

HOUSE BILL 82

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE STUDENT LOAN BILL OF RIGHTS ACT; PROVIDING FOR A STUDENT LOAN SERVICER'S LICENSE; DELINEATING THE DUTIES OF A STUDENT LOAN SERVICER; GIVING ADMINISTRATIVE RESPONSIBILITY AND ENFORCEMENT POWER TO THE FINANCIAL INSTITUTIONS DIVISION OF THE REGULATION AND LICENSING DEPARTMENT; PROVIDING FOR DISCHARGE OF PRIVATE EDUCATION LOANS UPON A SHOWING OF PERMANENT DISABILITY; REQUIRING THAT ALTERNATIVE REPAYMENT OPTIONS BE OFFERED TO

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BORROWERS EQUALLY; PROVIDING RIGHTS FOR COSIGNERS, INCLUDING NOTICE AND ACCESS TO INFORMATION; PROVIDING FOR COSIGNER RELEASE; PROHIBITING CERTAIN ACCELERATION OF PRIVATE EDUCATION LOANS; CREATING THE POSITION OF STUDENT LOAN OMBUDSMAN; DEFINING CERTAIN VIOLATIONS OF THE STUDENT BILL OF RIGHTS AS UNFAIR AND UNCONSCIONABLE TRADE PRACTICES; CREATING A PRIVATE RIGHT OF ACTION; CREATING THE STUDENT LOAN BILL OF RIGHTS FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 27 of this act may be cited as the "Student Loan Bill of Rights Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Student Loan Bill of Rights Act:

A. "cosigner":

(1) means an individual who is liable for the obligation of another without compensation, regardless of how the individual is designated in the contract or instrument with respect to that obligation, including an obligation under a private education loan extended to consolidate a borrower's preexisting student loans;

(2) includes any person whose signature is requested as a condition to grant credit or to forbear on collection; and

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(3) does not include a spouse of an individual described in Paragraph (1) of this subsection, the signature of whom is needed to perfect the security interest in a loan;

B. "director" means the director of the division;

C. "division" means the financial institutions division of the regulation and licensing department;

D. "person" includes legal representatives, unincorporated organizations, trustees, fiduciaries and public entities;

E. "post-secondary education expense" means any expense associated with attendance at or enrollment in a public or non-publicly funded post-secondary educational institution as defined by Subsections F and G of Section 21-23-3 NMSA 1978 for expenses HEC→, including tuition,←HEC related to courses, instruction, training or education;

F. "private education lender" or "lender" means any person engaged in the business of securing, making or extending private education loans or any holder of a private education loan. "Private education lender" does not include the following persons, only to the extent that state regulation is preempted by federal law:

(1) a bank or credit union;

(2) a wholly owned subsidiary of a bank or credit union;

(3) an operating subsidiary of a bank or

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credit union where each owner of the operating subsidiary is wholly owned by the same bank or credit union; and

(4) the higher education department;

G. "private education loan":

(1) means an extension of credit that is not made, insured or guaranteed under Title IV of the federal Higher Education Act of 1965;

(2) means an extension of credit that is extended to a consumer expressly, in whole or in part, for post-secondary education expenses, regardless of whether the loan is provided by the educational institution that the student attends;

(3) does not include open-end credit or any loan that is secured by real property or a dwelling; and

(4) does not include an extension of credit in which the covered educational institution is the creditor if:

(a) the term of the extension of credit is ninety days or less; or

(b) an interest rate shall not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments;

H. "servicing" includes:

(1) receiving scheduled periodic payments from a student loan borrower pursuant to the terms of a student

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education loan;

(2) applying payments of principal and interest and other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan;

(3) maintaining account records for a student education loan and communicating with a student loan borrower regarding a loan on behalf of the loan's holder during a period when no payment is required on the loan; and

(4) interacting with a student loan borrower to help prevent default on obligations arising from a student education loan;

I. "student education loan" means an extension of credit primarily for personal use to finance a student loan borrower's post-secondary education expenses, but does not include an isolated personal loan made by an individual to another for post-secondary education expenses;

J. "student loan borrower" means:

(1) a resident of New Mexico who has received or agreed to pay a student education loan; or

(2) a person who shares responsibility with a resident of New Mexico for repaying a student education loan;

K. "student loan servicer" means a person engaged in the business of servicing student education loans in New Mexico; and

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L. "total and permanent disability" means the condition of an individual who:

(1) has been determined by the United States secretary of veterans affairs to be unemployable due to a service-connected disability; or

(2) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than twelve months or can be expected to last for a continuous period of not less than twelve months."

SECTION 3. [NEW MATERIAL] LICENSE REQUIRED--EXEMPTIONS.--

A. A person shall not act directly or act indirectly as a student loan servicer without first obtaining a license from the division pursuant to the Student Loan Bill of Rights Act, unless that person is exempt from licensure pursuant to Subsection B of this section.

B. The following persons are exempt from licensing requirements pursuant to the Student Loan Bill of Rights Act:

- (1) a bank or credit union;
- (2) a wholly owned subsidiary of a bank or credit union;
- (3) an operating subsidiary of a bank or credit union where each owner of the operating subsidiary is wholly owned by the same bank or credit union; and

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(4) the higher education department.

SECTION 4. [NEW MATERIAL] LICENSE APPLICATION--
INVESTIGATION--LICENSE ISSUANCE.--

A. A person seeking to act as a student loan servicer shall make a written application to the director for an initial license in a form prescribed by the director. The application shall include:

(1) a financial statement of the person applying, prepared by a certified or registered public accountant, the accuracy of which is sworn to under oath before a notary public by the proprietor, a general partner or a corporate officer or a member duly authorized to execute such documents;

(2) sufficient information pertaining to the history of any criminal conviction of the applicant, whether an individual or partner, member, officer, director or principal employee of the applicant, as the director deems necessary to make the findings required pursuant to Subsection F of this section;

(3) a nonrefundable initial license fee not to exceed five thousand dollars (\$5,000); and

(4) a nonrefundable investigation fee not to exceed five thousand dollars (\$5,000).

B. The director may periodically reduce or increase the amount of one or more of the fees in Subsection A of this

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section, but in no case more than the initial fees.

