

1 PART Z

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

4 ARTICLE XIV-A5 STUDENT LOAN SERVICERS6 Section 710. Definitions.7 711. Licensing.8 712. Application for a student loan servicer license; fees.9 713. Application process to receive license to engage in the
10 business of student loan servicing.11 714. Changes in officers and directors.12 715. Changes in control.13 716. Grounds for suspension or revocation of license.14 717. Books and records; reports and electronic filing.15 718. Rules and regulations.16 719. Prohibited practices.17 720. Servicing student loans without a license.18 721. Responsibilities.19 722. Examinations.20 723. Penalties for violation of this article.21 724. Severability of provisions.22 725. Compliance with other laws.

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

25 2. "Borrower" shall mean any resident of this state who has received a
26 student loan or agreed to pay a student loan or any person who shares
27 responsibility with such resident for repaying a student loan.

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

5 4. "Exempt organization" shall mean any banking organization, foreign
6 banking corporation, national bank, federal savings association, federal
7 credit union, or any bank, trust company, savings bank, savings and loan
8 association, or credit union organized under the laws of any other
9 state, or any instrumentality created by the United States or any state
10 with the power to service student loans, or any person exempted by the
11 superintendent of financial services pursuant to regulations promulgated
12 in accordance with this article.

13 5. "Person" shall mean any individual, association, corporation,
14 limited liability company, partnership, trust, unincorporated organiza-
15 tion, government or political subdivision of a government, and any other
16 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;

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

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

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

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

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

17 2. The licensing provisions of this subdivision shall not apply to any
18 exempt organization, or any person that shall be exempted in accordance
19 with regulations prescribed by the superintendent hereunder; provided
20 that such exempt organization notifies the superintendent that the
21 exempt organization is acting as a student loan servicer in this state
22 and complies with sections seven hundred nineteen and seven hundred
23 twenty-one of this article and any regulation applicable to student loan
24 servicers promulgated by the superintendent.

25 § 712. Application for a student loan servicer license; fees. 1. The
26 application for a license to be a student loan servicer shall be in
27 writing, under oath, and in the form prescribed by the superintendent.
28 Notwithstanding article three of the state technology law or any other

1 law to the contrary, the superintendent may require that an application
2 for a license or any other submission or application for approval as may
3 be required by this article be made or executed by electronic means if
4 he or she deems it necessary to ensure the efficient and effective
5 administration of this article. The application shall include a
6 description of the activities of the applicant, in such detail and for
7 such periods as the superintendent may require, including:

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

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

15 (c) the fingerprints of the applicant, or its members, officers, part-
16 ners, directors and principals as may be appropriate, which may be
17 submitted to the division of criminal justice services and the federal
18 bureau of investigation for state and national criminal history record
19 checks;

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

23 (e) information as to the character, fitness, financial and business
24 responsibility, background and experiences of the applicant, or its
25 members, officers, partners, directors and principals as may be appro-
26 priate;

27 (f) any additional detail or information required by the superinten-
28 dent.

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

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

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

1 (a) has been convicted of a crime involving an activity which is a
2 felony under this chapter or under article one hundred fifty-five, one
3 hundred seventy, one hundred seventy-five, one hundred seventy-six, one
4 hundred eighty, one hundred eighty-five, one hundred eighty-seven, one
5 hundred ninety, two hundred, two hundred ten or four hundred seventy of
6 the penal law or any comparable felony under the laws of any other state
7 or the United States, provided that such crime would be a felony if
8 committed and prosecuted under the laws of this state;

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

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

14 (d) has been an agent, employee, officer, director, partner or member
15 of an entity, or a consultant to, or person having had a similar
16 relationship with, any entity which has had a license or registration
17 revoked by the superintendent where such person shall have been found by
18 the superintendent to bear responsibility in connection with the revoca-
19 tion.

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

24 § 714. Changes in officers and directors. Upon any change of any of
25 the executive officers, directors, partners or members of any student
26 loan servicer, the student loan servicer shall submit to the superinten-
27 dent the name, address, and occupation of each new officer, director,

1 partner or member, and provide such other information as the superinten-
2 dent may require.

3 § 715. Changes in control. 1. It shall be unlawful, except with the
4 prior approval of the superintendent, for any action to be taken which
5 results in a change of control of the business of a student loan servi-
6 cer. Prior to any change of control, the person desirous of acquiring
7 control of the business of a student loan servicer shall make written
8 application to the superintendent and pay an investigation fee as
9 prescribed pursuant to section eighteen-a of this chapter to the super-
10 intendent. The application shall contain such information as the super-
11 intendent, by rule or regulation, may prescribe as necessary or appro-
12 priate for the purpose of making the determination required by
13 subdivision two of this section. Such information shall include, but not
14 be limited to, the information and other material required for a student
15 loan servicer by subdivision one of section seven hundred twelve of this
16 article.

