

Regulation of Student Loan Servicers: What's Out There, and What's Coming

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States around the country continue to consider and enact laws and regulations to regulate student loan servicers and provide protections to student loan borrowers. Several states and the District of Columbia currently have laws on the books that regulate the activities of student loan servicers. In the next issue of *Insights*, we'll also take a closer look at the recently enacted provisions of New York's student loan servicing requirements that were passed as part of the 2019/2020 state budget. New York's requirements will become effective this fall.

There are some thematic similarities between the rising tide of regulation and the raft of state and federal loss mitigation statutes, regulations and guidelines that arose in response to the mortgage crisis. But, more specifically, what's in the enacted laws, and what does it all mean for you? Let's look at some provisions of the existing laws and what they generally require.

Provisions of Existing Laws

Applicability

As a general matter, existing student loan servicer laws purport to apply to servicers of both federal student loans and private student loans. However, some of these laws apply different standards and requirements to federal student loans and private student loans. For example, while California imposes different disclosure requirements for federal and private loans, Illinois imposes one set of disclosure requirements on both types of loans and imposes additional disclosures for private loans.

Existing law also provides different types of exemptions for certain servicers. For example, Washington exempts from licensing a person who services five or fewer student loans but requires such a person to comply with other applicable substantive requirements of the state's Consumer Loan Act. On the other hand, California exempts certain entities (such as banks) from all requirements of its student loan servicing law.

License Requirement

Most of the existing student loan servicer laws require a student loan servicer to obtain a license. The licensing requirements vary among jurisdictions. Some jurisdictions require

bonding or proof of minimum net worth for the entity responsible for the servicing activities. Due diligence is also often required for control persons, such as fingerprinting and background checks.

Communication with Borrowers

Many of the existing student loan servicer laws require prompt responses to borrower correspondence. For example, under California law, a servicer must acknowledge receipt of written borrower correspondence within 10 business days and act on any request in the correspondence within 30 business days. Similarly, Illinois law requires a servicer to acknowledge oral or written notice of an account dispute within 14 calendar days and investigate and act on the dispute within 30 calendar days.

Application of Payments

Another common feature is a requirement to apply payments as the borrower specifies (e.g., where a borrower has multiple accounts with the same servicer). Under Illinois law, for example, a servicer must allow a borrower or cosigner to specify how to apply overpayments. California takes this requirement one step further, requiring a servicer to ask a borrower how to apply an overpayment. Connecticut is somewhat less strict, as it simply prohibits the knowing misapplication or reckless application of payments.

Disclosure Requirements

Many of the current set of state laws require a servicer to disclose certain information to borrowers. For example, under Washington law, a servicer must post on its website, at no charge, information or links to information about loan repayment assistance and loan forgiveness programs that may be available to borrowers. The servicer must also send this information in writing or e-mail to each borrower at least once per calendar year. California has a similar requirement.

Transfer of Servicing

Some of the existing laws impose requirements on a servicer who transfers or receives servicing rights for a student loan. Under the Illinois provisions, both the transferor servicer and the transferee servicer must provide state-specified disclosures no later than 15 days before the effective date of a servicing transfer. For 60 days after the transfer, the transferee servicer may not treat an on-time payment to the transferor servicer as late. Washington requires each servicer to notify the borrower of an upcoming transfer between 45 and 60 days before the transfer.

Other Common Requirements

For the laws currently on the books, there are a number of additional requirements that apply to parties servicing student loans. They include:

- restrictions on fees;
- requirements to credit payments promptly and accurately;

- requirements to employ trained personnel to assist borrowers upon request;
- record retention requirements;
- credit reporting requirements;
- restrictions on advertisements; and
- prohibitions against unfair or deceptive practices.

Other Regulatory Schemes

While the regulatory schemes, discussed above, represent a recent and continuing trend in regulation, parties servicing student loans should be aware of other licensing and conduct-regulating schemes that could apply. For example, many states have statutes that require the licensure of and/or regulate the conduct of parties that collect loans and other forms of debt. A more limited number of states (for example: Massachusetts) have additional registration or licensing requirements that apply to parties that intake and process payments or otherwise service loans. These laws, which have been on the books for some time, may also apply to the activities of parties that service student loans.

More Student Loan Servicing Regulation on the Way?

While the number of states that have existing laws specific to the servicing of student loans is relatively modest, there may be more on the way. Several states have, in recent years, introduced legislation that would regulate various aspects of student loan servicing. Whether these various bills will ripen into signed legislation remains to be seen, and it's worth keeping an eye on.

One such jurisdiction where this has occurred is New York. As mentioned above, in the fall of this year New York state will join the ranks of those states currently regulating the activities of student loan servicers. We will touch on the upcoming New York requirements in more detail in the next issue of *Insights*.

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