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HOUSE BILL 71

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Christine Chandler and Dayan Hochman-Vigil and
Patricia Roybal Caballero

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
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 OMBUD; DEFINING
CERTAIN VIOLATIONS OF THE STUDENT LOAN BILL OF RIGHTS ACT AS
UNFAIR AND UNCONSCIONABLE TRADE PRACTICES; CREATING A PRIVATE
RIGHT OF ACTION; CREATING THE STUDENT LOAN BILL OF RIGHTS FUND;

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1 MAKING AN APPROPRIATION.

2

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

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

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

9 A. "cosigner":

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

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

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

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

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

25 D. "person" includes legal representatives,

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1 unincorporated organizations, trustees, fiduciaries and public
2 entities;

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

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

15 (1) a bank or credit union;

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

18 (3) an operating subsidiary of a bank or
19 credit union where each owner of the operating subsidiary is
20 wholly owned by the same bank or credit union; and

21 (4) the higher education department;

22 G. "private education loan":

23 (1) means an extension of credit that is not
24 made, insured or guaranteed under Title 4 of the federal Higher
25 Education Act of 1965;

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

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

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

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

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

16 H. "servicing" includes:

17 (1) receiving scheduled periodic payments from
18 a student loan borrower pursuant to the terms of a student
19 education loan;

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

24 (3) maintaining account records for a student
25 education loan and communicating with a student loan borrower

1 regarding a loan on behalf of the loan's holder during a period
2 when no payment is required on the loan; and

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

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

11 J. "student loan borrower" means:

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

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

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

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

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

24 (2) is unable to engage in any substantial
25 gainful activity by reason of any medically determinable

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1 physical or mental impairment that can be expected to result in
2 death, has lasted for a continuous period of not less than
3 twelve months or can be expected to last for a continuous
4 period of not less than twelve months."

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

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

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

- 13 (1) a bank or credit union;
14 (2) a wholly owned subsidiary of a bank or
15 credit union;
16 (3) an operating subsidiary of a bank or
17 credit union where each owner of the operating subsidiary is
18 wholly owned by the same bank or credit union; and
19 (4) the higher education department.

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

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

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

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

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

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

17 B. The director may periodically reduce or increase
18 the amount of one or more of the fees in Subsection A of this
19 section, but in no case more than the initial fees.

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

24 D. Upon the filing of an application for an initial
25 license and the payment of required fees, the director shall

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1 investigate the financial condition and responsibility, the
2 financial and business experience and the character and general
3 fitness of the applicant.

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

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

11 (1) the applicant has submitted a completed
12 application;

13 (2) the applicant's financial condition is
14 sound;

15 (3) the applicant's business will be conducted
16 honestly, fairly, equitably, carefully, efficiently and in a
17 manner commanding the confidence and trust of the community;

18 (4) the applicant or a partner, member,
19 officer, director, trustee, fiduciary or principal employee of
20 the applicant has not been convicted of a crime that relates to
21 money lending, financing, financial matters, fiduciary status,
22 trustee status, fraud or another matter that substantially
23 relates to the qualifications, functions or duties of a student
24 loan servicer;

25 (5) a person has not made an incorrect

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1 statement of a material fact on behalf of the applicant either
2 in the application or in a report or statement made pursuant to
3 the Student Loan Bill of Rights Act;

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

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

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

14 (9) if the applicant is:

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

17 (b) a partnership, the partnership is
18 registered to do business in New Mexico and is in good
19 standing, and each partner is in all respects properly
20 qualified and of good character;

21 (c) a corporation or association, the
22 corporation or association is registered to do business in New
23 Mexico and is in good standing, and the following are in all
24 respects properly qualified and of good character: 1) the
25 president; 2) the executive committee chair; 3) the senior

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1 officer responsible for the corporation's business; 4) the
2 chief financial officer; 5) any other person who performs
3 functions similar to those described in Items 1) through 4) of
4 this subparagraph and as determined by the director; and 6)
5 each director, each trustee and each shareholder owning ten
6 percent or more of each class of the securities of the
7 corporation or association; or

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

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

15 A. A person seeking to act as a student loan
16 servicer is excepted from the application procedures described
17 in Subsection A of Section 4 of the Student Loan Bill of Rights
18 Act upon a determination by the director that the person's
19 student loan servicing performed in this state is conducted
20 pursuant to a contract awarded by the United States secretary
21 of education pursuant to 20 U.S.C. Section 1087f. The director
22 shall prescribe the procedure to document eligibility for the
23 exception.

