



Sen. Daniel Biss

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1 AMENDMENT TO SENATE BILL 1351

2 AMENDMENT NO. _____. Amend Senate Bill 1351, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "ARTICLE 1. GENERAL PROVISIONS

6 "Section 1-1. Short title. This Act may be cited as the
7 Student Loan Servicing Rights Act.

8 Section 1-5. Definitions. As used in this Act:

9 "Applicant" means a person applying for a license pursuant
10 to this Act.

11 "Borrower" or "student loan borrower" means a person who
12 has received or agreed to pay a student loan for his or her own
13 educational expenses.

14 "Cosigner" means a person who has agreed to share
15 responsibility for repaying a student loan with a borrower.

1 "Department" means the Department of Financial and
2 Professional Regulation.

3 "Division of Banking" means the Division of Banking of the
4 Department of Financial and Professional Regulation.

5 "Federal loan borrower eligible for referral to a repayment
6 specialist" means a borrower who possesses any of the following
7 characteristics:

8 (1) requests information related to options to reduce
9 or suspend his or her monthly payment;

10 (2) indicates that he or she is experiencing or
11 anticipates experiencing financial hardship, distress, or
12 difficulty making his or her payments;

13 (3) has missed 2 consecutive monthly payments;

14 (4) is at least 75 days delinquent;

15 (5) is enrolled in a discretionary forbearance for more
16 than 9 of the previous 12 months;

17 (6) has rehabilitated or consolidated one or more loans
18 out of default within the past 12 months; or

19 (7) has not completed a course of study, as reflected
20 in the servicer's records, or the borrower identifies
21 himself or herself as not having completed a program of
22 study.

23 "Federal education loan" means any loan made, guaranteed,
24 or insured under Title IV of the federal Higher Education Act
25 of 1965.

26 "Income-driven payment plan certification" means the

1 documentation related to a federal student loan borrower's
2 income or financial status the borrower must submit to renew an
3 income-driven repayment plan.

4 "Income-driven repayment options" includes the
5 Income-Contingent Repayment Plan, the Income-Based Repayment
6 Plan, the Income-Sensitive Repayment Plan, the Pay As You Earn
7 Plan, the Revised Pay As You Earn Plan, and any other federal
8 student loan repayment plan that is calculated based on a
9 borrower's income.

10 "Licensee" means a person licensed pursuant to this Act.

11 "Other repayment plans" means the Standard Repayment Plan,
12 the Graduated Repayment Plan, the Extended Repayment Plan, or
13 any other federal student loan repayment plan not based on a
14 borrower's income.

15 "Private loan borrower eligible for referral to a repayment
16 specialist" means a borrower who possesses any of the following
17 characteristics:

18 (1) requests information related to options to reduce
19 or suspend his or her monthly payments; or

20 (2) indicates that he or she is experiencing or
21 anticipates experiencing financial hardship, distress, or
22 difficulty making his or her payments.

23 "Requester" means any borrower or cosigner that submits a
24 request for assistance.

25 "Request for assistance" means all inquiries, complaints,
26 account disputes, and requests for documentation a servicer

1 receives from borrowers or cosigners.

2 "Secretary" means the Secretary of Financial and
3 Professional Regulation, or his or her designee, including the
4 Director of the Division of Banking of the Department of
5 Financial and Professional Regulation.

6 "Servicing" means: (1) receiving any scheduled periodic
7 payments from a student loan borrower or cosigner pursuant to
8 the terms of a student loan; (2) applying the payments of
9 principal and interest and such other payments with respect to
10 the amounts received from a student loan borrower or cosigner,
11 as may be required pursuant to the terms of a student loan; and
12 (3) performing other administrative services with respect to a
13 student loan.

14 "Student loan" or "loan" means any federal education loan
15 or other loan primarily for use to finance a postsecondary
16 education and costs of attendance at a postsecondary
17 institution, including, but not limited to, tuition, fees,
18 books and supplies, room and board, transportation, and
19 miscellaneous personal expenses. "Student loan" includes a
20 loan made to refinance a student loan.

21 "Student loan" shall not include an extension of credit
22 under an open-end consumer credit plan, a reverse mortgage
23 transaction, a residential mortgage transaction, or any other
24 loan that is secured by real property or a dwelling.

25 "Student loan" shall not include an extension of credit
26 made by a postsecondary educational institution to a borrower

1 if one of the following apply:

2 (1) The term of the extension of credit is no longer
3 than the borrower's education program.

4 (2) The remaining, unpaid principal balance of the
5 extension of credit is less than \$1,500 at the time of the
6 borrower's graduation or completion of the program.

7 (3) The borrower fails to graduate or successfully
8 complete his or her education program and has a balance due
9 at the time of his or her disenrollment from the
10 postsecondary institution.

11 "Student loan servicer" or "servicer" means any person
12 engaged in the business of servicing student loans.

13 "Student loan servicer" shall not include:

14 (1) a bank, savings bank, savings association, or
15 credit union organized under the laws of the State or any
16 other state or under the laws of the United States;

17 (2) a wholly owned subsidiary of any bank, savings
18 bank, savings association, or credit union organized under
19 the laws of the State or any other state or under the laws
20 of the United States;

21 (3) an operating subsidiary where each owner of the
22 operating subsidiary is wholly owned by the same bank,
23 savings bank, savings association, or credit union
24 organized under the laws of the State or any other state or
25 under the laws of the United States;

26 (4) the Illinois Student Assistance Commission and its

1 agents;

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

5 (6) a licensed debt management service under the Debt
6 Management Service Act, except to the extent that the
7 organization acts as a subcontractor, affiliate, or
8 service provider for an entity that is otherwise subject to
9 licensure under this Act;

10 (7) any collection agency licensed under the
11 Collection Agency Act that is collecting post-default
12 debt;

13 (8) in connection with its responsibilities as a
14 guaranty agency engaged in default aversion, a State
15 nonprofit private institution or organization having an
16 agreement with the U.S. Secretary of Education under
17 Section 428(b) of the Higher Education Act (20 U.S.C.
18 1078(B)); or

19 (9) a State institution or a nonprofit private
20 organization designated by a governmental entity to make or
21 service student loans, provided in each case that the
22 institution or organization services fewer than 20,000
23 student loan accounts of borrowers who reside in Illinois.

24

ARTICLE 5. STUDENT LOAN BILL OF RIGHTS

1 Section 5-5. General provisions.

2 (a) A servicer shall not engage in any unfair or deceptive
3 practice toward any borrower or cosigner or misrepresent or
4 omit any material information in connection with the servicing
5 of a student loan, including, but not limited to,
6 misrepresenting the amount, nature, or terms of any fee or
7 payment due or claimed to be due on a student loan, the terms
8 and conditions of the student loan agreement, or the borrower's
9 or cosigner's obligations under the student loan or the terms
10 of any repayment plans.

11 (b) A servicer shall not misapply payments made by a
12 borrower to the outstanding balance of a student loan.

13 (c) A servicer shall oversee third parties, including
14 subservicers, debt collectors, independent contractors,
15 subsidiaries, affiliates, or other agents, to ensure that those
16 companies comply with this Article 5.

17 Section 5-10. Payment processing.

18 (a) A servicer shall credit borrower and cosigner payments
19 promptly and accurately.

20 (b) A servicer shall provide borrowers and cosigners with
21 prompt notice if the servicer changes the address to which the
22 borrower or cosigner needs to send payments.

23 (c) A servicer shall not charge a penalty to a borrower or
24 cosigner if a student loan payment is received at an address
25 used for payments for a period of 90 days after the change in

1 address.

2 (d) A servicer shall not misrepresent the delinquent amount
3 of the loan on any call with a borrower or cosigner.

4 (e) A servicer shall allow a borrower or cosigner to
5 specify instructions as to how an overpayment should be applied
6 to the balance of the loan as consistent with the promissory
7 note.

8 Section 5-15. Fees.

9 (a) Unless otherwise provided by federal law, a servicer
10 may only charge late fees that are reasonable and proportional
11 to the cost it incurs related to a late payment.

12 (b) Unless otherwise provided by federal law, a servicer
13 shall not charge a borrower or cosigner any fee to modify,
14 defer, forbear, renew, extend, or amend the borrower's or
15 cosigner's loan.

16 Section 5-20. Billing statements.

17 (a) In any student loan billing statement, a servicer shall
18 not misrepresent the:

- 19 (1) fees assessed;
20 (2) total amount due for each loan;
21 (3) payment due date;
22 (4) date to avoid late fees;
23 (5) accrued interest during the billing cycle;
24 (6) default payment methodology;

1 (7) means to provide instructions for a payment; or

2 (8) procedure regarding escalated requests for
3 assistance.

4 (b) A servicer shall not misrepresent information
5 regarding the \$0 bill and advancement of the due date on any
6 billing statement that reflects \$0 owed.

7 Section 5-25. Payment histories. A servicer shall provide a
8 written payment history to a borrower or cosigner upon request
9 at no cost within 21 calendar days of receiving the request.

10 Section 5-30. Specialized assistance for student loan
11 borrowers.

12 (a) A servicer shall specially designate servicing and
13 collections personnel deemed repayment specialists who have
14 received enhanced training related to repayment options.

15 (b) A servicer shall refrain from presenting forbearance as
16 the sole or first repayment option to a student loan borrower
17 struggling with repayment unless the servicer has determined
18 that, based on the borrower's financial status, a short term
19 forbearance is appropriate.

20 (c) All inbound and outbound calls from a federal loan
21 borrower eligible for referral to a repayment specialist and a
22 private loan borrower eligible for referral to a repayment
23 specialist shall be routed to a repayment specialist.

24 (d) During each inbound or outbound communication with an

1 eligible federal loan borrower, a repayment specialist shall
2 first inform a federal loan borrower eligible for referral to a
3 repayment specialist that federal income-driven repayment
4 plans that can reduce the borrower's monthly payment may be
5 available, discuss such plans, and assist the borrower in
6 determining whether a particular repayment plan may be
7 appropriate for the borrower.

8 (e) A repayment specialist shall assess the long-term and
9 short-term financial situation and needs of a federal loan
10 borrower eligible for referral to a repayment specialist and
11 consider any available specific information from the borrower
12 as necessary to assist the borrower in determining whether a
13 particular income-driven repayment option may be available to
14 the borrower.

15 (f) In each discussion with a federal loan borrower
16 eligible for referral to a repayment specialist, a repayment
17 specialist shall present and explain the following options, as
18 appropriate:

19 (1) total and permanent disability discharge, public
20 service loan forgiveness, closed school discharge, and
21 defenses to repayment;

22 (2) other repayment plans;

23 (3) deferment; and

24 (4) forbearance.

25 (g) A repayment specialist shall assess the long-term and
26 short-term financial situation and needs of a private loan

1 borrower eligible for referral to a repayment specialist in
2 determining whether any private loan repayment options may be
3 appropriate for the borrower.

4 (h) A servicer shall present and explain all private loan
5 repayment options, including alternative repayment
6 arrangements applicable to private student loan borrowers.

7 (i) A servicer shall be prohibited from implementing any
8 compensation plan that has the intended or actual effect of
9 incentivizing a repayment specialist to violate this Act or any
10 other measure that encourages undue haste or lack of quality.

11 (j) The requirements of this Section shall not apply if a
12 repayment specialist has already conversed with a borrower
13 consistent with the requirements of this Section.

14 Section 5-35. Disclosures related to discharge and
15 cancellation. If a servicer is aware that a student loan
16 borrower attended a school the United States Department of
17 Education has made findings supporting a defense to repayment
18 claim or closed school discharge, or that a borrower may be
19 eligible to have his or her loans forgiven under a total and
20 permanent disability discharge program, the servicer's
21 personnel shall disclose information related to the Department
22 of Education's procedure for asserting a defense to repayment
23 claim, closed school discharge, or submitting an application
24 for a total and permanent disability discharge.

1 Section 5-40. Income-driven repayment plan certifications.
2 A servicer shall disclose the date that a borrower's
3 income-driven payment plan certification will expire and the
4 consequences to the borrower for failing to recertify by the
5 date, including the new repayment amount.

6 Section 5-45. Information to be provided to private
7 education loan borrowers.

8 (a) A servicer shall provide on its website a description
9 of any alternative repayment plan offered by the servicer for
10 private education loans.

11 (b) A servicer shall establish policies and procedures and
12 implement them consistently in order to facilitate evaluation
13 of private student loan alternative repayment arrangement
14 requests, including providing accurate information regarding
15 any private student loan alternative repayment arrangements
16 that may be available to the borrower through the promissory
17 note or that may have been marketed to the borrower through
18 marketing materials.

19 A private student loan alternative repayment arrangements
20 shall consider the affordability of repayment plans for a
21 distressed borrower, as well as investor, guarantor, and
22 insurer guidelines and previous outcome and performance
23 information.

24 (c) If a servicer offers private student loan repayment
25 arrangements, a servicer shall consistently present and offer

1 those arrangements to borrowers with similar financial
2 circumstances.

3 Section 5-50. Cosigner release. For private student loans,
4 a servicer shall provide information on its website concerning
5 the availability and criteria for a cosigner release.

6 Section 5-55. Payoff statements. A servicer shall indicate
7 on its website that a borrower may request a payoff statement.
8 A servicer shall provide the payoff statement within 10 days,
9 including information the requester needs to pay off the loan.
10 If a payoff is made, the servicer must send a paid-in-full
11 notice within 30 days.

12 Section 5-60. Requirements related to the transfer of
13 servicing.

14 (a) When acting as the transferor servicer, a servicer
15 shall provide to each borrower subject to the transfer a
16 written notice not less than 15 calendar days before the
17 effective date of the transfer. The transferee servicer and
18 transferor servicer may provide a single notice, in which case
19 the notice shall be provided not less than 15 calendar days
20 before the effective date of the transfer. The notice by the
21 transferor servicer or, if applicable, the combined notice of
22 transfer shall contain the following information:

23 (1) the effective date of the transfer of servicing;

1 (2) the name, address, and toll-free telephone number
2 for the transferor servicer's designated point of contact
3 that can be contacted by the borrower to obtain answers to
4 servicing inquiries;

5 (3) the name, address, and toll-free telephone number
6 for the transferee servicer's designated point of contact
7 that can be contacted by the borrower to obtain answers to
8 servicing inquiries;

9 (4) the date on which the transferor servicer will
10 cease to accept payments relating to the loan and the date
11 on which the transferee servicer will begin to accept such
12 payments; the dates shall either be the same or consecutive
13 days;

14 (5) a statement that the transfer of servicing does not
15 affect any term or condition of the loan other than terms
16 directly related to the servicing of a loan;

17 (6) information on whether the borrower's
18 authorization for recurring electronic fund transfers, if
19 applicable, will be transferred to the transferee
20 servicer; if any such recurring electronic funds transfers
21 cannot be transferred, the transferee servicer shall
22 provide information explaining how the borrower may
23 establish new recurring electronic funds transfers with
24 the transferee servicer; and

25 (7) a statement of the current loan balance, including
26 the current unpaid amount of principal, interest, and fees.

1 (b) When acting as the transferee servicer, a servicer
2 shall provide to each borrower subject to the transfer a
3 written notice not more than 15 calendar days after the
4 effective date of the transfer. The transferee servicer and
5 transferor servicer may provide a combined notice of transfer,
6 in which case the notice shall be provided not less than 15
7 days before the effective date of the transfer. The notice by
8 the transferee servicer or, if applicable, the combined notice
9 of transfer shall contain the following information:

10 (1) the effective date of the transfer of servicing;

11 (2) the name, address, and toll-free telephone number
12 for the transferee servicer's designated point of contact
13 that can be contacted by the borrower to obtain answers to
14 servicing inquiries;

15 (3) the date on which the transferor servicer will
16 cease to accept payments relating to the loan and the date
17 on which the transferee servicer will begin to accept such
18 payments; the dates shall either be the same or consecutive
19 days;

20 (4) a statement that the transfer of servicing does not
21 affect any term or condition of the student loan other than
22 terms directly related to the servicing of a loan;

23 (5) information on whether the borrower's
24 authorization for recurring electronic fund transfers, if
25 applicable, will be transferred to the transferee
26 servicer; if any such recurring electronic funds transfers

1 cannot be transferred, the transferee servicer shall
2 provide information explaining how the borrower may
3 establish new recurring electronic funds transfers with
4 the transferee servicer; and

5 (6) a statement of the current loan balance, including
6 the current unpaid amount of principal, interest, and fees.

7 (c) During the 60 calendar day period beginning on the
8 effective date of transfer of the servicing of any loan, a
9 payment timely made to the transferor servicer may not be
10 treated as late for any purpose by the transferee servicer,
11 including the assessment of late fees, accrual of additional
12 interest, and furnishing negative credit information.

13 (d) To the extent practicable, for at least 120 calendar
14 days beginning on the effective date of transfer of servicing
15 of any loan, when acting as the transferor servicer, a servicer
16 shall promptly transfer payments received to the transferee
17 servicer for application to the borrower's loan account.

18 (e) Unless a borrower's authorizations for recurring
19 electronic fund transfers are automatically transferred to the
20 transferee servicer, when acting as transferee servicer, a
21 servicer shall make available to a borrower whose loan
22 servicing is transferred an online process through which a
23 borrower may make a new authorization for recurring electronic
24 fund transfers. A servicer shall also provide a process through
25 which the borrower may make a new authorization for recurring
26 electronic funds transfers by phone or through written

1 approval.

2 Section 5-65. Requests for assistance; account dispute
3 resolution; appeals.

4 (a) A servicer shall implement reasonable policies and
5 procedures for accepting, processing, investigating, and
6 responding to requests for assistance in a timely and effective
7 manner, including, but not limited to, the following
8 requirements:

9 (1) A servicer shall provide readily accessible
10 methods for consumers to submit a request for assistance to
11 the servicer, including such methods as phone, email, and
12 U.S. mail.

13 (2) A servicer shall post on its website and disclose
14 on its billing statements:

15 (A) the toll-free telephone number, email address,
16 and mailing address for consumers to submit a requests
17 for assistance to the servicer; and

18 (B) the procedures for a requester to send a
19 written communication to the servicer regarding any
20 request for assistance.

21 (3) For any request for assistance that includes a
22 request for documentation or information, where a response
23 cannot be immediately provided, a servicer shall provide
24 the requested documentation or information to the
25 requester within 14 calendar days of the request; if a

1 servicer determines in good faith that it is unable to
2 provide the documentation or information within 14
3 calendar days, promptly after making the determination,
4 the servicer shall notify the requester of the expected
5 response period, which must be reasonable for the request
6 for assistance.

7 (b) A servicer shall implement a process by which a
8 requester can escalate any request for assistance. Such process
9 shall allow a requester who has made a request for assistance
10 on the phone and who receives a response during the call to
11 obtain immediate review of the response by an employee of the
12 servicer at a higher supervisory level.

13 (c) The following requirements shall apply when a requester
14 submits a written or oral request for assistance which contains
15 an account dispute to a servicer:

16 (1) Within 14 calendar days after its receipt of the
17 written communication or oral request for further
18 escalation, a servicer shall attempt to make contact,
19 including providing the requester with name and contact
20 information of the representative handling the account
21 dispute, by phone or in writing, to the requester and
22 document such attempt in the borrower's account.

23 (2) A servicer shall complete the following actions
24 within 30 calendar days of its receipt of the written
25 communication or oral request for further escalation,
26 subject to paragraph (3) of this subsection:

1 (A) conduct a thorough investigation of the
2 account dispute;

3 (B) make all appropriate corrections to the
4 account of the requester, including crediting any late
5 fees assessed and derogatory credit furnishing as the
6 result of any error, and, if any corrections are made,
7 sending the requester a written notification that
8 includes the following information:

9 (i) an explanation of the correction or
10 corrections to the requester's account that have
11 been made; and

12 (ii) the toll-free telephone number, email
13 address, and mailing address of the servicer's
14 personnel knowledgeable about the investigation
15 and resolution of the account dispute.

16 (3) If a servicer determines in good faith that it
17 cannot complete a thorough investigation of the account
18 dispute within 30 calendar days after receiving the written
19 communication or oral request for further escalation
20 regarding the account dispute, then, promptly after making
21 the determination, the servicer shall notify the requester
22 of the expected resolution time period, which must be
23 reasonable for the account dispute. A servicer must
24 complete the actions listed in the investigation and
25 resolution of account dispute within this time period.

26 (4) If a servicer determines as a result of its

1 investigation that the requested changes to a requester's
2 dispute will not be made, the servicer shall provide the
3 requester with a written notification that includes the
4 following information:

5 (A) a description of its determination and an
6 explanation of the reasons for that determination;

7 (B) the toll-free telephone number, email address,
8 and mailing address of the servicer's personnel
9 knowledgeable about the investigation and resolution
10 of the account dispute;

11 (C) instructions about how the requester can
12 appeal the servicer's determination in accordance with
13 paragraph (5) of this subsection; and

14 (D) information regarding the method by which a
15 borrower may request copies of documents a servicer
16 relied on to make a determination that no changes to a
17 requester's account will be made.

18 (5) After the requester receives a determination
19 regarding an account dispute in accordance with paragraph
20 (4) of this subsection, the servicer shall allow a process
21 by which the requester can appeal, in writing, the
22 determination. The appeals process shall include:

23 (A) a written acknowledgment notifying the
24 requester that the servicer has commenced the appeals
25 process; such acknowledgment shall be sent within 14
26 calendar days after receiving a written request for

1 appeal from the requester;

2 (B) an independent reassessment of the servicer's
3 determination regarding the account dispute, performed
4 by another employee of the servicer at an equal or
5 higher supervisory level than the employee or
6 employees involved in the initial account dispute
7 determination;

8 (C) investigation and resolution of appeals within
9 30 calendar days after a servicer's commencement of the
10 appeals process; and

11 (D) notification sent to the requester, in
12 writing, documenting the outcome of the appeal,
13 including any reason for denial.

14 (d) While a requester has a pending account dispute,
15 including any applicable appeal, a servicer shall take
16 reasonable steps to:

17 (1) prevent negative credit reporting with respect to
18 the borrower's or cosigner's account while the dispute is
19 under review; and

20 (2) suspend all collection activities on the account
21 while the account dispute is being researched or resolved,
22 if the account dispute is related to the delinquency.

23 ARTICLE 10. STUDENT LOAN OMBUDSMAN

24 Section 10-5. Student Loan Ombudsman.

1 (a) The position of Student Loan Ombudsman is created
2 within the Office of the Attorney General to provide timely
3 assistance to student loan borrowers.

4 (b) The Student Loan Ombudsman, in consultation with the
5 Secretary, shall:

6 (1) receive, review, and attempt to resolve any
7 complaints from student loan borrowers, including, but not
8 limited to, attempts to resolve complaints in
9 collaboration with institutions of higher education,
10 student loan servicers, and any other participants in
11 student loan lending;

12 (2) compile and analyze data on student loan borrower
13 complaints;

14 (3) assist student loan borrowers to understand their
15 rights and responsibilities under the terms of student
16 education loans;

17 (4) provide information to the public, agencies,
18 legislators, and others regarding the problems and
19 concerns of student loan borrowers and make
20 recommendations for resolving those problems and concerns;

21 (5) analyze and monitor the development and
22 implementation of federal, State, and local laws,
23 regulations, and policies relating to student loan
24 borrowers and recommend any changes the Student Loan
25 Ombudsman deems necessary;

26 (6) review the complete student education loan history

1 for any student loan borrower who has provided written
2 consent for such review;

3 (7) disseminate information concerning the
4 availability of the Student Loan Ombudsman to assist
5 student loan borrowers and potential student loan
6 borrowers, as well as public institutions of higher
7 education, student loan servicers, and any other
8 participant in student education loan lending, with any
9 student loan servicing concerns; and

10 (8) take any other actions necessary to fulfill the
11 duties of the Student Loan Ombudsman as set forth in this
12 subsection.

13 ARTICLE 15. LICENSURE

14 Section 15-5. Scope; requirement for student loan
15 servicing license.

16 (a) It shall be unlawful for any person to operate as a
17 student loan servicer in Illinois except as authorized by this
18 Act and without first having obtained a license in accordance
19 with this Act.

20 (b) The provisions of this Act do not apply to any of the
21 following:

22 (1) a bank, savings bank, savings association, or
23 credit union organized under the laws of the State or any
24 other state or under the laws of the United States;

1 (2) a wholly owned subsidiary of any bank, savings
2 bank, savings association, or credit union organized under
3 the laws of the State or any other state or under the laws
4 of the United States;

5 (3) an operating subsidiary where each owner of the
6 operating subsidiary is wholly owned by the same bank,
7 savings bank, savings association, or credit union
8 organized under the laws of the State or any other state or
9 under the laws of the United States;

10 (4) the Illinois Student Assistance Commission and its
11 agents;

12 (5) a public postsecondary educational institution or
13 a private nonprofit postsecondary educational institution
14 servicing a student loan it extended to the borrower;

15 (6) a licensed debt management service under the Debt
16 Management Service Act, except to the extent that the
17 organization acts as a subcontractor, affiliate, or
18 service provider for an entity that is otherwise subject to
19 licensure under this Act;

20 (7) any collection agency licensed under the
21 Collection Agency Act that is collecting post-default
22 debt;

23 (8) in connection with its responsibilities as a
24 guaranty agency engaged in default aversion, a State
25 nonprofit private institution or organization having an
26 agreement with the U.S. Secretary of Education under

1 Section 428(b) of the Higher Education Act (20 U.S.C.
2 1078(B); or

3 (9) a State institution or a nonprofit private
4 organization designated by a governmental entity to make or
5 service student loans, provided in each case that the
6 institution or organization services fewer than 20,000
7 student loan accounts of borrowers who reside in Illinois.

