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IN ASSEMBLY

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Introduced by M. of A. ZEBROWSKI, SEAWRIGHT, WALKER, ORTIZ, ENGLEBRIGHT, SIMON, JAFFEE, GOTTFRIED, COLTON, D'URSO, BLAKE, WRIGHT, DE LA ROSA, VANEL, FAHY, PEOPLES-STOKES, CUSICK, L. ROSENTHAL, GALEF, MOSLEY, DINOWITZ, TAYLOR, SOLAGES, HYNDMAN, KIM, MONTESANO, DiPIETRO, EPSTEIN, D. ROSENTHAL -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, DenDEKKER, M. L. MILLER, THIELE -- read once and referred to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to student loan servicers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The banking law is amended by adding a new article 14-A to read as follows:

ARTICLE 14-A

STUDENT LOAN SERVICERS

Section 710. Definitions.

711. Licensing.

712. Application for a student loan servicer license; fees.

713. Application process to receive license to engage in the business of student loan servicing.

714. Changes in officers and directors.

715. Changes in control.

716. Grounds for suspension or revocation of license.

717. Books and records; reports and electronic filing.

718. Rules and regulations.

719. Prohibited practices.

720. Servicing student loans without a license.

721. Responsibilities.

722. Examinations.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD01465-04-9

723. Penalties for violation of this article.

724. Severability of provisions.

725. Compliance with other laws.

§ 710. Definitions. 1. "Applicant" shall mean any person applying for a license under this article.

2. "Borrower" shall mean any resident of this state who has received a student loan or agreed in writing to pay a student loan or any person who shares a legal obligation with such resident for repaying a student loan.

3. "Borrower benefit" shall mean an incentive offered to a borrower in connection with the origination of a student loan, including but not limited to an interest rate reduction, principal rebate, fee waiver or rebate, loan cancellation, or cosigner release.

4. "Exempt organization" shall mean any banking organization, foreign banking corporation, national bank, federal savings association, federal credit union, or any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state, or any person licensed or supervised by the department and exempted by the superintendent pursuant to regulations promulgated in accordance with this article.

5. "Person" shall mean any individual, association, corporation, limited liability company, partnership, trust, unincorporated organization, government, and any other entity.

6. "Servicer" or "student loan servicer" shall mean a person engaged in the business of servicing student loans owed by one or more borrowers residing in this state.

7. "Servicing" shall mean:

(a) receiving any payment from a borrower pursuant to the terms of any student loan;

(b) applying any payment to the borrower's account pursuant to the terms of a student loan or the contract governing the servicing of any such loans;

(c) providing any notification of amounts owed on a student loan by or on account of any borrower;

(d) during a period where a borrower is not required to make a payment on a student loan, maintaining account records for the student loan and communicating with the borrower regarding the student loan on behalf of the owner of the student loan promissory note;

(e) interacting with a borrower with respect to or regarding any attempt to avoid default on the borrower's student loan, or facilitating the activities described in paragraph (a) or (b) of this subdivision; or

(f) performing other administrative services with respect to a borrower's student loan.

8. "Student loan" shall mean any loan to a borrower to finance postsecondary education or expenses related to postsecondary education.

9. "Federal student loan" means (a) any student loan issued pursuant to the William D. Ford Federal Direct Loan Program; (b) any student loan issued pursuant to the Federal Family Education Loan Program, which was purchased by the government of the United States pursuant to the federal Ensuring Continued Access to Student Loans Act and is presently owned by the government of the United States; and (c) any other student loan issued pursuant to a federal program that is identified by the superintendent as a "federal student loan" in a regulation.

§ 711. Licensing. 1. Except as provided in subdivisions two and three of this section, no person shall engage in the business of servicing student loans owed by one or more borrowers residing in this state with-

1 out first being licensed by the superintendent as a student loan servi-
2 cer in accordance with this article and such regulations as may be
3 prescribed by the superintendent.

4 2. The licensing provisions of this article shall not apply to any
5 exempt organization that is a student loan servicer; provided that such
6 exempt organization notifies the superintendent that it is servicing
7 student loans in this state and complies with sections seven hundred
8 seventeen, seven hundred nineteen, seven hundred twenty-one, and seven
9 hundred twenty-five of this article and any regulation applicable to
10 student loan servicers promulgated by the superintendent.

11 3. A license is not required to engage in the business of servicing
12 federal student loans. A person, other than an exempt organization, that
13 services federal student loans owed by one or more borrowers residing in
14 this state, which is not otherwise required to be licensed pursuant to
15 this section, shall notify the superintendent that it is servicing
16 federal student loans in this state and comply with sections seven
17 hundred seventeen, seven hundred nineteen, seven hundred twenty-one,
18 seven hundred twenty-two, seven hundred twenty-three and seven hundred
19 twenty-five of this article and any regulation applicable to student
20 loan servicers promulgated by the superintendent. The provisions of
21 section thirty-three, thirty-nine, and forty-four of this chapter shall
22 apply to a person required to notify the superintendent under this
23 subdivision, as though they were a licensed student loan servicer.

24 § 712. Application for a student loan servicer license; fees. 1. The
25 application for a license to engage in the business of servicing student
26 loans shall be in writing, under oath, and in the form prescribed by the
27 superintendent. Notwithstanding article three of the state technology
28 law or any other law to the contrary, the superintendent may require
29 that an application for a license or any other submission or application
30 for approval as may be required by this article be made or executed by
31 electronic means if he or she deems it necessary to ensure the efficient
32 and effective administration of this article. The application shall
33 include a description of the activities of the applicant, in such detail
34 and for such periods as the superintendent may require; including:

35 (a) an affirmation of financial solvency noting such capitalization
36 requirements as may be required by the superintendent, and access to
37 such credit as may be required by the superintendent;

38 (b) a financial statement prepared by a certified public accountant,
39 the accuracy of which is sworn to under oath before a notary public by
40 an officer or other representative of the applicant who is authorized to
41 execute such documents;

42 (c) an affirmation that the applicant, or its members, officers, part-
43 ners, directors and principals as may be appropriate, are at least twen-
44 ty-one years of age;

45 (d) information as to the character, fitness, financial and business
46 responsibility, background and experiences of the applicant, or its
47 members, officers, partners, directors and principals as may be appro-
48 priate;

49 (e) any additional detail or information required by the superinten-
50 dent.

51 2. An application to become a licensed student loan servicer or any
52 application with respect to a student loan servicer shall be accom-
53 plished by a fee as prescribed pursuant to section eighteen-a of this
54 chapter.

55 § 713. Application process to receive license to engage in the busi-
56 ness of student loan servicing. 1. Upon the filing of an application for

1 a license, if the superintendent shall find that the financial responsi-
2 bility, experience, character, and general fitness of the applicant and,
3 if applicable, the members, officers, partners, directors and principals
4 of the applicant are such as to command the confidence of the community
5 and to warrant belief that the business will be operated honestly, fair-
6 ly, and efficiently within the purpose of this article, the superinten-
7 dent shall thereupon issue a license in duplicate to engage in the busi-
8 ness of servicing student loans described in section seven hundred ten
9 of this article in accordance with the provisions of this article. If
10 the superintendent shall not so find, the superintendent shall not issue
11 a license, and the superintendent shall so notify the applicant. The
12 superintendent shall transmit one copy of a license to the applicant and
13 file another in the office of the department of financial services. Upon
14 receipt of such license, a student loan servicer shall be authorized to
15 engage in the business of servicing student loans in accordance with the
16 provisions of this article. Such license shall remain in full force and
17 effect until it is surrendered by the servicer or revoked or suspended
18 as hereinafter provided.

19 2. The superintendent may refuse to issue a license pursuant to this
20 article if he or she shall find that the applicant, or any person who is
21 a director, officer, partner, agent, employee, member, or substantial
22 stockholder of the applicant:

23 (a) has been convicted of a crime involving an activity which is a
24 felony under this chapter or under article one hundred fifty-five, one
25 hundred seventy, one hundred seventy-five, one hundred seventy-six, one
26 hundred eighty, one hundred eighty-five, one hundred eighty-seven, one
27 hundred ninety, two hundred, two hundred ten or four hundred seventy of
28 the penal law or any comparable felony under the laws of any other state
29 of the United States, provided that such crime would be a felony if
30 committed and prosecuted under the laws of this state;

31 (b) has had a license or registration revoked by the superintendent or
32 any other regulator or jurisdiction;

33 (c) has been an officer, director, partner, member or substantial
34 stockholder of an entity which has had a license or registration revoked
35 by the superintendent or any other regulator or jurisdiction; or

36 (d) has been an agent, employee, officer, director, partner or member
37 of an entity which has had a license or registration revoked by the
38 superintendent where such person shall have been found by the super-
39 intendent to bear responsibility in connection with the revocation.

40 3. The term "substantial stockholder", as used in this section, shall
41 be deemed to refer to a person owning or controlling directly or indi-
42 rectly ten per centum or more of the total outstanding stock of a corpo-
43 ration.

44 § 714. Changes in officers and directors. Upon any change of any of
45 the executive officers, directors, partners or members of any student
46 loan servicer required to be licensed under section seven hundred eleven
47 of this article, the student loan servicer shall submit to the super-
48 intendent the name, address, and occupation of each new officer, direc-
49 tor, partner or member, and provide such other information as the super-
50 intendent may require.

51 § 715. Changes in control. 1. It shall be unlawful except with the
52 prior approval of the superintendent for any action to be taken which
53 results in a change of control of the business of a student loan servi-
54 cer required to be licensed under section seven hundred eleven of this
55 article. Prior to any change of control, the person desirous of acquir-
56 ing control of the business of a student loan servicer shall make writ-

1 ten application to the superintendent and pay an investigation fee as
2 prescribed pursuant to section eighteen-a of this chapter to the super-
3 intendent. The application shall contain such information as the super-
4 intendent, by rule or regulation, may prescribe as necessary or appro-
5 priate for the purpose of making the determination required by
6 subdivision two of this section. This information shall include but not
7 be limited to the information and other material required for a student
8 loan servicer by subdivision one of section seven hundred twelve of this
9 article.

10 2. The superintendent shall approve or disapprove the proposed change
11 of control of a student loan servicer required to be licensed under
12 section seven hundred eleven of this article in accordance with the
13 provisions of section seven hundred thirteen of this article.

14 3. For a period of six months from the date of qualification thereof
15 and for such additional period of time as the superintendent may
16 prescribe, in writing, the provisions of subdivisions one and two of
17 this section shall not apply to a transfer of control by operation of
18 law to the legal representative, as hereinafter defined, of one who has
19 control of a student loan servicer. Thereafter, such legal represen-
20 tative shall comply with the provisions of subdivisions one and two of
21 this section. The provisions of subdivisions one and two of this section
22 shall be applicable to an application made under such section by a legal
23 representative. The term "legal representative", for the purposes of
24 this subdivision, shall mean one duly appointed by a court of competent
25 jurisdiction to act as executor, administrator, trustee, committee,
26 conservator or receiver, including one who succeeds a legal represen-
27 tative and one acting in an ancillary capacity thereto in accordance
28 with the provisions of such court appointment.

29 4. As used in this section the term "control" means the possession,
30 directly or indirectly, of the power to direct or cause the direction of
31 the management and policies of a student loan servicer, whether through
32 the ownership of voting stock of such student loan servicer, the owner-
33 ship of voting stock of any person which possesses such power or other-
34 wise. Control shall be presumed to exist if any person, directly or
35 indirectly, owns, controls or holds with power to vote ten per centum or
36 more of the voting stock of any student loan servicer or of any person
37 which owns, controls or holds with power to vote ten per centum or more
38 of the voting stock of any student loan servicer, but no person shall be
39 deemed to control a student loan servicer solely by reason of being an
40 officer or director of such student loan servicer. The superintendent
41 may in his or her discretion, upon the application of a student loan
42 servicer or any person who, directly or indirectly, owns, controls or
43 holds with power to vote or seeks to own, control or hold with power to
44 vote any voting stock of such student loan servicer, determine whether
45 or not the ownership, control or holding of such voting stock consti-
46 tutes or would constitute control of such student loan servicer for
47 purposes of this section.

48 § 716. Grounds for suspension or revocation of license. 1. After
49 notice and hearing, the superintendent may revoke or suspend any license
50 to engage in the business of a student loan servicer issued pursuant to
51 this article if he or she shall find that:

52 (a) a servicer has violated any provision of this article, any rule or
53 regulation promulgated by the superintendent under and within the
54 authority of this article, or any other applicable law;

1 (b) any fact or condition exists which, if it had existed at the time
2 of the original application for such license, would have warranted the
3 superintendent refusing originally to issue such license;

4 (c) a servicer does not cooperate with an examination or investigation
5 by the superintendent;

6 (d) a servicer engages in fraud, intentional misrepresentation, or
7 gross negligence in servicing a student loan;

8 (e) the competence, experience, character, or general fitness of the
9 servicer, an individual controlling, directly or indirectly, ten percent
10 or more of the outstanding interests, or any person responsible for
11 servicing a student loan for the servicer indicates that it is not in
12 the public interest to permit the servicer to continue servicing student
13 loans;

14 (f) the servicer engages in an unsafe or unsound practice;

15 (g) the servicer is insolvent, suspends payment of its obligations, or
16 makes a general assignment for the benefit of its creditors; or

17 (h) a servicer has violated the laws of this state, any other state or
18 any federal law involving fraudulent or dishonest dealing, or a final
19 judgement has been entered against a student loan servicer in a civil
20 action upon grounds of fraud, misrepresentation or deceit.

21 2. The superintendent may, on good cause shown, or where there is a
22 substantial risk of public harm, suspend any license for a period not
23 exceeding thirty days, pending investigation. "Good cause", as used in
24 this subdivision, shall exist when a student loan servicer has defaulted
25 or is likely to default in performing its financial engagements or
26 engages in dishonest or inequitable practices which may cause substan-
27 tial harm to the persons afforded the protection of this article.

28 3. Except as provided in subdivision two of this section, no license
29 shall be revoked or suspended except after notice and hearing thereon.
30 Any order of suspension issued after notice and a hearing may include as
31 a condition of reinstatement that the student loan servicer make resti-
32 tution to consumers of fees or other charges which have been improperly
33 charged or collected, including but not limited to by allocating
34 payments contrary to a borrower's direction or in a manner that fails to
35 help a borrower avoid default, as determined by the superintendent. Any
36 hearing held pursuant to the provisions of this section shall be
37 noticed, conducted and administered in compliance with the state admin-
38 istrative procedure act.

39 4. Any student loan servicer may surrender any license by delivering
40 to the superintendent written notice that it thereby surrenders such
41 license, but such surrender shall not affect such servicer's civil or
42 criminal liability for acts committed prior to such surrender. If such
43 surrender is made after the issuance by the superintendent of a state-
44 ment of charges and notice of hearing, the superintendent may proceed
45 against the servicer as if such surrender had not taken place.

46 5. No revocation, suspension, or surrender of any license shall impair
47 or affect the obligation of any pre-existing lawful contract between the
48 student loan servicer and any person, including the department of finan-
49 cial services.

50 6. Every license issued pursuant to this article shall remain in force
51 and effect until the same shall have been surrendered, revoked or
52 suspended in accordance with any other provisions of this article.

53 7. Whenever the superintendent shall revoke or suspend a license
54 issued pursuant to this article, he or she shall forthwith execute in
55 duplicate a written order to that effect. The superintendent shall file
56 one copy of such order in the office of the department and shall forth-

1 with serve the other copy upon the student loan servicer. Any such order
2 may be reviewed in the manner provided by article seventy-eight of the
3 civil practice law and rules.

4 § 717. Books and records; reports and electronic filing. 1. Each
5 student loan servicer shall keep and use in its business such books,
6 accounts and records as will enable the superintendent to determine
7 whether such servicer or exempt organization is complying with the
8 provisions of this article and with the rules and regulations lawfully
9 made by the superintendent. Every servicer shall preserve such books,
10 accounts, and records, for at least three years.

11 2. (a) Each student loan servicer, other than an exempt organization,
12 shall annually, on or before a date to be determined by the superinten-
13 dent, file a report with the superintendent giving such information as
14 the superintendent may require concerning the business and operations
15 during the preceding calendar year of such servicer under authority of
16 this article. Such report shall be subscribed and affirmed as true by
17 the servicer under the penalties of perjury and shall be in the form
18 prescribed by the superintendent.

19 (b) In addition to annual reports, the superintendent may require such
20 additional regular or special reports as he or she may deem necessary to
21 the proper supervision of student loan servicers under this article.
22 Such additional reports shall be subscribed and affirmed as true by the
23 servicer under the penalties of perjury and shall be in the form
24 prescribed by the superintendent.

25 3. Notwithstanding article three of the state technology law or any
26 other law to the contrary, the superintendent may require that any
27 submission or approval as may be required by the superintendent be made
28 or executed by electronic means if he or she deems it necessary to
29 ensure the efficient administration of this article.

30 § 718. Rules and Regulations. 1. In addition to such powers as may
31 otherwise be prescribed by law, the superintendent is hereby authorized
32 and empowered to promulgate such rules and regulations as may in the
33 judgement of the superintendent be consistent with the purposes of this
34 article, or appropriate for the effective administration of this arti-
35 cle, including, but not limited to:

36 (a) Such rules and regulations in connection with the activities of
37 student loan servicers as may be necessary and appropriate for the
38 protection of borrowers in this state.

39 (b) Such rules and regulations as may be necessary and appropriate to
40 define unfair, deceptive or abusive acts or practices in connection with
41 the activities of student loan servicers.

42 (c) Such rules and regulations as may define the terms used in this
43 article and as may be necessary and appropriate to interpret and imple-
44 ment the provisions of this article.

45 (d) Such rules and regulations as may be necessary for the enforcement
46 of this article.

47 2. The superintendent is hereby authorized and empowered to make such
48 specific rulings, demands and findings as the superintendent may deem
49 necessary for the proper conduct of the student loan servicing industry.

50 § 719. Prohibited practices. No student loan servicer shall:

51 1. Employ any scheme, device or artifice to defraud or mislead a
52 borrower;

53 2. Engage in any unfair, deceptive or predatory act or practice toward
54 any person or misrepresent or omit any material information in
55 connection with the servicing of a student loan, including, but not
56 limited to, misrepresenting the amount, nature or terms of any fee or

1 payment due or claimed to be due on a student loan, the terms and condi-
2 tions of the loan agreement or the borrower's obligations under the
3 loan;

4 3. Misapply payments to the outstanding balance of any student loan or
5 to any related interest or fees;

6 4. Provide inaccurate information to a consumer reporting agency;

7 5. Refuse to communicate with an authorized representative of the
8 borrower who provides a written authorization signed by the borrower,
9 provided that the servicer may adopt procedures reasonably related to
10 verifying that the representative is in fact authorized to act on behalf
11 of the borrower;

12 6. Make any false statement or make any omission of a material fact in
13 connection with any information or reports filed with a governmental
14 agency or in connection with any investigation conducted by the super-
15 intendent or another governmental agency;

16 7. Fail to respond within fifteen calendar days to communications from
17 the department, or within such shorter, reasonable time as the depart-
18 ment may request in his or her communication; or

19 8. Fail to provide a response within fifteen calendar days to a
20 consumer complaint submitted to the servicer by the department. If
21 necessary, a student loan servicer may request additional time up to a
22 maximum of forty-five calendar days, provided that such request is
23 accompanied by an explanation why such additional time is reasonable and
24 necessary.

25 § 720. Servicing student loans without a license. 1. Whenever, in the
26 opinion of the superintendent, a person is engaged in the business of
27 servicing student loans, other than federal loans, either actually or
28 through subterfuge, without a license from the superintendent, the
29 superintendent may order that person to desist and refrain from engaging
30 in the business of servicing student loans in the state. If, within
31 thirty days after an order is served, a request for a hearing is filed
32 in writing and the hearing is not held within sixty days of the filing,
33 the order shall be rescinded.

34 2. This section does not apply to exempt organizations.

35 § 721. Responsibilities. 1. If a student loan servicer regularly
36 reports information to a consumer reporting agency, the servicer shall
37 accurately report a borrower's payment performance to at least one
38 consumer reporting agency that compiles and maintains files on consumers
39 on a nationwide basis as defined in Section 603(p) of the federal Fair
40 Credit Reporting Act (15 U.S.C. Sec. 1681a(p)), upon acceptance as a
41 data furnisher by that consumer reporting agency.

42 2. (a) Except as provided in federal law or required by a student loan
43 agreement, a student loan servicer shall inquire of a borrower how to
44 apply a borrower's nonconforming payment. A borrower's direction on how
45 to apply a nonconforming payment shall remain in effect for any future
46 nonconforming payment during the term of a student loan until the
47 borrower provides different directions.

48 (b) For purposes of this subdivision, "nonconforming payment" shall
49 mean a payment that is either more or less than the borrower's required
50 student loan payment.

51 3. (a) If the sale, assignment, or other transfer of the servicing of
52 a student loan results in a change in the identity of the person to whom
53 the borrower is required to send subsequent payments or direct any
54 communications concerning the student loan, a student loan servicer
55 shall transfer all information regarding a borrower, a borrower's
56 account, and a borrower's student loan, including but not limited to the

1 borrower's repayment status and any borrower benefits associated with
2 the borrower's student loan, to the new student loan servicer servicing
3 the borrower's student loan within forty-five days.

4 (b) A student loan servicer shall adopt policies and procedures to
5 verify that it has received all information regarding a borrower, a
6 borrower's account, and a borrower's student loan, including but not
7 limited to the borrower's repayment status and any borrower benefits
8 associated with the borrower's student loan, when the servicer obtains
9 the right to service a student loan.

10 4. If a student loan servicer sells, assigns, or otherwise transfers
11 the servicing of a student loan to a new servicer, the sale, assignment
12 or other transfer shall be completed at least seven days before the
13 borrower's next payment is due.

14 5. (a) A student loan servicer that sells, assigns, or otherwise
15 transfers the servicing of a student loan shall require as a condition
16 of such sale, assignment or other transfer that the new student loan
17 servicer shall honor all borrower benefits originally represented as
18 being available to a borrower during the repayment of the student loan
19 and the possibility of such benefits, including any benefits that were
20 represented as being available but for which the borrower had not yet
21 qualified.

22 (b) A student loan servicer that obtains the right to service a
23 student loan shall honor all borrower benefits originally represented as
24 being available to a borrower during the repayment of the student loan
25 and the possibility of such benefits, including any benefits that were
26 represented as being available but for which the borrower had not yet
27 qualified.

28 6. A student loan servicer shall respond within thirty days after
29 receipt to a written inquiry from a borrower or a borrower's represen-
30 tative.

31 7. A student loan servicer shall preserve records of each student loan
32 and all communications with borrowers for not less than two years
33 following the final payment on such student loan or the sale, assignment
34 or other transfer of the servicing of such student loan, whichever
35 occurs first, or such longer period as may be required by any other
36 provision of law.

37 § 722. Examinations. 1. The superintendent may at any time, and as
38 often as he or she may determine, either personally or by a person duly
39 designated by the superintendent, investigate the business and examine
40 the books, accounts, records, and files used therein of every student
41 loan servicer. For that purpose the superintendent and his or her duly
42 designated representative shall have free access to the offices and
43 places of business, books, accounts, papers, records, files, safes and
44 vaults of all such servicers. The superintendent and any person duly
45 designated by him or her shall have authority to require the attendance
46 of and to examine under oath all persons whose testimony he or she may
47 require relative to such business.

48 2. No person subject to investigation or examination under this
49 section may knowingly withhold, abstract, remove, mutilate, destroy or
50 secrete any books, records, computer records or other information.

51 3. The expenses incurred in making any examination pursuant to this
52 section shall be assessed against and paid by the student loan servicer
53 so examined, except that travelling and subsistence expenses so incurred
54 shall be charged against and paid by servicers in such proportions as
55 the superintendent shall deem just and reasonable, and such propor-
56 tionate charges shall be added to the assessment of the other expenses

1 incurred upon each examination. Upon written notice by the superinten-
2 dent of the total amount of such assessment, the servicer shall become
3 liable for and shall pay such assessment to the superintendent.

4 4. In any hearing in which a department employee acting under authori-
5 ty of this chapter is available for cross-examination, any official
6 written report, worksheet, other related papers, or duly certified copy
7 thereof, compiled, prepared, drafted, or otherwise made by said depart-
8 ment employee, after being duly authenticated by said employee, may be
9 admitted as competent evidence upon the oath of said employee that said
10 worksheet, investigative report, or other related documents were
11 prepared as a result of an examination of the books and records of a
12 servicer or other person, conducted pursuant to the authority of this
13 chapter.

14 5. Unless it is an exempt organization, affiliates of a student loan
15 servicer are subject to examination by the superintendent on the same
16 terms as the servicer, but only when reports from, or examination of, a
17 servicer provides evidence of unlawful activity between a servicer and
18 affiliate benefitting, affecting, or arising from the activities regu-
19 lated by this article.

20 6. This section shall not apply to exempt organizations. To the extent
21 the superintendent is authorized by any other law to make an examination
22 into the affairs of any exempt organization, this subdivision shall not
23 be construed to limit in any way the superintendent's authority, regard-
24 ing the subjects of such an examination, or otherwise.

25 § 723. Penalties for violation of this article. 1. In addition to such
26 penalties as may otherwise be applicable by law, including but not
27 limited to the penalties available under section forty-four of this
28 chapter, the superintendent may, after notice and hearing, require any
29 person found violating the provisions of this article or the rules or
30 regulations promulgated hereunder to pay to the people of this state a
31 penalty for each violation of the article or any regulation or policy
32 promulgated hereunder a sum not to exceed the greater of (i) ten thou-
33 sand dollars for each offense; (ii) a multiple of two times the aggre-
34 gate damages attributable to the violation; or (iii) a multiple of two
35 times the aggregate economic gain attributable to the violation.

36 2. Nothing in this article shall limit any statutory or common-law
37 right of any person to bring any action in any court for any act, or the
38 right of the state to punish any person for any violation of any law.

39 § 724. Severability of provisions. If any provision of this article,
40 or the application of such provision to any person or circumstance,
41 shall be held invalid, illegal or unenforceable, the remainder of the
42 article, and the application of such provision to persons or circum-
43 stances other than those as to which it is held invalid, illegal or
44 unenforceable, shall not be affected thereby.

45 § 725. Compliance with other laws. 1. Student loan servicers shall
46 engage in the business of servicing student loans in conformity with the
47 provisions of the financial services law, this chapter, such rules and
48 regulations as may be promulgated by the superintendent thereunder and
49 all applicable federal laws and the rules and regulations promulgated
50 thereunder.

51 2. Nothing in this section shall be construed to limit any otherwise
52 applicable state or federal law or regulations.

53 § 2. Subdivision 10 of section 36 of the banking law, as amended by
54 chapter 182 of the laws of 2011, is amended to read as follows:

55 10. All reports of examinations and investigations, correspondence and
56 memoranda concerning or arising out of such examination and investi-

gations, including any duly authenticated copy or copies thereof in the possession of any banking organization, bank holding company or any subsidiary thereof (as such terms "bank holding company" and "subsidiary" are defined in article three-A of this chapter), any corporation or any other entity affiliated with a banking organization within the meaning of subdivision six of this section and any non-banking subsidiary of a corporation or any other entity which is an affiliate of a banking organization within the meaning of subdivision six-a of this section, foreign banking corporation, licensed lender, licensed casher of checks, licensed mortgage banker, registered mortgage broker, licensed mortgage loan originator, licensed sales finance company, registered mortgage loan servicer, licensed student loan servicer, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, any other person or entity subject to supervision under this chapter, or the department, shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be subserved by the publication thereof, in which event the superintendent may publish or authorize the publication of a copy of any such report or any part thereof in such manner as may be deemed proper or unless such laws specifically authorize such disclosure. For the purposes of this subdivision, "reports of examinations and investigations, and any correspondence and memoranda concerning or arising out of such examinations and investigations", includes any such materials of a bank, insurance or securities regulatory agency or any unit of the federal government or that of this state any other state or that of any foreign government which are considered confidential by such agency or unit and which are in the possession of the department or which are otherwise confidential materials that have been shared by the department with any such agency or unit and are in the possession of such agency or unit.

§ 3. Section 39 of the banking law, as amended by section 1 of part FF of chapter 59 of the laws of 2004, subdivisions 1, 2 and 5 as amended by chapter 123 of the laws of 2009, subdivision 3 as amended by chapter 155 of the laws of 2012 and subdivision 6 as amended by chapter 217 of the laws of 2010, is amended to read as follows:

§ 39. Orders of superintendent. 1. To appear and explain an apparent violation. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business or maintain a representative office in this state has violated any law or regulation, he or she may, in his or her discretion, issue an order describing such apparent violation and requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, licensed mortgage loan originator, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation to appear before him or

1 her, at a time and place fixed in said order, to present an explanation
2 of such apparent violation.

3 2. To discontinue unauthorized or unsafe and unsound practices. When-
4 ever it shall appear to the superintendent that any banking organiza-
5 tion, bank holding company, registered mortgage broker, licensed mort-
6 gage banker, licensed student loan servicer, registered mortgage loan
7 servicer, licensed mortgage loan originator, licensed lender, licensed
8 casher of checks, licensed sales finance company, licensed insurance
9 premium finance agency, licensed transmitter of money, licensed budget
10 planner, out-of-state state bank that maintains a branch or branches or
11 representative or other offices in this state, or foreign banking corpo-
12 ration licensed by the superintendent to do business in this state is
13 conducting business in an unauthorized or unsafe and unsound manner, he
14 or she may, in his or her discretion, issue an order directing the
15 discontinuance of such unauthorized or unsafe and unsound practices, and
16 fixing a time and place at which such banking organization, bank holding
17 company, registered mortgage broker, licensed mortgage banker, licensed
18 student loan servicer, registered mortgage loan servicer, licensed mort-
19 gage loan originator, licensed lender, licensed casher of checks,
20 licensed sales finance company, licensed insurance premium finance agen-
21 cy, licensed transmitter of money, licensed budget planner, out-of-state
22 state bank that maintains a branch or branches or representative or
23 other offices in this state, or foreign banking corporation may volun-
24 tarily appear before him or her to present any explanation in defense of
25 the practices directed in said order to be discontinued.

26 3. To make good impairment of capital or to ensure compliance with
27 financial requirements. Whenever it shall appear to the superintendent
28 that the capital or capital stock of any banking organization, bank
29 holding company or any subsidiary thereof which is organized, licensed
30 or registered pursuant to this chapter, is impaired, or the financial
31 requirements imposed by subdivision one of section two hundred two-b of
32 this chapter or any regulation of the superintendent on any branch or
33 agency of a foreign banking corporation or the financial requirements
34 imposed by this chapter or any regulation of the superintendent on any
35 licensed lender, registered mortgage broker, licensed mortgage banker,
36 licensed student loan servicer, licensed casher of checks, licensed
37 sales finance company, licensed insurance premium finance agency,
38 licensed transmitter of money, licensed budget planner or private banker
39 are not satisfied, the superintendent may, in the superintendent's
40 discretion, issue an order directing that such banking organization,
41 bank holding company, branch or agency of a foreign banking corporation,
42 registered mortgage broker, licensed mortgage banker, licensed student
43 loan servicer, licensed lender, licensed casher of checks, licensed
44 sales finance company, licensed insurance premium finance agency,
45 licensed transmitter of money, licensed budget planner, or private bank-
46 er make good such deficiency forthwith or within a time specified in
47 such order.

48 4. To make good encroachments on reserves. Whenever it shall appear to
49 the superintendent that either the total reserves or reserves on hand of
50 any banking organization, branch or agency of a foreign banking corpo-
51 ration are below the amount required by or pursuant to this chapter or
52 any other applicable provision of law or regulation to be maintained, or
53 that such banking organization, branch or agency of a foreign banking
54 corporation is not keeping its reserves on hand as required by this
55 chapter or any other applicable provision of law or regulation, he or
56 she may, in his or her discretion, issue an order directing that such

1 banking organization, branch or agency of a foreign banking corporation
2 make good such reserves forthwith or within a time specified in such
3 order, or that it keep its reserves on hand as required by this chapter.

4 5. To keep books and accounts as prescribed. Whenever it shall appear
5 to the superintendent that any banking organization, bank holding compa-
6 ny, registered mortgage broker, licensed mortgage banker, licensed
7 student loan servicer, registered mortgage loan servicer, licensed mort-
8 gage loan originator, licensed lender, licensed casher of checks,
9 licensed sales finance company, licensed insurance premium finance agen-
10 cy, licensed transmitter of money, licensed budget planner, agency or
11 branch of a foreign banking corporation licensed by the superintendent
12 to do business in this state, does not keep its books and accounts in
13 such manner as to enable him or her to readily ascertain its true condi-
14 tion, he or she may, in his or her discretion, issue an order requiring
15 such banking organization, bank holding company, registered mortgage
16 broker, licensed mortgage banker, licensed student loan servicer, regis-
17 tered mortgage loan servicer, licensed mortgage loan originator,
18 licensed lender, licensed casher of checks, licensed sales finance
19 company, licensed insurance premium finance agency, licensed transmitter
20 of money, licensed budget planner, or foreign banking corporation, or
21 the officers or agents thereof, or any of them, to open and keep such
22 books or accounts as he or she may, in his or her discretion, determine
23 and prescribe for the purpose of keeping accurate and convenient records
24 of its transactions and accounts.

25 6. As used in this section, "bank holding company" shall have the same
26 meaning as that term is defined in section one hundred forty-one of this
27 chapter.

28 § 4. Paragraph (a) of subdivision 1 of section 44 of the banking law,
29 as amended by chapter 155 of the laws of 2012, is amended to read as
30 follows:

31 (a) Without limiting any power granted to the superintendent under any
32 other provision of this chapter, the superintendent may, in a proceeding
33 after notice and a hearing, require any safe deposit company, licensed
34 lender, licensed casher of checks, licensed sales finance company,
35 licensed insurance premium finance agency, licensed transmitter of
36 money, licensed mortgage banker, licensed student loan servicer, regis-
37 tered mortgage broker, licensed mortgage loan originator, registered
38 mortgage loan servicer or licensed budget planner to pay to the people
39 of this state a penalty for any violation of this chapter, any regu-
40 lation promulgated thereunder, any final or temporary order issued
41 pursuant to section thirty-nine of this article, any condition imposed
42 in writing by the superintendent in connection with the grant of any
43 application or request, or any written agreement entered into with the
44 superintendent.

45 § 5. This act shall take effect on the one hundred eightieth day after
46 it shall have become a law.