

Kentucky and Virginia Enact Student Education Loan Servicing Laws

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Kentucky and Virginia have passed legislation relating to student loan servicers. In Kentucky, a new student loan servicing law creates new licensing and compliance requirements. In Virginia, an amendment limits the scope of the state's existing student loan servicing law. An explanation of the changes follows below.

Kentucky's Student Education Loan Servicing, Licensing, and Protection Act

On April 7, 2022, the governor of Kentucky signed into law [HB 494](#), the Student Education Loan Servicing, Licensing, and Protection Act (the Kentucky Act), which includes a licensing requirement applicable to student loan servicers and other substantive requirements related to the regulation of student loan servicers in Kentucky. The Kentucky Act will become effective 90 days from April 14, 2022, which was the date of adjournment of the Kentucky legislative session. This means the law will become effective on July 13, 2022, and, therefore, entities subject to this law must **prepare now** to ensure compliance before the effective date.

Licensing Requirement

The Kentucky Act requires a license to act as a student education loan servicer, unless an entity is exempt from the licensing requirement. Entities exempt from the licensing requirement include, among other entities, (a) a federal or state bank, trust company, or industrial loan company that is authorized to transact business in Kentucky; (b) a federally chartered savings and loan association, federal savings bank, or federal credit union authorized to transact business in Kentucky; (c) a savings and loan association, savings bank, or credit union formed under state law authorized to transact business in Kentucky; and (d) a public postsecondary education institution or private nonprofit postsecondary education institution servicing a student loan extended to a borrower.

However, note that entities exempt from the licensing requirement are still subject to the substantive conduct requirements and prohibitions under the Kentucky Act.

Definition of Servicing

HB 494 defines "servicing" to mean participating in any of the following activities related to a student education loan:

- (a) performing both of the following: (1) receiving: (i) payments from a borrower; or (ii) notification that a borrower made a scheduled periodic payment; and (2) applying payments to the borrower's account pursuant to the terms of a student education loan or the contract governing the servicing of the loan; OR
- (b) during a period when no payment is required on a student education loan, performing both of the following: (1) maintaining account records for the student education loan; and (2) communicating with the borrower regarding the student education loan on behalf of the owner of the student education loan promissory note; OR
- (c) communicating with a borrower regarding the borrower's student education loan with the goal of facilitating the borrower to: (1) make payments on the student education; or (2) apply for a qualified forbearance program; OR
- (d) facilitating the activities described in paragraph (a) or (b) above.

This definition of servicing is broad because an entity needs to trigger only one of the above activities to be subject to the license requirement. For example, an entity that only engages in facilitation receiving of payments from borrowers or facilitating borrower communications must be licensed.

Prohibited Conduct

The Kentucky Act provides that a student education loan servicer may not engage in abusive acts or practices, including but not limited to acts or practices that: (a) materially interfere with the ability of a borrower to clarify a term or condition of a student education loan; or (b) fail to educate and inform the borrower of any of the following: (1) the material risks, costs, or conditions of a student education loan; (2) selecting or using a student education loan or a feature, term, or condition of a student education loan; or (3) accurate and relevant information related to loan payments of the loans serviced by the servicer.

A student education loan servicer also may not:

- employ any scheme, device, or artifice to defraud or mislead a borrower;
- engage in any unfair, deceptive, or predatory practice toward any borrower or misrepresent or omit any material information in connection with servicing a student education loan, including but not limited to: (1) misrepresenting the: (i) amount, nature, or terms of any fee or payment due or claimed to be due on a student education loan; (ii) terms and conditions of the student education loan agreement or any modification to the agreement; or (iii) borrower's obligations under the student education loan; and (2) with respect to a military borrower, "older" borrower (not defined), borrower working in public service, or a borrower with a disability, misrepresenting or omitting the availability of a program or protection specific to the respective borrower or applicable to the respective category of borrowers;
- misapply payments made by a borrower to the outstanding loan balance;
- refuse to communicate with an authorized representative of the borrower, except the servicer may adopt reasonable procedures for: (i) requesting verifying documentation that the representative is in fact authorized to act on behalf of the borrower; and (ii) protecting the borrower from fraud or abusive practices;

- make any false statement or omit a material fact in connection with any information or report filed with a governmental agency or in connection with any investigation conducted by the Kentucky Commissioner of Financial Institutions (Commissioner) or any other governmental agency;
- if the student education loan servicer is required to report, or voluntarily reports, to a consumer reporting agency, fail to accurately report each borrower's payment performance to a least one consumer reporting agency upon acceptance as a data furnisher by that consumer reporting agency; or
- fail to respond timely to correspondence from the borrower, the Commissioner, or any borrower complaints submitted to the servicer by the Commissioner.

Student education loan servicers also may not impede the Commissioner from interviewing the servicer's employees or customers and must make available and grant the Commissioner access to records and other relevant property. Among other things, the law also contains requirements related to recordkeeping and filing reports with the Commissioner.

In addition, as noted above, the substantive provisions under the law apply also to entities that are exempt from licensure.

Violations and Penalties

The Commissioner may issue a written order to deny, suspend, or revoke a license issued under the Kentucky Act if the Commissioner finds a violation has occurred. In addition to any other remedies or penalties, the Commissioner may also impose a civil penalty for repeat violations or a pattern or practice that results in a violation. A civil penalty will be not less than \$1,000 and not more than \$25,000 per violation per day the violation is outstanding. There is no private right of action under the law.

Virginia Amendment to Qualified Education Loan Servicer law (SB 496/HB 203)

Virginia has also recently amended its law governing student loan servicers. [SB 496](#), signed into law on April 11, 2022, makes definitional changes to the Virginia law governing qualified education loan servicers. The law will become effective on July 1, 2022. The amendments narrow the scope of the law by replacing the term "or" with "and" when used in the definition of "qualified education loan servicer" and "servicing." This change means that a person must meet all of the listed requirements to be considered a servicer subject to the law, rather than just one of the listed requirements. The amended statute changes the definition of "servicing" as shown below, and makes a very similar change to the definition of "qualified education loan servicer." The only change is from the "or" to the "and" as shown below:

"Servicing" means:

1. (i) Receiving any scheduled periodic payments from a qualified education loan borrower or notification of such payments or (ii) applying the payments of principal and interest and such other payments, with respect to the amounts received from a qualified education loan borrower, as may be required pursuant to the terms of a qualified education loan;

2. During a period when no payment is required on a qualified education loan, (i) maintaining account records for the loan and (ii) communicating with the qualified education loan borrower regarding the qualified education loan, on behalf of the qualified education loan's holder; ~~or~~ **and**
3. Interacting with a qualified education loan borrower, including conducting activities to help prevent default on obligations arising from qualified education loans or to facilitate any activity described in clause (i) or (ii) of subdivision 1.

Because of this minor change, an entity must now engage in all activities listed above to be subject to the license requirement. Under the way the definition was structured previously, an entity would be subject to the license requirement for simply interacting with borrower, even if the entity did not receive payments or maintain account records or other activities on behalf of the loan holder. Because of the narrowed scope of the Virginia law, it is possible that some licensed student loan servicers may now reasonably consider whether they can surrender their Virginia licenses.

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