

## **New Jersey Enacts Licensing and Other Requirements for Student Loan Servicers**

Article By:

John L. Culhane, Jr.

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On July 30, 2019, Acting New Jersey Governor Sheila Oliver signed into law [SB 1149](#), which **requires student loan servicers to be licensed**, creates an **Office of the Student Loan Ombudsman** within the NJ Department of Banking and Insurance, imposes various requirements, and prohibits certain conduct. The law takes effect 120 days after enactment.

### **Licensing requirement.**

The law prohibits any person from acting as a student loan servicer, directly or indirectly, without obtaining a license from the Commissioner of Banking and Insurance (Commissioner). The law exempts the following entities from licensing: federal- or state-chartered banks and credit unions, their wholly-owned subsidiaries, and any operating subsidiary where each owner of the subsidiary is wholly-owned by the same bank or credit union. License applications are to be filed through the Nationwide Mortgage Licensing System and Registry.

The law defines servicing as engaging in one or more of the following activities :

- Receiving any scheduled periodic payments from a student loan borrower or notification of such payments, and applying payments to the borrower's account pursuant to the terms of the student education loan or the contract governing the servicing of the loan
- During a period when no payment is required on the student education loan, maintaining account records for the loan and communicating with the borrower regarding the loan, on behalf of the loan holder
- Interacting with a student loan borrower to facilitate the loan servicing, including activities to help prevent default

A "student loan servicer" is defined as "any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower." A "student education loan" is defined as "a loan that is extended to a student loan borrower expressly to finance postsecondary education expenses or other school-related expenses" but does not include open-end credit or any loan

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secured by real property. A “student loan borrower” is defined as “any resident of [New Jersey] who has received or agreed to pay a student education loan; or any person who shares responsibility with a resident for repaying a student education loan.”

The law requires the Commissioner to automatically issue “a limited, irrevocable license” to any servicer operating under contract with the U.S. Department of Education. Such a servicer however remains subject to the Commissioner’s authority to issue a cease and desist or injunction against the servicer to cease activities in violation of the new law or the NJ consumer fraud act.

## **Student Loan Ombudsman.**

The Commissioner is directed to designate an ombudsman whose duties include:

- Receiving and reviewing complaints from student loan borrowers
- Compiling complaint data
- Assisting student loan borrowers to understand their rights and responsibilities under the terms of student education loans
- Analyzing the development and implementation of federal, state, and local laws and regulations and recommending necessary changes
- Establishing a student loan borrower education course by October 1, 2020
- Submitting an annual report containing specified information to the Commissioner and Secretary of Higher Education

## **Servicer requirements.**

The requirements imposed by the new law include:

- Except as otherwise required by federal law, a federal student education loan agreement, or a contract between a licensee and the federal government, a student loan servicer licensee and exempt entities must maintain student education loan records for at least two years following final payment or assignment of the loan.
- Except as otherwise required by federal law, a federal student education loan agreement, or a contract between a licensee and the federal government, a student loan servicer must:
  - Acknowledge and respond to written inquiries within specified time periods
  - Obtain instructions from a borrower regarding the application of overpayments (those instructions remain in effect until countermanded by the borrower)
  - Apply partial payments as specified by the law, minimizing late fees and adverse credit reporting
  - Follow specified requirements if the sale, assignment, or other transfer of servicing

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results in a change in the identity of the person to whom the borrower is required to send payments or direct communications concerning the student education loan

- Adopt policies and procedures to verify that the servicer has received certain information
- Evaluate a borrower for eligibility for income-driven repayment programs (if available to the borrower) before placing a borrower in forbearance or default

### **Prohibited actions.**

The law prohibits a servicer from engaging in certain conduct, including engaging in any unfair or deceptive practice or misrepresenting or omitting any material information in connection with servicing a student education loan (including misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due), misapplying payments to the outstanding loan balance, reporting inaccurate information to a credit bureau that harms a student loan borrower's creditworthiness, and failing to report both favorable and unfavorable payment history to a nationally recognized credit bureau at least annually if the servicer regularly reports to a credit bureau. A student loan borrower "who suffers any ascertainable loss of moneys" as a result of a servicer's use of "any method, act, or practice declared unlawful" under the new law can bring an action or assert a counterclaim for such loss "in any court of competent jurisdiction." In addition to any other appropriate legal or equitable relief, a court can award treble damages sustained by the borrower, together with reasonable attorneys' fees, filing fees, and reasonable costs of suit. The new law provides further that the remedies it provides "are not intended to be the exclusive remedies available to a student loan borrower" and a student loan borrower is not required to exhaust administrative remedies established by the new law or any other applicable law before proceeding under the new law.

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