

STATE OF CALIFORNIA
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
TEXT OF PROPOSED CHANGES TO REGULATIONS
UNDER THE STUDENT LOAN SERVICING ACT

CALIFORNIA CODE OF REGULATIONS,
TITLE 10, CHAPTER 3, SUBCHAPTER 15
(Deletions shown by strike through; additions shown by underline.)

Subchapter 15. Student Loan Servicing Act

Article 1. Definitions

1. Section 2032 is amended to read:

§ 2032. Definitions.

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

(1) "Act" or "SLSA" means the Student Loan Servicing Act, Financial Code, Division 12.5, section 28100, et seq.

~~(2) "Code" means the Financial Code.~~

(2) "Annual percentage rate" or "APR" means the percentage rate calculated according to the Federal Reserve Board's methodology as set forth in Regulation Z, 12 C.F.R. Part 1026.

(3) "Borrower," as defined in Financial Code section 28104, subdivision (b) and Civil Code section 1788.100, subdivision (a), includes a person who has received or agreed to pay any student loan, including an income share agreement or installment contract.

(4) "Education financing products" means all private student loans which are not traditional student loans.

(35) “Federal Direct Loan(s)” means loan(s) made under the William D. Ford Federal Direct Loan Program, authorized under Title IV of the Higher Education Act, as amended, 20 U.S.C. § 1070, et seq.

(46) “Federal Family Education Loan(s)” means loan(s) made under the Federal Family Education Loan (“FFEL”) Program, authorized under Title IV of the Higher Education Act, as amended, 20 U.S.C. § 1070, et seq.

(57) “Federal student loan(s)” means ~~Federal Direct Loans; FFEL Loans; and Perkins Loans~~ a loan made, insured or guaranteed under Title IV of the Higher Education Act, as amended, 20 U.S.C. § 1070, et seq.

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

(79) “Form MU1” means the uniform licensing form developed by the Nationwide Multistate Licensing System & Registry for a student loan servicer, entitled “NMLS Company Form,” Version 11.0, dated 09/12/2015, incorporated herein by reference.

(810) “Form MU2” means the uniform licensing form developed by the Nationwide Multistate Licensing System & Registry for a person that directly or indirectly exercises control over a student loan servicer, or a branch thereof, including qualifying individuals and branch managers specified in Form MU1, entitled “NMLS Individual Form,” Version 9, dated 9/12/16, incorporated herein by reference.

(911) “Form MU3” means the uniform licensing form developed by the Nationwide Multistate Licensing System & Registry for the branch office of a student loan servicer, entitled “NMLS Branch Office Form,” Version 10, dated 3/31/14, incorporated herein by reference.

(12) "Income" means a borrower's compensation from all sources, including but not limited to salary, wages, bonuses, commissions, vacation pay, gratuities, and self-employed earnings, but excludes passive income such as interest, dividends or rental income.

(13) "Income share agreement" or "ISA" means an agreement between a student and a school or an income share provider under which the student agrees to pay a percentage or amount of the student's future income for the payment term, in exchange for the school or income share provider advancing, covering, crediting, deferring, or funding the cost of some or all of the student's postsecondary education and costs of attendance at a postsecondary institution, including but not limited to tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses.

(14) "Income share" means the percentage or amount of a borrower's income payable during the term of the income share agreement.

(15) "Installment contract" means a private student loan from a postsecondary institution to a student in which the student agrees to repay the amount advanced, covered, credited, deferred, or funded in a fixed number of payments of a fixed amount, including an education installment contract and a retail installment contract.

(16) "Maximum payments" means the maximum number of payments a borrower is required to make under an income share agreement, if the borrower's income meets

or exceeds the minimum income threshold.

(17) "Minimum income threshold," "minimum threshold," "payment floor" or "floor" means the amount of income specified in an income share agreement below which a borrower is not required to make payments.

(108) "NMLS" means the Nationwide Multistate Licensing System & Registry.

(19) "Payment cap," "payment ceiling," "ceiling" or "cap" means the maximum amount payable under an income share agreement, which may be expressed as an APR or an amount or a multiple of the amount advanced, covered, credited, deferred, or funded, excluding charges related to default.

(20) "Payment term" means the payment window or maximum period of repayment obligations under an income share agreement or other written agreement evidencing an education financing product.

(4421) "Perkins Loan(s)" means Federal Perkins Loans, authorized under Title IV of the Higher Education Act, as amended, 20 U.S.C., § 1070, et seq.

(4222) "Private Student Loan" means a private student education loan which is not a federal student loan but, rather, a private student loan made by a lender such as a bank or credit union, as defined in the Truth in Lending Act, at 15 U.S.C. 1650(a)(8).

(23) "Qualifying payment" means, with respect to income share agreements, a monthly payment that counts toward the maximum payments or the payment cap.

(24) "Startup" means a company in its first twelve months of operations.

(4325) "Student Aid Office" or "Federal Student Aid Office" means that certain office of the U.S. Department of Education, which is the largest provider of student financial aid nationwide and is responsible for managing the student financial assistance

programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C., § 1070, et seq.

(26) “Student loan servicer,” as defined in Financial Code section 28104, subdivision (m), includes any person engaged in the business of servicing education financing products, such as program managers.

(27) “Student Loans: Borrower Rights law” means Civil Code, Division 3, Part 4, Title 1.6C.10, sections 1788.100, et seq.

(28) “Traditional student loan” means:

(A) federal student loans; or

(B) private student loans which use promissory notes and loan agreements to evidence the loan and provide for the repayment of a principal balance with a fixed or variable interest rate.

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

Note: Authority cited: Section 1788.103, Civil Code; and Section 28106, Financial Code. Reference: Section 1788.100, Civil Code; and Sections 28104 and 28130, Financial Code.

2. Section 2033.5 is amended to read:

§2033.5. License Application for Student Loan Servicer.

The procedures set forth in this section are applicable to a person who is

required to be licensed pursuant to Financial Code Section 28102 of the Code, as a student loan servicer. The application for a license as a student loan servicer shall be filed as follows:

(a) INITIAL APPLICATION: The application for a license as a student loan servicer under subdivision (a) of Financial Code Section 28102 of the Code, and any amendment to such application, shall be filed upon Form MU1, in accordance with the instructions of NMLS, for transmission to the Commissioner. All exhibits, and supporting documents related to the application or amendment shall also be filed with NMLS, in accordance with the instructions of NMLS, for transmission to the Commissioner. Exhibits that cannot be submitted through NMLS, if any, shall be submitted directly to the Commissioner. The notices set forth in Section 2036 are part of every application. An applicant shall provide the following information, exhibits and documentation in the manner provided:

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

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

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

(C) Every applicant and licensee shall comply with the rules governing the filing of a fictitious business name, set forth in Business and Professions Code Sections 17900-17930.

(2) For every additional business location, an applicant shall submit through NMLS a Form MU3, in accordance with Section 2035.5 of these rules.

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

(A) The individuals named in Form MU1, for whom a Form MU2 has been filed, shall provide authorization for, and subsequent delivery of, fingerprints to the California Department of Justice, or NMLS, if and when NMLS can process fingerprints taken in a specific state, to check criminal history in that state. Fingerprinting shall be done in accordance with ~~§~~Section 2034.5 of these rules.

(B) An individual named in Form MU1, for whom a Form MU2 has been filed, who is not residing in the United States, or who has not resided in the United States for at least ten years, is not required to submit fingerprints but must ~~also~~ submit an investigative background report, in accordance with ~~§~~Section 2035 of these rules. ~~This investigative report shall be required in addition to fingerprinting.~~

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

(4) An applicant shall submit through NMLS, as an exhibit to Form MU1, audited financial statements with an unqualified opinion prepared by an independent certified public accountant, in accordance with generally accepted accounting principles, and acceptable to the Commissioner. The audited financial statements shall be prepared as

of the applicant's most recent fiscal year end, or a more recent date, and must document a minimum tangible net worth of \$250,000.

A startup may file a statement of condition in lieu of audited financial statements when applying for a student loan servicer license if audited financial statements are not available. The statement of condition must be attested to by a duly authorized individual who has submitted a Form MU2 or has been delegated to attest to the filing by an individual who has submitted a Form MU2. The attestation shall constitute the applicant's representation that the statement of condition is a true and accurate portrayal of the startup applicant's financial condition. If granted a student loan servicer license, startup licensees must thereafter submit annual audited financial statements pursuant to Financial Code section 28148.

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

(6) An applicant shall submit the surety bond required by Financial Code section 28142, through NMLS, utilizing NMLS' electronic surety bond function and form, in accordance with Section 2039 of these rules.

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

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

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

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

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

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

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

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

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

(10) Every applicant shall provide a registered agent for service of process,

located within the state of California, through NMLS, on Form MU1. Every applicant shall also upload to NMLS an Appointment of the Commissioner as the applicant's agent to receive process, in accordance with the Act and Section 2034 of these rules.

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

(12) The individual attesting to the filing of the Form MU1 must be a duly authorized individual, who has submitted a Form MU2, or has been delegated to attest to the filing by an individual who has submitted a Form MU2. The attestation provided pursuant to this paragraph shall constitute an agreement to comply with the requirements of ~~Section 28130 of the Code~~ the Act, the Student Loans: Borrower Rights law, these rules, all applicable federal laws relating to student loan servicing, and the regulations promulgated thereunder.

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

(c) COMPLETION OF FILING AND ISSUANCE OF LICENSE: An application for licensure as a student loan servicer is not deemed complete until all required fees, all required submissions, and all background and investigative reports are received by the Commissioner. The filing of Form MU1 with NMLS does not constitute automatic approval of a license. The student loan servicer shall not consider the application approved until it is approved by the Commissioner and a license is issued to the applicant. In accordance with Financial Code Section 28122, subdivision (b), the Form MU1 application may be

considered withdrawn, if the Commissioner does not receive information requested in a deficiency notification, within 60 days of the date of notification.

(d) **FILING AN AMENDMENT:** In the event of a change to the information in the application, or exhibits thereto, the student loan servicer shall file an amendment to the Form MU1, MU2, or MU3 through NMLS, in accordance with the procedures in §Section 2036.5 of these rules. Prior to the issuance of a license, any amendment to an application shall be filed within five (5) days of the event necessitating the amendment.

(e) DESIGNATED EMAIL ADDRESS: Upon receiving a license, an applicant shall establish a designated email address by registering for a Department of Financial Protection and Innovation Self-Service Portal Account through the Department of Financial Protection and Innovation’s website. The email account shall be established and monitored in accordance with the requirements in Financial Code section 331.5. By registering the designated email address, the applicant consents to receive information from the Commissioner at that email address.

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28106, 28110, 28112, 28114, 28116, 28118, 28122, 28128, 28130 and 28142, Financial Code.

3. Section 2033.75 is adopted to read:

§2033.75. Non-Licensee Filing With The Department.

Any person who does not require a license under the SLSA but is subject to the Student Loans: Borrower Rights law (“non-licensee”) must file with the Department an address at which the non-licensee receives certified or registered mail, return receipt requested, by submitting this information electronically through a Department of Financial

Protection and Innovation Self-Service Portal Account. A non-licensee who has filed a notice of its designation of a central location for service of process pursuant to Code of Civil Procedure section 684.115 and who has not filed with the Department an address at which the non-licensee receives certified or registered mail, return receipt requested, pursuant to this rule, shall be deemed to receive certified or registered mail, return receipt requested, for the purposes of Civil Code section 1788.103, at its designated central location for service of process. A non-licensee who has not filed a notice of its designation of central location for service of process pursuant to Code of Civil Procedure section 684.115 and who has not filed with the Department an address at which the non-licensee receives certified or registered mail, return receipt requested, pursuant to this rule, shall be deemed to receive certified or registered mail, return receipt requested, at each branch of that non-licensee.

Note: Authority cited: Section 1788.103, Civil Code. Reference: Section 1788.103, Civil Code.

4. Section 2034.5 is amended to read:

§2034.5. Fingerprints and Background Checks.

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

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

(1) Applicant, if an individual;

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

(3) The directors of the applicant;

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

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

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

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

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

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

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

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

California Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, CA 95834

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

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

Note: Authority cited: Section 28106, Financial Code. Reference: Sections 28106, 28110, 28111, 28112, and 28114, Financial Code.

5. Section 2035 is amended to read:

§2035. Information Regarding Individuals Who Are Not Residents of the United States.

(a) In addition to other background information required in the application, applicants must engage a search firm to perform an investigative background report of each individual required to be fingerprinted under the SLSA ~~and Sections 2033.5 and 2034.5 of these rules~~, who does not currently reside or has not resided in the United States for at least ten years. A copy of the investigative report may be submitted to the Commissioner, by uploading a copy of the report to applicant's NMLS account. The search firm must be able to demonstrate that it has sufficient resources and is properly licensed to conduct the background search. The search firm may not be affiliated with or related to the persons who are the subject of the search. The report must be in English. The cost of the report shall be paid by the applicant or individual.

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

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

(2) Civil court and bankruptcy court records concerning the applicant or individual, for the past ten years. The search for such records shall include a search of the court data in the country(ies), state(s), and town(s) where the person resided or worked.

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

(4) Education records.

(5) Employment history during the last ten years.

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

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

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

(1) identifies the scope of the search,

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

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

(d) If the applicant or individual has had a report, containing at least the information listed in subdivision (b) of this section, prepared for another licensing agency within 12 months of the filing of the application, the applicant or individual may request permission from that licensing agency or the search firm to submit a copy of that report to the Commissioner. If the applicant or individual elects to submit a prior report as authorized in this subdivision, the applicant or individual shall also submit a statement of no material change in items in the report.

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

6. Section 2036.5 is amended to read:

§2036.5. Notice of Changes by Student Loan Servicer.

(a) Each licensed student loan servicer shall, upon any change in the information contained in its application for a license (other than changes in financial information or ~~contained therein, and~~ its Policies and Procedures, demonstrating how the applicant will comply with the borrower protection requirements ~~of the Act, specified at Code section 28130, subsections (f) through (h)~~ required under section 2033.5, subdivision (a)(7) of these rules) file an amendment to such application setting forth the changed information. All such amendments shall be filed within ten business days of the occurrence of the event that results in the information becoming inaccurate or incomplete.

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

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

7. Section 2040 is amended to read:

§2040. Borrower Information and Statements of Account, Payment Processing, Co-signer Payments.

(a) The student loan servicer licensee shall maintain on its internet website, free of charge, complete, detailed information and account records for each student loan borrower. This information and accounting shall be accessible to the borrower only, through a secure log-in system. This information shall include a consolidated report, for each student loan borrower, and a loan history, for each loan serviced. This information

and accounting shall be available to borrowers at all times, except for occasional, short periods of time when the servicer's system is not available because the system is undergoing routine maintenance or blocked for security reasons.

(b) The consolidated report required to be maintained must include the information specified in §Section 2042, subdivision (b), or section 2042.65, subdivision (b), and subdivisions (c), (d) or (e), as applicable, of these rules.

(c) The loan history for each loan serviced must include the information specified in §Section 2042.5, subdivision (c), or section 2042.75, subdivision (c), of these rules.

(d) A licensee shall credit any electronic (on line) payment made to a borrower's account on the same business day the payment is electronically paid by the borrower, if paid before the daily cut off time for same day crediting posted on the servicer's website, or the next business day, if after the posted cut off time. If a payment is made with check, the licensee shall credit the payment on the date received by the licensee, regardless of the date of processing. Borrowers' on line accounts shall reflect payments made, within three business days of the date of payment, unless payment is made by check and contains no information identifying to which account or loan the payment should be credited. In the event servicer receives a paper check with no information identifying to which account or loan the payment should be credited, the servicer may take a reasonable amount of time, not to exceed ten business days, to research the issue and determine to which account and loan the payment should be credited. When the servicer determines to which account and loan the payment should be credited, the servicer shall credit the payment as of the date the payment was received by the servicer, and update the borrower's on line account within one business day.

(e) Servicers must provide a specific process, clearly explained on the servicer's website, which student loan co-signers may follow to apply co-signer payments to co-signed loans. Provided co-signers follow the specific process specified by servicers, servicers must follow the elections made by a student loan co-signer regarding the application of co-signer payment(s).

Note: Authority cited: Section 1788.103, Civil Code; and Section 28106, Financial Code. Reference: Section 1788.102, Civil Code; and Section 28130, Financial Code.

8. Section 2040.5 is amended to read:

§2040.5. Qualified Written Requests.

(a) A servicer is only required to send an acknowledgment of receipt of a "Qualified Written Request," within ten business days of receipt, if the action requested by the borrower has not been taken within ten business days of receipt of the Qualified Written Request. Acknowledgments of receipt and responses to Qualified Written Requests must be in writing, sent by the preferred method of communication indicated by the borrower (email, or regular mail through the United States Postal Service). If the borrower has not indicated a preferred method of communication, the servicer shall send the acknowledgment of receipt and responses to Qualified Written Requests by regular mail, through the United States Postal Service, to the borrower's last known mailing address on record and to all email address(es) the servicer has on record for the borrower.

(b) Servicers may designate a specific electronic address to which Qualified Written Requests must be sent. Servicers may also designate a specific physical address

to which Qualified Written Requests must be sent. A servicer that designates a specific address or addresses for receipt of Qualified Written Requests must post the designated address(es) on the servicer's website.

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

Note: Authority cited: Section 1788.103, Civil Code; and Section 28106, Financial Code.

Reference: Sections 1788.100 and 1788.102, Civil Code; and Section 28132, Financial Code.

9. Section 2041 is amended to read:

§2041. Customer Service, Alternative Repayment Plans, Loan Forgiveness Benefits.

(a) Customer Service.

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

(1) Federal student loan servicer representatives answering calls to this toll-free number must have been fully trained about, and capable of informing and discussing with callers, alternative repayment plans and loan forgiveness benefits. If the caller calls to inquire about repayment options, federal student loan servicer representatives must

inform and discuss with callers, alternative repayment plans and loan forgiveness benefits. Federal student loan servicer representatives must also be trained in the differences among deferment, forbearance, and alternative repayment plans, and able to answer caller questions regarding the differences.

(2) Private student loan servicer representatives answering calls to this toll-free number must have been fully trained about, and capable of informing and discussing with callers, any alternative repayment plan offered by the servicer, ~~or promissory note holder,~~ contractual obligee, or payee for the private student loans serviced ("Private Student Loan Alternative Repayment Arrangements"), in accordance with ~~subsection~~ subdivision (c) below. If the caller calls to inquire about repayment options, private student loan servicer representatives must inform and discuss with callers, Private Student Loan Alternative Repayment Arrangements, in accordance with ~~subsection~~ subdivision (c) below.

(b) Publication of Federal Student Loan Repayment Options and Loan Forgiveness Benefits.

(1) To assist the prevention of borrower delinquency or default, all servicers of federal student loans must prominently post, on the servicer's internet website, clear and complete information, written in easily understandable language, about repayment options available for federal student loans, including deferments and income-based alternative repayment plans, available under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C., § 1070, et seq. The posted information may appear on the servicer's homepage or be available through links on the homepage to specified web pages. The posted information shall include direct, live links to the following web pages, or successor or replacement web pages, of the Student Aid Office of the United States

Department of Education website: “How to Repay Your Loans,” <https://studentaid.ed.gov/sa/repay-loans;> and <https://studentloans.gov/myDirectLoan/repayOptions.action>. [https://studentaid.gov/manage-loans/repayment/plans;](https://studentaid.gov/manage-loans/repayment/plans) and [https://studentaid.gov/manage-loans/lower-payments/get-temporary-relief.](https://studentaid.gov/manage-loans/lower-payments/get-temporary-relief)

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

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

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

(c) Private Student Loans.

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

Servicers of private student loans, must provide borrowers clear and complete information, written in easily understandable language, about Private Student Loan Alternative Repayment Arrangements.

(2) Properly Evaluating Private Student Loan Alternative Repayment Arrangement Requests from a Borrower.

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

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

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

(C) Servicer may satisfy the requirements of (A) and (B) above by demonstrating that servicer has made reasonable efforts to obtain information from the original lender, ~~or~~ promissory note holder, contractual obligee, or payee about Private Student Loan Alternative Repayment Arrangements that may have been marketed to the borrower

through marketing materials, or that have been widely advertised or marketed by the servicer, original lender, ~~or promissory note holder~~, contractual obligee, or payee as available to similarly-situated borrowers.

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

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

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

10. Section 2042 is amended to read:

§2042. Aggregate Student Loan Servicing Report--Traditional Student Loans.

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

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

(1) Borrower name;

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

(3) Loan number, for each loan;

(4) Loan type, i.e., Federal Direct Loan; FFEL Loan; Perkins Loan; or private student loan- which is a traditional student loan (Private student loans which are not traditional student loans are subject to section 2042.65 of these rules.);

(5) Loan disbursement amount and date, for each loan;

(6) Interest rate(s) and maturity date, or number of monthly payments required to repay the loan, for each loan;

(7) Loan balance, ~~and~~ status, and total amount paid for each loan;

(8) Cumulative balance owing and cumulative amount paid by ~~for~~ each borrower;

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

(10) Whether borrower has an application pending for any loan forgiveness benefit.

Note: Authority cited: Section 1788.103, Civil Code; and Section 28106, Financial Code. Reference: Sections 1788.100, 1788.101, 1788.102 and 1788.103, Civil Code; and Sections 28130 and 28152, Financial Code.

11. Section 2042.5 is amended to read:

§2042.5. ~~Individual Student Loan Servicing Records~~--Traditional Student Loans.

(a) A student loan servicer must maintain its books, records, and accounts at one or more of its licensed location(s). The licensee must designate the licensed location(s) at which its books, records, and accounts are maintained. The designated licensed location(s) and books, records and accounts thereat must be accessible to the Department.

