
OLR Bill Analysis

SB 716

AN ACT CONCERNING THE FEDERAL STUDENT LOAN BORROWERS' BILL OF RIGHTS ACT OF 2019.

SUMMARY

This bill requires private student loan servicers to provide certain information to private student loan borrowers and cosigners regarding (1) borrower and cosigner rights and responsibilities, (2) cosigner release eligibility, and (3) the cosigner release application process.

The bill prohibits any student loan servicer licensee or control person from engaging in an abusive act or practice when servicing a student loan, as described in the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203).

It also allows student loan borrowers, classes of student loan borrowers, or legal representatives of either to bring a lawsuit against a student loan servicer for violating the state's requirements for student loan servicers.

The bill also expands the definition of "servicing" in state student loan servicer law to include (1) maintaining account records for and communicating with a student loan borrower during the period when no scheduled loan payments are required and (2) interacting with a student loan borrower to facilitate the loan, including assisting them from defaulting on loan obligations. Under current law, "servicing" under this law means, among other things, (1) receiving scheduled periodic payments from a student loan borrower under a student education loan's terms or (2) applying the principal and interest payments and other payments to the amounts received from a student loan borrower, as under a student education loan's terms. The bill narrows this definition to require both these actions in order to be considered servicing.

EFFECTIVE DATE: October 1, 2021

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

The bill prohibits any student loan servicer licensee or control person from engaging in an abusive act or practice when servicing a student loan, as described in the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, § 1031).

Under the act, an act or practice is abusive if it materially interferes with a consumer's ability to understand a term or condition of a consumer financial product or service. It is also abusive if it takes unreasonable advantage of (1) a lack of understanding on the consumer's part of the material risks, costs, or conditions of the product or service; (2) the consumer's inability to protect his or her own interests in selecting or using a consumer financial product or service; or (3) the consumer's reasonable reliance on a covered person to act in his or her best interests.

PRIVATE STUDENT LOAN SERVICER NOTIFICATION REQUIREMENTS

Borrower and Cosigner Rights and Responsibilities

The bill requires a private loan servicer to provide certain information to student loan borrowers and cosigners about their rights and responsibilities (1) before sending the first loan billing statement or (2) immediately after receiving a transferred or assigned private education loan. This information includes:

1. how the loan obligation will appear on a cosigner's consumer report;
2. how cosigners will be notified if the loan becomes delinquent, including how they can cure the delinquency to avoid a negative credit rating; and
3. cosigner release eligibility, including the number of on-time payments and other criteria required for release approval.

Under the bill, a "cosigner" is any individual who is liable for the obligation of another without compensation, regardless of how the contract or instrument designates the obligation. But it does not include an obligation under a private education loan extended to consolidate a consumer's pre-existing private education loans. A cosigner includes any person whose signature is requested as a condition to grant credit or forbear on collection but does not include an individual's spouse whose signature is needed to perfect the security interest in a loan (15 U.S.C. § 1650(a)).

A "consumer report" is any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected to serve as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes; (2) employment purposes; or (3) any other purpose specified by federal law (15 U.S.C. § 1681a).

A "private education loan" is a loan provided by a private education lender that is (1) not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 and (2) expressly issued for postsecondary educational expenses to a borrower, regardless of whether it is provided through the educational institution that the student attends or directly to the borrower for the private educational lender. It does not include a credit extension under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage, or any other loan secured by real property or dwelling (15 U.S.C. § 1650(a)).

Annual Notification

Under the bill, a private student loan servicer must annually send written notice to all private student loan borrowers and cosigners with information on cosigner release, including the (1) criteria for release approval and (2) release application process.

Cosigner Release

Eligibility. The bill requires the private loan servicer, upon the borrower satisfying the applicable consecutive on-time payment requirement, to send in writing to the borrower and cosigner (1) a notification that the borrower satisfied the on-time payment requirement and the cosigner may be eligible for release and (2) information on the cosigner release application process and any additional criteria that a cosigner must satisfy to be eligible for release. The loan servicer must send the information via mail (e.g. the U.S. Postal Service), or email if the student has elected to receive electronic communications from the servicer.

Incomplete Application. Under the bill, the servicer must provide written notification to the student loan borrower and cosigner if the cosigner release application is incomplete and provide (1) a description of the missing or additional information required and (2) the date by which the borrower and cosigner must provide the missing information.

Approval or Denial of Application. The bill requires the servicer, within 30 days after receiving a cosigner release application, to provide the borrower and cosigner written notice of the application's approval or denial. If the application was denied, the notice must inform the borrower and cosigner that they can request all documents and information used in the decision, including (1) the credit score threshold the servicer used, (2) the borrower's or cosigner's consumer report and credit score, and (3) any other relevant or specific document. The servicer must also provide the borrower and cosigner with any adverse action notices required under federal law if the denial was based on any information in a consumer report.

Under the bill, the servicer must also include information on cosigner release, including the (1) criteria for release approval and (2) release application process, in any response to a cosigner's release application.

COSIGNER RELEASE APPLICATIONS

Servicer Response

The bill requires private student loan servicers, when responding to a cosigner release application, to refrain from the following:

1. imposing any restrictions on a borrower or cosigner that may permanently prevent them from qualifying for a cosigner release, including restricting the number of times a borrower or cosigner can apply, and
2. requiring a borrower to make more than 12 consecutive on-time payments as part of the eligibility criteria for cosigner release.

Servicers must also refrain from imposing any negative consequences on a borrower or cosigner during the 60 days after issuing a notice for incomplete information or until a final decision for cosigner release is made. “Negative consequences” include (1) imposing additional eligibility criteria, (2) negative credit reporting, (3) losing eligibility for cosigner release, (4) late fees, (5) interest capitalization, or (6) other financial penalties or injury.

Consecutive On-Time Payment Requirement

Under the bill, a private student loan servicer must consider any borrower who paid the equivalent of 12 months of principal and interest during any 12-month period as satisfying the consecutive on-time payment requirement, even if the borrower did not make monthly payments during the 12-month period.

The bill requires a servicer, upon receiving a borrower’s or cosigner’s request for a change that results in restarting the count of consecutive on-time payments required for cosigner release eligibility, to provide the borrower and cosigner (1) written notification about the change’s impact on cosigner eligibility and (2) a chance to withdraw or reverse the change to avoid it.

Cosigner Appeal of Release Denial

The bill requires the student loan servicer to provide a borrower or cosigner (1) the right to request an appeal of a release denial; (2) an opportunity to submit additional information or documentation that

the borrower has the ability, willingness, and stability to make the payment obligations; and (3) the right to request that a different loan servicer review and make a determination on the release application.

RECORD MANAGEMENT

The bill requires a student loan servicer to establish and maintain a comprehensive record management system designed to ensure the accuracy, integrity, and completeness of cosigner release application data and information. The system must include (1) the number of applications received, (2) the application approval and denial rate, and (3) the primary reasons for application denial.

RELEASE OF DISABLED COSIGNER

If a cosigner has a total and permanent disability, and unless otherwise expressly prohibited under the loan agreement terms, the bill requires a private student loan servicer to (1) release the cosigner from his or her loan repayment obligation upon receiving notification of the disability and (2) refrain from requiring a new cosigner to be added to the loan after releasing the original cosigner. The cosigner's disability must be determined by a federal or state agency or doctor of medicine or osteopathy legally authorized to practice in the state.

ACCESS TO RECORDS AND DOCUMENTS

The bill requires private student loan servicers to provide the cosigner with access to the same loan documents and records available to the borrower. Under the bill, if the borrower has electronic access to private loan documents and records, the servicer must extend this same access to the cosigner.

CIVIL ACTION

The bill allows private student loan borrowers, or their legal representative, to bring a lawsuit in Superior Court for violations of state student loan servicer requirements. It also allows them to bring a class action lawsuit in Superior Court on behalf of themselves and other similarly situated borrowers to recover damages. The borrower does not have to exhaust administrative remedies before bringing the action.

The bill allows a court, after finding that a student loan servicer committed the alleged violations, to award actual damages, reasonable attorney's fees, court costs, punitive damages, property restitution, and appropriate equitable relief. Under the bill, the court must award treble damages to the borrower if it finds that the student loan servicer engaged in conduct that substantially interfered with (1) the borrower's right to an alternative payment arrangement, loan forgiveness, cancellation, or student loan discharge or (2) another financial benefit set out in the borrower's promissory note or the Higher Education Act of 1965 or its regulations. The remedies are in addition to any other remedies state or federal law provide.

COMMITTEE ACTION

Higher Education and Employment Advancement Committee

Joint Favorable

Yea 22 Nay 0 (03/18/2021)