Final Amendments – Effective 9/26/25

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 18.00: Conduct of the Business of Debt Collectors, Student Loan Servicers, and Third Party Loan Servicers

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18.01: Purpose and Coverage

(1) Purpose. The purpose of 209 CMR 18.00 is to establish standards, by defining unfair or deceptive acts or practices, for the servicing of loans and collection of debts from persons within the Commonwealth of Massachusetts by debt collectors, third party loan servicers, and student loan servicers; to establish procedures and requirements for the licensing and supervision of debt collectors and student loan servicers; and for the registration and supervision of third party loan servicers.

(2) Coverage.

(a) Persons exempt from the licensing and registration provisions pursuant to M.G.L. c. 93, § 24A(c) who conduct the business of a debt collector or third party loan servicer as defined in 209 CMR 18.02, shall be subject to the provisions governing fair debt collection and third party loan servicing practices at 209 CMR 18.06, 209 CMR 18.10 through 18.22, 18.30(3), 18.30(6), 18.34, 18.38, 18.40, and 18.41 and shall not be subject to the provisions of 209 CMR 18.50 through 18.55, 209 CMR 18.60 through 18.63, or 209 CMR 18.30(4).

(b) Any person licensed as a debt collector shall not be required to register as a third party loan servicer. However, any debt collector who engages in third party loan servicing activities must comply with all pertinent state and federal laws and regulations governing third party loan servicers when acting in that capacity including, but not limited to, the provisions of 209 CMR 18.40 and 18.41.

(c) A student loan servicer who engages in third-party loan servicing activities or debt collection activities within the scope of student loan servicing activities described in M.G.L. c. 93L shall comply with all applicable state and federal laws and regulations governing third party loan servicers and debt collectors when acting in such capacity.

(d) Nothing contained in 209 CMR 18.00 shall limit the ability of the Commissioner to consider other information in determining whether or not to approve an application, or to require information in addition to that required by the application form provided to the applicant.

18.02: Definitions

(1) Definitions and rules of construction as presented in 12 CFR 1006.2 are incorporated by reference as 209 CMR 18.02, except as noted in 209 CMR 18.02(2).

(2) For purposes of 209 CMR 18.00, the following definitions apply:

Automatic Federal Student Loan Servicer. A person that acts or intends to act as a student loan servicer solely pursuant to a contract with the United States Secretary of Education under 20 U.S.C. 1087f and shall also include subservicers who solely engage in student loan servicing pursuant to a subservicing agreement with an automatic federal student loan servicer.

Automatic Federal Student Loan Servicer Applicant. Any automatic federal student loan servicer who is required to be licensed under the provisions of M.G.L. c. 93L, § 2(f). The term shall include partners or members, if the applicant is a partnership, association, or limited liability company, and officers, directors and principal employees, if the applicant is a corporation.

Commissioner. The Commissioner of Banks.

Consumer. Any natural person, whether living or deceased, obligated or allegedly obligated to pay any debt.

Creditor. Any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

Debt. Any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment.

Debt Collector. Any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another. Debt collector shall also include any person who buys or acquires debt that is in default at the time of purchase or acquisition and who seeks to collect such debt directly. Notwithstanding the exclusion provided by 209 CMR 18.02: Debt Collector(f), debt collector shall include a creditor who, in the process of collecting his or her own debt, uses any name other than his or her own which would indicate that a third person is collecting or attempting to collect the debt. Debt collector shall also include a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the enforcement of security interests. Debt collector shall not include:-

(a) an officer or employee of a creditor while, in the name of the creditor, collecting debts for the creditor;
(b) a person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for a person to whom it is so related or affiliated and if the principal business of the person is not the collection of a debt;
(c) an officer or employee of the United States or a state of the United States to the extent that collecting or attempting to collect a debt is in the performance of his or her official duty;
(d) a person while serving or attempting to serve legal process on another person in connection with the judicial enforcement of a debt;

(e) a nonprofit organization which, at the request of a consumer, performs bona fide consumer credit counseling and assists the consumer in the liquidation of debts by receiving payments from the consumer and distributing the amounts to creditors;

(f) a person collecting or attempting to collect a debt owed or due or asserted to be owed or due another to the extent the activity:

1. is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
2. concerns a debt which was originated by the person;
3. concerns a debt which was not in default at the time it was obtained by the person; or
4. concerns a debt obtained by the person as a secured party in a commercial credit transaction involving the creditor;

(g) attorneys-at-law licensed to practice law in the Commonwealth who are collecting a debt on behalf of a client; and

(h) an agent or independent contractor employed for the purpose of collecting a charge or bill owed by a tenant to a landlord or owed by a customer to a corporation subject to the supervision of the Department of Telecommunications and Energy or the Division of Insurance insofar as the person collects charges or bills only for the landlord or supervised corporations.

(i) a student loan servicer licensed under M.G.L. c. 93L who is engaged solely in the activities of a student loan servicer, provided, however, that if a student loan servicer acts, represents, operates or holds itself out as a debt collector outside of the scope of M.G.L. c. 93L, the student loan servicer shall obtain a debt collector license.

(j) a passive debt buyer.