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

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

(d) A student loan servicer must also maintain a consolidated report, for each student loan borrower, individually, containing the information specified in section 2042, subdivision (b), of these rules.

Note: Authority cited: Section 1788.103, Civil Code; and Section 28106, Financial Code. Reference: Sections 1788.100, 1788.101, 1788.102 and 1788.103, Civil Code; and Sections 28130 and 28152, Financial Code.

12. Section 2042.65 is adopted to read:

§2042.65. Aggregate Student Loan Servicing Report--Education Financing Products.

(a) Each licensee shall maintain a current, aggregate report of education financing products it services and shall produce it within ten (10) days of a request by the Commissioner.

(b) The aggregate education financing servicing report shall contain the following information for each education financing product serviced:

(1) Borrower name;

(2) Education financing product account number;

(3) Number of education financing products serviced for each borrower;

(4) Education financing product type, using the name the product is most commonly called, such as, for example, income share agreement or installment contract;

(5) Date of execution of income share agreement, installment contract, or other written agreement evidencing an education financing product; and

(6) Payoff amount or, in the case of an income share agreement, a description of the early completion provision and calculated dollar amount that allows students to terminate the income share agreement.

(c) The aggregate education financing servicing report shall also contain the following information for each income share agreement serviced:

(1) Date amount advanced, covered, credited, deferred, or funded;

(2) Amount advanced, covered, credited, deferred, or funded;

(3) Borrower's income;

(4) Income share;

(5) Annual percentage rate, calculated at the minimum annual income above which payments are required and at \$10,000 income increments thereafter up to the annual income where the maximum number of monthly payments results in the maximum amount payable.

(6) Minimum threshold;

(7) Payment cap;

(8) Payment term;

(9) Maximum payments;

(10) Monthly payment amount; and

(11) Number and total amount of qualifying payments made.

(d) The aggregate education financing servicing report shall also contain the following information for each installment contract serviced:

(1) Date amount advanced, covered, credited, deferred, or funded;

(2) Amount advanced, covered, credited, deferred, or funded;

(3) Annual percentage rate;

(4) Installment contract term, including date of commencement and date of termination;

(5) Date first installment payment is due;

(6) Installment payment amount; and

(7) Maximum number of required payments due, payments made, and payments remaining due until the installment contract is paid or satisfied.

(e) The aggregate education financing servicing report shall also contain the following information for each education financing product serviced which is not an income share agreement or installment contract:

(1) Date amount advanced, covered, credited, deferred, or funded;

(2) Amount advanced, covered, credited, deferred, or funded;

(3) Annual percentage rate;

(4) Amount of each payment due;

(5) Maximum number of required payments; and

(6) Maximum payment term.

Note: Authority cited: Section 1788.103, Civil Code; and Section 28106, Financial Code. Reference: Sections 1788.100, 1788.101, 1788.102 and 1788.103, Civil Code; and Sections 28130 and 28152 Financial Code.

13. Section 2042.75 is adopted to read:

§2042.75. Student Loan Servicing Records--Education Financing Products.

(a) A student loan servicer must maintain its books, records, and accounts at one or more of its licensed locations. Upon notice, such books, records and accounts must be made available for inspection at a licensed location designated by the Department. Such

books, records and accounts required for inspection by the Department may be provided electronically.

(b) The servicing records required to be maintained for each education financing product serviced shall include the following: all education financing contracts; disclosure statements sent to the borrower; complete loan history; qualified written requests; borrower instructions how to apply overpayments; and statements of account sent to the borrower.

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

(d) A student loan servicer who services education financing products must also maintain a consolidated report for each student loan borrower, individually, containing the information specified in section 2042.65, subdivision (b), and subdivisions (c), (d) or (e), as applicable, of these rules.

Note: Authority cited: Section 1788.103, Civil Code; and Section 28106, Financial Code. Reference: Section 1788.100, et seq., Civil Code; and Sections 28130 and 28152, Financial Code.

14. Section 2043 is amended to read:

§2043. Records of Servicing Transferred; Notification to Borrower of Transfer.

(a) In addition to the records required under section 2042.5, subdivision (e), and section 2042.75, subdivision (b) of these rules, as applicable, a licensee that transfers any servicing rights, must also retain the contract and delivery schedules detailing loans

for which servicing rights were transferred as part of its books and records to be examined by the Commissioner.

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

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

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