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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

FILED

04/27/2022 3:18 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Student Loan Servicer Licensing Rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/27/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/23/2022

TIME: 10:00 AM

OFFICER: Aeron Teverbaugh

ADDRESS: Labor & Industries Building

350 Winter St NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Microsoft TEAMS meeting

Call in (audio only)

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Phone Conference ID: 539 639 738#

NEED FOR THE RULE(S)

The 2021 Legislative Assembly adopted Senate Bill 485. The bill required persons servicing student loans to be licensed by the director of the Department of Consumer and Business Services. These rules provide the requirements for licensure. They establish submission of specific materials needed to apply and renew through the Nationwide Multistate Licensing System. They establish the application fees and process for an assessment in order to administer the program. They lay out specific responsibilities and prohibited acts as provided in SB 485.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These proposed rules will largely impact student loan servicers. However, the regulation of student loan servicers imposed by SB 485 is likely to have a positive impact on individuals with student loans. SB 485 was passed in response to reported abuses of student loan servicers. Often, minority groups, women, persons with lower incomes lack the resources necessary to challenge and correct actions by abusive servicers. The proposed rules individually are unlikely to result in a disparate impact for borrowers.

FISCAL AND ECONOMIC IMPACT:

Because there is no current licensing regime for student loan servicers, these proposed rules will have a fiscal impact. However, the impact is largely due to the requirements of Senate Bill 485 for which these proposed rules spell out procedures. The largest impact is related to fees needed to administer the program. Additionally, licensees will be required to obtain a bond as required by the bill.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Based on information currently available to DCBS, the proposed rule would not have a fiscal or economic impact on state agencies, local government units, nor the general public.

The rule advisory committee estimates that the impact to state agencies will be limited to the Department of Consumer and Business Services (DCBS) as the agency responsible for administering and enforcing the student loan servicer licensing program required by SB 485. The impact to DCBS is likely to be minimal because SB 485 allows the department to charge fees to off-set the costs of administering and enforcing the program. Utilizing the NMLS establishes operating efficiencies in the licensing process for both the department and for the business entities that engage in servicing student loans in Oregon. Since this is a new licensing program, the exact extent of the fiscal impact is unknown because it is unknown how many student loan servicers will apply for licensure in the state.

(2)(a) This is a new licensing program; it is unknown how many businesses are engaged in servicing student loans in Oregon. As of May 2021, 13 states regulated student loan servicers, largely through the Nationwide Multistate Licensing System (NMLS). While the licensing pool is largely made up of a few large multistate companies, there are smaller student loan servicers. The division is unable to determine if or how many student loan servicers would meet the definition of a small business under ORS 183.336. While businesses engaged in servicing student loans will see a fiscal impact due to licensing and renewal fees, an annual assessment, and obtaining a surety bond or irrevocable letter of credit, those were requirements of the underlying SB 485 and not solely a result of this proposed rulemaking. Additionally, NMLS require a \$100 for registration and renewals through the system. Because these proposed rules implement the student loan servicer licensing program the fiscal impact is unknown at this time. This cost may be somewhat offset by the fact that NMLS allows licensees to submit information once to meet multiple state requirements. The NMLS does not have full functionality for annual reports at this time, so reports will need to be submitted directly to Oregon.

(2)(b) The proposed rules require student loan servicers to submit an annual report in order to apportion the assessment to support the program. The proposed rules require that the report to be a detailed breakdown of the licensee's Oregon loan servicing portfolio. Additionally, the proposed rules require the filing of an annual fiscal report in order to assess the licensee's financial health. The proposed rules require the financial report to be compiled no later than 90 days after the end of the licensee's fiscal year. Examination costs are estimated to approximately \$700. Since

this is a new program it is unknown how many, or how often, examinations are likely to be done "for cause." Because it is unknown at this time how many persons are engaged in servicing student loans in Oregon the exact impact is indeterminable.

(2)(c) The proposed rules should not have a significant impact on equipment, supplies, labor, or increased administration required for compliance, particularly because the proposed rules require use of a multistate licensing system. The proposed rules implement the requirements of SB 485. However, because it is unknown at this time how many persons are engaged servicing student loans in Oregon the exact impact is unknown at this time.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Representatives of small businesses will be invited to provide comment on the rule. The department attempted to incorporate small businesses into representation on the rulemaking advisory committee. The department is unaware of any student loan servicers in Oregon that would qualify as small businesses under ORS 183.336.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

441-895-0005, 441-895-0010, 441-895-0015, 441-895-0020, 441-895-0025, 441-895-0030, 441-895-0035, 441-895-0040, 441-895-0045, 441-895-0050, 441-895-0055, 441-895-0060, 441-895-0065, 441-895-0070, 441-895-0075, 441-895-0080, 441-895-0085, 441-895-0090, 441-895-0095, 441-895-0110

ADOPT: 441-895-0005

RULE SUMMARY: Provides for submitting application through the Nationwide Multistate Licensing System and outlines specific application materials.

CHANGES TO RULE:

441-895-0005

Application Requirements

Except as provided in OAR 441-895-0010, each person applying for a student loan servicer license shall submit to the director all the following required application materials and information: ¶

(1) A completed Form MU1 submitted through the NMLS and approved by the director. ¶

(2) A completed Form MU2 submitted through the NMLS and approved by the director for any individual identified in OAR 441-895-0010. ¶

(3) Fingerprints and an authorization to conduct a criminal records check and authorize a credit report submitted through the NMLS from any individual that acts as a controller or manager for the student loan servicer. ¶

(4)(a) A corporate surety bond submitted through the NMLS; or ¶

(b) An irrevocable letter of credit filed with the director through the NMLS. ¶

(5)(a) Financial statements prepared in accordance with generally accepted accounting principles, including a balance sheet and a statement of income or operations, dated not more than six months prior to submission of the application through the NMLS. ¶

(b) The financial statements may be prepared by the student loan servicer, except that if the director finds it in the public interest, the director may require that a student loan servicer submit financial statements prepared by an independent accountant. ¶

(c) If the financial statements are more than six months old, interim period financial statements prepared by the student loan servicer for the period ending the last full month prior to the date of application shall also be submitted. ¶

(6) A statement with a detailed breakdown of the portfolio of student loan servicing rights for Oregon. The information should reflect the composition of the portfolio based on student loan servicing rights owned and aggregate number of loans and unpaid principal balance of all student loan loans segregated by subservicer. The information provided should be as of the most recent quarter and reported in the form of an NMLS Student Loan Call Report, if available. ¶

(7) The names and contact information of all subcontractors performing servicing activities on behalf of the student loan servicer. ¶

(8) Biographical information required by OAR 441-895-0015 submitted through the NMLS. ¶

(9) The name and address of the registered agent in this state upon whom any process, notice or demand required or permitted by law to be served upon the servicer may be served. ¶

(10) The information required under OAR 441-895-0020 for each branch office submitted through the NMLS. ¶

(11) Payment of fees for application or renewal, as applicable, under OAR 441-895-0045 and OAR 441-895-0055, as applicable, paid through the NMLS. ¶

(12) 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 approved by the director.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0010

RULE SUMMARY: Provides for automatic licensure of applicants contracted with the U.S. Department of Education under 20 U.S.C. 1087f.

CHANGES TO RULE:

441-895-0010

Automatic Licensure

(1) An applicant that services a student loan under a contract with the United States Secretary of Education under 20 U.S.C. 1087f shall be granted a license automatically upon payment of the fee proscribed in OAR 441-895-0045 if they:

(a) Identify a registered agent in this state or appoint the director as the applicant's registered agent; and

(b) Notify the director in writing within seven days after the date on which the contract with the United States Secretary of Education under 20 U.S.C. 1087f expires or terminates. At the expiration or termination of the contract, the licensee becomes subject to OAR 441-895-0005 and, to continue to service a student loan in this state, must meet the criteria within 30 days after the date on which the contract expires or terminates.

(2) Automatic licensure does not relieve a student loan servicer from complying with all other requirements under these rules or Oregon Laws 2021, chapter 651.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0015

RULE SUMMARY: Requires biographical information for control persons of an applicant for licensure.

CHANGES TO RULE:

441-895-0015

Biographical Information Required for Student Loan Servicer License Application

(1) Each of the following persons listed in section (2) of this rule shall submit a Form MU2 to the director of the Department of Consumer and Business Services through the NMLS. ¶

(2) This rule applies to: ¶

(a) Any director, officer or general partner of a business entity; ¶

(b) A managing member of a limited liability company; ¶

(c) A person that has a direct or indirect right to vote 10 percent or more of the securities of a business entity that have voting rights or the power to sell or cause the sale of 10 percent or more of any class of a business entity's securities; ¶

(d) A person that has contributed 10 percent or more to a partnership's capital or has the right to receive a distribution of 10 percent or more of a partnership's capital or assets upon dissolution; or ¶

(e) A person that, under the terms of a contract or because the person has an ownership interest in another person, has the power to manage or set policies for the other person or otherwise direct the other person's operations or affairs.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0020

RULE SUMMARY: Provides process for fixing deficiencies in an application, renewal or other filing.

CHANGES TO RULE:

441-895-0020

Deficiencies in Student Loan Servicer License Application, Renewal, Filing or Amendment

(1) If an applicant or licensee submits an application, renewal, filing, or amendment, which is incomplete in any respect, the director shall notify the applicant or licensee of the deficiencies through the NMLS. The applicant or licensee shall correct a deficiency associated with an application, renewal, filing, or amendment within 30 days of being notified through the NMLS that the director placed a deficiency on the person's application, renewal, filing, or amendment. A challenge submitted to the NMLS as set out in OAR 441-850-0050 shall halt the 30-day period of time for correcting deficiencies for the duration of the challenge process. ¶

(2) If the applicant fails to complete the application or respond to deficiencies within 30 days, the application will be considered abandoned. Any fees paid by the applicant under OAR 441-895-0045 will not be refunded due to abandonment. An applicant whose application is abandoned under this rule may reapply to obtain a student loan servicer license.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0025

RULE SUMMARY: Provides procedure for licensing branch locations.

CHANGES TO RULE:

441-895-0025

Branch Office Licensing

(1) If a licensee intends to operate a branch office from which it will service Oregon loans or that will be located in Oregon, the licensee shall obtain a license for the branch office prior to servicing loans from the branch office by submitting the licensing fee specified in OAR 441-895-0045 and submitting a Form MU3 to the NMLS. ¶

(2) Upon satisfaction of the requirements listed in section (1) if the company's license is in good standing and the director is satisfied that the branch application is complete, the director shall issue a separate branch office license.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0030

RULE SUMMARY: Provides procedures for renewing a license.

CHANGES TO RULE:

441-895-0030

Renewal of Student Loan Servicer License

(1) A student loan servicer license shall expire on December 31 of each calendar year. At least 30 days prior to the expiration of a student loan servicer license, the student loan servicer shall submit a renewal request for the license to the director through the NMLS and shall: ¶

(a) Complete a renewal request with an attestation that the records are true and accurate; and ¶

(b) Pay any applicable renewal fees prescribed under OAR 441-895-0040. ¶

(2) A student loan servicer seeking to renew its license shall each calendar year: ¶

(a) Submit, or confirm, through the NMLS a corporate surety bond meeting the specified amounts under OAR 441-895-0040; or ¶

(b) File or have on file with the director an irrevocable letter of credit which meets the amounts under OAR 441-895-0040. ¶

(3) If a student loan servicer submits an application for renewal which is incomplete in any respect, the director shall notify the student loan servicer of the deficiencies on the application. The student loan servicer shall have 30 days from the date of the notice or the end of the renewal period, whichever occurs last, to complete the application for renewal. If the student loan servicer fails to complete the application for renewal, and the license shall be terminated on the expiration date by reason of failure to renew.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0035

RULE SUMMARY: Adopts liquidity and operating reserve requirements.

CHANGES TO RULE:

441-895-0035

Liquidity, Operating Reserves, and Tangible Net Worth Requirements

(1) An applicant or licensee operating an approved servicer must maintain liquidity, operating reserves, and tangible net worth of at least \$250,000. ¶

(2) The director may waive or adjust the requirements in this section if it finds that doing so will be in the public interest. The director shall consider the servicer's loan portfolio, operational risks, net worth, operating reserves, and degree of supervision by other regulatory entities.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0040

RULE SUMMARY: Requires a \$25,000 bond.

CHANGES TO RULE:

441-895-0040

Corporate Surety Bond or Irrevocable Letter of Credit for Student Loan Servicers

(1) Every applicant for a license as a student loan servicer must file a corporate surety bond or irrevocable letter of credit with the director as specified in this rule in a form and on terms approved by the director. The corporate surety bond shall be renewed or replaced each calendar year. The corporate surety bond or irrevocable letter of credit shall be delivered to the director by filing in the NMLS by December 1 of each calendar year but may be made effective as of December 31 of each calendar year. In no case shall any applicant or student loan servicer subject to this rule reduce the amount of a corporate surety bond or irrevocable letter of credit before October 1 of each calendar year. ¶

(2) The corporate surety bond or irrevocable letter of credit must remain in effect for at least five years after the person ceases to be licensed as a student loan servicer. A consumer must file a claim against the corporate surety bond or irrevocable letter of credit before the corporate surety bond or irrevocable letter of credit expires as described in this section. ¶

(3) At least five years after a person ceases to be licensed as a student loan servicer, the person or the writer of the corporate surety bond or irrevocable letter of credit may apply to the director for release of the corporate surety bond or irrevocable letter of credit. Unless the director determines that claims are pending against the person for violation of Oregon Laws 2021, chapter 651, the director will release the corporate surety bond or irrevocable letter of credit. ¶

(4) The corporate surety bond or irrevocable letter of credit shall be in the amount of \$30,000 made payable to the State of Oregon.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0045

RULE SUMMARY: Establishes licensing and renewal fees.

CHANGES TO RULE:

441-895-0045

Fees Payable to the Director

In addition to any fees required to participate in the NMLS, a student loan servicer shall pay to the director the following fees at the time of application or renewal: ¶

(1) A nonrefundable application fee for a student loan servicer license of \$1,000 plus a \$500 nonrefundable application fee for each branch the student loan servicer establishes in Oregon. ¶

(2) The fee for late renewals is \$500. The director may waive this if there is good cause and the late renewal was outside the licensee's control. ¶

(3) Application and renewal fees are in addition to annual assessments under OAR 441-895-0050.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0050

RULE SUMMARY: Establishes annual reporting requirement.

CHANGES TO RULE:

441-895-0050

Annual Reporting

(1) In order to assist with the administration of the assessment in OAR 441-895-0055, licensees must submit annually a report containing a detailed breakdown of the licensee's portfolio of student loan servicing rights for Oregon, by borrower. The information should reflect the composition of the portfolio based on student loan servicing rights owned and aggregate number of loans and unpaid principal balance of all student loans segregated by subservicer. The information provided in the report should be current as of June 30 and reported in the form of an NMLS Student Loan Call Report, if available.¶

(2) Annual reports will be due August 1.¶

(3) 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 approved by the director.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0055

RULE SUMMARY: Establishes an assessment.

CHANGES TO RULE:

441-895-0055

Assessments

(1) Each licensee must pay an annual assessment, representing the licensee's pro rata share of all costs and expenses incurred by the department to run the Student Loan Servicing Program. A licensee's pro rata share is the proportion that a licensee's servicing activities in Oregon bears to total costs and expenses, after deducting the licensing fee for each licensed location. A licensee's servicing activities in Oregon is the percentage which the number of borrowers serviced in Oregon by the licensee bears to the total number of borrowers serviced by all licensees in Oregon.

(2) Assessment payments will be due October 31 and will be based upon information contained in the annual report outlined in OAR 441-895-0050, except that the first assessment due for businesses licensed in in 2022 shall be based on information submitted during initial licensure.

(3) Assessments will be paid through NMLS.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0060

RULE SUMMARY: Establishes examination fees.

CHANGES TO RULE:

441-895-0060

Examination Charges

(1) Examination charges shall be paid upon receipt of the invoice of examination fees. ¶

(2) In addition to the initial application and renewal fees assessed under Oregon Laws 2021, chapter 651, section 3 and these rules, licensees shall pay an examination charge in the amount of \$75 an hour for each person used in performance of the examination. ¶

(3) Notwithstanding section (2) of this rule: ¶

(a) If an employee of the department is required to travel out of state to perform the work described by section (2) of this rule, the rate of charge is \$75 per hour plus costs for travel and subsistence for each such person: ¶

(b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the licensee is the actual cost to the director of the contract consultant.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0065

RULE SUMMARY: Establishes rules for use of an assumed business name.

CHANGES TO RULE:

441-895-0065

Rules for Use of an Assumed Business Name

(1) In addition to any requirements for registering an assumed business name with the Secretary of State, a student loan servicer who intends to use an assumed business name to identify the person's student loan servicer business shall also comply with the following before doing business under the assumed business name: ¶

(a) If the assumed business name contains words or phrases described in ORS 56.023, the student loan servicer must obtain specific written approval from the director under ORS 705.635 and OAR 441-005-0010. ¶

(b) The student loan servicer must list the name as an other trade name on the company's MU1 in NMLS and MU3 if the name will be used in connection with a branch location. ¶

(2) Regardless of the lack of any ownership interest in the assumed business name, the student loan servicer is responsible for all actions of those acting under the assumed business name which relate to student loan servicing.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0070

RULE SUMMARY: Establishes elements the department will use to determine financial responsibility of applicants and control persons.

CHANGES TO RULE:

441-895-0070

Financial Responsibility Criteria for Individuals

(1) For purposes of this rule, an individual is not financially responsible if the individual has shown a disregard of his or her own financial circumstances, taking into consideration the totality of the individual's financial circumstances. ¶

(2) Factors that the director may consider in determining whether an individual has not demonstrated financial responsibility include, but are not limited to, the following: ¶

(a) Current outstanding judgments or material litigation, excluding judgments solely as a result of medical expenses; ¶

(b) Current outstanding tax liens or other government liens and filings; ¶

(c) A foreclosure within the past three years and the type of property subject to foreclosure, whether residential or commercial; ¶

(d) Pending or completed bankruptcy proceedings, and the length of time between two or more bankruptcy filings; or ¶

(e) A pattern of seriously delinquent accounts within the past three years. ¶

(3) In assessing the financial responsibility of the individual, the director may consider extenuating or mitigating factors, including but not limited to the following: ¶

(a) Involuntary loss of job or income; ¶

(b) Involuntary medical expenses; ¶

(c) Divorce; ¶

(d) Attempting workout arrangements with creditors; or ¶

(e) Any other factor the director believes reflects circumstances beyond the control of the applicant.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0075

RULE SUMMARY: Requires annual financial reporting.

CHANGES TO RULE:

441-895-0075

Annual Financial Statements

(1) Licensees shall submit 90 days after the end of their fiscal year, a copy of the licensee's most recent consolidated annual financial statement. Annual financial statements must include a balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. ¶

(2) In the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement. ¶

(3) The financial statements may be prepared by the licensee, except that if the director finds in the public interest, the director may require that a licensee submit financial statements prepared by an independent accountant. ¶

(4) Financial statements shall be submitted through the NMLS.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

RULE SUMMARY: Lays out the affirmative duties of a student loan servicer.

CHANGES TO RULE:

441-895-0080

Duties of a Servicer of a Student Loan

(1) Except as otherwise required under federal law, in a federal student loan agreement or in a contract between the federal government and a person that services a student loan, a person that services a student loan shall:

(a) Assess any fee that the person may assess against a borrower within 45 days after the borrower incurs the fee.

(b) Accept and credit, or treat as credited, to the borrower's account all amounts the person receives at the address to which the borrower has been instructed to send payments or notifications of payment on the borrower's student loan. The person must credit the payment, or treat the payment as credited, within one business day after receiving the payment or notification of payment if the borrower has provided sufficient information to credit the account. If the person uses the scheduled method of accounting and the person receives a regularly scheduled payment before the scheduled due date, the person shall credit the payment to the borrower's account not later than the scheduled due date.

(c) Correct promptly any errors the person makes and refund promptly any fees the person assesses against the borrower in error.

(d) Maintain adequate records for not less than two years after a final payment on a student loan or after the person assigns the student loan, whichever occurs first, of:

(A) Each student loan transaction;

(B) Communications with borrowers other than transactions, such as complaints, complaint resolutions, counseling; or

(C) Business records, including but not limited to board meeting minutes and policy documents related to servicing student loans.

(e) At the request of the director of the Department of Consumer and Business Services and within five days after the request or the within the time the director specifies in the request, the person shall make the records available to the director or send the records to the director in the manner the director specifies by rule.

(2) A person that services a student loan may not, directly or indirectly:

(a) Employ any device, scheme or artifice to defraud another person;

(b) Knowingly make an untrue statement of a material fact or omit a material fact that is necessary to make the person's statement true in light of the circumstances in which the person makes the statement, or misrepresent the amount, nature or terms of any fee or payment due or claimed to be due on a student loan or the terms and conditions of a loan agreement or the borrower's obligations under the loan agreement;

(c) Obtain property by fraud or misrepresentation;

(d) Knowingly misapply or recklessly apply payments to the outstanding balance of a student loan;

(e) Engage in an act, practice or course of business that operates or that the person intends to operate as a fraud or deceit upon another person;

(f) Make or file with the Department of Consumer and Business Services or another state agency, or cause to be made or filed with the department, a statement, report or document that the person knows is false in any material respect or manner;

(g) Fail to respond to a consumer complaint, or to communication from the ombudsman appointed or designated under Oregon Laws 2021, chapter 651, section 65111, within 30 calendar days or within a reasonable time that the student loan ombudsman specifies in the communication. The person may request in writing that the student loan ombudsman allow not more than 30 additional calendar days within which to respond if in the request the person explains why the additional time is reasonable and necessary; or

(h) Engage in an Unfair, Deceptive, or Abusive Act or Practice as prohibited by the federal Consumer Financial Protection Act (12 USC 5531).

(3) The revocation, suspension, or failure to obtain and maintain a license does not impair or affect the servicer's obligations under a preexisting lawful contract with a lender or borrower.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0085

RULE SUMMARY: Entities exempt from the licensing requirements.

CHANGES TO RULE:

441-895-0085

Exempt Entities

(1) A person need not obtain a student loan servicer license under section (2)(1) of Oregon Laws 2021, chapter 651, if the person: ¶

(a) Is a financial institution, as defined in ORS 706.008;¶

(b) A financial holding company or bank holding company, both as defined in ORS 706.008, if the financial holding company or bank holding company does no more than control an affiliate or subsidiary, as defined in 12 U.S.C. 1841(d), and does not engage in business as a student loan servicer.¶

(c) An attorney who is licensed or otherwise authorized to practice law in this state if the attorney services a student loan only incidentally in the course of practicing law.¶

(d) A public body, as defined in ORS 174.109.¶

(e) A public university listed in ORS 352.002.¶

(f) A community college, as defined in ORS 341.005.¶

(g) The Oregon Health and Science University.¶

(h) A nonprofit, private, post-secondary institution that the Higher Education Coordinating Commission has authorized to confer academic degrees under ORS 348.594 to 348.615.¶

(i) A state agency or a private nonprofit institution or organization that has an agreement with the United States Secretary of Education under section 428(b) of the Higher Education Act of 1965 (20 U.S.C. 1078(b)), solely to the extent of the agency's, institution's or organization's actions as a guarantor that engages in averting defaults. The exemption set forth in this paragraph does not extend to the agency's, institution's or organization's actions in servicing a student loan.¶

(2) Notwithstanding section (1) the director may require any person to obtain a license under OAR 441-895-0005 before the person services or continues to service a student loan in this state if the director determines that the person has violated state or federal law or has engaged in a course of dealing that is fraudulent, deceptive or dishonest.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0090

RULE SUMMARY: Director has general supervisory authority over student loan servicers.

CHANGES TO RULE:

441-895-0090

Director Supervision

(1) The director has general supervision and control over licensees in Oregon, whether or not the person has obtained a license, had a license withdrawn, canceled, suspended, conditioned or revoked. ¶

(2)(a) At any time, the director may examine the books, accounts, papers, records, files, correspondence, contracts and agreements, memoranda, disclosures, documents and other information of a servicer servicing Oregon loans or servicing in Oregon, whether or not the person has obtained a license, had a license withdrawn, canceled, suspended, conditioned or revoked. ¶

(b) Materials received by the director as a part of an examination or enforcement action are subject to ORS 705.137. ¶

(3) The director may investigate, in-state or out-of-state licensees and: ¶

(a) Require a person to submit a statement concerning the subject of the investigation in writing under oath; ¶

(b) Compel witnesses, take evidence, require the production of books, accounts, papers, records, files, correspondence, contracts and agreements, memoranda, documents and other information, material or evidence the director deems relevant or material to the examination, investigation, or proceeding; ¶

(c) Interview and preserve testimony concerning licensee or person's business practices and operations.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

RULE SUMMARY: Requires disclosure of certain significant events.

CHANGES TO RULE:

441-895-0095

Disclosure of Significant Developments

(1) A licensee must notify the director within 10 days following the occurrence of any of the following significant developments: ¶

(a) Filing for bankruptcy or reorganization;¶

(b) The licensee or a director, member, officer, manager, partner, control person or registered agent becomes subject to an indictment related in any manner to the licensee's activities;¶

(c) The licensee receives notice of a final order issued in this or another state that:¶

(A) Demands that the licensee cease and desist from any act;¶

(B) Suspends or revokes a license or registration; or¶

(C) Constitutes any other formal or informal regulatory action against the licensee;¶

(d) The licensee ceases doing business or ceases servicing student loans; or¶

(e) Any change in assumed business name registered with Secretary of State.¶

(2) A licensee must notify the director at least 30 days before:¶

(a) Closing its principal place of business or a licensed branch;¶

(b) Opening a branch office that the licensee did not list in an application under OAR 441-895-0025;¶

(c) Changing registered agent. If a licensee fails to appoint or maintain a registered agent in this state or the registered agent cannot be found with reasonable diligence, the director shall be the agent of the servicer. ¶

(3) A licensee must notify the director within 30 days following:¶

(a) The appointment, resignation or change in licensee's directors, members, officers, managers, partners, control persons or registered agent and provide the new address and title of any new director, member, officer, manager, partner, control person or registered agent.¶

(b) Any changes in the information required on the licensee application form under OAR 441-895-0005, including, but not limited to address changes, phone number changes, e-mail addresses, and other contact information;¶

(c) Any other material changes to information submitted in license application under OAR 441-895-0005.¶

(4) The director may require other information as necessary to determine whether a new application is required if a change of control or ownership of a licensee occurs. For purposes of this rule, a change in control or ownership includes: ¶

(a) Acquisition of 10 percent or more of the stock in a corporation by a person or a group of persons, or the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy of the corporation;¶

(b) Acquisition of the licensee business, if the applicant is an unincorporated sole proprietorship; ¶

(c) Acquisition by a managing partner of a limited partnership or a partner in a general partnership of 10 percent or more of the partnership interests in the general or limited partnership; ¶

(d) Acquisition by a member or managing member in a limited liability company of a membership interest greater than or equal to 10 percent of the total membership interests in the limited liability company; and ¶

(e) In the case of entities other than corporations or those listed in paragraphs (a) through (d) of this subsection, change in control shall mean any change in principals of the organization, whether active or passive. ¶

(5) The director may request additional information regarding any of the occurrences outlined in this rule.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10

ADOPT: 441-895-0110

RULE SUMMARY: Requires display of license and provides method for displaying on webpage.

CHANGES TO RULE:

441-895-0110

Displaying Student Loan Servicer Licensing Information

Licensees can meet the requirements of Oregon Laws 2021, chapter 651, section 3(6) by posting a form provided by the Department of Consumer and Business Services completed with current and valid NMLS licensing information. The licensee must also prominently display their NMLS number on their website.

Statutory/Other Authority: Or Laws 2021, ch 651, secs 1-10

Statutes/Other Implemented: Or Laws 2021, ch 651, secs 2-10