

[First Reprint]

ASSEMBLY, No. 4395

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 16, 2020

Sponsored by:

Assemblyman WILLIAM F. MOEN, JR.

District 5 (Camden and Gloucester)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

SYNOPSIS

Requires registration of private education lenders; establishes protections for private education borrowers.

CURRENT VERSION OF TEXT

As reported by the Assembly Higher Education Committee on March 8, 2021, with amendments.



(Sponsorship Updated As Of: 6/21/2021)

1 AN ACT concerning private education lenders and supplementing
2 P.L.2019, c.200 (C.17:16ZZ-1 et seq.).

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 “Commissioner” means the Commissioner of Banking and
9 Insurance.

10 “Cosigner” means:

11 (1) any individual who is liable for the obligation of another
12 without compensation, regardless of how the individual is
13 designated in the contract or instrument with respect to that
14 obligation, including an obligation under a private education loan
15 extended to consolidate a borrower’s pre-existing private education
16 loans; and

17 (2) shall include any person whose signature is requested as a
18 condition to grant credit or to forbear on collection.

19 As used in this act, “cosigner” shall not include a spouse of an
20 individual described in paragraph (1), the signature of whom is
21 needed to perfect the security interest in a loan.

22 “Creditor” means:

23 (1) the original creditor, where ownership of a private education
24 loan debt has not been sold, assigned, or transferred;

25 (2) the person or entity that owned the private education loan
26 debt at the time the debt defaulted, even if that person or entity did
27 not originate the private education loan, and where such a debt has
28 not subsequently been sold, transferred or assigned; or

29 (3) a person or entity that purchased a defaulted private
30 education loan debt for collection purposes, whether it collects the
31 debt itself, hires a third party for collection, or hires an attorney for
32 collection litigation.

33 “Debt collector” means a person who regularly collects or
34 attempts to collect, directly or indirectly, consumer debts originally
35 owed or due or asserted to be owed or due another. The term shall
36 not include an officer or employee of a creditor who, in the name of
37 the creditor, collects debts for that creditor, but it shall include a
38 creditor who, in the process of collecting its own debt, uses a name
39 other than its own that would indicate that a third person is
40 collecting or attempting to collect the debt.

41 “Department” means the Department of Banking and Insurance.

42 “Original Creditor” means the private education lender identified
43 in a promissory note, loan agreement, or loan contract entered into
44 with a student loan borrower or cosigner.

45 “Private education lender” or “lender” means any person

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHI committee amendments adopted March 8, 2021.

1 engaged in the business of securing, making, or extending private
2 education loans, or any holder of a private education loan. “Private
3 education lender” shall not include the following persons, only to
4 the extent that State regulation is preempted by federal law:

5 (1) any federally chartered bank, savings bank, savings and loan
6 association, or credit union;

7 (2) any wholly owned subsidiary of a federally chartered bank
8 or credit union; and

9 (3) any operating subsidiary where each owner of the operating
10 subsidiary is wholly owned by the same federally chartered bank or
11 credit union.

12 “Private education loan” means an extension of credit that:

13 (1) is not made, insured, or guaranteed under Title IV of the
14 “Higher Education Act of 1965” (20 U.S.C. s.1070 et seq.);

15 (2) is extended to a consumer expressly, in whole or in part, for
16 postsecondary educational expenses, regardless of whether the loan
17 is provided by the educational institution that the student attends;

18 (3) shall not include open-end credit or any loan that is secured
19 by real property or a dwelling; and

20 (4) shall not include an extension of credit in which the covered
21 educational institution is the creditor if:

22 (a) the term of the extension of credit is 90 days or less; or

23 (b) an interest rate shall not be applied to the credit balance and
24 the term of the extension of credit is ¹one year or less, even if the
25 credit is payable in more than four installments **in effect until the**
26 **student completes the educational program**¹.

27 “Private education loan borrower” or “borrower” means any
28 resident of this State who has received or agreed to pay a private
29 education loan for the borrower’s own educational expenses.

