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HOUSE BILL 116

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Patricia Roybal Caballero

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE STUDENT LOAN BILL OF RIGHTS ACT; PROVIDING FOR A STUDENT LOAN SERVICER'S LICENSE; DELINEATING THE DUTIES OF A STUDENT LOAN SERVICER; GIVING ADMINISTRATIVE RESPONSIBILITY AND ENFORCEMENT POWER TO THE FINANCIAL INSTITUTIONS DIVISION OF THE REGULATION AND LICENSING DEPARTMENT; CREATING THE POSITION OF OMBUDSMAN; IDENTIFYING AN UNFAIR TRADE PRACTICE; CREATING A PRIVATE RIGHT OF ACTION; PROVIDING PENALTIES; CREATING THE STUDENT LOAN BILL OF RIGHTS FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Student Loan Bill of Rights Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Student Loan Bill of Rights Act:

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1           A. "director" means the director of the division;

2           B. "division" means the financial institutions  
3 division of the regulation and licensing department;

4           C. "person" includes legal representatives,  
5 unincorporated organizations, trustees, fiduciaries and public  
6 entities;

7           D. "servicing" includes:

8                   (1) receiving scheduled periodic payments from  
9 a student loan borrower pursuant to the terms of a student  
10 education loan;

11                   (2) applying payments of principal and  
12 interest and other payments with respect to the amounts  
13 received from a student loan borrower, as may be required  
14 pursuant to the terms of a student education loan;

15                   (3) maintaining account records for a student  
16 education loan and communicating with a student loan borrower  
17 regarding a loan on behalf of the loan's holder during a period  
18 when no payment is required on the loan; and

19                   (4) interacting with a student loan borrower  
20 to help prevent default on obligations arising from a student  
21 education loan;

22           E. "student education loan" means a loan primarily  
23 for personal use to finance a student loan borrower's higher-  
24 education-related expenses, but does not include an isolated  
25 personal loan made by an individual to another for higher-

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1 education-related expenses;

2 F. "student loan borrower" means:

3 (1) a resident of New Mexico who has received  
4 or agreed to pay a student education loan; or

5 (2) a person who shares responsibility with a  
6 resident of New Mexico for repaying a student education loan;  
7 and

8 G. "student loan servicer" means a person engaged  
9 in the business of servicing student education loans in New  
10 Mexico."

11 SECTION 3. [NEW MATERIAL] LICENSE REQUIRED--EXEMPTIONS.--

12 A. A person shall not act directly or act  
13 indirectly as a student loan servicer without first obtaining a  
14 license from the division pursuant to the Student Loan Bill of  
15 Rights Act, unless that person is exempt from licensure  
16 pursuant to Subsection B of this section.

17 B. The following persons are exempt from licensing  
18 requirements pursuant to the Student Loan Bill of Rights Act:

19 (1) a bank or credit union;

20 (2) a wholly owned subsidiary of a bank or  
21 credit union;

22 (3) an operating subsidiary of a bank or  
23 credit union where each owner of the operating subsidiary is  
24 wholly owned by the same bank or credit union; and

25 (4) the higher education department.

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1           SECTION 4.   [NEW MATERIAL] LICENSE APPLICATION--

2 INVESTIGATION--LICENSE ISSUANCE.--

3           A.   A person seeking to act as a student loan  
4 servicer shall make a written application to the director for  
5 an initial license in a form prescribed by the director.  The  
6 application shall include:

7                   (1)   a financial statement of the person  
8 applying, prepared by a certified or registered public  
9 accountant, the accuracy of which is sworn to under oath before  
10 a notary public by the proprietor, a general partner or a  
11 corporate officer or a member duly authorized to execute such  
12 documents;

13                   (2)   sufficient information pertaining to the  
14 history of any criminal conviction of the applicant, whether an  
15 individual or partner, member, officer, director or principal  
16 employee of the applicant, as the director deems necessary to  
17 make the findings required pursuant to Subsection F of this  
18 section;

19                   (3)   a nonrefundable initial license fee not to  
20 exceed five thousand dollars (\$5,000); and

21                   (4)   a nonrefundable investigation fee not to  
22 exceed five thousand dollars (\$5,000).

23           B.   The director may periodically reduce or increase  
24 the amount of one or more of the fees in Subsection A of this  
25 section, but in no case more than the initial fees.

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1           C. The director may require or allow applications  
2 to be made electronically through the nationwide multistate  
3 licensing system and registry. An applicant using that system  
4 shall pay all required processing fees for the system.

5           D. Upon the filing of an application for an initial  
6 license and the payment of required fees, the director shall  
7 investigate the financial condition and responsibility, the  
8 financial and business experience and the character and general  
9 fitness of the applicant.

10           E. The director may conduct a state and national  
11 criminal history records check of the applicant and of each  
12 partner, member, officer, director, trustee, fiduciary and  
13 principal employee of the applicant.

14           F. The director shall issue a license for a student  
15 loan servicer pursuant to the Student Loan Bill of Rights Act  
16 if the director finds that:

17                   (1) the applicant has submitted a completed  
18 application;

19                   (2) the applicant's financial condition is  
20 sound;

21                   (3) the applicant's business will be conducted  
22 honestly, fairly, equitably, carefully, efficiently and in a  
23 manner commanding the confidence and trust of the community;

24                   (4) the applicant or a partner, member,  
25 officer, director, trustee, fiduciary or principal employee of

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1 the applicant has not been convicted of a crime that relates to  
2 money lending, financing, financial matters, fiduciary status,  
3 trustee status or another matter that substantially relates to  
4 the qualifications, functions or duties of a student loan  
5 servicer;

6 (5) a person has not made an incorrect  
7 statement of a material fact on behalf of the applicant either  
8 in the application or in a report or statement made pursuant to  
9 the Student Loan Bill of Rights Act;

10 (6) a person on behalf of the applicant has  
11 not knowingly omitted to state a material fact on behalf of the  
12 applicant necessary to give the director information lawfully  
13 required by the director pursuant to the Student Loan Bill of  
14 Rights Act;

15 (7) the applicant has paid the license fee and  
16 investigation fee required by this section;

17 (8) the applicant has met all other  
18 requirements of the Student Loan Bill of Rights Act as  
19 determined by the director; and

20 (9) if the applicant is:

21 (a) an individual, the individual is in  
22 all respects properly qualified and of good character;

23 (b) a partnership, each partner is in  
24 all respects properly qualified and of good character;

25 (c) a corporation or association, the

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1 following are in all respects properly qualified and of good  
2 character: 1) president; 2) executive committee chair; 3)  
3 senior officer responsible for the corporation's business; 4)  
4 chief financial officer; or 5) any other person who performs  
5 functions similar to those described in Items 1) through 4) of  
6 this subparagraph and as determined by the director; and 6)  
7 each director, each trustee and each shareholder owning ten  
8 percent or more of each class of the securities of the  
9 corporation or association; or

10 (d) a limited liability company, each  
11 member is in all respects properly qualified and of good  
12 character.

13 SECTION 5. [NEW MATERIAL] AUTOMATIC ISSUANCE OF LICENSE  
14 FOR FEDERAL STUDENT LOAN SERVICING CONTRACTORS.--

15 A. A person seeking to act as a student loan  
16 servicer is excepted from the application procedures described  
17 in Subsection A of Section 4 of the Student Loan Bill of Rights  
18 Act upon a determination by the director that the person's  
19 student loan servicing performed in this state is conducted  
20 pursuant to a contract awarded by the United States secretary  
21 of education pursuant to 20 U.S.C. Section 1087f. The director  
22 shall prescribe the procedure to document eligibility for the  
23 exception.

24 B. A person deemed excepted by the director  
25 pursuant to this section shall, upon payment of the fees

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1 required by Section 4 of the Student Loan Bill of Rights Act,  
2 automatically be issued a license by the director and shall be  
3 considered by the director to have met all requirements set  
4 forth in Subsection F of Section 4 of the Student Loan Bill of  
5 Rights Act.

6 C. A person issued a license pursuant to this  
7 section is excepted from Paragraphs (1) through (3) of  
8 Subsection A, Subsection B and Subsection F of Section 4 of the  
9 Student Loan Bill of Rights Act. A person licensed pursuant to  
10 this section shall comply with the record retention  
11 requirements in Section 8 of the Student Loan Bill of Rights  
12 Act except to the extent that the requirements are inconsistent  
13 with federal law.

14 D. A person issued a license pursuant to this  
15 section shall provide the director with written notice within  
16 seven days following notification of the expiration, revocation  
17 or termination of a contract awarded by the United States  
18 secretary of education pursuant to 20 U.S.C. Section 1087f.  
19 The person has thirty days following notification to satisfy  
20 all requirements established under Subsection F of Section 4 of  
21 the Student Loan Bill of Rights Act in order to continue to act  
22 as a student loan servicer. At the expiration of the thirty-  
23 day period if the requirements have not been satisfied, the  
24 director shall immediately suspend a license granted to the  
25 person pursuant to this section.

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1           E. With respect to student loan servicing not  
2 conducted pursuant to a contract awarded by the United States  
3 secretary of education pursuant to 20 U.S.C. Section 1087f,  
4 nothing in this section prevents the director from issuing or  
5 filing a civil action for an order to temporarily or  
6 permanently bar a person from acting as a student loan servicer  
7 or violating applicable law.

8           SECTION 6. [NEW MATERIAL] LICENSE EXPIRATION--LICENSE  
9 SURRENDER--LICENSE RENEWAL--LICENSE SUSPENSION--INFORMATION  
10 UPDATE--LICENSE ABANDONMENT--NO ABATEMENT OF FEES.--

11           A. A license issued pursuant to the Student Loan  
12 Bill of Rights Act shall expire at midnight on December 31 of  
13 the year following its issuance, unless renewed or earlier  
14 surrendered, suspended or revoked pursuant to the Student Loan  
15 Bill of Rights Act.

16           B. Not later than fifteen days after a licensee  
17 ceases to engage in the business of student loan servicing in  
18 New Mexico for any reason, the licensee shall provide written  
19 notice of surrender to the director and shall surrender to the  
20 director its license for each location in which the licensee  
21 has ceased to engage in the business of student loan servicing.  
22 The written notice of surrender shall identify the location  
23 where the records of the licensee will be stored and the name,  
24 address and telephone number of an individual authorized to  
25 provide access to the records. The surrender of a license does

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1 not reduce or eliminate the licensee's civil or criminal  
2 liability arising from acts or omissions occurring prior to the  
3 surrender of the license, including administrative actions by  
4 the director to revoke or suspend a license, assess a civil  
5 penalty, order restitution or exercise any other authority  
6 provided to the director in the Student Loan Bill of Rights  
7 Act.

8 C. A license may be renewed for the next twelve-  
9 month period upon the filing of an application containing all  
10 required documents and fees required by the Student Loan Bill  
11 of Rights Act as for an initial license. The renewal  
12 application shall be filed on or before November 1 of the year  
13 in which the license expires. A renewal application filed with  
14 the director after November 1 and before December 31 of the  
15 year in which the license expires, but that is accompanied by a  
16 one-hundred-dollar (\$100) late fee, shall be deemed to be  
17 timely. If an application for a renewal license has been filed  
18 with the director on or before the date the license expires,  
19 the license sought to be renewed shall continue in full force  
20 and effect until the director issues the renewed license or the  
21 director has notified the licensee in writing of the director's  
22 refusal to renew the license, including the grounds for the  
23 refusal. The director may refuse to renew a license on any  
24 ground upon which the director may refuse to issue an initial  
25 license.

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1           D. If the director determines that a check filed  
2 with the director to pay a renewal fee has been dishonored, the  
3 director shall automatically suspend the license. The director  
4 immediately shall give the licensee notice of the automatic  
5 suspension by any practicable means and initiate proceedings  
6 for revocation or refusal to renew and an opportunity for a  
7 hearing on that action pursuant to the Uniform Licensing Act.

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

14           F. The director shall deem an application for a  
15 license abandoned if the applicant fails to respond to a  
16 request for information required by the Student Loan Bill of  
17 Rights Act. The director shall notify the applicant, in  
18 writing, that if the applicant fails to submit that information  
19 not later than sixty days after the date on which that request  
20 for information was made, the application shall be deemed  
21 abandoned. An application filing fee paid before the date an  
22 application is deemed abandoned pursuant to this subsection  
23 shall not be refunded. Abandonment of an application does not  
24 preclude the applicant from submitting a new application for a  
25 license pursuant to the Student Loan Bill of Rights Act.

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1           G. A license fee paid pursuant to the Student Loan  
2 Bill of Rights Act shall not be abated.

3           SECTION 7. [NEW MATERIAL] LICENSEE NAMES AND LOCATIONS--  
4 TRANSFERABILITY--ASSIGNABILITY.--

5           A. A licensed student loan servicer shall not  
6 service student education loans under a name or at a place of  
7 business other than as listed in the license. A change of a  
8 place of business shall require prior written notice to the  
9 director. Not more than one place of business shall be  
10 maintained under the same license, but the director may issue  
11 more than one license to the same licensee that is in  
12 compliance with the provisions of the Student Loan Bill of  
13 Rights Act.

14           B. A license for a student loan servicer is not  
15 transferable or assignable.

16           SECTION 8. [NEW MATERIAL] RECORD RETENTION.--

17           A. A student loan servicer shall maintain adequate  
18 records of each student education loan transaction for at least  
19 two years following the final payment on a student education  
20 loan or the assignment of a student education loan, whichever  
21 occurs first, or a longer period the director may require.

22           B. Within five business days of receipt of a  
23 request for student education loan records from the director, a  
24 student loan servicer shall make the records available to the  
25 director, or shall send the records to the director by

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1 registered or certified mail, return receipt requested, or by  
2 any express delivery carrier that provides a dated delivery  
3 receipt. Upon request, the director may grant a licensee  
4 additional time to make the records available or send the  
5 records to the director.

6 SECTION 9. [NEW MATERIAL] STUDENT LOAN SERVICERS.--Except  
7 as otherwise provided in federal law, a federal student  
8 education loan agreement or a contract between the federal  
9 government and a student loan servicer, a student loan servicer  
10 shall comply with the following requirements:

11 A. upon receipt of a written inquiry from a student  
12 loan borrower or the representative of a student loan borrower,  
13 a student loan servicer shall respond by:

14 (1) acknowledging receipt of the written  
15 inquiry within ten days; and

16 (2) within thirty days after receiving the  
17 inquiry, providing information relating to the inquiry and, if  
18 applicable, the action the student loan servicer will take to  
19 correct the student loan borrower's account or an explanation  
20 of the student loan servicer's position that the borrower's  
21 account is correct;

22 B. a student loan servicer shall inquire of a  
23 student loan borrower how to apply an overpayment or prepayment  
24 to a student education loan. A student loan borrower's  
25 direction on how to apply an overpayment or prepayment to a

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1 student education loan shall stay in effect for any future  
2 overpayments or prepayments during the term of a student  
3 education loan until the borrower provides different  
4 directions. For purposes of this subsection, "overpayment" or  
5 "prepayment" means a payment on a student education loan in  
6 excess of the monthly amount due from a borrower on a student  
7 education loan;

8 C. a student loan servicer shall apply a partial  
9 payment or underpayment in a manner that minimizes late fees  
10 and negative credit reporting. When loans on a student loan  
11 borrower's account have an equal stage of delinquency, a  
12 student loan servicer shall apply a partial payment or  
13 underpayment to satisfy as many individual loan payments as  
14 possible on a borrower's account. For purposes of this  
15 subsection, "partial payment" or "underpayment" means a payment  
16 on a student education loan account that contains multiple  
17 individual loans in an amount less than the amount necessary to  
18 satisfy the outstanding payment due on all loans in the student  
19 education loan account;

20 D. in the event of the sale, assignment or other  
21 transfer of a student loan servicer that results in a change in  
22 the identity of the student loan servicer to whom a student  
23 loan borrower is required to send payments or direct any  
24 communication concerning the student education loan:

25 (1) as a condition of the sale, assignment or

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1 transfer, the student loan servicer shall require the new  
2 student loan servicer to honor all benefits originally  
3 represented as available to the student loan borrower during  
4 the repayment of the student education loan and preserve the  
5 availability of those benefits, including benefits for which  
6 the student loan borrower has not yet qualified;

7 (2) within forty-five days after the sale,  
8 assignment or transfer, the student loan servicer shall  
9 transfer to the new student loan servicer all information  
10 regarding the student loan borrower, the account of the student  
11 loan borrower and the student education loan of the student  
12 loan borrower, including the repayment status of the student  
13 loan borrower and any benefits associated with the student  
14 education loan of the student loan borrower; and

15 (3) the sale, assignment or transfer of the  
16 servicing of the student education loan must be completed at  
17 least seven days before the next payment on the loan is due;

18 E. a student loan servicer that obtains the right  
19 to service a student education loan shall adopt policies and  
20 procedures to verify that the student loan servicer has  
21 received all information regarding the student loan borrower,  
22 the account of the student loan borrower and the student  
23 education loan of the student loan borrower, including the  
24 repayment status of the student loan borrower and any benefits  
25 associated with the student education loan of the student loan

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1 borrower. The director may investigate these policies and  
2 procedures; and

3 F. a student loan servicer shall evaluate a student  
4 loan borrower for a repayment program based on income prior to  
5 placing the borrower in forbearance or default, if a repayment  
6 program based on income is available to the borrower.

7 SECTION 10. [NEW MATERIAL] STUDENT LOAN SERVICERS--  
8 PROHIBITED ACTS--UNFAIR TRADE PRACTICE--LIABILITY.--

9 A. A student loan servicer shall not:

10 (1) directly or indirectly employ a scheme,  
11 device or artifice intended to defraud or mislead a student  
12 loan borrower;

13 (2) engage in an unfair or deceptive trade  
14 practice or unconscionable trade practice toward a person or  
15 misrepresent or omit material information in connection with  
16 the servicing of a student education loan, including  
17 misrepresenting the amount, nature or terms of a fee or payment  
18 due or claimed to be due on a student education loan, the terms  
19 and conditions of the loan agreement or the student loan  
20 borrower's obligations under the loan;

21 (3) engage in abusive acts or practices when  
22 servicing a student education loan. An abusive act or practice  
23 includes:

24 (a) material interference with the  
25 ability of a student loan borrower to understand a term or

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1 condition of a student education loan; or

2 (b) taking unreasonable advantage of any  
3 of the following: 1) a lack of understanding on the part of a  
4 student loan borrower of the material risks, costs or  
5 conditions of the student education loan; 2) the inability of a  
6 student loan borrower to protect the borrower's interests when  
7 selecting or using a student education loan or a feature, term  
8 or condition of a student education loan; or 3) the reasonable  
9 reliance by the student loan borrower on a person engaged in  
10 servicing a student education loan to act in the interests of  
11 the borrower;

12 (4) obtain property by fraud or  
13 misrepresentation;

14 (5) knowingly misapply or recklessly apply  
15 student education loan payments to the outstanding balance of a  
16 student education loan;

17 (6) knowingly or recklessly provide inaccurate  
18 information to a credit bureau;

19 (7) fail to report a favorable or unfavorable  
20 payment history of a student loan borrower to a nationally  
21 recognized consumer credit bureau at least annually if the  
22 student loan servicer regularly reports information to a credit  
23 bureau;

24 (8) refuse to communicate with an authorized  
25 representative of a student loan borrower who provides a

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1 written authorization signed by the student loan borrower;  
2 provided that the student loan servicer may adopt procedures  
3 reasonably related to verifying that the representative is  
4 authorized to act on behalf of the student loan borrower;

5 (9) negligently make a false statement or  
6 knowingly and willfully make an omission of a material fact in  
7 connection with any information or report filed with a  
8 governmental agency or in connection with an investigation  
9 conducted by the director or another governmental agency;

10 (10) fail to properly evaluate a student loan  
11 borrower for an income-driven or other student loan repayment  
12 program or for eligibility for a public service loan  
13 forgiveness program before placing the student loan borrower in  
14 forbearance or default, if an income-driven repayment or other  
15 program is available to the student loan borrower except as  
16 otherwise provided in federal law, federal student loan  
17 agreements or a contract between the federal government and a  
18 student loan servicer;

19 (11) fail to respond within fifteen days to  
20 communication from the student loan ombudsman, or within a  
21 shorter reasonable time as the student loan ombudsman may  
22 request in the communication; or

23 (12) fail to respond within fifteen days to a  
24 student loan borrower complaint submitted to the servicer by  
25 the student loan ombudsman. If necessary, a student loan

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1 servicer may request additional time, up to forty-five days, as  
2 long as the request is accompanied by an explanation of why  
3 additional time is reasonable and necessary.

4 B. A violation of this section is an unfair or  
5 deceptive trade practice and an unconscionable trade practice  
6 pursuant to the Unfair Practices Act and is subject to the  
7 enforcement and penalty provisions contained in that act.

8 C. A student loan servicer that commits an act  
9 prohibited by this section with respect to a student loan  
10 borrower is liable in an amount equal to the sum of:

11 (1) any actual damages sustained by the  
12 borrower as a result of the failure;

13 (2) a monetary award to the borrower equal to  
14 three times the total amount the student loan servicer  
15 collected from the borrower;

16 (3) punitive damages as the court may allow;  
17 and

18 (4) in the case of a successful action by the  
19 borrower to enforce the liability set out in this subsection,  
20 the costs of the action, together with reasonable attorney fees  
21 as determined by the court.

22 D. The remedies provided in this section are not  
23 the exclusive remedies available to a student loan borrower,  
24 nor must the borrower exhaust any administrative remedies  
25 provided in this section or any other applicable law before

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1 proceeding pursuant to this section.

2 SECTION 11. [NEW MATERIAL] POWERS OF THE DIRECTOR.--

3 A. The director may conduct investigations and  
4 examinations for purposes of initial licensing, license  
5 renewal, license suspension, license revocation or termination,  
6 or for general or specific inquiry or investigation, to  
7 determine compliance with the Student Loan Bill of Rights Act.  
8 The director may access, receive and use any documents,  
9 information or evidence the director deems relevant to the  
10 inquiry or investigation regardless of the location,  
11 possession, control or custody of those documents or that  
12 information or evidence.

