

LFC Requester:	Ginger Anderson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: **Date** 1/16/2024
Original **Amendment** **Bill No:** HB 71
Correction **Substitute**

Sponsor: Representative Christine Chandler **Agency Name and Code Number:** Regulation & Licensing Dept./Financial Inst. Div. (FID) - 420
Short Title: Student Loan Bill of Rights **Person Writing Phone:** Mark Sadowski - FID Director (505)476-4566 **Email** mark.sadowski@rld.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	Indeterminate	Indeterminate	Recurring	Student Loan Bill of Rights Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	\$285.0	NFI	\$285.0	Nonrecurring	General Fund
Total	NFI	NFI	\$569.9	\$569.9	Recurring	Student Loan Bill of Rights Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A
 Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 71 enacts the Student Loan Bill of Rights Act (“Act”) to regulate student loan servicers and private education lenders that extend private education loans. The bill charges the Director of the Regulation and Licensing Department’s (RLD) Financial Institutions Division (FID) with issuing license to student loan servicers and private education lenders in New Mexico and provides for discharge of loans in cases of permanent disability. The bill further provides that violations of the Act are subject to the enforcement and penalty provisions of the Unfair Practices Act. The bill also creates an ombudsperson position to assist student loan borrowers, whose duties would include reviewing and resolving complaints, educating borrowers on their rights and responsibilities, and monitoring trends in federal, state, and local laws. It further directs the Director of the FID and the ombudsperson to submit annual reports to the Legislature on the implementation and effectiveness of the Act.

More specifically,

Section 2 provides for definitions including “private education loan” to include extension of credit not made, insured, or guaranteed under Title IV of the federal Higher Education Act of 1965. Banks, credit unions, and their subsidiaries, and the Higher Education Department (HED), to the extent that state regulation is preempted by federal law, are exempt from being considered a “private education lender.”

Section 3 requires student loan *servicers* to be licensed unless those servicers are a bank, credit union, their subsidiary, or the HED.

Section 4 sets out the licensure application process that includes investigating applicants and conducting background checks to assess if they are financially sound and of good character. The application process includes initial licensing fees and investigation fees not to exceed \$5,000 each.

Section 5 provides an exception from the licensure process for *federal* student loan servicing contractors, upon payment of the required fees. These entities would be required to provide notice upon the expiration, revocation, or termination of their federal contract within seven (7) days.

Sections 6 to 8 explain procedures concerning license expiration, renewal, surrender, suspension, abandonment, and also states licenses are not transferrable or assignable. These sections also require prior written notice for a change in the place of business, allow no more than one (1) place of business per license, and create a record retention policy for servicers and lenders.

Section 9 creates a formal process for responding to inquiries from student borrowers related to borrowers' accounts, application of payments, and assignment or transfer of a loan to a third party.

Section 10 establishes prohibited acts and states such violations are subject to the Unfair Practices Act and enforcement and penalty provisions contained in that act.

Section 11 explains a private education lender's or student loan servicer's duties upon notification of a total and permanent disability of a student loan borrower or their cosigner.

Section 12 provides that if a private education lender offers any borrower a flexible or modified repayment option, those same options must be made available to all borrowers of that lender.

Section 13 sets forth notices and disclosures required before offering an extension of an education loan requiring a cosigner and prior to offering a loan to refinance an existing education loan.

Section 14 provides a process for releasing cosigners from loan obligations including the right to request an appeal of a lender's determination to deny a request for cosigner release.

Section 15 provides a cosigner with access to documents or records related to the loan.

Section 16 prohibits the acceleration of private student loans.

Section 17 establishes prohibited acts by private education lenders, specifically taking as security salary, wages, commissions, or other compensation, defrauding or misleading student borrowers, engaging in unfair or deceptive practices, and misapplying student loan payments.

Section 18 allows for the Director of the FID to monitor or assess for risk to consumers in education loans, including by requiring information engaged in private education lending or student loan servicing to provide annual or special reports, retaining specialist service providers, enter into information sharing agreements, and other tools.

Sections 19 to 21 create enforcement powers for the Director, allow judicial enforcement of the Act, and create civil penalties.

Section 22 states violations of applicable federal laws or regulations are also violations of the Act.

Section 23 allows the Director of the FID to promulgate rules and make orders to implement the Act.

Section 24 establishes a new ombudsperson position at the FID to assist student loan borrowers and the public, in collaboration with the New Mexico Attorney General (NMAG) and the HED.

This section provides that on or before July 1, 2025, the group will collaborate to establish a student loan borrower education course and on or before December 1, 2026, provide a status report to the appropriate legislative interim committee, and make those annual reports available and published on the FID's website and the state's sunshine portal.

Section 25 directs the FID, NMAG, and the HED to enter into an information sharing agreement by July 31, 2025.

Section 26 creates a civil cause of action to recover actual and punitive damages and legal fees.

Section 27 creates the "student loan bill of rights fund" as a nonreverting fund to consist of fees collected pursuant to the act. Money in the fund is appropriated to the FID to carry out the act.

Section 28 adds prohibited acts as defined in the bill to the list of acts that constitute "unfair or deceptive trade practices" under the Unfair Practices Act at NMSA 1978, Section 57-12-2(D)(2019).

Sections 29 and 30 provide that the provisions of the bill apply to private education loans issued on or after January 1, 2025, and set the effective date of the bill as January 1, 2025.

FISCAL IMPLICATIONS

HB71 provides for collection of fees from loan servicers to license and regulate their activities. It is unknown whether the fees collected will be sufficient to carry out the provisions in the act. In the event fees are insufficient, there will be an indeterminate recurring cost to the General Fund.

The FID will require an additional four (4) FTE to carry out the newly assigned duties: The new ombudsperson position, two (2) examiners, and one (1) licensing specialist position. Salary and benefits, along with operational expenses, are projected to be \$569.9 thousand per year. For the first year of operation, prior to the receipt of licensing fees revenues, these positions and costs will need to be paid from the general fund.

The RLD reports no projected budget impact in FY25 due to the bill going into effect at the half-way point of FY25. Therefore, the three-year cost indicated in the table only accounts for half of FY26 and all of FY27. A true three-year cost would be approximately \$1.71 million.

HB71 creates the student loan bill of rights fund as a nonreverting fund administered by the FID. The fund consists of fees collected by the FID pursuant to the new act and money that is appropriated or donated or that otherwise accrue to the fund, including investment income. Money in the fund is appropriated to the FID to carry out the provisions of the new act.

Revenue projections are indeterminate because the number of loan servicers impacted are unknown. Student loan servicers are currently not required to license or register in New Mexico. It remains uncertain whether revenues collected will ever be sufficient to cover projected operating expenses.

The bill directs the creation of a student loan ombudsperson. FID reports student loan services under contract with the U.S. Department of Education are required to have an ombudsman office to address borrower concerns. The largest private, nonprofit student loan services in New

Mexico, the New Mexico Educational Assistance Foundation, maintains a hotline for student concerns.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The RLD will administer provisions in the act including creating a new student ombudsperson position at the FID. This position will take and investigate complaints, provide information to the public about services, disseminate reports and statistics about student loans, and develop a student loan borrower education course funded through fees. The ombudsperson is required to work collectively with the NMAG and the HED to assist and educate student loan borrowers and the public. The Director of the FID is required to furnish a report annually, including on lending and servicing activities of licensees.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

The FID utilizes the Nationwide Multistate Licensing System and Registry (NMLS) for the licensing of several financial industries regulated by the FID. The bill allows use of the NMLS to conduct licensing applications and process activities for the licensing of student loan servicers. Utilization of the NMLS for licensing purposes would allow for efficiency and cost savings. However, page 13, lines 4-9 note the renewal of applications shall be filed on or before November 1 of the year in which the license expires. It further notes applications filed between November 1 and before December 31 must be accompanied by a \$100 late fee. To be compatible with the NMLS system, the licensing period should begin November 1 and not be considered late until after December 31.

The "private education lender" or "lender" in the bill means any person engaged in the business of securing, making or extending private education loans or any holder of a private education loan." It is not clear if a holder of a private education loan includes the holder of a tranche or portion of private student loans when the loans are packaged and sold on the market.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Borrowers will continue to have access to similar ombuds through the federal Consumer Financial Protection Bureau, federal student loan servicing contractors, the New Mexico Educational Assistance Foundation, and a hotline maintained by HED.

AMENDMENTS

Please see the comments in the “TECHNICAL ISSUES” section, above, regarding the dates of filing of renewal applications for licensure and when such renewal applications will be considered “late.”