



## State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE

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### BULLETIN NO. 20-31

**TO: ALL NEW JERSEY STATE CHARTERED BANKS, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, NEW JERSEY CREDIT UNIONS, NEW JERSEY LICENSED CONSUMER LENDERS, NEW JERSEY LICENSED SALES FINANCE COMPANIES, SURETY COMPANIES AUTHORIZED TO TRANSACT BUSINESS IN NEW JERSEY AND OTHER INTERESTED PARTIES**

**FROM: MARLENE CARIDE, COMMISSIONER**

**RE: STUDENT LOAN SERVICER LICENSES UNDER N.J.S.A. 17:16ZZ-1 TO -18**

P.L. 2019, c. 200, codified as N.J.S.A. 17:16ZZ-1 to -18 (the “Act”), was enacted on July 30, 2019 and became effective on November 27, 2019. The Act provides for the licensure and regulation of student loan servicers<sup>1</sup> in New Jersey by the Department of Banking and Insurance (the “Department”). On September 15, 2020, the Department will begin to accept license

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<sup>1</sup> The Act defines student loan servicer as “any person, wherever located, responsible for the servicing of any student education loan to any student loan borrower.” N.J.S.A. 17:16ZZ-1.

The Act defines servicing to mean “a. receiving any scheduled periodic payments from a student loan borrower or notification of such payments, and applying payments to the borrower’s account pursuant to the terms of the student education loan or the contract governing the servicing of the loan; b. during a period when no payment is required on the student education loan, maintaining account records for the loan and communicating with the student loan borrower regarding the loan, on behalf of the holder of the loan; or c. interacting with a student loan borrower to facilitate the loan servicing as described in this definition, including activities to help prevent loan default on obligations arising from a student education loan.” N.J.S.A. 17:16ZZ-1.

Student education loan means “a loan that is extended to a student loan borrower expressly to finance postsecondary education expenses or other school-related expenses and shall not include open-end credit or any loan secured by real property. N.J.S.A. 17:16ZZ-1.

Student loan borrower means “any resident of this State who has received or agreed to pay a student education loan; or any person who shares responsibility with a resident for repaying a student education loan.” N.J.S.A. 17:16ZZ-1.

submissions from all persons subject to the Act's licensing requirements, through use of the Nationwide Multistate Licensing System (the "NMLS"). The Act also imposes various regulatory obligations on student loan servicers, including entities that are exempt from the licensure requirement, and provides the Department with the appropriate investigative, examination and enforcement authority to implement the regulatory framework.

Persons<sup>2</sup> currently acting as student loan servicers in this State that submit license forms prior to the close of business on December 31, 2020 may continue to operate as student loan servicers, pending the Department's approval of the license forms. Any person that is not currently acting as student loan servicer in this State; that has been denied licensure by the Department; or that fails to submit a license form prior to the close of business on December 31, 2020, is prohibited from acting as a student loan servicer until the Department has issued a license to that person, unless that person is otherwise exempt from licensure under the Act. Any person acting as a student loan servicer without a license from the Department shall be deemed to be engaging in unlicensed activity and may be subject to enforcement action, as set forth in the Act. Accordingly, all student loan servicers that are not exempt from the Act's licensure requirement must submit all requirements for a license by December 31, 2020.

The Department is issuing this Bulletin to provide guidance to persons that are currently engaged in, or wish to conduct student loan servicing activity, and other interested parties, so as to help those entities meet their obligations under the Act, pending the adoption of regulations.

### **Exemptions from Licensure**

The following persons are exempt from the Act's licensure requirement:

- Any state or federally chartered bank, savings bank, savings and loan association or credit union. (N.J.S.A. 17:16ZZ-4(a)(2)(a)).
- Any wholly owned subsidiary of any bank or credit union. (N.J.S.A. 17:16ZZ-4(a)(2)(b)).
- Any operating subsidiary where each owner of the operating subsidiary is wholly owned by the same bank or credit union. (N.J.S.A. 17:16ZZ-4(a)(2)(c)).

### **Licensure Requirement**

Any person not exempt from the Act's licensure requirement must obtain a license from the Department before engaging in student loan servicing, directly or indirectly ("New Jersey Student Loan Servicer License"). N.J.S.A. 17:16ZZ-4(a)(1). A separate license must be obtained for every student loan servicer's main office and each branch office location from which student loan servicing is conducted. See, N.J.S.A. 17:16ZZ-6(a). The Act also creates a separate license type for persons servicing student loans pursuant to a contract awarded by the United States Secretary of Education under 20 U.S.C. S.1087f ("Federal Contract Student Loans" or "FCSL"). See, N.J.S.A. 17:16ZZ-5. Persons servicing Federal Contract Student Loans shall be automatically issued a limited, irrevocable license ("FCSL Servicer License"), upon adequately demonstrating their eligibility. N.J.S.A. 17:16ZZ-5(a) and (b). Any person engaged in the servicing of both FCSLs and student loans other than FCSLs ("Other Student Loans"), is required to comply with

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<sup>2</sup> As used in this Bulletin, "person" or "persons" means individuals, partnerships, corporations, limited liability companies, associations or any other entity.

the requirements outlined in both sections below and is required to obtain both a FCSL Servicer License and a New Jersey Student Loan Servicer License.

### **Operational Requirements for All Entities**

The Act sets forth operational requirements regarding the handling of student loan borrower payments; inquiries and other communications from the Department or student loan borrowers; record maintenance and retention; and the sale, assignment and transfer of student education loans. N.J.S.A. 17:16ZZ-8, 7. The Act requires student loan servicer licensees to file a report with the Commissioner of Banking and Insurance annually, setting forth information concerning business conducted in the previous calendar year. N.J.S.A. 17:16ZZ-15. The Act prohibits student loan servicers from engaging in unfair, deceitful or fraudulent conduct. N.J.S.A. 17:16ZZ-9. The Act authorizes the Commissioner to investigate and examine parties subject to the Act, including authority to access and take possession of books and records; and to subpoena or order the attendance of relevant parties. N.J.S.A. 17:16ZZ-10. The Commissioner may suspend, revoke or refuse to renew the license of licensees who violate the Act; and is empowered to bring a civil action, in a court of competent jurisdiction, against any person who violates the act, seeking a monetary penalty of not more than \$10,000 for the first violation, and \$20,000 for the second and each subsequent offense. N.J.S.A. 17:16ZZ-11. The Act creates a private right of action for student loan borrowers who suffer ascertainable loss of moneys as a result of the use or employment by a student loan servicer of any method, act or practice declared unlawful under the Act. A court shall award threefold the damages sustained by such a student loan borrower, as well as attorney's fees, filing fees, and reasonable costs of suit. N.J.S.A. 17:16ZZ-12.

Please note that any person engaged in the servicing of student loans in this State is subject to the operational requirements and regulatory obligations imposed by the Act, even if the person is exempt from the Act's licensure requirement. The operational and regulatory requirements apply to recipients of a FCSL Servicer License under N.J.S.A. 17:16ZZ-5 as well as persons exempt from licensure pursuant to N.J.S.A. 17:16ZZ-4(a)(2).

### **License Form Instructions**

The instructions below are divided into two sections. Persons engaged in the servicing of Other Student Loans in this State are directed to follow the instructions contained under **I. New Jersey Student Loan Servicer License Applications**. Persons engaged in the servicing of FCSLs are directed to follow the instructions contained under the section header **II. Federal Contract Student Loan (FCSL) Servicer License Form**. Any person engaged in servicing both FCSLs and Other Student Loans is required to comply with both sets of instructions below, in order to obtain both license types.

#### **I. New Jersey Student Loan Servicer License Applications**

Persons seeking to obtain a New Jersey Student Loan Servicer License must complete a license application, and submit the following to the Department, directly through the NMLS:

- A nonrefundable license fee, in the amount of \$5,000. N.J.S.A. 17:16ZZ-4(b)(3).
- A nonrefundable investigation fee, in the amount of \$500. N.J.S.A. 17:16ZZ-4(b)(4).

- An electronic surety bond obtained from a surety company authorized to transact business in New Jersey. The amount of the surety bond must be \$30,000 plus an additional \$30,000 for each branch office of the applicant. See, N.J.S.A. 17:16ZZ-6(b).
- A reviewed financial statement, demonstrating that the applicant has a tangible net worth of at least \$250,000. The financial statement must be prepared by a certified public accountant or a public accountant, in accordance with Generally Accepted Accounting Principles, dated within 90 days of the applicant’s fiscal year end. The accuracy of the financial statement must be sworn to under oath before a notary public by the applicant, proprietor, a general partner or a corporate officer, or a member duly authorized to execute those documents. The financial statement must include a balance sheet, income statement, statement of cash flows, and all relevant notes. See, N.J.S.A. 17:16ZZ-4(b)(1), (c)(1).
- A business plan that outlines, at a minimum, the following:
  - Marketing strategies
  - Products
  - Target markets
  - Fee schedule
  - Operating structure the applicant intends to employ

See, N.J.S.A. 17:16ZZ-4(c)(7).

- A chart showing, or a description that includes, the percentage of ownership of:
  - Direct owners (total direct ownership percentage must equate to 100%)
  - Indirect owners
  - Subsidiaries and affiliates of the applicant/licensee

See, N.J.S.A. 17:16ZZ-4(c)(7).

- A certified copy of formation documentation, including:
  - Certificate of Incorporation (if the applicant is a corporation)
  - Certificate of Formation and Operating Agreement (if the applicant is a limited liability company)
  - Partnership Agreement (if the applicant is a partnership)
  - If the applicant is an entity that was organized or formed outside of this State, a certificate of authority to do business in New Jersey

See, N.J.S.A. 17:16ZZ-4(c)(7).

- A certificate of good standing, or other State-issued and approved documentation, dated not more than 60 days prior to the filing of the application, that demonstrates authorization to do business in the applicant’s state of formation and in New Jersey. See, N.J.S.A. 17:16ZZ-4(c)(7).

- For applicants that will be operating under a name or names other than their legal name, such as a trade name, “d/b/a” or fictitious name, a file-stamped copy of each alternate name authorization issued by the New Jersey Division of Revenue and Enterprise Services. See, N.J.S.A. 17:16ZZ-4(c)(7).

- Authorization through the NMLS for a Federal Bureau of Investigation (“FBI”) criminal history background check for the applicant; all partners, if the applicant is a partnership; all members, if the applicant is a limited liability company or association; or for all officers, directors, principal employees and each shareholder and trustee owning 10 percent or more of each class of the securities of the corporation, if the applicant is a corporation.<sup>3</sup> N.J.S.A. 17:16ZZ-4(b)(2); See, N.J.S.A. 17:16ZZ-4(c)(3).
- Authorization through the NMLS for a credit report on the applicant; all partners, if the applicant is a partnership; all members, if the applicant is a limited liability company or association; or for all officers, directors, principal employees and each shareholder and trustee owning 10 percent or more of each class of the securities of the corporation, if the applicant is a corporation. N.J.S.A. 17:16ZZ-4(c)(7); See, N.J.S.A. 17:16ZZ-4(c)(3).
- Complete details of all events or proceedings in relation to any “Yes” response to any of the disclosure questions presented on the NMLS. See, N.J.S.A. 17:16ZZ-4(b)(2), (c)(7).
- A certified memorandum indicating all tax obligations to New Jersey have been paid or, if applicable, that a payment plan is in place. See, N.J.S.A. 17:16ZZ-4(c)(7).
- A complete and current resume for the applicant; all partners, if the applicant is a partnership; all members, if the applicant is a limited liability company or association; or for all officers, directors and principal employees, if the applicant is a corporation. The resume should include detailed job descriptions and/or duties performed evidencing experience in the loan servicing industry. See, N.J.S.A. 17:16ZZ-4(c)(3), (7).

**I.(a). New Jersey Student Loan Servicer Branch Office License Applications**

A separate license must be obtained for each branch office location from which an applicant conducts student loan servicing in New Jersey. See, N.J.S.A. 17:16ZZ-6(a). A Branch Manager must be designated for each branch office. The Branch Manager is an individual whose principal office is physically located in the branch office, and who is in charge of, and who is responsible for, the business operations of the branch office. Each branch office must complete a license application, and submit the following to the Department, directly through the NMLS:

- A nonrefundable license fee, in the amount of \$5,000. N.J.S.A. 17:16ZZ-4(b)(3).
- A nonrefundable investigation fee, in the amount of \$500. N.J.S.A. 17:16ZZ-4(b)(4).

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<sup>3</sup> The Act authorizes the Commissioner of Banking and Insurance to “conduct a State and national criminal history records check of the applicant and of each partner, member, officer, director and principal employee of the applicant.” N.J.S.A. 17:16ZZ-4(b). During the initial application process, the Department will only request that applicants submit to an FBI criminal background check through the NMLS. The Department reserves the right to require, at any time in the future, that applicants and then current licensees submit to a State criminal background check through the New Jersey State Police.

- A complete and current resume for the Branch Manager. The resume should include detailed job descriptions and/or duties performed evidencing experience in the loan servicing industry. See, N.J.S.A. 17:16ZZ-4(c)(7).
- Authorization through the NMLS for an FBI criminal history background check for the Branch Manager. N.J.S.A. 17:16ZZ-4(b)(2).
- Authorization through the NMLS for a credit report on the Branch Manager. N.J.S.A. 17:16ZZ-4(b)(2).
- Complete details of all events or proceedings in relation to any “Yes” response to any of the disclosure questions presented on the NMLS. See, N.J.S.A. 17:16ZZ-4(c)(7).

Please note that for new branch offices, which are created, or are applying for a license, after the initial licensure of the licensee’s main office, the licensee’s surety bond will need to be re-issued in an amount increased by \$30,000 for each such branch office. See, N.J.S.A. 17:16ZZ-6(a).

In addition to the Department’s license and investigation fees, the NMLS charges separate processing fees for application submissions, which are the responsibility of the applicant. N.J.S.A. 17:16ZZ-4(b)(5).

Upon the filing of a completed application, including all required accompanying documentation, and payment of the fees for licensure and investigation, applicants will be issued a license only if the Department determines that the applicant’s financial condition is sound; that the applicant will conduct its business honestly, fairly, equitably, carefully and efficiently, within the intent of the Act, and in a manner commanding the confidence and trust of the community; and that the applicant is in all respects properly qualified and of good character.<sup>4</sup> N.J.S.A. 17:16ZZ-4(c)(1)-(3).

Beginning in 2021, all New Jersey Student Loan Servicer Licenses will expire at the close of business on December 31<sup>st</sup> of each year. N.J.S.A. 17:16ZZ-4(d). The license may be renewed for the ensuing 12-month period by filing an application for renewal through the NMLS, between November 1<sup>st</sup> and December 1<sup>st</sup> each year. See, N.J.S.A. 17:16ZZ-4(e). The license renewal application process will require that applicants submit an attestation through the NMLS, confirming that the information in the NMLS account records is true and accurate.<sup>5</sup> Renewal applications must be accompanied by a license fee and an investigation fee in the same amount as in the initial application for a New Jersey Student Loan Servicer License. N.J.S.A. 17:16ZZ-4(e). Renewal applications that are filed after December 1<sup>st</sup> are subject to a late fee of \$100 per day.

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<sup>4</sup> This determination applies to each partner, if the applicant is a partnership; each member, if the applicant is a limited liability company; and if the applicant is a corporation, it applies to the president, chairperson of the executive committee, senior officer responsible for the corporation's business and chief financial officer or any other person who performs similar functions as determined by the Commissioner, each director, each trustee and each shareholder owning 10 percent or more of each class of the securities of the corporation. N.J.S.A. 17:16ZZ-4(c)(3).

<sup>5</sup> Annual renewal applications may also be subject to any submission required for the initial license application. N.J.S.A. 17:16ZZ-4(e).

N.J.S.A. 17:16ZZ-4(e). The annual renewal is subject to NMLS processing fees, which remain the responsibility of the applicant. N.J.S.A. 17:16ZZ-4(b)(5).

The Department may refuse to issue or renew a New Jersey Student Loan Servicer License to any applicant that has made a material misstatement, or knowing omission, on its application for licensure, has not submitted a complete application, or has otherwise failed to meet any of the application requirements. See, N.J.S.A. 17:16ZZ-4(c)(5) and (e).

## **II. Federal Contract Student Loan (FCSL) Servicer License Form**

The Act provides for the issuance of a limited, irrevocable license to any person engaged in the servicing of any student loan pursuant to a contract awarded by the United States Secretary of Education under 20 U.S.C. S.1087f (a Federal Contract Student Loan). See, N.J.S.A. 17:16ZZ-5. To be issued a Federal Contract Student Loan Servicer License, these persons must complete a licensing form and submit the following to the Department, directly through the NMLS:

- A nonrefundable license fee, in the amount of \$5,000. N.J.S.A. 17:16ZZ-4(b)(3), 5(a).
- A certification indicating that the person is servicing student loans pursuant to a contract awarded by the United States Secretary of Education. The certification must be signed and sworn to under oath before a notary public by the proprietor, a general partner or a corporate officer, member or other person duly authorized to execute such a document. See, N.J.S.A. 17:16ZZ-5(a). The certification form can be found here: [LINK].
- For persons servicing solely FCSLs, an electronic surety bond obtained from a surety company authorized to transact business in New Jersey. The amount of the surety bond must be \$30,000 plus an additional \$30,000 for each branch office location where student loan servicing activity is conducted. See, N.J.S.A. 17:16ZZ-6(b). Please note that a person servicing both FCSLs and Other Student Loans, and seeking both license types, is only required to obtain one surety bond in the amount set forth above.

### **II.(a). FCSL Servicer Branch Office License Form**

As with New Jersey Student Loan Servicer Licenses, a separate license must be obtained for each branch office location from which a person conducts student loan servicing of Federal Contract Student Loans in New Jersey. See, N.J.S.A. 17:16ZZ-6(a). A Branch Manager must be designated for each branch office. Each branch office must complete a license form and submit payment of the nonrefundable license fee, in the amount set forth above, directly through the NMLS. See, N.J.S.A. 17:16ZZ-4(b)(3), 5(a). Please note that for new branch offices, which are created, or are filing for a license, after the initial licensure of the licensee's main office, the licensee's surety bond will need to be re-issued in an amount increased by \$30,000 for each such branch office. See, N.J.S.A. 17:16ZZ-6(a).

The Department shall issue a FCSL Servicer License upon completion of the requirements outlined above. FCSL Servicer Licenses are not subject to the annual license renewal requirement. N.J.S.A. 17:16ZZ-5(c). Any person servicing Other Student Loans is subject to the requirements for a New Jersey Student Loan Servicer License as set forth above, regardless of the fact that such person is also engaged in the servicing of Federal Contract Student Loans.

The Department may refuse to issue an FCSL License to any person that has made a material misstatement, or knowing omission, on its license form, has not submitted a complete license form, or has otherwise failed to meet any of the Act's requirements. See, N.J.S.A. 17:16ZZ-5(a).

For assistance in using the NMLS system, you may access the NMLS Resource Center-Getting Started: State-Licensed Companies. In addition, the NMLS call center is available Monday – Friday from 9:00 AM to 9:00 PM Eastern Standard Time and can be reached at 1-855-NMLS123 (1-855-665-7123).

All questions regarding the licensing and registration requirements contained in this Bulletin and under the Act may be directed to Bliconline@dobi.nj.gov.

09/01/2020

Date



Marlene Caride  
Commissioner

JR Student Loan Servicer Licensees/Bulletins