

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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HOUSE BILL DRH10523-MUfa-29

Short Title: Student Borrowers' Bill of Rights. (Public)

Sponsors: Representatives Everitt and Batch (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT A STUDENT BORROWERS' BILL OF RIGHTS BY ESTABLISHING  
3 THE POSITION OF A STUDENT LOAN OMBUDSMAN IN THE OFFICE OF THE  
4 COMMISSIONER OF BANKS AND BY PROVIDING THAT THE COMMISSIONER OF  
5 BANKS SHALL LICENSE AND REGULATE STUDENT LOAN SERVICERS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 53 of the General Statutes is amended by adding a new Article  
8 to read:

9 "Article 26

10 "Student Borrowers' Bill of Rights.

11 **"§ 53-440. Short title.**

12 This Article may be cited as the Student Borrowers' Bill of Rights.

13 **"§ 53-441. Purpose.**

14 This Article protects student loan borrowers and their families (i) by establishing the position  
15 of a Student Loan Ombudsman to ensure that student loan borrowers and their families have  
16 accurate information about student loans and repayment options and (ii) by providing that the  
17 Commissioner of Banks shall license and regulate student loan servicers to ensure that student  
18 loan borrowers and their families are treated fairly.

19 **"§ 53-442. Definitions.**

20 The following definitions apply in this Article:

21 (1) Borrower. – Any of the following:

22 a. A resident of this State who has received or agreed to pay a student  
23 loan.

24 b. A person who shares responsibility to repay a student loan with a  
25 person described in sub-subdivision a. of this subdivision.

26 (2) Commissioner. – The Commissioner of Banks.

27 (3) Controlling person. – As defined in G.S. 53-208.42.

28 (4) Servicing. – Any of the following:

29 a. Performing all of the following:

30 1. Receiving any scheduled periodic payment on a student loan  
31 from a borrower or any notification that a borrower made a  
32 scheduled periodic payment on a student loan.

33 2. Applying the payment to the balance of the student loan  
34 according to the terms of the student loan.

35 b. During a period when no payment is required on a student loan,  
36 performing all of the following:



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1. Maintaining account records for the student loan.
2. Communicating with the borrower regarding the student loan on behalf of the owner of the student loan.

(5) Student loan. – A loan made to a borrower to assist a student in attaining an education beyond the high school level. This term includes a loan made to refinance a student loan or made to consolidate a student loan with another loan.

(6) Student loan servicer. – Any person, regardless of location, responsible for servicing a student loan.

**"§ 53-443. Student Loan Ombudsman.**

(a) General Duties. – There is established in the Office of the Commissioner of Banks the position of the Student Loan Ombudsman. The Student Loan Ombudsman, in consultation with the Commissioner, shall do all of the following:

(1) Receive, review, and attempt to resolve complaints from borrowers. The Ombudsman may collaborate with institutions of higher education, student loan servicers, and other participants in student loan lending, including The University of North Carolina and its constituent institutions and the State Education Assistance Authority.

(2) Compile and analyze data of complaints from borrowers.

(3) Assist borrowers in understanding their rights and responsibilities under the terms of student loans, including any income-based repayment options and any loan deferral or forgiveness options.

(4) Provide information to the public, State agencies, and the North Carolina General Assembly about borrowers' problems and concerns and make recommendations for resolving these problems and concerns.

(5) Analyze and monitor the development and implementation of federal, State, and local laws and policies concerning borrowers and recommend necessary changes.

(6) Review the loan history of borrowers who give written consent.

(7) Disseminate information about his or her availability to assist those with concerns about servicing, such as borrowers, potential borrowers, institutions of higher education, and student loan servicers.

(8) Take any other actions necessary to fulfill his or her duties.

(b) Student Loan Borrower Education Course. – The Student Loan Ombudsman, in consultation with the Commissioner, shall prepare a student loan borrower education course by January 1, 2021. The course shall include educational presentations and material about student loans and shall cover key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan deferral and forgiveness options, and disclosure requirements. The Ombudsman shall make the course available to students in high schools and institutions of higher education and to any borrower that requests it. The Ombudsman shall periodically update the course.

**"§ 53-444. License requirement for student loan servicers.**

(a) License Requirement. – No person except those exempt under subsection (b) of this section shall service a student loan unless the person has a student loan servicer license as provided in this Article. A licensee may conduct its business at one or more locations in this State pursuant to a single license.

(b) Exemptions. – This Article does not apply to any of the following:

(1) A bank, savings bank, credit union, or savings and loan association organized under the laws of any state or the United States.

(2) A wholly owned subsidiary of an entity described in subdivision (1) of this subsection.

- 1           (3)    The United States or any department, agency, or instrumentality of the United  
2           States.  
3           (4)    A person that services student loans pursuant to a contract with the United  
4           States Department of Education.  
5           (5)    The State or any political subdivision of the State.

6    **"§ 53-445. License application.**

7           (a)    Application. – A person may apply for a student loan servicer license by submitting  
8           a written application to the Commissioner. The application shall be verified by oath or  
9           affirmation of the applicant or a designee of the applicant and shall include all of the following:

- 10           (1)    The legal name, along with any assumed business name, principal address,  
11           contact information, and social security number or taxpayer identification  
12           number of the applicant.  
13           (2)    The applicant's form and place of organization, if applicable.  
14           (3)    A certificate of good standing from the state in which the applicant was  
15           organized, if applicable.  
16           (4)    A certificate of authority from the North Carolina Secretary of State to  
17           conduct business in this State, if required by Article 15 of Chapter 55 of the  
18           General Statutes, or other evidence of the applicant's registration or  
19           qualification to do business in this State.  
20           (5)    The most recent audited annual financial statement of the applicant, or if the  
21           applicant is a wholly owned subsidiary, of the applicant's parent entity. This  
22           statement shall include the balance sheet, statement of income or loss,  
23           statement of changes in shareholder equity, if applicable, and statement of  
24           changes in financial position.  
25           (6)    A record of any criminal convictions for the applicant, controlling person, or  
26           any key management personnel for a 10-year period prior to the date of the  
27           application, including authorization to perform a federal and State criminal  
28           background check.  
29           (7)    A current schedule of the ranges and categories of the fees it charges  
30           borrowers for servicing student loans.  
31           (8)    Any additional information that the Commissioner deems relevant.

32           (b)    Fees. – An applicant shall include a nonrefundable license fee of one thousand dollars  
33           (\$1,000) and a nonrefundable investigation fee of eight hundred dollars (\$800.00) with the  
34           application.

35           (c)    Investigation. – On receipt of the application and fees, the Commissioner shall  
36           investigate the applicant's financial condition and responsibility, financial and business  
37           experience, and character and general fitness.

38           (d)    Abandoned Application. – The Commissioner may deem an application abandoned if  
39           all of the following are true:

- 40           (1)    The applicant fails to respond to a request for information by the  
41           Commissioner within 60 days of the date of the request.  
42           (2)    The Commissioner has given the applicant 30 days' written notice of the  
43           Commissioner's intention to deem the application abandoned.

44           (e)    Issuance of License. – The Commissioner may issue a student loan servicer license  
45           to an applicant if the Commissioner finds all of the following:

- 46           (1)    The applicant's financial condition is sound.  
47           (2)    The applicant's business will be conducted honestly, fairly, equitably,  
48           carefully, efficiently, consistent with this Article's purposes and intent, and in  
49           a manner commanding the community's confidence and trust.  
50           (3)    The applicant and the applicant's controlling persons and key management  
51           personnel are qualified and of good character.

- (4) No person on behalf of the applicant has knowingly made a material misstatement or omission in the application.
- (5) The applicant meets other similar requirements determined by the Commissioner.

**"§ 53-446. License expiration, surrender, and renewal.**

(a) Expiration. – A student loan servicer license expires on September 30 of the odd-numbered year immediately following its issuance, unless it is renewed under subsection (c) of this section.

(b) Surrender. – If a licensee ceases engaging in student loan servicing in this State, the licensee shall do all of the following within 15 days of the date of the cessation:

- (1) Surrender its license to the Commissioner.
- (2) Give written notice to the Commissioner of the location where the licensee's records shall be stored and the name, address, and telephone number of an individual authorized to provide access to the records.

The surrender of a license under this subsection does not reduce or eliminate any civil or criminal liability of a licensee arising from acts or omissions occurring before the surrender.

(c) Renewal. – A licensee may apply to renew a license by submitting a written application to the Commissioner by September 1 of the year in which the license expires. The renewal application shall contain the same information and include the same fees as the initial application as provided in G.S. 53-445. An application that is submitted after September 1 of the year in which the license expires but before the license expires shall also include a nonrefundable late fee of one hundred dollars (\$100.00). The Commissioner shall consider a renewal application and investigate the licensee in the same manner as an initial application as provided in G.S. 53-445. The licensee's license shall be effective during the pendency of the renewal application.

**"§ 53-447. Assessments.**

(a) For the purpose of meeting the cost of regulation under this Article, each licensee shall pay into the Office of the Commissioner of Banks an assessment as provided in this subsection. The annual assessment shall be two thousand dollars (\$2,000) if the total volume of loans serviced by the licensee in the previous calendar year was no more than one million five hundred thousand dollars (\$1,500,000). If the total volume of loans serviced by the licensee in the previous calendar year was more than one million five hundred thousand dollars (\$1,500,000), the assessment shall consist of two thousand dollars (\$2,000), plus an additional sum calculated according to the following table:

<u>Annual Servicing Volume</u>	<u>Per Thousand</u>
<u>\$1,500,001 to \$2,500,000</u>	<u>\$0.07</u>
<u>\$2,500,001 to \$5,000,000</u>	<u>\$0.06</u>
<u>\$5,000,001 to \$10,000,000</u>	<u>\$0.05</u>
<u>\$10,000,001 to \$30,000,000</u>	<u>\$0.04</u>
<u>\$30,000,001 to \$100,000,000</u>	<u>\$0.03</u>
<u>\$100,000,001 to \$1,300,000,000</u>	<u>\$0.02</u>
<u>More than \$1,300,000,000</u>	<u>\$0.01.</u>

(b) The Commissioner may collect the assessment annually or in periodic installments.

**"§ 53-448. Responsibilities of licensee.**

(a) Duties to the Commissioner. –

- (1) Information update. – A licensee shall give written notice to the Commissioner of any change in the information provided in its initial application or most recent renewal application, within 10 business days after the information has changed.

- 1           (2)   Report on student loans. – Upon the request of the Commissioner, a licensee  
2           shall report on the licensee's activities in this State. This report shall include  
3           all of the following:  
4           a.     The number of student loans the licensee is servicing.  
5           b.     The type and characteristics of the student loans.  
6           c.     The number of student loans in default, along with a breakdown of  
7           student loans with 30-day, 60-day, and 90-day delinquencies.  
8           d.     Information on loss mitigation activities, including details on workout  
9           arrangements undertaken.  
10          (3)   Access to records; cooperation. – If the Commissioner requests records from  
11          the licensee, the licensee shall make the records available to the Commissioner  
12          or send the records to the Commissioner within five business days of the  
13          request. The Commissioner may allow additional time, if requested. A  
14          licensee shall fully cooperate with an investigation or examination by the  
15          Commissioner under this Article and shall compile information if requested  
16          by the Commissioner.  
17          (b)   Duties to the Borrower. –  
18          (1)   General duties. – A licensee shall safeguard and account for any money  
19          handled for a borrower, shall follow reasonable and lawful instructions from  
20          the borrower, and shall act with reasonable skill, care, and diligence.  
21          (2)   Borrower information. – A licensee shall adopt policies and procedures to  
22          verify that when it obtains the right to service a student loan, it receives all  
23          information regarding a borrower, the borrower's account, and the borrower's  
24          student loan, including the borrower's repayment status and any borrower  
25          benefits associated with the student loan.  
26          (3)   Disclosures. – At the time a licensee obtains the right to service a student loan,  
27          the licensee shall disclose in a conspicuous notice to the borrower all of the  
28          following:  
29          a.     A current schedule of the ranges and categories of the fees it charges  
30          borrowers for servicing student loans.  
31          b.     That the licensee is licensed by the Commissioner and that complaints  
32          about the licensee may be submitted to the Commissioner.  
33          (4)   Borrower benefits. – A licensee shall honor the terms of all borrower benefits  
34          that have been represented as being available to the borrower during the  
35          repayment of the student loan, including any benefits for which the borrower  
36          has not yet qualified.  
37          (5)   Response to inquiry. – A licensee shall respond to a written inquiry by a  
38          borrower or a borrower's authorized representative within 30 days of receipt  
39          of the inquiry. The licensee may adopt procedures to verify that the  
40          representative is authorized to act on the borrower's behalf.  
41          (6)   Nonconforming payments. – For purposes of this subsection, "nonconforming  
42          payment" means a payment that is either more or less than the required amount  
43          of the student loan payment. If a licensee receives a nonconforming payment,  
44          the licensee shall ask the borrower to provide a written instruction on how to  
45          apply the nonconforming payment. A borrower's written instruction on how  
46          to apply a nonconforming payment shall remain in effect for any future  
47          nonconforming payment during the term of the student loan until the borrower  
48          provides a different written instruction.  
49          (7)   Delinquency; default. – In the event of a delinquency or default on a student  
50          loan, a licensee shall inform the borrower of the nature and extent of the

1 delinquency or default no later than 30 days after the delinquency or default  
2 occurred.

3 (c) Other Duties. –

4 (1) Record retention. – Except as otherwise provided by federal law or by a  
5 contract between the licensee and a federal agency, a licensee shall preserve  
6 records of each student loan and all communications with each borrower for  
7 at least two years following either (i) the final payment on the student loan or  
8 (ii) the sale, assignment, or other transfer of the servicing of the student loan,  
9 whichever occurs first.

10 (2) Consumer reporting. – If a licensee regularly reports information to a  
11 consumer reporting agency as defined in G.S. 75-61, the licensee shall  
12 annually submit a report of each borrower's payment performance to at least  
13 one consumer reporting agency that compiles and maintains files on  
14 consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a.

15 **§ 53-449. Prohibited conduct.**

16 A licensee is prohibited from doing any of the following:

17 (1) Employing, directly or indirectly, any scheme, device, or artifice to defraud  
18 or mislead borrowers.

19 (2) Engaging in any unfair trade or deceptive practice toward any person or  
20 misrepresenting or omitting any material information in connection with the  
21 servicing of a student loan, including any fees, payments due, loan terms, or  
22 borrower obligations.

23 (3) Obtaining property by fraud or misrepresentation.

24 (4) Misapplying or recklessly applying payments to a student loan's balance.

25 (5) Providing inaccurate information to a credit reporting agency as defined in  
26 G.S. 75-61 that causes harm to a borrower's creditworthiness.

27 (6) Making any false statement or omitting a material fact in connection with (i)  
28 any information or report filed with a state or federal agency or (ii) any  
29 investigation or examination conducted by the Commissioner or another state  
30 or federal agency.

31 (7) Knowingly withholding, concealing, mutilating, or destroying any evidence  
32 during an investigation or examination by the Commissioner under this  
33 Article.

34 (8) Communicating with a borrower in any manner designed to harass or  
35 intimidate the borrower.

36 (9) Violating State or federal privacy laws.

37 (10) Violating any other applicable federal law, including the federal Consumer  
38 Credit Protection Act, Chapter 41 of Title 15 of the United States Code, (Truth  
39 in Lending Act) and any regulations adopted under that act.

40 (11) Violating any other applicable State law, including Article 15 of Chapter 53  
41 of the General Statutes or Chapter 24 of the General Statutes.

42 **§ 53-450. Commissioner's authority to investigate and examine.**

43 (a) Investigation and Examination. – In addition to the Commissioner's authority to  
44 investigate an applicant in connection with an initial application under G.S. 53-445(c) or a  
45 renewal application under G.S. 53-446(c), the Commissioner may investigate and examine a  
46 student loan servicer subject to this Article, whether or not licensed, to determine compliance  
47 with this Article.

48 (b) Powers. – In investigating and examining a student loan servicer under this Article,  
49 the Commissioner may do any of the following:

50 (1) Access any records, regardless of the location, possession, control, or custody  
51 of the records. The Commissioner may take possession of and control access

1 to the records in the place where they are usually kept. No person shall remove  
2 or attempt to remove the records except pursuant to a court order or with the  
3 Commissioner's consent.

4 (2) Subpoena any person to produce any evidence the Commissioner deems  
5 relevant to the investigation or examination.

6 (3) Administer oaths and examine any person under oath concerning the student  
7 loan servicer's business.

8 (4) Retain attorneys, accountants, other professionals, and specialists as  
9 investigators, examiners, or auditors to conduct or assist in conducting the  
10 investigation or examination.

11 (5) Enter into agreements or relationships with other government officials or  
12 regulatory associations to improve efficiencies and reduce regulatory burden  
13 by sharing resources, standardized or uniform methods or procedures, and  
14 evidence obtained under the Commissioner's authority.

15 (6) Use, hire, contract for, or employ publicly or privately available analytical  
16 systems, methods, or software to investigate or examine a student loan  
17 servicer.

18 (7) Accept and rely on investigation and examination reports made by other  
19 government officials.

20 (8) Accept audit reports made by an independent certified public accountant for  
21 the student loan servicer on the same general subject matter as the audit, and  
22 incorporate the audit report in a report by the Commissioner.

23 (c) Student Loan Servicer's Access. – The Commissioner shall not prevent a student loan  
24 servicer from accessing its own records as necessary to conduct its ordinary business unless the  
25 Commissioner has reason to believe there is a risk that the records will be altered or destroyed to  
26 conceal a violation of this Article.

27 (d) Extraordinary Review. – If the Commissioner determines that the investigation or  
28 examination requires an extraordinary review, the Commissioner may assess against the student  
29 loan servicer the actual costs of conducting the extraordinary review, including time spent at the  
30 hourly rate for the Commissioner's staff, to be determined by the State Banking Commission.

31 **§ 53-451. Confidentiality.**

32 (a) All information obtained by the Commissioner under this Article is subject to  
33 confidential treatment as provided in G.S. 53C-2-7.

34 (b) The Commissioner may enter into agreements or sharing arrangements with any state  
35 or federal agency and may share otherwise confidential information pursuant to these  
36 agreements, but only to the extent permitted by G.S. 53C-2-7(d). Information shared pursuant to  
37 these agreements retain all applicable privileges and confidentiality protections provided by State  
38 or federal law.

39 (c) Nothing in this section prohibits the Commissioner from releasing to the public a list  
40 of persons licensed under this Article or aggregated financial data on these licensees.

41 **§ 53-452. Commissioner's authority to discipline and enforce.**

42 (a) Disciplinary Authority. – The Commissioner may limit, suspend, revoke, or refuse to  
43 renew a license issued under this Article for any violation of this Article or any rule adopted  
44 under it.

45 (b) Cease and Desist Order. – The Commissioner may order a student loan servicer  
46 subject to this Article to cease and desist from violating this Article or any rule adopted under it.

47 (c) Injunction. – The Commissioner may apply to the Wake County Superior Court for  
48 an order enjoining a student loan servicer subject to this Article from violating this Article or any  
49 rule adopted under it.

50 **§ 53-453. Civil penalty; restitution.**

1       (a) Civil Penalty. – The Commissioner may assess a civil penalty against a student loan  
2 servicer subject to this Article not to exceed twenty-five thousand dollars (\$25,000) for a  
3 violation of this Article. The clear proceeds of civil penalties imposed pursuant to this section  
4 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.  
5 In assessing a civil penalty, the Commissioner shall consider all of the following factors:

- 6           (1) The degree and extent of harm to borrowers.
- 7           (2) The nature, gravity, and duration of the violation.
- 8           (3) Whether the violation continued after a cease and desist order was issued by  
9 the Commissioner.
- 10          (4) Whether the violation was committed willfully.
- 11          (5) Whether the violation reflects a continuing pattern of conduct.
- 12          (6) Whether the violation involved elements of fraud or deception of borrowers  
13 or the Commissioner.
- 14          (7) Whether and the extent to which the student loan servicer profited by the  
15 violation.
- 16          (8) Any failure of the student loan servicer to provide timely and complete  
17 responses to any of the following:
  - 18           a. The Commissioner's inquires about the student loan servicer's  
19 activities.
  - 20           b. Any request for records by the Commissioner.
- 21          (9) Whether the student loan servicer obstructed the inspection of records or any  
22 other aspect of an investigation or examination by the Commissioner.
- 23          (10) Whether the student loan servicer exercised reasonable diligence to comply  
24 with this Article and any rules adopted under this Article.
- 25          (11) Whether the student loan servicer reported the violation to the Commissioner,  
26 and, if so, after what period of time following the violation.
- 27          (12) Efforts by the student loan servicer to correct the violation.
- 28          (13) Any prior violation by the student loan servicer of this Article, a similar law  
29 of another state, or a similar federal law.
- 30          (14) Whether payment of the civil penalty will prevent payment of damages under  
31 G.S. 53-454, payment of restitution under subsection (b) of this section, or  
32 payment of any other relief in the nature of restitution.
- 33          (15) Any other factors that would tend to mitigate or aggravate the violation.

34       (b) Restitution. – If a student loan servicer subject to this Article violates this Article, the  
35 Commissioner may order the student loan servicer to pay restitution to a borrower injured by the  
36 violation.

37 **"§ 53-454. Civil remedy.**

38       (a) A borrower may bring a civil action for damages against a student loan servicer  
39 subject to this Article if the student loan servicer violates this Article and the borrower is injured  
40 by the violation.

41       (b) A violation of this Article is an unfair trade or deceptive practice for purposes of  
42 Chapter 75 of the General Statutes.

43       (c) A borrower that prevails in an action under this section may recover actual damages  
44 and costs and any other remedies, including attorneys' fees, provided under Chapter 75 of the  
45 General Statutes.

46 **"§ 53-455. Service of process.**

47       (a) A student loan servicer subject to this Article is deemed to have done all of the  
48 following:

- 49           (1) Consented to the jurisdiction of the courts of this State for an action arising  
50 under this Article.



1           (2)   Appointed the Secretary of State as the student loan servicer's agent for the  
2           purpose of accepting service of process in an action arising under this Article.

3           (b)   For purposes of this Article, the Commissioner is deemed to have complied with the  
4           requirements of law concerning service of process upon mailing by certified mail notice to a  
5           student loan servicer subject to this Article, postage prepaid and addressed to the last known  
6           address on file with the Commissioner.

7    "**§ 53-456. Rules; appeal by aggrieved person.**

8           (a)   The State Banking Commission may adopt rules to implement this Article.

9           (b)   Pursuant to G.S. 53C-2-6(b), any person aggrieved by any rule or order of the  
10          Commissioner may appeal to the State Banking Commission for review upon providing written  
11          notice within 20 days after the rule or order was adopted or issued. Any aggrieved party to a  
12          decision of the State Banking Commission may petition for judicial review pursuant to  
13          G.S. 53C-2-6(b).

14   "**§ 53-457. Annual report to the Governor and General Assembly.**

15          On January 1, 2022, and annually thereafter, the Commissioner shall submit a report to the  
16          Governor, the joint legislative oversight committee with jurisdiction over banking, and the  
17          Legislative Library that discusses all of the following:

18               (1)   The implementation and overall effectiveness of the Student Loan  
19               Ombudsman position established by G.S. 53-443.

20               (2)   Any additional steps needed for the Commissioner to gain regulatory control  
21               over the licensing and oversight of student loan servicers."

22          **SECTION 2.** Beginning with the 2020-2021 fiscal year, overrealized receipts that  
23          are available to the Banking Commission each fiscal year are hereby appropriated to be used by  
24          the Banking Commission in an amount necessary to provide the salary and benefits for the  
25          Student Loan Ombudsman position established by G.S. 53-443, as enacted by Section 1 of this  
26          act.

27          **SECTION 3.** If any provision of this act or its application to any person or  
28          circumstance is held invalid, the invalidity does not affect other provisions or applications of this  
29          act that can be given effect without the invalid provision or application, and to this end the  
30          provisions of this act are severable.

31          **SECTION 4.** G.S. 53-444 through G.S. 53-457, as enacted by Section 1 of this act,  
32          become effective October 1, 2021, and apply to acts or omissions committed by student loan  
33          servicers on or after that date. The remainder of this act becomes effective July 1, 2020.