
Student Loan Servicing Regulations: 50 State Guide on Laws and Legislation – First Edition



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Hinshaw & Culbertson LLP

Student Loan Servicing Regulations: 50 State Guide on Laws and Legislation – First Edition

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Preface

The following summary of current state law and pending legislation regarding student loan servicing as of June 1, 2017, is designed to serve as a tool to assist in understanding the breadth of state regulations applicable to student loan servicers. This guide does not contain the language of actual bills or laws. The language here has been paraphrased and summarized from the original legislation and is not a verbatim reference to the actual or proposed legislative text.

This guide does not contain legal advice or establish an attorney-client relationship, and we recommend review of the actual language and status of each law and piece of legislation as well as continued review on an ongoing case-by-case basis and consultation with counsel as appropriate to ensure compliance.

Introduction

States are taking aggressive action to regulate student loan servicers through legislation. California, Connecticut, Illinois, and Washington, D.C. have passed comprehensive legislation to regulate the way student loans are serviced and to require licensure of student loan servicers.

Most recently, Illinois passed the most expansive regulation of student loan servicing on May 31, 2017. This legislation includes an extensive Student Bill of Rights regulating how loans must be serviced, the requirement that servicers be licensed before doing business in the state, establishment of an Ombudsman to handle borrower complaints, and empowerment of the Attorney General to bring suit for any violation. At least twelve other states considered similar legislation during the 2017 legislative session.

These bills also include a Student Loan Bill of Rights that regulates how loans must be serviced, requires licensure, and establishes an Ombudsman to handle borrower complaints. The majority of legislation prohibits servicers from engaging in deceptive and misleading practices and allows the state to investigate the servicer in-depth prior to issuing a license.

This guide aims to inform student loan servicers of the regulations that have been enacted and are being aggressively pursued by many states. The following quick reference guide highlights the states where laws have already been enacted, and provides the bills that have been considered through June 1, 2017. Finally, the state-by-state summaries outline the major provisions of legislation in each state, providing an overview of who is impacted, the process for licensure, servicer's duties and prohibitions, and the state's enforcement powers.



About the Editor



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Vaishali Rao focuses her practice in Consumer Financial Services with particular emphasis in regulation & compliance. She brings her long history of experience in government regulatory and law enforcement actions to bear in the defense of her clients.

Prior to joining Hinshaw & Culbertson LLP in January 2017, Ms. Rao for eight years devoted her practice to public service in the Consumer Fraud Bureau of the Office of the Illinois Attorney General, and as an Assistant Counsel to Speaker Michael J. Madigan in the Illinois House of Representatives.

During the latter part of Ms. Rao's tenure at the Attorney General's Office, she led a national group of state Attorneys General in investigating student loan origination, servicing and debt collection practices, coordinating closely with the Consumer Financial Protection Bureau.

Ms. Rao has led and coordinated national investigations and litigations in several financial services areas, including: credit ratings, debt settlement, and mortgage servicing.

Notably, Ms. Rao contributed to negotiations in the National Mortgage Settlement. She led the Attorney General's litigation team in *People of the State of Illinois v. The McGraw-Hill Companies & Standard & Poor's Financial Services LLC*, 12 CH 02535.

Ms. Rao has been involved in all phases of a regulatory investigation, from the issuance of a subpoena to leading a litigation team, ensuring compliance with complex court orders involving implementation of specific business practices, and settling the issues in dispute.

In addition to her work in the financial services sector, Ms. Rao has developed an expertise in investigations and litigations related to the marketing and promotion of pharmaceutical products, drugs and medical devices.

Ms. Rao has concentrated her career on matters involving state and federal consumer protection laws around the country, most notably: The Illinois Consumer Fraud & Deceptive Trade Practices Act and corollary state unfair, deceptive or abusive trade practices laws ("UDAAP"), The Federal Trade Commission Act and the Consumer Financial Protection Act ("Dodd-Frank Act").

Besides working closely with State Attorneys General across the country, Ms. Rao has worked jointly with other local, state and federal agencies, including: The City of Chicago, Illinois Department of Financial & Professional Regulation, Illinois Department of Public Health, the Federal Trade Commission, the Consumer Financial Protection Bureau, and the United States Department of Justice.

As Assistant Counsel in the Illinois House of Representatives, Ms. Rao assisted in the impeachment trial of former Illinois Governor, Rod R. Blagojevich. She also managed and analyzed legal issues for members of the House of Representatives, including assisting them with presentation and defense of bills on the House floor and in Committee.

Ms. Rao served a series of clerkships in both the public and private sectors in Chicago and New York, and was a chancery judicial extern to The Honorable Jesse G. Reyes, Circuit Court of Cook County (now an Appellate Judge, First District, 5th Division.)

Ms. Rao routinely blogs about student loan issues at Hinshaw's Consumer Financial Services Blog, Consumer Cross Roads: hinshawcfs.com.



Yellow highlight indicates an enacted law, all others are pending legislation.

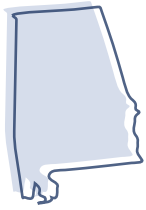
Loan Servicing Legislation: Quick Reference Guide			
State/Jurisdiction	Legislation Passed or Bill Pending	Effective Date	Topics Included
Alabama			
Alaska			
Arizona			
Arkansas			
California	Student Loan Servicing Act	7/1/2018	Licensing, Reporting, Disclosure
Colorado	Regulate Student Education Loan Servicers	9/1/2018	Licensing
Connecticut	Student Loan Bill of Rights	10/1/2015; 6/1/2016	Licensing, Reporting, Servicing Standards, Ombudsman
Delaware			
Florida			
Georgia			
Hawaii			
Idaho			
Illinois	Senate Bill 1351: Student Loan Servicing Rights	12/31/2018	Licensing, Reporting, Servicing Standards, Ombudsman
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana			
Maine	Senate Paper 532: Student Loan Bill of Rights To License and Regulate Student Loan Servicers	1/1/2018	Licensing, Reporting, Servicing Standards, Ombudsman
Maryland	House Bill 770: Maryland Collection Agency Licensing Act Student Education Loan Servicers	10/1/2017	Collection agency licensing
Massachusetts	House Bill 2173: Student Loan Bill of Rights	9/1/2017	Licensing, Reporting, Servicing Standards, Ombudsman
Michigan			



State/Jurisdiction	Legislation Passed or Bill Pending	Effective Date	Topics Included
Minnesota	House Bill 21: Student loan ombudsperson, student loan servicer licensure required, and student loan servicing practices prohibited	none	Licensing, Reporting, Servicing Standards, Ombudsman
Mississippi			
Missouri	House Bill 620: the "Student Loan Bill of Rights"	10/1/2017	Licensing, Reporting, Servicing Standards, Ombudsman
Montana			
Nebraska			
Nevada			
New Hampshire			
New Jersey	Assembly Bill 1670: Office of Student Loan Ombudsman; Regulates student loan servicers.	120 days after signed	Licensing, Reporting, Servicing Standards, Ombudsman
New Mexico	Student Loan Bill of Rights	none	Licensing, Reporting, Servicing Standards, Ombudsman
New York	Student Loan Servicers	180 days after signed	Licensing, Reporting, Servicing Standards
North Carolina			
North Dakota			
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
Rhode Island	House Bill 6056: The Student Loan Bill of Rights	7/1/2017	Licensing, Reporting, Servicing Standards, Ombudsman
South Carolina			
South Dakota			
Tennessee			
Texas			



State/Jurisdiction	Legislation Passed or Bill Pending	Effective Date	Topics Included
Utah			
Vermont			
Virginia	House Bill 1915: Student loan servicers: Student loan ombudsman	1/1/2019	Licensing, Reporting, Servicing Standards, Ombudsman
Washington	House Bill 1440/Senate Bill 5210: Student loan bill of rights.	1/1/2018	Licensing, Reporting, Servicing Standards, Ombudsman
Washington D.C.	§ 31-106.01. Student Loan Ombudsmen.	2/18/2017	Licensing, Reporting, Servicing Standards, Ombudsman
West Virginia			
Wisconsin			
Wyoming			



California



Student Loan Servicing Act

Financial Code Division 12.5

Sponsor: Assembly Member Mark Stone

Effective: July 1, 2018

Passed Assembly: 53-21-3

Passed Senate: 26-12-1

Executive Summary

Any person or entity servicing student loans in California must obtain a license from the Commissioner of Business Oversight pursuant to the requirements set forth by the Student Loan Servicing Act. Beginning January 1, 2017, the commissioner was given authority to take necessary actions to implement the Student Loan Servicing Act but regulations have not been issued at this time.

Exempt Servicers

- A bank, trust company, or industrial loan company appropriately authorized and licensed to transact business in California;
- A state or federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in California;
- A public postsecondary educational institution or a private nonprofit postsecondary educational institution servicing a student loan it extended to the borrower; and
- A nonprofit community service organization that meets all the criteria of California's statute regulating "check seller" licenses (Section 12104 of the California Financial Code).

Application for a License

Servicers must submit:

- 1) A completed application developed by the commissioner, signed under penalty of perjury;
- 2) \$100 as a fee for investigating the application, \$300 as an application fee, and the cost of fingerprinting and a criminal background check;
- 3) Audited financial statements prepared in accordance with generally accepted accounting principles that indicate a net worth of at least \$250,000. Servicers will not be licensed if their net worth is below \$250,000.

The commissioner then investigates the applicant, its general partners, and individuals owning 10% or more of the outstanding interests or dividends.



Servicer Duties

Servicers must:

- Notify the commissioner, in writing, of any change in the information provided during the application process within 10 days. If notice is not given within 10 days, the commissioner may assess up to a \$500 civil penalty;
- Submit an application for a new branch office at least 10 days before servicing loans at the new location;
- Develop policies and procedures reasonably intended to promote compliance with the Student Loan Servicing Act;
- File any report required by the commissioner;
- Comply with the provisions of this division and any regulation or order of the commissioner;
- Submit to periodic examination by the commissioner as required by this division and any regulation or order of the commissioner;
- Advise the commissioner of filing a petition for bankruptcy within 5 days of filing;
- Provide, free of charge on its website, information or links to information regarding repayment and loan forgiveness options that may be available to borrowers and provide this information to borrowers;
- Acknowledge receipt of a written request within 5 business days and provide information relating to the request and action the servicer will take to correct the account or explanation of why the account is correct within 30 days;
- Ask the borrower how to apply an overpayment to a student loan;
- File an annual report providing relevant information required by the commissioner, including the number of loans that are sold, assigned, or transferred to another party;
- Hire an independent certified public accountant to conduct an audit of its books and accounts; and
- Inform the commissioner in writing, and surrender the license it was granted, if it ceases to service student loans.

The servicer does not need to respond to a written request if: 1) it is substantially the same as previous written requests made by the same borrower, when the servicer has previously complied with the request; 2) the request is overboard; or 3) the request is delivered more than one year after the servicer is no longer responsible for the loan.

Powers of the Commissioner

The commissioner may:

- Issue, revoke or suspend licenses;
- Keep records;
- Investigate complaints;



- Issue subpoenas;
- Require access to information deemed necessary to further the "paramount public interest" in finding the experience, background, honesty, truthfulness, integrity, and competency of the servicer;
- Examine the affairs of each licensed servicer as often as deemed necessary, but at least every 36 months.

The commissioner has broad authority to subpoena any person whose testimony may be required for a complaint and any documents of the servicer being investigated, even beyond the scope of the complaint. The commissioner may levy fees and fines to cover the cost of administering the division.

