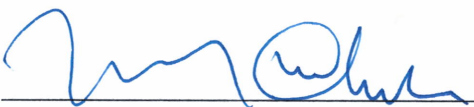


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2 Councilmember Anita Bonds



Councilmember David Grosso

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5 Councilmember Mary M. Cheh



Councilmember Brianne K. Nadeau

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8 Councilmember Elissa Silverman



Councilmember Robert C. White Jr.

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19 A BILL

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22 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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25
26 To amend the Department of Insurance and Securities Regulation Establishment Act of 1996 to
27 prevent abusive acts or practices on the part of student loan servicers, to clarify that
28 student loan servicers under contract with the United States Department of Education
29 shall automatically be issued a limited student loan servicing license upon meeting
30 certain criteria; to clarify denials of applications for approval; to proscribe prohibited
31 conduct on the part of student loan servicers; to assign affirmative duties to student loan
32 servicers; to assign the Attorney General of the District of Columbia the power to enforce
33 the Act; to transfer the Student Loan Ombudsperson from the Department of Insurance,
34 Securities and Banking to the Office of the Attorney General for the District of
35 Columbia; and require the creation of a Student Loan Borrower Bill of Rights by October
36 1, 2021.

37
38 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
39 act may be cited as the "Student Loan Borrower Bill of Rights Amendment Act of 2020".
40

41 Sec. 2. The Department of Insurance and Securities Regulation Establishment Act of
42 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-101 *et seq.*), is
43 amended as follows:

44 (a) Section 2 (D.C. Official Code § 31-101) is amended as follows:

45 (1) A new paragraph (1A) is added to read as follows:

46 “(1A) “Abusive act or practice” means an act or practice that:

47 “(A) Materially interferes with the ability of a student loan borrower to
48 understand a term or condition of a student education loan;

49 “(B) Takes unreasonable advantage of:

50 “(i) A lack of understanding on the part of a student loan borrower
51 of the material risks, costs, or conditions of a student loan;

52 “(ii) The inability of a student loan borrower to protect the interests
53 of the borrower when selecting or using either of the following:

54 “(I) A student education loan; or

55 “(II) A feature, term, or condition of a student education
56 loan; or

57 “(iii) The reasonable reliance by the student loan borrower on a
58 person engaged in servicing a student education loan to act in the interests of the borrower; or

59 “(C) Misrepresents the amount, nature, or terms of any fee or payment due
60 or claimed to be due on a student education loan, the terms and conditions of the student
61 education loan agreement or the borrower's obligations under the student education loan.”

62 (2) Paragraph (6B) is amended to read as follows:

63 “(6B) “Ombudsperson” means the position of Student Loan Ombudsperson
64 established within the Office of the Attorney General of the District of Columbia by section 108g
65 of the Attorney General for the District of Columbia Certification and Elected Term Amendment
66 Act of 2010, as introduced on March 3, 2020 (B23-____).”;

67 (3) New paragraphs (6C) and (6D) are added to read as follows:

68 “(6C) “Overpayment” or “prepayment” means a payment on a student education
69 loan in excess of the monthly amount due from the student loan borrower on a student education
70 loan.

71 “(6D) “Partial payment” or “underpayment” means a payment on a student
72 education loan account that contains multiple individual loans in an amount less than the amount
73 necessary to satisfy the outstanding payment due on all loans in the student education loan
74 account.

75 (b) Section 7a (D.C. Official Code § 31-106.01) is repealed.

76 (c) Section 7b (D.C. Official Code § 31-106.02) is amended as follows:

77 (1) Subsection (c) is amended as follows:

78 (A) Paragraph (1)(B) is amended by striking the phrase “Application fees
79 and other fees” and inserting the phrase “Application fees, investigation fees, and other fees” in
80 its place.

81 (B) A new paragraph (c)(3) is inserted as follows:

82 “(3) The Commissioner shall automatically issue a limited, irrevocable license to
83 any person servicing a student education loan under contract with the United States Department
84 of Education as follows:

85 “(A) Any person seeking to act within the District of Columbia as a
86 student loan servicer is exempt from the application procedures established pursuant to this
87 subsection, other than the requirements of paragraphs (1)(B) and (D) of this subsection, to the
88 extent that the student loan servicing performed is conducted pursuant to a contract awarded by
89 the United States Secretary of Education under 20 U.S.C. § 1087f. The procedure to document
90 eligibility for the exemption shall be prescribed by the Commissioner.

91 “(B) Any person meeting the criteria set forth in subparagraph (A) of this
92 paragraph shall be issued a license by the Commissioner for the student loan servicing of student
93 education loans under contract with the United States Department of Education and shall be
94 considered by the Commissioner to have met all requirements established in by paragraph (1)(A)
95 and (C) of this subsection.

96 “(C) The provisions of subsection (h) of this section shall not apply to a
97 person issued a limited license pursuant to this section to the extent that the person is servicing
98 federal student education loans.

99 “(D) Any person issued a license pursuant to this section shall provide the
100 Commissioner with written notice within seven days following the notification of the expiration,
101 revocation, or termination of any contract awarded by the United States Secretary of Education
102 under 20 U.S.C § 1087f. Thereafter, the person shall have 30 days to satisfy all requirements
103 established under this act in order to continue to act within the District of Columbia as a student
104 loan servicer for federal student education loans. At the expiration of the 30-day period, if the
105 person has not satisfied the requirements established pursuant to this act, the Commissioner shall
106 immediately suspend any license granted under this section.

107 “(E) In the case of student loan servicing that is not conducted pursuant to
108 a contract awarded by the United States Secretary of Education under 20 U.S.C. § 1087f, nothing
109 in this section shall prevent the Commissioner from issuing an order to temporarily or
110 permanently prohibit any person from acting as a student loan servicer.

111 “(F) In the case of student loan servicing conducted pursuant to a contract
112 awarded by the United States Secretary of Education under 20 U.S.C § 1087f, nothing in this
113 section shall prevent the commissioner from issuing a cease-and-desist order or injunction
114 against any student loan servicer to cease activities in violation of this act or D.C. Official Code
115 § 28-3901 *et seq.*”

116 (2) Subsection (g)(1)(C) is amended by striking “The Commissioner may deny an
117 application for renewal” and inserting “Except as provided for under subsection (c)(3) of this
118 section, the Commissioner may deny an application for renewal” in its place.

119 (d) New sections 7b-1, 7b-2, and 7b-3 are added to read as follows:

120 “Sec. 7b-1. Prohibited Conduct.

121 “(a) No student loan servicer shall:

122 “(1) Directly or indirectly employ any scheme, device, or artifice to defraud or
123 mislead student loan borrowers;

124 “(2) Engage in any unfair or deceptive practice toward any person or misrepresent
125 or omit any material information in connection with the servicing of a student education loan,
126 including, abusive acts and practices;

127 “(3) Obtain property by fraud or misrepresentation;

128 “(4) Misapply student education loan payments to the outstanding balance of a
129 student education loan;

130 “(5) Provide inaccurate information to a credit bureau, thereby harming a student
131 loan borrower's creditworthiness;

132 “(6) Fail to report both the favorable and unfavorable payment history of the
133 student loan borrower to a nationally recognized consumer credit bureau at least annually if the
134 student loan servicer regularly reports information to a credit bureau;

135 “(7) Refuse to communicate with an authorized representative of the student loan
136 borrower who provides a written authorization signed by the student loan borrower, provided the
137 student loan servicer may adopt procedures reasonably related to verifying that the representative
138 is in fact authorized to act on behalf of the student loan borrower;

139 “(8) Make any false statement or make any omission of a material fact in
140 connection with any information or reports filed with a governmental agency or in connection
141 with any investigation conducted by the Commissioner or another governmental agency;

142 “(9) Fail to respond within 15 business days to communications from the
143 Department of Insurance, Securities and Banking, or within such shorter, reasonable period of
144 time as may be requested by the Department; or

145 “(10) Fail to respond within 15 business days to a consumer complaint submitted
146 to the student loan servicer by the Department or Office of the Attorney General. If necessary,
147 the student loan servicer may request additional time to respond to the complaint, up to a
148 maximum of 45 business days, provided that the request is accompanied by an explanation on
149 why additional time is reasonable and necessary.

150 “Sec. 7b-2. Affirmative Duties

151 “(a) Except as otherwise provided pursuant to federal law, a student loan servicer shall:

152 “(1) Respond to any written inquiry from a student loan borrower or the
153 representative of a student loan borrower by:

154 “(A) Acknowledging receipt of the inquiry within 10 business days; and

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

158 “(2) Inquire of a student loan borrower how to apply an overpayment to a student
159 education loan. A borrower's instruction on how to apply an overpayment to a student education
160 loan shall stay in effect for any future overpayments during the term of the student education
161 loan until the borrower provides different instructions.

162 “(3) Apply partial payments in a manner that minimizes late fees and negative
163 credit reporting. If there are multiple loans on a borrower's account with an equal stage of
164 delinquency, a student loan servicer shall satisfy the requirements of this subsection by applying
165 partial payments to satisfy as many individual loan payments as possible on a borrower's
166 account.

167 “(b) The following requirements shall be applicable to a student loan servicer in the event
168 of the sale, assignment, or other transfer of the servicing of a student education loan that results
169 in a change in the identity of the person to whom a student loan borrower is required to send
170 payments or direct any communication concerning the student education loan:

171 “(1) As a condition of a sale, an assignment, or any other transfer of the servicing
172 of a student education loan, a student loan servicer shall require the new student loan servicer to
173 honor all benefits originally represented as available to a student loan borrower during the

174 repayment of the student education loan and preserve the availability of those benefits, including
175 any benefits for which the student loan borrower has not yet qualified;

176 “(2) A student loan servicer shall transfer to the new student loan servicer for the
177 student education loan all information regarding the student loan borrower, the account of the
178 borrower, and the student education loan of the borrower. The information shall include the
179 repayment status of the student loan borrower and any benefits associated with the student
180 education loan of the borrower;

181 “(3) The student loan servicer shall complete the transfer of information required
182 pursuant to section 7b-2(b)(2) within 45 calendar days after the sale, assignment, or other
183 transfer of the servicing of the student education loan; and

184 “(c) A student loan servicer who obtains the right to service a student education loan shall
185 adopt policies and procedures to verify that the student loan servicer has received all information
186 regarding the student loan borrower, the account of the student loan borrower, and the student
187 education loan of the student loan borrower including, but not limited to, the repayment status of
188 the student loan borrower and any benefits associated with the student education loan of the
189 student loan borrower.

190 “(d) A student loan servicer shall evaluate a student loan borrower for eligibility for an
191 income-driven repayment program prior to placing the borrower in forbearance or default, if an
192 income-driven repayment program is available to the borrower.”

193 “Sec. 7b-3. Enforcement

194 “(a) In addition to complying with the requirements of this act, a student loan servicer
195 shall comply with all applicable federal laws relating to student loan servicing, as from time to
196 time amended, and the regulations promulgated thereunder.

197 “(b) Any person who suffers damage as a result of the failure of a student loan servicer to
198 comply with sections 7b, 7b-1, 7b-2, or 7b-3(a) may bring an action on their own behalf and on
199 behalf of a similarly situated class of consumers against that student loan servicer to recover or
200 obtain any of the following:

201 “(1) Actual damages, but in no case, shall the total award of damages be less than
202 five hundred dollars (\$500) per plaintiff, per violation;

203 “(2) An order enjoining the methods, acts, or practices;

204 “(3) Restitution of property;

205 “(4) Punitive damages;

206 “(5) Attorney’s fees; or

207 “(6) Any other relief that the court deems proper.

208 “(c) In addition to any other remedies provided by this section or otherwise provided by
209 law, whenever it is proven by a preponderance of the evidence that a student loan servicer has
210 engaged in conduct that substantially interferes with a borrower’s right to an alternative payment
211 arrangement; loan forgiveness, cancellation, or discharge; or any other financial benefit as
212 established under the terms of a borrower’s promissory note or under the Higher Education Act
213 of 1965 (20 U.S.C. § 1070a *et seq.*), as from time to time amended, and the regulations
214 promulgated thereunder, the court shall award treble actual damages to the plaintiff, but in no
215 case shall the award of damages be less than one thousand five hundred dollars (\$1,500) per
216 plaintiff, per violation.

217 “(d) The attorney general may bring an action in the name of the people of the District of
218 Columbia to restrain or prevent any violation of sections 7b, 7b-1, 7b-2, or 7b-3(a) or any
219 continuance of any such violation.

220 “(e) The Department shall share information on a quarterly basis related to the
221 implementation, execution, and enforcement of sections 7b, 7b-1, 7b-2, and 7b-3(a) with the
222 Office of the Attorney General of the District of Columbia, and the Student Loan Ombudsperson
223 within the Office of the Attorney General established pursuant to section 108g of the Attorney
224 General for the District of Columbia Certification and Elected Term Amendment Act of 2010, as
225 introduced on March 3, 2020 (B23-____).”;

226 (e) Section 7c is amended by striking the phrase “sections 7a and 7b.” and inserting
227 “sections 7b, 7b-1, 7b-2, and 7b-3(a).” in its place.

228 Sec 3. The Attorney General for the District of Columbia Certification and Elected Term
229 Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code § 1-
230 301.81 *et seq*) is amended by inserting a new section 108g as follows:

231 “Student Loan Ombudsperson.

232 “(a) There is established within the Office of the Attorney General for the District of
233 Columbia the position of the Student Loan Ombudsperson (Ombudsperson).

234 “(b)(1) The Ombudsperson shall be:

235 “(A) Appointed by the Attorney General;

236 “(B) A District resident within 180 days of appointment; and

237 “(C) Experienced in consumer finance, including student loan servicing
238 and debt collection.

239 “(2) If a vacancy in the position of Ombudsperson occurs as a consequence of
240 removal, resignation, disability, death, or other reason, the Attorney General shall appoint an
241 Ombudsperson to fill the vacancy within 90 days of the occurrence of the vacancy.

242 “(c) The Ombudsperson, in consultation with the Attorney General and Commissioner of
243 the Department of Insurance, Securities, and Banking, shall:

244 “(1) Assist in the enforcement of the provisions of section 7b, 7b-1, 7b-2, and 7b-
245 3(a) of the Department of Insurance and Securities Regulation Establishment Act of 1996,
246 effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-101 *et seq.*), including the
247 referral of actions to the Office of the Attorney General for the District of Columbia for the
248 enforcement of an order of the Commissioner of the Department of Insurance, Securities, and
249 Banking pursuant to section 7b, 7b-1, 7b-2, and 7b-3(a) of the Department of Insurance and
250 Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268;
251 D.C. Official Code § 31-101 *et seq.*) or other authority of the Commissioner of the Department of
252 Insurance, Securities, and Banking related to a licensee or a person required to have a license
253 under the act;

254 “(2) Receive, review, and attempt to resolve any complaints from a student loan
255 borrower as defined by § 31-101(9), including attempts to resolve such complaints in
256 collaboration with student loan servicers, and any other participants in student-loan lending ,
257 including those entities engaging student loan borrowers about existing student debt;

258 “(3) Compile and analyze data on student loan borrower complaints;

259 “(4) Develop and provide information to assist student loan borrowers in
260 understanding their rights and responsibilities under the terms of the student loan borrower's
261 student education loan;

262 “(5) Monitor the actions that student loan servicers take to ensure that student
263 loan borrowers are informed of their rights and responsibilities under the terms of the student
264 loan borrower's student education loan in a transparent, accessible, and timely manner;

265 “(6) Make recommendations to the Attorney General and Commissioner of the
266 Department of Insurance, Securities, and Banking for resolving problems and concerns of student
267 loan borrowers;

268 “(7) Analyze and monitor the development and implementation of federal and
269 local laws, regulations, and policies relating to student loan borrowers;

270 “(8) Upon the request and written consent of a student loan borrower, review the
271 student education loan history of the student loan borrower; provided, that the student loan
272 borrower has provided documentation of the student loan borrower's student education loan
273 history;

274 “(9) By October 1, 2021, establish, publicize, and maintain an education course to
275 assist student loan borrowers in understanding their student education loans, which shall include:

276 “(A) Educational presentations;

277 “(B) Explanations of key loan terms;

278 “(C) Documentation requirements;

279 “(D) Monthly payment obligations, including:

280 “(i) Income-based repayment options;

281 “(ii) Loan forgiveness; and

282 “(iii) Disclosure requirements; and

283 “(E) Other educational materials that the Attorney General or
284 Commissioner of the Department of Insurance, Securities, and Banking considers necessary or
285 appropriate;

286 “(10) By October 1, 2021, develop a student loan borrower bill of rights;

287 “(11) Take any other action required by the Commissioner.

288 “(d) Beginning March 1, 2022, and by March 1 of each year thereafter, the Attorney
289 General shall submit an annual report to the Mayor and the Council on the Ombudsperson's
290 activities, as required or authorized by this section, of the previous year, which shall include the
291 number of educational presentations held across the city, the number of residents in attendance
292 for the educational presentations, and the number of complaints received and the action taken to
293 resolve the complaints.

294 “(e) The Ombudsperson shall not:

295 “(1) Disclose personally identifiable information regarding a student loan
296 borrower without the written consent of the student loan borrower;

297 “(2) Disclose the identity of a person who brings a complaint or provides
298 information to the Ombudsperson without the person's consent, unless the Attorney General
299 determines that disclosure is necessary to further the resolution of a complaint or an
300 investigation;

301 “(3) Provide legal advice or legal representation; or

302 “(4) Be held personally liable for the good-faith performance of his or her
303 responsibilities or duties under this section or rules issued pursuant to this section; except, that no
304 immunity shall extend to criminal acts, or other acts that violate District or federal law.”

305 “(f) The Attorney General for the District of Columbia, pursuant to section 2-501 *et seq.*
306 may issue rules to implement section 108g of the Attorney General for the District of Columbia
307 Certification and Elected Term Amendment Act of 2010, as introduced on March 3, 2020 (B23-
308 _____).”.

309 Sec. 4. Fiscal impact statement.

310 The Council adopts the fiscal impact statement in the committee report as the fiscal

311 Impact statement required by section 602(c)(3) of the District of Columbia Home Rule
312 Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

313 Sec. 5. Effective date.

314 This act shall take effect following approval by the Mayor (or in the event of veto by the
315 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
316 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
317 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
318 Columbia Register.