

**DISTRICT OF COLUMBIA  
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Commissioner of the Department of Insurance, Securities and Banking (“Commissioner”), pursuant to the authority set forth in section 7c of the Department of Securities Regulation Establishment Act of 1996, effective February 18, 2017 (D.C. Law 21-214; D.C. Official Code §§ 31-106.03), and Mayor’s Order 2017-206 (dated September 8, 2017), hereby gives notice of the adoption, on an emergency basis, of a new Chapter 30 (Student Loan Servicers), of Title 26 (Insurance, Securities, and Banking), Subtitle C (Banking and Financial Institutions), of the District of Columbia Municipal Regulations (DCMR).

The proposed chapter clarifies and implements the Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016, effective February 18, 2017 (D.C. Law 21-214; D.C. Official Code § 31-106.01 *et seq.*), so that the provisions of the act may be best effectuated and the public interest most effectively served. This emergency rulemaking is necessary because the District must act swiftly to ensure the long-term financial safety and security of District residents with student educational loans. In recent weeks, the Trump administration has begun to amend and repeal several federal regulations and policies related to student aid. The U.S. Department of Education has already announced plans to revise nearly ten regulations and policies that directly affect student loan borrowers. These revisions include the suspension of several changes scheduled to take effect in July 2017 designed to simplify and expedite the claims process for borrowers who fell victim to deceptive tactics by certain colleges. The Department of Education has also withdrawn several Obama administration memoranda crafted to strengthen consumer protections for student loan borrowers, including consideration of a loan servicer’s records related to consumer complaints and investigation prior to the award of any federal contract. The Department’s revised contracting policy also removed the requirement that companies employ specialists to assist individuals in delinquency.

District residents have filed more than four hundred (400) complaints with the federal Consumer Financial Protection Bureau (CFPB) in the past five (5) years related to issues arising from interactions with student loan servicers. Poor customer service resulting in substantial confusion about loan payment timetables and amounts has been a recurring theme among residents diligently working to pay off their student debt.

In light of the pending and potential changes in federal policy related to student loan borrowers, the District must increase its efforts to ensure that student loan servicers are acting in the best interests of the borrowers they serve. This is vital to promoting consumer confidence, and to maintaining the economic prosperity the District has seen in recent years. This rulemaking will provide the necessary framework for the Student Loan Ombudsman and the Department of Insurance, Securities and Banking to ensure that borrower interactions with their servicers are marked by professionalism and efficiency. Because of these imperatives, this emergency and proposed rulemaking is necessary for the immediate preservation of the public’s safety and welfare.

The emergency rulemaking was adopted on September 8, 2017 and became effective on that date. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the date of adoption, expiring on January 6, 2018, unless earlier superseded by publication of a Notice of Final Rulemaking. The Commissioner also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**A new Chapter 30, STUDENT LOAN SERVICERS, of Title 26-C DCMR, BANKING AND FINANCIAL INSTITUTIONS, is added to read as follows:**

**3000 SCOPE AND APPLICABILITY**

3000.1 This chapter shall apply to any person or entity that operates as a student loan servicer in the District of Columbia (“District”).

**3001 EXEMPTIONS**

3001.1 This chapter shall not apply to any bank, trust company, other loan company, savings bank, savings and loan association, credit union, or financial institution that accepts deposits and is incorporated or chartered under the laws of the District, the United States, or any state or territory of the United States.

3001.2 This chapter shall not apply to a public postsecondary educational institution or private non-profit postsecondary educational institution servicing a student loan it extended to a borrower.

**3002 LICENSE APPLICATION CONTENT, FEES, AND QUALIFICATIONS**

3002.1 A license application shall be filed on a form prescribed by the Commissioner.

3002.2 The application shall include at a minimum:

- (a) Statements under oath that the applicant has never had an educational or student loan-related license, or other financial services related license, revoked by any governmental agency in any jurisdiction;
- (b) Statements under oath that the applicant and each of its officers, directors, partners, and owners of a controlling interest have not been convicted of, or pled guilty or nolo contendere, to a felony in a domestic, foreign, or military court:
  - (1) During the seven (7) year period preceding the date of the application for licensure; or

- (2) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering;
- (c) Evidence of the applicant's financial responsibility, character and general fitness that warrants a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of the act. For the purposes of this paragraph, an applicant shall not be found financially responsible if the applicant has:
  - (1) Current outstanding judgments, except judgments solely as a result of medical expenses;
  - (2) Current outstanding tax liens or other government liens and filings;
  - (3) Foreclosures within the past three (3) years; or
  - (4) A pattern of seriously delinquent accounts within the past three (3) years;
- (d) Evidence demonstrating that the applicant has met the applicable net worth and surety bond requirements pursuant to D.C. Code § 31-106.02(c)(1)(C) and (D), and §§ 3003 and 3004 of these rules;
- (e) Payment of applicable fees as described in Appendix A of these rules and any outstanding fees due to the Department or to the District, including compliance with the Clean Hands Before Receiving a License or Permit Act of 1996, effective May 11, 1996 (D.C. Law 11-118; D.C. Official Code § 47-2861 *et seq.*);
- (f) The legal name, trade name, and business address of the applicant and, if the applicant is a partnership, association, company, or corporation, of every partner, member, officer, and director thereof;
- (g) All names, including but not limited to, website domain names, under which the applicant will conduct business in the District;
- (h) The complete name and address of the applicant's initial registered agent and registered office for service of process in the District;
- (i) Information to demonstrate the applicant's current qualifications to do business in the District;
- (j) The general plan and description of the applicant's business,

including policies and procedures for receiving and processing consumer inquiries, complaints, and grievances promptly and fairly;

- (k) The address of the applicant's principal place of business and any branch or branch offices from which the applicant proposes to operate as a student loan servicer; and
- (l) Other data, financial statements, and information as the Commissioner may require with respect to the applicant, its partners, members, officers, directors, trustees, or agents.

### **3003 FINANCIAL STATEMENTS AND NET WORTH REQUIREMENT**

3003.1 An applicant for a student loan servicer license shall submit its audited financial statements for the immediately preceding three (3) years, or for the period the applicant has been in business less than three (3) years. Financial statements shall be prepared in accordance with generally accepted accounting principles.

3003.2 The financial statements shall include:

- (a) A balance sheet;
- (b) An income statement;
- (c) A statement of cash flows; and
- (d) All relevant notes included with the documents listed in § 3003.2 (a) through (c).

3003.3 A student loan servicer shall demonstrate and continuously maintain a net worth of not less than two hundred fifty thousand dollars (\$250,000).

### **3004 SURETY BOND REQUIREMENT**

3004.1 An applicant for a student loan servicer license shall file a surety bond in a form prescribed by the Commissioner with each original application and any renewal application.

3004.2 The surety bond shall:

- (a) Run to the Commissioner for the benefit of:
  - (1) The District and any person who has been damaged by a licensee as a result of violating any law or regulation governing the activities of a student loan servicer; or

- (2) The recovery of fees or expenses levied against a licensee pursuant to the act;
- (b) Be issued by an insurer authorized to do business in the District;
- (c) Be conditioned upon the applicant:
  - (1) Complying with all District and federal laws regulating the activities of student loan servicers;
  - (2) Performing all written agreements with student loan borrowers; and
  - (3) Accounting for all funds received by the licensee in conformity with a standard system of accounting consistently applied;
- (d) Be continuously maintained thereafter for as long as any license issued under the act and this chapter remains in force; and
- (e) Be issued in the applicant's legal name and include any trade names, if applicable.

3004.3 Each student loan servicer licensee shall maintain a continuous surety bond in the amount of fifty thousand dollars (\$50,000) at all times as a condition of licensure.

3004.4 When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond pursuant to the requirements of this section.

3004.5 Immediately upon recovery or upon any action on the bond, the licensee shall file a new bond pursuant to the requirements of this section.

3004.6 Any person who may be damaged by the noncompliance of a licensee with any condition of the bond may proceed on the bond against the principal or surety, or both, to recover damages.

3004.7 Regardless of the number of years the bond remains in effect, the number of premiums paid, the number of renewals of the license, or the number of claims made, the aggregate liability under each bond shall not exceed the penal sum of the bond.

**3005 INCOMPLETE AND ABANDONED APPLICATIONS**

3005.1 An application shall be deemed incomplete if it omits required information, documents, or material facts.

3005.2 If the Commissioner determines that an application is incomplete, the Commissioner shall notify the applicant of the deficiencies through the NMLS. The applicant shall correct a deficiency associated with an application within forty-five (45) days of being notified through the NMLS that the application is deficient.

3005.3 If the applicant fails to complete the application or respond to deficiencies within the forty-five (45) day period, the application will be considered abandoned.

3005.4 Abandonment of an application pursuant to this chapter shall not preclude the applicant from submitting a new application for a license.

### **3006 WITHDRAWAL OF AN INITIAL APPLICATION**

3006.1 An applicant may request withdrawal of an application prior to a determination on the application by filing the request through the NMLS.

3006.2 No withdrawal shall be effective until accepted by the Commissioner.

### **3007 ISSUANCE AND TRANSFERABILITY OF A LICENSE**

3007.1 The Commissioner shall approve an initial license application not later than sixty (60) days from the date the Commissioner determines that the application is complete, and meets the requirements of this chapter.

3007.2 A licensee shall continuously maintain its license or qualification to do business in the District so long as the student loan servicer license is in effect.

3007.3 The Commissioner may restrict or impose conditions on any license.

3007.4 Licensees are under a continuing obligation to update information on file with the Commissioner. If any information filed with the Commissioner becomes inaccurate, the licensee shall promptly submit to the Commissioner an amendment to its record that will correct the information on file with the Commissioner.

3007.5 A licensee shall not operate as a student loan servicer under any other name or at any other place of business other than that named in the license.

3007.6 A license shall remain in force until it has been surrendered, revoked, or suspended in accordance with the provisions of this chapter. The surrender, revocation, or suspension of a license shall not affect any pre-existing legal right or obligation of the licensee, including any civil or criminal liability of a licensee for acts committed before the license was surrendered, revoked, or suspended.

3007.7 A license granted pursuant to this chapter shall not be transferable or assignable.

3007.8 Not more than one (1) place of business shall be maintained under the same license, but the Commissioner may issue more than one (1) license to the same student loan servicer licensee upon compliance with all applicable provisions of this chapter governing the original issuance of a license.

### **3008 INFORMATION CHALLENGE PROCESS**

3008.1 A licensee may challenge information entered into the NMLS by the Commissioner. Any such challenge must be in writing and include the specific information being challenged and supporting information to evidence that the information being challenged is incorrect or invalid.

3008.2 The grounds for the challenge shall be limited to the factual accuracy of the information pertaining to the licensee's own license record that the Commissioner has entered into the NMLS. A licensee shall not submit a challenge to protest a disciplinary action the Commissioner has taken against the licensee or to appeal the underlying reasons for the disciplinary action.

3008.3 A challenge pursuant to § 3008.1 shall be filed with the Commissioner within forty-five (45) business days from the date the information is entered into the NMLS.

3008.4 The Commissioner shall respond to the challenge within twenty-one (21) business days by:

- (a) Granting the challenge and entering the requested change;
- (b) Granting the challenge and allowing the licensee to submit information to be entered into the system; or
- (c) Denying the challenge.

### **3009 EXPIRATION AND RENEWAL OF LICENSE**

3009.1 A student loan servicer license shall expire on December 31st of each year.

3009.2 In order to renew a license, a licensee shall:

- (a) File a license renewal application with the NMLS on a form prescribed by the Commissioner at least thirty (30) days before the expiration date of the licensee's current license;

- (b) Pay the required fees prescribed in Appendix A and supply the Commissioner with any other required information; and
- (c) Demonstrate that the licensee continues to meet the standards for licensure under the act and this chapter.

**3010 LICENSE REINSTATEMENT**

- 3010.1 A renewal license application filed after the license expiration deadline set forth in § 3009.1 but before the last day of February of any year shall be subject to, and accompanied by, a reinstatement fee as prescribed in Appendix A.
- 3010.2 A license that remains expired after the last day of February of any year, or another date that may be selected by the NMLS for the same purpose, cannot be renewed.

**3011 DENIAL OF APPLICATION**

- 3011.1 The Commissioner shall approve or deny a license or renewal application not later than sixty (60) days from the date the Commissioner determines that the application is complete.
- 3011.2 If a license or renewal application is denied, the Commissioner shall notify the applicant and set forth reasons for the denial. The applicant may appeal the Commissioner's decision in accordance with the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-501 *et seq.*).

**3012 CHANGE OF LOCATION**

- 3012.1 A licensee shall notify the Commissioner, in the form prescribed by the Commissioner, of a change to the location of the business and pay all applicable fees as prescribed by the Commissioner.

**3013 SURRENDER OF LICENSE**

- 3013.1 A licensee who intends to permanently cease operating as a student loan servicer during a license period shall file a request to surrender the license for each office at which the licensee intends to cease operations on a form prescribed by the Commissioner.
- 3013.2 The Commissioner may request the reason for the cessation of business in the District.
- 3013.3 No surrender shall be effective until accepted by the Commissioner.



3013.4 The surrender of a license does not affect any legal right or obligation described under and pursuant to § 3007.6.

**3014 ANNUAL REPORT AND REPORTING REQUIREMENTS**

3014.1 A student loan servicer licensee shall, on or before January 30, submit an annual report for the preceding calendar year to the Commissioner in a form prescribed by the Commissioner.

3014.2 The annual report shall include information on the following:

- (a) The number of loans sold, assigned or transferred during the preceding calendar year; and
- (b) Any other relevant information related to business operations required by the Commissioner.

**3015 ANNUAL ASSESSMENTS**

3015.1 Each licensed student loan servicer who held a license during the prior licensing period shall be subject to an annual assessment fee as prescribed in Appendix A.

3015.2 The annual assessment fee shall be determined to be the sum of a fixed amount plus a variable amount based on the number of loans serviced in the previous license period as prescribed in Appendix A.

3015.3 A licensee who has been charged and pays an annual assessment fee shall not be subject to an examination fee in the same year unless the following occurs:

- (a) The Commissioner determines that an out-of-the-District examination is necessary; or
- (b) The Commissioner determines that an unscheduled examination is necessary.

3015.4 All annual assessment fees shall be invoiced through the NMLS and are due on or before November 1 of each calendar year.

3015.5 In the case of a licensee surrendering a license, the annual assessment shall be due no later than thirty (30) days after receipt of a surrender request in the NMLS.

**3016 NOTIFICATION OF SIGNIFICANT EVENTS BY LICENSEE**

- 3016.1 A licensee shall notify the Commissioner, in writing, within five (5) business days, of the occurrence of any of the following significant events:
- (a) The filing for bankruptcy or reorganization by the licensee;
  - (b) Any fact or condition that exists that has a negative impact on the licensee's financial condition and ability to maintain the financial requirements prescribed in this chapter, or which precludes the licensee from operating in a safe and sound manner consistent with the act, these regulations and in the best interests of District consumers;
  - (c) Settlement or resolution of any civil action or proceeding against the licensee involving fraud, misrepresentation, or wrongful taking of property;
  - (d) Receipt of notification of the initiation of any action against the licensee by the District of Columbia Office of the Attorney General or of any other state or federal agency, and the reasons therefor;
  - (e) Receipt of notification of license denial, cease and desist order, initiation of suspension or revocation proceedings, issuance of formal orders of suspension or revocation or other imposed disciplinary action, or other formal or informal regulatory action, from any state or federal agency against the licensee, and the reasons therefor; or
  - (f) A charge of or conviction of the licensee of any criminal offense involving financial services or financial services related business; or any charge involving fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion.

**3017 SPECIAL REPORTS**

- 3017.1 The Commissioner may require a licensee to submit a report of a condition, which must be in the form and must contain the information, prescribed by the Commissioner.

**3018 RECORD KEEPING**

- 3018.1 For each student education loan sold, assigned, transferred or serviced, a licensee shall retain adequate records of each transaction for at least three (3) years after final payment is made on the student educational loan, or after the assignment or transfer of the student education loan, whichever first occurs.
- 3018.2 Each licensee shall make applicable books and records available to the

Commissioner or send such records to the Commissioner by registered or certified mail, return receipt requested, or by any express delivery carrier that provides dated delivery receipt, no later than seven (7) days after the Commissioner's official request. Upon request, the Commissioner may grant a licensee additional time to make such books and records available.

**3019                   SUSPENSION AND REVOCATION OF LICENSE**

3019.1           The Commissioner may suspend or revoke a license issued under this chapter, or take any other action provided for in this chapter, if the Commissioner finds that:

- (a)     The licensee has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter;
- (b)     Any fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted a denial of the license; or
- (c)     The licensee refuses to permit the Commissioner to make an examination or investigation authorized under this chapter.

**3020                   ORDER OF REVOCATION AND NOTICE OF SUSPENSION**

3020.1           An order issued pursuant to D.C. Official Code § 31-106.02(h)(2) shall include:

- (a)     The date the order was entered;
- (b)     The basis for the proposed action;
- (c)     The date by which the person must file a written request for reconsideration; and
- (d)     The date by which the Commissioner shall consider the order to be final.

3020.2           A notice of suspension under D.C. Official Code § 31-106.02(i) shall include:

- (a)     The date the notice was issued;
- (b)     A statement determining that suspension is in the public interest;
- (c)     The grounds for the suspension;

- (d) The date by which the person must file a written request for a hearing; and
- (e) Notice that the failure of the person to file a written request for a hearing with the Commissioner within the specified time period shall constitute a waiver of a hearing.

3020.3 Unless otherwise required by the act, a final order, temporary order, or any other type of enforcement action taken by the Commissioner shall be issued or conducted in accordance with D.C. Code § 31-106.02(h-i).

3020.4 The Commissioner may make public a final order, temporary order, or any other type of enforcement action taken by the Commissioner.

3020.5 All hearings held pursuant to this section shall be conducted pursuant to the Rules of Practice and Procedure for Hearings set out in Chapter 38 of Title 26-A of the District of Columbia Municipal Regulations.

3020.6 Any order issued by the Commissioner pursuant to D.C. Code § 31-106.02(h) shall remain in full force and effect until and unless later modified or vacated by the Commissioner.

## **3021 EXAMINATIONS AND INVESTIGATIONS**

3021.1 The Commissioner, or the Commissioner's designated agent, shall examine the affairs, business premises, and records of each licensee at least once every three (3) years and at any other time the Commissioner considers necessary.

3021.2 The Commissioner or the Commissioner's designee, on the basis of a written complaint or on his or her own initiative, may conduct an investigation into the transactions, business, and records of any licensee or person who the Commissioner has reason to believe is engaging in any business subject to the act or this chapter.

3021.3 The investigation by the Commissioner under this section may include an examination. Examinations may be conducted in conjunction with examinations to be performed by representatives of governmental agencies of another state.

3021.4 To defray the costs of an examination, every student loan servicer required to be licensed under this chapter shall be subject to an examination fee as prescribed in Appendix A.

