



Increased Protections at Origination for Private Student Loan Borrowers

I. Definitions

- A. "Commissioner" means the Commissioner of Banking and Insurance.
- B. "Cosigner" means:
 - 1. Any individual who is liable for the obligation of another without compensation, regardless of how the individual is designated in the contract or instrument with respect to that obligation, including an obligation under a private education loan extended to consolidate a borrower's pre-existing private education loans; and
 - 2. Shall include any person whose signature is requested as a condition to grant credit or to forbear on collection.
 - 3. As used in this act, "cosigner" shall not include a spouse of an individual described in paragraph (1), the signature of whom is needed to perfect the security interest in a loan.
- C. "Department" means the Department of Banking and Insurance.
- D. "Private education lender" or "lender" means any person engaged in the business of securing, making, or extending private education loans, or any holder of a private education loan. "Private education lender" shall not include the following persons, only to the extent that state regulation is preempted by federal law:
 - 1. Any federally chartered bank, savings bank, savings and loan association, or credit union;
 - 2. Any wholly owned subsidiary of a federally chartered bank or credit union; and
 - 3. Any operating subsidiary where each owner of the operating subsidiary is wholly owned by the same federally chartered bank or credit union.

- E. "Private education loan" means an extension of credit that:
1. Is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. s.1070 et seq.);
 2. Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;
 3. Shall not include open-end credit or any loan that is secured by real property or a dwelling; and
 4. Shall not include an extension of credit in which the covered educational institution is the creditor if:
 1. The term of the extension of credit is 90 days or less; or
 2. An interest rate shall not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.
- F. "Private education loan borrower" or "borrower" means any resident of this state who has received or agreed to pay a private education loan for the borrower's own educational expenses.

II. Notices Required at Origination

- A. Prior to the extension of a private education loan that requires a cosigner, a private education lender shall deliver the following information to the cosigner:
1. How the private education loan obligation shall appear on the cosigner's credit;
 2. How the cosigner shall be notified if the private education loan becomes delinquent, including how the cosigner can cure the delinquency in order to avoid negative credit furnishing and loss of cosigner release eligibility; and
 3. Eligibility for release of the cosigner's obligation on the private education loan, including the number of on-time payments and

any other criteria required to approve the release of cosigner from the loan obligation.

- B. Prior to offering a person a private education loan that is being used to refinance an existing education loan, a private education lender shall provide the person a disclosure that benefits and protections applicable to the existing loan may be lost due to the refinancing.
- C. The information provided pursuant to this section shall be provided on a one-page information sheet in a 12-point font and shall be written in simple, clear, understandable and easily readable language as provided in P.L.1980, c.125 (C.56:12-1 et seq.).

III. Cosigner Release

- A. For any private education loan that obligates a cosigner, a lender shall provide the borrower and the cosigner an annual written notice containing information about cosigner release, including the administrative, non-judgmental criteria the lender requires to approve the release of the cosigner from the loan obligation and the process for applying for cosigner release.
- B. If the borrower has met the applicable payment requirement to be eligible for cosigner release, the lender shall send the borrower and the cosigner a written notification by mail and by electronic mail, where a borrower or cosigner has elected to receive electronic communications from the lender, informing the borrower and cosigner that the payments requirement to be eligible for cosigner release have been met. The notification shall also include information about any additional criteria to qualify for cosigner release, and the procedure to apply for cosigner release.
- C. A lender shall provide written notice to a borrower who applies for cosigner release, but whose application is incomplete. The written notice shall include a description of the information needed to consider the application complete and the date by which the applicant shall furnish the missing information.

- D. Within 30 days after a borrower submits a completed application for cosigner release, the lender shall send the borrower and cosigner a written notice that informs the borrower and cosigner whether the cosigner release application has been approved or denied. If the lender denies a request for cosigner release, the borrower may request any documents or information used in the determination, including, but not limited to, the credit score threshold used by the lender, the borrower's consumer report, the borrower's credit score, and any other documents specific to the borrower. The lender shall also provide any adverse action notices required under applicable federal law if the denial is based in whole or in part on any information contained in a consumer report.
- E. In response to a written or oral request for cosigner release, a lender shall provide the information described in subsection (III)(B) of this Act.
- F. A lender shall not impose any restriction that permanently bars a borrower from qualifying for cosigner release, including restricting the number of times a borrower may apply for cosigner release.
- G. A lender shall not impose any negative consequences on any borrower or cosigner during the 60 days following the issuance of the notice required pursuant to subsection (III)(C) of this Act, or until the lender makes a final determination about a borrower's cosigner release application. For the purpose of this subsection, "negative consequences" includes, but is not limited to, the imposition of additional eligibility criteria, negative credit reporting, lost eligibility for cosigner release, late fees, interest capitalization, or other financial injury.
- H. A lender shall not require greater than 12 consecutive, on-time payments as criteria for cosigner release. Any borrower who has paid the equivalent of 12 months of principal and interest payments within any 12-month period shall be considered to have satisfied the consecutive, on-time payment requirement, even if the borrower has not made payments monthly during the 12-month period.

- I. If a borrower or cosigner requests a change in terms that restarts the count of consecutive, on-time payments required for cosigner release, the lender shall notify the borrower and cosigner in writing of the impact of the change and provide the borrower or cosigner the right to withdraw or reverse the request to avoid that impact.
- J. A borrower shall have the right to request an appeal of a lender's determination to deny a request for cosigner release, and the lender shall permit the borrower to submit additional documentation evidencing the borrower's ability, willingness, and stability to meet the payment obligations. The borrower may request review of the cosigner release determination by another employee.
- K. A lender shall establish and maintain a comprehensive record management system reasonably designed to ensure the accuracy, integrity, and completeness of data and other information about cosigner release applications and to ensure compliance with applicable state and federal laws, including but not limited to the "Equal Credit Opportunity Act," 15 U.S.C. s.1691 et seq., and the "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq. This system shall include the number of cosigner release applications received, the approval and denial rate, and the primary reasons for any denial.

IV. Information Available to Cosigners

- A. A lender shall provide a cosigner with access to all documents or records related to the cosigned private education loan that are available to the borrower.
- B. If a lender provides electronic access to documents and records for a borrower, it shall provide equivalent electronic access to the cosigner.

V. Prohibitions on the Acceleration of Private Education Loans

- A. A private education loan executed after the effective date of this Act shall not include a provision that permits the private educational lender to accelerate, in whole or in part, payments on the private education loan, except in cases of payment default. A lender shall not place any

loan or account into default or accelerate a loan for any reason, other than for payment default.

- B. Private education loan executed prior to the effective date of this Act shall permit the lender to accelerate payments only if the promissory note or loan agreement explicitly authorizes an acceleration and only for the reasons stated in the note or agreement.
- C. In the event of the death of a cosigner, the lender shall not attempt to collect against the cosigner's estate, other than for payment default.
- D. Upon receiving notification of the death or bankruptcy of a cosigner, when the loan is not more than 60 days delinquent at the time of the notification, the lender shall not change any terms or benefits under the promissory note, repayment schedule, repayment terms, or monthly payment amount or any other provision associated with the loan.
- E. A lender shall not place any loan or account into default or accelerate a loan while a borrower is seeking a loan modification or enrollment in a flexible repayment plan, except that a lender may place a loan or account into default or accelerate a loan for payment default 90 days following the borrower's default.

VI. **Prohibitions.** No private education lender shall:

- A. Offer any private education loan that is not in conformity with this act, or that is in violation of any other state or federal law;
- B. Engage in any unfair, deceptive, or abusive act or practice; or
- C. Make a private education loan upon security of any assignment of or order for the payment of any salary, wages, commissions or other compensation for services earned, or to be earned. No assignment or order shall be taken by a lender in connection with a private education loan, or for the enforcement or repayment thereof, and any assignment or order taken or given to secure any loan made by any lender under this act shall be void.

VII. **Record Retention.** A private education lender shall establish and maintain records and permit the department to access and copy any records required to

be maintained pursuant to this act. Loan files, including any records specified for retention by regulation adopted by the commissioner, shall be retained for not less than six years after the termination of the loan account.

- VIII. **Private Right of Action.** A borrower or cosigner who suffers damage as a result of a violation of this act may bring an action in a court of competent jurisdiction to recover:
- A. Actual damages, but in no case shall the total award of damages action be less than \$500;
 - B. An order enjoining the methods, acts, or practices;
 - C. Restitution of property;
 - D. Punitive damages;
 - E. Attorney's fees; and
 - F. Any other relief that the court deems proper.
- IX. This act shall take effect on the January 1, 20XX.