

Student loan servicing developments in California, Illinois, and Washington; legislation introduced in Virginia and New Mexico

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The new year heralds many new developments in the state regulation of student loan servicers. California, Illinois, and Washington have each taken significant steps in implementing their existing laws while legislation has been introduced in Virginia and New Mexico to regulate student loan servicers for the first time.

California. California's Department of Business Oversight has published its [student loan servicing annual report cover letter](#) and [student loan servicing annual report form](#). The cover letter provides instructions for how licensees are to file the required annual report with the Commissioner by March 15th. The annual report form requires detailed portfolio and borrower information as of December 31st, as well as aggregate complaint information for the calendar year. These developments come along with [the DBO's publication](#) of the [third revisions to its proposed rules](#) under the Student Loan Servicing Act. The revisions include publication of NMLS forms, require that licensees appoint the Commissioner of the DBO as an agent for service of process, clarify the formula for assessing the required annual fee, and make various clerical revisions.

Illinois. Illinois is now accepting [student loan servicer applications](#) through NMLS. The [Student Loan Servicing Rights Act](#) became effective December 31, 2018, but the state's [proposed regulations](#), published November 16, 2018, have not been finalized.

Among other requirements, the Illinois regulations require that each licensee maintain a "secured-access website" to handle communications and questions regarding new loan applications or existing loans. The regulations further require that licensees provide "detailed" account information to borrowers on its website through a secure login system. The regulations include an independent requirement that servicers maintain certain documents or information concerning each loan serviced consisting of: (1) the application; (2) disclosure statements sent to the borrower; (3) the promissory note or loan agreement; (4) complete loan history; (5) qualified written requests; (6) borrower instructions on how to apply overpayments; (7) statements of account sent to the borrower; and (8) any additional records specified by the Director of the Division of Banking. All records must be maintained for a minimum of three years after the loan has been paid in full, assigned to collections, or the servicing rights have been sold, assigned, or transferred.

The regulations also include other novel additions, including that licensees maintain a consolidated report of all loans serviced by the licensee, provide same-day crediting of physical payments, provide same-day crediting of electronic payments received before a posted cut-off time, and apply payments received from cosigners only to loans for which the payor has cosigned unless otherwise specifically directed by the cosigner.

Washington. The state of Washington has [published revised student loan servicer regulations](#), which became effective January 1, 2019. The rules implement the [modifications to the Consumer Loan Act](#) passed last year. The regulations now define “student loan servicing” which, similar to other states, includes receiving scheduled periodic payments, applying payments, handling modification requests, and performing “other administrative services, including collection activities.” The modifications clarify that the regulations do not apply to licensed collection agencies collecting loans in default, or licensed attorneys collecting loans as part of providing legal services.

Substantive changes to the Washington rules relate to servicers’ reporting duties in the event of business changes, the provision of payoff information to borrowers, and the provision of a toll-free number where the borrower may speak to a single point of contact about repayment and loan forgiveness options. The regulations also clarify that if a servicer is acquiring, transferring, or selling servicing on federal student loans in compliance with federal Department of Education rules, the regulations’ loan transfer requirements do not apply.

Virginia. In Virginia, Democratic representative Marcus B. Simon [introduced HB 1760](#), which would prohibit any person from acting as an education loan servicer without a license and [mirrors legislation he introduced in 2017](#). The bill exempts certain financial institutions and nonprofit institutions of higher education, but covers other entities that receive scheduled periodic payments, apply principal and interest payments, or perform other administrative services. The bill makes a violation punishable by a civil penalty of up to \$2,500. Among other things, violations may result from activity related to borrower communication, payment application, and credit reporting. The bill has a delayed effective date of October 1, 2020 with applications to be accepted March 1, 2020.

New Mexico. The New Mexico legislature may soon consider its own student loan servicing restrictions. On December 27th, Democratic Senator Bill Tallman introduced the [Student Loan Servicing Rights Act](#), which largely follows the form of other state bills, including Virginia. Servicing—receiving scheduled periodic payment, applying principal and interest payments, or performing administrative services—would require a license. Certain financial institutions are exempted. A violation of the Act, which includes provision of false or deceptive information, misapplication of payments, and furnishing inaccurate credit information, can result in a civil penalty of up to \$5,000.

With the 2018 midterm elections shifting state legislatures and governorships to Democratic control, similar legislation is expected in more states this year.

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