24 B. A person deemed excepted by the director
25 pursuant to this section shall, upon payment of the fees

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1 required by Section 4 of the Student Loan Bill of Rights Act,
2 automatically be issued a license by the director and shall be
3 considered by the director to have met all requirements set
4 forth in Subsection F of Section 4 of the Student Loan Bill of
5 Rights Act.

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

13 D. A person issued a license pursuant to this
14 section shall provide the director with written notice within
15 seven days following notification of the expiration, revocation
16 or termination of a contract awarded by the United States
17 secretary of education pursuant to 20 U.S.C. Section 1087f.
18 The person has thirty days following notification to satisfy
19 all requirements established under Subsection F of Section 4 of
20 the Student Loan Bill of Rights Act in order to continue to act
21 as a student loan servicer. At the expiration of the thirty-
22 day period if the requirements have not been satisfied, the
23 director shall immediately suspend a license granted to the
24 person pursuant to this section.

25 E. With respect to student loan servicing not

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1 conducted pursuant to a contract awarded by the United States
2 secretary of education pursuant to 20 U.S.C. Section 1087f,
3 nothing in this section prevents the director from issuing or
4 filing a civil action for an order to temporarily or
5 permanently bar a person from acting as a student loan servicer
6 or violating applicable law.

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

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

15 B. Not later than fifteen days after a licensee
16 ceases to engage in the business of student loan servicing in
17 New Mexico for any reason, the licensee shall provide written
18 notice of surrender to the director and shall surrender to the
19 director its license for each location in which the licensee
20 has ceased to engage in the business of student loan servicing.
21 The written notice of surrender shall identify the location
22 where the records of the licensee will be stored and the name,
23 address and telephone number of an individual authorized to
24 provide access to the records. The surrender of a license does
25 not reduce or eliminate the licensee's civil or criminal

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1 liability arising from acts or omissions occurring prior to the
2 surrender of the license, including administrative actions by
3 the director to revoke or suspend a license, assess a civil
4 penalty, order restitution or exercise any other authority
5 provided to the director in the Student Loan Bill of Rights
6 Act.

7 C. A license may be renewed for the next twelve-
8 month period upon the filing of an application containing all
9 required documents and fees required by the Student Loan Bill
10 of Rights Act as for an initial license. The renewal
11 application shall be filed on or before November 1 of the year
12 in which the license expires. A renewal application filed with
13 the director after November 1 and before December 31 of the
14 year in which the license expires, but that is accompanied by a
15 one-hundred-dollar (\$100) late fee, shall be deemed to be
16 timely. If an application for a renewal license has been filed
17 with the director on or before the date the license expires,
18 the license sought to be renewed shall continue in full force
19 and effect until the director issues the renewed license or the
20 director has notified the licensee in writing of the director's
21 refusal to renew the license, including the grounds for the
22 refusal. The director may refuse to renew a license on any
23 ground upon which the director may refuse to issue an initial
24 license.

25 D. If the director determines that a check filed

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

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

13 F. The director shall deem an application for a
14 license abandoned if the applicant fails to respond to a
15 request for information required by the Student Loan Bill of
16 Rights Act. The director shall notify the applicant, in
17 writing, that if the applicant fails to submit that information
18 not later than sixty days after the date on which that request
19 for information was made, the application shall be deemed
20 abandoned. An application filing fee paid before the date an
21 application is deemed abandoned pursuant to this subsection
22 shall not be refunded. Abandonment of an application does not
23 preclude the applicant from submitting a new application for a
24 license pursuant to the Student Loan Bill of Rights Act.

25 G. A license fee paid pursuant to the Student Loan

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1 Bill of Rights Act shall not be abated.

