

S.332

An act relating to regulating student loan servicers

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 8 V.S.A. § 2102 is amended to read:

§ 2102. APPLICATION FOR LICENSE

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(b) At the time of making an application, the applicant shall pay to the Commissioner a fee for investigating the application and a license or registration fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

\* \* \*

(13) For an application for a loan servicer license under chapter 85 of this title, \$1,000.00 as a license fee and \$1,000.00 as an application and investigation fee.

(14) For an application for a student loan servicer licensure under chapter 86 of this title, \$1,000.00 as a license fee and \$500.00 as an application and investigation fee.

\* \* \*

Sec. 2. 8 V.S.A. § 2109(a) is amended to read:

(a) On or before December 1 of each year, every licensee shall renew its license or registration for the next succeeding calendar year and shall pay to the Commissioner the applicable renewal of license or registration fee. At a

minimum, the licensee or registree shall continue to meet the applicable standards for licensure or registration. At the same time, the licensee or registree shall maintain with the Commissioner any required bond in the amount and of the character as required by the applicable chapter. The annual license or registration renewal fee shall be:

\* \* \*

(13) For a loan servicer license under chapter 85 of this title, ~~\$1,000.00~~  
\$1,000.00.

(14) For a student loan servicer license under chapter 86 of this title,  
\$1,000.00.

Sec. 3. 8 V.S.A. chapter 86 is added to read:

CHAPTER 86. STUDENT LOAN SERVICERS

§ 3001. DEFINITIONS

As used in this chapter:

(1) “Borrower” means:

(A) a resident of this State who has agreed to pay, or shares legal responsibility to pay, a student loan; or

(B) a person who shares legal responsibility to repay a student loan with a person described in subdivision (1)(A) of this section.

(2) “Credit reporting agency” has the same meaning as in 9 V.S.A.

§ 2480a.

(3) “Federal student loan” means a loan made, guaranteed, or insured under Title IV of the federal Higher Education Act of 1965, as amended.

(4) “Federal student loan agreement” means, with respect to a federal student loan, each of the credit agreement and the promissory note for the federal student loan, or any similar agreement or instrument governing the terms and conditions of the federal student loan, to the extent that the form of any note, agreement, or instrument is required by, or has been approved by, the U.S. Department of Education.

(5) “Servicing” means:

(A)(i) receiving payments, or notification of payments, on a student loan from a borrower; and

(ii) applying payments to the borrower’s account pursuant to the terms of a student loan or of a contract governing the servicing of the student loan;

(B) maintaining account records for a student loan that a borrower has agreed to pay or shares legal responsibility to repay;

(C) communicating with a borrower regarding a student loan on behalf of an owner or holder of the student loan; or

(D) interacting with a borrower, including to help prevent default on obligations arising from a student loan, to facilitate the activities described in this subdivision (5).

(6)(A) “Student loan” means a loan primarily for the purpose of financing a postsecondary education or the costs of attending a postsecondary institution, including a student’s tuition, fees, books, supplies, room and board, living expenses, transportation, and other personal expenses.

(B) “Student loan” includes a loan made to refinance a student loan described in subdivision (6)(A) of this section or to consolidate such a loan with another loan.

(C) “Student loan” does not include a loan under an open-end credit plan, as defined in Regulation Z, 12 C.F.R. § 1026.2, or a loan that is secured by real property, regardless of the purpose for the loan.

(7) “Student loan servicer” means a person, regardless of location, that engages in servicing or is responsible for servicing a student loan.

#### § 3002. EXCLUSIONS

(a) This chapter does not apply to:

(1) a depository institution, as defined in section 2101 of this title, or a wholly-owned subsidiary of a depository institution;

(2) a public postsecondary institution or a private nonprofit postsecondary institution servicing a student loan it extended to the borrower;

(3) the Vermont Student Assistance Corporation or any agency, department, or instrumentality of this State; or

(4) the United States or any department, agency, or instrumentality thereof, provided that this chapter does apply to a nongovernmental person that performs student loan servicing pursuant to a contract with the United States or any department, agency, or instrumentality thereof.

§ 3003. STUDENT LOAN OMBUDSPERSON

(a) The Commissioner shall designate and support a student loan ombudsperson to provide assistance and education to borrowers.

