

Washington D.C. emergency student loan servicer rules plunder federal fees; expensive administrative regime in search of consumer complaint justification

As we [reported last month](#), the District of Columbia Department of Insurance, Securities and Banking (DISB) started accepting applications and transition filings for the Student Loan Servicer License on the National Mortgage Licensing System (NMLS) on August 10, 2017. However, at the time, the DISB did not issue any regulations implementing the Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016. The Act, which became effective February 18, 2017, directed the Commissioner of the DISB to issue rules implementing the Act's Student Loan Ombudsman and licensing provisions within 180 days of the Act's effective date.

After nearly a month of accepting Student Loan Servicer License applications, the Commissioner released a [Notice of Emergency and Proposed Rulemaking](#) (Notice) to implement the Act. The Student Loan Servicer emergency rules were adopted and made effective on September 8, 2017. In addition, we have been informed by the DISB that Charles Burt was appointed as the Student Loan Ombudsman earlier this summer.

The Act requires that no person or entity, unless exempt, can service a "student education loan" of a "student loan borrower" in D.C., directly or indirectly, without first obtaining a license. Exemptions are limited to: a bank, trust company, loan company, savings and loan association, savings bank, credit union, or financial institution incorporated or chartered under D.C., state, or federal law; and a public postsecondary educational institution or a private nonprofit postsecondary educational institution servicing a loan it extended to a student loan borrower.

As justification for the emergency rulemaking, the Notice inaccurately claims that "District residents have filed more than four hundred (400) complaints with the federal Consumer Protection Bureau (CFPB) in the past five (5) years related to issues arising from interactions with student loan servicers." As of September 20th, 2017, the [CFPB Consumer Complaints](#) data indicated that since 2012, the CFPB has received only 384 consumer complaints total from District residents regarding student loans. The data do not allow for the isolation of complaints that solely involve servicers.

Furthermore, the [CFPB Consumer Complaints](#) data indicated that in the past five years, only a small number of student loan borrowers in the District were entitled to relief after filing a complaint. More specifically, only 61 out of the 384 complaints (15.9%) from District residents resulted in some sort of relief—18 complaints (4.7%) were "closed with money relief" and 43 complaints (11.2%) were "closed with non-monetary relief." Given that there are approximately [140,000 federal student loan borrowers in the District](#) as of January 2015, the grounds provided for the emergency rules seem to be overstated.

Moreover, the cost imposed on federal Student Loan Servicers would effectively result in the Department of Education paying for DISB administrative expenses. The Student Loan Servicer emergency rules provide that Student Loan Servicer Licensees must pay an annual assessment of \$800 plus \$6.60 per loan serviced during the licensing period. However, [under the 2014 contracts with the Department of Education](#), the most a federal student loan servicer can earn is

\$2.85 per borrower per month (the amount paid for borrowers who are current on their loans). Since many borrowers have five loans (or more), the annual assessment fee on a per borrower basis would be roughly \$33.00, but the maximum servicing fee would be \$34.20 per year.

In addition to the cost of the assessment and fees, Student Loan Servicer Licensees must meet additional licensing requirements, including but not limited to:

- Maintain a require a net worth of at least \$250,000;
- File a surety bond of \$50,000;
- Notify the Commissioner of a change to the location of the business;
- On or before January 30 of each year, submit an annual report including information on the number of loans sold, assigned, or transferred during the preceding calendar year, and any other relevant information related to business operations required by the Commissioner;
- File a license renewal application via NMLS as licenses expire on December 31st of each year;
- Notify the Commissioner, in writing, within five business days of significant events such as the settlement or resolution of any civil action or proceeding against the licensee involving fraud, misrepresentation, or wrongful taking of property;
- Retain adequate records of each transaction of each student education loan sold, assigned, transferred, or serviced for at least three years after final payment is made on the student educational loan, or after the assignment or transfer of the student education loan, whichever first occurs; and
- Pay the examination fee when examined by the Commissioner.

The emergency rules expire on January 6, 2018, unless earlier superseded by publication of a Notice of Final Rulemaking. Comments on the rules must be received no later thirty days after the date of publication of the Notice in the D.C. Register.