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

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

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

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

16 A. All private education lenders and student loan
17 servicers shall maintain adequate records of each student
18 education loan transaction for at least six years following the
19 final payment on a student education loan or the assignment of
20 a student education loan, whichever occurs first, or a longer
21 period the director may require.

22 B. Within five business days of receipt of a
23 request for student education loan records from the director, a
24 private education lender or student loan servicer shall make
25 the records available to the director or shall send the records

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1 to the director by registered or certified mail, return receipt
2 requested or by any express delivery carrier that provides a
3 dated delivery receipt. Upon request, the director may grant a
4 licensee additional time to make the records available or send
5 the records to the director.

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

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

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

16 (2) within thirty days after receiving the
17 inquiry, providing information relating to the inquiry and, if
18 applicable, the action the student loan servicer will take to
19 correct the student loan borrower's account or an explanation
20 of the student loan servicer's position that the borrower's
21 account is correct, including copies of all information and
22 account information used by the student loan servicer in
23 reaching the determination;

24 B. a student loan servicer shall inquire of a
25 student loan borrower how to apply an overpayment or prepayment

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

10 C. in the absence of a direction provided by a
11 student loan borrower pursuant to Subsection B of this section,
12 a student loan servicer shall allocate an overpayment on a
13 student loan account in a manner that is in the best financial
14 interest of a student loan borrower. A student loan servicer
15 shall be considered to meet the requirements of this subsection
16 if the servicer allocates the overpayment to the loan with the
17 highest interest rate on the borrower's student loan account,
18 unless the borrower specifies otherwise. For the purposes of
19 this subsection, "best financial interest of a student loan
20 borrower" means reducing the total cost of the student loan,
21 including principal and balance, interest and fees;

22 D. in the absence of a direction provided by a
23 student loan borrower pursuant to Subsection B of this section,
24 a student loan servicer shall apply a partial payment or
25 underpayment in a manner that minimizes late fees and negative

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1 credit reporting. When loans on a student loan borrower's
2 account have an equal stage of delinquency, a student loan
3 servicer shall apply a partial payment or underpayment to
4 satisfy as many individual loan payments as possible on a
5 borrower's account. For purposes of this subsection, "partial
6 payment" or "underpayment" means a payment on a student
7 education loan account that contains multiple individual loans
8 in an amount less than the amount necessary to satisfy the
9 outstanding payment due on all loans in the student education
10 loan account;

11 E. as a condition of the sale, assignment or
12 transfer, the student loan servicer shall require the new
13 student loan servicer to honor all benefits originally
14 represented as available to the student loan borrower during
15 the repayment of the student education loan and preserve the
16 availability of those benefits, including benefits for which
17 the student loan borrower has not yet qualified. If a student
18 loan servicer is not also the loan holder or is not acting on
19 behalf of the loan holder, the student loan servicer satisfies
20 the requirement established by this subsection by providing the
21 new student loan servicer with information necessary for the
22 new student loan servicer to honor all benefits originally
23 represented as available to a student loan borrower during the
24 repayment of the student education loan and preserve the
25 availability of those benefits, including benefits for which

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1 the student loan borrower has not yet qualified, and:

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

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

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

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

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

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

25 (d) the contact information for the new

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1 student loan servicer;

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

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

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

19 A. A student loan servicer shall not:

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

23 (2) engage in an unfair or deceptive trade
24 practice or unconscionable trade practice toward a person or
25 misrepresent or omit material information in connection with

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1 the servicing of a student education loan, including
2 misrepresenting the amount, nature or terms of a fee or payment
3 due or claimed to be due on a student education loan, the terms
4 and conditions of the loan agreement or the student loan
5 borrower's obligations under the loan;

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

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

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

22 (4) obtain property by fraud or
23 misrepresentation;

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

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1 (6) provide inaccurate information to a credit
2 bureau;

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

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

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

19 (10) fail to properly evaluate a student loan
20 borrower for an income-driven or other student loan repayment
21 program or for eligibility for a public service loan
22 forgiveness program before placing the student loan borrower in
23 forbearance or default if an income-driven repayment or other
24 program is available to the student loan borrower except as
25 otherwise provided in federal law, federal student loan

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1 agreements or a contract between the federal government and a
2 student loan servicer;

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

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

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

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

18 A. For a private education loan issued or executed
19 on or after the effective date of the Student Loan Bill of
20 Rights Act, a private education lender or student loan servicer
21 acting on behalf of a private education lender, when notified
22 of the total and permanent disability of a student loan
23 borrower or cosigner, shall release any cosigner from the
24 obligations under a private education loan. The lender shall
25 not attempt to collect a payment from a cosigner upon notice of

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1 total and permanent disability of the cosigner or borrower.