C. The director may require or allow applications to be made electronically through the nationwide multistate licensing system and registry. An applicant using that system shall pay all required processing fees for the system.

D. Upon the filing of an application for an initial license and the payment of required fees, the director shall investigate the financial condition and responsibility, the financial and business experience and the character and general fitness of the applicant.

E. The director may conduct a state and national criminal history records check of the applicant and of each partner, member, officer, director, trustee, fiduciary and principal employee of the applicant.

F. The director shall issue a license for a student loan servicer pursuant to the Student Loan Bill of Rights Act if the director finds that:

- (1) the applicant has submitted a completed application;
- (2) the applicant's financial condition is sound;
- (3) the applicant's business will be conducted honestly, fairly, equitably, carefully, efficiently and in a manner commanding the confidence and trust of the community;
- (4) the applicant or a partner, member,

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officer, director, trustee, fiduciary or principal employee of the applicant has not been convicted of a crime that relates to money lending, financing, financial matters, fiduciary status, trustee status, fraud or another matter that substantially relates to the qualifications, functions or duties of a student loan servicer;

(5) a person has not made an incorrect statement of a material fact on behalf of the applicant either in the application or in a report or statement made pursuant to the Student Loan Bill of Rights Act;

(6) a person on behalf of the applicant has not knowingly omitted to state a material fact on behalf of the applicant necessary to give the director information lawfully required by the director pursuant to the Student Loan Bill of Rights Act;

(7) the applicant has paid the license fee and investigation fee required by this section;

(8) the applicant has met all other requirements of the Student Loan Bill of Rights Act as determined by the director; and

(9) if the applicant is:

(a) an individual, the individual is in all respects properly qualified and of good character;

(b) a partnership, HEC→the partnership is registered to do business in New Mexico and is in good

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standing and←HEC each partner is in all respects properly qualified and of good character;

(c) a corporation or association, HEC→the corporation or association is registered to do business in New Mexico and is in good standing and←HEC the following are in all respects properly qualified and of good character: 1) president; 2) executive committee chair; 3) senior officer responsible for the corporation's business; 4) chief financial officer; or 5) any other person who performs functions similar to those described in Items 1) through 4) of this subparagraph and as determined by the director; and 6) each director, each trustee and each shareholder owning ten percent or more of each class of the securities of the corporation or association; or

(d) a limited liability company, HEC→the limited liability company is registered to do business in New Mexico and is in good standing and←HEC each HEC→officer, manager or←HEC member is in all respects properly qualified and of good character.

SECTION 5. [NEW MATERIAL] AUTOMATIC ISSUANCE OF LICENSE FOR FEDERAL STUDENT LOAN SERVICING CONTRACTORS.--

A. A person seeking to act as a student loan servicer is excepted from the application procedures described in Subsection A of Section 4 of the Student Loan Bill of Rights Act upon a determination by the director that the person's student loan servicing performed in this state is conducted

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pursuant to a contract awarded by the United States secretary of education pursuant to 20 U.S.C. Section 1087f. The director shall prescribe the procedure to document eligibility for the exception.

B. A person deemed excepted by the director pursuant to this section shall, upon payment of the fees required by Section 4 of the Student Loan Bill of Rights Act, automatically be issued a license by the director and shall be considered by the director to have met all requirements set forth in Subsection F of Section 4 of the Student Loan Bill of Rights Act.

C. A person issued a license pursuant to this section is exempt from Paragraphs (1) through (3) of Subsection A, Subsection B and Subsection F of Section 4 of the Student Loan Bill of Rights Act. A person licensed pursuant to this section shall comply with the record retention requirements in Section 8 of the Student Loan Bill of Rights Act except to the extent that the requirements are inconsistent with federal law.

D. A person issued a license pursuant to this section shall provide the director with written notice within seven days following notification of the expiration, revocation or termination of a contract awarded by the United States secretary of education pursuant to 20 U.S.C. Section 1087f. The person has thirty days following notification to satisfy all requirements established under Subsection F of Section 4 of

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the Student Loan Bill of Rights Act in order to continue to act as a student loan servicer. At the expiration of the thirty-day period if the requirements have not been satisfied, the director shall immediately suspend a license granted to the person pursuant to this section.

E. With respect to student loan servicing not conducted pursuant to a contract awarded by the United States secretary of education pursuant to 20 U.S.C. Section 1087f, nothing in this section prevents the director from issuing or filing a civil action for an order to temporarily or permanently bar a person from acting as a student loan servicer or violating applicable law.

SECTION 6. [NEW MATERIAL] LICENSE EXPIRATION--LICENSE SURRENDER--LICENSE RENEWAL--LICENSE SUSPENSION--INFORMATION UPDATE--LICENSE ABANDONMENT--NO ABATEMENT OF FEES.--

A. A license issued pursuant to the Student Loan Bill of Rights Act shall expire at midnight on December 31 of the year following its issuance, unless renewed or earlier surrendered, suspended or revoked pursuant to the Student Loan Bill of Rights Act.

B. Not later than fifteen days after a licensee ceases to engage in the business of student loan servicing in New Mexico for any reason, the licensee shall provide written notice of surrender to the director and shall surrender to the director its license for each location in which the licensee

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has ceased to engage in the business of student loan servicing. The written notice of surrender shall identify the location where the records of the licensee will be stored and the name, address and telephone number of an individual authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including administrative actions by the director to revoke or suspend a license, assess a civil penalty, order restitution or exercise any other authority provided to the director in the Student Loan Bill of Rights Act.

C. A license may be renewed for the next twelve-month period upon the filing of an application containing all required documents and fees required by the Student Loan Bill of Rights Act as for an initial license. The renewal application shall be filed on or before November 1 of the year in which the license expires. A renewal application filed with the director after November 1 and before December 31 of the year in which the license expires, but that is accompanied by a one-hundred-dollar (\$100) late fee, shall be deemed to be timely. If an application for a renewal license has been filed with the director on or before the date the license expires, the license sought to be renewed shall continue in full force and effect until the director issues the renewed license or the

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director has notified the licensee in writing of the director's refusal to renew the license, including the grounds for the refusal. The director may refuse to renew a license on any ground upon which the director may refuse to issue an initial license.