(b) The student loan ombudsperson, in consultation with the Commissioner, may:

(1) receive, review, and attempt to resolve complaints from borrowers, including in collaboration with postsecondary institutions, student loan servicers, and any other participants in student loan lending, including originators servicing their own student loans;

(2) compile and analyze data on borrower complaints;

(3) assist borrowers in understanding their rights and responsibilities under the terms of their student loans;

(4) provide information to the public, State agencies, members of the General Assembly, and others regarding the problems and concerns of borrowers and make recommendations for resolving those problems and concerns;

(5) disseminate information concerning the availability of the student loan ombudsperson to assist borrowers and potential borrowers, postsecondary institutions, student loan servicers, and any other participants in student loan lending with concerns regarding servicing; and

(6) take any other actions necessary or reasonably related to the actions authorized in this subsection.

§ 3004. LICENSE REQUIRED

A person shall not act as a student loan servicer without first obtaining a student loan servicing license from the Commissioner pursuant to the application procedures set forth in section 2102 of this title.

§ 3005. EXEMPTION FROM APPLICATION PROCEDURES:

AUTOMATIC LICENSURE

(a)(1) A person seeking to act within this State as a student loan servicer is exempt from the application procedures described in subsections 2102(a) and 2102(c)–(h) of this title, if and to the extent that the Commissioner determines that the servicing performed is conducted pursuant to a contract awarded to the person by the U.S. Secretary of Education.

(2) The Commissioner shall prescribe the procedure to document eligibility for an exemption pursuant to this subsection.

(b) With regard to a person who the Commissioner determines is exempt under subsection (a) of this section, the Commissioner shall automatically:

(A) issue a student loan servicing license to the person upon payment of the fees required in subdivision 2102(b)(14) of this title; and

(B) renew the license upon payment of the fees required in subdivision 2109(a)(14) of this title.

(c) A person holding a student loan servicing license issued by the Commissioner under subsection (b) of this section shall not engage in any servicing other than servicing conducted pursuant to a contract awarded to the person by the U.S. Secretary of Education unless:

(1) the person has completed the application procedures described in subsections 2102(a) and 2102(c)–(h) of this title;

(2) the Commissioner has determined that the person meets the requirements of section 2103 of this title.

(d) A person holding a student loan servicing license issued by the Commissioner under subsection (b) of this section:

(1) may act as a student loan servicer until the contract awarded by the U.S. Secretary of Education expires or is terminated or revoked;

(2) shall provide written notice to the Commissioner not later than seven days after receiving notice of the expiration, revocation, or termination of the contract;

(3) subject to providing timely notice to the Commissioner, may continue to act as a student loan servicer until 30 days after the effective date of the expiration, revocation, or termination of the contract; and

(4) shall not further engage in servicing after the 30-day period expires unless the person obtains a license pursuant to section 3004 of this title.

(e) With respect to student loan servicing not conducted pursuant to a contract awarded by the U.S. Secretary of Education, this section does not prevent the Commissioner from issuing an order to temporarily or permanently prohibit any person holding a license issued by the Commissioner under subsection (b) of this section from engaging in such servicing.

(f) Nothing in this section shall prevent the Commissioner from issuing a cease and desist order or obtaining an injunction against any student loan servicer to cease activities in violation of this chapter or 9 V.S.A. § 2453(a).

#### § 3006. APPLICATION FOR LICENSE; ADDITIONAL INFORMATION

In addition to the information required by section 2102 of this title, a person who applies for a student loan servicer license pursuant to section 3004 of this title shall provide in its application a current schedule of the ranges and categories of the fees it charges to borrowers for servicing.



§ 3007. DUTIES OF STUDENT LOAN SERVICERS

Except as otherwise provided in federal law, a federal student loan agreement, or a contract between the federal government and a student loan servicer:

(1) At the time a student loan servicer obtains the right to service a student loan, the servicer shall disclose in a conspicuous written notice to the borrower:

(A) a current schedule of the ranges and categories of the fees it charges to borrowers for servicing;

(B) that the servicer is licensed by the Commissioner; and

(C) that the borrower may submit complaints about the servicer to the Commissioner.

(2) Upon receiving a written inquiry from a borrower, or his or her authorized representative, or the student loan ombudsperson concerning the borrower's account, a student loan servicer shall:

(A) within 10 days, acknowledge receipt of the written inquiry; and

(B) within 30 days, provide information relating to the inquiry and, if applicable, the action the servicer will take to correct the account or an explanation for its determination that the borrower's account is correct.

(3) A student loan servicer shall respond within 15 days to a communication, other than an inquiry described in subsection 2(A), from the

student loan ombudsperson or within a shorter reasonable time as the student loan ombudsperson requests in his or her communication.

(4) If a borrower makes a payment that exceeds the monthly amount due on the borrower's account, a student loan servicer shall request instruction on how to apply the overpayment to the loan and shall follow the instruction for future overpayments until the borrower provides different instructions.

(5)(A) If a borrower makes a payment that is less than the monthly amount due on the borrower's account, a student loan servicer shall apply the partial payment in a manner that minimizes late fees and negative credit reporting.

