

HB 1500-FN - AS AMENDED BY THE HOUSE

11Mar2020... 0980h

2020 SESSION

20-2682

11/06

HOUSE BILL ***1500-FN***

AN ACT relative to a student loan bill of rights and a student loan ombudsman.

SPONSORS: Rep. Griffith, Hills. 18; Rep. Thompson, Ches. 14; Rep. Cornell, Hills. 18; Rep. Fox, Merr. 23

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill requires the commissioner of the banking department to designate a student loan ombudsman within the department. This bill also establishes a student loan servicer license.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT relative to a student loan bill of rights and a student loan ombudsman.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subdivision; Student Loan Ombudsman. Amend RSA 383 by inserting after section 25 the following new subdivision:

Student Loan Ombudsman

383:26 Student Loan Ombudsman.

I. The commissioner shall designate a student loan ombudsman within the department to provide timely assistance to any student loan borrower, as defined in RSA 399-H:1, VII, on any student education loan, as defined in RSA 399-H:1, VI.

II. The student loan ombudsman, in consultation with the commissioner, shall:

- (a) Administer and coordinate the commissioner's response to consumer complaints related to student education loans.
- (b) Make available information to assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans.
- (c) Take any other actions necessary to assist the commissioner in enforcement of RSA 399-H.

2 New Chapter; Student Loan Servicing. Amend RSA by inserting after chapter 399-G the following new chapter:

CHAPTER 399-H

STUDENT LOAN SERVICING

399-H:1 Definitions. In this chapter:

I. "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person is presumed to be a control person if that person:

- (a) Is a director, general partner, or executive officer;

(b) Directly or indirectly has the right to vote 10 percent or more of a class of a voting security or membership interest, or has the power to sell or direct the sale of 10 percent or more of a class of voting securities or membership interest;

(c) In the case of a limited liability company, is a managing member; or

(d) In the case of a partnership, has the right to receive upon dissolution, or has contributed, 10 percent or more of the capital.

II. "Nationwide multistate licensing system and registry" means a national licensing system and facility developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, for the licensing and registration of mortgage loan originators, mortgage lenders, mortgage servicers, mortgage brokers, and other non-depository financial service licensees, including student loan servicers.

III. "Principal" of the applicant or licensee means an owner with 10 percent or more ownership interest, corporate officer, director, member, general or limited liability partner, limited partner with 10 percent or more ownership interest, trustee, beneficiary of 10 percent or more of the trust that owns the applicant or licensee, indirect owner, senior manager, branch manager of a location required to be licensed as a branch office under this chapter, and any person occupying similar status or performing similar functions.

IV. "Servicing" means:

(a) Receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan, and applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan;

(b) During a period when no payment is required on the student education loan, maintaining account records for the loan and communicating with the student loan borrower regarding the loan, on behalf of the holder of the loans;

(c) Interacting with a student loan borrower to facilitate the loan servicing as described in this definition, including activities to help prevent loan default on obligations arising from a student education loan; or

(d) Performing other administrative services with respect to a student education loan.

V. "Significant event" means:

(a) Filing for bankruptcy or reorganization;

(b) Criminal felony indictment or conviction of any of the licensee's principals;

(c) Receiving notification of a license denial, cease and desist, consent agreement or order, suspension, or revocation, or any other formal administrative action in any state against the licensee;

(d) Receiving notification of any enforcement action or investigation by the attorney general of the state of New Hampshire or of any other state pursuant to any consumer protection statute, and the reasons therefor, except routine investigations of consumer complaints; or

(e) Entering into a consent agreement, settlement agreement, memorandum of understanding, or similar agreement with any regulatory body pertaining to the licensee's practices.

VI. "Student education loan" means any loan primarily for personal use to finance education or other school-related expenses.

VII. "Student loan borrower" means any resident of this state who has received or agreed to pay a student education loan; or any person who shares responsibility with such resident for repaying the student education loan.

VIII. "Student loan servicer" means any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.

399-H:2 License Required.

I. Prior to engaging in the business of a student loan servicer a person shall obtain and maintain a license under this chapter. Each student loan servicer shall register with and obtain and maintain a valid unique identifier issued by the nationwide multistate licensing system and registry.

II. Any license fee required by this chapter shall be paid before a license may become effective.

III. A person located outside of the United States and required to be licensed under this chapter shall maintain a location within the continental United States where records of all New Hampshire transactions are kept and from where all activity under this chapter shall be conducted.

