

Regulation of Student Loan Servicers - A Review of 2019 Legislation Enacted in Colorado, Maine, Maryland, and Nevada

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The May 2019 issue of *Insights* provided high-level background information about the recent trend of state legislation targeting student loan servicers. In the June 2019 issue of *Insights*, we took a deeper dive into New York's Student Loan Servicers Law. In this third installment of our four-part student loan servicer series, we will take a look at student loan servicer laws enacted this year in Colorado, Maine, Maryland, and Nevada.

Colorado Student Loan Servicers Act

On May 13, 2019, Colorado joined the growing list of states enacting student loan servicer licensing legislation (including California, Connecticut, Illinois, New York, Washington, and the District of Columbia) when Governor Polis signed Senate Bill 19-002 to enact the Colorado Student Loan Servicers Act (the "Colorado Student Loan Servicers Act" or the "Colorado Act"). The Colorado Act, which will become effective on August 2, 2019, creates a new Article 20 of the Colorado Consumer Credit Code that imposes licensing requirements and substantive conduct requirements and restrictions on servicers of student loans. Highlights include:

- The Colorado Student Loan Servicers Act applies to any person engaged in servicing a student education loan made to an individual who is a resident of Colorado (based on the address given to the creditor or servicer by the individual).
- Covered student education loan products include both federal student and parent loans as well as private student and parent loans to finance education expenses, or to refinance or consolidate such loans.
- Covered borrowers include any resident of Colorado who receives or agrees to pay a student loan and any person who shares legal responsibility for repayment of a covered student education loan.
- Servicing means (i) receiving scheduled periodic payments (or notification of such payments) and applying the payments to student loan accounts; (ii) maintaining account records for a student education loan; (iii) communicating with a student loan borrower regarding a student loan on behalf of the loan holder; or (iii) other interactions with a student loan borrower, including activities to help prevent default on student loans.
- Banks, trust companies, industrial loan companies, savings and loan associations, savings

banks, credit unions, and agencies, instrumentalities, or political subdivisions of the State of Colorado are excluded from the definition of student loan servicer. In addition, collection agencies licensed under Colorado law are exempt if they are collecting defaulted student education loans (defined to mean federal student loans for which no payment has been received for 270 or more days and private student loans in default under the terms of the loan documents).

- As of January 31, 2020, student education loan servicers must obtain a license from the Colorado regulator in order to service covered loans. Federal student loan servicers determined to be a party to a servicing contract awarded by the U.S. Secretary of Education are exempt from the license application process, but must still pay the licensing fee and must be deemed by the regulator to satisfy certain requirements for servicers.
- The Colorado Student Loan Servicers Act imposes various affirmative servicing requirements on servicers, such as:
 - An obligation to respond to inquiries from borrowers, their representatives, and a student loan ombudsperson to be appointed by the regulator within 10 business days, and to provide information relating to the inquiry within 30 days (which may be extended by 15 days upon timely notice and explanation of reasons for delay);
 - After receipt of an inquiry concerning a dispute with respect to a payment, a servicer is prohibited from reporting adverse information to a consumer reporting agency regarding such payment for a period of 60 days; and
 - Servicers must ask borrowers how to apply overpayments, and apply partial payments in a manner that minimizes late fees and negative credit reporting.
- The Colorado Act also prohibits student education loan servicers from:
 - defrauding or misleading student loan borrowers;
 - engaging in unfair or deceptive practices or misrepresenting or omitting material information in connection with servicing a covered student education loan;
 - misapplying student loan payments;
 - providing inaccurate information to a consumer reporting agency;
 - failing to report both favorable and unfavorable payment history information to a consumer reporting agency at least annually (if the servicer regularly reports information to a consumer reporting agency);
 - refusing to communicate with an authorized representative of a student loan borrower; or
 - failing to evaluate a borrower for an income-based or other repayment program or eligibility for a loan forgiveness program before placing the loan in default, if such programs are available.
- The Colorado Act includes provisions governing the sale, assignment, or other transfer of

servicing of a covered student education loan that are intended to ensure that benefits promised to student loan borrowers are maintained and continue to be available after the transfer of the loan.

- Violations of the Colorado Act are deemed to be deceptive trade practices under Colorado law and give rise to liability for actual damages, penalties equal to 3 times the total amount collected by the servicer in violation of the law, punitive damages as determined by the court, and court costs and attorneys' fees.

Maine Student Loan Bill of Rights

On June 20, 2019, Maine's Governor Mills signed Maine Public Laws Chapter 431, *"An Act to Establish a Student Loan Bill of Rights to License and Regulate Student Loan Servicers"* (the "Maine Student Loan Bill of Rights" or the "Maine Act"). The Act, which will become effective on January 1, 2020, creates a new Article 14 of the Maine Consumer Credit Code that imposes licensing requirements and substantive conduct requirements and restrictions on servicers of student loans. In most respects, the Maine Student Loan Bill of Rights is very similar to the Colorado Act described above, with a couple of key differences:

- Cosigners appear to be protected by the Maine Act, even if they are not residents of the State of Maine, as long as the primary borrower is a Maine resident.
- Maine does not exclude licensed debt collection agencies from the definition of student loan servicer.
- Maine does not provide a general exclusion for state agencies, instrumentalities, or political subdivisions, but does exclude the Finance Authority of Maine from the licensing requirements.

Maryland

On May 13, 2019, Maryland's Governor Hogan signed HB 594, which makes a number of amendments to the student loan legislation enacted in the prior legislative session (captioned as the "Financial Consumer Protection Act of 2018"). Highlights of this legislation include:

- The term "student education loan" has been redefined to clarify that the law covers both federal student and parent loans as well as private student and parent loans to finance education expenses, or to refinance or consolidate such loans.
- The term "servicing" has been redefined in a manner consistent with the Colorado definition discussed above.
- Student loan servicers are required to allocate non-conforming payments as directed by student loan borrowers.
- The Commissioner of Financial Regulation is now authorized to enforce the student loan servicing law.

Nevada

On June 5, 2019, Nevada's Governor Sisolak approved Assembly Bill 383. Although this bill as originally drafted was very similar to the Colorado and Maine legislation discussed above, it was amended prior to passage to remove all of the student loan servicer licensing and substantive behavior provisions. As enacted, this legislation requires the Nevada State Treasurer to designate a Student Loan Ombudsman to perform the following duties:

- Receive, review, and attempt to resolve complaints from student loan borrowers in collaboration with institutions of higher education, student loan servicers, and any other person who participates in providing student education loans;
- Compile and analyze data on such complaints;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, governmental agencies, and the legislature regarding the problems and concerns of student loan borrowers and make recommendations for resolving those problems and concerns;
- Analyze and monitor the development and implementation of federal, state and local laws, regulations, and policies relating to student loan borrowers and recommend any changes the Student Loan Ombudsman deems necessary;
- Review the complete history of any student education loan for any student loan borrower who has provided written consent for such a review;
- Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers, potential student loan borrowers, institutions of higher education, student loan servicers, and any other persons who participate in providing a student education loan with any concerns relating to student loan servicing; and
- Establish and maintain an education course for student loan borrowers that provides educational presentations and materials regarding student education loans including, without limitation, information concerning important loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness, and disclosure requirements.

The Treasurer must provide a report to the Nevada Legislature every two years concerning the Student Loan Ombudsman's implementation of the legislation and the overall effectiveness of the Student Loan Ombudsman.

More to Come

We will conclude our four-part survey of student loan servicer legislation in the next issue of *Insights* with a brief summary of pending legislation.

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