D. If the director determines that a check filed with the director to pay a renewal fee has been dishonored, the director shall automatically suspend the license. The director immediately shall give the licensee notice of the automatic suspension by any practicable means and initiate proceedings for revocation or refusal to renew and an opportunity for a hearing on that action pursuant to the Uniform Licensing Act.

E. The applicant or licensee shall notify the director, in writing, of any change in the information provided in its initial application for a license or its most recent renewal application for that license, as applicable, not later than ten business days after the occurrence of the event that results in that information becoming inaccurate.

F. The director shall deem an application for a license abandoned if the applicant fails to respond to a request for information required by the Student Loan Bill of Rights Act. The director shall notify the applicant, in writing, that if the applicant fails to submit that information not later than sixty days after the date on which that request for information was made, the application shall be deemed

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abandoned. An application filing fee paid before the date an application is deemed abandoned pursuant to this subsection shall not be refunded. Abandonment of an application does not preclude the applicant from submitting a new application for a license pursuant to the Student Loan Bill of Rights Act.

G. A license fee paid pursuant to the Student Loan Bill of Rights Act shall not be abated.

SECTION 7. [NEW MATERIAL] LICENSEE NAMES AND LOCATIONS--TRANSFERABILITY--ASSIGNABILITY.--

A. A licensed student loan servicer shall not service student education loans under a name or at a place of business other than as listed in the license. A change of a place of business shall require prior written notice to the director. Not more than one place of business shall be maintained under the same license, but the director may issue more than one license to the same licensee that is in compliance with the provisions of the Student Loan Bill of Rights Act.

B. A license for a student loan servicer is not transferable or assignable.

SECTION 8. [NEW MATERIAL] RECORD RETENTION.--

A. All private education lenders and student loan servicers shall maintain adequate records of each student education loan transaction for at least six years following the final payment on a student education loan or the assignment of

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a student education loan, whichever occurs first, or a longer period the director may require.

B. Within five business days of receipt of a request for student education loan records from the director, a private education lender or student loan servicer shall make the records available to the director, or shall send the records to the director by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. Upon request, the director may grant a licensee additional time to make the records available or send the records to the director.

SECTION 9. [NEW MATERIAL] STUDENT LOAN SERVICERS.--Except as otherwise provided in federal law, a federal student education loan agreement or a contract between the federal government and a student loan servicer, a student loan servicer shall comply with the following requirements:

A. upon receipt of a written inquiry from a student loan borrower or the representative of a student loan borrower, a student loan servicer shall respond by:

(1) acknowledging receipt of the written inquiry within ten days; and

(2) within thirty days after receiving the inquiry, providing information relating to the inquiry and, if applicable, the action the student loan servicer will take to correct the student loan borrower's account or an explanation

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of the student loan servicer's position that the borrower's account is correct, including copies of all information and account information used by the student loan servicer in reaching the determination;

B. a student loan servicer shall inquire of a student loan borrower how to apply an overpayment or prepayment to a student education loan. A student loan borrower's direction on how to apply an overpayment or prepayment to a student education loan shall stay in effect for any future overpayments or prepayments during the term of a student education loan until the borrower provides different directions. For purposes of this subsection, "overpayment" or "prepayment" means a payment on a student education loan in excess of the monthly amount due from a borrower on a student education loan;

C. in the absence of a direction provided by a student loan borrower pursuant to Subsection B of this section, a student loan servicer shall allocate an overpayment on a student loan account in a manner that is in the best financial interest of a student loan borrower. A student loan servicer shall be considered to meet the requirements of this subsection if the servicer allocates the overpayment to the loan with the highest interest rate on the borrower's student loan account, unless the borrower specifies otherwise. For the purposes of this subsection, "best financial interest of a student loan

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borrower" means reducing the total cost of the student loan, including principal and balance, interest and fees;

D. in the absence of a direction provided by a student loan borrower pursuant to Subsection B of this section, a student loan servicer shall apply a partial payment or underpayment in a manner that minimizes late fees and negative credit reporting. When loans on a student loan borrower's account have an equal stage of delinquency, a student loan servicer shall apply a partial payment or underpayment to satisfy as many individual loan payments as possible on a borrower's account. For purposes of this subsection, "partial payment" or "underpayment" means a payment on a student education loan account that contains multiple individual loans in an amount less than the amount necessary to satisfy the outstanding payment due on all loans in the student education loan account;

E. as a condition of the sale, assignment or transfer, the student loan servicer shall require the new student loan servicer to honor all benefits originally represented as available to the student loan borrower during the repayment of the student education loan and preserve the availability of those benefits, including benefits for which the student loan borrower has not yet qualified. If a student loan servicer is not also the loan holder or is not acting on behalf of the loan holder, the student loan servicer satisfies

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the requirement established by this subsection by providing the new student loan servicer with information necessary for the new student loan servicer to honor all benefits originally represented as available to a student loan borrower during the repayment of the student education loan and preserve the availability of those benefits, including benefits for which the student loan borrower has not yet qualified:

(1) the student loan servicer shall transfer to the new student loan servicer all information regarding the student loan borrower, the account of the student loan borrower and the student education loan of the student loan borrower, including the repayment status of the student loan borrower and any benefits associated with the student education loan of the student loan borrower;

(2) the sale, assignment or transfer of the servicing of the student education loan must be completed within forty-five days after the sale, assignment or other transfer of the servicing of a student education loan; and

(3) the parties shall notify affected student loan borrowers of the sale, assignment or other transfer of the servicing of the student education loan at least seven days before the next payment on the loan is due. This notice must include:

(a) the identity of the new student loan servicer;

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(b) the effective date of the transfer of the student loan borrower's student education loan to the new student loan servicer;

(c) the date on which the existing student loan servicer will no longer accept payments; and

(d) the contact information for the new student loan servicer;

F. a student loan servicer that obtains the right to service a student education loan shall adopt policies and procedures to verify that the student loan servicer has received all information regarding the student loan borrower, the account of the student loan borrower and the student education loan of the student loan borrower, including the repayment status of the student loan borrower and any benefits associated with the student education loan of the student loan borrower. The director may investigate these policies and procedures; and

G. a student loan servicer shall inform the student loan borrower about the availability of a repayment program based on income prior to placing the borrower in forbearance or default, if a repayment program based on income is available to the borrower.