Enforcement

The commissioner may issue an order suspending or revoking a servicer's license if, after notice and an opportunity for a hearing, the commissioner finds the servicer:

- Is violating the Student Loan Servicing Act;
- Does not cooperate with an investigation or examination;
- Engages in fraud, intentional misrepresentation, or gross negligence in servicing a student loan;
- Should not continue to service student loans because it is against the public interest;
- Engages in unsafe or injurious practice;
- Is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors;
or
- Would have been denied the application due to any fact or condition that now exists.

The commissioner may bring an action in the appropriate superior court of California to enjoin a servicer if he or she has reasonable grounds to believe that the servicer has engaged or is about to engage in any practice that violates Student Loan Servicing Act.

The commissioner shall impose a penalty up to \$100 per day that a servicer fails to: 1) make a required report to the commissioner within 10 days of the designated due date; or 2) include any matter required by law or the commissioner in the report.

The commissioner may revoke the servicer's license for failure to file required reports.

The commissioner may censure or suspend a servicer's license for up to 12 months if: 1) the censure, suspension, or bar is in the public interest and the person has committed or caused a violation of the Student Loan Servicing Act; or 2) the servicer has been convicted of, or pleaded nolo contendere to any crime or has been held liable in any civil action by final judgment or any administrative judgment by any public agency if the conviction is a specific offense related to finance or is reasonably related to the qualifications, functions, or duties of the servicer.

The commissioner may order a servicer to desist and refrain from any action the commissioner deems to be servicing of student loans without a license. The department may also issue a citation for up to \$2,500.



The commissioner must direct any servicer to comply if it finds, after investigation, that the servicer has failed to comply with the Student Loan Servicing Act.

No order is final until notice has been provided to the servicer that the commissioner intends to make the order final and provides reasoning for the finding. If no hearing is requested by the servicer, or ordered by the commissioner, the order may become final without a hearing within 30 days of notice given to the servicer.

The servicer has 10 days after an order is final to file for an injunction. If an injunction is not ordered within 10 days, the servicer is required to comply with the order.

After the exhaustion of administrative review, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and an order compelling compliance.

Servicers are subject to a civil penalty of up to \$2,500 for each violation of the Student Loan Servicing Act in addition to any other penalties assessed in other sections of the Act.

The commissioner may refer violations of the Student Loan Servicing Act to the District Attorney who may, with or without a referral, institute criminal proceedings for violations.

Definitions

Applicant: a person applying for a license.

Borrower, either: (1) A person who has received or agreed to pay a student loan; (2) A person who shares responsibility for repaying a student loan with a person described in paragraph (1).

Commissioner: the Commissioner of Business Oversight.

Department: the Department of Business Oversight.

Engage in the business: without limitation, servicing student loans.

In this state: any activity of a person relating to servicing student loans that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state.

Licensee: a person licensed pursuant to this division.

Person: an individual, a corporation, a partnership, a limited liability company, an association, a trust, an unincorporated organization, a government, or a political subdivision of a government, and any other entity.

Qualified written request: a written correspondence made by a borrower, other than notice on a payment medium supplied by a licensee, that is transmitted by mail, facsimile, or electronically through an email address or Internet Web site designated by the licensee to receive communications from a borrower that does all of the following: (1) Enables the licensee to identify the name and account of the borrower' and (2) Includes a statement of the reasons for the belief by the borrower, to the extent applicable, that the account is in error or that provides sufficient detail to the servicer regarding information sought by the borrower, such as a complete payment history for the loan or

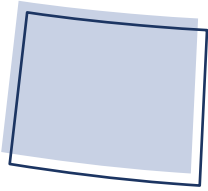


the borrower's account, a copy of the borrower's student loan promissory note, or the contact information for the creditor to whom the borrower's student loan is owed.

Student loan servicer: any person engaged in the business of servicing student loans.

Servicing: any of the following activities related to a student loan of a borrower: (1) Performing both of the following: (A) Receiving any scheduled periodic payments from a borrower or any notification that a borrower made a scheduled periodic payment; and (B) Applying payments to the borrower's account pursuant to the terms of the student loan or the contract governing the servicing. (2) During a period when no payment is required on a student loan, performing both of the following: (A) Maintaining account records for the student loan; (B) Communicating with the borrower regarding the student loan on behalf of the owner of the student loan promissory note. (3) Interacting with a borrower related to that borrower's student loan, with the goal of helping the borrower avoid default on his or her student loan or facilitating the activities described in paragraph (1) or (2).

Student loan: any loan primarily for use to finance a postsecondary education and costs of attendance at a postsecondary institution, including, but not limited to, tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses. A "student loan" includes a loan made to refinance a student loan. "Student loan" is not: an extension of credit under an open-end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; or, an extension of credit made by a postsecondary educational institution to a borrower if one of the following apply: 1) the term of the extension of credit is no longer than the borrower's education program; 2) the remaining, unpaid principal balance of the extension of credit is less than \$1,500 at the time of the borrower's graduation or completion of the program; or 3) the borrower fails to graduate or successfully complete his or her education program and has a balance due at the time of his or her disenrollment from the postsecondary institution.



Colorado (pending legislation)



Regulate Student Education Loan Servicers

House Bill 17-1352

Sponsor: Representative Faith Winter, Senator Dominick Moreno

Effective: September 1, 2018

Passed the House 35-29-1 on 5/5/2017

Died in Senate Committee on 5/8/2017

Executive Summary

The bill would require servicers to obtain a supervised lender license from the Administrator of the Uniform Consumer Credit Code. The Administrator would have the authority to adopt rules necessary to license servicers. The bill does not provide specific requirements for licensure.

Exempt Servicers

- A bank, trust company, or industrial loan company that is authorized to transact business in this state; and
- A state or federally chartered bank, savings bank, savings and loan association or, credit union, and subsidiaries.

Definitions

Servicing: 1) Receiving a scheduled periodic payment from a student loan borrower pursuant to the terms of a student education loan; 2) Applying the payments of principal, interest, and such other payments with respect to the amounts received from a student loan borrower as may be required pursuant to the terms of a student education loan; 3) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against consumers arising from student education loans; and, 4) Performing other administrative services with respect to a student education loan.

Student Education Loan: a consumer credit transaction that is not, a consumer credit transaction for which a license is required pursuant to the consumer credit code, supervised loans and supervised lenders, and that is used to finance education or other school-related expenses; except that, a consumer credit transaction includes transactions in which the principal or the amount financed exceeds \$75,000.

Student Loan Borrower: an individual who has received or agreed to pay a student education loan or an individual who shares responsibility for repaying the student education loan.

Student Loan Servicer: a person, wherever located, responsible pursuant to a contract with the United States Secretary of education for servicing a student education loan made to a student loan borrowers pursuant to the Federal "Ensuring Continued Access to Student Loans Act of 2008."

Supervised Lender: includes a student loan servicer.



Student Loan Bill of Rights

House Bill 6915 (Public Act 15-162)

Effective: July 1, 2016 (Ombudsman effective October 1, 2015)

Executive Summary

Any person or entity servicing student loans must obtain a license from the Banking Commissioner pursuant to the requirements set forth by the Student Loan Bill of Rights. A separate license is required for each place of business where a servicer operates.

Exempt Servicers

Any bank, out-of-state bank, Connecticut credit union, federal credit union or out-of-state credit union and subsidiary of such bank or credit union.

Application for License

Servicers must submit:

- 1) A written application developed by the Commissioner;
- 2) A financial statement prepared by a CPA, public accountant, general partner, corporate officer, or authorized member;
- 3) A history of criminal convictions of the applicant, partners, members, and officers;
- 4) A nonrefundable license fee of \$1,000 and investigation fee of \$800.

The application must be submitted on the [National Mortgage Licensing System](#). The commissioner may determine that an application is abandoned if the servicer fails to respond to any request for information. The commissioner must notify the servicer, in writing, that the servicer has 60 days to submit such information. Even if an application is determined to be abandoned, the servicer may file a new application.

Once a servicer files an application, the commissioner must investigate the applicant and a license may be issued if the commissioner finds:

- The applicant's financial condition is sound;
- Business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community;
- The servicer is properly qualified and of good character;
- No person on behalf of the applicant knowingly made any incorrect statement of a material fact in the application, or in any report or statement to the superintendent;
- No person on behalf of the applicant knowingly omitted any material fact necessary to give the commissioner any information required by law;



- The applicant has paid the investigation fee and the license fee; and
- The applicant has met any other similar requirements determined by the commissioner.

A license expires on September 30th of the odd number year after it is issued. The license may be renewed every two years if a servicer submits a renewal application by September 1st of the year the license expires. If a renewal application has been filed on or before the date the license expires, the license will continue in effect until the renewal license is issued or the commissioner notifies the servicer in writing that the application has been denied. If the servicer files an application after September 1st, with a \$100 late fee, it will be deemed timely and sufficient. The servicer's license will be automatically suspended if the commissioner determines that a check filed to pay a license or renewal fee is not valid.

Servicer Duties and Prohibitions

All servicers, even those exempt from licensure, must maintain adequate records of each student education loan transaction for at least two years following the final payment on a student education loan or the assignment of a student education loan, whichever occurs first.

If requested by the commissioner, a servicer must make records available to the commissioner within five business days. The commissioner may grant a servicer additional time to make such records available or send the records to the commissioner upon request.

Servicers must notify the commissioner, in writing:

- Within fifteen days, if the servicer ceases to engage in student loan servicing. The written notice must identify where the servicer's documents will be stored and the name, address and telephone number of a person authorized to provide access to the records;
- Within ten days if any information provided it its initial application within ten days; and
- Within ten days if the servicer changes the location of its place of business.

Servicers are prohibited from:

- Directly or indirectly employing any scheme, device or artifice to defraud or mislead student loan borrowers;
- Engaging in any unfair or deceptive practice toward any person;
- Misrepresenting or omitting any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Obtaining property by fraud or misrepresentation;
- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Knowingly or recklessly providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;



- Failing to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or
- Negligently making any false statement or knowingly and willfully making any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Banking Commissioner or another governmental agency.

Powers of the Commissioner

The commissioner may:

- Access, receive and use any books, accounts, records, files, documents, information or evidence including, criminal, civil and administrative history information; personal history and experience information, including independent credit reports obtained from a consumer reporting agency; and any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of the documents, information or evidence;
- Review, investigate or examine any student loan servicer as often as necessary in order to carry out the purposes of the Act;
- Direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about the student education loan or the business or subject matter of any an examination or investigation;
- Direct, subpoena, or order a production of books, accounts, records, files and any other documents the commissioner deems relevant;
- Control access to any documents and records of the student loan servicer under examination or investigation;
- Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations;
- Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence;
- Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the student loan servicer;
- Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
- Accept audit reports made by an independent certified public accountant for the student loan servicer and may incorporate the audit report in the report of examination, report of investigation or other writing of the commissioner.



No student loan servicer subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

The commissioner may suspend, revoke, or refuse to renew a license if: 1) the servicer has violated any provision in the Student Loan Bill of Rights, 2) any fact or condition exists that would have clearly warranted denial of a license if it has existed at the time the servicer applied for a license.

Enforcement

The commissioner may bring an action in the superior court for the judicial district of Hartford to enjoin a servicer if reasonable grounds exist to believe that the servicer has engaged or is about to engage in any practice that violates Student Loan Servicing Act.

The commissioner may send a notice to a servicer when it has violated, is violating, or is about to violate the Student Loan Bill of Rights. If no hearing is requested by the servicer, the commissioner shall issue an order to cease and desist if a hearing is not requested within 14 days of notice given to the servicer. If a hearing is requested, the commissioner will determine whether an order should be issued after the hearing.

Student Loan Ombudsman

The commissioner shall designate a Student Loan Ombudsman to provide timely assistance to any student loan borrower.

The Student Loan Ombudsman shall:

- Receive, review and attempt to resolve any complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, agencies, legislators and others 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 student education loan history for any student loan borrower who has provided written consent for such review;
- Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns; and
- Take any other actions necessary to fulfill the duties of the Student Loan Ombudsman.



Definitions

Student loan borrower: any resident of Connecticut who has received or agreed to pay a student loan; or any person who shares responsibility repaying the student loan.

Student loan servicer: any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

Servicing: receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan; applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and performing other administrative services with respect to a student education loan.

Student education loan: any loan primarily for personal use to finance education or other school-related expenses.



Illinois



Student Loan Servicing Rights

Senate Bill 1351

Chief Sponsors: Senator Daniel Biss, Don Harmon, Jacqueline Collins, Scott Bennett, and Melinda Bush;
Representatives Will Guzzardi, Chris Welch, Elizabeth Hernandez, Mary Flowers, and Christian Mitchell

Passed both houses 5/31/2017

Effective Date: December 31, 2018

Executive Summary

The Student Loan Bill of Rights regulates a variety of a servicer's activities, including how a servicer processes payments, regulation of the late fees that may be charged, representations that are prohibited on billing statements, required disclosures, and the process for transfer of a student loan. The Act also requires servicers to designate specialized assistance for borrowers, provide information for private loan borrowers, payoff statements, and provide information about cosigner release. Further, any person or entity servicing student loans must obtain a license from the Illinois Department of Financial and Professional Regulation. Finally, the Act creates a Student Loan Ombudsman and allows the Attorney General to enforce violations of the Act under the Consumer Fraud and Deceptive Business Practices Act.

Exempt Servicers

- A bank, savings bank, savings association, credit union, or organized under the laws of any state or the United States, and any wholly owned or operating subsidiary;
- The Illinois Student Assistance Commission;
- A public postsecondary educational institution or private nonprofit postsecondary educational institution;
- A licensed debt management service except to the extent that the organization acts as a subcontractor, affiliate, or service provider for an entity that is otherwise subject to the licensure requirement;
- Any collection agency collecting post-default debt;
- A State or nonprofit private institution or organization having an agreement with the U.S. Department of Education and acting in connection with its responsibilities as a guaranty agency engaged in default aversion; or
- A State institution or a nonprofit private organization designated by a governmental entity to make or service student loans where that institution or organization services under 20,000 student loan accounts of borrowers residing in Illinois.

Application for License

Servicers must submit:

- 1) An application for license with the Secretary or the Nationwide Mortgage Licensing System and Registry as approved by the Secretary;
- 2) A listing of judgments entered against, and bankruptcy petitions by, the servicer for the preceding 10 years;



- 3) An audited balance sheet; and
- 4) \$1,000 for an application fee and \$800 for a background investigation.

Before a license will be issued, the Secretary must: investigate the averments required under the Act and find the financial responsibility, experience, character, and general fitness of the servicer would command the confidence of the community and warrant belief that the business will be operated honestly, fairly, and efficiently.

The averments required in statute require the servicer to:

- File with the Secretary or Nationwide Licensing System and Registry, as applicable, any report or reports it shall be required to file;
- Advise the Secretary in writing, or the Nationwide Mortgage Licensing System and Registry, as applicable, of any changes to the information submitted on its most recent application for licensure or averments of record within 30 days of the change;
- Comply with the Act and any lawful order, rule, or regulation issued under the Act;
- Submit to periodic examination by the Secretary as required by the Act; and
- Advise the Secretary in writing of judgments entered against and bankruptcy petitions filed by the applicant within five days of the occurrence.

Additionally, the servicer must not have:

- Committed a crime against the law of Illinois, any other state, or the United States involving moral turpitude or fraudulent or dishonest dealing;
- Had a final judgment entered against it in a civil action for fraud, misrepresentation, or deceit that was not previously reported to the Secretary;
- Engaged in any conduct that would cause a denial of a license;
- Become insolvent;
- Submitted an application for a license that contains a material misstatement; or
- Demonstrated by course of conduct, negligence or incompetence in performing any act for which a license is required under the Act.

A failure to fulfill the obligations of an averment or to comply with the averments made shall subject the applicant to the penalties provided under the Act.

Licenses shall be renewed each year using the common renewal date as will be established on the Nationwide Mortgage Licensing System and Registry. Renewal forms and filing fees may be received 60 days before expiration but must be filed at least 30 days before expiration. An inactive license may be reactivated upon payment of the renewal fee and a reactivation fee.



Servicer Duties and Prohibitions

Servicers must:

- Oversee any third parties, such as sub-servicers, debt collectors, independent contractors, subsidiaries, affiliates, or other agents to ensure compliance with the Student Loan Bill of Rights;
- Credit borrowers and cosigner payments promptly and accurately;
- Provide borrowers and cosigners with prompt notice if the servicer changes the address to which the borrower or cosigner needs to send payments;
- Not charge a penalty to a borrower or cosigner if a student loan payment is received at an address used for payments for a period of 90 days after the change in address;
- Not misrepresent the delinquent amount of the loan on any call with a borrower or cosigner;
- Allow a borrower or cosigner to specify instructions as to how an overpayment should be applied to the balance of the loan as consistent with the promissory note;
- Provide a written payment history within 21 calendar days of receiving a request;
- Designate servicing collections personnel with enhanced training on repayment options to be deemed repayment specialists;
- Refrain from presenting forbearance as the sole or first repayment option unless the servicer has determined it is appropriate due to the borrower's financial status;
- Rout all inbound and outbound calls from a borrower eligible for referral to a payment specialist to a repayment specialist;
- Disclose information about the procedure for asserting a defense to repayment claim, closed school discharge, or submitting an application for a total and permanent disability discharge when the servicer is aware there are grounds to assert the discharge or defense;
- Disclose the date that a borrower's income-driven payment plan certification will expire and the consequences for failing to recertify by that date, including the new repayment amount after expiration;
- Provide, on its website, a description of any alternative repayment plan offered by the servicer of private education loans;
- Establish policies and procedures and implement them consistently to facilitate evaluation of private student loan alternative repayment arrangement requests and provide accurate information on the arrangements that may be available for the borrower;
- Indicate, on its website, that borrowers may request a payoff statement and provide the statement within 10 days of the request;
- Send a pain-in-full notice within 30 days of when payments are completed;
- Provide information on its website about the availability and criteria for a cosigner release of private loans;
- Provide each borrower subject to the transfer of a loan at least 15 days before the transfer occurs;



- Provide the Secretary written notice if the servicer ceases activity regulated by the Act;
- Implement reasonable policies and procedures for accepting, processing, investigating, and responding to requests for assistance in a timely and effective manner including, but not limited to:
 - Providing readily accessible methods for consumers to submit a request for assistance to the servicer;
 - Posting the servicer's contact information where borrowers may submit requests for assistance on its website and disclosing the information on billing statements;
 - If the response cannot be immediately provided, provide the requested information within 14 calendar days of the request unless it is determined in good faith that a response cannot be made in that timeframe and the requester is notified of the expected time for a response;
 - Establish a process to investigate, notify the borrower of a finding, and appeal the decision made on an account dispute.

Servicers shall not:

- Engage in unfair or deceptive practices toward any borrower;
- Misrepresent or omit any material information including, the amount, nature, or terms of any fee or payment due or claimed to be due on a student loan, terms and conditions of the student loan agreement, borrower's or cosigner's obligations under the student loan, or the terms of any repayment plans;
- Misapply payments made by a borrower to the outstanding balance of a student loan;
- Charge a fee to modify, defer, forbear, renew, extend, or amend a loan arrangement;
- Misrepresent the fees assessed, total amount due for each loan, payment due date, date to avoid late fees, accrued interest during the billing cycle, default payment methodology, means to provide instructions for payment or the procedure for escalated requests for assistance;
- Implement any compensation plan with the intended or actual effect of incentivizing a repayment specialist to violate the Act or that encourages undue haste or lack of quality.

Powers of the Secretary

The Secretary may:

- Issue, refuse, revoke or suspend any license;
- Keep records of all licenses issued;
- Receive, consider, investigate, and act upon complaints made by any person in connection with a licensed servicer;
- Prescribe the form of, and receive applications for, licenses and required reports and records;
- Subpoena documents and witnesses and otherwise require their attendance or production when relevant to an inquiry;



- Issue orders against any person if when the Secretary has reasonable cause to believe that an unsafe, unsound, or unlawful practice has occurred, is occurring, or is about to occur;
- Address inquiries to any servicer or its officers in relation to its activities and conditions;
- Examine the books and records of every servicer;
- Levy fees, fines, and charges for services performed in administering the Act;
- Appoint examiners, supervisors, experts, and special assistants as needed;
- Conduct hearings for the purpose of:
 - Appeals of orders of the Secretary;
 - Suspensions or revocations of licenses;
 - Investigating complaints or annual gross delinquency rates; and
 - Carrying out the purposes of the Act;
- Enter into cooperative agreements with state regulatory authorities of other states to provide for examination of corporate offices or branches in those states;
- Exercise exclusive visitorial power over a servicer;
- Assign an examiner or examiners to monitor the affairs of a servicer with whatever frequency the Secretary determines appropriate and charge servicers for reasonable and necessary expenses of the Secretary if the Secretary determines an emergency exists or is likely to occur;
- Impose civil penalties up to \$50 per day against a servicer who fails to respond to regulatory requests or reporting requirements; and
- Enter into agreements related to the Nationwide Mortgage Licensing System and Registry.

Enforcement

The Secretary may suspend or revoke a servicer's license, upon written notice if:

- The licensee has violated any provision of the Act, a rule adopted by the Secretary, or any other law, rule, or regulation of the State or United States;
- Any fact or condition exists that, if it had existed at the time of the servicer's application for a license, would have warranted the Secretary in refusing to issue the license; or
- An equitable owner, officer, director, or member of a licensed servicer has acted or failed to act in a way that would be cause for suspending or revoking a license.

The servicer has the right to a hearing prior to suspension or revocation of the license, unless the Secretary determines that an emergency exists and shows good cause.



The Secretary may impose the penalties for:

- Being convicted or found guilty of a crime, in any jurisdiction, that involves fraud, dishonest dealing, or any other act of moral turpitude, regardless of any pending appeal;
- Fraud, misrepresentation, deceit, or negligence in any student loan transaction;
- A material or intentional misstatement of fact on an initial or renewal application;
- Insolvency or filing under any provision of the federal Bankruptcy Code as a debtor;
- Failure to account or deliver to any person any property, including any money, fund, deposit, check, draft, or other document or thing of value, that has come into his or her hands and that is not his or her property or that he or she is not entitled to retain;
- Failure to disburse funds in accordance with agreements;
- Having a license to practice any profession or occupation revoked, suspended, or otherwise acted against, including a denial of licensure by any state licensing authority for reasons such as fraud, dishonest dealing, or any other act of moral turpitude;
- Failure to comply with an order of the Secretary or rule made or issued under the Act;
- Engaging in activities regulated by the Act without an active license unless specifically exempted from the licensing requirement;
- Failure to pay in a timely manner any fee, charge, or fine under the Act;
- Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by the Act and rules of the Secretary;
- Refusing, obstructing, evading or unreasonably delaying an investigation, information request, or examination authorized under this Act or compliance with the Secretary's subpoena; and
- A violation or failure to comply with any provision of the Act.

The Secretary may impose the following penalties:

- Revocation of license;
- Suspension of a license subject to reinstatement upon satisfying all reasonable conditions the Secretary may specify;
- Placement of the licensee or applicant on probation for a period of time subject to the reasonable conditions specified by the Secretary;
- Issuance of a reprimand;
- Imposition of a fine not to exceed:
 - \$75,000 for each separate count of fraud, misrepresentation, deceit, or negligence in any student loan transaction; or



- \$25,000 for each count of any other offense; or
- Denial of a license.