30 “Student financing” means:

31 (1) an extension of credit that:

32 (a) is not made, insured, or guaranteed under Title IV of the
33 “Higher Education Act of 1965” (20 U.S.C. s.1070 et seq.);

34 (b) is extended to a consumer expressly, in whole or in part, for
35 postsecondary educational expenses, regardless of whether the
36 extension of credit is provided by the provider of postsecondary
37 education that the student attends; and

38 (c) shall not include any loan that is secured by real property or
39 a dwelling; or

40 (2) a debt or obligation owed or incurred by a consumer,
41 contractual or otherwise, that:

42 (a) is not a loan made, insured, or guaranteed under Title IV of
43 the “Higher Education Act of 1965” (20 U.S.C. s.1070 et seq.);

44 (b) is incurred by the consumer, in whole or in part, expressly to
45 finance postsecondary education expenses regardless of whether the
46 debt incurred is owed to the provider of postsecondary education
47 that the student attends; and

1 (c) shall not include any loan that is secured by real property or
2 a dwelling.

3 “Student financing company” means any person engaged in the
4 business of securing, making, or extending credit to a consumer for
5 postsecondary education expenses, or any holder of a debt incurred
6 by a consumer to finance postsecondary education expenses.
7 “Student financing company” shall not include the following
8 persons, only to the extent that State regulation is preempted by
9 federal law:

10 (1) any federally chartered bank, savings bank, savings and loan
11 association, or credit union;

12 (2) any wholly owned subsidiary of a federally chartered bank
13 or credit union; and

14 (3) any operating subsidiary where each owner of the operating
15 subsidiary is wholly owned by the same federally chartered bank or
16 credit union.

17 “Total and permanent disability” is the condition of an individual
18 who:

19 (1) has been determined by the United States Secretary of
20 Veterans Affairs to be unemployable due to a service-connected
21 disability; or

22 (2) is eligible for Social Security Disability Insurance or
23 Supplemental Security Income and whose next scheduled disability
24 review will be five to seven years or more from the date of the
25 individual’s last Social Security Administration disability
26 determination; or

27 (3)¹ is unable to **engage in any substantial gainful activity**
28 work and earn money or attend school¹ by reason of any medically
29 determinable physical or mental impairment ¹, as certified by a
30 doctor of medicine or a doctor of osteopathy who is legally licensed
31 to practice in the United States,¹ that can be expected to result in
32 death, has lasted for a continuous period of not less than **12** 60¹
33 months, or can be expected to last for a continuous period of not
34 less than **12** 60¹ months.

35 ¹An individual shall not be considered “totally and permanently
36 disabled” under this act on the basis of a condition that existed at
37 the time the individual applied for the loan, unless the individual’s
38 condition has deteriorated later so as to render the individual totally
39 and permanently disabled.¹

40

41 2. a. No **person** creditor, lender, or student financing
42 company¹ shall extend student financing or a private education loan
43 to a resident of this State without first registering with the
44 Commissioner of Banking and Insurance as provided in this section
45 ¹and with the Nationwide Multistate Licensing System and Registry
46 in accordance with any requirements established by that entity. The
47 commissioner shall establish and collect a registration fee¹.

- 1 b. A 'creditor, lender, or' student financing company shall:
- 2 (1) register with the commissioner pursuant to any registration
- 3 procedures set forth by the commissioner by regulation;
- 4 (2) provide the commissioner, at the time of registration and not
- 5 less than once per year thereafter, with the following documents and
- 6 information:
- 7 (a) a list of all schools at which the 'creditor, lender, or' student
- 8 financing company **'[or lender]'** has provided loans to a borrower
- 9 residing in this State;
- 10 (b) the volume of loans made annually to borrowers residing in
- 11 this State;
- 12 (c) the volume of loans made annually at each school identified
- 13 under subparagraph (a) of this paragraph;
- 14 (d) the default rate for borrowers obtaining loans from the
- 15 'creditor, lender, or' student financing company **'[or lender]'**;
- 16 (e) **'[a copy of each model promissory note, agreement,**
- 17 contract or other instrument used by the student financing company
- 18 during the previous year to substantiate that a private education loan
- 19 has been extended to a borrower or that a borrower owes a debt to
- 20 the student financing company] the eligibility criteria to receive the
- 21 lowest advertised starting interest rate and the percentage of
- 22 applicants who receive the lowest advertised starting interest rate';
- 23 and
- 24 (f) the name and address of the 'creditor, lender, or' student
- 25 financing company and any officer, director, partner or owner of a
- 26 controlling interest of the 'creditor, lender, or' student financing
- 27 company.
- 28 c. The commissioner shall **'[create a publicly accessible**
- 29 website that includes the] post on the department's Internet website
- 30 the' following information about private education lenders
- 31 registered in this State:
- 32 (1) the name, address, telephone number and website for all
- 33 registered private education lenders; 'and'
- 34 (2) a summary of the information required under subparagraphs
- 35 (a) through **'[(d)] (e)'** of paragraph (2) of subsection b. of this
- 36 section **'[; and**
- 37 (3) copies of all model promissory notes, agreements, contracts,
- 38 or other instruments provided to the commissioner under
- 39 subparagraph (e) of paragraph (2) of subsection b. of this section **']'**.
- 40 d. 'A creditor, lender, or student financing company shall post
- 41 on its website a copy of each model promissory note, agreement,
- 42 contract or other instrument used by the creditor, lender, or student
- 43 financing company during the previous year to substantiate that a
- 44 private education loan has been extended to a borrower or that a
- 45 borrower owes a debt to the creditor, lender, or student financing
- 46 company.

