

**NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
PROPOSED  
3 NYCRR 409**

**STUDENT LOAN SERVICERS**

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 10, 11, 14, 718 and Article 14-A of the Banking Law and Sections 102, 201, 202, 301, and 302 of the Financial Services Law, do hereby promulgate Part 409 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

**(ALL OF THE FOLLOWING MATERIAL IS NEW)**

§ 409.1	Definitions.
§ 409.2	Applicability.
§ 409.3	Licensing.
§ 409.4	Temporary license during transition period.
§ 409.5	Continuing duty to update licensing information; changes in officers and directors.
§ 409.6	Change in control application; prior approval.
§ 409.7	Suspension and revocation of a license.
§ 409.8	Servicing standards.
§ 409.9	Prohibited practices.
§ 409.10	Examinations.
§ 409.11	Reporting requirements.
§ 409.12	Confidential supervisory information.
§ 409.13	Books and records.
§ 409.14	Cybersecurity.
§ 409.15	Notifications.
§ 409.16	Severability.

**§ 409.1 Definitions.**

(a) “Applicant” shall mean any person applying for a license under this part.

(b) “Borrower” shall mean any resident of this state who has received a student loan or agreed in writing to pay a student loan or any person who shares a legal obligation with such resident for repaying a student loan.

(c) “Borrower benefit” shall mean an incentive offered to a borrower in connection with the origination of a student loan, including but not limited to an interest rate reduction, principal rebate, fee waiver or rebate, loan cancellation, or cosigner release.

(d) “Exempt organization” shall mean any banking organization, foreign banking corporation, national bank, federal savings association, federal credit union, or any bank, trust company, savings bank, savings and

loan association, or credit union organized under the laws of any other state; any public postsecondary educational institution or private nonprofit postsecondary educational institution; the New York State higher education services corporation; and any entity that holds a license under articles nine or eleven-b of the banking law.

(e) “NMLS” means the Nationwide Multistate Licensing System & Registry and shall include all related computer systems, the Conference of State Bank Supervisors, and State Regulatory Registry LLC.

(f) “Nonconforming payment” shall mean an overpayment or a partial payment.

(g) “Overpayment” shall mean a payment on a student loan in excess of the monthly amount due from a borrower on a student loan, also commonly referred to as a prepayment.

(h) “Partial payment” shall mean a payment on a student loan in an amount less than the monthly amount due from a borrower on a student loan, also commonly referred to as an underpayment.

(i) “Person” shall mean any individual, association, corporation, limited liability company, partnership, trust, unincorporated organization, government, or any other entity.

(j) “Student loan servicer” shall mean a person engaged in the business of servicing student loans owed by one or more borrowers.

(k)(1) “Servicing” shall mean:

(i) receiving any payment from a borrower pursuant to the terms of any student loan; or

(ii) applying any payment to the borrower’s account pursuant to the terms of a student loan or the contract governing the servicing of any such loan; or

(iii) during a period where a borrower is not required to make a payment on a student loan, maintaining account records for the student loan and communicating with the borrower regarding the student loan on behalf of the owner of the student loan promissory note; or

(iv) in conjunction with the activities described in subparagraphs (i), (ii), and (iii) of this paragraph:

(a) providing any notification of amounts owed on a student loan by or on account of any borrower;

(b) performing other administrative services with respect to a borrower’s student loan; or

(c) interacting with a borrower with respect to or regarding any attempt to avoid default on the borrower’s student loan and facilitating the activities described in subparagraph (i) or (ii) of this paragraph.

(2) “Servicing” shall not include collecting, or attempting to collect, on a defaulted student loan for which no payment has been received for 270 days or more.

(l) “Student loan” shall mean any loan to a borrower to finance postsecondary education or expenses related to postsecondary education.

(m) “Federal student loan” means:

(1) any Direct Loan;

(2) any FFELP Loan, which was purchased by the government of the United States pursuant to the federal Ensuring Continued Access to Student Loans Act and is presently owned by the government of the United States; and

(3) any other student loan which is owned by the government of the United States.

(n) “Direct Loan” means any student loan 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.).

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

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

(q) “Private student loan” means a student loan which is not a Direct Loan, FFELP Loan, or Perkins Loan but, rather, a private student loan made by a lender.

## **§ 409.2 Applicability.**

(a) Except as provided in subdivision (b) of this section or as explicitly provided for in another section of this part, all provisions of this part shall apply to every student loan servicer.

(b) The following sections shall not apply to a student loan servicer that services only federal student loans:

(1) section 409.3;

(2) section 409.4;

(3) section 409.5;

(4) section 409.6; and

(5) section 409.7.

### **§ 409.3 Licensing.**

(a) License required.

(1) Except as provided in subdivisions (2) and (3), every person engaged in the business of servicing student loans owed must be licensed by the superintendent as a student loan servicer in accordance with this section.

(2) An exempt organization is not required to apply for or receive a license under this section to engage in the business of servicing student loans, provided that unless preempted by federal law such exempt organization notifies the superintendent that it is servicing student loans in this state. In the event that a student loan servicer ceases to be an exempt organization, that person may not service student loans without first being licensed by the superintendent as a student loan servicer in accordance with this section.

(3) A student loan servicer that services only federal student loans is not required to apply for or receive a license under this section to engage in the business of servicing student loans. In the event that a student loan servicer ceases to be a student loan servicer that services only federal student loans seeks to begin servicing student loans which are not federal student loans, that person may not service student loans other than federal student loans owed by one or more borrowers residing in this state without first being licensed by the superintendent as a student loan servicer in accordance with this section.

(4) (i) A debt collector whose student loan debt collection business, and business operations, involve collecting, or attempting to collect, on student loans for which no payment has been received for 270 days or more shall not be required to obtain a license under paragraph (1) of this subdivision. (ii) Notwithstanding subparagraph (i) of this paragraph any debt collector who services non-defaulted student loans, as part of their business, and business operations, shall be deemed to be engaged in the business of servicing student loans and shall be required to obtain a license pursuant to paragraph (1) of this subdivision.

(b) Use of NMLS.

(1) Every application for a license under this section shall be filed through NMLS.

(2) Every applicant shall make such application in accordance with the checklist and instructions of NMLS for transmission to the department.

(3) An applicant that files an application through the NMLS shall comply with all of the filing requirements imposed by the NMLS and the department including the payment of all fees required by the NMLS and by the department. Fees payable to the NMLS shall be the sole property of the NMLS and shall not be deemed revenue of the department.

(4) Any information or documentation required to be submitted in connection with an application that cannot be filed through NMLS shall be transmitted to the department in a form and manner as required by the superintendent.

(c) Initial Application.

(1) Every application for a license under this section shall include all information required by the NMLS checklist and instructions for the application, including:

(i) a description of the business operations of the applicant;

(ii) an affirmation of financial solvency noting such capitalization requirements as may be required by the superintendent, and access to such credit as may be required by the superintendent;

(iii) a financial statement prepared by a certified public accountant, the accuracy of which is sworn to under oath before a notary public by an officer or other representative of the applicant who is authorized to execute such documents;

(iv) an affirmation that the applicant, or its members, officers, partners, directors and principals as may be appropriate, are at least twenty-one years of age;

(v) information as to the character, fitness, financial and business responsibility, background and experiences of the applicant, or its members, officers, partners, directors and principals as may be appropriate including but not limited to an affirmation setting forth whether the applicant, or its members, officers, partners, directors and principals:

(a) has, within the last ten years prior to the date of application, committed any act involving dishonesty, fraud, deceit, or has been convicted of, or pleaded nolo contendere to, a crime directly related to the qualifications, functions, or duties related to servicing student loans, provided that any criminal conviction be evaluated consistent with article twenty-three-A of the correction law;

(b) has had a license or registration revoked by the superintendent or any other regulator or jurisdiction;

(c) has been an officer, director, partner, member or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or any other regulator or jurisdiction; and

(d) has been an agent or employee of an entity which has had a license or registration revoked by the superintendent or any other regulator or jurisdiction and the nature of the agency or employment at the time of the revocation; and

(vi) any additional detail or information required by the superintendent.

(d) Investigation fee. No application shall be deemed submitted unless accompanied by a fee as prescribed pursuant to section 18-a of the banking law.

(e) Review of applications.

(1) Upon a complete application being submitted, the superintendent shall consider, in her sole discretion, whether the financial responsibility, experience, character, and general fitness of the applicant and, if

applicable, the members, officers, partners, directors, and principals of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of article 14-A of the banking law.

(2) If this review reveals that any matter requires, in the superintendent's judgment, the submission of additional information from the applicant, the applicant shall be so notified and shall submit such supplementation as may be required, in a manner directed by the superintendent. Failure to submit the information required by the superintendent within fifteen days after being notified of the need for supplementation, or such longer time as provided by the superintendent, shall be deemed a withdrawal of the application.

(3) If, after the application is submitted, but before the superintendent has made a determination thereon, any information in the application ceases to be true or correct, the applicant shall immediately file through NMLS an amendment correcting the information.

(4) Refusal to issue license.

(i) If, after consideration of the application, the superintendent, in her sole discretion, determines that the financial responsibility, experience, character, and general fitness of the applicant and, if applicable, the members, officers, partners, directors and principals of the applicant are not such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently, the superintendent shall refuse to issue the license.

(ii) Further, after consideration of the application, the superintendent may refuse to issue a license to any applicant if she finds that the applicant, or any person who is a director, officer, partner, agent, employee, member, or substantial stockholder of the applicant:

(a) within the last ten years prior to the date of application, has committed any act involving dishonesty, fraud, deceit, or has been convicted of, or pleaded nolo contendere to, a crime directly related to the qualifications, functions, or duties related to servicing student loans, provided that any criminal conviction be evaluated consistent with article twenty-three-A of the correction law;

(b) has had a license or registration revoked by the superintendent or any other regulator or jurisdiction;

(c) has been an officer, director, partner, member or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or any other regulator or jurisdiction; or

(d) has been an agent, employee, officer, director, partner or member of an entity which has had a license or registration revoked by the superintendent where such person shall have been found by the superintendent to bear responsibility in connection with the revocation.

(iii) If the superintendent refuses to issue a license under this paragraph, the superintendent shall notify the applicant of such refusal.

(5) Issuance of a license.

(i) If after consideration of the application the superintendent, in her sole discretion, determines that the financial responsibility, experience, character, and general fitness of the applicant and, if applicable, the members, officers, partners, directors, and principals of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently, and the superintendent determines that no other grounds to refuse to issue the license exist, the superintendent may cause the license to be issued.

(ii) Upon determining the license should be issued the superintendent shall cause the license to be transmitted in an electronic format to the applicant and shall cause a copy to be retained in the records of the department.

(iii) No application shall be considered approved until it is approved by the superintendent and the license is received by the applicant.

(f) Surrender of License.

(1) Any student loan servicer may surrender a license issued under this section by delivering to the superintendent written notice that it thereby surrenders such license, but such surrender shall not affect such student loan servicer's civil or criminal liability for acts committed prior to such surrender. Further, such surrender shall not affect the jurisdiction of the department or the courts of this state over acts committed prior to such surrender.

(2) If such surrender is made after the issuance by the superintendent of a statement of charges and notice of hearing, the superintendent may proceed against the student loan servicer as if such surrender had not taken place.

(3) A student loan servicer that surrenders its license shall remain responsible for paying assessments under section 206 of the financial services law for the year in which the surrender takes place.

(4) No surrender shall be effective during the conduct of an examination under this part without the consent of the superintendent upon such conditions as she may deem necessary and appropriate in her discretion.

(5) A student loan servicer that surrenders its license shall preserve books and records in accordance with section 409.13 of this part.

(g) Any license issued under this section shall continue in full force and effect until it is surrendered, revoked, or suspended.

(h) By filing an application under this section, a student loan servicer is deemed to have consented to the jurisdiction of the courts in this State and waives any defense to the contrary.

**§ 409.4 Temporary license during transition period.**

(a) Notwithstanding section 409.3 of this part, any student loan servicer required to obtain a license under that section, that is engaged in the business of servicing student loans prior to October 9, 2019 and that on or before such date submits a complete application pursuant to that section, shall be deemed to possess a temporary license to continue its engagement in the business of student loan services subject to the conditions and limitations set forth in subdivision (b) of this section.

(b) Temporary license.

(1) The temporary license provided for in subdivision (a) of this section, shall be effective from October 9, 2019 and shall expire upon the superintendent's issuance of a license, the superintendent's refusal to issue a license, or the withdrawal of the application, whichever occurs first.

(2) A temporary license provided for in subdivision (a) of this section may be terminated without a hearing if the superintendent, in her sole discretion, finds that there is a risk of public harm or other good cause for such termination.

(3) A temporary license provided for in subdivision (a) of this section shall not be renewable.

(c) Any person that fails to obtain a temporary license under this section shall not commence or continue the business of servicing student loans without first obtaining a license pursuant to section 409.3 of this part.

#### **§ 409.5 Continuing duty to update licensing information; changes in officers and directors.**

(a) Every student loan servicer required to obtain a license pursuant to section 409.3 of this Part, shall within five days of any change in any of its executive officers, directors, partners or members notify the superintendent of the change by executing an amendment in NMLS which contains the information required to be submitted by the checklist and instructions for such an amendment posted on NMLS.

(b) Every student loan servicer required to obtain a license pursuant to section 409.3 of this Part, shall file with NMLS an amendment as soon as practicable, but in no event more than ten days, after any information contained in the application or the NMLS file, as the case may be, ceases to be true and correct or applicable.

#### **§ 409.6 Change in control application; prior approval.**

(a) Definition of Control.

(1) As used in this part the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a student loan servicer, whether through the ownership of voting stock of such student loan servicer, the ownership of voting stock of any person which possesses such power, or otherwise.

(2) Control shall be presumed to exist if any person, directly or indirectly, owns, controls, or holds with power to vote ten percent or more of the voting stock of any student loan servicer or of any person which, directly or indirectly, owns, controls, or holds with power to vote ten percent or more of the voting stock of any student loan servicer, but no person shall be deemed to control a student loan servicer solely by reason of being

an officer or director of such student loan servicer. Such presumption may not be rebutted except by a determination of the superintendent on an application under subdivision (g) of this section.

(3) As used in this section the term “person” means individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity or any combination of the foregoing acting in concert.

(4) As used in this part the term “substantial stockholder” means a person owning or controlling directly or indirectly ten percent or more of the total outstanding stock of a corporation.

(b) Prior Approval Required.

(1) Any action which results in a change of control of the business of a student loan servicer shall be void unless the superintendent has given prior approval of the act before it is taken.

(2) Prior to taking any action which results in any change of control of a student loan servicer, the person desiring to acquire control shall make a proposed amendment through NMLS consistent with the checklist and instructions for making such an amendment posted in NMLS and pay an investigation fee as prescribed pursuant to section eighteen-a of the banking law. After receiving the proposed amendment, the superintendent may require the person desiring to acquire control to submit any other information she determines necessary as a supplement thereto.

(c) Without limiting the responsibilities of persons seeking to acquire control of a student loan servicer to make application to the superintendent pursuant to section 715 of the banking law and this section, every student loan servicer shall report to the superintendent within five days of the date the student loan servicer becomes aware of such information, the name and residence of each person (or each member of a group of persons acting in concert) who becomes an owner of ten percent or more of the outstanding shares of any voting class of the student loan servicer and shall inform such person of the reporting requirements under this part.

(d) Application for a determination of control.

(1) The superintendent may in her discretion, upon the application of a student loan servicer or any person who, directly or indirectly, owns, controls, or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such student loan servicer, determine whether or not the ownership, control, or holding of such voting stock constitutes or would constitute control of such student loan servicer for purposes of this section.

(2) Such an application shall be in the form of a letter, containing a sworn statement under penalty of perjury by the person making the application that the contents of the letter are true, that sets forth all the information necessary for the superintendent to make the determination. Such information must at a minimum include:

(i) name and address of the person seeking a determination;

(ii) a detailed narrative description of the manner in which the person owns, controls, or holds, or seeks to own, control, or hold, voting stock of a student loan servicer;

(iii) the number of shares of each class of stock of the licensee and the amount (if any) of obligations of the licensee of which the person seeking a determination owns or intends to be beneficial owner;

(iv) an organizational chart showing the structure or the proposed structure of the ownership of the student loan servicer now or immediately after the proposed transaction to which the application relates, including anyone who controls the person seeking the determination; and

(v) any other information required by the superintendent as deemed necessary under the circumstances of the particular application.

(3) The superintendent may require the person making the application to supplement the information contained in the application as she, in her sole discretion, deems necessary to render a decision.

(e) Applications for prior approval under this section shall be approved or disapproved in accordance with the provisions of section 713 of the banking law and section 409.3 of this part.

(f) This section shall not apply to an exempt organization.

#### **§ 409.7 Suspension and revocation of a license.**

(a) After a hearing. After notice and hearing, the superintendent may revoke or suspend any license to engage in the business of servicing student loans if she finds that:

(1) a student loan servicer has violated any provision of Article 14-A of the banking law, any provision of this part, or any other applicable law;

(2) any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the superintendent refusing originally to issue such license;

(3) a student loan servicer does not cooperate with an examination or investigation by the superintendent;

(4) a student loan servicer engages in fraud, intentional misrepresentation, or gross negligence in servicing a student loan;

(5) the competence, experience, character, or general fitness of the student loan servicer, a person controlling, directly or indirectly, ten percent or more of the outstanding interests, or any person responsible for servicing a student loan for the student loan servicer indicates that it is not in the public interest to permit the student loan servicer to continue servicing student loans;

(6) the student loan servicer engages in an unsafe or unsound practice;

(7) the student loan servicer is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors;

(8) a student loan servicer has violated the laws of this state, any other state or any federal law involving fraudulent or dishonest dealing, or a final judgement has been entered against a student loan servicer in a civil action upon grounds of fraud, misrepresentation or deceit;

(9) a student loan servicer fails to comply with any of the servicing standards set forth in section 409.8 of this part; or

(10) a student loan servicer engages in a prohibited practice in violation of section 409.9 of this part.

(b) Emergency Suspension.

(1) The superintendent may suspend a student loan servicer license on an emergency basis for a period not exceeding thirty days if:

(i) the superintendent finds that there is a substantial risk of public harm; or

(ii) the superintendent finds that there is good cause for such a suspension on the basis that:

(a) the student loan servicer has defaulted or is likely to default in performing its financial engagements; or

(b) the student loan servicer has engaged, or is engaging, in dishonest or inequitable practices which may cause substantial harm to borrowers or the student loan servicer market, including by taking any action prohibited by subdivision (a) of section 409.9 of this part.

(2) When the superintendent suspends a license pursuant to this subdivision she shall thereafter provide notice to the licensee.

(3) The superintendent may renew an emergency suspension under this subdivision if such additional emergency suspension is accompanied by notice of a hearing to be conducted under subdivision (a) of this section within the period of such additional suspension. If such a hearing is delayed at the request or with the consent of the licensee, the licensee shall be deemed to consent to the continuation of the emergency suspension during the ensuing period ending upon a determination on the hearing.

**§ 409.8 Servicing standards.**

(a) A student loan servicer shall not misrepresent or omit any material information in connection with the servicing of a student loan, including, but not limited to, misrepresenting or omitting:

(1) the amount, nature, or terms of any fee or payment due or claimed to be due on a student loan;

(2) the terms and conditions of a student loan or a borrower's obligations under a student loan; or

(3) the availability of any program or protection specific to or applicable to military borrowers, borrowers working in public service, older borrowers, cosigners, or borrowers with disabilities.

(b) Nonconforming payments. Except as provided in federal law or required by a student loan agreement:

(1) a student loan servicer shall inquire of a borrower how to apply a borrower's nonconforming payment and shall follow the borrower's instructions on how to apply a nonconforming payment. A borrower's instructions on how to apply a nonconforming payment shall remain in effect for any future nonconforming payment during the term of a student loan until the borrower provides different instructions.

(2) if a borrower does not provide instructions to a student loan servicer on how to apply a nonconforming payment, a student loan servicer shall:

(i) apply an overpayment in a manner that is in the best financial interest of the borrower. A student loan servicer shall be considered to meet the requirements of this subparagraph if the servicer applies the overpayment to the highest interest-rate loan on the borrower's account.

(ii) apply a partial payment in a manner that minimizes late fees and negative credit reporting. If there are multiple loans on a borrower's account with an equal stage of delinquency, a student loan servicer shall satisfy the requirements of this subparagraph by applying a partial payment to satisfy as many loans as possible on a borrower's account.

(c) Consumer reporting.

(1) A student loan servicer shall not provide inaccurate information to a consumer reporting agency.

(2) If a student loan servicer regularly reports information to a consumer reporting agency, the student loan servicer shall accurately report a borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in Section 603 of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)), upon acceptance as a data furnisher by that consumer reporting agency.

(d) Sale, assignment, or other transfer of servicing.

(1) If the sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the person to whom a borrower is required to send subsequent payments or direct any communications concerning a student loan, a student loan servicer shall transfer all information regarding the borrower, the borrower's account, and the borrower's student loan to the new student loan servicer servicing the borrower's student loan within forty-five days. Such information shall include, at a minimum:

(i) the borrower's repayment status;

(ii) any borrower benefits associated with the borrower's student loan;

(iii) a schedule of all transactions credited or debited to the student loan account;

(iv) a copy of the promissory note for the student loan;

(v) any notes created by student loan servicer personnel reflecting communications with the borrower about the student loan account;

(vi) a report of the data fields relating to the borrower's student loan account created by the student loan servicer's electronic systems in connection with servicing practices;

(vii) copies of any information or documents provided by the borrower to the student loan servicer;

(viii) usable data fields with information necessary to assess qualification for forgiveness, including public service loan forgiveness; and

(ix) any information necessary to compile a payment history.

(2) A student loan servicer shall adopt policies and procedures to verify that it has received all information regarding a borrower, a borrower's account, and a borrower's student loan, including at a minimum the information listed in paragraph (1) of this subdivision, when the student loan servicer obtains the right to service a student loan.

(3) If a student loan servicer sells, assigns, or otherwise transfers the servicing of a student loan to a new student loan servicer, the sale, assignment or other transfer shall be completed at least seven days before the borrower's next payment is due.

(4) A student loan servicer that sells, assigns, or otherwise transfers the servicing of a student loan shall require as a condition of such sale, assignment, or other transfer that the new student loan servicer shall honor all borrower benefits originally represented as being available to a borrower during the repayment of the student loan and the possibility of such benefits, including any benefits that were represented as being available but for which the borrower had not yet qualified.

(5) A student loan servicer that obtains the right to service a student loan shall honor all borrower benefits originally represented as being available to a borrower during the repayment of the student loan and the possibility of such benefits, including any benefits that were represented as being available but for which the borrower had not yet qualified.

(e) A student loan servicer shall post, process, and credit student loan payments in a timely manner, including but not limited to:

(1) crediting a payment received on the date on which that payment is due as effective on the date on which the student loan servicer received the payment; and

(2) treating a payment received from a borrower on the borrower's due date as an on-time payment.

(f) Customer service.

(1) A student loan servicer shall prominently post, on the homepage of the student loan servicer's website, a toll-free telephone number a borrower may call to discuss their student loans with a live person.

(2) A student loan servicer shall fully train representatives who answer calls to the toll-free number described in paragraph (1) of this subdivision and shall ensure that such representatives are capable of informing and discussing with callers any available alternative repayment plans, loan forgiveness, cancellation, and discharge benefits. If a caller calls to inquire about repayment options, such student loan servicer representatives shall inform and discuss with callers any available alternative repayment plans, loan forgiveness, cancellation, and discharge benefits. Such student loan servicer representatives must also be trained in the differences among deferment, forbearance, and alternative repayment plans, and be able to answer caller questions regarding the differences.

(g) Loan repayment options and loan forgiveness benefits.

(1) To assist the prevention of borrower delinquency or default, a student loan servicer shall prominently post, on the student loan servicer's website, clear and complete information, written in easily understandable language, about any available repayment options, including deferments and income-based alternative repayment plans, and forgiveness benefits. The posted information may appear on the student loan servicer's homepage or be available through links on the homepage to specified web pages. The posted information shall include direct, live links to the following web pages, or successor or replacement web pages, of the Student Aid Office of the United States Department of Education website: "How to Repay Your Loans," <https://studentaid.ed.gov/sa/repay-loans>; and <https://studentloans.gov/myDirectLoan/repayOptions.action>.

(2) At least once per calendar year, a student loan servicer shall send to borrowers a plain language notice, containing the information or links to information regarding repayment and loan forgiveness options, required under this rule. This notice shall also include the toll-free telephone number described in paragraph (1) of subdivision (f) of this section to call to discuss student loans with a live person.

(3) A student loan servicer shall establish policies and procedures, and implement them consistently, in order to facilitate disclosure of any available alternative repayment arrangements, including:

(i) providing accurate information regarding any alternative repayment arrangements that may be available to the borrower through the promissory note, that may have been marketed to the borrower through marketing materials, or that have been widely advertised or marketed by the servicer, original lender, or promissory note holder as available to similarly-situated borrowers; and

(ii) consistently presenting and offering any available alternative repayment arrangements to borrowers with similar financial circumstances.

(h) Borrower information and statements of account.

(1) A student loan servicer shall maintain on its website, free of charge, clear and complete information and account records for each 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 borrower, and a loan history for each student loan serviced. This information and accounting shall be available to borrowers at all times, except for occasional, short periods of time when the student loan servicer's system is not available because the system is undergoing routine maintenance or blocked for security reasons.

(2) The consolidated report required under paragraph (1) of this subdivision must include, at a minimum:

- (i) borrower name;
- (ii) number of student loan(s) serviced for each borrower;
- (iii) loan number, for each student loan;
- (iv) loan type, i.e., Direct Loan; FFELP Loan; Perkins Loan; or private student loan.
- (v) loan disbursement amount and date, for each student loan;
- (vi) interest rate(s) and maturity date, or number of monthly payments required to repay the loan, for each student loan;
- (vii) loan balance and status, for each student loan;
- (viii) cumulative balance owing for each borrower;
- (ix) whether the borrower has an application pending for, or is repaying under, an alternative repayment plan, listing the plan chosen; and
- (x) whether the borrower has an application pending for any loan forgiveness cancellation, or discharge benefit.

(3) The loan history required under paragraph (1) of this subdivision must include, at a minimum, the following information, including the corresponding dates for each:

- (i) disbursements;
- (ii) interest accruals;
- (iii) fees;
- (iv) late charges;
- (v) any other miscellaneous amounts charged to the borrower;
- (vi) payments received;
- (vii) payments toward loan forgiveness programs; and
- (viii) the borrower's repayment plan.

(i) A student loan servicer that services private student loans must provide on its website clear and complete information, written in easily understandable language, concerning the availability and criteria for a cosigner release.

(j) Consumer complaints and inquiries.

(1) A student loan servicer shall respond within fifteen calendar days to a consumer complaint submitted to the student loan servicer by the department. A student loan servicer may request additional time to respond up to a maximum of forty-five calendar days. Such a request for additional time must be accompanied by an explanation why such additional time is reasonable and necessary. The department may grant additional time to respond in its sole discretion.

(2) A student loan servicer shall not refuse to communicate with an authorized representative of a borrower who provides a written authorization signed by such borrower, including those transmitted to the student loan servicer by mail, facsimile, or electronically, provided that the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower.

(3) Complaints from a Borrower or a Borrower's Representative. A student loan servicer shall comply with the requirements of this section for any written complaint, including those transmitted by mail, facsimile, or electronically, from a borrower or an authorized representative of a borrower that enables the student loan servicer to identify the name and account of the borrower, the borrower's student loan account, and the nature of the borrower's complaint.

(i) Within ten days of receiving a complaint, a student loan servicer shall acknowledge receipt of the complaint and inform the borrower or the authorized representative of the borrower of any additional information or documentation required by the student loan servicer to review and address the complaint.

(ii) A student loan servicer must conduct a reasonable investigation of the complaint and either:

(a) correct any error or other servicing-related issue identified and provide the borrower or the authorized representative of the borrower with a written notification of the correction and the effective date of the correction; or

(b) if the student loan servicer has determined that no error occurred or that no action is warranted to correct a servicing-related issue, inform the borrower or the authorized representative of the borrower, in writing delivered via mail unless the borrower has elected to receive this response in another format, of the results of the student loan servicer's investigation and provide a statement of the reason or reasons for this determination.

(iii) A student loan servicer shall comply with the requirements of subparagraph (ii) of this paragraph within thirty days of receiving a complaint.

(4) A student loan servicer shall adopt policies and procedures permitting borrowers to escalate a complaint or inquiry to a senior representative if the borrower is dissatisfied with the outcome of the initial complaint or inquiry.

(k) All information listed in paragraph (1) of subdivision (d) of this section, and all communications with borrowers shall be considered books and records of the student loan servicer and shall be preserved pursuant to the requirements of section 409.13 of this part.

**§ 409.9 Prohibited Practices.**

(a) No student loan servicer shall undertake any unlawful action including:

(1) employing any scheme, device or artifice to defraud or mislead a borrower;

(2) engaging in any unfair, deceptive, abusive, or predatory act or practice;

(3) misapplying payments to the outstanding balance of any student loan or to any related interest or fees;

(4) making any false statement or make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the superintendent or another governmental agency;

(5) failing to respond within fifteen calendar days to communications from the department, or within such other time as the department may provide in its communication;

(6) failing to provide a response pursuant to the requirements of this Part, to a consumer complaint submitted to the student loan servicer by the department or a consumer; or

(7) altering any license issued by the department.

(b) Unfair and abusive acts and practices.

(1) As used in this part the term “unfair” shall include any act or practice that:

(i) causes or is likely to cause substantial injury to borrowers which is not reasonably avoidable by borrowers; and

(ii) where such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) As used in this part the term “abusive” shall include any act or practice that:

(i) materially interferes with the ability of a borrower to understand a term or condition of a student loan or other service or option thereunder; or

(ii) takes unreasonable advantage of:

(a) a lack of understanding on the part of the borrower of the material risks, costs, or conditions of a student loan or other service or option thereunder;

(b) the inability of the borrower to protect the interests of the borrower in selecting or using a student loan or other service or option thereunder; or

(c) the reasonable reliance by the borrower on a student loan servicer to act in the interests of the borrower.

#### **§ 409.10 Examinations.**

(a) The superintendent may at any time, and as often as she may determine, either personally or by a person duly designated by the superintendent, investigate the business and examine the books, accounts, records, and files used therein of every student loan servicer.

(b) The superintendent and her duly designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all student loan servicers.

(c) The superintendent and any person duly designated by her may require the attendance of and may examine under oath all persons relative to the acts, operations, or business of a student loan servicer. Such attendance may be required at any office of the department or any office of the student loan servicer in the superintendent's sole discretion.

(d) The superintendent and any person duly designated by her shall have authority to require the production of documents, or copies thereof, in hard copy or electronic form. Such production can be required to be made at any office of the department or any office of the student loan servicer in the superintendent's sole discretion. The superintendent may permit such production by means other than personal delivery of the documents, including by electronic mail.

(e) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

(f) An examination under this section may be used to determine any matter the determination of which in the judgment of the superintendent is necessary or advisable. Such matters shall include:

(1) the financial condition of the licensee;

(2) the safety and soundness of the conduct of its business;

(3) the policies of its management;

(4) whether the requirements of law have been complied with in the administration of its affairs; and

(5) such other matters, as the Superintendent may determine, including any activities of the licensee outside this State if in the opinion of the Superintendent such activities may affect the licensee's money transmission business in this State.

(g) Assessment for the cost of examination. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the student loan servicer so examined. Upon written notice by the superintendent of the total amount of such assessment, the student loan servicer shall become liable for and shall pay such assessment to the superintendent.

(h) Without limiting any other power or responsibility of the superintendent, this section shall not apply to an exempt organization.

#### **§ 409.11 Reporting requirements.**

(a) Annual Reporting.

(1) Each year by the first of February the superintendent shall publish instructions for the submission of an annual report by each student loan servicer on the website of the department, which instructions shall set forth the content of such report for the previous calendar year.

(2) Each student loan servicer shall, by the first of April of each year, submit an annual report, which complies with the instructions published pursuant to paragraph (1) of this subdivision, in the manner set forth in those instructions.

(3) Extensions.

(i) In an exercise of discretion, the superintendent may extend the dates established by this subdivision for such period as she determines is necessary.

(ii) A student loan servicer may request an extension to its time to file an annual report by making such request in writing at least fifteen days prior to the date on which the annual report is due. Such request shall set forth the reasons such an extension is necessary and provide all information relevant to the request. Making such a request shall not stay the date on which the report is due. The superintendent may grant such a request in her discretion, but failure to respond to such a request within five days shall be deemed a denial.

(b) Special Reports. In addition to the regular reporting required by this section, the superintendent may address to any student loan servicer, or to any officer, director, member, or partner thereof, any inquiry necessary to the proper supervision of the student loan servicer or the servicing industry. Such inquiry shall be answered in writing within fifteen days, unless the superintendent in her discretion provides for different period to answer, and such answer shall be affirmed as true under penalty of perjury by the person to whom the inquiry is addressed.

(c) Without limiting any other power or responsibility of the superintendent, this section shall not apply to an exempt organization.

#### **§ 409.12 Confidential supervisory information.**

(a) The following, including any duly authenticated copy or copies thereof, shall be deemed confidential communications under subdivision (10) of section 36 of the banking law:

(1) All communications between the department and any student loan servicer.

(2) Any materials compiled by the department in the course of the supervision of any student loan servicer.

(3) Any reports provided to the department by any student loan servicer.

(4) Any reports of examinations or investigations, correspondence, and memoranda concerning or arising out of such examination and investigations.

(b) Such information shall not be subject to subpoena and shall not be made public. No student loan servicer or any other person in possession of such information shall make any disclosure or publication of such information.

(c) Notwithstanding subdivision (b) of this section, the superintendent in her discretion may determine that the ends of justice and the public advantage will be served by the disclosure or publication of any confidential communication and may publish or authorize the publication of a copy of any such confidential communication or any part thereof in such manner and subject to such conditions as the superintendent in her discretion deems proper.

#### **§ 409.13 Books and records.**

(a) Each student loan servicer shall keep and use in its business such books, accounts, and records as will enable the superintendent to determine whether such student loan servicer is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent.

(b) Every student loan servicer shall preserve such books, accounts, and records, for at least three years or such longer period as may be required by any other provision of law.

(c) In addition to the requirements of subdivision (b) of this section, each student loan servicer shall keep records of each student loan, including at a minimum all the information listed in paragraph (d)(1) of section 409.8 of this part, and all communications with borrowers for not less than two years following the final payment on such student loan or the sale, assignment or other transfer of the servicing of the student loan to which they relate.

(d) A licensee who surrenders its license shall remain under the obligations of this section to maintain books, accounts, and records notwithstanding the surrender.

#### **§ 409.14 Cybersecurity.**

(a) Every student loan servicer, other than an exempt organization, is a Covered Entity under Part 500 of title 23 and shall comply with that part.

(b) A student loan servicer shall have until April 9, 2020 to comply with Part 500 of title 23, except that a student loan servicer shall have until October 9, 2020 to comply with the requirements of sections 500.06, 500.08, 500.11, 500.13, 500.14 (a) and 500.15 of that part.

**§ 409.15 Notifications.**

Any student loan servicer not required to obtain a license under section 409.3 of this part that is required by section 711 of the banking law to notify the superintendent that it is servicing student loans shall make such notification by completing the form published on the department's website for such purpose.

**§ 409.16 Severability.**

To the extent any portion of this part is found by a court of competent jurisdiction to be preempted by federal law, it is intended that such portion be reformed to narrow its applicability, to the minimum extent necessary, and that it shall continue to apply to any student loan servicer to whom its application is not preempted.