SB 1012

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1012 (Senator Feldman, *et al.*)
Finance

Commissioner of Financial Regulation - Student Education Loans - Ombudsman and Licensing of Servicers

This bill requires the Office of the Commissioner of Financial Regulation (OCFR) to designate an individual to serve as the Student Loan Ombudsman. The bill specifies the related functions, powers, and duties of the ombudsman and OCFR. In addition, the bill prohibits a person from engaging in student loan servicing in Maryland unless the person is licensed (or exempt from licensing). Violation of the bill's requirements is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: General fund revenues increase by approximately $63,000 in FY 2019 for initial licensure and $63,000 in FY 2020 to begin the biennial licensing cycle. General fund revenues also increase, likely minimally, beginning in FY 2019 as a result of the bill's penalty provisions. General fund expenditures increase by $156,700 in FY 2019 for additional personnel, reflecting the bill's October 1, 2018 effective date.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	$63,000	$63,000	-	$63,000	-
GF Expenditure	$156,700	$196,400	$202,200	$209,100	$216,300
Net Effect	($93,700)	($133,400)	($202,200)	($146,100)	($216,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Responsibilities of Ombudsman

The ombudsman (in consultation with OCFR) must:

- receive and review complaints from student loan borrowers;
- attempt to resolve complaints;
- compile and analyze complaint data;
- help borrowers understand their rights and responsibilities;
- provide information to the public and others;
- make recommendations regarding resolution of borrower problems and concerns;
- analyze and monitor the development and implementation of federal, State, and local laws, regulations, and policies and recommend necessary changes;
- review student education loan history of borrowers;
- disseminate information about the ombudsman; and
- take any other actions necessary to fulfill the duties of the ombudsman.

The bill requires the ombudsman to establish a student loan education course that includes educational presentations and material about student education loans. The course must review specified information related to student loans.

Student Loan Servicers

The bill establishes new requirements for student loan servicers (*i.e.*, the entities collecting principal, interest, or other amounts owed on student loans) operating in Maryland.

Under the bill, a person is prohibited from engaging in student loan servicing unless the person is (1) licensed or (2) exempt from licensing.

The bill establishes an application process (including required licensing and investigation fees of $1,000 and $800, respectively) as well as requirements related to licensing and licensing renewal, preservation of records, OCFR's investigative and examination powers, compliance with federal laws regarding student loan servicing, prohibitions of licensees, staffing for OCFR, enforcement, violations, and reporting by OCFR.

Enforcement and Penalties

OCFR is authorized to conduct investigations and to hold a hearing. Among other specified enforcement actions, OCFR may impose a civil penalty of up to $100,000 per violation. In addition, violation of the bill's provisions is an unfair or deceptive trade practice and this analysis assumes that such a violation is subject to the enforcement and penalty provisions of MCPA.

OCFR is authorized to enforce the provisions of the bill against a student loan servicer who is doing business in Maryland but is not licensed (or exempt). In addition, OCFR may order a person to cease and desist from engaging in the business of servicing under specified circumstances.

A licensee who *willfully* fails to comply with the bill's requirements is liable to the borrower in an amount equal to the sum of (1) actual damages sustained by the borrower; (2) a monetary award equal to three times the total amount the licensee collected (as determined by OCFR); (3) punitive damages allowed by the court; and (if a borrower prevails in an action), the costs of the action and reasonable attorney's fees. A licensee who *negligently* fails to comply with the bill's requirements is liable to the borrower in an amount equal to the sum of (1) actual damages sustained and (2) if the borrower prevails, the costs of the action and reasonable attorney's fees.

Current Law/Background: Student loan servicers are not required to be licensed or regulated under Maryland law.

In January 2018, the Maryland Financial Consumer Protection Commission (MFCPC) released an interim report. To address the growing concerns of student loan borrowers in Maryland, the commission recommended that (1) the General Assembly adopt a student loan bill of rights; (2) the State designate a student loan ombudsman; and (3) the State consider licensing student loan servicers.

The MFPFC report stated that Illinois, Washington, and Connecticut each have adopted a student loan bill of rights in the last few years. The consensus among advocates is that a student loan bill of rights should be designed to prevent borrowers from being misled or ignored by the companies that service their loans.

MFPFC suggested that OCFR designate a student loan ombudsman to receive, review, and attempt to resolve any complaints from student loan borrowers and to assist student loan borrowers in understanding their rights and responsibilities under the terms of student education loans. It was recommended that the ombudsman collect and analyze data regarding complaints received and report annually to the Governor and General Assembly.

To enhance the effectiveness of the student loan bill of rights, MFPFC also recommended that the State consider licensing student loan servicers. Student loan servicers collect and receive any principal, interest, or other money owed under a student education loan, and they perform other administrative services that relate to a student education loan. MFPFC recommended that licensing requirements include recordkeeping and examination requirements, as well as specific provisions regarding servicing student loans, such as properly processing payments. Licensure of the student loan servicers is intended to allow OCFR to know each servicer doing business in the State and to take enforcement actions against the servicers. The State may use other jurisdictions that have begun regulating student loan servicers as a model, such as the District of Columbia.

Likewise, the Maryland Financial Education and Capability Commission (MFECC) in its 2017 annual report made a series of recommendations, including creating a student loan bill of rights with a student loan ombudsman in OCFR to monitor complaints and serve as an advocate for those impacted by student loan fraud or predatory practices. MFECC monitors public and private initiatives to improve the financial education and capabilities of Marylanders and recommends how State agencies can coordinate financial education and capability efforts. To support this recommendation, the report indicates that student loan borrowing complaints increased 153% in Maryland, from 2015 to 2016, and that over 800 complaints have been filed against their student loan servicers.

Maryland Consumer Protection Act

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

State Revenues: OCFR advises that, based on the number of licensees registered in Connecticut (which recently established a similar regulatory structure), about 35 student loan servicers are likely to seek licensure. The bill specifies that a license initially issued during 2018 expires at the end of September 30 of the odd-numbered year immediately following issuance, which is September 30, 2019. This analysis assumes that 35 applicants pay licensing fees after the bill's October 1, 2018 effective date; therefore, general fund revenues increase by $63,000 in fiscal 2019, reflecting both the $1,000 license fee and the $800 investigation fee. Then the licensees renew their licenses by September 30, 2019 – paying the same fees in fiscal 2020. Thereafter, licensees pay those fees to complete license renewals on a biennial basis.

In addition, the bill also establishes new penalty provisions related to student loan servicers. To the extent that violations occur, general fund revenues increase accordingly. Any increase is anticipated to be minimal, although given the relative novelty of state-level licensing of student loan servicers, the likelihood of violations occurring is unclear.

State Expenditures: OCFR advises that the activities specified by the bill warrant additional personnel. The ombudsman is responsible for, among other things, the management of consumer outreach and education; handling consumer complaints and resolutions; reviewing consumer student loan histories; providing information to State agencies and officials; and analyzing relevant laws and regulations. Based on complaint data from the federal Consumer Financial Protection Bureau, OCFR anticipates hiring two additional staff to implement the bill (including the ombudsman).

General fund expenditures increase by $156,705 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring one Student Loan Ombudsman and one Nondepository Examiner to perform the functions required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$140,234
Operating Expenses	16,471
Total FY 2019 State Expenditures	**$156,705**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Small Business Effect: To the extent that student loan servicers operate as small businesses, they incur new licensing and compliance costs and may have to substantially alter their operations to comply with the bill.

Additional Comments: This fiscal analysis assumes that the reference to civil and criminal penalties for unfair and deceptive trade practices refers to those penalties codified in Title 13 of the Commercial Law Article.

Additional Information

Prior Introductions: None.

Cross File: HB 1642 (Delegate Frick, *et al.*) - Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Maryland Higher Education Commission; University System of Maryland; Department of Labor, Licensing, and Regulation; Maryland Financial Education and Capability Commission; Department of Legislative Services

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