SENATE, No. 1149

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JANUARY 25, 2018

Sponsored by:
Senator SANDRA B. CUNNINGHAM
District 31 (Hudson)
Senator CHRIS A. BROWN
District 2 (Atlantic)

Co-Sponsored by:
Senators Ruiz, Beach and Gordon

SYNOPSIS
Establishes Office of Student Loan Ombudsman; regulates student loan servicers.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 2/27/2018)
AN ACT establishing the Office of the Student Loan Ombudsman and regulating student loan servicers and supplementing Title 17 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:
   "Commissioner" means the Commissioner of Banking and Insurance.
   "Ombudsman" means the Student Loan Ombudsman appointed pursuant to section 2 of this act.
   "Servicing" means: (1) receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan; (2) applying the payments of principal and interest and other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and (3) performing other administrative services with respect to a student education loan.
   "Student education loan" means any loan primarily for personal use to finance education or other school-related expenses.
   "Student loan borrower" means any resident of this State who has received or agreed to pay a student education loan; or any person who shares responsibility with a resident for repaying a student education loan.
   "Student loan servicer" means any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

2. There is created within the Department of Banking and Insurance the Office of the Student Loan Ombudsman. The ombudsman shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor during the Governor's term of office. The ombudsman shall not hold any other office, position, or employment outside of the position of ombudsman. Any vacancy occurring in the position of ombudsman shall be filled in the same manner as the original appointment. If the ombudsman shall be unable for any reason to serve the full term of office, the Governor may designate an acting ombudsman until a successor is appointed and qualified.

3. a. The ombudsman shall:
   (1) receive, review, and attempt to resolve any complaints from student education loan borrowers, including, but not limited to, attempts to resolve those complaints in collaboration with institutions of higher education, student loan servicers, and any other participants in student education loan lending:
(2) compile and analyze data on student loan borrower complaints as described in paragraph (1) of this subsection;

(3) assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;

(4) provide information to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers, and make recommendations for resolving those problems and concerns;

(5) analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to student loan borrowers and recommend any changes the Student Loan Ombudsman deems necessary;

(6) review the complete student education loan history for any student loan borrower who has provided written consent for review;

(7) disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers, and any other participant in student education loan lending, with any student loan servicing concerns; and

(8) take any other actions necessary to fulfill the duties of the Student Loan Ombudsman as set forth in this section.

b. No later than October 1, 2019, the Student Loan Ombudsman, in consultation with the commissioner, shall establish and maintain a student loan borrower education course that shall include educational presentations and materials regarding student education loans. The program shall include, but not be limited to, key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness, and disclosure requirements.

c. No later than January 1, 2019, and annually thereafter, the commissioner shall submit a report to the standing committees of the General Assembly and Senate having cognizance of matters relating to banking and higher education. The commissioner shall report on: (1) the implementation of this section; (2) the overall effectiveness of the Student Loan Ombudsman position; and (3) additional steps that need to be taken for the Department of Banking and Insurance to gain regulatory control over the licensing and enforcement of student loan servicers.

4. a. (1) No person shall act as a student loan servicer, directly or indirectly, without first obtaining a license from the commissioner under subsection b. of this section, unless that person is exempt from licensure pursuant to paragraph (2) of this subsection.

(2) The following persons are exempt from subsection a. of this section: (a) any State or federally chartered bank, savings bank, savings and loan association, or credit union; (b) any wholly owned subsidiary of any bank or credit union; and (c) any operating
subsidary where each owner of the operating subsidiary is wholly
owned by the same bank or credit union.

b. Any person seeking to act within this State as a student loan
servicer shall make a written application to the commissioner for an
initial license in the form prescribed by the commissioner. The
application shall be accompanied by:

(1) a financial statement prepared by a certified public accountant
or a public accountant, the accuracy of which is sworn to under oath
before a notary public by the applicant, proprietor, a general partner or
a corporate officer, or a member duly authorized to execute those
documents;

(2) (a) the history of criminal convictions of the: (i) applicant; (ii)
partners, if the applicant is a partnership; (iii) members, if the
applicant is a limited liability company or association; or (iv) officers,
directors and principal employees, if the applicant is a corporation; and
(b) sufficient information pertaining to the history of criminal
convictions of that applicant, partners, members, officers, directors or
principal employees as the commissioner deems necessary to make the
findings under subsection c. of this section;

(3) a nonrefundable license fee of $1,000; and

(4) a nonrefundable investigation fee of $800.

The commissioner may conduct a State and national criminal
history records check of the applicant and of each partner, member,
officer, director and principal employee of the applicant.

c. Upon the filing of an application for an initial license and the
payment of the fees for license and investigation, the commissioner
shall investigate the financial condition and responsibility, financial
and business experience, character and general fitness of the applicant.
The commissioner may issue a license if the commissioner finds that:

(1) the applicant's financial condition is sound;

(2) the applicant's business will be conducted honestly, fairly,
equitably, carefully and efficiently within the purposes and intent of
this act, and in a manner commanding the confidence and trust of the
community;

(3) (a) if the applicant is an individual, the individual is in all
respects properly qualified and of good character;

(b) if the applicant is a partnership, each partner is in all respects
properly qualified and of good character;

(c) if the applicant is a corporation or association, the president,
chairperson of the executive committee, senior officer responsible for
the corporation's business and chief financial officer or any other
person who performs similar functions as determined by the
commissioner, each director, each trustee and each shareholder owning
10 percent or more of each class of the securities of the corporation is
in all respects properly qualified and of good character; or

(d) if the applicant is a limited liability company, each member is
in all respects properly qualified and of good character;
(4) neither the applicant nor any person on behalf of the applicant knowingly has made any incorrect statement of a material fact in the application, or in any report or statement made pursuant to this act;

(5) neither the applicant nor any person on behalf of the applicant knowingly has omitted to state any material fact necessary to give the commissioner any information lawfully required by the commissioner;

(6) the applicant has paid the investigation fee and the license fee required under subsection b. of this section; and

(7) the applicant has met any other similar requirements as determined by the commissioner.

d. A license issued pursuant to subsection c. of this section shall expire at the close of business on September 30 of the odd-numbered year following its issuance, unless renewed or earlier surrendered, suspended or revoked pursuant to this act. Not later than 15 days after a licensee ceases to engage in the business of student loan 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 commissioner and shall surrender to the commissioner its license for each location in which the licensee has ceased to engage in business. The written notice of surrender shall identify the location where the records of the licensee will be stored and the name, address and telephone number of an individual 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 prior to the surrender of the license, including any administrative actions undertaken by the commissioner to revoke or suspend a license, assess a civil penalty, order restitution or exercise any other authority provided to the commissioner.

e. A license may be renewed for the ensuing 24 month period upon the filing of an application containing all required documents and fees as provided in subsection b. of this section. The renewal application shall be filed on or before September 1 of the year in which the license expires. Any renewal application filed with the commissioner after September 1 shall be accompanied by a $100 late fee. If an application for a renewal license has been filed with the commissioner on or before the date the license expires, the license sought to be renewed shall continue in full force and effect until the issuance by the commissioner of the renewal license applied for or until the commissioner has notified the licensee in writing of the commissioner's refusal to issue the renewal license together with the grounds upon which that refusal is based. The commissioner may refuse to issue a renewal license on any ground on which the commissioner might refuse to issue an initial license.

f. The applicant or licensee shall notify the commissioner, in writing, of any change in the information provided in its initial application for a license or its most recent renewal application for the license, as applicable, not later than 10 business days after the
occurrence of the event that results in the information becoming inaccurate.

g. The commissioner may deem an application for a license abandoned if the applicant fails to respond to any request for information required under this act. The commissioner shall notify the applicant, in writing, that if the applicant fails to submit any information not later than 60 days after the date on which the request for information was made, the application shall be deemed abandoned. An application filing fee paid prior to the date an application is deemed abandoned pursuant to this subsection shall not be refunded. Abandonment of an application pursuant to this subsection shall not preclude the applicant from submitting a new application for a license under the provisions of this act.

