

Legal Developments Impacting Forbearance and Loan Modifications

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NYS Banking Law and Forbearance:

On March 21, 2020, in order to combat the COVID-19 crisis, New York Governor Andrew Cuomo issued Executive Order 202.9 (the “NYS Order”), which modifies the New York State’s Banking Law by deeming that it shall be:

“an unsafe and unsound business practice if, in response to the COVID-19 pandemic, any bank which is subject to the jurisdiction of the [Department of Financial Services] shall not grant a forbearance to any person or business who has a financial hardship as a result of the COVID-19 pandemic for a period of ninety days.”

The NYS Order also directs that:

“The Superintendent of the Department of Financial Services... ensures under reasonable and prudent circumstances that any licensed or regulated entities provide to any consumer in the State of New York an opportunity for a forbearance of payments for a mortgage for any person or entity facing a financial hardship due to the COVID-19 pandemic.”

Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus

On March 22, 2020, the federal financial institution regulators (including the Board of Governors of the Federal Reserve System and Office of the Comptroller of the Currency) and the Bureau Conference of State Bank Supervisors published an interagency statement (the “Interagency Statement”) encouraging financial institutions to “work prudently with borrowers who are or may be unable to meet their payment obligations because of the effects” of COVID-19.

The agencies state that they will not criticize institutions for working with borrowers in respect of COVID-19 effects, nor will they direct supervised institutions to automatically categorize all COVID-19-related loan modifications as troubled debt restructurings.

Given the fast-moving nature of the COVID-19 crisis, the full effect and implications of the NYS Order and Interagency Statement are not yet knowable. We will continue to monitor developments and post them to you accordingly. We encourage you to reach out to your Winston & Strawn LLP contacts to discuss the potential impacts on your institutions and transactions.

View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

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