

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians***Jan Lynn Owen****Commissioner of Business Oversight**

DEPARTMENT OF BUSINESS OVERSIGHT
1515 K STREET, SUITE 200
SACRAMENTO, CA 95814

**NOTICE OF THIRD MODIFICATIONS TO PROPOSED REGULATIONS UNDER THE
STUDENT LOAN SERVICING ACT**

To Interested Persons:

On September 8, 2017, the Commissioner of Business Oversight (Commissioner) published a Notice of Rulemaking Action to adopt sections 2032 through 2057 in Subchapter 15, Chapter 3, of Title 10 of the California Code of Regulations (see California Regulatory Notice Register 2017, No. 36-Z). The proposed sections implement the Student Loan Servicing Act,¹ which became operative on July 1, 2018.

After consideration of public comments, the Commissioner proposed additional changes to the regulations and invited public comment during a 15-day comment period. The Commissioner received comments to the revised proposed regulations. After consideration of these comments, the Commissioner proposed additional changes to the regulations and invited public comment during a second 15-day comment period.

On September 7, 2018, the Commissioner submitted the final proposed regulations and rulemaking file for review by the Office of Administrative Law (OAL), in accordance with Government Code section 11349.1. On October 19, 2018, the OAL issued a notice disapproving the proposed regulations, under Government Code section 11349.3, for failure to meet the standards of Government Code section 11349.1. On October 26, 2018, the OAL issued its decision of disapproval of the regulations, specifying the reasons for disapproval and permitting the Commissioner to resubmit revised regulations within 120 days.

The Commissioner has revised the proposed rules to address and resolve the OAL's reasons for disapproval. A copy of the proposed revisions is being made available to the public in accordance with the requirements of Government Code section 11346.8, subdivision (c). The text showing modifications to proposed sections 2032 through 2057 is attached.

Government Code section 11349.4, subdivision (b), allows the public to submit comments on the proposed changes, **BUT ONLY ON THE PROPOSED CHANGES**. In

¹ Assem. Bill, No. 2251, Stats. 2016, ch. 824, codified at Fin. Code, § 28100 *et seq.*

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accordance with Government Code sections 11346.8, subdivision (c), and 11346.9, subdivision (a)(3), the Commissioner will not respond to any comments pertaining to rules which are not the subject of these third proposed modifications.

DESCRIPTION OF CHANGES

The proposed changes are made in response to the OAL's specified reasons for disapproval, and to align with legislation amending the Student Loan Servicing Act.² The third modifications to proposed regulations would:

FORMS INCORPORATED BY REFERENCE-RULE 2032 (a)(7)-(a)(9) AND RULE 2046

Specifically identify, attach as Exhibits 1-4, and incorporate by reference into these third modified proposed rules the following four documents, to make readily available to the regulated public:

- "Form MU1," the uniform licensing form developed by the Nationwide Multistate Licensing System (NMLS) for a student loan servicer, entitled "NMLS Company Form," Version 11.0, dated 9/12/2015, available at [Company \(MU1\) Form](#).
- "Form MU2," the uniform licensing form developed by the NMLS 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, available at [Individual \(MU2\) Form](#).
- "Form MU3," the uniform licensing form developed by the NMLS for the branch office of a student loan servicer, entitled "NMLS Branch Form," Version 10, dated 3/31/14, available at [Branch \(MU3\) Form](#).
- The "electronic surety bond form," developed by the NMLS, titled "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, available at [CA-DBO Student Loan Servicer License ESB Form](#).

DEFINITIONS-RULE 2032(a)(14)

- Delete 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.³ Therefore, this rule is unnecessary.

² Assem. Bill No. 38, Stats. 2018, ch. 379.

³ Id. at §3(n).

APPOINTMENT OF COMMISSIONER AS AGENT TO ACCEPT SERVICE OF PROCESS-RULE 2036

- Require 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.⁴

BRANCH OFFICES-RULE 2039

- Revise Rule 2039 to specify the fees for applying for a license for a licensee's branch office(s).

ANNUAL ASSESSMENTS-RULE 2047

- Further clarify how annual assessments will be calculated, by defining a licensee's "servicing activities" in California.

MISCELLANEOUS, NON-SUBSTANTIVE CHANGES⁵

- Revise language to clarify certain rules.
- Delete vague language to enhance specificity and clarity.
- Add the authority and reference for Rule 2048.
- Delete 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.
- Renumber sections as necessitated by proposed changes.

The initial statement of reasons containing information upon which the proposal is based is available on the Department of Business Oversight's website at www.dbo.ca.gov and from the Legal Division of the Department of Business Oversight. As required by the Administrative Procedure Act, the Legal Division maintains a rulemaking file containing all the information upon which the proposal is based. The rulemaking file is available for public inspection during regular business hours. Comments or inquiries concerning these proposed regulation changes may be directed to the Commissioner's Regulations Coordinator, Mark Dyer, at (916) 322-1977.

⁴ Id. at §9.

⁵ Cal. Code Regs., tit. 1, §100.

15-DAY COMMENT PERIOD

Any interested person may submit written comments to the proposed additional changes by written communication addressed as follows:

Commissioner of Business Oversight
Attn: Mark Dyer, Regulations Coordinator
1515 K Street, Suite 200
Sacramento, CA 95814

Comments will be received from December 12, 2018 through December 27, 2018. The last day to submit comments is December 27, 2018. Comments received after December 27, 2018 will not be considered. Comments may only address changes proposed in this third modification. Comments addressing rules or sections of rules that are not changed in the third modified text will not be considered. Written comments may also be sent to the Commissioner via electronic mail at regulations@dbo.ca.gov.

The proposed additions to the Commissioner's rules in the text accompanying this notice are not yet effective and will not be effective until approved by the OAL and filed with the California Secretary of State in accordance with Government Code section 11349.3.

Dated: December 12, 2018
Sacramento, California