

New York State Emergency Regulation Requiring Certain Relief to Banking Customers Impacted by Covid-19 Has Effectively Been Terminated by New Executive Order

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The New York State emergency banking regulation adopted in March requiring state-chartered institutions to grant certain relief to customers impacted by Covid-19 has effectively been terminated by a recent Executive Order issued by Governor Andrew Cuomo. However, the requirement to provide forbearances on certain residential mortgage loans is still applicable pursuant to the enactment of Banking Law Section 9-x in June.

The New York State Department of Financial Services (“DFS”) adopted Emergency Regulation Part 119 on March 24, 2020 (“Part 119”) pursuant to a directive in Governor Cuomo’s Executive Order 202.9 (“EO 202.9”). Part 119 required regulated institutions^[1] to grant a forbearance on residential mortgage loans for 90 days and to eliminate overdraft fees, credit card late payment fees and certain ATM fees to any individual who demonstrates a financial hardship as a result of the COVID-19 pandemic. Our advisory on Part 119 can be found [here](#). Part 119 stated that it was effective for the duration of EO 202.9.

On July 6, 2020, Governor Cuomo signed Executive Order 202.48 (“EO 202.48”) which extends several prior Covid-19 executive orders and ends certain directives in other executive orders. EO 202.48 ends the change to Banking Law 39(2), which had temporarily provided that it is an unsafe and unsound business practice for any bank subject to the jurisdiction of DFS to refuse to grant a mortgage forbearance to any person or business who has a financial hardship as a result of the COVID-19 pandemic. In addition, EO 202.48 ends “all other directives contained in Executive Order 202.9.” As EO 202.9 contained the directive for adoption of Part 119, this has effectively terminated Part 119. DFS has yet to take any formal action to rescind Part 119 or publicly confirm its termination, but hopefully the agency will do so shortly to eliminate any confusion concerning the regulation.

The main impact of this change for regulated institutions is that they are no longer required to eliminate overdraft fees, credit card late payment fees and certain ATM fees to individuals who demonstrate financial hardship as a result of the COVID-19 pandemic. Although the requirement to provide a mortgage forbearance to certain borrowers pursuant to Part 119 has also been terminated, that requirement is now codified in Banking Law Section 9-x enacted on June 17, 2020. Our advisory on Banking Law Section 9-x can be found [here](#).

If you have any questions regarding this matter, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

Please note that this is a general overview of the issues addressed and does not constitute legal advice.

Footnote

[1] 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 DFS.

Practices

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