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BANKING CLIENT ALERT

NEW YORK DEPARTMENT OF FINANCIAL SERVICES REGULATION PART 119

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On March 24, 2020, the New York Department of Financial Services (“DFS”) promulgated an emergency regulation (Part 119 to 3 NYCRR) pursuant to Governor Cuomo’s Executive Order No. 202.9. In brief, Part 119 requires that New York State regulated financial 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. The emergency regulation also requires that, from March 21, 2020 to April 20, 2020 (which may be extended), New York regulated banking organizations eliminate fees charged for the use of Automated Teller Machines (“ATMs”) that are owned or operated by the regulated banking organization, overdraft fees, and credit card late payment fees for any individual who demonstrates financial hardship as a result of the COVID-19 pandemic, subject to the safety and soundness requirements of the regulated banking organization.

A bullet point summary and explanation of pertinent provisions of Part 119 is as follows:

- Since Part 119 applies only to New York State regulated financial institutions, it does not apply to federally chartered banking institutions.
- There is no explanation for the “safety and soundness” loophole that would avoid providing a 90-day forbearance to individuals who demonstrate financial hardship as a result of the COVID-19 pandemic. However, we presume this exception will be narrowly interpreted by banking regulators.
- Part 119 generally does *not* apply to FHA loans, VA loans and other loans sold to Fannie Mae, Freddie Mac and a variety of other Federal instrumentalities or government sponsored enterprises.
- Part 119 does *not* apply to commercial mortgage loans.

- Part 119 requires New York regulated financial institutions to eliminate ATM, overdraft and credit card late payment fees for any individual who can demonstrate financial hardship from COVID-19.
- Part 119 does not require New York regulated financial institutions to allow overdrafts and does not prohibit interest on overdrafts pursuant to the terms of a pre-existing account agreement.
- As soon as reasonably practicable, and not later than ten (10) business days from March 24, 2020, all New York regulated financial institutions must 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.
- Part 119 encourages New York regulated financial institutions to take additional actions to assist individuals demonstrating financial hardship as a result of COVID-19 in any manner they deem appropriate.

Please contact us with any questions or for further discussions related to Part 119, including, but not limited to, the implementation of an emergency forbearance policy that complies with the requirements therein. Please also keep in mind that this is a fluid situation and amended or additional regulations may be promulgated at any time.

Disclaimer: This Alert does not, and is not intended to, constitute legal advice. This information is provided for general informational purposes only and may not constitute the most current information available.