



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
BUDGET OFFICE
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MEMORANDUM

To: The Honorable Marvin L. Abney
Chairman, House Finance Committee

The Honorable William J. Conley, Jr.
Chairman, Senate Finance Committee

From: Thomas A. Mullaney *Thomas A. Mullaney*
Executive Director/State Budget Officer

Date: April 1, 2019

Subject: New Article for the FY 2020 Appropriations Act
(19-H-5151)

The Governor requests that an additional article, entitled "Relating to Student Loans", be submitted alongside the other articles submitted on January 17, 2019.

This article amends Title 19 of the Rhode Island General Laws entitled "FINANCIAL INSTITUTIONS" by adding thereto chapter 33 entitled "Student Loan Bill of Rights."

This article proposes to strengthen consumer protections for student loan borrowers by establishing standards for the servicing of student loans in Rhode Island law, and providing mechanisms for the Department of Business Regulation and the Department of Attorney General to enforce those standards. Additionally, this article proposes to require student loan servicers conduct their business in accordance with certain customer service standards and provide regular communications to student loan borrowers regarding their student loan including, but not limited to, terms of loan, progress toward repayment, eligibility for any loan relief programs, etc. To ensure compliance with the required standards of conduct, this article authorizes the Department of Business Regulation to conduct examinations of student loan servicers and issue fines upon the finding of a violation. Moreover, this article allows the Department of Attorney General to bring action when necessary under the Deceptive Trade Practices Act. Lastly, this article proposes to allow for a private right of action for student loan borrowers when the consumer protections guaranteed in this legislation are violated.

The General Treasurer's Office has worked closely with the Department of Business Regulation and the Attorney General's Office in the development of this legislation and is available to provide additional explanation and background at your request.

New Article – Student Loan

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If you have any questions regarding this new article, please feel free to call me at 222-6300.

TAM: 20-Amend 18

Cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
Kelly Rogers, Deputy General Treasurer
Elizabeth Tanner, Director, Department of Business Regulation

NEW ARTICLE _

RELATING TO STUDENT LOANS

SECTION 1. Title 19 of the General Laws entitled "FINANCIAL INSTITUTIONS" is hereby amended by adding thereto the following chapter:

CHAPTER 33

STUDENT LOAN BILL OF RIGHTS

19-33-1. Title.

This chapter shall be known as the Student Loan Bill of Rights.

19-33-2. Definitions. As used in this chapter:

(1) "Commissioner" means the commissioner of postsecondary education

(2) "Department" means the department of business regulation, division of banking.

(3) "Director" means the director of the department of business regulation or designee.

(4) "Distressed Borrower" means a student loan education borrower who is not considered current on their student education loan payments by the student loan servicer.

(5) "Student loan borrower" means:

(i) Any resident of this state who has received or agreed to pay a postsecondary student education loan; or

(ii) Any person who shares responsibility, as a guarantor or by other legal obligation, with such resident for repaying the postsecondary student education loan for another.

(6) "Student loan servicer" means any person or entity who engages in student loan servicing as defined in this chapter.

(7) "Student loan servicing" or "Servicing" means:

(i)(A) Receiving any scheduled periodic payments from a borrower or notification of such payments; and

1 (B) Applying payments to the borrower's account pursuant to the terms of the
2 postsecondary education loan or of the contract governing the servicing;

3 (ii) During a period when no payment is required on a postsecondary education loan,

4 (A) Maintaining account records for the loan; and

5 (B) Communicating with the borrower regarding the loan, on behalf of the loan's holder;

6 or

7 (iii) Interactions with a borrower, including activities to help prevent default on
8 obligations arising from postsecondary education loans, conducted to facilitate the
9 activities described in paragraph (i) or (ii) of this definition.

10 (7) "Student education loan" means any loan made to a student loan borrower primarily
11 for personal use to finance postsecondary education or other school-related expenses.

12 **19-33-3 – Borrower assistance, education, and complaints.**

13 (a) The department of attorney general's consumer protection unit, in collaboration with
14 the director, general treasurer, and commissioner, shall:

15 (1) Receive, review, and attempt to resolve complaints from student loan borrowers;

16 (2) Compile and analyze data on student loan borrower complaints;

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

19 (4) Provide information to the public, agencies, the general assembly, and others
20 regarding the problems and concerns of student loan borrowers and make
21 recommendations for resolving those problems and concerns;

22 (5) Share information concerning the availability of the consumer protection unit to assist
23 student loan borrowers and potential student loan borrowers, as well as public

institutions of higher education, student loan servicers, and any other participant in student education loan lending with any student loan servicing concerns;

(6) Take any other actions necessary to fulfill the borrower assistance, education, and complaints-related duties in this chapter; and

(b) The attorney general, the director, the general treasurer, and the commissioner, or their designees, shall meet at least once per quarter to coordinate their efforts under this chapter.

19-33-4 – Registration of student loan servicers.

(a) Each person or entity that services any student education loan issued to a student loan borrower after July 1, 2019 shall register with the department as a student loan servicer no later than September 30, 2019 or within thirty (30) days of conducting servicing of student education loans, whichever is earlier.

(b) The registration provisions of this chapter shall not apply to:

(1) any person or entity that services fewer than six (6) student education loans in this state during any consecutive twelve (12) month period; and

(2) any person or entity that services loans for education other than postsecondary education.

(c) As part of that registration, the person or entity shall:

(1) Complete a registration in the form promulgated by the department providing the information requested by the application;

(2) Pay an annual registration fee of one thousand dollars (\$1,000);

(3) Provide a bond in which the registrant shall be the obligor, and which shall run to the state for the use of the state and of the person who may have a cause of action against the obligor

1 of the bond under the provisions of this chapter. The bond shall be perpetual and shall be
2 conditioned upon the obligor conforming to the provisions of this chapter and all regulations
3 thereunder and the obligor will pay to the state and to any person all money that may become due
4 or owing to the state or to the person from the obligor under the provisions of this chapter. The
5 bond shall provide for notice directly to the department in the manner specified by the
6 department, if the bond is cancelled by the surety for any reason. The bond shall be in the sum
7 of fifty thousand dollars (\$50,000.)

8 (4) Appoint, and thereafter maintain, a resident agent in this state with authority to
9 accept service of process for the registrant in this state, including the process of garnishment.

10 (i) Service of process upon the agent shall be deemed sufficient service upon the
11 registrant.

12 (ii) Any process, including the process of garnishment, may be served upon the director,
13 as agent of the registrant, in the event that no resident agent can be found upon whom service can
14 be made, or the registrant has failed to designate a resident agent as required.

15 (d) No registration shall be transferable or assignable. A change in ownership of less than
16 twenty-five percent (25%) of the voting stock or equity interests of a registrant shall not be
17 considered a transfer or assignment of the registration. A change in ownership of twenty-five
18 percent (25%) or more of the voting stock or equity interests shall require notification to the
19 department, and registration by the transferee/assignee within fifteen (15) days of the change in
20 ownership. A change in name shall require notification to the department within fifteen (15)
21 days.

22 (e) Any registrant shall, within twenty-four (24) hours after actual knowledge, notify the
23 department of the occurrence of any of the following events: the institution of bankruptcy,

1 receivership, reorganization, or insolvency proceedings regarding a registrant; the institution of
2 any adverse government action against a registrant; or any felony indictment or conviction of any
3 registrant or any officers, directors, owners, employees, members, or partners thereof.

4 (f) Student loan servicers shall designate and provide contact information for an
5 individual to represent the student loan servicer in communications with the department. Such
6 information shall be updated within ten (10) days of any change thereto.

7 (g) Registration shall be valid for one (1) calendar year, and student loan servicers shall
8 be required to renew their registration with the department annually.

9 (h) The department may assess a fine of ten thousand dollars (\$10,000) on any student
10 loan servicer that services student education loans for thirty (30) or more days without
11 registering and complying with the conditions provided in this section..

12 (i) The department may share any information gathered through its registration or
13 examination of student loan servicers with the attorney general.

14 **19-33-5. Servicer registration account established.**

15 There is established a restricted receipt account to be known as the "servicer registration
16 account" which shall be a separate, non-lapsing account within the department. Registration fees
17 and other monies, excluding examination fees pursuant to § 19-33-9, received by the department
18 pursuant to the terms of this chapter shall be deposited into the account. Monies deposited in the
19 account shall be transferred to the department of attorney general's student loan consumer
20 protection account at the request of the attorney general and shall be expended for the purpose of
21 administering the provisions of this chapter.

22 **19-33-6. Maintenance of records.**

1 (a) Each student loan servicer shall maintain complete records of each student education
2 loan transaction, including recordings of communications with borrowers, for not less than two
3 (2) years following the final payment on such student education loan or the assignment of such
4 student education loan, whichever occurs first, or such longer period as may be required by any
5 other provision of law.

6 (b) If requested by the division of banking, each student loan servicer shall make such
7 records available, not later than five (5) business days after requested. Upon request, the
8 department may grant a student loan servicer additional time to make such records available.

9 **19-33-7. Reporting requirements.**

10 (a) Each registrant shall annually, on or before March 31, file a report with the
11 department, giving any relevant information that the department may reasonably require
12 concerning the business and operations during the preceding calendar year of registrant within
13 the state. At the time of filing each report, the sum of fifty-five dollars (\$55.00) per registration
14 shall be paid by the registrant to the department. Any registrant that delays the transmission of
15 any report required by the provisions of this chapter beyond the limit, unless additional time is
16 granted, in writing, for good cause, by the department shall pay a penalty of twenty-five dollars
17 (\$25) for each day of the delay.

18 **19-33-8. Responsibilities of student loan servicers**

19 (a) A student loan servicer shall provide annually, and at the request of a student loan
20 borrower, the terms of their loan, progress toward repayment, and eligibility for any loan relief
21 programs including but not limited to income driven repayment plans, public service loan
22 forgiveness, forbearance and deferment.

1 **(b) A student loan servicer shall establish policies and procedures, and implement them**
2 **consistently, in order to facilitate evaluation of private student loan alternative repayment**
3 **arrangement requests, including providing accurate information regarding any private student**
4 **loan alternative repayment arrangements that may be available to the borrower through the**
5 **promissory note or that may have been marketed to the borrower through marketing materials.**

6 **(c) A private student loan alternative repayment arrangement shall consider the**
7 **affordability of repayment plans for a distressed borrower, as well as investor, guarantor, and**
8 **insurer guidelines and previous outcome and performance information.**

9 **(d) If a student loan servicer offers private student loan prepayment arrangements, a**
10 **student loan servicer shall consistently present and offer those arrangements to borrowers with**
11 **similar financial circumstances.**

12 **(e) A student loan servicer shall respond to a written inquiry from a student loan**
13 **borrower or the representative of a student loan borrower within ten business days after receipt**
14 **of the request and provide information relating to the request and, if applicable, the action the**
15 **student loan servicer will take to correct the account or an explanation for the student loan**
16 **servicer's position that the borrower's account is correct.**

17 **(i) The ten-day period described in section (e) may be extended for not more than**
18 **fifteen days if before the end of the ten-day period the student loan servicer notifies the**
19 **borrower or the borrower's representative of the extension and the reasons for the delay in**
20 **responding.**

21 **(ii) After receipt of a written request related to a credit reporting dispute on a**

1 borrower's payment on a student education loan, a student loan servicer shall not furnish
2 adverse information to a consumer reporting agency regarding a payment that is the
3 subject of the written inquiry.

4 (f) Except as provided in federal law or required by a student loan agreement, a student
5 loan servicer shall inquire of a borrower how to apply an overpayment to a student education
6 loan. A borrower's direction on how to apply an overpayment to a student education loan stays in
7 effect for any future overpayments during the term of a student education loan until the borrower
8 provides different directions. For purposes of this section (f), "overpayment" means a payment
9 on a student education loan in excess of the monthly amount due from a borrower on a student
10 education loan, also commonly referred to as a prepayment.

11 (g) Where a borrower has multiple loans at the same level of delinquency, a student loan
12 servicer shall apply partial payments in a manner that minimizes late fees and negative credit
13 reporting by applying such payments to satisfy as many individual loan payments as possible on
14 a borrower's account. For purposes of this section (g), "partial payment" means a payment on a
15 student loan account that contains multiple individual loans in an amount less than the amount
16 necessary to satisfy the outstanding payment due on all loans in the student loan account, also
17 commonly referred to as an underpayment.

18 (h) In the event of the sale, assignment, or other transfer of the servicing of a student
19 education loan that results in a change in the identity of the person to whom a student loan
20 borrower is required to send payments or direct any communication concerning the student
21 education loan, the following provisions apply:

22 (i) As a condition of a sale, an assignment, or any other transfer of the servicing of a
23 student education loan, a student loan lender shall require the new student loan

1 servicer to honor all benefits originally represented as available to a student loan
2 borrower during the repayment of the student education loan and preserve the
3 availability of the benefits, including any benefits for which the student loan
4 borrower has not yet qualified.

5 (ii) A student loan servicer shall transfer to the new student loan servicer all records
6 regarding the student loan borrower, the account of the student loan borrower, and
7 the student education loan of the student loan borrower.

8 (iii) The records required under subsection (h)(ii) of this section include the repayment
9 status of the student loan borrower and any benefits associated with the student
10 education loan of the student loan borrower.

11 (iv) The student loan servicer shall complete the transfer of records required under
12 subsection (h)(ii) of this section within forty-five days after the sale, assignment,
13 or other transfer of the servicing of a student education loan.

14 (v) The parties shall notify impacted student loan borrowers of the sale, assignment,
15 or other transfer of the servicing of a student education loan at least seven days
16 before the next payment on the loan is due. Notice must include: the identity of
17 the new loan holder and/or servicer, the effective date of the transfer, the date on
18 which the old servicer will no longer accept payments, the date on which the new
19 servicer will begin to accept payments, and contact and billing information for
20 loan payments.

21 (i) A student loan servicer that services a student education loan shall adopt policies and
22 procedures to verify that the student loan servicer has received all records regarding the student
23 loan borrower, the account of the student loan borrower, and the student education loan of the

student loan borrower, including the repayment status of the student loan borrower and any benefits associated with the student education loan of the student loan borrower.

(j) When a prior student loan servicer receives a payment intended for the new student loan servicer, the prior student loan servicer must promptly transfer the payment to the new servicer, along with the date the prior servicer received the payment.

(k) When a new servicer receives a payment from a prior servicer under section (j), the payment must be applied as of the date received by the prior servicer. A student loan servicer must implement processes and controls to ensure a student loan borrower does not incur additional interest, fees, or delinquency due to complications related to the sale, assignment, or other transfer of the servicing of a student education loan.

19-33-9. Examinations.

(a) In addition to any other authority provided under this chapter, the department shall have the authority to conduct examinations of registrants.

(b) In order to carry out the purposes of this chapter, the department may:

(1) Retain attorneys, accountants or other professionals and specialists as examiners or auditors to conduct or assist in the conduct of examinations. The costs of such persons shall be borne by the registrant;

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

1 (3) Use, hire, contract or employ public or privately available analytical systems,
2 methods or software to examine the student loan servicer or person subject to the provisions of
3 this chapter. The costs of such systems shall be borne by the registrant;

4 (4) Accept and rely on examination reports made by other government officials, within or
5 outside of the state; and

6 (5) Accept audit reports made by an independent certified public accountant for the
7 student loan servicer or person subject to the provisions of this chapter in the course of that part
8 of the examination covering the same general subject matter as the audit and incorporate the
9 audit report in the report of examination or other writing of the department.

10 (c) The department may at any time examine the student education loans and business
11 and examine the books, accounts, records, and files used therein, of every registrant and person
12 who shall be engaged in any activity that requires a registration under this chapter, whether the
13 person shall act, or claim to act, as principal or agent, or under or without the authority of this
14 chapter. For that purpose, the department shall have free access to the offices and places of
15 business, books, accounts, paper, records, files, and safes, of all such persons. The department,
16 shall have authority to require the attendance of, and to examine under oath, any person whose
17 testimony may be required relative to the student education loans or the business or to the subject
18 matter of any examination, or hearing.

19 (d) The department shall make an examination of the affairs, business, office, and records
20 of each registrant as often as is necessary, based upon all relevant factors, including the volume
21 of activity within the state. The total cost of an examination made pursuant to this section shall
22 be paid by the registrant or person being examined and shall include the following expenses:

1 (1) One hundred fifty percent (150%) of the total salaries and benefits plus one hundred
2 percent (100%) of the travel and transportation expenses for the examining personnel engaged in
3 the examinations. The fees shall be paid to the department to, and for the use of, the state. The
4 examination fees shall be in addition to any taxes and fees otherwise payable to the state;

5 (2) All reasonable technology costs related to the examination process. Technology costs
6 shall include the actual cost of software and hardware utilized in the examination process and the
7 cost of training examination personnel in the proper use of the software or hardware; and

8 (3) All necessary and reasonable education and training costs incurred by the state to
9 maintain the proficiency and competence of the examination personnel. All such costs shall be
10 incurred in accordance with appropriate state of Rhode Island regulations, guidelines, and
11 procedures.

