

Massachusetts Issues Student Loan Servicing Conduct Rules

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

In last month's issue of *Insights* we discussed a new licensing regime in the Commonwealth of Massachusetts specific to student loan servicers. As of the publication date of that article the rules such servicers must follow when conducting their business were not yet published.

That changed on June 28th when the Division of Banks issued emergency amendments to its debt collection / third party loan servicing regulation to both implement the new student loan servicer licensing requirement and establish the conduct-regulating rules such parties must follow. On the same day the Division also released more modest emergency amendments to its record-keeping regulations to address the addition of student loan servicers as a new licensing scheme.

These emergency regulations - issued just days before they became effective, on July 1st - will be subject to a hearing and opportunity for comment in early August. The emergency regulations (both in clean and redline form) are available on the Division of Banks website, and may be accessed directly [here](#) (for the licensing and conduct-regulating requirements applicable to student loan servicers) and [here](#) (for the amendments to the recordkeeping regulation).

The new requirements are grafted onto a relatively old chassis. The Division has long had a regulation governing the requirements applicable to the registration of third party loan servicers, and the licensure of debt collectors. These rules, which are codified at Part 18 of the Division of Banks regulations, are broken into two general parts: (1) rules that govern the application and licensing or registration standards and (2) rules that govern the conduct and activities of such a licensed or registered entity.

In terms of the licensing requirements, there are two separate provisions which have been added to the existing regulation. The first governs the activities of a student loan servicer, with these licensing requirements generally running side-by-side with the requirements applicable to debt collectors in terms of the applicant's financial responsibility, bonding and financial statement requirements, as well as those governing the "character and fitness" of the applicant. The student loan servicer license is subject to renewal on an annual basis.

The second set of application requirements, however, are specific to the granting of an automatic federal student loan service license. Such licenses are granted to parties who act (or intend to act) exclusively as a student loan servicer pursuant to a contract with the United States Secretary of Education. Unlike the general student loan servicer license, this license is perpetual and only terminates when the licensee ceases to act as a student loan servicer under a contract with the Secretary of Education.

While there is some additional helpful content, the emergency regulations appear to generally track the content and drafting of the underlying statute. Somewhat more helpful on the issue of licensing, is a [Frequently Asked Questions Document](#) issued by the Division of Banks simultaneously with the release of the emergency regulations. This FAQ document provides additional, helpful color on some of the licensing requirements.

In terms of substantive new content, the emergency regulation now includes a separate provision specific to student loan servicing practices. Similar to the rules governing the conduct of debt collectors and third-party loan servicers, the new provisions governing the conduct of student loan servicing practices generally prohibit the use of any "unfair, deceptive or unconscionable" servicing practices. They then provide a non-exhaustive list of activities that would be considered to be in violation of the new servicing standards.

Several of these prohibitions are best described as general, garden-variety fraud. For example: the student loan servicer should not engage in any scheme to defraud or mislead student loan borrowers, it should not engage in any unfair, deceptive, unconscionable or misleading practices when servicing (for example: by misrepresenting the amount, nature or terms of fees or payments due under the loan or the borrower's obligation to repay it), servicers should not obtain property by fraud or knowingly or recklessly misapply payments. These prohibitions should fall into the category of common sense.

Others, however, are somewhat more targeted. For example, the regulation prohibits:

- Allocating partial payments in a manner that maximizes late fees;
- Charging late fees for payments that are made during a grace period;
- Misrepresenting the availability of repayment options to student loan borrowers, or otherwise failing to disclose all available repayment options to a borrower who has asked about alternative repayment options;
- Steering student loan borrowers into forbearance status without disclosing all other repayment options that might be available; and
- Failing to provide information to student loan borrowers to notify or confirm changes in account status in accordance with the borrower's loan terms or other documentation.

Additionally, the emergency regulation requires student loan servicers who intend to sell or otherwise transfer servicing to provide sufficient notice of such transfer before it occurs (including the effective date of the transfer, the name of the new servicer, and the contact information for both the new and existing servicers).

Parties servicing student loans would be well-advised to review the new regulation to ensure that they are servicing in accordance with the now-effective standards. They are now on the clock for compliance with these new requirements.

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

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