

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

February 7, 2019

Committee on Education.

After consideration on the merits, the Committee recommends the following:

SB19-002 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 **"SECTION 1. Legislative declaration.** (1) The general
4 assembly hereby:

5 (a) Finds that:

6 (I) Student loan debt has reached a crisis point. More than
7 44,000,000 individuals in the United States owe some amount of student
8 loan debt. Total student loan debt in the United States currently exceeds
9 \$1.48 trillion, surpassing both the amount of credit card debt and car
10 loans. With tuition and other college costs on the rise, student loan debt
11 continues to rise, with no clear reduction in sight.

12 (II) According to the Institute for College Access and Success, 52
13 percent of Colorado's students graduate with student loan debt, with an
14 average balance of \$26,530. There are approximately 761,000 student
15 loan borrowers in Colorado, and the total student loan debt outstanding
16 for Coloradans is approximately \$26 billion.

17 (III) Student loan debt is a hindrance to the state's economy,
18 preventing borrowers from achieving financial independence, buying
19 property, starting businesses, and otherwise investing in Colorado's
20 economy;

21 (b) Determines that:

22 (I) Student loan servicers administer student loans, serving as a
23 critical link between borrowers and lenders in managing accounts,
24 processing payments, and communicating directly with borrowers.
25 Despite this critical relationship, according to the federal consumer

1 financial protection bureau (CFPB), there are no consistent, market-wide
2 federal standards for student loan servicing.

3 (II) The CFPB released a report in September of 2015 that found
4 that student loan borrowers encounter servicers that discourage
5 borrower-friendly alternative payment plans, fail to respond to questions
6 and payment processing errors, and fail to provide sufficient information
7 to borrowers regarding payments, benefits, interest rates, and other
8 charges; and

9 (III) A report released in March of 2017 found that Coloradans
10 complained to the CFPB 124 times about their student loan servicers in
11 2017 alone, and that nationally, complaints against servicers had
12 increased by 429 percent compared to data collected in 2016; and

13 (c) Declares that it intends by the enactment of the "Colorado
14 Student Loan Servicers Act" to promote all of the following:

15 (I) Meaningful access to federal affordable repayment and loan
16 forgiveness benefits;

17 (II) Reliable information about student loans and loan repayment
18 options;

19 (III) The public interest in furtherance of the state's historic police
20 powers to protect the health, welfare, and safety of the state and, in
21 furtherance of the public interest, the act should be liberally construed to
22 effectuate that intent; and

23 (IV) Quality customer service and fair treatment.

24 **SECTION 2.** In Colorado Revised Statutes, **add** article 20 to title
25 5 as follows:

26 **ARTICLE 20**

27 **Colorado Student Loan Servicers**

28 **5-20-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 20 IS THE
29 "COLORADO STUDENT LOAN SERVICERS ACT".

30 **5-20-102. Scope of article.** THIS ARTICLE 20 APPLIES TO ANY
31 PERSON ENGAGED IN SERVICING A STUDENT EDUCATION LOAN OWED BY AN
32 INDIVIDUAL WHO IS A RESIDENT OF THIS STATE. FOR THE PURPOSES OF THIS
33 ARTICLE 20, THE RESIDENCE OF AN INDIVIDUAL IS THE ADDRESS GIVEN BY
34 THE INDIVIDUAL AS THE INDIVIDUAL'S RESIDENCE TO THE CREDITOR OR TO
35 THE STUDENT LOAN SERVICER. UNTIL AN INDIVIDUAL NOTIFIES THE
36 CREDITOR OR THE STUDENT LOAN SERVICER OF A NEW OR DIFFERENT
37 ADDRESS, THE GIVEN ADDRESS IS PRESUMED TO BE UNCHANGED.

38 **5-20-103. Definitions.** AS USED IN THIS ARTICLE 20, UNLESS THE
39 CONTEXT OTHERWISE REQUIRES:

40 (1) "ADMINISTRATOR" MEANS THE ADMINISTRATOR DESIGNATED
41 IN SECTION 5-6-103.

1 (2) "CONSUMER REPORTING AGENCY" HAS THE MEANING
2 ESTABLISHED IN SECTION 5-18-103 (4).

3 (3) "EDUCATION EXPENSES" MEANS ANY OF THE EXPENSES THAT
4 ARE INCLUDED AS PART OF THE COST OF ATTENDANCE OF A STUDENT AS
5 DEFINED IN 20 U.S.C. SEC. 1087II, REGARDLESS OF WHETHER THE
6 EXPENSES ARE FOR POSTSECONDARY EDUCATION.

7 (4) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
8 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
9 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

10 (5) "SERVICING" MEANS:
11 (a) (I) RECEIVING ANY SCHEDULED PERIODIC PAYMENTS FROM A
12 BORROWER OR NOTIFICATION OF SUCH PAYMENTS; AND
13 (II) APPLYING PAYMENTS TO THE BORROWER'S ACCOUNT
14 PURSUANT TO THE TERMS OF A STUDENT EDUCATION LOAN OR OF THE
15 CONTRACT GOVERNING THE SERVICING;
16 (b) DURING A PERIOD WHEN NO PAYMENT IS REQUIRED ON A
17 STUDENT EDUCATION LOAN:
18 (I) MAINTAINING ACCOUNT RECORDS FOR THE STUDENT
19 EDUCATION LOAN; AND
20 (II) COMMUNICATING WITH THE BORROWER REGARDING THE
21 STUDENT EDUCATION LOAN, ON BEHALF OF THE LOAN'S HOLDER; OR
22 (c) INTERACTIONS WITH A BORROWER, INCLUDING ACTIVITIES TO
23 HELP PREVENT DEFAULT ON OBLIGATIONS ARISING FROM STUDENT
24 EDUCATION LOANS, CONDUCTED TO FACILITATE THE ACTIVITIES
25 DESCRIBED IN SUBSECTION (5)(a) OR (5)(b) OF THIS SECTION.

26 (6) "STUDENT EDUCATION LOAN":
27 (a) MEANS A LOAN THAT IS MADE, INSURED, OR GUARANTEED
28 UNDER TITLE IV OF THE FEDERAL "HIGHER EDUCATION ACT OF 1965", 20
29 U.S.C. SEC. 1070 ET SEQ., AS AMENDED, OR THAT IS EXTENDED TO A
30 STUDENT LOAN BORROWER FOR THE PURPOSE OF FUNDING, IN WHOLE OR
31 IN PART, EDUCATION EXPENSES, REGARDLESS OF WHETHER THE EXPENSES
32 ARE FOR POSTSECONDARY EDUCATION. THE TERM INCLUDES A LOAN THAT
33 IS EXTENDED IN ORDER TO REFINANCE OR CONSOLIDATE A STUDENT LOAN
34 BORROWER'S EXISTING STUDENT EDUCATION LOANS.
35 (b) DOES NOT INCLUDE A LOAN UNDER AN OPEN-END CREDIT PLAN,
36 AS DEFINED IN REGULATION Z, 12 CFR 1026.2 (a)(20), OR A LOAN THAT
37 IS SECURED BY REAL PROPERTY, REGARDLESS OF THE PURPOSE FOR THE
38 LOAN.

39 (7) "STUDENT LOAN BORROWER" OR "BORROWER" MEANS:
40 (a) AN INDIVIDUAL WHO HAS RECEIVED OR AGREED TO PAY A
41 STUDENT EDUCATION LOAN; OR