**SECTION 10. [NEW MATERIAL] STUDENT LOAN SERVICERS--
PROHIBITED ACTS--UNFAIR TRADE PRACTICE--LIABILITY.--**

A. A student loan servicer shall not:

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(1) directly or indirectly employ a scheme, device or artifice to defraud or mislead a student loan borrower;

(2) engage in an unfair or deceptive trade practice or unconscionable trade practice toward a person or misrepresent or omit material information in connection with the servicing of a student education loan, including misrepresenting the amount, nature or terms of a fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the student loan borrower's obligations under the loan;

(3) engage in abusive acts or practices when servicing a student education loan. An abusive act or practice includes:

(a) material interference with the ability of a student loan borrower to understand a term or condition of a student education loan; or

(b) taking unreasonable advantage of any of the following: 1) a lack of understanding on the part of a student loan borrower of the material risks, costs or conditions of the student education loan; 2) the inability of a student loan borrower to protect the borrower's interests when selecting or using a student education loan or a feature, term or condition of a student education loan; or 3) the reasonable reliance by the student loan borrower on a person engaged in

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servicing a student education loan to act in the interests of the borrower;

(4) obtain property by fraud or misrepresentation;

(5) misapply student education loan payments to the outstanding balance of a student education loan;

(6) provide inaccurate information to a credit bureau;

(7) fail to report a favorable or unfavorable payment history of a student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;

(8) refuse to communicate with an authorized representative of a student loan borrower who provides a written authorization signed by the student loan borrower; provided that the student loan servicer may adopt procedures reasonably related to verifying that the representative is authorized to act on behalf of the student loan borrower;

(9) negligently make a false statement or knowingly and willfully make an omission of a material fact in connection with any information or report filed with a governmental agency or in connection with an investigation conducted by the director or another governmental agency;

(10) fail to properly evaluate a student loan

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borrower for an income-driven or other student loan repayment program or for eligibility for a public service loan forgiveness program before placing the student loan borrower in forbearance or default, if an income-driven repayment or other program is available to the student loan borrower except as otherwise provided in federal law, federal student loan agreements or a contract between the federal government and a student loan servicer;

(11) fail to respond within fifteen days to communication from the student loan ombudsman, or within a shorter reasonable time as the student loan ombudsman may request in the communication; or

(12) fail to respond within fifteen days to a student loan borrower complaint submitted to the servicer by the student loan ombudsman. If necessary, a student loan servicer may request additional time, up to forty-five days, as long as the request is accompanied by an explanation of why additional time is reasonable and necessary.

B. A violation of this section is an unfair or deceptive trade practice or an unconscionable trade practice pursuant to the Unfair Practices Act and is subject to the enforcement and penalty provisions contained in that act.

SECTION 11. [NEW MATERIAL] DISABILITY DISCHARGE.--

A. For a private education loan issued or executed on or after the effective date of the Student Loan Bill of

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Rights Act, a private education lender or student loan servicer acting on behalf of a private education lender, when notified of the total and permanent disability of a student loan borrower or cosigner, shall release any cosigner from the obligations under a private education loan. The lender shall not attempt to collect a payment from a cosigner upon notice of total and permanent disability of the cosigner or borrower.

B. A lender shall notify a student loan borrower and cosigner for a private education loan if either the cosigner or borrower is released from the obligations of the private education loan under this section within thirty days of the release.

C. Any lender that extends a private education loan shall provide the student loan borrower an option to designate an individual to have the legal authority to act on behalf of the borrower with respect to the private education loan in the event of the total and permanent disability of the borrower.

D. In the event a cosigner is released from the obligations of a private education loan pursuant to Subsection A of this section, the lender shall not require the student loan borrower to obtain another cosigner on the loan obligation.

E. In the event a cosigner is released from the obligations of a private education loan pursuant to Subsection A of this section, a lender shall not declare a default or

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accelerate the debt against the student loan borrower on the sole basis of the release of the cosigner from the loan obligation.

F. A lender shall, when notified of the total and permanent disability of a student loan borrower, discharge the liability of the borrower and cosigner on the loan.

G. After receiving a notification described in Subsection F of this section, the lender shall not attempt to collect on the outstanding liability of the student loan borrower or cosigner or monitor the disability status of the borrower at any point after the date of discharge.

SECTION 12. [NEW MATERIAL] AVAILABILITY OF ALTERNATIVE REPAYMENT OPTIONS.--

A. If a private education lender offers any student loan borrower flexible or modified repayment options in connection with a private education loan, those flexible repayment options shall be made available to all borrowers of loans by the lender. A lender shall:

(1) provide on its website a description of any alternative repayment options offered by the lender for private education loans; and

(2) establish policies and procedures and implement them consistently in order to facilitate evaluation of private education loan flexible repayment option requests, including providing accurate information regarding any private

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education loan alternative repayment options that may be available to the student loan borrower through the promissory note or that may have been marketed to the borrower through marketing materials.

B. A private education lender or a student loan servicer acting on behalf of a private education lender shall consistently present and offer flexible or modified private education loan repayment options to student loan borrowers with similar financial circumstances if the lender offers such repayment options.

SECTION 13. [NEW MATERIAL] NOTICES REQUIRED AT ORIGINATION.--

A. Prior to the extension of a private education loan that requires a cosigner, a private education lender shall deliver the following information to the cosigner:

(1) how the private education loan obligation shall appear on the cosigner's credit;

(2) how the cosigner shall be notified if the private education loan becomes delinquent, including how the cosigner can cure the delinquency in order to avoid negative credit furnishing and loss of cosigner release eligibility; and

(3) eligibility for release of the cosigner's obligation on the private education loan, including the number of on-time payments and any other criteria required to approve the release of the cosigner from the loan obligation.

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B. Prior to offering a person a private education loan that is being used to refinance an existing education loan, a private education lender shall provide the person a disclosure that benefits and protections applicable to the existing loan may be lost due to the refinancing.

C. The information provided pursuant to this section shall be provided on a one-page information sheet in a twelve-point font and shall be written in simple, clear, understandable and easily readable language as provided in P.L.1980, c.125 (C.56:12-1 et seq.).

