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## FISCAL IMPACT REPORT

**SPONSOR** Roybal Caballero/Trujillo, CH      **ORIGINAL DATE** 02/24/17  
**LAST UPDATED** \_\_\_\_\_      **HB** 318

**SHORT TITLE** Student Loan Bill of Rights Act      **SB** \_\_\_\_\_

**ANALYST** Amacher

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	Indeterminate	Indeterminate	Recurring	See Fiscal Impacts

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$276.0	\$273.0	\$549.0	Recurring	See Fiscal Impacts

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Central New Mexico Community College (CNM)  
 New Mexico Higher Education Department (NMHED)  
 Office of the Attorney General (OAG)  
 Office of Superintendent of Insurance (OSI)  
 Regulation & Licensing Department (RLD)  
 University of New Mexico (UNM)  
 University of New Mexico Health Sciences Center (UNMHSC)

### SUMMARY

#### Synopsis of Bill

House Bill 318 enacts the “Student Loan Bill of Rights Act”; provides licensure and regulations for the “student loan servicer” industry; and provides penalties. HB 318 has an effective date of January 1, 2018.

## FISCAL IMPLICATIONS

The Regulation and Licensing Department indicates that the three year cost only accounts for FY 18 and FY 19, as there is no budget impact in FY 17 due to the implementation of the bill going into effect until January 1, 2018. A true three-year cost, accounting for FY 20 would be approximately \$822 thousand dollars. These expenses include salaries and benefits for one (1) Ombudsmen and two (2) examiners/analysts along with operating costs to fulfill the requirements of the bill.

## SIGNIFICANT ISSUES

House Bill 318 enacts the “Student Loan Bill of Rights Act”; provides licensure and regulations for the “student loan servicer” industry; and provides penalties. The proposed legislation seeks to protect student loan holders from unscrupulous loan servicers.

Section 1 provides the short title “Student Loan Bill of Rights Act” (Act).

Section 2 provides definitions for “student loan servicer”, “student education loan”, “servicing” and other related terms to the Financial Institutions Division (FID) of the Regulation & Licensing Department. A “student loan servicer” means any person responsible for the servicing of student education loans to a student loan borrower.

Section 3 outlines the duties of a new student loan ombudsman. The director of FID designates this ombudsman within the Regulation & Licensing Department (RLD). The new student loan ombudsman is tasked in assisting borrowers in understanding the rights and responsibilities of the student loan process. He/she will address student complaints regarding student loans and seeks out resolutions to the concerns; track data and report on complaints received; and provide information to potential student loan applicants via the internet, higher education institutions, and other avenues. The FID director is responsible for an annual report that addresses the implementation of this Act; the overall effectiveness of the student loan ombudsman position; and actions that support FID in gaining appropriate regulatory control over licensing of student loan servicers and enforcement of the Act.

Section 4 provides exemptions from licensure with this Act. Those exempt include a bank or credit union and their wholly owned subsidiaries; and a wholly owned subsidiary of a bank or credit union.

Section 5 outlines the licensure requirements regarding application, license issuance and investigation. This licensing office will be a part of FID and is tasked in creating the application processes, assess application fees, set licensing continuation/revocation standards for all loan servicers, and oversee records retention of all loan service providers in the state. Section 5 does outline two nonrefundable fees: a \$1,000 nonrefundable license fee; and an \$800 nonrefundable investigation fee.

Sections 6 and 7 outline licensure license expiration, surrender, renewal, suspension and abandonment, and transferability and assign ability. As proposed there are no abatement fees.

Section 8 requires the student loan servicer licensee to retain specific records; and, if requested by the FID, provide student education loan records available to the director no later than five

business days from the request.

Section 9 outlines honest and fair trade practices that all loan servicers shall adhere to otherwise face violations of the Unfair Practices Act.

Sections 12 through 15 outline the enforcement powers of the FID director pursuant to this Act; notice of contemplated action and hearings; judicial enforcement and/or criminal penalties; and compliance with federal law.

Section 16 ensures promulgation of rules necessary for the implementation of this Act.

### **ADMINISTRATIVE IMPLICATIONS**

HB 318 requires additional administrative actions for both the RLD and higher education institutions. The requirements placed on RLD are clearly outlined in the language of this bill; the impact to institutions is ambiguous. The Central New Mexico Community College (CNM) notes it appears that institutions would have to gather and maintain lender information for the RDL offices, which would place additional administrative and fiscal stress on institutions.

Additionally, as noted by CNM, HB 318 appears to require institutions to administer new loan counseling services, in addition to loan servicing courses required by the federal government. If this is correct, the information could be confusing and contradictory to information already required to be disseminated by the federal government as part of federal loan servicing.

### **TECHNICAL ISSUES**

The Office of the Attorney General (OAG) points to several technical issues where the bill is somewhat vague on what the licensee is not allowed to do, and has little in the way of what a licensee is required to do in regards to borrowers. Possible requirements that could be added to provide better servicers to borrowers include (note that these are similar requirements under Federal regulations for mortgage loan servicers when working with homeowners, an analogous relationship to student loan borrowers and servicers):

- inform borrowers of repayment or loan forgiveness options;
- in the case of a borrower seeking to resolve an issue or enter a repayment plan, appoint a single point of contact for that borrower;
- respond to written requests from a borrower for specified information within 30 business days;
- appropriately apply amounts in excess of the minimum payment to the interest and fees owed on the payment due day, and then to the principal balance of the loan;
- inform the borrower if the servicing of their loan transfers to another entity, as well as the contact information for the new servicer; and,
- early intervention by servicers to contact borrowers within 30 days of a missed payment to assist them with preventing default.

### **OTHER SUBSTANTIVE ISSUES**

Presently, student loan servicing companies are largely unregulated and unlicensed by the Federal government. There have been many initiatives addressing the regulation, licensure, and

overall impact to students. In March 2015, President Obama unveiled a new Federal Student Aid Bill of Rights. In September 2015, the U.S. Department of Education, the Department of the Treasury, and the Consumer Financial Protection Bureau issued Joint Principles on Student Loan Servicing. Also, in June 2016, the U.S. Department of Education outlined a series of enhanced protections and customer service standards designed to guide the future of federal student loan servicing practices.

The OAG notes that despite these federal initiatives, it seems that none of these actions have resulted in legislation from the Federal government that would comprehensively regulate and license student loan servicing companies. Connecticut, New Jersey, and California are among the states that have enacted their own States Student Bill of Rights to fill the void left by the Federal government.

The OAG also seeks clarification and on Sections 12 and 13. Section 12 does not provide clear direction for the hearing process for disciplinary hearings conducted by the director on licensing matters. The OAG suggests that it would be helpful to include language regarding the individual's rights for the hearing; and the requirements for issuing a determination/decision/final order by the director. Furthermore, this bill does not seem to address whether the affected individual can appeal the decision or seek other review within the agency, which would place any administrative appeal under Rule 1-075 NMRA, a discretionary appeal to the district court.

Section 13 is also unclear as to whether the director can seek judicial enforcement only after conducting a hearing and issuing an order (a process which could be further clarified in Section 12), or if judicial enforcement is a mechanism independent of the hearing process. The OAG suggests this should be made clearer if it is only available after a final decision or other order is issued by the director. Yet, if this section is intended to be an independent enforcement process outside of the administrative hearings, the OAG notes this process could bypass the general practice of requiring exhaustion of administrative remedies prior to taking a matter before district court. And it could also draw due process concerns, especially related to the ability for the director to seek judicial enforcement against someone the director finds "is about to violate the Student Loan Bill of Rights Act or any rule or order of the director."

The University of New Mexico (UNM) comments that currently there is ombudsman support through the United State Department of Education. Servicing requirements are also addressed at a federal level for most cases. The vast majority of all student loans are federal, so any state supported advocated would have to go through the same channels available for most loan issues. UNM suggests the New Mexico Higher Education Department (HED) could collect all data necessary for a review of the student lending environment and assign staff to assess the student lending impact on borrowers. UNM indicates this may lead to the same results as this proposed legislation without adding another layer of bureaucracy. Additional administrative reporting to an agency on top of current compliance responsibilities seems unnecessarily burdensome, and the effort could be accomplished with HED.

The UNM Health Sciences Center points to several areas of possible conflict and duplication within HB 318 as indicated below:

- Section 2, D: Using the word "any" loan is extremely broad. This conflicts with Section 2, E(2) loan definition;

- Section 3, A: Potential duplication of Ombudsman position, as U.S. Dept. of Education's Federal Student Aid (FSA) has Ombudsman to assist borrowers;
- Section 3, B(3) and C: Possible duplication of service as Federal regulations require every borrower to complete a borrower entrance and exit counseling session which addresses borrowers rights & responsibilities;
- Section 3, B (6): Potential conflict as Ombudsman may not be granted access by FSA to borrowers complete Federal loan history, even with borrower's permission;
- Section 3, B(7) Potential duplication as FSA's Ombudsman is available for borrowers;
- Section 3, D(3) Assuming that regulatory control would apply only to servicers located in New Mexico, a State would not have regulatory control over the eleven providers which have signed contracts with the U.S. Dept. of Education.

CNM suggests that by creating a statewide Ombudsman, HB 318 duplicates duties currently covered by the Federal Government's Ombudsman Office. The Federal Student Loan Ombudsman already works to resolve issues on behalf of federal student loan borrowers. Because of the existence of the federal Ombudsman Officer, HB 318 creates conflicting outcomes between federal and state offices. However, if this bill is intended to only serve those who have borrowed privately from a bank or other student loan company then the Ombudsman position created by this bill could fill a void as these borrowers currently have no formal advocate offices.

The vast majority of CNM's student loans are currently administered by the federal government's Direct Loan program. This program already has an Ombudsman's office, which is regulated by federal law. HB 318 appears to place additional administrative oversight hurdles on the institution but will have little to no effect on our student body.

As provided by RLD, the FID recommends consideration of amending this proposed legislation to provide the Director of FID with authority to utilize the resources and capabilities of the Nationwide Mortgage Licensing System and Registry (NMLS). The NMLS system would be used in conducting licensing application and processing activities for the licensing of Student Loan Servicers under the proposed Student Loan Bill of Rights Act. RLD notes that the NMLS is currently utilized by the FID for licensing of mortgage companies, mortgage loan originators and money services businesses licensed under the Uniform Money Services Act. The NMLS is currently proposed in other legislation for utilization in the licensing of collection agencies and motor vehicle sales finance companies in New Mexico (Senate Bill 296). The FID notes this system is accessible for use in licensing student loan servicers. FID indicates Connecticut and California conduct licensing of student loan servicers through NMLS.

RLD and FID suggest that using the NMLS for licensing purposes may allow for increased efficiency in the license application and renewal processes. Furthermore, it may lessen overall costs for implementation and annual operation of this new licensing and regulation function of the FID as required by this bill.

RLD suggests that in keeping with the concept of utilizing the NMLS, Section 6 could be amended to set the licensing year from January 1 through December 31 of each year. This suggested calendar year time line is congruent with the NMLS. RLD recommends having the license application and renewal process begin on November 1 of each year, with a deadline for application submission by December 31.