NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

THIRD AMENDMENT TO 11 NYCRR 185
(INSURANCE REGULATION 27-A)
CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

THIRD AMENDMENT TO 11 NYCRR 187
(INSURANCE REGULATION 27-C)
CREDIT UNEMPLOYMENT INSURANCE

NEW 11 NYCRR 229
(INSURANCE REGULATION 216)
INSURER PRACTICES DURING THE COVID-19 PANDEMIC

AMENDMENT TO 3 NYCRR 405
PREMIUM FINANCE AGENCIES

I, Linda A. Lacewell, Superintendent of Financial Services of the State of New York, pursuant to the authority granted by Section 29-A of the Executive Law and Executive Order 202.13, dated March 29, 2020 and as extended thereafter, promulgated thereunder, Sections 202 and 302 of the Financial Services Law, Sections 301, 1116, 3203, 3219, 3220, 4216, 4235, and 4510 and Articles 21, 34, 53, 54, and 55 of the Insurance Law, Sections 561 and 576 of the Banking Law, and Sections 54 and 226 of the Workers' Compensation Law, do hereby promulgate the following amendments to Titles 3 and 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon filing of the Notice of Emergency Adoption with the Secretary of State, to read as follows:

(Matter in brackets is deleted; new matter is underlined)

Section 185.7(m)(4) of Title 11 is amended as follows:

(4) The total premium remitted by the creditor shall be assumed to provide coverage for those insured debtors whose payments are not more than two months overdue, regardless of whether or not the debtor has paid a charge for such two months' coverage; provided, however, that with regard to an insured debtor who does not make a timely premium payment and can demonstrate financial hardship as a result of the COVID-19 pandemic, the total premium remitted by the creditor shall be assumed to provide coverage for the insured debtor whose payments are not more than three months overdue, regardless of whether or not the debtor has paid a charge for such three months' coverage.

Section 187.6(f)(4) of Title 11 is amended as follows:

(4) The total premium remitted by the creditor shall be assumed to provide coverage for those insured debtors whose payments are not more than two months overdue regardless of whether or not the debtor has paid a charge for such two months' coverage; provided, however, that with regard to an insured debtor who does not make a timely premium payment and can demonstrate financial hardship as a result of the COVID-19 pandemic, the total premium remitted by the creditor shall be assumed to provide coverage for the insured debtor whose

payments are not more than three months overdue, regardless of whether or not the debtor has paid a charge for such three months' coverage.

A new Part 229 is added to Title 11 as follows:

Section 229.1. Preamble

(a) On March 29, 2020, Governor Andrew M. Cuomo issued Executive Order 202.13, which, among other things, temporarily suspended or modified Insurance Law sections 1116, 3203, 3219, 3220, and 4510 and articles 34, 53, 54, and 55 and Workers' Compensation Law sections 54 and 226.

(b) The Executive Order modified Insurance Law sections 3203 and 4510 to extend the grace period for the payment of premiums and fees to 90 days for any life policyholder facing a financial hardship as a result of the COVID-19 pandemic.

(c) The Executive Order modified Insurance Law sections 3203, 3219, and 3220 to provide a life policyholder with 90 days to exercise rights or benefits under the applicable life insurance policy or annuity contract for any life policyholder who is unable to exercise rights or benefits timely as a result of the COVID-19 pandemic.

(d) The Executive Order modified Insurance Law section 1116; Insurance Law articles 34, 53, 54, and 55; and Workers' Compensation Law sections 54 and 226 to impose a moratorium on an insurer, other than a life insurer, cancelling, non-renewing, or conditionally renewing any property/casualty insurance policy issued to a property/casualty policyholder for a period of 60 days, for any property/casualty policyholder facing financial hardship as a result of the COVID-19 pandemic.

(e) This Part is promulgated pursuant to the Executive Order.

Section 229.2. Definitions

(a) *Credit reporting agency* means a reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing credit reports to third parties bearing on a person's credit worthiness, credit standing, or credit capacity, and credit account information from persons who furnish that information regularly and in the ordinary course of business.

(b) *COVID-19* means the coronavirus disease 2019.

(c) *Debt collection agency* has the meaning set forth in General Business Law section 600.

(d) *Executive Order* means Executive Order 202.13, as extended.

