



## **Private Student Loan Collections Reform Act**

### **I. Definitions**

- A. "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. 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. Does not include open-end credit or any loan that is secured by real property or a dwelling; and
  4. Does not include an extension of credit in which the covered educational institution is the creditor if:
    - i. The term of the extension of credit is 90 days or less; or
    - ii. An interest rate will 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.
- B. "Private education lender" means
1. Any person or entity engaged in the business of securing, making, or extending private education loans;
  2. Any holder of a private education loan
- C. "Borrower" or "student loan borrower" means a person who has received or agreed to pay a private education loan.
- D. "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.
- E. "Private education loan collection action" means any judicial action in which a claim is asserted to collect a private education loan.
- F. "Original Creditor" means the private education lender identified in a promissory note, loan agreement, or loan contract entered into with a student loan borrower or cosigner.
- G. "Creditor" means
1. The original creditor, where ownership of a private education loan has not been sold, assigned, or transferred;
  2. The person or entity that owned the private education loan at the time the private education loan defaulted, even if that person or entity did not originate the private education loan, and where such a private education loan has not subsequently been sold, transferred or assigned;
  3. A person or entity that purchased a defaulted private education loan for collection purposes, whether it collects the private education loan itself, hires a third party for collection, or hires an attorney for collection litigation.
- H. "Private education loan collector" means a person collecting or attempting to collect on a defaulted private education loan.
- I. "Private education loan collection action" means any judicial action in which a claim is asserted to collect a private education loan.



## II. Requirements when collecting on a private education loan debt

- A. A private education lender or a private education loan collector may not initiate a private education loan collection action unless the private education lender or private education loan collector possesses all of the documents listed in subsection (D)(3) of this section.
- B. This subsection applies to a private education loan collection action that is maintained by a private education lender or a private education loan collector.
- C. In addition to any other requirement of law or rule, a court may not enter a judgment in favor of a private education lender or a private education loan collector unless the private education lender or private education loan collector introduces into evidence the documents specified in paragraphs (D) of this subsection in accordance with applicable rules of evidence.
- D. A private education lender or a private education loan collector shall introduce the following evidence in a private education loan collection action:
  - 1. The name of the owner of the private education loan;
  - 2. The original creditor's name at the time of default, if applicable;
  - 3. The original creditor's account number used to identify the private education loan at the time of default, if the original creditor used an account number to identify the private education loan at the time of default;
  - 4. The amount due at default;
  - 5. An itemization of interest and fees, if any, incurred after default claimed to be owed and whether those were imposed by the original creditor or any subsequent owners of the private education loan;
  - 6. The date that the private education loan was incurred;
  - 7. The date of the first partial payment and/or the first day that a payment was missed, whichever is earlier;



8. The date and amount of the last payment, if applicable;
9. Any payments, settlement, or financial remuneration of any kind paid to the creditor by a guarantor, co-signer, or surety, and the amount of payment received;
10. A copy of the self-certification form and any other "needs analysis" conducted by the original creditor prior to origination of the loan;
11. The names of all persons or entities that owned the private education loan after the time of default, if applicable, and the date of each sale or transfer;
12. A log of all collection attempts made in the last 12 months including date and time of all calls and letters;
13. A statement as to whether the creditor is willing to re-negotiate the terms of the debt;
14. Copies of all settlement letters made in the last 12 months, or, in the alternative, a statement that the creditor has not attempted to settle or otherwise renegotiate the debt prior to suit;
15. Documentation establishing that the creditor is the owner of the specific individual private education loan at issue. If the private education loan was assigned more than once, the creditor must possess each assignment or other writing evidencing the transfer of ownership of the specific individual private education loan to establish an unbroken chain of ownership, beginning with the original creditor to the first subsequent creditor and each additional creditor. Each assignment or other writing evidencing transfer of ownership or the right to collect must contain the original creditor's account number (redacted for security purposes to show only the last four digits) of the private education loan purchased or otherwise assigned, the date of purchase and assignment, and must clearly show the borrower's correct name associated with the original account number. The assignment or other writing attached shall be



that by which the creditor or other assignee acquired the private education loan, not a document prepared for litigation;

16. A copy of all pages of the contract, application or other documents evidencing the private education loan borrower's liability for the private education loan, stating all terms and conditions applicable to the private education loan.
  17. An affidavit stating that a representative of the creditor personally reviewed the evidence submitted to the court pursuant to this subsection for factual accuracy and confirmed the factual accuracy of the allegations set forth in the complaint and any supporting affidavits or affirmations filed with the court, as well as the accuracy of any notarizations contained in the supporting documents filed therewith.
  18. A statement as to whether a debt is eligible for an income-based repayment plan.
  19. A statement as to whether the debt is dischargeable in bankruptcy.
- E. In addition to any other requirement of law or rule, a court may not enter a judgment in favor of a private education lender or a private education loan collector unless the court finds that the applicable statute of limitations for the private education loan owned by the creditor has not expired.

### III. Requirements when communication with a debtor

- A. In addition to any other information required under applicable federal or state law, a private education loan collector shall provide in the first collection communication with the borrower and at any other time the borrower requests this documentation the information set forth in subsection (D) of this section.
- B. Failure to produce to a borrower upon request any documentation described in subsection (D) of this section is a violation of State Unfair and Deceptive Acts and Practices Law.

### IV. Enforcement



- A. Any person who suffers damage as a result of the failure of creditor to comply with this Act may bring an action against that creditor to recover or obtain any of the following:
  - 1. An order vacating any default judgment entered against that person;
  - 2. A judgment in favor of the person;
  - 3. Actual damages, but in no case, shall the total award of damages be less than five hundred dollars (\$500) per person, per violation;
  - 4. Restitution of all moneys taken from or paid by that person after a judgement was obtained by a creditor;
  - 5. Punitive damages;
  - 6. Attorney's fees;
  - 7. Correction of that person's credit report; or
  - 8. Any other relief that the court deems proper.
- B. In addition to any other remedies provided by this subdivision or otherwise provided by law, whenever it is proven by a preponderance of the evidence that a creditor or counsel representing a creditor filed an affidavit required under this title containing false information, the court shall award treble actual damages to the person, but in no case shall the award of damages be less than one thousand five hundred dollars (\$1,500) per person, per violation.