

# STATE OF NEW YORK

8463

## IN SENATE

May 8, 2018

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to the creating a student loan borrower bill of rights

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 684 to  
2 read as follows:

3 § 684. Student loan borrower bill of rights. 1. Definitions. As used  
4 in this section:

5 (a) "Servicing" shall mean receiving a scheduled periodic payment from  
6 a borrower pursuant to the terms of a loan, including amounts for escrow  
7 accounts, and making the payments to the owner of the loan or other  
8 third party of principal and interest and other payments with respect to  
9 the amounts received from the borrower as may be required pursuant to  
10 the terms of the servicing loan document or servicing contract. In the  
11 case of a home equity conversion mortgage or reverse mortgage as refer-  
12 enced in this section, servicing includes making payments to the borrow-  
13 er. In the case of a student education loan as referenced in this  
14 section, servicing includes applying the payments of principal and  
15 interest and other such payments with respect to the amounts received  
16 from a student loan borrower as may be required pursuant to the terms of  
17 a student education loan and performing other administrative services  
18 with respect to a student education loan.

19 (b) "Student education loan" shall mean any loan primarily used to  
20 finance education or other school-related expenses.

21 (c) "Student loan borrower" shall mean any resident of New York who  
22 has received or agreed to pay a student education loan, or any person  
23 who shares responsibility with such New York resident for repaying the  
24 student education loan.

25 (d) "Student loan servicer" shall mean any person responsible for the  
26 servicing of a student education loan to a student loan borrower.

27 2. Loan ombudsman. (a) There is hereby established the position of the  
28 student loan ombudsman, within the department of financial services, to

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 be appointed by the commissioner to provide timely assistance to any  
2 student loan borrower who has a student education loan.

3 (b) The student loan ombudsman shall work in consultation with the  
4 commissioner. The responsibilities of the student loan ombudsman will  
5 include, but not be limited to:

6 (i) receiving, reviewing and assisting in resolving complaints from  
7 student loan borrowers, including, but not limited to, attempting to  
8 resolve such complaints in collaboration with institutions of higher  
9 education, student loan servicers, and any other participants in student  
10 loan lending, including, but not limited to, the state university of New  
11 York, and the department;

12 (ii) compiling and analyzing data on student loan borrower complaints  
13 and any subsequent resolutions;

14 (iii) assisting student loan borrowers to understand their rights and  
15 responsibilities under the terms of student education loans;

16 (iv) providing information to the public regarding the problems and  
17 concerns of student loan borrowers;

18 (v) making recommendations to the commissioner for resolving such  
19 problems and concerns;

20 (vi) analyzing and monitoring the development and implementation of  
21 federal, state and local laws, regulations and policies relating to  
22 student loan borrowers and recommend any related changes deemed neces-  
23 sary;

24 (vii) reviewing complete student education loan history for any  
25 student loan borrower who has provided written consent for such review;  
26 and

27 (viii) disseminating information to student loan borrowers, potential  
28 student loan borrowers, public institutions of higher education, student  
29 loan servicers and any other participant in student education loan lend-  
30 ing.

31 (c) The student loan ombudsman, in consultation with the commissioner,  
32 shall establish a student loan borrower education course to include  
33 educational presentations and materials regarding student education  
34 loans. Such program shall include, but not be limited to:

35 (i) an explanation of key loan terms, prescribed documentation  
36 requirements, monthly payment obligations, income-based repayment  
37 options, loan forgiveness and disclosure requirements; and

38 (ii) the student loan borrower education course shall be funded by any  
39 license, renewal, late filing, or investigation fees, as well as any  
40 penalties assessed under this section.

41 3. Licensing. (a) No person or entity shall act as a student loan  
42 servicer, directly or indirectly, without first obtaining a license from  
43 the commissioner, unless such person is exempt from licensure pursuant  
44 to this section.

45 (b) The following persons or entities are exempt from student loan  
46 servicer licensing requirements:

47 (i) any bank, out-of-state bank, New York credit union, federal credit  
48 union or out-of-state credit union;

49 (ii) any wholly owned subsidiary of any such bank or credit union; and  
50 (iii) any operating subsidiary where each owner of such operating  
51 subsidiary is wholly owned by the same bank or credit union.

52 (c) Any person or entity seeking to act within the state as a student  
53 loan servicer shall submit a written application to the commissioner for  
54 a license in such form as the commissioner prescribes.

55 (d) Upon the filing of an application for an initial license and the  
56 payment of the fees for license and investigation, the commissioner

1 shall investigate the financial condition and responsibility, financial  
2 and business experience, character and general fitness of the applicant.  
3 The commissioner may issue a license if the commissioner finds that:

4 (i) the applicant's financial condition is sound;

5 (ii) the applicant's business will be conducted honestly, fairly,  
6 equitably, carefully and efficiently within the purposes and intent of  
7 this section;

8 (iii)(1) if the applicant is an individual, such individual is in all  
9 respects properly qualified and of good character;

10 (2) if the applicant is a partnership, each partner is in all respects  
11 properly qualified and of good character;

12 (3) if the applicant is a corporation or association, the president,  
13 chairperson of the executive committee, senior officer responsible for  
14 the corporation's business and chief financial officer or any other  
15 person or performs similar functions as determined by the commissioner,  
16 each director, each trustee and each shareholder owning ten percent or  
17 more of each class of the securities of such corporation is in all  
18 respects properly qualified and of good character; or

19 (4) if the applicant is a limited liability company, each member is in  
20 all respects properly qualified and of good character;

21 (iv) no person on behalf of the applicant has knowingly made any  
22 incorrect statement of a material fact in the application, or in any  
23 report or statement made pursuant to this section;

24 (v) no person on behalf of the applicant knowingly has omitted to  
25 state any material fact necessary to give the commissioner any informa-  
26 tion lawfully required by the commissioner;

27 (vi) the applicant has met any other requirements as determined by the  
28 commissioner.

29 (e)(i) A license shall be for a period of one year as of a date deter-  
30 mined by the commissioner and shall expire unless renewed, suspended or  
31 revoked pursuant to this section.

32 (ii) Not later than fifteen days after a licensee ceases to engage in  
33 the business of student loan servicing in this state for any reason,  
34 including a business decision to terminate operations in this state,  
35 license revocation, bankruptcy or voluntary dissolution, such licensee  
36 shall provide written notice of surrender to the commissioner and shall  
37 surrender to the commissioner such license for each location in which  
38 such licensee has ceased to engage in such business.

39 (iii) A written notice of surrender shall identify the location where  
40 the records of the licensee will be stored and the name, address and  
41 telephone number of an individual authorized to provide access to the  
42 records. The surrender of a license does not reduce or eliminate the  
43 licensee's civil or criminal liability arising from acts or omissions  
44 occurring prior to the surrender of the license.

45 (f) A license may be renewed for the ensuing one year period upon the  
46 filing of an application containing all required documents and fees as  
47 provided in paragraph (c) of this subdivision. A renewal application  
48 shall be filed at least thirty days prior to the date such license  
49 expires. The commissioner may assess a late fee for renewal applications  
50 filed within thirty days of license expiration. If an application for a  
51 renewal license has been filed with the commissioner on or before the  
52 date the license expires, the license sought to be renewed shall contin-  
53 ue in full force and effect until issuance by the commissioner of the  
54 renewal license or until the commissioner has notified the licensee in  
55 writing of the commissioner's refusal to issue such renewal license  
56 together with the grounds upon which such refusal is based. The commis-

1 sioner may refuse to issue a renewal license on any ground on which the  
2 commissioner might refuse to issue an initial license.

3 (g) If the commissioner determines that a check filed with the commis-  
4 sioner to pay a license or renewal fee has been dishonored, the commis-  
5 sioner shall automatically suspend the license. The commissioner shall  
6 notify the licensee in writing of the automatic suspension pending  
7 proceedings for revocation or refusal to renew and an opportunity for a  
8 hearing on such actions.

9 (h) The commissioner may deem an application for a license abandoned  
10 if the applicant fails to respond to any request for information  
11 required under this section, or any regulations adopted pursuant to  
12 such. The commissioner shall notify the applicant, in writing, that if  
13 the applicant fails to submit such information later than sixty days  
14 after the date on which such request for information was made, the  
15 application shall be deemed abandoned. An application filing fee paid  
16 prior to the date an application is deemed abandoned shall not be  
17 refunded. Abandonment of an application pursuant to this paragraph  
18 shall not preclude the applicant from submitting a new application for a  
19 license under the provisions of this section.

