

Regulatory Impact Statement for New Part 409 of 3 NYCRR.

1. Statutory Authority. Banking Law (the “Banking Law” or “BL”) Sections 10, 11, 14, 718 and Article 14-A and Financial Services Law Sections (the “Financial Services Law” or “FSL”) 102, 201, 202, 301, and 302.

FSL Section 102 declares that the purpose of the Financial Services Law 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 reasonably implied by [the FSL] or any other applicable law of this state.”

FSL Section 301 gives the Superintendent broad power “to protect users of financial products and services.”

FSL Section 302 provides the Superintendent with 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.

BL Section 10 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.

BL Section 11 sets forth that the Department is charged with the execution of the laws relating to entities regulated under the Banking Law.

BL Section 14 references, without limitation, the policy of BL Section 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.”

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

2. Legislative Objectives. BL Article 14-A, 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 provision of that Article. This regulation implements the provisions of Article 14-A and thus furthers the Legislature’s objective in enacting Part L, namely to provide for the supervision of the industry.

The regulation also protects New York consumers and ensures safe and sound operation of the industry in fulfillment of the Legislature’s objectives in creating the Department.

3. Needs and benefits. Article 14-A of the Banking Law as added by Part L of Chapter 58 of the Laws of 2019 establishes the supervision of the student loan servicing industry. That statute provides the Department with certain powers and responsibilities, and this regulation is necessary to implement Article 14-A in the manner that the legislation contemplated. Further, the 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 regulation is also necessary to establish the requirement to use that system. Finally, the 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 regulation may have certain costs to comply 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 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 the Legislature and found to be appropriate.

The statute provides that the Department can require electronic submissions. The 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. 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 state or federal 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 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 regulation will be effective upon publication of the notice of adoption in the State Register.

Statement explaining that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required for the adoption of 3 NYCRR Part 409.

The Department of Financial Services (“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. The clarifying changes made to the proposed regulation do not necessitate revision to this determination.

Statement explaining that a Rural Area Flexibility Analysis is not required for the Adoption of 3 NYCRR Part 409.

The Department of Financial Services (“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. The clarifying changes made to the proposed regulation do not necessitate revision to this determination.

Statement explaining that a revised Job Impact Statement is not required for the Adoption of 3 NYCRR Part 409.

The changes made to the proposed regulation were merely clarifying in nature and thus do not effect a change in the analysis or conclusions previously undertaken and made by the Department of Financial Services.