

DECLARATION OF EMERGENCY

Office of the Governor Office of Financial Institutions

Private Education Lender Registry (LAC 10:XV.2001-2015)

In compliance with Act 715 of the 2022 Regular Session of the Louisiana Legislature (“Act”), the Office of the Governor, Office of Financial Institutions (“OFI”) adopts this Declaration of Emergency (“Declaration”). The Act requires OFI to create and publish a registry of private education lenders not later than one year from the effective date of August 1, 2022. Originally enacted as one of three acts beginning with R.S. 6:1401, the Act was subsequently re-designated as Title VI, Chapter 24, Private Education Lender Registry, R.S. 6:1421 through 1424, by the Louisiana Law Institute. To comply with the legislative intent of the Act, private education lenders shall report information specified by R.S. 6:1422 to OFI. In turn, OFI shall publish this information on the internet for public inspection.

This Declaration adopts LAC 10:XV.2001, et seq., to prevent imminent peril to the public health, safety, or welfare in implementation of registration to engage in private education lending. Beginning April 1, 2024, no person shall engage in business as a private education lender in the State of Louisiana without first satisfying the requirements of R.S. 6:1422. The effective date of the Act has the potential of jeopardizing resident borrowers’ ability to obtain private loans necessary to pursue higher education or interrupting progress toward earning graduate, post-graduate and doctoral degrees. This Declaration allows recent high school graduates, and college and university students, to continue their education without losing or unnecessarily delaying educational and career opportunities. This Declaration further provides for necessary fees for costs of implementation, registration, publication and maintenance of the private education lenders registry, as required by R.S. 6:1424.

This Declaration becomes effective on December 20, 2023 and will remain in place for one hundred and eighty days or until it is supplanted or superseded by a permanent rule. OFI intends to publish a notice of intent to promulgate a permanent rule on January 20, 2024, with an anticipated date of April 20, 2024 for final publication of a permanent rule.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XV. Other Regulated Entities

Chapter 20. Private Education Lender Registry

§2001. Definitions

Annual Registration Period—is the first day of January through the thirty-first day of December for each calendar year, beginning January 1, 2024.

Annual Registration Renewal Period—is the first day of November of each calendar year through the thirty-first day of December of each calendar year, beginning November 1, 2024.

Commissioner—is the commissioner of the Office of Financial Institutions.

Expired Registration—any private education lender registration for which no timely registration renewal application is submitted.

Lapsed Registration—any private education lender registration for which no timely or untimely registration renewal application is submitted.

Lender—is any private education lender or person extending credit as a private education loan.

Loan Holder or Holder—any person owning and servicing any private education loan.

Loan Owner—any private education lender to the extent that the person:

1. secures, makes or extends any private education loan to any resident borrower and:
 - a. services the private education loan; or
 - b. outsources loan servicing of the private education loan to any third party.
2. holds and services any private education loan secured, made or extended by any private education lender.

Loan Servicing—includes:

1. receiving any periodic payments from any resident borrower or notification of such payments and application of payments to the resident borrower’s account;
2. maintaining account records for any private education loan and communicating with any resident borrower regarding the loan, on behalf of the loan’s holder or owner, during a period when no payment is required on the private education loan;

3. interactions with any resident borrower, including activities to help prevent default on obligations arising from private education loans, to facilitate the activities described in Paragraphs 1 and 2 of this Subsection.

NMLS—is the Nationwide Multistate Licensing System developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.

Person—is any individual, partnership, limited liability company, corporation, trust, association, business or nonprofit entity, or other legal entity, or group of individuals, however organized. “Person” shall not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

Provider of Postsecondary Education—is any person engaged in the business of providing education beyond high school, including but not limited to two-year and four-year colleges and universities, and occupational or technical training, via correspondence, online, or in this state, to any resident borrower.

Private Education Lender—is any person engaged in the business of:

1. securing, making, or extending any private education loan to a resident borrower; and
2. servicing any private education loan that person secured, made or extended to a resident borrower.
3. this term shall not include any:
 - a. person who services a private education loan, to the extent the person does not also secure, make, extend, or own the loan;
 - b. federally insured financial institution, its subsidiaries, and affiliates.

Private Education Lending—is engaging in business as a private education lender.

Private Education Loan—is any extension of credit to or a debt or obligation owed or incurred by, a resident borrower, contractual or otherwise, contingent or absolute, that meets the following criteria:

1. is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965, 20 U.S.C. 1070 et seq.; or
2. is extended to or owed or incurred by a resident borrower expressly, in whole or in part, for postsecondary education expenses, regardless of whether the extension of credit to or debt or obligation owed or incurred is provided by the provider of postsecondary education that the resident borrower attends.
3. this term shall not include any loan that is secured by immovable property or a dwelling.

Private Student Loan Registry—is the official, publicly accessible list of private education lenders registered to secure, make, extend, own or hold private education loans to resident borrowers, compiled and published by the Office of Financial Institutions, in accordance with R.S. 6:1421, et seq.

Resident Borrower—is any person:

1. residing in the state;
2. who resided in the State for more than six months in the aggregate during the previous calendar year; or
3. domiciled in the State; and
4. receives a private education loan;
5. agrees to repay a private education loan; or
6. shares responsibilities for repayment of a private education loan with any resident.

State—is the State of Louisiana.

Timely Registration Renewal Application—is any application for renewal of a private education lender registration submitted between the first day of November and the thirty-first day of December of the annual registration period for which the registration is issued.

Untimely Registration Renewal Application—is any application for renewal of a private education lender registration submitted between the first day of January and the last day of February of any calendar year beginning after March 31, 2024.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:1421, R.S. 6:1422, R.S. 6:1423, and R.S. 6:1424.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 49:

§2003. Registration

A. All private education lenders shall:

1. register with the commissioner through the NMLS before engaging in private education lending in the state, as required by and in accordance with R.S. 6:1421, et seq.;
2. renew their registration annually, as provided by R.S. 6:1421, et seq., and this rule;

3. maintain all qualifications of a registered private education lender; and
4. cease and desist all business of private education lending upon any of the following:
 - a. failure to submit a timely or untimely registration renewal application for any annual registration period;
 - b. failure to submit all fees and information required by R.S. 6:1421, et seq., or this rule with any initial registration or registration renewal application;
 - c. notice of the commissioner's denial, suspension, or revocation of any:
 - i. initial or renewal application submitted for any annual registration period; or
 - ii. registration the commissioner issued to the private education lender;
 - d. notice of the commissioner's removal of the lender from the Private Education Lender Registry.

B. For purposes of registration and maintaining registration with the commissioner, each private education lender shall provide all of the following:

1. a list of all providers of postsecondary education for which private education loans have been secured, made or extended to resident borrowers;
2. the total number of private education loans annually secured, made or extended to:
 - a. resident borrowers;
 - b. resident borrowers enrolled or enrolling in, or attending, each provider of postsecondary education listed in response to Subsection B.1 of this Section; and
 - c. resident borrowers requiring a cosigner;
3. The total dollar amount of private education loans annually secured, made or extended to:
 - a. resident borrowers;
 - b. resident borrowers enrolled in or attending each provider of postsecondary education listed in response to Subsection B.1 of this Section;
 - c. resident borrowers requiring a cosigner;
4. the range of starting interest rates for all private education loans secured, made or extended;
5. the percentage of resident borrowers who receive the starting interest rates provided in response to Subsection B.4 of this Section;
6. the default rate of all private education loans secured, made or extended;
7. the default rate of private education loans secured, made or extended to resident borrowers enrolled or enrolling in, or attending, each provider of postsecondary education listed in response to Subsection B.1 of this Section;
8. a copy of promissory note(s), agreement(s), contract(s) or other instrument(s) used during the previous calendar year to substantiate that:
 - a. the private education lender secured, made or extended any private education loans; or
 - b. any resident borrower owes any debt for a private education loan secured, made or extended;
9. the private education lender's:
 - a. name;
 - b. address;
 - c. telephone number; and
 - d. internet website address.

C.1. Beginning January 1, 2024, the annual registration period for all private education lenders shall commence on the first day of January and end on the thirty-first day of December of each calendar year.

2. Any initial private education lender registration approved between the first day of November and the thirty-first day of December of each calendar year will expire on the thirty-first day of December of the following annual registration period.

3. Except as provided by Subsection C.2 of this Section, all private education lender registrations shall expire on the thirty-first day of December of each calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:1421, R.S. 6:1422, R.S. 6:1423, and R.S. 6:1424.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 49:

§2005. Initial Registration Application Period

A. The commissioner shall begin accepting initial registration applications from private education lenders, as required by R.S. 6:1421, et seq., on January 1, 2024.

B. Any private education lender shall be in violation of R.S. 6:1421, et seq., if they:

1. are securing, making or extending any private education loan to any resident borrower;

2. hold or own any private education loans secured, made or extended to any resident borrower; and
3. fail to submit a registration application to the commissioner within 90 days of January 1, 2024.

C. Each private education loan secured, made or extended to any resident borrower, or held for any resident borrower in violation of R.S. 6:1421, et seq., or any rule or regulation adopted by the commissioner under authority of R.S. 6:1424, shall constitute a separate offense, as provided by R.S. 6:1423.

D. Private education lenders whose registration applications are approved by the commissioner shall be added to the Private Education Lender Registry.

E. After the initial 90-day registration application period, no person shall engage in business as a private education lender with any resident borrower without registering with the commissioner, as provided by R.S. 6:1421, et seq., and any rule or regulation adopted by the commissioner under authority of R.S. 6:1424.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:1421, R.S. 6:1422, R.S. 6:1423, and R.S. 6:1424.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 49:

§2007. Registration Renewals

A. Applications for renewal of private education lender registrations shall:

1. be submitted to the commissioner through the NMLS;
2. include all information required by R.S. 6:1421, et seq., and any rule or regulation adopted by the commissioner under authority of R.S. 6:1424; and
3. include all fees required by the commissioner by rule, in accordance with R.S. 6:1421, et seq.

B. Beginning October 31, 2024, the period for submitting registration renewal applications shall begin on the first day of November of each calendar year.

C.1. Timely private education lender registration renewal applications shall:

- a. be submitted on or before the thirty-first day of December of each calendar year;
- b. be accompanied by any registration fee established by rule; and
- c. allow the private education lender's registration to remain in force and effect during the pendency of their registration renewal application.

2. Any private education lender registration for which no timely renewal application is filed shall expire on the thirty-first day of December of the calendar year for which it is issued.

D.1. Registration renewal applications shall be untimely if they are submitted:

- a. on or after the first day of January of any calendar year beginning after March 31, 2024; and
- b. on or before the last day of February of any calendar year beginning after March 31, 2024.

2. Untimely registration renewal applications shall be accompanied by both:

- a. any registration renewal fee established by rule; and
- b. any applicable late fee established by rule.

3. Any registration for which no renewal application is submitted on or before the last day of February of any calendar year shall lapse and shall not be renewed.

4. Any private education lender whose registration has lapsed shall:

- a. be removed from the Private Education Lender Registry;
- b. cease engaging in private education lending in the state, as provided by R.S. 6:1421, et seq., or any rule or regulation adopted by the commissioner under authority of R.S. 6:1424; and
- c. register with the commissioner before resuming private education lending in the state;

5. Private education lenders whose registration is lapsed may submit an initial application for registration, as provided by R.S. 6:1421, et seq., and this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:1421, R.S. 6:1422, R.S. 6:1423, and R.S. 6:1424.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 49:

§2009. Enforcement

A. R.S. 6:1421, et seq., expressly authorizes the commissioner to enforce provisions thereof and this rule in accordance with powers vested by R.S. 6:121.1.

B. The commissioner may take appropriate action against any person subject to his licensing, registration, regulation, or supervisory authority for violating R.S. 6:1421, et seq., or any rule or regulation adopted under authority of R.S. 6:1424, as provided by R.S. 6:1423.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:1421, R.S. 6:1422, R.S. 6:1423, and R.S. 6:1424.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 49:

§2011. Violations

- A. Violations of R.S. 6:1421, et seq., or this rule include, but are not limited to, any person who:
1. has engaged, is engaging, or is about to engage in any act or practice prohibited by R.S. 6:1421, et seq., or any rule or regulation adopted under authority of R.S. 6:1424;
 2. has failed to act, is failing to act or is about to fail to act under an affirmative duty provided by R.S. 6:1421, et seq., or any rule or regulation adopted under authority of R.S. 6:1424.
- B. Appropriate action for violation of R.S. 6:1421, et seq., or this rule includes, but is not limited to:
1. conducting investigations and hearings to ascertain whether a violation R.S. 6:1421, et seq., has occurred;
 2. issuing orders assessing civil money penalties;
 3. entering into compliance agreements;
 4. seeking injunctive relief from any court of competent jurisdiction; or
 5. any combination of appropriate actions 1 through 4 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:1421, R.S. 6:1422, R.S. 6:1423, and R.S. 6:1424.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 49:

§2013. Fees

- A. The following fee schedule is adopted to cover administrative costs of implementing, maintaining and enforcing the Private Education Lender Registry, as provided by R.S. 6:1421, et seq.:
1. initial registration fee of one thousand and five hundred dollars;
 2. renewal registration fee of one thousand dollars; and
 3. renewal registration fee late fee of five hundred dollars.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:1421, R.S. 6:1422, R.S. 6:1423, and R.S. 6:1424.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 49:

§2015. Severability

A. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provisions, items, or applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121, R.S. 6:1421, R.S. 6:1422, R.S. 6:1423, and R.S. 6:1424.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 49: