

Regulatory Impact Statement for the Addition of New Part 119 to 3 NYCRR

1. Statutory authority: Banking Law (or “BL”) Sections 10, 11, 14, 39(2) and 590; Executive Law Section 29-a; Executive Order No. 202.9, dated March 21, 2020, promulgated thereunder; and Financial Services Law (or “FSL”) Sections 202 and 302.

BL Section 10 sets forth a declaration of policy, including that banking institutions will be regulated in a manner to insure safe and sound conduct and maintain public confidence.

BL Section 11 sets forth that the Department is charged with the execution of the laws relating to entities regulated under the Banking Law.

BL Section 14 references, without limitation, the policy of BL Section 10 and sets forth certain powers of the Superintendent of Financial Services (“Superintendent”) under the Banking Law, including the power to “make, alter and amend orders, rules and regulations not inconsistent with law” and, under certain enumerated circumstances, to “make variations from the requirements” of the Banking Law, provided such variations are “in harmony with the spirit of the law.”

BL Section 39 (2) provides that the Superintendent is empowered “[t]o discontinue unauthorized or unsafe and unsound practices. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed cashier of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business in this state is conducting business in an unauthorized or unsafe and unsound manner, he or she may, in his or her discretion, issue an order directing the discontinuance of such unauthorized or unsafe and unsound practices . . .”

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008), creates a framework for the regulation of mortgage loan servicers. That legislation also authorizes the adoption of regulations implementing its provisions, e.g., Banking Law Section 590(2)(b-1).

Executive Law Section 29-a governs the temporary suspension of state laws by executive order during state disaster emergencies, under which Governor Andrew M. Cuomo issued Executive Order 202.9 on March 21, 2020 that, among other things, directs the Superintendent to issue emergency regulations in conformance with the Executive Order.

FSL Section 202 establishes the office of the Superintendent of Financial Services and provides the Superintendent with broad rights, powers, duties and discretion with respect to matters under the Financial Services Law, the Banking Law, and the Insurance Law.

FSL Section 302 sets forth the power of the Superintendent to prescribe, withdraw or amend rules and regulations involving financial products and services, including in effectuating and interpreting the provisions of the Financial Services Law, the Banking Law, and the Insurance Law, and in governing the procedures to be followed in the practice of the Department.

2. Legislative objectives: The Legislature granted the Governor broad powers to take necessary action in cases of extreme emergency that threaten the health, safety and general welfare of New Yorkers. Specifically, Executive Law section 29-a authorizes the Governor to temporarily suspend or modify statutes, rules and regulations, or parts thereof, during a State disaster emergency. Governor Andrew M. Cuomo did so when issuing Executive Order 202.9 on March 21, 2020. This emergency banking regulation implements the Governor's Executive Order.

3. Needs and benefits: These measures are critical to help New Yorkers stay home and practice social distancing throughout the duration of this crisis, and to limit the impact on the State's economy. The regulation

calls for regulated entities to grant forbearances on mortgage, personal and business loans for the duration of the emergency measure. It also calls for banks to waive all out-of-network ATM fees, overdraft fees and penalty fees for late payments. The Department believes this action is necessary to keep the local economy functioning in the short term while a majority of people cannot go to work in New York, many of which are not being paid by their employers or have become unemployed as a result of the COVID-19 crisis.

4. Costs: The regulation will impose significant short term burdens on regulated entities. This is an unavoidable consequence of the forbearances contemplated. However, the Department believes that the regulation will prevent a wave of insolvencies and bankruptcies by debtors and support consumer demand in the short term. These measures should make it easier for the local economy to recover once the worst part of the COVID-19 crisis abates. The long term costs substantially depend upon the duration of the medical crisis, the length of the quarantine period requiring social distancing and stay at home measures, and the number of deaths and serious illnesses suffered by New Yorkers. The short term and long term costs are not calculable at this time.

The regulation will not impose significant costs on the state government or the Department. The Department may need to incur some overtime costs to render advice to regulated industries and to enforce the provisions of the regulation.

5. Local government mandates: This regulation will impose no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The regulation requires new reporting by regulated entities on their plans for COVID-19 relief measures. Regulated entities must also send special notices to delinquent borrowers and promptly process requests for assistance. While these measures temporarily impose greater paperwork requirements, they do not impose greater long term requirements.

7. Duplication: This rule does not duplicate or conflict with any existing state or federal rules or other legal requirements. This regulation operates in parallel with directives issued by the federal Department of Housing and Urban Development, Fannie Mae and Freddie Mac concerning mortgage forbearances. The Department will strive to harmonize its efforts with the federal government and government sponsored enterprises that originate, purchase, securitize and service residential mortgage loans.

8. Alternatives: There are no viable alternatives to this regulation. Without the Governor's Executive Order and this regulation, many residents would be pushed into default on their debts very quickly. A wave of insolvencies and bankruptcies would further disrupt economic recovery, which would not be in the long term best interest of financial institutions.

9. Federal standards: There are no federal standards that conflict with this regulation. The federal government and its instrumentalities are issuing comparable emergency orders and forbearance directives that parallel the efforts of the New York state government.

10. Compliance schedule: The rule will take effect immediately upon filing of the Notice of Emergency Adoption with the Secretary of State.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for the Addition of New Part 119 to 3 NYCRR

1. Effect of the Rule: The regulation applies to regulated entities only. To the extent that a regulated entity is a small business, it is operating in a highly regulated environment and must be adequately prepared to comply with the emergency regulation. The regulation will not have any impact on local governments.

2. Compliance Requirements: The regulation requires regulated institutions to develop policies and procedures to establish forms of COVID-19 relief that will be made available to people demonstrating financial hardship from the COVID-19 pandemic, the manner in which information about the availability of such relief will be communicated to the regulated institution's customers, the method by which people may apply for COVID-19 relief, the criteria that regulated institutions will use to assess whether to grant COVID-19 relief, and the time frame within which such applications will be processed. Regulated institutions must make applications widely available to their customers and must grant the requested relief in all reasonable and prudent circumstances during the period of the state emergency stemming from the COVID-19 pandemic.

3. Professional Services: Regulated institutions may need additional professional services to comply with the requirements of this regulation. The processing of customer applications may require additional temporary staffing and long term oversight and related documentation.

4. Compliance Costs: The Department cannot estimate the total short term and long term costs for a regulated institution that may be a small business in a systematic manner, although the Department expects that costs may be substantial. Regulated entities will be subject to additional direct costs due to the regulation's requirements to develop policies and procedures related to the forbearance on mortgages, personal and business loans, waiver of out-of-network ATM fees, overdraft fees and penalty fees for late payments, and the means by which their customers may apply for such relief. In addition, the mortgage and loan forbearance and fee waiver requirements require regulated institutions to delay or forego certain income. Pursuant to industry guidance

released on March 10, 2020 that is posted on the Department's website, the Department will consult with financial institutions concerning their liquidity and financial risks arising from the COVID crisis, and the Department accepts that their resources are not unlimited. The Department understands that our smaller institutions have fewer resources than our larger institutions.

5. Economic and Technological Feasibility: As noted above, the Department understands that these requirements can place financial institutions under greater financial stress. The new application and recordkeeping requirements are also a technological challenge. It will be difficult to adjust computer systems during the COVID crisis. The Department will consult with the industry as the challenges arise and try to address such challenges.

6. Minimizing Adverse Impacts: There are no viable alternatives to this regulation. Without the Governor's emergency order and this regulation, many residents would be pushed into default on their debts very quickly. A wave of insolvencies and bankruptcies would further disrupt economic recovery, which would not be in the long term best interest of financial institutions. The Department can only evaluate the stress placed on financial institutions as they communicate and inform the Department of their circumstances.

7. Small Business and Local Government Participation: Regulated institutions that are small businesses will have an opportunity to participate in the rulemaking process when the amendment is published in the State Register and posted on the Department's website.

Rural Area Flexibility Analysis for the Addition of New Part 119 to 3 NYCRR

1. Types and estimated numbers of rural areas: Financial institutions subject to this emergency measure operate in every county in this State, including rural areas as defined by State Administrative Procedure Act section 102(10).

2. Reporting, recordkeeping, and other compliance requirements; and professional services: The regulation requires regulated institutions to develop policies and procedures to establish forms of COVID-19 relief that will be made available to people demonstrating financial hardship from the COVID-19 pandemic, the manner in which information about the availability of such relief will be communicated to the regulated institution's customers, the method by which people may apply for COVID-19 relief, the criteria that regulated institutions will use to assess whether to grant COVID-19 relief, and the time frame within which such applications will be processed. Regulated institutions must make applications widely available to their customers and shall grant the requested relief in all reasonable and prudent circumstances during the period of the State emergency stemming from the COVID-19 pandemic.

This emergency measure also requires regulated institutions to maintain copies of all files relating to their implementation of this regulation for a period of seven years and to make such files available for inspection at the Department's next examination of the regulated institution.

3. Costs: Regulated entities will be subject to additional direct costs due to the rulemaking's requirements to develop policies and procedures related to the forbearance on mortgages, personal and business loans, waiver of out-of-network ATM fees, overdraft fees and penalty fees for late payments, and the means by which their customers may apply for such relief. In addition, the mortgage and loan forbearance and fee waiver requirements require regulated institutions to delay or forego certain income. However, these measures are critical to help New Yorkers stay home and practice social distancing throughout the duration of this crisis, and to limit its impact on the State's economy.

4. Minimizing adverse impact: This amendment uniformly affects regulated institutions that are located in both rural and non-rural areas of New York State.

5. Rural area participation: Regulated institutions in rural areas will have an opportunity to participate in the rulemaking process when the emergency regulation is published in the State Register and posted on the Department's website.

Statement Setting Forth the Basis for the Finding that the Addition of New Part 119 to 3 NYCRR Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

This emergency measure should not adversely affect jobs or employment opportunities in New York State.

The regulation establishes standards and procedures that regulated institutions must follow in weighing whether to provide relief to their customers consistent with Executive Order 202.9, signed by Governor Andrew M. Cuomo on March 21, 2020, and safe and sound practices pursuant to Banking Law section 39(2). These measures are critical to help New Yorkers stay home and practice social distancing throughout the duration of this crisis, and to limit the impact on the State's economy. The regulation calls for regulated entities to grant forbearances on mortgage, personal and business loans for the duration of the emergency measure. It also calls for banks to waive all out-of-network ATM fees, overdraft fees and penalty fees for late payments.

Therefore, the amendment should not cause any adverse impact on jobs or employment opportunities, and should provide significant relief to businesses and individuals during this extraordinary health crisis.