

# CORONAVIRUS

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## New York's Department of Financial Services Issues Regulation for Financial Institutions to Provide Relief to Consumers Suffering Financial Hardship Resulting from COVID-19 Pandemic

*New York regulated banking organizations as defined under New York Banking Law and any New York regulated mortgage servicer subject to the authority of the New York State Department of Financial Services should take note of the Department's emergency regulation directing such financial institutions to provide relief to consumers suffering financial hardship due to the COVID-19 pandemic and immediately implement procedures to expeditiously process consumers' applications for relief.*

On March 21, 2020, in response to the COVID-19 pandemic, Governor Cuomo issued Executive Order 202.9, directing institutions regulated by New York's Department of Financial Services ("NY DFS") to provide financial relief to New York consumers experiencing financial hardship as a result of the pandemic. As a result, on March 24, 2020, NY DFS enacted Part 119 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") establishing standards and procedures that a "Regulated Institution" must follow in its review of requests for relief pursuant to Executive Order 202.9. Importantly, Section 119.2 defines a "Regulated Institution" as **"any New York regulated banking organization as defined under New York Banking Law and any New York regulated mortgage servicer entity subject to the authority of the Department."** (Emphasis added).

### HIGHLIGHTS OF THE NY DFS REGULATION<sup>1</sup>

Section 119.3 directs the Regulated Institution to do the following for any individual *who can demonstrate financial hardship* as a result of the COVID-19 pandemic:

- In connection with a residential mortgage of a property located in NY: (i) make applications for forbearance of any payment due widely available to any individual who resides in NY and (ii) grant such forbearance for a period of 90 days (subject to the safety and soundness requirements of the Regulated Institution). This provision **does not** apply to, and does not affect mortgage loans "made, insured, or securitized by any agency or instrumentality of the United States, any Government Sponsored Enterprise, or a Federal Home Loan Bank, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association."
- With respect to banking organizations: (1) eliminate fees charged for the use of ATMs that are owned or operated by the regulated banking organization; (2) eliminate any overdraft fees; and (3) eliminate any credit card late payment fees. (Regulated Institutions are not limited to these three requirements and may take additional actions if they so desire.)

Within ten (10) business days of the implementation of this regulation, *i.e.*, by April 7, 2020, the Regulated Institution **shall** e-mail, publish on their website, mass mail, or otherwise broadly communicate to its customers how to apply for relief. The criteria, developed by the Regulated Institution, “shall be clear, easy to understand, and reasonably tailored to the requirements of the [R]egulated [I]nstitution to assess whether it will provide, consistent with the goals of Executive Order 202.9 and this regulation, applicable state and federal law, and the principles of safe and sound business practices, COVID-19 relief.” 3 NYCRR § 119.3(d)(1).

In addition, Section 119.3(e) outlines the requirements for processing applications for relief, as follows:

- The Regulated Institution must process and respond to the request for relief no later than ten (10) business days after receiving all the information it needs to process the application;
- The Regulated Institution must process the application for relief expeditiously; the Regulated Institution is responsible for developing and implementing the procedures to do so; and
- Decisions on the application for relief shall be made in writing and provide the consumers the next steps if they are approved or denied the request.

Finally, Section 119.39(4) modifies Section 39 of the New York Banking Law concerning unsafe and unsound business practices. Under the modified section, it is an “unsafe and unsound business practice” if any Regulated Institution does not “grant a forbearance of any payment due on a residential mortgage for a period of ninety (90) days to any individual who has applied for such forbearance and demonstrated a financial hardship as a result of the COVID-19 pandemic as described herein.” NY DFS will consider, among other things, the adequacy of the process established by the Regulated Institution, the thoroughness of the review of the application, and the payment history, creditworthiness and financial resources of the borrower, in assessing whether a regulated institution has engaged in an unsafe or unsound practice. Regulated Institutions must also maintain copies of all files related to implementation of Part 119 for seven (7) years from March 24, 2020 (date of implementation of the regulation) and must make such files available for inspection at the NY DFS’ next examination of the Regulated Institution.

The standards and procedures set forth in Part 119 shall be in effect for ninety (90) days. After the expiration of the 90-day period, NY DFS will renew this emergency regulation, if necessary.

## CONCLUSION

Regulated Institutions must implement processes and procedures to comply with Part 119 by April 7, 2020, including immediately setting up procedures to review applications for relief and taking the necessary steps to notify its customers of how to apply for such relief. Thus, Regulated Institutions should determine which of its loans, if any, are subject to this regulation and accept and review its customers for forbearance relief as described in the regulation.

*Mr. Streibich would like to thank Diana M. Eng, Andrea M. Roberts, and Scott D. Samlin for their assistance in developing this alert.*

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1. This Alert provides the highlights of the regulation, which does **not** apply to any commercial mortgage or any other loans not described in the regulation. Please visit the NY DFS website for the complete regulation: [dfs.ny.gov/system/files/documents/2020/03/re\\_new\\_pt119\\_nycrr3\\_text.pdf](https://dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf).