



PA 18-173—sHB 5490

Banking Committee

AN ACT CONCERNING CONSUMER CREDIT LICENSES

SUMMARY: This act generally expands the banking commissioner’s statutory authority and standardizes various requirements across several license types. Principally, it:

1. extends many of his existing powers over certain mortgage-related licensees (i.e., mortgage lenders, correspondent lenders, processors or underwriters, and loan originators), including investigatory power, to include small loan lenders, mortgage servicers, student loan servicers, lead generators, and six other nonmortgage licensees (i.e., check cashers, consumer collection agencies, debt adjustors, debt negotiators, money transmitters, and sales finance companies); and
2. codifies two banking commissioner orders requiring various nonmortgage licensees to use the Nationwide Mortgage Licensing System and Registry (NMLS or NMLSR; “the system”) for license applications, renewals, and other license related activities (mortgage-related licensees already do this).

The act also makes several changes to specific license types and establishes new requirements or modifies existing ones across all or several of such mortgage and nonmortgage license types. For example, it:

1. requires that activity subject to licensure in various license categories be conducted in an office in the United States or its territories;
2. removes a requirement that certain licensees physically display their license;
3. makes a licensee’s qualifying individual, branch manager, or control person, as applicable, responsible for the licensee’s actions; and
4. expands when the commissioner may deny licenses or suspend, revoke, or refuse to renew licenses.

The act also:

1. establishes a 36% maximum annual percentage rate (APR) for small loans under \$5,000 (§ 96);
2. allows the commissioner to charge an uninsured bank or trust bank a fee instead of the department’s operating assessment, if he believes the assessment is unreasonably low or high based on the bank’s size and risk profile (§ 6);
3. makes wholly-owned subsidiaries, including operating subsidiaries, of federally insured banks and credit unions subject to the existing cap on prepaid finance charges for first mortgage loans (§ 18);
4. requires the commissioner to report to the Banking Committee, by January 1, 2019, on the student loan ombudsman’s status (§ 95);

OLR PUBLIC ACT SUMMARY

5. requires sales finance companies to acquire and maintain certain demographic data and report it to the commissioner, and subjects companies who fail to collect the required information to criminal penalties (§§ 90, 91 & 97);
6. broadens the definition of credit union service organization and requires a credit union proposing to close one to notify the commissioner at least 30 days in advance (§§ 98 & 99);
7. changes the factors an approving authority must consider and the determinations it must make to approve a new bank application (§ 100); and
8. makes numerous minor, conforming, and technical changes.

EFFECTIVE DATE: October 1, 2018, except the provisions (1) requiring unique identifiers on advertisements and business cards for money transmitters are effective July 1, 2019, and (2) making certain minor and technical changes are effective January 1, 2019 (§ 92) or July 1, 2018.

EXPANDED AUTHORITY

Under prior law, the banking commissioner's authority over licensees differed to some extent based on the license type involved. The act generally standardizes the commissioner's investigative and related authority across the regulated licenses. It specifies that his authority extends to those who act or claim to act with or without any licensing, registration, or other state authorization.

Investigatory Authority (§ 3)

Access to Records and Information. By law, the commissioner has certain investigatory powers over licensees subject to his jurisdiction. The act expands these powers, allowing him to access, receive, and use records, information, and evidence for (1) an investigation related to issuing, renewing, suspending, conditioning, revoking, or terminating a license or (2) any inquiry or investigation of someone engaged in a business or activity licensed under the state's banking laws. The materials may include:

1. criminal, civil, and administrative history information;
2. personal history and experience information, such as independent credit reports; and
3. any other record, information, or evidence the commissioner deems relevant, regardless of its location, possession, control, or custody.

Under the act, anyone who is the subject of a commissioner's inquiry, investigation, examination, or proceeding, must make or compile reports or prepare other information the commissioner directs, including accounting compilations, information lists, transaction records, and other information he deems necessary.

The act allows the commissioner to (1) control access to any records of the person under investigation and (2) take possession of the records or place a person in exclusive control of them at the location where they are usually kept. When the records are being controlled, no one may remove or attempt to remove them

OLR PUBLIC ACT SUMMARY

without the commissioner's consent or a court order. The act allows the records' owner to access them during this control period to conduct ordinary business affairs unless the commissioner reasonably believes the records have been, or are at risk of being, altered or destroyed in an effort to conceal a violation of law.

The act specifies that the commissioner's authority to examine records includes accounts, files, computer systems, and documents in any form. By law, this authority already extends to documents such as, among other things, books, papers, software, and correspondence.

Destroying Records. The act prohibits anyone subject to an investigation, inquiry, examination, or related proceeding, from knowingly withholding, abstracting, removing, mutilating, destroying, or hiding records or information.

Investigation Assistance. To carry out an investigation, the act allows the commissioner to:

1. retain attorneys, accountants, examiners, auditors, investigators, and other professionals;
2. share resources, standardized or uniform methods or procedures, records, information, or evidence with other government officials or regulatory associations to improve efficiency and reduce regulatory burden; and
3. use, hire, contract, or employ public or private analytical systems, methods, or software.

Reliance on Other Investigations or Reports. Instead of conducting his own investigation, the act authorizes the commissioner to accept and rely upon an investigation, examination, or report made by another government official or a state or federal supervisory agency or its affiliated organization, either in Connecticut or outside the state. A report or investigation the commissioner accepts and relies upon is deemed his official examination or investigation report. (Prior law contained similar provisions for investigations of money transmitters.)

Under the act, the commissioner may also accept audit reports from an independent certified public accountant and (1) consider them an official examination or investigation report of the commissioner or (2) incorporate them into the commissioner's official examination or investigation report or any other commissioner writing.

Suspend and Revoke Licenses (§§ 4 & 15)

The act extends the commissioner's authority to suspend or revoke expired licenses and deny withdrawn license applications to all licenses issued on the system for licensing and registering people in the mortgage and other financial services industries. Prior law granted him this authority for certain mortgage-related licenses, and some or all of it for certain nonmortgage licenses such as debt adjusters and negotiators, small loan lenders, and sales finance companies.

Under the act, the commissioner may revoke or suspend, or initiate a revocation or suspension proceeding for an expired license within one year after the licensee failed to renew it. The act deems a withdrawn application effective when the commissioner receives a notice of intent to withdraw it. It allows him to deny a license until one year after the withdrawal is effective.

The act also broadens the commissioner's authority to suspend, revoke, or

OLR PUBLIC ACT SUMMARY

refuse to renew a license by allowing him to take these actions against mortgage loan originators, loan processors, underwriters, and lead generators for violations of banking regulations or department orders, instead of only the banking laws. This broader authority already applies to commissioner actions against mortgage lenders, correspondent lenders, and brokers.

Remove Individuals from Office and Employment (§ 5)

By law, the commissioner may order a mortgage loan originator, processor, underwriter, lender, correspondent lender, broker, or lead generator or small loan lender licensee to remove an individual from office and from employment or retention as an independent contractor, if he finds, after an investigation, that the individual (1) violated a licensure requirement or other applicable law, regulation, or order or (2) engaged in conduct that would be sufficient grounds for denying a license. The act extends this authority to mortgage servicers and other nonmortgage licensees (sales finance companies (§ 30), check cashers (§ 48), debt adjusters and negotiators (§§ 64 & 68), mortgage servicers (§ 77), consumer collection agencies (§ 81), and student loan servicers (§ 88)). For money transmitters (§ 59), the act allows the commissioner to order a licensee to remove a director, general partner, executive officer, or employee or terminate an independent contractor.

The commissioner must notify the individual to be removed by registered or certified mail, return receipt requested, or by express delivery with a dated receipt. If the individual is licensed by the commissioner, the commissioner may notify the individual by personal delivery in accordance with law (i.e., delivery directly to the intended recipient or his or her designated representative, including by email). Notice is deemed received on the earlier of (1) the receipt date or (2) seven days after mailing or sending.

The notice must include:

1. any scheduled hearing's time, place, and nature;
2. if a hearing is not scheduled, a statement indicating that the individual may request one in writing within 14 days after receipt;
3. the legal authority and jurisdiction under which the hearing is being held;
4. a reference to the statutory or regulatory provisions or order violated; and
5. a short and plain statement of the matters asserted.

The commissioner must hold a hearing if the individual timely requests it. If the individual fails to appear at the hearing or, after the hearing, if the commissioner finds that a violation occurred or that there are grounds to deny a license, he may order the licensee to remove the individual from office and employment or retention as an independent contractor in any business under the department's jurisdiction. Orders must be issued in accordance with the state Uniform Administrative Procedure Act.

The act authorizes the commissioner, before a hearing, to suspend an individual from office and require him or her to take or refrain from taking specific actions, if he finds that immediate action is necessary to protect consumers. To do so, he must incorporate a finding into the notice and the suspension or requirement is effective upon receipt of the notice. Unless it is

OLR PUBLIC ACT SUMMARY

stayed by a court, the suspension or requirement remains in effect until the commissioner enters a permanent order or the matter is dismissed.

Hold Qualifying Individuals, Branch Managers, and Control Persons Responsible for the Licensee's Actions

The act generally makes a licensee's qualifying individual, branch manager, or control person, as applicable, responsible for the licensee's actions. (By law, a control person is someone who directly or indirectly exercises control over the licensee. Certain people are presumed to be control persons, including general partners, executive officers, and those who control 10% or more of an organization's voting rights.) The act establishes certain requirements for these individuals. As is already the case for some licenses, the commissioner may deny a licensee's application if a control person, qualified individual, or branch manager was convicted of certain crimes or otherwise made material misstatements on the application.

The act generally extends or applies these provisions to sales finance companies (§ 25), small loan lenders (§ 34), check cashers (§ 43), money transmitters (§ 51), debt adjusters and negotiators (§§ 63 & 67), mortgage servicers (§ 72), consumer collection agencies (§§ 79 & 81), and student loan servicers (§ 85).

The act also generally extends these provisions to mortgage lenders, correspondent lenders, and brokers (§§ 10 & 11). However, for these licensees (1) a qualified individual at the main office must also have supervisory authority over the licensee's lending and brokerage activities and (2) a branch manager at a branch office must be responsible for that office's actions.

Unique Identifiers on Advertisements and Retaining Advertisement Records

By law, mortgage loan originators, loan processors, underwriters, and small loan lenders must clearly show their unique identifier on all advertisements, including business cards and websites. Additionally, lead generators must keep adequate records of their advertisements (CGS § 36a-493). (A unique identifier is the licensee's NMLS number.)

The act requires all license types, including mortgage lenders, correspondent lenders, brokers, and lead generators (§ 19), sales finance companies (§ 29), check cashers (§ 47), money transmitters (§ 60), debt adjusters and negotiators (§§ 65 & 67), mortgage servicers (§ 72), consumer collection agencies (§ 79), and student loan servicers (§ 86) to show their unique identifier on all advertisements and clearly state it in audio advertisements, and keep records of all advertisements for two years. It prohibits a licensee from including in advertisements (1) false, deceptive, or misleading statements or (2) a statement that they are endorsed by the state.

For money transmitters, advertisements on third-party websites do not need the licensee's unique identifier as long as the advertisement has a link to a website that clearly shows it (§ 60).

Proceed Against Bonds

OLR PUBLIC ACT SUMMARY

By law, the commissioner may proceed against a mortgage servicer licensee's bond to recover restitution and unpaid examination costs (CGS § 36a-719c). Beginning April 1, 2019, the act allows him to proceed against certain other licensees' bonds to recover restitution imposed for violating state banking laws and unpaid examination costs. He may do so against mortgage lenders, correspondent lenders, brokers, and loan originators (§ 13); debt adjusters and negotiators (§§ 66 & 69); and consumer collection agencies (§ 80).

Reports of Condition

By law, mortgage lenders, correspondent lenders, brokers, lead generators, loan originators, and loan processors or underwriters, to the extent required by the system, must submit timely and accurate reports of condition in a form and manner it requires and pay any applicable fees and charges. Failure to do so is a violation of state banking law.

The act requires timely and accurate reports of condition, under similar or the same circumstances as above, of sales finance companies (§ 29), check cashers (§ 46), money transmitters (§ 57), debt adjusters and negotiators (§§ 65 & 67), mortgage servicers (§ 72), consumer collection agencies (§ 79), and student loan servicers (§ 86).

For money transmitters (§ 57) and debt adjusters (§ 66), the act eliminates redundant reporting requirements by requiring certain financial reports only to the extent the information is not included in the reports of condition. For money transmitters, the act also changes the deadline for certain existing reporting requirements, from April 30 to not later than 90 days after the licensee's fiscal year ends.

For student loan servicers (§ 85), the act allows the commissioner to waive the requirement to include a financial statement with a licensee's renewal application if the data is also captured in annual reports of condition submitted to the department.

Cooperative Agreements

The act expands the commissioner's authority to enter into cooperative, coordinating, or information-sharing agreements with other state or federal supervisory agencies regarding individuals subject to regulation under the state's banking laws by applying the authority to exchange facilitators and student loan servicers (§ 89).

COMMISSIONER ORDERS

The act codifies two orders of the banking commissioner, dated June 17, 2015 and May 12, 2016, requiring certain department-regulated applicants and licensees to use the system to apply for and renew licenses, pay license fees, update license information, and conduct other license related activity. The orders also required annual, instead of biannual, license renewal. They applied to eight license types: money transmitters, consumer collection agencies, check cashing services, debt adjusters, debt negotiators, sales finance companies, small loan

OLR PUBLIC ACT SUMMARY

companies, and student loan servicers. Existing law already required mortgage-related licensees to use the system.

The act requires the nonmortgage licensees listed above to use the system for all license-related activities and subjects them to the same application minimum content requirements as mortgage related licensees. This includes:

1. requiring applicants to provide certain information about the applicant and the following persons: any control person, the qualified individual, and any branch manager;
2. allowing the commissioner to conduct state or national criminal background checks on the applicant and such other persons, and requiring their fingerprints to be taken; and
3. allowing the commissioner to investigate the financial condition of the applicant and other such persons on the application, including obtaining a credit report.

Additional Commissioner Authority Over Licensees on the System

License Applications, Renewals, and Fees. The act codifies a requirement that all licenses have an annual term expiring December 31, except initial license applications made after November 1 are valid until December 31 of the following year. Renewal applications must be filed between November 1 and December 31. The act makes generally corresponding reductions to license application and renewal fees in accordance with the shift from biannual to annual licenses.

The provisions apply to sales finance companies (§ 26), check cashers (§ 44), money transmitters (§ 52), debt adjusters and negotiators (§§ 63 & 67), consumer collection agencies (§ 79), and student loan servicers (§ 85). By law, small loan lenders must already meet this requirement.

Paying Fees and Automatic License Suspensions. By law, the commissioner may (1) require that all fees be paid through the system and (2) automatically suspend a license or registration on the system if a licensee is deficient due to a returned payment. In such a circumstance, the commissioner must notify the licensee of the suspension, pending revocation, or refusal to renew proceedings; offer a hearing; and require the licensee to take or refrain from taking action that he deems necessary to effectuate the law's provisions (CGS § 36a-24b).

The act makes conforming changes to standardize this authority with respect to sales finance companies (§ 26), check cashers (§ 44), money transmitters (§ 54), debt adjusters and negotiators (§§ 63 & 67), consumer collection agencies (§ 79), and student loan servicers (§ 85). (This requirement already applies to small loan lenders and mortgage servicers.)

Nonrefundable Fees. All fees paid through the system, including those for withdrawn or denied applications, are nonrefundable. The act makes conforming changes to apply these provisions, as applicable, across all license types using the system, including sales finance companies (§ 26), small loan lenders (§ 35), check cashers (§ 44), money transmitters (§ 52), debt adjusters and negotiators (§§ 63 & 67), consumer collection agencies (§ 79), and student loan servicers (§§ 85 & 88).

Reinstating Expired Licenses. By law, the commissioner can adopt regulations

OLR PUBLIC ACT SUMMARY

for reinstating expired licenses issued through the system. The act allows him to adopt procedures for reinstatements of certain other licenses the act moves onto the system, including for sales finance companies (§ 28), small loan lenders (§ 36), check cashers (§ 43), money transmitters (§ 54), debt adjusters and negotiators (§§ 63 & 67), consumer collection agencies (§ 79), and student loan servicers (§ 85).

Temporary Cease and Desist Orders. By law, the commissioner may issue a temporary cease and desist order to a business licensed through the system if he determines it is operating under an erroneously issued license or registration. The commissioner must give the licensee an opportunity for a hearing. The temporary order is effective when the licensee receives it and, unless stayed by a court, remains in effect until a permanent order replaces it or the matter is dismissed (CGS § 36a-24b(j)).

The act either establishes the commissioner's authority to issue such orders, or makes conforming changes to existing authority, for sales finance companies (§ 30), small loan lenders (§ 40), check cashers (§ 48), money transmitters (§ 59), debt adjusters and negotiators (§§ 64 & 68), mortgage servicers (§ 77), consumer collection agencies (§ 81), and student loan servicers (§ 88).

For certain licensees, including mortgage lenders, correspondent lenders, and brokers and small loan lenders, existing law allows the commissioner to take enforcement action, including issuing cease and desist orders, if any person takes an action they know or should know would contribute to a violation of the state's banking laws. The act applies this authority to sales finance companies (§ 30), check cashers (§ 48), money transmitters (§ 59), debt adjusters and negotiators (§§ 64 & 68), mortgage servicers (§ 77), consumer collection agencies (§ 81), and student loan servicers (§ 88).

NEW LICENSURE REQUIREMENTS

License Required for Each Branch Office for Certain Licensees

By law, certain licensees on the system (e.g., mortgage lenders, brokers, and servicers) must have a license for a main office and an additional license for each branch office that conducts licensable activity. The act also requires this of sales finance companies (§ 24), debt adjusters (§ 63), and student loan servicers (§ 85).

Minimum Standards for License Renewal

The act adds to the minimum standards for a license renewal a requirement that the applicant has paid outstanding examination or other fees due to the commissioner. For various licenses, existing law specifies that the licenses of individuals who fail to meet the minimum requirements expire. The act clarifies that this applies to additional licensure categories as well.

The act establishes or extends these provisions, as applicable, to mortgage lenders, correspondent lenders, brokers, loan originators, loan processors and underwriters, and lead generators (§ 11); sales finance companies (§ 28); small loan lenders (§ 36); check cashers (§ 43); money transmitters (§ 54); debt adjusters and negotiators (§§ 63 & 67); mortgage servicers (§ 72); consumer

OLR PUBLIC ACT SUMMARY

collection agencies (§ 79); and student loan servicers (§ 85).

Bond Cancellation Notice

By law, a surety company may cancel certain licensees' bonds at any time by notifying the bond principal, and at least 30 days before the cancellation, the commissioner. For bonds issued through the system, the act allows the company to electronically notify the commissioner and bond principal through the system at least 30 days before the cancellation. The provisions apply to mortgage lenders, correspondent lenders, brokers, and loan originators (§ 13); money transmitters (§ 55); debt adjusters and negotiators (§§ 66 & 69); mortgage servicers (§ 74); and consumer collection agencies (§ 80).

Advance Change Notice and Using Unapproved Names or Addresses

As under prior law, the act prohibits a license from being transferred or assigned. However, it requires licensees to file an advance change notice on the system at least 30 days before a change in control person, but not a change in director, general partner, or executive officer that is not due to an acquisition or other change in control. This change requires the commissioner's approval.

Existing law:

1. prohibits certain licensees from using a name other than their legal name or a fictitious name approved by the commissioner and specified on his or her license;
2. allows the commissioner to disapprove use of a licensee's name; and
3. allows licensees to change their name or address by filing the change on the system at least 30 days before the change, as long as the commissioner does not disapprove it or require more information.

Under existing law and the act, these requirements apply to mortgage lenders, correspondent lenders, brokers, and lead generators (§ 12); sales finance companies (§ 27); check cashers (§ 45); money transmitters (§ 51); debt adjusters and negotiators (§§ 65 & 67); mortgage servicers (§ 73); consumer collection agencies (§ 79); and student loan servicers (§ 86). Similar requirements already applied under existing law for small loan lenders, although the act specifically exempts from the advance notice requirements any change in director, general partner, or executive officer that is not due to an acquisition or other change in control (§ 37).

By law and the act, additional requirements apply to certain licensees seeking to change their name or address, including providing a bond rider, endorsement, or addendum, as applicable.

Automatic Suspensions. The act allows the commissioner to automatically suspend a license for, among other things, a violation of these provisions. After suspending the license, the commissioner must notify the licensee of the suspension, pending revocation, or refusal to renew proceedings; offer a hearing; and require the licensee to take or refrain from taking action that, in his opinion, is necessary to effectuate the law's provisions. The automatic suspension provisions apply to mortgage lenders, correspondent lenders, brokers, and lead generators (§

OLR PUBLIC ACT SUMMARY

12); sales finance companies (§ 27); small loan lenders (§ 37); check cashers (§ 45); money transmitters (§ 51); debt adjusters and negotiators (§§ 65 & 67); mortgage servicers (§ 73); consumer collection agencies (§ 79); and student loan servicers (§ 86).

Under the act, the commissioner may also automatically suspend certain licenses for other criteria, including failing to appoint the appropriate qualified individual or branch manager within 30 days after a vacancy in the position. This provision applies to mortgage lenders, correspondent lenders, brokers, and lead generators (§ 12); small loan lenders (§ 37); and mortgage servicers (§ 73).

Filing Updated Information

Under the act, applicants, licensees, control persons, qualified individuals, and branch managers must update information on the system with certain changes within 15 days after the person had reason to know of the change. If the information cannot be filed on the system, they must notify the commissioner of the change in writing. These provisions apply to mortgage lenders, correspondent lenders, brokers, and lead generators (§ 12); sales finance companies (§ 29); small loan lenders (§ 38); check cashers (§ 43); money transmitters (§ 51); debt adjusters and negotiators (§§ 65 & 67); mortgage servicers (§ 73); consumer collection agencies (§ 79); and student loan servicers (§ 85).

By law, certain licensees must file or notify the commissioner in writing of certain specified actions, such as if they file for bankruptcy, are criminally indicted related to their licensed activities, or are the subject of action by an attorney general or other government agency. The act expands this requirement to more licensees, and requires them to notify the commissioner (1) if the actions are taken by or against certain individuals, such as a control person, branch manager, or qualified individual, and (2) generally within 15 days of having reason to know of the actions. These provisions apply to mortgage lenders, correspondent lenders, brokers, and lead generators (§ 12); sales finance companies (§ 29); small loan lenders (§ 38); check cashers (§ 43); money transmitters (§ 51); debt adjusters and negotiators (§§ 65 & 67); mortgage servicers (§ 73); and student loan servicers (§ 86). The act retains the requirement that money transmitters report the information within one business day.

For consumer collection agencies (§ 79), the act applies these provisions and also requires a licensee to file on the system if his or her tangible net worth falls below statutory minimums.

CHANGES TO CERTAIN LICENSURE REQUIREMENTS

Bona Fide Nonprofit Mortgage Brokers (§§ 9 & 14)

By law, bona fide nonprofit organizations acting as mortgage brokers are exempt from broker licensing if they act in that capacity for residential mortgage loans to benefit their employees or agents or to promote home ownership in economically disadvantaged areas.

The act generally sunsets such a bona fide nonprofit's status if it fails to annually submit a renewed certification and any updated information by

OLR PUBLIC ACT SUMMARY

December 31. But for those that receive their initial status after November 1, the deadline to submit a renewal certification and updated information is extended to December 31 of the following year. The act also authorizes the commissioner to (1) periodically examine a certified bona fide nonprofit organization's books and activities and (2) revoke its status if it fails to meet the criteria for being one.

For bona fide nonprofit organizations that are exempt from licensure due to making loans that promote home ownership in economically disadvantaged areas, the act extends a requirement to maintain adequate records of the residential mortgage loan transactions and make them available to the commissioner upon request. This requirement already applies to mortgage lenders, correspondent lenders, and brokers. For each transaction involved, the nonprofit must keep related documents for at least two years after the transaction date, the final loan payment, or the loan's assignment date, depending on the nonprofit's role in the transaction. Copies of other related documents, including the note, must be kept for at least five years from the transaction date. Under the act, anyone who provides a nonprofit with any records it needs to meet these requirements may charge the nonprofit up to \$50.

Mortgage Lenders, Correspondent Lenders, Brokers, Loan Originators, Processors, Underwriters, and Servicers

Local Oversight (§§ 10 & 72). By law, mortgage lenders, correspondent lenders, brokers, and servicers must have (1) at the main office, a qualified individual and (2) at each branch office, a branch manager. The act requires that the qualified individual and branch manager (1) live within 100 miles of the respective office or (2) can demonstrate to the commissioner that he or she is otherwise capable of providing full-time, in-person supervision.

The act permits the commissioner to waive this requirement as well as certain other supervisory and experience requirements, for a (1) qualified individual if no activity subject to licensure will occur at the main office and another qualified individual is designated as responsible for the licensees' actions and (2) branch manager if the licensee has only mortgage servicing rights and meets certain other requirements.

The act requires mortgage originators to meet similar criteria. Licensees must (1) be associated with and operate out of a specific licensed office supervised by a qualified individual or branch manager and (2) live within 100 miles of the office unless they demonstrate to the commissioner that they are supervised by a qualified individual or branch manager.

Bond Reporting Requirements (§ 13). By law, mortgage lenders, correspondent lenders, loan originators, brokers, and certain persons exempt from licensure must be covered by a surety bond. Prior law required the principal on a bond to annually confirm with the commissioner that he or she maintained the required amount. The act instead requires principals to file quarterly reports on the system reflecting their residential mortgage loan volume to confirm that licensees maintain bonds in the required amounts.

Fidelity Bond and Errors and Omissions Coverage Expiration (§ 74). The act requires the commissioner to suspend a mortgage servicer license when a fidelity

OLR PUBLIC ACT SUMMARY

bond or errors and omissions coverage expires.

Continuing Education Requirements (§ 92). The act allows mortgage loan originators, processors, and underwriters that otherwise meet the minimum standards for license renewal, including paying all fees due, to compensate for any continuing education requirement deficiencies according to regulations adopted by the commissioner.

BAN ON CONDUCTING ACTIVITY OUTSIDE THE UNITED STATES

By law, all small loan lender offices must be located in the United States (CGS § 36a-562). The act modifies and extends this provision to require any activity subject to licensure by the department to be conducted from an office in the United States or its territories. The provision applies to mortgage lenders, correspondent lenders, brokers, loan originators, processors, and underwriters (§ 8); sales finance companies (§ 24); check cashers (§ 43); money transmitters (§ 50); debt adjusters and negotiators (§§ 63 & 67); mortgage servicers (§ 71); consumer collection agencies (§ 79); and student loan servicers (§ 85).

OTHER CHANGES

Sales Finance Companies

Violations (§ 30). By law, the commissioner can suspend, revoke, or refuse to renew a sales company license if the licensee, among other things, knowingly violated or failed to exercise due care in preventing a violation of statutory requirements. Under prior law, he could take such action if:

1. for licensees who are entities, an officer, director, trustee, member, or partner was guilty of an act or omission that would be cause for revoking or suspending the license; or
2. a licensee's agent or employee was guilty of such an offense and the licensee knew about or approved the offense and benefited from it.

The act instead allows the commissioner to take action if the licensee's control person, qualified individual, branch manager, trustee, employee, or agent, among other things, (1) knowingly violates statutory requirements or (2) fails to exercise due care in preventing such a violation.

Check Cashers

Annual Reports (§ 46). By law, check cashers must submit quarterly reports to the commissioner on the type of checks cashed and how many were above a certain amount. Beginning January 15, 2019, the act increases, from \$2,500 to \$6,000, the minimum value of a cashed check that must be counted in the quarterly report. Licensees must also file a written statement if no reportable activity occurred.

Debt Negotiators

Bond Requirements for Certain Exempt Debt Negotiators (§ 69). Prior law required all debt negotiators sponsoring and bonding at least one exempt

OLR PUBLIC ACT SUMMARY

mortgage loan originator to file a bond with specified amounts based on mortgage loan volume. The act limits this requirement to debt negotiators who are exempt from licensure as a mortgage lender, correspondent lender, or broker.

The act also requires bond principals to file quarterly reports on their loan volume to confirm they maintain the required minimum bond amount. Under prior law, such principals only had to confirm that they maintained the required amount.

License Surrender (§ 67). The act requires debt negotiators to surrender their license for each location that stops conducting business within 15 days. Existing law already requires this for various other licenses.

Consumer Collection Agencies

License Surrender (§ 79). The act requires consumer collection agencies to request a license surrender on the system at least 30 days before any location stops conducting business.

Certified Public Accountant (§ 79). Prior law required a license application to be accompanied by a financial statement prepared by a certified public accountant (CPA) or other public accountant. Under the act, only a CPA can prepare the statement.

Exempt Consumer Collection Agencies (§§ 79, 80 & 83). The act exempts agencies that only participate in the business of debt buying from including evidence of a \$50,000 minimum tangible net worth in their application. It also exempts them, rather than third party collection agencies, from certain bonding and depository requirements and related provisions (e.g., restrictions on commingling collected funds with other funds used in the business).

Student Loan Servicers

Examination Costs (§ 6). The act also extends to student loan servicer licensees the requirement that a licensee pay the actual cost of any investigation into him or her, as determined by the commissioner. As under existing law for other licensees, a student loan servicer licensee who fails to pay the investigation cost within 60 days after receiving a demand from the commissioner may have his or her license suspended until it is paid.

Certified Public Accountant (§ 85). Prior law required a license application to be accompanied by a financial statement prepared by a CPA or other public accountant. The act allows only CPAs to prepare the statement.

Service Standards (§ 87). The act requires student loan servicers to comply with the commissioner's service standards. (PA 16-65 required him to adopt the standards and post them on the department's website by July 1, 2017.)

Good Character Requirement (§ 85). Under the act, the commissioner must find the applicant's control persons, qualified individuals, branch managers, and trustees to be properly qualified and of good character, including assessing their financial responsibility and any criminal history. Under prior law, in order to issue a license, the commissioner had to find that the applicant and certain partners, shareholders, and other interested individuals were properly qualified and of good character.

OLR PUBLIC ACT SUMMARY

Money Transmitters

Good Character Requirement (§ 53). Under prior law, in order to issue a license, the commissioner had to, among other things, find that the applicant and certain partners, shareholders, and other interested individuals were properly qualified and of good character. Under the act, he must find the applicant's control persons and qualified individual to be properly qualified, of good character, and demonstrate financial responsibility.

§ 6 — BANK ASSESSMENT WAIVER AND FEE

By law, the banking commissioner collects from each Connecticut bank an amount, proportional to its assets, necessary to fund the department's expenses, including a reasonable reserve. Under the act, if the commissioner determines that the assessment for an uninsured bank or trust bank is unreasonably low or high based on the bank's size and risk profile, he may require it to pay a fee instead. The bank must pay the fee before a date the commissioner sets, or pay an additional \$200.

Under the act, an uninsured bank required to pay a fee instead of the assessment must also pay the commissioner the actual cost of the bank's examination, which he determines.

§ 18 — PREPAID FINANCE CHARGE CAP ON MORTGAGE LOANS

Existing law prohibits mortgage lenders and correspondent lenders and certain persons exempt from licensure as a mortgage lender, correspondent lender or broker, including certain banks and credit unions, from imposing on a first mortgage loan prepaid finance charges that exceed the greater of 5% of the loan principal or \$2,000. The act subjects to the cap wholly-owned subsidiaries, including operating subsidiaries, of such exempt banks and credit unions.

§§ 90, 91 & 97 — SALES FINANCE COMPANIES' DEMOGRAPHIC DATA COLLECTION

The act (1) expands the demographic data collection requirement for sales finance companies involved in retail motor vehicle sales; (2) allows the commissioner to adopt related regulations; and (3) subjects violators of the collection requirement to a fine of up to \$500, up to six months in prison, or both.

Record Requirement

Beginning October 1, 2018, the act requires sales finance companies to (1) acquire and maintain records for each retail installment contract and application for a retail installment contract for the retail sale of a motor vehicle in the state and (2) make the records collected from October 1, 2018, to June 30, 2019 available to the commissioner by July 1, 2019 and also within five business days after he requests them. The requirement applies to contracts acquired by purchase, discount, loan, advance, or other methods. The commissioner must direct the form

OLR PUBLIC ACT SUMMARY

and manner for collecting the information.

The information that must be collected includes the (1) applicant's and co-applicant's name, address, income, credit score, ethnicity, race, and sex; (2) loan type, amount, and APR; and (3) disposition of the application. The act requires the records to be kept (1) for at least two years after the date of the application for denied applications; (2) for at least two years after the earlier of the date of final payment or sale or contract assignment for acquired contracts; or (3) longer if another law requires it.

Prior law required these companies to collect similar information starting October 1, 2016, but only required the information on ethnicity, race, and sex to be acquired if it was known.

Related Regulations

The act authorizes the commissioner to adopt regulations related to the record collection requirement, including defining terms, as long as he finds that it is (1) necessary or appropriate in the public interest or to protect purchasers and (2) consistent with the purpose of the law governing sales finance company licensing.

§ 95 — STUDENT LOAN OMBUDSMAN REPORT

The act requires the commissioner, by January 1, 2019, to report to the Banking Committee on the student loan ombudsman's status. By law, he must, within available appropriations, designate the ombudsman to help student loan borrowers.

§ 96 — SMALL LOAN PERCENTAGE RATE CAP

The act establishes a 36% maximum APR for small loans under \$5,000. Previously, the APR cap for these loans was tied to the maximum rate permitted under the federal Military Lending Act (MLA), which is also 36%. Under the act, if the maximum APR permitted under the MLA is amended to a rate below 36%, that rate prevails.

§§ 98 & 99 — CREDIT UNION SERVICE ORGANIZATIONS

By law, a credit union service organization is an organization incorporated under Connecticut law, located in the state, and established by at least one Connecticut credit union. The act expands the definition to include an organization that is wholly owned by a federal or out-of-state credit union that converted to a Connecticut credit union. It also requires any Connecticut credit union that proposes closing a credit union service organization to notify the commissioner at least 30 days before the proposed closing with the detailed reasons for its closing.

§ 100 — BANK APPLICATION APPROVAL PROCESS

The act makes several minor changes to the factors that must be considered

OLR PUBLIC ACT SUMMARY

when reviewing an application for a new Connecticut bank.

By law, one of the determinations the approving authority (i.e., generally the commissioner or a combination of the commissioner, treasurer, and comptroller) must make in order to approve an application is whether the bank will serve the public interest. When making this determination, the act requires the authority to consider the (1) population of the area that will be served, (2) competitive effect of the bank on the availability and quality of services in the market area, (3) likely impact on other financial institutions in the market area, and (4) market area's convenience and needs. Prior law required similar considerations, but limited the analysis of the bank's effect and impact to the adequacy of existing banking facilities in the area.

In order to approve an application, prior law also required the approving authority to find that the (1) conditions where the bank would transact business offer a reasonable promise of success and (2) proposed directors have the capacity and fitness for their duties. The act (1) limits the former requirement to whether the bank shows a reasonable promise of success and (2) expands the latter to include proposed officers and whether they have the necessary character and experience.