A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Department of Insurance and Securities Regulation Establishment Act of 1996 to prevent abusive acts or practices on the part of student loan servicers, to clarify that student loan servicers under contract with the United States Department of Education shall automatically be issued a limited student loan servicing license upon meeting certain criteria; to clarify denials of applications for approval; to proscribe prohibited conduct on the part of student loan servicers; to assign affirmative duties to student loan servicers; to assign the Attorney General of the District of Columbia the power to enforce the Act; to transfer the Student Loan Ombudsperson from the Department of Insurance, Securities and Banking to the Office of the Attorney General for the District of Columbia; and require the creation of a Student Loan Borrower Bill of Rights by October 1, 2021.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Student Loan Borrower Bill of Rights Amendment Act of 2020”.
Sec. 2. The Department of Insurance and Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-101 et seq.), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-101) is amended as follows:

(1) A new paragraph (1A) is added to read as follows:

“(1A) “Abusive act or practice” means an act or practice that:

“(A) Materially interferes with the ability of a student loan borrower to understand a term or condition of a student education loan;

“(B) Takes unreasonable advantage of:

“(i) A lack of understanding on the part of a student loan borrower of the material risks, costs, or conditions of a student loan;

“(ii) The inability of a student loan borrower to protect the interests of the borrower when selecting or using either of the following:

“(I) A student education loan; or

“(II) A feature, term, or condition of a student education loan; or

“(iii) The reasonable reliance by the student loan borrower on a person engaged in servicing a student education loan to act in the interests of the borrower; or

“(C) Misrepresents the amount, nature, or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the student education loan agreement or the borrower's obligations under the student education loan.”

(2) Paragraph (6B) is amended to read as follows:
“(6B) “Ombudsperson” means the position of Student Loan Ombudsperson established within the Office of the Attorney General of the District of Columbia by section 108g of the Attorney General for the District of Columbia Certification and Elected Term Amendment Act of 2010, as introduced on March 3, 2020 (B23-____).”;

(3) New paragraphs (6C) and (6D) are added to read as follows:

“(6C) “Overpayment” or “prepayment” means a payment on a student education loan in excess of the monthly amount due from the student loan borrower on a student education loan.

“(6D) “Partial payment” or “underpayment” means a payment on a student education loan account that contains multiple individual loans in an amount less than the amount necessary to satisfy the outstanding payment due on all loans in the student education loan account.

(b) Section 7a (D.C. Official Code § 31-106.01) is repealed.

(c) Section 7b (D.C. Official Code § 31-106.02) is amended as follows:

(1) Subsection (c) is amended as follows:

(A) Paragraph (1)(B) is amended by striking the phrase “Application fees and other fees” and inserting the phrase “Application fees, investigation fees, and other fees” in its place.

(B) A new paragraph (c)(3) is inserted as follows:

“(3) The Commissioner shall automatically issue a limited, irrevocable license to any person servicing a student education loan under contract with the United States Department of Education as follows:
“(A) Any person seeking to act within the District of Columbia as a student loan servicer is exempt from the application procedures established pursuant to this subsection, other than the requirements of paragraphs (1)(B) and (D) of this subsection, to the extent that the student loan servicing performed is conducted pursuant to a contract awarded by the United States Secretary of Education under 20 U.S.C. § 1087f. The procedure to document eligibility for the exemption shall be prescribed by the Commissioner.

“(B) Any person meeting the criteria set forth in subparagraph (A) of this paragraph shall be issued a license by the Commissioner for the student loan servicing of student education loans under contract with the United States Department of Education and shall be considered by the Commissioner to have met all requirements established in by paragraph (1)(A) and (C) of this subsection.

“(C) The provisions of subsection (h) of this section shall not apply to a person issued a limited license pursuant to this section to the extent that the person is servicing federal student education loans.

“(D) Any person issued a license pursuant to this section shall provide the Commissioner with written notice within seven days following the notification of the expiration, revocation, or termination of any contract awarded by the United States Secretary of Education under 20 U.S.C § 1087f. Thereafter, the person shall have 30 days to satisfy all requirements established under this act in order to continue to act within the District of Columbia as a student loan servicer for federal student education loans. At the expiration of the 30-day period, if the person has not satisfied the requirements established pursuant to this act, the Commissioner shall immediately suspend any license granted under this section.
“(E) In the case of student loan servicing that is not conducted pursuant to a contract awarded by the United States Secretary of Education under 20 U.S.C. § 1087f, nothing in this section shall prevent the Commissioner from issuing an order to temporarily or permanently prohibit any person from acting as a student loan servicer.

“(F) In the case of student loan servicing conducted pursuant to a contract awarded by the United States Secretary of Education under 20 U.S.C § 1087f, nothing in this section shall prevent the commissioner from issuing a cease-and-desist order or injunction against any student loan servicer to cease activities in violation of this act or D.C. Official Code § 28-3901 et seq.”

(2) Subsection (g)(1)(C) is amended by striking “The Commissioner may deny an application for renewal” and inserting “Except as provided for under subsection (c)(3) of this section, the Commissioner may deny an application for renewal” in its place.

