



Private Student Loan Borrower Protection Act

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.
- G. "Total and permanent disability" is the condition of an individual who:
1. Has been determined by the United States Secretary of Veterans Affairs to be unemployable due to a service-connected disability; or
 2. Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 12 months, or can be expected to last for a continuous period of not less than 12 months.

II. **Disability Discharge**

- A. A private education lender, when notified of the total and permanent disability of a borrower or cosigner, shall release any cosigner from the obligations of the cosigner under a private education loan. The lender

shall not attempt to collect a payment from a cosigner following a notification of total and permanent disability of the cosigner or borrower.

- B. A lender shall notify a borrower and cosigner for a private education loan if either a cosigner or borrower is released from the obligations of the private education loan under this subsection, within 30 days of the release.
- C. Any lender that extends a private education loan shall provide the borrower an option to designate an individual to have the legal authority to act on behalf of the borrower with respect to the private education loan in the event of the total and permanent disability of the borrower.
- D. In the event a cosigner is released from the obligations of a private education loan pursuant to subsection a. of this section, the lender shall not require the borrower to obtain another cosigner on the loan obligation.
- E. A lender shall not declare a default or accelerate the debt against the borrower on the sole basis of the release of the cosigner from the loan obligation.
- F. A lender shall, when notified of the total and permanent disability of a borrower, discharge the liability of the borrower and cosigner on the loan.
- G. After receiving a notification described in subsection (F) of this section, the lender shall not:
 - 1. Attempt to collect on the outstanding liability of the borrower or cosigner; or
 - 2. Monitor the disability status of the borrower at any point after the date of discharge.

III. Availability of Alternative Repayment Options

- A. If a private education lender offers any borrower flexible repayment options in connection with a private education loan, those flexible

repayment options shall be made available to all borrowers of loans by the lender. A lender shall:

1. Provide on its website a description of any alternative repayment options offered by the lender for private education loans; and
 2. Establish policies and procedures and implement them consistently in order to facilitate evaluation of private education loan flexible repayment option requests, including providing accurate information regarding any private education loan alternative repayment options that may be available to the borrower through the promissory note or that may have been marketed to the borrower through marketing materials; and
- B. A lender shall consistently present and offer private education loan repayment options to borrowers with similar financial circumstances, if the lender offers repayment options.

IV. 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.

V. 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.

VI. **Effective date**

This Act shall take effect on January 1, 20XX.