13 B. For the purposes of investigating violations or  
14 complaints arising pursuant to the Student Loan Bill of Rights  
15 Act or for the purposes of examination, the director may  
16 review, investigate or examine the activities of any student  
17 loan servicer as often as necessary to carry out the purposes  
18 of that act. The director may direct, subpoena or order the  
19 attendance of and examine under oath a person whose testimony  
20 may be required about the student education loan or the  
21 business or subject matter of the examination or investigation  
22 and may direct, subpoena or order the person to produce books,  
23 accounts, records, files and any other documents the director  
24 deems relevant to the inquiry.

25 C. In making an examination or investigation

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1 authorized by the Student Loan Bill of Rights Act, the director  
2 may control access to any documents or records of the student  
3 loan servicer licensee or person under examination or  
4 investigation related to the student education loan. The  
5 director may take possession of the documents and records or  
6 place a person in exclusive charge of the documents and records  
7 in the place where the documents and records are usually kept.  
8 During the period of control, a person shall not remove or  
9 attempt to remove any of the documents and records except  
10 pursuant to a court order or with the consent of the director.  
11 Unless the director has reasonable grounds to believe the  
12 documents or records of the student loan servicer licensee or  
13 person have been, or are at risk of being, altered or destroyed  
14 for purposes of concealing a violation of the Student Loan Bill  
15 of Rights Act, the student loan servicer licensee or owner of  
16 the documents and records shall have access to the documents or  
17 records as necessary to conduct its ordinary business affairs.

18 D. To fulfill the duties imposed by this section  
19 and to carry out the purposes of this section, the director  
20 may:

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

25 (2) enter into agreements or relationships

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1 with other government officials or regulatory associations to  
2 improve efficiencies and reduce regulatory burden by sharing  
3 resources, standardized or uniform methods or procedures and  
4 documents, records, information or evidence obtained pursuant  
5 to this section;

6 (3) use, hire, contract or employ public or  
7 privately available analytical systems, methods or software to  
8 examine or investigate the student loan servicer licensee or  
9 person subject to the Student Loan Bill of Rights Act;

10 (4) rely on examination or investigation  
11 reports made by other government officials, whether in or  
12 outside of New Mexico; and

13 (5) accept audit reports made by an  
14 independent certified public accountant for the student loan  
15 servicer licensee or person subject to the Student Loan Bill of  
16 Rights Act in the course of that part of the examination  
17 covering the same general subject matter as the audit and may  
18 incorporate the audit report in the report of examination,  
19 report of investigation or other writing of the director.

20 E. A student loan servicer licensee or person  
21 subject to investigation or examination under this section  
22 shall not knowingly withhold, abstract, remove, mutilate,  
23 destroy or secrete any books, records, computer records or  
24 other information.

25 F. The costs of an investigation conducted by the

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1 director shall be paid by the student loan servicer licensee or  
2 person being investigated. When it becomes necessary to  
3 examine or investigate the books and records of a licensee  
4 under this section at a location outside of New Mexico, the  
5 licensee shall be liable for and shall pay to the division  
6 within thirty days of the presentation of an itemized statement  
7 the actual travel and reasonable living expenses incurred on  
8 account of its examination, supervision and regulation or shall  
9 pay a reasonable per diem rate approved by the director.

10 SECTION 12. [NEW MATERIAL] ENFORCEMENT BY DIRECTOR.--

11 A. To ensure the effective supervision and  
12 enforcement of the Student Loan Bill of Rights Act and in  
13 accordance with the procedures provided in the Uniform  
14 Licensing Act, the director may:

15 (1) deny, suspend, revoke or decline to renew  
16 a license for a violation of the Student Loan Bill of Rights  
17 Act, rules issued pursuant to that act or an order or directive  
18 entered pursuant to that act;

19 (2) deny, suspend, revoke or decline to renew  
20 a license if an applicant or student loan servicer fails at any  
21 time to meet the requirements of Subsection F of Section 4 of  
22 the Student Loan Bill of Rights Act; and

23 (3) issue orders or directives as follows:

24 (a) order or direct student loan  
25 servicers to cease and desist from conducting business related

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1 to student education loans, including issuing an immediate  
2 temporary order to cease and desist;

3 (b) order or direct student loan  
4 servicers to cease any violations of the Student Loan Bill of  
5 Rights Act; and

6 (c) enter immediate temporary orders to  
7 cease any business licensed pursuant to the Student Loan Bill  
8 of Rights Act if the director determines that the license was  
9 erroneously granted or the licensed student loan servicer is  
10 currently in violation of that act.