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

20 3. For a period of six months from the date of qualification thereof
21 and for such additional period of time as the superintendent may
22 prescribe, in writing, the provisions of subdivisions one and two of
23 this section shall not apply to a transfer of control by operation of
24 law to the legal representative, as hereinafter defined, of one who has
25 control of a student loan servicer. Thereafter, such legal represen-
26 tative shall comply with the provisions of subdivisions one and two of
27 this section. The provisions of subdivisions one and two of this section
28 shall be applicable to an application made under this section by a legal

1 representative. The term "legal representative", for the purposes of
2 this subdivision, shall mean a person duly appointed by a court of
3 competent jurisdiction to act as executor, administrator, trustee,
4 committee, conservator or receiver, including a person who succeeds a
5 legal representative and a person acting in an ancillary capacity there-
6 to in accordance with the provisions of such court appointment.

7 4. As used in this section the term "control" means the possession,
8 directly or indirectly, of the power to direct or cause the direction of
9 the management and policies of a student loan servicer, whether through
10 the ownership of voting stock of such student loan servicer, the owner-
11 ship of voting stock of any person which possesses such power or other-
12 wise. Control shall be presumed to exist if any person, directly or
13 indirectly, owns, controls or holds with power to vote ten per centum or
14 more of the voting stock of any student loan servicer or of any person
15 which owns, controls or holds with power to vote ten per centum or more
16 of the voting stock of any student loan servicer, but no person shall be
17 deemed to control a student loan servicer solely by reason of being an
18 officer or director of such student loan servicer. The superintendent
19 may in his discretion, upon the application of a student loan servicer
20 or any person who, directly or indirectly, owns, controls or holds with
21 power to vote or seeks to own, control or hold with power to vote any
22 voting stock of such student loan servicer, determine whether or not the
23 ownership, control or holding of such voting stock constitutes or would
24 constitute control of such student loan servicer for purposes of this
25 section.

26 § 716. Grounds for suspension or revocation of license. 1. The super-
27 intendent may revoke any license to engage in the business of a student

1 loan servicer issued pursuant to this article if he or she shall find
2 that:

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

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

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

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

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

19 (f) the servicer engages in unsafe or injurious practice;

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

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

26 2. As a part of his or her determination regarding suspension or revo-
27 cation, the superintendent is authorized to require the fingerprinting
28 of any person, officer, director, partner, member or employee of a

1 student loan servicer. Such fingerprints shall be submitted to the divi-
2 sion of criminal justice services for a state criminal history record
3 check and may be submitted to the federal bureau of investigation for a
4 national criminal history record check.

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

12 4. Except as provided in subdivision three of this section, no license
13 shall be revoked or suspended except after notice and a hearing thereon.
14 Any order of suspension issued after notice and a hearing may include as
15 a condition of reinstatement that the student loan servicer make resti-
16 tution to consumers of fees or other charges which have been improperly
17 charged or collected, including but not limited to by allocating
18 payments contrary to a borrower's direction or in a manner that fails to
19 help a borrower avoid default, as determined by the superintendent. Any
20 hearing held pursuant to the provisions of this section shall be
21 noticed, conducted and administered in compliance with the state admin-
22 istrative procedure act.

23 5. Any student loan servicer may surrender any license by delivering
24 to the superintendent written notice that the student loan servicer
25 thereby surrenders such license, but such surrender shall not affect the
26 servicer's civil or criminal liability for acts committed prior to the
27 surrender. If such surrender is made after the issuance by the super-
28 intendent of a statement of charges and notice of hearing, the super-

1 intendent may proceed against the servicer as if the surrender had not
2 taken place.

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

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

10 8. Whenever the superintendent shall revoke or suspend a license
11 issued pursuant to this article, he or she shall forthwith execute in
12 duplicate a written order to that effect. The superintendent shall file
13 one copy of the order in the office of the department of financial
14 services and shall forthwith serve the other copy upon the student loan
15 servicer. Any such order may be reviewed in the manner provided by arti-
16 cle seventy-eight of the civil practice law and rules. An application
17 for review as authorized by this section must be made within thirty days
18 from the date of the order of suspension or revocation.

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

27 2. (a) Each student loan servicer shall annually, on or before a date
28 to be determined by the superintendent, file a report with the super-

1 intendent giving such information as the superintendent may require
2 concerning the business and operations during the preceding calendar
3 year of such servicer under authority of this article. Such report shall
4 be subscribed and affirmed as true by the servicer under the penalties
5 of perjury and shall be in the form 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 this chapter, the superintendent is hereby
19 authorized and empowered to promulgate such rules and regulations as may
20 in the judgment of the superintendent be consistent with the purposes of
21 this article, or appropriate for the effective administration of this
22 article, including, but not limited to:

23 (a) Such rules and regulations in connection with the activities of
24 student loan servicers and exempt organizations as may be necessary and
25 appropriate for the 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

1 the activities of student loan servicers and exempt organizations in
2 servicing student loans.

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

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

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

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

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

14 2. Engage in any unfair, deceptive or predatory act or practice toward
15 any person or misrepresent or omit any material information in
16 connection with the servicing of a student loan, including, but not
17 limited to, misrepresenting the amount, nature or terms of any fee or
18 payment due or claimed to be due on a student loan, the terms and condi-
19 tions of the loan agreement or the borrower's obligations under the
20 loan.

21 3. Misapply payments to the outstanding balance of any student loan or
22 to any related interest or fees.

23 4. Provide inaccurate information to a consumer reporting agency.

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

1 6. Make any false statement or make any omission of a material fact in
2 connection with any information or reports filed with a governmental
3 agency or in connection with any investigation conducted by the super-
4 intendent or another governmental agency.

5 § 720. Servicing student loans without a license. 1. Whenever, in the
6 opinion of the superintendent, a person is engaged in the business of
7 servicing student loans, either actually or through subterfuge, without
8 a license from the superintendent, the superintendent may order that
9 person to desist and refrain from engaging in the business of servicing
10 student loans in the state. If, within thirty days after an order is
11 served, a request for a hearing is filed in writing and the hearing is
12 not held within sixty days of the filing, the order shall be rescinded.

13 2. The superintendent may maintain a civil action to enforce any order
14 issued by the superintendent pursuant to this section.

15 3. This section shall not apply to exempt organizations.

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

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

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

4 3. (a) If the sale, assignment, or other transfer of the servicing of
5 a student loan results in a change in the identity of the person to whom
6 the borrower is required to send subsequent payments or direct any
7 communications concerning the student loan, a student loan servicer
8 shall transfer all information regarding a borrower, a borrower's
9 account, and a borrower's student loan, including but not limited to the
10 borrower's repayment status and any borrower benefits associated with
11 the borrower's student loan, to the new student loan servicer servicing
12 the borrower's student loan within forty-five days.

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

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

23 5. (a) A student loan servicer that sells, assigns, or otherwise
24 transfers the servicing of a student loan shall require as a condition
25 of such sale, assignment or other transfer that the new student loan
26 servicer 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

1 represented as being available but for which the borrower had not yet
2 qualified.

3 (b) A student loan servicer that obtains the right to service a
4 student loan 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 6. A student loan servicer shall respond within thirty days after
10 receipt to a written inquiry from a borrower or a borrower's represen-
11 tative.

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

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

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

4 3. The expenses incurred in making any examination pursuant to this
5 section shall be assessed against and paid by the student loan servicer
6 so examined, except that traveling and subsistence expenses so incurred
7 shall be charged against and paid by servicers in such proportions as
8 the superintendent shall deem just and reasonable, and such propor-
9 tionate charges shall be added to the assessment of the other expenses
10 incurred upon each examination. Upon written notice by the superinten-
11 dent of the total amount of such assessment, the servicer shall become
12 liable for and shall pay such assessment to the superintendent.

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

23 5. Unless otherwise exempt pursuant to subdivision two of section
24 seven hundred eleven of this article, affiliates of a student loan
25 servicer shall be subject to examination by the superintendent on the
26 same terms as the servicer, but only when reports from, or examination
27 of, a servicer provides evidence of unlawful activity between a servicer

1 and affiliate benefitting, affecting, or arising from the activities
2 regulated by this article.

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

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

14 § 724. Severability of provisions. If any provision of this article,
15 or the application of such provision to any person or circumstance,
16 shall be held invalid, illegal or unenforceable, the remainder of the
17 article, and the application of such provision to persons or circum-
18 stances other than those as to which it is held invalid, illegal or
19 unenforceable, shall not be affected thereby.

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

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

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

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

1 any other state or that of any foreign government which are considered
2 confidential by such agency or unit and which are in the possession of
3 the department or which are otherwise confidential materials that have
4 been shared by the department with any such agency or unit and are in
5 the possession of such agency or unit.

6 § 3. Subdivisions 1, 2, 3 and 5 of section 39 of the banking law,
7 subdivisions 1, 2 and 5 as amended by chapter 123 of the laws of 2009
8 and subdivision 3 as amended by chapter 155 of the laws of 2012, are
9 amended to read as follows:

10 1. To appear and explain an apparent violation. Whenever it shall
11 appear to the superintendent that any banking organization, bank holding
12 company, registered mortgage broker, licensed mortgage banker, licensed
13 student loan servicer, registered mortgage loan servicer, licensed mort-
14 gage loan originator, licensed lender, licensed casher of checks,
15 licensed sales finance company, licensed insurance premium finance agen-
16 cy, licensed transmitter of money, licensed budget planner, out-of-state
17 state bank that maintains a branch or branches or representative or
18 other offices in this state, or foreign banking corporation licensed by
19 the superintendent to do business or maintain a representative office in
20 this state has violated any law or regulation, he or she may, in his or
21 her discretion, issue an order describing such apparent violation and
22 requiring such banking organization, bank holding company, registered
23 mortgage broker, licensed mortgage banker, licensed student loan servi-
24 cer, licensed mortgage loan originator, licensed lender, licensed casher
25 of checks, licensed sales finance company, licensed insurance premium
26 finance agency, licensed transmitter of money, licensed budget planner,
27 out-of-state state bank that maintains a branch or branches or represen-
28 tative or other offices in this state, or foreign banking corporation to

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

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

26 3. To make good impairment of capital or to ensure compliance with
27 financial requirements. Whenever it shall appear to the superintendent
28 that the capital or capital stock of any banking organization, bank

1 holding company or any subsidiary thereof which is organized, licensed
2 or registered pursuant to this chapter, is impaired, or the financial
3 requirements imposed by subdivision one of section two hundred two-b of
4 this chapter or any regulation of the superintendent on any branch or
5 agency of a foreign banking corporation or the financial requirements
6 imposed by this chapter or any regulation of the superintendent on any
7 licensed lender, registered mortgage broker, licensed mortgage banker,
8 licensed student loan servicer, licensed casher of checks, licensed
9 sales finance company, licensed insurance premium finance agency,
10 licensed transmitter of money, licensed budget planner or private banker
11 are not satisfied, the superintendent may, in the superintendent's
12 discretion, issue an order directing that such banking organization,
13 bank holding company, branch or agency of a foreign banking corporation,
14 registered mortgage broker, licensed mortgage banker, licensed student
15 loan servicer, licensed lender, licensed casher of checks, licensed
16 sales finance company, licensed insurance premium finance agency,
17 licensed transmitter of money, licensed budget planner, or private bank-
18 er make good such deficiency forthwith or within a time specified in
19 such order.

20 5. To keep books and accounts as prescribed. Whenever it shall appear
21 to the superintendent that any banking organization, bank holding compa-
22 ny, registered mortgage broker, licensed mortgage banker, licensed
23 student loan servicer, registered mortgage loan servicer, licensed mort-
24 gage loan originator, licensed lender, licensed casher of checks,
25 licensed sales finance company, licensed insurance premium finance agen-
26 cy, licensed transmitter of money, licensed budget planner, agency or
27 branch of a foreign banking corporation licensed by the superintendent
28 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 § 4. Paragraph (a) of subdivision 1 of section 44 of the banking law,
14 as amended by chapter 155 of the laws of 2012, is amended to read as
15 follows:

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

1 application or request, or any written agreement entered into with the
2 superintendent.

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

5 PART AA

6 Section 1. The banking law is amended by adding a new section 4-d to
7 read as follows:

8 § 4-d. Protecting vulnerable adults from financial exploitation. 1.
9 Definitions. As used in this section:

10 (a) "Banking institution" means any bank, trust company, savings bank,
11 savings and loan association, credit union, or branch of a foreign bank-
12 ing corporation, which is chartered, organized or licensed under the
13 laws of this state or any other state or the United States, and, in the
14 ordinary course of business takes deposit accounts in this state.

15 (b) "Vulnerable adult" means an individual who, because of mental
16 and/or physical impairment is potentially unable to manage his or her
17 own resources or protect himself or herself from financial exploitation.

18 (c) "Financial exploitation" means: (i) the improper taking, withhold-
19 ing, appropriation, or use of a vulnerable adult's money, assets, or
20 property; or (ii) any act or omission by a person, including through the
21 use of a power of attorney, guardianship, or any other authority regard-
22 ing a vulnerable adult to: (A) obtain control, through deception, intim-
23 idation or undue influence, over the vulnerable adult's money, assets,
24 or property or (B) convert the vulnerable adult's money, assets, or
25 property.