

Massachusetts About to Join the Ranks of States Licensing Student Loan Servicers

June 30, 2021 | [Thomas P. Quinn, Jr.](#)

The Commonwealth of Massachusetts is aiding student loan consumer protection efforts, and is ramping up the level of scrutiny applied to student loan servicers. Effective July 1st, it will join a growing list of states that require the licensure of parties that service student loans.

Codified at Chapter 93L of the Massachusetts General Laws, the commonwealth's Student Loan Servicer Act (SLSA) legislation was enacted as part of an overarching "Act Enabling Partnerships for Growth" that was finalized earlier this year. It requires the licensure of any party who (directly or indirectly):

- Receives or solicits a scheduled periodic payment from a borrower, and then remits such payments to the owner of the student loan or other third party as required by the requirements of the servicing loan document or contract;
- Maintains account records for a student loan, and who communicates on behalf of the owner of the student loan with the borrower during those periods (such as a forbearance period) when no payment is required on the student loan; and/or
- Interacts with a borrower, including activities help the borrower prevent default or to help facilitate the repayment and/or communication activities described above.

For purposes of this licensing requirement a "student loan" is broadly defined to mean any loan that is primarily used to finance a student's post-secondary education or other school-related expenses. Given the breadth of this definition, it is not limited to either private or federal student loans - it includes both. Moreover, the aim of the Massachusetts SLSA is to provide consumer protections to the "student loan borrower" - a term defined to mean not only Massachusetts resident who have received or agreed to repay such a loan, but also a Massachusetts resident who has agreed to share in the repayment responsibility. In short, the policy goal here is to afford consumer protections to both Massachusetts borrowers and cosigners.

There are several exceptions to the SLSA licensing requirement. For one, depository institutions - banks and credit unions (including federal and out-of-state banks and credit unions) as well as their wholly-owned subsidiaries do not require licensure. Nor do nonprofit or public institutions of higher education.

Coupled with these automatic exemptions, the Massachusetts SLSA calls for the Division of Banks to

issue an automatic, and generally irrevocable, "federal student loan servicer license" for parties who act as a student loan servicer pursuant to a contract with the United States Secretary of Education. The duration of the federal student loan servicer license is coterminous with the expiration or termination of the servicer's contract with the Secretary of Education. Such a servicer is required by the SLSA to provide notice to the Division of Banks within 7 business days of the termination of such an agreement with the Secretary of Education.

Massachusetts will administer the licensing processing through the NMLS, which has made the license application available on its state licensing portal. The license will be subject to renewal on an annual basis. Servicers must maintain records of each student loan transaction serviced for a minimum period of 2 years after the loan has been paid in full or assigned, whichever occurs first.

Massachusetts does have additional licensing schemes that could apply to a student loan servicer. For example, the commonwealth has long required debt collectors to be licensed and third party loan servicers to register with the Division of Banks. The newly-minted SLSA scheme will exempt a licensed student loan servicer from the licensing / registration requirements applicable to debt collectors and third party loan servicers, so that "double licensing" is not required. However, this exemption will only apply so long as the student loan servicer is acting exclusively in that capacity and is not otherwise engaging in activities that would trigger the debt collector licensing or third party loan servicer registration requirements. Regardless of whether such additional licenses or registrations are required, if the student loan servicer is engaging in third party loan servicing or debt collection activities within the scope of its student loan servicing activities as specified in the SLSA it must follow the conduct-regulating requirements applicable to debt collectors and third party loan servicers when engaging in such activity.

What conduct-regulating requirements will be applicable to student loan servicers, however, is presently unclear. While the licensing regime is at least partially built out, the conduct-regulating requirements are at the moment "to be determined." The SLSA does require that servicer to comply with all applicable federal laws and regulations governing the servicing of student loans, and empowers the Division of Banks to investigate any alleged violations of such requirements. It also generally prohibits the servicer from engaging in any unfair methods of competition or any unfair or deceptive acts or practices, but does not provide any further definition of what precise activities would rise to that level. Presumably, the state-specific servicing requirements applicable to student loan servicers under the SLSA will be addressed in forthcoming regulations to implement the requirements of the law. These regulations remain in the drafting process.

In addition to enacting the SLSA, Massachusetts has also established two additional regulatory bodies - one within the Division of Banks and another within the Attorney General's Office that are worth mentioning. The first is the Consumer Assistance Unit, which falls within the Division's Investigations and Enforcement arm. It is tasked with answering questions and investigating complaints involving Division of Banks licensees, which soon will include student loan servicers.

The second is a more focused Student Loan Ombudsman within the Office of the Attorney General. Under the statutes authorizing the creation of the office the ombudsman will assist in borrower complaint resolution, assisting borrowers with repayment options and loss prevention options, resolution of billing and collection disputes among other services. It is also tasked with annual reporting requirements on its activities to the Massachusetts legislature and the committees on ways and means and the joint committee on financial services.

Clearly the issue of student loan servicing is a rising tide of regulation across the United States. Massachusetts, which has a long history of robust consumer protection is the latest jurisdiction to enter this fray. Parties servicing student loans will need to adhere to this licensing requirement, as well as those already in existence in other states - while simultaneously keeping an ear to the ground for developments elsewhere.

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