1 (b) AN INDIVIDUAL WHO SHARES RESPONSIBILITY WITH THE
2 INDIVIDUAL SPECIFIED IN SUBSECTION (7)(a) OF THIS SECTION FOR
3 REPAYING THE STUDENT EDUCATION LOAN.
4 (8) "STUDENT LOAN SERVICER":
5 (a) MEANS A PERSON THAT:
6 (I) (A) RECEIVES ANY SCHEDULED PERIODIC PAYMENTS FROM A
7 STUDENT LOAN BORROWER OR NOTIFICATION OF THE PAYMENTS; AND
8 (B) APPLIES PAYMENTS TO THE STUDENT LOAN BORROWER'S
9 ACCOUNT PURSUANT TO THE TERMS OF THE STUDENT EDUCATION LOAN OR
10 OF THE CONTRACT GOVERNING THE SERVICING;
11 (II) DURING A PERIOD WHEN NO PAYMENT IS REQUIRED ON A
12 STUDENT EDUCATION LOAN:
13 (A) MAINTAINS ACCOUNT RECORDS FOR THE LOAN; AND
14 (B) COMMUNICATES WITH THE STUDENT LOAN BORROWER
15 REGARDING THE LOAN, ON BEHALF OF THE LOAN'S HOLDER; OR
16 (III) INTERACTS WITH A STUDENT LOAN BORROWER, INCLUDING
17 ACTIVITIES TO HELP PREVENT DEFAULT ON OBLIGATIONS ARISING FROM
18 EDUCATION LOANS, CONDUCTED TO FACILITATE THE ACTIVITIES
19 DESCRIBED IN SUBSECTION (8)(a)(I) OR (8)(a)(II) OF THIS SECTION;
20 (b) DOES NOT INCLUDE:
21 (I) A BANK, TRUST COMPANY, OR INDUSTRIAL LOAN COMPANY
22 DOING BUSINESS UNDER THE AUTHORITY OF, OR IN ACCORDANCE WITH, A
23 LICENSE, CERTIFICATE, OR CHARTER ISSUED BY THE UNITED STATES OR
24 ANY STATE, DISTRICT, TERRITORY, OR COMMONWEALTH OF THE UNITED
25 STATES THAT IS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE;
26 (II) A FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIATION,
27 FEDERAL SAVINGS BANK, OR FEDERAL CREDIT UNION THAT IS AUTHORIZED
28 TO TRANSACT BUSINESS IN THIS STATE;
29 (III) A SAVINGS AND LOAN ASSOCIATION, SAVINGS BANK, OR
30 CREDIT UNION ORGANIZED UNDER THE LAWS OF THIS OR ANY OTHER STATE
31 THAT IS AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE; OR
32 (IV) A COLLECTION AGENCY, AS DEFINED IN SECTION 5-16-103(3),
33 THAT IS LICENSED PURSUANT TO SECTION 5-16-120 AND WHOSE STUDENT
34 LOAN DEBT COLLECTION BUSINESS INVOLVES COLLECTING OR ATTEMPTING
35 TO COLLECT ON DEFAULTED STUDENT LOANS; EXCEPT THAT A COLLECTION
36 AGENCY THAT ALSO SERVICES NONDEFAULTED STUDENT LOANS AS PART
37 OF ITS BUSINESS IS A STUDENT LOAN SERVICER. FOR THE PURPOSE OF THIS
38 SUBSECTION (8)(b)(IV), "DEFAULTED STUDENT LOANS" MEANS FEDERAL
39 STUDENT LOANS FOR WHICH NO PAYMENT HAS BEEN RECEIVED FOR TWO
40 HUNDRED SEVENTY DAYS OR MORE OR PRIVATE STUDENT LOANS IN
41 DEFAULT ACCORDING TO THE TERMS OF THE LOAN DOCUMENTS. THIS

1 SUBSECTION (8)(b)(IV) DOES NOT EXEMPT A COLLECTION AGENCY FROM
2 COMPLYING WITH THE REQUIREMENTS OF THE "COLORADO FAIR DEBT
3 COLLECTION PRACTICES ACT", ARTICLE 16 OF THIS TITLE 5.

4 **5-20-104. Student loan ombudsperson - report - fund - rules**
5 **- repeal.** (1) THE ADMINISTRATOR SHALL DESIGNATE, SUPPORT, AND
6 MAINTAIN A STUDENT LOAN OMBUDSPERSON TO PROVIDE TIMELY
7 ASSISTANCE TO STUDENT LOAN BORROWERS. THE STUDENT LOAN
8 OMBUDSPERSON, IN CONSULTATION WITH THE ADMINISTRATOR, SHALL:

9 (a) **Complaints.** RECEIVE, REVIEW, AND ATTEMPT TO RESOLVE
10 COMPLAINTS FROM STUDENT LOAN BORROWERS, INCLUDING IN
11 COLLABORATION WITH INSTITUTIONS OF HIGHER EDUCATION, STUDENT
12 LOAN SERVICERS, AND ANY OTHER PARTICIPANTS IN STUDENT LOAN
13 LENDING, INCLUDING ORIGINATORS SERVICING THEIR OWN STUDENT
14 EDUCATION LOANS;

15 (b) **Data.** COMPILE AND ANALYZE DATA ON STUDENT LOAN
16 BORROWER COMPLAINTS AS DESCRIBED IN SUBSECTION (1)(a) OF THIS
17 SECTION;

18 (c) **Assistance.** ASSIST STUDENT LOAN BORROWERS IN
19 UNDERSTANDING THEIR RIGHTS AND RESPONSIBILITIES UNDER THE TERMS
20 OF STUDENT EDUCATION LOANS;

21 (d) **Information.** PROVIDE INFORMATION TO THE PUBLIC,
22 AGENCIES, LEGISLATORS, AND OTHERS REGARDING THE PROBLEMS AND
23 CONCERNS OF STUDENT LOAN BORROWERS AND MAKE RECOMMENDATIONS
24 FOR RESOLVING THOSE PROBLEMS AND CONCERNS;

25 (e) **Laws, rules, and policies.** ANALYZE AND MONITOR THE
26 DEVELOPMENT AND IMPLEMENTATION OF FEDERAL, STATE, AND LOCAL
27 LAWS, ORDINANCES, REGULATIONS, RULES, AND POLICIES RELATING TO
28 STUDENT LOAN BORROWERS AND RECOMMEND ANY NECESSARY CHANGES;

29 (f) **Student loan history.** REVIEW THE COMPLETE STUDENT
30 EDUCATION LOAN HISTORY FOR A STUDENT LOAN BORROWER WHO
31 PROVIDES WRITTEN CONSENT FOR THE REVIEW;

32 (g) **Availability.** DISSEMINATE INFORMATION CONCERNING THE
33 AVAILABILITY OF THE STUDENT LOAN OMBUDSPERSON TO ASSIST STUDENT
34 LOAN BORROWERS AND POTENTIAL STUDENT LOAN BORROWERS,
35 INCLUDING DISSEMINATING THE INFORMATION TO INSTITUTIONS OF HIGHER
36 EDUCATION, STUDENT LOAN SERVICERS, AND ANY OTHER PARTICIPANTS IN
37 STUDENT EDUCATION LOAN LENDING WITH ANY SERVICING CONCERNS;

38 (h) **Education course.** ESTABLISH AND MAINTAIN A STUDENT
39 LOAN BORROWER EDUCATION COURSE WITHIN EXISTING RESOURCES THAT
40 INCLUDES EDUCATIONAL PRESENTATIONS AND MATERIALS REGARDING
41 STUDENT EDUCATION LOANS. THE COURSE MUST INCLUDE AT LEAST KEY

1 LOAN TERMS, DOCUMENTATION REQUIREMENTS, MONTHLY PAYMENT
2 OBLIGATIONS, INCOME-BASED REPAYMENT OPTIONS, LOAN FORGIVENESS,
3 AND DISCLOSURE REQUIREMENTS.

4 (i) **Other actions.** TAKE ANY OTHER ACTIONS NECESSARY TO
5 FULFILL THE DUTIES OF THE STUDENT LOAN OMBUDSPERSON AS SET FORTH
6 IN THIS SECTION.

7 (2) (a) **Annual report.** THE ADMINISTRATOR SHALL SUBMIT A
8 REPORT BY JANUARY 1 OF EACH YEAR TO THE COMMITTEES OF REFERENCE
9 OF THE GENERAL ASSEMBLY HAVING JURISDICTION OVER EDUCATION,
10 INSURANCE, AND FINANCIAL SERVICES MATTERS. THE REPORT MUST
11 INCLUDE:

12 (I) **Implementation.** A DESCRIPTION OF ACTIONS TAKEN WITH
13 RESPECT TO THE IMPLEMENTATION OF THIS SECTION;

14 (II) **Effectiveness.** AN ASSESSMENT OF THE OVERALL
15 EFFECTIVENESS OF THE STUDENT LOAN OMBUDSPERSON; AND

16 (III) **Additional steps.** RECOMMENDATIONS REGARDING
17 ADDITIONAL STEPS FOR THE ADMINISTRATOR TO GAIN REGULATORY
18 CONTROL OVER LICENSING AND ENFORCEMENT WITH RESPECT TO STUDENT
19 LOAN SERVICERS.

20 (b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE SEPTEMBER 1,
21 2023.

22 (3) **Student loan ombudsperson and student loan servicer**
23 **licensing fund.** (a) THE STUDENT LOAN OMBUDSPERSON AND STUDENT
24 LOAN SERVICER LICENSING FUND, REFERRED TO IN THIS SECTION AS THE
25 "FUND", IS HEREBY CREATED IN THE STATE TREASURY. THE FUND
26 CONSISTS OF LICENSING AND INVESTIGATION FEES COLLECTED PURSUANT
27 TO SECTION 5-20-107, CIVIL PENALTIES COLLECTED PURSUANT TO
28 SECTIONS 5-20-114 AND 5-20-117, ANY OTHER MONEY REQUIRED BY LAW
29 TO BE DEPOSITED IN THE FUND, AND ANY OTHER MONEY THAT THE
30 GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND.

31 (b) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
32 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
33 FUND TO THE FUND.

34 (c) ALL MONEY HELD IN THE FUND IS CONTINUOUSLY
35 APPROPRIATED TO THE DEPARTMENT OF LAW. THE ADMINISTRATOR SHALL
36 EXPEND MONEY HELD IN THE FUND TO ADMINISTER THIS ARTICLE 20.