Debt Collector Applicant. Any debt collector who is required to be licensed under the provisions of M.G.L. c. 93, § 24A and has applied for such license. The term shall include partners or members, if the applicant is a partnership, association or limited liability company, and officers, directors and principal employees, if the applicant is a corporation.

Licensee. Any person who is licensed by the Commissioner as a debt collector under M.G.L. c. 93, §§ 24 through 28 and 209 CMR 18.00; or any person who is licensed as a student loan servicer or automatic federal student loan servicer under M.G.L. c. 93L.

Net Worth. The applicant's or licensee's total assets less total liabilities, omitting the following assets:

(a) that portion of an applicant's assets pledged to secure obligations of any person or entity other than that of the applicant;

(b) any asset due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest;

(c) an amount in excess of the lower of the cost or fair market value of mortgage loans in foreclosure, or real property acquired through foreclosure;
(d) an investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates, which is greater than the fair market value of the assets;
(e) intangible assets such as goodwill, value placed on insurance renewals or copyrights, patents, trademarks, and intellectual property;
(f) organization costs;
(g) the value of servicing contracts not determined in accordance with the Financial Accounting Standards Codification Topic 860 "Transfers and Servicing"; and
(h) any other intangible asset, as may be determined by the Commissioner.

NMLS. The Nationwide Multi-State Licensing System & Registry, a multistate licensing system owned and operated by the State Regulatory Registry LLC (SRR), a wholly owned subsidiary of the Conference of State Bank Supervisors (CSBS), an association of state financial services regulators.

Passive Debt Buyer. A person engaged solely in the practice of purchasing delinquent consumer debts for investment purposes who collects on consumer debts through Massachusetts licensed debt collectors or Massachusetts licensed attorneys and who does not undertake any activities to directly collect debts from consumers.

Person. A natural person or an organization, including a corporation, limited or general partnership, limited liability partnership, limited liability company, joint stock company, trust, business trust, profit and not-for-profit incorporated or unincorporated associations, and any other entity authorized under the laws of any state of the United States or any country.

Principal Employee. Any person with the power to exercise, directly or indirectly, managerial, supervisory, or policy-making authority or such other controlling influence over the management, policies, or operation of the Licensee.

Register. Filing a notice with the Commissioner on a form prescribed by the Commissioner that notifies the Commissioner of the intent to engage in the activities of a third party loan servicer in this state and the payment of a fee required under M.G.L. c. 93, s. 24C, along with the other documents, proofs, and fees required by the Commissioner.

Student Loan**.** A loan primarily used to finance postsecondary education or other school-related expenses.

Student Loan Borrower. A resident of the Commonwealth who has received or agreed to repay a student loan or a person who shares responsibility with that resident for repaying the student loan, including cosigners.

Student Loan Servicer**.** A person responsible for servicing a student loan to a student loan borrower. Unless otherwise indicated, this term shall include an automatic federal student loan servicer.

Student Loan Servicer Applicant. Any student loan servicer who is required to be licensed under the provisions of M.G.L. c. 93L, § 2(c). The term shall include partners or members, if the applicant is a partnership, association or limited liability company, and officers, directors and principal employees, if the applicant is a corporation.

Student Loan Servicing.

(a) Receiving or soliciting a scheduled periodic payment from a student loan borrower pursuant to the terms of a student loan and making the principal, interest and other payments to the owner of the loan or other third-party with respect to the amounts received from the student loan borrower as may be required pursuant to the terms of the servicing loan document or servicing contract;
(b) Maintaining account records for a loan and communicating with the student loan borrower regarding the loan on behalf of the owner of the loan during a period in which no payment is required on the loan; or
(c) Interacting with a student loan borrower, including activities to help prevent default on obligations arising from a loan, to facilitate the activities described in clause (a) or clause (b); provided, however, that the actions of the student loan ombudsman under section 35 of chapter 12 and the actions of the Division of Banks consumer assistance unit under section 3A of chapter 26 shall not constitute servicing.

Third Party Loan Servicing. Receiving a scheduled periodic payment from a consumer pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third-party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage, servicing includes making payments to the borrower.

Third Party Loan Servicer. A person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is servicing a loan directly or indirectly, owed or due or asserted to be owed or due another. Third party loan servicer shall not include a student loan servicer licensed under M.G.L. c. 93L who is engaged solely in the activities of a student loan servicer, provided, however, that if a student loan servicer acts, represents, operates or holds itself out as a third party loan servicer outside of the scope of said chapter 93L, the student loan servicer shall register as a third party loan servicer.

18.06: Communication in Connection with Debt Collection

Compliance with 12 CFR 1006.06 constitutes compliance with 209 CMR 18.06.

18.10: Acquisition of Location Information – Debt Collection

Compliance with 12 CFR 1006.10 constitutes compliance with 209 CMR 18.10.

18.14: Harassing, Oppressive, or Abusive Conduct – Debt Collection

Compliance with 12 CFR 1006.14 constitutes compliance with 209 CMR 18.14; provided, however, that, for purposes of compliance with 209 CMR 18.14, a debt collector may not place a telephone call to a consumer in connection with a particular debt in excess of two calls in a seven-day period; nor within a period of seven consecutive days after having had a telephone conversation with the person in connection with the debt.

18.18: False, Deceptive, or Misleading Representations of Means – Debt Collection

Compliance with 12 CFR 1006.18 constitutes compliance with 209 CMR 18.18.

