

**286.12-100 Examinations and investigations by commissioner -- Confidentiality of information -- Prima facie evidence -- Enforcement of subpoena -- Use of specialists -- Examination of affiliates.**

- (1) For purposes of enforcing this subtitle, the commissioner may:
  - (a) Conduct routine examinations of the books, accounts, records, and files of:
    1. Any licensee and its affiliates; and
    2. Any other person, to the extent the commissioner is authorized by any other law to make an examination into the affairs of that person;
  - (b) Conduct investigations of student education loan servicers or additional persons within or outside of the state as the commissioner deems necessary to discover violations of this subtitle or to secure information necessary for its proper enforcement;
  - (c) Control access to any documents and records of the licensee or other person under examination or investigation; and
  - (d)
    1. Take possession of the documents and records referenced under paragraph (c) of this subsection or place a person in exclusive charge of those documents and records in the place where they are usually kept.
    2. During the period of control under this paragraph, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner.
    3. Unless the commissioner has reasonable grounds to believe that documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this subtitle, the licensee or owner of the documents or records shall have access to the documents or records as necessary to conduct its ordinary business affairs.
- (2) For purposes of conducting examinations and investigations under this section, the commissioner and the commissioner's examiner or designated representative:
  - (a) May:
    1. Compel the attendance of any person or obtain any documents by subpoenas;
    2. Administer oaths and affirmations; and
    3. Examine under oath or affirmation all persons whose testimony he or she may require relative to the loans or business of the persons regulated under this subtitle; and
  - (b) Shall have free access to the accounts, papers, records, correspondences, files, safes, vaults, offices, and places of business relating to or used in connection with any business regulated under this subtitle, including records kept by any current or former officer, agent, contractor, or employee.
- (3) A student education loan servicer shall:
  - (a) Not impede the commissioner, or the commissioner's examiner or designated

representative, from interviewing the servicer's officers, principals, members, employees, independent contractors, agents, or customers; and

- (b) Make available and grant access to the commissioner, or the commissioner's examiner or designated representative, the records and other property referenced under subsection (2)(b) of this section.
- (4) No person subject to investigation or examination under this subtitle shall knowingly withhold, abstract, alter, remove, mutilate, destroy, or secrete any books, records, or other information.
- (5) (a) Subject to paragraphs (b) and (c) of this subsection, an examination report, correspondence that relates to an examination report, and information obtained during an examination or investigation shall be confidential.
- (b) No officer or director of a student education loan servicer, employee of the department, or employee of a state or federal regulatory authority shall release any information contained in an examination conducted under this section unless:
- 1. Required in a proper legal proceeding in which a subpoena and protective order ensuring confidentiality has been issued by a court of competent jurisdiction; or
  - 2. The information is referred to an appropriate prosecuting attorney for possible criminal proceedings.
- (c) The department may furnish information to, and exchange information and reports with, officials and examiners of other properly authorized state and federal regulatory authorities and law enforcement agencies.
- (6) Every official report concerning a student education loan servicer and every report of examination shall be prima facie evidence of the facts therein stated for all purposes in any action in which the department and the student education loan servicer are parties.
- (7) If any person fails to comply with a subpoena issued by the commissioner under this section, the commissioner may petition the Franklin Circuit Court or any court of competent jurisdiction for enforcement of the subpoena.
- (8) In order to carry out the purposes of this subtitle, the commissioner may:
- (a) Retain examiners, auditors, investigators, accountants, or other professionals and specialists to conduct, or assist in the conduct of, any examination, investigation, or enforcement action; and
  - (b) Use, hire, contract, or employ public or private analytical systems, methods, or software.
- (9) The authority of this section shall remain in effect whether a person acts, or claims to act, under any licensing law of this subtitle, or acts, or claims to act, without such authority.
- (10) If a report from, or an examination of, a licensee provides evidence of unlawful activity between a licensee and affiliate benefitting, affecting, or arising from the activities regulated by this subtitle, the affiliate shall be subject to examination by

the commissioner on the same terms as the licensee.

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