

TITLE 10. DEPARTMENT OF BUSINESS OVERSIGHT

PROPOSED CHANGES UNDER THE
STUDENT LOAN SERVICING ACT

MODIFIED: MAY 31, 2018

(Additions shown by double underline and deletions shown by double strikethrough)

1. Subchapter 15 Student Loan Servicing Act, Article 1, Section 2032 is adopted to read:

Article 1. Definitions

§2032. Definitions.

(a) The following terms used in these rules shall have the following meanings:

(1) "Act" or "SLSA" means the Student Loan Servicing Act, Financial Code,

Division 12.5, section 28100, et seq.

(2) "Code" means the Financial Code.

~~(3) "Commissioner" means the Commissioner of the Department of Business~~

~~Oversight.~~

~~(4) "Department" means the Department of Business Oversight.~~

~~(5) 3) "Federal Direct Loan(s)" means loan(s) made under the William D. Ford~~

~~Federal Direct Loan Program, authorized under Title IV of the Higher Education Act, as amended, 20 U.S.C. § 1070, et seq.~~

~~(6) 4) "Federal Family Education Loan(s)" means loan(s) made under the Federal~~

~~Family Education Loan ("FFEL") Program, authorized under Title IV of the Higher Education Act, as amended, 20 U.S.C. § 1070, et seq.~~

~~(7) 5) "Federal student loan(s)" means Federal Direct Loans; FFEL Loans; and~~

~~Perkins Loans.~~

(8 6) “Forbearance” means a period during which monthly federal student loan payments are temporarily suspended or reduced, due to certain types of financial hardships. During forbearance, principal payments are postponed but interest continues to accrue. Unpaid interest that accrues during forbearance will be added to the principal balance (capitalized) of the loan(s), increasing the total amount owed by the borrower(s).

(9 7) “Form MU1” means the uniform licensing form developed by the Nationwide Multistate Licensing System & Registry for a student loan servicer, entitled “Uniform Student Loan Servicer Form.”

(10 8) “Form MU2” means the uniform licensing form developed by the Nationwide Multistate Licensing System & Registry for a person that directly or indirectly exercises control over a student loan servicer, or a branch thereof, including qualifying individuals and branch managers specified in Form MU1, entitled “Uniform Student Loan Servicer Biographical Statement & Consent Form.”

(11 9) “Form MU3” means the uniform licensing form developed by the Nationwide Multistate Licensing System & Registry for the branch office of a student loan servicer, entitled “Uniform Student Loan Servicer Branch Office Form.”

(12 10) “NMLS” means the Nationwide Multistate Licensing System & Registry.

~~(13) “Nationwide Multistate Licensing System & Registry” has the same meaning as its definition in the Act.~~

~~(14 11) “Overpayment” means “a payment on a student loan in excess of the monthly amount due from a borrower on a student loan, also commonly referred to as a prepayment,” which is the meaning ascribed to “overpayment” at Code section 28130, subdivision (h)(2).~~

~~(45 11)~~ “Perkins Loan(s)” means Federal Perkins Loans, authorized under Title IV of the Higher Education Act, as amended, 20 U.S.C., § 1070, et seq.

~~(46 12)~~ “Private Student Loan” means a student loan which is not a federal student loan but, rather, a private student loan made by a lender such as a bank or credit union.

~~(17 14)~~ “Qualified written request” has the same meaning as its definition in the Act.

~~(48 13)~~ “Student Aid Office” or “Federal Student Aid Office” means that certain office of the U.S. Department of Education; which is the largest provider of student financial aid nationwide; and is responsible for managing the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C., § 1070, et seq.

~~(19 16)~~ “Student loan” has the same meaning as its definition in the Act.

(14) “Student loan servicer” means any person engaged in the business of servicing student loans. A “student loan servicer” does not include a debt collector, as defined in Section 1788.2 of the Civil Code, whose student loan debt collection business, and business operations, involve collecting, or attempting to collect, on defaulted student loans, that is, federal student loans for which no payment has been received for 270 days or more, or private student loans, in default, according to the terms of the loan documents. Debt collectors who also service non-defaulted student loans, as part of their business, and business operations, are “student loan servicers.”

(b) All terms used in these rules, which are defined anywhere in the Act, but not defined in these rules, shall have the meanings ascribed to them in the Act.

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28104 and 28130, Financial Code.

2. Subchapter 15 Student Loan Servicing Act, Article 2, Section 2033 is adopted to read:

Article 2. Application for Licensure and Related Forms

§2033. Electronic Filings.

(a) DESIGNATION: The Commissioner designates the Nationwide Multistate Licensing System & Registry (NMLS) to receive and store filings, obtain credit reports, and collect related fees and assessments from applicants and state-licensed student loan servicers, on behalf of the Commissioner.

(b) USE OF NMLS: All student loan servicer applications, amendments, surety bonds, notices, related filings, supporting documents, renewals, authorizations, assessments, and fees required to be filed with the Commissioner, shall be filed electronically with and transmitted to NMLS, except as otherwise indicated in Subchapter 15 of these rules. The following conditions relate to such electronic filings:

(1) Electronic Signature: When a signature or signatures are required by the particular instructions of any filing, including any attestation to be made through NMLS, a duly authorized officer or proper delegate of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate field and submitting the filing to the Commissioner through NMLS. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual making the filing.

(2) When filed: Solely for purposes of a filing made through NMLS, unless otherwise specified, a document is considered filed with the Commissioner when all fees are received and the filing is transmitted by NMLS to the Commissioner.

(3) An applicant shall provide through NMLS the necessary authorizations so that NMLS may obtain independent credit reports

(4) Any document required to be filed with the Commissioner that is not permitted to be filed with, or cannot be transmitted through NMLS, shall be filed directly with the Commissioner.

Note: Authority cited: Sections 28106, Financial Code. Reference: Section 1633.7, Civil Code; and Sections 28106, 28108, 28110, 28112, 28114 and 28116, Financial Code.

3. Section 2034 is adopted to read:

§2034. Officers, Directors, Partners, and Other Persons: Maintenance of Current List with Commissioner: Information Required.

A student loan servicer shall at all times maintain on file with NMLS, in accordance with its procedures for transmission to the Commissioner, a current list of officers, directors, and partners in the case of a partnership, and other persons named in the Forms MU1, MU2, and MU3, as applicable. In the event of any change in the officers, directors, partners, or other persons named in the application, a student loan servicer shall file with NMLS, within ten (10) business days of any change, an amendment to the application containing the same information in relation to such new person(s) as is required in the Forms MU1, MU2, and MU3.

Note: Authority cited: Sections 28106, Financial Code. Reference: Sections 28110 and 28126, Financial Code.

4. Section 2035 is adopted to read:

§2035. License Application for Student Loan Servicer.

The procedures set forth in this section are applicable to a person who is required to be licensed pursuant to Section 28102 of the Code, as a student loan servicer. The application for a license as a student loan servicer shall be filed as follows:

(a) INITIAL APPLICATION: The application for a license as a student loan servicer under subdivision (a) of Section 28102 of the Code, and any amendment to such application, shall be filed upon Form MU1, in accordance with the instructions of NMLS, for transmission to the Commissioner. All exhibits, and supporting documents related to the application or amendment shall also be filed with NMLS, in accordance with the instructions of NMLS, for transmission to the Commissioner. Exhibits that cannot be submitted through NMLS, if any, shall be submitted directly to the Commissioner. The notices set forth in Section 2039 of Title 10 of the California Code of Regulations are part of every application. An applicant shall provide the following information, exhibits and documentation in the manner provided:

(1) An applicant shall identify all fictitious business names on Form MU1.

(A) For each fictitious business name, an applicant shall upload to NMLS a copy of the Fictitious Business Name Statement, with the “filed stamp” from the county clerk’s office.

(B) An applicant may not use a fictitious business name until the Commissioner approves the use of the name.

(C) Every applicant and licensee shall comply with the rules governing the filing of a fictitious business name, set forth in Business and Professions Code Section 17900 et seq.

(2) For every additional business location, an applicant shall submit through NMLS a Form MU3, in accordance with Section ~~2037~~ 2038 of these rules.

(3) An applicant shall provide the names, personal history, and experience of individual applicants, officers, directors, managing members (in the case of a limited liability company), general and managing partners (in the case of a partnership), individuals owning or controlling, directly or indirectly, ten percent (10%) or more of the applicant, and individuals with responsibility for the servicing activities of the applicant, through NMLS, on Form MU1, within the “Directors and Executive Officers” section, and on Form MU2.

(A) The individuals named in MU1, for whom an MU2 has been filed, shall provide authorization for, and subsequent delivery of, fingerprints to the California Department of Justice, or NMLS, if and when NMLS can process fingerprints taken in a specific state, to check criminal history in that state. Fingerprinting shall be done in accordance with Section ~~2037~~ 2036 of these rules.

(B) An individual named in MU1, for whom an MU2 has been filed, who is not residing in the United States, or who has not resided in the United States for at least ten years, must also submit an investigative background report, in accordance with Section ~~2036~~ 2037 of these rules. This investigative report shall be required in addition to fingerprinting.

(C) An applicant shall pay all fees related to fingerprinting, the criminal history background check, and the investigative background report.

(4) An applicant shall submit through NMLS, as an exhibit to Form MU1, audited financial statements with an unqualified opinion prepared by an independent certified public accountant, in accordance with generally accepted accounting principles, and acceptable to the Commissioner. The audited financial statements shall be prepared as of the applicant's most recent fiscal year end, or a more recent date, and must document a minimum tangible net worth of \$250,000.

(5) In addition to the identification of business activities requested on Form MU1, an applicant shall upload to NMLS a detailed description of the applicant's business activities. If an applicant identifies additional contact employees in Item # 7 of Form MU1, the applicant must upload an entity organizational chart.

(6) An applicant shall submit the surety bond required by Code section 28142, through NMLS, utilizing NMLS' electronic surety bond function and form, in accordance with Section ~~2046-2045~~ of these rules.

(7) An applicant shall upload to NMLS copies of its Policies and Procedures, demonstrating how the applicant will comply with the borrower protection requirements of the Act, specified at Code section 28130, subsections (f) through (h), and these rules, related to borrower protections.

(8) If an applicant intends to engage in any activities not specified in Item #1 of Form MU1, the applicant shall upload this information to NMLS.

(9) Business entities shall upload the following documents to NMLS, for transmission to the Commissioner:

(A) A corporate applicant shall upload a certificate of qualification or good standing from the California Secretary of State, executed not more than sixty days before the filing of the application. The certificate must show that the applicant is authorized to transact business in the State of California.

(B) A foreign corporation shall upload a certificate of qualification or good standing from the Secretary of State of the state of incorporation, executed not more than 60 days before the filing of the application, showing that the applicant is authorized to transact business in that state.

(C) A partnership applicant shall upload its partnership agreement.

(D) A limited liability company shall upload its Operating Agreement.

(E) A limited partnership or limited liability company applicant shall upload a certificate of qualification or good standing from the California Secretary of State, executed not more than 60 days before the filing of the application, showing that the applicant is authorized to transact business in the State of California.

(F) A foreign limited partnership or limited liability company applicant shall upload a certificate of qualification or good standing from the Secretary of State of the state of formation, executed not more than 60 days before the filing of the application, showing that the applicant is authorized to transact business in that state.

(10) Every applicant shall provide a registered agent for service of process, located within the state of California, through NMLS, on Form MU1. ~~Every applicant shall also upload to NMLS, an Appointment of the Commissioner as the applicant's agent to receive process, in accordance with the Act, and Section 2036 of these rules.~~

(11) An applicant shall provide its website information, through NMLS, on Form MU1.

(12) The individual attesting to the filing of the Form MU1 must be a duly authorized individual, who has submitted a Form MU2, or has been delegated to attest to the filing by an individual who has submitted a Form MU2. The attestation provided pursuant to this paragraph shall constitute an agreement to comply with the requirements of Section 28130 of the Code.

(b) FEES: The application fee (\$300), and the investigation fee (\$100), required under Code Section 28112, and any other fees payable through NMLS, shall be paid through NMLS, for transmission to the Commissioner. Any fees that cannot be paid through NMLS shall be paid directly to the Commissioner. Fees are not refundable.

(c) COMPLETION OF FILING AND ISSUANCE OF LICENSE: An application for licensure as a student loan servicer is not deemed complete until all required fees, all

required submissions, and all background and investigative reports are received by the Commissioner. The filing of Form MU1 with NMLS does not constitute automatic approval of a license. The student loan servicer shall not consider the application approved until it is approved by the Commissioner and a license is issued to the applicant. In accordance with Code Section 28122(b), the Form MU1 application may be considered withdrawn, if the Commissioner does not receive information requested in a deficiency notification, within 60 days of the date of notification.

(d) FILING AN AMENDMENT: In the event of a change to the information in the application, or exhibits thereto, the student loan servicer shall file an amendment to the Form MU1, MU2 or MU3, through NMLS, in accordance with the procedures in Section 203940 of these rules. Prior to the issuance of a license, any amendment to an application shall be filed within five (5) days of the event necessitating the amendment.

Note: Authority cited: Sections 28106, Financial Code. Reference: Sections 17900, 17910, 17913 and 17926, Business and Professions Code; Section 1798.17, Civil Code; Section 7473, Government Code; Sections 28106, 28110, 28112, 28114, 28116, 28118, 28122, 28128, 28130 and 28142, Financial Code; Section 17520, Family Code; and Section 11077.1, Penal Code.

~~5. Section 2036 is adopted to read:~~

~~§2036. Appointment of Commissioner of Business Oversight as Agent for Service of Process.~~

~~(a) Applicants are required to complete and submit to the Commissioner, in accordance with subsections (b) and (c), the following Appointment Of Commissioner Of Business Oversight As Agent For Service Of Process form:~~

~~STATE OF CALIFORNIA – DEPARTMENT OF BUSINESS OVERSIGHT~~

~~APPOINTMENT OF COMMISSIONER OF BUSINESS OVERSIGHT AS AGENT FOR SERVICE OF PROCESS PURSUANT TO SECTION 28112 of the California Financial Code~~

~~(Name of Applicant), (hereinafter referred to as the "Applicant"), which is applying for a license under the Student Loan Servicing Act (commencing with Section 28100 of the California Financial Code), hereby irrevocably appoints the Commissioner of Business Oversight of the State of California and his or her successor, to be the Applicant's agent to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the Applicant, or any successor, executor, or administrator of the Applicant, which arises under the Student Loan Servicing Act, or under any regulation or order issued under the Student Loan Servicing Act, with the same force and validity as if served personally on the Applicant.~~

<p>Dated: _____</p>	<p>_____ Name of Applicant (Printed)</p>
	<p>By: _____ (Signature)</p>
	<p>_____ (Name and Title (Printed))</p>

~~(The signature of the Applicant must be notarized.)~~

~~(b) The Appointment form must be signed by an individual with authority to sign on behalf of the applicant. The signature of the individual signing the Appointment form must be notarized.~~

~~(c) Applicants must file the completed, signed, notarized Appointment form, electronically, with NMLS, for transmission to the Commissioner.~~

~~Note: Authority cited: Sections 28106, Financial Code. Reference: Section 28106, Financial Code.~~

§5. Section 20376 is adopted to read:

§20376. Fingerprints and Background Checks.

(a) Subject to subsection (b) of this section, all applicants must submit fingerprints through the California Department of Justice's ("Department of Justice") electronic fingerprint submission Live Scan Service ("Live Scan").

(b) Applicants must complete the ~~three-part~~ Department of Justice Form “Request for Live Scan Service,” and submit fingerprinting, through Live Scan, for each of the following persons, who must be listed in the applicant’s MU1, and submit a MU2:

(1) Applicant, if an individual;

(2) The President, Chief Executive Officer, Treasurer, and Chief Financial Officer, of the applicant;

(3) The directors of the applicant;

(4) The managing members of the applicant, if applicant is a limited liability company;

(5) The general and managing partners of the applicant, if applicant is a partnership;

(6) The trustee of applicant, if applicant is a trust;

(7) Individuals owning or controlling, directly or indirectly, ten percent (10%) or more of the applicant; and

(8) Individuals responsible for the conduct of the applicant’s servicing activities, such as branch managers and persons in charge of the servicing business of the applicant, at any location for which licensure is applied.

(c) The applicant must take the ~~three-part~~ form to a Live Scan location to have their fingerprints taken by the operator. The applicant will be required to pay all fingerprint processing fees payable to the Live Scan operator, including the Live Scan operator’s “rolling fee,” if any, and fees charged by the California Department of Justice, and the Federal Bureau of Investigation. For current information about fingerprint background checks, and Live Scan locations, please visit the Attorney General's website at: <https://oag.ca.gov/fingerprints>.

(d) For each individual required to be fingerprinted, applicants must upload to NMLS, as proof of Live Scan completion, a copy (~~Requesting Agency Copy~~) of the Department of Justice Request for Live Scan Form.

~~(e) The only exception to the requirement to submit fingerprints electronically, through Live Scan, is for those individuals (almost without exception, individuals living and working outside California), who have submitted a Request for Exemption from Mandatory Requirement to, and obtained approval from, the Department of Justice to submit fingerprint cards, using a Bureau of Criminal Identification fingerprint card, instead of Live Scan.~~

(~~f~~ e) Individuals residing outside of California that cannot be fingerprinted electronically in California must have their fingerprints taken at a law enforcement agency in their state of residence, using fingerprint cards. These individuals should complete two fingerprint cards. The applicant should retain the second card, to be used if the first card is determined to be unreadable and rejected by the Department of Justice. Applicants must ~~Mail the completed Request for Exemption form, and~~ mail one fingerprint card, together with fees in the amount of \$49 (either personal check drawn on a U.S. bank, money order or certified check), ~~made payable to the "California Department of Justice,"~~ to:

California Department of Business Oversight
One Sansome Street, Suite 600
San Francisco, CA 94104-4428

~~The Department of Justice will notify~~ Applicants will be notified if the first card is rejected. If rejected, applicants must follow the instructions on the rejection letter, and submit the second fingerprint card ~~to the Department of Justice.~~ The Department of Justice does not charge an additional fee to process the second fingerprint card.

(g) No license will be issued until the Department receives a response received from the Department of Justice for all persons required to submit fingerprint information under the SLSA, and the Department determines that the applicant with whom the persons fingerprinted are affiliated merits approval.

Note: Authority cited: Sections 28106, Financial Code. Reference: Sections 28106, 28110, 28112, and 28114, Financial Code.

7 6. Section 20387 is adopted to read:

§20387. Information Regarding Individuals Who Are Not Residents of the United States.

(a) In addition to other background information required in the application, applicants must engage a search firm to perform an investigative background report of each individual required to be fingerprinted under the SLSA and Sections 2035 and 2036 of these rules, who does not currently reside or has not resided in the United States for at least ten years. A copy of the investigative report may be submitted to the Commissioner, by uploading a copy of the report to applicant's NMLS account. The search firm must be able to demonstrate that it has sufficient resources and is properly licensed to conduct the background search. The search firm may not be affiliated with or related to the persons who are the subject of the search. The report must be in English. The cost of the report shall be paid by the applicant or individual.

(b) The report shall contain the following, at a minimum:

(1) A comprehensive credit report and/or history, including the actual credit report, as well as a summary.

(2) Civil court and bankruptcy court records concerning the applicant or individual, for the past ten years. The search for such records shall include a search of

the court data in the country(ies), states, and towns where the person resided or worked.

(3) Criminal records of the applicant or individual, including felonies, misdemeanors and violations (excluding traffic violations). The search for such records shall include a search of court data in the country(ies), states, and towns where the person resided or worked.

(4) Education records.

(5) Employment history during the last ten years.

(6) Media records referencing the applicant or individual. The search for such records shall include a search of national and local publications, wire services, and business publications.

(7) Regulatory history, particularly in student loan lending and servicing, lending and servicing, generally, and securities.

(c) The report shall be accompanied by a search summary letter, which

(1) identifies the scope of the search,

(2) indicates the independence of the search firm from the applicant and the individual(s) who are the subject of the search, and

(3) identifies a person and contact information for that person, who the Commissioner may contact with questions regarding the report.

(d) If the applicant or individual has had a report, containing at least the information listed in subdivision (b) of this section, prepared for another licensing agency within 12 months of the filing of the application, the applicant or individual may request permission from that licensing agency or the search firm to submit a copy of that report to the Commissioner. If the applicant or individual elects to submit a prior report as

authorized in this subdivision, the applicant or individual shall also submit a statement of no material change in items in the report.

Note: Authority cited: Sections 28106, Financial Code. Reference: Section 28106, Financial Code.

§ ~~7~~. Section 203~~98~~ is adopted to read:

§203~~98~~. Branch Office Instructions for Student Loan Servicers.

(a) A student loan servicer that seeks to engage in business at an additional location must submit an application for a branch office by submitting Form MU3, in accordance with the instructions of NMLS, for transmission to the Commissioner, at least ten days (10) before engaging in business at the location.

(b) An applicant that intends to conduct business at the branch office under a fictitious business name not already approved by the Commissioner shall upload to NMLS a copy of the Fictitious Business Name Statement with the “filed stamp” from the county clerk’s office, and may not use the name until the Commissioner approves the use of the name.

(c) An applicant shall indicate the branch manager as a branch manager on the Form MU3 and submit to NMLS a Form MU2 for each branch manager.

(d) The Commissioner may request additional information, documentation or detail pertaining to the branch office application.

(e) Application, investigation, and any other fees payable through NMLS, shall be paid by the applicant or licensee to NMLS, for transmission to the Commissioner. Any fees that cannot be paid through NMLS shall be paid directly to the Commissioner. Fees are not refundable.

Note: Authority cited: Section 28106, Financial Code. Reference: Section 28106, 28110, 28112, 28114, 28116, 28118, 28128 and 28130, Financial Code.

§ 8. Section 204039 is adopted to read:

§204039. Notices Included with Applications.

The following notices required by state and federal law are hereby provided for those completing an application for a student loan servicer license under these rules:

NOTICES REQUIRED UNDER STATE AND FEDERAL LAW INFORMATION PRACTICES ACT OF 1977 (California Civil Code Section 1798.17)

(a) The Department of Business Oversight of the State of California is requesting the information specified in the application for licensure of student loan servicers.

(b) The Deputy Commissioner for Administration, the Department of Business Oversight, 1515 K Street, Suite 200 Sacramento, CA 95814, telephone (916) 445-5541, is responsible for the system of records and shall, upon request, inform individuals regarding the location of the Department of Business Oversight's records and the categories of persons who use the information in the records.

(c) The records are maintained pursuant to the Student Loan Servicing Act (Financial Code Section 28100, et seq.).

(d) The submission of all items of information is mandatory, unless otherwise noted. The Department of Business Oversight is required to collect from all applicants social security numbers under Family Code Section 17520, and social security numbers or federal taxpayer identification numbers under Business and Professions Code Section 494.5. ~~The federal Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.~~

(e) Failure to provide all or any part of the information requested may preclude the Department of Business Oversight from approving the application.

(f) The principal purposes within the Department of Business Oversight for which the information is to be used are to determine whether (1) a license, registration, or other authority, as allowed under the law, should be accepted, granted, approved, denied, revoked or limited in any way; (2) business entities or individuals licensed or otherwise regulated by the Department of Business Oversight are conducting themselves in accordance with applicable laws; and/or (3) laws administered by the Department of Business Oversight are being or have been violated and whether administrative action, civil action, or referral to appropriate federal, state or local law enforcement or regulatory agencies, as authorized by law, is appropriate.

(g) Any known or foreseeable disclosures of the information pursuant to subdivision (e) or (f) of Civil Code Section 1798.24 may include transfers to other federal, state, or local law enforcement and regulatory agencies, including NMLS as a channeling agent to, from, or on behalf of those federal, state, and local law enforcement and regulatory agencies, as authorized by law.

(h) Subject to certain exceptions or exemptions, the Information Practices Act grants an individual a right of access to personal information concerning the requesting individual that is maintained by the Department of Business Oversight.

FEDERAL PRIVACY ACT OF 1974 (Public Law 93-579)

(i) In accordance with Section 7 of the Privacy Act of 1974 (found at 5 U.S.C. § 552a note (Disclosure of Social Security Number)), the following is information on whether the disclosure of a social security account number is voluntary or mandatory, by what statutory or other authority such number is solicited, and what uses will be made of it.

(1) The Department of Business Oversight is required to collect from all applicants social security numbers under Family Code Section 17520, and social security numbers or federal taxpayer identification numbers under Business and Professions Code Section 494.5. ~~The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.~~

(2) A social security account number or federal taxpayer identification number is solicited pursuant to one or more of the following authorities: these rules, and Sections 28106, 28108 and 28116 of the Financial Code; Section 17520 of the Family Code; and Section 494.5 of the Business and Professions Code.

(3) For all persons disclosing a social security account number or federal taxpayer identification number, the number is used to match the information to the names on the list provided by the Department of Child Support Services under Family Code Section 17520, and the lists of tax delinquencies provided by the State Department of Tax and Fee Administration, and the Franchise Tax Board, under Business and Professions Code Section 494.5. The social security number may be used, in addition to other information provided, to conduct a background investigation of the individual by the Department of Justice's Identification and Information Branch or by other federal, state or local law enforcement agencies, as authorized by law. The social security number may also be used to respond to requests for this number made by child support agencies.

NOTICE REGARDING TAXPAYER INFORMATION

(j) The State Department of Tax and Fee Administration, and the Franchise Tax Board, are authorized to share taxpayer information with the Department of Business

Oversight. In the event the state tax obligation is not paid by a licensee, the Department of Business Oversight may be required to suspend the license.

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 31 and 494.5, Business and Professions Code; Section 1798.17, Civil Code; Sections 28106, Financial Code; Section 17520, Family Code; Sections 7470, 7473, 7490 and 13140-13144, Government Code; and Section 7 of Public Law 93-579 (5 U.S.C. Section 552a note).

~~40~~ 9. Section 20440 is adopted to read:

§20440. Notice of Changes by Student Loan Servicer.

(a) Each licensed student loan servicer shall, upon any change in the information contained in its application for license (other than financial information contained therein, and its Policies and Procedures, demonstrating how the applicant will comply with the borrower protection requirements of the Act, specified at Code section 28130, subsections (f) through (h)), file an amendment to such application setting forth the changed information. All such amendments shall be filed within ten business days of the occurrence of the event that results in the information becoming inaccurate or incomplete.

(b) A student loan servicer shall file changed information contained in its Forms MU1, MU2, and MU3, and any exhibits thereto, through NMLS, in accordance with its procedures, for transmission to the Commissioner. Any change that cannot be submitted through NMLS shall be filed directly with the Commissioner.

Note: Authority cited: Sections 28106, Financial Code. Reference: Section 1798.18, Civil Code; and Sections 28110 and 28126, Financial Code.

140. Section ~~20421~~ is adopted to read:

§20421. Effectiveness of Student Loan Servicer License.

A student loan servicer license, granted under the Act, continues in effect until it is revoked, or suspended, by the Commissioner, or surrendered by the student loan servicer, and the surrender has been accepted by the Commissioner, in accordance with Section 28150 of the Code, and these rules.

Note: Authority cited: Sections 28106, Financial Code. Reference: Sections 28124 and 28150, Financial Code.

121. Section ~~20432~~ is adopted to read:

§20432. Challenge Process for Information Entered into NMLS.

(a) If an applicant or licensee disputes the accuracy or completeness of any material information entered into and maintained by NMLS, the applicant or licensee may submit a written request to the Commissioner to the attention of the ~~Special Administrator Manager~~, Student Loan Servicing Program Act, Department of Business Oversight, ~~1515 K Street, Suite 200, Sacramento, CA 95814.~~

(b) The request shall include the applicant or licensee's name, unique identifier, a statement of the alleged inaccuracy or incompleteness of the information entered into NMLS, and its materiality, and shall provide any proof or corroboration available, including copies of official documents or court orders that support the changes requested by the applicant.

(c) Upon receipt of the request, the Commissioner shall investigate the request, along with any information provided, and determine if the information entered into NMLS is correctly reflected.

(d) If the Commissioner determines that the information is materially incorrect, the Commissioner shall request that the NMLS record be corrected.

(e) If the Commissioner denies the allegations of material inaccuracy or incompleteness in the NMLS record, the Commissioner shall notify the licensee or applicant in writing.

(f) Within 30 days from the mailing or service of the notification, the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code) for a determination of whether material inaccuracy or incompleteness exists in the record.

(g) If a material inaccuracy or incompleteness is found in any record, within 30 days of notice of the finding, the Commissioner shall request that NMLS correct the information.

(h) Judicial review of the decision shall be governed by Section 11523 of the Government Code.

Note: Authority cited: Sections 28106, Financial Code. Reference: Section 28110, Financial Code.

132. Section 20443 is adopted to read:

§20443. Share Arrangements with Other Governmental Agencies.

The Commissioner is authorized to share any information or material that has been submitted to the NMLS, with any governmental agency, including but not limited to, the California Attorney General, the California Department of Justice, the U.S. Department of Justice, the U.S. Department of Education, the Consumer Financial Protection Bureau, the Federal Bureau of Investigation, state, local, or federal regulatory agencies, state attorneys general, and county district attorney's offices. The information

or material that is shared with a governmental agency shall be accomplished without the loss of privilege or the loss of confidentiality protections provided by law.

Note: Authority cited: Section 28106, Financial Code. Reference: Section 1798.24, Civil Code; and Sections 28106 and 28174, Financial Code.

143. Section 20454 is adopted to read:

§20454. Request for Confidential Treatment.

A student loan servicer may request that certain documents, or parts thereof, be treated confidentially. A request for confidentiality shall be in writing and made pursuant to Section 250.10 of Article 1 of Subchapter 1 of these rules. If a request for confidential treatment is granted or denied, the person making such request will be notified in writing.

Note: Authority cited: Section 28106, Financial Code. Reference: Section 1798.24, Civil Code; and Section 28106, Financial Code.

154. Subchapter 15 Student Loan Servicing Act, Article 3, Section 20465 is adopted to read:

~~165. Subchapter 15 Student Loan Servicing Act, Article 4, Section 20476 is adopted to read:~~

~~Article 4. Audit Reports~~

~~§20476. Preparation of Independent Audit Report.~~

~~The audit report which must be filed with the Department within 105 days of the end of the licensee's fiscal year, pursuant to Section 28148 of the Code, must include a description of the system of internal control used by the student loan servicer, including~~

~~material weaknesses in internal accounting controls, recommendations for improvements, and comments concerning corrective actions taken or in process.~~

~~Note: Authority cited: Section 28106, Financial Code. Reference: Section 28148, Financial Code.~~

~~17. Subchapter 15 Student Loan Servicing Act, Article 5, Section 20487 is adopted to read:~~

Article 35. Surety Bond

§20485. Surety Bond.

(a) All surety bonds, amendments, cancellations, notices of claims, and information related to surety bonds, shall be filed with, and processed through, NMLS.

(b) The surety bond shall be in the form of the “electronic surety bond form” available on the NMLS website.

(c) (1) Every licensee shall post and maintain a surety bond, in accordance with Section 28142 of the Code, in the minimum amount of \$25,000.

(~~e~~ 2) A licensee will be required to post a surety bond in an amount greater than \$25,000, if the dollar amount of student loans serviced by the licensee in the preceding calendar year exceeds \$50,000,000. The specific amount of the required bond is as follows:

<u>Aggregate Loans</u>	<u>Bond Amount</u>
<u>0 - \$50,000,000</u>	<u>\$ 25,000</u>
<u>\$50,000,001 - \$100,000,000</u>	<u>\$ 50,000</u>
<u>\$100,000,001 - \$250,000,000</u>	<u>\$ 75,000</u>

Over \$250,000,000

\$ 100,000

~~(c) A student loan servicer without a prior year operating history shall make a good faith estimate of the aggregate amount of loans anticipated to be serviced in the upcoming year, to determine the amount of the surety bond.~~

(f d) The surety bond shall not be cancelled in whole or in part, without at least 30 days notice to the Commissioner by the surety, bonding or insurance company.

(e e) The surety bond shall also provide that the surety, bonding or insurance company issuing the bond provide notice to the Commissioner within 10 days of service of any action against the bond, and, immediately, upon payment of any claims.

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28110 and 28142, Financial Code.

15. Subchapter 15 Student Loan Servicing Act, Article 4, Section 2046 is adopted to read:

Article 4. Assessments

§2046. Annual Assessments.

(a) The annual assessment, required under Financial Code section 28144, is calculated from information provided in the annual report.

(b) Assessment notices will be distributed to licensees on or before September 30 of each year.

(c) The Commissioner may choose to distribute assessment notices through NMLS.

(d) The Commissioner may require that all assessments be paid through NMLS.

Note: Authority cited: Section 28106, Financial Code. Reference: Section 28110 and 28144, Financial Code.

186. Subchapter 15 Student Loan Servicing Act, Article ~~6~~ 5, Section ~~20497~~ is adopted to read:

Article ~~6~~ 5. Borrower Protections

§~~20497~~. Borrower Information and Statements of Account, Payment Processing, Co-signer Payments.

(a) The student loan servicer licensee shall maintain on its internet website, free of charge, complete, detailed information and account records for each student loan borrower. This information and accounting shall be accessible to the borrower only, through a secure log in system. This information shall include a consolidated report, for each student loan borrower, and a loan history, for each loan serviced. This information and accounting shall be available to borrowers at all times, except for occasional, short periods of time when the servicer's system is not available because the system is undergoing routine maintenance or blocked for security reasons.

(b) The consolidated report required to be maintained must include the information specified in Section 2052, subdivision (b), of these rules.

(c) The loan history for each loan serviced must include the information specified in Section 2053, subdivision (d), of these rules.

(d) A licensee shall credit any electronic (on line) payment made to a borrower's account on the same day the payment is electronically paid by the borrower, if paid before the daily cut off time for same day crediting posted on the servicer's website, or the next day, if after the posted cut off time. If a payment is made with check, the

licensee shall credit the payment on the date received by the licensee, regardless of the date of processing. Borrowers' on line accounts shall reflect payments made, within three business days of the date of payment, unless payment is made by check and contains no information identifying to which account or loan the payment should be credited. In the event servicer receives a paper check with no information identifying to which account or loan the payment should be credited, the servicer may take a reasonable amount of time, not to exceed ten business days, to research the issue and determine to which account and loan the payment should be credited. When the servicer determines to which account and loan the payment should be credited, the servicer shall credit the payment as of the date the payment was received by the servicer, and update the borrower's on line account within one business day.

(e) Servicers must provide a specific process, clearly explained on the servicer's website, which student loan co-signers may follow to apply co-signer payments to co-signed loans. Provided co-signers follow the specific process specified by servicers, servicers must follow ~~instructions provided~~ the elections made by a student loan co-signer regarding the ~~allocation~~ application of co-signer payment(s). ~~In the absence of contrary instructions from the co-signer, the servicer may only apply payments made by co-signers to the specific student loan(s) for which the payor has co-signed, and may not apply any portion of these co-signer payments to any other outstanding student loans, for which the payor has not co-signed.~~

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28130, Financial Code.

17. Section ~~20494~~8 is adopted to read:

§~~2049~~8. Qualified Written Requests.

A servicer is only required to send a borrower a total of three notices stating that there will be no response to a “Qualified Written Request,” because the borrower has previously submitted the same request, received a response, and provided no new information in its subsequent, duplicative Qualified Written Request.

Note: Authority cited: Section 28132, Financial Code.

198. Section 205049 is adopted to read:

§205049. Customer Service, Alternative Repayment Plans, Loan Forgiveness Benefits.

(a) Customer Service.

All student loan servicer licensees, including servicers of federal student loans and private student loans, must prominently post, on the homepage of the servicer’s internet website, a toll-free telephone number borrowers may call to discuss their student loans with a live person.

(1) Federal student loan servicer representatives answering calls to this toll-free number must have been fully trained about, and be capable of inform and discuss discussing with callers, alternative repayment plans and loan forgiveness benefits. Federal student loan servicer representatives must also be trained in the differences between among deferment, forbearance and alternative repayment plans, and able to answer caller questions regarding the differences. Given the substantial negative consequences of forbearance, servicer representatives must be trained to encourage borrowers to elect an alternative repayment plan, instead of forbearance.

(2) Private student loan servicer representatives answering calls to this toll-free number must have been fully trained about, inform and discuss with callers, any alternative repayment plan offered by servicer or promissory note holder for the private

student loans serviced ("Private Student Loan Alternative Repayment Arrangements"),
in accordance with subsection (c) below. (b) Publication of Federal Student Loan
Repayment Options and Loan Forgiveness Benefits

(1) To assist the prevention of borrower delinquency or default, all ~~student loan~~
servicers ~~licensees~~ of federal student loans must prominently post, on the homepage of
the servicer's internet website, clear and complete information, written in easily
understandable language, about repayment options available for federal student loans,
including deferments and income-based alternative repayment plans, available under
Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C., § 1070, et seq.
The posted information may appear on the servicer's homepage or be available through
links on the homepage to specified web pages. The posted information shall include
direct, live links to the following web pages, or successor or replacement web pages, of
the Student Aid Office of the United States Department of Education website: "How to
Repay Your Loans," <https://studentaid.ed.gov/sa/repay-loans>; and
<https://studentloans.gov/myDirectLoan/repayOptions.action>.

(2) To assist the prevention of borrower delinquency or default, all servicers of
federal student loans ~~servicer licensees~~ must prominently post, on the homepage of the
servicer's internet website, clear and complete information, written in easily
understandable language, about loan forgiveness benefits available to qualifying federal
student loan borrowers. The posted information may appear on the servicer's homepage
or be available through links on the homepage to specified web pages. The posted
information shall include direct, live links to the following web pages, or successor or
replacement web pages, of the Student Aid Office of the United States Department of
Education website: "How to Repay Your Loans," [https://studentaid.ed.gov/sa/repay-](https://studentaid.ed.gov/sa/repay-loans)
[loans](https://studentloans.gov/myDirectLoan/repayOptions.action); and <https://studentloans.gov/myDirectLoan/repayOptions.action>.

(3) Annual Notice of Repayment Options and Loan Forgiveness Benefits.

(A) At least once per calendar year, all ~~student loan servicers licensees of~~ federal student loans shall send to borrowers a plain language notice, containing the information ~~and or~~ links to information regarding repayment and loan forgiveness options for federal student loans, required under this rule. This notice shall also include the toll-free telephone number to call to discuss federal student loans with a live person.

(c) Private Student Loans

(1) Publication of Private Student Loan Alternative Repayment Arrangements.

Service providers of private student loans, must ~~prominently post~~ provide, on the homepage of the servicer's internet website, borrowers clear and complete information, written in easily understandable language, about any alternative repayment plan offered by servicer or promissory note holder for the private student loans serviced ("Private Student Loan Alternative Repayment Arrangements").

(2) Properly Evaluating Private Student Loan Alternative Repayment Arrangement Requests From A Borrower.

Service provider shall establish policies and procedures, and implement them consistently, in order to facilitate disclosure of Private Student Loan Alternative Repayment Arrangements, including:

(i) Providing accurate information regarding any Private Student Loan Alternative Repayment Arrangements that may be available to the borrower through the promissory note, that may have been marketed to the borrower through marketing materials, or that have been widely advertised or marketed by the servicer, original lender, or promissory note holder as available to similarly-situated borrowers; and

(ii) If Servicer offers Private Student Loan Repayment Arrangements, servicer shall consistently present and offer those arrangements to borrowers with similar financial circumstances.

(iii) Servicer may satisfy the requirements of (i) and (ii) above by demonstrating that servicer has made reasonable efforts to obtain information from the original lender or promissory note holder about Private Student Loan Alternative Repayment Arrangements that may have been marketed to the borrower through marketing materials, or that have been widely advertised or marketed by the servicer, original lender, or promissory note holder as available to similarly-situated borrowers.

(3) Annual Notice of Private Student Loan Alternative Repayment Arrangements. Servicer shall provide eligible borrowers with a single-page notice at least once per calendar year, which includes a plain language description of all Private Student Loan Alternative Repayment Arrangements for which the borrower is eligible, consistent with the policies and procedures established by servicer, pursuant to Code section 28130, and this rule. This single-page notice shall also include the toll-free telephone number to call to discuss student loans with a live person.

(d) All student loan servicer licensees shall send to borrowers the notification required to be sent to borrowers once per calendar year, under Code section 28130, and this rule, by the preferred method of communication indicated by the borrower (email or regular mail, through the United States Postal Service). If the borrower has not indicated a preferred method of communication, the servicer shall send this information by ~~email~~ regular mail, through the United States Postal Service, to the borrower's last known mailing address on record. If the notification is returned as "undeliverable" by the United States Postal Service, ~~servicer receives a reply email from "Mailer-Daemon,"~~ ~~indicating the email to the borrower is notice that the "undeliverable,"~~ the servicer shall

send borrower the required notification to the email address(es) servicer has on record for the borrower, by regular mail, through the United States Postal Service, to the borrower's last known mailing address on record.

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28130, Financial Code.

~~2019.~~ Subchapter 15 Student Loan Servicing Act, Article ~~76~~, Section ~~20540~~ is adopted to read:

Article ~~76~~. Examinations, Books and Records

§~~20540~~. General Books and Records.

(a) A student loan servicer shall establish, and maintain current at all times, the following books and records with reference to its general accounts:

(1) General ledgers reflecting the assets, liabilities, capital, income and expense of the business, in accordance with generally accepted accounting principles;

(2) Cash receipt and disbursement journal.

~~(b) The bank accounts contained in the general ledger shall be reconciled at least once each month with the bank statements of the general accounts.~~

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28130 and 28152, Financial Code.

~~240.~~ Section ~~20521~~ is adopted to read:

§~~20521~~. Aggregate Student Loan Servicing Report.

(a) Each licensee shall maintain a current, aggregate student loan servicing report, which shall be produced, upon request by the Commissioner. Servicer may provide student loan servicing reports for each type of loan serviced, which when read

together and aggregated, represent the total amount of student loans serviced by the servicer.

(b) At a minimum, the aggregate student loan servicing report shall contain the following information, with respect to each student loan serviced:

(1) Borrower name;

(2) Number of student loan(s) serviced for each borrower;

(3) Loan #, for each loan;

(4) Loan type, i.e., Federal Direct Loan; FFEL Loan; Perkins Loan; or private student loan.

(5) Loan origination amount, for each loan;

(6) ~~Loan terms of~~ Interest rate(s) and maturity date for each loan;

(7) Loan balance and status, for each loan;

(8) Cumulative balance owing for each borrower;

(9) Whether borrower has an application pending ~~applied for~~, or is repaying under, an alternative repayment plan, listing the plan chosen; and

(10) Whether borrower has an application pending ~~applied for~~, or ~~qualifies for~~, any loan forgiveness benefit.

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28130 and 28152, Financial Code.

~~2221.~~ Section ~~2053-2052~~ is adopted to read:

~~§2053~~ 2052. Individual Student Loan Servicing Records.

(a) A student loan servicer must maintain its books, records, and accounts at one or more of its licensed location(s). The licensee must designate the licensed location(s)

at which its books, records, and accounts are maintained. The licensed location(s) and books, records and accounts must be accessible to the Department.

~~(b) A student loan servicer must maintain monthly reconciliations of trust account balances.~~

~~(e) The individual loan servicing records required to be maintained for each student loan shall include, at the minimum, if the servicer has received, or has access to the documents, the following: the student loan application; disclosure statements sent to the borrower; the promissory note or loan agreement; the complete loan history; qualified written requests; borrower instructions how to apply overpayments; statements of account sent to the borrower; and such records as the Commissioner may designate.~~

~~(e) Each loan history shall include disbursements, interest accruals, fees, late charges, any other miscellaneous amounts charged to the borrower, payments received, and the corresponding dates for each.~~

~~(e) A student loan servicer must also maintain a consolidated report, for each student loan borrower, individually, containing the information specified in section 2052, subdivision (b), of these rules.~~

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28130 and 28152, Financial Code.

~~2322.~~ Section ~~2054~~2053 is adopted to read:

~~§2054~~2053. Records of Servicing Sold, Assigned, or Transferred. Notification to Borrower of Transfer.

(a) In addition to the records required under section 2053, subdivision (c), of these rules, a licensee which ~~sells, assigns, or~~ transfers any servicing rights, must also

retain the following information and documents, as part of its books and records to be examined by the Commissioner:

(1) The contract and delivery schedules, detailing loans for which servicing rights were sold, assigned, or transferred; and

(2) Any other documents relating to such transaction, designated by the Commissioner.

(b)(1) Licensees shall send to borrowers the notification of transfer required to be sent, by the preferred method of communication indicated by the borrower (email or regular mail, through the United States Postal Service). If the borrower has not indicated a preferred method of communication, the servicer shall send this information by regular mail, through the United States Postal Service, to the borrower's last known mailing address on record. If the notification is returned as "undeliverable" by the United States Postal Service, the servicer shall send borrower the required notification to all email address(es) servicer has on record for the borrower

(2) The license number of the new student loan servicer to which loan(s) have been transferred is the servicer's NMLS number. The servicer's NMLS number may be used in the notification of transfer sent to the borrower.

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28130, 28134, 28138 and 28152, Financial Code.

2423. Section ~~2055~~2054 is adopted to read:

§~~2055~~2054. Records Retention Requirements.

Unless the servicer's contract with the U.S. Department of Education or private lender mandates that records required under these rules be purged or deleted sooner than three years after the loan serviced has been paid in full, assigned to collection; or

transferred to another servicer. All records required under these rules, must be maintained for a minimum of three years after the loan serviced has been paid in full, or assigned to collection; or the servicing rights have been sold, assigned, or transferred.

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28130, 28134, 28138 and 28152, Financial Code.

~~2524.~~ Section ~~2056~~2055 is adopted to read:

§~~2056~~2055. Electronic Records: Maintenance, Storage and Reproduction Requirements.

(a) Records and reports required under these rules, may be maintained, stored, and reproduced electronically, provided the records are maintained in a commonly used format; are readily accessible, readable, and printable by the Commissioner and Department staff; and are maintained in accordance with generally acceptable accounting principles.

~~(b) Additionally, an optical image reproduction must meet all of the following requirements:~~

~~———— (1) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document;~~

~~———— (2) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management; and~~

~~———— (3) Written authentication identifying the optical image reproduction as an exact unaltered copy of the note, agreement, assignment, or documents shall be stamped or printed on the optical image reproduction.~~

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28110, 28130, 28152, Financial Code.

25. Subchapter 15 Student Loan Servicing Act, Article 7, Section 2056, is adopted to read:

Article 7. Surrender of License

§2056. Surrender of License as a Student Loan Servicer.

(a) An application to surrender a license as a student loan servicer shall be filed on Form(s) MU1, MU2, or MU3, through NMLS, in accordance with its procedures for transmission to the Commissioner. A licensee shall amend every branch office application Form MU3.

(b) Subject to subdivision (c) hereof, Prior to surrendering its license, a student loan servicer may file a plan for approval by the Commissioner. The plan shall contain the licensee's detailed proposal for the orderly closing out of its student loan servicing business. At a minimum, the plan shall contain the following:

(1) A detailed description of the plan to transfer the licensee's existing servicing portfolio, including the time frame within which the transfer will be completed.

(2) The time frame required for payout to the lender of all payments received from the borrowers, or the time frame required for transfer of payments received to another servicer.

(c) As an alternative to the requirements of subdivision (b), a servicer may satisfy this rule by providing the Commissioner the termination requirements of the lender(s) for which servicing has ceased, and evidence of satisfaction of such requirements.

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28124 and 28150, Financial Code.