FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
STUDENT LOAN SERVICING ACT
PRO 01/17

UPDATED INITIAL STATEMENT OF REASONS [Government Code Section 11346.9, Subdivision (a)(1)]

In the Initial Statement of Reasons for this rulemaking action, the Department of Business Oversight (Department) highlighted its objective to implement, and make specific, the "Student Loan Servicing Act;"[1] to help achieve the stated legislative intent to promote meaningful access to, and reliable information about student loans, federal alternative repayment and loan forgiveness options, and quality customer service and fair treatment.[2]

The Student Loan Servicing Act became effective January 1, 2017, and operative on July 1, 2018. The final rules establish a structure to enable the Department to oversee the activities of student loan servicers, promote accountability of servicers through Department examinations of books and records, and compliance with borrower protection mandates. The rules provide clarity, certainty and transparency for student loan servicers and the borrowers they serve.

This rulemaking action adopts sections 2032 through 2057, in seven articles, as new Subchapter 15 to Chapter 3 of Title 10 of the California Code of Regulations. No current regulations are affected by this proposed rulemaking action. These new regulations are necessary to implement and effectively administer recent legislation in an area previously unregulated in California.

The benefits anticipated from this regulatory action include protective benefits to student loan borrowers, improving the Department's regulatory oversight of the servicer industry, and strengthening enforcement of the Student Loan Servicing Act.

The final regulations meet the Department's objectives. The Department made many changes to the originally proposed rules. The Department modified the text twice to ensure the regulations were consistent with servicers' operations and businesses.

The Department also modified the text a third time to resolve concerns noted by the Office of Administrative Law (OAL) in OAL's disapproval of the rulemaking package filed by the Department on September 7, 2018.[3]

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[1] AB 2251 (Chap. 824, Stats. 2016).
[2] AB 2251 (Ch. 824, Stats. 2016), § 1, subd. (f).
[3] On October 26, 2018, OAL issued a Decision of Disapproval of Regulatory Action disapproving the rulemaking action based on a failure to comply with the clarity standard and procedural requirements of the Administrative Procedures Act (Gov. Code, § 11340 *et seq.*).

The final regulations strike a balance between protecting California student loan borrowers and imposing an unnecessary compliance burden on servicers.

May 31, 2018 Modifications to the Text

In the May 31, 2018 modifications to the proposed rules, the Department made many changes to accord with servicers' operational realities. The Department made all reasonable changes requested by stakeholders, which were necessary to better align the regulations with the facts and servicers' business operations. The Department also deleted rules which duplicated statutory language and therefore were unnecessary to include in regulation. The only additional substantive revisions were (1) revising the definition of "servicing," at rule 2032(a)(14), to clarify that "servicer" does not include debt collectors, as specified; and (2) deleting the required appointment of the Commissioner as agent to accept service. (These revisions were further amended in December 12, 2018 modifications, as discussed more fully below. [4])

July 9, 2018 Modifications to the Text

In the July 9, 2018 modifications to the proposed rules, the Department revised the proposed rules to grant all reasonable changes requested by stakeholders. The Department strove to make these rules further accord with the facts and operational realities of servicers' businesses, and to facilitate compliance. The Department made no substantive revisions in the second modified rules.

December 12, 2018 Modifications to the Text

In the December 12, 2018 modifications to the proposed rules, the Department made changes required by OAL's Decision of Disapproval of Regulatory Action. The changes included miscellaneous, non-substantive changes and the following substantive changes:

- Specifically identified, attached as Exhibits 1-4, and incorporated by reference the following four forms developed by the Nationwide Multistate Licensing System (NMLS)[5] for student loan servicer applicants and licensees: MU-1, MU-2, MU-3, and the E-Surety Bond;
- Deleted the definition of "student loan servicer," which had been included to clarify that debt collectors are not included within the definition. Section 28104, subdivision (n), of the Student Loan Servicing Act was amended to make clear

[4] Assembly Bill 38 (Stats. 2018, ch. 379), which became effective January 1, 2019, amended the Student Loan Servicing Act to expressly exclude debt collectors from the definition of "student loan servicer" (Fin. Code, § 28104, subd. (n), as amended by Stats. 2018, ch. 379, § 3), and mandate appointment of the Commissioner as agent for service of process (Fin. Code, § 28117, added by Stats. 2018, ch. 379, § 9).

[5] The NMLS is a multi-state Internet-based platform created in January 2008 by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) required that all states license mortgage originators through NMLS. The states have steadily expanded the use of the NMLS platform to provide a web-based framework for licensing and monitoring other types of licensees operating within the financial services market, including money transmitters and finance lenders and brokers.

that debt collectors are not student loan servicers, making this previous rule unnecessary;[6]

- Required applicants for licensure and licensees to appoint the Commissioner as agent to accept service of process, complete the appointment of the Commissioner for the service of process form, and upload the completed, signed, notarized form to the applicant or licensee's Account page on NMLS, to implement this new mandate included in legislation amending the Student Loan Servicing Act;[7]
- Revised Rule 2039 to specify the fees for applying for a license for a licensee's branch office(s); and,
- Further clarified how annual assessments will be calculated, by defining a licensee's "servicing activities" in California.

ADDITIONAL CLARIFICATION OF NECESSITY

The Department sets forth below additional clarification of the necessity for each of the proposed rules.

Rule 2032, "Definitions."

- Subsection (a): It is necessary to define all terms commonly used in student lending and servicing, to provide clarity for all stakeholders, and ensure that stakeholders are operating under the same definition of key terms.
    - Subsection (a)(7): Form MU-1, the uniform licensing form developed by NMLS, entitled "*NMLS Company Form," Version 11.0, dated 09/12/2015*, attached to the proposed regulations as Exhibit 1, and incorporated by reference, is necessary to show student loan servicers, prospective applicants, and the regulated public the exact application form which applicants must complete to become licensed. Requiring applicants to apply for licensure through NMLS, and complete NMLS Forms MU-1, MU-2, MU-3 and the E-Surety Bond Form provides applicants, licensees and the Department a quick, cost effective, secure, and efficient mechanism to become licensed as a student loan servicer in California. The specific sections of Form MU1 are necessary to provide the Department the information needed to determine whether an applicant meets the requirements for licensure under the Student Loan Servicing Act. The NMLS forms used – MU-1, MU-2 and MU-3 – are universal application forms originally developed for mortgage originator licensing. Since the inception of NMLS in 2008, use of these universal template forms has expanded greatly. The NMLS application system and forms are currently used by all 50 states, for a wide variety of financial services licenses. The

[6] Fin. Code, § 28104, subd. (n), as amended by Stats. 2018, ch. 379, § 3.

[7] Fin. Code, § 28117, added by Stats. 2018, ch. 379, § 9.

Department does not require a response or completion of some sections of the universal forms. The Department does not require student loan servicer applicants to complete sections of the form that are not factually applicable to student loan servicers nor does the Department require applicants to provide information that is not needed for the purpose of determining eligibility for a license.

- Section 1 requires the applicant to identify the specific business activities in which it wishes to engage and be licensed.
- Section 2 requires basic identifying information, including the company's name, address, IRS Employer Identification Number (EIN), phone and fax numbers, email and physical addresses, and branch locations. This information is necessary because the Department must know which companies are applying for licensure, be able to contact the company at all times, be able to conduct its statutorily mandated investigation of the company, and know whether the company has branches, which would also require licensure.
- Section 3 requires the applicant company to list other trade names (also referred to as a "doing business as" or "dba") it wishes to use. This will allow the Department to track whether the applicant has complied with the legal requirement to use dba's in California, and to upload the supporting filed, date stamped copy of the document filed with a County Clerk, evidencing compliance. This will also allow the Department to license the applicant under all names legally used so that consumers will know whether the applicant and dba's are licensed.
- Section 4 requires the company to list its registered or resident agent. This is necessary so that the Department has a way to mail and communicate with the applicant within the state.
- Section 5 requires the company to list its web addresses so the Department can learn about the applicant's services, such as the types of servicing performed by applicant. This information is necessary to help the Department implement the Act.
- Section 6 requires the company to list a primary company contact and a primary consumer complaint (regulator) contact to receive all compliance and licensing information, communications and mailings, and be responsible for disseminating it to others within the company as necessary. Many servicers are large companies with many employees. It is necessary to designate two employees as the points of contact for the Department so the Department will know immediately who to contact within the company to obtain required information. This information will

streamline communications between the Department and the company, saving both time and money.

- Section 7 allows the applicant to list additional contacts who handle specific inquiries, if the applicant believes this will help. Again, the intent of designating employees to communicate with the Department is increased efficiency.
- Section 8 requires the applicant to specify custodian(s) of records and storage location(s). This is necessary because the Act requires the Department to conduct regulatory examinations of licensees at least once every 36 months.[8] The Department must review books and records as part of its examinations. The Department must know where records are located and who to contact to access these records to quickly obtain this information and to conduct more efficient examinations.
- Section 9 requires applicants to specify any approvals or designations the company holds, such as being a Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac) approved seller or servicer. Student loan servicers are not required to have specific approvals or designations, so this section is not applicable.
- Section 10 requires bank account information, but only if instructed to provide such by the applicant's regulator. The Department has chosen not to require bank account information, so this section is not applicable. Asking for bank account information may raise privacy concerns, generating questions and opposition from applicants. Responding to these inquiries would divert the Department's and applicants' resources. The Department does not need bank account information to determine eligibility for licensure. Most applicants are large entities. Some are public companies. The Department will review an applicant's entire application and supporting documentation. The Department can investigate financial responsibility through a review of the applicant's audited financial statements, evidencing the statutory minimum net worth of $250,000. The Department will review the background forms (MU-2) submitted by principal officers, directors and employees with responsibility for the applicant's servicing activities in California, applicant's website(s), and any additional on-line research deemed helpful.
- Section 11 requires applicants to specify their legal structure (corporation, partnership, limited liability company, etc.) and status. This information is necessary because the Department must know that applicants are

[8] Fin. Code, § 28152, subd. (a).

complying with California laws intended to ensure the responsible conduct of business within the state. Compliance with state business registration requirements specified in the California corporations code, and concomitant good standing with the Secretary of State, is a factor demonstrating honesty and integrity, requirements for licensure. The Department must know how the applicant is organized. If the applicant is formed under the laws of another state, the Department must know whether it went to the effort to follow the corporate laws of applicant's home state or state of formation. If formed under another state's law, entities must apply for and be qualified to do business in California by the California Secretary of State.[9] Compliance with required business entity registration laws in the applicant's state of formation and California demonstrates that the applicant is law abiding. Student borrowers will also be better protected, as they will be able to locate and obtain information from government agencies about the duly organized entity.

- Section 12 requires applicants to list affiliates and subsidiaries. This information will allow the Department to research entities under common ownership with applicant or controlled by applicant. This research will help the Department get an overall picture of the applicant's corporate culture and behavior, factors in determining integrity, honesty and character and whether the applicant merits licensure.
- Section 13 requires applicants to identify all financial institutions, if any, which control applicant. While no applicants, to date, are under the control of a financial institution, this information is necessary to determine whether control entities are in good standing with their regulator(s), demonstrating honesty and integrity, and qualification for licensure.
- Section 14 requires the applicant to list the criminal, civil, regulatory, and financial history of the applicant and any affiliates controlling, or controlled by, the applicant. This information is critical for the Commissioner to determine that the applicant and its control affiliates meet the financial responsibility, character, and general fitness standards supporting a finding that the business will be operated honestly and fairly, and the applicant should be granted a license.[10]
- Sections 15 and 16 require applicants to list information identifying direct and indirect owners, and executive officers. This information will allow the Department to determine which individuals must complete and submit NMLS Form MU2, an Individual Control Form. Information about control individuals is necessary for the Department to approve or disapprove

[9] Corp. Code, § 2105.
[10] Fin. Code, § 28120.

individuals who may impact company operations and whether the business is operated honestly and fairly, meriting licensure.[11]

- Section 17, "*Qualifying Individuals*" is not required to be completed by applicants. The Department advises applicants that they are not required to complete this section in the MU-1 Checklist on NMLS.
- The Attestation under penalty of perjury at the end of the MU-1 application binds the company to the truthfulness of its answers and documents submitted in support of the application. The Department must be able to rely on the information provided by the applicant, in determining eligibility for licensure. The Attestation also specifically authorizes the Department to investigate the applicant and its control persons to determine qualification for licensure; to keep the information provided in the application current; and to comply with the Act, including maintaining accurate books and records pertaining to its student loan servicing business. The Department may deny an application for reasons including that a false statement of material fact has been made in the application; a material requirement for licensure has not been met; or that the commissioner cannot find that the business will be operated honestly, fairly, efficiently, and in accordance with the Act.[12] If the Commissioner discovers after approval that the company has made a material misrepresentation of fact, the Commissioner may issue an order suspending or revoking its license, after notice and an opportunity for hearing.[13]

- Subsection (a)(8): Form MU-2, the uniform licensing form developed by NMLS for a student loan servicer, entitled "*NMLS Individual Form," Version 9, dated 9/12/16,* attached to the proposed regulations as Exhibit 2, and incorporated by reference, is necessary to show student loan servicers, prospective applicants, and the regulated public the exact application form which control individuals must complete as part of the entity's application to become licensed. Requiring applicants to apply for licensure through NMLS, and complete NMLS Forms MU-1, MU-2, MU-3 and the E-Surety Bond Form provides applicants, licensees and the Department a quick, cost effective, secure, and efficient mechanism to become licensed as a student loan servicer in California. The specific sections of Form MU-2 are necessary to provide the Department the information needed to determine whether the individual may retain his or her position with the applicant entity, and whether the individual and entity applicant meet the requirements for licensure under the Student Loan Servicing Act.[14]

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[11] *Ibid.*
[12] Fin. Code, § 28120, subd. (b).
[13] Fin. Code, § 28166, subd. (g).
[14] *Ibid.*

- Sections 1 through 5 request basic information about the individual, including identifying and contact information, citizenship, other names used, residential and employment history, and other financial services companies with which the applicant is engaged. This information is necessary for the Commissioner to investigate applicants and their control people, including principal officers, directors, general partners, individuals owning 10 percent or more of the applicant and individuals responsible for conducting servicing activities in California. This information allows the Commissioner to assess the honesty, truthfulness, experience and competence of these individuals.[15] The Commissioner needs this information to determine whether to approve or deny the application for a license. The Commissioner may deny the application if the mandatory investigation does not support a finding that the business will be operated honestly, fairly, efficiently, and in accordance with the Act.[16]
- Section 6 requires the individual to answer questions about his or her criminal, civil, regulatory, and financial history, and whether the individual was ever terminated from employment based on inappropriate behavior. This information is critical for the Commissioner to determine that the individual meets the financial responsibility, character, and general fitness standards supporting a finding that the individual and the business will act honestly and fairly, and the applicant should be granted a license.[17]
- Sections 7 and 8 require individuals to consent to fingerprinting and a credit check, which are required parts of the student loan servicer application process. Fingerprinting is statutorily required[18] and necessary for the Commissioner to obtain state and federal criminal arrest and conviction records and history. The commissioner will use the information to determine whether to approve or deny an application. The commissioner may deny an application based on conviction, a plea of no contest, or the commission of any act involving dishonesty, fraud or deceit, if substantially related to qualifications, functions, or duties of a person engaged in student loan servicing.[19] A credit check is necessary to ascertain the financial responsibility, character and honesty of applicants. The commissioner may deny an application if unable to find that the financial responsibility, character and general fitness of the applicant and those completing an MU-2 do not support a finding that the business will

[15] Fin. Code, § 28106, subd. (b)(7).
[16] Fin. Code, § 28120, subd. (b)(7).
[17] *Ibid.*
[18] Fin. Code, § 28116.
[19] Fin. Code, § 28120, subd. (b)(2).

be operated "honestly, fairly, efficiently, and in accordance with...[the Act].[20]

- Section 9 requires an individual with authority to bind the company applicant to list the relationship of the MU-2 applicant to the company. The signatory takes responsibility for the individual's actions on behalf of the company. This includes representations that the individual completing the MU-2 will be familiar with the Act and implementing rules; will be qualified for his or her position; that the authorized signatory has verified the accuracy and completeness of the the MU-2 information; that the company will appropriately supervise the individual completing the MU-2; and that the individual merits approval. This information is necessary for the Commissioner to determine whether the applicant company and individual meet the standards for licensure, including general fitness, financial responsibility, honesty, integrity and character.
- Section 10 is the individual's attestation under penalty of perjury. This attestation is necessary to demonstrate the information is true and complete, and the Department may rely on it as such. It further demonstrates the individual will update the information as needed to keep it current. The attestation specifically authorizes the Department to conduct a statutorily-required investigation into the individual's qualification for licensure. The individual is also stating he or she will comply with the Act, including maintaining accurate books and records pertaining to the conduct of the student loan servicing business, for which the individual is applying for approval. The Department must be able to rely on the information provided by the individual, to determine whether to approve the individual. The individual attests that (s)he understands that the application may be denied if the individual has knowingly made a material misrepresentation of fact. The Department may deny an application for reasons including that a false statement of material fact has been made in the application or the commissioner cannot find that the business will be operated honestly, fairly, efficiently, and in accordance with the Act.[21] If the Commissioner discovers after approval that the individual has made a material misrepresentation of fact, the Commissioner may issue an order suspending or revoking a license, after notice and an opportunity for hearing.[22]

- Subsection (a)(9): Form MU-3, the uniform licensing form developed by NMLS for the branch office of a student loan servicer, entitled "*NMLS* Branch *Office*

[20] Fin. Code, § 28120, subd. (b)(7).
[21] Fin. Code, § 28120, subd. (b).
[22] Fin. Code, § 28166, subd.(g).

Form," *Version 10, dated 3/31/14,* attached to the proposed regulations as Exhibit 3, and incorporated by reference, is necessary to show student loan servicers, prospective applicants, and the regulated public the exact application form that licensees must complete to obtain a license for each of their branches. Requiring applicants to apply for licensure through NMLS, and complete NMLS Forms MU-1, MU-2, MU-3 and the E-Surety Bond Form provides applicants, licensees and the Department a quick, cost effective, secure, and efficient mechanism to become licensed as a student loan servicer in California. The specific sections of Form MU-3 are necessary to provide the Department the information needed to determine whether the application meets the requirements for branch licensure under the Student Loan Servicing Act.

- Section 1 requires the applicant to identify the specific business activities in which the branch wishes to engage, for which it seeks a branch license.
- Section 2 requires identifying information, including the branch main and mailing address, phone and fax numbers, and email address. This information is necessary because the Department must be able to contact the branch at all times, be able to conduct its statutorily mandated investigation of the company, calculate assessments,[23] and know where its examiners may have to travel to conduct examinations.[24]
- Section 3 requires the branch to list other trade names (dba's) used at the branch. This will allow the Department to determine whether the applicant has complied with the law governing use of dba's in California. Knowing dba's will also allow the Department to license the applicant under all names legally used, so consumers will know whether the applicant and dba's used are licensed.
- Section 4 requires the company to specify the name and identifying information for the branch manager. Information about the branch manager is necessary because each branch manager must complete an Individual Form MU-2, which the Commissioner will review to approve or deny the branch manager.[25]
- Section 5 requires the branch to list its web addresses and any separate websites for other trade names used by the branch. This information is necessary so the Department can learn about and investigate the applicant. The Department must know which types of loans the applicant services, and the number of borrowers serviced. This information is necessary for the Department to determine each licensee's pro rata share of Department costs to administer the Act. The Department will compare

[23] Fin. Code, § 28144, subd.(c).
[24] Fin. Code, § 28152.
[25] Fin. Code, § 28128, as amended by Stats. 2018, ch. 379, § 13.

information provided by applicant, including data about loan types, borrowers serviced, and officers and directors, with information listed on applicants' websites. This comparison will show whether the applicant has been truthful and provided all required information. An applicant's honesty and integrity will determine eligibility for a license.

- Section 6 requires the applicant to specify the custodian(s) of records and storage location(s) for the branch. This is necessary because the Act requires the Department to conduct regulatory examinations of licensees at least once every 36 months.[26] The Department must review books and records as part of its examinations. The Department must know where records are located and who to contact to access these records to quickly obtain this information and most efficiently examine the applicant.
- Section 7 requests information about the branch's operations, which indicate the level of autonomy and decision making held at the branch level. This information is necessary to know the applicant entity's organizational structure and determine where control and responsibility for servicing activities is held. This information is also necessary to determine the experience and competency of the company applying for licensure.[27]
- Section 8 requires the branch applicant to specify and list contact information for parties which have an ownership interest in the branch or are responsible for branch expenses. This information is necessary to investigate the applicant and its control people to determine financial responsibility, honesty, integrity and eligibility for licensure.[28]The concluding attestation under penalty of perjury is necessary because the Department may deny an application for reasons including that a false statement of material fact has been made in the application; or that the commissioner cannot find that the business will be operated honestly, fairly, efficiently, and in accordance with the Act.[29] If the Commissioner discovers after approval that the branch application includes a material misrepresentation of fact, the Commissioner may issue an order suspending or revoking the license, after notice and an opportunity for hearing.[30]

- Subsection (b): This subsection is necessary to clarify for stakeholders that terms defined in the Act, but not defined in the rules, have the meanings ascribed to them in the Act.

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[26] Fin. Code, § 28152, subd. (a).
[27] Fin. Code, § 28120.
[28] *Ibid.*
[29] Fin. Code, § 28120, subd. (b).
[30] Fin. Code, § 28166, subd. (g).

Rule 2033, "Electronic Filings."

- Subsection (a): This subsection is necessary to designate the Nationwide Multistate Licensing System & Registry (NMLS) as the system to receive and store filings, obtain credit reports, and collect related fees and assessments from applicants and licensees; to provide clarity for stakeholders; and to make licensing and regulatory oversight as efficient, cost effective and smooth as possible. NMLS is a secure system widely used by all states and territories as an efficient system through which applications for licensure and regulatory oversight can be easily managed.
- Subsection (b): This subsection is necessary for all student loan servicer applications, amendments, surety bonds, notices, related filings, supporting documents, renewals, authorizations, assessments, and fees to be filed electronically with NMLS, because NMLS provides an efficient, cost effective and quick way to handle these aspects of licensure. Use of NMLS allows for immediate turnaround and feedback, instead of time delays caused by paper filings and transmittal of documentation through postal mail.
- Subsection (b)(1): This subsection is necessary for a duly authorized officer, proper delegate of, or the applicant itself to electronically sign documents, to bind the applicant or licensee to the statements made in, and the filing itself. It is necessary to clarify that electronic filings constitute irrefutable evidence of legal signature by an individual making the filing to bind the applicant or licensee to the statements made in, and the filing itself. The Department and all regulators that use NMLS must be able to rely on NMLS as legally binding applicants and licensees to the representations made and submitted through the system.
- Subsection (b)(2): This subsection is necessary to define when a document is filed with the Commissioner. The subsection provides that a document is filed with the Commissioner when all fees are received and the file has been transmitted through NMLS, as payment of fees and transmittal by NMLS to the Commissioner constitute final, concrete acts demonstrating that the filing has been made. Payment of fees by applicants and licensees indicates their intent to submit the filing, and accords with statutory mandates regarding fees due.
- Subsection (b)(3): This subsection is necessary for applicants to provide necessary authorizations for NMLS to receive credit reports, because the Student Loan Servicing Act expressly authorizes the Commissioner to investigate applicants, licensees and their control persons, and obtain independent credit reports, to ascertain the honesty, truthfulness, and integrity of the applicant or control person.[31]
- Subsection (b)(4): This subsection is necessary to require documents not transmittable through NMLS to be filed directly with the Commissioner, so

[31] Fin. Code, §§ 28106, subd. (b)(7) & 28108, subd. (a)(1)(B).

applicants and licensees have direction on how to submit to the Commissioner required documents not accepted through NMLS. For example, NMLS currently does not have the functionality to process fingerprints and provide state criminal history records. The Student Loan Servicing Act requires both federal and state criminal record history.[32] Thus, applicants and licensees must have a mechanism to submit fingerprints and the state and federal criminal record history reports directly to the Commissioner.

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

- This rule requiring student loan servicers to file an amendment to the application within 10 business days of changes in officers, directors, and partners, is necessary to ensure the Department and the Commissioner have the most current information about servicers while still providing them a reasonable amount of time to complete and submit the requisite forms. This rule is also necessary for the Department and Commissioner to fulfill their statutory duty to "investigate" control persons, to determine if the new control person may be approved.[33]

Rule 2035, " License Application for Student Loan Servicer."

- Subsection (a): It is necessary to use NMLS for applications because it is a secure, efficient, quick, cost effective system, and a system with which the Department has experience. NMLS is used by the Department for several other laws and programs the Department administers,[34] as well as regulatory agencies nationwide. NMLS was created by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR)[1] and began operations in January 2008. It is owned and operated by the State Regulatory Registry LLC (SRR), a wholly owned subsidiary of CSBS.[35] Supporting documents used for the same license in another state can be reused in the new state for which the applicant has applied for licensure. SRR-not the Department-exclusively controls the NMLS system and forms, and has exclusive rights to revise the MU-1 form, and all forms identified in this rule.
  It is necessary to state that the legally required state and federal privacy notices set forth in section 2039 are part of every application, to clarify to applicants, and

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[32] Fin. Code, § 28114.
[33] Fin. Code, § 28116.
[34] *See*, e.g., the California Residential Mortgage Lending Act (Fin. Code, § 50000 *et seq.*) and implementing regulations (Cal. Code Regs, tit. 10, § 1950.003 *et seq.*); *see also* the California Financing Law (Fin. Code, § 22000 *et seq.*) and implementing regulations (Cal. Code Regs., tit. 10, § 1422.4 *et seq.*).
[35] "*About NMLS* <https://mortgage.nationwidelicensingsystem.org/about/Pages/default.aspx,> (as of August 31, 2018).

eliminate any concerns, that these legally related privacy notices apply to the NMLS application.

- Subsection (a)(1): It is necessary for each fictitious business name to be identified on Form MU-1, so that the Department is aware of all names under which applicants are operating and seeking licensure, so that the Department can effectively regulate and supervise licensees.
- Subsection (a)(1)(A): It is necessary for the applicant to upload to NMLS a copy of the Fictitious Business Name Statement with the "filed stamp" from the county clerk's office, to prove applicant has complied with the law and is able to use this fictitious name.
- Subsection (a)(1)(B) and (C): It is necessary that an applicant not use a fictitious business name until the Commissioner approves the use of the name, and that applicants and licensees comply with the rules governing the filing of a fictitious business name under Business and Professions Code 17900, et seq., to make sure that applicants have complied with the law, to ensure that the Department only approves the use of names for applicants who have complied with the law (relates to the applicant's honesty and integrity, a standard for licensure), and to determine if any other licensees may be using the same, or a similar fictitious business name, which would cause confusion to the public, and make Departmental oversight harder.
- Subsection (a)(2): It is necessary for an applicant to submit through NMLS a Form MU-3 for each additional business location in accordance with Section 2038, as this is the mechanism NMLS has designated to keep a record of all business locations used by the applicant and licensee, and necessary for effective Departmental oversight and supervision, and enforcement of the Student Loan Servicing Act.
- Subsection (a)(3): It is necessary to have an applicant provide the names, personal history, and experience of officers, etc., through NMLS on Form MU-1 and MU-2, as these are the specific and exclusive mechanisms by which NMLS processes information about control persons, including principal officers, directors, general partners and 10 percent or more shareholders. It is necessary for these control persons to be identified in MU-1, and complete an MU-2, akin to a background check, so that the Department can fulfill its statutorily mandated duty to "investigate" applicants and their control people,[36] to determine whether the Department may approve that individual and the applicant.[37]
- Subsection (a)(3)(A): It is necessary to require that individuals filing an MU-2 provide authorization for delivery of fingerprints to the California Department of Justice (or NMLS, if and when NMLS can process fingerprints taken in a specific state, for which a state criminal history record is necessary), as fingerprinting is a required part of the application process. The Department must submit these

[36] Fin. Code, § 28116.
[37] Fin. Code, § 28120.

prints and related information to DOJ to obtain the statutorily mandated state and federal criminal history records, upon which the decision to approve a control person will be based.

- Subsection (a)(3)(B): It is necessary for individuals named in MU-1 who are not residing in the US or who have not resided in the US for at least 10 years to submit an investigation background report in accordance with Rule 2037, to ensure that the Department receives current, accurate information about the individual. Federal criminal history records go back only ten years, and only detail domestic criminal activity. A federal criminal history record for individuals who have lived outside the United States for any period of time gives no information about that individual for the period of absence from the United States. This background report fills these time gaps and information void, and provides the Department with information it needs to determine eligibility for licensure.
- Subsection (a)(3)(C): It is necessary for the applicant to pay all fees related to fingerprinting, background check, and investigative background report because these are costs required to be paid by the applicant under the Student Loan Servicing Act[38] and a requirement to complete and submit an application. NMLS only allows submission of completed applications.
- Subsection (a)(4): It is necessary for applicants to submit as an exhibit to MU-1 audited financial statements, as of the applicant's most recent fiscal year end, or more recent date, and that the financial statement document a minimum tangible net worth of $250,000 because these are application requirements under the Student Loan Servicing Act.[39]
- Subsection (a)(5): It is necessary for applicants to upload to NMLS a detailed description of their business activities and an entity organizational chart, so that the Commissioner can determine the type (federal, private or both) and volume of servicing performed, so that the Commissioner can calculate the pro rata assessment required to be paid by each licensee as its share of the costs to run the program.[40] The organizational chart is required so the Commissioner can determine the principal officers and directors of the entity, to know which individuals the Commissioner must investigate, under the Student Loan Servicing Act. [41]
- Subsection (a)(6): It is necessary for applicant to submit a surety bond using NMLS' electronic surety bond function because the surety bond is required under the Student Loan Servicing Act, and using the electronic surety bond function is a quick, efficient, cost effective way for applicants to satisfy this statutory obligation.
- Subsection (a)(7): It is necessary for applicants to upload copies of their Policies and Procedures demonstrating compliance with the specific consumer protection

[38] Fin. Code, § 28112, subd. (b).
[39] Fin. Code, § 28112, subd. (c).
[40] Fin. Code, § 28144.
[41] Fin. Code, § 28116.

provisions of the Student Loan Servicing Act[42], as this is one of the key ways the Commissioner will determine if the applicant is complying and will comply with the law's consumer protection mandates.

- Subsection (a)(8): It is necessary for applicants to identify business activities not already listed in Item #1 of the MU-1, so that the Commissioner knows all businesses in which the applicant engages, to ensure there are no conflicts of interest.
- Subsection (a)(9): It is necessary for business entities to upload documents, based on their particular type of business structure (domestic or foreign corporation, general partnership, limited liability company or limited partnership), evidencing that the entity is properly formed under the laws of the state of formation, and that the entity is authorized to transact business in California, for the Commissioner to know that the entity is validly formed, operating, authorized under its formation documents to engage in student loan servicing, and complying with the law. This requirement relates to the Commissioner's authority to require information to ascertain the experience, background, honesty, truthfulness, integrity, and competency of the entity and its control persons, to determine eligibility for licensure.[43]
- Subsection (a)(10): It is necessary for an applicant to identify a registered agent - located in California, for purposes including receiving communications and for service of process, to ensure that Californians can work with a local representative in the same time zone, particularly because many of the servicer licensees are headquartered out of state.
- Subsection (a)(11): It is necessary for an applicant to provide its website information so that the Commissioner can review the site to corroborate information listed in the application, and as a mechanism to determine compliance with the consumer protection provisions of the Student Loan Servicing Act.
- Subsection (a)(12): It is necessary for the individual attesting to the MU-1 to be a control person who has submitted a MU-2 (background check), or been designated by an individual who submitted an MU-2 to attest, as the entity must be bound by the statements and representations made in the MU-1, for the Commissioner to be able to rely on the information provided, obtain the entity's agreement to comply with the borrower protection mandates of the Student Loan Servicing Act, and to be able to properly investigate the applicant and determine eligibility for licensure.
- Subsection (b): It is necessary for statutorily required fees to be paid through NMLS, for transmission to the Commissioner, as that is an efficient, cost effective way to receive payment and ensure compliance with the law. This subsection does also allow for direct payments to the Commissioner if a fee cannot be paid

[42] Fin. Code, § 28130, subds. (f) – (h).
[43] Fin. Code, § 28106, subd.(b)(7).

through NMLS. The only fees currently not able to be paid through NMLS are fingerprinting fees.

- Subsection (c): It is necessary to define the conditions for an application to be considered complete to reiterate the statutory prerequisites for an application, and to clarify that submission of an application, without approval by the Commissioner, does not mean approval. It is also helpful to reiterate the statutory provision that the Commissioner may consider an application withdrawn if the Commissioner does not receive information requested in a deficiency notice within 60 days of notification, to eliminate any confusion or misunderstanding by applicants.
- Subsection (d): It is necessary for applicants to amend NMLS filings, so that the Commissioner has current information to effectively regulate and supervise licensees and protect student borrowers. It is necessary for applicants to amend applications within five days of the event necessitating the amendment, as this new information may cause the Commissioner to make a different decision regarding licensure.

Rule 2036, "Appointment of Commissioner of Business Oversight as Agent for Service of Process."

This rule implements the new mandate under legislation amending the Student Loan Servicing Act, which became effective January 1, 2019.[44] This rule includes the form that applicants and licensees must complete, notarize and upload to the applicant or licensee's account page on NMLS. Providing the form and specifying the process is necessary to provide clarity, specificity, certainty and transparency for applicants and licensees.

Rule 2037, "Fingerprints and Background Checks."

- Subsection (a): It is necessary to specify that applicants must submit fingerprints through the California Department of Justice's (DOJ) Live Scan service, the digital fingerprinting process required in California, to clarify for applicants the specific process and system required.
- Subsection (b): It is necessary to specify the individuals who must submit fingerprinting, to clarify for applicants which individuals are required to submit fingerprints, and to reiterate for applicants that fingerprinting is required under the Student Loan Servicing Act.
- Subsection (c): It is necessary to detail the Live Scan process for applicants, to specify that the applicant is responsible for all related fees, and to identify the DOJ webpage applicants can review for additional information, to clarify

[44] Fin. Code, § 28117, added by Stats. 2018, ch. 379, § 9.

the fingerprint process for applicants, and eliminate questions or misunderstandings.

- Subsection (d): It is necessary for applicants to upload to NMLS proof of Live Scan submission, to evidence to the Commissioner that the applicant has complied with the requirement to be fingerprinted in the Student Loan Servicing Act.
- Subsection (e): It is necessary to specify that Live Scan may only be used in California, to specify that individuals outside California must instead use fingerprint cards, and to provide information about the out of state process, to clarify the out-of-state fingerprint process for applicants, and eliminate questions or misunderstandings.
- Subsection (f): It is necessary to specify that no license will be issued until after the Commissioner has received from DOJ the statutorily required report of state and federal criminal history, to clarify that the Commissioner will not issue a license until satisfied the criminal history report provides no evidence of dishonesty, fraud or deceit, or crime, forming the basis for denial of the individual or the application.[45]

Rule 2038, "Information Regarding Individuals Who Are Not Residents of the United States."

- Subsection (a): It is necessary to require individuals who currently reside outside the United States or have resided outside the United States to provide an investigative background report, at the individual's expense, as state and federal criminal history information only covers domestic criminal activity, and not also information from other countries.
- Subsection (b): It is necessary specify the information required in the investigative report, to make clear to applicants exactly what is required, and will be deemed acceptable to the Commissioner, to ensure that the Commissioner receives sufficient information about the individual to make an informed decision about licensure approval or denial.
- Subsection (c): It is necessary to specify that the report must be accompanied by a search summary letter that identifies the scope of the search, independence of the search firm, and a contact person for the Commissioner to call with follow up questions, to confirm that the report contains the information required, is the result of an independent, unbiased firm, and allows for full follow up by the Commissioner by designating a specific individual to contact.

[45] Fin. Code, § 28120, subd.(b)(2).

- Subsection (d): It is necessary to allow an applicant the opportunity to use a report prepared for another licensing agency within 12 months of the filing of the application for licensure, which contains at least the information required in subsection (b), as this report will contain information sufficiently current to allow the Commissioner to make an informed decision about approving or denying such individual, and will save the applicant an additional, fairly substantial expense.

Rule 2039, "Branch Office Instructions for Student Loan Servicers."

- Subsections (a) and (b): It is necessary for applicants to submit a form MU3, designated by NMLS as required to be submitted for each branch location, and upload proof of filing a new Fictitious Business Name Statement for names not already approved by the Commissioner, which the applicant intends to use at the branch, so that the Commissioner can have a complete list and record of all servicer's branches, to fulfill its statutory duty to administer and enforce the Student Loan Servicing Act, and effectively regulate and supervise licensees.
- Subsection (c): It is necessary to identify the branch manager at each branch and submit an MU-2 (background report) for each branch manager, so the Commissioner has the information needed to approve or deny the manager, and to comply with the Commissioner's duty to investigate each branch manager.[46]
- Subsection (d): It is necessary to reference Financial Code section 28112(b), so that licensees know the cost to license a branch, which is the same amount required to license the main location. This information provides clarity, certainty and transparency for licensees and the regulated public. It is necessary to require the applicant or licensee to pay all fees related to the branch application and licensure to NMLS, for transmission to the Commissioner, except for fees which may not be paid to NMLS (which must be paid directly to the Commissioner), as this is a quick, efficient, and cost effective way to make payment.

Rule 2040, "Notices Included with Applications."

- It is necessary to include all required state and federal privacy law notices, and state what the Department may and may not do with an individual's information, to clarify to applicants that they and their information retain privacy protections with their electronic submissions, just as they do for paper submissions. It is also necessary to state the purposes for which the

[46] Fin. Code, § 28128.

Department will use the information, and what the Department is entitled to do with an individual's private information, in the course of deciding whether to approve or deny an individual. Instead of receiving these notices through additional sheets of paper attached to a paper filing, the notices are included in the rule for clarity, transparency, peace of mind, and to eliminate confusion or misunderstandings.

Rule 2041, "Notice of Changes by Student Loan Servicer."

- It is necessary to clarify that, while servicers must report changes to information which occur while an application is pending within five days of the event causing the change (because such change may impact or change the Commissioner's decision to approve or deny an individual or applicant), licensees must file amendments to the related NMLS forms within ten business days of the change. This ten-day period is statutorily mandated,[47] provides the Commissioner with current information to effectively implement the Student Loan Servicing Act, and allows licensees a reasonable amount of time to submit the amendment.

Rule 2042, "Effectiveness of Student Loan Servicer License."

- It is necessary to state in express language that a license is perpetual, and does not require renewal, nor expire on a certain date, to provide clarity for licensees. It is also necessary for clarity and transparency to reiterate the related law that licenses continue in effect, unless revoked or suspended under the Student Loan Servicing Act, or the servicer has surrendered its license and the Commissioner has accepted the surrender. This is a fundamental licensee question. It will be helpful for licensees to have this information, in plain language.

Rule 2043, "Challenge Process for Information into NMLS."

- It is necessary for applicants and licensees to know their rights, if they believe there is an inaccuracy or that the information they submitted to NMLS is not complete. This rule provides applicants and licensees clarity, specifies the exact process to follow, including appeal rights, and simultaneously provides comfort, knowing they are protected. The Department has determined that the specific process described in the rule is an efficient means to receive and evaluate requests on an adequately limited timeline that also preserves applicants and licensees' due process rights.

[47] Fin. Code, § 28126.

Rule 2044, "Share Arrangements with Other Governmental Agencies."

- It is necessary to clarify the governmental agencies with whom the Commissioner is authorized to share information submitted to NMLS with, to provide clarity and transparency for servicers.

Rule 2045, "Request for Confidential Treatment."

- It is necessary to advise servicers that they may request confidential treatment for certain documents, or parts thereof, submitted as part of the application process for clarity. This rule also provides servicers guidance on how to submit a request for confidential treatment, including referring the servicer to the existing regulation that outlines the standard for the Commissioner to grant confidential treatment, and the requirements for submitting a request.

Rule 2046, "Surety Bond."

- Subsections (a) and (b): It is necessary to state that all surety bonds, and matters related to surety bonds, shall be processed through NMLS and its electronic surety bond function. This information provides clarity and certainty to servicers, and eliminates misunderstandings.
- Subsection (b): The uniform form developed by NMLS for the surety bond required of each applicant, entitled "*SURETY BOND, STUDENT LOAN SERVICING ACT LICENSEE BOND (California Financial Code Section 28100, et seq.), ESB Form Version 1 Effective 01/01/2018, NMLS Version: CA-DBO-01/01/2018,* attached to the proposed regulations as Exhibit 4, and incorporated by reference, is necessary to inform student loan servicers, prospective applicants, and the regulated public about the surety bond form which bond companies retained by applicants and licensees must use to obtain a license. Requiring applicants to apply for licensure through NMLS and submit uniform forms, including the Electronic Surety Bond Form, provides applicants, licensees and the Department with a quick, cost effective, secure and efficient mechanism to become licensed as a student loan servicer in California. The provisions of the Electronic Surety Bond Form are necessary to ensure that the mandatory surety bonds meet the standards of the Student Loan Servicing Act.
- Subsection (c): It is necessary to reiterate the minimum $25,000 bond amount specified in statute, and to specify the required amounts of surety bonds, for servicers who service more than $50,000,000 in loans in the preceding calendar year. This rule provides servicers necessary detail about the costs of licensure, including the correct amount of bond, and also protects the Department and student borrowers, if the servicer does not comply with reporting and other requirements of the Student Loan Servicing Act, or harms borrowers. Higher bond amounts are required for servicers who service a

higher cumulative dollar amount of loans, due to the greater risk, and to better protect the Department and borrowers from loss.

- Subsection (d): It is necessary to require 30 days advance notice to the Commissioner of prospective bond cancellation, so that the Department can monitor the servicer, to ensure that it replaces the cancelled bond on or before the cancellation date, in compliance with statute.
- Subsection (e): It is necessary that the company issuing the bond provide notice to the Commissioner within 10 days of service of any action against the bond, to monitor the status of the claim, and immediately, in the event of payment of a claim, to ensure that the bond amount is restored to the legally required amount.

Rule 2047, "Assessments."

- Subsection (a): It is necessary to specify that annual assessments represent the licensee's pro rata share of all costs and expenses incurred by the Department to run the Student Loan Servicing Program. It is necessary to define a licensee's pro rata share as the proportion that a licensee's servicing activities in California bears to total costs and expenses, after deducting $250 for each licensed location, to provide clarity for servicers. It is necessary to specify that a licensee's servicing activities in California is the percentage which the number of borrowers serviced in California by the licensee bears to the total number of borrowers serviced by all licensees in California, so that servicers know how the assessment is calculated, and may estimate and budget for payment of annual assessments. This detail and specificity provide clarity and certainty for servicers, aiding stable operations.
- Subsections (b) through (d): It is necessary to state that the Commissioner may distribute assessments through NMLS, statutorily required to be distributed each year by September 30,[48] and require payment through NMLS, again to provide clarity, certainty, and transparency for servicers.

Rule 2048, "Borrower Information and Statements of Account, Payment Processing, Co-Signer Payments.

- Subsections (a) through (d): It is necessary to require licensees to maintain on their websites detailed information and account records for each student loan borrower, which includes a consolidated report for each borrower, and a loan history, for each loan serviced, containing specified information, to provide clarity, certainty, and transparency for servicers and student borrowers. The required information aligns with industry standards regarding information currently included in borrowers' on line accounts, and provides borrowers the fundamental information needed to give meaning to the

[48] Fin. Code, § 28144, subd. (b).

borrower protections mandated in the Student Loan Servicing Act.[49] Without this basic account information, borrowers cannot determine if their payments, and overpayments are being properly applied, know if they are eligible for public service forgiveness benefits, or determine which repayment plan is best for them to select. It is necessary to specify when payments must be credited and posted if made electronically, or by check, which accords with industry standards, and provides clarity, certainty and transparency for servicers and student loan borrowers. Subsection (e): It is necessary to specify that servicers must provide a specific process to follow for application of co-signer payments, to provide clarity to co-signers and servicers, and to provide servicers with guidance on the repayment information they must provide on their website regarding co-signer payments.

Rule 2049, "Qualified Written Requests."

- It is necessary to explain in detail a servicer's responsibilities regarding responses to Qualified Written Requests (QWR), to provide clarity, certainty and transparency for servicers and student loan borrowers. The rule is necessary to implement QWR procedures while balancing the interests of student loan borrowers and servicers, by (1) requiring servicers to send an acknowledgement of receipt of a QWR within five business days of receipt, only if the QWR has not already been resolved (to do otherwise would be confusing, and could be misleading to borrowers); (2) authorizing servicers to designate a specific electronic address and specific physical address to which QWRs must be sent, to allow servicers to be optimally responsive to QWRs, and be cost effective; and (3) requiring servicers to send a total of three notices stating that there will be no response to a QWR, if the QWR is a duplicate of a previous QWR to which the servicer has responded, and for which borrower has provided no new information.

Rule 2050, "Customer Service, Alternative Repayment Plans, Loan Forgiveness Benefits."

- Subsection (a): It is necessary to require all servicers to post on their homepage a toll-free telephone number that borrowers may call to discuss their student loans with a live person in order to provide a borrower with access to a live person to answer questions and resolve errors. The typical action of a consumer who has questions about his or her loan or online account is to attempt to contact a customer service representative (CSR) capable of providing specific answers to specific questions.

[49] Fin. Code, § 28130, subds. (f) through (h).

- Subsection (a)(1): It is necessary for CSRs of federal loans to be trained about, and capable of informing and discussing with borrowers alternative payment plans and loan forgiveness benefits because these are fundamental benefits of federal loans. Similarly, federal loan CSRs must be able to answer borrower questions about the differences among deferment, forbearance and alternative repayment plans, because they all have different meanings, and have different financial impacts. The Student Loan Servicing Act requires servicers to inform borrowers about alternative repayment plans and loan forgiveness benefits. Borrowers must know the differences among all repayment options, to make an informed decision, and have the opportunity to pick the best repayment plan, and make the best financial decision for them.
- Subsection (a)(2): It is necessary to require private loan servicer CSRs to be fully trained about, and inform and discuss with borrowers any alternative repayment plan offered, for all student loan borrowers to be treated fairly, and to effectuate the stated legislative intent to promote "reliable information about student loans and loan repayment options [and] quality customer service and fair treatment."[50]
- Subsection (b): It is necessary to require servicers of federal student loans to post information on their websites about alternative repayment plans, and loan forgiveness benefits, including links to specific, related pages on the U.S. Department of Education's website, and to send borrowers annual notices containing this information, or links to this information, and the toll-free number to call to discuss federal loans with a live person, to effectuate statutory mandates,[51] and provide specificity, clarity, and certainty for servicers and borrowers.
- Subsection (c): It is necessary to require private student loan servicers to provide borrowers clear and complete information about alternative repayment arrangements available to the borrower through the promissory note or marketing offers, or which were offered to similarly situated borrowers through marketing and advertising, and to establish and implement policies and procedures to disclose to borrowers these alternative repayment arrangements, to ensure that borrowers are treated fairly, that similarly situated borrowers are offered the same benefits and treated equally, and to effectuate the above stated legislative intent of the Student Loan Servicing Act. This rule also treats servicers fairly by providing that servicers that have made reasonable efforts to obtain alternative repayment information from the original lender or the promissory note holder, but have not received

[50] A.B. 2251 (Stats. 2016, Ch. 824), § 1(f)(2) and (3).
[51] Fin. Code, § 28130, subd.(f).

responses, will be deemed in compliance with this rule. It is necessary to require private student loan servicers to provide borrowers a single-page plain language notice, annually, about alternative repayment arrangements, and the toll-free number to call with questions, to comply with the statutory directive, and provide specificity and clarity for servicers and borrowers.

- Subsection (d): It is necessary to require servicers to send borrowers annual notices by the preferred method of communication indicated by the borrower, to comply with the borrower's wishes and provide quality customer service, in accord with the Student Loan Servicing Act. It is necessary to require servicers to send these notices by U.S. postal mail, if the borrower has not indicated its preferred method of communication, in compliance with applicable law, and for servicers to send to the borrower's email address of record, if the notice sent by postal mail is returned as undeliverable, to make every attempt to inform borrowers of their benefits and options, potentially obtain a higher percentage of loans in repayment, as more borrowers are reached, and to comply with the Student Loan Servicing Act.

Rule 2051, "Examinations, Books and Records."

- It is necessary to require servicers to maintain current books and records, which include general ledgers and a cash receipt and disbursement journal, in accordance with generally accepted accounting principles, as these records are basic requirements of a fiscally sound, well-managed entity, relating to an entity's continued maintenance of licensure; necessary to meet the statutory requirement of providing the Commissioner with annual, audited financial statements;[52] and necessary to demonstrate to the Commissioner that the entity continues to meet the minimum $250,000 net worth requirement.[53]

Rule 2052, "Aggregate Student Loan Servicing Report."

- Subsection (a): It is necessary for licensees to maintain current, aggregate student loan servicing reports, which, when read together, represent the total amount of student loans serviced by the servicer, to verify the dollar amount of loans serviced in California, to ensure that annual pro rata assessments are accurately and fairly assessed,[54] and to allow the Commissioner's effective examination, oversight and supervision of servicers.
- Subsection (b): It is necessary for the required student loan servicing report to contain the information listed in the rule, as this information is basic loan information, which servicers must demonstrate they are able to provide

[52] Fin. Code, § 28148.
[53] Fin. Code, § 28140.
[54] Fin. Code, § 28144.

borrowers, to allow borrowers to make an informed decision about which repayment plan is the best for the borrower. Demonstrating to the Commissioner that the servicer has this basic loan information readily available, including a record of pending applications for alternative repayment plans or loan forgiveness benefits, and a record of borrowers repaying under an alternative repayment plan, allows Department examiners to determine whether the servicer is providing the borrower with needed information and has records matching the borrower's records, all of which is necessary to determine whether the servicer is complying with the Student Loan Servicing Act's mandates to inform borrowers about alternative repayment plans and loan forgiveness benefits, and provide quality customer service and fair treatment.

Rule 2053, "Individual Student Loan Servicing Records."

- Subsection (a): It is necessary that servicers maintain their books, records and accounts at one or more licensed location, designate the locations at which the books, records and accounts are maintained, and make the location and books, records and accounts accessible to the Department, to facilitate and make as simple and cost effective as possible the statutorily mandated examination of licensees.[55]
- Subsections (b), (c), and (d): It is necessary for servicers to maintain all student loan documents and records for each borrower, if the servicer has received or has access to these records, for the Department to determine compliance with the student borrower protections in the Student Loan Servicing Act, including informing borrower about alternative repayment options; providing borrower a complete loan history for each loan, to determine if payments have been correctly applied; timely and appropriately responding to Qualified Written Requests; and following borrower instructions regarding application of overpayments.[56]

Rule 2054, "Records of Servicing Transferred. Notification to Borrower of Transfer."

- Subsection (a): It is necessary for licensees that transfer servicing rights to retain contract and delivery schedules detailing loans for which servicing rights were transferred, for the Commissioner to know the dates the loan was serviced by each servicer, to know which servicer is responsible for complying with the Student Loan Servicing Act during which period of time, to know which servicer to examine and for which period of time, and to verify that pro rata assessments are correctly calculated.

[55] Fin. Code, § 28152.
[56] Fin. Code, § 28130, subds.(f) - (h).

- Subsection (b): It is necessary for servicers to send borrowers a notification of transfer of servicing, so that borrowers know where to send payments and which servicer to contact with questions, and to avoid misapplication of payments or incorrect assessment of interest or late charges, if a borrower is not timely informed about the new servicer.

Rule 2055, " Records Retention Requirements."

- It is necessary to require servicers to retain records required under these rules for a minimum of three years after the loan has been paid in full, transferred to another servicer, or assigned to collection (unless the servicer's contract with the U.S. Department of Education or private lender requires a shorter time period), to ensure that the Department has access to records for the period of time covered by each regulatory examination.[57]

Rule 2056, "Electronic Records: Maintenance, Storage and Reproduction Requirements."

- It is necessary to allow servicing records to be maintained, stored, and produced electronically, in a commonly used format, readily accessible and readable by the Commissioner, in accordance with generally accepted accounting principles. Electronic records management is much faster, quicker, and cheaper. This is cost effective for licensees and the Department. The Department may be able to obtain records on their computers in their normal work stations, and reduce travel, copying and exam time and charges. The rule is necessary to avoid any uncertainty about whether required records may be maintained electronically under the law.

Rule 2057, "Surrender of License as a Student Loan Servicer."

- Subsections (a) and (b): It is necessary to require licensees to file an application to surrender a license through the related NMLS form(s), to file a plan detailing the licensee's proposal to orderly close out its student loan servicing business, and to require Commissioner approval of surrender, to ensure that borrower accounts will be well serviced without interruption; to know which servicer will be servicing each loan during which time period; to have a current, accurate record of all servicers and the dollar amount of loans serviced in California; and to correctly calculate annual assessments.
- Subsection (c): It is necessary to allow servicers to comply with this rule, by providing the alternative termination requirements of the lender for which servicing has ceased, and evidence of satisfaction thereof, to avoid

[57] Fin. Code, § 28152.

interference with contractual arrangements and agreements, and payments due thereunder, between the surrendering licensee and lender or promissory note holder.

LOCAL MANDATE DETERMINATION [Government Code Section 11346.9, Subdivision (a)(2)]

The Commissioner has determined that the adoption of these regulations does not impose a mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF SEPTEMBER 8, 2017 THROUGH NOVEMBER 6, 2017. [Government Code Section 11346.9, Subdivision (a)(3)]

The Department received six public comment letters during the 45-day public comment period. The comments are summarized below, together with the Department's response.

1. Commenter: Letter dated October 31, 2017 from former California State Senator Tony Mendoza.

Comment No.1: Senator Mendoza claims that the rule designating the National Multistate Licensing System and Registry (NMLS) to receive and process all applications and licensee filings, amendments, fees and assessments, is not statutorily authorized.

Response: The Department disagrees with the comment. The Student Loan Servicing Act expressly authorizes the Commissioner to prescribe circumstances under which to accept electronic records.[58] Indeed, the Legislature expressly encourages the Department to "continue to expand its use of electronic filings...."[59] Further, legislation amending the Student Loan Servicing Act,[60] effective January 1, 2019, expressly authorizes the Commissioner to receive and process all applications and licensee filings, amendments, fees and assessments through NMLS.[61] Consequently, this comment is moot.

Comment No. 2: Senator Mendoza asserts that the Department has no statutory authority to require applicants and licensees to appoint the Commissioner as agent for service of process.

Response: The Student Loan Servicing Act, as amended January 1, 2019, now requires applicants to irrevocably appoint the Commissioner agent for service of process. Consequently, this comment is moot.

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[58] Fin. Code, § 28110.
[59] Fin. Code, § 28110, subd.(c).
[60] Assem. Bill No. 38, Stats. 2018, ch. 379.
[61] Fin. Code, § 28111, added by Stats. 2018, ch. 379, § 6.

Comment No. 3: Senator Mendoza asserts that the Department lacks statutory authority to require servicers to maintain detailed account information and loan histories for borrowers.

Response: The Department disagrees. The required information is basic account information, which servicers of all types of consumer loans, including student loan servicers, routinely provide and include in borrowers' on line accounts. The Student Loan Servicing Act requires servicers to provide free of charge on their websites information or links to information regarding repayment and loan forgiveness options. This mandate would be meaningless, if borrowers do not have access to fundamental information about their loans. Borrowers need basic account information, such as loan balance, interest rate, maturity date, or number of additional monthly payments required to repay each loan, to make informed decisions about which repayment option is best for them.

2. Commenter: Letter dated November 6, 2017 from the Center for Responsible Lending. The Center discusses, generally, the status of student loan debt in California, its impact, and California's response to the problem. The Center makes only one specific comment to the rules, as follows.

Comment: The Center references the provision of the Student Loan Servicing Act which requires servicers to file annual reports with the Department, on or before March 15 each year.[62] The Center asserts that the Commissioner should specify in regulation the information which the annual report will require.

Response: The Department disagrees. The annual report must include relevant information concerning servicers' business and operations for the preceding calendar year, including servicing transferred to another servicer. This information is maintained by, and readily available, to servicers. The Department will have obtained this information through the license applications, supporting documents and regulatory examinations. Information requested on an annual report form will simply be a reiteration of information already provided. Should the Department require information in the annual report beyond what licensees have already provided through NMLS and exams, the Department will file a subsequent rulemaking action.

3. Commenter: Letter dated November 6, 2017 from Educational Credit Management Corporation (ECMC), a non-profit, federally-designated student loan guaranty agency. Among other roles, ECMC is the sole guaranty agency for California, responsible for administering loans made under the former Federal Family Education Loan Program (FFELP). Congress ended the FFELP Program in 2010, but many FFELP legacy loans exist and are in repayment.

Comments: ECMC makes general comments, rather than suggesting changes to specific rules. ECMC notes its overriding objection to being covered under the Student

[62] Fin. Code, § 28146, subd. (a).

Loan Servicing Act, simply by inclusion within the broader, more generic portion of the definition of "servicing."[63] ECMC notes also that it is unable to comply with many of the regulations' requirements, such as providing detailed borrower loan histories, because it does not have access to borrower account records.

Response: The Student Loan Servicing Act, as amended effective January 1, 2019, expressly provides that the Act does not apply to guaranty agencies, in connection with its responsibilities as a guaranty agency engaged in default aversion, having an agreement with the U.S. Department of Education to provide such services.[64] ECMC's This comment is moot.

4. Commenter: Letter dated November 6, 2017 from the National Council of Higher Education Resources (NCHER), a national, nonprofit trade association representing student loan servicers.

Comment: NCHER submitted general policy comments, as well as comments on some specific rules, as detailed below. The Department is not required to respond to these general, policy comments, but does so for clarity and transparency.

Policy Comment No. 1: NCHER asks the Department to exempt guaranty agencies and smaller state-based servicers from the Student Loan Servicing Act.

Guaranty agencies insure FFELP loans. NCHER asserts that guaranty agencies do not perform any traditional servicing functions, but would nonetheless be covered under the broader definition of "servicing" within the Student Loan Servicing Act.

NCHER states that many states have created state-based loan authorities to fund private loans to their residents, to supplement federal financial aid. The cost of licensure to these state authorities would be prohibitive, and possibly cause these states to disband these programs. NCHER cites the Illinois Student Loan Servicing Rights Act, which includes exemptions for both guaranty agencies and small state-based servicers, and urges the Department to add these same exemptions in the final regulation.

Response: The Department provides the same response to NCHER's comment about guaranty agencies as it did above, in response to ECMC's comment. The Student Loan Servicing Act, as amended effective January 1, 2019, expressly provides that the Act does not apply to guaranty agencies, in connection with its responsibilities as a guaranty agency engaged in default aversion, having an agreement with the U.S. Department of Education to provide such services.[65] This portion of NCHER'S comment is moot.

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[63] Fin. Code, § 28104, subd. (j)(3), "interacting with a borrower related to that borrower's student loan, with the goal of helping the borrower avoid default on his or her student loan....."
[64] Fin. Code, § 28102, subd. (b)(6), added by Stats. 2018, ch. 379, § 2.
[65] Fin. Code, § 28102, subd. (b)(6), added by Stats. 2018, ch. 379, § 2.

The Department has no express legal authority to grant the exemption for smaller state-based agencies, which NCHER requests. The Department can only do by regulation what the Student Loan Servicing Act, as amended, authorizes. The Act does not include an exemption for smaller state-based agencies.

Policy Comment No. 2: NCHER does not object to a requirement that large federal loan servicers and private loan servicers obtain a license, and agrees that the $300 application fee and $100 investigative fee are reasonable. NCHER takes issue with the statutorily-imposed pro rata assessment, and asserts that the State of California should cover this cost. NCHER states that federal loan servicers earn about $24 a year per borrower account. The cost of paying a pro rata assessment and complying with disparate state laws will be prohibitive, and leave less revenue for customer service.

Response: The Department disagrees. The Department may not change how assessments are calculated. The Student Loan Servicing Act provides for pro rata assessments.[66] The Student Loan Servicing Act calls for this Program to be paid for by the servicer licensees. The Department has no legal authority to change in regulation what the underlying statute mandates.

Policy Comment No. 3: NCHER argues that state regulation of federal loan servicing is federally preempted.

Response: Federal preemption is based on the facts and law applicable in each case. No court has rendered a decision finding that the Student Loan Servicing Act is federally preempted, nor has such a case been commenced. Until that time, the Department must comply with the Student Loan Servicing Act's mandate to implement, and administer the Student Loan Servicing Act.

Additionally, Article III, Section 3.5 of the California Constitution[67] requires state agencies to enforce statutes unless and until an appellate court holds otherwise.

NCHER comments about specific rules follow.

Comment No. 1: NCHER objects to background checks and fingerprinting for directors of state-based servicers or guaranty agencies, under Rules 2035 and 2036. NCHER argues that many of the directors on these organizations' boards are state officials,

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[66] Fin. Code, § 28144, subd. (a).

[67] Article III, Section 3.5 of the California Constitution provides:
"An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
(b) To declare a statute unconstitutional;
(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations. (emphasis added)

making background checks and fingerprinting unnecessary, and risking discouraging qualified, reputable individuals from serving on these boards.

Response: The Department has no legal authority to change in regulation what exists in statute. The Student Loan Servicing Act mandates fingerprinting of every applicant for a license[68] and the investigation of an applicant's directors.[69] No exception is made for directors of guaranty agencies or state-based servicers created by statute, whose directors are state officials, legislators or gubernatorial appointees.

Comment No. 2: Rule 2049(d): NCHER objects to applying payments only to co-signed loans. NCHER asserts that loan payments are made by many different people (borrower, parent, government agency, such as the Department of Defense, as a veteran's benefit, and a co-signer), and that servicers have no way to know that a payment is made by a co-signer unless specifically advised of that fact.

Response: The Department understands that the rule, as originally proposed, does not take into account how and by whom payments can be made. The Department agrees with NCHER. (Servicer trade organization, the Student Loan Servicing Alliance (SLSA) made the same comment. *See* below.) The Department has revised the final rule (now rule 2047(e)) to adopt the request that servicers provide a specific process, clearly explained on the servicer's website, that co-signers may follow to apply co-signer payments to co-signed loans. Provided co-signers follow the specified process, servicers must apply co-signer payments, as directed by the co-signer.

Comment No. 3: NCHER makes the general comment that rules 2052 and 2053(d), specifying loan information which must be available to borrowers on the servicer's website, are overly prescriptive or overly vague. The sole specific comment NCHER makes is that "loan terms," at rule 2052, subd. (b)(6), is too vague. (SLSA made the same comment. *See* below.)

Response: The Department agrees with NCHER and SLSA's specific comment, and revised the final rule to contain the language requested by SLSA (now at rule 2051, subd. (b)(6)): "At a minimum, the aggregate student loan servicing report shall contain the following information, with respect to each student loan serviced: "Interest rate(s) and maturity date, or number of monthly payments required to repay the loan, for each loan."

Comment No. 4: NCHER (SLSA made the same comment; *see* below) objects to the requirement of proposed rule 2053, subd. (b), that servicers "maintain monthly reconciliations of trust accounts."

Response: The Department has learned that servicers do not maintain trust accounts, so the proposed rule assumes a fact which does not exist. The Department, therefore,

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[68] Fin. Code, § 28114, subd. (a).
[69] Fin. Code, § 28116, subd. (a).

agrees with NCHER and SLSA's comments, and has deleted this proposed rule from the final regulation.

5. Commenter: Letter dated November 6, 2017 from Scratch, a San Francisco startup company servicing private loans.

Comment No. 1: Scratch asks that only servicers of federal loans be required to post information about repayment and loan forgiveness options available for federal loans only.

Response: The Department agrees with this comment. The Student Loan Servicing Act requires servicers to provide borrowers information about alternative repayment and loan forgiveness options.[70] These benefits are only available as a matter of course for federal loans. It would be confusing, misleading, and cause unnecessary disappointment for servicers of private loans to provide information to borrowers about these federal loan benefits. Borrowers could expect that these benefits are available to them, and be very disappointed to learn they are not. This could also cast the servicer in a bad light. The Department has revised Rule 2050(b) to specify that servicers of federal loans must provide this information. The Department has amended Rule 2050(c) to specify that servicers of private loans need only provide repayment information applicable to the specific, private loan and borrower being serviced.

Comment No. 2: Scratch asks that servicers be required to send annual notices only about repayment options available for the specific type loans carried by borrower.

Response: The Department agrees with Scratch for the reasons stated in the Department's Response to Scratch's Comment 1. Servicers should only send notices about repayment options available to the particular loan type and borrower receiving the notice. Otherwise, the notice is meaningless, and provides unnecessary confusion. The Department has revised the rules to specify that servicers of private loans must post information and send annual notice containing information applicable to the private loan type and private loan borrower.[71]

Comment No. 3: Scratch asks that servicers be allowed to include required annual notices about repayment options with other annual communications, such as a borrower's annual statement.

Response: The Department agrees with Scratch. The Department interprets Rule 2049, as currently written, as permitting servicers to send this annual notice along with other annual communications. The Department does not interpret Rule 2049 as prohibiting such practice. It is more efficient for borrowers to receive all annual notices in one communication, rather than several. Borrowers are likely more apt to read one notice, than a number of routine notices coming in succession from the same servicer. Allowing

[70] Fin. Code, § 28130, subd. (f).

this will also save servicers money. There is no need to impose unnecessary expense on servicers for which there is no benefit.

Comment No. 4: Scratch suggests the Department add a rule permitting servicers to "use reasonable methods to determine borrower intent when making an overpayment...."

Response: The Department disagrees. The Student Loan Servicing Act clearly requires licensees to ask borrowers how to apply overpayments, and to follow that direction until changed by borrower.[72] Permitting servicer subjectivity is contrary to the statutory mandate.

6. Commenter: Letter dated November 6, 2017 from the Student Loan Servicing Alliance (SLSA), another non-profit, membership organization of student loan servicers. SLSA's approximately 20 members service about 95 percent of student loans in the United States. SLSA represents that it "primarily focuses on the operational and technical issues that impact customer service and program administration."

Policy Comments: Before commenting on the individual proposed rules, SLSA discusses "three important overarching issues:" federal preemption; Assembly Bill 38, currently pending in the California Legislature, amending the Student Loan Servicing Act, which, if enacted, would become effective January 1, 2019;[73] and Income Driven Repayment Plans, available for federal student loans.

Policy Comment No. 1: SLSA cites a provision of the Higher Education Act[74] which provides that federal loans are not subject to state disclosure requirements.[75] SLSA implies that the provisions of the Student Loan Servicing Act requiring servicers to provide information about repayment and loan forgiveness options equate to disclosures.

SLSA cites *Chae v. SLM Corp.,* 593 F.3d 936, 950 (9th Cir. 2010) for the proposition that state law regulating servicers of federal student loans is federally preempted, on both express and conflict preemption grounds.

Response: The Department is not required to respond to these general comments. The Department notes, however, that it disagrees with this Policy Comment, for the reasons stated in its Response to Policy Comment No. 3 submitted by NCHER.

Policy Comment No. 2: SLSA claims that several provisions of the proposed rules implement AB 38, the pending bill which amends the Student Loan Servicing Act. SLSA argues that this is *ultra vires*, as AB 38 has not yet been enacted into law.

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[72] Fin. Code, § 28130, subd. (h).
[73] A.B. 38 (Stone), <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB38,> as of August 3, 2018.
[74] 20 U.S.C. § 1070 *et seq.*
[75] 20 U.S.C. § 1098g

Response: The Department has underlying statutory authority for all proposed regulations, as indicated in the specific citations to the related provision of the Student Loan Servicing Act, which follows each rule. The Department further notes that AB 38 has been enacted into law, effective January 1, 2019, mooting this portion of SLSA's comments.

Policy Comment No. 3: SLSA asserts that income driven repayment plans are not the panacea that some claim.

Response: While an income-driven repayment plan may not be the best choice for all student borrowers, it is for many borrowers. Being enrolled in an income-driven repayment plan keeps the borrower in a "current," rather than delinquent, or default status, critical for credit and peace of mind. The California Legislature made it clear that servicers should provide borrowers with information about, and "meaningful access to, federal affordable repayment and loan forgiveness benefits."[76]

Comments about Specific Rules:

Comment No.1: "Qualified Written Requests." Qualified written requests (QWRs) must be acknowledged within five days and responded to within 30 days. SLSA asserts that many QWRs are resolved telephonically within five days. SLSA requests that the rule be changed to allow servicers to forego the acknowledgment if the action requested is taken within five days. SLSA also asks that servicers may stop sending five-day acknowledgment notices after three acknowledgment notices have been sent, in cases where the QWR is a repeat QWR, with no new information provided.

Response: The Department agrees with SLSA and has revised Rule 2048 to accommodate these comments. The Department agrees that it would be confusing for borrowers to receive an acknowledgment about a QWR that has been resolved. The Department agrees that it is reasonable to allow servicers to stop sending five-day acknowledgment notices after the servicer has sent three such notices about a QWR that is a duplicate of a previous QWR and contains no new information. Requiring servicers to send out more than three notices is an unnecessary waste of servicers' time and resources, and potentially encourages harassing behavior by unscrupulous borrowers or entities purportedly working on behalf of the borrower. The Department also revised Rule 2048 to accommodate a subsequent SLSA comment that servicers be allowed to designate a specific email address and physical address to which QWRs should be sent. This is organized and efficient and will allow servicers not to miss any QWRs and to timely respond to QWRs.

Comment No. 2: Rules 2033-2035: SLSA argues that the rule designating the National Multistate Licensing System and Registry (NMLS) to receive and process all applications and licensee filings, amendments, fees and assessments, is not statutorily authorized.

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[76] A.B. 2251, §1, subd. (f).

Response: The Department disagrees with this comment, for the reasons stated in its Response to Comment No. 1 submitted by Senator Mendoza.

Comment No. 3: Rule 2035, "License Application." SLSA argues several times in its comment letter that the Department should adopt "transition rules" for the initial licensing process, as this is a new licensing scheme.

Response: The Department disagrees. There is no statutory provision for "transition rules," nor are such rules necessary. The Department made all application materials available on NMLS on January 2, 2018, six months before servicers were required to be licensed. The Department posted alerts of required licensure on its website. Six months gave servicers plenty of time to comply with the licensure mandate.

Comment No. 4: Rules 2035(a)(7) and Rule 2041, regarding required upload of policies and procedures demonstrating compliance with borrower protection requirements of the Student Loan Servicing Act.

SLSA argues that servicers should not be required to upload these policies and procedures, as they are voluminous and constantly changing.

Response: The Department disagrees in part and agrees in part. The Department must know the servicer's policies and procedures at time of application, as a starting point to determine if the servicer appears to be complying with borrower-protection mandates. The Department has revised the rule to clarify that servicers need not upload changes to the policies and procedures. The Department will obtain that information during its regularly scheduled regulatory examinations.

Comment No. 5: SLSA objects to an out of state servicer being required to file, as part of its application for licensure, a Certificate of Qualification to Do Business in California.

Response: The Department disagrees with SLSA's understanding of the California Corporations Code. The Department believes that out of state entities conducting business in California must obtain a Certificate of Qualification to Do Business in California.[77]

Comment No. 6: Rule 2035(d), "Filing an Amendment [to an application]" requires *applicants* for a license to file amendments to the application within five days of the event causing the amendment. Rule 2040(a) requires *licensees* to file amendments within ten business days of the event causing the amendment. SLSA argues that Rule 2035(d) should be changed to also provide that amendments to applications be filed within ten business days of the event causing the amendment.

Response: The Department disagrees with SLSA's comment. There is a difference between changes which occur while an application is pending and changes which occur

[77] Corp. Code, § 2105.

after a servicer is licensed. While an application is pending, the Department needs to know immediately of changes, to make a decision with current information. Otherwise, the Department might approve an application it might not have approved, had it known about the change in circumstances.

Comment No. 7: Rule 2036, "Appointment of Commissioner of Business Oversight as Agent for Service of Process." SLSA asserts that the Department has no statutory authority to require applicants and licensees to appoint the Commissioner as agent for service of process.

Response: The Department disagrees for the reasons stated in its Response to Comment No. 2 submitted by Senator Mendoza..

Comment No. 8: Rule 2037, "Fingerprints and Background Checks." SLSA objects to background checks and fingerprinting for directors and shareholders. SLSA argues that many student loan servicers are state-based servicers whose directors are state officials, or publicly held corporations whose directors are elected by institutional shareholders. SLSA argues that background checks and fingerprinting are unnecessary, in the context of student loan servicers.

Response: The Department disagrees, as noted in its Response to the similar comment (Comment No. 2) submitted by NCHER. The Department has no legal authority to change in regulation what exists in statute. The Student Loan Servicing Act mandates fingerprinting of every applicant for a license[78] and the investigation of an applicant's directors.[79] No exception is made for directors of state-based servicers created by statute, *or* directors of publicly held corporations.

Comment No. 9: Section 2046, "Surrender of License as Student Loan Servicer." SLSA objects to the rule requiring servicers to obtain the Commissioner's approval to surrender a license prior to transferring loans to a new servicer. SLSA states this is not possible, as decommissioned federal student loan servicers must transfer all loans and records within time frames prescribed by the U.S. Department of Education.

Response: The Department agrees with the comment. Federal loan servicers operate under voluminous, very detailed service contracts with the U.S. Department of Education (ED). The contract includes termination provisions. These servicers must adhere to ED's contractual requirements, to be in compliance, paid for their work, and retain any ongoing work with ED. The Department has revised Rule 2056 to specify that a servicer may satisfy the surrender rule by providing the Commissioner the termination requirements of the lender(s) for which servicing has ceased, and evidence of satisfaction of such requirements.

Comment No. 10: Rule 2049, "Borrower Information and Statements of Account, Payment Processing, Co-signer Payments." SLSA objects to several provisions of this

[78] Fin. Code, §28114, subd. (a).
[79] Fin. Code, § 28116, subd. (a).

rule, including: that borrower's online account be available "at all times;" that payments made online be reflected in a borrower's account within three business days of payments; and the mandate to apply payments only to co-signed loans.

SLSA asserts that borrower accounts will not be accessible when down for routine maintenance.

SLSA claims that there are instances when the lender determines when a payment may be posted and reflected in a borrower's account. SLSA argues that, in most circumstances, the U.S. Department of Education requires the servicer to post payments only after the U.S. Treasury has received the funds.

SLSA asserts that loan payments are made by many different people (borrower, parent, government agency, such as the Department of Defense, as a veteran's benefit, and a co-signer), and that servicers have no way to know that a payment is made by a co-signer unless specifically advised the payment was made by a co-signer.

Response: The Department agrees that borrower accounts will not be accessible when closed for routine maintenance. This is standard. Websites routinely are unavailable for routine maintenance. Notices to that effect are routinely posted on websites, specifying the exact time that the website will be unavailable. The Department has revised Rule 2047(a) to clarify that borrower account information shall be available to borrowers at all times except for occasional, short periods of time when the system is undergoing routine maintenance or blocked for security reasons.

The Department also agrees that the rule regarding co-signer payments does not take into account how and by whom payments can be made. The Department has revised the final rule (now rule 2047(e)) to reflect the facts, as detailed in its Response to NCHER's Comment No.2.

The Department disagrees with SLSA regarding updating borrower online accounts within three business days of payments to reflect payments made. Borrower payments go directly to the U.S. Treasury. They are not transmitted through the servicer. The rule simply requires servicers to do what accords with the facts, current industry standards and practices, and applicable rules imposed by the National Automated Clearing House Association (NACHA), the organization that establishes rules for transferring payments. Electronic payments of all kinds are commonly reflected in borrowers' accounts within three business days, if not sooner.

Comment No. 11: Rule 2050, "Customer Service, Alternative Repayment Plans, Loan Forgiveness Benefits." SLSA objects to the rule requiring that all information about repayment and loan forgiveness options be displayed on the servicer's homepage, as unwieldy and not borrower friendly. SLSA states that servicers currently provide this information through links to pages within the website.

SLSA objects to providing information about federal loan repayment and loan forgiveness options to borrowers who only have private loans.

SLSA objects to requiring annual notices contain information about federal loan repayment and loan forgiveness options, *and* links to the information, on the grounds that the statute only requires one method, not both.

SLSA objects to sending information by email, if borrower has not indicated a preference, as borrowers must opt in to email under federal law and U.S. Department of Education contractual requirements.

Response: The Department agrees with these comments and revised Rule 2049 to accommodate all these comments.

Servicers' websites will be much more borrower friendly if not too cluttered, and providing links to information on other webpages.

The Department reiterates its Response to Scratch Comment 2. The Department agrees that servicers should only send notices about repayment options available to the particular loan type and borrower receiving the notice. Servicers of private loans should not send information about benefits only available to federal loan borrowers. Otherwise, the notice is meaningless, and provides unnecessary confusion.

SLSA is correct. The Student Loan Servicing Act requires servicers to provide information or links to the information, not both.[80]

The Department agrees that borrowers must opt in to receive paperless communications. The Department revised Rule 2049(d) to specify that servicers should only send the required annual notice to a borrower's email of record, if the notice sent via postal mail is returned as "undeliverable."

Comment No. 12: Rule 2053, "Individual Student Loan Servicing Records." SLSA objects to the mandate that all servicer records be maintained at one licensed location, as factually impossible. Many servicers have different locations for specific functions. SLSA objects to maintaining monthly trust reconciliations, as factually inapplicable. SLSA objects to requiring borrower records which a servicer may not have, such as a loan application.

Response: The Department agrees with these comments and has revised Rule 2052 to accommodate these comments. Many student loan servicers have multiple locations, each of which performs a different function and contains only records pertaining to that portion of the process. The Department has learned that student loan servicers do not maintain trust accounts, and that servicers never receive certain loan related documents which are generated before servicing begins, such as the loan application. The Department revised Rule2052 to provide that licensees must designate the location(s)

[80] Fin. Code, § 28130, subd. (f).

at which documents are maintained, and that servicers are only responsible for maintaining documents the servicer has received, or has access to.

Comment No. 13: Rule 2054, "Records of Servicing Sold, Assigned and Transferred." SLSA asserts that student loan servicing rights are not like mortgage servicing rights, which are valuable and can be sold separately from mortgage loans. Rather, student loan servicing is not sold or assigned, but, rather, transferred at the direction of the federal or private lender. SLSA asks that references to "sale or assignment of servicing" be deleted and only "transfer of servicing" be used.

Response: The Department agrees that student loan servicing is unlike mortgage servicing. Student loan servicers do not sell servicing rights. Rather, the lender for which they work decides whether to keep the servicing with the present servicer or transfer servicing to another entity. The Department has revised Rule 2053 to delete the words "sell" or "assign," using only "transfer."

Comment No. 14: Rule 2055, "Records Retention Requirements." SLSA asserts that servicers may not be able to comply with the mandate to retain records for three years after transfer. The U.S. Department of Education requires that servicing records be purged fairly quickly after transfer, generally within months. Some private lenders have similar requirements.

Response: The Department agrees with the comment and revised Rule 2054 to specify that the three-year retention rule does not apply if the servicer's contract with ED or the private lender requires records be purged or deleted sooner than three years. It is understandable that lenders may insist on earlier purging due to privacy concerns about borrower data, and concerns that former servicers may mistakenly continue to service loans.

Comment No.15: Rule 2046, "Annual Assessments." SLSA takes issue with the statutorily imposed pro rata assessment. SLSA states that federal loan servicers earn a little more than $22 annually per borrower account. SLSA refers to the California Residential Mortgage and Lending Act[81], which contains a floor ($1,000) and a ceiling ($5,000) for assessments. SLSA argues that a similar structure should be adopted for student loan servicers. Otherwise, the cost of paying a pro rata assessment will be prohibitive, and leave less revenue for customer service.

Response: The Department disagrees with this comment, for the reasons stated in the Department's Response to NCHER's Policy Comment No. 2.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAYS\ COMMENT PERIOD OF MAY 31, 2018 THROUGH JUNE 18, 2018 [Government Code Section 11346.9, Subdivision (a)(3)]

[81] Fin. Code, § 50000 *et seq.*

The Department received two comments during the 15-day public comment period, from the two student loan servicing trade associations-NCHER and SLSA. Each submitted comment letters dated June 18, 2018.

1. Commenter: Letter dated June 18, 2018 from NCHER.

Policy Comment: NCHER did not comment on any individual rule. Rather, NCHER repeated its previous Policy Comment that the Department exempt guaranty agencies and smaller state-based servicers from the Student Loan Servicing Act, in the final regulation. NCHER also notes, "as a general matter," its concern with a myriad of state laws, and the regulatory burden that imposes.

Response: The Department reiterates its Response to NCHER's Policy Comment No. 1, included in NCHER's November 6, 2017 Comment Letter.

2. Commenter: Letter dated June 18, 2018 from SLSA.

Comment: SLSA reiterates its assertion that state regulation of student loan servicers is federally preempted. SLSA cites actions taken by the U.S. Department of Justice, the U.S. Department of Education, and federal lawsuits filed by SLSA, and the Pennsylvania Higher Education Assistance Agency (PHEAA, aka Fed Loan Servicing), one of the largest federal loan servicers, for additional support for its claim that state regulation of federal student loan servicers is federally preempted.

Response: The Department is not required to respond to this repeat, policy comment. Nonetheless, the Department reiterates its disagreement, for the reasons stated in its Response to NCHER'S Policy Comment No. 3, included in NCHER's November 6, 2017 Comment Letter.

SLSA made the following specific comments on some of the modified proposed rules, many of which repeat previous comments included in SLSA's November 6, 2017 Comment Letter:

Comment No. 1: Rule 2035(d), "Filing an Amendment [to an application]" requires *applicants* for a license to file amendments to the application within five days of the event causing the amendment. Rule 2040(a) requires *licensees* to file amendments within ten business days of the event causing the amendment. SLSA argues that Rule 2035(d) should be changed to also provide that amendments to applications be filed within ten business days of the event causing the amendment.

Response: The Department reiterates its disagreement with SLSA's comment, for the reasons stated in its Response to Comment No. 6 in SLSA's November 6, 2017 Comment Letter.

Comment No. 2: Rule 2036, "Fingerprints and Background Checks." SLSA objects to background checks and fingerprinting for directors and shareholders. SLSA argues that

many student loan servicers are state-based servicers whose directors are state officials, or publicly held corporations whose directors are elected by institutional shareholders. SLSA argues that background checks and fingerprinting are unnecessary, in the context of student loan servicers.

Response: The Department reiterates its disagreement with this comment, for the reasons stated in the Department's Response to Comment No. 8 in SLSA's November 6, 2017 Comment Letter.

Comment No. 3: Rule 2046, "Annual Assessments." SLSA takes issue with the statutorily-imposed pro rata assessment. SLSA states that federal loan servicers earn a little more than $22 annually per borrower account. SLSA refers to the California Residential Mortgage and Lending Act[82], which contains a floor ($1,000) and a ceiling ($5,000) for assessments. SLSA argues that a similar structure should be adopted for student loan servicers. Otherwise, the cost of paying a pro rata assessment will be prohibitive, and leave less revenue for customer service.

Response: The Department reiterates its disagreement with this comment, for the reasons stated in the Department's Response to Comment No. 15 in SLSA's November 6, 2017 Comment Letter.

Comment No. 4: Rule 2047, "Borrower Information and Statements of Account, Payment Processing, Co-signer Payments." SLSA objects to the requirement in Rule 2047(d) that payments made online be reflected in a borrower's account within three business days of payments. SLSA claims that there are instances when the lender determines when a payment may be posted and reflected in a borrower's account. SLSA argues that, in most circumstances, the U.S. Department of Education requires the servicer to post payments only after the U.S. Treasury has received the funds.

Response: The Department reiterates its disagreement with this comment, for the reasons stated in the Department's Response to Comment No. 10 in SLSA's November 6, 2017 Comment Letter.

Comment No. 5: Rule 2048, "Qualified Written Requests." Qualified written requests (QWRs) must be acknowledged within five days and responded to within 30 days. SLSA asserts that many QWRs are resolved telephonically within five days. SLSA requests that the rule be changed to allow services to forego the five-day acknowledgment if the action requested is taken within such five days. SLSA also asks that servicers be allowed to designate a specific email address and postal address to which QWRs must be sent, to be addressed.

Response: The Department agrees with SLSA, as stated in its Response to SLSA Comment 1, in SLSA's November 6, 2017 comment letter. The Department reiterates its Response here.

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[82] Fin. Code, § 50000 *et seq.*

Comment No. 6: Rule 2049, "Customer Service, Alternative Repayment Plans, Loan Forgiveness Benefits." SLSA objects to links to certain Federal Student Aid (on U.S. Department of Education website) webpages. SLSA argues that these links are general, and not specific to the type of loan the borrower has (FFELP, Perkins, Direct), which may be confusing to borrower. SLSA also states that the link for loan forgiveness options is incorrect, and provides the correct link.

Response: The Department agrees that the rule contains the incorrect link for loan forgiveness options. The Department revised the rule to include the correct link. The Department disagrees with the rest of SLSA's comment. One link is to the home page for all repayment options, for all types of loans. The Department believes it best to provide a link which contains all information, rather than to limit or be too specific, and risk not providing all information. The Department believes borrowers can navigate pages to find helpful information, but servicers should provide them the best starting point. The rule also contains a link to an excellent tool for borrowers to determine, within five simple steps/clicks, the best repayment option. https://studentloans.gov/myDirectLoan/repayOptions.action. This tool applies to federal loans of all types.

Comment No. 7: Rule 2049(d) and Rule 2053(b), requiring servicers to send annual notices to "all" email addresses of borrower. SLSA objects on grounds that all email addresses may include some which are no longer valid. SLSA asks that notices be sent only to "the" email address of record, that is, a working email address.

Response: The Department agrees that it does not make sense to send emails to email addresses a servicer knows to be invalid, no longer working. This is inefficient and unreasonable. The Department has revised Rule 2049(d) and Rule 2053(b) to clarify that servicers must only send notices to the email servicer has on record for the borrower.

Comment No. 8: Rule 2051(b)(6). SLSA objects to the requirement that servicers include a "maturity date" in a borrower's loan history, as maturity dates change, depending on the repayment plan. SLSA suggests that servicers instead include the "number of monthly payments required to repay the loan."

Response: The Department agrees with this comment. Loan maturity dates will change every time a borrower begins an alternative repayment plan. The Department has, therefore, revised Rule 2051(b)(6), to require borrower servicing reports contain, for each loan serviced, "the maturity date, or number of monthly payments required to repay the loan."

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF JULY 9, 2018 THROUGH JULY 25, 2018
[Government Code Section 11346.9, Subdivision (a)(3)]

The Department received two comments from SLSA during the 15-day public comment period. SLSA submitted a comment letter dated July 24, 2018, and a Supplemental Comment letter dated July 25, 2018. Both letters primarily repeat comments made in previous Comment Letters, as noted.

1. Commenter: Letter dated July 24, 2018 from SLSA.

Comment: SLSA repeats its assertion that state regulation of student loan servicers is federally preempted. SLSA refers again to federal agency actions and federal lawsuits litigating this issue, as support for its claim that state regulation of federal student loan servicers is federally preempted.

Response: While not required to respond, the Department reiterates its disagreement with this comment, for the reasons stated in the Department's Response to Policy Comment No. 1 in SLSA's November 6, 2017 Comment Letter.

SLSA comments on certain specific modified rules, as follows:

Comment No. 1: Rule 2035(d), "Filing an Amendment [to an application]" requires *applicants* for a license to file amendments to the application within five days of the event causing the amendment. Rule 2040(a) requires *licensees* to file amendments within ten business days of the event causing the amendment. SLSA argues that Rule 2035(d) should be changed to also provide that amendments to applications be filed within ten business days of the event causing the amendment.

Response: The Department reiterates its disagreement with this repeat SLSA comment, for the reasons stated in the Department's Response to Comment No. 6 in SLSA's November 6, 2017 Comment Letter.

Comment No. 2: Rule 2036, "Fingerprints and Background Checks." SLSA objects to background checks and fingerprinting for directors and shareholders. SLSA argues that many student loan servicers are state-based servicers whose directors are state officials, or publicly held corporations whose directors are elected by institutional shareholders. SLSA argues that background checks and fingerprinting are unnecessary, in the context of student loan servicers.

Response: The Department reiterates its disagreement, for the reasons stated in its Response to Comment No. 8 in SLSA's November 6, 2017 Comment Letter.

Comment No. 3: Rule 2046, "Annual Assessments." SLSA takes issue with the statutorily imposed pro rata assessment. SLSA states that federal loan servicers earn a little more than $22 annually per borrower account. SLSA refers to the California Residential Mortgage and Lending Act[83], which contains a floor ($1,000) and a ceiling ($5,000) for assessments. SLSA argues that a similar structure should be adopted for

[83] Fin. Code, § 50000 *et seq.*

student loan servicers. Otherwise, the cost of paying a pro rata assessment will be prohibitive, and leave less revenue for customer service.

Response: The Department reiterates its disagreement, for the reasons stated in its Response to Comment No. 15 in SLSA's November 6, 2017 Comment Letter.

Comment No. 4: Rule 2047, "Borrower Information and Statements of Account, Payment Processing, Co-signer Payments." SLSA objects to the requirement in rule 2047(d) that payments made on line be reflected in a borrower's account within three business days of payments. SLSA claims that there are instances when the lender determines when a payment may be posted and reflected in a borrower's account. SLSA argues that, in most circumstances, the U.S. Department of Education requires the servicer to post payments only after the U.S. Treasury has received the funds.

Response: The Department reiterates its disagreement, for the reasons stated in its Response to Comment No. 10 in SLSA's November 6, 2017 Comment Letter.

Comment No. 5: Rule 2049, "Customer Service, Alternative Repayment Plans, Loan Forgiveness Benefits." SLSA objects to links to certain Federal Student Aid (on U.S. Department of Education website) webpages. SLSA argues that these links are general, and not specific to the type of loan the borrower has (FFELP, Perkins, Direct), which may be confusing to borrower.

Response: The Department disagrees. One link is to the home page for all repayment options, for all types of loans. The Department believes it best to provide a link which contains all information, than to limit or be too specific, and risk not providing all information. The Department trusts borrowers to link to different pages helpful to them, but believes it critical to provide borrowers the best starting point. The rule also contains a link to an excellent tool for borrowers to determine, within five simple steps/clicks, the best repayment option. https://studentloans.gov/myDirectLoan/repayOptions.action. This tool applies to federal loans of all types.

Comment No. 6: Rule 2049(c)(3), "Private Loan Annual Notification." SLSA objects to providing borrowers information about private loan repayment options in a one page plain language notice.

Response: The Department disagrees. SLSA previously commented that, unlike federal loan repayment options, private loan repayment options are not standardized. They vary based on borrower, loan type, date of origination, etc. Providing this information in a one page plain language notice will be most helpful to borrower and servicer alike.

2. Commenter: "Supplemental comment" letter dated July 25, 2018 from SLSA.

Comment: SLSA objects to the mandatory fingerprinting and background checks of the Board of Directors of state-based student loan servicers. SLSA alleges that these organizations are government entities with Boards of Directors statutorily created and

comprised of legislators and gubernatorial appointments, vetted through the electoral process or the gubernatorial appointment process. SLSA claims fingerprinting and background checks of these directors is unnecessary, especially because day to day operations are managed by principal officers and control persons. Principal officers and control persons are subject to fingerprinting and background checks, to which SLSA does not appear to object.

Response: The Department reiterates its disagreement, for the reasons stated in its Response to Comment No. 8 in its November 6, 2017 Comment Letter.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF DECEMBER 12, 2018 THROUGH DECEMBER 27, 2018 [Government Code Section 11346.9, Subdivision (a)(3)]

The Department received one comment letter, from SLSA, dated December 27, 2018, during the 15-day public comment period. However, SLSA did not address any of the changes proposed in the third modifications. The Notice of Third Modifications, in accordance with the Administrative Procedure Act,[84] specifies that comments addressing rules or sections of rules that are not changed in the third modified text will not be considered. The Department, therefore, provides no response to SLSA's letter.

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES [Government Code Section 11346.9, Subdivision (a)(5)]

Student loan servicers licensed under the Student Loan Servicing Act are not small businesses under Government Code section 11342.610. Therefore, no alternatives would lessen the impact of the proposed regulations on small businesses.

ALTERNATIVES DETERMINATION [Government Code Section 11346.9, Subdivision (a)(4)]

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The regulations adopted by the Department are new. They are the first and only regulations of their kind, implementing the recently enacted and newly operative Student Loan Servicing Act. They are the only regulatory provisions that ensure the Department has oversight of student loan servicers servicing in this state, for the protection of more than 4.2 million California student loan borrowers. Except as set forth and discussed in the summary and responses to comments, no other alternative has

[84] Gov. Code, § 11346.8, subd. (c).

been proposed or otherwise brought to the Department's attention that is equally effective.

UPDATED INFORMATIVE DIGEST [Government Code Section 11346.9, Subdivision (b)]

The Department has updated the original informative digest, which was published in the Notice of Rulemaking Action in the September 8, 2017 California Regulatory Notice Register (Register 2017, No. 36-Z, No. Z-2017-0824-01), as follows:

- The Department revised the text twice to meet the rulemaking's Policy Statement and Anticipated Benefits, on pages 7-9 of the original informative digest, to make the final rules align with servicer operational realities, and balance regulatory burden on servicers, with necessary protections to student loan borrowers.

- The Department revised the rules a third time to resolve concerns noted by the Office of Administrative Law (OAL) in OAL's Decision of Disapproval of Regulatory Action, dated October 26, 2018.

- The third revised text includes the following miscellaneous, non-substantive changes:

    - Rule 2038: deletes subsection (d) as vague and unnecessary, to provide specificity and clarity to the regulated public.
    - Deletes incorrect references to codes other than the Financial Code, with which the Department is complying but not implementing through this rulemaking, including incorrect references to Rules 2033, 2035, 2039, 2043, and 2044.
    - Adds the authority and reference for Rule 2048.
    - Rule 2052(b): deletes "and such records as the Commissioner may designate" at the end of this rule, as vague and unnecessary, to provide clarity and specificity to the regulated public.
    - Rule 2053(a): deletes subsection (a)(2), as vague and unnecessary, to provide clarity and specificity to the regulated public.
    - Renumbers sections as necessitated by proposed changes.

- The third revised text includes the following substantive changes:

    - Rule 2032(a)(7), (8), and (9): specifically identifies, incorporates by reference and attaches as Exhibits 1, 2 and 3 to the rulemaking text NMLS Forms MU-1, MU-2 and MU-3 defined and referenced in the rulemaking.
    - Rule 2032(a)(14): deletes the definition of "student loan servicer," which had been included to clarify that debt collectors are not included within the definition. Section 28104 of the Student Loan Servicing Act was amended to

make clear that debt collectors are not student loan servicers.[85] Therefore, this rule is unnecessary.

- Rule 2036: requires applicants for licensure and licensees to appoint the Commissioner as agent to accept service of process, complete the appointment of the Commissioner for the service of process form, and upload the completed, signed, notarized form to the applicant or licensee's Account page on the NMLS, to implement this new mandate included in legislation amending the Student Loan Servicing Act.[86]
- Rule 2039: revises Rule 2039 to specify the fees for applying for a license for a licensee's branch office(s), to provide specificity and certainty.
- Rule 2046(b): specifically identifies and incorporates by reference and attaches as Exhibit 4 to the rulemaking text the NMLS Electronic Surety Bond Form referenced in the rulemaking.
- Rule 2047: clarifies how annual assessments will be calculated, by defining a licensee's "servicing activities" in California.

The Department updates the Summary of Existing Laws and Regulations, by noting that AB 38, which amends ("cleans up") the Student Loan Servicing Act, was signed into law and became effective on January 1, 2019.[87] This new law moots many comments received in this rulemaking. Most notably, AB 38 provides that the Student Loan Servicing Act does not apply to guaranty agencies and debt collectors, as specified, and mandates the appointment of the Commissioner as agent for service of process. These proposed rules are being enacted in accordance with the Student Loan Servicing Act, as amended. [88]

FORMS INCORPORATED BY REFERENCE (Cal. Code Regs., tit. 1, § 20)

NMLS Forms MU-1, MU-2, MU-3, and the E-Surety Bond are incorporated by reference. These forms are readily available to the public from the NMLS website. Live links to the forms are included within the definitions or descriptions of the forms in the rulemaking text. The Department has directly and readily made these forms available to the public, by including them in the Department's rulemaking file. It would be unduly cumbersome, burdensome and impractical to include the forms within the rules. These forms total 20 pages, with many sections and different types of formatting. It is unnecessary to include these forms in the rulemaking text, as the forms are readily available to, and accessible by, the public.

[85] Fin. Code, § 28104, subd. (n), as amended by Stats. 2018, ch. 379, § 3.
[86] Fin. Code, § 28117, added by Stats. 2018, ch. 379, § 9.
[87] A.B. 38 (Stats. 2018, ch. 379).
[88] Fin. Code, § 28100 *et seq.*