399-H:3 Exemptions. This chapter shall not apply to:

I. Any bank, out-of-state bank, credit union, federal credit union, or out-of-state credit union, bank holding company, or any wholly owned subsidiary of any such bank, bank holding company or credit union, or any subsidiary where each owner of such subsidiary is wholly owned by the same bank, bank holding company, or credit union.

II. Any state or private nonprofit guaranty agency that has an agreement with the United States Department of Education under section 428(b) of the Higher Education Act of 1965, 20 U.S.C. 1078(b), that does not:

- (a) Receive any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan, and apply the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan;
- (b) During a period when no payment is required on the student education loan, maintain account records for the loan and communicate with the student loan borrower regarding the loan, on behalf of the holder of the loans; and
- (c) Perform other administrative serves with respect to a student education loan.

III. Any person engaged as a student loan servicer when:

- (a) Such services are conducted pursuant to a contract awarded by the United States Secretary of Education under 20 U.S.C. section 1087f; and
- (b) The commissioner is preempted by federal law from regulating the activities of the servicer.

399-H:4 Application, Fees and Bond.

I. To be considered for student loan servicer licensing, each person shall complete and file an application with the department, through the nationwide multistate licensing system and registry using the nationwide multistate licensing system and registry form. At a minimum, the application shall state the primary business address of the applicant, the applicant's tax identification number, the address of its offices, the contact person required pursuant to paragraph V, and a list of the principals of the applicant. Each principal shall provide his or her social security number and shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and its principals, and a financial statement prepared by a certified public accountant or a public accountant, the accuracy of which is sworn to under oath before a notary public by the proprietor, a general partner, or a corporate officer or a member duly authorized to execute such documents. The applicant shall disclose whether the applicant or any of its principals has ever been issued or been the subject of an injunction or administrative order, has ever been convicted of a misdemeanor involving financial services or a financial services-related business or any fraud, false statements or omissions, theft or any wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses or has ever been convicted of any felony.

II.(a) Unless the student loan servicer is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on the individuals who are indirect owners.

(b) The persons described in subparagraph (a) shall submit to the department a criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(c) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(d) The department may require the applicant or licensee to pay the actual costs of each background investigation and criminal history records check.

(e) The department may rely on criminal records checks reported through the nationwide multistate licensing system and registry in lieu of subparagraphs (b) and (c).

III. Each initial and annual renewal license application shall be accompanied by a nonrefundable application fee of \$1,000. Unless exempted under RSA 399-H:3, III, each initial application fee shall also be accompanied by a nonrefundable investigation fee of \$1,000.

IV.(a) Each applicant shall post a continuous surety bond in amount of \$100,000. The surety bond shall be payable to the state of New Hampshire and the bank commissioner of the state of New Hampshire for the benefit of any person who is damaged by any violation of this chapter and shall be conditioned upon the licensee's compliance with each provision of this chapter.

(b) Surety bonds shall include a provision requiring the surety to give written notice to the commissioner 30 days in advance of the cancellation or termination of the bond.

(c) Every bond shall provide that no recovery shall be made against the bond unless the state makes a claim for recovery or the person brings suit naming the licensee within 6 years after the act upon which the recovery or suit is based. The obligations of the surety shall survive the bankruptcy, insolvency, liquidation, or reorganization of the licensee, including, without limitation, any bankruptcy, insolvency, liquidation, or reorganization commenced by or against the licensee under any applicable state or federal law, including the United State Bankruptcy Code.

(d) When an action is commenced on a licensee's bond, the licensee shall immediately file a new bond. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

V. Student loan servicers shall designate an individual contact person who shall be a control person of their organization to communicate with department personnel on complaints from student loan borrowers. The contact person shall have authority to facilitate resolution of student loan borrower complaints.

399-H:5 License Grant and Renewal.

I. Upon the filing of the complete application for an initial or renewal license and the payment of the applicable fees, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The commissioner may issue or renew a license if the commissioner finds that:

- (a) The applicant's financial condition is sound.
- (b) The applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently within the purposes and intent of this chapter and in a manner commanding the confidence and trust of the community.
- (c) If the applicant is an individual, such individual is in all respects properly qualified and of good character.
- (d) If the applicant is a partnership, each partner is in all respects properly qualified and of good character.
- (e) If the applicant is a corporation or association, the president, chairperson of the executive committee, senior officer responsible for the corporation's business and chief financial officer or any other person who performs similar functions as determined by the commissioner, each director, each trustee and each shareholder owning 10 percent or more of each class of the securities of such corporation is in all respects properly qualified and of good character.
- (f) If the applicant is a limited liability company, each member is in all respects properly qualified and of good character.
- (g) No person on behalf of the applicant knowingly has made any incorrect statement of a material fact in the application, or in any report or statement made pursuant to this chapter.
- (h) No person on behalf of the applicant knowingly has omitted to state any material fact necessary to give the commissioner any information lawfully required by the commissioner.
- (i) The applicant has paid the investigation fee and the license fee required pursuant to RSA 399-H:4, III.
- (j) The applicant has met any other similar requirements as determined by the commissioner.

II. Each license shall expire on December 31 of each calendar year. A licensee may renew the license by paying the required fee to the banking department on or before December 1 for the ensuing year that begins on January 1. Failure to renew the license shall result in the license terminating on December 31. The commissioner may refuse to issue a renewal license on any ground on which the commissioner might refuse to issue an initial license. No application for renewal of a license shall be denied without reasonable cause and the right of appeal pursuant to RSA 541-A and RSA 541.

III. If the commissioner determines that a check filed with the commissioner to pay a license or renewal fee has been dishonored, the commissioner shall automatically suspend the license or the renewal license that has been issued but is not yet effective.

IV. A license shall not be transferable or assignable.

399-H:6 License Denial; Abandonment.

I. If the commissioner determines that an applicant fails to meet the requirements of this chapter, the commissioner shall notify the applicant of that determination in writing immediately.

II. The commissioner may deny a license application if it is in the public interest and the applicant or the applicant's principal:

- (a) Has filed an application for licensing which was incomplete in any material respect;
- (b) Is the subject of an order entered within the past 5 years by this state, any other state, or federal regulator denying, suspending, or revoking a license or registration;
- (c) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of lending or collection activities;
- (d) Is not qualified on the basis of such factors as experience, knowledge, and financial integrity; or
- (e) Should not be licensed for other good cause shown.

III. Applicants may appeal a license denial in accordance with RSA 541-A and rules of the commissioner.

IV. Applicants may petition the banking department for a rehearing in accordance with RSA 541 if the decision in an appeal conducted pursuant to paragraph III affirms a denial of a license application.

V. The commissioner may deem an application for a license abandoned if the applicant fails to respond to any request for additional information. The commissioner shall notify the applicant, in writing, that if the applicant fails to submit such information not later than 60 days after the date on which such request for information was made, the application shall be deemed abandoned. An application filing fee paid prior to the date an application is deemed abandoned pursuant to this paragraph shall not be refunded. Abandonment of an application pursuant to this paragraph shall not preclude the applicant from submitting a new application for a license.

399-H:7 License Surrender.

I. Not later than 15 days after a licensee ceases to engage in the business of student loan servicing in this state for any reason, including a business decision to terminate operations in this state, license revocation, bankruptcy, or voluntary dissolution, such licensee shall provide written notice of surrender to the commissioner and shall surrender to the commissioner its license for each location in which such licensee has ceased to engage in such business. The written notice of surrender shall identify the location where the records of the licensee will be stored and the name, address, and telephone number of an individual authorized to provide access to the records.

II. Surrender of a license shall not take effect until the commissioner deems the surrender process complete.

III. The surrender of a license shall not reduce or eliminate the licensee's administrative, civil, or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the commissioner to revoke or suspend a license, assess a civil penalty, order restitution, or exercise any other authority provided to the commissioner.

399-H:8 Continuing Obligation to Update.

I. Licensees shall update information concerning the contact person required pursuant to RSA 399-H:4, V on file with the commissioner within 10 days of any change of such information.

II.(a) A licensee shall submit written notification to the department of the addition or deletion of a principal, and shall provide the name and address of each new principal no later than 30 days after such change.

(b) Each new principal shall authorize the commissioner to conduct a background investigation and a criminal history records check.

(c) The commissioner shall investigate management and ownership changes including, but not limited to, each principal's qualifications and business history.

(d) The licensee shall investigate and disclose any injunction or administrative order that has been issued against the principal and whether the principal has been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or convicted of any felony, prior to the commissioner's approval of such change.

III. Licensees shall notify the department of any change of address and the commissioner shall endorse such change of address on the person's license.