SECTION 14. [NEW MATERIAL] COSIGNER RELEASE.--

A. For any private education loan that obligates a cosigner, a lender shall provide the student loan borrower and the cosigner an annual written notice containing information about cosigner release, including the administrative, non-judgmental criteria the lender requires to approve the release of the cosigner from the loan obligation and the process for applying for cosigner release.

B. If the student loan borrower has met the applicable payment requirement to be eligible for cosigner release, the lender shall send the borrower and the cosigner a written notification by mail and by electronic mail, where a borrower or cosigner has elected to receive electronic communications from the lender, informing the borrower and cosigner that the payment requirement to be eligible for

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cosigner release has been met. The notification shall also include information about any additional criteria to qualify for cosigner release and the procedure to apply for cosigner release.

C. A lender shall provide written notice to a student loan borrower who applies for cosigner release but whose application is incomplete. The written notice shall include a description of the information needed to consider the application complete and the date by which the applicant shall furnish the missing information.

D. Within thirty days after a student loan borrower submits a completed application for cosigner release, the lender shall send the borrower and cosigner a written notice that informs the borrower and cosigner whether the cosigner release application has been approved or denied. If the lender denies a request for cosigner release, the student loan borrower may request any documents or information used in the determination, including the credit score threshold used by the lender, the borrower's consumer report, the borrower's credit score and any other documents specific to the borrower. The lender shall also provide any adverse action notices required under applicable federal law if the denial is based in whole or in part on any information contained in a consumer report.

E. In response to a written or oral request for cosigner release, a lender shall provide the information

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described in Subsection B of this section.

F. A lender shall not impose any restriction that permanently bars a student loan borrower from qualifying for cosigner release, including restricting the number of times a borrower may apply for cosigner release.

G. A lender shall not impose any negative consequences on any student loan borrower or cosigner during the sixty days following the issuance of the notice required pursuant to Subsection C of this section, or until the lender makes a final determination about a borrower's cosigner release application. For the purpose of this subsection, "negative consequences" includes the imposition of additional eligibility criteria, negative credit reporting, lost eligibility for cosigner release, late fees, interest capitalization or other financial injury.

H. For a private education loan issued or executed on or after the effective date of the Student Loan Bill of Rights Act, a lender shall not require more than twelve consecutive on-time payments as criteria for cosigner release. Any student loan borrower who has paid the equivalent of twelve months of principal and interest payments within any twelve-month period shall be considered to have satisfied the consecutive on-time payment requirement, even if the borrower has not made payments monthly during the twelve-month period.

I. If a student loan borrower or cosigner requests

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a change in terms that restarts the count of consecutive on-time payments required for cosigner release, the lender shall notify the borrower and cosigner in writing of the impact of the change and provide the borrower or cosigner the right to withdraw or reverse the request to avoid that impact.

J. A student loan borrower shall have the right to request an appeal of a lender's determination to deny a request for cosigner release, and the lender shall permit the borrower to submit additional documentation evidencing the borrower's ability, willingness and stability to meet the payment obligations. The student loan borrower may request review of the cosigner release determination by another employee.

K. A lender shall establish and maintain a comprehensive record management system reasonably designed to ensure the accuracy, integrity and completeness of data and other information about cosigner release applications and to ensure compliance with applicable state and federal laws, including the federal Equal Credit Opportunity Act and the federal Fair Credit Reporting Act. This system shall include the number of cosigner release applications received, the approval and denial rate and the primary reasons for any denial.

SECTION 15. [NEW MATERIAL] INFORMATION AVAILABLE TO COSIGNERS.--

A. A lender shall provide a cosigner with access to

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all documents or records related to the cosigned private education loan that are available to the student loan borrower.

B. If a lender provides electronic access to documents and records for a student loan borrower, the lender shall provide equivalent electronic access to the cosigner.

C. Upon written notice from the student loan borrower or cosigner, the lender shall redact or withhold contact information for the borrower and cosigner.

SECTION 16. [NEW MATERIAL] PROHIBITIONS ON THE ACCELERATION OF PRIVATE EDUCATION LOANS.--

A. A private education loan executed on or after the effective date of the Student Loan Bill of Rights Act shall not include a provision that permits the private education lender to accelerate, in whole or in part, payments on the private education loan, except in cases of payment default. A lender shall not place any loan or account into default or accelerate a loan for any reason, other than for payment default.

B. A private education loan executed prior to the effective date of the Student Loan Bill of Rights Act shall permit the lender to accelerate payments only if the promissory note or loan agreement explicitly authorizes an acceleration and only for the reasons stated in the note or agreement.

C. In the event of the death of a cosigner, the lender shall not attempt to collect against the cosigner's

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estate, other than for payment default.

D. Upon receiving notification of the death or bankruptcy of a cosigner, when the private education loan is not more than sixty days delinquent at the time of the notification, the lender shall not change any terms or benefits under the promissory note, repayment schedule, repayment terms or monthly payment amount or any other provision associated with the private education loan.

E. A lender shall not place any private loan or account into default or accelerate a private loan while a borrower is seeking a private loan modification or enrollment in a flexible repayment plan, except that a lender may place a private loan or account into default or accelerate a private loan for payment default ninety days following the student loan borrower's default.

**SECTION 17. [NEW MATERIAL] PRIVATE EDUCATION LENDERS--
PROHIBITED ACTS.--**

A. A private education lender shall not:

(1) offer any private education loan that is not in conformity with the Student Loan Bill of Rights Act or that is in violation of any other state or federal law;

(2) make a private education loan upon security of any assignment of or order for the payment of any salary, wages, commissions or other compensation for services earned or to be earned. No assignment or order shall be taken

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by a lender in connection with a private education loan, or for the enforcement or repayment thereof, and any assignment or order taken or given to secure any loan made by any lender under the Student Loan Bill of Rights Act shall be void;

(3) directly or indirectly employ a scheme, device or artifice to defraud or mislead a student loan borrower or cosigner;

(4) engage in an unfair or deceptive trade practice or unconscionable trade practice toward a person or misrepresent or omit material information in connection with the lending or servicing of a private education loan, including misrepresenting the amount, nature or terms of a fee or payment due or claimed to be due on a private education loan, the terms and conditions of the loan agreement or the student loan borrower's or cosigner's obligations under the loan;

(5) engage in abusive acts or practices when lending or servicing a private education loan. An abusive act or practice includes:

(a) material interference with the ability of a student loan borrower or cosigner to understand a term or condition of a private education loan; or

(b) taking unreasonable advantage of any of the following: a lack of understanding on the part of a student loan borrower or cosigner of the material risks, costs or conditions of the private education loan; the inability of a

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student loan borrower or cosigner to protect the borrower's or cosigner's interests when selecting or using a private education loan or a feature, term or condition of a private education loan; or the reasonable reliance by the student loan borrower or cosigner on a person engaged in lending or servicing a private education loan to act in the interests of the borrower or cosigner;

(6) obtain property by fraud or misrepresentation;

(7) misapply private education loan payments to the outstanding balance of a student education loan;

(8) provide inaccurate information to a credit bureau;

(9) fail to report a favorable or unfavorable payment history of a student loan borrower or cosigner to a nationally recognized consumer credit bureau at least annually if the private education lender regularly reports information to a credit bureau;

(10) refuse to communicate with an authorized representative of a student loan borrower or cosigner who provides a written authorization signed by the student loan borrower; provided that the private education lender may adopt procedures reasonably related to verifying that the representative is authorized to act on behalf of the student loan borrower;

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(11) negligently make a false statement or knowingly and willfully make an omission of a material fact in connection with any information or report filed with a governmental agency or in connection with an investigation conducted by the director or another governmental agency;

(12) fail to respond within fifteen days to communication from the student loan ombudsman, or within a shorter reasonable time as the student loan ombudsman may request in the communication; or

(13) fail to respond within fifteen days to a student loan borrower or cosigner complaint submitted to the lender by the student loan ombudsman. If necessary, a private education lender may request additional time, up to forty-five days, as long as the request is accompanied by an explanation of why additional time is reasonable and necessary.

B. A violation of this section is an unfair or deceptive trade practice or an unconscionable trade practice pursuant to the Unfair Practices Act and is subject to the enforcement and penalty provisions contained in that act.

SECTION 18. [NEW MATERIAL] MARKET MONITORING.--

A. The director may monitor for risks to consumers in the provision of student loan servicing and student education loans, including private education loans in New Mexico and developments in the market for those services, by compiling and analyzing data and other information based on any

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of the following considerations:

(1) the likely risks and costs to consumers associated with using or repaying a student education loan or with the servicing of a student education loan;

(2) the understanding by consumers of the risks of a student education loan or the servicing of a student education loan;

(3) the legal protections applicable to the offering or provision of a student education loan or the servicing of a student education loan, including the extent to which the law is likely to adequately protect consumers;

(4) the rates of growth in the offering or provision of a student education loan or the servicing of that loan;

(5) the extent, if any, to which the risks of a student education loan or the servicing of a student education loan disproportionately affect traditionally underserved consumers; and

(6) the type, number and other pertinent characteristics of private education lenders and student loan servicers in New Mexico.

B. In conducting monitoring or assessment authorized by this section, the director may gather information regarding the organization, business conduct, markets and activities of private education lenders and student loan

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servicers in New Mexico, except if that private education lender or student loan servicer is a national bank as defined in 12 U.S.C. Section 25b, and only to the extent that the requirements of this subsection are preempted with respect to national banks pursuant to 12 U.S.C. Section 25B, et seq. The director may enter into contracts to perform the duties required by this section, as necessary.

C. In order to gather information described in Subsection B of this section, the director may do the following:

(1) gather and compile information from a variety of sources, including consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with private education lenders and student loan servicers and service providers, and review of available databases; and

(2) require persons engaged in private education lending or student loan servicing and subject to the Student Loan Bill of Rights Act to file, under oath or otherwise, in the form and within a reasonable period of time as the director may prescribe, annual or special reports, or answers in writing to specific questions, as necessary for the director to fulfill the monitoring, assessment and reporting responsibilities set forth in this section.

D. In addition to any other market monitoring

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activities deemed necessary by the director pursuant to Subsection A of this section, the division may gather and compile information from private education lenders and student loan servicers to assemble data that assesses the total size of the student loan market in New Mexico, the servicing of loans owed by borrowers at risk of default, the servicing of private education loans owed by borrowers experiencing financial distress and the servicing of federal student education loans for borrowers who seek to repay their loans under an income-driven repayment plan as described in Section 1070 et seq. of Title 20 of the United States Code.

E. The director may, on a quarterly basis, develop and publicize metrics based on data collected pursuant to this section, and those metrics may identify each private education lender and student loan servicer and publish relevant metrics related to performance of each such persons. In executing the function described in this section, the director may meet and confer with the student loan ombudsman, the office of the attorney general and the higher education department.

F. To fulfill the monitoring and assessment authorized by this section and to carry out the purposes of this section, the director may:

- (1) retain attorneys, accountants or other professionals;
- (2) enter into agreements or relationships

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with other government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained pursuant to this section;

(3) use, hire, contract or employ public or privately available analytical systems, methods or software;

(4) rely on examination or investigation reports made by other government officials, whether in or outside of New Mexico; and

(5) accept audit reportings made by an independent certified public accountant for the private education lender, student loan servicer or person subject to the Student Loan Bill of Rights Act.

SECTION 19. [NEW MATERIAL] POWERS OF THE DIRECTOR.--

A. The director may conduct investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or for general or specific inquiry or investigation, to determine compliance with the Student Loan Bill of Rights Act. The director may access, receive and use any documents, information or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of those documents or that information or evidence.

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B. For the purposes of investigating violations or complaints arising pursuant to the Student Loan Bill of Rights Act or for the purposes of examination, the director may review, investigate or examine the activities of any private education lender or student loan servicer as often as necessary to carry out the purposes of that act. The director may direct, subpoena or order the attendance of and examine under oath a person whose testimony may be required about the student education loan or the business or subject matter of the examination or investigation and may direct, subpoena or order the person to produce books, accounts, records, files and any other documents the director deems relevant to the inquiry.

C. In making an examination or investigation authorized by the Student Loan Bill of Rights Act, the director may control access to any documents or records of the student loan servicer licensee or person under examination or investigation related to the student education loan. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where the documents and records are usually kept. During the period of control, a person shall not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the student loan servicer licensee or

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person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of the Student Loan Bill of Rights Act, the student loan servicer licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs. Nothing in this subsection shall be construed as limiting the student loan borrower's access to the borrower's own account records.

D. To fulfill the duties imposed by this section and to carry out the purposes of this section, the director may:

(1) retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;

(2) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained pursuant to this section;

(3) use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the student loan servicer, private education lender or person subject to the Student Loan Bill of

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Rights Act;

(4) rely on examination or investigation reports made by other government officials, whether in or outside of New Mexico; and

(5) accept audit reports made by an independent certified public accountant for the student loan servicer, private education lender or person subject to the Student Loan Bill of Rights Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation or other writing of the director.

E. A student loan servicer, private education lender or person subject to investigation or examination under this section shall not knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

F. The costs of an investigation or examination conducted by the director shall be paid by the student loan servicer, private education lender or person being investigated. When it becomes necessary to examine or investigate the books and records of a licensee under this section at a location outside of New Mexico, the licensee shall be liable for and shall pay to the division within thirty days of the presentation of an itemized statement the actual travel

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and reasonable living expenses incurred on account of its examination, supervision and regulation or shall pay a reasonable per diem rate approved by the director.

SECTION 20. [NEW MATERIAL] ENFORCEMENT BY DIRECTOR.--

A. To ensure the effective supervision and enforcement of the Student Loan Bill of Rights Act and in accordance with the procedures provided in the Uniform Licensing Act, the director may:

(1) deny, suspend, revoke or decline to renew a license for a violation of the Student Loan Bill of Rights Act, rules issued pursuant to that act or an order or directive entered pursuant to that act;

(2) deny, suspend, revoke or decline to renew a license if an applicant or student loan servicer fails at any time to meet the requirements of Subsection F of Section 4 of the Student Loan Bill of Rights Act; and

(3) issue orders or directives as follows:

(a) order or direct student loan servicers or private education lenders to cease and desist from conducting business related to student education loans, including issuing an immediate temporary order to cease and desist;

(b) order or direct student loan servicers or private education lenders to cease any violations of the Student Loan Bill of Rights Act; and

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(c) enter immediate temporary orders to cease any business licensed pursuant to the Student Loan Bill of Rights Act if the director determines that the license was erroneously granted or the licensed student loan servicer is currently in violation of that act.

B. The director may impose an administrative penalty on a student loan servicer if the director finds, from the record after notice and opportunity for a recorded hearing, that the student loan servicer has violated or failed to comply with any requirement of the Student Loan Bill of Rights Act or any rule promulgated by the director pursuant to that act or any order issued pursuant to that act. The maximum amount of penalty for each act or omission shall be five thousand dollars (\$5,000).

SECTION 21. [NEW MATERIAL] JUDICIAL ENFORCEMENT.--

A. Upon a showing by the director that a person has violated, or is about to violate, the Student Loan Bill of Rights Act or any rule or order of the director pursuant to that act, the district court of the first judicial district or HEC→~~other appropriate district court in the state~~←HEC HEC→**the district court in the judicial district where the student loan borrower or cosigner resides**←HEC may grant or impose one or more of the following:

(1) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of

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prohibition or mandamus;

(2) a civil penalty up to a maximum of five thousand dollars (\$5,000) for each violation;

(3) declaratory judgment;

(4) restitution to student loan borrowers or cosigners;

(5) recovery by the director of all costs and expenses for conducting an investigation or the bringing of any enforcement action pursuant to the Student Loan Bill of Rights Act; or

(6) other relief as the court deems proper.

B. In determining the appropriate relief, the court shall consider administrative enforcement actions taken and imposed by the director pursuant to the Student Loan Bill of Rights Act in connection with the transactions constituting violations of that act.

C. The court shall not require the director to post bond in an action pursuant to this section.

SECTION 22. [NEW MATERIAL] COMPLIANCE WITH FEDERAL LAW.--

A. A student loan servicer licensee shall comply with all applicable federal laws and regulations relating to student loan servicing. In addition to any other remedies provided by law, a violation of an applicable federal law or regulation is a violation of the Student Loan Bill of Rights Act.

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B. A private education lender shall comply with all applicable federal laws and regulations relating to the lending of servicing of private education loans. In addition to any other remedies provided by law, a violation of an applicable federal law or regulation is a violation of the Student Loan Bill of Rights Act.

SECTION 23. [NEW MATERIAL] PROMULGATION OF RULES.--The director may promulgate rules and make reasonable orders necessary to implement the Student Loan Bill of Rights Act. A copy of every rule and of every order containing requirements of general application shall be mailed to each licensee not less than fifteen days before the effective date of the rule or order.

SECTION 24. [NEW MATERIAL] STUDENT LOAN OMBUDSMAN--
DUTIES--ANNUAL REPORT.--

A. The director shall designate a student loan ombudsman within the division to provide timely assistance to student loan borrowers.

B. The student loan ombudsman, in collaboration with the office of the attorney general and the higher education department, shall:

(1) receive, review and attempt to resolve complaints from student loan borrowers;

(2) compile and analyze data regarding student loan borrower complaints received by the ombudsman;

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(3) assist student loan borrowers and cosigners in understanding their rights and responsibilities under the terms of student education loans;

(4) provide information to the public, state agencies, state legislators and others regarding the problems and concerns of student loan borrowers and make recommendations for resolving those problems and concerns;

(5) analyze and monitor the development and implementation of federal laws, regulations and policies and state laws, rules and policies relating to student loan borrowers and make recommendations for any changes the ombudsman deems necessary;

(6) review the complete student education loan history for any student loan borrower who has provided written consent for that review;

(7) disseminate information concerning the availability of the student loan ombudsman to assist student loan borrowers, cosigners, potential student loan borrowers, potential cosigners, post-secondary educational institutions, student loan servicers and other participants in student education loan lending with student loan servicing concerns; and

(8) take any other action the ombudsman deems necessary to fulfill the duties of the student loan ombudsman.

C. The division, including the student loan

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ombudsman, the office of the attorney general and the higher education department, or their designees, shall meet at least once per quarter to coordinate their efforts under Subsection B of this section.