(d) New sections 7b-1, 7b-2, and 7b-3 are added to read as follows:

“Sec. 7b-1. Prohibited Conduct.

“(a) No student loan servicer shall:

“(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead student loan borrowers;

“(2) Engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan, including, abusive acts and practices;

“(3) Obtain property by fraud or misrepresentation;

“(4) Misapply student education loan payments to the outstanding balance of a student education loan;
“(5) Provide inaccurate information to a credit bureau, thereby harming a student loan borrower's creditworthiness;

“(6) Fail to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;

“(7) Refuse to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower;

“(8) Make any false statement or make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Commissioner or another governmental agency;

“(9) Fail to respond within 15 business days to communications from the Department of Insurance, Securities and Banking, or within such shorter, reasonable period of time as may be requested by the Department; or

“(10) Fail to respond within 15 business days to a consumer complaint submitted to the student loan servicer by the Department or Office of the Attorney General. If necessary, the student loan servicer may request additional time to respond to the complaint, up to a maximum of 45 business days, provided that the request is accompanied by an explanation on why additional time is reasonable and necessary.

“Sec. 7b-2. Affirmative Duties

“(a) Except as otherwise provided pursuant to federal law, a student loan servicer shall:
“(1) Respond to any written inquiry from a student loan borrower or the representative of a student loan borrower by:

“(A) Acknowledging receipt of the inquiry within 10 business days; and

“(B) Providing information relating to the inquiry, and, if applicable, the action the student loan servicer will take to correct the account, or an explanation of the student loan servicer's position that the borrower's account is correct, within 30 business days.

“(2) Inquire of a student loan borrower how to apply an overpayment to a student education loan. A borrower's instruction on how to apply an overpayment to a student education loan shall stay in effect for any future overpayments during the term of the student education loan until the borrower provides different instructions.

“(3) Apply partial payments in a manner that minimizes late fees and negative credit reporting. If there are multiple loans on a borrower's account with an equal stage of delinquency, a student loan servicer shall satisfy the requirements of this subsection by applying partial payments to satisfy as many individual loan payments as possible on a borrower's account.

“(b) The following requirements shall be applicable to a student loan servicer in the event of the sale, assignment, or other transfer of the servicing of a student education loan that results in a change in the identity of the person to whom a student loan borrower is required to send payments or direct any communication concerning the student education loan:

“(1) As a condition of a sale, an assignment, or any other transfer of the servicing of a student education loan, a student loan servicer shall require the new student loan servicer to honor all benefits originally represented as available to a student loan borrower during the...
repayment of the student education loan and preserve the availability of those benefits, including any benefits for which the student loan borrower has not yet qualified;

“(2) A student loan servicer shall transfer to the new student loan servicer for the student education loan all information regarding the student loan borrower, the account of the borrower, and the student education loan of the borrower. The information shall include the repayment status of the student loan borrower and any benefits associated with the student education loan of the borrower;

“(3) The student loan servicer shall complete the transfer of information required pursuant to section 7b-2(b)(2) within 45 calendar days after the sale, assignment, or other transfer of the servicing of the student education loan; and

“(c) A student loan servicer who obtains the right to service a student education loan shall adopt policies and procedures to verify that the student loan servicer has received all information regarding the student loan borrower, the account of the student loan borrower, and the student education loan of the student loan borrower including, but not limited to, the repayment status of the student loan borrower and any benefits associated with the student education loan of the student loan borrower.

“(d) A student loan servicer shall evaluate a student loan borrower for eligibility for an income-driven repayment program prior to placing the borrower in forbearance or default, if an income-driven repayment program is available to the borrower.”

“Sec. 7b-3. Enforcement

“(a) In addition to complying with the requirements of this act, a student loan servicer shall comply with all applicable federal laws relating to student loan servicing, as from time to time amended, and the regulations promulgated thereunder.
“(b) Any person who suffers damage as a result of the failure of a student loan servicer to comply with sections 7b, 7b-1, 7b-2, or 7b-3(a) may bring an action on their own behalf and on behalf of a similarly situated class of consumers against that student loan servicer to recover or obtain any of the following:

“(1) Actual damages, but in no case, shall the total award of damages be less than five hundred dollars ($500) per plaintiff, per violation;

“(2) An order enjoining the methods, acts, or practices;

“(3) Restitution of property;

“(4) Punitive damages;

“(5) Attorney’s fees; or

“(6) Any other relief that the court deems proper.

“(c) In addition to any other remedies provided by this section or otherwise provided by law, whenever it is proven by a preponderance of the evidence that a student loan servicer has engaged in conduct that substantially interferes with a borrower’s right to an alternative payment arrangement; loan forgiveness, cancellation, or discharge; or any other financial benefit as established under the terms of a borrower’s promissory note or under the Higher Education Act of 1965 (20 U.S.C. § 1070a et seq.), as from time to time amended, and the regulations promulgated thereunder, the court shall award treble actual damages to the plaintiff, but in no case shall the award of damages be less than one thousand five hundred dollars ($1,500) per plaintiff, per violation.

“(d) The attorney general may bring an action in the name of the people of the District of Columbia to restrain or prevent any violation of sections 7b, 7b-1, 7b-2, or 7b-3(a) or any continuance of any such violation.
“(e) The Department shall share information on a quarterly basis related to the implementation, execution, and enforcement of sections 7b, 7b-1, 7b-2, and 7b-3(a) with the Office of the Attorney General of the District of Columbia, and the Student Loan Ombudsperson within the Office of the Attorney General established pursuant to section 108g of the Attorney General for the District of Columbia Certification and Elected Term Amendment Act of 2010, as introduced on March 3, 2020 (B23-____).”;

(e) Section 7c is amended by striking the phrase “sections 7a and 7b.” and inserting “sections 7b, 7b-1, 7b-2, and 7b-3(a).” in its place.

Sec 3. The Attorney General for the District of Columbia Certification and Elected Term Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code § 1-301.81 et seq) is amended by inserting a new section 108g as follows:

“Student Loan Ombudsperson.

“(a) There is established within the Office of the Attorney General for the District of Columbia the position of the Student Loan Ombudsperson (Ombudsperson).

“(b)(1) The Ombudsperson shall be:

“(A) Appointed by the Attorney General;

“(B) A District resident within 180 days of appointment; and

“(C) Experienced in consumer finance, including student loan servicing and debt collection.

“(2) If a vacancy in the position of Ombudsperson occurs as a consequence of removal, resignation, disability, death, or other reason, the Attorney General shall appoint an Ombudsperson to fill the vacancy within 90 days of the occurrence of the vacancy.
“(c) The Ombudsperson, in consultation with the Attorney General and Commissioner of
the Department of Insurance, Securities, and Banking, shall:

“(1) Assist in the enforcement of the provisions of section 7b, 7b-1, 7b-2, and 7b-3(a) of the Department of Insurance and Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-101 et seq.), including the referral of actions to the Office of the Attorney General for the District of Columbia for the enforcement of an order of the Commissioner of the Department of Insurance, Securities, and Banking pursuant to section 7b, 7b-1, 7b-2, and 7b-3(a) of the Department of Insurance and Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-101 et seq.) or other authority of the Commissioner of the Department of Insurance, Securities, and Banking related to a licensee or a person required to have a license under the act;

“(2) Receive, review, and attempt to resolve any complaints from a student loan borrower as defined by § 31-101(9), including attempts to resolve such complaints in collaboration with student loan servicers, and any other participants in student-loan lending, including those entities engaging student loan borrowers about existing student debt;

“(3) Compile and analyze data on student loan borrower complaints;

“(4) Develop and provide information to assist student loan borrowers in understanding their rights and responsibilities under the terms of the student loan borrower's student education loan;

“(5) Monitor the actions that student loan servicers take to ensure that student loan borrowers are informed of their rights and responsibilities under the terms of the student loan borrower's student education loan in a transparent, accessible, and timely manner;
“(6) Make recommendations to the Attorney General and Commissioner of the Department of Insurance, Securities, and Banking for resolving problems and concerns of student loan borrowers;

“(7) Analyze and monitor the development and implementation of federal and local laws, regulations, and policies relating to student loan borrowers;

“(8) Upon the request and written consent of a student loan borrower, review the student education loan history of the student loan borrower; provided, that the student loan borrower has provided documentation of the student loan borrower’s student education loan history;

“(9) By October 1, 2021, establish, publicize, and maintain an education course to assist student loan borrowers in understanding their student education loans, which shall include:

“(A) Educational presentations;

“(B) Explanations of key loan terms;

“(C) Documentation requirements;

“(D) Monthly payment obligations, including:

“(i) Income-based repayment options;

“(ii) Loan forgiveness; and

“(iii) Disclosure requirements; and

“(E) Other educational materials that the Attorney General or Commissioner of the Department of Insurance, Securities, and Banking considers necessary or appropriate;

“(10) By October 1, 2021, develop a student loan borrower bill of rights;

“(11) Take any other action required by the Commissioner.
“(d) Beginning March 1, 2022, and by March 1 of each year thereafter, the Attorney General shall submit an annual report to the Mayor and the Council on the Ombudsperson's activities, as required or authorized by this section, of the previous year, which shall include the number of educational presentations held across the city, the number of residents in attendance for the educational presentations, and the number of complaints received and the action taken to resolve the complaints.

“(e) The Ombudsperson shall not:

“(1) Disclose personally identifiable information regarding a student loan borrower without the written consent of the student loan borrower;

“(2) Disclose the identity of a person who brings a complaint or provides information to the Ombudsperson without the person's consent, unless the Attorney General determines that disclosure is necessary to further the resolution of a complaint or an investigation;

“(3) Provide legal advice or legal representation; or

“(4) Be held personally liable for the good-faith performance of his or her responsibilities or duties under this section or rules issued pursuant to this section; except, that no immunity shall extend to criminal acts, or other acts that violate District or federal law.”

“(f) The Attorney General for the District of Columbia, pursuant to section 2-501 et seq. may issue rules to implement section 108g of the Attorney General for the District of Columbia Certification and Elected Term Amendment Act of 2010, as introduced on March 3, 2020 (B23-____).”

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal
Impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.