

New York Department of Financial Services Clarifies Executive Order on Consumer Forbearance

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Last week, we [reported](#) on Executive Order No. 202.9 issued by Governor Cuomo, and some of the important questions posed by that Executive Order. We suggested that the implementing regulations by the NYS Department of Financial Services (the “DFS”) would likely clarify these points, and this has turned out to be the case.

On March 24, implementing regulations were released by the Superintendent of Financial Services, Linda A. Lacewell, establishing a new Part 119 to be added to Title 3 of the Official compilation of Codes, Rules and Regulations of the State of New York. [The regulations](#), by their terms, focus on parts 2 and 3 of the Executive Order, providing for:

- (i) forbearance procedures with respect to individuals who are residents in NY and owe payments on residential mortgages of properties located in New York; and
- (ii) the right of individuals who have suffered financial hardship from the COVID-19 pandemic to obtain relief from ATM fees, overdraft fees and credit card late fees.

Individuals who believe they are entitled to relief under these regulations should look for their banks to publish instructions on how they may apply for relief within 10 business days after March 24.

Importantly, the regulations apply only to New York regulated banking organizations and New York regulated mortgage service entities; branches of foreign banks and national banks are not subject to the regulations. Also, mortgage relief does not apply to mortgages “made, insured, or securitized by any agency or instrumentality of the United States, any Government Sponsored Enterprise, ... a Federal Home Loan Bank” or the Government National Mortgage Association.

Section 119.3(k) of the regulations provides that regulations do not apply to “any commercial mortgage or any other loans not described herein.” There has been significant discussion concerning the seeming difference in scope between the regulations and the Executive Order, particularly insofar as one might read the first part of the Executive Order as intending to affect commercial transactions. While the express terms of the regulations do not preclude further regulatory action, the informal consensus of the banking community at this time is that the DFS does not intend to issue similar forbearance regulations affecting commercial real estate loans or other commercial financial transactions.