

**PROPOSED REGULATION OF THE
COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB FILE NO. R120-23I

**The following document is the initial draft regulation proposed
by the agency submitted on 11/09/2023**

**DRAFT PROPOSED REGULATION OF THE COMMISSIONER OF
THE FINANCIAL INSTITUTIONS DIVISION**

(Student Loan Servicers/Lenders)

LCB File No. ____ - ____

August 30, 2023

Purpose: To adopt regulations under the Nevada Administrative Code to implement Assembly Bill No. 332 (2023), which creates a new chapter of the Nevada Revised Statutes (NRS) related to student loan servicers and establishes additional requirements for private education lenders under existing law NRS 675.

Authority: Assembly Bill 332, Chapter 466, Statutes of Nevada 2023.

Explanation: Material in *blue bold italics* is new language.

Section 1. *Title 55/Chapter xxx of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 34, inclusive, of this regulation.*

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in this chapter have the meanings ascribed to them in those sections and sections 3 through 13 of Assembly Bill No. 332 and section 3 of this chapter.*

Sec. 3. *“Place of business” means the physical location where the officers and senior management direct the student loan servicing business, oversee the day-to-day operations of the student loan servicing business, and all books and records are maintained at such location.*

Sec. 4. *A person shall not engage in the business of student loan servicing in this State unless:*

- 1. The person holds a license required by Assembly Bill 332, and any license or permit issued by a local governmental entity; and*
- 2. The place of business cannot be a residence; it must be a commercially zoned place of business located in the United States.*

Sec. 5. *A person who wishes to apply for a license for a place of business outside this State agrees to:*

(a) Make available at a location within this State the books, accounts, papers, records and files of the place of business located outside this State to the Commissioner; or

(b) Pay the reasonable expenses for travel, meals and lodging of the Commissioner incurred during any investigation or examination made at an office or principal place of business located outside this State.

(c) At the discretion of the Commissioner, books, accounts, papers, records and files may be electronically submitted to the Office of the Commissioner in lieu of subsections (a) or (b).

Sec. 6. *In addition to the records and files required to be retained by a licensee in Assembly Bill 332, the following, without limitation, shall be retained for not less than 6 years:*

(a) Any correspondence or communication involving a private education loan borrower or student loan borrower, including, emails, telephone calls, or mail;

(b) The acknowledgment and information required in section 27 of Assembly Bill 332;

(c) Payment history, including dates of all payments received, all interest and fees charged and the allocation of payments across principal, interest and fees;

(d) Request from borrowers with more than one loan for alternative payment allocation;

(e) Account history, including without limitation, accounts transferred to or from another servicer and dates of such transfers;

(f) Call notes or communication logs;

(g) Documentation used in determining a student loan borrower's eligibility for an income-driven repayment program, including evaluating dates and the reasoning for decision to place a borrower in an income-driven repayment program, forbearance or default;

(h) The loan contract between the borrower and private education lender and supporting documentation evidencing the borrower's obligations to the lender; and

(i) The servicing contract between the lender and licensee.

Sec. 7. *For the purpose of sections 7(1) and 37 of Assembly 332, a private education lender extending private education loans or student education loans in this state or to private education loan borrowers or student loan borrowers in this state, must obtain an NRS 675 license from the Office of the Commissioner prior to engaging in lending activity.*

Sec. 8. *For the purpose of sections 16 and 19, an applicant for a license must file with the Commissioner, concurrently with the application, a surety bond in the sum of \$250,000, which is payable to the State of Nevada. The bond must be made and executed by the principal and a surety company authorized to write bonds in the State of Nevada. The bond must be conditioned:*

(a) That the principal, who must be the applicant, must, upon demand in writing, pay any lender from whom any loan for collection is received, the proceeds of the collection, in accordance with the terms of the agreement made between the servicer and the lender; and

(b) That the principal must comply with all requirements of this or any other statute with respect to the duties, obligations and liabilities of a licensee.

Sec. 9. *For the purpose of section 20, a student loan servicer seeking an exemption from the requirement to submit an application for licensure pursuant to section 20 of Assembly Bill 332, shall document eligibility for the exemption by submitting an executed copy of the contract awarded by the United States Security of Education under 20 U.S.C. § 1087f.*

Sec. 10. *For the purpose of section 24, any change made to the licensee's business name, fictitious firm name, licensed location, change in any control person as defined in section 3 of*

Assembly Bill 332, or any change in the information provided in the initial application, must be approved by the Commissioner.

Sec. 11. *1. The Commissioner of the Financial Institutions Division will charge and collect a fee of \$75 per hour from each licensee for any supervision, examination, audit, investigation or hearing conducted pursuant to Assembly Bill 332.*

2. The Commissioner will invoice each licensee upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date on which the invoice is received. Any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of a licensee to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

Sec. 12. *1. Each licensee shall pay to the Financial Institutions Division an annual assessment of not greater than \$300 to cover the costs related to the employment of a certified public accountant.*

2. The Division shall invoice each licensee for the assessment. The assessment must be paid within 30 days after the date on which the invoice is received. Any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of a licensee to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

Sec. 13. 1. *Each licensee shall pay to the Division of Financial Institutions the assessment to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division which is imposed pursuant to NRS 658.098.*

2. The Division shall invoice each licensee for the assessment described in subsection 1. The licensee shall pay the assessment within 30 days after the date on which the licensee receives the invoice. A charge of 10 percent of the assessment described in subsection 1 will be imposed on any licensee if payment for an assessment described in subsection 1 is received by the Division after the date on which the assessment is due.

3. Failure to pay the assessment described in subsection 1 constitutes grounds for the revocation of the license of the licensee.

Sec.14. 1. *The Commissioner may revoke or suspend the license of a student loan servicer if the licensee violates any provision of this chapter or Assembly Bill 332, including, without limitation, a provision that imposes a fee or assessment.*

2. The Commissioner may revoke the license if the licensee does not allow the Division to conduct an examination, investigation or audit of any accounts, books and records.

3. A revocation or suspension of a license must be made in accordance with the procedures set forth in Assembly Bill 332 and NRS 233B.

Sec. 15. *For the purpose of section 40 of Assembly Bill 332, in addition to the annual report required to be filed on or before April 15th of each year, a licensee shall submit the following with the annual report, in a form prescribed by the Commissioner, for the prior calendar year:*

1. Listing of each account with the following information for each account:

- a. Annual percentage rate;*
- b. Finance charge;*

- c. Amount financed;*
 - d. Total of payments;*
 - e. Payment schedule;*
 - f. Payments made on the loan, full or partial payments;*
 - g. Outstanding balance of the loan;*
 - h. Late fees;*
 - i. Miscellaneous fees, and identify the fee;*
 - j. Status of the loan;*
 - k. The monthly income of the borrower at the time the loan was originated, and at the time of any loan modification, repayment plan or forbearance, as applicable; and*
 - l. Credit reporting information:*
 - i. Reporting frequency;*
 - ii. Name of the nationally recognized consumer credit bureau reported to;*
and
 - iii. Reporting of both favorable and unfavorable payment history, and the dates reporting per each borrower.*
- 2. Provide notices and disclosures provided to a borrower or cosigner regarding the risks of a student education loan.*
 - 3. The number of accounts serviced the start of the calendar year, with the amount of the loans.*
 - 4. The number of accounts serviced at the end of the calendar year, with amount of the loans.*

5. *The number of accounts paid, with the amount of the loans.*
6. *The number of accounts placed in an income-driven repayment plan, with amount of the loans.*
7. *The number of accounts in a loan modification, with amount of the loans.*
8. *The number of accounts placed in a flexible repayment plan, with amount of the loans.*
9. *The number of accounts placed in forbearance, with amount of the loans.*
10. *The number of accounts placed in default, with amount of the loans.*
11. *The number of defaulted accounts assigned to a collection agency and name of collection agency.*
12. *The number of accounts placed in forgiveness, with amount of the loans and reason for each.*
13. *The number of accounts cancelled or discharged, with amount of the loans and reason for each.*

↪ The Commissioner may request additional information pursuant to section 40 of Assembly Bill 332 or this chapter, at any time necessary.

Sec. 16. *1. Every licensee shall at all times maintain a separate account in a bank or credit union that is federally insured, or privately insured by a private insurer approved by the Commissioner, in which must be deposited all money collected. The account title must distinguish it from the licensee's general operating account and to designate it as a trust account or for the benefit of account, such as "lender's trust account" or "for the benefit of [lender's name]." The trust account must at all times contain sufficient money to pay all money due or owing to all lenders, and no disbursement may be made from the account except to the lenders, or to pay costs advanced for those lenders, except that a licensee may periodically withdraw from*

the account such money as may accrue to the licensee from collections deposited or from adjustments resulting from costs advanced and payments made directly to lenders.

2. Every licensee maintaining a separate trust account shall keep a record of all money deposited in the account, which must indicate clearly the date and from whom the money was received, the date deposited, the dates of the remittance and other pertinent information concerning the transaction and must show clearly for whose account the money is deposited and to whom the money belongs. The money must be remitted to the lenders entitled thereto within 30 days following the end of the month in which payment is received, or pursuant to the servicing agreement. The records and money are subject to inspection by the Commissioner. The records must be maintained at the authorized place of business.

Sec. 17. If a borrower did not provide authorization for electronic communications during the loan origination process, a licensee must obtain authorization from the borrower on a form that clearly states the borrower agreed to receive all communications electronically. Such form must be retained pursuant to the record retention in this chapter.

Sec. 18. A licensee may charge and collect fees from a borrower if authorized by the loan agreement.

Sec. 19. 1. In addition to the policies and procedures required to be developed and implemented pursuant to Assembly Bill 332, a licensee shall develop and implement policies and procedure to:

- a. Identify borrowers at risk of default, notify borrowers of the possibility of default and make reasonable efforts to assist borrowers in avoiding default.*
- b. Ensure licensee has the most up-to-date personal information of borrowers.*

Sec. 20. *Licenses shall apply borrower payments to the outstanding loan balance upon the date of receipt of payment by the licensee in accordance with the loan agreement and in a manner that is most beneficial to the borrower.*

Sec. 21. *Licenses shall provide timely and accurate information to credit bureaus and shall reasonably investigate any complaint received from a borrower concerning inaccurate credit reporting in a timely manner. Licenses shall promptly correct any negative information previously reported to a credit bureau found to be inaccurate as a result of subsequent investigation by the licensee.*

Sec. 22. *Licenses who service more than one loan for a borrower shall notify borrowers at least annually of the manner in which partial payments are allocated across multiple loans pursuant to section 27 of Assembly Bill 332 and provide an opportunity for borrowers to direct the allocation of payments in a different manner. A licensee shall adhere to any alternative payment allocation instructions provided by the borrower.*

Sec. 23. 1. *Licenses shall provide monthly statements to borrowers that clearly identify:*

- (a) The servicer and current loan holder;*
- (b) Date of origination;*
- (c) Detail the outstanding balance of the loan;*
- (d) Monthly payment;*
- (e) Current loan term;*
- (f) Interest rate;*
- (g) Any interest and fees charged since last statement; and*
- (h) Payments received since the last statement.*

2. Licensee shall also provide timely and accurate annual statements concerning loan interest paid for tax reporting purposes.

3. Upon request by the borrower, the licensee shall provide the borrower a complete and accurate payoff statement. The statement shall clearly indicate the date on which it was prepared, the date pay-off amount is good until and any circumstances which may change the amount required to pay-off the loan. The payoff statement must be delivered to the borrower within 5 business days of the request.

4. Upon consent of the borrower, such statements may be provided electronically.

5. No fee may be charged for any statement.

Sec. 24. *The unique identifier license number shall be posted on the home page of the licensee's website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents.*

Sec. 25. *A notice of right for a borrower to contact the Office of the Commissioner of the Financial Institutions Division regarding concerns or complaints shall be posted on the home page of the licensee's website or on a page that is clearly conspicuously connect to the home page by a link that clearly reveals its contents. The notice shall be in the following form:*

***NOTICE OF RIGHT TO FILE A WRITTEN COMPLAINT TO THE
COMMISSIONER OF THE FINANCIAL INSTITUTIONS DIVISION***

You may file a written complaint with the Commissioner of the Financial Institutions Division by submitting a signed complaint form to the Office of the Commissioner. The required complaint form can be found on the homepage of the Financial Institution's website: www.fid.nv.gov, or you may request a

complaint form via telephone by calling the toll-free telephone number: 1 (866) 858-8951.

Sec. 26. For the purposes of Section 21 subsection 2 of Assembly Bill 332, the late fee may be waived if a licensee submits a renewal application through the Nationwide Multistate Licensing System after November 1 and on or before December 31 of each year.

Sec. 27. The Commissioner may request any information or documentation deemed necessary to perform an examination or investigation of an applicant or licensee.

NAC CHAPTER 675

Sec. 28. Chapter 675 of NAC is hereby amended by adding thereto the provisions set forth as sections 28 to 33 of this regulation.

Sec. 29. A private education lender operating in this state must comply with the provisions of Assembly Bill 332, this chapter, chapter NRS 675 and NAC 675, including, without limitation, sections 31 through 37, 40, and 46 through 48 of Assembly Bill 332, and section 15 this chapter.

Sec. 30. Private education lender has the meaning ascribed to it in section 7 of Assembly Bill 332.

Sec. 31. Private education loan has the meaning ascribed to it in section 8 of Assembly Bill 332.

Sec. 32. A private education lender extending private education loans or student education loans in this state or to private education loan borrowers or student loan borrowers, must obtain a NRS 675 license from the Office of the Commissioner prior to engaging in lending activity.

Sec. 33. *A notice of right for a borrower to contact the Office of the Commissioner of the Financial Institutions Division regarding concerns or complaints shall be posted on the home page of the licensee's website or on a page that is clearly conspicuously connect to the home page by a link that clearly reveals its contents. The notice shall be in the following form:*

***NOTICE OF RIGHT TO FILE A WRITTEN COMPLAINT TO THE
COMMISSIONER OF THE FINANCIAL INSTITUTIONS DIVISION***

You may file a written complaint with the Commissioner of the Financial Institutions Division by submitting a signed complaint form to the Office of the Commissioner. The required complaint form can be found on the homepage of the Financial Institution's website: www.fid.nv.gov, or you may request a complaint form via telephone by calling the toll-free telephone number: 1 (866) 858-8951.

Sec. 34. *The Commissioner may request any information or documentation deemed necessary to perform an examination or investigation of an applicant or licensee.*