

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
23 NYCRR PART 101**

BANKING DIVISION ASSESSMENTS

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 10, 11, and 14 of the Banking Law and Sections 102, 201, 202, 206, 301, and 302 of the Financial Services Law, do hereby promulgate Part 101 of Title 23 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(ALL OF THE FOLLOWING MATERIAL IS NEW)

§ 101.1 Background

§ 101.2 Definitions

§ 101.3 Billing and Assessment Process

§ 101.4 Computation of Assessment

§ 101.5 Penalties/Enforcement Actions

§ 101.6 Special Assessments

§ 101.1 Background.

Pursuant to the Financial Services Law (“FSL”), the former New York State Banking Department and the former New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services (“Department”).

Prior to the consolidation, assessments of institutions subject to the Banking Law (“Banking Law”) were governed by former section 17 of the Banking Law. Effective October 3, 2011, assessments are governed solely by section 206 of the FSL.

FSL section 206 provides that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the Banking Law are to be charged to, and paid by, such regulated institutions (“Regulated Entities”). The Superintendent is authorized to assess Regulated Entities for its total costs attributable to such institutions in such proportions as the Superintendent shall deem just and reasonable.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 101.2 Definitions.

The following definitions apply in this Part:

(a) *Total Operating Cost* means (1) the sum of the total operating expenses of the Department that are solely attributable to its oversight of persons regulated under the Banking Law and (2) the proportion

deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under FSL section 206(a) may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) *Industry Group* means the grouping to which a business entity regulated under the Banking Law is assigned. The three Industry Groups are:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) *Industry Group Operating Cost* means the amount of the Total Operating Cost assessed to a particular Industry Group in any fiscal year. The amount is derived from the percentage of the total expenses for salaries, fringe benefits and indirect costs incurred for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) *Industry Group Supervisory Component* means the total of the Supervisory Components for all institutions in that Industry Group.

(e) *Supervisory Component* for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) *Industry Group Regulatory Component* means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) *Industry Financial Basis* means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group. The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of credit extensions in New York; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar

value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) *Financial Basis* for an individual institution is that institution's portion of the measurement tool used in subdivision (g) of this section to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) *Industry Group Regulatory Rate* means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) *Regulatory Component* for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 101.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 101.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 101.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the Banking Law, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, expiration or termination of the entity's license or such other actions as the Superintendent may deem appropriate.

§ 101.6 Special Assessments.

(a) When the Superintendent shall determine that the expenses associated with a specific examination, investigation or review are best allocated solely to the individual institution or institutions subject to such examination or investigation, rather than to an Industry Group generally or any subgroup thereof, such expenses shall be billed separately as provided for in this subdivision. The time of each person associated with such examination or investigation shall be multiplied by the average costs of the examiners and specialists at their respective grade levels assigned to such examination or investigation, plus expenses for travel outside of New York, and the resulting amount shall be assessed separately to each such institution subject to such examination or investigation in such amounts as the Superintendent shall deem appropriate. Alternatively, if another entity or person is selected to perform an examination, investigation or review of an individual institution or institutions, the expenses associated with such examination, investigation and

review shall be the amount of the contract for such services and such portion of the Department's administrative expenses associated with such contract as the Superintendent shall deem appropriate. The resulting amount shall be assessed separately to each such institution subject to such examination, investigation or investigation in such amounts as the Superintendent shall deem appropriate.

Such special assessments shall be billed within one hundred and eighty days after the calendar quarter within which such expenses were incurred. Such amounts shall be paid within thirty days of the date of such billing.

In making a determination to make a special assessment and to allocate such assessment between one or more institutions, the Superintendent shall include such factors as she or he shall deem appropriate, including, but not limited to: the significance of the examination to the conduct of business by a given Industry Group or institutions; the potential seriousness of any violations of law or regulation identified by, or under review in, such examination or investigation; the likelihood that such violations are common within an Industry Group; and the extent to which an institution attempted to cover up or failed to disclose the existence of such violations.

(b) The Superintendent may exempt any not-for-profit entity licensed by the Department from any assessments otherwise applicable to such entity when the Superintendent determines the public benefit warrants such exemption.



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is new Part 101 of title 23 of the Official Compilation of Codes, Rules and Regulations of the State of New York, signed by me on January 23, 2020 pursuant to the authority granted by Sections 10, 11, and 14 of the Banking Law and Sections 102, 201, 202, 206, 301, and 302 of the Financial Services Law, to take effect upon publication of the Notice of Adoption in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed consensus rule was published in the New York State Register on November 20, 2019. No other publication or prior notice is required by statute.

Linda A. Lacewell
Superintendent of Financial Services

Date: January 23, 2020