

Massachusetts Enacts Student Loan Servicer License Requirement

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On January 14, 2021, the governor of Massachusetts signed H 5250 into law, which includes a licensing requirement applicable to student loan servicers, and other requirements related to the regulation and supervision of student loan servicers in Massachusetts.

The law will become effective on July 1, 2021, but entities subject to licensure should prepare for the forthcoming licensing requirement soon to ensure compliance with this new law. Servicers may also want to review their compliance management systems, federal law policies and procedures, and record retention policies in preparation for licensing and supervisory examinations.

“Servicing” Definition

The law defines broadly defines “servicing” student loans to include: (i) receiving or soliciting a scheduled periodic payment from a borrower pursuant to the terms of a student loan making the principal, interest, and other payments to the owner of the loan or other third party with respect to the amount received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract; (ii) maintaining account records for a loan and communicating with the borrower regarding the loan on behalf of the owner of the loan during a period in which no payment is required on the loan; or (iii) interacting with a borrower, including activities to help prevent default on obligations arising from a loan, to facilitate the activities in (i) or (ii).

Requirements and Prohibitions for Student Loan Servicers

H 5250 creates a set of requirements applicable to student loan servicers, including:

- Not later than 15 days after a licensed student loan servicer ceases to engage in student loan servicing for any reason, the licensee must provide written notice of surrender to the Commissioner of Banks and surrender the license certificate.
- Provide written notice to the Commissioner at least 30 days prior to the change of the licensee’s place of business.
- Maintain adequate records of each student loan transaction for at least 2 years following the final payment on the student loan or the assignment of the student loan, whichever occurs first, or a longer period if

required by law. If the Commissioner requests these records, the student loan servicer must comply with the request within 5 business days.

- Comply with all applicable federal laws and regulations relating to student loan servicing.

The law also prohibits student loan servicers from engaging in unfair methods of competition or unfair or deceptive acts or practices (UDAP). H 5250 does not specifically define what constitutes a UDAP violation. However, the law provides that a violation of the student loan chapter is also a violation of Mass. Gen. Laws Ch. 93A, which contains a general UDAP prohibition in the conduct of any trade or commerce. Chapter 93A provides that when construing UDAP violations of Chapter 93A, courts are guided by interpretations of the Federal Trade Commission and federal courts. Therefore, the link between Chapter 93A and the UDAP prohibition in H 5250 likely indicates student loan servicing UDAP violations will be guided by interpretations of federal UDAP prohibitions.

Exemptions

The law exempts certain entities from the licensing requirement. Exempt entities include: (i) banks and credit unions, including federal credit unions and out-of-state banks and credit unions; (ii) wholly-owned subsidiaries of banks and credit unions; and (iii) nonprofit or public institutions of high education. While unclear, it appears that exempt entities are still subject to some of the substantive requirements under the law (recordkeeping requirements, compliance with federal laws and regulations, UDAP prohibition).

Student Loan Ombudsman

In addition to the licensing requirement, the legislation also creates a Student Loan Ombudsman position within the Massachusetts Attorney General's Office. Duties of the Ombudsman include receiving, reviewing, and assisting in resolving complaints from student loan borrowers. The Ombudsman also has the responsibility to help student loan borrowers to explore repayment options, apply for federal income-driven repayment plans, avoid or remove a default, end wage garnishments or tax refund interceptions, resolve billing disputes with student loan servicers, obtain student loan details and information, stop harassing collection calls, and apply for loan discharges and forgiveness.

Debt Collection Licensing Law Exemption

Note also that H 5250 amends the current Massachusetts debt collection licensing law to provide that a licensed student loan servicer who engages solely in the activities of a student loan servicer is not required to obtain a debt collection license or register as a third party servicer under Massachusetts law. Therefore, entities that only engage in servicing student loans are only required to hold the student loan servicer license and are exempt from the Massachusetts debt collection license that would otherwise apply to student loan servicing. However, due to the fact that licensed third party loan servicers are not exempt from the student loan servicer license, companies that conduct servicing for both student loans and other consumer loans appear to need separate licenses for each line of business.

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