11 B. The director may impose an administrative  
12 penalty on a student loan servicer if the director finds, from  
13 the record after notice and opportunity for a recorded hearing,  
14 that the student loan servicer has violated or failed to comply  
15 with any requirement of the Student Loan Bill of Rights Act or  
16 any rule promulgated by the director pursuant to that act or  
17 any order issued pursuant to that act. The maximum amount of  
18 penalty for each act or omission shall be five thousand dollars  
19 (\$5,000).

20 SECTION 13. [NEW MATERIAL] JUDICIAL ENFORCEMENT.--

21 A. Upon a showing by the director that a person has  
22 violated, or is about to violate, the Student Loan Bill of  
23 Rights Act or any rule or order of the director pursuant to  
24 that act, the district court of the first judicial district or  
25 other appropriate district court in the state may grant or

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1 impose one or more of the following:

2 (1) a temporary restraining order, permanent  
3 or temporary prohibitory or mandatory injunction or a writ of  
4 prohibition or mandamus;

5 (2) a civil penalty up to a maximum of five  
6 thousand dollars (\$5,000) for each violation;

7 (3) declaratory judgment;

8 (4) restitution to student loan borrowers;

9 (5) recovery by the director of all costs and  
10 expenses for conducting an investigation or the bringing of any  
11 enforcement action pursuant to the Student Loan Bill of Rights  
12 Act; or

13 (6) other relief as the court deems proper.

14 B. In determining the appropriate relief, the court  
15 shall consider administrative enforcement actions taken and  
16 imposed by the director pursuant to the Student Loan Bill of  
17 Rights Act in connection with the transactions constituting  
18 violations of that act.

19 C. The court shall not require the director to post  
20 bond in an action pursuant to this section.

21 SECTION 14. [NEW MATERIAL] CRIMINAL PENALTIES.--

22 A. An individual who acts as a student loan  
23 servicer without being properly licensed pursuant to the  
24 Student Loan Bill of Rights Act is, for a first offense, guilty  
25 of a misdemeanor and upon conviction shall be sentenced in

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1 accordance with the provisions of Subsection A of Section  
2 31-19-1 NMSA 1978.

3 B. In the case of a conviction pursuant to  
4 Subsection A of this section, the court may impose a deferred  
5 sentence in accordance with Section 31-20-6 NMSA 1978.

6 C. An individual who violates Subsection A of this  
7 section is, for a second or subsequent offense, guilty of a  
8 fourth degree felony and upon conviction shall be sentenced in  
9 accordance with the provisions of Section 31-18-15 NMSA 1978.

10 SECTION 15. [NEW MATERIAL] COMPLIANCE WITH FEDERAL LAW.--

11 A student loan servicer licensee shall comply with all  
12 applicable federal laws and regulations relating to federal  
13 student loan servicing. In addition to any other remedies  
14 provided by law, a violation of an applicable federal law or  
15 regulation is a violation of the Student Loan Bill of Rights  
16 Act.

17 SECTION 16. [NEW MATERIAL] PROMULGATION OF RULES.--The  
18 director may promulgate rules and make reasonable orders  
19 necessary to implement the Student Loan Bill of Rights Act. A  
20 copy of every rule and of every order containing requirements  
21 of general application shall be mailed to each licensee not  
22 less than fifteen days before the effective date of the rule or  
23 order.

24 SECTION 17. [NEW MATERIAL] STUDENT LOAN OMBUDSMAN--  
25 DUTIES--ANNUAL REPORT.--

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1           A. The director shall designate a student loan  
2 ombudsman within the division to provide timely assistance to  
3 student loan borrowers.

4           B. The student loan ombudsman, in collaboration  
5 with the office of the attorney general and the higher  
6 education department, shall:

7                   (1) receive, review and attempt to resolve  
8 complaints from student loan borrowers;

9                   (2) compile and analyze data regarding student  
10 loan borrower complaints received by the ombudsman;

11                   (3) assist student loan borrowers in  
12 understanding their rights and responsibilities under the terms  
13 of student education loans;

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

18                   (5) analyze and monitor the development and  
19 implementation of federal laws, regulations and policies and  
20 state laws, rules and policies relating to student loan  
21 borrowers and make recommendations for any changes the  
22 ombudsman deems necessary;

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

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1                   (7) disseminate information concerning the  
2 availability of the student loan ombudsman to assist student  
3 loan borrowers and potential student loan borrowers,  
4 institutions of higher education, student loan servicers and  
5 other participants in student education loan lending with  
6 student loan servicing concerns; and

7                   (8) take any other action the ombudsman deems  
8 necessary to fulfill the duties of the student loan ombudsman.