37 **5-20-105. License required.** A PERSON SHALL NOT ACT AS A
38 STUDENT LOAN SERVICER, DIRECTLY OR INDIRECTLY, WITHOUT FIRST
39 OBTAINING A STUDENT LOAN SERVICING LICENSE FROM THE
40 ADMINISTRATOR PURSUANT TO THIS ARTICLE 20.

41 **5-20-106. Licensure of student loan servicers.** (1) **Automatic**

1 **issuance of license for federal student loan servicing contractors.**

2 (a) A PERSON SEEKING TO ACT WITHIN THIS STATE AS A STUDENT LOAN
3 SERVICER IS EXEMPT FROM THE APPLICATION PROCEDURES DESCRIBED IN
4 SUBSECTION (2) OF THIS SECTION UPON A DETERMINATION BY THE
5 ADMINISTRATOR THAT STUDENT LOAN SERVICING PERFORMED IN THIS
6 STATE IS CONDUCTED PURSUANT TO A CONTRACT AWARDED BY THE
7 UNITED STATES SECRETARY OF EDUCATION UNDER 20 U.S.C. SEC. 1087f.
8 THE ADMINISTRATOR SHALL PRESCRIBE THE PROCEDURE TO DOCUMENT
9 ELIGIBILITY FOR THE EXEMPTION.

10 (b) **Automatic license.** A PERSON DEEMED EXEMPT BY THE
11 ADMINISTRATOR PURSUANT TO THIS SUBSECTION (1) SHALL, UPON
12 PAYMENT OF THE FEES REQUIRED BY SECTION 5-20-107, AUTOMATICALLY
13 BE ISSUED A LICENSE FROM THE ADMINISTRATOR AND SHALL BE
14 CONSIDERED BY THE ADMINISTRATOR TO HAVE MET ALL REQUIREMENTS
15 SET FORTH IN SUBSECTION (2) OF THIS SECTION.

16 (c) **Procedural exemptions.** A PERSON ISSUED A LICENSE
17 PURSUANT TO THIS SUBSECTION (1) IS EXEMPT FROM SUBSECTIONS (3) TO
18 (9) AND (11) OF THIS SECTION. A PERSON ISSUED A LICENSE PURSUANT TO
19 THIS SUBSECTION (1) SHALL COMPLY WITH THE RECORD REQUIREMENTS IN
20 SUBSECTION (10) OF THIS SECTION EXCEPT TO THE EXTENT THAT THE
21 REQUIREMENTS ARE INCONSISTENT WITH FEDERAL LAW.

22 (d) **Notice.** A PERSON ISSUED A LICENSE PURSUANT TO THIS
23 SUBSECTION (1) SHALL PROVIDE THE ADMINISTRATOR WITH WRITTEN
24 NOTICE WITHIN SEVEN DAYS AFTER NOTIFICATION OF THE EXPIRATION,
25 REVOCATION, OR TERMINATION OF ANY CONTRACT AWARDED BY THE
26 UNITED STATES SECRETARY OF EDUCATION UNDER 20 U.S.C. SEC. 1087f.
27 THE PERSON HAS THIRTY DAYS AFTER NOTIFICATION TO SATISFY ALL
28 REQUIREMENTS ESTABLISHED UNDER SUBSECTION (2) OF THIS SECTION IN
29 ORDER TO CONTINUE TO ACT WITHIN THIS STATE AS A STUDENT LOAN
30 SERVICER. AT THE EXPIRATION OF THE THIRTY-DAY PERIOD, IF THE PERSON
31 SEEKING TO ACT WITHIN THIS STATE AS A STUDENT LOAN SERVICER HAS
32 NOT SATISFIED THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION,
33 THE ADMINISTRATOR SHALL SUMMARILY SUSPEND ANY LICENSE GRANTED
34 TO THE PERSON UNDER THIS SECTION IN ACCORDANCE WITH SECTION
35 24-4-104 (4); EXCEPT THAT THE FULL INVESTIGATION REQUIREMENT
36 SPECIFIED IN SECTION 24-4-104 (4)(a) DOES NOT APPLY.

37 (e) **Preservation of authorities.** WITH RESPECT TO STUDENT LOAN
38 SERVICING NOT CONDUCTED PURSUANT TO A CONTRACT AWARDED BY THE
39 UNITED STATES SECRETARY OF EDUCATION UNDER 20 U.S.C. SEC. 1087f,
40 NOTHING IN THIS SECTION PREVENTS THE ADMINISTRATOR FROM ISSUING,
41 OR FILING A CIVIL ACTION FOR, AN ORDER TO TEMPORARILY OR

1 PERMANENTLY PROHIBIT OR BAR ANY PERSON FROM ACTING AS A STUDENT
2 LOAN SERVICER OR VIOLATING APPLICABLE LAW.

3 (2) **Other student loan servicers.** (a) A PERSON SEEKING TO ACT
4 WITHIN THIS STATE AS A STUDENT LOAN SERVICER, OTHER THAN A PERSON
5 DEEMED EXEMPT BY THE ADMINISTRATOR PURSUANT TO SUBSECTION (1)
6 OF THIS SECTION, MUST APPLY TO THE ADMINISTRATOR FOR AN INITIAL
7 LICENSE IN THE FORM THE ADMINISTRATOR PRESCRIBES. THE APPLICATION
8 MUST BE ACCOMPANIED BY:

9 (I) A FINANCIAL STATEMENT PREPARED BY A CERTIFIED PUBLIC
10 ACCOUNTANT OR A PUBLIC ACCOUNTANT, A GENERAL PARTNER IF THE
11 APPLICANT IS A PARTNERSHIP, A CORPORATE OFFICER IF THE APPLICANT IS
12 A CORPORATION, OR A MEMBER DULY AUTHORIZED TO EXECUTE FINANCIAL
13 STATEMENTS IF THE APPLICANT IS A LIMITED LIABILITY COMPANY OR
14 ASSOCIATION;

15 (II) INFORMATION REGARDING THE HISTORY OF CRIMINAL
16 CONVICTIONS OF THE FOLLOWING:

17 (A) THE APPLICANT;

18 (B) PARTNERS OF THE APPLICANT, IF THE APPLICANT IS IN A
19 PARTNERSHIP;

20 (C) MEMBERS OF THE APPLICANT, IF THE APPLICANT IS A LIMITED
21 LIABILITY COMPANY OR ASSOCIATION; OR

22 (D) OFFICERS, DIRECTORS, AND PRINCIPAL EMPLOYEES OF THE
23 APPLICANT, IF THE APPLICANT IS A CORPORATION.

24 (b) THE INFORMATION SUBMITTED PURSUANT TO SUBSECTION
25 (2)(a)(II) OF THIS SECTION MUST BE SUFFICIENT, AS DETERMINED BY THE
26 ADMINISTRATOR, TO MAKE THE FINDINGS REQUIRED UNDER THIS SECTION.

27 (3) **Investigation of applicant.** (a) UPON THE FILING OF AN
28 APPLICATION FOR AN INITIAL LICENSE AND THE PAYMENT OF THE FEES FOR
29 LICENSING AND INVESTIGATION PURSUANT TO SECTION 5-20-107, THE
30 ADMINISTRATOR SHALL INVESTIGATE THE FINANCIAL CONDITION AND
31 RESPONSIBILITY, FINANCIAL AND BUSINESS EXPERIENCE, CHARACTER, AND
32 GENERAL FITNESS OF THE APPLICANT.

33 (b) THE ADMINISTRATOR MAY ISSUE A LICENSE PURSUANT TO THIS
34 SECTION IF THE ADMINISTRATOR FINDS THAT:

35 (I) THE APPLICANT'S FINANCIAL CONDITION IS SOUND;

36 (II) THE APPLICANT'S BUSINESS WILL BE CONDUCTED HONESTLY,
37 FAIRLY, EQUITABLY, CAREFULLY, AND EFFICIENTLY WITHIN THE PURPOSES
38 AND INTENT OF THIS ARTICLE 20 AND IN A MANNER COMMANDING THE
39 CONFIDENCE AND TRUST OF THE COMMUNITY;

40 (III) IF THE APPLICANT IS:

41 (A) AN INDIVIDUAL, THE INDIVIDUAL IS IN ALL RESPECTS

1 PROPERLY QUALIFIED AND OF GOOD CHARACTER;
2 (B) A PARTNERSHIP, EACH PARTNER IS IN ALL RESPECTS PROPERLY
3 QUALIFIED AND OF GOOD CHARACTER;
4 (C) A LIMITED LIABILITY COMPANY OR ASSOCIATION, EACH
5 MEMBER IS IN ALL RESPECTS PROPERLY QUALIFIED AND OF GOOD
6 CHARACTER; OR
7 (D) A CORPORATION, THE PRESIDENT, CHAIR OF THE EXECUTIVE
8 COMMITTEE, SENIOR OFFICER RESPONSIBLE FOR THE CORPORATION'S
9 BUSINESS, CHIEF FINANCIAL OFFICER OR ANY OTHER PERSON WHO
10 PERFORMS SIMILAR FUNCTIONS AS DETERMINED BY THE ADMINISTRATOR,
11 EACH DIRECTOR, EACH TRUSTEE, AND EACH SHAREHOLDER OWNING TEN
12 PERCENT OR MORE OF EACH CLASS OF THE SECURITIES OF THE
13 CORPORATION ARE IN ALL RESPECTS PROPERLY QUALIFIED AND OF GOOD
14 CHARACTER;
15 (IV) NO PERSON ACTING ON BEHALF OF THE APPLICANT
16 KNOWINGLY HAS MADE AN INCORRECT STATEMENT OF A MATERIAL FACT
17 IN THE APPLICATION OR IN ANY REPORT OR STATEMENT MADE PURSUANT
18 TO THIS ARTICLE 20; AND
19 (V) THE APPLICANT HAS MET ANY OTHER REQUIREMENTS AS
20 DETERMINED BY THE ADMINISTRATOR.
21 (4) **License expiration.** A LICENSE ISSUED PURSUANT TO THIS
22 SECTION EXPIRES EACH JANUARY 31 UNLESS RENEWED OR EARLIER
23 SURRENDERED, SUSPENDED, OR REVOKED PURSUANT TO THIS ARTICLE 20.
24 NO LATER THAN FIFTEEN DAYS AFTER A LICENSEE CEASES TO ENGAGE IN
25 THE BUSINESS OF SERVICING IN THIS STATE FOR ANY REASON, INCLUDING
26 A BUSINESS DECISION TO TERMINATE OPERATIONS IN THIS STATE, LICENSE
27 REVOCATION, BANKRUPTCY, OR VOLUNTARY DISSOLUTION, THE LICENSEE
28 SHALL PROVIDE WRITTEN NOTICE OF SURRENDER TO THE ADMINISTRATOR
29 AND SHALL SURRENDER TO THE ADMINISTRATOR ITS LICENSE FOR EACH
30 LOCATION IN WHICH THE LICENSEE HAS CEASED TO ENGAGE IN SERVICING.
31 THE WRITTEN NOTICE OF SURRENDER MUST IDENTIFY THE LOCATION
32 WHERE THE RECORDS OF THE LICENSEE WILL BE STORED AND THE NAME,
33 ADDRESS, AND TELEPHONE NUMBER OF A PERSON AUTHORIZED TO PROVIDE
34 ACCESS TO THE RECORDS. THE SURRENDER OF A LICENSE DOES NOT
35 REDUCE OR ELIMINATE THE LICENSEE'S CIVIL OR CRIMINAL LIABILITY
36 ARISING FROM ACTS OR OMISSIONS OCCURRING BEFORE THE SURRENDER
37 OF THE LICENSE, INCLUDING ANY ADMINISTRATIVE ACTIONS UNDERTAKEN
38 BY THE ADMINISTRATOR TO REVOKE OR SUSPEND A LICENSE, ASSESS A
39 CIVIL PENALTY, ORDER RESTITUTION, OR EXERCISE ANY OTHER AUTHORITY
40 PROVIDED TO THE ADMINISTRATOR.
41 (5) **License renewal.** (a) A LICENSE ISSUED PURSUANT TO THIS

1 SECTION MAY BE RENEWED FOR THE ENSUING TWELVE-MONTH PERIOD
2 UPON THE FILING OF AN APPLICATION CONTAINING ALL REQUIRED RECORDS
3 AND FEES, INCLUDING RENEWAL FEES AS ESTABLISHED BY THE
4 ADMINISTRATOR IN ACCORDANCE WITH SECTION 5-20-107. A RENEWAL
5 APPLICATION MUST BE FILED ON OR BEFORE JANUARY 31 OF THE YEAR IN
6 WHICH THE LICENSE EXPIRES. THE ADMINISTRATOR MAY ESTABLISH A
7 LATE FEE FOR ANY RENEWAL APPLICATIONS SUBMITTED AFTER JANUARY
8 31.

9 (b) IF AN APPLICATION FOR A RENEWAL LICENSE HAS BEEN FILED
10 WITH THE ADMINISTRATOR ON OR BEFORE THE DATE THE LICENSE EXPIRES,
11 THE LICENSE SOUGHT TO BE RENEWED CONTINUES IN EFFECT UNTIL THE
12 ISSUANCE BY THE ADMINISTRATOR OF THE RENEWAL LICENSE APPLIED FOR
13 OR UNTIL THE ADMINISTRATOR HAS NOTIFIED THE LICENSEE IN WRITING OF
14 THE ADMINISTRATOR'S REFUSAL TO ISSUE THE RENEWAL LICENSE
15 TOGETHER WITH THE GROUNDS UPON WHICH THE REFUSAL IS BASED.

16 (c) THE ADMINISTRATOR MAY REFUSE TO ISSUE A RENEWAL
17 LICENSE ON ANY GROUND ON WHICH THE ADMINISTRATOR MAY REFUSE TO
18 ISSUE AN INITIAL LICENSE.

19 (6) **Dishonored check.** IF A CHECK FILED WITH THE
20 ADMINISTRATOR TO PAY A LICENSE, INVESTIGATION, OR RENEWAL FEE
21 UNDER THIS SECTION IS DISHONORED, THE ADMINISTRATOR SHALL
22 SUMMARILY SUSPEND THE LICENSE OR THE RENEWAL LICENSE THAT HAS
23 BEEN ISSUED BUT IS NOT YET EFFECTIVE IN ACCORDANCE WITH SECTION
24 24-4-104 (4); EXCEPT THAT THE FULL INVESTIGATION REQUIREMENT
25 SPECIFIED IN SECTION 24-4-104 (4)(a) DOES NOT APPLY. THE
26 ADMINISTRATOR SHALL GIVE THE LICENSEE NOTICE OF THE SUMMARY
27 SUSPENSION PENDING PROCEEDINGS FOR REVOCATION OR REFUSAL TO
28 RENEW AND AN OPPORTUNITY FOR A HEARING ON THE ACTIONS IN
29 ACCORDANCE WITH SECTION 5-20-113.

30 (7) **Update application information.** AN APPLICANT OR LICENSEE
31 UNDER THIS SECTION SHALL NOTIFY THE ADMINISTRATOR, IN WRITING, OF
32 ANY CHANGE IN THE INFORMATION PROVIDED IN ITS INITIAL APPLICATION
33 FOR A LICENSE OR ITS MOST RECENT RENEWAL APPLICATION FOR A
34 LICENSE, AS APPLICABLE, NOT LATER THAN TEN BUSINESS DAYS AFTER THE
35 OCCURRENCE OF THE EVENT THAT RESULTS IN THE CHANGE.

36 (8) **Incomplete application.** THE ADMINISTRATOR MAY CONSIDER
37 AN APPLICATION FOR A LICENSE UNDER THIS SECTION ABANDONED IF THE
38 APPLICANT FAILS TO RESPOND TO ANY REQUEST FOR INFORMATION
39 REQUIRED UNDER THIS ARTICLE 20 OR ANY RULES ADOPTED PURSUANT TO
40 THIS ARTICLE 20, AS LONG AS THE ADMINISTRATOR NOTIFIES THE
41 APPLICANT, IN WRITING, THAT THE APPLICATION WILL BE CONSIDERED

1 ABANDONED IF THE APPLICANT FAILS TO SUBMIT THE INFORMATION
2 WITHIN SIXTY DAYS AFTER THE DATE ON WHICH THE REQUEST FOR
3 INFORMATION WAS MADE. ABANDONMENT OF AN APPLICATION PURSUANT
4 TO THIS SUBSECTION (8) DOES NOT PRECLUDE THE APPLICANT FROM
5 SUBMITTING A NEW APPLICATION FOR A LICENSE UNDER THIS ARTICLE 20.

6 (9) **Change of license notification.** A LICENSEE UNDER THIS
7 SECTION SHALL NOT ACT WITHIN THIS STATE AS A STUDENT LOAN
8 SERVICER UNDER ANY NAME OR AT ANY PLACE OF BUSINESS OTHER THAN
9 THOSE NAMED IN THE LICENSE. A LICENSEE SHALL GIVE PRIOR WRITTEN
10 NOTICE TO THE ADMINISTRATOR OF A CHANGE OF BUSINESS LOCATION. A
11 LICENSEE SHALL NOT OPERATE MORE THAN ONE PLACE OF BUSINESS UNDER
12 THE SAME LICENSE, BUT THE ADMINISTRATOR MAY ISSUE MORE THAN ONE
13 LICENSE TO A LICENSEE THAT COMPLIES WITH THIS ARTICLE 20 AS TO EACH
14 LICENSE. A LICENSE IS NOT TRANSFERABLE OR ASSIGNABLE.

15 (10) **Records retention - records request.** A STUDENT LOAN
16 SERVICER SHALL MAINTAIN ADEQUATE RECORDS OF EACH STUDENT
17 EDUCATION LOAN TRANSACTION FOR NOT LESS THAN TWO YEARS AFTER
18 THE FINAL PAYMENT ON THE STUDENT EDUCATION LOAN OR THE
19 ASSIGNMENT OF THE STUDENT EDUCATION LOAN, WHICHEVER OCCURS
20 FIRST, OR EXCEPT AS OTHERWISE REQUIRED BY FEDERAL LAW, A FEDERAL
21 STUDENT EDUCATION LOAN AGREEMENT, OR A CONTRACT BETWEEN THE
22 FEDERAL GOVERNMENT AND A LICENSEE. UPON REQUEST BY THE
23 ADMINISTRATOR, A STUDENT LOAN SERVICER SHALL MAKE THE RECORDS
24 AVAILABLE OR SHALL SEND THE RECORDS TO THE ADMINISTRATOR BY
25 REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY
26 EXPRESS DELIVERY CARRIER THAT PROVIDES A DATED DELIVERY RECEIPT,
27 NOT LATER THAN FIVE BUSINESS DAYS AFTER REQUESTED BY THE
28 ADMINISTRATOR. UPON A LICENSEE'S REQUEST, THE ADMINISTRATOR MAY
29 GRANT THE LICENSEE ADDITIONAL TIME TO MAKE THE RECORDS
30 AVAILABLE OR TO SEND THE RECORDS TO THE ADMINISTRATOR.

31 (11) **License suspension and revocation - refusal to renew.**

32 (a) THE ADMINISTRATOR MAY SUSPEND, REVOKE, ANNUL, LIMIT, MODIFY,
33 OR REFUSE TO RENEW A LICENSE ISSUED PURSUANT TO SUBSECTION (2) OF
34 THIS SECTION OR TAKE ANY OTHER ACTION IN ACCORDANCE WITH THIS
35 ARTICLE 20 IF THE ADMINISTRATOR FINDS ONE OR MORE OF THE
36 FOLLOWING:

37 (I) THE LICENSEE HAS VIOLATED ANY PROVISION OF THIS ARTICLE
38 20 OR ANY RULE LAWFULLY ADOPTED OR ORDER LAWFULLY ISSUED
39 PURSUANT TO AND WITHIN THE AUTHORITY OF THIS ARTICLE 20; OR

40 (II) ANY FACT OR CONDITION EXISTS THAT, IF IT HAD EXISTED AT
41 THE TIME OF THE ORIGINAL APPLICATION FOR THE LICENSE, CLEARLY

1 WOULD HAVE WARRANTED A DENIAL OF THE LICENSE.
2 (b) AN ABATEMENT OF THE LICENSE FEE MAY NOT BE MADE IF THE
3 LICENSE IS SURRENDERED, REVOKED, OR SUSPENDED.
4 **5-20-107. License and investigation fees.** (1) A PERSON
5 APPLYING FOR LICENSURE UNDER SECTION 5-20-106 (1) OR (2) SHALL PAY
6 THE FOLLOWING NONREFUNDABLE FEES ESTABLISHED BY THE
7 ADMINISTRATOR:
8 (a) INITIAL LICENSE FEE OF AT LEAST ONE THOUSAND DOLLARS;
9 (b) ANNUAL RENEWAL FEE OF AT LEAST ONE THOUSAND DOLLARS;
10 AND
11 (c) INVESTIGATION FEE.
12 (2) THE ADMINISTRATOR SHALL DETERMINE THE AMOUNT OF THE
13 FEES REQUIRED IN THIS SECTION AND MAY PERIODICALLY REDUCE OR
14 INCREASE THE AMOUNT OF ONE OR MORE OF THE FEES IF NECESSARY
15 PURSUANT TO SECTION 24-75-402 (3) AND (4), TO REDUCE THE
16 UNCOMMITTED RESERVES OF THE FUND CREATED IN SECTION 5-20-104(3).
17 THE FUND IS SUBJECT TO THE MAXIMUM RESERVE ESTABLISHED IN
18 SECTION 24-75-402.
19 **5-20-108. Affirmative acts required of student loan servicers**
20 **- definitions.** (1) EXCEPT AS OTHERWISE PROVIDED IN FEDERAL LAW,
21 FEDERAL STUDENT EDUCATION LOAN AGREEMENTS, OR A CONTRACT
22 BETWEEN THE FEDERAL GOVERNMENT AND A STUDENT LOAN SERVICER, A
23 STUDENT LOAN SERVICER SHALL TAKE THE ACTIONS SPECIFIED IN THIS
24 SECTION.
25 (2) (a) A STUDENT LOAN SERVICER SHALL RESPOND TO A WRITTEN
26 INQUIRY FROM A STUDENT LOAN BORROWER, THE REPRESENTATIVE OF A
27 STUDENT LOAN BORROWER, OR THE STUDENT LOAN OMBUDSPERSON
28 WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF THE REQUEST AND, WITHIN
29 THIRTY BUSINESS DAYS AFTER RECEIPT OF THE REQUEST, PROVIDE
30 INFORMATION RELATING TO THE REQUEST AND, IF APPLICABLE, THE
31 ACTION THE STUDENT LOAN SERVICER WILL TAKE TO CORRECT THE
32 ACCOUNT OR AN EXPLANATION FOR THE STUDENT LOAN SERVICER'S
33 POSITION THAT THE BORROWER'S ACCOUNT IS CORRECT.
34 (b) THE THIRTY-DAY PERIOD DESCRIBED IN SUBSECTION (2)(a) OF
35 THIS SECTION MAY BE EXTENDED FOR NOT MORE THAN FIFTEEN DAYS IF,
36 BEFORE THE END OF THE THIRTY-DAY PERIOD, THE STUDENT LOAN
37 SERVICER NOTIFIES THE BORROWER, THE BORROWER'S REPRESENTATIVE,
38 OR THE OMBUDSPERSON, AS APPLICABLE, OF THE EXTENSION AND THE
39 REASONS FOR THE DELAY IN RESPONDING.
40 (c) AFTER RECEIPT OF A WRITTEN REQUEST RELATED TO A DISPUTE
41 ON A BORROWER'S PAYMENT ON A STUDENT EDUCATION LOAN, A STUDENT

1 LOAN SERVICER SHALL NOT, FOR THE SIXTY DAYS FOLLOWING RECEIPT,
2 FURNISH ADVERSE INFORMATION TO A CONSUMER REPORTING AGENCY
3 REGARDING A PAYMENT THAT IS THE SUBJECT OF THE WRITTEN INQUIRY.

4 (3) (a) EXCEPT AS PROVIDED IN FEDERAL LAW OR REQUIRED BY A
5 STUDENT LOAN AGREEMENT, A STUDENT LOAN SERVICER SHALL INQUIRE
6 OF A BORROWER HOW TO APPLY AN OVERPAYMENT TO A STUDENT
7 EDUCATION LOAN. A BORROWER'S DIRECTION ON HOW TO APPLY AN
8 OVERPAYMENT TO A STUDENT EDUCATION LOAN STAYS IN EFFECT FOR ANY
9 FUTURE OVERPAYMENTS DURING THE TERM OF A STUDENT EDUCATION
10 LOAN UNTIL THE BORROWER PROVIDES DIFFERENT DIRECTIONS.

11 (b) FOR PURPOSES OF THIS SUBSECTION (3), "OVERPAYMENT"
12 MEANS A PAYMENT ON A STUDENT EDUCATION LOAN IN EXCESS OF THE
13 MONTHLY AMOUNT DUE FROM A BORROWER ON A STUDENT EDUCATION
14 LOAN, ALSO COMMONLY REFERRED TO AS A PREPAYMENT.

15 (4) (a) A STUDENT LOAN SERVICER SHALL APPLY PARTIAL
16 PAYMENTS IN A MANNER THAT MINIMIZES LATE FEES AND NEGATIVE
17 CREDIT REPORTING BY APPLYING PARTIAL PAYMENTS TO SATISFY AS MANY
18 INDIVIDUAL LOAN PAYMENTS AS POSSIBLE ON A BORROWER'S ACCOUNT.

19 (b) FOR PURPOSES OF THIS SUBSECTION (4), "PARTIAL PAYMENT"
20 MEANS A PAYMENT ON A STUDENT LOAN ACCOUNT THAT CONTAINS
21 MULTIPLE INDIVIDUAL LOANS IN AN AMOUNT LESS THAN THE AMOUNT
22 NECESSARY TO SATISFY THE OUTSTANDING PAYMENT DUE ON ALL LOANS
23 IN THE STUDENT LOAN ACCOUNT, ALSO COMMONLY REFERRED TO AS AN
24 UNDERPAYMENT.

