

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 21-190—SB 716

Higher Education and Employment Advancement Committee

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

SUMMARY: This act generally requires private student loan servicers to provide certain information to private student loan borrowers and cosigners about (1) borrower and cosigner rights and responsibilities, (2) cosigner release eligibility, and (3) parameters for the cosigner release application process, which the act sets. Exempt from this requirement are certain banks, credit unions, and their subsidiaries, as well as the Connecticut Higher Education Supplemental Loan Authority (CHESLA).

The act broadens the list of prohibited actions for any student loan servicer (i.e., servicing federal or private student education loans) and its control persons (i.e., individuals who directly or indirectly exercise control over it) by banning them 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) (Dodd-Frank Act). Under the Dodd-Frank Act, an act or practice is abusive if, among other things, it materially interferes with a consumer's ability to understand a term or condition of a consumer financial product or service.

The act also exempts the federal and private servicers and their control persons from requirements to have supervisory policies and procedures and comply with state Department of Banking (DOB) standards if a federal law, agreement, or contract requires otherwise.

Lastly, the act expands the scope of "servicing" covered by the state student loan servicer law to include (1) maintaining account records for, and communicating with, a student loan borrower about a loan when no scheduled periodic loan payments are required and (2) interacting with a student loan borrower to facilitate a loan, including helping prevent a default on loan obligations. The "servicing" covered by prior law was limited to (1) receiving scheduled periodic payments from a student loan borrower under the terms of a student education loan; (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; and (3) performing other related administrative services.

EFFECTIVE DATE: July 1, 2021

**BORROWER AND COSIGNER INFORMATION AND COSIGNER RELEASE
REQUIREMENTS**

The act requires private student education loan servicers to provide student

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loan borrowers and cosigners with certain information about their loans, including their rights and responsibilities and the terms of a cosigner's release. Cosigners must have the same access to loan related documents as borrowers.

The act also (1) sets parameters for the servicers to follow when someone seeks a cosigner release and (2) requires them to maintain a record management system about cosigner release applications.

Exempt from these requirements are the following entities: banks, out-of-state banks with a physical presence in Connecticut, and credit unions; their wholly owned subsidiaries; operating subsidiaries where the owners are wholly owned by the bank or credit union; and CHESLA.

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

Notice to Borrowers and Cosigners

Rights and Responsibilities. Under the act, a private loan servicer must 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 student education loan. This information includes the following:

1. how the loan obligation will appear on the cosigner's consumer report (i.e., a communication of certain information by a consumer reporting agency that is used or expected to be used or collected to serve as a factor in establishing eligibility for credit, insurance, employment, or other purposes set out in federal law (15 U.S.C. § 1681a));
2. how cosigners will receive notice if the loan becomes delinquent, including how to cure the delinquency to avoid a negative credit rating and losing release eligibility; and
3. cosigner release eligibility, including the number of on-time payments and other required criteria.

Cosigner Release Information. The act requires private student loan servicers to annually send their loan borrowers and cosigners written information on cosigner release, including the criteria for release approval and the release application process (see below). The servicer must also include this information in any response to a cosigner's release application.

Access to Records and Documents. The act requires private student loan servicers to provide cosigners with access to the same loan documents and records that are available to the borrowers. If a borrower has electronic access to private loan documents and records, the act requires the servicer to extend this same access to the cosigner.

Cosigner Release Process

Eligibility. The act prohibits private student loan servicers from requiring a borrower to make more than 12 consecutive timely payments to be eligible for a cosigner release. In addition, it requires the servicers to consider a borrower who paid the equivalent of 12 months of principal and interest during any 12-month period as having satisfied the timely payment requirement, regardless of whether the borrower made the payments on a monthly basis.

When a borrower satisfies the applicable consecutive timely payment requirement, the act requires its servicer to send written notice to the borrower and cosigner that the payment requirement was satisfied and the cosigner may be eligible for release. The servicer must also send information on the cosigner release application process and any additional criteria that a cosigner must satisfy to be eligible. This notice and information must be sent by mail, or by email if the borrower chose to receive electronic communications.

Unless the loan agreement otherwise prohibits it, if a cosigner has a total and permanent disability, the act also requires a private student loan servicer to (1) release the cosigner from his or her loan repayment obligation upon being notified of the disability and (2) not require that a new cosigner be added to the loan after releasing the original cosigner. The cosigner's disability must be determined by a federal or state agency or a doctor of medicine or osteopathy legally authorized to practice in Connecticut.

Incomplete Application. The act requires a servicer to notify the borrower and cosigner in writing if the release application is incomplete and provide a description of the missing or additional required information and the date by which it must be provided.

Application Approval or Denial. Under the act, a servicer must, within 30 days after receiving a cosigner release application, provide the borrower and cosigner written notice of its approval or denial. If the application is 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 due to information in a consumer report.

Appeal of Release Denial. The act requires servicers to provide a borrower or cosigner with (1) the right to request an appeal of a release denial; (2) an opportunity to submit additional information or documentation that the borrower is able, willing, and stable enough to make the payment obligations; and (3) the right to request that a different loan servicer employee review and make a determination on the cosigner release application.

Servicer Actions Related to Cosigner Release. The act prohibits private student loan servicers, when responding to a cosigner release application, from imposing restrictions on a borrower or cosigner that could permanently prevent him or her from qualifying for a cosigner release, including restricting how many times they can apply.

The act also prohibits servicers from imposing negative consequences on a

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borrower or cosigner during the 60 days after issuing a notice of incomplete application information or until making a final decision for cosigner release. “Negative consequences” include additional eligibility criteria, negative credit reporting, loss of cosigner release eligibility, late fees, interest capitalization, or other financial penalties or injury.

And upon receiving a request from a borrower or cosigner for a change that would restart the count of the consecutive timely payments required for cosigner release eligibility (see above), the act requires a servicer to provide the borrower and cosigner (1) written notice of the change’s impact on release eligibility and (2) a chance to withdraw or reverse the change.

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

SERVICER PROHIBITED ACTS

Dodd-Frank Act

The act prohibits a student loan servicer and its control persons from engaging in an abusive act or practice when servicing a student loan, as described in the federal Dodd-Frank Act.

Under the Dodd-Frank 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 a 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 the product or service; or (3) reasonable reliance on the person offering or providing the product or service to act in his or her best interests (12 U.S.C. § 5531).

Existing state law prohibits, among other things, (1) using a scheme to defraud or mislead borrowers; (2) engaging in an unfair or deceptive practice; and (3) misrepresenting or omitting information related to servicing a student loan (CGS § 36a-850).

Exemption for Federally Related Loans

Prior law required student loan servicers and their control persons to (1) establish, enforce, and maintain policies and procedures to supervise employees, agents, and operations and achieve compliance with student loan servicing requirements and (2) comply with DOB student loan servicing standards. The act exempts servicers and control persons from these requirements if they must do otherwise under a federal law, federal student loan agreement, or contract with the U.S. Department of Education (ED).

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BACKGROUND

Related Act

PA 21-130, §§ 1 & 7, (1) adds identical definitions for private and federal student education loans and private student education loan servicers and (2) also exempts servicers and control persons from needing to have supervisory policies and procedures and comply with DOB standards when a federal law, agreement, or ED contract requires otherwise.