NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

NEW PART 119 TO 3 NYCRR

EMERGENCY RELIEF FOR NEW YORKERS WHO CAN DEMONSTRATE FINANCIAL HARDSHIP AS A RESULT OF COVID-19

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Executive Law 29-a and Executive Order No. 202.9, dated March 21, 2020, promulgated thereunder, Sections 202 and 302 of the Financial Services Law, Sections 10, 11, 14, 39(2), and 590 of the Banking Law, do hereby promulgate Part 119 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon the filing of the Notice of Emergency Adoption with the Secretary of State, to read as follows:

(ALL MATERIAL IS NEW)

A new Part 119 is added to 3 NYCRR to read as follows:

§ 119.1 Statement of Purpose

By Executive Order No. 202, issued March 7, 2020, Governor Andrew M. Cuomo declared a disaster emergency in the State of New York in response to the outbreak of COVID-19. COVID-19 presents a public health crisis and economic challenge to the State unprecedented in modern history. Responding to COVID-19 requires a coordinated effort by all New Yorkers. For many, COVID-19 presents an unexpected hardship that will strain their limited resources. The measures responsive to the disaster emergency, required to protect the health and safety of New Yorkers, limit the ability of many people to earn a livelihood. In recognition of the adversity many will face, Governor Cuomo issued, on March 21, 2020, Executive Order 202.9, directing institutions regulated by the Department of Financial Services (the "Department") to provide, under reasonable and prudent circumstances, financial relief to consumers in New York experiencing a financial hardship due to the COVID-19 pandemic.

The aim of Executive Order 202.9 and this regulation is to provide certain financial relief during this pandemic to those who can demonstrate a financial hardship as a result of the COVID-19 pandemic, subject to the safety and soundness of the regulated institutions. This regulation establishes standards and procedures that regulated institutions must follow in their review of requests for relief and determinations to provide financial relief to those experiencing financial hardship, consistent with the purposes of Executive Order 202.9, this regulation, and the safe and sound practices of the regulated institutions. Such relief is critical to help individuals and to limit the impact of this pandemic on the State's welfare and economy.

§ 119.2 Definitions

(a) *COVID-19 relief* means certain financial relief provided by a New York regulated institution under the terms of this regulation pursuant to Executive Order 202.9.

(b) *COVID-19 pandemic* means the global outbreak of COVID-19, the disease caused by the novel coronavirus first identified in Wuhan, China, in or about December 2019, that has been detected in increasing numbers in the United States, including the State of New York.

(c) *Regulated institution* means 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.

§ 119.3 COVID-19 Relief Program

(a) Pursuant to Executive Order 202.9 and for the duration specified therein, which may be extended, New York regulated institutions are required to, in addition to adhering to the servicing requirements of Part 419, (i) make applications for forbearance of any payment due on a residential mortgage of a property located in New York, widely available to any individual who resides in New York and who demonstrates financial hardship as a result of the COVID-19 pandemic; and (ii) subject to the safety and soundness requirements of the regulated institution, grant such forbearance for a period of ninety (90) days to any such individual.

Notwithstanding anything else to the contrary herein, this regulation is not applicable to, and does not affect any 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.

(b) Pursuant to Executive Order 202.9 and for the duration specified therein, which may be extended, New York regulated banking organizations will provide the following financial relief to any individual who can demonstrate financial hardship from COVID-19, subject to the safety and soundness requirements of the regulated banking organization:

(1) Eliminating fees charged for the use of automated teller machines ("ATMs") that are owned or operated by the regulated banking organization;

(2) Eliminating any overdraft fees; and

(3) Eliminating any credit card late payment fees.

Regulated institutions are not limited to offering the types of relief listed above. Regulated institutions are encouraged, consistent with safe and sound banking practices, to take additional reasonable and prudent actions to assist individuals demonstrating financial hardship as a result of the COVID-19 pandemic in any manner they deem appropriate.

(c) As soon as reasonably practicable, and in no event not later than ten (10) business days following the promulgation of this regulation, all regulated institutions shall e-mail, publish on their website, mass mail, or otherwise similarly broadly communicate to customers how to apply for COVID-19 relief and provide their contact information.

(d) Qualifications to Receive COVID-19 Relief:

(1) The criteria developed by regulated institutions for individuals to qualify for COVID-19 relief shall be clear, easy to understand, and reasonably tailored to the requirements of the regulated institution 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.

(2) If a regulated institution receives an application for COVID-19 relief that omits any information that the institution reasonably needs to process the application, the institution shall promptly communicate to the applicant the nature of the missing information and how it can be provided to the institution.

(e) Processing Applications for COVID-19 Relief:

(1) Regulated institutions shall process and respond to requests for COVID-19 relief immediately, and in no event not later than ten (10) business days after the regulated institution receives all information it reasonably requires to process the application.

(2) Regulated institutions shall develop and implement procedures for the expedited processing of applications for COVID-19 relief for any individual who reasonably establishes an exigent circumstance and requests the expedited processing of the individual's application.

(3) All determinations on applications for COVID-19 relief shall be communicated to the applicant in writing where reasonably feasible and warranted, and shall state whether the regulated institution granted the application and, if the application was granted, what, if anything, the applicant needs to do to secure the relief or, if the application was denied, the reason it was denied and a statement that the applicant may file a complaint with the New York State Department of Financial Services at 1-800-342-3736 or http://www.dfs.ny.gov if the applicant believes the application was wrongly denied.

(f) Pursuant to the terms of Executive Order 202.9, Section 39 of the Banking Law was modified to provide that it shall be an unsafe and unsound business practice if, in response to the COVID-19 pandemic, any regulated institution shall 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 a forbearance and demonstrated a financial hardship as a result of the COVID-19 pandemic, as described herein. In assessing whether a regulated institution has engaged in an unsafe or unsound practice by denying an application for such a forbearance, the Department will consider the adequacy of the process established by the regulated institution to process such forbearance applications, the thoroughness of the review afforded to the application, the payment history, creditworthiness, and the financial resources of the borrower, the application of any state and federal laws or regulations that would prohibit the grant of a forbearance, as well as the safety and soundness requirements of the regulated institution.

(g) During examinations, the Department's examiners will not criticize in their examinations prudent and reasonable efforts to grant forbearance of any payment due on a residential mortgage pursuant to this regulation and consistent with safe and sound practices.

(h) Regulated institutions are directed to maintain copies of all files relating to their implementation of this regulation for a period of seven (7) years from the date of creation and to make such files available for inspection at the Department's next examination of the regulated institution.

(i) Regulated institutions are encouraged to seek guidance from the Department with respect to notices, communications, application processes, reviews and any other provisions of this regulation.

(j) To the extent there are any inconsistencies between this regulation and either of the two following Guidance Letters issued by the Department on March 19, 2020, this regulation shall prevail: (i) "Guidance to New York State Regulated and Exempt Mortgage Servicers Regarding Support for Borrowers Impacted by the Novel Coronavirus (COVID-19)," and (ii) "Guidance to New York State Regulated Financial Institutions Regarding Support for Consumers and Businesses Impacted by the Novel Coronavirus (COVID-19)."

(k) For the sake of clarity, this regulation does not apply to any commercial mortgage or any other loans not described herein.

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 attached new Part 119 of the General Regulations of the Superintendent, Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is duly authorized by me, pursuant to the authority granted by Executive Law 29-a, Executive Order No. 202.9, dated March 21, 2020, promulgated thereunder, Sections 202 and 302 of the Financial Services Law, and Sections 10, 11, 14, 39(2), and 590 of the Banking Law, 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 amendment is being promulgated as an emergency measure for the preservation of the general welfare. A statement of the specific reasons for the finding of the need for emergency action is attached.

Linda A. Lacewell
Superintendent of Financial Services

March 24, 2020

Statement of the Reasons for the Adoption of Emergency Measure
Part 119 of the Superintendent's Regulations, 3 NYCRR

By Executive Order No. 202, issued March 7, 2020, Governor Andrew M. Cuomo declared a disaster emergency in the State of New York in response to the outbreak of COVID-19. COVID-19 presents a public health and economic challenge to the State unprecedented in modern history. Responding to COVID-19 requires a coordinated effort by all New Yorkers. For many, COVID-19 presents an unexpected hardship that will strain their limited resources, as measures responsive to the disaster emergency required to protect the health and safety of New Yorkers limit the ability of many people to earn a livelihood. In recognition of the adversity many will face, Governor Cuomo issued, on March 21, 2020, Executive Order 202.9, directing entities regulated by the Department of Financial Services (the "Department") to provide reasonable and prudent financial relief to consumers in New York and facing a financial hardship due to the COVID-19 pandemic.

The aim of Executive Order 202.9 and this regulation is to provide certain financial relief during this pandemic to those who can demonstrate a financial hardship as result of the COVID-19 pandemic, subject to the safety and soundness of the regulated institutions. This regulation establishes standards and procedures that regulated institutions must follow in their review of requests for relief and determinations to provide financial relief to those experiencing financial hardship, consistent with the purposes of Executive Order 202.9, this regulation, and the safe and sound practices of the regulated institutions pursuant. These measures are critical to help individuals and to limit the impact of this pandemic on the State's welfare and economy.

The Department believes ninety (90) days will initially be sufficient to provide New Yorkers with emergency forbearances. If faced with a longer emergency, the Department will renew this emergency regulation.

Accordingly, it is imperative that this new Part 119 of the General Regulations of the Superintendent be promulgated on an emergency basis for the public's general welfare.

Linda A. Lacewell
Superintendent of Financial Services

Dated: March 24, 2020