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# New York In Focus: Regulatory Update And Outlook

Elizabeth A. Murphy

# DFS Consumer Protection Task Force

- January 2020 - Creation of Consumer Protection Task Force
- Purpose: implement consumer protection proposals set forth by Governor Cuomo
- Focus:
  - strengthening regulatory oversight of debt collectors;
  - cracking down on elder financial abuse;
  - increasing access to affordable banking services; and
  - strengthening the state’s consumer protection laws to protect New Yorkers against unfair, deceptive, and abusive practices

# Climate Change and Financial Risks

- 2019 - DFS became first financial regulator in the U.S. to join the Network for Greening the Financial System (a coalition of central banks and supervisory authorities committed to managing environmental and climate risk management in the financial sector)
- October 2020 – [Industry Letter: Climate Change and Financial Risks](#)
  - outlines risks and impact for both Regulated Organizations and Regulated Non-Depositories;
  - sets forth DFS expectations as to how to best manage financial risks from climate change; and
  - calls on DFS-supervised institutions to start incorporating climate risks into their strategy, risk management and corporate governance
- Direct any questions or suggestions regarding climate change to Dr. Yue (Nina) Chen, Director of Sustainability and Climate Initiatives, at [climate@dfs.ny.gov](mailto:climate@dfs.ny.gov)

# Climate Change and Financial Risks

- February 2021 – [Industry Letter: CRA Consideration for Activities that Contribute to Climate Mitigation and Adaptation](#)
  - Institutions subject to the NY Community Reinvestment Act (“CRA”) may receive CRA credit for financing activities that support the climate resiliency of low- and moderate-income (“LMI”), and underserved communities
  - Examples of financing activities that support climate resiliency and may qualify for credit under the NY CRA:
    - renewable energy, energy-efficiency and water conservation equipment or projects for affordable housing, to reduce utility payments for LMI tenants, or community facilities, including solar panels, geothermal heat pumps, battery storage, improving building envelope insulation, and lighting, window and appliance upgrades;
    - community solar projects that provide energy to an affordable housing project or a community facility that has a community development purpose;
    - microgrid or battery storage projects in LMI areas with high flood and/or wind risk, thereby reducing risks of power loss due to flooding and high winds;

# Climate Change and Financial Risks

- projects addressing flooding or sewer issues, or reducing stormwater runoffs such as new or rehabilitated sewer lines, levees, and storm drains that primarily benefit LMI geographies;
  - flood resilience activities for multifamily buildings offering affordable housing, such as building elevation and relocation and installation of sump pumps; and
  - installation of air conditioning in multifamily buildings offering affordable housing, to reduce heat risks and utility payments for LMI residents
- Institutions may also receive community development credit for climate resiliency promoting investments or loans to Community Development Financial Institutions, New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations (CDC), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions in support of the above-referenced activities in LMI communities or to LMI individuals
- Direct any questions regarding potential CRA credit to Serwat Farooq, Deputy Superintendent, Consumer Examinations Unit, Consumer Protection and Financial Enforcement Division, at [CRA@dfs.ny.gov](mailto:CRA@dfs.ny.gov)

# Fair Lending

- DFS announced findings of its [report](#) on redlining in the Buffalo metropolitan area on February 4, 2021
- Among other things, DFS found:
  - only 9.74% of total loans were made to minorities, even though minorities make up about 20% of the area's population;
  - nonbank mortgage lenders lent at lower rate in majority-minority neighborhoods than depository institutions did; and
  - several of the nonbank mortgage lenders:
    - made little to no effort to do business in majority-minority neighborhoods,
    - do not have adequate fair lending compliance programs, and
    - do not track whether, or how well, they are serving populations of color

# Fair Lending

- Report recommendations include:
  - State legislative action to amend the NY CRA to apply to nonbank mortgage lenders
  - OCC and CFPB investigate federally regulated institutions to determine whether fair lending violations are occurring at Buffalo institutions that appear to be performing poorly based on statistical measures
  - NY Department of State conduct an investigation of real estate agents that several nonbank lenders largely relied on for business so as to determine their role, if any, with respect to lending patterns



# Fair Lending

- DFS also surveyed western New York banks that have built robust fair lending programs and noted these elements of a successful program:
  - Robust fair lending compliance policies and practices, such as:
    - meaningful engagement of senior management in fair lending programs and policy development and implementation;
    - periodic fair lending training for staff;
    - responsive and engaged compliance committee;
    - regular engagement of staff on CRA-related lending with attention to improving performance; and
    - regularly scheduled internal and third-party analysis of institutional lending data with prompt responses to findings
  - Specialized product and service offerings, such as:
    - products specifically designed for LMI customers that may integrate subsidies and tailored underwriting standards; and
    - lending programs focused on community revitalization and development



# Fair Lending

- Community outreach and engagement efforts, for example:
  - partnering with community organizations to understand community needs in the bank's service areas, and to connect with customers they previously did not;
  - enhanced attention to marketing content and reach including marketing targeted at underserved communities;
  - hiring loan officers specializing in community development and working with brokers who serve and have connections to communities the institution had not been reaching before; and
  - providing educational programming to the community relating to home buying

# Fair Lending

- DFS announced in February report that on January 12, 2021 it signed a settlement with Hunt Mortgage Corporation, a nonbank mortgage lender
  - DFS found that weaknesses in Hunt Mortgage's fair lending and compliance programs contributed to its poor performance in lending to people of color and in majority-minority neighborhoods
  - Hunt agreed to take steps to improve its service to the entire community, including:
    - increasing marketing to people of color and within majority-minority neighborhoods;
    - developing a special financing program that will provide \$150,000 in discounted or subsidized financing on loans for properties located in majority-minority neighborhoods;
    - providing annual fair lending training to Hunt Mortgage employees and agents with significant involvement in lending; and
    - conducting an annual fair lending compliance audit
- DFS has initiated investigations into several other lenders and plans on announcing its findings as those cases resolve

# Inactivity Fee

- New Banking Law Section 9-x took effect February 9, 2021
- Requires all financial institutions subject to New York's Banking Law to provide 30 days' prior written notice to a customer before imposing a fee based on account inactivity
- Term "account" is not defined, but given that the law applies to all financial institutions, including mortgage brokers and mortgage bankers, the law should be deemed to apply to both deposit and loan accounts
- Notification can be sent electronically
- Notice required even if inactivity fee has already been disclosed on fee schedule

# Power of Attorney Law

- Significant amendments to NY POA laws take effect June 14, 2021
- Changes include:
  - Substantial conformance: third party presented with a POA that substantially conforms with the wording of the statutory short form will be required to accept such POA
  - Damages: provisions added to special proceeding remedy to allow a court to award damages, including reasonable attorney’s fees and costs, if the court finds that a third party acted unreasonably in refusing to accept a properly-executed POA
  - Removal of Statutory Gifts Rider: Statutory Gifts Rider no longer required for certain “gifting” transactions - to authorize an agent to open, modify or terminate a joint or in-trust-for account, or to designate/change beneficiaries on the principal’s accounts, the principal must now expressly state that the agent has such authority in the Modifications section of the POA form

# Power of Attorney Law

## – Safe Harbor Provisions:

- a person that in good faith accepts an acknowledged POA without actual knowledge that the signature is not genuine may rely upon the presumption that the signature is genuine
- a person that in good faith accepts an acknowledged POA without actual knowledge that the POA is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority, may rely upon the POA as if it were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority
- a person that is asked to accept an acknowledged POA may request, and rely upon, without further investigation: (i) an agent's certification under penalty of perjury of any factual matter and (ii) an opinion of counsel as to any matter of law concerning the POA

## – Procedure and Timeframe for Acceptance or Rejection of POA: created a new process for a third party, such as a financial institution, to accept or reject a statutory short form POA

# Power of Attorney Law

- Chapter amendments are currently with legislature but have not been signed into law yet
  - requires two disinterested witnesses to sign the POA form and makes technical changes around the designation of multiple agents

# Covid-19 Pandemic and Foreclosure Moratorium

- Emergency Eviction and Foreclosure Prevention Act – signed December 28, 2020
- Applies to any action to foreclose a mortgage relating to residential real property, provided the owner or mortgagor of such property is a natural person and owns ten or fewer dwelling units whether directly or indirectly
- Any action to foreclose a mortgage pending on the effective date of the Act, including actions filed on or before March 7, 2020, or commenced within thirty days of the effective date of the Act shall be stayed for at least sixty days
- If a borrower presents a Hardship Declaration Form, there shall be no initiation of an action to foreclose a mortgage against the borrower until at least May 1, 2021, and in such event any specific time limit for the commencement of an action to foreclose a mortgage shall be tolled until May 1, 2021



# Covid-19 Pandemic and Foreclosure Moratorium

- Courts cannot accept a filing of an action to foreclose unless the foreclosing party submits an affidavit of service showing that the Hardship Declaration Form was provided to the borrower and an affidavit attesting that no Hardship Declaration Form has been received
- For actions already commenced, but a judgment of sale has not been issued, including actions filed on or before March 7, 2020, if a borrower presents a Hardship Declaration Form, the proceeding shall be stayed until at least May 1, 2021
- In any action in which a judgment of sale has been issued, if a borrower presents a Hardship Declaration Form prior to the execution of the judgment, the execution shall be stayed until at least May 1, 2021



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Thank you.

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# Contact Information



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