

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 ARTICLE 1. GENERAL PROVISIONS

5 Section 1-1. Short title. This Act may be cited as the  
6 Student Loan Servicing Rights Act.

7 Section 1-5. Definitions. As used in this Act:

8 "Applicant" means a person applying for a license pursuant  
9 to this Act.

10 "Borrower" or "student loan borrower" means a person who  
11 has received or agreed to pay a student loan for his or her own  
12 educational expenses.

13 "Cosigner" means a person who has agreed to share  
14 responsibility for repaying a student loan with a borrower.

15 "Department" means the Department of Financial and  
16 Professional Regulation.

17 "Division of Banking" means the Division of Banking of the  
18 Department of Financial and Professional Regulation.

19 "Federal loan borrower eligible for referral to a repayment  
20 specialist" means a borrower who possesses any of the following  
21 characteristics:

22 (1) requests information related to options to reduce

1 or suspend his or her monthly payment;

2 (2) indicates that he or she is experiencing or  
3 anticipates experiencing financial hardship, distress, or  
4 difficulty making his or her payments;

5 (3) has missed 2 consecutive monthly payments;

6 (4) is at least 75 days delinquent;

7 (5) is enrolled in a discretionary forbearance for more  
8 than 9 of the previous 12 months;

9 (6) has rehabilitated or consolidated one or more loans  
10 out of default within the past 12 months; or

11 (7) has not completed a course of study, as reflected  
12 in the servicer's records, or the borrower identifies  
13 himself or herself as not having completed a program of  
14 study.

15 "Federal education loan" means any loan made, guaranteed,  
16 or insured under Title IV of the federal Higher Education Act  
17 of 1965.

18 "Income-driven payment plan certification" means the  
19 documentation related to a federal student loan borrower's  
20 income or financial status the borrower must submit to renew an  
21 income-driven repayment plan.

22 "Income-driven repayment options" includes the  
23 Income-Contingent Repayment Plan, the Income-Based Repayment  
24 Plan, the Income-Sensitive Repayment Plan, the Pay As You Earn  
25 Plan, the Revised Pay As You Earn Plan, and any other federal  
26 student loan repayment plan that is calculated based on a

1 borrower's income.

2 "Licensee" means a person licensed pursuant to this Act.

3 "Other repayment plans" means the Standard Repayment Plan,  
4 the Graduated Repayment Plan, the Extended Repayment Plan, or  
5 any other federal student loan repayment plan not based on a  
6 borrower's income.

7 "Private loan borrower eligible for referral to a repayment  
8 specialist" means a borrower who possesses any of the following  
9 characteristics:

10 (1) requests information related to options to reduce  
11 or suspend his or her monthly payments; or

12 (2) indicates that he or she is experiencing or  
13 anticipates experiencing financial hardship, distress, or  
14 difficulty making his or her payments.

15 "Requester" means any borrower or cosigner that submits a  
16 request for assistance.

17 "Request for assistance" means all inquiries, complaints,  
18 account disputes, and requests for documentation a servicer  
19 receives from borrowers or cosigners.

20 "Secretary" means the Secretary of Financial and  
21 Professional Regulation, or his or her designee, including the  
22 Director of the Division of Banking of the Department of  
23 Financial and Professional Regulation.

24 "Servicing" means: (1) receiving any scheduled periodic  
25 payments from a student loan borrower or cosigner pursuant to  
26 the terms of a student loan; (2) applying the payments of

1 principal and interest and such other payments with respect to  
2 the amounts received from a student loan borrower or cosigner,  
3 as may be required pursuant to the terms of a student loan; and  
4 (3) performing other administrative services with respect to a  
5 student loan.

6 "Student loan" or "loan" means any federal education loan  
7 or other loan primarily for use to finance a postsecondary  
8 education and costs of attendance at a postsecondary  
9 institution, including, but not limited to, tuition, fees,  
10 books and supplies, room and board, transportation, and  
11 miscellaneous personal expenses. "Student loan" includes a  
12 loan made to refinance a student loan.

13 "Student loan" shall not include an extension of credit  
14 under an open-end consumer credit plan, a reverse mortgage  
15 transaction, a residential mortgage transaction, or any other  
16 loan that is secured by real property or a dwelling.

17 "Student loan" shall not include an extension of credit  
18 made by a postsecondary educational institution to a borrower  
19 if one of the following apply:

20 (1) The term of the extension of credit is no longer  
21 than the borrower's education program.

22 (2) The remaining, unpaid principal balance of the  
23 extension of credit is less than \$1,500 at the time of the  
24 borrower's graduation or completion of the program.

25 (3) The borrower fails to graduate or successfully  
26 complete his or her education program and has a balance due

1 at the time of his or her disenrollment from the  
2 postsecondary institution.

3 "Student loan servicer" or "servicer" means any person  
4 engaged in the business of servicing student loans.

5 "Student loan servicer" shall not include:

6 (1) a bank, savings bank, savings association, or  
7 credit union organized under the laws of the State or any  
8 other state or under the laws of the United States;

9 (2) a wholly owned subsidiary of any bank, savings  
10 bank, savings association, or credit union organized under  
11 the laws of the State or any other state or under the laws  
12 of the United States;

13 (3) an operating subsidiary where each owner of the  
14 operating subsidiary is wholly owned by the same bank,  
15 savings bank, savings association, or credit union  
16 organized under the laws of the State or any other state or  
17 under the laws of the United States;

18 (4) the Illinois Student Assistance Commission and its  
19 agents when the agents are acting on the Illinois Student  
20 Assistance Commission's behalf;

21 (5) a public postsecondary educational institution or  
22 a private nonprofit postsecondary educational institution  
23 servicing a student loan it extended to the borrower;

24 (6) a licensed debt management service under the Debt  
25 Management Service Act, except to the extent that the  
26 organization acts as a subcontractor, affiliate, or

1 service provider for an entity that is otherwise subject to  
2 licensure under this Act;

3 (7) any collection agency licensed under the  
4 Collection Agency Act that is collecting post-default  
5 debt;

6 (8) in connection with its responsibilities as a  
7 guaranty agency engaged in default aversion, a State or  
8 nonprofit private institution or organization having an  
9 agreement with the U.S. Secretary of Education under  
10 Section 428(b) of the Higher Education Act (20 U.S.C.  
11 1078(B)); or

12 (9) a State institution or a nonprofit private  
13 organization designated by a governmental entity to make or  
14 service student loans, provided in each case that the  
15 institution or organization services fewer than 20,000  
16 student loan accounts of borrowers who reside in Illinois.

17 ARTICLE 5. STUDENT LOAN BILL OF RIGHTS

18 Section 5-5. General provisions.

19 (a) A servicer shall not engage in any unfair or deceptive  
20 practice toward any borrower or cosigner or misrepresent or  
21 omit any material information in connection with the servicing  
22 of a student loan, including, but not limited to,  
23 misrepresenting the amount, nature, or terms of any fee or  
24 payment due or claimed to be due on a student loan, the terms

1 and conditions of the student loan agreement, or the borrower's  
2 or cosigner's obligations under the student loan or the terms  
3 of any repayment plans.

4 (b) A servicer shall not misapply payments made by a  
5 borrower to the outstanding balance of a student loan.

6 (c) A servicer shall oversee third parties, including  
7 subservicers, debt collectors, independent contractors,  
8 subsidiaries, affiliates, or other agents, to ensure that those  
9 companies comply with this Article 5 when working on behalf of  
10 the servicer.

11 Section 5-10. Payment processing.

12 (a) A servicer shall credit borrower and cosigner payments  
13 promptly and accurately.

14 (b) A servicer shall provide borrowers and cosigners with  
15 prompt notice if the servicer changes the address to which the  
16 borrower or cosigner needs to send payments.

17 (c) A servicer shall not charge a penalty to a borrower or  
18 cosigner if a student loan payment is received at an address  
19 used for payments for a period of 90 days after the change in  
20 address.

21 (d) A servicer shall not misrepresent the delinquent amount  
22 of the loan on any call with a borrower or cosigner.

23 (e) A servicer shall allow a borrower or cosigner to  
24 specify instructions as to how an overpayment should be applied  
25 to the balance of the loan as consistent with the promissory

1 note.

2 Section 5-15. Fees.

3 (a) Unless otherwise provided by federal law, a servicer  
4 may only charge late fees that are reasonable and proportional  
5 to the cost it incurs related to a late payment.

6 (b) Unless otherwise provided by federal law, a servicer  
7 shall not charge a borrower or cosigner any fee to modify,  
8 defer, forbear, renew, extend, or amend the borrower's or  
9 cosigner's loan.

10 Section 5-20. Billing statements.

11 (a) In any student loan billing statement, a servicer shall  
12 not misrepresent the:

- 13 (1) fees assessed;  
14 (2) total amount due for each loan;  
15 (3) payment due date;  
16 (4) date to avoid late fees;  
17 (5) accrued interest during the billing cycle;  
18 (6) default payment methodology;  
19 (7) means to provide instructions for a payment; or  
20 (8) procedure regarding escalated requests for  
21 assistance.

22 (b) A servicer shall not misrepresent information  
23 regarding the \$0 bill and advancement of the due date on any  
24 billing statement that reflects \$0 owed.



1           Section 5-25. Payment histories. A servicer shall provide a  
2 written payment history to a borrower or cosigner upon request  
3 at no cost within 21 calendar days of receiving the request.

4           Section 5-30. Specialized assistance for student loan  
5 borrowers.

6           (a) A servicer shall specially designate servicing and  
7 collections personnel deemed repayment specialists who have  
8 received enhanced training related to repayment options.

9           (b) A servicer shall refrain from presenting forbearance as  
10 the sole or first repayment option to a student loan borrower  
11 struggling with repayment unless the servicer has determined  
12 that, based on the borrower's financial status, a short term  
13 forbearance is appropriate.

14           (c) All inbound and outbound calls from a federal loan  
15 borrower eligible for referral to a repayment specialist and a  
16 private loan borrower eligible for referral to a repayment  
17 specialist shall be routed to a repayment specialist.

18           (d) During each inbound or outbound communication with an  
19 eligible federal loan borrower, a repayment specialist shall  
20 first inform a federal loan borrower eligible for referral to a  
21 repayment specialist that federal income-driven repayment  
22 plans that can reduce the borrower's monthly payment may be  
23 available, discuss such plans, and assist the borrower in  
24 determining whether a particular repayment plan may be

1 appropriate for the borrower.

2 (e) A repayment specialist shall assess the long-term and  
3 short-term financial situation and needs of a federal loan  
4 borrower eligible for referral to a repayment specialist and  
5 consider any available specific information from the borrower  
6 as necessary to assist the borrower in determining whether a  
7 particular income-driven repayment option may be available to  
8 the borrower.

9 (f) In each discussion with a federal loan borrower  
10 eligible for referral to a repayment specialist, a repayment  
11 specialist shall present and explain the following options, as  
12 appropriate:

13 (1) total and permanent disability discharge, public  
14 service loan forgiveness, closed school discharge, and  
15 defenses to repayment;

16 (2) other repayment plans;

17 (3) deferment; and

18 (4) forbearance.

19 (g) A repayment specialist shall assess the long-term and  
20 short-term financial situation and needs of a private loan  
21 borrower eligible for referral to a repayment specialist in  
22 determining whether any private loan repayment options may be  
23 appropriate for the borrower.

24 (h) A servicer shall present and explain all private loan  
25 repayment options, including alternative repayment  
26 arrangements applicable to private student loan borrowers.

1           (i) A servicer shall be prohibited from implementing any  
2 compensation plan that has the intended or actual effect of  
3 incentivizing a repayment specialist to violate this Act or any  
4 other measure that encourages undue haste or lack of quality.

5           (j) The requirements of this Section shall not apply if a  
6 repayment specialist has already conversed with a borrower  
7 consistent with the requirements of this Section.

8           Section 5-35. Disclosures related to discharge and  
9 cancellation. If a servicer is aware that a student loan  
10 borrower attended a school the United States Department of  
11 Education has made findings supporting a defense to repayment  
12 claim or closed school discharge, or that a borrower may be  
13 eligible to have his or her loans forgiven under a total and  
14 permanent disability discharge program, the servicer's  
15 personnel shall disclose information related to the Department  
16 of Education's procedure for asserting a defense to repayment  
17 claim, closed school discharge, or submitting an application  
18 for a total and permanent disability discharge.

19           Section 5-40. Income-driven repayment plan certifications.  
20 A servicer shall disclose the date that a borrower's  
21 income-driven payment plan certification will expire and the  
22 consequences to the borrower for failing to recertify by the  
23 date, including the new repayment amount.

1           Section 5-45. Information to be provided to private  
2 education loan borrowers.

3           (a) A servicer shall provide on its website a description  
4 of any alternative repayment plan offered by the servicer for  
5 private education loans.

6           (b) A servicer shall establish policies and procedures and  
7 implement them consistently in order to facilitate evaluation  
8 of private student loan alternative repayment arrangement  
9 requests, including providing accurate information regarding  
10 any private student loan alternative repayment arrangements  
11 that may be available to the borrower through the promissory  
12 note or that may have been marketed to the borrower through  
13 marketing materials.

14           A private student loan alternative repayment arrangements  
15 shall consider the affordability of repayment plans for a  
16 distressed borrower, as well as investor, guarantor, and  
17 insurer guidelines and previous outcome and performance  
18 information.

19           (c) If a servicer offers private student loan repayment  
20 arrangements, a servicer shall consistently present and offer  
21 those arrangements to borrowers with similar financial  
22 circumstances.

23           Section 5-50. Cosigner release. For private student loans,  
24 a servicer shall provide information on its website concerning  
25 the availability and criteria for a cosigner release.

1           Section 5-55. Payoff statements. A servicer shall indicate  
2           on its website that a borrower may request a payoff statement.  
3           A servicer shall provide the payoff statement within 10 days,  
4           including information the requester needs to pay off the loan.  
5           If a payoff is made, the servicer must send a paid-in-full  
6           notice within 30 days.

7           Section 5-60. Requirements related to the transfer of  
8           servicing.

9           (a) When acting as the transferor servicer, a servicer  
10          shall provide to each borrower subject to the transfer a  
11          written notice not less than 15 calendar days before the  
12          effective date of the transfer. The transferee servicer and  
13          transferor servicer may provide a single notice, in which case  
14          the notice shall be provided not less than 15 calendar days  
15          before the effective date of the transfer. The notice by the  
16          transferor servicer or, if applicable, the combined notice of  
17          transfer shall contain the following information:

18                 (1) the effective date of the transfer of servicing;

19                 (2) the name, address, and toll-free telephone number  
20                 for the transferor servicer's designated point of contact  
21                 that can be contacted by the borrower to obtain answers to  
22                 servicing inquiries;

23                 (3) the name, address, and toll-free telephone number  
24                 for the transferee servicer's designated point of contact

1 that can be contacted by the borrower to obtain answers to  
2 servicing inquiries;

3 (4) the date on which the transferor servicer will  
4 cease to accept payments relating to the loan and the date  
5 on which the transferee servicer will begin to accept such  
6 payments; the dates shall either be the same or consecutive  
7 days;

8 (5) a statement that the transfer of servicing does not  
9 affect any term or condition of the loan other than terms  
10 directly related to the servicing of a loan;

11 (6) information on whether the borrower's  
12 authorization for recurring electronic fund transfers, if  
13 applicable, will be transferred to the transferee  
14 servicer; if any such recurring electronic funds transfers  
15 cannot be transferred, the transferee servicer shall  
16 provide information explaining how the borrower may  
17 establish new recurring electronic funds transfers with  
18 the transferee servicer; and

19 (7) a statement of the current loan balance, including  
20 the current unpaid amount of principal, interest, and fees.

21 (b) When acting as the transferee servicer, a servicer  
22 shall provide to each borrower subject to the transfer a  
23 written notice not more than 15 calendar days after the  
24 effective date of the transfer. The transferee servicer and  
25 transferor servicer may provide a combined notice of transfer,  
26 in which case the notice shall be provided not less than 15

1 days before the effective date of the transfer. The notice by  
2 the transferee servicer or, if applicable, the combined notice  
3 of transfer shall contain the following information:

4 (1) the effective date of the transfer of servicing;

5 (2) the name, address, and toll-free telephone number  
6 for the transferee servicer's designated point of contact  
7 that can be contacted by the borrower to obtain answers to  
8 servicing inquiries;

9 (3) the date on which the transferor servicer will  
10 cease to accept payments relating to the loan and the date  
11 on which the transferee servicer will begin to accept such  
12 payments; the dates shall either be the same or consecutive  
13 days;

14 (4) a statement that the transfer of servicing does not  
15 affect any term or condition of the student loan other than  
16 terms directly related to the servicing of a loan;

17 (5) information on whether the borrower's  
18 authorization for recurring electronic fund transfers, if  
19 applicable, will be transferred to the transferee  
20 servicer; if any such recurring electronic funds transfers  
21 cannot be transferred, the transferee servicer shall  
22 provide information explaining how the borrower may  
23 establish new recurring electronic funds transfers with  
24 the transferee servicer; and

25 (6) a statement of the current loan balance, including  
26 the current unpaid amount of principal, interest, and fees.

1           (c) During the 60 calendar day period beginning on the  
2 effective date of transfer of the servicing of any loan, a  
3 payment timely made to the transferor servicer may not be  
4 treated as late for any purpose by the transferee servicer,  
5 including the assessment of late fees, accrual of additional  
6 interest, and furnishing negative credit information.

7           (d) To the extent practicable, for at least 120 calendar  
8 days beginning on the effective date of transfer of servicing  
9 of any loan, when acting as the transferor servicer, a servicer  
10 shall promptly transfer payments received to the transferee  
11 servicer for application to the borrower's loan account.

