Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 594 (The Speaker, *et al.*) (By Request - Office of the Attorney General)

Economic Matters Finance

Financial Institutions - Student Loan Servicers - Unfair, Abusive, or Deceptive Trade Practices

This bill 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. The Office of the Commissioner of Financial Regulation (OCFR) is authorized to enforce the bill. As a result, the bill allows the Nondepository Special Fund to be used for related enforcement activities. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General (OAG), Consumer Protection Division, and OCFR can enforce the bill's requirements with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: Except as otherwise required by federal law (or a court order), the bill prohibits a student loan servicer from:

- employing (directly or indirectly) any scheme, device, or artifice to mislead a student loan borrower;
- engaging in any unfair, abusive, or deceptive trade practice toward any person;

- misrepresenting specified information (or omitting any material information) in connection with the servicing of a student education loan;
- obtaining property by misrepresentation of fact (or omission of material fact);
- beginning February 1, 2020, allocating a nonconforming payment (*i.e.*, a payment that is more or less than the required payment amount) in a manner other than as directed by a student loan borrower, if the request is made in writing or electronically;
- knowingly (or recklessly) misapplying, or refusing to correct a misapplication of a payment;
- knowingly (or recklessly) providing inaccurate information to a consumer reporting agency (CRA), or refusing to correct inaccurate information;
- failing to report the favorable history of a borrower to a nationally recognized CRA at least once a year, if a student loan servicer regularly reports information to a CRA;
- refusing to communicate with an authorized representative of a borrower who provides a signed written authorization;
- negligently making a false statement (or omitting a material fact) in connection with any information report filed with (or any investigation conducted by) a state or local government agency; or
- violating any federal law concerning student education loan servicing.

The bill authorizes a student loan servicer to adopt procedures to verify that an authorized representative of a borrower is, in fact, authorized to act on behalf of the borrower.

With regard to written inquiries, a servicer must acknowledge receipt of such an inquiry or complaint from a borrower (or an authorized representative) within 10 days after receipt of the inquiry or complaint. Unless a response to the written inquiry is included in the acknowledgement, the servicer must provide information responding to the inquiry or complaint within 30 days. If a written inquiry or complaint relates to a borrower's account balance, the information provided in response must either (1) state that the servicer has corrected the account balance or (2) explain why the servicer believes the borrower's account is correct.

If a borrower requests an account document that is in the possession (or control) of a servicer, the servicer must provide the document within 30 days after receiving the request.

Office of the Commissioner of Financial Regulation – Enforcement Provisions

OCFR may enforce the bill by exercising any of the powers provided under §§ 2-113 through 2-116 of the Financial Institutions Article.

The bill authorizes OCFR to seek an injunction to prohibit a person who has engaged in (or is engaging in) a violation of the bill from engaging in (or continuing to engage in) the violation. The court may enter any order or judgment necessary to (1) prevent the use by a person of a prohibited practice; (2) restore to a person any money or real or personal property acquired from the person by means of a prohibited practice; or (3) appoint a receiver in a case of a willful violation of the bill.

In any action brought by OCFR pursuant to the bill's authorization, OCFR may recover the costs of the action.

OCFR may enforce the bill by requiring a violator to take affirmative action to correct the violation (including the restitution of money or property to an aggrieved person). The bill further authorizes OCFR to (1) investigate violations of the bill and (2) aid any other unit of State government that has regulatory jurisdiction over the business activities of the violator.

Finally, OCFR may cooperate in the investigation and prosecution of any violation of the bill with OAG, the State's Attorney, or any other unit of law enforcement.

Student Loan Ombudsman Provisions

The bill repeals a provision requiring OCFR to report each year on the implementation and effectiveness of the Student Loan Ombudsman. Instead, the bill authorizes the ombudsman to refer any complaint from student loan borrowers to OCFR for investigation pursuant to the bill.

Current Law: While student loan servicers are not required to be licensed or regulated under Maryland law, Chapters 731 and 732 of 2018 required OCFR to designate an individual to serve as the Student Loan Ombudsman. Each student loan servicer in the State must designate an individual to represent the student loan servicer in communications with the ombudsman.

The ombudsman (in consultation with OCFR) must receive and process complaints about student education loan servicing, including receiving and reviewing complaints from student loan borrowers; attempt to resolve complaints; and compile and analyze complaint data. In addition, the ombudsman (in consultation with OCFR) must disseminate information about student education loans and servicing by helping borrowers understand their rights and responsibilities, providing information to the public and others, and disseminating information about the ombudsman.

The ombudsman may refer any matter that is abusive, unfair, deceptive, or fraudulent to OAG for civil enforcement or criminal prosecution.

Commissioner of Financial Regulation – Enforcement Powers

The Commissioner of Financial Regulation has the power to vigorously investigate financial transactions to determine whether a person has violated a law, regulation, rule, or order over which the commissioner has jurisdiction. For the purposes of an investigation or proceeding, the commissioner may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, and require the production of documents and other evidence. If a person refuses to obey a subpoena from the commissioner, the commissioner may apply to the appropriate circuit court to issue an order requiring the person to appear before the commissioner and produce any requested evidence. If the court issues such an order, failure to obey it subjects the person to contempt of court.

When the commissioner determines, after notice and hearing, as specified, that a person has engaged in a violation of a law, regulation, rule, or order, the commissioner may issue a cease and desist order, suspend or revoke the license of the violator, or issue a penalty order against the person for up to $10,000 for a first violation and up to $25,000 for each subsequent violation.

The commissioner may also bring an action in a circuit court to either prevent an unlawful action or to remedy the outcome of an unlawful action. The commissioner may bring an action to obtain a temporary restraining order, a temporary or permanent injunction, a declaratory judgment, an order preventing access to the violator's assets, an order of rescission or restitution, or any other relief that is determined just by the court.

Maryland Consumer Protection Act

An unfair, abusive, 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, abusive, 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 $10,000 for each violation and up to $25,000 for each repetition of the same 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.

Background: According to the January 2019 Maryland Financial Consumer Protection Commission report, U.S. student loan debt totaled $1.56 trillion by September 2018, with 44.2 million borrowers nationwide as of year-end 2017. Student loan debt continues to rise and is now the second largest total debt balance after mortgage debt. Student loan debt has more than doubled since 2008. According to a survey done by the Institute for College Access and Success, about 68% of 2015 college graduates had student debt, owing on average $30,100.

The federal government plays a significant role in the student loan market. The U.S. Department of Education regulates the federal student loan industry and has established standards and procedures, which borrowers, lenders, educational institutions, and student loan services must follow. It also is actively engaged in lending to students through two loan programs: the Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The federal government acts as the lender for FDLP loans. In the FFELP loan program, which was discontinued in 2010, loans were issued by private lenders and the federal government acted as a reinsurer. Over 90% of new student loans are currently made through FDLP.

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.

The Federal Reserve has expressed concern that high levels of student debt and delinquency reduce borrowers' ability to acquire other types of credit, which may hamper the recovery of the housing market, a key driver of economic growth. The growth in outstanding student loan debt has also been accompanied by a marked increase in student loan delinquency. The Federal Reserve reported in 2017 that 10.3% of borrowers are behind on their payments, and 38% of their loans are in deferment.

According to the Project on Student Loan Debt, the average debt of 2015 college graduates from Maryland institutions was $27,672, the twenty-eighth highest in the nation. About 56% of Maryland graduates have student loan debt, which ranked thirty-sixth among all states. These estimates include only public and nonprofit four-year institutions. The Federal Reserve estimates that 16.7% of all Maryland individuals with a credit report have a student loan, compared with 16.2% nationwide.

Additional Information

Prior Introductions: None.

Cross File: SB 670 (The President, *et al.*) (By Request - Office of the Attorney General) - Finance.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Maryland Higher Education Commission; Department of Labor, Licensing, and Regulation; Federal Reserve; *New York Times*; Project on Student Loan Debt; Institute for College Access and Success; Department of Legislative Services

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