



## Department of Financial Services

**ANDREW M. CUOMO**  
Governor

**LINDA A. LACEWELL**  
Superintendent

January 28, 2020

TO THE INDIVIDUAL OR INSTITUTION ADDRESSED:

Re: Emergency Adoption of Part 501 of the Superintendent's Regulations, 3 NYCRR  
(Banking Division Assessments)

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The Superintendent has adopted the attached new Part 501 of the Superintendent's Regulations on an emergency basis. An emergency regulation in identical form was previously adopted on October 25, 2019. The emergency regulation is effective immediately.

The regulation sets forth the assessment methodology applicable to all entities regulated by the Banking Division ("Banking Division") of the Department of Financial Services ("Department") for state fiscal years beginning with fiscal year 2011.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department.

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 applied to assessments for the fiscal year which commenced April 1, 2011.

Section 206 of the FSL provides that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. The Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012) (“Homestead”), held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act (“SAPA”). In response, the Department adopted this emergency regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The FSL makes the industries regulated by the former Banking Department (and now by the Banking Division of the Department) responsible for all the costs and expenses of their regulation by the State. This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead held that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division’s assessment methodology – the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive – the Department determined to adopt this comprehensive assessment rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

The Department intends to replace this emergency regulation with the adoption of 23 NYCRR Part 101. The Department’s proposal of 23 NYCRR Part 101 was published in the State Register on November 20, 2020. The public comment period for this proposal expired on January 21, 2020, and the Department received no public comments. The Notice of Adoption for 23 NYCRR Part 101 will be published in the State Register on February 12, 2020.

The Notice of Emergency Adoption for Part 501 also is expected to be published in the February 12, 2020 issue of the State Register. To avoid confusion, please note that entities regulated by the Banking Division will not be assessed twice for the first quarter of 2020, as Part 501 was only necessary for the brief period preceding the adoption of the new 23 NYCRR Part 101.

Comments should be sent to George Bogdan, Esq., Department of Financial Services, One State Street, New York, NY 10004 or by email at [George.bogdan@dfs.ny.gov](mailto:George.bogdan@dfs.ny.gov).

Very truly yours,

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Senior Attorney  
Office of General Counsel

