STATE OF NEW YORK

7582--A

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, WRIGHT, SEPULVEDA -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, DE LA ROSA, HYNDMAN, THIELE -- read once and referred to the Committee on Banks -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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

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725. Compliance with other laws.

§ 710. Definitions. 1. "Applicant" shall mean any person applying for a license to be a student loan servicer.

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.

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

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

7. "Servicing" shall mean:

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

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

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

(d) during a period when 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.

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

2. The licensing provisions of this subdivision shall not apply to any exempt organization.

§ 712. Application for a student loan servicer license; fees. 1. The application for a license to be a student loan servicer shall be in writing, under oath, and in the form prescribed by the superintendent. Notwithstanding article three of the state technology law or any other law to the contrary, the superintendent may require that an application for a license or any other submission or application for approval as may be required by this article be made or executed by electronic means if he or she deems it necessary to ensure the efficient and effective

administration of this article. The application shall include a description of the activities of the applicant, in such detail and for such periods as the superintendent may require, including:

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

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

(c) an affirmation that the applicant, or its members, officers, partners, directors and principals as may be appropriate, are at least twenty-one years of age;

(d) information as to the character, fitness, financial and business responsibility, background and experiences of the applicant, or its members, officers, partners, directors and principals as may be appropriate; and

(e) any additional detail or information required by the superintendent.

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

§ 713. Application process to receive license to engage in the business of student loan servicing. 1. Upon the filing of an application for a license, if the superintendent shall find that the financial responsibility, experience, character, and general fitness of the applicant and, if applicable, the members, officers, partners, directors and principals of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of this article, the superintendent shall thereupon issue a license in duplicate to engage in the business of servicing student loans described in section seven hundred ten of this article in accordance with the provisions of this article. If the superintendent shall not so find, the superintendent shall not issue a license, and the superintendent shall so notify the applicant. The superintendent shall transmit one copy of a license to the applicant and file another copy in the office of the department of financial services. Upon receipt of such license, a student loan servicer shall be authorized to engage in the business of servicing student loans in accordance with the provisions of this article. Such license shall remain in full force and effect until it is surrendered by the servicer or revoked or suspended as hereinafter provided.

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

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

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

(c) has been an officer, director, partner, member or substantial stockholder of an entity which has had a license or registration revoked 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 deemed to control a student loan servicer solely by reason of being an officer or director of such student loan servicer. The superintendent

may in his discretion, upon the application of a student loan servicer or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such student loan servicer, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such student loan servicer for purposes of this section.

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

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

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

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

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

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

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

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

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

5. No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the

student loan servicer and any person, including the department of financial services.

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

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

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

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

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

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

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

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

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

(c) such rules and regulations as may define the terms used in this article and as may be necessary and appropriate to interpret and implement the provisions of this article; and

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

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

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

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

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

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

4. Intentionally provide misleading information to a consumer reporting agency.

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

6. Knowingly make any false statement or make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the superintendent or another governmental agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The expenses incurred in making any examination pursuant to this section shall be assessed against and paid by the student loan servicer so examined, except that traveling and subsistence expenses so incurred shall be charged against and paid by servicers in such proportions as the superintendent shall deem just and reasonable, and such proportionate charges shall be added to the assessment of the other expenses

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

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

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

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

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

§ 724. Severability of provisions. If any provision of this article, or the application of such provision to any person or circumstance, shall be held invalid, illegal or unenforceable, the remainder of the article, and the application of such provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, shall not be affected thereby.

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

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

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

10. All reports of examinations and investigations, correspondence and memoranda concerning or arising out of such examination and investigations, 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. Subdivisions 1, 2, 3 and 5 of section 39 of the banking law, subdivisions 1, 2 and 5 as amended by chapter 123 of the laws of 2009 and subdivision 3 as amended by chapter 155 of the laws of 2012, are amended to read as follows:

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

2. To discontinue unauthorized or unsafe and unsound practices. 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 in this state is conducting business in an unauthorized or unsafe and unsound manner, he or she may, in his or her discretion, issue an order directing the discontinuance of such unauthorized or unsafe and unsound practices, and fixing a time and place at which such 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 may voluntarily appear before him or her to present any explanation in defense of the practices directed in said order to be discontinued.

3. To make good impairment of capital or to ensure compliance with financial requirements. Whenever it shall appear to the superintendent that the capital or capital stock of any banking organization, bank holding company or any subsidiary thereof which is organized, licensed or registered pursuant to this chapter, is impaired, or the financial requirements imposed by subdivision one of section two hundred two-b of this chapter or any regulation of the superintendent on any branch or agency of a foreign banking corporation or the financial requirements imposed by this chapter or any regulation of the superintendent on any licensed lender, registered mortgage broker, licensed mortgage banker, **licensed student loan servicer,** licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner or private banker are not satisfied, the superintendent may, in the superintendent's discretion, issue an order directing that such banking organization, bank holding company, branch or agency of a foreign banking corporation, registered mortgage broker, licensed mortgage banker, **licensed student loan servicer,** licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, or private banker make good such deficiency forthwith or within a time specified in such order.

5. To keep books and accounts as prescribed. 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, agency or branch of a foreign banking corporation licensed by the superintendent to do business in this state, does not keep its books and accounts in such manner as to enable him or her to readily ascertain its true condition, he or she may, in his or her discretion, issue an order requiring such 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, or foreign banking corporation, or the officers or agents thereof, or any of them, to open and keep such books or accounts as he or she may, in his or her discretion, determine

and prescribe for the purpose of keeping accurate and convenient records of its transactions and accounts.

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

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

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