



Financial Services & Products ADVISORY ■

JUNE 18, 2018

Maryland Imposes New Obligations on Investors in Student Loan Debt

by [Nanci Weissgold](#) and [Lisa Lanham](#)

On May 15, 2018, the governor of Maryland approved [SB 1068](#), adding new regulatory obligations on those engaged in Maryland's student loan servicing industry. The legislative history suggests that further amendments may be on the horizon. Effective October 1, 2018, SB 1068 adds a new Section 2-104.1 to the state's Financial Institutions Article that, among other things:

- Creates the position of "student loan ombudsman" for the state, who will have the power to "[a]nalyze [and] monitor the development and implementation of federal, State, and local laws, regulations, and policies on student loan borrowers ... [and make] recommendations regarding ... [n]ecessary changes to State law to ensure that the student loan servicing industry is fair, transparent, and equitable, including whether the State should require licensing or registration of student loan servicers."
- Defines "student loan servicer" to encompass "a trust entity ... receiving the benefit of student loan servicing."¹
- Requires each student loan servicer to designate an individual to represent it in communications with the student loan ombudsman.

The governor approved these amendments on the back of the Maryland Court of Special Appeals' June 2017 opinion addressing the consolidated cases of *Blackstone v. Sharma* and *Shanahan v. Marvastian* ("Ventures Trust"), so it seems that Maryland's distrust of passive, secondary market investors in consumer debt persists and raises the question of whether the legislature will soon require passive, secondary market investors in student loan debt to be licensed or registered to engage in business.

Regulation of Maryland's Student Loan Servicing Industry after October 1, 2018

Suspicious of the Trump Administration's and Congress's efforts to "loosen a variety of ... postcrisis reforms," including reforms relating to the protection of student loan borrowers, the legislature amended Maryland

¹ "Servicing," in turn, is defined to mean "(I) Receiving scheduled periodic payments from a student loan borrower according to the terms of a student education loan; (II) Applying the payments according to the student education loan terms; and (III) Performing other administrative services."

law to obligate Maryland's commissioner of financial regulation to appoint an individual to serve as the state's student loan ombudsman. To that end, new Section 2-104.1 requires this person, in consultation with the commissioner, to:

- Attempt to resolve student loan borrowers' complaints by collaborating with student loan servicers.
- Analyze and monitor the development and implementation of federal, state, and local laws, regulations, and policies on student loan borrowers.
- Make recommendations on necessary changes to state law to ensure the student loan servicing industry is fair, transparent, and equitable, including whether licensing or registration of student loan servicers should be required in Maryland.

Significantly, the legislature drafted this new section of Maryland law to provide for a definition of the term "student loan servicer" that specifically includes "**a trust entity performing or receiving the benefit of student loan servicing.**" Although the legislature provided no further description of what it means for a trust entity to receive the benefit of student loan servicing for the purposes of Section 2-104.1, one can speculate that given the ongoing *Sharma* and Ventures Trust litigation, the legislature sought to remove any ambiguity in the proposed law regarding whether a trust entity that passively invests in student loan debt on the secondary market would be outside of its purview, avoiding similar, future litigation for Maryland's student loan servicing industry.

As a result, trust entities passively investing in student loan debt on the secondary market must meet the requirements contained within Section 2-104.1 for student loan servicers by October 1, 2018. In particular, such entities must appoint individuals to represent them in communications with the student loan ombudsman and provide the student loan ombudsman with the names, phone numbers, and email addresses of such designees for future communications. Furthermore, on and after the October 1 effective date, the business operations of such entities may be overseen by the student loan ombudsman, who will be able to refer student loan servicers to Maryland's Office of the Attorney General for civil enforcement actions or criminal prosecutions for matters that are "abusive, unfair, deceptive, or fraudulent" under applicable Maryland laws and regulations.

Expectations for Future Regulation of Investors in Student Loan Debt

Although SB 1068 as enacted does not include a licensing or registration requirement for student loan servicers, the legislative history of SB 1068 suggests that such a requirement is likely on the horizon and may obligate certain passive, secondary market investors in student loan debt to be licensed or registered with the commissioner to engage in business, irrespective of how they are organized.

A prior version of SB 1068 proposed that the Maryland Code's Financial Institution Article be amended to add a Subtitle 11, which included a licensing requirement for student loan servicers as the prior version of SB 1068 defined such term. Specifically, this subtitle stated that:

A person may not engage in student education loan servicing unless the person: (1) Is licensed by the Commissioner under this subtitle [Student Loan Servicers]; or (2) Is exempt from licensing under this subtitle.²

It seems that the Maryland legislature is contemplating requiring certain passive, secondary market investors in student loan debt to be licensed or registered with the commissioner as student loan servicers, especially if they are deemed to be either: (1) trust entities receiving the benefit of student loan servicing; or (2) engaging in debt collection activities in Maryland for student loan debt. Moreover, given the authority granted to the student loan ombudsman, it would not be surprising to see more regulation forthcoming.

We will continue to monitor the state's efforts to regulate student loan servicers, particularly relating to passive, secondary market investors in student loan debt, in the months to come.

² Additionally, this prior version included the following definition of the term "student loan servicer":

"Student loan servicer" means a person, regardless of location, responsible for servicing a student education loan to a student loan borrower. (2) "Student loan servicer" includes: (I) **A trust entity** performing or receiving the benefit of student loan servicing; and (II) **A person conducting debt collection activities in [Maryland]**.(emphasis added)

You can subscribe to future *Financial Services & Products* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any member of our [Financial Services & Products Group](#).

Nanci Weissgold
202.239.3189
nanci.weissgold@alston.com

Kendall Stensvad
919.862.2245
kendall.stensvad@alston.com

Stephen Ornstein
202.239.3844
stephen.ornstein@alston.com

Walter Cosby
202.239.3730
walt.cosby@alston.com

Elizabeth Corbett
919.862.2257
elizabeth.corbett@alston.com

Zachary Miller
202.239.3005
zach.miller@alston.com

Morey Barnes Yost
202.239.3674
morey.barnesyost@alston.com

Lisa Lanham
212.210.9527
lisa.lanham@alston.com

Rinaldo Martinez
202.239.3205
rinaldo.martinez@alston.com

Anoush Garakani
202.239.3091
anoush.garakani@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2018

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
 BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
 BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
 CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
 DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
 NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
 RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, NC 27601-3034 ■ 919.862.2200 ■ Fax: 919.862-2200
 SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
 SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650-838-2000 ■ Fax: 650.838.2001
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333