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

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

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

17 E. In the event a cosigner is released from the
18 obligations of a private education loan pursuant to Subsection
19 A of this section, a lender shall not declare a default or
20 accelerate the debt against the student loan borrower on the
21 sole basis of the release of the cosigner from the loan
22 obligation.

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

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

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

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

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

16 (2) establish policies and procedures and
17 implement them consistently in order to facilitate evaluation
18 of private education loan flexible repayment option requests,
19 including providing accurate information regarding any private
20 education loan alternative repayment options that may be
21 available to the student loan borrower through the promissory
22 note or that may have been marketed to the borrower through
23 marketing materials.

24 B. A private education lender or a student loan
25 servicer acting on behalf of a private education lender shall

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1 consistently present and offer flexible or modified private
2 education loan repayment options to student loan borrowers with
3 similar financial circumstances if the lender offers such
4 repayment options.

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

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

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

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

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

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

25 C. The information provided pursuant to this

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

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

6 A. For any private education loan that obligates a
7 cosigner, a lender shall provide the student loan borrower and
8 the cosigner an annual written notice containing information
9 about cosigner release, including the administrative,
10 nonjudgmental criteria the lender requires to approve the
11 release of the cosigner from the loan obligation and the
12 process for applying for cosigner release.

13 B. If the student loan borrower has met the
14 applicable payment requirement to be eligible for cosigner
15 release, the lender shall send the borrower and the cosigner a
16 written notification by mail and by electronic mail, where a
17 borrower or cosigner has elected to receive electronic
18 communications from the lender, informing the borrower and
19 cosigner that the payment requirement to be eligible for
20 cosigner release has been met. The notification shall also
21 include information about any additional criteria to qualify
22 for cosigner release and the procedure to apply for cosigner
23 release.

24 C. A lender shall provide written notice to a
25 student loan borrower who applies for cosigner release but

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1 whose application is incomplete. The written notice shall
2 include a description of the information needed to consider the
3 application complete and the date by which the applicant shall
4 furnish the missing information.

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

18 E. In response to a written or oral request for
19 cosigner release, a lender shall provide the information
20 described in Subsection B of this section.

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

25 G. A lender shall not impose any negative

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1 consequences on any student loan borrower or cosigner during
2 the sixty days following the issuance of the notice required
3 pursuant to Subsection C of this section, or until the lender
4 makes a final determination about a borrower's cosigner release
5 application. For the purpose of this subsection, "negative
6 consequences" includes the imposition of additional eligibility
7 criteria, negative credit reporting, lost eligibility for
8 cosigner release, late fees, interest capitalization or other
9 financial injury.

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

19 I. If a student loan borrower or cosigner requests
20 a change in terms that restarts the count of consecutive on-
21 time payments required for cosigner release, the lender shall
22 notify the borrower and cosigner in writing of the impact of
23 the change and provide the borrower or cosigner the right to
24 withdraw or reverse the request to avoid that impact.

25 J. A student loan borrower shall have the right to

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1 request an appeal of a lender's determination to deny a request
2 for cosigner release, and the lender shall permit the borrower
3 to submit additional documentation evidencing the borrower's
4 ability, willingness and stability to meet the payment
5 obligations. The student loan borrower may request review of
6 the cosigner release determination by another employee.

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

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

19 A. A lender shall provide a cosigner with access to
20 all documents or records related to the cosigned private
21 education loan that are available to the student loan borrower.

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

25 C. Upon written notice from the student loan

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1 borrower or cosigner, the lender shall redact or withhold
2 contact information for the borrower and cosigner.

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

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

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

18 C. In the event of the death of a cosigner, the
19 lender shall not attempt to collect against the cosigner's
20 estate, other than for payment default.

21 D. Upon receiving notification of the death or
22 bankruptcy of a cosigner, when the private education loan is
23 not more than sixty days delinquent at the time of the
24 notification, the lender shall not change any terms or benefits
25 under the promissory note, repayment schedule, repayment terms

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1 or monthly payment amount or any other provision associated
2 with the private education loan.

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

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

12 A. A private education lender shall not:

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

16 (2) make a private education loan upon
17 security of any assignment of or order for the payment of any
18 salary, wages, commissions or other compensation for services
19 earned or to be earned. No assignment or order shall be taken
20 by a lender in connection with a private education loan, or for
21 the enforcement or repayment thereof, and any assignment or
22 order taken or given to secure any loan made by any lender
23 under the Student Loan Bill of Rights Act shall be void;

24 (3) directly or indirectly employ a scheme,
25 device or artifice to defraud or mislead a student loan

.227043.3

1 borrower or cosigner;

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

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

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

16 (b) taking unreasonable advantage of any
17 of the following: a lack of understanding on the part of a
18 student loan borrower or cosigner of the material risks, costs
19 or conditions of the private education loan; the inability of a
20 student loan borrower or cosigner to protect the borrower's or
21 cosigner's interests when selecting or using a private
22 education loan or a feature, term or condition of a private
23 education loan; or the reasonable reliance by the student loan
24 borrower or cosigner on a person engaged in lending or
25 servicing a private education loan to act in the interests of

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1 the borrower or cosigner;

2 (6) obtain property by fraud or
3 misrepresentation;

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

6 (8) provide inaccurate information to a credit
7 bureau;

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

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

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

25 (12) fail to respond within fifteen days to

.227043.3

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1 communication from the student loan ombud, or within a shorter
2 reasonable time as the student loan ombud may request in the
3 communication; or

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

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

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

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

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

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

.227043.3

1 education loan;

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

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

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

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

16 B. In conducting monitoring or assessment
17 authorized by this section, the director may gather information
18 regarding the organization, business conduct, markets and
19 activities of private education lenders and student loan
20 servicers in New Mexico, except if that private education
21 lender or student loan servicer is a national bank as defined
22 in 12 U.S.C. Section 25b, and only to the extent that the
23 requirements of this subsection are preempted with respect to
24 national banks pursuant to 12 U.S.C. Section 25B, et seq. The
25 director may enter into contracts to perform the duties

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1 required by this section, as necessary.

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

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

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

19 D. In addition to any other market monitoring
20 activities deemed necessary by the director pursuant to
21 Subsection A of this section, the division may gather and
22 compile information from private education lenders and student
23 loan servicers to assemble data that assesses the total size of
24 the student loan market in New Mexico, the servicing of loans
25 owed by borrowers at risk of default, the servicing of private

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1 education loans owed by borrowers experiencing financial
2 distress and the servicing of federal student education loans
3 for borrowers who seek to repay their loans under an income-
4 driven repayment plan as described in Section 1070 et seq. of
5 Title 20 of the United States Code.

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

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

17 (1) retain attorneys, accountants or other
18 professionals;

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

25 (3) use, hire, contract or employ public or

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1 privately available analytical systems, methods or software;

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

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

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

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

20 B. For the purposes of investigating violations or
21 complaints arising pursuant to the Student Loan Bill of Rights
22 Act or for the purposes of examination, the director may
23 review, investigate or examine the activities of any private
24 education lender or student loan servicer as often as necessary
25 to carry out the purposes of that act. The director may

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1 direct, subpoena or order the attendance of and examine under
2 oath a person whose testimony may be required about the student
3 education loan or the business or subject matter of the
4 examination or investigation and may direct, subpoena or order
5 the person to produce books, accounts, records, files and any
6 other documents the director deems relevant to the inquiry.

7 C. In making an examination or investigation
8 authorized by the Student Loan Bill of Rights Act, the director
9 may control access to any documents or records of the student
10 loan servicer licensee or person under examination or
11 investigation related to the student education loan. The
12 director may take possession of the documents and records or
13 place a person in exclusive charge of the documents and records
14 in the place where the documents and records are usually kept.
15 During the period of control, a person shall not remove or
16 attempt to remove any of the documents and records except
17 pursuant to a court order or with the consent of the director.
18 Unless the director has reasonable grounds to believe the
19 documents or records of the student loan servicer licensee or
20 person have been, or are at risk of being, altered or destroyed
21 for purposes of concealing a violation of the Student Loan Bill
22 of Rights Act, the student loan servicer licensee or owner of
23 the documents and records shall have access to the documents or
24 records as necessary to conduct its ordinary business affairs.
25 Nothing in this subsection shall be construed as limiting the

.227043.3

1 student loan borrower's access to the borrower's own account
2 records.

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

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

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

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

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

24 (5) accept audit reports made by an
25 independent certified public accountant for the student loan

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1 servicer, private education lender or person subject to the
2 Student Loan Bill of Rights Act in the course of that part of
3 the examination covering the same general subject matter as the
4 audit and may incorporate the audit report in the report of
5 examination, report of investigation or other writing of the
6 director.

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

12 F. The costs of an investigation or examination
13 conducted by the director shall be paid by the student loan
14 servicer, private education lender or person being
15 investigated. When it becomes necessary to examine or
16 investigate the books and records of a licensee under this
17 section at a location outside of New Mexico, the licensee shall
18 be liable for and shall pay to the division within thirty days
19 of the presentation of an itemized statement the actual travel
20 and reasonable living expenses incurred on account of its
21 examination, supervision and regulation or shall pay a
22 reasonable per diem rate approved by the director.

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

24 A. To ensure the effective supervision and
25 enforcement of the Student Loan Bill of Rights Act and in

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1 accordance with the procedures provided in the Uniform
2 Licensing Act, the director may:

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

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

11 (3) issue orders or directives as follows:

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

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

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

25 B. The director may impose an administrative

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1 penalty on a student loan servicer if the director finds, from
2 the record after notice and opportunity for a recorded hearing,
3 that the student loan servicer has violated or failed to comply
4 with any requirement of the Student Loan Bill of Rights Act or
5 any rule promulgated by the director pursuant to that act or
6 any order issued pursuant to that act. The maximum amount of
7 penalty for each act or omission shall be five thousand dollars
8 (\$5,000).

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

10 A. Upon a showing by the director that a person has
11 violated, or is about to violate, the Student Loan Bill of
12 Rights Act or any rule or order of the director pursuant to
13 that act, the district court of the first judicial district or
14 the district court in the judicial district where the student
15 loan borrower or cosigner resides may grant or impose one or
16 more of the following:

17 (1) a temporary restraining order, permanent
18 or temporary prohibitory or mandatory injunction or a writ of
19 prohibition or mandamus;

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

22 (3) declaratory judgment;

23 (4) restitution to student loan borrowers or
24 cosigners;

25 (5) recovery by the director of all costs and

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1 expenses for conducting an investigation or the bringing of any
2 enforcement action pursuant to the Student Loan Bill of Rights
3 Act; or

4 (6) other relief as the court deems proper.

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

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

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

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

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

25 SECTION 23. [NEW MATERIAL] PROMULGATION OF RULES.--The

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1 director may promulgate rules and make reasonable orders
2 necessary to implement the Student Loan Bill of Rights Act. A
3 copy of every rule and of every order containing requirements
4 of general application shall be mailed to each licensee not
5 less than fifteen days before the effective date of the rule or
6 order.

7 SECTION 24. [NEW MATERIAL] STUDENT LOAN OMBUD--DUTIES--
8 ANNUAL REPORT.--

9 A. The director shall designate a student loan
10 ombud within the division to provide timely assistance to
11 student loan borrowers.

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

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

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

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

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

.227043.3

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

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

9 (7) disseminate information concerning the
10 availability of the student loan ombud to assist student loan
11 borrowers, cosigners, potential student loan borrowers,
12 potential cosigners, post-secondary educational institutions,
13 student loan servicers and other participants in student
14 education loan lending with student loan servicing concerns;
15 and

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

18 C. The division, including the student loan ombud,
19 the office of the attorney general and the higher education
20 department, or their designees, shall meet at least once per
21 quarter to coordinate their efforts under Subsection B of this
22 section.

23 D. On or before July 1, 2025, the student loan
24 ombud, in collaboration with the office of attorney general and
25 the higher education department, shall establish and maintain a

1 student loan borrower education course that includes
2 educational presentations and materials regarding student
3 education loans. The student loan borrower education course
4 shall review key loan terms, documentation requirements,
5 monthly payment obligations, income-based repayment options,
6 loan forgiveness and disclosure requirements.

7 E. On or before December 1, 2026, and annually
8 thereafter, the director shall submit a report to the
9 appropriate legislative interim committee. Annual reports
10 shall be made available to interested parties and the general
11 public and published on the division's website and on the
12 sunshine portal. Consistent with state law, the report shall
13 include, at a minimum, non-identifying consumer data from the
14 preceding calendar year, including the following information:

15 (1) for each licensee:

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

18 (b) the number of loans, percentage of
19 all loans and the total outstanding balance of all loans that
20 the licensee is servicing that are currently in default;

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

24 (d) the number, percentage of all loans
25 and the total outstanding balance of all loans that the

.227043.3

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1 licensee is servicing that have been paid off; and

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

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

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

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

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

19 SECTION 25. [NEW MATERIAL] INFORMATION SHARING.--By July
20 31, 2025, the division, the student loan ombud, the office of
21 the attorney general and the higher education department shall
22 enter into an agreement to allow for the sharing of all
23 necessary information.

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

25 A. A person who suffers damage as a result of the

.227043.3

1 failure of a student loan servicer or private education lender
2 to comply with a provision of the Student Loan Bill of Rights
3 Act may bring an action in district court against that student
4 loan servicer or private education lender to recover any of the
5 following:

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

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

11 (3) restitution of property;

12 (4) punitive damages;

13 (5) attorney fees; and

14 (6) other relief the court deems proper.

15 B. In addition to any other remedies provided by
16 this section or otherwise provided by law, whenever it is
17 proven by a preponderance of the evidence that a student loan
18 servicer or private education lender has engaged in conduct
19 that substantially interferes with a student loan borrower's
20 right to an alternative payment arrangement; loan forgiveness,
21 cancellation or discharge; or any other financial benefit as
22 established under the terms of a borrower's promissory note or
23 under the federal Higher Education Act of 1965, and the
24 regulations promulgated pursuant to that act, the court shall
25 award treble actual damages to the plaintiff, but in no case

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1 shall the award of damages be less than one thousand five
2 hundred dollars (\$1,500) per violation.

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

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

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

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

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

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1 authorized representative.

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

4 "57-12-2. DEFINITIONS.--As used in the Unfair Practices
5 Act:

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

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

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

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

23 C. "trade" or "commerce" includes the advertising,
24 offering for sale or distribution of any services and any
25 property and any other article, commodity or thing of value,

.227043.3

1 including any trade or commerce directly or indirectly
2 affecting the people of this state;

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

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

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

18 (3) causing confusion or misunderstanding as
19 to affiliation, connection or association with or certification
20 by another;

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

24 (5) representing that goods or services have
25 sponsorship, approval, characteristics, ingredients, uses,

.227043.3

1 benefits or quantities that they do not have or that a person
2 has a sponsorship, approval, status, affiliation or connection
3 that the person does not have;

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

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

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

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

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

18 (11) making false or misleading statements of
19 fact concerning the price of goods or services, the prices of
20 competitors or one's own price at a past or future time or the
21 reasons for, existence of or amounts of price reduction;

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

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

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

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

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

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

16 (18) violating the Tobacco Escrow Fund Act;
17 [~~or~~]

18 (19) offering or providing unposted or
19 unadvertised pricing or service based on the buyer's gender or
20 perceived gender identity; provided, however, that this
21 provision does not apply to persons regulated by the office of
22 superintendent of insurance pursuant to the New Mexico
23 Insurance Code; or

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

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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, 2025.

SECTION 30. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2025.