18.22: Unfair or Unconscionable Means – Debt Collection

Compliance with 12 CFR 1006.22 constitutes compliance with 209 CMR 18.22.

18.26: Collection of Time Barred Debt – Debt Collection

Compliance with 12 CFR 1006.26 constitutes compliance with 209 CMR 18.26.

18.30: Other Prohibited Practices

(1) Required actions prior to furnishing information. Compliance with 12 CFR 1006.30(a) constitutes compliance with 209 CMR 18.30(1).

(2) Prohibition on the sale, transfer for consideration, or placement for collection of certain debts. Compliance with 12 CFR 1006.30(b) constitutes compliance with 209 CMR 18.30(2).

(3) Multiple debts. Compliance with 12 CFR 1006.30(c) constitutes compliance with 209 CMR 18.30(3).

(4) Commingling and preserving identity of funds of clients.

(a)No debt collector shall commingle money collected for a creditor with the debt collector's own funds or use any part of a creditor's money in the conduct of the debt collector's business.

(b) All funds of clients paid to a debt collector shall be deposited in one or more client trust accounts maintained at a federally insured bank.

(c) The gross amount of monies collected from consumers by the debt collector shall be deposited into client trust account(s).

(d) In remitting to clients, a debt collector may offset funds in the client trust account(s) against commissions to which it is entitled for payments made by consumers directly to clients. All offsets shall be accounted for through written documentation evidencing the amount of offset.

(e) A debt collector shall maintain complete and accurate client trust account records. A debt collector shall produce, upon request, all documents pertaining to trust account activity, including, but not limited to: bank settlements, check stubs, canceled, voided or unused checks, deposit tickets, and reconciliations or other comparable account records.

(5) Legal actions by debt collectors. Compliance with 12 CFR 1006.30(d) constitutes compliance with 209 CMR 18.30(5).

(6) Furnishing certain deceptive forms. Compliance with 12 CFR 1006.30(e) constitutes compliance with 209 CMR 18.30(6).

18.34: Validation of Debts – Debt Collection

Compliance with 12 CFR 1006.34 constitutes compliance with 209 CMR 18.34.

18.38: Disputes and Requests for Original-Creditor Information

Compliance with 12 CFR 1006.38 constitutes compliance with 209 CMR 18.38.

18.40: Unfair Servicing Practices – General

A third party loan servicer or student loan servicer may not use unfair or unconscionable means in servicing any loan. Without limiting the general application of the foregoing, the following conduct is a violation of 209 CMR 18.40:

(1) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.

(2) Knowingly misapplying or recklessly applying payments to escrow accounts.

(3) Requiring the unnecessary forced placement of insurance, when adequate insurance is currently in place.

(4) Failing to provide loan payoff information within five business days of a receipt of a written request.

(5) Charging excessive or unreasonable fees to provide loan payoff information.

(6) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a consumer's creditworthiness.

(7) Failing to report both the favorable and unfavorable payment history of the consumer to a nationally recognized consumer credit bureau at least annually if the servicer regularly reports information to a credit bureau.

(8) Knowingly or recklessly facilitating the illegal repossession of chattel collateral.

(9) Misrepresenting any material information in connection with the servicing of the loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a loan, the terms and conditions of the servicing contract or the borrower's obligations under the loan.

(10) Failing to maintain procedures to ensure accuracy and timely updating of borrower's account information, including posting of payments and imposition of fees.

(11) Requiring funds to be remitted by means more costly to the consumer than a bank or certified check or attorney's check from an attorney's account.

(12) Refusing to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided that the third party loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower.

(13) Failing to establish and implement policies and procedures to ensure effective monitoring and oversight of law firms, subservicers, foreclosure firms, foreclosure trustees and other third party providers, agents or affiliates retained by or on behalf of the third party loan servicer to ensure that such third parties are complying with the pertinent state and federal laws and regulations governing third party loan servicers, including, but not limited to, the provisions of 209 CMR 18.00.

18.41: Mortgage Loan Servicing Practices

(1) A third party loan servicer may not use unfair or unconscionable means in servicing any mortgage loan. Without limiting the general application of the foregoing, the following conduct is a violation of 209 CMR 18.41:

(a) Failing to comply with the provisions of M.G.L. c. 183, § 54D regarding providing loan payoff information to a consumer.

(b) Collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.

(c) Failing to comply with the provisions of M.G.L. c. 244, §§ 35A, 35B, or 35C regarding the right to cure a mortgage loan default and other requirements.

(d) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.

(e) Failing to comply with the provisions of 12 CFR 1024.38(b)(2) or other applicable provision of 12 CFR part 1024, regarding the evaluation of borrowers for loss mitigation options.

(f) Failing to comply with the provisions of 12 CFR 1024.41(b)(2), or other applicable provision of 12 CFR part 1024, regarding providing borrowers with written acknowledgment of receipt of loan modification and required follow up.

(g) Failing to comply with the provisions of 12 CFR 1024.41(g), or other applicable provision of 12 CFR part 1024, regarding the process of concluding the modification process prior to initiating a foreclosure.

(h) Failing to comply with the provisions of 12 CFR 1024.40 or other applicable provision of 12 CFR part 1024, regarding providing borrowers with contact information for a designated individual.

(i) Nothing in 209 CMR 18.41 shall be construed to prevent a third party loan servicer from offering or accepting alternative loss mitigation options, including other modification programs offered by the third party loan servicer, a short sale, a deed-*in-lieu* of foreclosure or forbearance, if the borrower requests such an alternative, is not eligible for or does not qualify for a loan modification under a government sponsored mortgage loan modification program or proprietary modification program, or rejects the third party loan servicer's loss mitigation proposal.

(j) 209 CMR 18.41(2) contains requirements that are in addition to those contained in M.G.L. c. 244, § 35B and 209 CMR 56.00: *Foreclosure Prevention Options* regarding "Certain Mortgage Loans", as that term is defined pursuant to 209 CMR 56.02: *Definitions*.

(2) Information and documentation provided by third party loan servicers in the context of foreclosure proceedings. To the extent a servicer is authorized to act on behalf of a mortgagee,

(a) A third party loan servicer shall ensure that all foreclosure affidavits or sworn statements are based on personal knowledge.

(b) A third party loan servicer shall ensure that foreclosure affidavits or sworn statements shall set forth a detailed description of the basis of affiant's claimed personal knowledge of information contained in the affidavit or sworn statement, including sources of all information recited and a statement as to why the sources are accurate and reliable.

(c) A third party loan servicer shall certify in writing the basis for asserting that the foreclosing party has the right to foreclose including, but not limited to, certification of the chain of title and ownership of the note and mortgage from the date of the recording of the mortgage being foreclosed upon. The third party loan servicer shall provide such certification to the borrower with the notice of foreclosure provided pursuant to M.G.L. c. 244, § 14, and shall also include a copy of the note with all required endorsements.

(d) A third party loan servicer shall comply with all applicable state and federal laws governing the rights of tenants living in foreclosed residential properties.

18.42: Student Loan Servicing Practices

(1) A student loan servicer may not use unfair, deceptive, or unconscionable means in servicing any student loan. Without limiting the general application of the foregoing, the following conduct is a violation of 209 CMR 18.42:

(a) directly or indirectly employing any scheme, device, or artifice to defraud or mislead student loan borrowers;

(b) engaging in any unfair, deceptive, or unconscionable practice toward any person or misrepresenting or omitting any material information in connection with the servicing of a student loan including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student loan, the terms and conditions of the loan agreement or the student loan borrower's obligations under the student loan;

(c) obtaining property by fraud or misrepresentation;

(d) knowingly or recklessly misapplying loan payments to the outstanding balance of a loan;

(e) making any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Commissioner or another governmental agency;

(f) allocating partial payments in a way that maximizes late fees;

(g) assessing or collecting any late fees on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) assessed on earlier installment(s);

(h) misrepresenting required minimum payments on any billing or account statements provided to the student loan borrower;

(i) charging late fees for payments made during a grace period;

(j) misrepresenting the availability of repayment options to a student loan borrower, or failing to disclose all available repayment options to a student loan borrower who has inquired about alternative repayment options;

(k) steering student loan borrowers into forbearance without disclosing all other available repayment options;

(l) collecting any amount (including any interest, fee, charge, or expense incidental to the principal obligation), unless such amount is expressly authorized by the agreement creating the student loan or permitted by law;

(m) failing to provide information to student loan borrowers to notify or confirm changes in account status, in accordance with the promissory note for the student loan or other applicable student loan documents;

(n) knowingly or willfully failing to respond to student loan borrower complaints in a timely manner;

(o) knowingly or willfully failing to provide a substantive response to the Student Loan Ombudsman unit within 30 days of being contacted by the Student Loan Ombudsman unit.

(2) A student loan servicer that intends to sell or otherwise transfer the servicing of a student loan shall provide sufficient notice to the student loan borrower prior to the transfer of servicing including, but not limited to: the effective date of the transfer of servicing; identification of the transferee; and transferor and transferee contact information for servicing inquiries.

(3) During the 60-day period beginning on the effective date of transfer of the servicing of any student loan, if the transferor student loan servicer receives payment on or before the applicable due date, such payment may not be treated as late for any purpose.

(4) A student loan servicer shall maintain appropriate policies and procedures with respect to the transfer of student loan servicing obligations, whether as transferor or transferee. Such policies and procedures shall include provisions to ensure that a student loan servicer transfers or receives all information regarding a student loan borrower, a student loan borrower's account, and a student loan borrower's student loan, and that such information is accurate.

(5) A student loan servicer shall ensure that student loan borrowers are not subject to any negative consequences resulting from a sale, assignment, transfer, system conversion including, but are not limited to: negative credit reporting; the imposition of late fees not required by the promissory note; loss of or denial of eligibility for any benefit or protection established under federal law or included in a loan contract.

(6) A student loan servicer shall include the contact information and the web page URL of the Student Loan Ombudsman unit, established pursuant to G. L. c. 12, § 35, within any account statements and any other written communications with student loan borrowers relative to the borrower's student loan, including communications via email but not including text messaging.

(7) A student loan servicer shall maintain and make student loan borrower account records available through its website to such borrowers at no additional cost.

18.50: Application Requirements – Debt Collector Applicants and Student Loan Servicer Applicants

(1) Application. Each debt collector applicant or student loan servicer applicant shall submit a written application on a form prescribed by the Commissioner, signed under the pains and penalties of perjury, containing such information as the Commissioner may from time to time require.

(2) License Requirements. A debt collector applicant or student loan servicer applicant shall be required to submit detailed information supporting the following general requirements:

(a) Financial Responsibility. A debt collector applicant or student loan servicer applicant shall demonstrate financial responsibility and shall demonstrate and maintain a positive net worth. Failure to demonstrate a positive net worth at any time in which the debt collector or student loan servicer license is in effect may constitute evidence that the aforementioned licensee has failed to satisfy the financial responsibility requirements of 209 CMR 18.50(2)(a). In addition, a review of financial responsibility may include a review of historical net losses, profitability, and any other information that the Commissioner may deem necessary.

1. The Commissioner, in his or her discretion, may require a debt collector to furnish a bond, in addition to the $25,000 bond that is required pursuant to M.G.L. c. 93, §§ 24A, 25 and 26, in a sum as determined by the Commissioner. The bond shall run to the state treasurer and be executed by the licensee and by a surety company licensed by the Massachusetts Division of Insurance.

2. A student loan servicer applicant shall furnish a surety bond of $25,000 in such form and with such sureties as may be approved by the Commissioner, as required pursuant to M.G.L. c. 93L, § 2(d). The Commissioner, in his or her discretion, may require a student loan servicer to furnish a bond, in addition to the requirements pursuant to M.G.L. 93L, §2(d), in a sum as determined by the Commissioner and in a form prescribed by the Commissioner.

(b) Financial Statements. A debt collector applicant or student loan servicer applicant shall submit financial statements prepared in accordance with U.S. generally accepted accounting principles, in U.S. dollars, meeting the following minimum requirements:

1. Contents. The financial statements required by 209 CMR 18.00 shall include, but are not limited to, a Balance Sheet, Income Statement, Statement of Cash Flows, Statement of Stockholder's Equity, and all relevant notes thereto.

2. Initial Application. A student loan servicer applicant shall submit financial statements audited by an independent certified public accountant. A debt collector applicant shall submit financial statements audited by an independent certified public accountant, or, if audited financial statements, were not prepared, the debt collector applicant shall submit financial statements reviewed by an independent certified public accountant. If a debt collector applicant or student loan servicer applicant has not conducted any business, it shall submit an initial Balance Sheet which has been audited or reviewed by an independent certified public accountant. At the discretion of the Commissioner and under such conditions as he or she may impose, an Applicant's unaudited financial statements may be submitted with audited consolidated financial statements of its parent.

3. Renewal Applications. Each debt collector license and student loan servicer license shall expire annually on a date determined by the Commissioner. A student loan servicer applicant for license renewal shall submit financial statements which have been audited by an independent Certified Public Accountant within 90 days of the close of its fiscal year. A debt collector applicant for license renewal shall submit financial statements which have been either audited or reviewed by an independent Certified Public Accountant within 90 days of the close of its fiscal year. At the discretion of the Commissioner and under such conditions as he may impose, a debt collector applicant or student loan servicer applicant may submit unaudited entity-only financial statements with its parent's audited consolidated financial statements.

4. Audit Scope. The audited financial statements shall be performed in accordance with generally accepted auditing standards and reviewed financial statements shall be performed in accordance with Statements of Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(c) Character and Fitness. A debt collector applicant or student loan servicer applicant shall submit information demonstrating that it possesses the character, reputation, integrity and fitness to engage in the business of a debt collector or student loan servicer in an honest, fair, sound, and efficient manner.

(d) Other Information. A debt collector applicant or student loan servicer applicant shall submit such other information as the Commissioner may deem necessary to properly evaluate an application.

(e) Incomplete Applications. Debt collector applications which are missing material information shall be held in an incomplete status for a period of 14 calendar days after written notice to the debt collector applicant specifying the nature of the deficiency. Student loan servicer applications which are missing material information shall be held in an incomplete status for a period of 60 calendar days after written notice to the student loan servicer applicant specifying the nature of the deficiency. If such deficiency remains outstanding for more than the aforementioned time periods, the license application may be considered abandoned and terminated by the Commissioner, and the applicant shall be required to submit a new application and pay all fees associated therewith.

18.51: Application Requirements – Automatic Federal Student Loan Servicer Applicant

(1) Application. Each automatic federal student loan servicer applicant shall submit an application on a form prescribed by the Commissioner, containing such information as the Commissioner may from time to time require.

(2) Bond. Upon receipt of the automatic federal student loan servicer license, the automatic federal student loan servicer shall submit a surety bond of $25,000 in such form, and with such sureties, as may be approved by the Commissioner under M.G.L. c. 93L, § 2(f).

(3) Perpetual License. An automatic federal student loan servicer license shall be irrevocable and shall not expire unless the automatic federal student loan servicer ceases acting as a student loan servicer pursuant to a contract with the United States Secretary of Education under 20 U.S.C. 1087f. On an annual basis, an automatic federal student loan servicer licensee shall verify and attest to its NMLS record, and submit the appropriate NMLS processing fees.