8 Section 15-10. Licensee name. No person, partnership,
9 association, corporation, limited liability company, or other
10 entity engaged in the business regulated by this Act shall
11 operate such business under a name other than the real names of
12 the entity and individuals conducting such business. Such
13 business may in addition operate under an assumed corporate
14 name pursuant to the Business Corporation Act of 1983, an
15 assumed limited liability company name pursuant to the Limited
16 Liability Company Act, or an assumed business name pursuant to
17 the Assumed Business Name Act.

18 Section 15-15. Application process; investigation; fees.

19 (a) The Secretary shall issue a license upon completion of
20 all of the following:

21 (1) the filing of an application for license with the
22 Secretary or the Nationwide Mortgage Licensing System and
23 Registry as approved by the Secretary;

24 (2) the filing with the Secretary of a listing of

1 judgments entered against, and bankruptcy petitions by,
2 the license applicant for the preceding 10 years;

3 (3) the payment, in certified funds, of investigation
4 and application fees, the total of which shall be in an
5 amount equal to \$1,000 for an initial application and \$800
6 for a background investigation;

7 (4) the filing of an audited balance sheet, including
8 all footnotes prepared by a certified public accountant in
9 accordance with generally accepted accounting principles
10 and generally accepted auditing standards; notwithstanding
11 the requirements of this subsection, an applicant that is a
12 subsidiary may submit audited consolidated financial
13 statements of its parent, intermediary parent, or ultimate
14 parent as long as the consolidated statements are supported
15 by consolidating statements that include the applicant's
16 financial statement; if the consolidating statements are
17 unaudited, the applicant's chief financial officer shall
18 attest to the applicant's financial statements disclosed
19 in the consolidating statements; and

20 (5) an investigation of the averments required by
21 Section 15-30, which investigation must allow the
22 Secretary to issue positive findings stating that the
23 financial responsibility, experience, character, and
24 general fitness of the license applicant and of the members
25 thereof if the license applicant is a partnership or
26 association, of the officers and directors thereof if the

1 license applicant is a corporation, and of the managers and
2 members that retain any authority or responsibility under
3 the operating agreement if the license applicant is a
4 limited liability company, are such as to command the
5 confidence of the community and to warrant belief that the
6 business will be operated honestly, fairly, and
7 efficiently within the purpose of this Act; if the
8 Secretary does not so find, he or she shall not issue the
9 license, and he or she shall notify the license applicant
10 of the denial.

11 The Secretary may impose conditions on a license if the
12 Secretary determines that those conditions are necessary or
13 appropriate. These conditions shall be imposed in writing and
14 shall continue in effect for the period prescribed by the
15 Secretary.

16 (b) All licenses shall be issued to the license applicant.
17 Upon receipt of the license, a student loan servicing licensee
18 shall be authorized to engage in the business regulated by this
19 Act. The license shall remain in full force and effect until it
20 expires without renewal, is surrendered by the licensee, or
21 revoked or suspended as hereinafter provided.

22 Section 15-20. Application form.

23 (a) Application for a student loan servicer license must be
24 made in accordance with Section 15-40 and, if applicable, in
25 accordance with requirements of the Nationwide Mortgage

1 Licensing System and Registry. The application shall be in
2 writing, under oath, and on a form obtained from and prescribed
3 by the Secretary, or may be submitted electronically, with
4 attestation, to the Nationwide Mortgage Licensing System and
5 Registry.

6 (b) The application shall contain the name and complete
7 business and residential address or addresses of the license
8 applicant. If the license applicant is a partnership,
9 association, corporation, or other form of business
10 organization, the application shall contain the names and
11 complete business and residential addresses of each member,
12 director, and principal officer thereof. The application shall
13 also include a description of the activities of the license
14 applicant in such detail and for such periods as the Secretary
15 may require, including all of the following:

16 (1) an affirmation of financial solvency noting such
17 capitalization requirements as may be required by the
18 Secretary and access to such credit as may be required by
19 the Secretary;

20 (2) an affirmation that the license applicant or its
21 members, directors, or principals, as may be appropriate,
22 are at least 18 years of age;

23 (3) information as to the character, fitness,
24 financial and business responsibility, background,
25 experience, and criminal record of any (i) person, entity,
26 or ultimate equitable owner that owns or controls, directly

1 or indirectly, 10% or more of any class of stock of the
2 license applicant; (ii) person, entity, or ultimate
3 equitable owner that is not a depository institution, as
4 defined in Section 1007.50 of the Savings Bank Act, that
5 lends, provides, or infuses, directly or indirectly, in any
6 way, funds to or into a license applicant in an amount
7 equal to or more than 10% of the license applicant's net
8 worth; (iii) person, entity, or ultimate equitable owner
9 that controls, directly or indirectly, the election of 25%
10 or more of the members of the board of directors of a
11 license applicant; or (iv) person, entity, or ultimate
12 equitable owner that the Secretary finds influences
13 management of the license applicant; the provisions of this
14 subsection shall not apply to a public official serving on
15 the board of directors of a State guaranty agency;

16 (4) upon written request by the licensee and
17 notwithstanding the provisions of paragraphs (1), (2), and
18 (3) of this subsection, the Secretary may permit the
19 licensee to omit all or part of the information required by
20 those paragraphs if, in lieu of the omitted information,
21 the licensee submits an affidavit stating that the
22 information submitted on the licensee's previous renewal
23 application is still true and accurate; the Secretary may
24 adopt rules prescribing the form and content of the
25 affidavit that are necessary to accomplish the purposes of
26 this Section; and

1 (5) such other information as required by rules of the
2 Secretary.

3 Section 15-25. Student loan servicer license application
4 and issuance.

5 (a) Applicants for a license shall apply in a form
6 prescribed by the Secretary. Each form shall contain content as
7 set forth by rule, regulation, instruction, or procedure of the
8 Secretary and may be changed or updated as necessary by the
9 Secretary in order to carry out the purposes of this Act.

10 (b) In order to fulfill the purposes of this Act, the
11 Secretary is authorized to establish relationships or
12 contracts with the Nationwide Mortgage Licensing System and
13 Registry or other entities designated by the Nationwide
14 Mortgage Licensing System and Registry to collect and maintain
15 records and process transaction fees or other fees related to
16 licensees or other persons subject to this Act.

17 (c) In connection with an application for licensing, the
18 applicant may be required, at a minimum, to furnish to the
19 Nationwide Mortgage Licensing System and Registry information
20 concerning the applicant's identity, including:

21 (1) fingerprints for submission to the Federal Bureau
22 of Investigation or any governmental agency or entity
23 authorized to receive such information for a State,
24 national, and international criminal history background
25 check; and

1 (2) personal history and experience in a form
2 prescribed by the Nationwide Mortgage Licensing System and
3 Registry, including the submission of authorization for
4 the Nationwide Mortgage Licensing System and Registry and
5 the Secretary to obtain:

6 (A) an independent credit report obtained from a
7 consumer reporting agency described in Section 603(p)
8 of the Fair Credit Reporting Act (15 U.S.C. 1681a(p));
9 and

10 (B) information related to any administrative,
11 civil, or criminal findings by any governmental
12 jurisdiction.

13 (d) For the purposes of this Section, and in order to
14 reduce the points of contact that the Federal Bureau of
15 Investigation may have to maintain for purposes of subsection
16 (c) of this Section, the Secretary may use the Nationwide
17 Mortgage Licensing System and Registry as a channeling agent
18 for requesting information from and distributing information
19 to the federal Department of Justice or any governmental
20 agency.

21 (e) For the purposes of this Section, and in order to
22 reduce the points of contact that the Secretary may have to
23 maintain for purposes of paragraph (2) of subsection (c) of
24 this Section, the Secretary may use the Nationwide Mortgage
25 Licensing System and Registry as a channeling agent for
26 requesting and distributing information to and from any source

1 as directed by the Secretary.

2 (f) The provisions of this Section shall not apply to a
3 public official serving on the board of directors of a State
4 guaranty agency.