1 ~~e.~~¹ The commissioner may impose a civil penalty not exceeding
2 \$25,000 on any person for a violation of this section. Each
3 violation of this section, including any order, rule or regulation
4 made or issued pursuant to the act, shall constitute a separate
5 offense. Additionally, each violation which constitutes a knowing
6 violation shall be a crime of the third degree.

7 ~~¹[e.] f.~~¹ The commissioner may order that any person who has
8 been found to have knowingly violated any provision of this
9 section, or of the rules and regulations issued pursuant to this
10 section, ~~¹[and has thereby caused financial harm to consumers,]~~¹
11 be barred for a term not exceeding 10 years from acting as a private
12 education lender, or a stockholder, or an officer, director, partner or
13 other owner, or an employee of a private education lender. The
14 commissioner may order the rescission of a loan made by a person
15 who fails to register pursuant to this section. A violation of an
16 order shall be a crime of the third degree.

17
18 3. a. Prior to the extension of a private education loan that
19 requires a cosigner, a private education lender shall deliver the
20 following information to the cosigner:

21 (1) how the private education loan obligation shall appear on the
22 cosigner's credit;

23 (2) how the cosigner shall be notified if the private education
24 loan becomes delinquent, including how the cosigner can cure the
25 delinquency in order to avoid negative credit furnishing and loss of
26 cosigner release eligibility; and

27 (3) ¹for a loan that provides a cosigner release option, the
28 conditions for¹ eligibility for release of the cosigner's obligation on
29 the private education loan, including the number of on-time
30 payments and any other criteria required to approve the release of
31 cosigner from the loan obligation.

32 b. For any private education loan that obligates a cosigner ¹and
33 provides for cosigner release¹, a lender shall provide the borrower
34 and the cosigner an annual written ¹or electronic¹ notice containing
35 ¹clear and conspicuous¹ information about cosigner release,
36 including the administrative, non-judgmental criteria the lender
37 requires to approve the release of the cosigner from the loan
38 obligation and the process for applying for cosigner release. ¹Such
39 criteria may include minimum income or credit, or both income and
40 credit, requirements that the lender requires the borrower to satisfy
41 for cosigner release.¹

42 c. If the borrower has met the applicable payment requirement
43 to be eligible for cosigner release, the lender shall send the
44 borrower and the cosigner a written notification by mail ~~¹[and]~~ or¹
45 by electronic mail, where a borrower or cosigner has elected to
46 receive electronic communications from the lender, informing the
47 borrower and cosigner that the payments requirement to be eligible

1 for cosigner release have been met. The notification shall also
2 include information about any additional criteria to qualify for
3 cosigner release, and the procedure to apply for cosigner release.

4 d. A lender shall provide written notice to a borrower who
5 applies for cosigner release, but whose application is incomplete.
6 The written notice shall include a description of the information
7 needed to consider the application complete and the date by which
8 the applicant shall furnish the missing information.

9 e. Within 30 days after a borrower submits a completed
10 application for cosigner release, the lender shall send the borrower
11 and cosigner a written notice that informs the borrower and
12 cosigner whether the cosigner release application has been approved
13 or denied. If the lender denies a request for cosigner release, the
14 borrower may request any documents or information used in the
15 determination, including, but not limited to, the credit score
16 threshold used by the lender ¹["], the borrower's consumer report, the
17 borrower's credit score,¹ and any other documents specific to the
18 borrower ¹, in the possession of the lender or the lender's third-
19 party contractors¹. The lender shall also provide any adverse action
20 notices required under applicable federal law if the denial is based
21 in whole or in part on any information contained in a consumer
22 report.

