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Legal Update

New York Encourages Servicers of Private Student Loans to Provide Relief to Borrowers Impacted by COVID-19

Given the economic disruption caused by the COVID-19 national emergency, the federal government was quick to enact relief measures designed to help federal student loan borrowers who may be experiencing financial hardship as a result of the pandemic. Last week, New York became the first state to announce relief measures specifically designed to aid private student loan borrowers. Despite similarities between the relief measures announced by the federal government and New York, there are also notable differences, including whether servicers are *required* to provide relief and whether relief measures will be automatically applied to borrower accounts. This Legal Update provides an overview of relief measures applicable to federal and private student loans, critical differences between them, and things to watch for as other states consider adopting similar relief measures in response to COVID-19.

1. Background

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act" or "Act") into law. The CARES Act was designed to provide emergency assistance for those affected by the COVID-19 national emergency, and it includes certain temporary relief for federal student loan borrowers.[1] Most notably, the Act suspends payments on all federal student loans through September 30, 2020 and waives interest during this time.[2] Separately, the Department of Education has ordered collection agencies to cease all collection activities related to federal student loans for a period of at least 60 days, including making collection calls and sending collection letters.[3]

On April 7, 2020, New York became the first state to announce relief measures specifically designed to aid private student loan borrowers. New York's Governor Cuomo announced an agreement with the largest student loan servicers in New York to provide relief to private student loan borrowers experiencing financial hardship due to COVID-19,[4] and the New York Department of Financial Services ("NYDFS") published guidance outlining these relief measures ("NYDFS Guidance").[5] Most notably, the NYDFS Guidance urges servicers of private student loans to provide at least 90 days of forbearance to borrowers who contact servicers and express a financial hardship due to the COVID-19 national emergency. Although some of the proposed relief measures are similar to those provided to federal student loan borrowers under the CARES Act, there are some critical differences.

2. Notable Differences in Relief Measures

A. COMPARISON OF KEY TERMS

There are some notable differences between the relief measures provided by the CARES Act and those outlined in the NYDFS Guidance. Those differences are detailed in the chart below.

Relief Characteristics	NYDFS Guidance for Servicers of Private Student Loans	Requirements for Servicers of Federal Student Loans[6]
Automatic Application of Relief Measures	No, borrowers must contact their servicers to request forbearance and must be experiencing a financial hardship as the result of COVID-19	Yes, demonstration of financial hardship as the result of COVID-19 is not required
Principal Relief Measure	Forbearance or similar repayment accommodation	Payment obligations suspended
Period of Principal Relief Measure	At least 90 days	Through September 30, 2020
Interest Stops Accruing	No[7]	Yes
Suspended Payments Treated as Qualifying Payments for Public Loan Forgiveness Programs	N/A	Yes
Suspension of Negative Credit Reporting[8]	Yes	Yes
Waiver of Late Fees	Yes	Yes[9]
Suspension of Collections Efforts	Yes[10]	Yes[11]
Notification Provided to Borrowers	Yes	Yes

B. CONSUMER ELIGIBILITY FOR NEW YORK RELIEF MEASURES

Among the most notable differences between the CARES Act and the NYDFS Guidance is the scope of borrower eligibility. Although the CARES Act automatically provides the prescribed relief to all consumers with federal student loans, New York residents with private student loans must affirmatively contact their loan servicers to request an accommodation. Moreover, the NYDFS Guidance indicates that private student loan borrowers must be impacted by COVID-19 in order to qualify for the outlined relief measures.[12] It is unclear whether servicers can automatically assume that borrowers are suffering from a financial hardship as a result of the COVID-19 pandemic, if they will be expected to rely on borrowers' self-certification to that effect, or if additional borrower documentation can be requested.

C. APPLICABILITY OF NYDFS GUIDANCE TO SERVICERS

Unlike the CARES Act, the NYDFS Guidance is simply that – guidance. Student loan servicers are not required to comply with the suggested measures, although Governor Cuomo's announcement indicates that the largest servicers have already agreed to these measures voluntarily. In many instances, a student loan servicer does not own the underlying student loan contracts it services and, as a result, may not have the authority to implement the suggested measures of its own volition.

The NYDFS seems to contemplate this scenario and states in the NYDFS Guidance, "[w]here regulated student loan servicers are limited in their ability to take these actions due to investor restrictions or contractual obligations, servicers should proactively work with loan holders or the U.S. Department of Education whenever possible to relax those restrictions or obligations."

Although compliance with the NYDFS Guidance is technically voluntary, the NYDFS suggests that it may use its authority over licensed student loan servicers as a "stick" to encourage compliance.[13] The NYDFS does not have the authority to dictate the borrower relief options offered by servicers or holders of private student loans, but it does have the authority to examine licensed student loan servicers for compliance with applicable law or "to determine any matter the determination of which in the judgment of the superintendent is necessary or advisable." Statements in the NYDFS Guidance suggest that the NYDFS may seek to use this authority to examine student loan servicers that do not follow the NYDFS Guidance.

D. NYDFS BORROWER OUTREACH AND CUSTOMER SERVICE GUIDANCE

The NYDFS Guidance proposes robust borrower outreach on the part of servicers in order to ensure that private student loan borrowers are informed about the potential relief available. It also proposes certain customer service enhancements designed to make it easier for borrowers to obtain relief measures. Specifically, the NYDFS Guidance suggests that regulated student loan servicers implement the following measures related to borrower outreach and customer service:

- Proactively contact borrowers via email or any other manner in which the borrower has agreed to receive communications to inform them of relief that is available if they have been impacted by COVID-19 and contact the servicer.
- Prominently post clear and complete information about any repayment options related to COVID-19 on their websites.
- Train customer service representatives to make them aware of all repayment options related to COVID-19 and other alternative repayment plans to ensure that they are able to communicate these options to borrowers.
- Affirmatively contact borrowers who miss payments in the coming weeks to determine their status and the best options for them.
- Reduce administrative procedures or document verification requirements associated with enrolling borrowers in repayment plans and relax hardship program recertification requirements.
- Ensure that staffing is sufficient to meet borrower needs.
- Hold borrowers harmless for disruptions in paper mail processing and processing of hard copy repayment applications to ensure that borrowers without internet or telephone access are adequately served.

3. Other Potentially Applicable COVID-19 Relief Measures

Although New York appears to be the first state to focus specifically on relief measures for private student loan borrowers, other states have enacted more limited relief measures that also cover student loan borrowers. For instance, Massachusetts enacted an emergency regulation designed to protect consumers from certain debt collection practices.[14] This emergency regulation effectively prohibits in-person and telephone debt collection communications with consumers. It also prohibits the filing of new collection lawsuits or garnishing wages, earnings, properties, or funds. The regulation will remain in place through June 27, 2020 or until the conclusion of the COVID-19 state of emergency.

Even before New York's announcement, there were news reports of many private student lenders voluntarily offering similar relief measures to borrowers.[15] Many holders of private student loans also have historically offered forbearance and repayment plan options to borrowers experiencing financial hardship (for reasons unrelated to COVID-19), although the specifics of those programs vary significantly.

4. Conclusion

Student loans are the second largest category of consumer debt in the United States. Relief for federal student loan borrowers was a focal point of the CARES Act, and New York's announcement demonstrates that some states may seek to extend similar relief measures to private student loans.

We continue to monitor developments related to COVID-19's impact on student loans and will report on any additional updates.

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Endnotes

[1] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 3513 (2020).

[2] *Delivering on President Trump's Promise, Secretary DeVos Suspends Federal Student Loan Payments, Waives Interest During National Emergency*, Dept. of Education (Mar. 20, 2020), https://www.ed.gov/news/press-releases/delivering-president-trumps-promise-secretary-devos-suspends-federal-student-loan-payments-waives-interest-during-national-emergency.

[3] *Secretary DeVos Directs FSA to Stop Wage Garnishment, Collections Actions for Student Loan Borrowers, Will Refund More Than $1.8 Billion to Students, Families*, Dept. of Education (Mar. 25, 2020), https://www.ed.gov/news/press-releases/secretary-devos-directs-fsa-stop-wage-garnishment-collections-actions-student-loan-borrowers-will-refund-more-18-billion-students-families.

[4] *Amid Ongoing COVID-19 Pandemic, Governor Cuomo Announces State Will Invest in Private Companies to Bring Rapid Testing to Scale*, Governor Andrew Cuomo (April 7, 2020), https://www.governor.ny.gov/news/amid-ongoing-covid-19-pandemic-governor-cuomo-announces-state-will-invest-private-companies.

[5] *Guidance to New York State-Regulated Student Loan Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19)*, NYDFS (April 7, 2020), https://www.dfs.ny.gov/industry_guidance/industry_letters/il20200407_student_loan_servicers (hereafter, "NYDFS Guidance").

[6] Relief under the Act and the obligations imposed on the Department of Education only apply to federal student loans that are held by the Department of Education. These provisions do not apply to Federal Family Education Program loans held by third parties or Perkins loans held by educational institutions.

[7] The NYDFS Guidance does not expressly urge private student loan servicers to suspend the accrual of interest during the relief period for eligible consumers. However, private student lenders could independently choose to suspend the accrual of interest for eligible borrowers.

[8] The CARES Act provides that all payments suspended on federal student loans must be treated as if they were regularly scheduled payments made by the borrower, but a servicer can continue to report a borrower's delinquency status (if any) prior to the payment suspension period. The NYDFS Guidance provides that servicer should "report[] any missed payment that is subject to a forbearance or other repayment accommodation as 'current' to credit reporting agencies." NYDFS Guidance.

[9] Although the CARES Act does not explicitly waive late fees, because payments are suspended through September 30, 2020 and the benefits apply automatically, it functionally eliminates the possibility of late fees.

[10] Servicers are asked to refrain from sending defaulted loan accounts to third-party debt collectors and refrain from filing any collections actions against borrowers for at least 90 days.

[11] All collections efforts, including collection calls and letters and involuntary collections, have been suspended for at least 60 days.

[12] NYDFS Guidance.

[13] Specifically, the NYDFS Guidance states, "[NYDFS] will exercise its examination and reporting authority, pursuant to 3 NYCRR 409.10-11, as necessary to ensure that regulated student loan servicers meet essential servicing standards and demonstrate the institutional fitness required to further the public interest."

[14] *AG's Office Issues Emergency Regulation to Protect Consumers from Harmful Debt Collection Practices During Covid-19 Emergency*, Mass. Att'y Gen. (March 27, 2020), https://www.mass.gov/news/ags-office-issues-emergency-regulation-to-protect-consumers-from-harmful-debt-collection.

[15] Laura Grace Tarpley, *24 Private Student Loan Lenders That May Help You With Payments During the COVID-19 Outbreak*, Business Insider (Apr. 7, 2020), https://www.businessinsider.com/personal-finance/private-student-loan-lenders-help-with-payments-2020-4.