been raised and rejected in several consumer protection cases against unlawful student loan servicing.<sup>9</sup>

Taken together, these three defenses paint a clear picture of a giant private-sector financial services firm that believes it is unaccountable for its abuses.

#### **AFT rebuts MOHELA’S claims.**

In its brief filed on September 25, 2024, seeking to remand this case back to the D.C. Superior Court, AFT explains that MOHELA’s supposed defenses lack merit. For example:

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<sup>6</sup> USDS Contract at p. 12, <https://sam.gov/api/prod/ops/v3/opportunities/resources/files/6ce030dc6972405fa4b8669bcfbc0be3/download?&status=archived&token=> (“Contractor Acknowledgement: USDS Servicer acknowledges that it is not the U.S. Department of Education, and is not acting as the U.S. Government under this Contract. As such the USDS Servicer acknowledges that any claim or defense of Sovereign Immunity or Qualified Immunity is not applicable to work performed under the Contract and any Task Order issued under the Contract.”).

<sup>7</sup> *Id.*

<sup>8</sup> See, generally U.S. Department of Education, *Federal Preemption and Joint Federal-State Regulation and Oversight of the Department of Education’s Federal Student Loan Programs and Federal Student Loan Servicers*, Fed. Reg. Vol. 88, No. 140 (July 24, 2023), <https://www.federalregister.gov/documents/2023/07/24/2023-15436/federal-preemption-and-joint-federal-state-regulation-and-oversight-of-the-department-of-educations>.

<sup>9</sup> See, e.g., *Nelson v. Great Lakes Educ. Loan Services, Inc.*, 928 F.3d 639 (7th Cir. 2019), <https://casetext.com/case/nelson-v-great-lakes-educ-loan-servs-inc-1>; *Lawson-Ross v. Great Lakes Higher Educ. Corp.*, 955 F.3d 908 (11th Cir. 2020), <https://www.defendstudents.org/news/body/Lawson-Ross-Decision.pdf>.

- Several district courts—including the Eastern District of Missouri—have already held that MOHELA is NOT “an arm” of the State of Missouri, and it is NOT entitled to state sovereign immunity.<sup>10</sup>
- The 3rd, 7th, and 11th Circuit Court of Appeals have all rejected arguments by federal servicers that borrowers’ affirmative misrepresentation claims, which alleged virtually identical patterns of misconduct as AFT does, were not preempted by the HEA.<sup>11</sup>

Throughout its brief tenure as a dominant participant in the student loan servicing market, MOHELA has shown it is unable to operate without causing widespread financial harm to millions of people. Given MOHELA’s place at the center of the student loan system, these defenses—if upheld—would put honest student loan companies at a competitive disadvantage and position the U.S. Department of Education to suffer immeasurable reputational damage in the future. MOHELA’s own arguments demonstrate that the firm poses a threat to the stability and credibility of the student loan system itself.

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<sup>10</sup> See *Walker v. MOHELA*, 2024 WL 3568576 (E.D. Cal. July 26, 2024); *Pellegrino v. Equifax Information Services, LLC*, 2024 WL 37062 (E.D. Va. Jan. 2, 2024); *Dykes v. MOHELA*, 2021 WL 3206691 (E.D. Mo. July 29, 2021); *Perkins v. Equifax Information Services, LLC*, 2020 WL 13120600 (W.D. Tex. May 1, 2020).

<sup>11</sup> See *Pennsylvania v. Navient Corp.*, 967 F.3d 273, 277 (3d Cir. 2020); *Lawson-Ross v. Great Lakes Higher Education Corp.*, 955 F.3d 908, 916-23 (11th Cir. 2020); *Nelson v. Great Lakes Educational Loan Services, Inc.*, 928 F.3d 639, 642 (7th Cir. 2019); see also *New York ex rel. James v. Pa. Higher Educ. Assistance Agency*, 2020 WL 2097640, at \*15 (S.D.N.Y. May 1, 2020) (“PHEAA”).