23
24 4. a. ¹["In"] If a private education loan provides a cosigner
25 release option, in¹ response to a written or oral request for cosigner
26 release, a lender shall provide the information described in
27 subsection b. of section 3 of this act.

28 b. ¹["A"] If a private education loan provides a cosigner release
29 option, a¹ lender shall not impose any restriction that permanently
30 bars a borrower from qualifying for cosigner release, including
31 restricting the number of times a borrower may apply for cosigner
32 release.

33 c. A lender shall not impose any negative consequences on any
34 ¹["borrower or"]¹ cosigner during the 60 days following the issuance
35 of the notice required pursuant to subsection d. of section 3 of this
36 act, or until the lender makes a final determination about a
37 borrower's cosigner release application. For the purpose of this
38 subsection, "negative consequences" includes, but is not limited to,
39 the imposition of additional eligibility criteria, negative credit
40 reporting, lost eligibility for cosigner release, late fees, interest
41 capitalization, or other financial injury.

42 d. ¹["A"] For any private education loan executed after the
43 effective date of this act, a¹ lender shall not require greater than 12
44 consecutive, on-time payments ¹["as"] of principal and interest as the
45 initial¹ criteria for ¹the borrower to submit an application for¹
46 cosigner release. ¹["Any borrower who has paid the equivalent of
47 12 months of principal and interest payments within any 12-month

1 period shall be considered to have satisfied the consecutive, on-time
2 payment requirement, even if the borrower has not made payments
3 monthly during the 12-month period.】¹

4 e. If a borrower or cosigner requests a change in terms that
5 restarts the count of consecutive, on-time payments required for
6 cosigner release, the lender shall notify the borrower and cosigner
7 in writing ¹, by mail, or by electronic mail, if a borrower or
8 cosigner has elected to receive electronic communications from the
9 lender,¹ of the impact of the change and provide the borrower or
10 cosigner the right to withdraw or reverse the request to avoid that
11 impact.

12 f. A borrower shall have the right to request an appeal of a
13 lender's determination to deny a request for cosigner release, and
14 the lender shall permit the borrower to submit additional
15 documentation evidencing the borrower's ability, willingness, and
16 stability to meet the payment obligations. The borrower may request
17 review of the cosigner release determination by another employee.

18 g. A lender shall establish and maintain a comprehensive
19 record management system reasonably designed to ensure the
20 accuracy, integrity, and completeness of data and other information
21 about cosigner release applications and to ensure compliance with
22 applicable state and federal laws, including but not limited to the
23 "Equal Credit Opportunity Act," 15 U.S.C. s.1691 et seq., and the
24 "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq. This system
25 shall include the number of cosigner release applications received,
26 the approval and denial rate, and the primary reasons for any denial.

27 h. (1) A lender shall provide a cosigner with access to all
28 documents or records related to the cosigned private education loan
29 that are available to the borrower.

30 (2) If a lender provides electronic access to documents and
31 records for a borrower, it shall provide equivalent electronic access
32 to the cosigner.

33

34 5. a. (1) A private education loan executed after the effective
35 date of this act shall not include a provision that permits the private
36 educational lender to accelerate, in whole or in part, payments on
37 the private education loan, except in cases of payment default. A
38 lender shall not place any loan or account into default or accelerate
39 a loan for any reason, other than for payment default.

40 (2) A private education loan prior to the effective date of this act
41 shall permit the lender to accelerate payments only if the
42 promissory note or loan agreement explicitly authorizes an
43 acceleration and only for the reasons stated in the note or
44 agreement.

45 b. (1) ¹【In the event of the death of a cosigner, the lender shall
46 not】 A private education loan executed prior to or after the effective
47 date of this act shall not include a provision that permits the private

1 education lender to¹ attempt to collect against the cosigner's estate,
2 other than for payment default.

3 (2) Upon receiving notification of the death or bankruptcy of a
4 cosigner, when the loan is not more than 60 days delinquent at the
5 time of the notification, the lender shall not change any terms or
6 benefits under the promissory note, repayment schedule, repayment
7 terms, or monthly payment amount or any other provision
8 associated with the loan.

9 c. A lender shall not place any loan or account into default or
10 accelerate a loan while a borrower is seeking a loan modification or
11 enrollment in a flexible repayment plan, except that a lender may
12 place a loan or account into default or accelerate a loan for payment
13 default 90 days following the borrower's default.

14

15 6. a. A private education lender, ¹**["when notified"]** upon
16 determination¹ of the total and permanent disability of a borrower
17 ¹**["or cosigner"]**¹, shall release any cosigner from the obligations of
18 the cosigner under a private education loan. The lender shall not
19 attempt to collect a payment from ¹**["a"]** any¹ cosigner following a
20 notification of total and permanent disability of the ¹**["cosigner or"]**¹
21 borrower.

22 b. ¹A private education lender, upon determination of the total
23 and permanent disability of a cosigner, shall release that individual
24 cosigner from the obligations of the cosigner under a private
25 education loan.

26 c.¹ A lender shall notify a borrower and cosigner for a private
27 education loan if either a cosigner or borrower is released from the
28 obligations of the private education loan under this section, within
29 30 days of the release.

30 ¹**["c.] d.**¹ Any lender that extends a private education loan shall
31 provide the borrower an option to designate an individual to have
32 the legal authority to act on behalf of the borrower with respect to
33 the private education loan in the event of the total and permanent
34 disability of the borrower.

35 ¹**["d.] e.**¹ (1) In the event a cosigner is released from the
36 obligations of a private education loan pursuant to subsection a. of
37 this section, the lender shall not require the borrower to obtain
38 another cosigner on the loan obligation.

39 (2) A lender shall not declare a default or accelerate the debt
40 against the borrower on the sole basis of the release of the cosigner
41 from the loan obligation.

42 ¹**["e.] f.**¹ A lender shall, ¹**["when notified"]** upon determination¹
43 of the total and permanent disability of a borrower, discharge the
44 liability of the borrower and cosigner on the loan.

45 ¹**["f.] g.**¹ After ¹**["receiving a notification"]** making the
46 determination¹ described in subsection ¹**["e.] f.**¹ of this section, the
47 lender shall not:

1 (1) attempt to collect on the outstanding liability of the borrower
2 or cosigner; or

3 (2) monitor the disability status of the borrower at any point
4 after the date of discharge.

5
6 7. a. Prior to offering a person a private education loan that is
7 being used to refinance an existing education loan, a private
8 education lender shall provide the person a disclosure that benefits
9 and protections applicable to the existing loan may be lost due to
10 the refinancing.

11 The information provided pursuant to this subsection shall be
12 provided on a one-page information sheet in a 12-point font and
13 shall be written in simple, clear, understandable and easily readable
14 language as provided in P.L.1980, c.125 (C.56:12-1 et seq.).

15 b. If a private education lender offers any borrower flexible
16 repayment options in connection with a private education loan,
17 those flexible repayment options shall be made available to all
18 borrowers of loans by the lender. A lender shall:

19 (1) provide on its website a description of any alternative
20 repayment options offered by the lender for private education loans;

21 (2) establish policies and procedures and implement them
22 consistently in order to facilitate evaluation of private education
23 loan flexible repayment option requests, including providing
24 accurate information regarding any private education loan
25 alternative repayment options that may be available to the borrower
26 through the promissory note or that may have been marketed to the
27 borrower through marketing materials; and

28 (3) consistently present and offer private education loan
29 repayment options to borrowers with similar financial
30 circumstances, if the lender offers repayment options.

31
32 8. a. No private education lender shall:

33 (1) offer any private education loan that is not in conformity
34 with this act, or that is in violation of any other State or federal law;

35 (2) engage in any unfair, deceptive, or abusive act or practice;

36 ¹or¹

37 (3) ¹make a private education loan upon security of any
38 assignment of or order for the payment of any salary, wages,
39 commissions or other compensation for services earned, or to be
40 earned. No assignment or order shall be taken by a lender in
41 connection with a private education loan, or for the enforcement or
42 repayment thereof, and any assignment or order taken or given to
43 secure any loan made by any lender under this act shall be void; or

44 (4) ¹make, advertise, print, display, publish, distribute,
45 electronically transmit, telecast or broadcast, in any manner, any
46 statement or representation which is false, misleading or deceptive.

47 b. ¹A private education lender shall establish and maintain
48 records and permit the department to access and copy any records

1 required to be maintained pursuant to this act. Loan files, including
2 any records specified for retention by regulation adopted by the
3 commissioner, shall be retained for not less than six years after the
4 termination of the loan account. **】** If a private education lender does
5 not offer the same interest rate to all borrowers, the private
6 education lender shall publish the criteria used to determine the rate
7 for which a borrower is eligible in all places where the interest rate
8 is published.¹

9
10 9. a. In addition to any other information required under
11 applicable federal or State law, a debt collector attempting to collect
12 a private education loan shall provide in the first debt collection
13 communication with the borrower and at any other time the
14 borrower requests this documentation:

15 (1) the name of the owner of the private education loan debt;

16 (2) the original creditor's name at the time of default, if
17 applicable;

18 (3) the original creditor's account number used to identify the
19 private education loan debt at the time of default, if the original
20 creditor used an account number to identify the private education
21 loan debt at the time of default;

22 (4) the amount due at the time of default;

23 (5) a schedule of all transactions credited or debited to the
24 student loan account;

25 (6) a copy of all pages of the contract, application or other
26 documents evidencing the private education loan borrower's
27 liability for the private education loan, stating all terms and
28 conditions applicable to the private education loan; and

29 (7) a clear and conspicuous statement disclosing that the
30 borrower has a right to request all information possessed by the
31 creditor related to the defaulted private education loan debt,
32 including, but not limited to the required information described in
33 paragraph (3) of this subsection.

34 b. A creditor shall not collect or attempt to collect a private
35 education loan debt unless the creditor possesses:

36 (1) the name of the owner of the private education loan;

37 (2) the original creditor's name at the time of default, if
38 applicable;

39 (3) the original creditor's account number used to identify the
40 private education loan at the time of default, if the original creditor
41 used an account number to identify the private education loan at the
42 time of default;

43 (4) the amount due at default;

44 (5) a schedule of all transactions credited or debited to the
45 student loan account;

46 (6) an itemization of interest and fees, if any, claimed to be
47 owed and whether those were imposed by the original creditor or
48 any subsequent owners of the private education loan;

- 1 (7) the date that the private education loan was incurred;
- 2 (8) a billing statement or other account record indicating the
3 date of the first partial payment or the first day that a payment was
4 missed, whichever is earlier;
- 5 (9) a billing statement or other account record indicating the
6 date of the last payment made by the borrower, if applicable;
- 7 (10) any payments, settlement, or financial remuneration of any
8 kind paid to the creditor by a guarantor, co-signer, or surety, and the
9 amount of payment received;
- 10 (11) ¹【a copy of the self-certification form and any other needs
11 analysis conducted by the original creditor prior to origination of
12 the loan;
- 13 (12)】¹ the names of all persons or entities that owned the
14 private education loan after the time of default, if applicable, and
15 the date of each sale or transfer;
- 16 ¹【(13)】 (12)¹ a log of all collection attempts made in the last 12
17 months including date and time of all calls and letters;
- 18 ¹【(14)】 (13)¹ copies of all settlement letters made in the last 12
19 months, or, in the alternative, a statement that the creditor has not
20 attempted to settle or otherwise renegotiate the debt prior to suit;
- 21 ¹【(15)】 (14)¹ a copy of all pages of the contract ¹【, application】¹
22 or other documents evidencing the private education loan
23 borrower's liability for the private education loan, stating all terms
24 and conditions applicable to the private education loan; and
- 25 ¹【(16)】 (15)¹ documentation establishing that the creditor is the
26 owner of the specific individual private education loan at issue. If
27 the private education loan was assigned more than once, the creditor
28 shall possess each assignment or other writing evidencing the
29 transfer of ownership of the specific individual private education
30 loan to establish an unbroken chain of ownership, beginning with
31 the original creditor to the first subsequent creditor and each
32 additional creditor. Each assignment or other writing evidencing
33 transfer of ownership or the right to collect shall contain the
34 original creditor's account number, redacted for security purposes
35 to show only the last four digits, of the private education loan
36 purchased or otherwise assigned, the date of purchase and
37 assignment, and shall clearly show the borrower's correct name
38 associated with the original account number. The assignment or
39 other writing attached shall be that by which the creditor or other
40 assignee acquired the private education loan, not a document
41 prepared for litigation or collection purposes.
- 42 c. Failure by a creditor or debt collector to produce to a
43 borrower, within 30 days of a verbal or written request, any
44 documentation described in subsection a. or b. of this section shall
45 be a violation of this act.

1 10. a. Upon a payment default on a private education loan by a
2 borrower, and before a creditor may accelerate the maturity of the
3 loan or commence a legal action against the borrower, the lender
4 shall provide to the borrower a notice of intention to accelerate the
5 loan. The creditor shall provide the notice at least 30 days, but not
6 more than 180 days, in advance of the action, and shall provide a
7 copy of the notice to the department at the same time it is provided
8 to the borrower.

9 b. ¹Notice of intention to take action as specified in
10 subsection a. of this section shall be in writing, provided to the
11 Department of Banking and Insurance, and sent to the borrower by
12 registered or certified mail, return receipt requested, at the
13 borrower's last known address. The notice shall effectuate on the
14 date the notice is delivered in person or mailed to the party.

15 c. ¹A notice provided pursuant to this section shall contain ¹a
16 certification that the lender possesses all of¹ the information
17 required pursuant to subsection b. of section 9 of this act.
18

19 11. a. An action to enter a judgment against a borrower shall be
20 commenced within six years of the date the borrower failed to make
21 a payment.

22 b. A creditor or lender commencing a legal action against a
23 borrower shall attach the following documentation and information
24 to the complaint filed in a court of competent jurisdiction:

25 (1) a copy of the notice of intention provided pursuant to section
26 10 of this act, including the information ¹provided to the borrower
27 pursuant to subsection c. of that section ¹a lender is required to
28 retain pursuant to subsection b. of section 9 of this act¹;

29 (2) the date of the first partial or missed payment;

30 (3) the date of the last payment, if applicable;

31 (4) a copy of any self-certification or needs analysis conducted
32 by the original creditor prior to origination of the loan;

33 (5) a statement as to whether the creditor is willing to
34 renegotiate the terms of the debt;

35 (6) a statement as to whether the debt is eligible for any flexible
36 repayment option; and

37 (7) a statement as to whether the debt is dischargeable in
38 bankruptcy.

39 Failure to attach the information required by this subsection shall
40 be an affirmative defense.

41 c. No court shall enter a judgment on a private education loan
42 obligation if the creditor or lender does not comply with the
43 requirements of this section.

44 d. If a creditor fails to comply with the requirements of this
45 section, a borrower may bring an action, including a counterclaim,
46 against the creditor to recover or obtain:

- 1 (1) an order setting aside or vacating any default judgment
2 entered against the person;
- 3 (2) a judgment in favor of the borrower;
- 4 (3) actual damages, but in no case shall the total award of
5 damages action be less than \$500;
- 6 (4) restitution of all moneys ¹invalidly¹ taken from or paid by
7 the borrower after a judgment was obtained by a creditor;
- 8 (5) ¹punitive damages;
- 9 (6) ¹injunctive relief;
- 10 ¹[(7)] (6)¹ correction of the borrower's credit report;
- 11 ¹[(8)] (7)¹ attorney's fees and court costs; and
- 12 ¹[(9)] (8)¹ any other relief that the court deems proper.
- 13 e. In addition to any other remedies provided by this section or
14 otherwise provided by law, whenever it is proven by a
15 preponderance of the evidence that a creditor has filed information
16 ¹with the court that is¹ required pursuant to the act that is false, the
17 court shall award treble damages to the borrower, but in no case
18 shall the total award of damages action be less than \$1,500.
- 19
- 20 12. A borrower or cosigner who suffers damage as a result of a
21 violation of this act may bring an action in a court of competent
22 jurisdiction to recover:
- 23 a. Actual damages, but in no case shall the total award of
24 damages action be less than \$500;
- 25 b. An order enjoining the methods, acts, or practices;
- 26 c. Restitution of property;
- 27 d. ¹punitive damages;
- 28 e. ¹Attorney's fees; and
- 29 ¹[(f.)] e.¹ Any other relief that the court deems proper.
- 30
- 31 ¹13. The Department of Banking and Insurance shall promulgate
32 rules and regulations pursuant to the "Administrative Procedure
33 Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate
34 the provisions of this act.¹
- 35
- 36 ¹[(13.)] 14.¹ This act shall take effect on the 180th day next
37 following enactment.