

# STATE OF NEW YORK

8862

2017-2018 Regular Sessions

## IN ASSEMBLY

December 22, 2017

Introduced by M. of A. SIMON -- read once and referred 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.

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

LBD13931-01-7

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

3 2. Loan ombudsman. (a) There is hereby established the position of the  
4 student loan ombudsman, within the department of financial services, to  
5 be appointed by the commissioner to provide timely assistance to any  
6 student loan borrower who has a student education loan.

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

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

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

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

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

22 (v) making recommendations to the commissioner for resolving such  
23 problems and concerns;

24 (vi) analyzing and monitoring the development and implementation of  
25 federal, state and local laws, regulations and policies relating to  
26 student loan borrowers and recommend any related changes deemed neces-  
27 sary;

28 (vii) reviewing complete student education loan history for any  
29 student loan borrower who has provided written consent for such review;  
30 and

31 (viii) disseminating information to student loan borrowers, potential  
32 student loan borrowers, public institutions of higher education, student  
33 loan servicers and any other participant in student education loan lend-  
34 ing.

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

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

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

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

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

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

53 (ii) any wholly owned subsidiary of any such bank or credit union; and

54 (iii) any operating subsidiary where each owner of such operating  
55 subsidiary is wholly owned by the same bank or credit union.

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

4 (d) Upon the filing of an application for an initial license and the  
5 payment of the fees for license and investigation, the commissioner  
6 shall investigate the financial condition and responsibility, financial  
7 and business experience, character and general fitness of the applicant.  
8 The commissioner may issue a license if the commissioner finds that:

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

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

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

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

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

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

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

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

32 (vi) the applicant has met any other requirements as determined by the  
33 commissioner.

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

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

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

50 (f) A license may be renewed for the ensuing one year period upon the  
51 filing of an application containing all required documents and fees as  
52 provided in paragraph (c) of this subdivision. A renewal application  
53 shall be filed at least thirty days prior to the date such license  
54 expires. The commissioner may assess a late fee for renewal applications  
55 filed within thirty days of license expiration. If an application for a  
56 renewal license has been filed with the commissioner on or before the

1 date the license expires, the license sought to be renewed shall contin-  
2 ue in full force and effect until issuance by the commissioner of the  
3 renewal license or until the commissioner has notified the licensee in  
4 writing of the commissioner's refusal to issue such renewal license  
5 together with the grounds upon which such refusal is based. The commis-  
6 sioner may refuse to issue a renewal license on any ground on which the  
7 commissioner might refuse to issue an initial license.

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

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

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

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

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

34 (iii) obtain property by fraud or misrepresentation;

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

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

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

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

48 (viii) negligently make any false statement or knowingly and willfully  
49 make any omission of a material fact in connection with any information  
50 or reports filed with a governmental agency or in connection with any  
51 investigation conducted by the superintendent of financial services or  
52 another governmental agency.

53 (b) No person or entity licensed to act within New York as a student  
54 loan servicer shall do so under any other name or at any other place of  
55 business other than that named in the license. Any change of location of  
56 a place of business of a licensee shall require prior written notice to

1 the commissioner. Not more than one place of business shall be main-  
2 tained under the same license. A license shall not be transferable or  
3 assignable.

4 (c) A student loan servicer or a person or entity exempt from licen-  
5 sure pursuant to subdivision three of this section shall maintain  
6 adequate records of each student education loan transaction for not less  
7 than two years following the final payment on such student education  
8 loan or the assignment of such student education loan, whichever occurs  
9 first, or such longer period as may be required by any other provision  
10 of law. The commissioner may request a student loan servicer to make  
11 such records available. A student loan servicer must comply with such  
12 request within five business days. The commissioner may grant a licensee  
13 additional time to make such records available upon request.

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

19 5. Licensing examinations. (a) The commissioner shall have the author-  
20 ity to conduct investigations and examinations for the purposes of:

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

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

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

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

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

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

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

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

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

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

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

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