- 3021.5 A licensee who has been charged and pays an examination fee, shall not be subject to an annual assessment fee in the same year unless the events set forth in § 3015.3 occur.
- 3021.6 The Commissioner may examine a licensee located outside the District of Columbia and charge the licensee the fee prescribed in Appendix A. When it becomes necessary to examine or investigate the affairs, books, and records of a licensee required to be licensed under this chapter at a location outside the Washington, D.C. metropolitan region, the licensee shall be liable for, and shall pay the Commissioner within thirty (30) days, the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation, or shall pay a reasonable per diem rate approved by the Commissioner.

## **3022 COMPLAINTS**

- 3022.1 Any complaint against a licensee shall be filed with the Commissioner, on a form prescribed by the Commissioner, and in accordance with any procedures or processes prescribed by the Commissioner.
- 3022.2 The Commissioner may provide information on consumer complaints to the NMLS and other state and federal regulatory agencies.

## **3023 PENALTIES**

- 3023.1 Any licensee that fails to file an annual report at the time prescribed by the act, shall be assessed a late penalty of up to one thousand dollars (\$1,000) per business day following the date the annual report is due until the annual report is filed with the Commissioner.
- 3023.2 A licensee, or a person required to have a license under the act, shall be assessed up to the maximum penalties upon a violation of the act as follows:
- (a) Five thousand dollars (\$5,000) for each occurrence of each violation of the act if the person committing the violation is a licensee, and the licensee has no more than one (1) violation of the act during the current license period; and
  - (b) Twenty-five thousand dollars (\$25,000) for each occurrence of each violation of the act if the person committing the violation is not licensed by the Commissioner.
- 3023.3 The Commissioner, in his or her discretion, may reduce the penalty imposed under this chapter upon good cause shown, in writing, by the person or entity against whom the penalty would be imposed.

## 3099 DEFINITIONS

3099.1 For the purpose of this chapter, the following terms have the meaning ascribed:

**Act** – The Department of Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-101 *et. seq.*), as amended by the Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016, effective February 18, 2017 (D.C. Law 21-214; D.C. Official Code §§ 31-106.01-.03).

**Applicant** - a person filing an initial or renewal application for licensure under this chapter.

**Application** – an initial or renewal application for licensure under this chapter processed as required by the Commissioner, through the Department, the NMLS, or any other third party processor prescribed by the Commissioner.

**Branch** – an office or location of a student loan servicer that is separate and distinct from the student loan servicer’s principal office and from which it operates as a student loans servicer.

**Commissioner** - the Commissioner of the Department of Insurance, Securities and Banking.

**Department** - the Department of Insurance, Securities and Banking.

**Licensee** – any person or entity duly licensed by the Commissioner pursuant to this chapter.

**Student Loan Servicer** - a person or entity, whether located within or outside the District, responsible for the servicing of a student education loan of a student loan borrower.

**Nationwide Multistate Licensing System and Registry (“NMLS”)** - the licensing system developed and maintained by the Conference of State Banking Supervisors and the American Association of Residential Mortgage Regulators, or their successors for the licensing and registration of persons engaged in the state-regulated financial service industries.

**Washington, D.C. metropolitan region** – means the District of Columbia, the counties of Montgomery and Prince Georges in the State of Maryland, the counties of Arlington and Fairfax, and the cities of Alexandria and Falls Church in the Commonwealth of Virginia.

## APPENDIX A

### STUDENT LOAN SERVICER LICENSE FEES

Student Loan Servicer License	Fees
DISB Initial Application Fee	\$1,200 + NMLS Fee
DISB Renewal Application Fee	\$1,000 + NMLS Fee
DISB Amendment Fee	\$100
DISB Reinstatement Fee	\$1,000
DISB Annual Assessment Fee	\$800 + \$6.60 per loan
DISB Examination Fee	\$400 per examiner day

Persons desiring to comment on these proposed rules should submit comments in writing to Christian A. Washington, Legislative Analyst, Office of the Commissioner, Department of Insurance, Securities and Banking, 810 First Street, N.E., Suite 701, Washington, D.C. 20002, or by email at [Christian.Washington@dc.gov](mailto:Christian.Washington@dc.gov). Comments must be received not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the Department at the address above.