12           (e) Unless a borrower's authorizations for recurring  
13 electronic fund transfers are automatically transferred to the  
14 transferee servicer, when acting as transferee servicer, a  
15 servicer shall make available to a borrower whose loan  
16 servicing is transferred an online process through which a  
17 borrower may make a new authorization for recurring electronic  
18 fund transfers. A servicer shall also provide a process through  
19 which the borrower may make a new authorization for recurring  
20 electronic funds transfers by phone or through written  
21 approval.

22           Section 5-65. Requests for assistance; account dispute  
23 resolution; appeals.

24           (a) A servicer shall implement reasonable policies and  
25 procedures for accepting, processing, investigating, and



1 responding to requests for assistance in a timely and effective  
2 manner, including, but not limited to, the following  
3 requirements:

4 (1) A servicer shall provide readily accessible  
5 methods for consumers to submit a request for assistance to  
6 the servicer, including such methods as phone, email, and  
7 U.S. mail.

8 (2) A servicer shall post on its website and disclose  
9 on its billing statements:

10 (A) the toll-free telephone number, email address,  
11 and mailing address for consumers to submit a requests  
12 for assistance to the servicer; and

13 (B) the procedures for a requester to send a  
14 written communication to the servicer regarding any  
15 request for assistance.

16 (3) For any request for assistance that includes a  
17 request for documentation or information, where a response  
18 cannot be immediately provided, a servicer shall provide  
19 the requested documentation or information to the  
20 requester within 14 calendar days of the request; if a  
21 servicer determines in good faith that it is unable to  
22 provide the documentation or information within 14  
23 calendar days, promptly after making the determination,  
24 the servicer shall notify the requester of the expected  
25 response period, which must be reasonable for the request  
26 for assistance.

1 (b) A servicer shall implement a process by which a  
2 requester can escalate any request for assistance. Such process  
3 shall allow a requester who has made a request for assistance  
4 on the phone and who receives a response during the call to  
5 obtain immediate review of the response by an employee of the  
6 servicer at a higher supervisory level.

7 (c) The following requirements shall apply when a requester  
8 submits a written or oral request for assistance which contains  
9 an account dispute to a servicer:

10 (1) Within 14 calendar days after its receipt of the  
11 written communication or oral request for further  
12 escalation, a servicer shall attempt to make contact,  
13 including providing the requester with name and contact  
14 information of the representative handling the account  
15 dispute, by phone or in writing, to the requester and  
16 document such attempt in the borrower's account.

17 (2) A servicer shall complete the following actions  
18 within 30 calendar days of its receipt of the written  
19 communication or oral request for further escalation,  
20 subject to paragraph (3) of this subsection:

21 (A) conduct a thorough investigation of the  
22 account dispute;

23 (B) make all appropriate corrections to the  
24 account of the requester, including crediting any late  
25 fees assessed and derogatory credit furnishing as the  
26 result of any error, and, if any corrections are made,

1            sending the requester a written notification that  
2            includes the following information:

3                    (i) an explanation of the correction or  
4                    corrections to the requester's account that have  
5                    been made; and

6                    (ii) the toll-free telephone number, email  
7                    address, and mailing address of the servicer's  
8                    personnel knowledgeable about the investigation  
9                    and resolution of the account dispute.

10            (3) If a servicer determines in good faith that it  
11            cannot complete a thorough investigation of the account  
12            dispute within 30 calendar days after receiving the written  
13            communication or oral request for further escalation  
14            regarding the account dispute, then, promptly after making  
15            the determination, the servicer shall notify the requester  
16            of the expected resolution time period, which must be  
17            reasonable for the account dispute. A servicer must  
18            complete the actions listed in the investigation and  
19            resolution of account dispute within this time period.

20            (4) If a servicer determines as a result of its  
21            investigation that the requested changes to a requester's  
22            dispute will not be made, the servicer shall provide the  
23            requester with a written notification that includes the  
24            following information:

25                    (A) a description of its determination and an  
26                    explanation of the reasons for that determination;

1 (B) the toll-free telephone number, email address,  
2 and mailing address of the servicer's personnel  
3 knowledgeable about the investigation and resolution  
4 of the account dispute;

5 (C) instructions about how the requester can  
6 appeal the servicer's determination in accordance with  
7 paragraph (5) of this subsection; and

8 (D) information regarding the method by which a  
9 borrower may request copies of documents a servicer  
10 relied on to make a determination that no changes to a  
11 requester's account will be made.

12 (5) After the requester receives a determination  
13 regarding an account dispute in accordance with paragraph  
14 (4) of this subsection, the servicer shall allow a process  
15 by which the requester can appeal, in writing, the  
16 determination. The appeals process shall include:

17 (A) a written acknowledgment notifying the  
18 requester that the servicer has commenced the appeals  
19 process; such acknowledgment shall be sent within 14  
20 calendar days after receiving a written request for  
21 appeal from the requester;

22 (B) an independent reassessment of the servicer's  
23 determination regarding the account dispute, performed  
24 by another employee of the servicer at an equal or  
25 higher supervisory level than the employee or  
26 employees involved in the initial account dispute

1 determination;

2 (C) investigation and resolution of appeals within  
3 30 calendar days after a servicer's commencement of the  
4 appeals process; and

5 (D) notification sent to the requester, in  
6 writing, documenting the outcome of the appeal,  
7 including any reason for denial.

8 (d) While a requester has a pending account dispute,  
9 including any applicable appeal, a servicer shall take  
10 reasonable steps to:

11 (1) prevent negative credit reporting with respect to  
12 the borrower's or cosigner's account while the dispute is  
13 under review; and

14 (2) suspend all collection activities on the account  
15 while the account dispute is being researched or resolved,  
16 if the account dispute is related to the delinquency.

17 ARTICLE 10. STUDENT LOAN OMBUDSMAN

18 Section 10-5. Student Loan Ombudsman.

19 (a) The position of Student Loan Ombudsman is created  
20 within the Office of the Attorney General to provide timely  
21 assistance to student loan borrowers.

22 (b) The Student Loan Ombudsman, in consultation with the  
23 Secretary, shall:

24 (1) receive, review, and attempt to resolve any

1 complaints from student loan borrowers, including, but not  
2 limited to, attempts to resolve complaints in  
3 collaboration with institutions of higher education,  
4 student loan servicers, and any other participants in  
5 student loan lending;

6 (2) compile and analyze data on student loan borrower  
7 complaints;

8 (3) assist student loan borrowers to understand their  
9 rights and responsibilities under the terms of student  
10 education loans;

11 (4) provide information to the public, agencies,  
12 legislators, and others regarding the problems and  
13 concerns of student loan borrowers and make  
14 recommendations for resolving those problems and concerns;

15 (5) analyze and monitor the development and  
16 implementation of federal, State, and local laws,  
17 regulations, and policies relating to student loan  
18 borrowers and recommend any changes the Student Loan  
19 Ombudsman deems necessary;

20 (6) review the complete student education loan history  
21 for any student loan borrower who has provided written  
22 consent for such review;

23 (7) disseminate information concerning the  
24 availability of the Student Loan Ombudsman to assist  
25 student loan borrowers and potential student loan  
26 borrowers, as well as public institutions of higher

1 education, student loan servicers, and any other  
2 participant in student education loan lending, with any  
3 student loan servicing concerns; and

4 (8) take any other actions necessary to fulfill the  
5 duties of the Student Loan Ombudsman as set forth in this  
6 subsection.

7 ARTICLE 15. LICENSURE

8 Section 15-5. Scope; requirement for student loan  
9 servicing license.

10 (a) It shall be unlawful for any person to operate as a  
11 student loan servicer in Illinois except as authorized by this  
12 Act and without first having obtained a license in accordance  
13 with this Act.

14 (b) The provisions of this Act do not apply to any of the  
15 following:

16 (1) a bank, savings bank, savings association, or  
17 credit union organized under the laws of the State or any  
18 other state or under the laws of the United States;

19 (2) a wholly owned subsidiary of any bank, savings  
20 bank, savings association, or credit union organized under  
21 the laws of the State or any other state or under the laws  
22 of the United States;

23 (3) an operating subsidiary where each owner of the  
24 operating subsidiary is wholly owned by the same bank,

1 savings bank, savings association, or credit union  
2 organized under the laws of the State or any other state or  
3 under the laws of the United States;

4 (4) the Illinois Student Assistance Commission and its  
5 agents when the agents are acting on the Illinois Student  
6 Assistance Commission's behalf;

7 (5) a public postsecondary educational institution or  
8 a private nonprofit postsecondary educational institution  
9 servicing a student loan it extended to the borrower;

10 (6) a licensed debt management service under the Debt  
11 Management Service Act, except to the extent that the  
12 organization acts as a subcontractor, affiliate, or  
13 service provider for an entity that is otherwise subject to  
14 licensure under this Act;

15 (7) any collection agency licensed under the  
16 Collection Agency Act that is collecting post-default  
17 debt;

18 (8) in connection with its responsibilities as a  
19 guaranty agency engaged in default aversion, a State or  
20 nonprofit private institution or organization having an  
21 agreement with the U.S. Secretary of Education under  
22 Section 428(b) of the Higher Education Act (20 U.S.C.  
23 1078(B)); or

24 (9) a State institution or a nonprofit private  
25 organization designated by a governmental entity to make or  
26 service student loans, provided in each case that the



1 institution or organization services fewer than 20,000  
2 student loan accounts of borrowers who reside in Illinois.

3 Section 15-10. Licensee name. No person, partnership,  
4 association, corporation, limited liability company, or other  
5 entity engaged in the business regulated by this Act shall  
6 operate such business under a name other than the real names of  
7 the entity and individuals conducting such business. Such  
8 business may in addition operate under an assumed corporate  
9 name pursuant to the Business Corporation Act of 1983, an  
10 assumed limited liability company name pursuant to the Limited  
11 Liability Company Act, or an assumed business name pursuant to  
12 the Assumed Business Name Act.

13 Section 15-15. Application process; investigation; fees.

14 (a) The Secretary shall issue a license upon completion of  
15 all of the following:

16 (1) the filing of an application for license with the  
17 Secretary or the Nationwide Mortgage Licensing System and  
18 Registry as approved by the Secretary;

19 (2) the filing with the Secretary of a listing of  
20 judgments entered against, and bankruptcy petitions by,  
21 the license applicant for the preceding 10 years;

22 (3) the payment, in certified funds, of investigation  
23 and application fees, the total of which shall be in an  
24 amount equal to \$1,000 for an initial application and \$800

1 for a background investigation;

2 (4) the filing of an audited balance sheet, including  
3 all footnotes prepared by a certified public accountant in  
4 accordance with generally accepted accounting principles  
5 and generally accepted auditing standards; notwithstanding  
6 the requirements of this subsection, an applicant that is a  
7 subsidiary may submit audited consolidated financial  
8 statements of its parent, intermediary parent, or ultimate  
9 parent as long as the consolidated statements are supported  
10 by consolidating statements that include the applicant's  
11 financial statement; if the consolidating statements are  
12 unaudited, the applicant's chief financial officer shall  
13 attest to the applicant's financial statements disclosed  
14 in the consolidating statements; and

15 (5) an investigation of the averments required by  
16 Section 15-30, which investigation must allow the  
17 Secretary to issue positive findings stating that the  
18 financial responsibility, experience, character, and  
19 general fitness of the license applicant and of the members  
20 thereof if the license applicant is a partnership or  
21 association, of the officers and directors thereof if the  
22 license applicant is a corporation, and of the managers and  
23 members that retain any authority or responsibility under  
24 the operating agreement if the license applicant is a  
25 limited liability company, are such as to command the  
26 confidence of the community and to warrant belief that the

1 business will be operated honestly, fairly, and  
2 efficiently within the purpose of this Act; if the  
3 Secretary does not so find, he or she shall not issue the  
4 license, and he or she shall notify the license applicant  
5 of the denial.

6 The Secretary may impose conditions on a license if the  
7 Secretary determines that those conditions are necessary or  
8 appropriate. These conditions shall be imposed in writing and  
9 shall continue in effect for the period prescribed by the  
10 Secretary.

11 (b) All licenses shall be issued to the license applicant.  
12 Upon receipt of the license, a student loan servicing licensee  
13 shall be authorized to engage in the business regulated by this  
14 Act. The license shall remain in full force and effect until it  
15 expires without renewal, is surrendered by the licensee, or  
16 revoked or suspended as hereinafter provided.

17 Section 15-20. Application form.

18 (a) Application for a student loan servicer license must be  
19 made in accordance with Section 15-40 and, if applicable, in  
20 accordance with requirements of the Nationwide Mortgage  
21 Licensing System and Registry. The application shall be in  
22 writing, under oath, and on a form obtained from and prescribed  
23 by the Secretary, or may be submitted electronically, with  
24 attestation, to the Nationwide Mortgage Licensing System and  
25 Registry.

1 (b) The application shall contain the name and complete  
2 business and residential address or addresses of the license  
3 applicant. If the license applicant is a partnership,  
4 association, corporation, or other form of business  
5 organization, the application shall contain the names and  
6 complete business and residential addresses of each member,  
7 director, and principal officer thereof. The application shall  
8 also include a description of the activities of the license  
9 applicant in such detail and for such periods as the Secretary  
10 may require, including all of the following:

11 (1) an affirmation of financial solvency noting such  
12 capitalization requirements as may be required by the  
13 Secretary and access to such credit as may be required by  
14 the Secretary;

15 (2) an affirmation that the license applicant or its  
16 members, directors, or principals, as may be appropriate,  
17 are at least 18 years of age;

18 (3) information as to the character, fitness,  
19 financial and business responsibility, background,  
20 experience, and criminal record of any (i) person, entity,  
21 or ultimate equitable owner that owns or controls, directly  
22 or indirectly, 10% or more of any class of stock of the  
23 license applicant; (ii) person, entity, or ultimate  
24 equitable owner that is not a depository institution, as  
25 defined in Section 1007.50 of the Savings Bank Act, that  
26 lends, provides, or infuses, directly or indirectly, in any

1 way, funds to or into a license applicant in an amount  
2 equal to or more than 10% of the license applicant's net  
3 worth; (iii) person, entity, or ultimate equitable owner  
4 that controls, directly or indirectly, the election of 25%  
5 or more of the members of the board of directors of a  
6 license applicant; or (iv) person, entity, or ultimate  
7 equitable owner that the Secretary finds influences  
8 management of the license applicant; the provisions of this  
9 subsection shall not apply to a public official serving on  
10 the board of directors of a State guaranty agency;

11 (4) upon written request by the licensee and  
12 notwithstanding the provisions of paragraphs (1), (2), and  
13 (3) of this subsection, the Secretary may permit the  
14 licensee to omit all or part of the information required by  
15 those paragraphs if, in lieu of the omitted information,  
16 the licensee submits an affidavit stating that the  
17 information submitted on the licensee's previous renewal  
18 application is still true and accurate; the Secretary may  
19 adopt rules prescribing the form and content of the  
20 affidavit that are necessary to accomplish the purposes of  
21 this Section; and

22 (5) such other information as required by rules of the  
23 Secretary.

24 Section 15-25. Student loan servicer license application  
25 and issuance.

1           (a) Applicants for a license shall apply in a form  
2 prescribed by the Secretary. Each form shall contain content as  
3 set forth by rule, regulation, instruction, or procedure of the  
4 Secretary and may be changed or updated as necessary by the  
5 Secretary in order to carry out the purposes of this Act.

6           (b) In order to fulfill the purposes of this Act, the  
7 Secretary is authorized to establish relationships or  
8 contracts with the Nationwide Mortgage Licensing System and  
9 Registry or other entities designated by the Nationwide  
10 Mortgage Licensing System and Registry to collect and maintain  
11 records and process transaction fees or other fees related to  
12 licensees or other persons subject to this Act.

13           (c) In connection with an application for licensing, the  
14 applicant may be required, at a minimum, to furnish to the  
15 Nationwide Mortgage Licensing System and Registry information  
16 concerning the applicant's identity, including:

17               (1) fingerprints for submission to the Federal Bureau  
18 of Investigation or any governmental agency or entity  
19 authorized to receive such information for a State,  
20 national, and international criminal history background  
21 check; and

22               (2) personal history and experience in a form  
23 prescribed by the Nationwide Mortgage Licensing System and  
24 Registry, including the submission of authorization for  
25 the Nationwide Mortgage Licensing System and Registry and  
26 the Secretary to obtain:

1           (A) an independent credit report obtained from a  
2           consumer reporting agency described in Section 603(p)  
3           of the Fair Credit Reporting Act (15 U.S.C. 1681a(p));  
4           and

5           (B) information related to any administrative,  
6           civil, or criminal findings by any governmental  
7           jurisdiction.

8           (d) For the purposes of this Section, and in order to  
9           reduce the points of contact that the Federal Bureau of  
10          Investigation may have to maintain for purposes of subsection  
11          (c) of this Section, the Secretary may use the Nationwide  
12          Mortgage Licensing System and Registry as a channeling agent  
13          for requesting information from and distributing information  
14          to the federal Department of Justice or any governmental  
15          agency.

16          (e) For the purposes of this Section, and in order to  
17          reduce the points of contact that the Secretary may have to  
18          maintain for purposes of paragraph (2) of subsection (c) of  
19          this Section, the Secretary may use the Nationwide Mortgage  
20          Licensing System and Registry as a channeling agent for  
21          requesting and distributing information to and from any source  
22          as directed by the Secretary.

23          (f) The provisions of this Section shall not apply to a  
24          public official serving on the board of directors of a State  
25          guaranty agency.

