

Regulatory Impact Statement for the Amendment to Part 419 of the Superintendent’s Regulations, 3 NYCRR

1. Statutory Authority: Banking Law (“BL”) Sections 10, 11, 14, and Article 12-D and Financial Services Law (“FSL”) Sections 102, 201, 202, 301, and 302.

BL Section 10 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.

BL Section 11 sets forth that the Department is charged with the execution of the laws relating to entities regulated under the Banking Law.

BL Section 14 references, without limitation, the policy of BL Section 10 and sets forth certain powers of the Superintendent of Financial Services (“Superintendent”) under the BL, 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 BL, provided such variations are “in harmony with the spirit of the law.”

BL Article 12-D, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Chapter 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., BL Sections 590(2) (b-1) and 595-b.)

Subsection (3) of BL Section 590 was amended by the MLRL to clarify the power of the banking board – now the power of the Department – 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.

A new paragraph (d) was added to subsection (5) of BL Section 590 by the MLRL and requires servicers to engage in the servicing business in conformity with the BL, such rules and regulations as may be promulgated by the Superintendent, and all applicable federal laws, rules and regulations.

A new subsection (1) was added to BL Section 595-b 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.

A new subdivision (2) was added to BL Section 595-b 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.

BL 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 BL Section 597, covering licensees, registrants and exempt organizations, were amended by the MLRL to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

FSL Section 102 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."

FSL Section 201 grants the Superintendent of Financial Services ("Superintendent") the 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 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 provides the Superintendent broad power “to protect users of financial products and services.”

FSL Section 302 provides the Superintendent with broad authority to adopt regulations relating to “financial products and services,” which are broadly defined in the FSL to mean essentially any product or service offered by an entity regulated by the Department.

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 3 NYCRR Part 419 implement the intent of the Legislature by establishing basic mortgage loan servicing standards in line with current federal and state law.

3. Needs and benefits: Trade associations representing mortgage loan servicers contend that the volume and complexity of the changes required by new Part 419 of 3 NYCRR, which became effective December 18, 2019, makes it almost impossible for them to be in timely compliance with the new regulation without additional preparation. Regulated entities need more time for computer programming to address the new reporting, notice and disclosure requirements for the home equity line of credit (“HELOC”) product in particular. The HELOC product formerly had been exempt from the emergency regulation that was in place prior to the adoption of new Part 419. The necessary programming usually is performed by third-party vendors, and the financial institutions reliant upon outsourcing cannot fully control the timing of their work. Regulated institutions also need additional time to revise procedures, train compliance staff and provide information to consumers. The business continuity and pandemic planning around the Coronavirus also is diverting the limited resources of smaller financial institutions.

4. Costs: There are no costs imposed by this amendment, which extends the transition period provided in Section 419.14 from 90 days to 180 days, giving mortgage loan servicers an additional 90 days to comply with the requirements of the regulation.

5. Local government mandates: There are no requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

6. Paperwork: This amendment does not require any additional paperwork because the amendment only extends the transition period provided in Section 419.14(a) from 90 days to one 180 days, giving mortgage loan servicers an additional 90 days to comply with the requirements of the regulation.

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. An extension of time to comply with Part 419 does not create duplication of or conflict with federal law.

8. Alternatives: Failure to extend the transition period in Part 419.14 would be unduly burdensome to financial institutions, particularly the smaller ones. Many regulated entities would be in technical violation of the law despite making good faith efforts to comply with it.

9. Federal Standards: 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: The amendment extends the transition period provided in 3 NYCRR Section 419.14(a) from 90 days to one 180 days, giving mortgage loan servicers an additional 90 days to comply with the requirements of the regulation. The Department believes this additional period should suffice for servicers to achieve compliance.

Statement explaining that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required for the Amendment of 3 NYCRR Part 419.

The Department of Financial Services (“Department”) finds that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in New York State. The amendment only extends the transition period provided in Section 419.14 from ninety (90) days to one hundred eighty (180) days, giving mortgage loan servicers an additional 90 days to comply with the requirements of the regulation. The amendment actually reduces the burden on small businesses. The regulation does not apply to local governments.

Statement Explaining Why a Rural Area Flexibility Analysis is Not Required for the Amendment to Part 419 of the Superintendent's Regulations, 3 NYCRR

The Department of Financial Services ("Department") finds that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in New York State, because the amendment only extends the transition period provided in 3 NYCRR Section 419.14 from 90 days to 180 days, giving mortgage loan servicers an additional 90 days to comply with the requirements of the regulation. Therefore, the extension will not have a negative impact on rural areas.

Statement Explaining Why a Job Impact Statement for the Amendment of Part 419 of the Superintendent's Regulations, 3 NYCRR is Not Necessary

The Department of Financial Services (“Department”) believes that the amendment will not have any adverse impact on jobs or employment opportunities, including self-employment opportunities, because the amendment only extends the transition period provided in Section 419.14 from 90 days to 180 days, giving mortgage loan servicers an additional 90 days to comply with the requirements of the regulation. Therefore, this rulemaking should have no impact on jobs and employment opportunities.