(4) Ceasing of Business. A licensed automatic federal student loan servicer shall notify the Commissioner when it ceases to engage in the business of student loan servicing no later than 15 days after the cessation of business. The automatic federal student loan servicer shall provide to the Commissioner the location where records are stored and contact information for an individual who will be authorized to provide access to the records. An automatic federal student loan servicer license shall immediately expire if the automatic federal student loan servicer is no longer acting as a student loan servicer pursuant to a contract with the United States Secretary of Education under 20 U.S.C. 1087f.

(5) Expiration of License. A licensed automatic federal student loan servicer shall provide written notice to the Commissioner not more than seven business days after receiving notification of the expiration, revocation or termination of a contract awarded by the United States Secretary of Education under 20 U.S.C 1087f. An automatic federal student loan servicer license shall immediately expire if such licensee is no longer acting as a student loan servicer pursuant to a contract with the United States Secretary of Education under said 20 U.S.C. 1087f.

18.52: Licensing Standards – Debt Collector Applicant

(1) A license to engage in the business of a debt collector will be issued to an applicant if the Commissioner, upon review of the application and all other relevant information, determines that all of the requirements of M.G.L. c. 93, §§ 24 through 28, and 209 CMR 18.50 have been met.

(2) The Commissioner may deny an application for a license to engage in the business of a debt collector, or the renewal thereof, if the applicant has not satisfied the requirements of M.G.L. c. 93, §§ 24 through 28 or 209 CMR 18.50, or for any of the following reasons, if the applicant, or any partner, member, officer, director, or equivalent, or principal employee has:

(a) violated, or engaged in a pattern of violations, of any state or federal law applicable to the conduct of the business of a debt collector, including, but not limited to, M.G.L. c. 93A, M.G.L. c. 93, §§ 24 through 28, or any rule, regulation, or administrative order or directive promulgated thereunder;

(b) defaulted on a payment of money collected or received for another;

(c) within ten years prior to the filing of the application,

1. been convicted of or pleaded *nolo contendere* to a felony,
2. had any adverse judgments entered against it in any court action or in any administrative enforcement action, in any jurisdiction, based upon allegations of fraud, misrepresentation, or dishonesty, or
3. committed any act involving dishonesty, fraud, or deceit, which act is substantially related to the qualifications, functions, or duties of a person engaged in the business of a debt collector;

(d) made, or caused to be made, a false or misleading statement of a material fact in the application; or has withheld from the Commissioner any information which, if submitted by the applicant, would have warranted the Commissioner in refusing to issue such license;

(e) conducted, or will conduct, its business in an unsafe and unsound manner;

(f) in its audited or reviewed financial statements, a notation made by an independent certified public accountant referencing existing conditions that raise doubt about the applicant's ability to continue as a going concern;

(g) an adverse credit history, as determined by the Commissioner, upon review of a current credit report submitted with the application pursuant to 209 CMR 18.50(1). For the purposes of 209 CMR 18.52(2)(g), an adverse credit history, reviewed as of the date of application, shall include, but is not limited to, any outstanding lien or unsatisfied judgment, an uncured default upon a government sponsored loan or student loan, or any other delinquent account in excess of 60 days past due;

(h) 1. had a license or registration denied, suspended, or revoked by the Commissioner or the licensing authority of any other state;

2. been a partner, member, officer, director, manager, or equivalent of an entity which has had a license or registration revoked by the Commissioner, or the licensing authority of any other state; or

3. if a natural person, either individually or as an employee, while acting in the course of the debt collection business, acted in a manner which would have warranted the Commissioner in suspending or revoking the license of the individual or entity;

(i) within 24 months of the date of application, been the subject of an order of the Commissioner denying an application for a license or an order denying, suspending, or revoking that person's license as a debt collector; or

(j) failed to respond to a written notification of a deficiency in the application, or in any other relevant information required by the Commissioner to be submitted with the application, within 30 days of the date of such written notice from the Division.

(3) An applicant whose application has been denied under 209 CMR 18.52(2) may appeal the Commissioner's action under M.G.L. c. 93, § 24G.

(4) Waiver of Prohibition on Reapplication for a License. Notwithstanding the provisions of 18.52(2)(i), the Commissioner may consider an application for a debt collector license within 24 months of the date of an order from the Commissioner denying, suspending, or revoking that person's license as a debt collector, if the Commissioner finds sufficient evidence to support a belief that the condition(s) which resulted in an order denying, suspending, or revoking the license of the debt collector applicant or licensee are not likely to recur and that all of the requirements of M.G.L. c. 93 §§24 through 28, inclusive, and 209 CMR 18.00. have been satisfied.

18.53: Licensing Standards – Student Loan Servicer Applicant

(1) A license to engage in the business of student loan servicer will be issued if the Commissioner, upon review of the application and all other relevant information, determines that all of the requirements of M.G.L. c. 93L, § 2(e) have been met.

(2) The Commissioner may deny an application to engage in the business of a student loan servicer, if the Commissioner upon review of the application and other relevant information, determines that the student loan servicer applicant has:

(a) failed to satisfy the requirements of M.G.L. c. 93L;

(b) violated any applicable provisions of M.G.L. c. 93L or 209 CMR 18.00;

(c) violated or engaged in a pattern of violations of any state or federal law applicable to the conduct of the business of a student loan servicer, including, but not limited to, M.G.L. c. 93A and any rule, regulation or administrative order or directive promulgated thereunder;

(d) conducted, or will conduct, its business in an unsafe and unsound manner; or

(e) engaged in conduct which has resulted in the suspension or revocation of its license to engage in the business of a student loan servicer, or other licensed business, by the licensing authority of this or any other state.

(3) A student loan servicer applicant whose application has been denied may appeal the Commissioner's action in accordance with M.G.L. c. 30A and 801 CMR 1.00.

(4) A licensed student loan servicer shall notify the Commissioner when it ceases to engage in the business of student loan servicing no later than 15 days after the cessation of business. The student loan servicer shall provide to the Commissioner the location where records are stored and contact information for an individual who will be authorized to provide access to the records.

18.54: Registration Procedures

(1) Registration. Each applicant for registration as a third party loan servicer shall submit a written registration on a form prescribed by the Commissioner, signed under the pains and penalties of perjury, containing such information as the Commissioner may from time to time require including, but not limited to, a description of the activities of the Applicant.

(2) Renewal of Registration. Each registration shall expire annually on a date determined by the Commissioner. An applicant for a renewal of its registration shall submit such information as the Commissioner may deem necessary.

18.55: Registration Standards

(1) A registration as a third party loan servicer will be issued to an applicant if the Commissioner, upon review of the registration and all other relevant information, determines that all of the requirements of M.G.L. c. 93, §§ 24 through 24G, and 209 CMR 18.52 have been met.

(2) The Commissioner may deny an application for registration as a third party loan servicer, or the renewal thereof, if the Commissioner upon review of the application and other relevant information, determines that the applicant has not satisfied the requirements of M.G.L. c.93, §§ 24 through 24G or 209 CMR 18.54 or has violated any provision of M.G.L. c.93, §§ 24 through 28 and 209 CMR 18.00 et seq.

18.60: Office Locations

(1) Debt Collector Branch Offices. A debt collector licensee who intends to carry on its business at any location in addition to the address on its original license shall submit an application to the Commissioner, in writing, at least 30 days prior to the opening of the branch location. Such application shall contain the address of any such place and such other information as the Commissioner may require.

(2) Student Loan Servicer Branch Offices. A student loan servicer licensee, other than an automatic federal student loan servicer licensee, who intends to operate at any place in addition to its main address on the license shall notify the Commissioner, in writing, not less than 30 days before commencing operation in the additional location. The notification shall include information as required by the Commissioner.

(3) Relocations and Closings. A debt collector licensee, student loan servicer licensee other than an automatic federal student loan servicer, or registered third party loan servicer shall provide thirty days prior written notice of any change or closing of a location to the Commissioner and shall contain such other information as the Commissioner may require.

18.61: Notice of Significant Events and Proposed Change in Ownership or Personnel

(1) A debt collector, licensed student loan servicer or registered third party loan servicer if applicable, shall notify the Commissioner immediately, and in writing within one business day, unless specifically noted otherwise below, of the occurrence of any of the following significant developments. The provisions of 209 CMR 18.61(1) shall not apply to automatic federal student loan servicers.

(a) Filing for bankruptcy or reorganization of the Licensee or registered third party loan servicer, any partner, member, officer, director, or equivalent, or principal employee.

(b) The filing of a criminal indictment any way related to the activities of the debt collector, licensed student loan servicer, or registered third party loan servicer, any partner, member, officer, director, or equivalent, or principal employee, including, but not limited to, the handling and/or reporting of moneys received and/or instruments sold.

(c) Notification of the institution of license denial, cease and desist, suspension, or revocation procedures, or other formal or informal regulatory action, in any state against the debt collector, licensed student loan servicer, or registered third party loan servicer, and the reasons thereof.

(d) Receiving notification of the initiation of any action by the Attorney General of the Commonwealth or of any other state, pursuant to M.G.L. c. 93A, or any other comparable consumer protection statute, and the reasons thereof.

(e) Filing of a proposed settlement of a class action lawsuit that was filed on behalf of consumers against the debt collector, student loan servicer licensee, or registered third party loan servicer that is substantially related to the operation of the licensed business. Written notification to the Commissioner under this subsection must be provided within ten business days.

(f) Any partner, member, officer, director, or equivalent, or principal employee being convicted of a misdemeanor that is in any way related to debt collector, student loan servicing, or loan servicing activities; or of any felony whatsoever.

(g) Closing or shortage of any trust account where funds of clients paid to a debt collector are deposited.

(2) (a) 30 days prior to any proposed change in control in the ownership of a Licensee, or among the officers, partners or directors of a Licensee, a notice shall forthwith be filed with the Commissioner who may thereupon cause such investigation to be made as he or she deems necessary, as if it were a new license. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire 10% of the stock, 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. The provisions of 209 CMR 18.61(2) shall not apply to automatic federal student loan servicers.

(b) A notice of change in personnel or ownership shall contain the following information:

1. the name, address and occupation of each proposed officer, partner, director or shareholders; and
2. provide such other information as the Commissioner may require.

