

# California Amends Student Loan Servicing Act

**Ballard Spahr**  
LLP

Article By

[Brian J. Slagle](#)

[Ballard Spahr LLP](#)

- [Financial Institutions & Banking](#)
- [Public Education & Services](#)
- [California](#)

Friday, September 21, 2018

California Governor Jerry Brown has signed into law [Assembly Bill 38](#), which significantly modifies the scope, administration, and servicing requirements of the state's Student Loan Servicing Act. The bill was approved by the California Assembly 55-23-2 and the California Senate 28-11-1 with the intent to "build upon existing law to ensure that the Student Loan Servicing Act's goals are met as the federal government enacts new regulations." The bill contains no provisions delaying its immediate effectiveness.

In its most dramatic change, the bill narrows the scope of the Act by adding an exemption and redefining several terms. The bill carves out from coverage guaranty agencies engaged in default aversion through an agreement with the Secretary of Education and redefines "student loan servicer" to exclude a debt collector who exclusively services defaulted student loans—federal loans where no payment has been received for 270 days or more and private student loans in default according to the terms of the borrower's agreement. The Act also adds a section to clarify that any person claiming an exemption or an exception from a definition has the burden of proving that exemption or exception.

Reflecting these changes, the licensing trigger has been restricted to those who "engage in the business of servicing a student loan in this state." The previous definition included any person "directly or indirectly" engaged in servicing. However, an out-of-state entity is still deemed to be servicing "in this state" if it services loans to California residents. In further modifying the Act's scope, the term "student loan" has also been changed from a loan made "primarily" to finance a postsecondary education to a loan made "solely" to finance a postsecondary

education.

The bill also provides significant licensing changes. Now, the commissioner may require that applications, filings, and assessments be completed through the Nationwide Multistate Licensing System & Registry (NMLS). The commissioner is further empowered to waive or modify NMLS requirements, use NMLS “as a channeling agent for requesting information from and distributing information to” the Department of Justice and other governmental agencies, and to create a process by which licensees may challenge information entered into the NMLS by the commissioner.

The criteria for denying a license application have been clarified, and now include: failure to meet a material requirement for issuance of a license; violations of a similar regulatory scheme of California or a foreign jurisdiction; liability in any civil action by final judgment or an administrative judgment by any public agency within the past seven years; and failure to establish that the business will be operated honestly, fairly, efficiently, and in accordance with the requirements of the Act. Additionally, applicants must now appoint the commissioner as an agent for service of process.

With respect to servicing requirements, the bill extends the timeframe within which a servicer must acknowledge a borrower’s Qualified Written Request (QWR) to ten business days. Previously, the Act and the most [recent round of regulations](#) required that servicers acknowledge a QWR within five business days, except when the servicer fulfilled the borrower’s request within that period.

Copyright © by Ballard Spahr LLP

**Source URL:** <https://www.natlawreview.com/article/california-amends-student-loan-servicing-act>