

STATE OF NEW YORK

6511

2017-2018 Regular Sessions

IN ASSEMBLY

March 7, 2017

Introduced by M. of A. MORELLE, RODRIGUEZ, CRESPO, LUPARDO, M. G. MILLER, GALEF, McDONALD, MOSLEY, HIKIND, STIRPE, JAFFEE -- Multi-Sponsored by -- M. of A. MAGEE, SIMON -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to enacting the "credit creation pilot program act of New York"; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "credit creation pilot program act of New York".

3 § 2. The legislature finds and declares that consumer demand for
4 responsible installment loans in principal amounts of at least three
5 hundred dollars and no more than five thousand dollars exceeds the
6 supply of these loans. The legislature has identified several improve-
7 ments that could be made to the banking laws, which would allow more New
8 Yorkers to access responsible installment loans of at least three
9 hundred dollars and no more than five thousand dollars. The credit
10 creation pilot program act of New York is intended to assist consumers
11 in building their credit and has additional consumer protections for
12 these loans which exceed current protections under existing law.

13 § 3. The banking law is amended by adding a new article 8-B to read as
14 follows:

ARTICLE 8-B

CREDIT CREATION PILOT PROGRAM ACT OF NEW YORK

Section 339-a. Creation of pilot program and definitions.

339-b. Approval required; program application requirements; fees.

339-c. Requirements for program loans.

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

LBD10403-01-7

339-d. Underwriting requirements; credit reporting; credit education; prohibition on refinance; prohibition on credit insurance; and additional consumer protections.

339-e. Disclosures, statements and receipts.

339-f. Referral partners; permitted services; prohibited activities; compensation.

339-g. Examinations and grounds for disciplinary action.

339-h. Program reporting.

§ 339-a. Creation of pilot program and definitions. 1. The superintendent shall create and implement within the department, the credit creation pilot program act of New York.

2. For purposes of this article:

(a) "Consumer reporting agency" has the same meaning as in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. section 1681a(p).

(b) "Credit score" has the same meaning as in section 609(f)(2)(A) of the Fair Credit Reporting Act, 15 U.S.C. section 1681g(f)(2)(A).

(c) "Data furnisher" has the same meaning as the term "furnisher" in 12 C.F.R. section 1022.41(c).

(d) "Pilot program" or "program" means the credit creation pilot program act of New York.

(e) "Pilot program licensee" or "program licensee" means a person or entity that is licensed to make and collect program loans under this article and who is approved by the superintendent to participate in the program.

(f) "Pilot program master license" or "program master license" means a program master license issued by the superintendent under this article authorizing a program licensee to make and collect program loans.

(g) "Program branch office license" means the license granted to a program licensee with a program master license for additional licensed program locations, excluding a program licensee's or referral partner's principal place of business, at which program loans are originated, negotiated, funded, or serviced by a program licensee.

(h) "Program loan" means a consumer installment loan with a principal amount of at least three hundred dollars and no more than five thousand dollars.

(i) "Referral partner" means an entity that, at the referral partner's physical location for business or through other means, performs one or more of the permitted services specified in section three hundred thirty-nine-f of this article on behalf of a program licensee. A referral partner shall not mean a loan broker as defined in section 5-531 of the general obligations law.

(j) "Superintendent" means the superintendent of financial services.

§ 339-b. Approval required; program application requirements; fees. 1. A program licensee may not offer or make a program loan, or impose any charges or fees pursuant to this article, without prior approval from the superintendent to participate in the program.

2. In order to participate in the program, a person or entity must:

(a) Be licensed as a lender pursuant to article nine of this chapter;

(b) Not be the subject of any insolvency proceedings;

(c) Be in good standing with the superintendent and not be subject to any outstanding enforcement or other disciplinary actions taken against it by any of New York's financial regulators or by a financial regulator of another state, the District of Columbia or any agency of the United States;

(d) Pay an application fee of three thousand dollars to the superintendent at the time of making the application;

1 (e) File with the superintendent an application in a form and manner
2 prescribed by the superintendent which contains the following informa-
3 tion with respect to the program applicant and such other information as
4 the superintendent may require by regulation;

5 (i) The legal business name and any other name the applicant operates
6 under other than the legal business name;

7 (ii) The address of the principal place of business;

8 (iii) The telephone number and e-mail address;

9 (iv) The address of any program branch office;

10 (v) The name and address of the applicant and if the applicant is a
11 partnership or limited liability company, the names and addresses of the
12 members, or if the applicant is a corporation, the names and addresses
13 of the shareholders owning ten percent or more of the shares of such
14 corporation;

15 (vi) The contact person's name, title, address, telephone number, and
16 e-mail address;

17 (vii) The license number, if licensed under article nine of this chap-
18 ter;

19 (viii) A statement as to whether the applicant intends to use the
20 services of one or more referral partners under section three hundred
21 thirty-nine-f of this article;

22 (ix) A statement that the applicant has been accepted as a data
23 furnisher by a consumer reporting agency and will report to a consumer
24 reporting agency the payment performance of each borrower on all loans
25 made under the program; and

26 (x) The signature and certification of an authorized person of the
27 applicant.