5. No person licensed to act within this State as a student loan servicer shall do so under any other name or at any other place of business than that named in the license. Any change of location of a place of business of a licensee shall require prior written notice to the commissioner. Not more than one place of business shall be maintained under the same license but the commissioner may issue more than one license to the same licensee upon compliance with the provisions of this act as to each new licensee. A license shall not be transferable or assignable.

6. a. Each student loan servicer licensee and persons exempt from licensure pursuant to paragraph (2) of subsection a. of section 4 of this act shall maintain adequate records of each student education loan transaction for not less than two years following the final payment on that student education loan or the assignment of that student education loan, whichever occurs first, or any longer period as may be required by any other provision of law.

   b. If requested by the commissioner, each student loan servicer shall make records available or send records to the commissioner by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than five business days after requested by the commissioner to do so. Upon request, the commissioner may grant a licensee additional time to make records available or send the records to the commissioner.

7. No student loan servicer shall:
   a. directly or indirectly employ any scheme, device or artifice to defraud or mislead student loan borrowers;
   b. engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the
terms and conditions of the loan agreement or the borrower's obligations under the loan;
c. obtain property by fraud or misrepresentation;
d. knowingly misapply or recklessly apply student education loan payments to the outstanding balance of a student education loan;
e. knowingly or recklessly provide inaccurate information to a credit bureau, thereby harming a student loan borrower's creditworthiness;
f. fail to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;
g. refuse to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or
h. negligently make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the commissioner or another governmental agency.

8. a. In addition to any authority provided under Title 17 of the Revised Statutes, the commissioner shall have the authority to conduct investigations and examinations as follows:
(1) For purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this act, the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to: (a) criminal, civil and administrative history information; (b) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the “Fair Credit Reporting Act” (15 U.S.C. s.1681a); and (c) any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of documents, information or evidence.
(2) For the purposes of investigating violations or complaints arising under this act or for the purposes of examination, the commissioner may review, investigate or examine any student loan servicer licensee or person subject to this act. The commissioner may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the student education loan or the business or subject matter of any examination
or investigation, and may direct, subpoena or order any person
subject to this act to produce books, accounts, records, files and any
other documents the commissioner deems relevant to the inquiry.

b. In making any examination or investigation authorized by
this section, the commissioner may control access to any documents
and records of the student loan servicer licensee or person under
examination or investigation. The commissioner may take
possession of the documents and records or place a person in
exclusive charge of the documents and records in the place where
they are usually kept. During the period of control, no person shall
remove or attempt to remove any of the documents and records
except pursuant to a court order or with the consent of the
commissioner. Unless the commissioner has reasonable grounds to
believe the documents or records of the student loan servicer
licensee or person have been, or are at risk of being, altered or
destroyed for purposes of concealing a violation of this act, the
student loan servicer licensee or owner of the documents and
records shall have access to the documents or records as necessary
to conduct its ordinary business affairs.

c. In order to carry out the purposes of this section, the
commissioner may:

(1) retain attorneys, accountants or other professionals and
specialists as examiners, auditors or investigators to conduct or
assist in the conduct of examinations or investigations;

(2) enter into agreements or relationships with other government
officials or regulatory associations in order to improve efficiencies
and reduce regulatory burden by sharing resources, standardized or
uniform methods or procedures, and documents, records,
information or evidence obtained under this section;

(3) use, hire, contract or employ public or privately available
analytical systems, methods or software to examine or investigate
the student loan servicer licensee or any person subject to this act;

(4) accept and rely on examination or investigation reports made
by other government officials, within or without this State; and

(5) accept audit reports made by an independent certified public
accountant for the student loan servicer licensee or person subject to
this act in the course of that part of the examination covering the
same general subject matter as the audit and may incorporate the
audit report in the report of examination, report of investigation or
other writing of the commissioner.

d. The authority of this section shall remain in effect, whether
the student loan servicer licensee or person subject to this act, acts
or claims to act under any licensing or registration law of this State,
or claims to act without that authority.