IV. No licensee shall transact any business provided for by this chapter under a trade name or any other name different from the name stated in its license without immediately notifying the commissioner, who shall then amend the license accordingly.

V. Significant events shall be reported to the department in writing within 10 calendar days.

VI. If any other information filed with the commissioner becomes materially inaccurate, the licensee shall, within 30 days of the event causing such change, submit an amendment to its application records that corrects the information on file with the commissioner.

VII. Any officer, owner, manager, or agent of any licensee, and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

399-H:9 Reporting.

I. Each licensee shall file, under oath, its financial statement within 90 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles with appropriate note disclosures and, unless the commissioner grants an exemption due to hardship, shall be audited by an independent certified public accountant. The financial statement shall include a balance sheet, income statement, statement of changes in owners' equity, and a cash flow statement. If the financial statement filed under this section is not audited, a certification statement shall be attached and signed by a duly authorized officer of the licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.

II. The department shall publish its analysis of information obtained through licensee reporting requirements as a part of the commissioner's annual report.

III. Any licensee failing to file the financial statement required by this section within the time prescribed may be required to pay to the department a penalty of \$25 for each calendar day the financial statement is overdue up to a maximum penalty of \$2,500 per statement.

IV. The banking department may require additional regular or special reports as it may deem necessary to the proper supervision of licensees under this chapter.

399-H:10 Prohibitions. No student loan servicer shall:

I. Directly or indirectly employ any scheme, device, or artifice to defraud or mislead student loan borrowers.

II. Engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student loan, including, but not limited to, misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student loan, the terms and conditions of the loan agreement, or the borrower's obligations under the loan.

III. Obtain property by fraud or misrepresentation.

IV. Knowingly misapply or recklessly apply student loan payments to the outstanding balance of a student loan.

V. Knowingly or recklessly provide inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness.

VI. Fail to report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit bureau at least annually if the loan servicer regularly reports information to a credit bureau.

VII. Refuse to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided the loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower.

VIII. Negligently make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the commissioner or another governmental agency.

IX. No student loan servicer licensee or person subject to investigation or examination under this section shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records or other information.

X. Engage in abusive acts or practices when servicing a student education loan in this state. An act or practice is abusive in connection with the servicing of a student education loan, if the act or practice does either of the following:

(a) Materially interferes with the ability of a student loan borrower to understand a term or condition of a student education loan.

(b) Takes unreasonable advantage of any of the following:

(1) A lack of understanding on the part of a student loan borrower of the material risks, costs, or conditions of the student education loan.

(2) The inability of a student loan borrower to protect their interests when selecting or using either of the following:

(A) A student education loan; or

(B) A feature, term, or condition of a student education loan.

(3) The reasonable reliance by the student loan borrower on a person engaged in servicing a student education loan to act in the interests of the borrower.

XI. Engage in the business of student loan servicing under any other name or at any other place of business than that named in the license.

399-H:11 Affirmative Duties. Except as otherwise provided pursuant to federal law, a student loan servicer shall:

I. Upon receipt of a written inquiry from a student loan borrower or the representative of a student loan borrower, a student loan servicer shall respond by:

(a) Acknowledging receipt of the inquiry within 10 business days; and

(b) Providing information relating to the inquiry and, if applicable, the action the student loan servicer will take to correct the account, or an explanation of the student loan servicer's position that the borrower's account is correct, within 30 business days.

II. A student loan servicer shall inquire of a student loan borrower how to apply an overpayment to a student education loan. A borrower's instruction on how to apply an overpayment to a student education loan shall stay in effect for any future overpayments during the term of the student education loan until the borrower provides different instructions. For purposes of this paragraph, "overpayment" means a payment on a student education loan in excess of the monthly amount due from the student loan borrower on a student education loan, commonly referred to as a prepayment.

III. A student loan servicer shall apply partial payments in a manner that minimizes late fees and negative credit reporting. If there are multiple loans on a borrower's account with an equal stage of delinquency, a student loan servicer shall satisfy the requirements of this paragraph by applying partial payments to satisfy as many individual loan payments as possible on a borrower's account. For purposes of this paragraph, "partial payment" means a payment on a student education loan account that contains multiple individual loans in an

amount less than the amount necessary to satisfy the outstanding payment due on all loans in the student education loan account, commonly referred to as an underpayment.

IV. The following requirements shall be applicable to a student loan servicer in the event of the sale, assignment, or other transfer of the servicing of a student education loan that results in a change in the identity of the person to whom a student loan borrower is required to send payments or direct any communication concerning the student education loan:

- (a) As a condition of a sale, an assignment, or any other transfer of the servicing of a student education loan, a student loan servicer shall require the new student loan servicer to honor all benefits originally represented as available to a student loan borrower during the repayment of the student education loan and preserve the availability of those benefits, including any benefits for which the student loan borrower has not yet qualified;
- (b) A student loan servicer shall transfer to the new student loan servicer for the student education loan all information regarding the student loan borrower, the account of the borrower, and the student education loan of the borrower. The information shall include the repayment status of the student loan borrower and any benefits associated with the student education loan of the borrower;
- (c) The student loan servicer shall complete the transfer of information required pursuant to subparagraph (b) within 45 calendar days after the sale, assignment, or other transfer of the servicing of the student education loan; and
- (d) The sale, assignment, or other transfer of the servicing of a student education loan shall be completed at least 7 calendar days before the next payment on the student education loan is due.

V. A student loan servicer who obtains the right to service a student education loan shall adopt policies and procedures to verify that the student loan servicer has received all information regarding the student loan borrower, the account of the student loan borrower, and the student education loan of the student loan borrower including, but not limited to, the repayment status of the student loan borrower and any benefits associated with the student education loan of the student loan borrower.

VI. A student loan servicer shall evaluate a student loan borrower for eligibility for an income-driven repayment program prior to placing the borrower in forbearance or default, if an income-driven repayment program is available to the borrower.

399-H:12 Consumer Complaints.

I. Consumer complaints naming licensees under this chapter, which are filed in writing with the office of the commissioner, shall be forwarded via electronic, certified, or registered mail to the licensee for response within 10 days of receipt by the department.

Licensees shall, within 10 days after receipt of such complaint, send a written acknowledgment thereof to the consumer and the banking department. Not later than 30 days following receipt of such complaint, the licensee shall conduct an investigation of the complaint and either:

- (a) Make appropriate corrections in the account of the consumer and transmit to the consumer and the banking department written notification of such corrections, including documentary evidence thereof; or
- (b) Transmit a written explanation or clarification to the consumer and the banking department which sets forth, to the extent applicable, the reasons why the licensee believes its actions are correct, including copies of documentary evidence thereof.

II. A licensee who fails to respond to consumer complaints as required by this section within the time prescribed shall pay to the commissioner a penalty of \$50 for each day such response is overdue. For purposes of this section, the date of transmission shall be the date such response is received by the commissioner.

III.(a) Licensees which, because of extenuating circumstances beyond the control of the licensee, are unable to comply with the time frames prescribed in this section, may make written request to the commissioner for a waiver of such time frames. Waivers shall not be granted or considered unless the request for the waiver:

- (1) Is received by the banking department within 20 calendar days following the licensee's receipt of the complaint;
 - (2) Specifies the reason for the request; and
 - (3) Specifies a date certain by which the licensee shall comply with the provisions of this section.
- (b) Requests for waivers shall be either granted or denied within 5 calendar days of receipt by the banking department.

399-H:13 Examinations and Investigations.

I. The commissioner or the commissioner's duly authorized representative shall, in accordance with this chapter and RSA 383 and, with or without notice to the licensee or person, examine or investigate the business affairs of any licensee or any other person subject to this chapter, whether licensed or not, or more often when necessary, as the commissioner deems necessary to determine compliance with this chapter and the rules adopted pursuant to it. In determining compliance, the commissioner or the duly authorized representative may examine the books, accounts, records, files, and other documents, whether electronically stored or otherwise, and any other matters of any licensee or person. The commissioner or the duly authorized representative shall have and be given free access to the office and places of business, files, safes, and vaults of all such persons, and may require the attendance of any person and

to examine him or her under oath relative to such loans or such business or to the subject matter of any examination or investigation and may require the production of books, accounts, papers, and records of such persons.

II. The commissioner may, in his or her discretion, accept all or part of a report of examination of a student loan servicer, certified to by the regulatory supervisory official of another state. To avoid unnecessary duplication of examinations, the commissioner, insofar as he or she deems it practicable in administering this section, may cooperate with the regulators of other states, the Federal Trade Commission, other federal regulators, or their successors in conducting examinations and investigations.

III. The department may subpoena witnesses and administer oaths and to compel, by subpoena duces tecum, the production of all books, records, files, and other documents and materials whether electronically stored or otherwise relevant to its investigation at any time in any matter over which the department has jurisdiction, control, or supervision pertaining to the provisions of this chapter.

IV. When the department requests a loan list or other similar summary document from a licensee from which to select particular files for review, the licensee shall ensure that the list is received by the department within 7 calendar days after the licensee's receipt of the request from the department. The licensee shall provide the department the files it selects from the loan list within 14 calendar days after the licensee's receipt of the request from the department. The licensee shall ensure the department receives any other information requested within 21 days of the licensee's receipt of the request. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the department shall be sufficient cause for license revocation, suspension, or denial.

V. Every person being examined, and all of the officers, directors, employees, agents, and representatives of such person shall make freely available to the commissioner or the commissioner's examiners the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination.

VI. The expense of such examination or investigation shall be chargeable to and paid by the licensee or person being examined. The payment shall be calculated by the same method as for payments by institutions for cost of examinations under RSA 383:11.

VII. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the commissioner's finding that the person violated this chapter or a rule or order under this chapter, or the person charged with the violation defaults, the commissioner may recover the cost of the investigation, in addition to any other penalty provided for under this chapter.

VIII. If the commissioner or examiner finds any accounts or records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person being examined if such person has failed to maintain, complete, or correct such records or accounting after the commissioner or examiner has given him or her written notice and a reasonable opportunity to do so.

IX.(a) Upon receipt of a written report of examination, the licensee shall have 30 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report, recommend any changes, and set forth in writing the remedial course of action the licensee will pursue to correct any reported deficiencies outlined in the report.

(b) If so requested by the person examined, within the period allowed in subparagraph (a), or if deemed advisable by the commissioner without such request, the commissioner shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and issuance of his or her order thereon. If no such closed hearing has been requested or held, the examination report, with such modifications, if any, thereto as the commissioner deems proper, shall be accepted by the commissioner and filed upon expiration of the review period provided for in subparagraph (a). The report shall in any event be so accepted and filed within 6 months after final hearing thereon.

(c) All reports pursuant to this section shall be confidential and shall not be available for public inspection. The comments and recommendations of the examiner shall also be confidential information and shall not be available for public inspection.

X. In order to carry out the purposes of this section, the commissioner may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations.

(b) 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.

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the student loan servicer licensee or person subject to this chapter.

(d) Accept and rely on examination or investigation reports made by other government officials, within or without this state.

(e) Accept audit reports made by an independent certified public accountant for the student loan servicer licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the commissioner.

399-H:14 Compliance with Federal Law. A student loan servicer shall comply with all applicable federal laws and regulations relating to student loan servicing, including, but not limited to, the Truth-in-Lending Act, 15 U.S.C. section 1601 et seq., as from time to time amended, and the regulations promulgated thereunder. In addition to any other remedies provided by law, a violation of any such federal law or regulation shall be deemed a violation of this chapter and a basis upon which the commissioner may take enforcement action under this chapter.

399-H:15 Recordkeeping.

I. Each student loan servicer licensee shall maintain adequate records of each student education loan transaction for not less than 2 years following the final payment on such student education loan or the assignment of such student education loan, whichever occurs first, or such longer period as may be required by the commissioner or any other provision of law.

II. If requested by the commissioner, each student loan servicer shall make such records available or send such records to the commissioner by secure electronic transmission, registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than 5 business days after requested by the commissioner to do so. Upon request, the commissioner may grant a licensee additional time to make such records available or send the records to the commissioner.

399-H:16 Powers of the Commissioner.

I. The commissioner shall have the power to subpoena witnesses and administer oaths in any adjudicative proceeding and to compel, by subpoena duces tecum, the production of documents, papers, books, records, files, and other evidence, whether electronically stored or otherwise, before the commissioner in any matter over which the commissioner has jurisdiction, control, or supervision pertaining to the provisions of this chapter. The commissioner shall have the power to administer oaths and affirmation to any person whose testimony is required. If any person shall refuse to obey any such subpoena or to give testimony or to produce evidence as required thereby, any justice of the superior court may, upon application and proof of such refusal, order the issuance of a subpoena, or subpoena duces tecum, out of the superior court, for the witness to appear before the superior court to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the superior court, the clerk shall issue such subpoena, as directed, requiring the person to whom it is directed to appear at the time and place therein designated. If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the commissioner may apply to any justice of the superior court who, after proof of such refusal, shall issue such citation, directed to any sheriff, for the arrest of such person, and, upon such person's being brought before such justice, proceed to a hearing of the case. Any person who refuses to comply with a subpoena shall be subject to a fine not exceeding \$10,000 or by imprisonment, or both.

II. The commissioner may adopt rules, pursuant to RSA 541-A, relative to the administration and enforcement of this chapter.

III. The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this chapter.

IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

V. The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.

VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this chapter.

VII. In adopting rules, preparing forms, setting standards, and performing examinations, investigations, and other regulatory functions authorized by the provisions of this chapter, the commissioner may cooperate, and share information pursuant to confidentiality agreements, with regulators in this state and with regulators in other states and with federal regulators in order to implement the policy of this chapter in an efficient and effective manner and to achieve maximum uniformity in the form and content of applications, reports, and requirements for student loan servicers, where practicable.

VIII. The commissioner may set fees to be charged to cover the reasonable costs of copying documents and producing reports.

IX. The commissioner may share information with state and federal regulators, and may share information with law enforcement agencies for the purposes of criminal investigations.

399-H:17 Order to Show Cause.

I. The commissioner may issue an order requiring a person to whom any license has been granted or any person under the commissioner's jurisdiction to show cause why the license should not be revoked, suspended, or penalties imposed, or both, if the commissioner finds that:

(a) The licensee has violated any provision of this chapter or any rule or order lawfully made pursuant to this chapter.

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted a denial of such license. No abatement of the license fee shall be made if the license is surrendered, revoked, or suspended prior to the expiration of the period for which it was issued.

II.(a) The order shall give reasonable notice of the opportunity for a hearing and shall state the reasons for the issuance of the order.

(b) Valid delivery of such order shall be by hand or certified mail at the last known principal office of the licensee or respondent or to a principal, control person, or legal representative of the licensee or respondent.

(c) A hearing, if requested, shall be scheduled not later than 10 calendar days after the written request for such hearing is received by the commissioner.

(d) Within 30 calendar days from the date of the hearing the commissioner shall enter an order making such disposition of the matter as the facts require.

(e) If the person to whom an order to show cause is issued fails to appear at a hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the order to show cause, the allegations of which may be deemed to be true.

(f) If the person to whom an order to show cause or other order is issued fails to request a hearing within 30 calendar days of receipt or valid delivery of the order and no hearing is ordered by the commissioner, then such person shall be deemed in default, and the order shall, on the 31st day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

III. The department may take action for immediate suspension of a license, pursuant to RSA 541-A:30, III.

IV. If a licensee is a partnership, association, corporation, or entity however organized, it shall be sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has so acted or failed to act in behalf of said licensee as would be cause for suspending or revoking a license to such party as an individual.

399-H:18 Cease and Desist Orders.

I. The department may issue a cease and desist order against any person who it has reasonable cause to believe has violated or is about to violate the provisions of this chapter or any rule or order under this chapter.

II.(a) The order shall be calculated to give reasonable notice of the opportunity for a hearing and shall state the reasons for the issuance of the order.

(b) Valid delivery of such order shall be by hand or certified mail at the last known principal office of the person.

(c) A hearing, if requested, shall be held not later than 10 days after the written request for such hearing is received by the commissioner.

(d) Within 30 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as issued or as amended by the commissioner.

(e) If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

(f) If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt or valid delivery of such order and no hearing is ordered by the commissioner, then such person shall likewise be deemed in default, and the order shall, on the 31st day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

III. If any person refuses to comply with the commissioner's order, an action may be brought by the attorney general on the commissioner's behalf in any superior court in this state to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance of such violation. In any such action, an order or judgment may be entered awarding a temporary or permanent injunction, and awarding the commissioner or the attorney general or both costs in bringing such action. Any person who fails to comply with such injunction shall be subject to a fine not exceeding \$10,000 or imprisonment, or both.

399-H:19 Penalties.

I. Any person or the members, officers, directors, agents, and employees thereof who knowingly violate any provision of this chapter shall be guilty of a misdemeanor if a natural person, or a felony if any other person, in addition to any other penalty under this section.

II. Any person who knowingly violates any provision of this chapter, or rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension or revocation of any registration or license, or an administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this chapter for violation of the provision to which such rule or order relates. Each of the acts specified shall

constitute a separate violation and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

III. Any person who negligently violates any provision of this chapter, or rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or the imposition of an administrative fine not to exceed \$1,500 for each violation, in lieu of or in addition to suspension or revocation as may be applicable under this chapter for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

IV. Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in any act constituting a violation of this chapter, and every licensee or person acting as a common law agent who materially aids in any act constituting a violation of this chapter, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

V. Any person who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority shall be guilty of a misdemeanor.

VI. Any person who engages in the business of a student loan servicer in this state or with consumers located in this state without first obtaining a license, shall not collect, receive, or retain any principal, interest, or charges whatsoever on any purported student education loan contract.

VII. The attorney general on the commissioner's behalf, may, with or without prior administrative action by the commissioner, bring an action against any person in any superior court in this state to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner or attorney general to post a bond. Any person who fails to comply with an injunction, restraining order, or writ of mandamus shall be subject to a fine not exceeding \$10,000 or imprisonment, or both. In a proceeding in superior court under this paragraph where the state prevails, the commissioner and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

399-H:20 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity shall not affect other provisions or any other application of this act which can be given effect without invalid provision or application, and for this purpose the provisions of this act are declared severable.

3 Bank Commissioner; Examination Costs. Amend RSA 383:11, II(c) to read as follows:

(c) From consumer credit division entities. Each entity subject to the supervision of the commissioner under the provisions of RSA 361-A, RSA 397-A, RSA 399-A, RSA 399-D, ~~and~~ RSA 399-G, **and RSA 399-H** shall be charged and shall pay such proportion of the balance applicable to the consumer credit administration division under the department's accounting unit designation as the gross revenue received from the total dollar volume of loans made, originated, funded, or brokered, or debt adjustment contracts entered into, or mortgage **or student loan** servicing fees received or money transmitted from each entity's New Hampshire business bears to the total gross revenue received from the total dollar volume of the loans made, originated, funded, or brokered, or debt adjustment contracts entered into, or mortgage **or student loan** servicing fees received, or money transmitted, from New Hampshire business by all entities during the preceding calendar year ending December 31, as shown by their reports to the commissioner.

4 Repeal. RSA 383:9-c, relative to educational lending institutions, is repealed.

5 Effective Date. This act shall take effect January 1, 2021.

LBAO
20-2682
Amended 3/23/20

HB 1500-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2020-0980h)

AN ACT relative to a student loan bill of rights and a student loan ombudsman.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$43,000+	\$90,000+	\$96,000+
Funding Source:	☐ General ☐ Education ☐ Highway ☒ Other - Assessment of licensed and chartered entities			

METHODOLOGY:

This bill requires the Commissioner of the Banking Department to designate a student loan ombudsman within the Department and establishes a student loan servicer license. The Banking Department assumes the Student Loan Ombudsman will be a full time position. The Department does not have statutory authority to contract with an outside party to provide these services. The Department states it would need to create a new Student Loan Ombudsman position at labor grade 25 consistent with the State job classification system. The Department provided the following cost estimate for the new position:

Student Loan Ombudsman	FY 2021	FY 2022	FY 2023
Salary , Labor Grade 25	\$23,600	\$53,000	\$55,400
Benefits	\$14,200	\$30,700	\$32,200
Other Expenses: Equipment, Office Space, General Supplies etc.	\$5,100	\$5,800	\$8,000
Total Cost	\$42,900	\$89,500	\$95,600

The Banking Department is self-funded. The Department's costs and expenses, including personnel, are paid by fees, fines, and assessments of licensed and chartered entities.

Regarding establishment of the student loan servicer license, any fiscal impact on the Department's revenue and expenditures is indeterminable at this time because the number of possible licenses is not known.

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Class B Misdemeanor	\$54	\$56
Class A Misdemeanor	\$77	\$79
Simple Criminal Case	\$300	\$314
Routine Criminal Felony Case	\$484	\$498
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor		

	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2019 Average Cost of Incarcerating an Individual	\$44,400	\$44,400
FY 2019 Annual Marginal Cost of a General Population Inmate	\$5,071	\$5,071
FY 2019 Average Cost of Supervising an Individual on Parole/Probation	\$576	\$576
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

AGENCIES CONTACTED:

Departments of Banking, Justice and Corrections, Judicial Branch, Judicial Council and New Hampshire Association of Counties