28 3. A program licensee who desires to participate in the program but
29 who is not licensed to make loans pursuant to article nine of this chap-
30 ter must submit concurrently the following two applications to the
31 superintendent, in a form and manner specified in this section:

32 (a) An application and a fee for a master license pursuant to article
33 nine of this chapter; and

34 (b) An application and a fee for admission to the program in accord-
35 ance with paragraphs (d) and (e) of subdivision two of this section.

36 4. Except as otherwise provided in this article, a program licensee is
37 subject to all the laws and rules governing consumer loans under article
38 nine of this chapter.

39 5. All program licensees shall be assessed an annual nonrefundable
40 license fee of one thousand dollars.

41 6. Only one pilot program master license is required for a person or
42 entity to make program loans under this article, regardless of whether
43 the program licensee offers program loans to prospective borrowers at
44 its own physical business locations, through referral partners, or via
45 an electronic access point through which a prospective borrower may
46 directly access the website of the program licensee.

47 7. Each branch office of a program licensee must be licensed under
48 this section.

49 8. This superintendent shall issue a program branch office license to
50 a program licensee after the superintendent determines that the program
51 licensee has submitted a completed application for a program branch
52 office license in a form prescribed by the superintendent and payment of
53 an initial nonrefundable program branch office license fee of five
54 hundred dollars for each branch office as prescribed by the superinten-
55 dent. Application fees may not be prorated for partial years of licen-
56 sure. The program branch office license shall be issued in the name of

1 the program licensee that maintains the branch office. The application
2 for a program branch office license shall contain the following informa-
3 tion with respect to the applicant:

4 (a) The legal business name and any other name the applicant operates
5 under other than the legal business name;

6 (b) The address of the principal place of business;

7 (c) The telephone number and e-mail address;

8 (d) The address of each program branch office;

9 (e) The contact person's name, title, address, telephone number, and
10 e-mail address;

11 (f) The program master license number, if licensed under this article;
12 and

13 (g) The signature and certification of an authorized person of the
14 applicant.

15 § 339-c. Requirements for program loans. 1. A program licensee shall
16 comply with each of the following requirements in making program loans:

17 (a) A program loan shall be unsecured;

18 (b) A program loan shall have a minimum principal amount upon origi-
19 nation of three hundred dollars and a maximum principal amount upon
20 origination of five thousand dollars excluding the amount of the origi-
21 nation fee permitted under subdivision three of this section;

22 (c) A program loan shall have a term of not less than two hundred
23 forty days;

24 (d) A program loan must be repayable by the borrower in substantially
25 equal weekly, biweekly, semimonthly, or monthly installments; and

26 (e) A program loan must include a borrower's right to rescind the
27 program loan by notifying the program licensee of the borrower's intent
28 to rescind the program loan and return the principal advanced by the end
29 of the business day after the day the program loan is consummated.

30 2. As an alternative to the charges authorized by section 5-501 of the
31 general obligations law or section fourteen-a of this chapter, a program
32 licensee may contract for and receive charges for a program loan made
33 pursuant to this section at an annual simple interest rate not to exceed
34 thirty percent. The interest rate calculated as of the date of loan
35 origination shall be fixed for the life of the loan and shall accrue on
36 a simple-interest basis, through the application of a daily periodic
37 rate to the actual unpaid principal balance each day.

38 3. Notwithstanding section 5-501 of the general obligations law or
39 section fourteen-a of this chapter, a program licensee may contract for
40 and receive a nonrefundable origination fee from the borrower, provided
41 that the borrower has not rescinded the program loan pursuant to para-
42 graph (e) of subdivision one of this section. The origination fee shall
43 be fully earned immediately upon making the program loan, in an amount
44 not to exceed five percent of the principal amount, exclusive of the
45 origination fee, or seventy-five dollars, whichever is less, on the
46 program loan made to that borrower. An origination fee charged by a
47 program licensee shall be subject to all of the following:

48 (i) Only one origination fee may be contracted for or received from a
49 borrower until the program loan has been repaid in full;

50 (ii) A program licensee shall not charge the same borrower an origi-
51 nation fee more than twice in any twelve-month period; and

52 (iii) The program licensee may either deduct the origination fee from
53 the principal amount of the program loan disbursed to the borrower or
54 capitalize the origination fee into the principal balance of the program
55 loan.

1 4. Notwithstanding section three hundred fifty-one of this chapter, a
2 program licensee may:

3 (a) Require payment from a borrower of no more than twenty-five
4 dollars for insufficient funds fees incurred by that program licensee
5 due to actions of the borrower; and

6 (b) Contract for and receive a delinquency fee of no more than four-
7 teen dollars for each payment in default for at least seven days if the
8 charge is agreed upon in writing between the parties before imposing the
9 charge. A delinquency fee imposed by a program licensee is subject to
10 all of the following:

11 (i) No more than one delinquency fee may be imposed per delinquent
12 payment;

13 (ii) No more than two delinquency fees may be imposed during any peri-
14 od of thirty consecutive days; and

15 (iii) No delinquency fee may be imposed on a borrower who is one
16 hundred eighty days or more past due if that fee would result in the sum
17 of the borrower's remaining unpaid principal balance, accrued interest,
18 and delinquency fees exceeding one hundred eighty percent of the
19 original principal amount of the borrower's loan.

20 § 339-d. Underwriting requirements; credit reporting; credit educa-
21 tion; prohibition on refinance; prohibition on credit insurance; and
22 additional consumer protections. 1. The following shall apply to a
23 program loan made by a program licensee pursuant to this article:

24 (a) The program licensee shall underwrite each program loan to deter-
25 mine a borrower's ability and willingness to repay the program loan
26 pursuant to the program loan terms, and shall not make a program loan if
27 it determines that the borrower's total monthly debt service payments,
28 at the time of origination, including the program loan for which the
29 borrower is being considered and all outstanding forms of credit that
30 can be independently verified by the program licensee, exceed thirty-
31 five percent of the borrower's gross monthly income.

32 (i) (A) The program licensee shall seek information and documentation
33 pertaining to all of a borrower's outstanding debt obligations during
34 the program loan application and underwriting process, including loans
35 that are self-reported by the borrower but not available through inde-
36 pendent verification. The program licensee shall verify that information
37 using a credit report from at least one consumer reporting agency that
38 compiles and maintains files on consumers on a nationwide basis or
39 through other available electronic debt verification services that
40 provide reliable evidence of a borrower's outstanding debt obligations.

41 (B) The program licensee shall not be required to consider, for
42 purposes of debt-to-income ratio evaluation, loans from friends or fami-
43 ly.

44 (ii) The program licensee shall also verify the borrower's income that
45 the program licensee relies on to determine the borrower's debt-to-in-
46 come ratio using information from either of the following:

47 (A) Electronic means or services that provide reliable evidence of the
48 borrower's actual income; or

49 (B) Internal Revenue Service Form W-2, tax returns, payroll receipts,
50 bank statements, or other third-party documents that provide reasonably
51 reliable evidence of the borrower's actual income.

52 (b) The program licensee shall report each borrower's payment perform-
53 ance to at least one consumer reporting agency that compiles and main-
54 tains files on consumers on a nationwide basis. For purposes of this
55 section, a consumer reporting agency that compiles and maintains files
56 on consumers on a nationwide basis is one that meets the definition in

1 section 60-3(p) of the federal Fair Credit Reporting Act (15 U.S.C. Sec.
2 1681a(p)).

3 (c) The program licensee shall provide each borrower with the name of
4 the consumer reporting agency or agencies to which it will report the
5 borrower's payment history.

6 (d) The program licensee shall notify each borrower, at least two days
7 prior to each payment due date, informing the borrower of the amount
8 due, and the payment due date. Notification may be provided by any means
9 mutually acceptable to the borrower and the program licensee. A borrower
10 shall have the right to opt out of this notification at any time, upon
11 electronic or written request to the program licensee. The program
12 licensee shall notify each borrower of this right prior to disbursing
13 program loan proceeds.

14 (e) Before disbursing program loan proceeds to a borrower, the program
15 licensee shall either:

16 (i) offer a credit education program or seminar to the borrower that
17 has been previously reviewed and approved by the superintendent for use
18 in complying with this section; or

19 (ii) invite the borrower to a credit education program or seminar
20 offered by an independent third party that has been previously reviewed
21 and approved by the superintendent for use in complying with this
22 section. The borrower shall not be required to participate in either of
23 these education programs or seminars. A credit education program or
24 seminar offered pursuant to this paragraph shall be provided at no cost
25 to the borrower.

26 (f) A program licensee shall not refinance a program loan. Refinance
27 means the replacement or revision of an existing program loan contract
28 with a borrower in exchange for an advance of additional principal to
29 that borrower. A program licensee may extend, defer, or rewrite a
30 program loan.

31 2. (a) Notwithstanding section three hundred fifty-seven of this chap-
32 ter, no program licensee, referral partner or any other person or enti-
33 ty, in connection with, or incidental to, the making of any program loan
34 made pursuant to this article, may offer, sell, or require the borrower
35 to contract for "credit insurance" of the type specified in subdivision
36 three of section three hundred fifty-seven of this chapter or insurance
37 on tangible personal or real property of the type specified in subdivi-
38 sion one of section three hundred fifty-seven of this chapter.

39 (b) Notwithstanding section three hundred fifty-seven of this chapter,
40 no program licensee, referral partner, or any other person that partic-
41 ipates in the origination of a program loan under this article shall
42 refer a borrower to any other person for the purchase of "credit insur-
43 ance" of the type specified in subdivision three of section three
44 hundred fifty-seven of this chapter or insurance on tangible personal or
45 real property of the type specified in subdivision one of section three
46 hundred fifty-seven of this chapter.

47 3. (a) No program licensee shall require, as a condition of providing
48 the program loan, that the borrower waive any right, penalty, remedy,
49 forum, or procedure provided for in any law applicable to the program
50 loan, including the right to file and pursue a civil action or file a
51 complaint with or otherwise communicate with the superintendent or any
52 court or other public entity, or that the borrower agree to resolve
53 disputes in a jurisdiction outside of New York or to the application of
54 laws other than those of New York, as provided by law. Any waiver that
55 is required as a condition of doing business with the program licensee

1 shall be presumed involuntary, unconscionable, against public policy,
2 and unenforceable.

3 (b) No program licensee shall refuse to do business with or discrimi-
4 nate against a borrower or applicant on the basis that the borrower or
5 applicant refuses to waive any right, penalty, remedy, forum, or proce-
6 dure, including the right to file and pursue a civil action or complaint
7 with, or otherwise notify, the superintendent or any court or other
8 public entity. The exercise of a person's right to refuse to waive any
9 right, penalty, remedy, forum, or procedure, including a rejection of a
10 contract requiring a waiver, shall not affect any otherwise legal terms
11 of a contract or an agreement.

12 (c) This subdivision shall not apply to any agreement to waive any
13 right, penalty, remedy, forum, or procedure, including any agreement to
14 arbitrate a claim or dispute, after a claim or dispute has arisen.
15 Nothing in this subdivision shall affect the enforceability or validity
16 of any other provision of the contract.

17 4. The program licensee or any of its wholly owned subsidiaries may
18 not sell or assign an unpaid debt to an independent third party for
19 collection purposes unless the debt has been delinquent for at least
20 thirty days.

21 5. The program licensee shall develop and implement policies and
22 procedures designed to respond to questions raised by applicants and
23 borrowers regarding their program loans, including those involving
24 referral partners, and to address customer complaints as soon as reason-
25 ably practicable.

26 § 339-e. Disclosures, statements and receipts. 1. (a) In addition to
27 the disclosure requirements of article nine of this chapter, a program
28 licensee shall disclose the following to the consumer in writing, in a
29 typeface no smaller than twelve-point type, at the time of application:

30 (i) The amount borrowed; the total dollar cost of the program loan to
31 the consumer if the program loan is paid back on time, including the sum
32 of the origination fee, principal amount borrowed, and interest
33 payments; the corresponding annual percentage rate, calculated in
34 accordance with Federal Reserve Board Regulation Z (12 C.F.R. 226); the
35 periodic payment amount; the delinquency fee schedule; and the following
36 statement: "Repaying your loan early will lower your borrowing costs by
37 reducing the amount of interest you will pay. This loan has no prepay-
38 ment penalty."

39 (ii) A statement that the consumer has the right to rescind the
40 program loan by notifying the program licensee of the consumer's intent
41 to rescind the program loan and returning the principal advanced by the
42 end of the business day following the date the program loan is consum-
43 mated.

44 (b) A program licensee may provide the borrower with the disclosures
45 required by paragraph (a) of this subdivision in a mobile or other elec-
46 tronic application, on which the size of the typeface of the disclosure
47 can be manually modified by a prospective borrower, if the prospective
48 borrower is given the option to print the disclosure in a typeface of at
49 least twelve-point size or is provided by the program licensee with a
50 hardcopy of the disclosure in a typeface of at least twelve-point size
51 before the program loan is consummated.

52 (c) The program loan contract and all written disclosures and state-
53 ments may be provided in English or another language in which the
54 program loan is negotiated.

55 2. At the time a referral partner receives or processes an application
56 for a program loan pursuant to section three hundred thirty-nine-f of

1 this article, the referral partner shall provide the following statement
2 to the applicant, on behalf of the program licensee, in no smaller than
3 ten-point type, and must request that the applicant acknowledge receipt
4 of the statement in writing:

5 "Your loan application has been referred to us by (name of referral
6 partner). We may pay a fee to (name of referral partner) for the
7 successful referral of your loan application. If you are approved for
8 the loan, (name of program licensee) will become your lender. If you
9 have any questions about your loan, now or in the future, you should
10 direct those questions to (name of program licensee) by (insert at least
11 two different ways in which a borrower may contact the program licen-
12 see). If you wish to report a complaint about (name of referral part-
13 ner) or (name of program licensee) regarding this loan transaction, you
14 may contact the Department of Financial Services and file your complaint
15 online at <http://www.dfs.ny.gov>."

16 3. A referral partner that disburses loan proceeds to a borrower
17 pursuant to paragraph (j) of subdivision three of section three hundred
18 thirty-nine-f of this article shall deliver or cause to be delivered to
19 the borrower at the time loan proceeds are disbursed a plain and
20 complete receipt showing all of the following:

21 (a) The date of disbursement;

22 (b) The total amount disbursed;

23 (c) The corresponding loan account identification; and

24 (d) The following statement, prominently displayed in a type size
25 equal to or greater than the type size used to display the other items
26 on the receipt: "If you have any questions about your loan, now or in
27 the future, you should direct those questions to (name of program licen-
28 see) by (insert at least two different ways in which a borrower may
29 contact the program licensee)."

30 4. In addition to the receipt requirements in article nine of this
31 chapter, a program licensee or its approved referral partner, if appli-
32 cable, must make available to the borrower by electronic or physical
33 means, at the time that a payment is made by the borrower, a plain and
34 complete receipt of payment. For audit purposes, a program licensee must
35 maintain an electronic record for each receipt made available to a
36 borrower, which must include a copy of the receipt and the date and time
37 that the receipt was generated. Each receipt of payment must show all of
38 the following:

39 (a) The name of the borrower;

40 (b) The name of the referral partner, if applicable;

41 (c) The total payment amount received;

42 (d) The date of payment;

43 (e) The program loan balance before and after application of the
44 payment;

45 (f) The amount of the payment that was applied to principal, interest,
46 and fees;

47 (g) The type of payment made by the borrower; and

48 (h) The following statement, prominently displayed in a type size
49 equal to or greater than the type size used to display the other items
50 on the receipt: "If you have any questions about your loan now or in the
51 future, you should direct those questions to a... (name of program licen-
52 see) ... by ... (at least two different ways in which a borrower may
53 contact the program licensee)"

54 § 339-f. Referral partners; permitted services; prohibited activities;
55 compensation. 1. A licensee who is approved by the superintendent to

1 participate in the program may use the services of one or more referral
2 partners as provided in this article.

3 2. All arrangements between a program licensee and a referral partner
4 must be specified in a written referral partner agreement between the
5 parties. The agreement must contain a provision that the referral part-
6 ner agrees to comply with this section and all rules adopted under this
7 section regarding the activities of referral partners, and that the
8 superintendent has access to the referral partner's books and records
9 pertaining to the referral partner's operations under the agreement with
10 the program licensee in accordance with subdivision one of section three
11 hundred thirty-nine-g of this article.

12 3. A referral partner may perform one or more of the following
13 services for a program licensee:

14 (a) Distributing, circulating, using, or publishing printed brochures,
15 flyers, factsheets, or other written materials relating to program loans
16 that the program licensee may make or negotiate. The written materials
17 must be reviewed and approved in writing by the program licensee before
18 being distributed, circulated, or published;

19 (b) Providing written factual information about program loan terms,
20 conditions, or qualification requirements to a prospective borrower
21 which have been either prepared by the program licensee or reviewed and
22 approved in writing by the program licensee. A referral partner may
23 discuss the information with a prospective borrower in general terms;

24 (c) Notifying a prospective borrower of the information needed in
25 order to complete a program loan application;

26 (d) Entering information provided by the prospective borrower on a
27 preprinted or electronic application form or onto a preformatted comput-
28 er database;

29 (e) Assembling credit applications and other materials obtained in the
30 course of a credit application transaction for submission to the program
31 licensee;

32 (f) Contacting the program licensee to determine the status of a
33 program loan application;

34 (g) Communicating a response that is returned by the program
35 licensee's automated underwriting system to a borrower or a prospective
36 borrower;

37 (h) Obtaining a borrower's signature on documents prepared by the
38 program licensee and delivering final copies of the documents to the
39 borrower;

40 (i) Operating an electronic access point through which a prospective
41 borrower may directly access the website of the program licensee to
42 apply for a program loan;

43 (j) Disbursing loan proceeds to a borrower, if this method of
44 disbursement is acceptable to the borrower subject to the requirements
45 of subdivision four of section three hundred thirty-nine-e of this arti-
46 cle. A loan disbursement made by a referral partner under this subdivi-
47 sion is deemed to be made by the program licensee on the date the funds
48 are disbursed or otherwise made available by the referral partner to the
49 borrower; or

50 (k) Receiving a program loan payment from the borrower if this method
51 of payment is acceptable to the borrower, subject to the requirements of
52 subdivision five of section three hundred thirty-nine-e of this article.

53 4. (a) A program loan payment made by a borrower to a referral partner
54 under this section must be applied to the borrower's program loan and
55 deemed received by the program licensee as of the date the payment is
56 received by the referral partner.

1 (b) A referral partner that receives program loan payments under this
2 section shall deliver or cause to be delivered to the borrower at the
3 time that the payment is made by the borrower, a plain and complete
4 receipt showing all of the information specified in subdivision five of
5 section three hundred thirty-nine-e of this article.

6 5. A borrower who submits a program loan payment to a referral partner
7 under this section shall not be liable for any failure or delay by the
8 referral partner in transmitting the payment to the program licensee.

9 6. A referral partner that disburses or receives loan payments pursu-
10 ant to subdivision three of this section shall maintain records of all
11 disbursements made and loan payments received for a period of at least
12 two years or until one month following the completion of an examination
13 of the program licensee by the superintendent, whichever is later.

14 7. Providing any notice or disclosure required to be provided to the
15 borrower by the program licensee, other than the notice required to be
16 provided by the program licensee to the borrower pursuant to subdivision
17 three of section three hundred thirty-nine-e of this article. A program
18 licensee that uses a referral partner to provide notices or disclosures
19 to borrowers shall maintain a record of which notices and disclosures
20 each referral partner provides to borrowers on its behalf, for the
21 purpose of facilitating the commissioner's examination of the program
22 licensee.

23 8. A referral partner shall not engage in any of the following prohib-
24 ited activities:

25 (a) Providing counseling or advice to a borrower or prospective
26 borrower with respect to any loan term;

27 (b) Providing loan-related marketing material that has not previously
28 been approved by the program licensee to a borrower or a prospective
29 borrower;

30 (c) Negotiating a loan term between a program licensee and a prospec-
31 tive borrower;

32 (d) Offering information pertaining to a single prospective borrower
33 to more than one program licensee, except if a program licensee has
34 declined to offer a program loan to a prospective borrower and has so
35 notified that prospective borrower in writing, the referral partner may
36 then offer information pertaining to a single prospective borrower to
37 another program licensee with which it has a referral partner's agree-
38 ment; and

39 (e) Requiring a borrower to pay any fees or charges to the referral
40 partner or to any other person in connection with a program loan other
41 than those permitted under this article.

42 9. A referral partner shall comply with all laws applicable to the
43 program licensee that impose requirements upon the program licensee for
44 safeguards for information security.

45 10. If the loan applicant has questions about the program loan that
46 the referral partner is not permitted to answer, the referral partner
47 shall make a good faith effort to assist the applicant in making direct
48 contact with the program licensee before the program loan is consum-
49 mated.

50 11. The program licensee may compensate a referral partner pursuant to
51 the written agreement between the licensee and the referral partner and
52 a compensation schedule that is mutually agreed to by the program licen-
53 see and the referral partner, subject to the requirements in subdivision
54 twelve of this section.

55 12. The compensation of a referral partner by a program licensee shall
56 be subject to all of the following requirements:

1 (a) Compensation may not be paid to a referral partner in connection
2 with a loan application unless that program loan is consummated;

3 (b) Compensation may not be paid to a referral partner based upon the
4 principal amount of the program loan;

5 (c) Compensation may not be directly or indirectly passed on to a
6 borrower through a fee or other compensation, or a portion of a fee or
7 other compensation charged to a borrower; and

8 (d) Subject to the limitations set forth in paragraphs (a), (b) and
9 (c) of this subdivision, the total compensation paid by a program licen-
10 see to a referral partner for the services specified in subdivision
11 three of this section shall not exceed the sum of the following:

12 (i) Sixty dollars per program loan, on average, assessed annually,
13 whether paid at the time of consummation of the program loan, through
14 installments, or in a manner otherwise agreed upon by the program licen-
15 see and the referral partner; and

16 (ii) Two dollars per payment received by the referral partner on
17 behalf of the program licensee for the duration of the program loan, if
18 the referral partner receives borrower loan payments on the program
19 licensee's behalf in accordance with subdivision three of this section.

20 (e) Neither the program licensee nor any referral partner may pass on
21 to a borrower, whether directly or indirectly, any additional cost or
22 other charge for compensation paid to a referral partner under this
23 program.

24 13. A program licensee that utilizes the services of a referral part-
25 ner must notify the superintendent, in a form and manner prescribed by
26 the superintendent, within fifteen days after entering into a contract
27 with a referral partner regarding all of the following:

28 (a) The name, business address, and licensing details of the referral
29 partner and all locations at which the referral partner will perform
30 services under this section;

31 (b) The name and contact information of an employee of the referral
32 partner who is knowledgeable about, and has the authority to execute,
33 the referral partner agreement;

34 (c) The name and contact information of an employee of the referral
35 partner who is responsible for that referral partner's referring activ-
36 ities on behalf of the program licensee; and

37 (d) A statement by the program licensee that it has conducted due
38 diligence with respect to the referral partner and has confirmed that
39 none of the following applies:

40 (i) The filing of a petition under the United States Bankruptcy Code
41 for bankruptcy or reorganization by the referral partner;

42 (ii) The commencement of an administrative or a judicial license
43 suspension or revocation proceeding, or the denial of a license request
44 or renewal, by any state, the District of Columbia, any United States
45 territory, or any foreign country in which the referral partner oper-
46 ates, plans to operate, or is licensed to operate;

47 (iii) A felony indictment involving the referral partner or an affil-
48 iated party. As used in this subparagraph, the term "affiliated party"
49 means a director, an officer, a responsible person, an employee, or a
50 foreign affiliate of a referral partner; or a person who has a control-
51 ling interest in a referral partner;

52 (iv) The felony conviction, guilty plea, or plea of nolo contendere,
53 regardless of adjudication, of the referral partner or an affiliated
54 party;

55 (v) Any suspected criminal act committed in this state or any act
56 committed in another state or the District of Columbia that would

1 constitute a criminal act if committed in the state of New York relating
2 to activities regulated under this chapter by a referral partner;

3 (vi) Notification by a law enforcement or prosecutorial agency that
4 the referral partner is under criminal investigation including, but not
5 limited to, subpoenas to produce records or testimony and warrants
6 issued by a court of competent jurisdiction which authorize the search
7 and seizure of any records relating to a business activity regulated
8 under this chapter; and

9 (vii) Any other information requested by the superintendent.

10 14. A referral partner must provide the program licensee with a writ-
11 ten notice sent by registered mail within thirty days of any changes to
12 the information specified in paragraphs (a) through (c) of subdivision
13 thirteen of this section or the occurrence or knowledge of, whichever
14 time period is greater, any of the events specified in paragraph (d) of
15 subdivision thirteen of this section.

16 15. A program licensee is responsible for any act of its referral
17 partner if the program licensee should have known of the act or had
18 actual knowledge that such act is a violation of this section, and the
19 program licensee allowed the act to continue. Such responsibility is
20 limited to conduct engaged in by the referral partner pursuant to the
21 authority granted to it by the program licensee under the contract
22 between the referral partner and the program licensee.

23 16. The program licensee shall pay to the superintendent, at the time
24 it files a referral partner notice with the superintendent, a one-time
25 nonrefundable fee of thirty dollars for each referral partner as
26 prescribed by the superintendent.

27 § 339-g. Examinations and grounds for disciplinary action. 1. To
28 ensure that the activities of the program licensee are in compliance
29 with this article, the superintendent must examine each program licensee
30 at least once every twenty-four months. The superintendent may examine
31 each program licensee more frequently in accordance with and pursuant to
32 article nine of this chapter. The superintendent may also examine the
33 operations of each referral partner to ensure that the activities of the
34 program licensee and the referral partner are in compliance with this
35 article.

36 2. The program licensee shall pay for the costs of any such examina-
37 tion in the amount determined by the superintendent.

38 3. Notwithstanding subdivision one of this section, the superintendent
39 shall have the authority to waive one or more program branch office
40 examinations, if the superintendent deems that the program branch office
41 examinations are not necessary for the protection of the public, due to
42 the centralized operations of the program licensee or other factors
43 acceptable to the superintendent.

44 4. A program licensee who violates any applicable provision of this
45 article is subject to disciplinary action pursuant to article nine of
46 this chapter. Subject to subdivision fifteen of section three hundred
47 thirty-nine-f of this article, a program licensee is also subject to
48 disciplinary action for a violation of this article committed by any of
49 its referral partners.

50 5. The superintendent may take any of the following actions against a
51 referral partner who violates the provisions of this section:

52 (a) Disqualify the referral partner from performing services under
53 this article;

54 (b) Bar the referral partner from performing services at one or more
55 specific locations of that referral partner;

1 (c) Terminate a written agreement between a referral partner and a
2 program licensee;

3 (d) Impose an administrative fine not to exceed one thousand dollars
4 for each act of the referral partner; and

5 (e) If the superintendent deems that action in the public interest,
6 prohibit the use of that referral partner by all program licensees
7 accepted to participate in the program.

8 § 339-h. Program reporting. 1. On or before April first of each year,
9 a program licensee shall file a report with the superintendent contain-
10 ing aggregated or anonymized data, without reference to any borrower's
11 nonpublic personal information or any proprietary or trade secret infor-
12 mation of the program licensee, on each of the items specified in subdi-
13 vision four of this section.

14 2. On or before January first, two thousand twenty-one, and again, on
15 or before January first, two thousand twenty-three, the superintendent
16 must post a report on its website summarizing the use of the program
17 based upon the information contained in the report filed by each program
18 licensee under subdivision one of this section.

19 3. The report must state the information in aggregate so as not to
20 identify data by specific program licensee or referral partner.

21 4. The superintendent's report must specify the period to which the
22 report corresponds and must include, but shall not be limited to, the
23 following for that period:

24 (a) The number of entities that applied to participate in the program.

25 (b) The number of entities accepted to participate in the program.

26 (c) The reasons for rejecting applications for participation, if
27 applicable. This information must be provided in a manner that does not
28 identify the entity or entities rejected.

29 (d) The number of program loan applications received by program licen-
30 sees participating in the program, the number of program loans made
31 pursuant to the program, the total amount loaned, the distribution of
32 loan lengths upon origination, and the distribution of interest rates
33 and principal amounts upon origination among those program loans.

34 (e) The number of borrowers who obtained more than one program loan
35 and the distribution of the number of program loans per borrower.

36 (f) The average credit score increase between successive program loans
37 for borrowers (i) with no credit score and (ii) with a credit score. In
38 each case the licensee must specify the methodology used to measure the
39 increase based on information from at least one major credit bureau.

40 (g) The income distribution of borrowers upon program loan origi-
41 nation, including the number of borrowers who obtained at least one
42 program loan and who resided in a low-income or moderate-income census
43 tract at the time of their loan applications.

44 (h) The number of borrowers who obtained program loans for the follow-
45 ing purposes, based on borrower responses at the time of their loan
46 applications indicating the primary purpose for which the program loan
47 was obtained:

48 (i) Pay medical expenses;

49 (ii) Pay for vehicle repair or a vehicle purchase;

50 (iii) Pay bills;

51 (iv) Consolidate debt;

52 (v) Build or repair credit history; and

53 (vi) Pay other expenses.

54 (i) The number of borrowers who self-report that they had a bank
55 account at the time of their loan application and the number of borrow-

1 ers who self-report that they did not have a bank account at the time of
2 their loan application.

3 (j) The number and type of referral partners used by program licen-
4 sees.

5 (k) The number and percentage of borrowers who obtained one or more
6 program loans on which delinquency charges were assessed, the total
7 amount of delinquency charges assessed, and the average delinquency
8 charge assessed by dollar amount and as a percentage of the principal
9 amount loaned.

10 (l) The performance of program loans under the program as reflected by
11 all of the following:

12 (i) The number and percentage of borrowers who experienced at least
13 one delinquency lasting between seven and twenty-nine days and the
14 distribution of principal loan amounts corresponding to those delinquen-
15 cies;

16 (ii) The number and percentage of borrowers who experienced at least
17 one delinquency lasting between thirty and fifty-nine days and the
18 distribution of principal loan amounts corresponding to those delinquen-
19 cies; and

20 (iii) The number and percentage of borrowers who experienced at least
21 one delinquency lasting sixty days or more and the distribution of prin-
22 cipal loan amounts corresponding to those delinquencies.

23 (m) The number and types of violations of this article by referral
24 partners which were documented by the superintendent.

25 (n) The number and types of violations of this article by program
26 licensees which were documented by the superintendent.

27 (o) The number of times that the superintendent disqualified a refer-
28 ral partner from performing services, barred a referral partner from
29 performing services at one or more specific locations of the referral
30 partner, terminated a written agreement between a referral partner and a
31 program licensee, or imposed an administrative penalty.

32 (p) The number of complaints received by the superintendent about a
33 program licensee or a referral partner and the nature of those
34 complaints.

35 § 4. This act shall take effect on the one hundred eightieth day after
36 it shall have become a law and shall expire and be deemed repealed five
37 years after such date; provided, however, that effective immediately,
38 the addition, amendment and/or repeal of any rule or regulation neces-
39 sary for the implementation of this act on its effective date are
40 authorized to be made or completed on or before such effective date.