e. No student loan servicer licensee or person subject to
investigation or examination under this section may knowingly
withhold, abstract, remove, mutilate, destroy or secrete any books,
records, computer records or other information.
9. a. The commissioner may suspend, revoke or refuse to renew any license issued under the provisions of subsection c. of section 4 of this act, or take any other action, if the commissioner finds that: (1) the licensee has violated any provision of this act or any regulation made pursuant to this act; or (2) any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted a denial of the license. No abatement of the license fee shall be made if the license is surrendered, revoked, or suspended prior to the expiration of the period for which it was issued.

b. (1) Whenever it appears to the commissioner that any person has violated, is violating or is about to violate any of the provisions of this act, or any regulation adopted pursuant to this act, or any licensee or any owner, director, officer, member, partner, shareholder, trustee, employee or agent of a licensee has committed any fraud, engaged in dishonest activities or made any misrepresentation, the commissioner may bring a civil suit in a court of competent jurisdiction to enjoin the violation or potential violation, seek civil penalties pursuant to paragraph (2) of this subsection, or both.

(2) Any person who violates any provision of this act shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation. The penalty shall be paid to the commissioner to be used in accordance with this act and shall be collected pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.). The court shall also award court costs and reasonable attorneys' fees to the commissioner.

10. A student loan servicer shall comply with all applicable federal laws and regulations relating to student loan servicing, including, but not limited to, the “Truth in Lending Act” (15 U.S.C. s.1601 et seq.). In addition to any other remedies provided by law, a violation of any federal law or regulation shall be deemed a violation of this section and a basis upon which the commissioner may take enforcement action pursuant to section 9 of this act.

11. All costs of the implementation of this act shall be regarded as administrative costs of the Department of Banking and Insurance. Moneys collected from license fees, inspections, or violations pursuant to this act shall be expended by the commissioner for the purpose of administering the provisions of this act.

12. The Commissioner of Banking and Insurance shall, in accordance with the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt the rules and regulations necessary to implement the provisions of this act.
13. This act shall take effect on the 120th day next following enactment, provided that the Commissioner of Banking and Insurance may take any anticipatory actions necessary to implement the provisions of this act.

STATEMENT

This bill establishes the Office of the Student Loan Ombudsman within the Department of Banking and Insurance (DOBI) and regulates student loan servicers. Under the bill, the ombudsman will, at a minimum:

1. receive, review, and attempt to resolve any complaints from student loan borrowers;
2. compile and analyze data on student loan borrower complaints;
3. assist student loan borrowers to understand their rights and responsibilities;
4. provide information and make recommendations to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers;
5. analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies relating to student loan borrowers;
6. review the complete student education loan history for any student loan borrower who has provided written consent for review; and
7. disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers.

No later than October 1, 2019, the ombudsman, in consultation with the commissioner, is required to establish and maintain a student loan borrower education course that will include educational presentations and materials regarding student education loans.

Under the bill, student loan servicers are required to obtain a license from the commissioner before directly or indirectly acting as a student loan servicer. State or federally chartered banks, savings banks, savings and loan associations, and credit unions are exempt from the licensure requirement. Any person seeking to act within the State as a student loan servicer must make a written application to the commissioner accompanied by:

1. a financial statement prepared by a certified public accountant or a public accountant;
2. the history of criminal convictions of the applicant or certain other individuals in the case of certain business entities; and
3. certain licensure fees.
Upon the filing of an application for an initial license and the payment of the fees for license and investigation, the commissioner will investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The bill provides that licenses expire at the close of business on September 30 of the odd-numbered year following their issuance, unless renewed or earlier surrendered, suspended or revoked. The bill establishes procedures for license renewal and surrender.

The bill requires student loan servicers, and certain other entities exempt from the other requirements of the bill, to maintain student loan records for at least two years following final payment or assignment of the loan. The records are to be provided to the commissioner for inspection upon request.

The bill grants the commissioner the authority to conduct certain investigations and examinations for purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance, in which the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence.

The bill also provides that any person who violates any provision of this act will be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation.