

PUBLIC PROTECTION CABINET
Kentucky Department of Financial Institutions
Student Education Loan Servicers
(New Administrative Regulation)

808 KAR 16:020. Recordkeeping requirements; unfair, deceptive, or predatory practices.

RELATES TO: KRS 286.12-050, 286.12-080

STATUTORY AUTHORITY: KRS 286.1-011, 286.1-020, 286.12-050, 286.12-080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to promulgate administrative regulations as are necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.12-080 prohibits a student education loan servicer from engaging in unfair, deceptive, abusive, or predatory practice towards any borrower, or from misrepresenting or omitting any material information in connection with servicing a student education loan. This administrative regulation establishes standards that a licensee must abide by to maintain accurate records and prevent unfair, deceptive, or predatory practices.

Section 1. Definitions.

- (1) "Best financial interest of the borrower" means reducing the total cost of a student loan, including principal balance, interest, and fees to the borrower.
- (2) "Commissioner" is defined by KRS 286.1-010(1).
- (3) "Necessary information" includes the following:
 - (a) A schedule for all transactions credited or debited to the student loan account;
 - (b) A copy of the promissory note for the student loan;
 - (c) Notes created by a student loan servicer's personnel reflecting communication with the borrower regarding the student loan account;
 - (d) A report of the data fields relating to the borrower's student loan account created by the student loan servicer's electronic systems in connection with servicing practices;
 - (e) Copies of electronic records or any information or documents provided by the borrower to the student loan servicer;
 - (f) Usable data fields with information necessary to assess qualification for forgiveness, including public service loan forgiveness, if applicable; and
 - (g) Any information necessary to compile payment history.
- (4) "Negative financial consequences" includes:
 - (a) Negative credit reporting;
 - (b) Loss or denial of eligibility for a borrower benefit or protection established under federal law or by contract; and
 - (c) Late fees, interest capitalization, and other financial injury.
- (5) "Qualified request" means a request made by a borrower to a student loan servicer in which the borrower either:
 - (a) Requests specific information from the student loan servicer; or
 - (b) Reports what the borrower believes to be an error regarding the borrower's account.
- (6) "Student loan servicer" and "servicer" are defined by KRS 286.12-010(13).

Section 2. A student loan servicer shall:

- (1) Process student loan payments pursuant to the servicer's established payment processing policies, which shall be disclosed and readily accessible to borrowers;
- (2) Credit student loan payments to the borrower's account in accordance with the following:

- (a) A payment received before 11:59 p.m. on the date on which that payment is due, in the amount, manner, and location indicated by the servicer, shall be credited as effective on the date on which the payment was received by the servicer. A servicer shall treat a payment received from the borrower on the borrower's due date as an on-time payment;
 - (b) If a payment is made by check, a servicer shall credit the payment on the date the check was received by the servicer regardless of the date of processing;
 - (c) If the servicer receives a check with no identifying account information, the servicer shall:
 - 1. Within ten (10) days, determine to which account and loan the payment should be credited and credit the payment as of the date it was received by the servicer; and
 - 2. Update the borrower's online account within one (1) business day of the determination made under (a) of this subparagraph;
 - (d) If the borrower submits an overpayment to the student loan servicer, the servicer shall inquire of a borrower, either through electronic communication or in writing, to which account the borrower prefers to apply an overpayment. A borrower's direction regarding application of an overpayment to a student loan account shall be effective with respect to future overpayments during the term of a student loan, until the borrower provides to the servicer written alternative instructions regarding overpayment. In the absence of a direction provided by a borrower, the student loan servicer shall allocate an overpayment in a manner consistent with the best financial interest of the borrower; and
 - (e) If the borrower submits a partial payment, except as otherwise provided by a student loan agreement, comply with the direction provided by a borrower, regarding which account to allocate a partial payment. In the absence of a direction provided by a borrower, the student loan servicer shall allocate a partial payment in a manner consistent with the best financial interest of the borrower;
- (3) Not assess negative financial consequences related to the material change by a servicer of the mailing address, office, or procedures for handling borrower payments causing a delay in the crediting of a borrower payment;
- (4) Supervise and monitor actions of service providers, including maintaining policies and procedures to oversee compliance by third-party service providers engaged in all aspects of student loan servicing;
- (5) Manage and process loan accounts and paperwork, consistent with existing federal requirements, and maintain records ensuring the servicer's personnel have received the following:
- (a) Training on the management and processing of accounts and corresponding paperwork; and
 - (b) Access to necessary account information regarding forms and applications that have been approved, denied, or are in process, applications for income-driven repayment plans, and all forms required to access benefits and protections for federal student loans, pursuant to 20 U.S.C. secs. 1070 et seq., as amended;
- (6) Unless a longer period of time is stipulated by a student loan agreement or by federal law, maintain all records regarding a borrower's account for the period of time during which a servicer performs student loan servicing and for a minimum of three (3) years after the loan serviced has been paid in full or assigned to collections, or the servicing rights have been transferred;
- (7) Institute and maintain policies and procedures permitting a borrower who is dissatisfied with the outcome of an initial qualified request to escalate the borrower's concern to a supervisor or higher level of review;
- (8) Not take actions resulting in negative financial consequences that are directly related to the issue identified in a borrower's qualified request, until that request has been

resolved;

(9) Not take actions resulting in negative financial consequences that are directly related to a sale, assignment, transfer, system conversion, or payment made by the borrower to the original student loan servicer consistent with the original student loan servicer's policy;

(10) If a sale, assignment, or other transfer of the servicing of a student loan, results in a change in the identity of the party to whom the borrower is required to send payments or direct any communications concerning the student loan account, notify the borrower, in writing, fifteen (15) days prior to the date the borrower's payment is due on the student loan account, of the following:

(a) If applicable, the license number issued by the commissioner of the new student loan servicer;

(b) The name and address of the new student loan servicer to whom subsequent payments or communications are to be sent;

(c) The telephone numbers and the Web sites of the new student loan servicer;

(d) The effective date of the sale, assignment, or transfer;

(e) The date on which the current student loan servicer will stop accepting payments on the borrower's student loan account; and

(f) The date on which the new student loan servicer will begin accepting payments on the borrower's student loan;

(11) Transfer all necessary information regarding a borrower, a borrower's account, and a borrower's complete student loan history to any new student loan servicer within forty-five (45) calendar days of the effective date of the sale, assignment, or transfer;

(12) Provide and maintain a record of specialized training for customer service personnel to inform:

(a) Military borrowers about student loan repayment benefits and protections;

(b) Borrowers working in public service about student loan repayment benefits and protections;

(c) Older borrowers about the risks specifically applicable to older borrowers to ensure that, once identified, older borrowers are informed about student loan repayment benefits and protections, including discharge or loan forgiveness programs for private and federal loans, if applicable; and

(d) Borrowers with disabilities about student loan repayment benefits and protections, including disability discharge programs for private and federal loans;

(13) Respond to a qualified request by:

(a) Acknowledging, in writing or through electronic communication, receipt of the request within ten (10) business days; and

(b) Within thirty (30) business days of receipt of the request, providing information relating to the status of the request and, if applicable, either the action the student loan servicer will take to correct the account or an explanation for a determination that the borrower's account is correct.

1. The thirty (30) day period set out in subsection (13)(b) of this Section may be extended for fifteen (15) days if, before the end of the thirty (30) day period, the servicer notifies the borrower of the extension and the reason for the delay in responding; and

2. A servicer is required to send a borrower up to three subsequent notices stating there will be no response to a qualified request if the borrower has previously submitted the same request and received a complete response, and no new information is submitted in subsequent, duplicative qualified requests;

(14) Respond within ten (10) business days to communications from the Commissioner;

(15) Provide information to borrowers, in writing, about the availability of loan forgiveness programs and income-driven repayment plan opportunities;

(16) Maintain on its website, free of charge, complete information and account records for each borrower, which shall;

- (a) Be accessible to the borrower only, through a secure log-in system;
- (b) Include a consolidated account report for each borrower, and a loan history for each student loan serviced; and
- (c) Be available to borrowers at all times, except for occasional, short periods of time when the student loan servicer's system is not available because the system is undergoing routine maintenance or is blocked for security reasons.

1. The consolidated account report required under this subsection shall include:

- a. Borrower name;
- b. Number of student loan(s) serviced for each borrower;
- c. Loan number, for each student loan;
- d. Loan type, i.e., Direct Loan; FFELP Loan; Perkins Loan; or private student loan;
- e. Loan disbursement amount and date, for each student loan;
- f. Interest rate(s) and maturity date, or number of monthly payments required to repay the loan, for each student loan;
- g. Loan balance and status, for each student loan;
- h. Cumulative balance owing for each borrower;
- i. Whether the borrower has an application pending for, or is repaying under, an alternative repayment plan, and listing the plan chosen by the borrower; and
- j. Whether the borrower has an application pending for any loan forgiveness, cancellation, or discharge benefit and current status of the application; and

2. The loan history required under this subsection shall include the following information, including the corresponding dates or data range, for each:

- a. disbursements;
- b. interest accruals;
- c. fees;
- d. late charges;
- e. any other miscellaneous amounts charged to the borrower;
- f. payments received;
- g. payments toward loan forgiveness programs; and
- h. the borrower's repayment plan;

(17) Upon request by a borrower, within seven (7) days, provide a borrower, free of charge, a complete and accurate payoff statement. The statement shall clearly indicate the date on which it was prepared, the relevant time frame for submission of the payoff amount, and any circumstances which may change the amount required to pay off the loan account. A student education loan servicer is required to provide one (1) payoff statement per quarter, at no charge to the borrower, upon request. Thereafter, the student loan servicer may charge the borrower the actual cost to produce a physical copy of the account record.

JUSTIN BURSE, Acting Commissioner
RAY PERRY, Secretary

APPROVED BY AGENCY: January 13, 2023

FILED WITH LRC: January 13, 2023 at 11:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2023, at 2:00 p.m., at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be

cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Catherine Falconer, General Counsel, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, phone 502-782-9052, fax 502-573-8787, email Catherine.Falconer@ky.gov and Marni Gibson, Acting Deputy Commissioner, Dept. of Financial Institutions, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601, phone 502-782-9053, fax 502-573-8787, email Marni.Gibson@ky.gov.