(e) *Insurer* means a life insurer and an insurer that writes a property/casualty insurance policy, including an unauthorized insurer that sells insurance through a licensed excess lines broker and is subject to Insurance Law article 34.

(f) *Late fee* means a fee associated with an insurance premium payment that is made at a time later than the premium due date, but prior to both insurance policy or contract cancellation and the time in which an insurer may reject premium payment.

(g) *Life insurer* means an insurer authorized to write life insurance or annuities and an authorized fraternal benefit society.

(h) *Life policyholder* means the person to whom a life insurance policy, annuity contract, or fraternal benefit society certificate is issued, including a certificate holder under a group insurance policy or annuity contract.

(i) *Person* means an individual or business entity.

(j) *Policyholder* means a life policyholder or a property policyholder.

(k) *Premium finance agency* has the meaning set forth in Banking Law section 576(3)(a).

(l) *Premium finance agreement* has the meaning set forth in Banking Law section 576(3)(b).

(m) *Prior regulation* means the Part 229 of this Title that was in effect between March 30, 2020 and June 28, 2020.

(n) *Property/casualty insurance policy* means an insurance policy that provides a kind of insurance set forth in Insurance Law section 1113(a)(16), (17), (20), (21), (24), (26), or (30) or that is subject to Insurance Law section 1116 or articles 34, 53, 54, or 55 or Workers' Compensation Law section 54 or 226.

(o) *Property policyholder* means the individual or small business to whom a property/casualty insurance policy is issued, including a certificate holder under a group insurance policy.

(p) *Small business* means any business that is resident in this State, is independently owned and operated, and employs 100 or fewer individuals.

Section 229.3. Extension of grace periods for group life insurance policies and certificates

A life insurer shall extend to 90 days the applicable grace periods for the payment of premiums and fees set forth in group life insurance policies and certificates, for any life policyholder who demonstrates financial hardship as a result of the COVID-19 pandemic.

Section 229.4. Prohibited practices

With regard to a policyholder who does not make a timely premium payment and can demonstrate financial hardship as a result of the COVID-19 pandemic, an insurer shall not:

(a) impose any late fees relating to such premium payment; or

(b) report the policyholder to a credit reporting agency or refer the policyholder to a debt collection agency with respect to such premium payment.

Section 229.5. Premium repayment, demonstration of financial hardship, and voluntary cancellation

(a) An insurer shall permit a policyholder who did not make a timely premium payment due to financial hardship as a result of the COVID-19 pandemic, including a policyholder to whom the insurer issued a non-payment cancellation notice prior to the effective date of the Executive Order, and who can still demonstrate financial hardship as a result of the COVID-19 pandemic, to pay such premium over a 12-month period.

(b) Solely for the purposes of this Part, an insurer shall accept a written attestation from a policyholder as proof of financial hardship as a result of the COVID-19 pandemic.

(c) Nothing herein shall entitle a policyholder who demonstrated a financial hardship as a result of the COVID-19 pandemic and either received a moratorium for a specific policy or obtained relief for an amount due under the prior regulation, to obtain under the Executive Order and this Part an additional moratorium for a specific policy or further relief for an amount that comes due while this Part is in effect.

(d) Nothing shall prohibit a policyholder from voluntarily cancelling an insurance policy or annuity contract.

Section 229.6. Premium finance agency cancellation; return of unearned premium

(a) In the case of a property/casualty insurance policy where the property policyholder does not make the first installment payment to the premium finance agency after the conclusion of the 60-day period described in section 405.6(b)(1) of Part 405 of Title 3 and the premium finance agency cancels the property/casualty insurance policy based on such nonpayment at any time prior to the next succeeding installment payment, the insurer, other than a life insurer, shall return to the premium finance agency for the benefit of the property policyholder, in accordance with the terms of the property/casualty insurance policy but no later than 60 days after the effective date of such cancellation, the gross unearned premiums that are due under the property/casualty insurance policy on a pro rata basis, calculated as if the property/casualty insurance policy had been canceled 60 days prior to the effective date of such cancellation.

(b) Nothing in this section shall constitute the provision of free insurance in violation of Insurance Law section 2324 or a deviation from filed rates in violation of Insurance Law section 2314.

A new Section 405.6 is added to Title 3 as follows:

Section 405.6. No cancellation for financial hardship; prohibited practices

(a) This section is promulgated pursuant to the Executive Order.

