Proposed New Part 419 of the Superintendent’s Regulations, 3 NYCRR
(Mortgage Loan Servicers)

Regulatory Impact Statement

1. Statutory Authority.

Section 102 of the New York Financial Services Law (the “Financial Services Law” or “FSL”), declares that the purpose of the FSL is “to ensure the continued safety and soundness of New York’s banking, insurance and financial services industries, as well as the prudent conduct of the providers of financial products and services, through responsible regulation and supervision.”

Pursuant to FSL Section 201, the Department of Financial Services (the “Department”) has broad authority to take such actions as are necessary to ensure the continued solvency, safety, soundness and prudent conduct of the providers of financial products and services; to protect users of financial products and services from financially impaired or insolvent providers of such services; and to eliminate financial fraud, other criminal abuse and unethical conduct in the industry.

FSL Section 202 creates the office of the Superintendent of Financial Services (the “Superintendent”) and confers on the Superintendent all “the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonable implied by [the FSL] or any other applicable law of this state.”

FSL Section 301 gives the Department broad power “to protect users of financial products and services.” In addition, FSL Section 302 provides the Department with equally broad authority to adopt regulations relating to “financial products and services,” which are broadly defined in the Financial Services Law to mean essentially any product or service offered by a Department-regulated entity. Accordingly, the Department has ample authority to adopt the proposed rule.

Section 10 of the New York Banking Law (the “Banking Law” or “BL”) sets forth a declaration of policy, including that banking institutions will be regulated in a manner to insure safe and sound conduct and maintain public confidence. And BL § 11 sets forth that the Department is charged with the execution of the laws relating to entities regulated under the Banking Law.

BL § 14 references, without limitation, the policy of BL § 10 and sets forth certain powers of the Superintendent under the Banking Law, including the power to “make, alter and amend orders, rules and regulations not inconsistent with law” and, under certain enumerated circumstances, to “make variations from the requirements” of the Banking Law, provided such variations are “in harmony with the spirit of the law.”

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the “Mortgage Lending Reform Law” or the “MLRL”), creates a framework for the regulation of mortgage loan servicers (hereinafter,
“servicers”). That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (3) of Section 590 was amended by the MLRL to clarify the power of the banking board – now the power of DFS – to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover servicers, as well as mortgage bankers, mortgage brokers and exempt organizations.

New Paragraph (d) was added to Subsection (5) of Section 590 by the MLRL and requires servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the MLRL and authorizes the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a servicer.

New Subdivision (2) of Section 595-b was added by the MLRL and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the MLRL to extend the Superintendent’s examination authority over licensees and registrants to cover servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

2. Legislative Objectives.

The MLRL was intended to address various problems related to the servicing of residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing and the creation of mortgage loan servicing standards. The provisions of Part 419 implement the intent of the Legislature by establishing basic mortgage loan servicing standards in line with current federal and state law.

The proposed regulation also protects New York consumers and ensures safe and sound operation of the industry in fulfillment of the objectives of the Legislature in creating the Department.

Servicing is a vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans, to governmental agencies for taxes, and to insurance companies for insurance premiums. Servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As “middlemen,” moreover, servicers play an important role when a property is foreclosed upon. For example, the servicer may act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot “shop around” for servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer makes it important that servicing standards are established and adhered to by the industry for the protection of consumers. Recent years have provided ample evidence of problems in the servicing industry, including: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; failing to engage in prompt and appropriate loss mitigation efforts; and failing to properly oversee third-party providers.

Approximately 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these, over 5% were seriously delinquent as of the first quarter of 2018. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

Part 419 addresses the business practices of servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower’s account, authorized fees, late charges, and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer’s compliance with applicable laws, its financial condition and the status of its servicing portfolio.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.


Although servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation, are consistent with or substantially similar to standards found in other federal or state laws, or servicers’ own protocols.
Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent’s Regulations). Further, many of the requirements are currently in force under emergency rulemaking, and thus servicers are already complying with those parts of the proposed regulation.

The regulation is expected to reduce costs associated with responding to consumers’ complaints, decrease unnecessary expenses borne by mortgagors, and assist in decreasing the number of foreclosures in this state.

The regulation will not result in any fiscal implications to the State.

5. Local government mandates.

There are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

6. Paperwork.

Part 419 requires servicers to keep books and records related to servicing for a period of three years and produce quarterly reports and financial statements, as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate or conflict with any other regulations. The various federal laws and regulations that touch upon aspects of mortgage loan servicing are noted in Section 9 “Federal Standards” below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to regulate the manner in which servicers conduct business. The Department considered not promulgating this rule and instead rely on the current federal regulations. The federal regulations, however, do not fully address several problematic practices that the Department has identified in New York. Further, federal regulations are subject to changes which do not take into account the specific nature of New York markets, nor the interests of New York consumers. Thus, such an alternative would
not effectuate the intent of the legislature to address the foreclosure crisis in New York, help at-risk homeowners vis-à-vis their servicers and ensure that servicers engage in fair and appropriate servicing practices. Nor would it appropriately protect New York borrowers.


Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing. Amendments to federal laws and regulations are regularly made to address mortgage loan servicing. Regulation Z, 12 C.F.R. section 226.36(c), was amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, responding to borrower requests and providing information related to the owner of the loan. The CFPB regulations are codified at 12 C.F.R. section 2601 et. seq.

10. Compliance Schedule.

It is anticipated that servicers subject to the regulation are presently complying with many of the requirements of the proposed regulation. Further similar emergency regulations first became effective on October 1, 2010. Therefore, it is not anticipated that regulated persons will need additional time to achieve compliance.
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Regulatory Flexibility Analysis for Small Businesses and Local Governments

1. Effect of the Rule:

The proposed regulation will not have any impact on local governments. The proposed regulation applies to mortgage loan servicers, no local government is a mortgage loan servicer. The Department is not aware of any servicer which is a small business. To the extent any servicer is a small business they are operating in a highly regulated environment and should be adequately prepared to comply with the proposed rule.

2. Compliance Requirements:

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicing is conducted. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

It is not anticipated that any additional professional services will be needed in order to comply with the requirements of this regulation.

4. Compliance Costs:

Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation, are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, and crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent’s Regulations).
Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans. It is anticipated that these will also produce cost savings to the industry.

5. Economic and Technological Feasibility:

As set forth above no local government should be impacted by this regulation. Any servicer that is a small business will need to comply with the regulation. Given that Part 419 is necessary to protect New York consumers, and given further that any servicer that is a small business choose to enter an industry which is heavily regulated, the economic and technological costs of the regulation are necessary. Additionally, many of the requirements of the regulation have been in place and compliance has been required under the emergency regulation, or are codifications of best practices within the industry. As such servicers should already be in a position to comply with those requirements of the regulation.

6. Minimizing Adverse Impacts:

Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by servicers and best industry practices. Therefore, the Department has determined that uniform requirements across the industry are appropriate here and no other approach is viable.

Moreover, the proposed regulation is expected to reduce costs associated with responding to consumers’ complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

Prior to its original emergency adoption, the Department distributed a draft of the proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department distributed a draft of proposed emergency Part 419 to consumer groups and received their comments on the proposed rule. The rule reflects the input received from consumer groups as well as incorporates new standards developed at both a state and federal level since its original emergency adoption. Any servicer who is a small business also has the opportunity to submit public comments on the regulation.
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Rural Area Flexibility Analysis

1. Types and Estimated Numbers: The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the “Mortgage Lending Reform Law”), required mortgage loan servicers to be registered with the Department unless exempted under the law. There are currently 37 registered servicers and over 550 mortgage bankers, brokers, banks or other organizations exempt from the registration requirements, all of which are required to comply with the conduct of business contained in Part 419. Approximately 400 of those entities are located in New York, including several in rural areas. However, the overwhelming majority of these organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services. The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent’s Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicers as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers’ conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 will apply uniformly across all servicers and it is not anticipated that mortgage servicers located in rural areas will have need for any professional services other than used in the normal course of their business including compliance with current regulatory requirements.

3. Costs. The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie
Mac or servicers’ own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and already have the experience, resources and systems to comply with these requirements. The requirements of Part 419 will apply uniformly across all servicers and it is not anticipated that mortgage servicers located in rural areas will have any different costs to those servicers not located in a rural area. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans, all of which should have positive effects on the costs borne by servicers. Additionally, many of the requirements contained in the proposed regulation are currently in force under emergency rulemaking, thus reducing the costs based on existing compliance infrastructure already in place.

4. Minimizing Adverse Impacts. The requirements of Part 419 will apply uniformly across all servicers. Given that virtually all of the servicers located in rural areas of New York are banks or credit unions the Department has determined that uniform regulatory requirements are appropriate.

5. Rural Area Participation. Prior to its emergency adoption, the Department issued a draft of the Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation as well as new standards developed at both a state and federal level since Part 419’s emergency adoption. Rural area participants will also have the opportunity submit public comments on the proposed rule.
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Job Impact Statement.

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of parties servicing mortgage loan for their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers’ conduct and prohibits certain practices such as engaging in deceptive business practices. Further, this part imposes obligations concerning the transfer of mortgage loan servicing, and requires mortgage loan servicers to engage in oversight of third-party providers.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule derive from federal or state laws and reflect existing best industry practices. Additionally, many of the requirements of this Part have been in force under emergency rulemaking and thus are not new to industry.