

Emergency Requirements for Residential Mortgage Forbearance and Elimination of Fees

On March 24, 2020, the New York State Department of Financial Services issued an emergency regulation detailing the requirements applicable to New York State regulated institutions to provide certain financial relief during the disaster emergency to those individuals who can demonstrate financial hardship as a result of the COVID-19 pandemic, consistent with the safe and sound practices of the financial institution. This regulation was issued in furtherance of Executive Order 202.9, which was the subject of an Information Memo issued on March 24, 2020.

The regulation requires all New York State regulated institutions to email, publish on the institution's website, mass mail or otherwise provide a broad communication to customers explaining the process to apply for COVID-19 relief, and also provide the institution's contact information by April 7, 2020.

The regulation further requires all New York State regulated banking organizations as defined under New York Banking Law, including state chartered banks, credit unions and thrifts, and any New York licensed mortgage servicer to provide the following relief, subject to certain exceptions:

1. Make applications for forbearance of any payment due on a residential mortgage secured by property located in New York widely available to any individual residing in New York and demonstrating financial hardship due to the COVID-19 pandemic; and
2. Grant this forbearance for a period of 90 days to any such individual demonstrating financial hardship, subject to the safety and soundness requirements of the regulated institution.

The regulation also requires New York State banking organizations to provide the following relief to any individual demonstrating financial hardship as a result of COVID-19, subject to the safety and soundness requirements of the regulated banking organization:

1. Eliminate any fees charged for the use of ATM machines owned or operated by the regulated entity;
2. Eliminate any overdraft fees; and
3. Eliminate any late payment fees for credit cards.

In addition to the relief listed above, regulated institutions are encouraged to take additional prudent and reasonable actions to assist individuals demonstrating financial hardship as a result of the COVID-19 pandemic in any manner deemed appropriate, subject to safe and sound banking practices.

Regulated institutions must process and respond to requests for COVID-19 relief immediately but not later than 10 business days after the institution receives all the information reasonably required to process the application. Regulated institutions must also develop and implement procedures for the expedited processing of applications for COVID-19 relief for any individual that requests expedited processing of the application and can reasonably establish an "exigent circumstance." The regulation does not provide any criteria to determine whether an exigent circumstance exists.

All determinations for COVID-19 relief must be communicated to the applicant in writing where reasonably feasible and warranted. The communication is required to state whether the application was granted, and if so, any additional steps the applicant needs to take to obtain the COVID-19 relief. If the application was denied, the institution must communicate the reason for the denial 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 www.dfs.ny.gov if the applicant believes the application was wrongly denied.

As discussed above, the regulation applies to residential mortgage loans. This regulation does not apply to commercial mortgages or other types of loans.

The attorneys at Bond, Schoeneck and King are available to assist your institution in complying with the requirements of this new regulation, including preparing appropriate COVID-19 communications, and establishing policies and procedures related to COVID-19 relief applications. Please contact [Dori K. Bailey](#), chair of the [Financial Institutions Regulatory Practice](#), for further assistance.



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