

# STATE OF NEW YORK

2071--C

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

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

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

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

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

### ARTICLE 14-A

#### STUDENT LOAN SERVICERS

#### Section 710. Definitions.

711. Licensing.

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

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

714. Changes in officers and directors.

715. Changes in control.

716. Grounds for suspension or revocation of license.

717. Books and records; reports and electronic filing.

718. Rules and regulations.

719. Prohibited practices.

720. Servicing student loans without a license.

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

LBD01465-06-9

1       721. Responsibilities.

2       722. Examinations.

3       723. Penalties for violation of this article.

4       724. Severability of provisions.

5       725. Compliance with other laws.

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

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

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

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

23       5. "Person" shall mean any individual, association, corporation,  
24 limited liability company, partnership, trust, unincorporated organiza-  
25 tion, government, and any other entity.

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

29       7. "Servicing" shall mean:

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

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

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

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

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

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

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

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

1     § 711. Licensing. 1. Except as provided in subdivisions two and three  
2 of this section, no person shall engage in the business of servicing  
3 student loans owed by one or more borrowers residing in this state with-  
4 out first being licensed by the superintendent as a student loan servi-  
5 cer in accordance with this article and such regulations as may be  
6 prescribed by the superintendent.

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

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

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

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

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

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

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

52     (e) any additional detail or information required by the superinten-  
53 dent.

54     2. An application to become a licensed student loan servicer or any  
55 application with respect to a student loan servicer shall be accom-

1 plished by a fee as prescribed pursuant to section eighteen-a of this  
2 chapter.

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

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

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

29 (b) has been an officer, director, partner, member or substantial  
30 stockholder of an entity which has had a license or registration revoked  
31 by the superintendent or any other regulator or jurisdiction; or

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

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

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

47 § 715. Changes in control. 1. It shall be unlawful except with the  
48 prior approval of the superintendent for any action to be taken which  
49 results in a change of control of the business of a student loan servi-  
50 cer required to be licensed under section seven hundred eleven of this  
51 article. Prior to any change of control, the person desirous of acquir-  
52 ing control of the business of a student loan servicer shall make writ-  
53 ten application to the superintendent and pay an investigation fee as  
54 prescribed pursuant to section eighteen-a of this chapter to the super-  
55 intendent. The application shall contain such information as the super-  
56 intendent, by rule or regulation, may prescribe as necessary or appro-

1 priate for the purpose of making the determination required by  
2 subdivision two of this section. This information shall include but not  
3 be limited to the information and other material required for a student  
4 loan servicer by subdivision one of section seven hundred twelve of this  
5 article.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 3. Any student loan servicer may surrender any license by delivering  
27 to the superintendent written notice that it thereby surrenders such  
28 license, but such surrender shall not affect such servicer's civil or  
29 criminal liability for acts committed prior to such surrender. If such  
30 surrender is made after the issuance by the superintendent of a state-  
31 ment of charges and notice of hearing, the superintendent may proceed  
32 against the servicer as if such surrender had not taken place.

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

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

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

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

54 2. (a) Each student loan servicer, other than an exempt organization,  
55 shall annually, on or before a date to be determined by the superinten-  
56 dent, file a report with the superintendent giving such information as

1 the superintendent may require concerning the business and operations  
2 during the preceding calendar year of such servicer under authority of  
3 this article. Such report shall be subscribed and affirmed as true by  
4 the servicer under the penalties of perjury and shall be in the form  
5 prescribed by the superintendent.

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

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

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

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

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

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

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

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

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

38 1. Employ any scheme, device or artifice to defraud or mislead a  
39 borrower;

40 2. Engage in any unfair, deceptive or predatory act or practice toward  
41 any person or misrepresent or omit any material information in  
42 connection with the servicing of a student loan, including, but not  
43 limited to, misrepresenting the amount, nature or terms of any fee or  
44 payment due or claimed to be due on a student loan, the terms and condi-  
45 tions of the loan agreement or the borrower's obligations under the  
46 loan;

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

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

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

55 6. Make any false statement or make any omission of a material fact in  
56 connection with any information or reports filed with a governmental

1 agency or in connection with any investigation conducted by the super-  
2 intendent or another governmental agency;

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

6 8. Fail to provide a response within fifteen calendar days to a  
7 consumer complaint submitted to the servicer by the department. If  
8 necessary, a student loan servicer may request additional time up to a  
9 maximum of forty-five calendar days, provided that such request is  
10 accompanied by an explanation why such additional time is reasonable and  
11 necessary.

12 § 720. Servicing student loans without a license. 1. Whenever, in the  
13 opinion of the superintendent, a person is engaged in the business of  
14 servicing student loans, other than federal loans, either actually or  
15 through subterfuge, without a license from the superintendent, the  
16 superintendent may order that person to desist and refrain from engaging  
17 in the business of servicing student loans in the state. If, within  
18 thirty days after an order is served, a request for a hearing is filed  
19 in writing and the hearing is not held within sixty days of the filing,  
20 the order shall be rescinded.

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

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

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

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

38 3. (a) If the sale, assignment, or other transfer of the servicing of  
39 a student loan results in a change in the identity of the person to whom  
40 the borrower is required to send subsequent payments or direct any  
41 communications concerning the student loan, a student loan servicer  
42 shall transfer all information regarding a borrower, a borrower's  
43 account, and a borrower's student loan, including but not limited to the  
44 borrower's repayment status and any borrower benefits associated with  
45 the borrower's student loan, to the new student loan servicer servicing  
46 the borrower's student loan within forty-five days.

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

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

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

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

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

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

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

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

38     3. The expenses incurred in making any examination pursuant to this  
39 section shall be assessed against and paid by the student loan servicer  
40 so examined, except that travelling and subsistence expenses so incurred  
41 shall be charged against and paid by servicers in such proportions as  
42 the superintendent shall deem just and reasonable, and such propor-  
43 tionate charges shall be added to the assessment of the other expenses  
44 incurred upon each examination. Upon written notice by the superinten-  
45 dent of the total amount of such assessment, the servicer shall become  
46 liable for and shall pay such assessment to the superintendent.

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

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

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

12 § 723. Penalties for violation of this article. 1. In addition to such  
13 penalties as may otherwise be applicable by law, including but not  
14 limited to the penalties available under section forty-four of this  
15 chapter, the superintendent may, after notice and hearing, require any  
16 person found violating the provisions of this article or the rules or  
17 regulations promulgated hereunder to pay to the people of this state a  
18 penalty for each violation of the article or any regulation or policy  
19 promulgated hereunder a sum not to exceed the greater of (i) two thou-  
20 sand dollars or where such violation is wilfull ten thousand dollars for  
21 each offense; (ii) a multiple of two times the aggregate damages attrib-  
22 utable to the violation; or (iii) a multiple of two times the aggregate  
23 economic gain attributable to the violation.

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

27 § 724. Severability of provisions. If any provision of this article,  
28 or the application of such provision to any person or circumstance,  
29 shall be held invalid, illegal or unenforceable, the remainder of the  
30 article, and the application of such provision to persons or circum-  
31 stances other than those as to which it is held invalid, illegal or  
32 unenforceable, shall not be affected thereby.

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

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

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

43 10. All reports of examinations and investigations, correspondence and  
44 memoranda concerning or arising out of such examination and investi-  
45 gations, including any duly authenticated copy or copies thereof in the  
46 possession of any banking organization, bank holding company or any  
47 subsidiary thereof (as such terms "bank holding company" and "subsidi-  
48 ary" are defined in article three-A of this chapter), any corporation  
49 or any other entity affiliated with a banking organization within the  
50 meaning of subdivision six of this section and any non-banking subsid-  
51 iary of a corporation or any other entity which is an affiliate of a  
52 banking organization within the meaning of subdivision six-a of this  
53 section, foreign banking corporation, licensed lender, licensed casher  
54 of checks, licensed mortgage banker, registered mortgage broker,  
55 licensed mortgage loan originator, licensed sales finance company,  
56 registered mortgage loan servicer, licensed student loan servicer,

1 licensed insurance premium finance agency, licensed transmitter of  
2 money, licensed budget planner, any other person or entity subject to  
3 supervision under this chapter, or the department, shall be confidential  
4 communications, shall not be subject to subpoena and shall not be made  
5 public unless, in the judgment of the superintendent, the ends of  
6 justice and the public advantage will be subserved by the publication  
7 thereof, in which event the superintendent may publish or authorize the  
8 publication of a copy of any such report or any part thereof in such  
9 manner as may be deemed proper or unless such laws specifically author-  
10 ize such disclosure. For the purposes of this subdivision, "reports of  
11 examinations and investigations, and any correspondence and memoranda  
12 concerning or arising out of such examinations and investigations",  
13 includes any such materials of a bank, insurance or securities regulato-  
14 ry agency or any unit of the federal government or that of this state  
15 any other state or that of any foreign government which are considered  
16 confidential by such agency or unit and which are in the possession of  
17 the department or which are otherwise confidential materials that have  
18 been shared by the department with any such agency or unit and are in  
19 the possession of such agency or unit.

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

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

47 2. To discontinue unauthorized or unsafe and unsound practices. When-  
48 ever it shall appear to the superintendent that any banking organiza-  
49 tion, bank holding company, registered mortgage broker, licensed mort-  
50 gage banker, licensed student loan servicer, registered mortgage loan  
51 servicer, licensed mortgage loan originator, licensed lender, licensed  
52 casher of checks, licensed sales finance company, licensed insurance  
53 premium finance agency, licensed transmitter of money, licensed budget  
54 planner, out-of-state state bank that maintains a branch or branches or  
55 representative or other offices in this state, or foreign banking corpo-  
56 ration licensed by the superintendent to do business in this state is

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

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

36 4. To make good encroachments on reserves. Whenever it shall appear to  
37 the superintendent that either the total reserves or reserves on hand of  
38 any banking organization, branch or agency of a foreign banking corpo-  
39 ration are below the amount required by or pursuant to this chapter or  
40 any other applicable provision of law or regulation to be maintained, or  
41 that such banking organization, branch or agency of a foreign banking  
42 corporation is not keeping its reserves on hand as required by this  
43 chapter or any other applicable provision of law or regulation, he or  
44 she may, in his or her discretion, issue an order directing that such  
45 banking organization, branch or agency of a foreign banking corporation  
46 make good such reserves forthwith or within a time specified in such  
47 order, or that it keep its reserves on hand as required by this chapter.

48 5. To keep books and accounts as prescribed. Whenever it shall appear  
49 to the superintendent that any banking organization, bank holding compa-  
50 ny, registered mortgage broker, licensed mortgage banker, licensed  
51 student loan servicer, registered mortgage loan servicer, licensed mort-  
52 gage loan originator, licensed lender, licensed casher of checks,  
53 licensed sales finance company, licensed insurance premium finance agen-  
54 cy, licensed transmitter of money, licensed budget planner, agency or  
55 branch of a foreign banking corporation licensed by the superintendent  
56 to do business in this state, does not keep its books and accounts in

1 such manner as to enable him or her to readily ascertain its true condi-  
2 tion, he or she may, in his or her discretion, issue an order requiring  
3 such banking organization, bank holding company, registered mortgage  
4 broker, licensed mortgage banker, licensed student loan servicer, regis-  
5 tered mortgage loan servicer, licensed mortgage loan originator,  
6 licensed lender, licensed casher of checks, licensed sales finance  
7 company, licensed insurance premium finance agency, licensed transmitter  
8 of money, licensed budget planner, or foreign banking corporation, or  
9 the officers or agents thereof, or any of them, to open and keep such  
10 books or accounts as he or she may, in his or her discretion, determine  
11 and prescribe for the purpose of keeping accurate and convenient records  
12 of its transactions and accounts.

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

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

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

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