

# STATE OF NEW YORK

2426

2019-2020 Regular Sessions

## IN SENATE

January 24, 2019

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the financial services law, in relation to student debt consultants

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

1 Section 1. The financial services law is amended by adding a new article  
2 to read as follows:

### ARTICLE 7

#### STUDENT DEBT CONSULTANTS

3 Section 701. Definitions.

4 702. Prohibitions.

5 703. Disclosure requirements.

6 704. Student debt consulting contracts.

7 705. Penalties and other provisions.

8 706. Rules and regulations.

9 § 701. Definitions. (a) The term "advertisement" shall include, but  
10 is not limited to, all forms of marketing, solicitation, or dissemination  
11 of information related, directly or indirectly, to securing or  
12 obtaining a student debt consulting contract or services. Further, it  
13 shall include all commonly recognized forms of media marketing via tele-  
14 vision, radio, print media, all forms of electronic communication via  
15 the internet, and all prepared sales presentations given in person or  
16 over the internet to the general public.

17 (b) "Borrower" means any resident of this state who has received a  
18 student loan or agreed in writing to pay a student loan or any person  
19 who shares a legal obligation with such resident for repaying a student  
20 loan.

21 (c) "FSA ID" means a username and password allocated to an individual  
22 by the federal government to enable the individual to log in to certain  
23

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

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1 United States department of education websites, and may be used to sign  
2 certain documents electronically.

3 (d) "Student loan" means any loan to a borrower to finance post-second-  
4 ary education or expenses related to post-secondary education.

5 (e) "Student debt consulting contract" or "contract" means an agree-  
6 ment between a borrower and a consultant under which the consultant  
7 agrees to provide student debt consulting services.

8 (f) "Student debt consultant" or "consultant" means an individual or a  
9 corporation, partnership, limited liability company or other business  
10 entity that, directly or indirectly, solicits or undertakes employment  
11 to provide student debt consulting services. A consultant does not  
12 include the following:

13 (1) a person or entity who holds or is owed an obligation on the  
14 student loan while the person or entity performs services in connection  
15 with the student loan;

16 (2) a bank, trust company, private banker, bank holding company,  
17 savings bank, savings and loan association, thrift holding company,  
18 credit union or insurance company organized under the laws of this  
19 state, another state or the United States, or a subsidiary or affiliate  
20 of such entity or a foreign banking corporation licensed by the super-  
21 intendent of financial services or the comptroller of the currency;

22 (3) a bona fide not-for-profit organization that offers counseling or  
23 advice to borrowers; or

24 (4) such other persons as the superintendent prescribes by rule.

25 (g) "Student debt consulting services" means services that a student  
26 debt consultant provides to a borrower that the consultant represents  
27 will help to achieve any of the following:

28 (1) stop, enjoin, delay, void, set aside, annul, stay or postpone a  
29 default, bankruptcy, tax offset, or garnishment proceeding;

30 (2) obtain a forbearance, deferment, or other relief that temporarily  
31 halts repayment of a student loan;

32 (3) assist the borrower with preparing or filing documents related to  
33 student loan repayment;

34 (4) advise the borrower which student loan repayment plan or forgive-  
35 ness program to consider;

36 (5) enroll the borrower in any student loan repayment, forgiveness,  
37 discharge, or consolidation program;

38 (6) assist the borrower in re-establishing eligibility for federal  
39 student financial assistance;

40 (7) assist the borrower in removing a student loan from default; or

41 (8) educate the borrower about student loan repayment.

42 § 702. Prohibitions. A student debt consultant is prohibited from  
43 doing the following:

44 (a) performing student debt consulting services without a legal writ-  
45 ten, fully-executed contract with a borrower that comports with the  
46 provisions of this article;

47 (b) charging for or accepting any payment for student debt consulting  
48 services before the full completion of all such services, including a  
49 payment to be placed in escrow or any other account pending the  
50 completion of such services;

51 (c) taking a power of attorney from a borrower;

52 (d) retaining any original loan document or other original document  
53 related to a borrower's student loan;

54 (e) requesting that a borrower provide his or her FSA ID to the  
55 consultant, or accepting a borrower's FSA ID;

1 (f) stating or implying that a borrower will not be able to obtain  
2 relief on their own;

3 (g) misrepresenting, expressly or by implication, that:

4 (1) the consultant is a part of, affiliated with, or endorsed or spon-  
5 sored by the government, government loan programs, the United States  
6 department of education, or borrowers' student loan servicers; or

7 (2) some or all of a borrower's payments to the consultant will be  
8 applied towards the borrower's student loans.

9 (h) inducing or attempting to induce a student debtor to enter a  
10 contract that does not fully comply with the provisions of this article;  
11 or

12 (i) engaging in any unfair, deceptive, or abusive act or practice.

13 § 703. Disclosure requirements. (a) A student debt consultant shall  
14 clearly and conspicuously disclose in all advertisements:

15 (1) the actual services the consultant provides to borrowers;

16 (2) that borrowers may apply for consolidation loans from the United  
17 States department of education at no cost, including providing a direct  
18 link in all online advertising and contact information in all print  
19 advertising to the application materials for a Direct Consolidation Loan  
20 from the United States department of education;

21 (3) that consolidation or other services offered by the consultant may  
22 not be the best or only option for borrowers;

23 (4) that alternative federal student loan repayment plans, including  
24 income-based programs, that do not require consolidating existing feder-  
25 al student loans may be available; and

26 (5) that borrowers should consider consulting their student loan  
27 servicer before signing any legal document concerning a student loan.

28 (b) The disclosures required by subsection (a) of this section, if  
29 disseminated through print media or the internet, shall be clearly and  
30 legibly printed or displayed in not less than twelve-point bold type,  
31 or, if the advertisement is printed to be displayed in print that is  
32 smaller than twelve point, in bold type print that is no smaller than  
33 the print in which the text of the advertisement is printed or  
34 displayed.

35 (c) The provisions of this section shall apply to all consultants who  
36 disseminate advertisements in the state of New York or who intend to  
37 directly or indirectly contact a borrower who has a student loan and is  
38 in New York state. Consultants shall establish and at all times maintain  
39 control over the content, form and method of dissemination of all adver-  
40 tisements of their services. Further, all advertisements shall be  
41 sufficiently complete and clear to avoid the possibility to mislead or  
42 deceive.

43 § 704. Student debt consulting contracts. (a) A student debt consult-  
44 ing contract shall:

45 (1) contain the entire agreement of the parties;

46 (2) be provided in writing to the borrower for review before signing;

47 (3) be printed in at least twelve-point type and written in the same  
48 language that is used by the borrower and was used in discussions  
49 between the consultant and the borrower to describe the borrower's  
50 services or to negotiate the contract;

51 (4) fully disclose the exact nature of the services to be provided by  
52 the consultant or anyone working in association with the consultant;

53 (5) fully disclose the total amount and terms of compensation for such  
54 services;

55 (6) contain the name, business address and telephone number of the  
56 consultant and the street address, if different, and facsimile number or

1 email address of the consultant where communications from the debtor may  
2 be delivered;

3 (7) be dated and personally signed by the borrower and the consultant  
4 and be witnessed and acknowledged by a New York notary public; and

5 (8) contain the following notice, which shall be printed in at least  
6 fourteen-point boldface type, completed with the name of the Provider,  
7 and located in immediate proximity to the space reserved for the  
8 debtor's signature:

9 "NOTICE REQUIRED BY NEW YORK LAW

10 You may cancel this contract, without any penalty or obligation, at any  
11 time before midnight of

12 ..... (fifth business day after execution).

13 ..... (Name of consultant) (the "Consultant") or anyone working for  
14 the Consultant may not take any money from you or ask you for money  
15 until the consultant has completely finished doing everything this  
16 Contract says the Consultant will do.

17 You should consider contacting your student loan servicer before signing  
18 any legal document concerning your student loan. In addition, you may  
19 want to visit the New York State Department of Financial Services'  
20 student lending resource center at [www.dfs.ny.gov/studentprotection](http://www.dfs.ny.gov/studentprotection). The  
21 law requires that this contract contain the entire agreement between you  
22 and the Provider. You should not rely upon any other written or oral  
23 agreement or promise."

24 The Provider shall accurately enter the date on which the right to  
25 cancel ends.

26 (b) (1) The borrower has the right to cancel, without any penalty or  
27 obligation, any contract with a consultant until midnight of the fifth  
28 business day following the day on which the consultant and the borrower  
29 sign a consulting contract. Cancellation occurs when the borrower, or a  
30 representative of the borrower, either delivers written notice of  
31 cancellation in person to the address specified in the consulting  
32 contract or sends a written communication by facsimile, by United States  
33 mail or by an established commercial letter delivery service. A dated  
34 proof of facsimile delivery or proof of mailing creates a presumption  
35 that the notice of cancellation has been delivered on the date the  
36 facsimile is sent or the notice is deposited in the mail or with the  
37 delivery service. Cancellation of the contract shall release the borrow-  
38 er from all obligations to pay fees or any other compensation to the  
39 consultant.

40 (2) The contract shall be accompanied by two copies of a form,  
41 captioned "notice of cancellation" in at least twelve-point bold type.  
42 This form shall be attached to the contract, shall be easily detachable,  
43 and shall contain the following statement written in the same language  
44 as used in the contract, and the contractor shall insert accurate infor-  
45 mation as to the date on which the right to cancel ends and the contrac-  
46 tor's contact information:

47 "NOTICE OF CANCELLATION

48 Note: You may cancel this contract, without any penalty or obligation,  
49 at any time before midnight of (Enter date)

50 To cancel this contract, sign and date both copies of this cancellation  
51 notice and personally deliver one copy or send it by facsimile, United  
52 States mail, or an established commercial letter delivery service, indi-  
53 cating cancellation to the Consultant at one of the following:

54 Name of Consultant

55 Street Address

56 City, State, Zip

1 Facsimile:

2 I hereby cancel this transaction.

3 Name of Borrower:

4 Signature of Borrower:

5 Date: "

6 (3) Within ten days following receipt of a notice of cancellation  
7 given in accordance with this subsection, the consultant shall return  
8 any original contract and any other documents signed by or provided by  
9 the borrower. Cancellation shall release the borrower of all obligations  
10 to pay any fees or compensation to the consultant.

11 § 705. Penalties and other provisions. (a) If the superintendent  
12 finds, after notice and hearing, that a consultant has intentionally  
13 violated any provision of this article, the superintendent may: (1) make  
14 null and void any agreement between the borrower and the consultant; and  
15 (2) impose a civil penalty of not more than ten thousand dollars for  
16 each violation.

17 (b) If the consultant violates any provision of this article and the  
18 borrower suffers damage because of the violation, the borrower may  
19 recover actual and consequential damages and costs from the consultant  
20 in an action based on this article. If the consultant recklessly  
21 violates any provision of this article, the court may award attorneys'  
22 fees and costs. If the consultant intentionally violates any provision  
23 of this article, the court may award treble damages, attorneys' fees and  
24 costs.

25 (c) Any provision of a student debt consulting contract that attempts  
26 or purports to limit the liability of the consultant under this article  
27 shall be null and void. Inclusion of such provision shall at the option  
28 of the borrower render the contract void. Any provision in a contract  
29 which attempts or purports to require arbitration of any dispute arising  
30 under this article shall be void at the option of the borrower. Any  
31 waiver of the provisions of this article shall be void and unenforceable  
32 as contrary to public policy.

33 (d) The provisions of this article are not exclusive and are in addi-  
34 tion to any other requirements, rights, remedies, and penalties provided  
35 by law.

36 § 706. Rules and regulations. In addition to such powers as may  
37 otherwise be prescribed by this chapter, the superintendent is hereby  
38 authorized and empowered to promulgate such rules and regulations as may  
39 in the judgment of the superintendent be consistent with the purposes of  
40 this article, or appropriate for the effective administration of this  
41 article.

42 § 2. This act shall take effect on the one hundred eightieth day after  
43 it shall have become a law.