5 Section 15-30. Averments of licensee. Each application for
6 license shall be accompanied by the following averments stating
7 that the applicant:

8 (1) will file with the Secretary or Nationwide Mortgage
9 Licensing System and Registry, as applicable, when due, any
10 report or reports that it is required to file under any of
11 the provisions of this Act;

12 (2) has not committed a crime against the law of this
13 State, any other state, or of the United States involving
14 moral turpitude or fraudulent or dishonest dealing, and
15 that no final judgment has been entered against it in a
16 civil action upon grounds of fraud, misrepresentation, or
17 deceit that has not been previously reported to the
18 Secretary;

19 (3) has not engaged in any conduct that would be cause
20 for denial of a license;

21 (4) has not become insolvent;

22 (5) has not submitted an application for a license
23 under this Act that contains a material misstatement;

24 (6) has not demonstrated by course of conduct,
25 negligence or incompetence in performing any act for which

1 it is required to hold a license under this Act;

2 (7) will advise the Secretary in writing or the
3 Nationwide Mortgage Licensing System and Registry, as
4 applicable, of any changes to the information submitted on
5 the most recent application for license or averments of
6 record within 30 days of the change; the written notice
7 must be signed in the same form as the application for the
8 license being amended;

9 (8) will comply with the provisions of this Act and
10 with any lawful order, rule, or regulation made or issued
11 under the provisions of this Act;

12 (9) will submit to periodic examination by the
13 Secretary as required by this Act; and

14 (10) will advise the Secretary in writing of judgments
15 entered against and bankruptcy petitions by the license
16 applicant within 5 days after the occurrence.

17 A licensee who fails to fulfill the obligations of an
18 averment, fails to comply with averments made, or otherwise
19 violates any of the averments made under this Section shall be
20 subject to the penalties of this Act.

21 Section 15-35. Refusal to issue license. The Secretary
22 shall refuse to issue or renew a license if:

23 (1) it is determined that the applicant is not in
24 compliance with any provisions of this Act;

25 (2) there is substantial continuity between the

1 applicant and any violator of this Act; or

2 (3) the Secretary cannot make the findings specified in
3 subsection (a) of Section 15-15 of this Act.

4 Section 15-40. License issuance and renewal; fees.

5 (a) Licenses shall be renewed every year using the common
6 renewal date of the Nationwide Mortgage Licensing System and
7 Registry, as adopted by the Secretary. Properly completed
8 renewal application forms and filing fees may be received by
9 the Secretary 60 days prior to the license expiration date,
10 but, to be deemed timely, the completed renewal application
11 forms and filing fees must be received by the Secretary no
12 later than 30 days prior to the license expiration date.

13 (b) It shall be the responsibility of each licensee to
14 accomplish renewal of its license. Failure by a licensee to
15 submit a properly completed renewal application form and fees
16 in a timely fashion, absent a written extension from the
17 Secretary, shall result in the license becoming inactive.

18 (c) No activity regulated by this Act shall be conducted by
19 the licensee when a license becomes inactive. An inactive
20 license may be reactivated by the Secretary upon payment of the
21 renewal fee and payment of a reactivation fee equal to the
22 renewal fee.

23 (d) A licensee ceasing an activity or activities regulated
24 by this Act and desiring to no longer be licensed shall so
25 inform the Secretary in writing and, at the same time, convey

1 any license issued and all other symbols or indicia of
2 licensure. The licensee shall include a plan for the withdrawal
3 from regulated business, including a timetable for the
4 disposition of the business, and comply with the surrender
5 guidelines or requirements of the Secretary. Upon receipt of
6 such written notice, the Secretary shall post the cancellation
7 or issue a certified statement canceling the license.

8 (e) The expenses of administering this Act, including
9 investigations and examinations provided for in this Act, shall
10 be borne by and assessed against entities regulated by this
11 Act. Subject to the limitations set forth in Section 15-15 of
12 this Act, the Secretary shall establish fees by rule in at
13 least the following categories:

14 (1) investigation of licensees and license applicant
15 fees;

16 (2) examination fees;

17 (3) contingent fees; and

18 (4) such other categories as may be required to
19 administer this Act.

20 ARTICLE 20. SUPERVISION

21 Section 20-5. Functions; powers; duties. The functions,
22 powers, and duties of the Secretary shall include the
23 following:

24 (1) to issue or refuse to issue any license as provided

1 by this Act;

2 (2) to revoke or suspend for cause any license issued
3 under this Act;

4 (3) to keep records of all licenses issued under this
5 Act;

6 (4) to receive, consider, investigate, and act upon
7 complaints made by any person in connection with any
8 student loan servicing licensee in this State;

9 (5) to prescribe the forms of and receive:

10 (A) applications for licenses; and

11 (B) all reports and all books and records required
12 to be made by any licensee under this Act, including
13 annual audited financial statements and annual reports
14 of student loan activity;

15 (6) to adopt rules necessary and proper for the
16 administration of this Act;

17 (7) to subpoena documents and witnesses and compel
18 their attendance and production, to administer oaths, and
19 to require the production of any books, papers, or other
20 materials relevant to any inquiry authorized by this Act;

21 (8) to issue orders against any person if the Secretary
22 has reasonable cause to believe that an unsafe, unsound, or
23 unlawful practice has occurred, is occurring, or is about
24 to occur; if any person has violated, is violating, or is
25 about to violate any law, rule, or written agreement with
26 the Secretary; or for the purpose of administering the

1 provisions of this Act and any rule adopted in accordance
2 with this Act;

3 (9) to address any inquiries to any licensee, or the
4 officers thereof, in relation to its activities and
5 conditions, or any other matter connected with its affairs,
6 and it shall be the duty of any licensee or person so
7 addressed to promptly reply in writing to those inquiries;
8 the Secretary may also require reports from any licensee at
9 any time the Secretary may deem desirable;

10 (10) to examine the books and records of every licensee
11 under this Act;

12 (11) to enforce provisions of this Act;

13 (12) to levy fees, fines, and charges for services
14 performed in administering this Act; the aggregate of all
15 fees collected by the Secretary on and after the effective
16 date of this Act shall be paid promptly after receipt,
17 accompanied by a detailed statement thereof, into the Bank
18 and Trust Company Fund under Section 20-10; the amounts
19 deposited into that Fund shall be used for the ordinary and
20 contingent expenses of the Department; nothing in this Act
21 shall prevent the continuation of the practice of paying
22 expenses involving salaries, retirement, social security,
23 and State-paid insurance of State officers by
24 appropriation from the General Revenue Fund;

25 (13) to appoint examiners, supervisors, experts, and
26 special assistants as needed to effectively and

1 efficiently administer this Act;

2 (14) to conduct hearings for the purpose of:

3 (A) appeals of orders of the Secretary;

4 (B) suspensions or revocations of licenses, or
5 fining of licensees;

6 (C) investigating:

7 (i) complaints against licensees; or

8 (ii) annual gross delinquency rates; and

9 (D) carrying out the purposes of this Act;

10 (15) to exercise exclusive visitorial power over a
11 licensee unless otherwise authorized by this Act or as
12 vested in the courts, or upon prior consultation with the
13 Secretary, a foreign student loan servicing regulator with
14 an appropriate supervisory interest in the parent or
15 affiliate of a licensee;

16 (16) to enter into cooperative agreements with state
17 regulatory authorities of other states to provide for
18 examination of corporate offices or branches of those
19 states and to accept reports of such examinations;

20 (17) to assign an examiner or examiners to monitor the
21 affairs of a licensee with whatever frequency the Secretary
22 determines appropriate and to charge the licensee for
23 reasonable and necessary expenses of the Secretary if in
24 the opinion of the Secretary an emergency exists or appears
25 likely to occur;

26 (18) to impose civil penalties of up to \$50 per day

1 against a licensee for failing to respond to a regulatory
2 request or reporting requirement; and

3 (19) to enter into agreements in connection with the
4 Nationwide Mortgage Licensing System and Registry.

5 Section 20-10. Bank and Trust Company Fund. All moneys
6 received by the Secretary under this Act in conjunction with
7 the provisions relating to student loan servicers shall be paid
8 into and all expenses incurred by the Secretary under this Act
9 in conjunction with the provisions relating to student loan
10 servicers shall be paid from the Bank and Trust Company Fund.

11 Section 20-15. Examination; prohibited activities.

12 (a) The business affairs of a licensee under this Act shall
13 be examined for compliance with this Act as often as the
14 Secretary deems necessary and proper. The Secretary may adopt
15 rules with respect to the frequency and manner of examination.
16 The Secretary shall appoint a suitable person to perform such
17 examination. The Secretary and his or her appointees may
18 examine the entire books, records, documents, and operations of
19 each licensee and its subsidiary, affiliate, or agent, and may
20 examine any of the licensee's or its subsidiary's, affiliate's,
21 or agent's officers, directors, employees, and agents under
22 oath.

23 (b) The Secretary shall prepare a sufficiently detailed
24 report of each licensee's examination, shall issue a copy of

1 such report to each licensee's principals, officers, or
2 directors, and shall take appropriate steps to ensure
3 correction of violations of this Act.

4 (c) Affiliates of a licensee shall be subject to
5 examination by the Secretary on the same terms as the licensee,
6 but only when reports from or examination of a licensee
7 provides for documented evidence of unlawful activity between a
8 licensee and affiliate benefiting, affecting, or deriving from
9 the activities regulated by this Act.

10 (d) The expenses of any examination of the licensee and
11 affiliates shall be borne by the licensee and assessed by the
12 Secretary as may be established by rule.

13 (e) Upon completion of the examination, the Secretary shall
14 issue a report to the licensee. All confidential supervisory
15 information, including the examination report and the work
16 papers of the report, shall belong to the Secretary's office
17 and may not be disclosed to anyone other than the licensee, law
18 enforcement officials or other regulatory agencies that have an
19 appropriate regulatory interest as determined by the
20 Secretary, or to a party presenting a lawful subpoena to the
21 Department. The Secretary may, through the Attorney General,
22 immediately appeal to the court of jurisdiction the disclosure
23 of such confidential supervisory information and seek a stay of
24 the subpoena pending the outcome of the appeal. Reports
25 required of licensees by the Secretary under this Act and
26 results of examinations performed by the Secretary under this

1 Act shall be the property of only the Secretary, but may be
2 shared with the licensee. Access under this Act to the books
3 and records of each licensee shall be limited to the Secretary
4 and his or her agents as provided in this Act and to the
5 licensee and its authorized agents and designees. No other
6 person shall have access to the books and records of a licensee
7 under this Act. Any person upon whom a demand for production of
8 confidential supervisory information is made, whether by
9 subpoena, order, or other judicial or administrative process,
10 must withhold production of the confidential supervisory
11 information and must notify the Secretary of the demand, at
12 which time the Secretary is authorized to intervene for the
13 purpose of enforcing the limitations of this Section or seeking
14 the withdrawal or termination of the attempt to compel
15 production of the confidential supervisory information. The
16 Secretary may impose any conditions and limitations on the
17 disclosure of confidential supervisory information that are
18 necessary to protect the confidentiality of that information.
19 Except as authorized by the Secretary, no person obtaining
20 access to confidential supervisory information may make a copy
21 of the confidential supervisory information. The Secretary may
22 condition a decision to disclose confidential supervisory
23 information on entry of a protective order by the court or
24 administrative tribunal presiding in the particular case or on
25 a written agreement of confidentiality. In a case in which a
26 protective order or agreement has already been entered between

1 parties other than the Secretary, the Secretary may
2 nevertheless condition approval for release of confidential
3 supervisory information upon the inclusion of additional or
4 amended provisions in the protective order. The Secretary may
5 authorize a party who obtained the records for use in one case
6 to provide them to another party in another case, subject to
7 any conditions that the Secretary may impose on either or both
8 parties. The requester shall promptly notify other parties to a
9 case of the release of confidential supervisory information
10 obtained and, upon entry of a protective order, shall provide
11 copies of confidential supervisory information to the other
12 parties.

13 (f) The Secretary and employees of the Department shall be
14 subject to the restrictions provided in Section 2.5 of the
15 Division of Banking Act, including, without limitation, the
16 restrictions on (i) owning shares of stock or holding any other
17 equity interest in an entity regulated under this Act or in any
18 corporation or company that owns or controls an entity
19 regulated under this Act; (ii) being an officer, director,
20 employee, or agent of an entity regulated under this Act; and
21 (iii) obtaining a loan or accepting a gratuity from an entity
22 regulated under this Act.

23 Section 20-20. Subpoena power of the Secretary.

24 (a) The Secretary shall have the power to issue and to
25 serve subpoenas and subpoenas duces tecum to compel the

1 attendance of witnesses and the production of all books,
2 accounts, records, and other documents and materials relevant
3 to an examination or investigation. The Secretary, or his or
4 her duly authorized representative, shall have power to
5 administer oaths and affirmations to any person.

6 (b) In the event of noncompliance with a subpoena or
7 subpoena duces tecum issued or caused to be issued by the
8 Secretary, the Secretary may, through the Attorney General,
9 petition the circuit court of the county in which the person
10 subpoenaed resides or has its principal place of business for
11 an order requiring the subpoenaed person to appear and testify
12 and to produce such books, accounts, records, and other
13 documents as are specified in the subpoena duces tecum. The
14 court may grant injunctive relief restraining the person from
15 advertising, promoting, soliciting, entering into, offering to
16 enter into, continuing, or completing any student loan
17 servicing transaction. The court may grant other relief,
18 including, but not limited to, the restraint, by injunction or
19 appointment of a receiver, of any transfer, pledge, assignment,
20 or other disposition of the person's assets or any concealment,
21 alteration, destruction, or other disposition of books,
22 accounts, records, or other documents and materials as the
23 court deems appropriate, until the person has fully complied
24 with the subpoena or subpoena duces tecum and the Secretary has
25 completed an investigation or examination.

26 (c) If it appears to the Secretary that the compliance with

1 a subpoena or subpoena duces tecum issued or caused to be
2 issued by the Secretary pursuant to this Section is essential
3 to an investigation or examination, the Secretary, in addition
4 to the other remedies provided for in this Act, may, through
5 the Attorney General, apply for relief to the circuit court of
6 the county in which the subpoenaed person resides or has its
7 principal place of business. The court shall thereupon direct
8 the issuance of an order against the subpoenaed person
9 requiring sufficient bond conditioned on compliance with the
10 subpoena or subpoena duces tecum. The court shall cause to be
11 endorsed on the order a suitable amount of bond or payment
12 pursuant to which the person named in the order shall be freed,
13 having a due regard to the nature of the case.

14 (d) In addition, the Secretary may, through the Attorney
15 General, seek a writ of attachment or an equivalent order from
16 the circuit court having jurisdiction over the person who has
17 refused to obey a subpoena, who has refused to give testimony,
18 or who has refused to produce the matters described in the
19 subpoena duces tecum.

20 Section 20-25. Report required of licensee. In addition to
21 any reports required under this Act, every licensee shall file
22 any other report the Secretary requests.

23 Section 20-30. Suspension; revocation of licenses; fines.

24 (a) Upon written notice to a licensee, the Secretary may

1 suspend or revoke any license issued pursuant to this Act if,
2 in the notice, he or she makes a finding of one or more of the
3 following:

4 (1) that through separate acts or an act or a course of
5 conduct, the licensee has violated any provisions of this
6 Act, any rule adopted by the Secretary, or any other law,
7 rule, or regulation of this State or the United States;

8 (2) that any fact or condition exists that, if it had
9 existed at the time of the original application for the
10 license, would have warranted the Secretary in refusing
11 originally to issue the license; or

12 (3) that if a licensee is other than an individual, any
13 ultimate equitable owner, officer, director, or member of
14 the licensed partnership, association, corporation, or
15 other entity has acted or failed to act in a way that would
16 be cause for suspending or revoking a license to that party
17 as an individual.

18 (b) No license shall be suspended or revoked, except as
19 provided in this Section, nor shall any licensee be fined
20 without notice of his or her right to a hearing as provided in
21 Section 20-65 of this Act.

22 (c) The Secretary, on good cause shown that an emergency
23 exists, may suspend any license for a period not exceeding 180
24 days, pending investigation.

25 (d) The provisions of subsection (d) of Section 15-40 of
26 this Act shall not affect a licensee's civil or criminal

1 liability for acts committed prior to surrender of a license.

2 (e) No revocation, suspension, or surrender of any license
3 shall impair or affect the obligation of any pre-existing
4 lawful contract between the licensee and any person.

5 (f) Every license issued under this Act shall remain in
6 force and effect until the license expires without renewal, is
7 surrendered, is revoked, or is suspended in accordance with the
8 provisions of this Act, but the Secretary shall have authority
9 to reinstate a suspended license or to issue a new license to a
10 licensee whose license has been revoked if no fact or condition
11 then exists which would have warranted the Secretary in
12 refusing originally to issue that license under this Act.

13 (g) Whenever the Secretary revokes or suspends a license
14 issued pursuant to this Act or fines a licensee under this Act,
15 he or she shall execute a written order to that effect. The
16 Secretary shall post notice of the order on an agency Internet
17 site maintained by the Secretary or on the Nationwide Mortgage
18 Licensing System and Registry and shall serve a copy of the
19 order upon the licensee. Any such order may be reviewed in the
20 manner provided by Section 20-65 of this Act.

21 (h) If the Secretary finds any person in violation of the
22 grounds set forth in subsection (i), he or she may enter an
23 order imposing one or more of the following penalties:

24 (1) revocation of license;

25 (2) suspension of a license subject to reinstatement
26 upon satisfying all reasonable conditions the Secretary

1 may specify;

2 (3) placement of the licensee or applicant on probation
3 for a period of time and subject to all reasonable
4 conditions as the Secretary may specify;

5 (4) issuance of a reprimand;

6 (5) imposition of a fine not to exceed \$25,000 for each
7 count of separate offense; except that a fine may be
8 imposed not to exceed \$75,000 for each separate count of
9 offense of paragraph (2) of subsection (i) of this Section;

10 or

11 (6) denial of a license.

12 (i) The following acts shall constitute grounds for which
13 the disciplinary actions specified in subsection (h) may be
14 taken:

15 (1) being convicted or found guilty, regardless of
16 pendency of an appeal, of a crime in any jurisdiction that
17 involves fraud, dishonest dealing, or any other act of
18 moral turpitude;

19 (2) fraud, misrepresentation, deceit, or negligence in
20 any student loan transaction;

21 (3) a material or intentional misstatement of fact on
22 an initial or renewal application;

23 (4) insolvency or filing under any provision of the
24 federal Bankruptcy Code as a debtor;

25 (5) failure to account or deliver to any person any
26 property, such as any money, fund, deposit, check, draft,

1 or other document or thing of value, that has come into his
2 or her hands and that is not his or her property or that he
3 or she is not in law or equity entitled to retain, under
4 the circumstances and at the time which has been agreed
5 upon or is required by law or, in the absence of a fixed
6 time, upon demand of the person entitled to such accounting
7 and delivery;

8 (6) failure to disburse funds in accordance with
9 agreements;

10 (7) having a license, or the equivalent, to practice
11 any profession or occupation revoked, suspended, or
12 otherwise acted against, including the denial of licensure
13 by a licensing authority of this State or another state,
14 territory, or country for fraud, dishonest dealing, or any
15 other act of moral turpitude;

16 (8) failure to comply with an order of the Secretary or
17 rule made or issued under the provisions of this Act;

18 (9) engaging in activities regulated by this Act
19 without a current, active license unless specifically
20 exempted by this Act;

21 (10) failure to pay in a timely manner any fee, charge,
22 or fine under this Act;

23 (11) failure to maintain, preserve, and keep available
24 for examination all books, accounts, or other documents
25 required by the provisions of this Act and the rules of the
26 Secretary;

1 (12) refusing, obstructing, evading, or unreasonably
2 delaying an investigation, information request, or
3 examination authorized under this Act, or refusing,
4 obstructing, evading, or unreasonably delaying compliance
5 with the Secretary's subpoena or subpoena duces tecum; and

6 (13) failure to comply with or a violation of any
7 provision of this Act.

8 (j) A licensee shall be subject to the disciplinary actions
9 specified in this Act for violations of subsection (i) by any
10 officer, director, shareholder, joint venture, partner,
11 ultimate equitable owner, or employee of the licensee.

12 (k) A licensee shall be subject to suspension or revocation
13 for unauthorized employee actions only if there is a pattern of
14 repeated violations by employees or the licensee has knowledge
15 of the violations or there is substantial harm to a consumer.

16 (l) Procedures for surrender of a license include the
17 following:

18 (1) The Secretary may, after 10 days' notice by
19 certified mail to the licensee at the address set forth on
20 the license, stating the contemplated action and in general
21 the grounds for the contemplated action and the date, time,
22 and place of a hearing thereon, and after providing the
23 licensee with a reasonable opportunity to be heard prior to
24 such action, fine such licensee an amount not exceeding
25 \$25,000 per violation, or revoke or suspend any license
26 issued under this Act if he or she finds that:

1 (i) the licensee has failed to comply with any
2 provision of this Act or any order, decision, finding,
3 rule, regulation, or direction of the Secretary
4 lawfully made pursuant to the authority of this Act; or

5 (ii) any fact or condition exists that, if it had
6 existed at the time of the original application for the
7 license, clearly would have warranted the Secretary in
8 refusing to issue the license.

9 (2) Any licensee may submit an application to surrender
10 a license, but, upon the Secretary approving the surrender,
11 it shall not affect the licensee's civil or criminal
12 liability for acts committed prior to surrender or entitle
13 the licensee to a return of any part of the license fee.

14 Section 20-35. Investigation of complaints. The Secretary
15 shall at all times maintain staff and facilities adequate to
16 receive, record, and investigate complaints and inquiries made
17 by any person concerning this Act and any licensees under this
18 Act. Each licensee shall open its books, records, documents,
19 and offices wherever situated to the Secretary or his or her
20 appointees as needed to facilitate such investigations.

21 Section 20-40. Additional investigation and examination
22 authority. In addition to any authority allowed under this Act,
23 the Secretary shall have the authority to conduct
24 investigations and examinations as follows:

1 (1) For purposes of initial licensing, license
2 renewal, license suspension, license conditioning, license
3 revocation or termination, or general or specific inquiry
4 or investigation to determine compliance with this Act, the
5 Secretary shall have the authority to access, receive, and
6 use any books, accounts, records, files, documents,
7 information, or evidence, including, but not limited to,
8 the following:

9 (A) criminal, civil, and administrative history
10 information, including nonconviction data as specified
11 in the Criminal Code of 2012;

12 (B) personal history and experience information,
13 including independent credit reports obtained from a
14 consumer reporting agency described in Section 603(p)
15 of the federal Fair Credit Reporting Act; and

16 (C) any other documents, information, or evidence
17 the Secretary deems relevant to the inquiry or
18 investigation, regardless of the location, possession,
19 control, or custody of the documents, information, or
20 evidence.

21 (2) For the purposes of investigating violations or
22 complaints arising under this Act or for the purposes of
23 examination, the Secretary may review, investigate, or
24 examine any licensee, individual, or person subject to this
25 Act as often as necessary in order to carry out the
26 purposes of this Act. The Secretary may direct, subpoena,

1 or order the attendance of and examine under oath all
2 persons whose testimony may be required about the loans or
3 the business or subject matter of any such examination or
4 investigation, and may direct, subpoena, or order the
5 person to produce books, accounts, records, files, and any
6 other documents the Secretary deems relevant to the
7 inquiry.

8 (3) Each licensee, individual, or person subject to
9 this Act shall make available to the Secretary upon request
10 the books and records relating to the operations of the
11 licensee, individual, or person subject to this Act. The
12 Secretary shall have access to those books and records and
13 interview the officers, principals, employees, independent
14 contractors, agents, and customers of the licensee,
15 individual, or person subject to this Act concerning their
16 business.

17 (4) Each licensee, individual, or person subject to
18 this Act shall make or compile reports or prepare other
19 information as directed by the Secretary in order to carry
20 out the purposes of this Section, including, but not
21 limited to:

22 (A) accounting compilations;

23 (B) information lists and data concerning loan
24 transactions in a format prescribed by the Secretary;

25 or

26 (C) other information deemed necessary to carry

1 out the purposes of this Section.

2 (5) In making any examination or investigation
3 authorized by this Act, the Secretary may control access to
4 any documents and records of the licensee or person under
5 examination or investigation. The Secretary may take
6 possession of the documents and records or place a person
7 in exclusive charge of the documents and records in the
8 place where they are usually kept. During the period of
9 control, no person shall remove or attempt to remove any of
10 the documents or records, except pursuant to a court order
11 or with the consent of the Secretary. Unless the Secretary
12 has reasonable grounds to believe the documents or records
13 of the licensee have been, or are at risk of being altered
14 or destroyed for purposes of concealing a violation of this
15 Act, the licensee or owner of the documents and records
16 shall have access to the documents or records as necessary
17 to conduct its ordinary business affairs.

18 (6) In order to carry out the purposes of this Section,
19 the Secretary may:

20 (A) retain attorneys, accountants, or other
21 professionals and specialists as examiners, auditors,
22 or investigators to conduct or assist in the conduct of
23 examinations or investigations;

24 (B) enter into agreements or relationships with
25 other government officials or regulatory associations
26 in order to improve efficiencies and reduce regulatory

1 burden by sharing resources, standardized or uniform
2 methods or procedures, and documents, records,
3 information, or evidence obtained under this Section;

4 (C) use, hire, contract, or employ public or
5 privately available analytical systems, methods, or
6 software to examine or investigate the licensee,
7 individual, or person subject to this Act;

8 (D) accept and rely on examination or
9 investigation reports made by other government
10 officials, within or outside this State; or

11 (E) accept audit reports made by an independent
12 certified public accountant for the licensee,
13 individual, or person subject to this Act in the course
14 of that part of the examination covering the same
15 general subject matter as the audit and may incorporate
16 the audit report in the report of the examination,
17 report of investigation, or other writing of the
18 Secretary.

