Regulatory Impact Statement for the Proposed New Part 409 of 3 NYCRR, Superintendent’s Regulations

1. Statutory Authority: Section 102 of the New York Financial Services Law (the “Financial Services Law” or “FSL”), declares that the purpose of the FSL is “to ensure the continued safety and soundness of New York’s banking, insurance and financial services industries, as well as the prudent conduct of the providers of financial products and services, through responsible regulation and supervision.”

Pursuant to FSL Section 201, the Department of Financial Services (the “Department”) has broad authority to take such actions as are necessary to ensure the continued solvency, safety, soundness and prudent conduct of the providers of financial products and services; to protect users of financial products and services; and to eliminate financial fraud, other criminal abuse and unethical conduct in the industry.

FSL Section 202 creates the office of the Superintendent of Financial Services (the “Superintendent”) and confers on the Superintendent all “the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonable implied by [the FSL] or any other applicable law of this state.”

FSL Section 301 gives the Department broad power “to protect users of financial products and services.” In addition, FSL Section 302 provides the Department with equally broad authority to adopt regulations relating to “financial products and services,” which are broadly defined in the Financial Services Law to mean essentially any product or service offered by a Department-regulated entity.

Section 10 of the New York Banking Law (the “Banking Law” or “BL”) sets forth a declaration of policy, including that banking institutions will be regulated in a manner to insure safe and sound conduct and maintain public confidence. And BL § 11 sets forth that the Department is charged with the execution of the laws relating to entities regulated under the Banking Law.

BL § 14 references, without limitation, the policy of BL § 10 and sets forth certain powers of the Superintendent under the Banking Law, including the power to “make, alter and amend orders, rules and
regulations not inconsistent with law” and, under certain enumerated circumstances, to “make variations from
the requirements” of the Banking Law, provided such variations are “in harmony with the spirit of the law.”

Article 14-A of the Banking Law establishes the supervision of the student loan servicing industry by
the Department and provides from the licensure and regulation of student loan servicers thereby. BL § 718
specifically empowers the Superintendent to promulgate regulation in furtherance of the purposes of Article 14-
A.

2. Legislative Objectives: Article 14-A of the Banking Law as added by Part L of Chapter 58 of the
Laws of 2019, provides for the supervision of the student loan servicing industry by the Department. In
furtherance of that supervision student loan servicers are subject to licensure and to conduct requirements by the
provision of that Article. This proposed regulation implements the provisions of that Article and thus furthers
the Legislature’s objective in passing Part L, namely to provide for the supervision of the industry.
The proposed regulation also protects New York consumers and ensures safe and sound operation of the
industry in fulfillment of the objectives of the Legislature in creating the Department.

of 2019 establishes the supervision of the student loan servicing industry. That statute provides the Department
with certain powers and responsibilities, this proposed regulation is necessary to implement Article 14-A in the
manner the legislation contemplated. Further, the proposed regulation is necessary to ensure the industry is
aware of its responsibilities and obligations under Article 14-A and Department supervision. As efficient and
effective supervision requires the use of NMLS in making applications and other submissions the proposed
regulation is also necessary to establish the requirement to use that system. Finally, the proposed regulation is
necessary to protect consumers, in this case the approximately 2.8 million student loan borrowers in New York.
4. Costs: Student loan servicers who are subject to the proposed regulation may have certain costs of compliance with it. It should be noted however, that the industry subject to this regulation is comprised of sophisticated parties who are already subject to similar regulation in other states. Thus, to the extent there are compliance costs the industry should be able to bear them. Further, the Department has weighed the compliance costs against the financial risks to borrowers, who are undeniably in a more financially vulnerable position. While the Department sought to impose no greater than necessary costs under the proposed regulation, the Department was unwilling to narrow any necessary consumer protection for cost-savings reasons. Indeed, most industry costs arise directly from the text of the legislation and were thus considered by legislature and found to be appropriate.

The statute provides that the Department can require electronic submissions. The proposed regulation does impose requirements on electronic submission through NMLS. The use of NMLS is consistent with the Department’s practice with other non-bank entities it regulates under the Banking Law. There are costs to use the system that will be borne by the regulated entities. The use of NMLS has been determined necessary to ensure the efficient and effective regulation of the student loan servicing industry.

The regulation will not result in any fiscal implications to the State. The costs of supervision of the industry, e.g., the staff necessary to review licensing applications, to handle complaints, and to conduct examinations, are the result of the statute and not this regulation. Those costs are covered by the industry assessments as outlined in BL Article 14-A and FSL 206.

5. Local government mandates: To the Department’s knowledge there are no local governments who are student loan servicers, therefore there are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

6. Paperwork: Proposed Part 409 requires servicers to keep books and records related to servicing for a period of three years and produce annual and other reports requested by the Superintendent. It is anticipated
that submission of this reporting will be done electronically with instructions for completion provided sufficiently in advance for the preparation of the report. The other recordkeeping and reporting requirements are consistent with standards generally required of other regulated financial services entities. Applicants and licensees will be required to follow the checklists and instructions posted on NMLS in submitting applications or in making amendments to their NMLS files.

7. Duplication: The regulation does not duplicate or conflict with any other regulations.

8. Alternatives: Article 14-A of the Banking Law provides for the licensing of student loan servicers doing business in this state by the Department and as such, the promulgation of this regulation is necessary, and the alternative of not promulgating a regulation related to student loan servicers was rejected.

Further, as Article 14-A establishes the supervision of an entire industry it is necessary that additional detail be provided to industry participants to explain responsibilities and prohibited practices and to provide borrowers with a set of clear rules that servicers that are servicing their student loans must follow.

The Department considered not permitting the use of electronic application processes or to make use of NMLS optional for this license. Both options were rejected. Article 14-A specifically authorizes the Superintendent to require the application and other submissions by entities supervised under the Article to be made by electronic means. The Superintendent has determined that efficient and effective administration of the application process and the continued supervision of the industry demands uniform electronic filing.

9. Federal Standards: The proposed rule will overlap in some respects with the authority of the Consumer Financial Protection Bureau and the federal Department of Education to oversee student loan servicers. However, there are no consistent market-wide standards for servicing student loans. Although federal regulations provide some requirements for federal loans, the regulations are not comprehensive. No federal law or regulation governs servicing of private student loans. This rule is needed to ensure student loan servicers treat consumers fairly.
10. Compliance Schedule: The requirements of Article 14-A become effective October 9, 2019, it is anticipated that this regulation will be in place and effective by that date. The regulation will be effective upon publication of the notice of adoption.
Statement setting forth the basis for the finding that a Rural Area Flexibility Analysis is not required for the Proposed 3 NYCRR Part 409.

The Department finds that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in New York State. The rule provides for the supervision of the student loan servicing industry. The Department is not aware of any public or private entities in rural areas that are engaged in the servicing of student loans. Thus, the rule should have no impact on any public or private entities in rural areas.
Statement setting forth the basis for the finding that a Regulatory Flexibility Analysis is not required for the Proposed 3 NYCRR Part 409.

The Department finds that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in New York State. The rule provides for the supervision of the student loan servicing industry. The Department is not aware of any small business or local government to whom the regulation would apply. Thus, the rule should have no impact on any small business or local government.
Article 14-A of the Banking Law provides for the supervision of the student loan servicing industry by the Department. This supervision has certain compliance costs and provides certain prohibited practices. To the extent complying with the minimum standards outlined in Article 14-A and in the proposed regulation will impose costs on the industry, the industry may choose to address those costs by adjusting their hiring or staffing. However, as the Department cannot be sure how each student loan servicer will react to the Department’s supervision it is impossible to quantify any impact the regulation may have on jobs particularly in terms of numbers or categories affected. Indeed, the Department anticipates that most of the student loan servicers subject to the regulation are already licensed or regulated by other states, thus the additional regulation by New York may not pose any large increase in compliance costs and may result in no effect on jobs.

Further, the Department understands that the vast majority of student loan servicers who will be subject to the proposed regulation do not have a physical presence in New York. Thus, while the impact of the proposed regulation is uniform across the industry, the impact on jobs may not be felt in New York, or in any particular region in New York. Based on licensure in other states, the Department is aware of a limited number of student loan servicers that do maintain a physical presence in New York, however the functions served by those presences are currently unknown to the Department. Those presences are not limited to any one region and include downstate, central and western New York, so to the extent an impact on jobs may be anticipated in New York, those are the areas that could be impacted.

The proposed regulation represents the necessary rules for the proper conduct of the student loan industry in New York. Therefore, to the extent the proposed regulation has a negative impact on jobs, it is limited to the necessary rules for the industry. The regulation also calls for informed customer service staff and prompt investigation and handling of consumer complaints and inquiries. These requirements may require the
hiring of additional customer support staff and thus have a positive impact on jobs and employment opportunities.