

# STATE OF NEW YORK

7582

2017-2018 Regular Sessions

## IN ASSEMBLY

May 3, 2017

Introduced by M. of A. ZEBROWSKI, SEAWRIGHT, WALKER, ORTIZ, ENGLEBRIGHT, GJONAJ, MONTESANO, SIMON, JAFFEE, GOTTFRIED, COLTON, D'URSO, HARRIS, HOOPER, BLAKE -- Multi-Sponsored by -- M. of A. DE LA ROSA, HYNDMAN, THIELE -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to requiring the licensure of 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 XIV-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.

###### 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 to be a student loan servicer.

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

LBD11195-01-7

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

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

9     4. "Exempt organization" shall mean any banking organization, foreign  
10    banking corporation, national bank, federal savings association, federal  
11    credit union, or any bank, trust company, savings bank, savings and loan  
12    association, or credit union organized under the laws of any other  
13    state.

14    5. "Person" shall mean any individual, association, corporation,  
15    limited liability company, partnership, trust, unincorporated organiza-  
16    tion, or any other entity.

17    6. "Servicer" or "student loan servicer" shall mean a person licensed  
18    pursuant to section seven hundred eleven of this article to engage in  
19    the business of servicing any student loan of a borrower.

20    7. "Servicing" shall mean:

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

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

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

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

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

35    (f) performing other administrative services with respect to a borrow-  
36    er's student loan.

37    8. "Student loan" shall mean any loan to a borrower to finance postse-  
38    condary education or expenses related to postsecondary education.

39    § 711. Licensing. 1. No person shall engage in the business of servic-  
40    ing student loans owed by one or more borrowers residing in this state  
41    without first being licensed by the superintendent as a student loan  
42    servicer in accordance with this article and such regulations as may be  
43    prescribed by the superintendent.

44    2. The licensing provisions of this subdivision shall not apply to any  
45    exempt organization; provided that such exempt organization notifies the  
46    superintendent that the exempt organization is acting as a student loan  
47    servicer in this state and complies with sections seven hundred nineteen  
48    and seven hundred twenty-one of this article and any regulation applica-  
49    ble to student loan servicers promulgated by the superintendent.

50    § 712. Application for a student loan servicer license; fees. 1. The  
51    application for a license to be a student loan servicer shall be in  
52    writing, under oath, and in the form prescribed by the superintendent.  
53    Notwithstanding article three of the state technology law or any other  
54    law to the contrary, the superintendent may require that an application  
55    for a license or any other submission or application for approval as may  
56    be required by this article be made or executed by electronic means if

1 he or she deems it necessary to ensure the efficient and effective  
2 administration of this article. The application shall include a  
3 description of the activities of the applicant, in such detail and for  
4 such periods as the superintendent may require, including:

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

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

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

15 (d) information as to the character, fitness, financial and business  
16 responsibility, background and experiences of the applicant, or its  
17 members, officers, partners, directors and principals as may be appro-  
18 priate; and

19 (e) any additional detail or information required by the superinten-  
20 dent.

21 2. An application to become a student loan servicer or any application  
22 with respect to a student loan servicer shall be accompanied by a fee as  
23 prescribed pursuant to section eighteen-a of this chapter.

24 § 713. Application process to receive license to engage in the busi-  
25 ness of student loan servicing. 1. Upon the filing of an application for  
26 a license, if the superintendent shall find that the financial responsi-  
27 bility, experience, character, and general fitness of the applicant and,  
28 if applicable, the members, officers, partners, directors and principals  
29 of the applicant are such as to command the confidence of the community  
30 and to warrant belief that the business will be operated honestly, fair-  
31 ly, and efficiently within the purpose of this article, the superinten-  
32 dent shall thereupon issue a license in duplicate to engage in the busi-  
33 ness of servicing student loans described in section seven hundred ten  
34 of this article in accordance with the provisions of this article. If  
35 the superintendent shall not so find, the superintendent shall not issue  
36 a license, and the superintendent shall so notify the applicant. The  
37 superintendent shall transmit one copy of a license to the applicant and  
38 file another copy in the office of the department of financial services.  
39 Upon receipt of such license, a student loan servicer shall be author-  
40 ized to engage in the business of servicing student loans in accordance  
41 with the provisions of this article. Such license shall remain in full  
42 force and effect until it is surrendered by the servicer or revoked or  
43 suspended as hereinafter provided.

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

48 (a) lacks the good moral character and general fitness such as to  
49 warrant belief that the licensed entity would be operated honestly,  
50 fairly and efficiently within the purposes of this article;

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

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

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

3. The term "substantial stockholder", as used in this section, shall be deemed to refer to a person owning or controlling directly or indirectly ten per centum or more of the total outstanding stock of a corporation.

§ 714. Changes in officers and directors. Upon any change of any of the executive officers, directors, partners or members of any student loan servicer, the student loan servicer shall submit to the superintendent the name, address, and occupation of each new officer, director, partner or member, and provide such other information as the superintendent may require.

§ 715. Changes in control. 1. It shall be unlawful, except with the prior approval of the superintendent, for any action to be taken which results in a change of control of the business of a student loan servicer. Prior to any change of control, the person desirous of acquiring control of the business of a student loan servicer shall make written application to the superintendent and pay an investigation fee as prescribed pursuant to section eighteen-a of this chapter to the superintendent. The application shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making the determination required by subdivision two of this section. Such information shall include, but not be limited to, the information and other material required for a student loan servicer by subdivision one of section seven hundred twelve of this article.

2. The superintendent shall approve or disapprove the proposed change of control of a student loan servicer in accordance with the provisions of section seven hundred thirteen of this article.

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

4. As used in this section the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a student loan servicer, whether through the ownership of voting stock of such student loan servicer, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per centum or more of the voting stock of any student loan servicer or of any person which owns, controls or holds with power to vote ten per centum or more of the voting stock of any student loan servicer, but no person shall be

1 deemed to control a student loan servicer solely by reason of being an  
2 officer or director of such student loan servicer. The superintendent  
3 may in his discretion, upon the application of a student loan servicer  
4 or any person who, directly or indirectly, owns, controls or holds with  
5 power to vote or seeks to own, control or hold with power to vote any  
6 voting stock of such student loan servicer, determine whether or not the  
7 ownership, control or holding of such voting stock constitutes or would  
8 constitute control of such student loan servicer for purposes of this  
9 section.

10 § 716. Grounds for suspension or revocation of license. 1. The super-  
11 intendent may revoke any license to engage in the business of a student  
12 loan servicer issued pursuant to this article if a determination has  
13 been made, after notice and a hearing, that:

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

17 (b) a servicer engages in fraud, intentional misrepresentation, or  
18 gross negligence in servicing a student loan;

19 (c) the competence, experience, character, or general fitness of the  
20 servicer, an individual controlling, directly or indirectly, ten percent  
21 or more of the outstanding interests, or any person responsible for  
22 servicing a student loan for the servicer indicates that it is not in  
23 the public interest to permit the servicer to continue servicing student  
24 loans;

25 (d) the servicer is insolvent, suspends payment of its obligations, or  
26 makes a general assignment for the benefit of its creditors; or

27 (e) the servicer has violated the laws of this state, any other state  
28 law or any federal law involving fraudulent or dishonest dealing, or a  
29 final judgment has been entered against a student loan servicer in a  
30 civil action upon grounds of fraud, misrepresentation or deceit.

31 2. The superintendent may, on good cause shown, or where there is a  
32 substantial risk of public harm, suspend any license for a period not  
33 exceeding thirty days, pending investigation. "Good cause", as used in  
34 this subdivision, shall exist when a student loan servicer has defaulted  
35 in performing its financial engagements or engages in dishonest or ineq-  
36 uitable practices which may cause substantial harm to the persons  
37 afforded the protection of this article.

38 3. No license shall be revoked or suspended except after notice and a  
39 hearing thereon. Any order of suspension issued after notice and a  
40 hearing may include as a condition of reinstatement that the student  
41 loan servicer make restitution to consumers of fees or other charges  
42 which have been improperly charged or collected, including but not  
43 limited to by allocating payments contrary to a borrower's direction or  
44 in a manner that fails to help a borrower avoid default, as determined  
45 by the superintendent. Any hearing held pursuant to the provisions of  
46 this section shall be noticed, conducted and administered in compliance  
47 with the state administrative procedure act.

48 4. Any student loan servicer may surrender any license by delivering  
49 to the superintendent written notice that the student loan servicer  
50 thereby surrenders such license, but such surrender shall not affect the  
51 servicer's civil or criminal liability for acts committed prior to the  
52 surrender. If such surrender is made after the issuance by the super-  
53 intendent of a statement of charges and notice of hearing, the super-  
54 intendent may proceed against the servicer as if the surrender had not  
55 taken place.



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

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

8     7. Whenever the superintendent shall revoke or suspend a license  
9 issued pursuant to this article, he or she shall forthwith execute in  
10 duplicate a written order to that effect. The superintendent shall file  
11 one copy of the order in the office of the department of financial  
12 services and shall forthwith serve the other copy upon the student loan  
13 servicer. Any such order may be reviewed in the manner provided by arti-  
14 cle seventy-eight of the civil practice law and rules.

15     § 717. Books and records; reports and electronic filing. 1. Each  
16 student loan servicer and exempt organization shall keep and use in its  
17 business such books, accounts and records as will enable the superinten-  
18 dent to determine whether the servicer or exempt organization is comply-  
19 ing with the provisions of this article and with the rules and regu-  
20 lations lawfully made by the superintendent. Every servicer and exempt  
21 organization shall preserve such books, accounts, and records, for at  
22 least three years.

23     2. (a) Each student loan servicer shall annually, on or before a date  
24 to be determined by the superintendent, file a report with the super-  
25 intendent giving such information as the superintendent may require  
26 concerning the business and operations during the preceding calendar  
27 year of such servicer under authority of this article. Such report shall  
28 be subscribed and affirmed as true by the servicer under the penalties  
29 of perjury and shall be in the form prescribed by the superintendent.

30     (b) In addition to annual reports, the superintendent may require such  
31 additional regular or special reports as he or she may deem necessary to  
32 the proper supervision of student loan servicers under this article.  
33 Such additional reports shall be subscribed and affirmed as true by the  
34 servicer under the penalties of perjury and shall be in the form  
35 prescribed by the superintendent.

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

41     § 718. Rules and regulations. 1. In addition to such powers as may  
42 otherwise be prescribed by this chapter, the superintendent is hereby  
43 authorized and empowered to promulgate such rules and regulations as may  
44 in the judgment of the superintendent be consistent with the purposes of  
45 this article, or appropriate for the effective administration of this  
46 article, including, but not limited to:

47     (a) such rules and regulations in connection with the activities of  
48 student loan servicers and exempt organizations as may be necessary and  
49 appropriate for the protection of borrowers in this state;

50     (b) such rules and regulations as may be necessary and appropriate to  
51 define unfair, deceptive or abusive acts or practices in connection with  
52 the activities of student loan servicers and exempt organizations in  
53 servicing student loans;

54     (c) such rules and regulations as may define the terms used in this  
55 article and as may be necessary and appropriate to interpret and imple-  
56 ment the provisions of this article; and

1 (d) such rules and regulations as may be necessary for the enforcement  
2 of this article.

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

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

7 1. Directly employ any scheme, device or artifice to defraud or  
8 mislead a borrower.

9 2. Intentionally engage in any unfair, deceptive or predatory act or  
10 practice toward any person or misrepresent or omit any material informa-  
11 tion in connection with the servicing of a student loan, including, but  
12 not limited to, misrepresenting the amount, nature or terms of any fee  
13 or payment due or claimed to be due on a student loan, the terms and  
14 conditions of the loan agreement or the borrower's obligations under the  
15 loan.

16 3. Intentionally misapply payments to the outstanding balance of any  
17 student loan or to any related interest or fees.

18 4. Intentionally provide misleading information to a consumer report-  
19 ing agency.

20 5. Refuse to communicate with an authorized representative of the  
21 borrower who provides a written authorization signed by the borrower,  
22 provided that the servicer may adopt procedures reasonably related to  
23 verifying that the representative is in fact authorized to act on behalf  
24 of the borrower.

25 6. Knowingly make any false statement or make any omission of a mate-  
26 rial fact in connection with any information or reports filed with a  
27 governmental agency or in connection with any investigation conducted by  
28 the superintendent or another governmental agency.

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

37 2. This section shall not apply to exempt organizations.

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

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

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

54 3. (a) If the sale, assignment, or other transfer of the servicing of  
55 a student loan results in a change in the identity of the person to whom  
56 the borrower is required to send subsequent payments or direct any

1 communications concerning the student loan, a student loan servicer  
2 shall transfer all information regarding a borrower, a borrower's  
3 account, and a borrower's student loan, including but not limited to the  
4 borrower's repayment status and any borrower benefits associated with  
5 the borrower's student loan, to the new student loan servicer servicing  
6 the borrower's student loan within forty-five days.

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

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

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

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

31 6. A student loan servicer shall respond within thirty days after  
32 receipt to a written inquiry from a borrower or a borrower's authorized  
33 representative.

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

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

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

54 3. The expenses incurred in making any examination pursuant to this  
55 section shall be assessed against and paid by the student loan servicer  
56 so examined, except that traveling and subsistence expenses so incurred



1 shall be charged against and paid by servicers in such proportions as  
2 the superintendent shall deem just and reasonable, and such propor-  
3 tionate charges shall be added to the assessment of the other expenses  
4 incurred upon each examination. Upon written notice by the superinten-  
5 dent of the total amount of such assessment, the servicer shall become  
6 liable for and shall pay such assessment to the superintendent.

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

17 5. Unless otherwise exempt pursuant to subdivision two of section  
18 seven hundred eleven of this article, affiliates of a student loan  
19 servicer shall be subject to examination by the superintendent on the  
20 same terms as the servicer, but only when reports from, or examination  
21 of, a servicer provides evidence of unlawful activity between a servicer  
22 and affiliate benefitting, affecting, or arising from the activities  
23 regulated by this article.

24 § 723. Penalties for violation of this article. 1. In addition to such  
25 penalties as may otherwise be applicable by law, the superintendent may,  
26 after notice and hearing, require any person found violating the  
27 provisions of this article or the rules or regulations promulgated here-  
28 under to pay to the people of this state a penalty for each violation of  
29 this article or any regulation or policy promulgated hereunder a sum not  
30 to exceed an amount as determined pursuant to section forty-four of this  
31 chapter for each such violation.

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

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

41 § 725. Compliance with other laws. 1. Student loan servicers shall  
42 engage in the business of servicing student loans in conformity with the  
43 provisions of this chapter, such rules and regulations as may be promul-  
44 gated by the superintendent thereunder and all applicable federal laws  
45 and the rules and regulations promulgated thereunder.

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

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

50 10. All reports of examinations and investigations, correspondence and  
51 memoranda concerning or arising out of such examination and investi-  
52 gations, including any duly authenticated copy or copies thereof in the  
53 possession of any banking organization, bank holding company or any  
54 subsidiary thereof (as such terms "bank holding company" and "subsidi-  
55 ary" are defined in article three-A of this chapter), any corporation  
56 or any other entity affiliated with a banking organization within the

1 meaning of subdivision six of this section and any non-banking subsid-  
2 iary of a corporation or any other entity which is an affiliate of a  
3 banking organization within the meaning of subdivision six-a of this  
4 section, foreign banking corporation, licensed lender, licensed casher  
5 of checks, licensed mortgage banker, registered mortgage broker,  
6 licensed mortgage loan originator, licensed sales finance company,  
7 registered mortgage loan servicer, licensed student loan servicer,  
8 licensed insurance premium finance agency, licensed transmitter of  
9 money, licensed budget planner, any other person or entity subject to  
10 supervision under this chapter, or the department, shall be confidential  
11 communications, shall not be subject to subpoena and shall not be made  
12 public unless, in the judgment of the superintendent, the ends of  
13 justice and the public advantage will be subserved by the publication  
14 thereof, in which event the superintendent may publish or authorize the  
15 publication of a copy of any such report or any part thereof in such  
16 manner as may be deemed proper or unless such laws specifically author-  
17 ize such disclosure. For the purposes of this subdivision, "reports of  
18 examinations and investigations, and any correspondence and memoranda  
19 concerning or arising out of such examinations and investigations",  
20 includes any such materials of a bank, insurance or securities regulato-  
21 ry agency or any unit of the federal government or that of this state  
22 any other state or that of any foreign government which are considered  
23 confidential by such agency or unit and which are in the possession of  
24 the department or which are otherwise confidential materials that have  
25 been shared by the department with any such agency or unit and are in  
26 the possession of such agency or unit.

27 § 3. Subdivisions 1, 2, 3 and 5 of section 39 of the banking law,  
28 subdivisions 1, 2 and 5 as amended by chapter 123 of the laws of 2009  
29 and subdivision 3 as amended by chapter 155 of the laws of 2012, are  
30 amended to read as follows:

31 1. To appear and explain an apparent violation. Whenever it shall  
32 appear to the superintendent that any banking organization, bank holding  
33 company, registered mortgage broker, licensed mortgage banker, licensed  
34 student loan servicer, registered mortgage loan servicer, licensed mort-  
35 gage loan originator, licensed lender, licensed casher of checks,  
36 licensed sales finance company, licensed insurance premium finance agen-  
37 cy, licensed transmitter of money, licensed budget planner, out-of-state  
38 state bank that maintains a branch or branches or representative or  
39 other offices in this state, or foreign banking corporation licensed by  
40 the superintendent to do business or maintain a representative office in  
41 this state has violated any law or regulation, he or she may, in his or  
42 her discretion, issue an order describing such apparent violation and  
43 requiring such banking organization, bank holding company, registered  
44 mortgage broker, licensed mortgage banker, licensed student loan servi-  
45 cer, licensed mortgage loan originator, licensed lender, licensed casher  
46 of checks, licensed sales finance company, licensed insurance premium  
47 finance agency, licensed transmitter of money, licensed budget planner,  
48 out-of-state state bank that maintains a branch or branches or represen-  
49 tative or other offices in this state, or foreign banking corporation to  
50 appear before him or her, at a time and place fixed in said order, to  
51 present an explanation of such apparent violation.

52 2. To discontinue unauthorized or unsafe and unsound practices. When-  
53 ever it shall appear to the superintendent that any banking organiza-  
54 tion, bank holding company, registered mortgage broker, licensed mort-  
55 gage banker, licensed student loan servicer, registered mortgage loan  
56 servicer, licensed mortgage loan originator, licensed lender, licensed

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

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

41 5. To keep books and accounts as prescribed. Whenever it shall appear  
42 to the superintendent that any banking organization, bank holding compa-  
43 ny, registered mortgage broker, licensed mortgage banker, licensed  
44 student loan servicer, registered mortgage loan servicer, licensed mort-  
45 gage loan originator, licensed lender, licensed casher of checks,  
46 licensed sales finance company, licensed insurance premium finance agen-  
47 cy, licensed transmitter of money, licensed budget planner, agency or  
48 branch of a foreign banking corporation licensed by the superintendent  
49 to do business in this state, does not keep its books and accounts in  
50 such manner as to enable him or her to readily ascertain its true condi-  
51 tion, he or she may, in his or her discretion, issue an order requiring  
52 such banking organization, bank holding company, registered mortgage  
53 broker, licensed mortgage banker, licensed student loan servicer, regis-  
54 tered mortgage loan servicer, licensed mortgage loan originator,  
55 licensed lender, licensed casher of checks, licensed sales finance  
56 company, licensed insurance premium finance agency, licensed transmitter

1 of money, licensed budget planner, or foreign banking corporation, or  
2 the officers or agents thereof, or any of them, to open and keep such  
3 books or accounts as he or she may, in his or her discretion, determine  
4 and prescribe for the purpose of keeping accurate and convenient records  
5 of its transactions and accounts.

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

9 (a) Without limiting any power granted to the superintendent under any  
10 other provision of this chapter, the superintendent may, in a proceeding  
11 after notice and a hearing, require any safe deposit company, licensed  
12 lender, licensed casher of checks, licensed sales finance company,  
13 licensed insurance premium finance agency, licensed transmitter of  
14 money, licensed mortgage banker, licensed student loan servicer, regis-  
15 tered mortgage broker, licensed mortgage loan originator, registered  
16 mortgage loan servicer or licensed budget planner to pay to the people  
17 of this state a penalty for any violation of this chapter, any regu-  
18 lation promulgated thereunder, any final or temporary order issued  
19 pursuant to section thirty-nine of this article, any condition imposed  
20 in writing by the superintendent in connection with the grant of any  
21 application or request, or any written agreement entered into with the  
22 superintendent.

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