

Comparing CT Student Loan Servicing Law to Maryland SB 1012 (2018)¹

Assessment – Overall, the MD bill is a more comprehensive bill that reflects lessons learned related to preemption threats and further ways to strengthen the CT law to provide for affirmative responsibilities that student loan servicers must take in addition to prohibited practices. The bullets below highlight some key differences between the CT law and the MD bill.

- Definition of "student education loan" (MD 12-1101(C); CT Sec. 2(4)) – The MD bill is slightly stronger because it includes language to negate any attempts by anyone, most likely private lenders, to declare that their loans are student education loans or style them as something else or include a choice of law provision.
- Definition of "student loan servicer" (MD 12-1101(E)(2)); CT Sec. 2(2)) – The MD bill is explicitly includes trust entities (such as NCSLT), but it is likely not necessary to explicitly include them in the definition of "student loan servicer" since the activities of the trust would already be captured by the definition. It also includes a person engaging in debt collection activities. The latter provision probably could be worded better. In some states, this might be beneficial if they do not have debt collection laws; in other states, the provision may be duplicative of existing law.
- Exemption for banks (MD 12-1102; CT Sec. 3(2)) – CT law is stronger because it only exempts banks from licensing; it does not exempt them from substantive standards (See CT Sec. 6). MD, however, appears to exempt banks from the entire Subtitle. This assessment is further confirmed by the fact that all of MD's substantive standards apply just to "licensees", whereas in CT substantive standards (and the ability of the regulator to enforce those standards) apply to "student loan servicers", as defined in the act, regardless of whether licensed or not. We strongly recommend CT's approach.
- Record retention (MD 12-1111; CT Sec. 5) – While states include the same record retention policy, the MD bill guards against preemption challenges by including specific language in 12-1111(A) not included in CT's law: "Except as otherwise in federal law, a federal student education loan agreement, or a contract between the federal government and a licensee..."
- Affirmative responsibilities (MD 12-1113) – This section is not in CT's law, and as a result, MD's bill is stronger by not only prohibiting certain practices but also requiring servicers to affirmatively engage with borrowers in specific ways, including timely responses to questions from borrowers, applying payments that are more or less than the required payment amount as the borrower prefers, and certain responsibilities when a loan is sold, assigned, or transferred. The provision is taken from a bill that

¹ Conn. Pub. Act No. 15-162 (2015), <https://www.cga.ct.gov/2015/ACT/pa/pdf/2015PA-00162-R00HB-06915-PA.pdf>; Md. SB 1012 (2018), <http://mgaleg.maryland.gov/2018RS/bills/sb/sb1012f.pdf>.

passed the NY Assembly in 2017 (but not the Senate). We worked with state-level partners in NY to propose some of those provisions (which the NY DFS took and then expanded). MD 12-1113 excludes some provisions included in the NY bill because they were more likely to be challenged on preemption grounds. Additionally, 12-1113(B) provides a guard against preemption by requiring compliance except as provided in federal law, contract, or loan agreements.

- Prohibited actions (MD 12-1114; CT Sec. 6) – By and large, the MD bill took from the CT bill with a few improvements, as follows:
 1. Application of payments (MD 12-1114(A)(5); CT Sec. 6(4)) – Maryland excludes the “Knowingly misapply or recklessly apply...” language that is in CT’s law and simply states “Misapply”. MD’s language is stronger.
 2. Providing inaccurate information to credit bureaus (MD 12-1114(A)(6); CT Sec. 6(5)) – Both subsections relate to providing inaccurate information to credit bureaus. CT includes the “knowingly or recklessly” language but MD does not. Both require causation/harm. MD’s language is stronger.
 3. Making false statements (MD 12-1114(A)(9); CT. Sec. 6(8)) – Connecticut requires that the false statements be “negligently” made while Maryland does not. MD’s language is stronger.
- Violations of the law (MD 12-1119) – MD makes a violation of the Subtitle a UDAP. CT does not have a similar provision, though a violation of the law gives the Banking Department enforcement powers (CT Sec. 8(b)).
- Private right of action (MD 12-1120) – MD’s bill gives borrowers a private right of action for failure to comply with any requirement with respect to a student loan borrower. Connecticut’s law does not include such a provision.
- Severability clause (MD bill Section 2) – The MD bill provides that if any section is declared invalid by a court, then other provisions are not invalid if can be given effect without the invalid provision. There is not a severability clause in CT’s law.