9                   C. The division, including the student loan  
10 ombudsman, the office of the attorney general and the higher  
11 education department, or their designees, shall meet at least  
12 once per quarter to coordinate their efforts under Subsection B  
13 of this section.

14                   D. On or before July 1, 2021, the student loan  
15 ombudsman, in collaboration with the office of attorney general  
16 and the higher education department, shall establish and  
17 maintain a student loan borrower education course that includes  
18 educational presentations and materials regarding student  
19 education loans. The student loan borrower education course  
20 shall review key loan terms, documentation requirements,  
21 monthly payment obligations, income-based repayment options,  
22 loan forgiveness and disclosure requirements.

23                   E. On or before December 1, 2022, and annually  
24 thereafter, the director shall submit a report to the  
25 appropriate legislative interim committee. Annual reports

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1 shall be made available to interested parties and the general  
2 public and published on the division's website and on the  
3 sunshine portal. Consistent with state law, the report shall  
4 include, at a minimum, non-identifying consumer data from the  
5 preceding calendar year, including the following information:

6 (1) for each licensee:

7 (a) the number of loans the licensee is  
8 servicing in New Mexico;

9 (b) the number of loans and percentage  
10 of all loans that the licensee is servicing that are currently  
11 in default;

12 (c) the number and percentage of all  
13 loans that the licensee is servicing that are more than sixty  
14 days delinquent;

15 (d) the number and percentage of all  
16 loans that the licensee is servicing that have been paid off;  
17 and

18 (e) the number and percentage of all  
19 loans the licensee is servicing that have been forgiven or  
20 discharged;

21 (2) information regarding the implementation  
22 of the Student Loan Bill of Rights Act;

23 (3) the overall effectiveness of the student  
24 loan ombudsman position, including information, in the  
25 aggregate, regarding the number and categories of student loan

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1 borrower complaints filed with the division and the office of  
2 the attorney general;

3 (4) the number of student loan borrower  
4 complaints investigated and resolved by the division and the  
5 office of the attorney general; and

6 (5) any recommendations pertaining to the  
7 division's regulation of student loan servicers and the  
8 enforcement of the provisions of the Student Loan Bill of  
9 Rights Act.

10 SECTION 18. [NEW MATERIAL] INFORMATION SHARING.--By July  
11 31, 2021, the division, the student loan ombudsman, the office  
12 of the attorney general and the higher education department  
13 shall enter into an agreement to allow for the sharing of all  
14 necessary information.

15 SECTION 19. [NEW MATERIAL] PRIVATE ACTION.--

16 A. A person who suffers damage as a result of the  
17 failure of a student loan servicer to comply with a provision  
18 of the Student Loan Bill of Rights Act may bring an action in  
19 district court against that student loan servicer to recover  
20 any of the following:

21 (1) actual damages, but in no case shall the  
22 total award of damages be less than five hundred dollars (\$500)  
23 per violation;

24 (2) an order enjoining the methods, acts or  
25 practices causing the compliance failure;

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- 1 (3) restitution of property;
- 2 (4) punitive damages;
- 3 (5) attorney fees; and
- 4 (6) other relief the court deems proper.

5 B. In addition to any other remedies provided by  
6 this section or otherwise provided by law, whenever it is  
7 proven by a preponderance of the evidence that a student loan  
8 servicer has engaged in conduct that substantially interferes  
9 with a student loan borrower's right to an alternative payment  
10 arrangement; loan forgiveness, cancellation or discharge; or  
11 any other financial benefit as established under the terms of a  
12 borrower's promissory note or under the federal Higher  
13 Education Act of 1965, and the regulations promulgated pursuant  
14 to that act, the court shall award treble actual damages to the  
15 plaintiff, but in no case shall the award of damages be less  
16 than one thousand five hundred dollars (\$1,500) per violation.

17 C. The remedies provided in the Student Loan Bill  
18 of Rights Act are not intended to be the exclusive remedies  
19 available to a person suffering damage due to the non-  
20 compliance of a student loan servicer, and the person shall not  
21 be required to exhaust administrative remedies established  
22 pursuant to the Student Loan Bill of Rights Act or any other  
23 applicable law prior to bringing a private right of action.

24 SECTION 20. [NEW MATERIAL] STUDENT LOAN BILL OF RIGHTS  
25 FUND--CREATED--PURPOSE--APPROPRIATION.--

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