

New York Passes Sweeping Legislation Affecting Student Loan Servicers

Thursday, April 18, 2019

On April 1, 2019, New York enacted Article 14-A, governing servicers of student loans owed by New York residents, in connection with New York's fiscal year 2020 budget. Though sweeping legislation has been [anticipated](#) for some time, awareness of its extensive provisions are critical for student loan servicers nationwide.

The legislation requires certain servicers to obtain licensure from the New York Department of Financial Services (DFS) in order to service student loans owed by New York residents. Servicers of federal student loans are automatically deemed as licensed under the new law to service federal loans. To the extent a servicer services both federal and non-federal student loans, the servicer is required to obtain licensure.

Banking organizations, foreign banking corporations, national banks, federal savings associations, federal credit unions, certain banks and other financial institutions organized under the laws of states other than New York, and private nonprofit or public postsecondary educational institutions are exempt from licensure requirements and certain other requirements of the new legislation. However, even servicers that are exempt from licensure or are deemed as licensed are required to provide notice of their loan servicing to the DFS and to comply with some provisions of the law, including those pertaining to nonconforming payments, credit reporting, prohibited practices, and recordkeeping.

The law requires student loan servicers to inquire of a borrower how to apply a borrower's nonconforming payment, unless otherwise provided by federal law or the applicable loan agreement. Nonconforming payments are those that are either more or less than the required student loan payment. A borrower's instructions on how to apply nonconforming payments remains in effect for future nonconforming payments until the borrower provides different directions. The requirements for nonconforming payments are particularly noteworthy, as misapplying payments is considered a prohibited practice under the new law. The law also requires servicers who regularly report information to a consumer reporting agency to accurately report a borrower's payment performance to at least one nationwide consumer reporting agency.

Additional prohibited practices under the law include, but are not limited to:

- misapplying payments to the outstanding balance of any student loan, related interest or fees;
- providing inaccurate information to a consumer reporting agency;
- refusing to communicate with a borrower's authorized representative;
- misrepresenting or omitting any material information including the terms and conditions of the loan or the borrower's obligations thereunder;
- defrauding or misleading a borrower; and
- failing to respond within fifteen days to communications from the department.

Failure to comply with the law subjects servicers to the risk of hefty penalties and litigation. For each violation, the superintendent may require a servicer to pay the state a sum not to exceed the greater of \$2,000 or twice the economic gain attributable to the violation for non-willful violations and, for willful violations, a sum not to

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exceed \$10,000 or twice the economic gain attributable to the violation. These penalties are in addition to any liability or penalties available under other state or federal law.

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