

CHAPTER 378

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 21-057

BY SENATOR(S) Winter and Gonzales, Bridges, Buckner, Danielson, Ginal, Hansen, Lee, Moreno, Pettersen, Rodriguez, Story, Garcia;
also REPRESENTATIVE(S) Gray and Gonzales-Gutierrez, Bacon, Bernett, Bird, Caraveo, Esgar, Exum, Herod, Hooton, Kipp, Lontine, McCluskie, Michaelson Jenet, Mullica, Ricks, Titone, Young.

AN ACT**CONCERNING REQUIREMENTS FOR PRIVATE EDUCATION LENDERS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 5-19-206, **amend** (12) as follows:

5-19-206. Application for registration - required information. An application for registration shall be signed under penalty of false statement and include:

(12) At the applicant's expense, the results of a state and national fingerprint-based criminal history records check, conducted within the immediately preceding twelve months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to initiate transactions to the trust account required by section 5-19-222. The administrator shall be the authorized agency to receive information regarding the result of the national criminal history records check. IF A PROVIDER DELEGATES TO AN INDEPENDENT CONTRACTOR OR SUBCONTRACTOR THE AUTHORITY TO INITIATE TRANSACTIONS TO THE TRUST ACCOUNT REQUIRED BY SECTION 5-19-222, THE ADMINISTRATOR IS ENTITLED TO RECEIVE THE RESULTS OF THE STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECK ONLY FOR THOSE INDEPENDENT CONTRACTORS OR SUBCONTRACTORS WHO ARE AUTHORIZED TO INITIATE TRUST ACCOUNT TRANSACTIONS PURSUANT TO THAT DELEGATED AUTHORITY.

SECTION 2. In Colorado Revised Statutes, **amend** 5-20-101 as follows:

5-20-101. Short title. The short title of this article 20 is the "Colorado Student Loan ~~Services~~ EQUITY Act".

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

SECTION 3. In Colorado Revised Statutes, **amend** 5-20-102 as follows:

5-20-102. Scope of article - residence of debtor. (1) This ~~article 20~~ PART 1 applies to any person engaged in servicing a student education loan owed by an individual who is a resident of this state. For the purposes of this article 20, the residence of an individual is the address given by the individual as the individual's residence to the creditor or to the student loan servicer. Until an individual notifies the creditor or the student loan servicer of a new or different address, the given address is presumed to be unchanged.

(2) PART 2 OF THIS ARTICLE 20 APPLIES TO PRIVATE EDUCATION LENDERS, CREDITORS, AND COLLECTION AGENCIES IN CONNECTION WITH THOSE STUDENT EDUCATION LOANS THAT ARE NOT MADE, INSURED, OR GUARANTEED UNDER FEDERAL LAW AND THAT ARE USED FOR POSTSECONDARY EDUCATION.

SECTION 4. In Colorado Revised Statutes, 5-20-103, **amend** (3), (7), and (8)(b)(IV) as follows:

5-20-103. Definitions. As used in this article 20, unless the context otherwise requires:

(3) "Education expenses" means any of the expenses that are included as part of the cost of attendance of a student as defined in 20 U.S.C. sec. 1087H, as amended EXPENSE RELATED, IN WHOLE OR IN PART, EXPRESSLY TO FINANCING POSTSECONDARY EDUCATION, REGARDLESS OF WHETHER THE DEBT INCURRED BY A STUDENT TO PAY THOSE EXPENSES IS OWED TO THE PROVIDER OF POSTSECONDARY EDUCATION WHOSE SCHOOL, PROGRAM, OR FACILITY THE STUDENT ATTENDS.

(7) "Student loan borrower" or "borrower" means:

(a) An individual who has received or agreed to pay a student education loan; ~~or~~ AND

(b) FOR PURPOSES OF THIS PART 1 ONLY, an individual who shares responsibility with the individual specified in subsection (7)(a) of this section for repaying the student education loan.

(8) "Student loan servicer":

(b) Does not include:

(IV) EXCEPT AS OTHERWISE PROVIDED IN SECTION 5-20-203, a collection agency, as defined in section 5-16-103 (3), ~~that is~~ WHETHER OR NOT licensed pursuant to section 5-16-120, ~~and~~ whose student loan debt collection business involves collecting or attempting to collect on defaulted student loans; except that a collection agency that also services nondefaulted student loans as part of its business is a student loan servicer. For the purpose of this subsection (8)(b)(IV), "defaulted student loans" means federal student loans for which no payment has been received for two hundred seventy days or more or private ~~student~~ EDUCATION loans in default according to the terms of the loan documents. This subsection (8)(b)(IV) does not

exempt a collection agency from complying with the requirements of the "Colorado Fair Debt Collection Practices Act", article 16 of this title 5.

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

PART 2
PRIVATE STUDENT EDUCATION LENDERS

5-20-201. Scope of part - construction with other laws - legislative declaration. THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THIS PART 2 IS ENACTED TO ADDRESS ISSUES NOT FULLY ADDRESSED THROUGH THE REGULATION OF STUDENT LOAN SERVICERS UNDER PART 1 OF THIS ARTICLE 20. THIS PART 2 IS INTENDED TO COMPLEMENT, AND SHOULD BE CONSTRUED IN HARMONY WITH, PART 1 OF THIS ARTICLE 20 TO PROVIDE SEAMLESS AND CONSISTENT PROTECTION TO BORROWERS WHENEVER POSSIBLE.

5-20-202. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COLLECTION AGENCY" MEANS A COLLECTION AGENCY, AS DEFINED IN SECTION 5-16-103 (3), THAT COLLECTS OR ATTEMPTS TO COLLECT, DIRECTLY OR INDIRECTLY, A CONSUMER DEBT RESULTING FROM A PRIVATE EDUCATION LOAN. THE TERM INCLUDES A DEBT BUYER, AS DEFINED IN SECTION 5-16-103 (8.5).

(2)(a) "COSIGNER" MEANS ANY INDIVIDUAL WHO IS LIABLE FOR THE OBLIGATION OF ANOTHER WITHOUT COMPENSATION, REGARDLESS OF HOW THE INDIVIDUAL IS DESIGNATED IN THE CONTRACT OR INSTRUMENT WITH RESPECT TO THAT OBLIGATION, INCLUDING AN OBLIGATION UNDER A PRIVATE EDUCATION LOAN EXTENDED TO CONSOLIDATE A BORROWER'S PREEXISTING STUDENT LOANS. THE TERM INCLUDES ANY INDIVIDUAL WHOSE SIGNATURE IS REQUESTED AS A CONDITION TO GRANT CREDIT OR TO FORBEAR ON COLLECTION.

(b) "COSIGNER" DOES NOT INCLUDE A SPOUSE OF AN INDIVIDUAL DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION IF THE SPOUSE'S SIGNATURE IS NEEDED SOLELY TO PERFECT THE SECURITY INTEREST IN A LOAN.

(3) "CREDITOR" MEANS THE SELLER, LESSOR, LENDER, OR PERSON WHO MAKES OR ARRANGES A PRIVATE EDUCATION LOAN AND TO WHOM THE LOAN IS INITIALLY PAYABLE, OR THE ASSIGNEE OF A CREDITOR'S RIGHT TO PAYMENT, BUT USE OF THE TERM DOES NOT IN ITSELF IMPOSE ON AN ASSIGNEE ANY OBLIGATION OF THE ASSIGNOR. "CREDITOR" DOES NOT INCLUDE A COLLECTION AGENCY AS DEFINED IN SECTION 5-16-103 (3).

(4) "POSTSECONDARY EDUCATIONAL INSTITUTION" MEANS AN INSTITUTION THAT PROVIDES POSTSECONDARY INSTRUCTION, AS DEFINED IN SECTION 23-60-103 (3).

(5) "POSTSECONDARY EDUCATION EXPENSE" MEANS ANY EXPENSE ASSOCIATED WITH A STUDENT'S ENROLLMENT IN, OR ATTENDANCE AT, A POSTSECONDARY EDUCATIONAL INSTITUTION.

(6) (a) "PRIVATE EDUCATION LENDER" OR "LENDER" MEANS:

(I) ANY PERSON ENGAGED IN THE BUSINESS OF MAKING OR EXTENDING PRIVATE EDUCATION LOANS;

(II) A HOLDER OF A PRIVATE EDUCATION LOAN; OR

(III) A CREDITOR.

(b) "PRIVATE EDUCATION LENDER" OR "LENDER" DOES NOT INCLUDE:

(I) A BANK, AS DEFINED IN 12 U.S.C. SEC. 1841 (c);

(II) A CREDIT UNION; OR

(III) AN INDUSTRIAL BANK ORGANIZED UNDER TITLE 7, CHAPTER 8, FINANCIAL INSTITUTIONS ACT, UTAH CODE ANNOTATED, AS AMENDED.

(7) (a) "PRIVATE EDUCATION LOAN" MEANS A STUDENT EDUCATION LOAN THAT:

(I) IS NOT MADE, INSURED, OR GUARANTEED UNDER TITLE IV OF THE "HIGHER EDUCATION ACT OF 1965", 20 U.S.C. SEC. 1070 ET SEQ., AS AMENDED; AND

(II) IS EXTENDED TO A CONSUMER EXPRESSLY, IN WHOLE OR IN PART, FOR POSTSECONDARY EDUCATIONAL EXPENSES, REGARDLESS OF WHETHER THE LOAN IS PROVIDED BY THE POSTSECONDARY EDUCATIONAL INSTITUTION THAT THE STUDENT ATTENDS.

(b) "PRIVATE EDUCATION LOAN" DOES NOT INCLUDE:

(I) A LOAN THAT IS SECURED BY REAL PROPERTY, REGARDLESS OF THE PURPOSE OF THE LOAN; OR

(II) AN EXTENSION OF CREDIT IN WHICH THE COVERED POSTSECONDARY EDUCATIONAL INSTITUTION IS THE LENDER IF:

(A) THE TERM OF THE EXTENSION OF CREDIT IS NINETY DAYS OR LESS; OR

(B) AN INTEREST RATE IS NOT APPLIED TO THE CREDIT BALANCE AND THE TERM OF THE EXTENSION OF CREDIT IS ONE YEAR OR LESS, EVEN IF THE CREDIT IS PAYABLE IN MORE THAN FOUR INSTALLMENTS.

(8) "PRIVATE EDUCATION LOAN BORROWER" MEANS ANY RESIDENT OF COLORADO, INCLUDING A STUDENT LOAN BORROWER, WHO HAS RECEIVED OR AGREED TO PAY A PRIVATE EDUCATION LOAN FOR THE RESIDENT'S OWN POSTSECONDARY EDUCATION EXPENSES.

(9) (a) "TOTAL AND PERMANENT DISABILITY" MEANS, EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (9)(b) OF THIS SECTION, THE CONDITION OF AN INDIVIDUAL WHO:

(I) HAS BEEN DETERMINED BY THE UNITED STATES SECRETARY OF VETERANS AFFAIRS TO BE UNEMPLOYABLE DUE TO A SERVICE-CONNECTED DISABILITY; OR

(II) IS UNABLE TO ENGAGE IN ANY SUBSTANTIAL GAINFUL ACTIVITY BY REASON OF ANY MEDICALLY DETERMINABLE PHYSICAL OR MENTAL IMPAIRMENT THAT CAN BE EXPECTED TO RESULT IN DEATH, HAS LASTED FOR A CONTINUOUS PERIOD OF NOT LESS THAN TWELVE MONTHS, OR CAN BE EXPECTED TO LAST FOR A CONTINUOUS PERIOD OF NOT LESS THAN TWELVE MONTHS.

(b) "TOTAL AND PERMANENT DISABILITY" DOES NOT INCLUDE A CONDITION THAT HAS NOT PROGRESSED OR BEEN EXACERBATED, OR THAT THE INDIVIDUAL DID NOT ACQUIRE, UNTIL AFTER THE CLOSING OF THE LOAN AGREEMENT.

5-20-203. Registration of private education lenders - penalties - rules. (1) ON OR AFTER SEPTEMBER 1, 2021, A PERSON SHALL NOT OFFER OR MAKE A PRIVATE EDUCATION LOAN TO A RESIDENT OF COLORADO WITHOUT FIRST REGISTERING WITH THE ADMINISTRATOR AS PROVIDED IN THIS SECTION.

(2) A PRIVATE EDUCATION LENDER SHALL:

(a) REGISTER WITH THE ADMINISTRATOR PURSUANT TO ANY REGISTRATION PROCEDURES SET FORTH BY THE ADMINISTRATOR AND PAY THE FEE SET BY THE ADMINISTRATOR BY RULE; AND

(b) PROVIDE THE ADMINISTRATOR, AT THE TIME OF REGISTRATION AND NOT LESS THAN ONCE PER YEAR THEREAFTER, AS ESTABLISHED BY THE ADMINISTRATOR BY RULE, AND AT OTHER TIMES UPON THE ADMINISTRATOR'S REQUEST, WITH THE FOLLOWING DOCUMENTS AND INFORMATION:

(I) A LIST OF ALL SCHOOLS AT WHICH THE PRIVATE EDUCATION LENDER HAS PROVIDED PRIVATE EDUCATION LOANS TO A PRIVATE EDUCATION LOAN BORROWER;

(II) THE VOLUME OF PRIVATE EDUCATION LOANS MADE ANNUALLY TO PRIVATE EDUCATION LOAN BORROWERS;

(III) THE VOLUME OF PRIVATE EDUCATION LOANS MADE ANNUALLY AT EACH SCHOOL IDENTIFIED UNDER SUBSECTION (2)(b)(I) OF THIS SECTION;

(IV) THE DEFAULT RATE FOR PRIVATE EDUCATION LOAN BORROWERS OBTAINING PRIVATE EDUCATION LOANS FROM THE PRIVATE EDUCATION LENDER, INCLUDING THE DEFAULT RATE FOR PRIVATE EDUCATION LOANS MADE TO PRIVATE EDUCATION LOAN BORROWERS AT EACH SCHOOL LISTED PURSUANT TO SUBSECTION (2)(b)(I) OF THIS SECTION;

(V) A COPY OF EACH MODEL PROMISSORY NOTE, AGREEMENT, CONTRACT, OR OTHER INSTRUMENT USED BY THE PRIVATE EDUCATION LENDER DURING THE PREVIOUS YEAR TO SUBSTANTIATE THAT A PRIVATE EDUCATION LOAN HAS BEEN EXTENDED TO A PRIVATE EDUCATION LOAN BORROWER OR THAT A PRIVATE EDUCATION LOAN BORROWER OWES A DEBT TO THE LENDER; AND

(VI) THE NAME AND ADDRESS OF THE PRIVATE EDUCATION LENDER AND ANY

OFFICER, DIRECTOR, PARTNER, OR OWNER OF A CONTROLLING INTEREST OF THE LENDER.

(3) THE ADMINISTRATOR SHALL CREATE A PUBLICLY ACCESSIBLE WEBSITE THAT INCLUDES THE FOLLOWING INFORMATION ABOUT PRIVATE EDUCATION LENDERS REGISTERED IN COLORADO:

(a) THE NAME, ADDRESS, TELEPHONE NUMBER, AND WEBSITE FOR ALL REGISTERED PRIVATE EDUCATION LENDERS;

(b) A SUMMARY OF THE INFORMATION REQUIRED UNDER SUBSECTIONS (2)(b)(I) TO (2)(b)(VI) OF THIS SECTION; AND

(c) COPIES OF ALL MODEL PROMISSORY NOTES, AGREEMENTS, CONTRACTS, AND OTHER INSTRUMENTS PROVIDED TO THE ADMINISTRATOR UNDER SUBSECTION (2)(b)(V) OF THIS SECTION.

(4) THE ADMINISTRATOR MAY IMPOSE CIVIL PENALTIES ON PRIVATE EDUCATION LENDERS AND COLLECTION AGENCIES IN THE SAME AMOUNTS, IN SUBSTANTIALLY THE SAME MANNER, AND ON SUBSTANTIALLY THE SAME GROUNDS AS PROVIDED IN SECTIONS 5-20-114 TO 5-20-117 FOR THE IMPOSITION OF CIVIL PENALTIES ON STUDENT LOAN SERVICERS.

(5) THE ADMINISTRATOR MAY ORDER THAT ANY PERSON WHO HAS BEEN FOUND TO HAVE VIOLATED ANY PROVISION OF THIS PART 2, OR OF THE RULES ISSUED PURSUANT TO THIS PART 2, AND HAS THEREBY CAUSED FINANCIAL HARM TO A CONSUMER BE BARRED FOR A TERM NOT EXCEEDING TEN YEARS FROM ACTING AS A PRIVATE EDUCATION LENDER OR A STOCKHOLDER, OFFICER, DIRECTOR, PARTNER OR OTHER OWNER, OR EMPLOYEE OF A PRIVATE EDUCATION LENDER.

(6) THE ADMINISTRATOR MAY PRESCRIBE AN ALTERNATIVE REGISTRATION PROCESS AND FEE STRUCTURE FOR PUBLIC AND PRIVATE NONPROFIT POSTSECONDARY EDUCATIONAL INSTITUTIONS.

(7) AN ENTITY THAT IS REQUIRED TO FILE A NOTIFICATION WITH THE ADMINISTRATOR PURSUANT TO SECTION 5-6-202 OR REQUIRED TO HOLD A LICENSE PURSUANT TO SECTION 5-2-301, 5-16-118, OR 5-20-106 IS EXEMPT FROM REGISTRATION UNDER THIS SECTION BUT IS SUBJECT TO ALL OTHER REQUIREMENTS OF THIS PART 2.

5-20-204. Cosigner disclosures. (1) BEFORE EXTENDING A PRIVATE EDUCATION LOAN THAT REQUIRES A COSIGNER, A PRIVATE EDUCATION LENDER SHALL DISCLOSE TO THE COSIGNER:

(a) HOW THE PRIVATE EDUCATION LOAN OBLIGATION WILL APPEAR ON THE COSIGNER'S CREDIT;

(b) HOW THE COSIGNER WILL BE NOTIFIED IF THE PRIVATE EDUCATION LOAN BECOMES DELINQUENT, INCLUDING HOW THE COSIGNER CAN CURE THE DELINQUENCY IN ORDER TO AVOID NEGATIVE CREDIT FURNISHING AND LOSS OF COSIGNER RELEASE ELIGIBILITY; AND

(c) ELIGIBILITY FOR RELEASE OF THE COSIGNER'S OBLIGATION ON THE PRIVATE EDUCATION LOAN, INCLUDING THE NUMBER OF ON-TIME PAYMENTS AND ANY OTHER CRITERIA REQUIRED TO APPROVE THE RELEASE OF THE COSIGNER FROM THE LOAN OBLIGATION.

(2) FOR ANY PRIVATE EDUCATION LOAN THAT OBLIGATES A COSIGNER, A LENDER SHALL PROVIDE THE PRIVATE EDUCATION LOAN BORROWER AND THE COSIGNER AN ANNUAL WRITTEN NOTICE CONTAINING INFORMATION ABOUT COSIGNER RELEASE, INCLUDING THE ADMINISTRATIVE, OBJECTIVE CRITERIA THE LENDER REQUIRES TO APPROVE THE RELEASE OF THE COSIGNER FROM THE LOAN OBLIGATION AND THE PROCESS FOR APPLYING FOR COSIGNER RELEASE. IF THE PRIVATE EDUCATION LOAN BORROWER HAS MET THE APPLICABLE PAYMENT REQUIREMENT TO BE ELIGIBLE FOR COSIGNER RELEASE, THE LENDER SHALL SEND THE PRIVATE EDUCATION LOAN BORROWER AND THE COSIGNER A WRITTEN NOTIFICATION BY MAIL, AND BY ELECTRONIC MAIL IF A PRIVATE EDUCATION LOAN BORROWER OR COSIGNER HAS ELECTED TO RECEIVE ELECTRONIC COMMUNICATIONS FROM THE LENDER, INFORMING THE PRIVATE EDUCATION LOAN BORROWER AND COSIGNER THAT THE PAYMENTS REQUIREMENT TO BE ELIGIBLE FOR COSIGNER RELEASE HAS BEEN MET. THE NOTIFICATION MUST ALSO INCLUDE INFORMATION ABOUT ANY ADDITIONAL CRITERIA TO QUALIFY FOR COSIGNER RELEASE AND THE PROCEDURE TO APPLY FOR COSIGNER RELEASE.

(3) A LENDER SHALL PROVIDE WRITTEN NOTICE TO A PRIVATE EDUCATION LOAN BORROWER WHO APPLIES FOR COSIGNER RELEASE BUT WHOSE APPLICATION IS INCOMPLETE. THE WRITTEN NOTICE MUST INCLUDE A DESCRIPTION OF THE INFORMATION NEEDED TO CONSIDER THE APPLICATION COMPLETE AND THE DATE BY WHICH THE APPLICANT MUST FURNISH THE MISSING INFORMATION IN ORDER TO COMPLETE THE APPLICATION.

(4) WITHIN THIRTY DAYS AFTER A PRIVATE EDUCATION LOAN BORROWER SUBMITS A COMPLETED APPLICATION FOR COSIGNER RELEASE, THE LENDER SHALL SEND THE PRIVATE EDUCATION LOAN BORROWER AND COSIGNER A WRITTEN NOTICE THAT INFORMS THE PRIVATE EDUCATION LOAN BORROWER AND COSIGNER WHETHER THE LENDER HAS APPROVED OR DENIED THE COSIGNER RELEASE APPLICATION. IF THE LENDER DENIES A REQUEST FOR COSIGNER RELEASE, THE PRIVATE EDUCATION LOAN BORROWER MAY REQUEST COPIES OF ANY DOCUMENTS OR INFORMATION USED IN THE DETERMINATION, INCLUDING THE CREDIT SCORE THRESHOLD USED BY THE LENDER, THE PRIVATE EDUCATION LOAN BORROWER'S CONSUMER REPORT, THE PRIVATE EDUCATION LOAN BORROWER'S CREDIT SCORE, AND ANY OTHER DOCUMENTS OR INFORMATION SPECIFIC TO THE PRIVATE EDUCATION LOAN BORROWER. THE LENDER SHALL ALSO PROVIDE ANY ADVERSE ACTION NOTICES REQUIRED UNDER APPLICABLE FEDERAL LAW IF THE DENIAL IS BASED IN WHOLE OR IN PART ON ANY INFORMATION CONTAINED IN A CONSUMER REPORT.

(5) IN RESPONSE TO A WRITTEN OR ORAL REQUEST BY THE PRIVATE EDUCATION LOAN BORROWER FOR COSIGNER RELEASE, A LENDER SHALL PROVIDE TO THE PRIVATE EDUCATION LOAN BORROWER THE INFORMATION DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

5-20-205. Cosigner release. (1) A LENDER SHALL NOT IMPOSE ANY RESTRICTION THAT PERMANENTLY BARS A PRIVATE EDUCATION LOAN BORROWER FROM

QUALIFYING FOR COSIGNER RELEASE, INCLUDING RESTRICTING THE NUMBER OF TIMES A PRIVATE EDUCATION LOAN BORROWER MAY APPLY FOR COSIGNER RELEASE.

(2) A LENDER SHALL NOT IMPOSE ANY NEGATIVE CONSEQUENCES ON A PRIVATE EDUCATION LOAN BORROWER OR COSIGNER DURING THE SIXTY DAYS FOLLOWING THE ISSUANCE OF THE NOTICE REQUIRED PURSUANT TO SECTION 5-20-204 (3) OR UNTIL THE LENDER MAKES A FINAL DETERMINATION ABOUT A PRIVATE EDUCATION LOAN BORROWER'S COSIGNER RELEASE APPLICATION, WHICHEVER OCCURS LATER. AS USED IN THIS SUBSECTION (2), "NEGATIVE CONSEQUENCES" INCLUDES THE IMPOSITION OF ADDITIONAL ELIGIBILITY CRITERIA, NEGATIVE CREDIT REPORTING, LOST ELIGIBILITY FOR COSIGNER RELEASE, LATE FEES, INTEREST CAPITALIZATION, OR OTHER FINANCIAL INJURY.

(3) FOR ANY PRIVATE EDUCATION LOAN ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS PART 2, A LENDER SHALL NOT REQUIRE PROOF OF MORE THAN TWELVE CONSECUTIVE, ON-TIME PAYMENTS AS PART OF THE CRITERIA FOR COSIGNER RELEASE. A PRIVATE EDUCATION LOAN BORROWER WHO HAS PAID THE EQUIVALENT OF TWELVE MONTHS OF PRINCIPAL AND INTEREST PAYMENTS WITHIN ANY TWELVE-MONTH PERIOD IS DEEMED TO HAVE SATISFIED THE CONSECUTIVE, ON-TIME PAYMENT REQUIREMENT EVEN IF THE PRIVATE EDUCATION LOAN BORROWER HAS NOT MADE PAYMENTS MONTHLY DURING THE TWELVE-MONTH PERIOD. IF A PRIVATE EDUCATION LOAN BORROWER OR COSIGNER REQUESTS A CHANGE IN TERMS THAT RESTARTS THE COUNT OF CONSECUTIVE, ON-TIME PAYMENTS REQUIRED FOR COSIGNER RELEASE, THE LENDER SHALL NOTIFY THE PRIVATE EDUCATION LOAN BORROWER AND COSIGNER IN WRITING OF THE IMPACT OF THE CHANGE AND PROVIDE THE PRIVATE EDUCATION LOAN BORROWER OR COSIGNER THE RIGHT TO WITHDRAW OR REVERSE THE REQUEST TO AVOID THAT IMPACT.

(4) A PRIVATE EDUCATION LOAN BORROWER MAY REQUEST AN APPEAL OF A LENDER'S DETERMINATION TO DENY A REQUEST FOR COSIGNER RELEASE, AND THE LENDER SHALL PERMIT THE PRIVATE EDUCATION LOAN BORROWER TO SUBMIT ADDITIONAL DOCUMENTATION EVIDENCING THE PRIVATE EDUCATION LOAN BORROWER'S ABILITY, WILLINGNESS, AND STABILITY TO MEET THE PAYMENT OBLIGATIONS. THE PRIVATE EDUCATION LOAN BORROWER MAY REQUEST THAT ANOTHER EMPLOYEE OF THE LENDER REVIEW THE COSIGNER RELEASE DETERMINATION.

(5) A LENDER SHALL ESTABLISH AND MAINTAIN A COMPREHENSIVE RECORD MANAGEMENT SYSTEM REASONABLY DESIGNED TO ENSURE THE ACCURACY, INTEGRITY, AND COMPLETENESS OF INFORMATION ABOUT COSIGNER RELEASE APPLICATIONS AND TO ENSURE COMPLIANCE WITH APPLICABLE STATE AND FEDERAL LAWS, INCLUDING THE "EQUAL CREDIT OPPORTUNITY ACT," 15 U.S.C. SEC. 1691 ET SEQ., AS AMENDED, AND THE "FAIR CREDIT REPORTING ACT," 15 U.S.C. SEC. 1681 ET SEQ., AS AMENDED. THIS SYSTEM MUST INCLUDE THE NUMBER OF COSIGNER RELEASE APPLICATIONS RECEIVED, THE APPROVAL AND DENIAL RATE, AND THE PRIMARY REASONS FOR ANY DENIAL.

5-20-206. Cosigner rights. (1) A LENDER SHALL PROVIDE A COSIGNER WITH ACCESS TO ALL DOCUMENTS OR RECORDS RELATED TO THE COSIGNED PRIVATE EDUCATION LOAN THAT ARE AVAILABLE TO THE PRIVATE EDUCATION LOAN BORROWER.

(2)(a) IF A LENDER PROVIDES ELECTRONIC ACCESS TO DOCUMENTS AND RECORDS FOR A PRIVATE EDUCATION LOAN BORROWER, IT SHALL PROVIDE EQUIVALENT ELECTRONIC ACCESS TO THE COSIGNER.

(b) UPON THE PRIVATE EDUCATION LOAN BORROWER'S REQUEST, THE LENDER SHALL REDACT THE PRIVATE EDUCATION LOAN BORROWER'S CONTACT INFORMATION FROM DOCUMENTS AND RECORDS PROVIDED TO A COSIGNER.

(3) A LENDER SHALL NOT INCLUDE IN A PRIVATE EDUCATION LOAN EXECUTED AFTER THE EFFECTIVE DATE OF THIS PART 2 A PROVISION THAT PERMITS THE LENDER TO ACCELERATE PAYMENTS, IN WHOLE OR IN PART, EXCEPT UPON A PAYMENT DEFAULT. A LENDER SHALL NOT PLACE ANY LOAN OR ACCOUNT INTO DEFAULT OR ACCELERATE A LOAN FOR ANY REASON OTHER THAN PAYMENT DEFAULT.

(4) A PRIVATE EDUCATION LOAN EXECUTED BEFORE THE EFFECTIVE DATE OF THIS PART 2 MAY PERMIT THE LENDER TO ACCELERATE PAYMENTS ONLY IF THE PROMISSORY NOTE OR LOAN AGREEMENT EXPLICITLY AUTHORIZES AN ACCELERATION AND ONLY FOR THE REASONS STATED IN THE NOTE OR AGREEMENT.

5-20-207. Bankruptcy or death of cosigner. (1) IF A COSIGNER DIES, THE LENDER SHALL NOT ATTEMPT TO COLLECT AGAINST THE COSIGNER'S ESTATE OTHER THAN FOR PAYMENT DEFAULT.

(2) WITH REGARD TO THE DEATH OR BANKRUPTCY OF A COSIGNER, IF A PRIVATE EDUCATION LOAN IS NOT MORE THAN SIXTY DAYS DELINQUENT AT THE TIME THE LENDER IS NOTIFIED OF THE COSIGNER'S DEATH OR BANKRUPTCY, THE LENDER SHALL NOT CHANGE ANY TERMS OR BENEFITS UNDER THE PROMISSORY NOTE, REPAYMENT SCHEDULE, REPAYMENT TERMS, OR MONTHLY PAYMENT AMOUNT OR ANY OTHER PROVISION ASSOCIATED WITH THE LOAN.

5-20-208. Total and permanent disability of the private education loan borrower or cosigner. (1) FOR ANY PRIVATE EDUCATION LOAN ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS PART 2, A PRIVATE EDUCATION LENDER, WHEN NOTIFIED OF THE TOTAL AND PERMANENT DISABILITY OF A PRIVATE EDUCATION LOAN BORROWER OR COSIGNER, SHALL RELEASE ANY COSIGNER FROM THE OBLIGATIONS OF THE COSIGNER UNDER A PRIVATE EDUCATION LOAN. THE LENDER SHALL NOT ATTEMPT TO COLLECT A PAYMENT FROM A COSIGNER FOLLOWING A NOTIFICATION OF TOTAL AND PERMANENT DISABILITY OF THE PRIVATE EDUCATION LOAN BORROWER OR COSIGNER.

(2) A LENDER SHALL, WHEN NOTIFIED OF THE TOTAL AND PERMANENT DISABILITY OF A PRIVATE EDUCATION LOAN BORROWER, DISCHARGE THE LIABILITY OF THE PRIVATE EDUCATION LOAN BORROWER AND COSIGNER ON THE LOAN.

(3) AFTER RECEIVING A NOTIFICATION DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE LENDER SHALL NOT:

(a) ATTEMPT TO COLLECT ON THE OUTSTANDING LIABILITY OF THE PRIVATE EDUCATION LOAN BORROWER OR COSIGNER; OR

(b) MONITOR THE DISABILITY STATUS OF THE PRIVATE EDUCATION LOAN

BORROWER AT ANY POINT AFTER THE DATE OF DISCHARGE.

(4) A LENDER SHALL, WITHIN THIRTY DAYS AFTER THE RELEASE OF EITHER A COSIGNER OR PRIVATE EDUCATION LOAN BORROWER FROM THE OBLIGATIONS OF A PRIVATE EDUCATION LOAN PURSUANT TO SUBSECTION (1) OR (2) OF THIS SECTION, NOTIFY BOTH THE PRIVATE EDUCATION LOAN BORROWER AND COSIGNER OF THE RELEASE.

(5) A LENDER SHALL, WITHIN THIRTY DAYS AFTER RECEIVING NOTICE OF THE TOTAL AND PERMANENT DISABILITY OF A PRIVATE EDUCATION LOAN BORROWER PURSUANT TO SUBSECTION (1) OF THIS SECTION, PROVIDE THE PRIVATE EDUCATION LOAN BORROWER AN OPTION TO DESIGNATE AN INDIVIDUAL TO HAVE THE LEGAL AUTHORITY TO ACT ON BEHALF OF THE PRIVATE EDUCATION LOAN BORROWER.

(6) IF A COSIGNER IS RELEASED FROM THE OBLIGATIONS OF A PRIVATE EDUCATION LOAN PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE LENDER SHALL NOT REQUIRE THE PRIVATE EDUCATION LOAN BORROWER TO OBTAIN ANOTHER COSIGNER ON THE LOAN OBLIGATION.

(7) A LENDER SHALL NOT DECLARE A DEFAULT OR ACCELERATE THE DEBT AGAINST THE PRIVATE EDUCATION LOAN BORROWER ON THE SOLE BASIS OF THE RELEASE OF THE COSIGNER FROM THE LOAN OBLIGATION DUE TO TOTAL AND PERMANENT DISABILITY PURSUANT TO SUBSECTION (1) OF THIS SECTION.

5-20-209. Refinancing - additional disclosures - limitations on default pending approval. (1) BEFORE OFFERING A PERSON A PRIVATE EDUCATION LOAN THAT IS BEING USED TO REFINANCE AN EXISTING EDUCATION LOAN, A PRIVATE EDUCATION LENDER SHALL PROVIDE THE PERSON A DISCLOSURE EXPLAINING THAT BENEFITS AND PROTECTIONS APPLICABLE TO THE EXISTING LOAN MAY BE LOST DUE TO THE REFINANCING. THE DISCLOSURE MUST BE PROVIDED ON A ONE-PAGE INFORMATION SHEET IN AT LEAST TWELVE-POINT TYPE AND MUST BE WRITTEN IN SIMPLE, CLEAR, UNDERSTANDABLE, AND EASILY READABLE LANGUAGE.

(2) IF A PRIVATE EDUCATION LENDER OFFERS ANY PRIVATE EDUCATION LOAN BORROWER MODIFIED OR FLEXIBLE REPAYMENT OPTIONS IN CONNECTION WITH A PRIVATE EDUCATION LOAN, THE LENDER SHALL OFFER THOSE MODIFIED OR FLEXIBLE REPAYMENT OPTIONS TO ALL OF ITS PRIVATE EDUCATION LOAN BORROWERS. IN ADDITION, THE LENDER SHALL:

(a) PROVIDE ON ITS WEBSITE A DESCRIPTION OF ANY MODIFIED OR FLEXIBLE REPAYMENT OPTIONS OFFERED BY THE LENDER FOR PRIVATE EDUCATION LOANS;

(b) ESTABLISH POLICIES AND PROCEDURES AND IMPLEMENT MODIFIED OR FLEXIBLE REPAYMENT OPTIONS CONSISTENTLY IN ORDER TO FACILITATE THE EVALUATION OF PRIVATE EDUCATION LOAN MODIFIED OR FLEXIBLE REPAYMENT OPTION REQUESTS, INCLUDING PROVIDING ACCURATE INFORMATION REGARDING ANY SUCH OPTIONS THAT MAY BE AVAILABLE TO THE PRIVATE EDUCATION LOAN BORROWER THROUGH THE PROMISSORY NOTE OR THAT MAY HAVE BEEN MARKETED TO THE PRIVATE EDUCATION LOAN BORROWER THROUGH MARKETING MATERIALS; AND

(c) CONSISTENTLY PRESENT AND OFFER PRIVATE EDUCATION LOAN MODIFIED OR FLEXIBLE REPAYMENT OPTIONS TO PRIVATE EDUCATION LOAN BORROWERS WITH SIMILAR FINANCIAL CIRCUMSTANCES, IF THE LENDER OFFERS SUCH REPAYMENT OPTIONS.

(3) A PRIVATE EDUCATION LENDER SHALL NOT PLACE A LOAN OR ACCOUNT INTO DEFAULT OR ACCELERATE A LOAN WHILE A PRIVATE EDUCATION LOAN BORROWER IS SEEKING A LOAN MODIFICATION OR ENROLLMENT IN A MODIFIED OR FLEXIBLE REPAYMENT PLAN; EXCEPT THAT A LENDER MAY PLACE A LOAN OR ACCOUNT INTO DEFAULT OR ACCELERATE A LOAN FOR PAYMENT DEFAULT NINETY DAYS AFTER THE PRIVATE EDUCATION LOAN BORROWER'S DEFAULT.

5-20-210. Prohibited conduct. (1) A PRIVATE EDUCATION LENDER SHALL NOT:

(a) OFFER ANY PRIVATE EDUCATION LOAN THAT IS NOT IN CONFORMITY WITH THIS PART 2 OR RULES OR ORDERS OF THE ADMINISTRATOR UNDER THIS PART 2 OR THAT VIOLATES ANY OTHER STATE OR FEDERAL LAW;

(b) ENGAGE IN ANY UNFAIR, DECEPTIVE, OR ABUSIVE ACT OR PRACTICE;

(c) (I) TAKE AN ASSIGNMENT OF EARNINGS OF THE BORROWER OR COSIGNER FOR PAYMENT OR AS A SECURITY FOR PAYMENT OF A DEBT ARISING OUT OF A PRIVATE EDUCATION LOAN. AN ASSIGNMENT OF EARNINGS IN VIOLATION OF THIS SECTION IS UNENFORCEABLE BY THE ASSIGNEE OF THE EARNINGS AND REVOCABLE BY THE BORROWER OR COSIGNER.

(II) A SALE OF UNPAID EARNINGS MADE IN CONSIDERATION OF THE PAYMENT OF MONEY TO OR FOR THE ACCOUNT OF THE SELLER OF THE EARNINGS IS DEEMED TO BE A LOAN TO THE SELLER, SECURED BY AN ASSIGNMENT OF EARNINGS.

(d) MAKE, ADVERTISE, PRINT, DISPLAY, PUBLISH, DISTRIBUTE, ELECTRONICALLY TRANSMIT, TELECAST, OR BROADCAST, IN ANY MANNER, ANY STATEMENT OR REPRESENTATION THAT IS FALSE, MISLEADING, OR DECEPTIVE.

5-20-211. Record retention - confidentiality. (1) A PRIVATE EDUCATION LENDER SHALL ESTABLISH AND MAINTAIN RECORDS AND PERMIT THE ADMINISTRATOR TO ACCESS AND COPY ANY RECORDS OR RECORDS SYSTEMS REQUIRED TO BE MAINTAINED PURSUANT TO THIS PART 2 OR RULES OF THE ADMINISTRATOR ADOPTED TO IMPLEMENT THIS PART 2. THE LENDER SHALL RETAIN LOAN FILES, INCLUDING ANY RECORDS SPECIFIED FOR RETENTION UNDER RULES OF THE ADMINISTRATOR, FOR NOT LESS THAN SIX YEARS AFTER THE TERMINATION OF THE LOAN ACCOUNT.

(2) THE ADMINISTRATOR SHALL NOT MAKE PUBLIC THE NAME OR IDENTITY OF A PERSON WHOSE ACTS OR CONDUCT THE ADMINISTRATOR INVESTIGATES OR EXAMINES PURSUANT TO THIS PART 2 OR THE FACTS DISCLOSED IN THE INVESTIGATION OR EXAMINATION.

(3) THE ADMINISTRATOR MAY DISCLOSE REGISTRATION APPLICATION AND RENEWAL RECORDS PROVIDED TO THE ADMINISTRATOR AND OTHER CONTENTS OF REGISTRATION RECORDS MAINTAINED PURSUANT TO THIS PART 2, BUT THE

ADMINISTRATOR SHALL NOT MAKE PUBLIC THE CONFIDENTIAL INFORMATION CONTAINED IN THE RECORDS.

(4) THE RESTRICTIONS ON THE DISCLOSURE OF INFORMATION IN SUBSECTIONS (2) AND (3) OF THIS SECTION DO NOT APPLY TO DISCLOSURES MADE BY THE ADMINISTRATOR IN FURTHERANCE OF ACTIONS OR ADMINISTRATIVE ENFORCEMENT PROCEEDINGS PURSUANT TO THIS PART 2.

5-20-212. Collection on debt - prerequisites - documentation. (1) UNLESS THE PRIVATE EDUCATION LOAN BORROWER HAS INVOKED HIS OR HER RIGHT TO CEASE COMMUNICATION WITH THE COLLECTION AGENCY, A COLLECTION AGENCY ATTEMPTING TO COLLECT A PRIVATE EDUCATION LOAN SHALL PROVIDE THE FOLLOWING INFORMATION, IN ADDITION TO ANY OTHER INFORMATION REQUIRED UNDER APPLICABLE FEDERAL OR STATE LAW, TO THE PRIVATE EDUCATION LOAN BORROWER IN THE DEBT COLLECTION COMMUNICATION IMMEDIATELY FOLLOWING THE COMMUNICATION CONFIRMING THE CORRECT IDENTITY OF THE PRIVATE EDUCATION LOAN BORROWER AND AT ANY OTHER TIME THE PRIVATE EDUCATION LOAN BORROWER SO REQUESTS:

(a) FOR PRIVATE EDUCATION LOANS REFERRED TO COLLECTIONS ON OR AFTER THE EFFECTIVE DATE OF THIS PART 2, THE NAME OF THE OWNER OF THE PRIVATE EDUCATION LOAN DEBT;

(b) THE NAME OF THE TRUE ORIGINAL LENDER AND EVERY SUBSEQUENT LOAN HOLDER, IF APPLICABLE;

(c) THE TRUE ORIGINAL LENDER'S ACCOUNT NUMBER USED TO IDENTIFY THE PRIVATE EDUCATION LOAN DEBT AT THE TIME OF DEFAULT, IF THE TRUE ORIGINAL LENDER USED AN ACCOUNT NUMBER TO IDENTIFY THE PRIVATE EDUCATION LOAN DEBT AT THE TIME OF DEFAULT. THE COLLECTION AGENCY MAY RELY ON ACCOUNT NUMBERS PROVIDED BY THE LENDER.

(d) THE AMOUNT DUE WHEN THE PRIVATE EDUCATION LOAN WAS REFERRED TO COLLECTIONS;

(e) FOR PRIVATE EDUCATION LOANS REFERRED TO COLLECTIONS ON OR AFTER THE EFFECTIVE DATE OF THIS PART 2, A LOG OF ALL PAYMENTS MADE ON THE STUDENT LOAN ACCOUNT;

(f) A COPY OF ALL PAGES OF THE CONTRACT, APPLICATION, OR OTHER DOCUMENTS EVIDENCING THE PRIVATE EDUCATION LOAN BORROWER'S LIABILITY FOR THE PRIVATE EDUCATION LOAN, STATING ALL TERMS AND CONDITIONS APPLICABLE TO THE LOAN; AND

(g) A CLEAR AND CONSPICUOUS STATEMENT DISCLOSING THAT THE PRIVATE EDUCATION LOAN BORROWER HAS A RIGHT TO REQUEST ALL NONPRIVILEGED INFORMATION POSSESSED BY THE LENDER OR COLLECTION AGENCY RELATED TO THE DEFAULTED PRIVATE EDUCATION LOAN DEBT, INCLUDING THE REQUIRED INFORMATION DESCRIBED IN SUBSECTION (2) OF THIS SECTION, AND THAT FAILURE TO PROVIDE THAT INFORMATION WITHIN THIRTY DAYS AFTER SUCH A REQUEST PRECLUDES THE COLLECTION AGENCY FROM COLLECTING OR ATTEMPTING TO

COLLECT THE DEBT.

(1.5)(a) FROM THE INFORMATION LISTED IN SUBSECTION (1) OF THIS SECTION, THE COLLECTION AGENCY MAY REDACT THE PRIVATE EDUCATION LOAN BORROWER'S SOCIAL SECURITY NUMBER, ALL BUT THE LAST FOUR DIGITS OF THE PRIVATE EDUCATION LOAN BORROWER'S ACCOUNT NUMBER, AND ANY OTHER PERSONAL IDENTIFYING INFORMATION. A COLLECTION AGENCY THAT, IN GOOD FAITH, ATTEMPTS TO VALIDATE THE IDENTITY OF THE BORROWER AND SENDS THE INFORMATION REQUIRED BY THIS SECTION IN CONJUNCTION WITH THE NOTICE REQUIRED BY 15 U.S.C. SEC. 1692g (a) IS DEEMED TO HAVE VERIFIED THE IDENTITY OF THE BORROWER FOR PURPOSES OF THIS SECTION.

(b) THE INFORMATION LISTED IN SUBSECTION (1) OF THIS SECTION MAY ACCOMPANY ANY DEBT VALIDATION NOTICE ISSUED TO THE DEBTOR PURSUANT TO SECTION 5-16-109 (1).

(2) A COLLECTION AGENCY SHALL NOT COLLECT OR ATTEMPT TO COLLECT A PRIVATE EDUCATION LOAN DEBT UNLESS THE COLLECTION AGENCY POSSESSES, AND FURNISHES THE FOLLOWING INFORMATION TO THE PRIVATE EDUCATION LOAN BORROWER UPON REQUEST WITHIN THIRTY DAYS AFTER THE REQUEST; AND, FOR LOANS REFERRED TO COLLECTIONS BEFORE THE EFFECTIVE DATE OF THIS PART 2, THE COLLECTION AGENCY SHALL HAVE THIRTY DAYS TO ACQUIRE THE INFORMATION FROM THE PRIVATE EDUCATION LENDER:

(a) THE NAME OF THE OWNER OF THE PRIVATE EDUCATION LOAN;

(b) THE NAME OF THE TRUE ORIGINAL LENDER AND EVERY SUBSEQUENT LOAN HOLDER, IF APPLICABLE;

(c) THE TRUE ORIGINAL LENDER'S ACCOUNT NUMBER USED TO IDENTIFY THE PRIVATE EDUCATION LOAN AT THE TIME OF DEFAULT, IF THE TRUE ORIGINAL LENDER USED AN ACCOUNT NUMBER TO IDENTIFY THE LOAN AT THE TIME OF DEFAULT, AND THE ACCOUNT NUMBER ASSIGNED TO THE LOAN BY EACH SUBSEQUENT LOAN HOLDER, IF KNOWN;

(d) THE AMOUNT DUE WHEN THE PRIVATE EDUCATION LOAN WAS REFERRED TO COLLECTIONS;

(e) AN ITEMIZATION OF INTEREST AND FEES, IF ANY, CLAIMED TO BE OWED AND WHETHER THOSE WERE IMPOSED BY THE TRUE ORIGINAL LENDER OR ANY SUBSEQUENT OWNERS OF THE PRIVATE EDUCATION LOAN. THE COLLECTION AGENCY MAY RELY ON INFORMATION PROVIDED BY THE LENDER.

(f) THE DATE THAT THE PRIVATE EDUCATION LOAN WAS INCURRED;

(g) A BILLING STATEMENT OR OTHER ACCOUNT RECORD INDICATING THE DATE OF THE LAST PAYMENT MADE ON THE PRIVATE EDUCATION LOAN, IF APPLICABLE;

(h)(I) A LOG OF ALL COLLECTION ATTEMPTS MADE BY THE COLLECTION AGENCY IN THE IMMEDIATELY PRECEDING TWELVE MONTHS, INCLUDING THE DATE AND TIME OF ALL CALLS AND LETTERS; AND

(II) FOR PRIVATE EDUCATION LOANS REFERRED TO COLLECTIONS ON OR AFTER THE EFFECTIVE DATE OF THIS PART 2, COPIES OF ALL SETTLEMENT LETTERS OR, IN THE ALTERNATIVE, A STATEMENT THAT THE COLLECTION AGENCY HAS NOT ATTEMPTED TO SETTLE OR OTHERWISE RENEGOTIATE THE DEBT;

(i) A COPY OF ALL PAGES OF THE CONTRACT, APPLICATION, OR OTHER DOCUMENTS EVIDENCING THE PRIVATE EDUCATION LOAN BORROWER'S LIABILITY FOR THE PRIVATE EDUCATION LOAN, STATING ALL TERMS AND CONDITIONS APPLICABLE TO THE LOAN; AND

(j) DOCUMENTATION ESTABLISHING THAT THE COLLECTION AGENCY IS THE OWNER, OR ACTING ON BEHALF OF THE OWNER, OF THE SPECIFIC, INDIVIDUAL PRIVATE EDUCATION LOAN AT ISSUE. IF THE PRIVATE EDUCATION LOAN BORROWER DISPUTES THE OWNERSHIP OR ASSIGNMENT OF THE LOAN, THE COLLECTION AGENCY SHALL BEAR THE BURDEN OF ESTABLISHING THE UNBROKEN CHAIN OF OWNERSHIP, BEGINNING WITH THE TRUE ORIGINAL LENDER TO THE FIRST SUBSEQUENT LOAN HOLDER AND EACH ADDITIONAL LOAN HOLDER.

(3) UPON A PRIVATE EDUCATION LOAN BORROWER'S DEFAULT IN PAYMENT ON A PRIVATE EDUCATION LOAN, AND BEFORE A LENDER MAY ACCELERATE THE MATURITY OF THE LOAN OR COMMENCE A LEGAL ACTION AGAINST THE PRIVATE EDUCATION LOAN BORROWER, THE LENDER SHALL PROVIDE TO THE PRIVATE EDUCATION LOAN BORROWER A NOTICE OF INTENTION TO ACCELERATE THE LOAN. THE LENDER SHALL PROVIDE THE NOTICE AT LEAST THIRTY DAYS, BUT NOT MORE THAN ONE HUNDRED DAYS, IN ADVANCE OF THE ACTION.

(4) (a) A LENDER OR DEBT BUYER THAT INTENDS TO COLLECT OR ATTEMPT TO COLLECT A PRIVATE EDUCATION LOAN DEBT SHALL PROVIDE WRITTEN NOTICE OF THAT INTENTION TO THE PRIVATE EDUCATION LOAN BORROWER BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT THE PRIVATE EDUCATION LOAN BORROWER'S LAST-KNOWN ADDRESS.

(b) THE NOTICE REQUIRED BY THIS SUBSECTION (4):

(I) IS EFFECTIVE ON THE DATE IT IS DELIVERED IN PERSON OR MAILED, AS APPLICABLE; AND

(II) MUST CONTAIN ALL INFORMATION REQUIRED BY SUBSECTION (2) OF THIS SECTION.

(5) AN ACTION TO ENTER A JUDGMENT AGAINST A PRIVATE EDUCATION LOAN BORROWER MUST BE COMMENCED WITHIN SIX YEARS OF THE DATE THE PRIVATE EDUCATION LOAN BORROWER FAILED TO MAKE A PAYMENT.

(6) A LENDER OR COLLECTION AGENCY THAT, ON OR AFTER THE EFFECTIVE DATE OF THIS PART 2, COMMENCES A LEGAL ACTION AGAINST A PRIVATE EDUCATION LOAN BORROWER SHALL ATTACH THE FOLLOWING DOCUMENTATION AND INFORMATION TO THE COMPLAINT FILED IN A COURT OF COMPETENT JURISDICTION:

(a) A COPY OF THE NOTICE OF INTENTION PROVIDED PURSUANT TO SUBSECTION (4) OF THIS SECTION;

(b) THE DATE OF THE PARTIAL OR MISSED PAYMENT THAT LED TO THE REFERRAL OF THE PRIVATE EDUCATION LOAN TO COLLECTIONS;

(c) THE DATE OF THE LAST PAYMENT, IF APPLICABLE;

(d) A STATEMENT AS TO WHETHER THE LENDER OR COLLECTION AGENCY IS WILLING TO RENEGOTIATE THE TERMS OF THE DEBT;

(e) A STATEMENT AS TO WHETHER THE DEBT IS ELIGIBLE FOR ANY MODIFIED OR FLEXIBLE REPAYMENT OPTION.

5-20-213. Actions - counterclaims. (1) (a) FOR LITIGATION PROCEEDINGS COMMENCED ON OR AFTER THE EFFECTIVE DATE OF THIS PART 2, A COURT SHALL NOT ENTER A JUDGMENT ON A PRIVATE EDUCATION LOAN OBLIGATION IF THE COLLECTION AGENCY DOES NOT COMPLY WITH THE REQUIREMENTS OF SECTION 5-20-212.

(b) FOR LITIGATION PROCEEDINGS COMMENCED BEFORE THE EFFECTIVE DATE OF THIS PART 2, THE COURT SHALL NOT ENTER A JUDGMENT UNTIL THE COLLECTION AGENCY IS PROVIDED AN OPPORTUNITY TO SUBMIT PROOF OF COMPLIANCE WITH SECTION 5-20-212.

(2) IF A LENDER OR COLLECTION AGENCY FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS PART 2, A PRIVATE EDUCATION LOAN BORROWER MAY BRING AN ACTION, INCLUDING A COUNTERCLAIM, AGAINST THE LENDER OR COLLECTION AGENCY TO RECOVER OR OBTAIN:

(a) AN ORDER SETTING ASIDE OR VACATING ANY DEFAULT JUDGMENT ENTERED AGAINST THE PRIVATE EDUCATION LOAN BORROWER;

(b) A JUDGMENT IN FAVOR OF THE PRIVATE EDUCATION LOAN BORROWER;

(c) ACTUAL DAMAGES OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER;

(d) RESTITUTION OF ALL MONEY TAKEN FROM OR PAID BY THE PRIVATE EDUCATION LOAN BORROWER AFTER A JUDGMENT WAS OBTAINED BY A CREDITOR;

(e) PUNITIVE DAMAGES;

(f) INJUNCTIVE RELIEF;

(g) CORRECTION OF THE PRIVATE EDUCATION LOAN BORROWER'S CREDIT REPORT;

(h) ATTORNEY FEES AND COURT COSTS; AND

(i) ANY OTHER RELIEF THAT THE COURT DEEMS PROPER.

5-20-214. Remedies - civil actions - limitations - deceptive trade practice.

(1) IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY THIS PART 2 OR OTHERWISE PROVIDED BY LAW, WHENEVER IT IS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT A LENDER OR COLLECTION AGENCY HAS FILED WITH A COURT OR PROVIDED TO THE PRIVATE EDUCATION LOAN BORROWER INFORMATION REQUIRED

UNDER THIS PART 2 THAT IS FALSE, THE COURT SHALL AWARD TO THE PRIVATE EDUCATION LOAN BORROWER THE GREATER OF:

(a) TREBLE DAMAGES; OR

(b) ONE THOUSAND FIVE HUNDRED DOLLARS.

(2) A PRIVATE EDUCATION LOAN BORROWER OR COSIGNER WHO SUFFERS DAMAGE AS A RESULT OF A VIOLATION OF THIS PART 2 MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION TO RECOVER:

(a) THE GREATER OF ACTUAL DAMAGES OR FIVE HUNDRED DOLLARS;

(b) AN ORDER REQUIRING THE LENDER OR COLLECTION AGENCY TO TAKE ALL ACTIONS NECESSARY TO CORRECT THE PRIVATE EDUCATION LOAN BORROWER'S CREDIT REPORT;

(c) PUNITIVE DAMAGES;

(d) ATTORNEY FEES AND COURT COSTS; AND

(e) ANY OTHER RELIEF THAT THE COURT DEEMS PROPER.

(2.5) A COURT SHALL NOT AWARD MONETARY DAMAGES UNDER BOTH THIS PART 2 AND ARTICLE 16 OF THIS TITLE 5 OR 15 U.S.C. SEC. 1692k FOR VIOLATIONS OF LAW ARISING FROM SPECIFIC INSTANCES OF THE SAME CONDUCT.

(3) NOTWITHSTANDING ARTICLE 80 OF TITLE 13, ALL ACTIONS BROUGHT UNDER THIS PART 2 MUST BE COMMENCED WITHIN SIX YEARS AFTER THE DATE ON WHICH ANY VIOLATION OF THIS PART 2 OCCURRED, WITHIN SIX YEARS AFTER THE DATE ON WHICH THE LAST IN A SERIES OF SUCH ACTS OR PRACTICES OCCURRED, OR WITHIN SIX YEARS AFTER THE PLAINTIFF DISCOVERED, OR IN THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE DISCOVERED, THE OCCURRENCE OF A VIOLATION OF THIS PART 2; EXCEPT THAT THE PERIOD OF LIMITATION PROVIDED IN THIS SUBSECTION (3) MAY BE EXTENDED FOR A PERIOD OF ONE YEAR IF THE PLAINTIFF PROVES THAT FAILURE TO TIMELY COMMENCE THE ACTION WAS CAUSED BY THE DEFENDANT ENGAGING IN CONDUCT CALCULATED TO INDUCE THE PLAINTIFF TO REFRAIN FROM OR POSTPONE THE COMMENCEMENT OF THE ACTION.

(4) A VIOLATION OF THIS PART 2 IS A DECEPTIVE TRADE PRACTICE AS SPECIFIED IN SECTION 6-1-105. A PRIVATE EDUCATION LENDER OR COLLECTION AGENCY THAT FAILS TO COMPLY WITH ANY REQUIREMENT IMPOSED UNDER THIS PART 2 WITH RESPECT TO A PRIVATE EDUCATION LOAN BORROWER OR COSIGNER IS LIABLE IN AN AMOUNT EQUAL TO THE SUM OF:

(a) ANY ACTUAL DAMAGES SUSTAINED BY THE PRIVATE EDUCATION LOAN BORROWER OR COSIGNER AS A RESULT OF THE FAILURE;

(b) A MONETARY AWARD EQUAL TO THREE TIMES THE TOTAL AMOUNT THE PRIVATE EDUCATION LENDER OR COLLECTION AGENCY COLLECTED FROM THE PRIVATE EDUCATION LOAN BORROWER OR COSIGNER IN VIOLATION OF THIS PART 2;

(c) PUNITIVE DAMAGES AS THE COURT MAY ALLOW; AND

(d) IN THE CASE OF ANY SUCCESSFUL ACTION BY A PRIVATE EDUCATION LOAN BORROWER TO ENFORCE THE LIABILITY SET OUT IN THIS SECTION, THE COSTS OF THE ACTION, TOGETHER WITH REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

(5) THE REMEDIES PROVIDED IN THIS SECTION ARE NOT THE EXCLUSIVE REMEDIES AVAILABLE TO A PRIVATE EDUCATION LOAN BORROWER OR COSIGNER.

SECTION 6. In Colorado Revised Statutes, 5-20-104, **amend** (3)(a) and (3)(c) as follows:

5-20-104. Student loan ombudsperson - report - fund - rules - repeal.

(3) **Student loan ombudsperson and student loan servicer licensing fund.**

(a) The student loan ombudsperson and student loan servicer licensing fund, referred to in this section as the "fund", is hereby created in the state treasury. The fund consists of licensing and investigation fees collected pursuant to ~~section 5-20-107~~ SECTIONS 5-20-107 AND 5-20-203 (2)(a), civil penalties collected pursuant to sections 5-20-114, ~~and~~ 5-20-117, AND 5-20-203 (4), any other money required by law to be deposited in the fund, and any other money that the general assembly may appropriate or transfer to the fund.

(c) All money held in the fund is continuously appropriated to the department of law. The administrator shall expend money held in the fund to administer this ~~article 20~~ PART 1.

SECTION 7. In Colorado Revised Statutes, **amend** 5-20-105 as follows:

5-20-105. License required. On or after January 31, 2020, a person shall not act as a student loan servicer, directly or indirectly, without first obtaining a student loan servicing license from the administrator pursuant to this ~~article 20~~ PART 1.

SECTION 8. In Colorado Revised Statutes, 5-20-106, **amend** (3)(b)(II), (3)(b)(IV), (4), (8), (9), (11)(a) introductory portion, and (11)(a)(I) as follows:

5-20-106. Licensure of student loan servicers. (3) Investigation of applicant.

(b) The administrator may issue a license pursuant to this section if the administrator finds that:

(II) The applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently within the purposes and intent of this ~~article 20~~ PART 1 and in a manner commanding the confidence and trust of the community;

(IV) No person acting on behalf of the applicant knowingly has made an incorrect statement of a material fact in the application or in any report or statement made pursuant to this ~~article 20~~ PART 1; and

(4) **License expiration.** A license issued pursuant to this section expires each January 31 unless renewed or earlier surrendered, suspended, or revoked pursuant to this ~~article 20~~ PART 1. No later than fifteen days after a licensee ceases to engage

in the business of servicing in this state for any reason, including a business decision to terminate operations in this state, license revocation, bankruptcy, or voluntary dissolution, the licensee shall provide written notice of surrender to the administrator and shall surrender to the administrator its license for each location in which the licensee has ceased to engage in servicing. The written notice of surrender must identify the location where the records of the licensee will be stored and the name, address, and telephone number of a person authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring before the surrender of the license, including any administrative actions undertaken by the administrator to revoke or suspend a license, assess a civil penalty, order restitution, or exercise any other authority provided to the administrator.

(8) **Incomplete application.** The administrator may consider an application for a license under this section abandoned if the applicant fails to respond to any request for information required under this ~~article 20~~ PART 1 or any rules adopted pursuant to this ~~article 20~~ PART 1, as long as the administrator notifies the applicant, in writing, that the application will be considered abandoned if the applicant fails to submit the information within sixty days after the date on which the request for information was made. Abandonment of an application pursuant to this subsection (8) does not preclude the applicant from submitting a new application for a license under this ~~article 20~~ PART 1.

(9) **Change of license notification.** A licensee under this section shall not act within this state as a student loan servicer under any name or at any place of business other than those named in the license. A licensee shall give prior written notice to the administrator of a change of business location. A licensee shall not operate more than one place of business under the same license, but the administrator may issue more than one license to a licensee that complies with this ~~article 20~~ PART 1 as to each license. A license is not transferable or assignable.

(11) **License suspension and revocation - refusal to renew.** (a) The administrator may suspend, revoke, annul, limit, modify, or refuse to renew a license issued pursuant to subsection (2) of this section or take any other action in accordance with this ~~article 20~~ PART 1 if the administrator finds one or more of the following:

(I) The licensee has violated any provision of this ~~article 20~~ PART 1 or any rule lawfully adopted or order lawfully issued pursuant to and within the authority of this ~~article 20~~ PART 1; or

SECTION 9. In Colorado Revised Statutes, **amend** 5-20-111 as follows:

5-20-111. Compliance with federal law. A student loan servicer shall comply with all applicable federal laws and regulations relating to servicing, including the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 to 1667f, as amended, and the regulations adopted pursuant to that act. In addition to any other remedies provided by law, a violation of that act or regulations adopted pursuant to that act is a violation of this ~~article 20~~ PART 1 and a basis upon which the administrator may take enforcement action pursuant to this ~~article 20~~ PART 1.

SECTION 10. In Colorado Revised Statutes, 5-20-112, **amend** (1), (2) introductory portion, and (2)(b) as follows:

5-20-112. Civil action. (1) A violation of this ~~article 20~~ PART 1 is a deceptive trade practice within the meaning of section 6-1-105.

(2) A student loan servicer who fails to comply with any requirement imposed under this ~~article 20~~ PART 1 with respect to a student loan borrower is liable in an amount equal to the sum of:

(b) A monetary award equal to three times the total amount the student loan servicer collected from the student loan borrower in violation of this ~~article 20~~ PART 1;

SECTION 11. In Colorado Revised Statutes, **amend** 5-20-113 as follows:

5-20-113. Application of administrative procedures - provisions. Except as otherwise provided, sections 24-4-102 to 24-4-106 apply to and govern all rules promulgated and all administrative action taken by the administrator pursuant to this ~~article 20~~ PART 1; except that section 24-4-104 (3) does not apply to any such action.

SECTION 12. In Colorado Revised Statutes, 5-20-114, **amend** (1) as follows:

5-20-114. Administrative enforcement orders. (1) After notice and hearing, the administrator may order a student loan servicer or a person acting in the student loan servicer's behalf to cease and desist from engaging in violations of this ~~article 20~~ PART 1 or any rule lawfully adopted or order lawfully issued pursuant to this ~~article 20~~ PART 1. The order issued by the administrator may also require the student loan servicer or person to make refunds to persons of unlawful charges under this ~~article 20~~ PART 1 and an administrative penalty of up to one thousand five hundred dollars per violation, all or part of which may be specifically designated for consumer and creditor educational purposes.

SECTION 13. In Colorado Revised Statutes, **amend** 5-20-115 as follows:

5-20-115. Assurance of discontinuance. If it is claimed that a person has violated this ~~article 20~~ PART 1, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. The assurance may also require the person to make refunds to persons of unlawful charges under this ~~article 20~~ PART 1, pay a penalty authorized in section 5-20-114 (1), all or part of which may be specifically designated for consumer and creditor educational purposes, and reimburse the administrator for the administrator's reasonable costs incurred in investigating the conduct. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance the person engaged in the conduct described in the assurance.

SECTION 14. In Colorado Revised Statutes, **amend** 5-20-116 as follows:

5-20-116. Injunctions. The administrator may bring a civil action to restrain a person from violating this ~~article 20~~ PART 1 or rules promulgated pursuant to this ~~article 20~~ PART 1 and for other appropriate relief, including such orders or

judgments as may be necessary to completely compensate or restore any person affected by the violation to the person's original position. The administrator may also apply for a temporary restraining order or a preliminary injunction against a respondent pending final determination of proceedings. No bond or other security is required of the administrator before relief under this section may be granted.

SECTION 15. In Colorado Revised Statutes, **amend** 5-20-117 as follows:

5-20-117. Civil actions by the administrator. The administrator may bring a civil action against a student loan servicer for any violation of this ~~article 20~~ PART 1. An action may relate to transactions with more than one person. The court may order a student loan servicer to refund to a person any charges collected in violation of this ~~article 20~~ PART 1 and may also assess civil penalties against the student loan servicer as set forth in section 5-20-112 (2). If the administrator prevails in an action brought under this section, the administrator may recover reasonable costs in investigating and bringing the action and may recover reasonable attorney fees.

SECTION 16. In Colorado Revised Statutes, **amend** 5-20-118 as follows:

5-20-118. Limitations. Notwithstanding article 80 of title 13, all actions brought under this ~~article 20~~ PART 1 must be commenced within four years after the date on which any violation of this ~~article 20~~ PART 1 occurred or the date on which the last in a series of such acts or practices occurred or within four years after the plaintiff discovered or in the exercise of reasonable diligence should have discovered the occurrence of a violation of this ~~article 20~~ PART 1; except that the period of limitation provided in this section may be extended for a period of one year if the plaintiff proves that failure to timely commence the action was caused by the defendant engaging in conduct calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

SECTION 17. In Colorado Revised Statutes, **amend** 5-20-119 as follows:

5-20-119. Confidential information. (1) The administrator shall not make public the name or identity of a person whose acts or conduct the administrator investigates or examines pursuant to this ~~article 20~~ PART 1 or the facts disclosed in the investigation or examination.

(2) The administrator may disclose license application and renewal records provided to the administrator and other contents of license records maintained pursuant to this ~~article 20~~ PART 1, but the administrator shall not make public the confidential information contained in the records.

(3) The restrictions on the disclosure of information in subsections (1) and (2) of this section do not apply to disclosures by the administrator in actions or administrative enforcement proceedings pursuant to this ~~article 20~~ PART 1.

SECTION 18. In Colorado Revised Statutes, 24-5-102, **amend** (3)(e) as follows:

24-5-102. Employee information - student loan repayment and forgiveness programs - legislative declaration - definitions. (3)(e) The information provided pursuant to this section must include a summary of the public service loan

forgiveness program, the teacher loan forgiveness program, and federal student loan repayment programs, including who may be eligible for the programs, steps that an eligible employee must take in order to participate in the programs, and a recommendation that employees contact their student loan servicer OR PRIVATE EDUCATION LENDER or an ombudsman at the state, if one exists, for additional information.

SECTION 19. Applicability. This act applies to conduct occurring on or after the effective date of this act, including collection of debts arising out of loans issued before the effective date of this act.

SECTION 20. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 29, 2021