12 (e) The authority of this chapter shall remain in effect, whether such student loan
13 servicer or person subject to the provisions of this chapter acts or claims to act under any
14 licensing or registration law of this state, or claims to act without such authority.

15 (f) No student loan servicer or person subject to examination under this section may
16 knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer
17 records or other information.

18 (g) The provisions of § 19-4-3 shall apply to investigatory records and examination
19 reports issued by other state and federal regulatory agencies, and the workpapers of examinations
20 or investigations of registrants created by the department; provided, however, the director or the
21 director's designee, is authorized to make public all consumer complaints and final examination
22 reports issued by the department as determined by the director or the director's designee.

23 **19-33-10. Fines.**

1 (a) The director, after an administrative hearing pursuant to chapter 35 of title 42, may
2 issue fines upon a finding that the registrant violated the provisions of this chapter, or any
3 regulation or order lawfully made pursuant to this chapter; or take any other action provided for
4 in this chapter.

5 (b) Any student loan servicer or the members, officers, directors, agents, and employees
6 of any student loan servicer who violate or participate in the violation of any of the applicable
7 provisions of this chapter, or any regulation promulgated thereunder shall be punished by a fine
8 of not more than two thousand dollars (\$2,000) per violation. Each student education loan
9 constitutes a separate offense.

10 **19-33-11. Appeal and review.**

11 Any student loan servicer aggrieved by an action of the department in imposition of fines
12 shall have the right to appeal the action, order, or decision pursuant to chapter 35 of title 42.

13 **19-33-12. Prohibited conduct.**

14 No student loan servicer shall:

15 (1) Directly or indirectly employ any scheme, device or artifice to defraud or mislead
16 student loan borrowers;

17 (2) Engage in any unfair or deceptive practice toward any person or misrepresent or omit
18 any material information in connection with the servicing of a student education loan, including,
19 but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or
20 claimed to be due on a student education loan, the terms and conditions of the loan agreement or
21 the borrower's obligations under the loan;

22 (3) Obtain property by fraud or misrepresentation;

1 (4) Knowingly misapply or recklessly apply student education loan payments to the
2 outstanding balance of a student education loan;

3 (5) Knowingly or recklessly provide inaccurate information to a credit bureau, thereby
4 harming a student loan borrower's creditworthiness;

5 (6) Fail to report both the favorable and unfavorable payment history of the student loan
6 borrower to a nationally recognized consumer credit bureau at least annually if the student loan
7 servicer regularly reports information to a credit bureau;

8 (7) Refuse to communicate with an authorized representative of the student loan borrower
9 who provides a written authorization signed by the student loan borrower, provided the student
10 loan servicer may adopt procedures reasonably related to verifying that the representative is in
11 fact authorized to act on behalf of the student loan borrower;

12 (8) Negligently make any false statement or knowingly or willfully make any omission of
13 a material fact in connection with any information or reports filed with a governmental agency or
14 in connection with any examination conducted by the department or investigation conducted by
15 the attorney general or other governmental agency; or

16 (9) Fail to properly evaluate a student loan borrower for an income-driven or other
17 student loan repayment program or for eligibility for a public service loan forgiveness program
18 before placing the student loan borrower in forbearance or default, if an income-driven
19 repayment or other program is available to the student loan borrower except as otherwise
20 provided in federal law, federal student loan agreements, or a contract between the federal
21 government and a student loan servicer.

22 **19-33-13. Investigation and enforcement.**

1 The attorney general may enforce a violation of section 9 of this chapter as an unlawful
2 act or practice under chapter 13.1 of title 6.

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6 **19-33-14. Private actions.**

7 Any student loan borrower may bring an action under subsection 5.2 of chapter 13.1 of
8 title 6 for a violation of section 9 of this chapter as an unlawful act or practice under chapter 13.1
9 of title 6.

10 **19-33-15. Student loan consumer protection account established.**

11 A student loan consumer protection restricted receipt account (the “account”) is hereby
12 created within the department of the attorney general. Monies deposited in the account shall be
13 expended by the attorney general for the purpose of administering the provisions of this chapter.

14 SECTION 2. This article shall take effect upon passage.