(B) If a borrower has multiple loans on his or her account that are equally delinquent, a student loan servicer shall apply partial payments to satisfy as many individual loan payments on the account as possible.

(6) A student loan servicer shall notify a borrower of the occurrence, nature, and extent of a delinquency or default not later than 30 days after it occurs.

(7) If a sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the person to whom a borrower is required to send payments or direct any communication concerning the student loan:

(A)(i) As a condition of the sale, assignment, or transfer, a student loan servicer shall require the new student loan servicer to honor all benefits originally represented as available to the borrower, upon the same terms and conditions, during the repayment of the student loan and preserve the availability of the benefits, including any benefits for which the borrower has not yet qualified; or

(ii) if the student loan servicer is not also the owner or holder of the student loan, or is not acting on behalf of the owner or holder, the student loan servicer shall provide the information necessary for the new servicer to identify and honor all benefits originally represented as available to the borrower, upon the same terms and conditions, during the repayment of the student loan and preserve the availability of the benefits, including any benefits for which the borrower has not yet qualified.

(B)(i) Not later than 45 days after the sale, assignment, or transfer, the student loan servicer shall transfer to the new servicer all records concerning the borrower, the borrower's account, and the borrower's student loan, including records concerning the borrower's repayment status and any benefits associated with the student loan of the borrower.

(ii) A student loan servicer shall adopt policies and procedures to verify that it has received the records described in this subdivision (B).

(C) Not later than seven days before the next payment on the loan is due, the parties shall provide notice of the sale, assignment, or transfer to the borrower, which shall include:

(i) the identity and contact information of the new student loan servicer;

(ii) the effective date of the sale, assignment, or transfer; and

(iii) the date on which the current student loan servicer will no longer accept payments.

(D) The new student loan servicer shall honor all benefits previously represented as available to the borrower, upon the same terms and conditions, during the repayment of the student loan and preserve the availability of such benefits, including any benefits for which the borrower has not yet qualified.

(8) Upon request of the Commissioner, a student loan servicer shall provide a report to the Commissioner concerning its activity in this State that includes:

(A) the number of student loans and borrowers whose student loans the servicer is servicing;

(B) the type and characteristics of the student loans the servicer is servicing;

(C) the number of student loans in default and the number of borrowers with student loans in default, including a breakdown of the borrowers and student loans with 30-, 60-, and 90-day delinquencies;

(D) information concerning the servicer's loss mitigation activities, including the details of the servicer's workout arrangements, if applicable; and

(E) other information the Commissioner requests.

(9) A student loan servicer shall properly evaluate whether a borrower is eligible for an income-based repayment plan, loan forgiveness program, or other student loan repayment plan or program before placing the borrower in forbearance or default.

(10) A student loan servicer shall safeguard and account for any money handled for a borrower and act with reasonable skill, care, and diligence.

#### § 3008. PROHIBITED PRACTICES

A student loan servicer shall not:

(1) defraud, mislead, harass, or intimidate a borrower;

(2) employ, directly or indirectly, any scheme, device, or artifice to defraud or mislead a borrower;

(3) communicate with a borrower in any manner designed to harass or intimidate the borrower;

(4) misstate any material fact, or misrepresent or omit a material fact necessary in order to make any statements made not misleading, concerning a

student loan or servicing, including the amount, nature, or terms of a fee or payment due, the terms or conditions of a loan agreement, a borrower's payment history, or a borrower's obligations;

(5) misapply or recklessly apply payments to the outstanding balance of a student loan;

(6) refuse to communicate with an authorized representative of a borrower who provides written proof of authority signed by the borrower, provided that a student loan servicer may adopt reasonable procedures to verify whether a person is authorized to act on behalf of a borrower;

(7) make a false statement, or misrepresent or omit a material fact necessary in order to make any statements made not misleading, concerning information or reports filed with a State or federal agency, or an investigation or examination conducted by the Commissioner, another state agency, or a federal agency; or

(8) violate an applicable federal law or regulation, including the federal Consumer Credit Protection Act, 15 U.S.C. chapter 41 and the Fair Credit Reporting Act, 15 U.S.C. §§ 1681–1681x.

Sec. 4. 16 V.S.A. § 2821 is amended to read:

§ 2821. STUDENT ASSISTANCE CORPORATION; PURPOSE

\* \* \*

(c) Notwithstanding any general or special law to the contrary, the provisions of 8 V.S.A. ~~chapter 73~~ chapters 73 and 86 shall not apply to the Corporation or to any loan heretofore or hereafter made or serviced by the Corporation in accordance with this title.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2020.