19 (7) The authority of this Section shall remain in
20 effect, whether such a licensee, individual, or person
21 subject to this Act acts or claims to act under any
22 licensing or registration law of this State or claims to
23 act without the authority.

24 (8) No licensee, individual, or person subject to
25 investigation or examination under this Section may
26 knowingly withhold, abstract, remove, mutilate, destroy,

1 or secrete any books, records, computer records, or other
2 information.

3 Section 20-45. Confidential information. In hearings
4 conducted under this Act, information presented into evidence
5 that was acquired by the licensee when serving any individual
6 in connection with a student loan, including all financial
7 information of the individual, shall be deemed strictly
8 confidential and shall be made available only as part of the
9 record of a hearing under this Act or otherwise (i) when the
10 record is required, in its entirety, for purposes of judicial
11 review or (ii) upon the express written consent of the
12 individual served, or in the case of his or her death or
13 disability, the consent of his or her personal representative.

14 Section 20-50. Confidentiality.

15 (a) In order to promote more effective regulation and
16 reduce regulatory burden through supervisory information
17 sharing, except as otherwise provided in federal Public Law
18 110-289, Section 1512, the requirements under any federal law
19 or State law regarding the privacy or confidentiality of any
20 information or material provided to the Nationwide Mortgage
21 Licensing System and Registry, and any privilege arising under
22 federal or State law, including the rules of any federal or
23 State court, with respect to such information or material,
24 shall continue to apply to information or material after the

1 information or material has been disclosed to the Nationwide
2 Mortgage Licensing System and Registry. The information and
3 material may be shared with all State and federal regulatory
4 officials with student loan industry oversight authority
5 without the loss of privilege or the loss of confidentiality
6 protections provided by federal law or State law.

7 (b) In order to promote more effective regulation and
8 reduce regulatory burden through supervisory information
9 sharing, the Secretary is authorized to enter agreements or
10 sharing arrangements with other governmental agencies, the
11 Conference of State Bank Supervisors or other associations
12 representing governmental agencies as established by rule,
13 regulation, or order of the Secretary. The sharing of
14 confidential supervisory information or any information or
15 material described in subsection (a) of this Section pursuant
16 to an agreement or sharing arrangement shall not result in the
17 loss of privilege or the loss of confidentiality protections
18 provided by federal law or State law.

19 (c) In order to promote more effective regulation and
20 reduce regulatory burden through supervisory information
21 sharing, information or material that is subject to a privilege
22 or confidentiality under subsection (a) of this Section shall
23 not be subject to the following:

24 (1) disclosure under any State law governing the
25 disclosure to the public of information held by an officer
26 or an agency of the State; or

1 (2) subpoena or discovery, or admission into evidence,
2 in any private civil action or administrative process,
3 unless with respect to any privilege held by the Nationwide
4 Mortgage Licensing System and Registry with respect to the
5 information or material, the person to whom such
6 information or material pertains waives, in whole or in
7 part, in the discretion of that person, that privilege.

8 (d) In order to promote more effective regulation and
9 reduce regulatory burden through supervisory information
10 sharing, any other law relating to the disclosure of
11 confidential supervisory information or any information or
12 material described in subsection (a) of this Section that is
13 inconsistent with subsection (a) of this Section shall be
14 superseded by the requirements of this Section to the extent
15 the other law provides less confidentiality or a weaker
16 privilege.

17 Section 20-55. Reports of violations. Any person licensed
18 under this Act or any other person may report to the Secretary
19 any information to show that a person subject to this Act is or
20 may be in violation of this Act. A licensee who files a report
21 with the Department that another licensee is engaged in one or
22 more violations pursuant to this Act shall not be the subject
23 of disciplinary action by the Department, unless the Department
24 determines, by a preponderance of the evidence available to the
25 Department, that the reporting person knowingly and willingly

1 participated in the violation that was reported.

2 Section 20-60. Rules and regulations of the Secretary.

3 (a) In addition to such powers as may be prescribed by this
4 Act, the Secretary is hereby authorized and empowered to adopt
5 rules consistent with the purposes of this Act, including, but
6 not limited to:

7 (1) rules in connection with the activities of
8 licensees as may be necessary and appropriate for the
9 protection of consumers in this State;

10 (2) rules as may be necessary and appropriate to define
11 improper or fraudulent business practices in connection
12 with the activities of licensees in servicing student
13 loans;

14 (3) rules that define the terms used in this Act and as
15 may be necessary and appropriate to interpret and implement
16 the provisions of this Act; and

17 (4) rules as may be necessary for the enforcement of
18 this Act.

19 (b) The Secretary is hereby authorized and empowered to
20 make specific rulings, demands, and findings that he or she
21 deems necessary for the proper conduct of the student loan
22 servicing industry.

23 (c) A person or entity may make a written application to
24 the Department for a written interpretation of this Act. The
25 Department may then, in its sole discretion, choose to issue a

1 written interpretation. To be valid, a written interpretation
2 must be signed by the Secretary, or his or her designee, and
3 the Department's General Counsel. A written interpretation
4 expires 2 years after the date that it was issued.

5 (d) No provision in this Act that imposes liability or
6 establishes violations shall apply to any act taken by a person
7 or entity in conformity with a written interpretation of this
8 Act that is in effect at the time the act is taken,
9 notwithstanding whether the written interpretation is later
10 amended, rescinded, or determined by judicial or other
11 authority to be invalid for any reason.

12 Section 20-65. Appeal and review.

13 (a) Any person or entity affected by a decision of the
14 Secretary under any provision of this Act may obtain review of
15 that decision within the Department.

16 (b) The Secretary may, in accordance with the Illinois
17 Administrative Procedure Act, adopt rules to provide for review
18 within the Department of his or her decisions affecting the
19 rights of entities under this Act. The review shall provide
20 for, at a minimum:

21 (1) appointment of a hearing officer other than a
22 regular employee of the Department;

23 (2) appropriate procedural rules, specific deadlines
24 for filings, and standards of evidence and of proof; and

25 (3) provision for apportioning costs among parties to

1 the appeal.

2 (c) All final agency determinations of appeals to decisions
3 of the Secretary may be reviewed in accordance with and under
4 the provisions of the Administrative Review Law. Appeals from
5 all final orders and judgments entered by a court in review of
6 any final administrative decision of the Secretary or of any
7 final agency review of a decision of the Secretary may be taken
8 as in other civil cases.

9 Section 20-70. Violations of this Act; Secretary's orders.
10 If the Secretary finds, as the result of examination,
11 investigation, or review of reports submitted by a licensee,
12 that the business and affairs of a licensee are not being
13 conducted in accordance with this Act, the Secretary shall
14 notify the licensee of the correction necessary. If a licensee
15 fails to correct such violations, the Secretary shall issue an
16 order requiring immediate correction and compliance with this
17 Act, specifying a reasonable date for performance.

18 The Secretary may adopt rules to provide for an orderly and
19 timely appeal of all orders within the Department. The rules
20 may include provision for assessment of fees and costs.

21 Section 20-75. Collection of compensation. Unless exempt
22 from licensure under this Act, no person engaged in or offering
23 to engage in any act or service for which a license under this
24 Act is required may bring or maintain any action in any court

1 of this State to collect compensation for the performance of
2 the licensable services without alleging and proving that he or
3 she was the holder of a valid student loan servicing license
4 under this Act at all times during the performance of those
5 services.

6 Section 20-80. Licensure fees.

7 (a) The fees for licensure shall be a \$1,000 application
8 fee and an additional \$800 fee for investigation performed in
9 conjunction with Section 15-5. The fees are nonrefundable.

10 (b) The fee for an application renewal shall be \$1,000. The
11 fee is nonrefundable.

12 Section 20-85. Injunction. The Secretary, through the
13 Attorney General, may maintain an action in the name of the
14 people of the State of Illinois and may apply for an injunction
15 in the circuit court to enjoin a person from engaging in
16 unlicensed student loan servicing activity.

17 ARTICLE 25. CONSUMER FRAUD AND DECEPTIVE BUSINESS

18 PRACTICES ACT

19 Section 25-5. Enforcement; Consumer Fraud and Deceptive
20 Business Practices Act. The Attorney General may enforce a
21 violation of Article 5 of this Act as an unlawful practice
22 under the Consumer Fraud and Deceptive Business Practices Act.

1 ARTICLE 99. SEVERABILITY; EFFECTIVE DATE

2 Section 99-1. Severability. The provisions of this Act are
3 severable under Section 1.31 of the Statute on Statutes.

4 Section 99-99. Effective date. This Act takes effect
5 December 31, 2018."