

Clients & Friends Memo

COVID-19 Update: DFS Releases Emergency Regulation on Forbearance Actions

March 25, 2020

The New York State Department of Financial Services (“DFS”) has issued an [emergency regulation](#) on Governor Andrew Cuomo’s Executive Order No. 202.9 from March 21 (the “Executive Order”). As discussed in our [memorandum](#) from March 23, the Executive Order temporarily requires, among other things, that banks subject to the jurisdiction of the DFS grant 90-day forbearance relief to “any person or business who has a financial hardship as a result of the COVID-19 pandemic.” The Executive Order has sparked a flurry of questions within the lending market as to the scope of parties and products covered by its terms.

The new regulation, which was issued by the DFS on March 24, requires that “New York regulated institutions” provide residential mortgage forbearance on property located in New York for a period of 90 days to any individual residing in New York who demonstrates financial hardship as a result of the COVID-19 pandemic, subject to the safety and soundness requirements of the regulated institutions. Importantly, under the regulation: (i) forbearance is required only in respect of residential mortgages of individuals; (ii) commercial mortgages and other loans are expressly excluded; and (iii) mortgage loans made, insured or securitized by any U.S. government instrumentality, government-sponsored enterprise or Federal Home Loan Bank, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for Ginnie Mae, are excluded.

For purposes of the regulation, a New York regulated institution is “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 [DFS].” The regulation does not apply to national banks located in New York (as they are chartered under federal law) or to the New York branches of foreign banks (as they do not fall within the term “banking organization” under Section 2(11) of the New York Banking Law, which includes “all banks, trust companies, private bankers, savings banks, safe deposit companies, savings and loan associations, credit unions and investment companies,” and which has not been interpreted to otherwise encompass branches of foreign banks for purposes of the regulation).

The regulation outlines the qualifying criteria for individuals affected by the COVID-19 pandemic to apply for forbearance relief and the procedures that New York regulated institutions shall follow in processing applications and communicating to applicants. According to the regulation, institutions that make “prudent and reasonable efforts to grant forbearance of any payment on a residential mortgage” will not be criticized by the DFS in supervisory examinations.

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Cadwalader is actively monitoring legal and regulatory developments related to the COVID-19 pandemic and its lawyers are available to assist with any questions that you may have. For additional information regarding this memorandum, please contact the following Cadwalader partners:

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