



121 STATE STREET  
ALBANY, NEW YORK 12207-1693  
TEL: 518-436-0751  
FAX: 518-436-4751

JANET M. SILVER, ESQ.  
E-MAIL: [JSILVER@HINMANSTRAUB.COM](mailto:JSILVER@HINMANSTRAUB.COM)

## MEMORANDUM

**TO: Association of Private Colleges**  
**FROM: Hinman Straub**  
**DATE: June 22, 2023**  
**RE: Private Education Debt Registry Legislation**

Earlier this week, the Private Education Debt Registry legislation, A.5286 (Epstein)/S.5056 (Thomas) passed both houses (A copy of the bill text is attached). The legislation would amend the State Financial Services Law to place new standards and reporting requirements on any individual who engages in the business as a private education debt creditor. This is a new bill that gained traction over the last few weeks of Session. The legislation overwhelmingly passed both houses, with 139 affirmative and 2 negative votes in the Assembly, and 49 affirmative and 13 negative votes in the Senate.

Institutions of Higher Education might be impacted by this legislation. As such, we are providing the summary below and welcome any questions or feedback. We will continue to monitor this legislation and will provide updates, when necessary.

### **Definitions:**

A private education debt creditor is defined as:

- Any person engaged in the business of securing, making, or extending a private education debt, or
- Any holder of private education debt, including providers of higher education to which a student education debt<sup>1</sup> is owed.

A private education debt creditor does not include any of the following, only to the extent that state regulation is preempted by federal law:

- Any federal chartered bank, savings bank, savings and loan association or credit union;
- Any bank, saving bank, savings and loan association, or credit union organized under the laws of this or any other state;
- Any wholly owned subsidiary of a federally chartered bank or credit union; and,

---

<sup>1</sup> Student education debt is not defined in the legislation or the State Financial Services Law.

- Any operating subsidiary where each owner of the operating subsidiary is wholly owned by the same federally chartered bank or credit union.

Private education debt means an extension of credit or debt or obligation owed or incurred by a consumer, contractual or otherwise, contingent or absolute, that meets all of the following:

- Is not made, insured, or guaranteed under Title IV
- Is extended to a consumer, expressly, in whole or in part, for, or accrues from nonpayment of, higher education expenses, regardless of whether the credit or debt or obligation is owed to the provider of higher education<sup>2</sup> that the student attends; and
- Shall not include any loans that is secured by real property or a dwelling.

Private education debt also includes extensions of credit or debt or obligations owed or incurred to refinance a private education debt.

### **Registration:**

If this bill is enacted, private education creditors operating in New York will have to register with the Superintendent of Financial Services pursuant to any rule or regulation developed or through the National Multistate Licensing System<sup>3</sup>. The Superintendent also has discretion to create an alternative registration process and fee structure of providers of higher education. Private education debt creditors will be required to register and pay a fee on an annual basis.

### **Reporting:**

Private education debt creditors operating in New York will also be required to annually submit the following documents and information to the Superintendent related to consumers who reside in New York State:

- A list of all schools for which such private education debts were used to finance higher education, including, in the case of refinancing loan, the school that the consumer attended using the private education debt;
- The total outstanding dollar amount and number of such private education debts and the number of consumers who owe such private education debts;
- The total dollar amount and number of private education debts associated with each school that was listed;
- The total dollar amount and number of private education debts secured, made, or extended to consumers in the prior fiscal year and the percentage of consumers who received the rates;
- The total dollar amount and number of private education debts secured, made, or extended in the prior fiscal year associated with each school that was listed;

---

<sup>2</sup> A provider of higher education is broadly defined as a person engaged in the business of higher education and the person does not need authorization from SED to operate in this state or be accredited.