(b)(1) When a premium finance agreement contains a power of attorney or other authority enabling the premium finance agency to cancel any insurance contract or contracts listed in the agreement, and an insured does not make an installment payment, the premium finance agency shall not cancel the insurance contract or contracts for a period of at least 60 days, including any contractual grace period, for a property/casualty insurance contract or for a period of at least 90 days, including any contractual grace period, for an insurance contract providing life insurance, if the insured can demonstrate financial hardship as a result of the COVID-19 pandemic, and subject to the safety and soundness of the premium finance agency.

(2) With regard to an insured who does not make a timely installment payment to the premium finance agency and can demonstrate financial hardship as a result of the COVID-19 pandemic, a premium finance agency:

(i) shall extend the due date for such installment payment by at least 60 days for a property/casualty insurance contract and at least 90 days for an insurance contract providing life insurance, and shall not impose any late fees relating to such installment payment; and

(ii) shall not report the insured to a credit reporting agency or refer the insured to a debt collection agency with respect to such installment payment.

(3) A premium finance agency shall, subject to the safety and soundness of the premium finance agency, permit an insured who did not make a timely installment payment to the premium finance agency due to financial hardship as a result of the COVID-19 pandemic, including an insured to whom the premium finance agency issued a non-payment cancellation notice prior to the effective date of the Executive Order, and who can still demonstrate financial hardship as a result of the COVID-19 pandemic, to pay such installment payment over a 12-month period.

(4) In the case of a property/casualty insurance contract where the property insured does not make the first installment payment to the premium finance agency after the conclusion of the 60-day period described in paragraph (1) of this subdivision and the premium finance agency cancels the property/casualty insurance contract based on such nonpayment at any time prior to the next succeeding installment payment, the property/casualty insurer shall return to the premium finance agency for the benefit of the property insured, in accordance with the terms of the property/casualty insurance contract but no later than 60 days after the effective date of such cancellation, the gross unearned premiums that are due under the property/casualty insurance contract on a pro rata basis, calculated as if the property/casualty insurance contract had been canceled 60 days prior to the effective date of such cancellation.

(c) Solely for the purposes of this section, a premium finance agency shall accept a written attestation from an insured as proof of financial hardship as a result of the COVID-19 pandemic.

(d) Nothing herein shall entitle an insured who demonstrated a financial hardship as a result of the COVID-19 pandemic and already obtained relief for an amount due under the prior regulation, to obtain under the Executive Order and this section further relief for an amount that comes due while this section is in effect.

(e) Nothing shall prohibit an insured from exercising any right the insured has to voluntarily cancel an insurance contract.

(f) This section shall not apply to a settled policy.

(g) For the purpose of this section:

(1) *Credit reporting agency* means a reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing credit reports to third parties bearing on a person's credit worthiness, credit standing, or credit capacity, and credit account information from persons who furnish that information regularly and in the ordinary course of business.

(2) *COVID-19* means the coronavirus disease 2019.

(3) *Debt collection agency* has the meaning set forth in General Business Law section 600.

(4) *Executive Order* means Executive Order 202.13, as extended.

(5) *Insurance producer* has the meaning set forth in Insurance Law section 2101(k).

(6) *Insured* means a life insured or a property insured.

(7) *Insurer* means a life insurer and an insurer that writes a property/casualty insurance contract, including an unauthorized insurer that sells insurance through a licensed excess lines broker and is subject to Insurance Law article 34.

(8) *Late fee* means a fee associated with an installment payment to a premium finance agency that is made at a time later than the installment payment due date, but prior to both insurance contract cancellation and the time in which a premium finance agency may reject the installment payment.

(9) *Life insured* means the person to whom a life insurance policy, annuity contract, or fraternal benefit society certificate is issued, including a certificate holder under a group insurance policy or annuity contract.

(10) *Life insurer* means an insurer authorized to write life insurance or annuities and an authorized fraternal benefit society.

(11) *Person* means an individual or business entity.

(12) *Prior regulation* means the section 405.6 of this Part that was in effect between March 30, 2020 and June 28, 2020.

(13) *Property/casualty insurance contract* means an insurance contract that provides a kind of insurance set forth in Insurance Law section 1113(a)(16), (17), (20), (21), (24), (26), or (30) or that is subject to Insurance Law section 1116 or articles 34, 53, 54, or 55 or Workers' Compensation Law section 54 or 226.

(14) *Property insured* means the individual or small business to whom a property/casualty insurance contract is issued, including a certificate holder under a group insurance contract.

(15) *Settled policy* has the meaning set forth in Insurance Law section 7802(t).

(16) *Small business* means any business that is resident in this State, is independently owned and operated, and employs 100 or fewer individuals.

NEW YORK STATE OF OPPORTUNITY.
Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

CERTIFICATION

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is an amendment to Part 405 of the Superintendent's Regulations, Title 3, the Third Amendment to Part 185 (Insurance Regulation 27-A), Third Amendment to Part 187 (Insurance Regulation 27-C), and addition of new Part 229 (Insurance Regulation 216) to Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, signed by me on June 28, 2020, pursuant to the authority granted by Executive Law Section 29-a; Executive Order No. 202.13, dated March 29, 2020 and as extended thereafter, promulgated thereunder; Financial Services Law Sections 202 and 302; Insurance Law Sections 301, 1116, 3203, 3219, 3220, 4216, 4235, and 4510 and Articles 21, 34, 53, 54, and 55; Banking Law Sections 561 and 576; and Workers Compensation Law Sections 54 and 226, to take effect upon filing of the Notice of Emergency Adoption with the Secretary of State of New York.

Pursuant to Section 202(6) of the State Administrative Procedure Act, this consolidated rulemaking is being promulgated as an emergency measure. A statement of the specific reasons for the finding of the need for emergency action is attached.

Linda A. Lacewell
Superintendent of Financial Services

Date: June 28, 2020

Statement of the Reasons for the Adoption of Emergency Measure

Consolidated Rulemaking Amending 3 NYCRR 405, 11 NYCRR 185 (Insurance Regulation 27-A) and 11 NYCRR 187 (Insurance Regulation 27-C) and Adding New 11 NYCRR 229 (Insurance Regulation 216)

On March 7, 2020, Governor Andrew M. Cuomo issued Executive Order Number 202 declaring a disaster emergency in the State of New York in response to the novel coronavirus ("COVID-19") pandemic. This unprecedented crisis has caused individuals and businesses a sizeable disruption to their everyday lives and operations, and a considerable economic impact around the globe. As businesses across New York have decreased their workforces or closed, individuals and businesses have struggled to continue to pay insurance premiums on time for their insurance policies or annuity contracts. As a result, the Governor issued Executive Order 202.13 on March 29, 2020, which he has extended, to extend life insurance and annuity contract premium grace periods and time frames to exercise rights and benefits under life insurance policies, and to prohibit the cancellation, non-renewal, or conditional renewal of certain property/casualty insurance policies.

This emergency consolidated rulemaking implements the Governor's Executive Order by providing certain relief to policyholders, contract holders, and insureds (collectively, "insureds") who can demonstrate financial hardship as a result of the COVID-19 pandemic, such as: (1) amending 11 NYCRR section 185.7(m)(4) and 11 NYCRR section 187.6(f)(4) to provide that premium remitted by a creditor will be assumed to provide coverage under a credit life or credit unemployment insurance policy for those insured debtors whose payments are not more than three months overdue, regardless of whether the debtor has paid a charge for such three months' coverage; (2) adding a new Part 229 to 11 NYCRR to provide certain protections to insureds who do not make a timely premium payment to a life insurer, property/casualty insurer, or fraternal benefit society, such as an extension of a grace period for the payment of premium and fees set forth in a group life insurance policy or certificate, protection from late payment fees, a prohibition against referral to a credit reporting agency or debt collection agency, and an extension of one year to pay overdue premiums or fees; and (3) adding a new Section 405.6 to 3 NYCRR to, among other things, prohibit any PFA from canceling an insurance policy due to an insured's failure to make a timely installment payment, for a period of at least 60 days, including any contractual grace period, for a property/casualty insurance policy or for a period of at least 90 days, including any contractual grace period, for a life insurance policy, if the insured can demonstrate financial hardship as a result of the COVID-19 pandemic, and subject to the safety and soundness of the PFA.

To help ease the extensive economic burden brought about by the COVID-19 pandemic, and in compliance with EO 202.13 and extensions thereafter, it is imperative that the Superintendent promulgate this emergency measure for the public's general welfare.

Linda A. Lacewell
Superintendent of Financial Services

Dated: June 28, 2020