

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/05/2021

SPONSOR Duhigg LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Student Loan Bill Of Rights SB 164

ANALYST Hanika-Ortiz

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
	\$0.0	Indeterminate	Recurring	Student Loan Bill of Rights Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
FID		\$181.6		\$181.6	Nonrecurring	General Fund
FID			\$363.3	\$363.3	Recurring	Student Loan Bill of Rights Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

New Mexico Attorney General (NMAG)

New Mexico Higher Education Department (HED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 164 enacts the Student Loan Bill of Rights Act to regulate student loan servicers that extend private education loans. The bill charges the director of RLD's Financial Institutions Division (FID) with issuing a license to student loan servicers in New Mexico, and provides for

penalties for noncompliance and for discharge of loans in cases of permanent disability. Banks, credit unions and their subsidiaries, and HED are exempt from the licensure requirements. The bill also creates an ombudsman position to assist student loan borrowers, whose duties would include reviewing and resolving complaints, educating borrowers on their rights and responsibilities, and monitoring trends in federal, state and local laws. It further directs the director of FID and the ombudsman to submit annual reports to the Legislature on the implementation and effectiveness of the act.

More specifically,

Section 2 provides for definitions including “private education loan” to include extensions of credit not made, insured or guaranteed under Title IV of the federal Higher Education Act of 1965.

Section 3 requires student loan servicers to be licensed unless a bank, credit union or HED.

Section 4 sets out the licensure application process that includes investigating applicants and conducting background checks to assess if they are financially sound and of good character. The application process includes initial licensing fees and investigation fees of \$5,000 each.

Section 5 provides an exception from the licensure process for federal student loan servicing contractors, upon payment of the required fees. These people would be required to provide notice upon the expiration, revocation or termination of their federal contract within seven days.

Sections 6 to 8 explain procedures concerning license expiration, renewal, surrender, suspension, abandonment, and also states licenses are not transferrable or assignable. These sections also require a change of a place of business to require prior written notice, allow no more than one place of business per license, and create a record retention policy for servicers and lenders.

Section 9 creates a formal process for responding to inquiries from student borrowers related to borrowers’ accounts, application of payments, and assignment or transfer of a loan to a third party.

Section 10 establishes prohibited acts and states such violations are subject to the Unfair Practices Act and enforcement and penalty provisions contained in that act. This section also makes the student loan servicer that commits one of these acts liable for damages and costs of the action.

Section 11 explains a private education lender’s or student loan servicer’s duties upon notification of a total and permanent disability of a student loan borrower or their cosigner.

Section 12 provides that if a private education lender offers any borrower a flexible or modified repayment option, those same options must be made available to all borrowers of that lender.

Section 13 sets forth notices and disclosures required before offering an extension of an education loan requiring a cosigner, and prior to offering a loan to refinance an existing education loan.

Section 14 provides a process for releasing cosigners from loan obligations including the right to

request an appeal of a lender's determination to deny a request for cosigner release.

Section 15 provides a cosigner with access to documents or records related to the loan.

Section 16 prohibits the acceleration of private student loans.

Section 17 establishes prohibited acts by private education lenders, specifically taking as security salary, wages, omissions, or other compensation, defrauding or misleading student borrowers, engaging in unfair or deceptive practices, and recklessly applying student loan payments.

Sections 18 to 21 create enforcement powers for the director and allowable judicial enforcement of the act, and create civil and criminal penalties.

Section 22 states violations of applicable federal laws or regulations are also violations of the act.

Section 23 allows the director to promulgate rules and make orders to implement the act.

Section 24 establishes a new ombudsman position at FID to assist student loan borrowers and the public, in collaboration with the NMAG and HED. This section provides that on or before July 1, 2022, the group will collaborate to establish a student loan borrower education course and on or before July 1, 2023, provide a status report to the appropriate legislative interim committee.

Section 25 directs FID, NMAG and the HED to enter into an information sharing agreement.

Section 26 creates a civil cause of action to recover actual and punitive damages and legal fees.

Section 27 creates the "student loan bill of rights fund" as a nonreverting fund to consist of fees collected pursuant to the act. Money in the fund is appropriated to FID to carry out the act.

Section 28 adds prohibited acts as defined in the bill to the list of acts that constitute "unfair or deceptive trade practices" under the Unfair Practices Act at Section 57-12-21 NMSA 1978.

Sections 29 and 30 provide that the provisions of the bill apply to private education loans issued on or after January 1, 2022, and set the effective date of the bill as January 1, 2022.

## **FISCAL IMPLICATIONS**

SB164 provides for collection of fees from loan servicers to license and regulate their activities. It is unknown whether the fees collected will be sufficient to carry out the provisions in the act. In the event fees are insufficient, there will be an indeterminate recurring cost to the General Fund.

RLD reports FID will require an additional 4 FTE to carry out the newly assigned duties the new ombudsman position, two examiners and one licensing specialist position. Salary and benefits, along with operational expenses, are projected to be \$363.3 thousand per year. For the first year of operation, prior to the receipt of licensing fees revenues, these positions and costs will need to come from the General fund. It is anticipated these positions and operating costs, after a year of collecting licensing fees credited to the newly created nonreverting fund, will thereafter be paid

from the nonreverting fund.

RLD reports no projected budget impact in FY21 due to the bill going into effect at the half-way point of FY22. Therefore, the three-year cost indicated in the table only accounts for half of FY22 and all of FY23. A true three-year cost would be approximately \$1.1 million.

SB164 creates the student loan bill of rights fund as a nonreverting fund administered by the division. The fund consists of fees collected by the division pursuant to the new act and money that is appropriated or donated or that otherwise accrue to the fund, including investment income. Money in the fund is appropriated to the division to carry out the provisions of the new act.

This bill creates a fund and provides for continuing appropriations. LFC has concerns with including continuing appropriation language in statutory provisions for new funds because earmarking reduces the ability of the Legislature to establish spending priorities. See amendment section.

Revenue projections are indeterminate because the number of loan servicers impacted are unknown. Student loan servicers are currently not required to license or register in New Mexico.

Resources will be required from NMAG to prosecute the new violation of the Unfair Practice Act.

## **SIGNIFICANT ISSUES**

The bill exempts HED from the act. In addition, loan servicers under contract with the U.S. Department of Education automatically would qualify for a license to operate in New Mexico.

According to HED, New Mexico ranks 2<sup>nd</sup> in the nation in terms of low student debt at an average of \$20,991 per student; while New Mexico ranks 48<sup>th</sup> among the states on default.

By exempting banks and credit unions, those borrowers have limited avenues of dispute resolution.

According to HED, private colleges and universities that offer in-house, private student loans would be subject to the bill, but the department is unaware of any institution in New Mexico that offers such loans.

The bill directs the creation of a student loan ombudsman. HED reports student loan services under contract with the U.S. Department of Education are required to have an ombudsman office to address borrower concerns. The largest private, nonprofit student loan services in New Mexico, the New Mexico Educational Assistance Foundation, maintains a hotline for student concerns. HED also maintains a hotline for concerns relating to any aspect of student financial aid.

## **PERFORMANCE IMPLICATIONS**

NMAG notes Section 4(F)(3) states a license shall be issued if the director finds “the applicant's business will be conducted honestly, fairly, equitably, carefully, efficiently and in a manner commanding the confidence and trust of the community.” NMAG further noted the criteria

could be subject to varying interpretations and lead to legal challenges to the act and actions taken under it, including the issuance of a license when inappropriate but this standard has been deemed met.

NMAG also noted Section 19(B) does not provide clear direction for the administrative hearing process for disciplinary hearings conducted by the director on licensing matters. It would be helpful to include language regarding the individual's rights for the hearing and the requirements for issuing a determination, or decision, or final order by the director. The bill appears to lack essential elements of due process, i.e., a hearing in front of a fair and impartial tribunal before a license is denied, suspended, or revoked. The 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.

## **ADMINISTRATIVE IMPLICATIONS**

RLD will administer provisions in the act including creating a new student ombudsman position at FID. This position will take investigate complaints, providing information to the public about services, disseminate reports and statistics about student loans, and develop a student loan borrower education course funded through fees. The ombudsman is required to work collectively with NMAG and HED to assist and educate student loan borrowers and the public. The director is required to furnish a report annually, including on lending and servicing activities of licensees.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicate of HB218 Student Loan Bill of Rights

## **TECHNICAL ISSUES**

RLD noted FID uses the Nationwide Multistate Licensing System and Registry (NMLS) for the licensing of several financial industries regulated by FID. The bill allows use of NMLS to conduct licensing applications and process activities for the licensing of student loan servicers. Utilization of NMLS for licensing purposes would allow for efficiency and cost savings. However, page 13, lines 2-11 note the renewal of applications shall be filed on or before November 1 of the year in which the license expires. It further notes applications filed between November 1 and before December 31 must be accompanied by a \$100 late fee. To be compatible with the NMLS system, the licensing period should begin November 1 and not be considered late until after December 31.

RLD also noted the "private education lender" or "lender" in the bill means any person engaged in the business of securing, making or extending private education loans or any holder of a private education loan." It is not clear if a holder of a private education loan includes the holder of a tranche or portion of private student loans, when the loans are packaged and sold on the market.

## **OTHER SUBSTANTIVE ISSUES**

According to HED, states that have passed similar legislation (e.g., Illinois) enacted student loan

bills of rights in response to private colleges that offered in-house student loans. When Corinthian College closed its doors in 2014, the Consumer Financial Protection Bureau successfully sued Corinthian and forced the forgiveness of \$48 million in its student debt portfolio.

NMAG suggests Section 20 is unclear as to whether the director can seek judicial enforcement only after conducting a hearing and issuing an order (a process which could be clarified in Section 10), or if judicial enforcement is a mechanism independent of the hearing process. This should be made clearer if it is only available after a final decision or other order is issued by the director. If this section is intended to be an independent enforcement process outside of administrative hearings, the process could bypass the general practice of requiring exhaustion of administrative remedies prior to taking a matter before district court, and 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.”

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Student loan borrowers in New Mexico will have limited avenues of dispute resolution.

### **AMENDMENTS**

FID requested that the paragraph on page 13, lines 2 to 11 be changed to amend the licensing period to begin on November 1 and applications to not be considered late until after December 31.

LFC staff suggest money in the fund should be made subject to appropriation by the Legislature

AHO/al/rl