The Attorney General may enforce a violation of the Student Loan Bill of Rights as an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.

Student Loan Ombudsman

The Student Loan Ombudsman is required to:

- Receive, review, and attempt to resolve complaints from borrowers;
- Compile and analyze data on borrower complaints;
- Assist borrowers in understanding their rights and responsibilities under the terms of student loans;
- Provide information to the public, agencies, legislators, and others on the problems and concerns of 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;
- Review the complete loan history for any borrower who has consented in writing to such a review;
- Disseminate information concerning its availability to assist borrowers, potential borrowers, public institutions of higher education, servicers, and other participants in student loan lending with any servicing concerns; and
- Take other actions necessary to fulfill its duties.

Definitions

Applicant: a person applying for a license pursuant to this Act.

Borrower or student loan borrower: a person who has received or agreed to pay a student loan for his or her own educational expenses.

Cosigner: a person who has agreed to share responsibility for repaying a student loan with a borrower.

Department: the Department of Financial and Professional Regulation.

Division of Banking: the Division of Banking of the Department of Financial and Professional Regulation.

Federal loan borrower eligible for referral to a repayment specialist: a borrower who possesses any of the following characteristics: (1) requests information related to options to reduce or suspend his or her monthly payment; (2) indicates that he or she is experiencing or anticipates experiencing financial hardship, distress, or difficulty making his or her payments; (3) has missed 2 consecutive monthly payments; (4) is at least 75 days delinquent; (5) is enrolled in a discretionary forbearance for more than 9 of the previous 12 months; (6) has rehabilitated or consolidated one or more loans out of default within the past 12 months; or (7) has not completed a course of



study, as reflected in the servicer's records, or the borrower identifies himself or herself as not having completed a program of study.

Federal education loan: any loan made, guaranteed, or insured under Title IV of the federal Higher Education Act of 1965.

Income-driven payment plan certification: the documentation related to a federal student loan borrower's income or financial status the borrower must submit to renew an income-driven repayment plan.

Income-driven repayment options: includes the Income-Contingent Repayment Plan, the Income-Based Repayment Plan, the Income-Sensitive Repayment Plan, the Pay As You Earn Plan, the Revised Pay As You Earn Plan, and any other federal student loan repayment plan that is calculated based on a borrower's income.

Licensee: a person licensed pursuant to the Act.

Other repayment plans: the Standard Repayment Plan, the Graduated Repayment Plan, the Extended Repayment Plan, or any other federal student loan repayment plan not based on a borrower's income.

Private loan borrower eligible for referral to a repayment specialist: a borrower who possesses any of the following characteristics: (1) requests information related to options to reduce or suspend his or her monthly payments; or (2) indicates that he or she is experiencing or anticipates experiencing financial hardship, distress, or difficulty making his or her payments.

Requester: any borrower or cosigner that submits a request for assistance.

Request for assistance: all inquiries, complaints, account disputes, and requests for documentation a servicer receives from borrowers or cosigners.

Secretary: the Secretary of Financial and Professional Regulation, or his or her designee, including the Director of the Division of Banking of the Department of Financial and Professional Regulation.

Servicing: (1) receiving any scheduled periodic payments from a student loan borrower or cosigner pursuant to the terms of a student loan; (2) applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower or cosigner, as may be required pursuant to the terms of a student loan; and (3) performing other administrative services with respect to a student loan.

Student loan or loan: any federal education loan or other loan primarily for use to finance a postsecondary education and costs of attendance at a postsecondary institution, including, but not limited to, tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses. "Student loan" includes a loan made to refinance a student loan. "Student loan" shall not include an extension of credit under an open-end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling. "Student loan" shall not include an extension of credit made by a postsecondary educational institution to a borrower if one of the following apply: (1) The term of the extension of credit is no longer than the borrower's education program. (2) The remaining, unpaid principal balance of the extension of credit is less than \$1,500 at the time of the borrower's graduation or completion of the program. (3) The borrower fails to graduate or successfully complete his or her education program and has a balance due at the time of his or her disenrollment from the postsecondary institution.

Student loan servicer or servicer: any person engaged in the business of servicing student loans.



Maine (pending legislation)



Student Loan Bill of Rights to License and Regulate Student Loan Servicers

Senate Paper 532

In committee as of April 25, 2017

Executive Summary

Any person or entity servicing student loans must obtain a license from the Superintendent of Consumer Credit Protection.

Exempt Servicers

A licensed bank or credit union, a wholly owned subsidiary of such a bank or credit union and an operating subsidiary of such a bank or credit union as long as each owner of the operating subsidiary is a wholly owned by that bank or credit union.

Application for a License

Servicers must submit:

- 1) A written application developed by the Superintendent;
- 2) A financial statement prepared by a CPA, public accountant, general partner, corporate officer, or authorized member;
- 3) A history of criminal convictions of the applicant, partners, members, and officers; and
- 4) A nonrefundable license fee of \$1,000 and investigation fee of \$800.

A license expires on September 30th of the odd number year after it is issued. The license may be renewed every 2 years if a servicer submits a renewal application by September 1st of the year the license expires. If a renewal application has been filed on or before the date the license expires, the license will continue in effect until the renewal license is issued or the superintendent notifies the servicer in writing that the application has been denied. If the servicer files an application after September 1st, with a \$100 late fee, it will be deemed timely and sufficient.

The superintendent may suspend, revoke or refuse to renew a license if: 1) the servicer has violated any provision of the Student Loan Bill of Rights, or 2) any fact or condition exists that clearly would have warranted a denial of the license, if it had existed at the time of the original application.

Even if a servicer surrenders its license, it is liable for civil or criminal acts or omissions prior to surrendering the license.



Servicer Duties and Prohibitions

Servicers must:

- Maintain adequate records of each student loan transaction for at least 2 years after the final payment or the assignment of the student loan, whichever occurs first.
- Make records available to the superintendent within 5 days of a request. The superintendent may grant a servicer additional time to send records.
- Notify the superintendent, in writing, prior to any change of the servicer's name or place of business.

Servicers are prohibited from:

- Directly or indirectly employing a scheme, device or artifice to defraud or mislead student loan borrowers;
- Engage in an unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Obtain property by fraud or misrepresentation;
- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student loan;
- Knowingly or recklessly providing inaccurate information to a credit bureau thereby harming the determination of a student loan borrower's creditworthiness;
- Failing to report both the favorable and unfavorable payment history of a student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to such a credit bureau;
- Refusing to communicate with an authorized representative of a student loan borrower who provides a written authorization signed by the student loan borrower, except that the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower;
- Negligently making any false statements or knowing and willfully omitting a material fact in connection with information reports filed with a governmental agency or in connection with an investigation conducted by the superintendent or another governmental agency; or
- Failing to evaluate a student loan borrower for an income-based repayment program prior to placing the borrower in forbearance or default, if an income-based repayment program is available to the borrower.

Powers of the Superintendent

The superintendent may:

- Access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to, criminal, civil and administrative history information; personal history and experience information,



including independent credit reports obtained from a consumer reporting agency; and any other documents, information or evidence the superintendent deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of the documents, information;

- Review, investigate or examine any servicer as often as necessary in order to carry out the purposes of the Act;
- Direct, subpoena, or order the attendance of and examine under oath anyone whose testimony may be required about the student education loan or the subject matter of any examination or investigation;
- Direct, subpoena, or order production of books, accounts, records, files and any other documents the commissioner deems relevant;
- Control access to any documents and records of the servicer under examination or investigation;
- Retain attorneys, accountants, or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations;
- Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence;
- Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the student loan servicer;
- Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
- Accept audit reports made by an independent certified public accountant for the student loan servicer and may incorporate the audit report in the report of examination, report of investigation or other writing of the commissioner.

No servicer subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

The superintendent may suspend, revoke, or refuse to renew a license if: 1) the servicer has violated any provision in the Student Loan Bill of Rights, 2) any fact or condition exists that would have clearly warranted denial of a license if it has existed at the time the servicer applied for a license.

Student Loan Ombudsman

The superintendent shall support, maintain and designate a student loan ombudsman within the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, to provide timely assistance to student loan borrowers.

The Student Loan Ombudsman shall:

- Receive, review and attempt to resolve complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;



- Assist student loan borrowers to understand their rights and responsibilities under the terms of the student education loans;
- Provide information to the public, agencies, legislators and others regarding the problems and concerns of student loan borrowers;
- Analyze and monitor the development and implementation of federal, state and local laws, ordinances, regulations, rules and policies relating to student loan borrowers.

Definitions

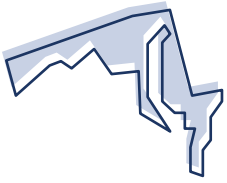
Servicing: receiving scheduled periodic payments from a student loan borrowers pursuant to the terms of a student education loan; applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower as may be required pursuant to the terms of a student education loan; and performing other administrative services with respect to a student education loan.

Student Education Loan: a loan primarily for personal use to finance postsecondary education or other school-related expenses.

Student Loan Borrower: a resident of Maine who has received or agreed to pay a student education loan or a person who shares legal responsibility with a resident for repaying the student education loan.

Student Loan Servicer: a person, wherever located, responsible for the servicing of a student education loan to a student loan borrower.

Superintendent: the Superintendent of Consumer Credit Protection



Maryland (pending legislation)



Maryland Collection Agency Licensing Act

House Bill 770

Sponsor: Delegates Stein, Brooks, Ebersole, Lierman, McCray, Morhaim, Platt, and P. Young

Unfavorable report from Economic Matters Committee on 3/7/2017

Executive Summary

Student loan servicers would be required to be licensed under the Maryland Collection Agency Licensing Act by the State Collection Agency Licensing Board.

Application for License

Servicers must file an application with the Department of Labor, Licensing and Regulation. Detailed instructions on how to file an application can be found on the Department's [website](#).

Servicing of a Student Education Loan: collection and receiving any principal, interest, or other money owed under a student education loan, or performing any other administrative services that relate to a student education loan.



Massachusetts (pending legislation)



Student Loan Bill of Rights

House Bill 2173

Sponsor: Natalie Higgins

Effective: September 1, 2017

Executive Summary

Any person or entity servicing student loans must obtain a license from the commissioner of the Division of Banks pursuant to the requirements set forth by the Student Loan Bill of Rights. The servicer must have a separate license for each place of business.

Exempt Servicers

Any bank, out-of-state bank, Massachusetts credit union, federal credit union or out-of-state credit union and wholly owned or operating subsidiary of such bank or credit union.

Application for License

Servicers must submit:

- 1) A written application developed by the commissioner; and
- 2) A nonrefundable license fee of \$1,000 and investigation fee determined by the commissioner.

The commissioner may require:

- 1) A financial statement prepared by a CPA, public accountant, general partner, corporate officer, or authorized member; and
- 2) A history of criminal convictions of the applicant, partners, members, and officers.

The commissioner may determine that an application is abandoned if the servicer fails to respond to any request for information. The commissioner must notify the servicer, in writing, that the servicer has 60 days to submit such information. Even if an application is determined to be abandoned, the servicer may file a new application.

Once a servicer files an application, the commissioner must investigate the applicant and a license may be issued if the commissioner finds:

- The applicant's financial condition is sound;
- Business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community;
- the servicer is properly qualified and of good character;
- No person on behalf of the applicant knowingly made any incorrect statement of a material fact in the application, or in any report or statement to the superintendent;



- No person on behalf of the applicant knowingly omitted any material fact necessary to give the commissioner any information required by law;
- The applicant has paid the investigation fee and the license fee; and
- The applicant has met any other similar requirements determined by the commissioner.

Licenses expire one year after the date determined by the commissioner. The license may be renewed every year if a servicer submits a renewal application at least 30 days before the license expires. If a renewal application has been filed on or before the date the license expires, the license will continue in effect until the renewal license is issued or the commissioner notifies the servicer in writing that the application has been denied. The commissioner may accept late applications, with a fee. The servicer's license will be automatically suspended if the commissioner determines that a check filed to pay a license or renewal fee is not valid.

Servicer Duties and Prohibitions

All servicers, even those exempt from licensure, must maintain adequate records of each student education loan transaction for at least 2 years following the final payment on such student education loan or the assignment of such student education loan, whichever occurs first.

Servicers must notify the commissioner, in writing:

- Within 15 days if the servicer ceases to engage in student loan servicing. The written notice must identify where the servicer's documents will be stored and the name, address and telephone number of a person authorized to provide access to the records.

Servicers are prohibited from:

- Directly or indirectly employing any scheme, device or artifice to defraud or mislead student loan borrowers;
- Engaging in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Obtaining property by fraud or misrepresentation;
- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Knowingly or recklessly providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;
- Failing to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or



- Negligently making any false statement or knowingly and willfully making any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Banking Commissioner or another governmental agency.

Powers of the Commissioner

The commissioner may:

- Access documents and records of the servicer under examination or investigation; and
- Conduct investigations for initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance.

No student loan servicer licensee or person subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

The commissioner may suspend, revoke, or refuse to renew a license if: 1) the servicer has violated any provision in the Student Loan Bill of Rights, 2) any fact or condition exists that would have clearly warranted denial of a license if it has existed at the time the servicer applied for a license.

Student Loan Ombudsman

The commissioner shall designate a Student Loan Ombudsman to provide timely assistance to any student loan borrower.

The Student Loan Ombudsman shall:

- Receive, review and attempt to resolve any complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, agencies, legislators and others 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 student education loan history for any student loan borrower who has provided written consent for such review; and
- Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns.



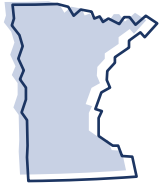
Definitions

Student loan borrower: any resident of Massachusetts who has received or agreed to pay a student loan; or any person who shares responsibility repaying the student loan.

Student loan servicer: any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

Servicing: receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower. In the case of a student education loan as referenced in this section, servicing includes applying the payments of principal and interest and other such payments with respect to the amounts received from a student loan borrower as may be required pursuant to the terms of a student education loan and performing other administrative services with respect to a student education loan.

Student education loan: any loan primarily for personal use to finance education or other school-related expenses.



Minnesota (pending legislation)



House Bill 21

Sponsor: Murphy, Omar, Dehn, Loeffler, and Bly.

Effective: No effective date

Executive Summary

Any person or entity servicing student loans must obtain a license from the commissioner of Commerce. The servicer must have a separate license for each place of business.

Exempt Servicers

- Financial institution;
- A person servicing student loans made with the person's own funds, if no more than three are made in any 12-month period;
- An agency of the federal government, or of a state or municipal government;
- A person acting in the fiduciary capacity, such as trustee or receiver, as a result of a specific order issued by a court of competent jurisdiction; or
- A person exempted by order of the commissioner.

Application for License

Servicers must submit:

- 1) A written application developed by the commissioner;
- 2) A financial statement prepared by a CPA or public accountant;
- 3) A history of criminal convictions of the applicant, partners, members, and officers; and 4) A nonrefundable license fee of \$1,000 and investigation fee determined by the commissioner.

The commissioner may determine that an application is abandoned if the servicer fails to respond to any request for information.

Once a servicer files an application, the commissioner must investigate the applicant and a license may be issued if the commissioner finds:

- The applicant's financial condition is sound;
- Business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community;
- the servicer is properly qualified and of good character;
- No person on behalf of the applicant knowingly made any incorrect statement of a material fact in the application, or in any report or statement to the superintendent;



- No person on behalf of the applicant knowingly omitted any material fact necessary to give the commissioner any information required by law;
- The applicant has paid the investigation fee and the license fee; and
- The applicant has met any other similar requirements determined by the commissioner.

Licenses expire on December 31st and are renewable January 1st of each year. For renewal, servicers must pay a renewal license fee of \$500; and a renewal investigation fee of \$400. Only the information that has changed from the previous application must be submitted for renewal

Servicer Duties and Prohibitions

Servicers must notify the commissioner, in writing if the servicer ceases to engage in student loan servicing.

Servicers are prohibited from:

- Directly or indirectly employing any scheme, device or artifice to defraud or mislead student loan borrowers;
- Engaging in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Knowingly or recklessly providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;
- Failing to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or
- Knowingly or Negligently making any false statement or any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the commissioner or any other federal, state, or local government agency.

Powers of the Commissioner

The commissioner may:

- Bar a person from engaging in student loan servicing;



- Deny, suspend, or revoke a student loan servicer license;
- Censure a student loan servicer;
- Impose a civil penalty;
- Revoke an exemption.

The commissioner may take this action if:

- The order is in the public interest;
- The servicer has violated any provision in the Act,
- The servicer has violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the practice involves student loan servicing;
- Engaged in an act or practice, whether or not the practice involves student loan servicing, that demonstrates untrustworthiness, financial irresponsibility, or incompetence;
- The servicer has been convicted of, or pleaded nolo contendere to a felony, gross misdemeanor, or misdemeanor;
- Paid a civil penalty or been the subject of disciplinary action by the commissioner;
- Been found by a court of competent jurisdiction to have engaged in conduct evidencing gross negligence, fraud, misrepresentation or deceit;
- Refused to cooperate with an investigation or examination by the commissioner;
- Failed to pay any fee or assessment imposed by the commissioner; or
- Failed to comply with state and federal tax obligations.

Student Loan Ombudsman

The commissioner shall designate a Student Loan Ombudsman to provide timely assistance to any student loan borrower.

The Student Loan Ombudsman shall:

- Receive, review and attempt to resolve any complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, agencies, legislators and others 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 student education loan history for any student loan borrower who has provided written consent for such review; and
- Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns.

Definitions

Student loan borrower: any resident of Massachusetts who has received or agreed to pay a student loan; or any person who shares responsibility repaying the student loan.

Student loan servicer: any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

Servicing: receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower. In the case of a student education loan as referenced in this section, servicing includes applying the payments of principal and interest and other such payments with respect to the amounts received from a student loan borrower as may be required pursuant to the terms of a student education loan and performing other administrative services with respect to a student education loan.

Student education loan: any loan primarily for personal use to finance education or other school-related expenses.



Missouri (pending legislation)



Student Loan Bill of Rights

House Bill 620

Sponsor: Kendrick

Effective: October 1, 2017

Referred to Select Committee on Local, State, Federal Relations and Miscellaneous Business on 5/12/2017

Executive Summary

Any person or entity servicing student loans must obtain a license from the Department of Higher Education pursuant to the requirements set forth by the Student Loan Bill of Rights. A separate license is required for each place of business where a servicer operates.

Exempt Servicers

Any bank, out-of-state bank, Missouri credit union, federal credit union or out-of-state credit union and subsidiary of such bank or credit union.

Application for License

Servicers must submit:

- 1) A written application developed by the department;
- 2) A financial statement prepared by a CPA or public accountant;
- 3) A history of criminal convictions of the applicant, partners, members, and officers;
- 4) A nonrefundable license fee of \$1,000 and investigation fee of \$800.

The department may determine that an application is abandoned if the servicer fails to respond to any request for information. The department must notify the servicer, in writing, that the servicer has 60 days to submit such information. Even if an application is determined to be abandoned, the servicer may file a new application.

Once a servicer files an application, the department must investigate the applicant and a license may be issued if the commissioner finds:

- The applicant's financial condition is sound;
- Business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community;
- The servicer is properly qualified and of good character;
- No person on behalf of the applicant knowingly made any incorrect statement of a material fact in the application, or in any report or statement to the superintendent;
- No person on behalf of the applicant knowingly omitted any material fact necessary to give the commissioner any information required by law;



- The applicant has paid the investigation fee and the license fee; and
- The applicant has met any other similar requirements determined by the department.

A license expires on September 30th the second year after it is issued. The license may be renewed every two years if a servicer submits a renewal application by September 1st of the year the license expires. If a renewal application has been filed on or before the date the license expires, the license will continue in effect until the renewal license is issued or the department notifies the servicer in writing that the application has been denied. If the servicer files an application after September 1st, with a \$100 late fee, it will be deemed timely and sufficient. The servicer's license will be automatically suspended if the department determines that a check filed to pay a license or renewal fee is not valid.

Servicer Duties and Prohibitions

All servicers, even those exempt from licensure, must maintain adequate records of each student education loan transaction for at least two years following the final payment on a student education loan or the assignment of a student education loan, whichever occurs first.

If requested by the department, a servicer must make records available to the department within five business days. The department may grant a servicer additional time to make such records available or send the records to the department upon request.

Servicers must notify the department, in writing:

- Within fifteen days, if the servicer ceases to engage in student loan servicing. The written notice must identify where the servicer's documents will be stored and the name, address and telephone number of a person authorized to provide access to the records;
- Within ten days if any information provided in its initial application within ten days; and
- Within ten days if the servicer changes the location of its place of business.

Servicers are prohibited from:

- Directly or indirectly employing any scheme, device or artifice to defraud or mislead student loan borrowers;
- Engaging in any unfair or deceptive practice toward any person;
- Misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Obtaining property by fraud or misrepresentation;
- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Knowingly or recklessly providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;



- Failing to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or
- Negligently making any false statement or knowingly and willfully making any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Banking Commissioner or another governmental agency.

Powers of the Department

The department may:

- Access, receive and use any books, accounts, records, files, documents, information or evidence;
- Review, investigate or examine any student loan servicer as often as necessary in order to carry out the purposes of the Act;
- Direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about the student education loan or the business or subject matter of any an examination or investigation;
- Direct, subpoena, or order a production of books, accounts, records, files and any other documents the commissioner deems relevant;
- Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations;
- Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence;
- Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the student loan servicer;
- Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
- Accept audit reports made by an independent certified public accountant for the student loan servicer and may incorporate the audit report in the report of examination, report of investigation or other writing of the commissioner.

No student loan servicer subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.



The department may suspend, revoke, or refuse to renew a license if: 1) the servicer has violated any provision in the Student Loan Bill of Rights, 2) any fact or condition exists that would have clearly warranted denial of a license if it has existed at the time the servicer applied for a license.

Enforcement

The department may send a notice to a servicer when it has violated, is violating, or is about to violate the Student Loan Bill of Rights. If no hearing is requested by the servicer, the department shall issue an order to cease and desist if a hearing is not requested within 14 days of notice given to the servicer. If a hearing is requested, the department will determine whether an order should be issued after the hearing.

Student Loan Ombudsman

The commissioner of higher education shall designate a Student Loan Ombudsman to provide timely assistance to any student loan borrower.

The Student Loan Ombudsman shall:

- Receive, review and attempt to resolve any complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, agencies, legislators and others 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 student education loan history for any student loan borrower who has provided written consent for such review;
- Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns; and
- Take any other actions necessary to fulfill the duties of the Student Loan Ombudsman.

Definitions

Department: the department of higher education.

Student loan borrower: any resident of Missouri who has received or agreed to pay a student loan; or any person who shares responsibility repaying the student loan.



Student loan servicer: any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

Servicing: receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan; applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and performing other administrative services with respect to a student education loan.

Student education loan: any loan primarily for personal use to finance education or other school-related expenses.



New Jersey (pending legislation)



Student Loan Bill of Rights

Assembly No. 1670

Effective: 120 days after signed into law

Sponsors: Schaer, Quijano, Mukherji, Holley, and Daniels

Passed the Assembly Higher Education Committee on February 22, 2016

On 2nd reading in the Assembly

Executive Summary

Any person or entity servicing student loans must obtain a license from the commissioner of Banking and Insurance pursuant to the requirements set forth by the Student Loan Bill of Rights. A separate license is required for each place of business where a servicer operates.

Exempt Servicers

Any bank, out-of-state bank, New Jersey credit union, federal credit union or out-of-state credit union and subsidiary of such bank or credit union.

Application for License

Servicers must submit:

- 1) A written application developed by the commissioner;
- 2) A financial statement prepared by a CPA or public accountant;
- 3) A history of criminal convictions of the applicant, partners, members, and officers;
- 4) A nonrefundable license fee of \$1,000 and investigation fee of \$800.

The commissioner may determine that an application is abandoned if the servicer fails to respond to any request for information. The commissioner must notify the servicer, in writing, that the servicer has 60 days to submit such information. Even if an application is determined to be abandoned, the servicer may file a new application.

Once a servicer files an application, the commissioner must investigate the applicant and a license may be issued if the commissioner finds:

- The applicant's financial condition is sound;
- Business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community;
- The servicer is properly qualified and of good character;
- No person on behalf of the applicant knowingly made any incorrect statement of a material fact in the application, or in any report or statement to the superintendent;



- No person on behalf of the applicant knowingly omitted any material fact necessary to give the commissioner any information required by law;
- The applicant has paid the investigation fee and the license fee; and
- The applicant has met any other similar requirements determined by the commissioner.

A license expires on September 30th of the odd number year after it is issued. The license may be renewed every two years if a servicer submits a renewal application by September 1st of the year the license expires. If a renewal application has been filed on or before the date the license expires, the license will continue in effect until the renewal license is issued or the commissioner notifies the servicer in writing that the application has been denied. If the servicer files an application after September 1st, with a \$100 late fee, it will be deemed timely and sufficient. The servicer's license will be automatically suspended if the commissioner determines that a check filed to pay a license or renewal fee is not valid.

Servicer Duties and Prohibitions

All servicers, even those exempt from licensure, must maintain adequate records of each student education loan transaction for at least two years following the final payment on a student education loan or the assignment of a student education loan, whichever occurs first.

If requested by the commissioner, a servicer must make records available to the commissioner within five business days. The Commissioner may grant a servicer additional time to make such records available or send the records to the commissioner upon request.

Servicers must notify the commissioner, in writing:

- Within fifteen days, if the servicer ceases to engage in student loan servicing. The written notice must identify where the servicer's documents will be stored and the name, address and telephone number of a person authorized to provide access to the records;
- Within ten days if any information provided in its initial application within ten days; and
- Within ten days if the servicer changes the location of its place of business.

Servicers are prohibited from:

- Directly or indirectly employing any scheme, device or artifice to defraud or mislead student loan borrowers;
- Engaging in any unfair or deceptive practice toward any person;
- Misrepresenting or omitting any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Obtaining property by fraud or misrepresentation;
- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;



- Knowingly or recklessly providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;
- Failing to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or
- Negligently making any false statement or knowingly and willfully making any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Banking Commissioner or another governmental agency.

Powers of the Commissioner

The commissioner may:

- Access, receive and use any books, accounts, records, files, documents, information or evidence including, criminal, civil and administrative history information; personal history and experience information, including independent credit reports obtained from a consumer reporting agency; and any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of the documents, information or evidence;
- Review, investigate or examine any student loan servicer as often as necessary in order to carry out the purposes of the Act;
- Direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about the student education loan or the business or subject matter of any an examination or investigation;
- Direct, subpoena, or order a production of books, accounts, records, files and any other documents the commissioner deems relevant;
- Control access to any documents and records of the student loan servicer under examination or investigation;
- Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations;
- Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence;
- Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the student loan servicer;
- Accept and rely on examination or investigation reports made by other government officials, within or without this state; and



- Accept audit reports made by an independent certified public accountant for the student loan servicer and may incorporate the audit report in the report of examination, report of investigation or other writing of the commissioner.

No student loan servicer subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

The commissioner may suspend, revoke, or refuse to renew a license if: 1) the servicer has violated any provision in the Student Loan Bill of Rights, 2) any fact or condition exists that would have clearly warranted denial of a license if it has existed at the time the servicer applied for a license.

Enforcement

The commissioner may bring an action in a competent jurisdiction to enjoin a servicer whenever it appears that the servicer has engaged or is about to engage in any practice that violates Student Loan Servicing Act.

The commissioner may bring an action to seek civil penalties of up to \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for each subsequent violation.

Student Loan Ombudsman

The commissioner shall designate a Student Loan Ombudsman to provide timely assistance to any student loan borrower.

The Student Loan Ombudsman shall:

- Receive, review and attempt to resolve any complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, agencies, legislators and others 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 student education loan history for any student loan borrower who has provided written consent for such review;
- Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns; and
- Take any other actions necessary to fulfill the duties of the Student Loan Ombudsman.



Definitions

Commissioner: the Commissioner of Banking and Insurance.

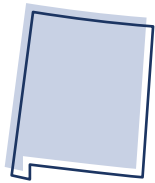
Ombudsman: the Student Loan Ombudsman appointed pursuant to the Act.

Student loan borrower: any resident of New Jersey who has received or agreed to pay a student loan; or any person who shares responsibility repaying the student loan.

Student loan servicer: any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

Servicing: receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan; applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and performing other administrative services with respect to a student education loan.

Student education loan: any loan primarily for personal use to finance education or other school-related expenses.



New Mexico (pending legislation)



Student Loan Bill of Rights

House Bill 318

Effective: none

Sponsors: Caballero and Trujillo

Referred to House Education Committee

Executive Summary

Any person or entity servicing student loans must obtain a license from the director of the financial institutions division of the regulation and licensing department pursuant to the requirements set forth by the Student Loan Bill of Rights. A separate license is required for each place of business where a servicer operates.

Exempt Servicers

A bank or credit union, including a wholly owned and operating subsidiary of a bank or credit union.

Application for License

Servicers must submit:

- 1) A written application developed by the director;
- 2) A financial statement prepared by a CPA or public accountant;
- 3) A history of criminal convictions of the applicant, partners, members, and officers;
- 4) A nonrefundable license fee of \$1,000 and investigation fee of \$800.

The director may determine that an application is abandoned if the servicer fails to respond to any request for information. The director must notify the servicer, in writing, that the servicer has 60 days to submit such information. Even if an application is determined to be abandoned, the servicer may file a new application.

Once a servicer files an application, the director must investigate the applicant and a license may be issued if the director finds:

- The applicant's financial condition is sound;
- Business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community;
- The servicer is properly qualified and of good character;
- No person on behalf of the applicant knowingly made any incorrect statement of a material fact in the application, or in any report or statement to the superintendent;
- No person on behalf of the applicant knowingly omitted any material fact necessary to give the commissioner any information required by law;



- The applicant has paid the investigation fee and the license fee; and
- The applicant has met any other similar requirements determined by the commissioner.

A license expires on September 30th of the odd number year after it is issued. The license may be renewed every two years if a servicer submits a renewal application by September 1st of the year the license expires. If a renewal application has been filed on or before the date the license expires, the license will continue in effect until the renewal license is issued or the director notifies the servicer in writing that the application has been denied. If the servicer files an application after September 1st, with a \$100 late fee, it will be deemed timely and sufficient. The servicer's license will be automatically suspended if the director determines that a check filed to pay a license or renewal fee is not valid.

Servicer Duties and Prohibitions

All servicers, even those exempt from licensure, must maintain adequate records of each student education loan transaction for at least two years following the final payment on a student education loan or the assignment of a student education loan, whichever occurs first.

If requested by the director, a servicer must make records available to the commissioner within five business days. Upon request, the director may grant a servicer additional time to make records available or send the records.

Servicers must notify the director, in writing:

- Within fifteen days, if the servicer ceases to engage in student loan servicing. The written notice must identify where the servicer's documents will be stored and the name, address and telephone number of a person authorized to provide access to the records;
- Within ten days if any information provided in its initial application within ten days; and
- Within ten days if the servicer changes the location of its place of business.

Servicers are prohibited from:

- Directly or indirectly employing any scheme, device or artifice to defraud or mislead student loan borrowers;
- Engaging in any unfair or deceptive practice toward any person;
- Misrepresenting or omitting any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Obtaining property by fraud or misrepresentation;
- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Knowingly or recklessly providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;



- Failing to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or
- Negligently making any false statement or knowingly and willfully making any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Banking Commissioner or another governmental agency.

Powers of the Director

The director may:

- Access, receive and use any books, accounts, records, files, documents, information or evidence including, criminal, civil and administrative history information; personal history and experience information, including independent credit reports obtained from a consumer reporting agency; and any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of the documents, information or evidence;
- Review, investigate or examine any student loan servicer as often as necessary in order to carry out the purposes of the Act;
- Direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about the student education loan or the business or subject matter of any an examination or investigation;
- Direct, subpoena, or order a production of books, accounts, records, files and any other documents the commissioner deems relevant;
- Control access to any documents and records of the student loan servicer under examination or investigation;
- Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations;
- Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence;
- Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the student loan servicer;
- Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
- Accept audit reports made by an independent certified public accountant for the student loan servicer and may incorporate the audit report in the report of examination, report of investigation or other writing of the director.



No student loan servicer subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

The director may suspend, revoke, or refuse to renew a license if: 1) the servicer has violated any provision in the Student Loan Bill of Rights, 2) any fact or condition exists that would have clearly warranted denial of a license if it has existed at the time the servicer applied for a license.

Enforcement

The director may suspend, revoke or refuse to renew any license if: 1) the servicer has violated any provision of the Act; or 2) any fact or condition exists, that would have warranted denial of the license when the servicer originally applied.

Student Loan Ombudsman

The director shall designate a Student Loan Ombudsman to provide timely assistance to any student loan borrower.

The Student Loan Ombudsman shall:

- Receive, review and attempt to resolve any complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, agencies, legislators and others 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 student education loan history for any student loan borrower who has provided written consent for such review;
- Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns; and
- Take any other actions necessary to fulfill the duties of the Student Loan Ombudsman.

Definitions

Director: the director of the division.

Division: the financial institutions division of the regulation and licensing department



Student loan borrower: any resident of New Mexico who has received or agreed to pay a student loan; or any person who shares responsibility repaying the student loan.

Student loan servicer: any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

Servicing: receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan; applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and performing other administrative services with respect to a student education loan.

Student education loan: any loan primarily for personal use to finance education or other school-related expenses.



New York (pending legislation)



Student Loan Bill of Rights

Assembly 7582

Effective: 180 days after signed into law

Sponsor: Zebrowski (also supported by Governor Cuomo)

Executive Summary

Any person or entity servicing student loans must obtain a license from the superintendent of the department of financial services.

Exempt Servicers

Any banking organization, foreign banking corporation, national bank, federal savings association, federal credit union, or any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any state.

Application for License

Servicers must submit:

- 1) A written application developed by the superintendent;
- 2) An affirmation of financial solvency noting such capitalization requirements as may be required by the superintendent, and access to credit as required by the superintendent;
- 3) A financial statement prepared by a CPA;
- 4) An affirmation that the members, officers, partners, directors, and principals are at least 21 years old;
- 5) Information on the character, fitness, financial and business responsibility, background and experiences of the members, officers, partners, directors, and principals;
- 4) Any additional details required by the superintendent.