<sup>3</sup> The National Multistate Licensing System is the system of record for non-depository, financial services licensing or registration in participating state agencies, as well as for managing ongoing compliance. The NMLS was created by the Consumer Financial Protections Bureau to support federal oversight and make access to mortgage loan operators more accessible to loan recipients and the public. Currently, NYS Banking law, requires any entity that needs a student loan license to also submit their application to NMLS (see Banking Law section 711)

- The range of starting interest rates for private education debts secured, made, or extended to consumers in the prior fiscal year;
- The overall default rate, as well as overall default for such debts associated with each school on the list;
- The total dollar amount and number of private education debts that defaulted for reasons other than non-payment in the prior fiscal year;
- The total dollar amount and number of private education debts with a cosigner;
- The total dollar amount and number of private education debts secured, made, or extended to refinance other private education debts or federal student loans, in the prior fiscal year;
- The total dollar amount and number of private education debts for which the private education creditor has sued to collect in the prior fiscal year;
- Additional information as may in the judgement of the Superintendent be necessary and appropriate to assess the total size and status of the private education debt market and to assess borrower well-being; and
- A copy of the model promissory note, agreement, contract or other instrument used in the prior fiscal year.

These same provisions would apply to a private education debt creditor that acquires or assumes private education debts owed by a consumer residing in New York.

Private education creditors that are also providers of higher education will also be required to annually report. The reporting will relate to private education debts that are a result from unpaid debts or obligations that were not extensions of credit and were the result of education provided in this state. Reporting by providers of higher education must also be broken down by race and gender and include the following:

- The total outstanding dollar amount and number of private education debts and number of consumers who owe those debts;
- The total dollar amount and number of private education debts accrued and number of consumers who owe those debts;
- The total number and balance of students accounts with an academic or administrative hold resulting from private education debt;
- The total number and balance of student accounts with an academic or administrative hold resulting from private education debt for which a payment was made in the prior fiscal year and average payment made;
- The total number of student accounts for which federal financial aid was returned to the federal government from the student's withdrawal from the provider of higher education in the prior fiscal year, and the total dollar amount of private education debt accrued as a result;
- The number of consumers who owe a private education debt who received a federal Pell grant and the average debt owed;
- The number of consumer who owe a private education debt who are considered in-state and out-of-state students, and the total debt owed by each group;
- The total dollar amount, number of private education debts, and number of consumers for each the private education creditor has in the prior fiscal year:

- Charged off the debt,
  - Sent the debt to a third party debt collection agency,
  - Initiated a collection lawsuit,
  - Reported the debt to a consumer credit reporting agency, and
  - Sold the debt;
- The total dollar amount, number of private education debts, and number of consumers for which the private education creditor has, in the prior fiscal year, collected on a private education debt in the following instances:
  - Payment arrangements where the payment was not considered past due, such as tuition installment agreements;
  - Payments made on past due debts during the same academic term or billing cycle in which the debt accrued or before such debts were sent to a collection agency;
  - Payments made on past due debts before they were sent to a collection agency, excluding those payments made during the same academic term or billing cycle, in which the debt accrued;
  - A third party collection agency, prior to initiating a lawsuit; and
  - A collection lawsuit, including payments made by settlement or pursuant to a judgement.
- Additional information as may in the judgement of the Superintendent be necessary and appropriate to assess the total size and status of the private education debt market and to assess borrower well-being; and
- A copy of the model written instrument used by a provider of higher education in the prior year to substantiate a private education debt, including a promissory note, enrollment agreement, or contract.

### **Violations:**

The Superintendent will have the authority after a finding, notice, and hearing to impose penalties when it has been determined the private education creditor knowingly violated this law by failing to comply with any registration or reporting requirements or by furnishing inaccurate information which include:

- A civil penalty of not more than \$10,000 per violation
- A person could be barred, for a period of 10 years, from acting as a private education creditor, or a stockholder, or an officer, director, partner, or other owner, or an employee of a private education creditor.

### **Public Website:**

The Superintendent will be required to create a website and include at least the following information on those registered in New York State:

- Name, address, telephone number and website for all private education creditors;
- A summary of the information that was reported; and
- Copies of all model promissory note, agreement, contract or other instrument used in the prior fiscal year that was required to be submitted.