
OLR Bill Analysis

SB 716 (File 279, as amended by Senate "A")

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).

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 to prevent them from defaulting on loan obligations. Under current law, "servicing" means, among other things, (1) receiving scheduled periodic payments from a student loan borrower under terms of a student education loan or (2) applying principal and interest payments and other payments to the amounts received from a student loan borrower, as under the terms of a student education loan. The bill narrows this definition by requiring both these actions to be considered servicing.

Lastly, the bill exempts the following from all of the state's student loan servicer requirements: banks and credit unions, their wholly owned subsidiaries, and operating subsidiaries where the owners are wholly owned by the bank or credit union. Current law already

exempts them from the licensing requirements.

*Senate Amendment "A" (1) eliminates the underlying bill's provision establishing a private right of action against student loan servicers for violating the state's student loan servicer requirements and (2) exempts banks and credit unions and certain subsidiaries from the state's student loan servicer requirements (see *Related Bill* in BACKGROUND).

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 the consumer's (1) lack of understanding of the material risks, costs, or conditions of the product or service; (2) inability to protect his or her own interests in selecting or using a consumer financial product or service; or (3) 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 regarding 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 the 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 required criteria.

Under the bill, a “cosigner” is someone who is liable for the obligation of another without compensation, regardless of how the contract or instrument designates the obligation, but 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 from a private education lender that is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 and is 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, reverse mortgage transaction, residential mortgage, or other loan secured by real property (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 criteria for release approval and 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 by mail, or email if the student has elected to receive electronic communications.

Incomplete Application. Under the bill, the servicer must notify the student loan borrower and cosigner in writing if the cosigner release application is incomplete and provide (1) a description of the missing or additional information 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 of 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 document relevant or specific to the borrower or cosigner. The servicer must also provide any adverse action notices required under federal law if the denial was based on 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 prohibits, when responding to a cosigner release application, private student loan servicers from doing the following:

1. imposing restrictions on a borrower or cosigner that may permanently prevent him or her 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 making a final decision for cosigner release. “Negative consequences” include additional eligibility criteria, negative credit reporting, loss of eligibility for cosigner release, late fees, interest capitalization, or 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 request by a borrower or cosigner for a change that results in a restart of the count of consecutive on-time payments required for cosigner release eligibility, to provide the borrower and cosigner (1) written notice of the impact of the change on cosigner eligibility and (2) a chance to withdraw or reverse the change.

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, and include in the system the (1) number of applications received, (2) application approval and denial rate, and (3) primary reasons for denial.

RELEASE OF DISABLED COSIGNER

The bill requires a private student loan servicer, if a cosigner has a total and permanent disability and unless otherwise expressly prohibited under the loan agreement terms, to (1) release the cosigner from his or her loan repayment obligation upon receiving notice 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 any 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 cosigners 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.

RELATED BILL

SB 890 (File 112, as amended by Senate "A" and "B"), contains an identical provision exempting banks and credit unions and certain subsidiaries from being subject to the state's student loan servicer requirements (§ 4).

COMMITTEE ACTION

Higher Education and Employment Advancement Committee

Joint Favorable

Yea 22 Nay 0 (03/18/2021)