Once a servicer files an application, the superintendent must investigate the applicant and a license may be issued if the superintendent finds that business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community. The license remains in full effect, without expiration, unless it is revoked or suspended by the superintendent.

Servicer Duties and Prohibitions

Servicers must submit the information for any new officers or directors upon change of any executive officers. No action can be taken which results in a change of control of the business of a servicer without prior approval of the superintendent. The superintendent must approve or disapprove the proposed change of control. These provisions do not apply for the first six months of approval, or so long as the superintendent determines.



Each servicer must keep books, accounts and records for at least 3 years. A servicer must file a report with the superintendent every year giving information as required by the superintendent concerning the business and operations during the preceding calendar year.

Servicers are prohibited from:

- Directly or indirectly employing any scheme, device or artifice to defraud or mislead student loan borrowers;
- Intentionally engaging in any unfair or deceptive practice toward any person;
- Misrepresenting or omitting any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Obtaining property by fraud or misrepresentation;
- Intentionally misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Intentionally providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or
- Knowingly making any false statement or knowingly and willfully making any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the superintendent or another governmental agency.

No student loan servicer subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

Enforcement

The servicer may surrender its license but will still be civilly and criminally liable for any actions prior to the surrender.

The superintendent may suspend, revoke, or refuse to renew a license, after notice and a hearing, if:

- A servicer has violated any provision of the Act;
- A servicer engages in fraud, intentional misrepresentation, or gross negligence in servicing a student loan;
- The competence, experience, character, or general fitness of the servicer indicates that it is not in the public interest to permit the servicer to continue servicing student loans;



- The servicer is insolvent, suspends payment of its obligations, or makes a general assignment for The benefit of its creditors; or
- The servicer has violated any state or federal law.

The superintendent may suspend a license for up to 30 days, pending investigation, where there is a substantial risk of public harm. The superintendent may make any rulings, demands and findings necessary for the proper conduct of the student loan servicing industry.

Definitions

Applicant: person applying for a license to be a student loan servicer.

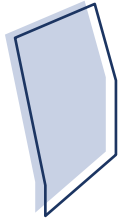
Borrower: any resident of New York who has received or agreed to pay a student loan; or any person who shares responsibility repaying the student loan.

Borrower benefit: an incentive offered to a borrower in connection with the origination of a student loan.

Student loan servicer: any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

Servicing: receiving any payment from a borrower pursuant to the terms of any student loan; applying any payment to a borrower's account pursuant to the terms of a student loan or the contract governing the service of a student loan; providing any notification of amounts owed on a student loan; during any period where a borrower is not required to make a payment, maintaining account records for the student loan and communicating with the borrower.

Student loan: any loan to a borrower to finance postsecondary education or expenses related to postsecondary education.



Rhode Island (pending legislation)



Student Loan Bill of Rights

House Bill 6056

Effective: July 1, 2017

Sponsors: McNamara, Amore, Regunberg, Casimiro, and Vella-Wilkinson

Referred to House Corporations

Executive Summary

Any person or entity servicing student loans must obtain a license from the director of the department of business regulation pursuant to the requirements set forth by the Student Loan Bill of Rights. A separate license is required for each place of business where a servicer operates.

Exempt Servicers

Any bank, out-of-state bank, Rhode Island credit union, federal credit union or out-of-state credit union and subsidiary of such bank or credit union.

Application for License

Servicers must submit:

- 1) A written application developed by the director;
- 2) A financial statement prepared by a CPA or public accountant;
- 3) A history of criminal convictions of the applicant, partners, members, and officers;
- 4) A nonrefundable license fee of \$1,000 and investigation fee of \$800.

The director may determine that an application is abandoned if the servicer fails to respond to any request for information. The director must notify the servicer, in writing, that the servicer has 60 days to submit such information. Even if an application is determined to be abandoned, the servicer may file a new application.

Once a servicer files an application, the director must investigate the applicant and a license may be issued if the director finds:

- The applicant's financial condition is sound;
- Business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community;
- The servicer is properly qualified and of good character;
- No person on behalf of the applicant knowingly made any incorrect statement of a material fact in the application, or in any report or statement to the director;
- No person on behalf of the applicant knowingly omitted any material fact necessary to give the director any information required by law;



- The applicant has paid the investigation fee and the license fee; and
- The applicant has met any other similar requirements determined by the commissioner.

A license expires on September 30th of the odd number year after it is issued. The license may be renewed every two years if a servicer submits a renewal application by September 1st of the year the license expires. If a renewal application has been filed on or before the date the license expires, the license will continue in effect until the renewal license is issued or the director notifies the servicer in writing that the application has been denied. If the servicer files an application after September 1st, with a \$100 late fee, it will be deemed timely and sufficient. The servicer's license will be automatically suspended if the director determines that a check filed to pay a license or renewal fee is not valid.

Servicer Duties and Prohibitions

All servicers, even those exempt from licensure, must maintain adequate records of each student education loan transaction for at least two years following the final payment on a student education loan or the assignment of a student education loan, whichever occurs first.

If requested by the director, a servicer must make records available to the director within five business days. The director may grant a servicer additional time to make such records available or send the records to the director upon request.

Servicers must notify the director, in writing:

- Within fifteen days, if the servicer ceases to engage in student loan servicing. The written notice must identify where the servicer's documents will be stored and the name, address and telephone number of a person authorized to provide access to the records;
- Within ten days if any information provided in its initial application within ten days; and
- Within ten days if the servicer changes the location of its place of business.

Servicers are prohibited from:

- Directly or indirectly employing any scheme, device or artifice to defraud or mislead student loan borrowers;
- Engaging in any unfair or deceptive practice toward any person;
- Misrepresenting or omitting any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Obtaining property by fraud or misrepresentation;
- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Knowingly or recklessly providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;



- Failing to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or
- Negligently making any false statement or knowingly and willfully making any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Banking Commissioner or another governmental agency.

Powers of the Director

The director may:

- Access, receive and use any books, accounts, records, files, documents, information or evidence including, criminal, civil and administrative history information; personal history and experience information, including independent credit reports obtained from a consumer reporting agency; and any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of the documents, information or evidence;
- Review, investigate or examine any student loan servicer as often as necessary in order to carry out the purposes of the Act;
- Direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about the student education loan or the business or subject matter of any an examination or investigation;
- Direct, subpoena, or order a production of books, accounts, records, files and any other documents the commissioner deems relevant;
- Control access to any documents and records of the student loan servicer under examination or investigation;
- Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations;
- Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence;
- Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the student loan servicer;
- Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
- Accept audit reports made by an independent certified public accountant for the student loan servicer and may incorporate the audit report in the report of examination, report of investigation or other writing of the director.



No student loan servicer subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

The director may suspend, revoke, or refuse to renew a license if: 1) the servicer has violated any provision in the Student Loan Bill of Rights, 2) any fact or condition exists that would have clearly warranted denial of a license if it has existed at the time the servicer applied for a license.

Enforcement

The director may suspend, revoke or refuse to renew any license if: 1) the servicer has violated any provision of the Act; or 2) any fact or condition exists, that would have warranted denial of the license when the servicer originally applied.

Student Loan Ombudsman

The commissioner shall designate a Student Loan Ombudsman to provide timely assistance to any student loan borrower.

The Student Loan Ombudsman shall:

- Receive, review and attempt to resolve any complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, agencies, legislators and others 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 student education loan history for any student loan borrower who has provided written consent for such review;
- Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns; and
- Take any other actions necessary to fulfill the duties of the Student Loan Ombudsman.



Definitions

Commissioner: the Commissioner of postsecondary education.

Department: the department of business regulation.

Director: director of the department of business regulation.

Division: the banking division of the department of business regulation.

Ombudsman: the Student Loan Ombudsman appointed pursuant to the Act.

Student loan borrower: any resident of Rhode Island who has received or agreed to pay a student loan; or any person who shares responsibility repaying the student loan.

Student loan servicer: any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

Servicing: receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan; applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and performing other administrative services with respect to a student education loan.

Student education loan: any loan primarily for personal use to finance education or other school-related expenses.



Virginia (pending legislation)



House Bill 1915

Student Loan Bill of Rights

Effective: January 1, 2019

Sponsors: Simon, Bagby, Bell, John, Boysko, Hope, Kory, Krizek, Levine, Murphy, Plum, Price, Torian, Tyler, Watts and Ebbin

Executive Summary

Any person or entity servicing student loans must obtain a license from the commissioner of Financial Institutions pursuant to the requirements set forth by the Student Loan Bill of Rights. A separate license is required for each place of business where a servicer operates.

Exempt Servicers

Any bank or credit union, including any wholly owned subsidiary of any bank or credit union.

Application for License

Servicers must submit:

- 1) A completed application developed by the commissioner;
- 2) A financial statement prepared by a CPA or public accountant;
- 3) A history of criminal convictions of the applicant, partners, members, and officers;
- 4) A nonrefundable license fee as prescribed by the Commissioner; and
- 5) A Bond in the sum of \$50,000 for each location, not to exceed \$500,000.

The commissioner may determine that an application is abandoned if the servicer fails to respond to any request for information. The commissioner must notify the servicer, in writing, that the servicer has 60 days to submit such information. Even if an application is determined to be abandoned, the servicer may file a new application.

Once a servicer files an application, the commissioner must investigate the applicant and a license may be issued if the commissioner finds:

- The applicant's financial condition is sound;
- Business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community;
- The servicer is properly qualified and of good character;
- No person on behalf of the applicant knowingly made any incorrect statement of a material fact in the application, or in any report or statement to the superintendent;
- No person on behalf of the applicant knowingly omitted any material fact necessary to give the commissioner any information required by law;



- The applicant has paid the investigation fee and the license fee; and
- The applicant has met any other similar requirements determined by the commissioner.

A license expires on September 30th of the odd number year after it is issued. The license may be renewed every two years if a servicer submits a renewal application by September 1st of the year the license expires. If a renewal application has been filed on or before the date the license expires, the license will continue in effect until the renewal license is issued or the commissioner notifies the servicer in writing that the application has been denied. If the servicer files an application after September 1st, with a \$100 late fee, it will be deemed timely and sufficient. The servicer's license will be automatically suspended if the commissioner determines that a check filed to pay a license or renewal fee is not valid.

Servicer Duties and Prohibitions

All servicers, even those exempt from licensure, must maintain adequate records of each student education loan transaction for at least two years following the final payment on a student education loan or the assignment of a student education loan, whichever occurs first.

If requested by the commissioner, a servicer must make records available to the commissioner within five business days. Upon request, the director may grant a servicer additional time to make such records available or send the records.

Servicers must notify the commissioner, in writing:

- Within fifteen days, if the servicer ceases to engage in student loan servicing. The written notice must identify where the servicer's documents will be stored and the name, address and telephone number of a person authorized to provide access to the records;
- Within fifteen days if bankruptcy, reorganization, receivership, or administrative proceedings are filed against the servicer;
- Within fifteen days if felony indictments or convictions are made against any members, partners, directors, officers, or principals of the servicer;
- Within ten days if any information provided in its initial application within ten days; and
- Within ten days if the servicer changes the location of its place of business.

Servicers are prohibited from:

- Directly or indirectly employing any scheme, device or artifice to defraud or mislead student loan borrowers;
- Engaging in any unfair or deceptive practice toward any person;
- Misrepresenting or omitting any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Obtaining property by fraud or misrepresentation;



- Knowingly misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Knowingly or recklessly providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;
- Failing to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or
- Negligently making any false statement or knowingly and willfully making any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Banking Commissioner or another governmental agency.

Powers of the Commissioner

The commissioner may:

- Access, receive and use any books, accounts, records, files, documents, information or evidence including, criminal, civil and administrative history information; personal history and experience information, including independent credit reports obtained from a consumer reporting agency; and any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of the documents, information or evidence;
- Review, investigate or examine any student loan servicer as often as necessary in order to carry out the purposes of the Act;
- Direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about the student education loan or the business or subject matter of any an examination or investigation;
- Direct, subpoena, or order a production of books, accounts, records, files and any other documents the commissioner deems relevant;
- Control access to any documents and records of the student loan servicer under examination or investigation;
- Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations;
- Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence;
- Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the student loan servicer;



- Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
- Accept audit reports made by an independent certified public accountant for the student loan servicer and may incorporate the audit report in the report of examination, report of investigation or other writing of the commissioner.

No student loan servicer subject to investigation or examination may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

The Commission may suspend, revoke, or refuse to renew any license if the Commission finds:

Any grounds for denial under the Act;

- Any violation of the Act;
- A course of conduct consisting of the failure to perform written agreements with a student local borrower;
- Failure to account for funds received or disbursed to the satisfaction of the person supplying or receiving student loan funds;
- Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;
- Entry of a federal or state administrative order against the student loan servicer;
- Refusal to permit an investigation or examination; or
- Failure to comply with any order of the Commission.

Enforcement

The Commission may send a notice to a servicer when it has violated, is violating, or is about to violate the Student Loan Bill of Rights. After 21 days' notice, the commission may order the servicer to cease and desist. The servicer may request a hearing within 14 days of notice given to the servicer. If a hearing is requested, the commissioner will determine whether an order should be issued after the hearing.

The Commission may impose a civil penalty up to \$2,500 for each violation of the Act, subject to a separate penalty for every violation and every day of the violation.

Student Loan Ombudsman

The commissioner shall designate a Student Loan Ombudsman to provide timely assistance to any student loan borrower.

The Student Loan Ombudsman shall:

- Receive, review and attempt to resolve any complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;



- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, agencies, legislators and others 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 student education loan history for any student loan borrower who has provided written consent for such review;
- Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns; and
- Take any other actions necessary to fulfill the duties of the Student Loan Ombudsman.

Definitions

Licensee: a student loan servicer licensed under the Act.

Principal: any person who, directly or indirectly, owns or controls 10 percent or more of the outstanding stock of a stock corporation or a 10 percent or greater interest in any other type of entity.

Student loan borrower: any resident of Virginia who has received or agreed to pay a student loan; or any person who shares responsibility repaying the student loan.

Student loan servicer: any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

Servicing: receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan; applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and performing other administrative services with respect to a student education loan.

Student education loan: any loan primarily for personal use to finance education or other school-related expenses.



Washington (pending legislation)



House Bill 1440

Student Loan Bill of Rights

Effective: January 1, 2018

Sponsors: Stonier, Stambaugh, Hudgins, Johson, Ortiz-Self, Stokesbary, Sells, Jinkins, Ryu, Appleton, Pollet, Senn, Peterson, Kilduff, Bergquist, Standord, Frame, Slatter, and Dolan (by request of the Attorney General)

Passed the House 71-27 on March 2, 2017

Executive Summary

Servicers must comply with extensive servicing regulations, apply for a license through the current system for licensing mortgage loan originators, and may not engage in misleading or deceptive practices.

Except Servicers

- Trade, technical, vocational, or apprentice programs that teach skills related to a specific job, and postsecondary schools that service their own student education loans¹
- Persons servicing five or fewer student education loans;
- The United States and its agencies to the extent it is servicing student education loans that it originated; and
- Any state, county, city, and its departments to the extent it is servicing student education loans that it originated.

Application for License

Servicers will be licensed in accordance with the current process for licensing mortgage loan originators. The application must be submitted on the National Mortgage Licensing System. Fees will be required as determined by the director to sufficiently fund the licensure of servicers.

Servicer Duties and Prohibitions

Servicers must:

- Make reasonable attempts to respond to requests promptly, in writing, and keep a record of that communication;
- Provide a written statement within fifteen business days of a request that includes whether the account is current, and if it is not, an explanation of the default, the current balance due, and the identity address of the current holder of the loan
- Provide more detailed information upon request within fifteen business days, including specific itemization of the loan;
- Notify the borrower between 45 to 60 days before a transfer of the loan occurs, including information about where the borrower can receive answers to inquiries;
- Credit payments within one business day;



- Provide notice when a loan is transferred between servicers;
- Refund fees assessed to the borrower from servicer error;
- Assess fees within 45 days of the date of when the fee is incurred and explain the fee clearly and conspicuously in a mailed statement;
- Credit payments received from a borrower within one business day;
- Maintain liquidity, operating reserves, and a tangible net worth in accordance with generally accepted accounting principles as determined by the director.

Servicers are prohibited from:

- Conducting licensable activity from an unlicensed location;
- Misrepresenting or omitting any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;
- Misapplying or recklessly applying student education loan payments to the outstanding balance of a student education loan;
- Providing inaccurate information to a credit bureau, harming a student loan borrower's creditworthiness;
- Failing to report to a consumer credit bureau at least annually if the servicer regularly reports information to a credit bureau; or
- Refusing to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower.

Student Loan Ombudsman

The council shall designate a Student Loan Ombuds to provide timely assistance to any student loan borrower.

The Student Loan Ombuds shall:

- Receive, review and attempt to resolve any complaints from student loan borrowers;
- Compile and analyze data on student loan borrower complaints;
- Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;
- Provide information to the public, agencies, legislators and others 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 Ombuds deems necessary;
- Review the complete student education loan history for any student loan borrower who has provided written consent for such review;
- Disseminate information concerning the availability of the Student Loan Ombuds to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns; and
- Take any other actions necessary to fulfill the duties of the Student Loan Ombuds.

Definitions

Student education loan: any loan solely for personal use to finance postsecondary education and costs of attendance at an educational institution, including a loan to refinance a student education loan. Student education loan does not include: an extension of credit under an open-end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

Student loan borrower: a resident of the District of Columbia who has received or agreed to pay a student education loan, or a person who shares legal responsibility with such a resident for the repayment of a student education loan.

Student loan servicer: a person or entity, whether located within or outside the District, responsible for the servicing of a student education loan of a student loan borrower.

Student loan servicing: the process of collecting payments and interest and performing other administrative tasks associated with maintaining a student education loan. During a period when no payment is required, servicing includes, maintaining account records for the loan and communicating with the borrower.



Washington, D.C.



B21-0877 (Public Act A21-0571)

Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016

Passed: March 17, 2017

Effective: February 18, 2017

Sponsors: Councilmembers Grosso, Nadeau, Evans, McDuffie, Allen, Bonds, and White

Executive Summary

Any person or entity servicing student loans must obtain a license from the commissioner of the Department of Insurance, Securities, and Banking pursuant to the requirements set forth by the Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016.

Exempt Servicers

- A bank, trust company, or other loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in the District;
- A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in the District;
- A savings and loan association, savings bank, or credit union organized under the laws of the District or any other state that is authorized to transact business in the District; or
- A public postsecondary educational institution or a private nonprofit postsecondary educational institution servicing a student loan it extended to a student loan borrower.

Application for License

Servicers must submit:

- 1) A completed application developed by the commissioner,
- 2) Application fees and other fees as prescribed by the commissioner,
- 3) Three years of audited financial statements prepared in accordance with generally accepted accounting principles that show a net worth of at least \$250,000;
- 4) A surety bond in an amount determined by the Mayor to be used for recovery of damages incurred by a student loan borrower as the result of noncompliance; and
- 5) Any other information the commissioner considers necessary and appropriate.

The commissioner shall issue a license if the application meets all of the requirements for licensure.

Licenses issued prior to November 1st expire on December 31st of the same year; licenses issued after November 1st expire on December 31st of the following year.



Licenses can be renewed for a period of time determined by the commissioner if an application is timely filed with all required documentation and fees. If an application for renewal has been filed on or before the date the current license expires, the license will continue to be in effect until the commissioner issues a renewal or notifies the servicer that the renewal has been denied.

Servicer Duties

The servicer must:

- Notify the Commissioner, in writing of any change in the application information within 10 days of the change; and
- File a report every year beginning January 30, 2018 that includes the number of loans that were sold, assigned, or transferred in the preceding calendar year and any other information that the commissioner reasonably requires concerning the business operations conducted by the servicer.
- Surrender the license in writing at least 15 days before it ceases to engage in student loan servicing. After surrender, the servicer is still liable for any civil and criminal liability.

Powers of the Commissioner

The commissioner may revoke a license, after notice and a hearing, if a servicer has:

- Committed any fraudulent acts, engaged in any dishonest activities, or made any misrepresentation in any business transaction;
- Been convicted of a felony under the laws of the District of Columbia, any state, or the United States;
- Violated any applicable banking laws of the District of Columbia, or any rules or regulations issued pursuant to any of those laws, or has violated any other law in the course of dealings as a licensee;
- Made a material misstatement in the application for a license under "(E) Demonstrated incompetency or untrustworthiness to act as a licensee; "(F) Violated any provision of this act or of any implementing regulation;
- Failed to satisfy any of the criteria for obtaining a license as set out in this act.

When the commissioner revokes a license, it must issue a written order explaining the grounds for revocation.

The commissioner may suspend the license for up to 30 days before a hearing if the commissioner determines the suspension is in the public interest.

Student Loan Ombudsman

The Ombudsman shall:

- Assist in licensing provisions, including referral of actions to the Attorney General for the enforcement of an order of the Commissioner in relation to violations of the Act;



- Receive, review, and attempt to resolve any complaints from a student loan borrower, including attempts to resolve such complaints in collaboration with student loan servicers;
- Compile and analyze data on student loan borrower complaints
- Develop and provide information to assist student loan borrowers in understanding their rights and responsibilities;
- Monitor the actions that student loan servicers take to ensure that student loan borrowers are informed of their rights and responsibilities;
- Make recommendations to the Commissioner for resolving problems and concerns of student loan borrowers;
- Analyze and monitor the development and implementation of federal and local laws, regulations, and policies relating to student loan borrowers;
- Upon request, review the student education loan history of the borrower;
- By October 1, 2017, establish, publicize, and maintain an education course to assist student loan borrowers in understanding their student loans;
- By October 1, 2017 develop a student loan borrowers bill of rights;
- Conduct an examination of each student loan servicer at least one every 3 years;
- Charge each student loan servicer an examination fee; and
- Take any other action required by the Commissioner.

The Ombudsman must report to the Mayor and Council on its activities each year.

Definitions

SLS license: the business license issued that is required for a student loan servicer.

Licensee: the holder of a SLS license.

Ombudsman: the position of Student Loan Ombudsman established within the Department.

Student education loan: a loan obtained for personal use to finance education or other school-related expenses.

Student loan borrower: a resident of the District of Columbia who has received or agreed to pay a student education loan, or a person who shares legal responsibility with such a resident for the repayment of a student education loan.

Student loan servicer: a person or entity, whether located within or outside the District, responsible for the servicing of a student education loan of a student loan borrower.

Student loan servicing: the process of collecting payments and interest and performing other administrative tasks associated with maintaining a student education loan. The term "student loan servicing" includes: Receiving any scheduled periodic payments from a student loan borrower or notification of payments; Applying payments to the



student loan borrower's account pursuant to the terms of the student education loan or contract governing the servicing; Maintaining account records for the student education loan during a period when no payment is required on the loan; and Communicating with the student loan borrower regarding the student education loan; and having other interactions to assist a student loan borrower, including activities to help prevent default on obligations arising from a student education loan.