

# NYDFS FAQs Confirm Scope of COVID Mortgage Forbearance Law

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As stated in our [alert dated June 23, 2020](#), Governor Andrew Cuomo signed [S8428/A10530](#) and [S8243-C/A10351-B](#) into law on June 17, 2020. Collectively, in relevant part, the legislation creates N.Y. Banking Law § 9-x, which relates to residential forbearances as a result of COVID-19.

Recently, the New York Department of Financial Services (NYDFS) released [FAQs](#) to address questions from those in the industry regarding, among other things, the scope of N.Y. Banking Law § 9-x. Some important items from the FAQs are noted below; however, Regulated Institutions and those utilizing Regulated Institutions to service loans within the scope of N.Y. Banking Law § 9-x should review the full FAQs.

## What type of institutions does N.Y. Banking Law § 9-x apply to?

The FAQs confirmed that New York regulated banking organizations and any New York regulated mortgage servicers (Regulated Institutions) must comply with N.Y. Banking Law § 9-x.

A “banking organization” means any bank, trust company, private banker, savings bank, safe deposit company, savings and loan association, credit union, and investment company chartered by the Department. “Banking organization” does not include New York-regulated branches or agencies of foreign banks.

A “regulated mortgage servicer” means any entity that is registered with the NYDFS to engage in mortgage servicing activities pursuant to Article 12-D of the Banking Law. N.Y. Banking Law § 9-x. also applies to mortgage bankers, brokers, and New York-regulated branches and agencies of foreign banks that engage in mortgage servicing activities that are exempt from the New York’s servicer registration requirement.

However, the FAQs made clear that N.Y. Banking Law § 9-x **does not** apply to banks and credit unions that are licensed by another state or a federal authority. Therefore, even if an out-of-state chartered bank or national bank has filed an “exempt servicer registration” with the NYDFS, it is not subject to N.Y. Banking Law § 9-x.

## N.Y. Banking Law § 9-x does not apply to federally backed mortgages

The FAQs confirmed that the relief granted under N.Y. Banking Law § 9-x is **limited** to privately serviced loans relating to residential mortgages on properties located in New York to any individual who resides in New York and who demonstrates financial hardship as a result of the COVID-19 pandemic. Federally backed mortgage

loans, which include loans made, insured, purchased, or securitized by any agency or instrumentality of the United States, any government sponsored enterprise, or a federal home loan bank, are not subject to N.Y. Banking Law § 9-x.

## N.Y. Banking Law § 9-x does not apply to vacation homes or investment properties

The FAQs make clear that N.Y. Banking Law § 9-x only applies to residential mortgage loans on 1-4 family properties that serve as the **primary residence** of the borrower. The law does not apply to vacation homes or investment properties.

## Regulated Institutions must “look back” to March 7, 2020

The “covered period” for forbearances under N.Y. Banking Law § 9-x is March 7, 2020 and runs “until the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive Orders 202.28 and 202.31 and as further extended by any future Executive Order, issued in response to the COVID-19 pandemic continue to apply in the county of the qualified mortgagor’s residence.”

The FAQs clarified some industry questions related to the March 7, 2020 date. Some of the more pertinent points are set forth below.

- Forbearance relief is not available under N.Y. Banking Law § 9-x for loans that were accelerated or in foreclosure as of March 7, 2020.
- Forbearance relief is not limited under N.Y. Banking Law § 9-x to those borrowers whose payments were current as of March 7, 2020.
- If a borrower already entered into a forbearance agreement before March 7, 2020, and the borrower requests relief under N.Y. Banking Law § 9-x due to a demonstrable hardship caused by COVID-19, such borrower would be entitled to relief under N.Y. Banking Law § 9-x. However, the Regulated Institution **can count** the time during the covered period the loan was already in forbearance towards the 180-day forbearance period provided for under N.Y. Banking Law § 9-x.

## What does it mean for a borrower to be in “financial hardship?”

N.Y. Banking Law § 9-x provides relief for borrowers “who demonstrate financial hardship as a result of COVID-19 during the covered period.” The FAQs confirm that the law does not establish specific criteria for demonstrating financial hardship as a result of the COVID-19 pandemic. It is up to each Regulated Institution to establish such standards and apply them in light of its knowledge of the individual borrower. Standards may include, but are not limited to, the borrower’s financial resources, payment history and current circumstances, subject to the safety and soundness of the institution.

The FAQs also confirm a borrower might be experiencing “financial hardship as a result of COVID-19” even if that borrower still has the capacity to pay their mortgage and other living expenses. The purpose of N.Y. Banking

Law § 9-x is to help homeowners who, as a result of COVID-19, have suffered a “financial hardship” that may make it difficult for them to pay their mortgage and other living expenses. In assessing whether a borrower is facing a financial hardship, Regulated Institutions should establish reasonable standards that take into consideration a borrower’s resources, income, expenses, and the uncertain duration of the impact of the pandemic.

Finally, the FAQs make clear that a borrower must demonstrate an ongoing COVID-19-related hardship to qualify for an extended forbearance at the end of their initial 180-day forbearance.

### Do Regulated Institutions need to amend existing forbearance agreements issued under Executive Order 202.9 to comply with N.Y. Banking Law § 9-x requirements?

No, the FAQs confirm that nothing in N.Y. Banking Law § 9-x requires a Regulated Institution to amend existing COVID-19 forbearance agreements. However, to the extent that a borrower who previously received a forbearance under Executive Order 202.9 asks to repay a forbearance using one of the options listed in N.Y. Banking Law § 9-x(3), Regulated Institutions are required to conform the forbearance agreement.

### The Forbearance Requirement Extends to Escrow Portion of Monthly Payment

The FAQs confirm that N.Y. Banking Law § 9-x’s requirement to forbear “all monthly payments due with respect to the mortgage” includes monthly escrow payments.

### Interest cannot accrue on forborne amounts when a borrower elects to repay the forbearance by spreading the forbearance over the remaining term of the loan.

Despite an express statutory prohibition, the NYDFS’s guidance indicates that if a borrower elects to spread the amount of the forbearance over the remaining term of the loan pursuant to N.Y. Banking § 9-x(3)(b).

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If you have questions, reach out to one of the authors of this alert or another member of the firm’s Consumer Financial Services team, or visit our [COVID-19 Resource Center](#).

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