

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 750
Economic Matters

(Delegate Lopez, *et al.*)

Action to Collect a Private Education Loan - Prohibition

This bill prohibits a private education lender from initiating an action to collect a private education loan if the student loan borrower or cosigner would be required to demonstrate undue hardship to discharge the private education loan in bankruptcy.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill defines “private education loan” as an extension of credit that:

- is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965;
- is extended to a consumer expressly, wholly or partly, for postsecondary educational expenses (regardless of whether the loan is provided by the institution that the student attends);
- does not include open-end credit or any loan that is secured by real property or a dwelling; and
- does not include an extension of credit in which the covered institution is the creditor if (1) the term of the extension of credit is 90 days or less or (2) an interest rate will

not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

The bill incorporates [provisions of federal law](#) related to discharging student loan debt.

Current Law/Background:

Private Student Loans

The Office of the Commissioner of Financial Regulation (OCFR) advises that private or alternative student loans are any student loans that are not federal student loans. These types of loans do not have the same flexible repayment terms, fixed interest rates, or the full range of borrower protections as federal student loans. Private student loans are not funded or subsidized by the federal government and are usually financed by banks, credit unions, state loan programs, or other types of private lenders.

OCFR further advises that federal student loans and private student loans are each treated differently in bankruptcy. Federal loans are only dischargeable in bankruptcy under extraordinary circumstances (or “undue hardship”). Private loans may be discharged if they do not meet the definition of “qualified loan” which is considered an unsecured form of debt and defined by the U.S. Tax Code and the Higher Education Act as a loan made (1) to an accredited institution; (2) for qualified higher education expenses; and (3) to an eligible student.

Regulation of Student Loans in Maryland

Chapters 731 and 732 of 2018 require OCFR to designate an individual to serve as a Student Loan Ombudsman. Among other things, the ombudsman must receive and process complaints about student education loan servicing and may refer any matter that is abusive, unfair, deceptive, or fraudulent to the Office of the Attorney General for civil enforcement or criminal prosecution.

Chapter 546 of 2019 prohibits a student loan servicer (*i.e.*, the entities collecting principal, interest, or other amounts owed on student loans) from taking specified adverse actions with regard to student loan borrowers. In addition, Chapter 546 requires a student loan servicer to engage in certain conduct on receipt of a written inquiry or complaint from a student loan borrower or the borrower’s authorized representative. OCFR is authorized to enforce the Act. The Student Loan Ombudsman may refer any complaint from a student loan borrower to OCFR for investigation. A violation of these provisions is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Small Business Effect: Any small business lenders that engage in lending as described in the bill may be affected, as the bill may make it more difficult to collect student loan debts that are in arrears. However, the number of small business lenders in the State that engage in the activities described by the bill is not known.

Additional Comments: Under [11 U.S.C. § 523](#), which is referenced by the bill, “undue hardship” is not defined. However, provisions in that section do describe instances in which a student loan debtor may be discharged from debt.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Comptroller’s Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of Labor; U.S. Code; Department of Legislative Services

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mm/ljm

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