

# **S. XXX, the Student Loan Borrower Bill of Rights**

## **Senators Durbin, Warren, Boxer, and Reed**

### **Section by Section**

#### **Section 1. Short Title**

The Student Loan Borrowers Bill of Rights

#### **Section 2. Truth in Lending Act Amendments for Private Student Loans**

Amends the Truth in Lending act related to private student loans.

**Definitions.** Borrower, Charge-off, Private education loan, Servicer, Servicing.

**Notification Before First Fully Amortized Payment.** A private educational lender must notify a borrower 30-150 days before the first full payment about key terms and conditions, including:

- Interest rate, whether it is fixed or variable, and limitations on adjustments;
- Finance charges, late fees, ranges of fees, penalties, and adjustments to principal based on borrower defaults or late payments and limitations on the discharge of a private loan in bankruptcy;
- Total amount to be repaid, principal amount, and maximum term of the loan;
- Maximum monthly payment and whether payments are graduated;
- Other information as determined by CFPB;
- Name of the lender and servicer;
- Address where payments and inquiries should be sent, telephone number, and website;
- Descriptions of alternative repayment plans including loan consolidation and refinancing options and servicemember or veteran benefits under the Servicemember Civil Relief Act
- A statement that a Servicemember and Veterans Liaison is available to answer questions about servicemember and veteran benefits and a toll-free number.

**Disclosures when Borrower is 30 Days Delinquent.** When a borrower becomes 30 days delinquent, the lender must notify the borrower within five days:

- The date on which the loan will be charged-off if no payment is made;
- The amount the borrower must pay to avoid the charge-off and to bring the loan current;
- That a payment of less than the minimum could result in the loan being charged-off; and
- A Servicemember and Veterans Liaison is available to answer inquiries about servicemember and veteran benefits and a toll-free telephone number.

**Disclosures when Borrower is 60 Days Delinquent.** When a borrower is having difficulty making a payment or becomes 60 days delinquent, the lender within five days must:

- Review the borrower's account and determine whether the borrower is eligible for an alternative repayment plan and servicemember or veteran benefits;
- Provide the borrower information about alternative repayment plans and servicemember and veteran benefits; and
- Notify the borrower that a Servicemember and Veterans Liaison is available to answer inquiries about servicemember and veteran benefits and a toll-free telephone number.

*Forbearance or Deferment.* If the borrower notifies the lender that a long-term alternative repayment plan is not needed, the lender may provide the borrower information about forbearance or deferment options.

*Notification Process.* Lenders are required to establish a process for borrower to notify lenders (1) the borrower is having difficulty making payments and (2) a long-term alternative repayment plan is not needed. The CFPB, in consultation with the Department of Education is required to set minimum standards and create a model form for lenders to use in implementing this section.

*Model Disclosure Form for Alternative Repayment Plans, Forbearance, and Deferment Options.* The CFPB and the Department of Education shall develop and issue model forms within two years to allow borrowers to compare alternative repayment plans, forbearance, and deferment options with the borrower's existing repayment plan. The forms must include:

- Total amount to be paid over the life of the loan;
- Total amount in interest to be paid over the life of the loan;
- Monthly payment amount;
- Expected pay-off date;
- Related fees and costs;
- Eligibility requirements and how the borrower can apply; and
- Consequences, including the loss of eligibility for alternative repayment plans, forbearance, or deferment options.

**Sale, Transfer, or Assignment.** If the sale, transfer, or assignment of a private student loan results in a change to whom the borrower sends payment or with whom the borrower communicates, the current lender or servicer must:

- Notify the borrower within 45 days of the sale, transfer, or assignment; the identity of the new lender or servicer; the name and address where payment and communications should be sent; the telephone number and website of the current and new lender or servicer; the effective date of the sale, transfer or assignment; the date when transferor servicer will stop accepting payment; and the date when transferee servicer will begin accepting payment.
- Forward immediately any payment received from a borrower with a loan that has been sold, transferred or assigned to the new servicer up to 60 days after the sale, transfer or assignment.

If the sale, transfer, or assignment of a private student loan results in a change to whom the borrower sends payment or to whom the borrower communicates, the new lender or servicer must:

- Notify the borrower within 45 days of the sale, transfer, or assignment; the identity of the new lender or servicer; the name and address where payment and communications should be sent; the telephone number and website of the current and new lender or servicer; the effective date of the sale, transfer or assignment; the date when transferor servicer will stop accepting payment; and the date when transferee servicer will begin accepting payment.

- Accept as on-time any payment forwarded from the previous servicer within 60 days after the previous servicer stops accepting payment;
- Provide a simple, online process for transferring electronic fund transfer authority; and
- Honor any promotion or benefit offered by the previous lender or servicer.

**Material Change in Mailing Address or Procedure for handling Payments.** Servicers may not impose any late fees for late payments if such delay is caused by a change in mailing address or procedures for handling payments.

**Application of Payments.** Unless otherwise directed by the borrower, payments must first be applied to the interest and fees owed on the due date and then to the principal of the loan with the highest APR and then interest and fees of that loan, then to the loan with the next highest APR until payment is exhausted.

*Application of Excess Amounts.* Unless otherwise directed by the borrower, excess payments must be applied to interest and fees owed on the payment due date and then to the principal of the loan with the highest APR and then interest and fees of that loan, then to the loan with the next highest APR until payment is exhausted.

*Apply Payment on Date Received.* Servicers shall apply payments to a borrower's account on the date the payment is received.

*Promulgation of Rules.* The CFPB, in consultation with the Department of Education, may issue rules that:

- Minimize the fees, interest, and the total loan amount;
- Minimize delinquencies, assignments to collection, and charge-offs;
- Require servicers to apply payments on the date received; and
- Allow the borrower to require payments be applied in a certain manner.

**Rehabilitation of Loans.** If a borrower makes 9 voluntary consecutive payments within 20 days of the due date or brings the loan current after the loan is charged-off, the servicer must request that consumer reporting agencies remove the delinquencies that led to the charge-off and the charge-off from the borrower's credit history.

**Servicemembers, Veterans and Private Education Loans.**

- *Servicemember and Veterans Liaison.* Servicers must designate a Servicemember and Veterans Liaison who is trained on servicemember and veteran benefits to answer questions from and provide assistance to servicemembers and veterans.
- *Toll-Free Telephone Number.* Servicemembers and Veterans must be able to reach the Liaison via a toll-free telephone number that is located on the servicer's website and on monthly billing statements.
- *Prohibition on Charge-Offs.* A lender or servicer may not charge-off or report a private education loan as delinquent, assigned to collection, or charged-off to a credit reporting agency if the borrower is on active duty or serving in a combat zone.

**Borrower's Loan History.** Servicers must make available a borrower's loan history via secure website or in writing upon request, including:

- Payment history;
- Loan history;
- Annual percentage rate history; and
- Key loan terms

Servicers must provide a borrower's original loan documents and promissory notes at no charge, if requested.

**Error Resolution.** CFPB, in consultation with the Department of Education, must promulgate rules requiring servicers to establish error resolution procedures allowing borrowers to resolve errors related to their private student loans in a timely fashion.

**Additional Servicing Standards.** The CFPB, in consultation with the Department of Education, may establish additional servicing standards to reduce delinquencies, assignments to collections, and charge-offs, and to ensure borrowers understand their rights and obligations.

**Arbitration.** Any rights and remedies available to borrowers against servicers may not be waived by any agreement, policy, or form, including predispute arbitration agreements.

Predispute arbitration agreements are not valid or enforceable by a servicer, including as a third-party beneficiary or by estoppel, if the agreement requires arbitration of a dispute. This applies to predispute arbitration agreements entered into before the date of enactment of this Act, and after such date of enactment if the violation occurred after such date of enactment.

**Preemption.** Nothing in this chapter preempts any provision of States law regarding private education loans where the state law provides stronger consumer protections.

**Civil Liability.** Servicers that fail to comply with the requirements of this paragraph will be considered a creditor for purposes of liability under section 130 of the Truth in Lending Act.

**Information to be Available at No Charge.** Borrowers shall not be charged for the information required to be disclosed under this section.

### **Section 3. Student Loan Borrower Bill of Rights**

Amends the Higher Education Act related to federal student loans

**Definitions.** Servicer, Servicing, and Student Loan

**Transfer of Lender or Servicer.** If the sale, transfer, or assignment of a federal student loan results in a change to whom the borrower sends payment or with whom the borrower communicates, the current lender or servicer must:

- Notify the borrower within 45 days of the sale, transfer, or assignment; the identity of the new lender or servicer; the name and address where payment and communications should be sent; the telephone number and website of the current and new lender or servicer; the

effective date of the sale, transfer or assignment; the date when transferor servicer will stop accepting payment; and the date when transferee servicer will begin accepting payment.

- Forward immediately to the new servicer any payment received from a borrower with a loan that has been sold, transferred or assigned to the new servicer up to 60 days after the sale, transfer or assignment.

If the sale, transfer, or assignment of a federal student loan results in a change to whom the borrower sends payment or to whom the borrower communicates, the new lender or servicer must:

- Notify the borrower within 45 days of the sale, transfer, or assignment; the identity of the new lender or servicer; the name and address where payment and communications should be sent; the telephone number and website of the current and new lender or servicer; the effective date of the sale, transfer or assignment; the date when transferor servicer will stop accepting payment; and the date when transferee servicer will begin accepting payment.
- Accept as on-time any payment forwarded from the previous servicer within 60 days after the previous servicer stops accepting payment;
- Provide a simple, online process for transferring electronic fund transfer authority; and
- Honor any promotion or benefit offered by the previous lender or servicer.

**Material Change in Mailing Address or Procedure for handling Payments.** Servicers may not impose any late fees for late payments if such delay is caused by a change in mailing address or procedures for handling payments.

**Eligibility for Discharge.** CFPB, in consultation with the Department of Education, shall issue rules requiring servicers to:

- Identify and contact borrowers who may be eligible for discharge;
- Provide information to borrowers about obtaining a discharge; and
- Create a streamlined process for borrowers to apply for and receive a discharge.

**Application of Payments.** The CFPB, in consultation with the Department of Education, may issue rules that:

- Minimize the fees, interest, and the total loan amount paid by the borrower;
- Minimize delinquencies, assignments to collection, and charge-offs;
- Requires servicers to apply payments on the date received; and
- Allow the borrower to require payments be applied in a certain manner.

The CFPB must choose a method that best benefits the borrower and is compatible with existing repayment options.

### **Servicemembers, Veterans, and Student Loans.**

*Servicemember and Veterans Liaison.* Servicers (guarantee agencies and other entities that the borrower interacts with as determined by the Secretary) must designate a Servicemember and Veterans Liaison who is trained on servicemember and veteran benefits to answer questions from servicemembers and veterans.

*Toll-Free Telephone Number.* Servicemembers and Veterans must be able to reach the Liaison via a toll-free telephone number that is located on the servicer's website and on monthly billing statements.

*Prohibition on Default.* A lender or servicer may not charge-off or report a private education loan as delinquent, assigned to collection, or charged-off to a credit reporting agency if the borrower is on active military duty or serving in a combat zone.

**Borrower's Loan History.** Servicers must make available a borrower's loan history via secure website or in writing upon request, including:

- Payment history;
- Loan history (including forbearances, deferrals, delinquencies, assignments to collection, and charge-offs);
- Annual percentage rate history;
- Key loan terms (including application of payments to interest, principal, and fees, origination date, principal, capitalized interest, APR, including any cap, loan term, and any contractual incentives.).

Servicers must provide a borrower's original loan documents and promissory notes at no charge, if requested.

**Error Resolution.** CFPB, in consultation with the Department of Education, must promulgate rules requiring servicers to establish error resolution procedures allowing borrowers to resolve errors related to their public student loans in a timely fashion.

**Additional Servicing Standards.** The CFPB, in consultation with the Department of Education, may establish additional servicing standards to reduce delinquencies, assignments to collections, and charge-offs, and to ensure borrowers understand their rights and obligations.

**Promulgation of Rules.** The CFPB, in consultation with the Department of Education, must issue rules implementing this section (requirements for servicers).

**Disclosures for Servicemembers and Veteran.** Amends the disclosure requirements under section 433 of the Higher Education Act by adding to subsection (b) Required Disclosure Before Repayment, subsection (e)(2) Borrower Having Difficulty Making Payment, and subsection (e)(3) Required Disclosures During Delinquency a requirement that borrowers be notified that:

- They may be entitled to servicemember and veteran benefits under the Servicemembers Civil Relief Act and other Federal or State laws; and
- A Servicemember and Veterans Liaison is available to answer questions about servicemember and veteran benefits and a toll-free telephone number to contact the Liaison.

**Notification of Repayment Options and Alternative to Default.** The CFPB, in consultation with the Secretary, must require federal loan lenders and servicers to:

- Notify borrowers about income-based repayment, income contingent repayment, consolidation, forgiveness options and other alternative repayment plans and servicemember or veteran benefits;
- Provide borrowers information in a format that allows borrower to compare alternative repayment plans, including all terms, conditions, and fees or costs associated with such plans; and
- Offer to enroll such borrowers in alternative repayment plans.

#### **Section 4. Know Before You Owe**

Amends the Truth in Lending Act and the Higher Education Act related to private student loans by adding a new section called Know Before You Owe Private Student Loans.

**Institutional Certification Required.** Before a creditor is allowed to issue a private student loan they must obtain certification from the school of the enrollment status of the student, the student's cost of attendance, and the difference between cost of attendance and the student's estimated financial assistance.

**Exception.** A creditor may issue a private student loan without certification if it has not received from the school within 15 days a denial of the request for certification or notification that the school will need additional time to process the certification request.

**Loans Disbursed Without Certification.** If a creditor makes a private student loan without obtaining a certification they are required to report the issuance of the loan in a manner determined by the CFPB.

**Provision of Information to Students.** A creditor that issues a private student loan must send loan statements to borrowers at least once every 3 months during the time that the student is enrolled at an institution of higher education. The loan statement must include the borrower's total remaining debt to the creditor, including accrued but unpaid interest and capitalized interest; report any debt increases since the last statement; and list the current interest rate for each loan

**Notification of Loans Disbursed without Certification.** On or before the date a creditor issues a private student loan, the creditor must notify the relevant institution of higher education of the amount of the extension of credit and the student who will receive the credit. The form of the notification shall be subject to the regulations of the CFPB.

**Annual Report.** A creditor that issues a private student loan shall prepare and submit an annual report to the CFPB containing the required information by the CFPB.

**Regulations.** Within 1 year after the enactment of this Act the CFPB must issue regulations in final form and those regulations will become effective not later than 6 months after they are issued.

**Requirements of Institutions of Higher Education.** Within 15 days of receiving a certification request from a creditor, the institution of higher education must provide the certification, provide

notice to the creditor that it needs additional time to consider the request, or provide notice to the creditor that it denies the certification request.

**Contents of certification.** A certification from the institution of higher education must include the enrollment status of the student, the student's cost of attendance, and the difference between cost of attendance and the student's estimated financial assistance.

**Prior to certification or refusal to certify.** Before providing certification or denying certification the institutions must determine whether the student who initiated the application for the private education loan, or on whose behalf the application was initiated, has applied for and exhausted the Federal financial assistance available to such student, and inform the student accordingly. Additionally, the institution must provide the borrower whose loan application has prompted the certification request by a private education lender, the following information and disclosures:

- The availability and the borrower's potential eligibility for, Federal financial assistance under this title, including disclosing the terms, conditions, interest rates, and repayment options and programs of Federal student loans.
- The borrower's ability to select a private educational lender of the borrower's choice.
- The impact of a proposed private education loan on the borrower's potential eligibility for other financial assistance, including Federal financial assistance.
- The borrower's right to accept or reject a private education loan within the 30-day period following a private educational lender's approval of a borrower's application and about a borrower's 3-day right to cancel period.

**Conditions for certification.** An institution is not allowed to provide certification to a creditor unless the private student loan includes terms that provide the borrower alternative repayment plans to avoid default and that the liability to repay will be cancelled if the borrower or co-borrower dies or becomes disabled.

**Preferred lender arrangements.** Adds certifying to the list of activities that are covered by preferred lender arrangement protections under the Higher Education Act.

**Report.** Within 24 months after issuing regulations under this section, CFPB and the Department of Education shall submit to Congress a report on the compliance of institutions of higher education and private educational lenders. The report shall include information about the degree to which specific institutions utilize certifications in encouraging the exhaustion of Federal student loan eligibility and lowering student private education loan debt.

### **Section 5. Report on Student Loan Servicers**

Within a year after the date of enactment, the CFPB, in consultation with the Secretary of Education, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Financial Services of the House of Representatives, and the Committee on Education and the Workforce of the House of Representatives on private and federal student loan servicers, including (1) any legislative recommendations to improve student loan servicing

standards, and (2) information on proactive early intervention methods by servicers to help distressed student loan borrowers enroll in any eligible repayment plans.