(3) A Licensee shall notify the Commissioner as soon as the Licensee becomes aware of any change to its net worth resulting from month-end market valuation or future loss liability or any other change which causes the net worth of the Licensee to fall below the requirements of 209 CMR 18.50(2)(a). The provisions of 209 CMR 18.61(3) shall not apply to automatic federal student loan servicers.

18.62: Annual Reports

Annually, on a date determined by the Commissioner, each licensee or registered third party loan servicer shall file an annual report with the Commissioner in such form as the Commissioner shall prescribe for the preceding year. In addition, each Licensee or registered third party loan servicer shall file a final annual report upon surrender of a license or registration. The annual report shall be in writing, subscribed by the licensee or registered third party loan servicer under the pains and penalties of perjury.

18.63: Books and Records

(1) Each Licensee, or registered third party loan servicer shall keep and use its books, records and accounts in a manner which will allow the Commissioner to determine whether the Licensee or registered third party loan servicer is complying with the provisions of M.G.L. c. 93 or c. 93L, and applicable state and federal laws and regulations. Each licensee shall comply with the provisions of 209 CMR 48.00: *Licensee Record Keeping*. The following records shall be maintained:

(a) Debt Collector. Each debt collector shall retain for a minimum of three years after the debt collector's last collection activity on the debt or after any account has been returned to the creditor whether or not payments have been made. If a debt collector records telephone calls made in connection with the collection of debt, the debt collector shall retain the recording of each such telephone call for three years after the date of the call. Books and records shall conform to generally accepted accounting principles. A debt collector shall comply with the provisions of M.G.L. c. 200A: *Abandoned Property*.

(b) Student Loan Servicer and Automatic Federal Student Loan Servicer. Each student loan servicer or automatic federal student loan servicer shall maintain adequate records of each student loan transaction for not less than two years following the final payment on the student loan or the assignment of the student loan, whichever occurs first, or except as otherwise required by federal law or a contract with the United States Secretary of Education under 20 U.S.C. 1087f.

(c) Third Party Loan Servicer. Each registered third party loan servicer shall retain for a minimum of two years after the conclusion of its fiscal year the records, books, accounts, and documents pertaining to the registered third party loan servicer's business.

(2) A Licensee who does not maintain an office in the Commonwealth and whose principal place of business is located outside of the Commonwealth may designate a resident agent within the Commonwealth for the purpose of complying with 209 CMR 18.63(1). The appointment of a resident agent shall require the prior approval of the Commissioner and shall be subject to such terms and conditions as the Commissioner may require from time to time.

(3) The Commissioner may also prescribe the extent to which such books, records and accounts shall be audited. Additional audits by independent certified public accountants shall be conducted whenever the Commissioner deems it expedient. Said audits shall be submitted to the Commissioner immediately upon completion. The cost of all such audits shall be borne by the Licensee or registered third party loan servicer.

(4) In addition to the reports required by law, a Licensee or registered third party loan servicer shall make such other statements and reports to the Commissioner as he or she may require. The Commissioner may require regular quarterly reports and may furnish blank forms for all such statements or reports, required by 209 CMR 18.63.

18.64: Confidentiality

(1) All records of investigations and reports of examinations, including workpapers, information derived from the reports and responses to the reports, and any copies thereof in the possession of a licensee, or registered third party loan servicer under the supervision of the Commissioner, shall be confidential and privileged communications;

(2) Records of investigation and reports of examinations include records of investigation and reports of examinations conducted by the Commissioner as well as those conducted by a financial regulatory agency of the federal government, another state, or a foreign government that are considered confidential by the agency or foreign government and are in the possession of the Commissioner;

(3) Copies of the reports of examination furnished to a licensee or registrant are for the licensee or registrant's use only and shall not be exhibited to any other person, organization, or agency without prior written approval by the Commissioner;

(4) The Commissioner may furnish information, reports and statements relating to the licensees or registrants under the Commissioner's supervision to regulatory agencies of the federal government, other states, and foreign countries and to law enforcement agencies as considered appropriate;

(5) The confidentiality provisions of this section are not applicable to the records provided by the Division of Banks to the student loan ombudsman, for the purposes of the student loan ombudsman annual report filed pursuant M.G.L. c. 12, § 35(c).

18.65: Relation to Other Laws

(1) A violation of the provisions of 209 CMR 18.00 shall be considered an unfair or deceptive act or practice under M.G.L. c. 93A, § 2 and subject to the penalties contained in M.G.L. c. 93A.

(2) 209 CMR 18.00 does not exempt any person from complying with existing laws or canons of ethics with respect to debt collection practices. To the extent that any provision of 209 CMR 18.00 is specifically inconsistent with the *Canons of Ethics and Disciplinary Rules Regulating the Practice of Law in Massachusetts*, and then only to the extent of the inconsistency, 209 CMR 18.00 is not applicable.

18.66: Relationship with Federal Law

In the event any inconsistency exists between the provisions of 209 CMR 18.00 and the provisions of federal statutes, regulations, and the corresponding Appendices and Official Interpretations relating to the collection of debts, the servicing of student loans, or third party loan servicing, such federal law shall control but only to the extent that such federal law provides greater consumer protections than those provided in 209 CMR 18.00.

REGULATORY AUTHORITY
209 CMR 18.00: M.G.L. c. 93, § 24A; M.G.L. c. 93L, §§ 1- 9.