20 4. Prohibitions. (a) A student loan servicer shall not:

21 (i) directly or indirectly employ any scheme, device or artifice to  
22 defraud or mislead student loan borrowers;

23 (ii) engage in any unfair or deceptive practice toward any person or  
24 misrepresent or omit any material information in connection with the  
25 servicing of a student education loan, including, but not limited to,  
26 misrepresenting the amount, nature or terms of any fee or payment due or  
27 claimed to be due on a student education loan, the terms and conditions  
28 of the loan agreement or the borrower's obligations under the loan;

29 (iii) obtain property by fraud or misrepresentation;

30 (iv) knowingly misapply or recklessly apply student education loan  
31 payments to the outstanding balance of a student education loan;

32 (v) knowingly or recklessly provide inaccurate information to a credit  
33 bureau, thereby harming a student loan borrower's creditworthiness;

34 (vi) fail to report both the favorable and unfavorable payment history  
35 of the student loan borrower to a nationally recognized consumer credit  
36 bureau at least annually if the student loan servicer regularly reports  
37 information to a credit bureau;

38 (vii) refuse to communicate with an authorized representative of the  
39 student loan borrower who provides a written authorization signed by the  
40 student loan borrower, provided the student loan servicer may adopt  
41 procedures reasonably related to verifying that the representative is in  
42 fact authorized to act on behalf of the student loan borrower; or

43 (viii) negligently make any false statement or knowingly and willfully  
44 make any omission of a material fact in connection with any information  
45 or reports filed with a governmental agency or in connection with any  
46 investigation conducted by the superintendent of financial services or  
47 another governmental agency.

48 (b) No person or entity licensed to act within New York as a student  
49 loan servicer shall do so under any other name or at any other place of  
50 business other than that named in the license. Any change of location of  
51 a place of business of a licensee shall require prior written notice to  
52 the commissioner. Not more than one place of business shall be main-  
53 tained under the same license. A license shall not be transferable or  
54 assignable.

55 (c) A student loan servicer or a person or entity exempt from licen-  
56 sure pursuant to subdivision three of this section shall maintain

adequate records of each student education loan transaction for not less than two years following the final payment on such student education loan or the assignment of such student education loan, whichever occurs first, or such longer period as may be required by any other provision of law. The commissioner may request a student loan servicer to make such records available. A student loan servicer must comply with such request within five business days. The commissioner may grant a licensee additional time to make such records available upon request.

(d) A student loan servicer shall comply with all applicable federal laws and regulations relating to student loan servicing. Any violation of federal law or regulation shall be deemed a violation of this section and a basis upon which the commissioner may take enforcement action pursuant to such.

5. Licensing examinations. (a) The commissioner shall have the authority to conduct investigations and examinations for the purposes of:

(i) initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this section, the commissioner may access, receive and use any books, accounts, records, files, documents, information or other evidence; and

(ii) investigating violations or complaints arising under this section.

(b) In making any examination or investigation authorized by this section, the commissioner may access documents and records of the student loan servicer, licensee or person under examination or investigation. Unless the commissioner has reasonable grounds to believe the documents or records of the student loan servicer, licensee or person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this section, the student loan servicer or owner of the documents and records shall have access to the documents or records as necessary to conduct ordinary business affairs.

(c) No student loan servicer or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, or destroy any books, records, computer records or other information.

(d) The commissioner may suspend, revoke or refuse to renew any license issued under this section if the commissioner finds that:

(i) the licensee has violated any provision of this section or any regulation made pursuant to this section, or (ii) any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted a denial of such license. No abatement of the license fee shall be made if the license is surrendered, revoked or suspended prior to the expiration of the period for which it was issued.

6. Report. Notwithstanding any general or special law to the contrary, the commissioner shall file a report on the work of the student loan ombudsman annually with the governor and the legislature beginning on January first, two thousand twenty. Such report shall include, but not be limited to:

(a) the number of complaints received by the student loan ombudsman from student loan borrowers;

(b) the types of complaints received by the student loan ombudsman from student loan borrowers;

(c) any recommendations to improve the effectiveness of the position of student loan ombudsman; and

1     (d) any recommendations to improve regulation, oversight, and enforce-  
2     ment of the department of financial services over the licensing and  
3     enforcement of student loan servicers.

4     § 2. This act shall take effect on the one hundred twentieth day after  
5     it shall have become a law.