1           Section 15-30. Averments of licensee. Each application for  
2 license shall be accompanied by the following averments stating  
3 that the applicant:

4           (1) will file with the Secretary or Nationwide Mortgage  
5 Licensing System and Registry, as applicable, when due, any  
6 report or reports that it is required to file under any of  
7 the provisions of this Act;

8           (2) has not committed a crime against the law of this  
9 State, any other state, or of the United States involving  
10 moral turpitude or fraudulent or dishonest dealing, and  
11 that no final judgment has been entered against it in a  
12 civil action upon grounds of fraud, misrepresentation, or  
13 deceit that has not been previously reported to the  
14 Secretary;

15           (3) has not engaged in any conduct that would be cause  
16 for denial of a license;

17           (4) has not become insolvent;

18           (5) has not submitted an application for a license  
19 under this Act that contains a material misstatement;

20           (6) has not demonstrated by course of conduct,  
21 negligence or incompetence in performing any act for which  
22 it is required to hold a license under this Act;

23           (7) will advise the Secretary in writing or the  
24 Nationwide Mortgage Licensing System and Registry, as  
25 applicable, of any changes to the information submitted on  
26 the most recent application for license or averments of



1 record within 30 days of the change; the written notice  
2 must be signed in the same form as the application for the  
3 license being amended;

4 (8) will comply with the provisions of this Act and  
5 with any lawful order, rule, or regulation made or issued  
6 under the provisions of this Act;

7 (9) will submit to periodic examination by the  
8 Secretary as required by this Act; and

9 (10) will advise the Secretary in writing of judgments  
10 entered against and bankruptcy petitions by the license  
11 applicant within 5 days after the occurrence.

12 A licensee who fails to fulfill the obligations of an  
13 averment, fails to comply with averments made, or otherwise  
14 violates any of the averments made under this Section shall be  
15 subject to the penalties of this Act.

16 Section 15-35. Refusal to issue license. The Secretary  
17 shall refuse to issue or renew a license if:

18 (1) it is determined that the applicant is not in  
19 compliance with any provisions of this Act;

20 (2) there is substantial continuity between the  
21 applicant and any violator of this Act; or

22 (3) the Secretary cannot make the findings specified in  
23 subsection (a) of Section 15-15 of this Act.

24 Section 15-40. License issuance and renewal; fees.

1           (a) Licenses shall be renewed every year using the common  
2 renewal date of the Nationwide Mortgage Licensing System and  
3 Registry, as adopted by the Secretary. Properly completed  
4 renewal application forms and filing fees may be received by  
5 the Secretary 60 days prior to the license expiration date,  
6 but, to be deemed timely, the completed renewal application  
7 forms and filing fees must be received by the Secretary no  
8 later than 30 days prior to the license expiration date.

9           (b) It shall be the responsibility of each licensee to  
10 accomplish renewal of its license. Failure by a licensee to  
11 submit a properly completed renewal application form and fees  
12 in a timely fashion, absent a written extension from the  
13 Secretary, shall result in the license becoming inactive.

14           (c) No activity regulated by this Act shall be conducted by  
15 the licensee when a license becomes inactive. An inactive  
16 license may be reactivated by the Secretary upon payment of the  
17 renewal fee and payment of a reactivation fee equal to the  
18 renewal fee.

19           (d) A licensee ceasing an activity or activities regulated  
20 by this Act and desiring to no longer be licensed shall so  
21 inform the Secretary in writing and, at the same time, convey  
22 any license issued and all other symbols or indicia of  
23 licensure. The licensee shall include a plan for the withdrawal  
24 from regulated business, including a timetable for the  
25 disposition of the business, and comply with the surrender  
26 guidelines or requirements of the Secretary. Upon receipt of

1 such written notice, the Secretary shall post the cancellation  
2 or issue a certified statement canceling the license.

3 (e) The expenses of administering this Act, including  
4 investigations and examinations provided for in this Act, shall  
5 be borne by and assessed against entities regulated by this  
6 Act. Subject to the limitations set forth in Section 15-15 of  
7 this Act, the Secretary shall establish fees by rule in at  
8 least the following categories:

- 9 (1) investigation of licensees and license applicant  
10 fees;  
11 (2) examination fees;  
12 (3) contingent fees; and  
13 (4) such other categories as may be required to  
14 administer this Act.

15 ARTICLE 20. SUPERVISION

16 Section 20-5. Functions; powers; duties. The functions,  
17 powers, and duties of the Secretary shall include the  
18 following:

- 19 (1) to issue or refuse to issue any license as provided  
20 by this Act;  
21 (2) to revoke or suspend for cause any license issued  
22 under this Act;  
23 (3) to keep records of all licenses issued under this  
24 Act;

1           (4) to receive, consider, investigate, and act upon  
2           complaints made by any person in connection with any  
3           student loan servicing licensee in this State;

4           (5) to prescribe the forms of and receive:

5                 (A) applications for licenses; and

6                 (B) all reports and all books and records required  
7           to be made by any licensee under this Act, including  
8           annual audited financial statements and annual reports  
9           of student loan activity;

10          (6) to adopt rules necessary and proper for the  
11          administration of this Act;

12          (7) to subpoena documents and witnesses and compel  
13          their attendance and production, to administer oaths, and  
14          to require the production of any books, papers, or other  
15          materials relevant to any inquiry authorized by this Act;

16          (8) to issue orders against any person if the Secretary  
17          has reasonable cause to believe that an unsafe, unsound, or  
18          unlawful practice has occurred, is occurring, or is about  
19          to occur; if any person has violated, is violating, or is  
20          about to violate any law, rule, or written agreement with  
21          the Secretary; or for the purpose of administering the  
22          provisions of this Act and any rule adopted in accordance  
23          with this Act;

24          (9) to address any inquiries to any licensee, or the  
25          officers thereof, in relation to its activities and  
26          conditions, or any other matter connected with its affairs,

1 and it shall be the duty of any licensee or person so  
2 addressed to promptly reply in writing to those inquiries;  
3 the Secretary may also require reports from any licensee at  
4 any time the Secretary may deem desirable;

5 (10) to examine the books and records of every licensee  
6 under this Act;

7 (11) to enforce provisions of this Act;

8 (12) to levy fees, fines, and charges for services  
9 performed in administering this Act; the aggregate of all  
10 fees collected by the Secretary on and after the effective  
11 date of this Act shall be paid promptly after receipt,  
12 accompanied by a detailed statement thereof, into the Bank  
13 and Trust Company Fund under Section 20-10; the amounts  
14 deposited into that Fund shall be used for the ordinary and  
15 contingent expenses of the Department; nothing in this Act  
16 shall prevent the continuation of the practice of paying  
17 expenses involving salaries, retirement, social security,  
18 and State-paid insurance of State officers by  
19 appropriation from the General Revenue Fund;

20 (13) to appoint examiners, supervisors, experts, and  
21 special assistants as needed to effectively and  
22 efficiently administer this Act;

23 (14) to conduct hearings for the purpose of:

24 (A) appeals of orders of the Secretary;

25 (B) suspensions or revocations of licenses, or  
26 fining of licensees;

- 1 (C) investigating:
- 2 (i) complaints against licensees; or
- 3 (ii) annual gross delinquency rates; and
- 4 (D) carrying out the purposes of this Act;
- 5 (15) to exercise exclusive visitorial power over a
- 6 licensee unless otherwise authorized by this Act or as
- 7 vested in the courts, or upon prior consultation with the
- 8 Secretary, a foreign student loan servicing regulator with
- 9 an appropriate supervisory interest in the parent or
- 10 affiliate of a licensee;
- 11 (16) to enter into cooperative agreements with state
- 12 regulatory authorities of other states to provide for
- 13 examination of corporate offices or branches of those
- 14 states and to accept reports of such examinations;
- 15 (17) to assign an examiner or examiners to monitor the
- 16 affairs of a licensee with whatever frequency the Secretary
- 17 determines appropriate and to charge the licensee for
- 18 reasonable and necessary expenses of the Secretary if in
- 19 the opinion of the Secretary an emergency exists or appears
- 20 likely to occur;
- 21 (18) to impose civil penalties of up to \$50 per day
- 22 against a licensee for failing to respond to a regulatory
- 23 request or reporting requirement; and
- 24 (19) to enter into agreements in connection with the
- 25 Nationwide Mortgage Licensing System and Registry.

1           Section 20-10. Bank and Trust Company Fund. All moneys  
2 received by the Secretary under this Act in conjunction with  
3 the provisions relating to student loan servicers shall be paid  
4 into and all expenses incurred by the Secretary under this Act  
5 in conjunction with the provisions relating to student loan  
6 servicers shall be paid from the Bank and Trust Company Fund.

7           Section 20-15. Examination; prohibited activities.

8           (a) The business affairs of a licensee under this Act shall  
9 be examined for compliance with this Act as often as the  
10 Secretary deems necessary and proper. The Secretary may adopt  
11 rules with respect to the frequency and manner of examination.  
12 The Secretary shall appoint a suitable person to perform such  
13 examination. The Secretary and his or her appointees may  
14 examine the entire books, records, documents, and operations of  
15 each licensee and its subsidiary, affiliate, or agent, and may  
16 examine any of the licensee's or its subsidiary's, affiliate's,  
17 or agent's officers, directors, employees, and agents under  
18 oath.

19           (b) The Secretary shall prepare a sufficiently detailed  
20 report of each licensee's examination, shall issue a copy of  
21 such report to each licensee's principals, officers, or  
22 directors, and shall take appropriate steps to ensure  
23 correction of violations of this Act.

24           (c) Affiliates of a licensee shall be subject to  
25 examination by the Secretary on the same terms as the licensee,

1 but only when reports from or examination of a licensee  
2 provides for documented evidence of unlawful activity between a  
3 licensee and affiliate benefiting, affecting, or deriving from  
4 the activities regulated by this Act.

5 (d) The expenses of any examination of the licensee and  
6 affiliates shall be borne by the licensee and assessed by the  
7 Secretary as may be established by rule.

8 (e) Upon completion of the examination, the Secretary shall  
9 issue a report to the licensee. All confidential supervisory  
10 information, including the examination report and the work  
11 papers of the report, shall belong to the Secretary's office  
12 and may not be disclosed to anyone other than the licensee, law  
13 enforcement officials or other regulatory agencies that have an  
14 appropriate regulatory interest as determined by the  
15 Secretary, or to a party presenting a lawful subpoena to the  
16 Department. The Secretary may, through the Attorney General,  
17 immediately appeal to the court of jurisdiction the disclosure  
18 of such confidential supervisory information and seek a stay of  
19 the subpoena pending the outcome of the appeal. Reports  
20 required of licensees by the Secretary under this Act and  
21 results of examinations performed by the Secretary under this  
22 Act shall be the property of only the Secretary, but may be  
23 shared with the licensee. Access under this Act to the books  
24 and records of each licensee shall be limited to the Secretary  
25 and his or her agents as provided in this Act and to the  
26 licensee and its authorized agents and designees. No other



1 person shall have access to the books and records of a licensee  
2 under this Act. Any person upon whom a demand for production of  
3 confidential supervisory information is made, whether by  
4 subpoena, order, or other judicial or administrative process,  
5 must withhold production of the confidential supervisory  
6 information and must notify the Secretary of the demand, at  
7 which time the Secretary is authorized to intervene for the  
8 purpose of enforcing the limitations of this Section or seeking  
9 the withdrawal or termination of the attempt to compel  
10 production of the confidential supervisory information. The  
11 Secretary may impose any conditions and limitations on the  
12 disclosure of confidential supervisory information that are  
13 necessary to protect the confidentiality of that information.  
14 Except as authorized by the Secretary, no person obtaining  
15 access to confidential supervisory information may make a copy  
16 of the confidential supervisory information. The Secretary may  
17 condition a decision to disclose confidential supervisory  
18 information on entry of a protective order by the court or  
19 administrative tribunal presiding in the particular case or on  
20 a written agreement of confidentiality. In a case in which a  
21 protective order or agreement has already been entered between  
22 parties other than the Secretary, the Secretary may  
23 nevertheless condition approval for release of confidential  
24 supervisory information upon the inclusion of additional or  
25 amended provisions in the protective order. The Secretary may  
26 authorize a party who obtained the records for use in one case

1 to provide them to another party in another case, subject to  
2 any conditions that the Secretary may impose on either or both  
3 parties. The requester shall promptly notify other parties to a  
4 case of the release of confidential supervisory information  
5 obtained and, upon entry of a protective order, shall provide  
6 copies of confidential supervisory information to the other  
7 parties.

8 (f) The Secretary and employees of the Department shall be  
9 subject to the restrictions provided in Section 2.5 of the  
10 Division of Banking Act, including, without limitation, the  
11 restrictions on (i) owning shares of stock or holding any other  
12 equity interest in an entity regulated under this Act or in any  
13 corporation or company that owns or controls an entity  
14 regulated under this Act; (ii) being an officer, director,  
15 employee, or agent of an entity regulated under this Act; and  
16 (iii) obtaining a loan or accepting a gratuity from an entity  
17 regulated under this Act.

18 Section 20-20. Subpoena power of the Secretary.

19 (a) The Secretary shall have the power to issue and to  
20 serve subpoenas and subpoenas duces tecum to compel the  
21 attendance of witnesses and the production of all books,  
22 accounts, records, and other documents and materials relevant  
23 to an examination or investigation. The Secretary, or his or  
24 her duly authorized representative, shall have power to  
25 administer oaths and affirmations to any person.

1           (b) In the event of noncompliance with a subpoena or  
2 subpoena duces tecum issued or caused to be issued by the  
3 Secretary, the Secretary may, through the Attorney General,  
4 petition the circuit court of the county in which the person  
5 subpoenaed resides or has its principal place of business for  
6 an order requiring the subpoenaed person to appear and testify  
7 and to produce such books, accounts, records, and other  
8 documents as are specified in the subpoena duces tecum. The  
9 court may grant injunctive relief restraining the person from  
10 advertising, promoting, soliciting, entering into, offering to  
11 enter into, continuing, or completing any student loan  
12 servicing transaction. The court may grant other relief,  
13 including, but not limited to, the restraint, by injunction or  
14 appointment of a receiver, of any transfer, pledge, assignment,  
15 or other disposition of the person's assets or any concealment,  
16 alteration, destruction, or other disposition of books,  
17 accounts, records, or other documents and materials as the  
18 court deems appropriate, until the person has fully complied  
19 with the subpoena or subpoena duces tecum and the Secretary has  
20 completed an investigation or examination.

21           (c) If it appears to the Secretary that the compliance with  
22 a subpoena or subpoena duces tecum issued or caused to be  
23 issued by the Secretary pursuant to this Section is essential  
24 to an investigation or examination, the Secretary, in addition  
25 to the other remedies provided for in this Act, may, through  
26 the Attorney General, apply for relief to the circuit court of

1 the county in which the subpoenaed person resides or has its  
2 principal place of business. The court shall thereupon direct  
3 the issuance of an order against the subpoenaed person  
4 requiring sufficient bond conditioned on compliance with the  
5 subpoena or subpoena duces tecum. The court shall cause to be  
6 endorsed on the order a suitable amount of bond or payment  
7 pursuant to which the person named in the order shall be freed,  
8 having a due regard to the nature of the case.

9 (d) In addition, the Secretary may, through the Attorney  
10 General, seek a writ of attachment or an equivalent order from  
11 the circuit court having jurisdiction over the person who has  
12 refused to obey a subpoena, who has refused to give testimony,  
13 or who has refused to produce the matters described in the  
14 subpoena duces tecum.

15 Section 20-25. Report required of licensee. In addition to  
16 any reports required under this Act, every licensee shall file  
17 any other report the Secretary requests.

18 Section 20-30. Suspension; revocation of licenses; fines.

19 (a) Upon written notice to a licensee, the Secretary may  
20 suspend or revoke any license issued pursuant to this Act if,  
21 in the notice, he or she makes a finding of one or more of the  
22 following:

23 (1) that through separate acts or an act or a course of  
24 conduct, the licensee has violated any provisions of this

1 Act, any rule adopted by the Secretary, or any other law,  
2 rule, or regulation of this State or the United States;

3 (2) that any fact or condition exists that, if it had  
4 existed at the time of the original application for the  
5 license, would have warranted the Secretary in refusing  
6 originally to issue the license; or

7 (3) that if a licensee is other than an individual, any  
8 ultimate equitable owner, officer, director, or member of  
9 the licensed partnership, association, corporation, or  
10 other entity has acted or failed to act in a way that would  
11 be cause for suspending or revoking a license to that party  
12 as an individual.

13 (b) No license shall be suspended or revoked, except as  
14 provided in this Section, nor shall any licensee be fined  
15 without notice of his or her right to a hearing as provided in  
16 Section 20-65 of this Act.

17 (c) The Secretary, on good cause shown that an emergency  
18 exists, may suspend any license for a period not exceeding 180  
19 days, pending investigation.

20 (d) The provisions of subsection (d) of Section 15-40 of  
21 this Act shall not affect a licensee's civil or criminal  
22 liability for acts committed prior to surrender of a license.

23 (e) No revocation, suspension, or surrender of any license  
24 shall impair or affect the obligation of any pre-existing  
25 lawful contract between the licensee and any person.

26 (f) Every license issued under this Act shall remain in

1 force and effect until the license expires without renewal, is  
2 surrendered, is revoked, or is suspended in accordance with the  
3 provisions of this Act, but the Secretary shall have authority  
4 to reinstate a suspended license or to issue a new license to a  
5 licensee whose license has been revoked if no fact or condition  
6 then exists which would have warranted the Secretary in  
7 refusing originally to issue that license under this Act.

8 (g) Whenever the Secretary revokes or suspends a license  
9 issued pursuant to this Act or fines a licensee under this Act,  
10 he or she shall execute a written order to that effect. The  
11 Secretary shall post notice of the order on an agency Internet  
12 site maintained by the Secretary or on the Nationwide Mortgage  
13 Licensing System and Registry and shall serve a copy of the  
14 order upon the licensee. Any such order may be reviewed in the  
15 manner provided by Section 20-65 of this Act.