25 (5) IN THE EVENT OF THE SALE, ASSIGNMENT, OR OTHER TRANSFER
26 OF THE SERVICING OF A STUDENT EDUCATION LOAN THAT RESULTS IN A
27 CHANGE IN THE IDENTITY OF THE PERSON TO WHOM A STUDENT LOAN
28 BORROWER IS REQUIRED TO SEND PAYMENTS OR DIRECT ANY
29 COMMUNICATION CONCERNING THE STUDENT EDUCATION LOAN, THE
30 FOLLOWING PROVISIONS APPLY:

31 (a) AS A CONDITION OF A SALE, AN ASSIGNMENT, OR ANY OTHER
32 TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN, A STUDENT
33 LOAN SERVICER SHALL REQUIRE THE NEW STUDENT LOAN SERVICER TO
34 HONOR ALL BENEFITS ORIGINALLY REPRESENTED AS AVAILABLE TO A
35 STUDENT LOAN BORROWER DURING THE REPAYMENT OF THE STUDENT
36 EDUCATION LOAN AND PRESERVE THE AVAILABILITY OF THE BENEFITS,
37 INCLUDING ANY BENEFITS FOR WHICH THE STUDENT LOAN BORROWER HAS
38 NOT YET QUALIFIED.

39 (b) A STUDENT LOAN SERVICER SHALL TRANSFER TO THE NEW
40 STUDENT LOAN SERVICER ALL RECORDS REGARDING THE STUDENT LOAN
41 BORROWER, THE ACCOUNT OF THE STUDENT LOAN BORROWER, AND THE

1 STUDENT EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

2 (c) THE RECORDS REQUIRED UNDER SUBSECTION (5)(b) OF THIS
3 SECTION INCLUDE THE REPAYMENT STATUS OF THE STUDENT LOAN
4 BORROWER AND ANY BENEFITS ASSOCIATED WITH THE STUDENT
5 EDUCATION LOAN OF THE STUDENT LOAN BORROWER.

6 (d) THE STUDENT LOAN SERVICER SHALL COMPLETE THE TRANSFER
7 OF RECORDS REQUIRED UNDER SUBSECTION (5)(b) OF THIS SECTION WITHIN
8 FORTY-FIVE DAYS AFTER THE SALE, ASSIGNMENT, OR OTHER TRANSFER OF
9 THE SERVICING OF A STUDENT EDUCATION LOAN.

10 (e) THE PARTIES SHALL COMPLETE THE SALE, ASSIGNMENT, OR
11 OTHER TRANSFER OF THE SERVICING OF A STUDENT EDUCATION LOAN AT
12 LEAST SEVEN DAYS BEFORE THE NEXT PAYMENT ON THE LOAN IS DUE.

13 (6) A STUDENT LOAN SERVICER THAT OBTAINS THE RIGHT TO
14 SERVICE A STUDENT EDUCATION LOAN SHALL ADOPT POLICIES AND
15 PROCEDURES TO VERIFY THAT THE STUDENT LOAN SERVICER HAS
16 RECEIVED ALL RECORDS REGARDING THE STUDENT LOAN BORROWER, THE
17 ACCOUNT OF THE STUDENT LOAN BORROWER, AND THE STUDENT
18 EDUCATION LOAN OF THE STUDENT LOAN BORROWER, INCLUDING THE
19 REPAYMENT STATUS OF THE STUDENT LOAN BORROWER AND ANY
20 BENEFITS ASSOCIATED WITH THE STUDENT EDUCATION LOAN OF THE
21 STUDENT LOAN BORROWER.

22 **5-20-109. Prohibited acts of student loan servicers.** (1) A
23 STUDENT LOAN SERVICER SHALL NOT:

24 (a) DIRECTLY OR INDIRECTLY EMPLOY A SCHEME, A DEVICE, OR
25 ARTIFICE TO DEFRAUD OR MISLEAD STUDENT LOAN BORROWERS;

26 (b) ENGAGE IN AN UNFAIR OR DECEPTIVE PRACTICE TOWARD ANY
27 PERSON OR MISREPRESENT OR OMIT ANY MATERIAL INFORMATION IN
28 CONNECTION WITH THE SERVICING OF A STUDENT EDUCATION LOAN,
29 INCLUDING MISREPRESENTING THE AMOUNT, NATURE, OR TERMS OF ANY
30 FEE OR PAYMENT DUE OR CLAIMED TO BE DUE ON A STUDENT EDUCATION
31 LOAN, THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT, OR THE
32 STUDENT LOAN BORROWER'S OBLIGATIONS UNDER THE LOAN;

33 (c) OBTAIN PROPERTY BY FRAUD OR MISREPRESENTATION;

34 (d) MISAPPLY STUDENT EDUCATION LOAN PAYMENTS TO THE
35 OUTSTANDING BALANCE OF A STUDENT EDUCATION LOAN;

36 (e) PROVIDE INACCURATE INFORMATION TO A CONSUMER
37 REPORTING AGENCY;

38 (f) FAIL TO REPORT BOTH THE FAVORABLE AND UNFAVORABLE
39 PAYMENT HISTORY OF A STUDENT LOAN BORROWER TO A CONSUMER
40 REPORTING AGENCY AT LEAST ANNUALLY IF THE STUDENT LOAN SERVICER
41 REGULARLY REPORTS INFORMATION TO A CONSUMER REPORTING AGENCY;

1 (g) REFUSE TO COMMUNICATE WITH AN AUTHORIZED
2 REPRESENTATIVE OF A STUDENT LOAN BORROWER WHO PROVIDES A
3 WRITTEN AUTHORIZATION SIGNED BY THE STUDENT LOAN BORROWER;
4 EXCEPT THAT THE STUDENT LOAN SERVICER MAY ADOPT PROCEDURES
5 REASONABLY RELATED TO VERIFYING THAT THE REPRESENTATIVE IS IN
6 FACT AUTHORIZED TO ACT ON BEHALF OF THE STUDENT LOAN BORROWER;

7 (h) MAKE ANY FALSE STATEMENT OR OMIT ANY MATERIAL FACT
8 IN CONNECTION WITH INFORMATION OR REPORTS FILED WITH A
9 GOVERNMENTAL AGENCY OR IN CONNECTION WITH AN INVESTIGATION
10 CONDUCTED BY THE ADMINISTRATOR OR ANOTHER GOVERNMENTAL
11 AGENCY; OR

12 (i) EXCEPT AS OTHERWISE PROVIDED IN FEDERAL LAW, FEDERAL
13 STUDENT LOAN AGREEMENTS, OR A CONTRACT BETWEEN THE FEDERAL
14 GOVERNMENT AND A STUDENT LOAN SERVICER, FAIL TO PROPERLY
15 EVALUATE A STUDENT LOAN BORROWER FOR AN INCOME-BASED OR OTHER
16 STUDENT LOAN REPAYMENT PROGRAM OR FOR ELIGIBILITY FOR A PUBLIC
17 SERVICE LOAN FORGIVENESS PROGRAM BEFORE PLACING THE STUDENT
18 LOAN BORROWER IN FORBEARANCE OR DEFAULT, IF AN INCOME-BASED
19 REPAYMENT OR OTHER PROGRAM IS AVAILABLE TO THE STUDENT LOAN
20 BORROWER.

21 **5-20-110. Powers and duties of the administrator - rules.**

22 (1) THE ADMINISTRATOR MAY CONDUCT INVESTIGATIONS AND
23 EXAMINATIONS AS FOLLOWS:

24 (a) FOR PURPOSES OF INITIAL LICENSING, LICENSE RENEWAL,
25 LICENSE SUSPENSION, LICENSE REVOCATION OR TERMINATION, OR
26 GENERAL OR SPECIFIC INQUIRY OR INVESTIGATION TO DETERMINE
27 COMPLIANCE WITH THIS ARTICLE 20, THE ADMINISTRATOR MAY ACCESS,
28 RECEIVE, AND USE ANY RECORDS OR INFORMATION BELONGING TO A
29 LICENSEE OR PERSON UNDER EXAMINATION, INCLUDING CRIMINAL, CIVIL,
30 AND ADMINISTRATIVE HISTORY INFORMATION; PERSONAL HISTORY AND
31 EXPERIENCE INFORMATION, INCLUDING INDEPENDENT CREDIT REPORTS
32 OBTAINED FROM A CONSUMER REPORTING AGENCY DESCRIBED IN SECTION
33 603 (p) OF THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC.
34 1681a, AS AMENDED; AND ANY OTHER RECORDS OR INFORMATION THE
35 ADMINISTRATOR CONSIDERS RELEVANT TO THE INQUIRY OR
36 INVESTIGATION REGARDLESS OF THE LOCATION, POSSESSION, CONTROL, OR
37 CUSTODY OF THE RECORDS OR INFORMATION.

38 (b) FOR THE PURPOSES OF INVESTIGATING VIOLATIONS OR
39 COMPLAINTS ARISING UNDER THIS ARTICLE 20 OR FOR THE PURPOSES OF
40 EXAMINATION, THE ADMINISTRATOR MAY REVIEW, INVESTIGATE, OR
41 EXAMINE ANY LICENSEE OR PERSON SUBJECT TO THIS ARTICLE 20 AS OFTEN

1 AS NECESSARY IN ORDER TO CARRY OUT THE PURPOSES OF THIS ARTICLE
2 20. THE ADMINISTRATOR MAY DIRECT, SUBPOENA, OR ORDER THE
3 ATTENDANCE OF AND EXAMINE UNDER OATH ANY PERSON WHOSE
4 TESTIMONY MAY BE REQUIRED ABOUT THE STUDENT EDUCATION LOAN OR
5 THE BUSINESS OR SUBJECT MATTER OF AN EXAMINATION OR
6 INVESTIGATION AND MAY DIRECT, SUBPOENA, OR ORDER THE PERSON TO
7 PRODUCE RECORDS THE ADMINISTRATOR CONSIDERS RELEVANT TO THE
8 INQUIRY.

9 (c) (I) IN MAKING AN EXAMINATION OR INVESTIGATION
10 AUTHORIZED BY THIS SECTION, THE ADMINISTRATOR MAY CONTROL
11 ACCESS TO ANY RECORDS OF THE LICENSEE OR PERSON UNDER
12 EXAMINATION OR INVESTIGATION. THE ADMINISTRATOR MAY TAKE
13 POSSESSION OF THE RECORDS OR PLACE A PERSON IN EXCLUSIVE CHARGE
14 OF THE RECORDS IN THE PLACE WHERE THEY ARE USUALLY KEPT.

15 (II) DURING THE PERIOD OF ADMINISTRATOR CONTROL PURSUANT
16 TO THIS SUBSECTION (1)(c), A PERSON MAY NOT REMOVE OR ATTEMPT TO
17 REMOVE ANY OF THE RECORDS EXCEPT PURSUANT TO A COURT ORDER OR
18 WITH THE CONSENT OF THE ADMINISTRATOR. UNLESS THE ADMINISTRATOR
19 HAS REASONABLE GROUNDS TO BELIEVE THAT THE RECORDS OF THE
20 LICENSEE OR PERSON HAVE BEEN, OR ARE AT RISK OF BEING, ALTERED OR
21 DESTROYED FOR PURPOSES OF CONCEALING A VIOLATION OF THIS ARTICLE
22 20, THE LICENSEE OR OWNER OF THE RECORDS MAY HAVE ACCESS TO THE
23 RECORDS AS NECESSARY TO CONDUCT ITS ORDINARY BUSINESS AFFAIRS.

24 (2) IN ORDER TO CARRY OUT THE PURPOSES OF THIS SECTION, THE
25 ADMINISTRATOR MAY:

26 (a) RETAIN ATTORNEYS, ACCOUNTANTS, OR OTHER PROFESSIONALS
27 AND SPECIALISTS AS EXAMINERS, AUDITORS, OR INVESTIGATORS TO
28 CONDUCT OR ASSIST IN THE CONDUCT OF EXAMINATIONS OR
29 INVESTIGATIONS;

30 (b) ENTER INTO AGREEMENTS OR RELATIONSHIPS WITH OTHER
31 GOVERNMENT OFFICIALS OR REGULATORY ASSOCIATIONS IN ORDER TO
32 IMPROVE EFFICIENCIES AND REDUCE REGULATORY BURDEN BY SHARING
33 RESOURCES, STANDARDIZED OR UNIFORM METHODS OR PROCEDURES, AND
34 RECORDS OR INFORMATION OBTAINED UNDER THIS SECTION;

35 (c) USE, HIRE, CONTRACT FOR, OR EMPLOY PUBLICLY OR
36 PRIVATELY AVAILABLE ANALYTICAL SYSTEMS, METHODS, OR SOFTWARE
37 TO EXAMINE OR INVESTIGATE THE LICENSEE OR PERSON SUBJECT TO THIS
38 ARTICLE 20;

39 (d) ACCEPT AND RELY ON EXAMINATION OR INVESTIGATION
40 REPORTS MADE BY OTHER GOVERNMENT OFFICIALS WITHIN OR OUTSIDE
41 THIS STATE; AND

1 (e) ACCEPT AUDIT REPORTS MADE BY AN INDEPENDENT CERTIFIED
2 PUBLIC ACCOUNTANT OF THE LICENSEE OR PERSON SUBJECT TO THIS
3 ARTICLE 20 IN THE COURSE OF THAT PART OF THE EXAMINATION COVERING
4 THE SAME GENERAL SUBJECT MATTER AS THE AUDIT AND MAY
5 INCORPORATE THE AUDIT REPORT IN A REPORT OF EXAMINATION, REPORT
6 OF INVESTIGATION, OR OTHER WRITING OF THE ADMINISTRATOR.

7 (3) A PERSON SUBJECT TO INVESTIGATION OR EXAMINATION UNDER
8 THIS SECTION SHALL NOT KNOWINGLY WITHHOLD, ABSTRACT, REMOVE,
9 MUTILATE, OR DESTROY ANY RECORDS OR OTHER INFORMATION RELATING
10 TO INFORMATION REGULATED UNDER THIS ARTICLE 20.

11 (4) WHENEVER IT APPEARS TO THE ADMINISTRATOR THAT A
12 PERSON HAS VIOLATED, IS VIOLATING, OR IS ABOUT TO VIOLATE A
13 PROVISION OF THIS ARTICLE 20 OR A RULE ADOPTED PURSUANT TO THIS
14 ARTICLE 20 OR THAT A LICENSEE OR AN OWNER, DIRECTOR, OFFICER,
15 MEMBER, PARTNER, SHAREHOLDER, TRUSTEE, EMPLOYEE, OR AGENT OF
16 THE LICENSEE HAS COMMITTED FRAUD, ENGAGED IN DISHONEST
17 ACTIVITIES, OR MADE A MISREPRESENTATION, THE ADMINISTRATOR MAY
18 TAKE ACTION AGAINST THE PERSON OR LICENSEE IN ACCORDANCE WITH
19 THIS ARTICLE 20.

20 (5) THE ADMINISTRATOR SHALL ADOPT RULES AS NECESSARY TO
21 IMPLEMENT THIS ARTICLE 20.

22 **5-20-111. Compliance with federal law.** A STUDENT LOAN
23 SERVICER SHALL COMPLY WITH ALL APPLICABLE FEDERAL LAWS AND
24 REGULATIONS RELATING TO SERVICING, INCLUDING THE FEDERAL "TRUTH
25 IN LENDING ACT", 15 U.S.C. SEC. 1601 TO 1667f, AS AMENDED, AND THE
26 REGULATIONS ADOPTED PURSUANT TO THAT ACT. IN ADDITION TO ANY
27 OTHER REMEDIES PROVIDED BY LAW, A VIOLATION OF THAT ACT OR
28 REGULATIONS ADOPTED PURSUANT TO THAT ACT IS A VIOLATION OF THIS
29 ARTICLE 20 AND A BASIS UPON WHICH THE ADMINISTRATOR MAY TAKE
30 ENFORCEMENT ACTION PURSUANT TO THIS ARTICLE 20.

31 **5-20-112. Civil action.** (1) A VIOLATION OF THIS ARTICLE 20 IS A
32 DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF SECTION 6-1-105.

33 (2) A STUDENT LOAN SERVICER WHO FAILS TO COMPLY WITH ANY
34 REQUIREMENT IMPOSED UNDER THIS ARTICLE 20 WITH RESPECT TO A
35 STUDENT LOAN BORROWER IS LIABLE IN AN AMOUNT EQUAL TO THE SUM
36 OF:

37 (a) ANY ACTUAL DAMAGES SUSTAINED BY THE STUDENT LOAN
38 BORROWER AS A RESULT OF THE FAILURE;

39 (b) A MONETARY AWARD EQUAL TO THREE TIMES THE TOTAL
40 AMOUNT THE STUDENT LOAN SERVICER COLLECTED FROM THE STUDENT
41 LOAN BORROWER IN VIOLATION OF THIS ARTICLE 20;

1 (c) PUNITIVE DAMAGES AS THE COURT MAY ALLOW; AND
2 (d) IN THE CASE OF ANY SUCCESSFUL ACTION BY A STUDENT LOAN
3 BORROWER TO ENFORCE THE LIABILITY SET OUT IN THIS SECTION, THE
4 COSTS OF THE ACTION, TOGETHER WITH REASONABLE ATTORNEY FEES AS
5 DETERMINED BY THE COURT.

6 (3) THE REMEDIES PROVIDED IN THIS SECTION ARE NOT THE
7 EXCLUSIVE REMEDIES AVAILABLE TO A STUDENT LOAN BORROWER.

8 **5-20-113. Application of administrative procedures -**
9 **provisions.** EXCEPT AS OTHERWISE PROVIDED, SECTIONS 24-4-102 TO
10 24-4-106 APPLY TO AND GOVERN ALL RULES PROMULGATED AND ALL
11 ADMINISTRATIVE ACTION TAKEN BY THE ADMINISTRATOR PURSUANT TO
12 THIS ARTICLE 20; EXCEPT THAT SECTION 24-4-104 (3) DOES NOT APPLY TO
13 ANY SUCH ACTION.

14 **5-20-114. Administrative enforcement orders.** (1) AFTER
15 NOTICE AND HEARING, THE ADMINISTRATOR MAY ORDER A STUDENT LOAN
16 SERVICER OR A PERSON ACTING IN THE STUDENT LOAN SERVICER'S BEHALF
17 TO CEASE AND DESIST FROM ENGAGING IN VIOLATIONS OF THIS ARTICLE 20
18 OR ANY RULE LAWFULLY ADOPTED OR ORDER LAWFULLY ISSUED
19 PURSUANT TO THIS ARTICLE 20. THE ORDER ISSUED BY THE
20 ADMINISTRATOR MAY ALSO REQUIRE THE STUDENT LOAN SERVICER OR
21 PERSON TO MAKE REFUNDS TO PERSONS OF UNLAWFUL CHARGES UNDER
22 THIS ARTICLE 20 AND AN ADMINISTRATIVE PENALTY OF UP TO ONE
23 THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION, ALL OR PART OF
24 WHICH MAY BE SPECIFICALLY DESIGNATED FOR CONSUMER AND CREDITOR
25 EDUCATIONAL PURPOSES.

26 (2) A RESPONDENT AGGRIEVED BY AN ORDER OF THE
27 ADMINISTRATOR MAY OBTAIN JUDICIAL REVIEW OF THE ORDER IN THE
28 COLORADO COURT OF APPEALS. THE ADMINISTRATOR MAY OBTAIN AN
29 ORDER OF THE COURT FOR ENFORCEMENT OF THE ADMINISTRATOR'S ORDER
30 IN THE DISTRICT COURT UNDER SECTION 24-4-106. ALL PROCEEDINGS
31 UNDER THIS SECTION ARE GOVERNED BY SECTIONS 24-4-105 AND
32 24-4-106.

33 **5-20-115. Assurance of discontinuance.** IF IT IS CLAIMED THAT
34 A PERSON HAS VIOLATED THIS ARTICLE 20, THE ADMINISTRATOR MAY
35 ACCEPT AN ASSURANCE IN WRITING THAT THE PERSON WILL NOT ENGAGE
36 IN THE CONDUCT IN THE FUTURE. THE ASSURANCE MAY ALSO REQUIRE THE
37 PERSON TO MAKE REFUNDS TO PERSONS OF UNLAWFUL CHARGES UNDER
38 THIS ARTICLE 20, PAY A PENALTY AUTHORIZED IN SECTION 5-20-114 (1),
39 ALL OR PART OF WHICH MAY BE SPECIFICALLY DESIGNATED FOR
40 CONSUMER AND CREDITOR EDUCATIONAL PURPOSES, AND REIMBURSE THE
41 ADMINISTRATOR FOR THE ADMINISTRATOR'S REASONABLE COSTS

1 INCURRED IN INVESTIGATING THE CONDUCT. IF A PERSON GIVING AN
2 ASSURANCE OF DISCONTINUANCE FAILS TO COMPLY WITH ITS TERMS, THE
3 ASSURANCE IS EVIDENCE THAT PRIOR TO THE ASSURANCE THE PERSON
4 ENGAGED IN THE CONDUCT DESCRIBED IN THE ASSURANCE.

5 **5-20-116. Injunctions.** THE ADMINISTRATOR MAY BRING A CIVIL
6 ACTION TO RESTRAIN A PERSON FROM VIOLATING THIS ARTICLE 20 OR
7 RULES PROMULGATED PURSUANT TO THIS ARTICLE 20 AND FOR OTHER
8 APPROPRIATE RELIEF, INCLUDING SUCH ORDERS OR JUDGMENTS AS MAY BE
9 NECESSARY TO COMPLETELY COMPENSATE OR RESTORE ANY PERSON
10 AFFECTED BY THE VIOLATION TO THE PERSON'S ORIGINAL POSITION. THE
11 ADMINISTRATOR MAY ALSO APPLY FOR A TEMPORARY RESTRAINING ORDER
12 OR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT PENDING FINAL
13 DETERMINATION OF PROCEEDINGS. NO BOND OR OTHER SECURITY IS
14 REQUIRED OF THE ADMINISTRATOR BEFORE RELIEF UNDER THIS SECTION
15 MAY BE GRANTED.

16 **5-20-117. Civil actions by the administrator.** THE
17 ADMINISTRATOR MAY BRING A CIVIL ACTION AGAINST A STUDENT LOAN
18 SERVICER FOR ANY VIOLATION OF THIS ARTICLE 20. AN ACTION MAY
19 RELATE TO TRANSACTIONS WITH MORE THAN ONE PERSON. THE COURT
20 MAY ORDER A STUDENT LOAN SERVICER TO REFUND TO A PERSON ANY
21 CHARGES COLLECTED IN VIOLATION OF THIS ARTICLE 20 AND MAY ALSO
22 ASSESS CIVIL PENALTIES AGAINST THE STUDENT LOAN SERVICER AS SET
23 FORTH IN SECTION 5-20-112 (2). IF THE ADMINISTRATOR PREVAILS IN AN
24 ACTION BROUGHT UNDER THIS SECTION, THE ADMINISTRATOR MAY
25 RECOVER REASONABLE COSTS IN INVESTIGATING AND BRINGING THE
26 ACTION AND MAY RECOVER REASONABLE ATTORNEY FEES.

27 **5-20-118. Limitations.** NOTWITHSTANDING ARTICLE 80 OF TITLE
28 13, ALL ACTIONS BROUGHT UNDER THIS ARTICLE 20 MUST BE COMMENCED
29 WITHIN FOUR YEARS AFTER THE DATE ON WHICH ANY VIOLATION OF THIS
30 ARTICLE 20 OCCURRED OR THE DATE ON WHICH THE LAST IN A SERIES OF
31 SUCH ACTS OR PRACTICES OCCURRED OR WITHIN FOUR YEARS AFTER THE
32 PLAINTIFF DISCOVERED OR IN THE EXERCISE OF REASONABLE DILIGENCE
33 SHOULD HAVE DISCOVERED THE OCCURRENCE OF A VIOLATION OF THIS
34 ARTICLE 20; EXCEPT THAT THE PERIOD OF LIMITATION PROVIDED IN THIS
35 SECTION MAY BE EXTENDED FOR A PERIOD OF ONE YEAR IF THE PLAINTIFF
36 PROVES THAT FAILURE TO TIMELY COMMENCE THE ACTION WAS CAUSED
37 BY THE DEFENDANT ENGAGING IN CONDUCT CALCULATED TO INDUCE THE
38 PLAINTIFF TO REFRAIN FROM OR POSTPONE THE COMMENCEMENT OF THE
39 ACTION.

40 **5-20-119. Confidential information.** (1) THE ADMINISTRATOR
41 SHALL NOT MAKE PUBLIC THE NAME OR IDENTITY OF A PERSON WHOSE

1 ACTS OR CONDUCT THE ADMINISTRATOR INVESTIGATES OR EXAMINES
2 PURSUANT TO THIS ARTICLE 20 OR THE FACTS DISCLOSED IN THE
3 INVESTIGATION OR EXAMINATION.

4 (2) THE ADMINISTRATOR MAY DISCLOSE LICENSE APPLICATION
5 AND RENEWAL RECORDS PROVIDED TO THE ADMINISTRATOR AND OTHER
6 CONTENTS OF LICENSE RECORDS MAINTAINED PURSUANT TO THIS ARTICLE
7 20, BUT THE ADMINISTRATOR SHALL NOT MAKE PUBLIC THE CONFIDENTIAL
8 INFORMATION CONTAINED IN THE RECORDS.

9 (3) THE RESTRICTIONS ON THE DISCLOSURE OF INFORMATION IN
10 SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO DISCLOSURES
11 BY THE ADMINISTRATOR IN ACTIONS OR ADMINISTRATIVE ENFORCEMENT
12 PROCEEDINGS PURSUANT TO THIS ARTICLE 20.

13 **SECTION 3.** In Colorado Revised Statutes, 6-1-105, **add** (1)(III)
14 as follows:

15 **6-1-105. Deceptive trade practices.** (1) A person engages in a
16 deceptive trade practice when, in the course of the person's business,
17 vocation, or occupation, the person:

18 (III) VIOLATES ARTICLE 20 OF TITLE 5.

19 **SECTION 4.** In Colorado Revised Statutes, 13-4-102, **add**
20 (2)(mm) as follows:

21 **13-4-102. Jurisdiction.** (2) The court of appeals has initial
22 jurisdiction to:

23 (mm) REVIEW FINAL DECISIONS OR ORDERS OF THE
24 ADMINISTRATOR AS PROVIDED IN ARTICLE 20 OF TITLE 5.

25 **SECTION 5. Act subject to petition - effective date -**
26 **applicability.** (1) This act takes effect January 1, 2020; except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the
28 state constitution against this act or an item, section, or part of this act
29 within the ninety-day period after final adjournment of the general
30 assembly, then the act, item, section, or part will not take effect unless
31 approved by the people at the general election to be held in November
32 2020 and, in such case, will take effect on the date of the official
33 declaration of the vote thereon by the governor.

34 (2) This act applies to conduct occurring on or after the applicable
35 effective date of this act."

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