D. On or before July 1, 2024, the student loan ombudsman, in collaboration with the office of attorney general and the higher education department, shall establish and maintain a student loan borrower education course that includes educational presentations and materials regarding student education loans. The student loan borrower education course shall review key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness and disclosure requirements.

E. On or before December 1, 2025, and annually thereafter, the director shall submit a report to the appropriate legislative interim committee. Annual reports shall be made available to interested parties and the general public and published on the division's website and on the sunshine portal. Consistent with state law, the report shall include, at a minimum, non-identifying consumer data from the preceding calendar year, including the following information:

(1) for each licensee:

(a) the number of loans the licensee is servicing in New Mexico and the total outstanding balance;

(b) the number of loans, percentage of

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all loans and the total outstanding balance of all loans that the licensee is servicing that are currently in default;

(c) the number, percentage of all loans and the total outstanding balance of all loans that the licensee is servicing that are more than sixty days delinquent;

(d) the number, percentage of all loans and the total outstanding balance of all loans that the licensee is servicing that have been paid off; and

(e) the number, percentage of all loans and the total outstanding balance of all loans the licensee is servicing that have been forgiven or discharged;

(2) information regarding the implementation of the Student Loan Bill of Rights Act;

(3) the overall effectiveness of the student loan ombudsman position, including information, in the aggregate, regarding the number and categories of student loan borrower and cosigner complaints filed with the division and the office of the attorney general;

(4) the number of student loan borrower and cosigner complaints investigated and resolved by the division and the office of the attorney general; and

(5) any recommendations pertaining to the division's regulation of student loan servicers and private education lenders and the enforcement of the provisions of the Student Loan Bill of Rights Act.

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SECTION 25. [NEW MATERIAL] INFORMATION SHARING.--By July 31, 2024, the division, the student loan ombudsman, the office of the attorney general and the higher education department shall enter into an agreement to allow for the sharing of all necessary information.

SECTION 26. [NEW MATERIAL] PRIVATE ACTION.--

A. A person who suffers damage as a result of the failure of a student loan servicer or private education lender to comply with a provision of the Student Loan Bill of Rights Act may bring an action in district court against that student loan servicer or private education lender to recover any of the following:

(1) actual damages, but in no case shall the total award of damages be less than five hundred dollars (\$500) per violation;

(2) an order enjoining the methods, acts or practices causing the compliance failure;

(3) restitution of property;

(4) punitive damages;

(5) attorney fees; and

(6) other relief the court deems proper.

B. In addition to any other remedies provided by this section or otherwise provided by law, whenever it is proven by a preponderance of the evidence that a student loan servicer or private education lender has engaged in conduct

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that substantially interferes with a student loan borrower's right to an alternative payment arrangement; loan forgiveness, cancellation or discharge; or any other financial benefit as established under the terms of a borrower's promissory note or under the federal Higher Education Act of 1965, and the regulations promulgated pursuant to that act, the court shall award treble actual damages to the plaintiff, but in no case shall the award of damages be less than one thousand five hundred dollars (\$1,500) per violation.

C. The remedies provided in the Student Loan Bill of Rights Act are not intended to be the exclusive remedies available to a person suffering damage due to the non-compliance of a student loan servicer or private education lender, and the person shall not be required to exhaust administrative remedies established pursuant to the Student Loan Bill of Rights Act or any other applicable law prior to bringing a private right of action.

SECTION 27. [NEW MATERIAL] STUDENT LOAN BILL OF RIGHTS FUND--CREATED--PURPOSE--APPROPRIATION.--

A. The "student loan bill of rights fund" is created as a nonreverting fund in the state treasury and shall be administered by the division. The fund consists of fees collected by the division pursuant to the Student Loan Bill of Rights Act and money that is appropriated or donated or that otherwise accrues to the fund. Income from investment of the

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fund shall be credited to the fund.

B. Money in the student loan bill of rights fund is appropriated to the division to carry out the provisions of the Student Loan Bill of Rights Act.

C. Expenditures from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director or the director's authorized representative.

SECTION 28. Section 57-12-2 NMSA 1978 (being Laws 1967, Chapter 268, Section 2, as amended) is amended to read:

"57-12-2. DEFINITIONS.--As used in the Unfair Practices Act:

A. "person" means, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or the seller's representative solicits the sale by telephoning the prospective purchaser and in which the sale is consummated entirely by telephone or mail, but does not include a transaction:

(1) in which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or

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(2) in which the purchaser is accorded the right of rescission by the provisions of the federal Consumer Credit Protection Act, 15 U.S.C. 1635, or regulations issued pursuant thereto;

C. "trade" or "commerce" includes the advertising, offering for sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of this state;

D. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the Unfair Practices Act, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person and includes:

(1) representing goods or services as those of another when the goods or services are not the goods or services of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(3) causing confusion or misunderstanding as

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to affiliation, connection or association with or certification by another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that the person does not have;

(6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

(8) disparaging the goods, services or business of another by false or misleading representations;

(9) offering goods or services with intent not to supply them in the quantity requested by the prospective buyer to the extent of the stock available, unless the purchaser is purchasing for resale;

(10) offering goods or services with intent not to supply reasonable expectable public demand;

(11) making false or misleading statements of

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fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of or amounts of price reduction;

(12) making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;

(13) packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

(15) stating that a transaction involves rights, remedies or obligations that it does not involve;

(16) stating that services, replacements or repairs are needed if they are not needed;

(17) failing to deliver the quality or quantity of goods or services contracted for;

(18) violating the Tobacco Escrow Fund Act;

[or]

(19) offering or providing unposted or

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unadvertised pricing or service based on the buyer's gender or perceived gender identity; provided, however, that this provision does not apply to persons regulated by the office of superintendent of insurance pursuant to the New Mexico Insurance Code; or

(20) violating Section 10 or 17 of the Student Loan Bill of Rights Act; and

E. "unconscionable trade practice" means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts that to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; ~~[or]~~

(2) results in a gross disparity between the value received by a person and the price paid; or

(3) violates Section 10 or 17 of the Student Loan Bill of Rights Act."

SECTION 29. APPLICABILITY.--The provisions of Section 11 of this act apply to private education loans issued on or after January 1, 2024.

SECTION 30. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2024.

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