16 (h) If the Secretary finds any person in violation of the  
17 grounds set forth in subsection (i), he or she may enter an  
18 order imposing one or more of the following penalties:

19 (1) revocation of license;

20 (2) suspension of a license subject to reinstatement  
21 upon satisfying all reasonable conditions the Secretary  
22 may specify;

23 (3) placement of the licensee or applicant on probation  
24 for a period of time and subject to all reasonable  
25 conditions as the Secretary may specify;

26 (4) issuance of a reprimand;

1           (5) imposition of a fine not to exceed \$25,000 for each  
2           count of separate offense; except that a fine may be  
3           imposed not to exceed \$75,000 for each separate count of  
4           offense of paragraph (2) of subsection (i) of this Section;  
5           or

6           (6) denial of a license.

7           (i) The following acts shall constitute grounds for which  
8           the disciplinary actions specified in subsection (h) may be  
9           taken:

10           (1) being convicted or found guilty, regardless of  
11           pendency of an appeal, of a crime in any jurisdiction that  
12           involves fraud, dishonest dealing, or any other act of  
13           moral turpitude;

14           (2) fraud, misrepresentation, deceit, or negligence in  
15           any student loan transaction;

16           (3) a material or intentional misstatement of fact on  
17           an initial or renewal application;

18           (4) insolvency or filing under any provision of the  
19           federal Bankruptcy Code as a debtor;

20           (5) failure to account or deliver to any person any  
21           property, such as any money, fund, deposit, check, draft,  
22           or other document or thing of value, that has come into his  
23           or her hands and that is not his or her property or that he  
24           or she is not in law or equity entitled to retain, under  
25           the circumstances and at the time which has been agreed  
26           upon or is required by law or, in the absence of a fixed

1 time, upon demand of the person entitled to such accounting  
2 and delivery;

3 (6) failure to disburse funds in accordance with  
4 agreements;

5 (7) having a license, or the equivalent, to practice  
6 any profession or occupation revoked, suspended, or  
7 otherwise acted against, including the denial of licensure  
8 by a licensing authority of this State or another state,  
9 territory, or country for fraud, dishonest dealing, or any  
10 other act of moral turpitude;

11 (8) failure to comply with an order of the Secretary or  
12 rule made or issued under the provisions of this Act;

13 (9) engaging in activities regulated by this Act  
14 without a current, active license unless specifically  
15 exempted by this Act;

16 (10) failure to pay in a timely manner any fee, charge,  
17 or fine under this Act;

18 (11) failure to maintain, preserve, and keep available  
19 for examination all books, accounts, or other documents  
20 required by the provisions of this Act and the rules of the  
21 Secretary;

22 (12) refusing, obstructing, evading, or unreasonably  
23 delaying an investigation, information request, or  
24 examination authorized under this Act, or refusing,  
25 obstructing, evading, or unreasonably delaying compliance  
26 with the Secretary's subpoena or subpoena duces tecum; and



1           (13) failure to comply with or a violation of any  
2           provision of this Act.

3           (j) A licensee shall be subject to the disciplinary actions  
4           specified in this Act for violations of subsection (i) by any  
5           officer, director, shareholder, joint venture, partner,  
6           ultimate equitable owner, or employee of the licensee.

7           (k) A licensee shall be subject to suspension or revocation  
8           for unauthorized employee actions only if there is a pattern of  
9           repeated violations by employees or the licensee has knowledge  
10          of the violations or there is substantial harm to a consumer.

11          (l) Procedures for surrender of a license include the  
12          following:

13               (1) The Secretary may, after 10 days' notice by  
14               certified mail to the licensee at the address set forth on  
15               the license, stating the contemplated action and in general  
16               the grounds for the contemplated action and the date, time,  
17               and place of a hearing thereon, and after providing the  
18               licensee with a reasonable opportunity to be heard prior to  
19               such action, fine such licensee an amount not exceeding  
20               \$25,000 per violation, or revoke or suspend any license  
21               issued under this Act if he or she finds that:

22                       (i) the licensee has failed to comply with any  
23                       provision of this Act or any order, decision, finding,  
24                       rule, regulation, or direction of the Secretary  
25                       lawfully made pursuant to the authority of this Act; or

26                       (ii) any fact or condition exists that, if it had

1           existed at the time of the original application for the  
2           license, clearly would have warranted the Secretary in  
3           refusing to issue the license.

4           (2) Any licensee may submit an application to surrender  
5           a license, but, upon the Secretary approving the surrender,  
6           it shall not affect the licensee's civil or criminal  
7           liability for acts committed prior to surrender or entitle  
8           the licensee to a return of any part of the license fee.

9           Section 20-35. Investigation of complaints. The Secretary  
10          shall at all times maintain staff and facilities adequate to  
11          receive, record, and investigate complaints and inquiries made  
12          by any person concerning this Act and any licensees under this  
13          Act. Each licensee shall open its books, records, documents,  
14          and offices wherever situated to the Secretary or his or her  
15          appointees as needed to facilitate such investigations.

16          Section 20-40. Additional investigation and examination  
17          authority. In addition to any authority allowed under this Act,  
18          the Secretary shall have the authority to conduct  
19          investigations and examinations as follows:

20                 (1) For purposes of initial licensing, license  
21                 renewal, license suspension, license conditioning, license  
22                 revocation or termination, or general or specific inquiry  
23                 or investigation to determine compliance with this Act, the  
24                 Secretary shall have the authority to access, receive, and

1 use any books, accounts, records, files, documents,  
2 information, or evidence, including, but not limited to,  
3 the following:

4 (A) criminal, civil, and administrative history  
5 information, including nonconviction data as specified  
6 in the Criminal Code of 2012;

7 (B) personal history and experience information,  
8 including independent credit reports obtained from a  
9 consumer reporting agency described in Section 603(p)  
10 of the federal Fair Credit Reporting Act; and

11 (C) any other documents, information, or evidence  
12 the Secretary deems relevant to the inquiry or  
13 investigation, regardless of the location, possession,  
14 control, or custody of the documents, information, or  
15 evidence.

16 (2) For the purposes of investigating violations or  
17 complaints arising under this Act or for the purposes of  
18 examination, the Secretary may review, investigate, or  
19 examine any licensee, individual, or person subject to this  
20 Act as often as necessary in order to carry out the  
21 purposes of this Act. The Secretary may direct, subpoena,  
22 or order the attendance of and examine under oath all  
23 persons whose testimony may be required about the loans or  
24 the business or subject matter of any such examination or  
25 investigation, and may direct, subpoena, or order the  
26 person to produce books, accounts, records, files, and any

1 other documents the Secretary deems relevant to the  
2 inquiry.

3 (3) Each licensee, individual, or person subject to  
4 this Act shall make available to the Secretary upon request  
5 the books and records relating to the operations of the  
6 licensee, individual, or person subject to this Act. The  
7 Secretary shall have access to those books and records and  
8 interview the officers, principals, employees, independent  
9 contractors, agents, and customers of the licensee,  
10 individual, or person subject to this Act concerning their  
11 business.

12 (4) Each licensee, individual, or person subject to  
13 this Act shall make or compile reports or prepare other  
14 information as directed by the Secretary in order to carry  
15 out the purposes of this Section, including, but not  
16 limited to:

17 (A) accounting compilations;

18 (B) information lists and data concerning loan  
19 transactions in a format prescribed by the Secretary;  
20 or

21 (C) other information deemed necessary to carry  
22 out the purposes of this Section.

23 (5) In making any examination or investigation  
24 authorized by this Act, the Secretary may control access to  
25 any documents and records of the licensee or person under  
26 examination or investigation. The Secretary may take

1 possession of the documents and records or place a person  
2 in exclusive charge of the documents and records in the  
3 place where they are usually kept. During the period of  
4 control, no person shall remove or attempt to remove any of  
5 the documents or records, except pursuant to a court order  
6 or with the consent of the Secretary. Unless the Secretary  
7 has reasonable grounds to believe the documents or records  
8 of the licensee have been, or are at risk of being altered  
9 or destroyed for purposes of concealing a violation of this  
10 Act, the licensee or owner of the documents and records  
11 shall have access to the documents or records as necessary  
12 to conduct its ordinary business affairs.

13 (6) In order to carry out the purposes of this Section,  
14 the Secretary may:

15 (A) retain attorneys, accountants, or other  
16 professionals and specialists as examiners, auditors,  
17 or investigators to conduct or assist in the conduct of  
18 examinations or investigations;

19 (B) enter into agreements or relationships with  
20 other government officials or regulatory associations  
21 in order to improve efficiencies and reduce regulatory  
22 burden by sharing resources, standardized or uniform  
23 methods or procedures, and documents, records,  
24 information, or evidence obtained under this Section;

25 (C) use, hire, contract, or employ public or  
26 privately available analytical systems, methods, or

1 software to examine or investigate the licensee,  
2 individual, or person subject to this Act;

3 (D) accept and rely on examination or  
4 investigation reports made by other government  
5 officials, within or outside this State; or

6 (E) accept audit reports made by an independent  
7 certified public accountant for the licensee,  
8 individual, or person subject to this Act in the course  
9 of that part of the examination covering the same  
10 general subject matter as the audit and may incorporate  
11 the audit report in the report of the examination,  
12 report of investigation, or other writing of the  
13 Secretary.

14 (7) The authority of this Section shall remain in  
15 effect, whether such a licensee, individual, or person  
16 subject to this Act acts or claims to act under any  
17 licensing or registration law of this State or claims to  
18 act without the authority.

19 (8) No licensee, individual, or person subject to  
20 investigation or examination under this Section may  
21 knowingly withhold, abstract, remove, mutilate, destroy,  
22 or secrete any books, records, computer records, or other  
23 information.

24 Section 20-45. Confidential information. In hearings  
25 conducted under this Act, information presented into evidence

1 that was acquired by the licensee when serving any individual  
2 in connection with a student loan, including all financial  
3 information of the individual, shall be deemed strictly  
4 confidential and shall be made available only as part of the  
5 record of a hearing under this Act or otherwise (i) when the  
6 record is required, in its entirety, for purposes of judicial  
7 review or (ii) upon the express written consent of the  
8 individual served, or in the case of his or her death or  
9 disability, the consent of his or her personal representative.

10 Section 20-50. Confidentiality.

11 (a) In order to promote more effective regulation and  
12 reduce regulatory burden through supervisory information  
13 sharing, except as otherwise provided in federal Public Law  
14 110-289, Section 1512, the requirements under any federal law  
15 or State law regarding the privacy or confidentiality of any  
16 information or material provided to the Nationwide Mortgage  
17 Licensing System and Registry, and any privilege arising under  
18 federal or State law, including the rules of any federal or  
19 State court, with respect to such information or material,  
20 shall continue to apply to information or material after the  
21 information or material has been disclosed to the Nationwide  
22 Mortgage Licensing System and Registry. The information and  
23 material may be shared with all State and federal regulatory  
24 officials with student loan industry oversight authority  
25 without the loss of privilege or the loss of confidentiality

1 protections provided by federal law or State law.

2 (b) In order to promote more effective regulation and  
3 reduce regulatory burden through supervisory information  
4 sharing, the Secretary is authorized to enter agreements or  
5 sharing arrangements with other governmental agencies, the  
6 Conference of State Bank Supervisors or other associations  
7 representing governmental agencies as established by rule,  
8 regulation, or order of the Secretary. The sharing of  
9 confidential supervisory information or any information or  
10 material described in subsection (a) of this Section pursuant  
11 to an agreement or sharing arrangement shall not result in the  
12 loss of privilege or the loss of confidentiality protections  
13 provided by federal law or State law.

14 (c) In order to promote more effective regulation and  
15 reduce regulatory burden through supervisory information  
16 sharing, information or material that is subject to a privilege  
17 or confidentiality under subsection (a) of this Section shall  
18 not be subject to the following:

19 (1) disclosure under any State law governing the  
20 disclosure to the public of information held by an officer  
21 or an agency of the State; or

22 (2) subpoena or discovery, or admission into evidence,  
23 in any private civil action or administrative process,  
24 unless with respect to any privilege held by the Nationwide  
25 Mortgage Licensing System and Registry with respect to the  
26 information or material, the person to whom such



1 information or material pertains waives, in whole or in  
2 part, in the discretion of that person, that privilege.

3 (d) In order to promote more effective regulation and  
4 reduce regulatory burden through supervisory information  
5 sharing, any other law relating to the disclosure of  
6 confidential supervisory information or any information or  
7 material described in subsection (a) of this Section that is  
8 inconsistent with subsection (a) of this Section shall be  
9 superseded by the requirements of this Section to the extent  
10 the other law provides less confidentiality or a weaker  
11 privilege.

12 Section 20-55. Reports of violations. Any person licensed  
13 under this Act or any other person may report to the Secretary  
14 any information to show that a person subject to this Act is or  
15 may be in violation of this Act. A licensee who files a report  
16 with the Department that another licensee is engaged in one or  
17 more violations pursuant to this Act shall not be the subject  
18 of disciplinary action by the Department, unless the Department  
19 determines, by a preponderance of the evidence available to the  
20 Department, that the reporting person knowingly and willingly  
21 participated in the violation that was reported.

22 Section 20-60. Rules and regulations of the Secretary.

23 (a) In addition to such powers as may be prescribed by this  
24 Act, the Secretary is hereby authorized and empowered to adopt

1 rules consistent with the purposes of this Act, including, but  
2 not limited to:

3 (1) rules in connection with the activities of  
4 licensees as may be necessary and appropriate for the  
5 protection of consumers in this State;

6 (2) rules as may be necessary and appropriate to define  
7 improper or fraudulent business practices in connection  
8 with the activities of licensees in servicing student  
9 loans;

10 (3) rules that define the terms used in this Act and as  
11 may be necessary and appropriate to interpret and implement  
12 the provisions of this Act; and

13 (4) rules as may be necessary for the enforcement of  
14 this Act.

15 (b) The Secretary is hereby authorized and empowered to  
16 make specific rulings, demands, and findings that he or she  
17 deems necessary for the proper conduct of the student loan  
18 servicing industry.

19 (c) A person or entity may make a written application to  
20 the Department for a written interpretation of this Act. The  
21 Department may then, in its sole discretion, choose to issue a  
22 written interpretation. To be valid, a written interpretation  
23 must be signed by the Secretary, or his or her designee, and  
24 the Department's General Counsel. A written interpretation  
25 expires 2 years after the date that it was issued.

26 (d) No provision in this Act that imposes liability or

1 establishes violations shall apply to any act taken by a person  
2 or entity in conformity with a written interpretation of this  
3 Act that is in effect at the time the act is taken,  
4 notwithstanding whether the written interpretation is later  
5 amended, rescinded, or determined by judicial or other  
6 authority to be invalid for any reason.

7 Section 20-65. Appeal and review.

8 (a) Any person or entity affected by a decision of the  
9 Secretary under any provision of this Act may obtain review of  
10 that decision within the Department.

11 (b) The Secretary may, in accordance with the Illinois  
12 Administrative Procedure Act, adopt rules to provide for review  
13 within the Department of his or her decisions affecting the  
14 rights of entities under this Act. The review shall provide  
15 for, at a minimum:

16 (1) appointment of a hearing officer other than a  
17 regular employee of the Department;

18 (2) appropriate procedural rules, specific deadlines  
19 for filings, and standards of evidence and of proof; and

20 (3) provision for apportioning costs among parties to  
21 the appeal.

22 (c) All final agency determinations of appeals to decisions  
23 of the Secretary may be reviewed in accordance with and under  
24 the provisions of the Administrative Review Law. Appeals from  
25 all final orders and judgments entered by a court in review of

1 any final administrative decision of the Secretary or of any  
2 final agency review of a decision of the Secretary may be taken  
3 as in other civil cases.

4 Section 20-70. Violations of this Act; Secretary's orders.  
5 If the Secretary finds, as the result of examination,  
6 investigation, or review of reports submitted by a licensee,  
7 that the business and affairs of a licensee are not being  
8 conducted in accordance with this Act, the Secretary shall  
9 notify the licensee of the correction necessary. If a licensee  
10 fails to correct such violations, the Secretary shall issue an  
11 order requiring immediate correction and compliance with this  
12 Act, specifying a reasonable date for performance.

13 The Secretary may adopt rules to provide for an orderly and  
14 timely appeal of all orders within the Department. The rules  
15 may include provision for assessment of fees and costs.

16 Section 20-75. Collection of compensation. Unless exempt  
17 from licensure under this Act, no person engaged in or offering  
18 to engage in any act or service for which a license under this  
19 Act is required may bring or maintain any action in any court  
20 of this State to collect compensation for the performance of  
21 the licensable services without alleging and proving that he or  
22 she was the holder of a valid student loan servicing license  
23 under this Act at all times during the performance of those  
24 services.

1 Section 20-80. Licensure fees.

2 (a) The fees for licensure shall be a \$1,000 application  
3 fee and an additional \$800 fee for investigation performed in  
4 conjunction with Section 15-5. The fees are nonrefundable.

5 (b) The fee for an application renewal shall be \$1,000. The  
6 fee is nonrefundable.

7 Section 20-85. Injunction. The Secretary, through the  
8 Attorney General, may maintain an action in the name of the  
9 people of the State of Illinois and may apply for an injunction  
10 in the circuit court to enjoin a person from engaging in  
11 unlicensed student loan servicing activity.

12 ARTICLE 25. CONSUMER FRAUD AND DECEPTIVE BUSINESS  
13 PRACTICES ACT

14 Section 25-5. Enforcement; Consumer Fraud and Deceptive  
15 Business Practices Act. The Attorney General may enforce a  
16 violation of Article 5 of this Act as an unlawful practice  
17 under the Consumer Fraud and Deceptive Business Practices Act.

18 ARTICLE 99. SEVERABILITY; EFFECTIVE DATE

19 Section 99-1. Severability. The provisions of this Act are  
20 severable under Section 1.31 of the Statute on Statutes.

1           Section 99-99. Effective date. This Act takes effect  
2    December 31, 2018.