

Costs

- a) To agency, the state and local governments: None.
- b) Costs to private regulated parties: None. The proposed amendment does not apply to private parties.
- c) This cost analysis is based upon the fact that this proposal merely defines spousal relationships.

Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules.

Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

Alternatives

No alternatives are apparent and none have been considered as this is a legal court ruling.

Federal Standards

None.

Compliance Schedule

The Department of Correctional Services will achieve compliance with the proposed rules immediately.

Revised Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal merely adds language to recognize same-sex marriage under certain circumstances.

Revised Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal merely adds language to recognize same-sex marriages under certain circumstances.

Revised Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely adds language to recognize same-sex marriages under certain circumstances.

Assessment of Public Comment

Comment: The Department of Corrections and Community Supervision received comments from two assemblymen who supported the efforts of the Department to ensure that its regulations provide due recognition to same-sex marriages or civil unions performed in an outside jurisdiction that authorizes such marriages or unions. They recommended that the Department make similar changes to those regulations applicable to the Family Reunion Program.

Response: The Department of Corrections and Community Supervision appreciates the assemblymen's support for the changes currently adopted by the Department and are making similar changes to regulations governing the Family Reunion Program.

NOTICE OF ADOPTION**Urinalysis Testing**

I.D. No. CCS-51-11-00009-A

Filing No. 157

Filing Date: 2012-02-21

Effective Date: 2012-03-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Renumbering of section 1020.4(e) to (f); addition of new section 1020.4(e); and amendment of section 1020.4(d)(3), (4) and (f)(1)(iii) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Urinalysis Testing.

Purpose: To introduce urinalysis testing procedures for inmates for inmates alleging to have a "shy bladder" and other minor amendments.

Text or summary was published in the December 21, 2011 issue of the Register, I.D. No. CCS-51-11-00009-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, The Harriman State Campus-Building 2-1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@doccs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Education Department**NOTICE OF ADOPTION****Tuition Assistance Program**

I.D. No. EDU-50-11-00007-A

Filing No. 156

Filing Date: 2012-02-17

Effective Date: 2012-03-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 145-2.1, 145-2.2 and 145-2.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 and 661

Subject: Tuition Assistance Program.

Purpose: Revise and clarify the criteria for determining student eligibility to participate in the tuition assistance program.

Text or summary was published in the December 14, 2011 issue of the Register, I.D. No. EDU-50-11-00007-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, NYS Education Department, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-2183, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services**EMERGENCY
RULE MAKING****License, Financial Responsibility, Education and Test Requirements for Mortgage Loan Originators**

I.D. No. DFS-10-12-00001-E

Filing No. 154

Filing Date: 2012-02-17

Effective Date: 2012-02-21

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Repeal of Part 420 and Supervisory Procedures MB 107 and MB 108; addition of new Part 420 and Supervisory Procedure MB 107 to Title 3 NYCRR.

Statutory authority: Banking Law, arts. 12-D and 12-E

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Article 12-E of the

Banking Law provides for the regulation of mortgage loan originators (MLOs). Article 12-E was recently amended in order to conform the regulation of MLOs in New York to new federal legislation (Title V of the Housing and Economic Recovery Act of 2008, known as the "SAFE Act").

The SAFE Act authorized the federal Department of Housing and Urban Development ("HUD") to assume the regulation of MLOs in any state that did not enact acceptable implementing legislation by August 1, 2009. In response, the Legislature enacted revised Article 12-E.

The emergency rulemaking revises the existing MLO regulations, which implement the prior version of Article 12-E, to conform to the changes in the statute.

Under the new legislation, MLOs, including those already engaged in the business of originating mortgage loans, must complete new education, testing and bonding requirements prior to licensure. Meeting these requirements will likely entail significant time and effort on the part of individuals subject to the revised law and regulations.

Emergency adoption of the revised regulations is necessary in order to afford such individuals sufficient advance notice of the new substantive rules and licensing procedures for MLOs that they will have an adequate opportunity to comply with the new licensing requirements and in order to protect against federal preemption of the regulation of MLOs in New York.

Subject: License, financial responsibility, education and test requirements for mortgage loan originators.

Purpose: To require that individuals engaging in mortgage loan origination activities must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks).

Substance of emergency rule: Section 420.1 summarizes the scope and application of Part 420. It notes that all individuals unless exempt must be licensed under Article 12-E to engage in mortgage loan originator ("MLO") activities. It also sets forth the basic authority of the Superintendent to revoke or suspend a license.

Section 420.2 sets out the exemptions available to individuals from the general license requirements. Specifically, the proposed regulation includes a number of exemptions, including exemptions for individuals who work for banking institutions as mortgage loan originators and individuals who arrange mortgage loans for family members. Also, individuals who work for mortgage loan servicers and negotiate loan modifications are only subject to the license requirement if required by HUD. The Superintendent is authorized to approve other exemptions for good cause.

Section 420.3 contains a number of definitions of terms that are used in Part 420. These include definitions for "mortgage loan originator," "originating entity," "residential mortgage loan" and "loan processor or underwriter".

Section 420.4 describes the applications procedures for applying for a license as an MLO. It also provides important transitional rules for individuals already engaging in mortgage loan origination activities pursuant to the authority of the prior version of Article 12-E or, in the case of individuals engaged in the origination of manufactured homes, not previously subject to regulation by the Department of Financial Services (formerly the Banking Department).

Section 420.5 describes the circumstances in which originating entities may employ or contract with MLOs to engage in mortgage loan origination activities during the application process.

Section 420.6 sets forth the steps the Superintendent of Financial Services (formerly the Superintendent of Banks) must take upon determining to approve or disapprove an application for an MLO license.

Section 420.7 describes the circumstances when an MLO license is inactive and how an MLO may maintain his or her license during such periods.

Section 420.8 sets forth the circumstances when an MLO license may be suspended or terminated. Specifically, the proposed regulation provides that an MLO license shall terminate if the annual license renewal fee has not been paid or the requisite number of continuing education credits have not been taken. The Superintendent also may issue an order suspending an MLO license if the licensee does not file required reports or maintain a bond. The license of an MLO that has been suspended pursuant to this authority shall automatically terminate by operation of law after 90 days unless the licensee has cured all deficiencies within this time period.

Section 420.9 sets forth the process for the annual renewal of an MLO license.

Section 420.10 sets forth the process by which an MLO may surrender his or her license.

Section 420.11 sets forth the pre-licensing educational requirements applicable to applicants seeking an MLO license. Twenty hours of educational courses are required, including courses related to federal law and state law issues.

Section 420.12 sets out the requirement that pre-licensing education

and continuing education courses and education course providers must be approved by the Nationwide Mortgage Licensing System and Registry (the "NMLS"). This represents a change from the prior law pursuant to which the Superintendent issued such approvals.

Section 420.13 sets forth the pre-licensing testing requirements for applicants for an MLO license. It also sets out the test location requirements and the minimum passing grades to obtain a license.

Section 420.14 sets out the continuing education requirements applicable to MLOs seeking to renew their licenses.

Section 420.15 sets out the new requirements that MLOs have a surety bonds in place as a condition to being licensed under Article 12-E. It also sets out the minimum amounts of such bonds.

Section 420.16 requires the Superintendent to make reports to the NMLS annually regarding violations by, and enforcement actions against, MLOs. It also provides a mechanism for MLOs to challenge the content of such reports.

Section 420.17 sets forth the process for calculating and collecting fees applicable to MLO licensing.

Sections 420.18 and 420.19 set forth the various duties of MLOs and originating entities. Section 420.20 also describes conduct prohibited for MLOs and loan originators.

Finally, Section 420.21 describes the administrative action and penalties that the Superintendent may take against an MLO for violations of law or regulation.

Section 107.1 contains definitions of defined terms used in the Supervisory Procedure. Importantly, it defines the National Mortgage Licensing System (NMLS), the web-based system with which the Superintendent has entered into a written contract to process applications for initial licensing and applications for annual license renewal for MLOs.

Section 107.2 contains general information about applications for initial licensing and annual license renewal as an MLO. It states that a sample of the application form (which must be completed online) may be found on the Department's website and includes the address where certain information required in connection with the application for licensing must be mailed.

Section 107.3 describes the parts of an application for initial licensing. The application includes (1) the application form, (2) fingerprint cards, (3) the fees, (4) applicant's credit report, (5) an affidavit subscribed under penalty of perjury in the form prescribed by the Superintendent, and (6) any other information that may be required by the Superintendent. It also describes the procedure when the Superintendent determines that the information provided by the application is not complete.

Section 107.4 describes the required submissions for annual license renewal of an MLO.

Section 107.5 covers inactive status.

Section 107.6 provides information on places where applicants may obtain additional instructions and assistance on the Department's website, by email, by mail, and by telephone.

Supervisory Procedure MB 108 is hereby repealed.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 16, 2012.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority.

Revised Article 12-E of the Banking Law became effective on July 11, 2009 when Governor Paterson signed into law Chapter 123 of the Laws of 2009. The revised version of Article 12-E is modeled on the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act") pertaining to the regulation of mortgage loan originators. Hence, the licensing and regulation of mortgage loan regulators in New York now closely tracks the federal standard.

Current Part 420 of the Superintendent's Regulations, implementing the prior version of Article 12-E, was adopted on an emergency basis in December of 2008. Since the new version of Article 12-E is already effective, it is necessary to revise Part 420 and adopt the revised version on an emergency basis. An earlier draft of this regulation was published on the Department of Financial Services' (formerly the Banking Department) website on August 27, 2009. To date, the Department has received two sets of comments, and these have been incorporated into the current version of the revised regulation as appropriate.

New Section 599-a of the Banking Law sets forth the legislative purpose of new Article 12-E. It notes that the new Article is intended to enhance consumer protection, reduce fraud and ensure the public welfare. It also

notes that the new regulatory scheme is to be consistent with the SAFE Act.

Section 599-b sets forth the definitions used in the new Article. Defined terms include: mortgage loan originator (“MLO”); mortgage loan processor -- an individual who may not need to be licensed; residential mortgage loans -- loans for which an MLO must be licensed; residential real property; and the Nationwide Mortgage Licensing System and Registry (the “NMLS”).

Section 599-c sets forth the requirements for being licensed as an MLO, the effective date for licensing and exemptions from the licensing requirements. Exemptions include ones for individuals who work for insured financial institutions, licensed attorneys who negotiate the terms of a loan for a client as an ancillary to the attorney’s representation of the client, and, unless required to be licensed by the U.S. Department of Housing and Urban Development (“HUD”), certain individuals employed by a mortgage loan servicer.

Section 599-d sets out the process for obtaining an MLO license. It also sets out the Department’s authority for imposing fees, the authority of the NMLS to collect such fees, the ability of the Superintendent of Financial Services (formerly the Superintendent of Banks) to modify the requirements of Article 12-E in order to ensure compliance with the SAFE Act, the requirement that filings be made electronically and required background information from all applicants.

Section 599-e sets for the findings that the Superintendent must make before a license is issued. These include a finding that the applicant not have any felony convictions within seven years or any fraud convictions at any time, that the applicant demonstrate acceptable character and fitness, educational and testing criteria and a bonding requirement. An MLO also must be affiliated with an originating entity -- a licensed mortgage banker or registered mortgage broker (or other licensed entity in the case of individuals originating manufactured homes) -- or working for mortgage loan servicers.

Section 599-f sets out the pre-licensing education requirements, and Section 599-g sets forth the pre-licensing testing requirements. Section 599-h imposes a reporting requirement on entities employing MLOs. Such entities must make annual filings through the NMLS.

Section 599-i sets forth the annual license renewal requirements for MLOs. In addition to continuing to satisfy the initial requirements for licensing, MLOs must satisfy annual continuing educational requirements and must have paid all fees. Failure to meet these requirements shall result in the automatic termination of an MLO’s license. The statute also provides for a licensee going into inactive status, provided the individual continues to pay all applicable fees and to take required education courses.

Section 599-j sets forth the continuing education requirements for MLOs, and Section 599-k sets forth the requirements for a surety bond. Section 599-l requires the Superintendent to report through the NMLS at least annually on all violations of Article 12-E and all enforcement actions. MLOs may challenge the information contained in such reports. Section 599-m sets forth the records and reports that originating entities must maintain or make on MLOs employed by, or working for, such entities. This section also requires the Superintendent to maintain on the internet a list of all MLOs licensed by the Department and requires reporting to the Department by MLOs.

Section 599-n sets forth the enforcement authority of the Superintendent. In addition to “for good cause” suspension authority, the Superintendent may revoke a license for stated reasons (after a hearing), and the Superintendent may suspend a license if a required surety bond is allowed to lapse or thirty days after a required report is not filed. This section also sets out the requirements for surrendering a license and the implications of any surrender, revocation, termination or suspension of a license.

Section 599-o sets forth the authority of the Superintendent to adopt rules and regulations implementing Article 12-E, including the authority to adopt expedited review and licensing procedures for individuals previously authorized under the prior version of Article 12-E to act as MLOs. It also authorizes the Superintendent to investigate licensees and the entities with which they are associated.

Section 599-p requires that the unique identifier of every originator be clearly shown on certain documents. Section 599-q provides certain confidentiality protections for information provided to the Superintendent by an MLO, notwithstanding the sharing of such information with other regulatory bodies.

2. Legislative objectives.

As noted, new Article 12-E was intended to conform New York Law to federal law and to enhance the regulation of MLOs operating in this state. These objectives have taken on increased urgency with the problems evidenced in the mortgage banking industry over the last two years.

The regulations implement this statute. New Part 420 differs from the prior version in a number of respects. The following is a summary of the major changes from the previous regulation:

1. The definition of a mortgage loan originator is broadened to include any individual who takes a mortgage application or offers or negotiates the terms of the mortgage with a consumer.

2. Individuals who originate loans on manufactured homes will be subject to the regulation for the first time.

3. If licensing of individuals who work for mortgage loan servicers and who engage in loan modification activities is required by the U.S. Department of Housing and Urban Development, such individuals may be subject to the licensing requirements of the new law and to the new regulation.

4. Individuals who have applied for “authorization” under the prior version of Article 12-E and Part 420 have a simplified process for becoming licensed and may continue to originate loans until they are licensed under the revised regulation or their applications are denied.

5. Individuals with a felony conviction within the last seven years or a felony conviction for fraud at any time are now prohibited from being licensed as MLOs in New York State.

6. Individuals must satisfy new pre-license education and testing requirements. There also are new bonding requirements and continuing education requirements.

7. A license automatically terminates if the licensee does not pay his or her annual license renewal fee or take the requisite amount of continuing education credits. The authority of the Superintendent to suspend an individual for good cause also has been clarified.

When Part 420 was originally adopted on an emergency basis, the Superintendent also adopted Supervisory Procedures MB 107 and MB 108. Supervisory Procedure MB107 deals with applications to become an MLO. It has been updated in line with the revisions to Article 12-E and Part 420.

Supervisory Procedure MB 108, relating to the approval of education providers and courses, was originally adopted because the prior version of Article 12-E required the Superintendent to approve both courses and providers. This activity has been transferred to the NMLS under new Article 12-E. Accordingly, Supervisory Procedure MB 108 is being rescinded.

3. Needs and benefits.

The SAFE Act is intended to impose a nationwide standard for MLO regulation; new Article 12-E constitutes New York’s effort to adopt a regulatory regime consistent with this uniform standard. This regulation is needed to implement revised Article 12-E and is necessary to address problems that have surfaced over the last several years in the mortgage industry.

As has now been recognized at the federal level in the SAFE Act, increased oversight of mortgage loan originators is necessary to curb disreputable and deceptive businesses practices by MLOs. Individuals engaging in abusive practices have avoided detection by moving from company to company and in some instances, from state to state. The licensing of MLOs will greatly assist the Department in its efforts to oversee the mortgage industry and protect consumers. The regulation will enable the Department to identify, track and hold accountable those individuals who engage in abusive practices, and ensure continuing education for all MLOs that are licensed by the Department.

These regulatory requirements will improve accountability among mortgage industry professionals, protect and promote the integrity of the mortgage industry, and improve the quality of service, thereby helping to restore consumer confidence.

If New York did not adopt the new federal standards for MLO regulation or failed to implement its requirements, the SAFE Act requires that HUD assume the licensing of MLOs in New York State. This would result in ceding an important responsibility and element of state sovereignty to the federal government.

4. Costs.

MLOs are already experiencing increased costs as a result of the fees and continuing education requirements associated with the prior version of Article 12-E. These costs will continue under the new law and regulations.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry are set by that body.

The ability by the Department to regulate MLOs is expected to substantially decrease losses to consumers and the mortgage industry, as well as to assist in decreasing the number of foreclosures in the State and the associated direct and indirect costs of such foreclosures. It is expected also to reduce consumer complaints regarding MLO conduct.

The regulations will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local government mandates.

None.

6. Paperwork.

An application process has been established for MLOs electronically through the NMLS. Over time, the application process is expected to become virtually paperless; accordingly, while a limited number of documents, including fingerprints where necessary, currently have to be submitted to the Department in paper form, these requirements should diminish with the passage of time.

The specific procedures that are to be followed in order to apply for licensing as a mortgage loan originator are detailed in revised Supervisory Procedure MB 107.

7. Duplication.

The revised regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to license and regulate MLOs in a manner consistent with the SAFE Act. As noted above, the alternative would be to cede this responsibility to the federal government. By enacting revised Article 12-E, the Legislature has indicated its desire to retain this responsibility at the state level.

9. Federal standards.

Currently, mortgage loan originators are required under the SAFE Act to be licensed under requirements nearly identical to those set forth in new Article 12-E.

10. Compliance schedule.

New Article 12-E became effective on July 11, 2009.

A transitional period is provided for mortgage loan originators who, as of July 11, 2009, were authorized to act as MLOs or had filed applications to be so authorized. Such MLOs may continue to engage in MLO activities, provided they submit any additional, updated information required by the Superintendent. The transitional period runs until January 1, 2011, in the case of authorized persons, and until July 31, 2010, in the case of applicants (unless their applications are denied or withdrawn as of an earlier date). Applicants are required to complete their applications considerably in advance of these dates under the regulations in order to allow the Department to complete their processing.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The revised regulation will not have any impact on local governments. However, many of the originating entities who employ or are affiliated with mortgage loan originators are mortgage bankers or mortgage brokers who are considered small businesses. In excess of 2,700 of these businesses are licensed or registered by the Department of Financial Services (formerly the Banking Department).

2. Compliance Requirements:

The revised regulation reflects the changes made in revised Article 12-E of the Banking Law. The small businesses that MLOs are employed by or affiliated with will be required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for actual or alleged violations, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. In addition to these requirements, originating entities will be required to assign MLOs to registered locations and to ensure that an MLO's unique identifier is recorded on each mortgage application he or she originates.

3. Professional Services:

None.

4. Compliance Costs:

As under the existing Part 420, some mortgage entities may choose to pay for costs associated with initial licensing and annual license renewal for their MLOs and with continuing education requirements, but are not required to do so. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education are expected to be minimal.

5. Economic and Technological Feasibility:

The rule-making should impose no adverse economic or technological burden on small businesses that MLOs are employed by or affiliated with.

6. Minimizing Adverse Impacts:

The industry, and specifically small businesses who are licensed and registered mortgage businesses, supported passage of the previous Banking Law Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulations. In addition, these businesses were involved in a policy dialogue with the Department during rule development. In order to minimize any potential adverse economic impact of the rulemaking, outreach was conducted with associations representing the industries that would be affected thereby (mortgage bankers, and mortgage brokers).

The revised regulation implements changes in Article 12-E of the Banking Law. An earlier draft of the revised regulation was published on the Department's website on August 27, 2009. Changes incorporating the comments have been made in the regulation where appropriate.

7. Small Business and Local Government Participation:

See response to Item 6 above.

Rural Area Flexibility Analysis

Types and Estimated Numbers. The New York State Department of Financial Services (formerly the Banking Department) licenses over 1,800 mortgage bankers and brokers, of which over 1,200 are located in the state. It has received almost 15,000 applications from MLOs under the present regulations and anticipates receiving approximately 2,700 applications from individuals who were previously exempted but will be required to be licensed under the revised regulations. Many of these entities and MLOs will be operating in rural areas of New York State and would be impacted by the regulation. If individuals who originate mobile home loans are required to be licensed, a relatively small number of additional applications is anticipated.

Compliance Requirements. Mortgage loan originators in rural areas must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks) to engage in the business of mortgage loan origination. The application process established by the regulations requires an MLO to apply for a license electronically and to submit additional background information to the Mortgage Banking unit of the Department. This additional information consists of fingerprints, a recent credit report, supplementary background information and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for cause, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. The Department believes that this rule will not impose a burdensome set of requirements on entities operating in rural areas.

Costs. Some mortgage businesses in rural areas may choose to pay the increased costs associated with the continuing education requirements and the fees associated with licensing and annual renewal of their MLOs, but are not required to do so. The regulation sets forth a background investigation fee of \$125.00, an initial license processing fee of \$50.00 and an annual license renewal fee of \$50.00. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. The latter two fees will be posted on the Department's website. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education courses are expected to be minimal. The cost of continuing education is estimated to be approximately \$500 every two years. The Department's increased effectiveness in fighting mortgage fraud and predatory lending will lower costs related to litigation and will decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

Minimizing Adverse Impacts. The industry supported passage of the prior Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry was involved in a dialogue with the Department during rule development.

The revised regulations implement revised Article 12-E of the Banking Law, which in turn closely tracks the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act"). Hence, the licensing and regulation of mortgage loan originators in New York now closely tracks the federal standard. If New York did not adopt this standard, the SAFE Act requires that the federal Department of Housing and Urban Development assume the licensing of MLOs in New York State.

Rural Area Participation. Representatives of various entities, including mortgage bankers and brokers conducting business in rural areas and entities that conduct mortgage originating in rural areas, participated in outreach meetings that were conducted during the process of drafting the prior Article 12-E and the implementing regulations. As noted above, the revised statute and regulations closely track the provisions of the federal SAFE Act.

Job Impact Statement

Revised Article 12-E of the Banking Law, effective on July 11, 2009, replaces the prior version of Article 12-E with respect to the licensing and regulation of mortgage loan servicers. This proposed regulation sets forth the application, exemption and approval procedures for licensing registration as a Mortgage Loan Originator (MLO), as well as financial responsi-

bility requirements for individuals engaging in MLO activities. The proposed regulation also provides transition rules for individuals who engaged in MLO activities under the prior version of the article to become licensed under the new statute.

The requirement to comply with the proposed regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. This is because individuals were already subject to regulation under the prior version of Article 12-E of the Banking Law. New Article 12-E and Part 420 are intended to conform the regulation of MLOs to the requirements of federal law. Absent action by New York to conform this regulation to federal requirements, federal law authorized the Department of Housing and Urban Affairs to take control of the regulation of MLOs in New York State.

As with their predecessors, the new statute and proposed regulations require the use of the internet-based National Mortgage Licensing System and Registry (NMLS), developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for MLO registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory licensing requirement rather than the provisions of the proposed regulations.

Supervisory Procedure 108 relates to the approval by the Superintendent of Financial Services (formerly the Superintendent of Banks) of educational courses and course providers for MLOs. Under revised Article 12-E, this function has been transferred to the NMLS. Moreover, educational requirements have been increased under the new law and proposed regulation by the Superintendent.

NOTICE OF ADOPTION

Workers' Compensation Insurance

I.D. No. DFS-52-11-00004-A

Filing No. 158

Filing Date: 2012-02-21

Effective Date: 2012-03-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Subpart 151-6 (Regulation 119) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, section 301; and Workers' Compensation Law, sections 15(8)(h)(4) and 151(2)(b)

Subject: Workers' Compensation Insurance.

Purpose: This regulation is necessary to standardize the basis upon which the workers' compensation assessments are calculated.

Text or summary was published in the December 28, 2011 issue of the Register, I.D. No. DFS-52-11-00004-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: David Neustadt, Department of Financial Services, One State Street, New York, NY 10004-1511, (212) 709-1691, email: david.neustadt@dfs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Action taken: Amendment of Subpart 86-8 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807(2-a)(e)

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulation on an emergency basis in order to meet the regulatory requirement found within the regulation itself to update the Ambulatory Patient Group (APG) weights at least once a year. To meet that requirement, the weights needed to be revised and published in the regulation for January 2010 and updated thereafter. Additionally, the regulation needs to reflect the many software changes made to the APG payment software, known as the APG grouper-pricer, which is a sub-component of the eMedNY Medicaid payment system. These changes include revised lists of payable and non-payable APGs, a new list of APGs that are not eligible for a capital add-on, and a list of APGs that are not subject to having their payment "blended" with provider-specific historical payment amounts. Finally, a brand new payment software enhancement, which allows payment on a procedure code-specific basis rather than an APG basis, needs to be reflected in the regulation.

There is a compelling interest in enacting these amendments immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of these provisions. APGs represent the cornerstone to health care reform. Their continued refinement is necessary to assure access to preventive services for all Medicaid recipients.

Subject: October 2011 Ambulatory Patient Groups (APGs) Payment Methodology.

Purpose: To refine the APG payment methodology.

Text of emergency rule: Subdivision (r) of section 86-8.2 is hereby repealed.

Section 86-8.7 is hereby repealed effective October 1, 2011 and a new section 86-8.7 is added to read as follows:

(a) *The table of APG Weights, Procedure Based Weights and units, and APG Fee Schedule Fees and units for each effective period are published on the New York State Department of Health website at: http://www.health.state.ny.us/health_care/medicaid/rates/apg/docs/apg_payment_components.xls*

Subdivision (c) of section 86-8.9 is repealed and a new subdivision (c) is added, to read as follows:

(c) *Drugs purchased under the 340B drug benefit program and billed under the APG reimbursement methodology shall be reimbursed at a reduced rate comparable to the reduced cost of drugs purchased through the 340B drug benefit program.*

Subdivision (d) of section 86-8.9 is amended to read as follows:

* * *

94 CARDIAC REHABILITATION
274 PHYSICAL THERAPY, GROUP
275 SPEECH THERAPY AND EVALUATION, GROUP
322 MEDICATION ADMINISTRATION AND OBSERVATION
414 LEVEL I IMMUNIZATION AND ALLERGY IMMUNOTHERAPY
415 LEVEL II IMMUNIZATION
416 LEVEL III IMMUNIZATION
428 PATIENT EDUCATION, INDIVIDUAL
429 PATIENT EDUCATION, GROUP
451 SMOKING CESSATION TREATMENT

Subdivision (h) of section 86-8.10 is amended to read as follows:

* * *

065 RESPIRATORY THERAPY
066 PULMONARY REHABILITATION
117 HOME INFUSION
190 ARTIFICIAL FERTILIZATION
311 FULL DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
313 HALF DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
314 HALF DAY PARTIAL HOSPITALIZATION FOR MENTAL ILLNESS

Department of Health

EMERGENCY RULE MAKING

October 2011 Ambulatory Patient Groups (APGs) Payment Methodology

I.D. No. HLT-50-11-00015-E

Filing No. 159

Filing Date: 2012-02-21

Effective Date: 2012-02-21

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action: