

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Banking Department

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. BNK-13-10-00002-E

Filing No. 250

Filing Date: 2010-03-11

Effective Date: 2010-03-17

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

Action taken: Addition of Part 418 and Supervisory Procedures MB 109 and 110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent, goes into effect on July 1, 2009. These regulations implement the registration requirement. It is therefore necessary that servicers be informed of the details of the registration process sufficiently far in advance to permit applications for registrations to be prepared, submitted and reviewed by the effective date.

Subject: Registration and financial responsibility requirements for mortgage loan servicers.

Purpose: To require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Banks.

Substance of emergency rule: SUMMARY OF NEW PART 418

Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers (“servicers”) be registered with the Superintendent of Banks, while Sections 418.12 to 418.15 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.16 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including “Mortgage loan”, “Mortgage loan servicer” and “Exempted Person”.

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a “change of control” of a servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 90 days without a hearing. The section also provides for termination of a servicer registration upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant does not cure the deficiencies in 90 days, its registration terminates. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the power of the Superintendent to extend a suspension and the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration and to registered servicers. The financial responsibility requirements include (1) a required net worth of at least 1% of total loans serviced, with a minimum of \$250,000; (2) a ratio of net worth to total New York mortgage loans serviced of at least 5%; (3) a corporate surety bond of at least \$250,000 and a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of \$300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service not more than 12 mortgage loans or an aggregate amount of loans not exceeding \$5,000,000, whichever is less.

Section 418.13 applies similar financial responsibility requirements to "Exempted Persons" who are not subject to the requirement to register as servicers. Such persons include mortgage bankers, mortgage brokers and most banking institutions and insurance companies.

Section 418.14 exempts from the otherwise applicable net worth and Fidelity and E&O and requirements entities subject to comparable requirements in connection with servicing mortgage loans for federal instrumentalities, and exempts from the otherwise applicable net worth requirement entities that are subject to the capital requirements applicable to insured depository institutions and that are considered at least adequately capitalized.

Section 418.15 covers the utilization of the proceeds of a servicer's surety bond in the event of the surrender or termination of its registration.

Section 418.16 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied.

SUMMARY OF NEW SUPERVISORY PROCEDURE MB 109

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

SUMMARY OF NEW SUPERVISORY PROCEDURE MB 110

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer's operations resulting from a change of control which should be notified to the Banking Department.

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 12, 2010.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary of the Banking Board, New York State Banking Department, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the "Subprime Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See e.g., Banking Law Sections 590(2) (b-1) and 595-b)

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i))

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board 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 mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Subprime Law 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.

Section 596 was amended by the Subprime Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Subprime Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Subprime Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.2. Legislative Objectives.

The Subprime Bill is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there has heretofore been no general regulation of servicers by the state or the Federal government.

The Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Banking Board and the superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this State.

The regulations implement the first component of the mortgage servicing statute - the registration of mortgage servicers. (See Sections 418.4 to 418.7.) In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.10 and 418.11 to 418.14 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule

also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7.)

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

Governor Paterson reported in early 2008 that there were more than 52,000 foreclosure actions filed in 2007, or approximately 1,000 per week. That number increased in 2008, averaging approximately 1,100 per week in the first quarter. This is a crisis and the problems that have affected so many have been found to affect not only the origination of residential mortgage loans, but also their servicing and foreclosure. The Subprime Law adopted a multifaceted approach to the problem. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Currently, the Department regulates the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; and erroneously force-placing insurance when borrowers already have insurance. While establishing minimum standards for the business conduct of servicers will be the subject of another regulation currently being developed by the Department, Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing loans and must otherwise comply with the regulations.

As noted above, the proposed regulation relates to the first component of the mortgage servicing statute - the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these proposed regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 90 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are being divided into two parts in order to facilitate meeting the statutory requirement that all MLSs be registered by July 1, 2009. The Department will separately propose regulations dealing with business conduct and consumer protection requirements for MLSs.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is \$3,000.

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 are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and, through the timely response to consumers' inquiries, should assist in decreasing the number of foreclosures in this State.

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 is being established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process would be virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

7. Duplication.

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

Currently, the mortgage servicing industry is required to meet specific financial net worth requirements and to maintain certain surety bonds in order to service mortgage loans for federal instrumentalities. Those requirements have been considered and in drafting these proposed regulations an exemption was created under Section 418.13, from the otherwise applicable net worth and Fidelity and E&O bond requirements, for entities subject to comparable requirements in connection with servicing mortgage loans for federal instrumentalities, and entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer - collecting consumers' money and acting as agents for mortgagees in foreclosure transactions - the Department believes that it is imperative that servicers be required to meet this heightened standard.

10. Compliance Schedule.

The emergency regulations will become effective on September 23, 2009. Substantially similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an ap-

application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law"). Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Banking Department of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of \$3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. Of the remaining servicers which are small businesses subject to the registration requirements of the regulation, a number are expected to be exempt from most of the financial responsibility requirements because they service mortgages for FNMA, GNMA, VA or other federal instrumentalities and comply with net worth and E&O bond requirements of those entities.

As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs during the month of April. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Rural Area Flexibility Analysis

Types and Estimated Numbers:

The New York State Banking Department anticipates that approximately 120 mortgage loan servicers may apply to become registered in 2009. It is expected that a very few of these entities will be operating in rural areas of New York State and would be impacted by the emergency regulation.

Compliance Requirements:

Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking Division of the Banking Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs:

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be \$3,000. 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 ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations. Of the remainder, a number are expected to be exempt from most of the financial responsibility requirements because they service mortgages for FNMA, GNMA, FHLMC, VA or other federal instrumentalities and comply with net worth and E&O bond requirements of those entities.

As regards servicers that operate in rural areas and are not otherwise exempted, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

Rural Area Participation:

Industry representatives have participated in outreach programs during the month of April. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Banking Department and exempt from the new registration requirement. Many of the remaining servicers, while subject to the registration requirement, already service mortgages for FNMA, GNMA or

VA and are thus expected to be exempt from the financial responsibility requirements in the regulation. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, 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 servicer 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 registration requirement rather than the provisions of the emergency regulations.

EMERGENCY RULE MAKING

License, Financial Responsibility, Education and Test Requirements for Mortgage Loan Originators

I.D. No. BNK-13-10-00003-E

Filing No. 251

Filing Date: 2010-03-15

Effective Date: 2010-03-17

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 Banks.

Substance of emergency rule: SUMMARY OF NEW PART 420

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.

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 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.

SUMMARY OF NEW SUPERVISORY PROCEDURE 107

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.

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 June 12, 2010.

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

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's 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 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 forth 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 business 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.

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 Banking Department currently 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 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 Division of the Banking 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 responsibility 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 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.

Office of Children and Family Services

EMERGENCY RULE MAKING

Mandatory Disqualification of Foster and Adoptive Parents Based on Criminal History

I.D. No. CFS-06-10-00004-E

Filing No. 237

Filing Date: 2010-03-11

Effective Date: 2010-03-14

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

Action taken: Amendment of sections 421.27(d)(1) and 443.8(e)(1); and repeal of sections 421.27(k) and 443.8(k) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 378-a(2), as amended by L. 2008, ch. 623 and L. 1997, ch. 436

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The regulations must be filed on an emergency basis to protect the health and safety of children in foster boarding homes and adoptive placements. The regulations reflect newly enacted state statutory standards.

Subject: Mandatory disqualification of foster and adoptive parents based on criminal history.

Purpose: The regulations implement Chapter 623 of the Laws of 2008 relating to criminal history checks of foster and adoptive parents.

Text of emergency rule: Paragraph (1) of subdivision (d) of section 421.27 is amended to read as follows:

(d)(1) Except [as authorized herein and] as set forth in subdivision (h) of this section, the authorized agency must deny an application to be an approved adoptive parent or revoke the approval of an approved adoptive parent when a criminal history record of the prospective or approved adoptive parent reveals a conviction for:

(i) a felony conviction at any time involving:

(a) child abuse or neglect;

(b) spousal abuse;

(c) a crime against a child, including child pornography;

(d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery[, unless the prospective adoptive parent or approved adoptive parent demonstrates that:

(1) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(2) approval of the application or continuing approval will not place the child's safety in jeopardy and will be in the best interests of the child]; or

(ii) a felony conviction within five years for physical assault, battery, or a drug-related offense [, unless the prospective adoptive parent or approved adoptive parent demonstrates that:

(a) such denial will create an unreasonable risk of harm to the physical or mental health of the child; and

(b) approval of the applicant will not place the child's safety in jeopardy and will be in the best interests of the child].

Notwithstanding any other provision to the contrary, with regard to an adoptive parent fully approved prior to October 1, 2008, the provisions of this paragraph only apply to mandatory disqualifying convictions that occur on or after October 1, 2008.

Subdivision (k) of section 421.27 is repealed.

Paragraph (1) of subdivision (e) of section 443.8 is amended to read as follows:

(e)(1) Except as [authorized herein and as] set forth in this section, the authorized agency must deny an application for certification or approval as a certified or approved foster parent or deny an application for renewal of the certification or approval of an existing foster parent *submitted on or after October 1, 2008* or revoke the certification or approval of an existing foster parent when a criminal history record of the prospective or existing foster parent reveals a conviction for:

(i) a felony conviction at any time involving:

(a) child abuse or neglect;

(b) spousal abuse;

(c) a crime against a child, including child pornography; or

(d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery[, unless the applicant or approval or certification as a foster parent or the certified or approved foster parent demonstrates that:

(1) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(2) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child]; or

(ii) a felony conviction within the past five years for physical assault, battery, or a drug-related offense[; unless the applicant for certification or approval as a foster parent or the certified or approved foster parent demonstrates that:

(a) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(b) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child].

Notwithstanding any other provision to the contrary, with regard to a foster parent fully certified or approved prior to October 1, 2008, the provisions of this paragraph only apply to mandatory disqualifying convictions that occur on or after October 1, 2008.

Subdivision (k) of section 443.8 is repealed.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. CFS-06-10-00004-P, Issue of February 10, 2010. The emergency rule will expire June 8, 2010.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, N.Y. 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out its powers and duties.

Section 34(3)(f) of the SSL authorizes the commissioner of OCFS to establish regulations for the administration of public assistance and care within New York State, both by the State and by local government units.

Section 378-a(2) of the SSL requires criminal history record reviews of prospective foster and adoptive parents, as well as other persons over the age of 18 who reside in the home of such applicants.

Chapter 623 of the laws of 2008 amended the criminal history review standards set forth in section 378-a(2) of the SSL. Section 5 of Chapter 623 of the Laws of 2008 authorizes OCFS to promulgate rules and regulations on an emergency basis for the purpose of implementing the provision of the Chapter.

2. Legislative objectives:

The regulations implement Chapter 623 of the Laws of 2008 relating to criminal history record reviews of applicants for certification or approval as foster or adoptive parents. The regulations reflect amendments to federal and state statutory standards relating to situations where such applicant has been convicted of a mandatory disqualifying crime. The regulations eliminate the category of presumptive disqualifying crimes and replace that category with the category of mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents.

Chapter 623 of the Laws of 2008 and the regulations implement changes in federal statutes that had previously allowed states to opt out of federal criminal history record review requirements for prospective foster or adoptive parents and that required the application of mandatory disqualification for certain categories of felony convictions. The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L.109-248) eliminated effective October 1, 2008 the ability of states to opt out of federal criminal history review standards and required states to comply in order to receive federal Title IV-E payments for foster care or adoption assistance.

3. Needs and benefits:

The regulations are necessary for OCFS to conform to federal and state statutory changes to criminal history record review standards. The regulations reflect the federal requirement set forth in the federal Adam Walsh Child Protection and Safety Act of 2006 that states must adopt federal mandatory disqualification standards for prospective foster and adoptive parents who are convicted of certain categories of felonies. Compliance with the federal requirement is a condition for New York State to have a compliant Title IV-E State Plan which is a condition for New York State to receive federal funding for foster care and adoption assistance.

The regulations are also necessary to reflect amendments to section 378-a(2) of the SSL that eliminated the category of presumptive disqualifying crimes. The regulations reflect the mandatory disqualification of an applicant to be certified or approved as a foster or adoptive parent when such applicant has been convicted of a certain category of felony.

The regulations will not impact persons who were fully certified or approved as a foster or adoptive parent prior to October 1, 2008 for convictions that occurred prior to that date.

4. Costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York State must implement provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately \$600 million in federal Title IV-E funding earned on an annual basis.

5. Local government mandates:

The regulations adopt the standards that were in place in 1999 with the enactment of Chapter 7 of the Laws of 1999, but were amended by Chapter 145 of the Laws of 2000 that created the criteria of presumptive disqualifying crimes.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe have been required to perform criminal history record reviews since 1999 in regard to New York State checks through the New York State Division of Criminal Justice Services and since 2007 in regard to a national criminal history record check through the Federal Bureau of Investigation. The regulations do not expand who must have a criminal history record check in relation to foster care or adoption.

6. Paperwork:

Authorized agencies are currently required to document their criminal history record review activities. The regulations do not impose additional paperwork requirements on social services districts or voluntary authorized agencies.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

The proposed regulations are required to implement the state law, Chapter 623 of the Laws of 2008 and the federal Adam Walsh Child Protection and Safety Act of 2006.

9. Federal standards:

The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) eliminated the ability of states to opt out of the federal criminal history record review requirements set forth in section 471(a)(20) of the Social Security Act for prospective foster and adoptive parents. New York State had opted out of the federal requirements in 2000 through Chapter 145 of the Laws of 2000 that created the category of presumptive disqualifying crimes. Effective October 1, 2008, for a state to have a compliant Title IV-E State Plan, the state must apply the federal criminal history record review standards for applicants for certification or approval as foster or adoptive parents. Those standards prohibit the final certification or approval of a prospective foster or adoptive parent who has a felony conviction at any time for abuse or neglect, spousal abuse, or a crime against a child or for a crime involving violence. In addition, the federal statutes prohibit final certification or approval of a prospective foster or adoptive parent who has been convicted within 5 years of such application for assault or a drug related offense.

10. Compliance schedule:

Chapter 623 of the Laws of 2008 provides for an October 1, 2008 effective date of the standards set forth in the regulations. OCFS is developing the necessary revised forms and instructions to authorized agencies to implement the revised standards.

Regulatory Flexibility Analysis

1. Effect on small business and local governments:

The regulations will affect social services districts, Indian tribes

with an agreement with the State of New York to provide foster care and adoption services and voluntary authorized agencies that certify or approve prospective foster and adoptive parents. There are 58 social services districts and approximately 160 voluntary authorized agencies. The St. Regis Mohawk Tribe has an agreement with the State of New York to provide foster care and adoption services.

2. Reporting, recordkeeping and compliance requirements:

The regulations are necessary to comply with federal and state statutory requirements relating to criminal history record reviews of persons applying for certification or approval as foster or adoptive parents. The regulations reflect the enactment by Chapter 623 of the Laws of 2008 regarding mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents and the elimination of the category of presumptive disqualifying crimes for such applicants. The adoption of mandatory disqualifying crimes is required by the federal Adam Walsh Child Protection and Safety Act of 2006 in order to enable New York State to continue to receive federal funding for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act. The 2006 federal Act requires implementation of this provision effective October 1, 2008.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe will continue to process requests for criminal history record reviews as originally mandated by Chapter 7 of the Laws of 1999. The regulations reflect modifications to the standards for the certification or approval of prospective foster or adoptive parents when an applicant has been convicted of a mandatory disqualifying crime.

The regulations will not impose additional record keeping or reporting requirements on agencies. The regulations will eliminate a notification that is presently required in regard to presumptive disqualifying crimes.

3. Professional services:

No new or additional professional services would be required by small businesses or local governments in order to comply with the regulations.

4. Compliance costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York must implement the provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately \$600 million in federal Title IV-E funding earned on an annual basis.

5. Economic and technological feasibility:

The social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe affected by the regulations have the economic and technological ability to comply with the regulations. The regulations do not expand the categories of persons for whom a criminal history record review must be completed. OCFS is making modifications to the statewide automated child welfare information system, CONNECTIONS and to its criminal history information system, CHRS to support and implement the regulations.

6. Minimizing adverse impact:

The regulations reflect specific amendments to state statute enacted by Chapter 623 of the Laws of 2008 and amendments to federal standards as enacted by the Adam Walsh Child Protection and Safety Act of 2006. The process for fingerprinting foster or adoptive parents and other persons over the age of 18 who reside in the home of the applicants has been the same since 1999 for in-state checks through the New York State Division of Criminal Justice Services and since 2007 for national checks through the Federal Bureau of Investigation. While the regulations will change the standards following the receipt of the result of the criminal history check, the regulations will not change the process for taking and reviewing of fingerprints. The regulations build on existing procedures.

7. Small business and local government participation:

OCFS advised social services districts, voluntary authorized agen-

cies and the St. Regis Mohawk Tribe of the federal amendment to criminal history record checks in the federal Adam Walsh Child Protection and Safety Act of 2006 and the anticipated impact on New York State standards in an administrative directive (07-OCFS-ADM-01 State and National Criminal History Record Checks (for Foster /Adoptive Parents) issued on February 7, 2007. A reminder of the federal statutory change and related impact on New York State standards was sent to the same parties in an informational letter (08-OCFS-INF-07 Preparation for the Elimination of the "Out-Out" Provision for conducting Criminal History Record Checks) issued May 21, 2008. The federal statute was posted on the OCFS website and was discussed at a video conference held in October of 2006 at which agencies were invited to view and to ask questions. A tape of that conference is also available to all agencies that were not able to attend.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect 44 social services districts that are defined as being rural counties and the seven social services districts that include significant rural areas within their borders. The regulations will also affect the St. Regis Mohawk Tribe that has an agreement with the State of New York to provide foster care and adoption services and which services a rural community. In addition, there are approximately 100 voluntary authorized agencies that service rural communities that will be affected by the regulations.

2. Reporting, recordkeeping, and other compliance requirements and professional services:

The regulations are necessary to comply with federal and state statutory requirements relating to criminal history record reviews of persons applying for certification or approval as foster or adoptive parents. The regulations reflect the enactment by Chapter 623 of the Laws of 2008 regarding mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents and the elimination of the category of presumptive disqualifying crimes for such applicants. The adoption of mandatory disqualifying crimes is required by the federal Adam Walsh Child Protection and Safety Act of 2006 in order to enable New York State to continue to receive federal funding for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act. The federal 2006 Act requires implementation of this provision effective October 1, 2008.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe will continue to process requests for criminal history record reviews as originally mandated by Chapter 7 of the Laws of 1999. The regulations reflect modifications to the standards for the certification or approval of prospective foster or adoptive parents when an applicant has been convicted of a mandatory disqualifying crime.

The regulations will not impose additional record keeping or reporting requirements on agencies. The regulations will eliminate a notification that is presently required in regard to presumptive disqualifying crimes.

3. Costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York State must implement the provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately \$600 million in federal Title IV-E funding on an annual basis.

4. Minimizing adverse impact:

It is anticipated that the regulations will not have an adverse impacts on rural areas.

5. Rural area participation:

The Office of Children and Family Services (OCFS) advised social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe of the federal amendment to criminal history record checks by the Adam Walsh Child Protection and Safety Act of 2006

and the anticipated impact on New York State standards in an administrative directive (07-OCFS-ADM-01 State and National Criminal History Record Checks (for Foster/Adoptive Parents) issued on February 7, 2007. A reminder of the federal statutory change and related impact on New York State standards was sent to the same parties in an informational letter (08-OCF-INF-07 Preparation for the Elimination of the "Opt-Out" Provision for Conducting Criminal History Record Checks) issued on May 21, 2008. The federal statute was posted on the OCFS website and was discussed at a statewide video conference held in October of 2006 at which agencies were invited to view and to ask questions. A tape of the video conference is available for agencies not able to attend.

Job Impact Statement

A full job impact statement has not been prepared for the regulations which contain new requirements imposed by Chapter 623 of the Laws of 2008. The regulations will not have an impact on jobs and employment opportunities because they will not impact the number of staff authorized agencies must maintain to certify, approve or supervise foster or adoptive homes. The regulations impact persons who are not in an employment relationship with the agency.

EMERGENCY RULE MAKING

Child Care Market Rate and Stimulus Regulations

I.D. No. CFS-13-10-00001-E

Filing No. 238

Filing Date: 2010-03-11

Effective Date: 2010-03-14

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

Action taken: Amendment of sections 404.5, 415.2 and 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 410; and title 5-C

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary to protect the health, safety and welfare of families and children receiving subsidized child care in New York State. First, these regulations address the expanded need for child care services by families affected by the extensive loss of jobs and employment opportunities as a result in the economic downturn of the State and national economy. With the simultaneous severe downturn of the credit, housing, job and stock markets and expected unusually slow recovery of each, OCFS expects the need for child care services for those battling the economic depression to only continue to grow for the foreseeable future. Further, without this action OCFS believes that the consequences for those battling the economic depression will only deepen, and only lead to an even slower recovery for the affected families and, as a result, the State economy.

OCFS also believes that by implementing these regulations, it will allow social services districts to meet some of the expanding need for child care services by families imperiled by the economic depression, which will hopefully allow those families to maintain or gain much needed services, training or employment. To be effective, and in order to best serve the families in the State that need child care services, OCFS must act quickly and without delay. Any delay in action may only exacerbate the financial crisis facing many families that need child care services in the State. Faced with this stark consequence, OCFS decided it had to act on an emergency basis, to get the needed child care services to those in the affected communities as soon as possible.

Second, it is also necessary to adopt these regulations on an emergency basis because Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure equal access for eligible children. The market rates that are being replaced are based on a survey conducted in 2007 and as a result, continuing to maintain the existing rates could result in subsidized families losing equal access for eligible children to child care arrangements or being unable to find appropriate child care.

In addition, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than

two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The current State Plan in effect covers the period October 1, 2009 through September 30, 2011. The federal Administration for Children and Families has indicated that the New York State Child Care and Development Fund (CCDF) Plan would not have been approved unless the child care market rates were adjusted, based upon a market rate survey, and were effective on October 1, 2009. Unless new market rates become effective on that date and remain in effect for the remainder of the State Plan period, the State's ability to use federal funds under CCDF and to transfer Temporary Assistance to Needy Families funds into CCDF for child care subsidies would be jeopardized.

Subject: Child Care Market Rate and Stimulus Regulations.

Purpose: To revise the market rates and address the expanded need for child care services caused by the economic downturn.

Text of emergency rule: Subparagraphs (xviii) and (xix) of subparagraph (6) of paragraph (b) of section 404.5 of Title 18 are amended, and a new subparagraph (xx) is added to such paragraph, to read as follows:

(xviii) veterans' assistance payments made to or on behalf of certain Vietnam veterans' natural adult or minor children for any disability resulting from spina bifida suffered by such children; [and]

(xix) veterans' assistance payments made for covered birth defects to or on behalf of the adult or minor children of women Vietnam veterans in service in the Republic of Vietnam during the period beginning on February 28, 1961 and ending on May 7, 1975. Covered birth defects means any birth defect identified by the Veterans' Administration as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period on February 28, 1961 and ending on May 7, 1975, and that has resulted or may result in permanent physical or mental disability[.]; and

(xx) one-time \$250 payments made under the American Recovery and Reinvestment Act of 2009 to Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits and Veterans Disability Compensation or Pension Benefits recipients for 10 months from the date the payment was received, including the month payment was received.

A new subparagraph (c) of subparagraph (vii) of paragraph (a) of section 415.2 of Title 18 is added to read as follows:

(c) a program to train workers in an employment field that currently is or is likely to be in demand in the near future, if the caretaker documents that he or she is a dislocated worker and is currently registered in such a program, provided that child care services are only used for the portion of the day the caretaker is able to document is directly related to the caretaker engaging in such a program. For the purposes of this provision, a dislocated worker is any person who: has been terminated or laid off from employment; has received a notice of termination or layoff from employment that will occur within six months of such notice; or was self-employed but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

Subparagraph (1) of paragraph (j) of section 415.9 of Title 18 is amended and reads as follows:

(1) Effective [May 15, 2009] October 1, 2009, the following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.

Subparagraph (2) of paragraph (j) of section 415.9 of Title 18 is renumbered as subparagraph (3) and a new subparagraph (2) is added to read as follows:

(2) Upon the effective date of these regulations, there will be two market rates for the legally-exempt family child care and in-home child care categories, a standard market rate and an enhanced market rate. The standard market rate for legally-exempt family child care and in-home child care categories will be 65 percent of the applicable registered family day care market rate. The enhanced market rate for legally-exempt family child care and in-home child care categories will be 70 percent of the applicable registered family day care market rate. The enhanced market rate will apply to those caregivers of legally-exempt family child care and in-home child care who have provided notice to, and have been verified by, the applicable legally-exempt caregiver enrollment agency or by the district for those portions of the district that are not covered by a legally-exempt caregiver enrollment agency, as having completed ten or more hours of training annually in the areas set forth in section 390-a(3)(b) of the social services law. A social services district has the option, if it so chooses in the child care portion of its child and family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate: (i) for all such providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the

enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement. The standard market rate will apply to all other caregivers of legally-exempt family child care and in-home child care.

Re-numbered subparagraph (3) of paragraph (j) of section 415.9 of Title 18 is amended and reads as follows:

[(2)] (3) The market rates are established in five groupings of social services districts. [Except for districts noted as an exception in the market rate schedule,] [t]The rates established for a group apply to all districts in the designated group. The district groupings are as follows:

CHILD CARE MARKET RATES

Market rates are established in five groupings of social services districts as follows:

Group 1: Nassau, Putnam, Rockland, Suffolk, Westchester

Group 2: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren

Group 3: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates

Group 4: Albany, Dutchess, Orange, Ulster

Group 5: Bronx, Kings, New York, Queens, Richmond

GROUP 1 COUNTIES:

Nassau, Putnam, Rockland, Suffolk, and Westchester

DAY CARE CENTER

	Age of Child			
	Under 1½	1½-2	3-5	6-12
WEEKLY	\$330	\$304	\$265	\$265
DAILY	\$59	\$52	\$42	\$40
PART-DAY	\$39	\$35	\$28	\$27
HOURLY	\$9.32	\$9.00	\$8.56	\$9.16

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$270	\$263	\$250	\$250
DAILY	\$48	\$41	\$40	\$37
PART-DAY	\$32	\$27	\$27	\$25
HOURLY	\$10.00	\$10.00	\$9.00	\$9.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$275	\$275	\$265	\$257
DAILY	\$50	\$50	\$50	\$50
PART-DAY	\$33	\$33	\$33	\$33
HOURLY	\$9.88	\$9.13	\$9.13	\$8.00

(Group 1 Counties)

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$265
DAILY	\$0	\$0	\$0	\$40
PART-DAY	\$0	\$0	\$0	\$27
HOURLY	\$0	\$0	\$0	\$9.16

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$176	\$171	\$163	\$163
DAILY	\$31	\$27	\$26	\$24
PART-DAY	\$21	\$18	\$17	\$16
HOURLY	\$6.50	\$6.50	\$5.85	\$5.85

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$189	\$184	\$175	\$175
DAILY	\$34	\$29	\$28	\$26
PART-DAY	\$23	\$19	\$19	\$17
HOURLY	\$7.00	\$7.00	\$6.30	\$6.30

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$226	\$215	\$196	\$190
DAILY	\$48	\$45	\$40	\$35
PART-DAY	\$32	\$30	\$27	\$23
HOURLY	\$8.00	\$8.36	\$8.00	\$8.00

GROUP 2COUNTIES: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$170	\$161	\$152	\$150
DAILY	\$35	\$32	\$30	\$30
PART-DAY	\$23	\$21	\$20	\$20
HOURLY	\$5.00	\$5.37	\$5.00	\$5.75

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$180	\$175	\$175	\$160
DAILY	\$36	\$35	\$35	\$34
PART-DAY	\$24	\$23	\$23	\$23
HOURLY	\$5.79	\$5.83	\$5.93	\$7.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$190
DAILY	\$0	\$0	\$0	\$35
PART-DAY	\$0	\$0	\$0	\$23
HOURLY	\$0	\$0	\$0	\$8.00

(Group 2 Counties)

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$111	\$105	\$99	\$98
DAILY	\$23	\$21	\$20	\$20
PART-DAY	\$15	\$14	\$13	\$13

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$111	\$105	\$99	\$98
DAILY	\$23	\$21	\$20	\$20
PART-DAY	\$15	\$14	\$13	\$13

HOURLY	\$3.25	\$3.49	\$3.25	\$3.74
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE <i>ENHANCED RATE</i>				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$119	\$113	\$106	\$105
DAILY	\$25	\$22	\$21	\$21
PART-DAY	\$17	\$15	\$14	\$14
HOURLY	\$3.50	\$3.76	\$3.50	\$4.03

GROUP 3 COUNTIES:

Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates

DAY CARE CENTER				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$180	\$171	\$160	\$150
DAILY	\$40	\$37	\$34	\$31
PART-DAY	\$27	\$25	\$23	\$21
HOURLY	\$6.50	\$6.50	\$6.50	\$6.25

REGISTERED FAMILY DAY CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$140	\$139	\$135	\$130
DAILY	\$30	\$30	\$30	\$30
PART-DAY	\$20	\$20	\$20	\$20
HOURLY	\$4.00	\$3.88	\$3.50	\$4.00

GROUP FAMILY DAY CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$150	\$145	\$140	\$140
DAILY	\$33	\$31	\$30	\$30
PART-DAY	\$22	\$21	\$20	\$20
HOURLY	\$4.00	\$4.00	\$4.00	\$5.00

(Group 3 Counties)				
SCHOOL AGE CHILD CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$150
DAILY	\$0	\$0	\$0	\$31
PART-DAY	\$0	\$0	\$0	\$21
HOURLY	\$0	\$0	\$0	\$6.25

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE <i>STANDARD RATE</i>				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$91	\$90	\$88	\$85
DAILY	\$20	\$20	\$20	\$20

PART-DAY	\$13	\$13	\$13	\$13
HOURLY	\$2.60	\$2.52	\$2.28	\$2.60
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE <i>ENHANCED RATE</i>				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$98	\$97	\$95	\$91
DAILY	\$21	\$21	\$21	\$21
PART-DAY	\$14	\$14	\$14	\$14
HOURLY	\$2.80	\$2.72	\$2.45	\$2.80

GROUP 4 COUNTIES:
Albany, Dutchess, Orange, and Ulster

DAY CARE CENTER				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$241	\$223	\$205	\$200
DAILY	\$50	\$48	\$43	\$37
PART-DAY	\$33	\$32	\$29	\$25
HOURLY	\$8.24	\$7.90	\$7.62	\$7.00

REGISTERED FAMILY DAY CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$200	\$191	\$185	\$185
DAILY	\$44	\$40	\$38	\$38
PART-DAY	\$29	\$27	\$25	\$25
HOURLY	\$7.00	\$6.13	\$6.00	\$7.00

GROUP FAMILY DAY CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$220	\$200	\$195	\$195
DAILY	\$45	\$45	\$40	\$40
PART-DAY	\$30	\$30	\$27	\$27
HOURLY	\$8.00	\$7.22	\$8.00	\$7.25

(Group 4 Counties)				
SCHOOL AGE CHILD CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$200
DAILY	\$0	\$0	\$0	\$37
PART-DAY	\$0	\$0	\$0	\$25
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE <i>STANDARD RATE</i>				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$130	\$124	\$120	\$120
DAILY	\$29	\$26	\$25	\$25
PART-DAY	\$19	\$17	\$17	\$17
HOURLY	\$4.55	\$3.98	\$3.90	\$4.55

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE <i>ENHANCED RATE</i>				
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	AGE OF CHILD			
	Under 1½	1½–2	3–5	6–12
WEEKLY	\$140	\$134	\$130	\$130
DAILY	\$31	\$28	\$27	\$27
PART-DAY	\$21	\$19	\$18	\$18
HOURLY	\$4.90	\$4.29	\$4.20	\$4.90

GROUP 5 COUNTIES:

Bronx, Kings, New York, Queens, and Richmond
DAY CARE CENTER

	AGE OF CHILD			
	Under 1½	1½–2	3–5	6–12
WEEKLY	\$338	\$255	\$217	\$195
DAILY	\$53	\$47	\$40	\$35
PART-DAY	\$35	\$31	\$27	\$23
HOURLY	\$16.09	\$17.00	\$15.70	\$10.00

REGISTERED FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½–2	3–5	6–12
WEEKLY	\$160	\$150	\$150	\$150
DAILY	\$30	\$30	\$32	\$30
PART-DAY	\$20	\$20	\$21	\$20
HOURLY	\$16.00	\$11.11	\$13.20	\$13.06

GROUP FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½–2	3–5	6–12
WEEKLY	\$194	\$181	\$175	\$160
DAILY	\$35	\$33	\$31	\$32
PART-DAY	\$23	\$22	\$21	\$21
HOURLY	\$18.14	\$15.65	\$12.83	\$18.00

(Group 5 Counties)

SCHOOL AGE CHILD CARE

	AGE OF CHILD			
	Under 1½	1½–2	3–5	6–12
WEEKLY	\$0	\$0	\$0	\$195
DAILY	\$0	\$0	\$0	\$35
PART-DAY	\$0	\$0	\$0	\$23
HOURLY	\$0	\$0	\$0	\$10.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

	AGE OF CHILD			
	Under 1½	1½–2	3–5	6–12
WEEKLY	\$104	\$98	\$98	\$98
DAILY	\$20	\$20	\$21	\$20
PART-DAY	\$13	\$13	\$14	\$13
HOURLY	\$10.40	\$7.22	\$8.58	\$8.49

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE

	AGE OF CHILD			
	Under 1½	1½–2	3–5	6–12
WEEKLY	\$112	\$105	\$105	\$105

DAILY	\$21	\$21	\$22	\$21
PART-DAY	\$14	\$14	\$15	\$14
HOURLY	\$11.20	\$7.78	\$9.24	\$9.14

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$ 338
DAILY	\$ 59
PART-DAY	\$ 39
HOURLY	\$ 18.14

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 June 8, 2010.

This rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, N.Y. 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant. It includes provisions regarding the use of funds by social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care services, and reporting requirements. OCFS is required to specify certain NYSCCBG requirements in regulation.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant.

Federal statute, 42 USC 9858(c)(4)(A), and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure equal access to care that is provided to children whose parents/caretakers are not eligible to receive assistance under federal or state programs. Additionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund.

2. Legislative objectives:

The legislative intent of the child care subsidy program is to assist low income families in meeting their child care costs in programs that provide for the health and safety of their children. The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

The regulations support the legislative objectives underlying Sections 332-a, 334, 335 and 410 and Title 5-C of the SSL to provide child care services to public assistance recipients and low income families when necessary to promote self-sufficiency and protect children. In addition, the regulations provide social services districts with greater local flexibility to provide child care services in the manner that best meets the needs of their local communities.

3. Needs and benefits:

The State is required under the Federal Child Care and Development Fund to adjust child care payment rates with each new State Plan based on a current survey of providers. The current State Plan covers the period October 1, 2007 through September 30, 2009 and the proposed State Plan for the period October 1, 2009 through September 30, 2011 has been submitted for approval by the federal government. A current survey of

providers was conducted in April and May of 2009. These regulations are needed to adjust existing rates that were established based on a survey done in 2007. Adjustments to the child care market rates reflect both increases and decreases in the five groupings of counties.

Decreases in the child care market rates reflect the market place and provide comparable access to those families in receipt of a child care subsidy as compared with families that do not receive a child care subsidy, which is required by federal and State laws.

In addition, this regulatory package includes the three provisions from the previous market rate stimulus regulatory package that was filed previously on an emergency basis on May 15, 2009 and was re-filed on August 13, 2009. The revised market rates that were in effect since August 13, 2009 are superseded by this filing.

The first provision is the exclusion of the one time payment of \$250 under the American Recovery and Reinvestment Act of 2009 when determining the eligibility for social services programs. These regulations address the federal requirement that one time payments disbursed under the American Recovery and Reinvestment Act of 2009 to recipients of Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits and Veterans Disability Compensation or Pension Benefits be excluded as income for determining eligibility for any programs in receipt of federal funds.

Second, social services districts have the option to serve families in which the parent/caretaker is a dislocated worker and is participating in a training program in an employment field that currently is or is likely to be in demand in the near future. Social services districts may choose to serve these families to provide safe, affordable child care to enable these parents/caretakers to be trained in various skills and rejoin the workforce in new employment.

Third, some districts have indicated that, in these difficult economic times, more families could be served without a negative impact on family access to child care if the enhanced child care market rate for legally-exempt family and in-home child care providers was lowered. Currently, there are two child care market rates established for legally-exempt family and in-home child care providers. One, the enhanced market rate, based on a 75 percent differential applied to the child care market rates established for registered family day care. The 75 percent reflects an incentive to legally exempt providers to pursue a minimum of ten hours of approved training. Two, the standard market rate, based on a 65 percent differential applied to the child care market rates established for registered family day care. The 65 percent applies to legally-exempt family and in-home child care providers that have not obtained ten hours of training annually. These regulations propose to establish the enhanced market rate for legally-exempt family and in-home providers at a 70 percent differential applied to the child care market rates established for registered family day care. Additionally, the regulation allows local social services districts, which so choose in their Child and Family Services Plans, to increase the enhanced market rate to up to 75 percent of the applicable registered family day care market rate. Further, a social services district has the option, if it so chooses in the child care portion of its child and family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate: (i) for all such providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement.

4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; and, districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the New York State Child Care Block Grant, and is limited on an annual basis to each district's New York State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2009-2010, social services districts received their allocations of \$736,036,409 in federal and State funds under the New York State Child Care Block Grant. This funding represented an increase of \$11.9 million from the base amount allocated to districts for SFY 2008-09. These increases in funding are available to cover any increased payments by social services districts due to the implementation of the adjusted market rates. Further, social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations. In addition, social services districts may use block

grant funds to serve the optional category of eligible individuals set forth in these regulations. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent up to 75 percent, if social services districts select this option.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

Social services districts will also be required to amend their existing Child and Family Services Plan to select the expanded categories of eligible families to include the parent/caretaker that is a dislocated worker participating in a training program in an employment field that currently is or is likely to be in demand in the near future, if social services districts so desire. In addition, social services districts would also be required to amend their existing Child and Family Services Plans to increase the enhanced market rate for legally-exempt providers of family child care or in-home child care to 75 percent of the registered family child care rate, if social services districts so desire.

6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

The adjustments in rates set forth in the regulations are required to implement the federal and State statutory and regulatory mandates; there are no other alternatives because every other alternative would violate federal and State statutory and regulatory mandates.

There are also no other viable alternatives to the child care stimulus provisions included in this regulatory filing. The only alternative to those provisions would be to not expand the delivery of child care services to needy families. This would adversely impact federal and State initiatives to support needy families affected by the recession and to stimulate the economy.

9. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a) and (b)(2) and (3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers and consistent with the parental choice provisions in 45 CFR 98.30.

10. Compliance schedule:

These provisions must be implemented effective on October 1, 2009.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The adjustments to the child care market rates will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 56,000 informal providers that may provide child care services to families receiving a child care subsidy.

2. Compliance requirements:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

Social services districts will also be required to amend their existing Child and Family Services Plans to select the expanded categories of eligible families to include the parent/caretaker that is a dislocated worker and is participating in a training program in an employment field that currently is or is likely to be in demand in the near future. In addition, social services districts would also be required to amend their existing Child and Family Services Plan to increase the enhanced market rate for legally-exempt providers of family child care or in-home child care to 75 percent of the registered family child care rate, if social services districts so desire.

3. Professional services:

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2009-10, social services districts received their allocations of \$736,036,409 in federal and State funds under the New York State Child Care Block Grant, an increase of \$11.9 million from the base amount allocated to districts for SFY 2008-09. These increases in funding are available to cover any increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

Social services districts will be required to provide the subsidies on behalf of the parent for subsidized child care services to legally-exempt family child care and in-home child providers who have completed ten hours of training annually, as approved by the legally-exempt caregiver enrollment agency, at the enhanced rate of seventy percent (70%) of the family child care rate. Districts do have the option to pay seventy five percent (75%) of the family child care rate for the enhanced market rate to legally-exempt family child care and in-home care approved by the legally-exempt caregiver enrollment agency, if the district selects this option in its Children and Family Services Plan. In addition, a social services district has the option, if it so chooses in the child care portion of its child and family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate: (i) for all such providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent up to 75 percent, if social services districts select this option.

The exclusion of the one time payment of \$250 under the American Recovery and Reinvestment Act of 2009 related to the determination of eligibility for social services programs, which receive federal funds, will not require any additional compliance costs to implement.

Social services districts have the option to serve families in which the parent/caretaker is a dislocated worker and is participating in a training program in an employment field that currently is or is likely to be in demand in the near future. Social services districts may choose to serve these families to provide safe, affordable child care to enable these parents/caretakers to be trained in various skills and rejoin the workforce in new employment. Social services districts may use the already allocated block grant funds to serve this optional category of families, if social services districts so desire.

5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers and with standard statistical methodology to minimize adverse impact. The Office applied standard statistical methods to choose a sample of approximately 5,020 licensed and registered child care providers so that it was representative throughout the State. The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care that were reported in the survey within the counties. Adjustments to the child care market rates reflect the market place and provide access comparable to those families not receiving a child care subsidy.

The regulations recognize that there may be differences in the needs among districts. To the extent allowed by statute, the regulations provide districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

7. Small business and local government participation:

In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed. Rate data was collected from almost 5,020 providers and that information formed the basis for the updated market rates.

The regulatory changes were discussed with a workgroup of local districts, including rural districts, for advice on potential impact.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those districts.

2. Reporting, recordkeeping, and other compliance requirements and professional services:

The regulations will not result in any new reporting or recordkeeping requirements for social services districts.

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine if the payments reflect the actual cost of care up to the appropriate market rate. Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

The exclusion of the one time payment of \$250 under the American Recovery and Reinvestment Act of 2009 to the determination of eligibility for social services programs, which receive federal funds, will not place any additional compliance requirements on social services districts.

Social services districts that choose to serve the optional eligibility categories of families to serve families where the parent/caretaker is a dislocated worker participating in a program to train workers in an employment field that is currently or is likely to be in demand in the near future will be required to amend the district's current Child and Family Services Plan.

A district will be required to provide subsidies on behalf of the parents for subsidized child care services to legally-exempt family child care and in-home child providers who have completed ten hours of training annually, as long as such providers are approved by the appropriate legally-exempt caregiver enrollment agencies, for the enhanced rate; or by the district for those portions of the district that are not covered by a legally-exempt caregiver enrollment agency, at the rate of seventy percent (70%) of the family child care rate. A district has the option to pay seventy five percent (75%) of the family child care rate for the enhanced market rate to legally-exempt family child care and in-home care approved by an enrollment agency, if the district selects this option in its Child and Family Services Plan.

3. Costs:

Under the State Budget for SFY 2009-2010, social services districts received their allocations of \$736,036,409 in federal and State funds under the New York State Child Care Block Grant, an increase of \$11.9 million from the base amount allocated to districts for SFY 2008-09. These increases in funding are available to cover any increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

The exclusion of the one time payment of \$250 under the American Recovery and Reinvestment Act of 2009 to the determination of eligibility for social services programs, which receive federal funds, will not require add any additional compliance costs to implement. In addition, social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent up to 75 percent, if social services districts select this option.

4. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers and with standard statistical methodology to minimize adverse impact. The Office applied standard statistical methods to choose a sample of approximately 5,020 licensed and registered child care providers so that it was representative throughout the State. The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care that were reported in the survey within the counties. Adjustments to the child care market rates reflect the market place and provide access comparable to those families not receiving a child care subsidy.

Adjustments to the child care market rates reflect both increases and decreases in the five groupings of counties. Decreases in the child care market rates reflect the market place and provides access comparable to those families not receiving a child care subsidy to that received by families that do not receive a child care subsidy as required by federal and State laws. The adjustments in the rates will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access to additional child care providers. This will assist these districts to enable more temporary assistance and low-income families to work, thereby reducing the number of families in need of temporary assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

The market rates for legally-exempt family child care and in-home child care were established based on a 65 percent differential applied to the market rates established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider. The enhanced market rate for legally-exempt family and in-home child care providers is based on a 70 percent differential applied to the child care market rates established for registered family day care. The 70 percent reflects an incentive to legally exempt providers to pursue a minimum of ten hours of approved training. Additionally, the regulation allows local social services districts, which so choose in their Child and Family Services Plans, to increase the enhanced market rate to up to 75 percent of the applicable registered family day care market rate.

The regulations recognize that there may be differences in the needs among districts. To the extent allowed by statute, the regulations provide districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities. Social services districts have the option to serve families in which the parent/caretaker is a dislocated worker and is participating in a training program in an employment field that currently is or is likely to be in demand in the near future. Social services districts may choose to serve these families to provide safe, affordable child care to enable these parents/caretakers to be trained in various skills and rejoin the workforce in new employment.

5. Rural area participation:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. In accordance with the federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. The sample drawn was representative of the regions across the State and, therefore, providers located in rural areas were appropriately represented in the survey. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had resources available to assist providers in other languages, if needed. Rate data was collected from almost 5,020 providers and that information formed the basis for the updated market rates.

The regulatory changes were also discussed with a workgroup of local districts, including rural districts, for advice on potential impact.

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

Adjustments to the child care market rates reflect both increases and decreases. Decreases in the child care market rates reflect the market place and OCFS believes that they are not substantial enough to cause the loss of jobs in child care programs.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-15-09-00009-A

Filing No. 245

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the April 15, 2009 issue of the Register, I.D. No. CVS-15-09-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-27-09-00003-A

Filing No. 242

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the July 8, 2009 issue of the Register, I.D. No. CVS-27-09-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-27-09-00004-A

Filing No. 244

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text or summary was published in the July 8, 2009 issue of the Register, I.D. No. CVS-27-09-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-09-00001-A

Filing No. 248

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the August 26, 2009 issue of the Register, I.D. No. CVS-34-09-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-09-00002-A

Filing No. 240

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the August 26, 2009 issue of the Register, I.D. No. CVS-34-09-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-09-00003-A

Filing No. 239

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the August 26, 2009 issue of the Register, I.D. No. CVS-34-09-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-09-00004-A

Filing No. 246

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the August 26, 2009 issue of the Register, I.D. No. CVS-34-09-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-09-00005-A

Filing No. 247

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the August 26, 2009 issue of the Register, I.D. No. CVS-34-09-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-09-00006-A

Filing No. 241

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the exempt class.

Text or summary was published in the August 26, 2009 issue of the Register, I.D. No. CVS-34-09-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-09-00007-A

Filing No. 243

Filing Date: 2010-03-11

Effective Date: 2010-03-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the non-competitive class.
Text or summary was published in the August 26, 2009 issue of the Register, I.D. No. CVS-34-09-00007-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-09-00009-A
Filing No. 249
Filing Date: 2010-03-11
Effective Date: 2010-03-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the non-competitive class.
Text or summary was published in the August 26, 2009 issue of the Register, I.D. No. CVS-34-09-00009-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

Education Department

**EMERGENCY
 RULE MAKING**

Standing Committees of the Board of Regents

I.D. No. EDU-51-09-00023-E
Filing No. 260
Filing Date: 2010-03-16
Effective Date: 2010-03-22

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of section 3.2 of Title 8 NYCRR.
Statutory authority: Education Law, section 207 (not subdivided)
Finding of necessity for emergency rule: Preservation of general welfare.
Specific reasons underlying the finding of necessity: The proposed amendment is needed to clarify in the Regents Rules that a Chancellor Emeritus, who is also a current member of the Board of Regents, is an ex officio member of each standing committee of the Board of Regents.
 The Board of Regents has determined that this provision is appropriate and necessary to assist the Board of Regents to effectively meet its responsibilities to govern the University of the State of New York, determine the educational policies of the State and oversee the State Education Department.
 The proposed amendment was adopted as an emergency rule at the December 2009 Regents meeting, effective December 22, 2009. The proposed amendment was adopted as a permanent rule at the March 8-9, 2010 Regents meeting. Pursuant to the State Administrative Procedure

Act, the earliest the permanent rule can become effective is March 31, 2010, the date a Notice of Adoption will be published in the State Register. However, the December emergency rule will expire on March 21, 2010.

The proposed amendment is being adopted as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the December 2009 Regents meeting remains continuously in effect until the effect date of its adoption as a permanent rule, and thereby prevent any disruption in the privileges and duties of the Chancellor Emeritus as an ex-officio member of the Regents standing committees.

Subject: Standing Committees of the Board of Regents.
Purpose: To provide for the ex-officio membership of a Chancellor Emeritus on Regents standing committees.

Text of emergency rule: Subdivision (b) of section 3.2 of the Rules of the Board of Regents is amended, effective March 22, 2010, as follows:

(b) The chancellor, [and] the vice chancellor, and any chancellor emeritus who is also a current member of the Board of Regents shall be ex officio members of each standing committee.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-51-09-00023-P, Issue of December 23, 2009. The emergency rule will expire May 14, 2010.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 gives the Board of Regents broad authority to adopt rules to carry into effect the laws and policies of the State pertaining to education and the functions, powers and duties conferred upon the University of the State of New York and the State Education Department. Inherent in such authority is the authority to adopt rules concerning the internal management and committee structure of the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above authority, the proposed amendment provides for membership of a Chancellor Emeritus on Standing Committees of the Board of Regents, which will assist the Board in meeting its statutory responsibility to determine the educational policies of the State and to carry out the laws and policies of the State relating to education.

3. NEEDS AND BENEFITS:

The proposed amendment is needed to clarify in the Regents Rules that a Chancellor Emeritus, who is also a current member of the Board of Regents, is an ex officio member of each standing committee of the Board of Regents. The Board of Regents has determined that this provision is appropriate and necessary to assist the Board of Regents to effectively meet its responsibilities to govern the University of the State of New York, determine the educational policies of the State and oversee the State Education Department.

4. COSTS:

- (a) Cost to State government: None.
- (b) Cost to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to the regulating agency for implementation and continuing administration of the rule: None.

The proposed amendment relates to the internal organization of the Board of Regents and merely provides for membership of a Chancellor Emeritus on each Standing Committee of the Board of Regents, and will not impose any costs on State and local government, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the internal organization of the Board of Regents and consequently will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment does not impose any reporting, recordkeeping or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate any existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The amendment does not exceed any minimum federal standards for the same or similar subject areas, since it relates solely to the internal organization of the Board of Regents of New York State and there are no federal standards governing such.

10. COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal organization of the Board of Regents and will not impose compliance requirements on local governments or private parties.

Regulatory Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore does not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the proposed amendment that it will have no impact on entities in rural areas of the State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates to the internal organization of the Board of Regents and will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Standing Committees of the Board of Regents

I.D. No. EDU-51-09-00023-A

Filing No. 261

Filing Date: 2010-03-16

Effective Date: 2010-03-31

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

Action taken: Amendment of section 3.2 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided)

Subject: Standing committees of the Board of Regents.

Purpose: To provide for the ex-officio membership of a Chancellor Emeritus on Regents standing committees.

Text or summary was published in the December 23, 2009 issue of the Register, I.D. No. EDU-51-09-00023-P.

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

Text of rule and any required statements and analyses may be obtained from: Chris Moore, Office of Counsel, State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements for Mental Health Counselors, Marriage and Family Therapists, Creative Arts Therapists and Psychoanalysts

I.D. No. EDU-13-10-00006-P

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

Proposed Action: Amendment of Subparts 79-9, 79-10, 79-11 and 79-12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6506(6), 6507(2)(a), 6508(1), 8402(3)(c), 8403(3)(c), 8404(3)(c), 8405(3)(c) and 8409(1)

Subject: Requirements for mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts.

Purpose: Implement requirements of Article 163 of the Education Law and establishes endorsement provisions.

Substance of proposed rule (Full text is posted at the following State website: www.op.nysed.gov): The Commissioner of Education proposes to promulgate regulations, relating to licensure as mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts in New York State. The following is a summary of the substance of the regulations.

Mental Health Counselor

Experience

Section 79-9.3(a) requires the applicant to complete at least 1,500 clock hours of direct client contact as part of the 3,000 clock hour requirement for licensure with the remaining hours in activities that do not require client contact.

Section 79-9.3(b) requires that experience completed in New York be under a limited permit issued by the department and provides that experience in another jurisdiction may be accepted if completed in an authorized setting under a qualified supervisor, as determined by the department.

Section 79-9.3(c)(1) requires an applicant to be under the general supervision of a qualified supervisor who shall provide supervision for an average of one hour per week or two hours every other week. The supervisor shall review the applicant's assessment, evaluation and treatment of each client and provide oversight to the applicant in developing skills as a mental health counselor.

Section 79-9.3(c)(2) requires the supervisor to be licensed and registered as a mental health counselor, physician, physician's assistant, psychologist, licensed clinical social worker, registered professional nurse or nurse practitioner, and eliminates the requirement for three years of licensed practice to qualify as a supervisor.

Section 79-9.3(d)(1) defines an acceptable setting for the supervised practice of mental health counseling as setting that is authorized to provide mental health counseling services, including a professional business entity authorized to provide services in mental health counseling, sole proprietorship or professional partnership owned by licensees who provide services that are within the scope of practice of mental health counseling services, a hospital or clinic authorized under the public health law, program or facility authorized under the mental hygiene law, program or facility authorized under federal law or an entity defined as exempt or otherwise authorized.

Section 79-9.3(d)(2) requires the setting to provide adequate supervision to the applicant gaining experience.

Section 79-9.3(e) requires the licensed supervisor to submit verification of the applicant's supervised experience and to produce a log of hours, if requested.

Limited Permit

Section 79-9.4(a)(2) is amended to clarify that the applicant for a permit must meet the moral character and education requirements to be eligible for a permit.

Section 79-9.4(b) is amended to clarify that the permit is issued for a specific setting, under a qualified supervisor, who provides general supervision of the permit holder. The supervisor shall be responsible for appropriate oversight over services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Endorsement

A new section 79-9.7 is added to the Regulations of the Commissioner of Education to establish requirements for endorsement of a license to practice mental health counseling issued by another jurisdiction.

Marriage and Family Therapist

Experience

Section 79-10.3(a) requires the applicant to complete 1,500 clock hours of direct client contact to meet the 1,500 clock hour requirement for licensure. Any experience completed in New York be under a limited permit issued by the department and provides that experience in another jurisdiction may be accepted if completed in an authorized setting under a qualified supervisor, as determined by the department.

Section 79-10.3(d)(1) requires the applicant to be under the general supervision of a qualified supervisor who shall provide supervision for an average of one hour per week or two hours every other week. The supervisor shall review the applicant's assessment, evaluation and treatment of each client and provide oversight to the applicant in developing skills as a marriage and family therapist.

Section 79-10.3(d)(2) requires the supervisor to be licensed and registered as a marriage and family therapist, physician, physician's assistant, psychologist, licensed clinical social worker, registered professional nurse or nurse practitioner, and eliminates the requirement for three years of licensed practice to qualify as a supervisor.

Section 79-10.3(e)(1) defines an acceptable setting for the supervised practice of marriage and family therapy as a setting that is authorized to provide marriage and family therapy services, including a professional business entity authorized to provide services within scope of practice of marriage and family therapy, a sole proprietorship or professional partnership owned by licensees who provide services that are within the scope of

practice of marriage and family therapy, a hospital or clinic authorized under the public health law, program or facility authorized under the mental hygiene law, program or facility authorized under federal law or an entity defined as exempt or otherwise authorized.

Section 79-10.3(e)(2) requires the setting to provide adequate supervision to the applicant gaining experience.

Section 79-10.3(f) requires the licensed supervisor to submit verification of the applicant's supervised experience and to produce a log of hours, if requested.

Limited Permit

Section 79-10.4(a)(2) is amended to clarify that the applicant for a permit must meet the moral character and education requirements to be eligible for a permit.

Section 79-10.4(b) is amended to clarify that the permit is issued for a specific setting, under a qualified supervisor, who provides general supervision of the permit holder. The supervisor shall be responsible for appropriate oversight of all services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Endorsement

A new section 79-10.7 is added to the Regulations of the Commissioner of Education to establish requirements for endorsement of a license to practice marriage and family therapy issued by another jurisdiction.

Creative Arts Therapist

Experience

Section 79-11.3(a) requires the applicant to complete not less than 1,000 clock hours of direct client contact as part of the 1,500 clock hour requirement for licensure with the remaining hours in activities that do not require client contact.

Section 79-11.3(b) requires that experience completed in New York be under a limited permit issued by the department and provides that experience in another jurisdiction may be accepted if completed in an authorized setting under a qualified supervisor, as determined by the department.

Section 79-11.3(c)(1) requires the applicant to be under the general supervision of a qualified supervisor who shall provide supervision for an average of one hour per week or two hours every other week. The supervisor shall review the applicant's assessment, evaluation and treatment of each client and provide oversight to the applicant in developing skills as a creative arts therapist.

Section 79-11.3(c)(2) requires the supervisor to be licensed and registered as a creative arts therapist, physician, physician's assistant, psychologist, licensed clinical social worker, registered professional nurse or nurse practitioner, and eliminates the requirement for three years of licensed practice to qualify as a supervisor.

Section 79-11.3(d)(1) defines an acceptable setting for the supervised practice of creative arts therapy as setting that is authorized to provide creative arts therapy services, including a professional business entity authorized to provide services within scope of practice of creative arts therapy, sole proprietorship or professional partnership owned by licensees who provide services that are within the scope of practice of creative arts therapy, a hospital or clinic authorized under the public health law, program or facility authorized under the mental hygiene law, program or facility authorized under federal law or an entity defined as exempt or otherwise authorized.

Section 79-11.3(d)(2) requires the setting to provide appropriate supervision to the applicant gaining experience.

Section 79-11.3(e) requires the licensed supervisor to submit verification of the applicant's supervised experience and to produce a log of hours, if requested.

Limited Permit

Section 79-11.4(a)(2) is amended to clarify that the applicant for a permit must meet the moral character and education requirements to be eligible for a permit.

Section 79-11.4(b) is amended to clarify that the permit is issued for a specific setting, under a qualified supervisor, who provides general supervision of the permit holder. The supervisor shall be responsible for providing appropriate oversight over services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Endorsement

A new section 79-11.7 is added to the Regulations of the Commissioner of Education to establish requirements for endorsement of a license to practice creative arts therapy issued by another jurisdiction.

Psychoanalysis

Experience

Section 79-12.3(a) requires the applicant to complete not less than 750 clock hours of direct client contact as part of the 1,500 clock hour requirement for licensure with the remaining hours in activities that do not require client contact experience.

Section 79-12.3(b) requires that experience completed in New York be under a limited permit issued by the department and provides that experi-

ence in another jurisdiction may be accepted if completed in an authorized setting under a qualified supervisor, as determined by the department.

Section 79-12.3(c) requires the applicant to be under the general supervision of a qualified supervisor who shall provide supervision for an average of one hour per week or two hours every other week. The supervisor shall review the applicant's assessment, evaluation and treatment of each client and provide oversight to the applicant in developing skills as a psychoanalyst.

Section 79-12.3(c)(2) requires the supervisor to be licensed and registered as a psychoanalyst, physician, physician's assistant, psychologist, licensed clinical social worker, registered professional nurse or nurse practitioner, and eliminates the requirement for three years of licensed practice to qualify as a supervisor.

Section 79-12.3(d)(1) defines an acceptable setting for the supervised practice of psychoanalysis as a setting that is authorized to provide psychoanalysis services, including a professional business entity authorized to provide services within the scope of practice of psychoanalysis, sole proprietorship or professional partnership owned by licensees who provide services that are within the scope of practice of psychoanalysis, a hospital or clinic authorized under the public health law, program or facility authorized under the mental hygiene law, program or facility authorized under federal law or an entity defined as exempt or otherwise authorized.

Section 79-12.3(d)(2) requires the setting to provide adequate supervision to the applicant gaining experience.

Section 79-12.3(e) requires the licensed supervisor to submit verification of the applicant's supervised experience and to produce a log of hours, if requested.

Limited Permit

Section 79-12.4(a)(2) is amended to clarify that the applicant for a permit must meet the moral character and education requirements to be eligible for a permit.

Section 79-12.4(b) is amended to clarify that the permit is issued for a specific setting, under a qualified supervisor, who provides general supervision of the permit holder. The supervisor shall be responsible for providing appropriate oversight over services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Endorsement

A new section 79-12.7 is added to the Regulations of the Commissioner of Education to establish requirements for endorsement of a license to practice psychoanalysis issued by another jurisdiction.

Text of proposed rule and any required statements and analyses may be obtained from: Christine Moore, NYS Education Department, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Frank Munoz, Deputy Commissioner, Office of the Professions, NYS Education Department, Washington Avenue, 2M, Albany, NY 12234, (518) 474-1941, email: fmunoz@mail.nysed.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the article of the Education Law that pertains to the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (6) of section 6506 of the Education Law authorizes the Board of Regents to indorse a license issued by a licensing board of another state or country upon the applicant fulfilling the requirements.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations relating to the professions.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Paragraph (c) of subdivision (3) of section 8402 of the Education Law authorizes the State Education Department to establish standards for supervised experience that must be successfully completed by an applicant to qualify for a license as a mental health counselor.

Paragraph (c) of subdivision (3) of section 8403 of the Education Law authorizes the State Education Department to establish standards for supervised experience that must be successfully completed by an applicant to qualify for a license as a marriage and family therapist.

Paragraph (c) of subdivision (3) of section 8404 of the Education Law authorizes the State Education Department to establish standards for supervised experience that must be successfully completed by an applicant to qualify for a license as a creative arts therapist.

Paragraph (c) of subdivision (3) of section 8405 of the Education Law authorizes the State Education Department to establish standards for supervised experience that must be successfully completed by an applicant to qualify for a license as a psychoanalyst.

Subdivision (1) of section 8409 of the Education Law authorizes the State Education Department to establish standards for limited permits that may be issued to an applicant for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst, who has met all requirements for licensure, except supervised experience and/or examination.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of Article 163 of the Education Law by clarifying existing experience and limited permit requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst and by establishing new requirements for the endorsement of a license issued in another jurisdiction if the applicant meets certain education, experience and examination requirements and the applicant has at least 5 years of experience in that profession, satisfactory to the State Board of Mental Health Practitioners, within the 10 years immediately preceding their application for licensure by endorsement.

3. NEEDS AND BENEFITS:

In 2002, Article 163 was added to the Education Law to authorize the licensure and practice of mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts. The Board of Regents adopted regulations in 2005 to implement the provisions of Article 163 of the Education Law.

The proposed amendment changes current regulations in each of these professions in three major areas. First, the proposed amendment amends the experience requirements for licensure in each of these professions by requiring applicants to obtain experience under the general supervision of a qualified supervisor. The proposed amendment defines general supervision, requires a certain amount of clock hours of the supervised experience to consist of direct contact with clients, and requires that any supervised experience be performed by an applicant under a limited permit issued by the department. This ensures that the applicant is receiving appropriate supervision from a qualified supervisor in a setting that is authorized to provide services that are restricted under Title VIII of the Education.

The proposed amendment also eliminates the requirement that the individual supervising an applicant's experience have three years of licensed experience in the practice of the profession and defines what is considered an appropriate setting to receive licensure-qualifying experience in each of these professions. Due to the recent creation of these four mental health professions, the State Board has notified the Department of shortages in qualified supervisors because of the three-year experience requirement for supervisors. Eliminating the three-year requirement will decrease the shortages in qualified supervisors and be consistent with other professions.

Secondly, the proposed amendment clarifies that the Department will issue a limited permit to an applicant to practice under supervision while meeting the experience and/or examination requirements for licensure in these professions and that the limited permit shall identify a qualified supervisor. The proposed amendment requires that the permit identify a qualified supervisor acceptable to the department, and prohibits a supervisor from supervising more than five permit holders at a time, which reflects the significant role of the supervisor in overseeing the practice of permit holders.

Finally, a new section will be added to the existing regulations in each of these professions to allow the Department to endorse a license issued in another jurisdiction if the applicant meets certain education, experience and examination requirements and the applicant has at least 5 years of experience in that profession, satisfactory to the State Board of Mental Health Practitioners, within the 10 years immediately preceding their application for licensure by endorsement.

4. COSTS:

(a) Costs to State government: The proposed regulations will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 163 of the Education Law for administering these professions.

(b) Cost to local government: The proposed amendment establishes requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. The regulation will not impose additional costs on local government.

(c) Cost to private regulated parties: The proposed regulation will not impose any other costs on applicants for the licenses over and above those imposed by Article 163 of the Education Law. The proposed regulation

simply clarifies the standards for acceptable experience and the issuance of limited permits, and provides an option for endorsement of a professional license for certain applicants seeking licensure in New York.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed regulation does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of Article 163 of the Education Law by establishing educational standards that individuals must meet to be licensed as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. Therefore, the proposed regulation does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed regulation imposes no additional reporting or recordkeeping requirements beyond those imposed by Article 163 of the Education Law. In accordance with Article 163, applicants for licensure will be required to submit to the State Education Department evidence satisfactory to meet the licensure requirements and licensed supervisors will be required to maintain documentation of the applicant's supervised practice and hours of supervision and for submitting a copy of such documentation to the Department upon its request.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There have been extensive discussions concerning the experience requirements for licensure in the professions. The proposed amendments will clarify the current experience requirements and allow supervision by licensed mental health counselors, marriage and family therapists, creative arts therapists or psychoanalysts within the respective profession.

9. FEDERAL STANDARDS:

There are no Federal standards for the licensure of mental health counselors, marriage and family therapists, creative arts therapists or psychoanalysts, the subject of the proposed regulation.

10. COMPLIANCE SCHEDULE:

Applicants for licensure or certification must comply with the regulation on the stated effective date.

Regulatory Flexibility Analysis

The proposed amendment implements the provisions of Article 163 of the Education Law by establishing experience, limited permit, and endorsement requirements for the licensure of individuals as mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts. The proposed amendment will have no effect on small businesses and does not regulate local governments.

The amendment will not impose any adverse economic impact, recordkeeping, reporting, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the regulation that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to applicants seeking licensure as mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts in New York State. The proposed amendment seeks to change New York State licensure requirements to conform to current practice in the professions, to expand opportunities for applicants to meet the experience requirement under qualified supervisors, and allow for the endorsement of licenses issued in other jurisdictions for qualified mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts seeking to become licensed in New York State. Applicants for licensure in these fields include individuals located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

In 2002, Article 163 was added to the Education Law to authorize the licensure and practice of mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts. The Board of Regents adopted regulations in 2005 to implement the provisions of Article 163 of the Education Law.

The proposed amendment changes current regulations in each of these professions in three major areas. First, the proposed amendment amends the experience requirements for licensure in each of these professions by requiring applicants to obtain experience under the general supervision of a qualified supervisor. The proposed amendment defines general supervision, requires a certain amount of clock hours of the supervised experience to consist of direct contact with clients, and requires that any

supervised experience be performed by an applicant under a limited permit issued by the department. This ensures that the applicant is receiving appropriate supervision from a qualified supervisor in a setting that is authorized to provide services that are restricted under Title VIII of the Education.

The proposed amendment also eliminates the requirement that the individual supervising an applicant's experience have three years of licensed experience in the practice of the profession and defines what is considered an appropriate setting to receive licensure-qualifying experience in each of these professions. Due to the recent creation of these four mental health professions, the State Board has notified the Department of shortages in qualified supervisors because of the three-year experience requirement for supervisors. Eliminating the three-year requirement will decrease the shortages in qualified supervisors and be consistent with other professions.

Secondly, the proposed amendment clarifies that the Department will issue a limited permit to an applicant to practice under supervision while meeting the experience and/or examination requirements for licensure in these professions and that the limited permit shall identify a qualified supervisor. The proposed amendment requires that the permit identify a qualified supervisor acceptable to the department, and prohibits a supervisor from supervising more than five permit holders at a time, which reflects the significant role of the supervisor in overseeing the practice of permit holders.

Finally, a new section will be added to the existing regulations in each of these professions to allow the Department to endorse a license issued in another jurisdiction if the applicant meets certain education, experience and examination requirements and the applicant has at least 5 years of experience in that profession, satisfactory to the State Board of Mental Health Practitioners, within the 10 years immediately preceding their application for licensure by endorsement.

The changes do not impose any additional reporting or recordkeeping requirements on licensees, including those located in rural areas, beyond those currently imposed by regulation. In addition, the amendment does not require regulated parties to hire professional services in order to comply.

3. COSTS:

The proposed amendment will not impose costs beyond those currently required to comply with statutory and regulatory requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment revises the experience and limited permit provisions and establishes new endorsement requirements for the licensure of mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts in New York State. These requirements are in place to ensure competency of licensed professionals and thereby safeguard the public.

Due to the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the State Board for Mental Health Practitioners and from statewide professional associations whose memberships include individuals who live or work in rural areas.

Job Impact Statement

Article 163 of the Education Law establishes a requirement that mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts be licensed to practice in New York State. The proposed amendment implements the requirements of Article 163 of the Education Law by amending the experience and limited permit requirements for those seeking licensure in the professions. It also sets forth standards for the endorsement of a license issued in another state or country for qualified applicants seeking licensure in New York, in accordance with statutory requirements.

Because it is evident from the nature of the proposed regulation that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

State Board of Elections

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Mandatory Audit of Voting Systems, Setting of Procedures and Discrepancy Thresholds

I.D. No. SBE-23-09-00007-RP

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

Proposed Action: Addition of section 6210.18 to Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102, 7-201, 7-206 and 9-211
Subject: Mandatory audit of voting systems, setting of procedures and discrepancy thresholds.

Purpose: Provide procedures for conducting mandatory audit of voting systems and set discrepancy thresholds for escalated audits.

Text of revised rule: Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by adding thereto a new section 6210.18, to read as follows:

Section 6210.18 Three-Percent (3%) Audit

(a) *As required by NYS Election Law Section 9-211, the board of elections or a bipartisan team appointed by such board shall manually count all votes of the voter verifiable paper audit trail (VVPAT) from no less than 3% of each type of voting machine or system used within the county.*

(b) *The voting machines or systems to be audited to meet the county-wide minimum requirement set forth in Subdivision (a) herein shall be selected by lot through a transparent, random, manual process where all selections of machines or systems used in the county are equally probable. The county boards shall adopt one of the random, manual selection methods prescribed by the State Board of Elections or such county board may submit for approval by the State Board a proposed alternative random, manual selection method. County Board adoption of the prescribed random, manual selection method shall take place not later than 45 days after the purchase of a voting system and notice by the County Board of the adoption of such random, manual selection method shall be filed with the State Board.*

(1) *As required by NYS Election Law Section 9-211, not less than five days prior to the time fixed for the random selection process, the board of elections shall send notice by first class mail to each candidate, political party and independent body entitled to have had watchers present at the polls in any election district in such board's jurisdiction and to the State Board. Such notice shall state the time and place fixed for such random selection process. Such random selection process shall not occur until after election day. Each candidate, political party or independent body entitled to appoint watchers to attend at a polling place shall be entitled to appoint such number of watchers to observe the random selection process and the subsequent audit.*

(2) *Such notice shall also announce the date, time, and location that the audit shall commence, information on the number of audit teams which will conduct such audit, and such other information that the County Board deems necessary.*

(3) *The county board shall at a single session randomly select from all machines and systems used within the county in the election so that no further drawings are required if anomalies are encountered during the manual audit. The audit shall commence on the same day as the random, manual selection process.*

(4) *Prior to auditing the audit records, the county board shall distribute to those in attendance at the audit session, copies of the list showing the number of machines and systems needed to meet the audit requirement for each contest and any questions or proposals, and the unofficial vote results per voting machine or system selected for audit.*

(c) *For each voting machine or system subject to be audited, the manual audit shall consist of a manual tabulation of the voter verifi-*

able paper audit trail records and a comparison of such count, with respect to all candidates and any questions or proposals appearing on the ballot, with the electronic vote tabulation reported for such election district.

(1) A reconciliation report, on a form prescribed by the State Board of Elections, that reports and compares the manual and electronic vote tabulations for each audited candidate for each contest and any question or proposal from each machine or system subject to the audit by election district, including tallies of overvotes, undervotes, blank ballots, spoiled ballots and rejections recorded on the VVPAT, along with any discrepancies, shall be prepared by the board of elections or a bipartisan team appointed by such board and signed by such members of the audit team.

(2) Any discrepancies between the corresponding audit results and initial electronic vote counts shall be duly noted, along with a description of the actions taken by the county board of elections for resolution of discrepancies. The number and type of any damaged or missing paper records shall be duly noted.

(3) If any unresolved discrepancy is detected between the manual count described in Subdivision (c) above and the machine or system electronic count, even an unresolved discrepancy of a single vote, the manual count shall be conducted a second time on such machine or system to confirm the discrepancy.

(d) The reconciliation report required in Subdivision (c) above shall be transmitted to the County Board commissioners or their designees upon completion of the initial phase of the audit for determination on the expansion of the audit conducted pursuant to Subdivisions (e) through (g) herein.

(e) The county board shall aggregate the audit results reported pursuant to Subdivision (c) (2) herein that are applicable to any contests, questions or proposals. The aggregated results for each contest, question or proposal shall be used to determine whether further auditing is required as follows:

(1) For any contest, question or proposal, an expanded audit will be required if either or both of the following criteria apply to the aggregated audit results:

(i) Any one or more discrepancies between the confirming manual counts described in Subdivision (c) (3) herein and the original machine or system electronic counts, which taken together, would alter the vote share of any candidate, question or proposal by one tenth of one percent (0.1%) or more of the hand counted votes for respective contests, questions or proposals in the entire sample; or

(ii) If discrepancies of any amount are detected between the confirming manual count described in Subdivision (c) (3) herein and the original machine or system electronic count from at least 10% of the machines or systems initially audited then the board or bipartisan team appointed by such board shall manually count the votes recorded on all the voter verifiable paper audit trail records from no less than an additional 5% of each type of the same type of voting machine or system which contains any such discrepancy or discrepancies.

(iii) When determining whether discrepancies warrant expanding the audit, the percentage-based thresholds in this section shall be rounded down by truncating the decimal portion (with a minimum of 1).

(f) A further expansion of the audit will be required if either or both of the following criteria apply to the audit results:

(1) For each contest, question or proposal, the county board shall aggregate the results from the initial audit as required in Subdivision (a) above and the expanded 5% audit. If, such aggregated results of unresolved discrepancies satisfy the criteria in Subdivision (e)(1)(i) above, a further expansion of the audit will be required.

(2) For each contest, question or proposal, the county board shall take the results of the 5% expanded audit under Subdivision (e) above, and, if such results of unresolved discrepancies satisfy the criteria in Subdivision (e)(1)(ii) above, a further expansion of the audit will be required.

(3) When an expanded audit is required for a contest pursuant to this section, each county board or bipartisan team appointed by such board shall manually count all voter verifiable paper audit trail re-

ords from no less than an additional 12% of each type of the same type of voting machine or system which contains any such discrepancy or discrepancies.

(4) When determining whether discrepancies warrant expanding the audit, all percentage-based thresholds in this section shall be rounded down by truncating the decimal portion (with a minimum of 1).

(g) A further expansion of the audit will be required if either or both of the following criteria apply to the audit results:

(1) For each contest, question or proposal, the county board shall aggregate the results from the initial audit as required in Subdivision (a) above and the expanded audit as required in Subdivision (e) and (f) above. If, such aggregated results of unresolved discrepancies satisfy the criteria in Subdivision (e)(1)(i) above, a further expansion of the audit will be required.

(2) For each contest, question or proposal, the county board shall take the results of the 12% expanded audit under Subdivision (f) above, and, if such results of unresolved discrepancies satisfy the criteria in Subdivision (e)(1)(ii) above, a further expansion of the audit will be required.

(3) When an expanded audit is required for a contest pursuant to this section, each county board shall manually count all voter verifiable paper audit trail records from all the remaining unaudited machines and systems where the contest appeared on the ballot.

(4) When determining whether discrepancies warrant expanding the audit, all percentage-based thresholds in this section shall be rounded down by truncating the decimal portion (with a minimum of 1).

(h) The standards set forth in Subdivisions (a)-(g) above are not intended to describe the only circumstances for a partial or full manual count of the voter verifiable paper audit record, but instead are designed to set a uniform statewide standard under which such hand counts must be performed. The county boards of elections, as well as the courts, retain the authority to order manual counts of those records in whole or in part under such other and additional circumstances as they deem warranted. In doing so, they should take into consideration: 1) whether the discrepancies were exclusively or predominantly found on one type of voting machine or system; 2) the size of the discrepancies; 3) the number of discrepancies; 4) the percentage of machines or systems with discrepancies; 5) the number and distribution of unusable voter-verified paper audit trail records as described in Section J below; 6) the number of cancellations recorded on the voter-verified paper audit trail records reported pursuant to Subdivision (c)(1) herein; and 7) whether, when projected to a full audit, the discrepancies detected (no matter how small) might alter the outcome of the contest, question or proposal result.

(i) If the audit officials are unable to reconcile the manual count with the electronic vote tabulation on a voting machine or system, then the board of elections shall conduct such further investigation of the discrepancies as may be necessary for the purpose of determining whether or not to certify the election results, expand the audit, or prohibit that voting machine or system's use in such jurisdiction.

(j) If a complete audit is conducted, the results of such audit shall be used by the canvassing board in making the statement of canvass and determinations of persons elected and propositions approved or rejected. The results of a partial audit shall not be used in lieu of voting machine or system tabulations, unless a voting machine or system is found to have failed to record votes in a manner indicating an operational failure. When such operational failure is found, the board of county canvassers shall use the voter verifiable audit records to determine the votes cast on such machine or system, provided such records were not also impaired by the operational failure of the voting machine or system. If the voter verified paper audit trail records in any machine or system selected for an audit are found to be unusable for an audit for any reason whatsoever, another machine or system used in the same contest shall be selected at random by the county board to replace the original machine or system in the audit sample. All such selections shall be made randomly in the presence of those observing the audit. The County Board shall inquire in an effort to determine the reason the voter verified paper audit trail records were

compromised and unusable and such inquiry shall begin as soon as practicable. The results of the inquiry shall be made public upon completion.

(k) Any anomaly in the manual audit shall be reported to and be on a form prescribed by the State Board and shall accompany the certified election results.

Revised rule compared with proposed rule: Substantial revisions were made in section 6210.18(a) and (b).

Text of revised proposed rule and any required statements and analyses may be obtained from Paul M. Collins, New York State Board of Elections, 40 Steuben Street, Albany, NY 12207, (518) 474-6367, email: pcollins@elections.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

1. Statutory Authority:

Election Law Section 3-102.1 provides for the State Board to promulgate rules and regulations relating to the administration of the election process; and Section 7-201.3 provides for the examination of voting systems to determine if they are safe for use in elections; and, if found not to be safe, a process is provided to rescind the approval to use such voting machine or system; Section 7-206.3 provides for routine testing of voting systems, at least annually, in a manner prescribed by the State Board of Election; and Section 9-211 requires that regulations be promulgated by the New York State Board of Elections to set uniform statewide standards to be used by boards of elections to determine when a discrepancy between the manual audit tallies and the voting machine or system tallies shall require a further audit escalation. This is necessary to ensure that the voting equipment used in New York State is safe, secure and reliable and will accurately record the votes cast on them in the elections in which they are used.

2. Legislative Objectives:

The Election Reform and Modernization Act of 2005 (Chapter 181 / Laws of 2005), enacted a new subdivision 9-211 requiring voter verifiable audit records to be audited within fifteen days after each general election or special election, and within seven days after every primary or village election conducted by the board of elections. These regulations establish uniform statewide standards to be used by boards of elections to determine when a discrepancy between the manual audit tallies and the voting machine or system tallies shall require a further audit escalation of additional voting machines.

That in turn helps to provide the assurance that the voting equipment used in New York State is safe and reliable and will accurately record votes cast on them in the elections in which they are used. This new audit requirement is required for new voting machines or systems, and central count absentee systems that will be certified pursuant to the requirements of the Election Law for use in elections in New York State. The new voting systems are intended to replace the traditional mechanical/lever voting machines. The Revised Regulation tracks more closely the statutory mandate and does not expand it as the original proposed Regulation had done.

3. Needs and Benefits:

Public trust in our elections is fundamental to governmental effectiveness. Uniform manual audit standards are now required due to changes in the type of voting systems that will be available for use in New York State pursuant to Chapter 181 / Laws of 2005. The previous mechanical/lever voting machines did not produce a voter verifiable audit record, so this new manual audit requirement was created for use by county boards of elections to audit such records utilized with new voting equipment.

The new audit requirements will help ensure that public confidence in the fairness and accuracy of elections continues to be maintained. The statute provides for the time period in which to conduct an audit; and mandates notice and reporting requirements for county boards of elections; as well as the comparison of manual audit tallies for each voting machine or system with the tallies records by such voting machines or systems which are subject to the audit. These regulations were prepared pursuant to Section 9-211.3 that requires the State Board of Elections to establishing a uniform statewide standard to be

used by boards of elections to determine when a discrepancy between the manual audit tallies and the voting machine or system tallies shall require an escalation on the numbers of voting machines.

The Revised Regulation limits the obligation of the initial audit to 3% of the voting machines used (as per statute) and eliminates the requirement that an audit also be conducted of at least one other voting machine or system for each public office and/or question on the ballot which was not captured in the initial 3% audit. This amendment will lessen the financial and manpower cost of compliance.

4. Costs:

Post-election manual audits of voter verifiable audit records are now required pursuant to NYS Election Law Section 9-211. These regulations govern when such audit results should trigger a larger audit. Costs to counties will depend upon the salaries of the employees responsible for such manual audits; the numbers of election districts and voting machines or systems in use in elections conducted by the board of elections; the number of audit teams which will conduct such audits; the total number of voter verifiable audit records to be counted; and any overtime hours that may accrue. Initial costs will include developing county-specific policies and procedures; training county-designated personnel; and preparing new audit tracking documents. Ongoing costs will include expenses associated with randomly selected voting systems to be audited; manually auditing the voter verifiable audit records; and such audit tracking documents in use by such jurisdiction.

Costs of this process will vary depending upon the ballot size on which the audit is being conducted and the number of election districts covered therein. Small contests in a very small county would have minimal costs, while contests in which the initial audit detects discrepancies that require significant escalation (which could lead to a full hand count) would be quite substantial. These are statutorily prescribed audit requirements that contain significant time constraints for completion. These time constraints may also add to a cost escalation in that they may require additional staffing, staff overtime, etc.

There are many issues that vary greatly from county-to-county and election-to-election. Therefore, it is impossible to truly make an actual calculation of the costs due these changing variables which include the total number of: voters; voting systems; election districts; different ballot styles; number of candidates and contests.

There will be minimal costs to the State Board of Elections to establish uniform policies, procedures and forms, the development and implementation of training for county board of election commissioners and designated staff members, and to provide ongoing compliance supervision.

The Revised Regulation limits the obligation of the initial audit to 3% of the voting machines used (as per statute) and eliminates the requirement that an audit also be conducted of at least one other voting machine or system for each public office and/or question on the ballot which was not captured in the initial 3% audit. This amendment will lessen the financial and manpower cost of compliance.

The Revised Regulation will result in real, albeit minimal, cost savings for the counties by reason of such reduction in the scope of the audit requirements from the scope as originally proposed.

5. Local Governmental Mandates:

The new manual audit requirements create uniform procedures that county boards of elections are mandated to follow pursuant to Election Law and these rules.

The Revised Regulation limits the obligation of the initial audit to 3% of the voting machines used (as per statute) and eliminates the requirement that an audit also be conducted of at least one other voting machine or system for each public office and/or question on the ballot which was not captured in the initial 3% audit. This amendment will lessen the financial and manpower cost of compliance.

The Revised Regulation will result in real, albeit minimal, cost savings for the counties by reason of such reduction in the scope of the audit requirements from the scope as originally proposed and thereby reduce the effect of the mandate.

6. Paperwork:

Counties are now required by Election Law and these procedures to

prepare a reconciliation report that reports and compares the manual and electronic vote tabulations for each audited candidate, contest and/or question or proposal from each machine or system subject to the audit; along with any discrepancies and a description of the actions taken for the resolution of discrepancies, if any.

7. Duplication:

These regulations do not duplicate or overlap with any other federal or state regulations.

8. Alternatives:

An alternative that was considered was to complete a manual audit of all machines or systems based upon a statistical-power-based vote tabulation audit versus the percentage-based audit required by Section 9-211 of the Election Law and these regulations. This proposal was rejected because 9-211.1 requires a manual audit of the voter verifiable audit records from three percent of the voting machines or systems within the jurisdiction of the county board of elections rather than a mathematical calculation of the vote differences between candidates or ballot proposals.

Also, based on a review of comments received during previous rule-making activities surrounding the Part 6210 regulations, amendments were considered and included in the draft proposal relative to the time and place fixed for the random selection process; the type of contests to be included in the initial audit; and uniform standards used to determine when further auditing is required.

As to the Revised Regulation, the significant alternatives which were considered was the expansive audit requirements contained in the regulation as originally proposed, i.e. the additional requirement that an audit also be conducted of at least one other voting machine or system for each public office and/or question on the ballot which was not captured in the initial 3% audit. This amendment will lessen the financial and manpower cost of compliance. By reason of the cogent comments of the Election Commissioners Association, this requirement was dropped in the Revised Regulation (See Summary of Comments).

9. Federal Standards:

There are no federal standards pertaining to manual audits of voter verifiable audit records.

10. Compliance Schedules:

Compliance can be achieved in conjunction with the first election conducted by the county board of elections immediately after the effective date of this revised regulation, which is the date of the publication of the Notice of Adoption of the Revised Regulation in the State Register. The State Board is currently formulating and developing instructional tools and a training schedule for county board commissioners and their staff.

Revised Regulatory Flexibility Analysis

Per HAVA mandates, New York State is required to replace current mechanical lever machines with new voting machines. The changes made to these regulations more accurately define the procedures for conducting the mandatory audit of voting systems after each election and set the thresholds for escalated audits, up to and including the audit of an entire election.

The nature of the revision to the rule as originally proposed consists of the removal of the requirement that there be a manual recount of at least one of each type of voting machine or system used for each public office and any questions or proposals appearing on the ballot in accordance with the comments of the New York State Election Commissioners' Association. The change in the regulation from what was originally proposed will lessen the burden of compliance that the counties face in that they will not have to audit as large a sample of voters as the requirement to audit beyond the 3% of machines has been eliminated. This will lessen the financial and manpower cost of compliance.

Revised Rural Area Flexibility Analysis

Per HAVA mandates, New York State is required to replace current mechanical lever machines with new voting machines. The changes made to these regulations more accurately define the procedures for conducting the mandatory audit of voting systems after each election and set the thresholds for escalated audits, up to and including the audit of an entire

election. The nature of the revision to the rule as originally proposed consists of the removal of the requirement that there be a manual recount of at least one of each type of voting machine or system used for each public office and any questions or proposals appearing on the ballot in accordance with the comments of the New York State Election Commissioners' Association. The change in the regulation from what was originally proposed will lessen the burden of compliance that the rural counties face in that they will not have to audit as large a sample of voters as the requirement to audit beyond the 3% of machines has been eliminated. This will lessen the financial and manpower cost of compliance for all counties, including rural counties.

Revised Job Impact Statement

Per HAVA mandates, New York State is required to replace current mechanical lever machines with new voting machines. The changes made to these regulations more accurately define the procedures for conducting the mandatory audit of voting systems after each election and set the thresholds for escalated audits, up to and including the audit of an entire election. There are no substantive changes made which would necessitate revision to the previously published JIS. The nature of the revision to the rule as originally proposed consists of the removal of the requirement that there be a manual recount of at least one of each type of voting machine or system used for each public office and any questions or proposals appearing on the ballot in accordance with the comments of the New York State Election Commissioners' Association.

Assessment of Public Comment

Election Commissioners' Association of the State of New York (ECA):

Comments were received from the ECA expressing concern over the expansion of the statutory requirement of NYS Election Law Section 9-211 to randomly audit three percent of the voting systems used in an election by further requiring the manual audit of at least one voting system for each public office and any questions or proposals appearing on the ballot. The recommendation to remove the contest specific audit escalation was based on three areas of concern: the extensive pre-election qualification checking, the cost of implementation and the number of counted ballots.

RESPONSE: The Revised Regulation incorporates the suggestions of the ECA in that it tracks the statutory requirement to randomly audit three percent of the voting systems used in an election and eliminates the previously proposed additional requirement of a manual audit of at least one voting system for each public office and any questions or proposals appearing on the ballot.

New York State Association of Counties (NYSAC):

At the Fall 2009 Seminar, NYSAC members adopted a resolution opposing the proposed 6210.18 audit regulations that would expand upon the statutorily required three-percent audit of voting systems by requiring that there be a manual count of at least one of each type of voting machine or system used at an election for each public office and any questions or proposals appearing on the ballot. NYSAC opposes the proposed draft regulations as taking away flexibility from counties and that the expanded audit provides unnecessary audit procedures that are daunting and serve no additional purpose in assuring the machines' accuracy.

RESPONSE: The Revised Regulation eliminates the previously proposed additional requirement of a manual audit of at least one voting system for each public office and any questions or proposals appearing on the ballot beyond those included in the 3% of systems already being audited.

Rockland County Board of Elections:

Election Commissioners Ann Marie Kelly and Joan Silvestri submitted comments to Section 6210.18, to only audit ballots from 3 percent of the voting systems and remove the requirement to also audit records from each race for public office.

RESPONSE: The Revised Regulation eliminates the previously proposed additional requirement of a manual audit of at least one voting system for each public office and any questions or proposals appearing on the ballot beyond those included in the 3% of systems already being audited.

OTHER COMMENTS RECEIVED:

COMMENT: A comment was received suggesting that the regula-

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Health Care Facility (RHCF) Bed Need Methodology

I.D. No. HLT-13-10-00005-P

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

Proposed Action: Amendment of section 709.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

Subject: Residential Health Care Facility (RHCF) Bed Need Methodology.

Purpose: Revision of Residential Health Care Facility (RHCF) Bed Need Methodology.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): Proposed changes to subdivision (a) of 10 NYCRR section 709.3 would extend the application of the need methodology to the evaluation of Certificate of Need (CON) applications for the renovation of residential health care facilities (RHCFs), the sale or transfer of RHCF beds between facilities, and changes of ownership of RHCFs that are subject to review by the Public Health Council. The Department of Health expects that this provision will encourage the operators of nursing homes to upgrade their facilities in a manner that converts underused inpatient space to less restrictive forms of care, while modernizing and maintaining space for inpatient beds in numbers that reflect actual bed need in the operators' individual service areas, as identified by the need methodology. The Department believes that the need methodology should be extended to transactions for the renovation, sale and transfer of facilities and beds to discourage the maintenance of excess bed capacity throughout the State and simultaneously encourage the development of less restrictive settings for long-term care.

The proposed amendments would replace the current base year of 2000 with the year 2006, and change the planning target year from 2007 to 2016. In the need methodology set forth in subdivision (d), the several five-year age ranges employed for estimating segments of the population over age 65 would be replaced by the age ranges of 65-74 years and 75 years and older. Estimates of the population aged 0-64, 65-74, and 75 and older for the base year and the planning target year would be derived from projections by the New York State Data Center. The number of functionally dependent individuals age 65 and older would be derived from United States Census Bureau data which identify persons with a self-care limitation as those who reside in the community but report having a condition that makes activities of daily living difficult.

Estimates of needed RHCF beds derived under the amended regulations would continue to include beds needed for dementia patients (e.g., Alzheimer's disease and related disorders) but would no longer include beds for ventilator-dependent patients. This reflects the issuance of a separate need methodology for long-term ventilator beds (10 NYCRR section 709.17) since section 709.3 was last amended. The proposed methodology would also continue to exclude RHCF bed need estimates for special pediatric beds, beds for patients with AIDS, and beds for those in need of long-term rehabilitation for head injury.

Further proposed revisions to subdivision (d) would add the number of long-term care patients served by managed long-term care programs to the factors employed in calculating normative use rates for long-term care services and in estimating the number of persons served by long-term care services overall. The fundamental element of the methodology - the blending of statewide pattern use rates and local utilization rates to derive county-specific bed numbers - would remain unchanged. There would also be no change to the 99 percent imputed occupancy rate used in adjusting initial calculations of bed need and the 97 percent threshold occupancy rate for approval of new beds where need is indicated. The proposed regulations also would retain the provision in subdivision (h) for the consideration of local factors that may indicate a need for additional beds, despite an overall occupancy rate of less than 97 percent in the planning area. These local factors include, but are not limited to:

- The impact of requirements pertaining to the placement of persons with disabilities into the most integrated setting appropriate to their needs;
- The growth and availability of long-term home and community-based services, including other non-institutional residential programs;
- Patient migration patterns that vary from those included in the bed need methodology;

tion be amended to require public release and publication of the unofficial vote results per voting machine or system prior to the random selections of the voting machines for audit to avoid the possibility that insiders could adjust the vote total in those machines not selected in for audit in the random 3% audit. The same commenter also suggested that the proposed regulation's language with respect to selecting another voting machine for audit in the event that a randomly selected machine's verifiable paper audit trial records were unusable for any reason was unsound.

RESPONSE: The suggestions were considered and not incorporated into the Revised Regulation as the publication of unofficial election results by machine would be an unnecessary financial burden upon the counties as the candidates, who have the most interest in the unofficial and official results, have an absolute and statutory right to be present or have a representative present upon the closing of the polls and could avail themselves of the information as to vote count at that time. Armed with the information directly from the voting machines on election night, it would seem that such candidates would not need a subsequent, time consuming and expensive machine by machine publication of the results. Also, under Election Law § 9-211(1) candidates have the right to be present or have representatives present at the time of the random selection of machines to be audited.

As to the suggestion that the Proposed Regulation be amended to change the requirement that a randomly selected machine whose verifiable paper audit trial is unusable be replaced by another randomly selected machine the original draft of the Proposed Regulation provides that the County Board shall inquire in an effort to determine the reason the voter verified paper audit trail records were compromised and unusable and such inquiry shall begin as soon as practicable. The language further mandates that the results of the inquiry shall be made public upon completion. The agency feels that such safeguards are sufficient to address this concern.

COMMENT: A comment was received suggesting that the Proposed Regulation be amended to provide for a "complete audit" on a contest basis in the event discrepancies with a machine are found, having the escalation being done on a contest rather than machine, district or county basis. There was also a suggestion that all races in which the margin of victory is 1% or less be the subject of a mandatory hand recount as was done in the 2009 Pilot Program carried out with uncertified machines. The comment further suggested that overhead projectors be mandated during hand re-counts, that re-counts be web cast, that all voted ballots be subject to continuous observation until the completion of all audits, that county jail cells be used to store ballots with observers provide folding chairs in the aisle outside the cell. It further suggested that the trigger for a further audit be reduced from a 1% change in a candidate's vote share to a 0.05% reduction in the apparent margin of victory and that each candidate be allowed to choose a small number of EDs (1% TO 1.5%) to be audited in each county in which he/she appears on the ballot, "as a check for implausible results", the aggregation of final audit results for multi-county results, escalation of audit by type of voting machine where a discrepancy was found and that audits be based on elections districts rather than voting machines.

RESPONSE: Much of this comment deals with items which are beyond the scope of the statutory requirements for audits and was rejected for that reason. The operative statute, Election Law § 9-211 mandates that the audit be of 3% of the voting machines within the county, not 3% of election districts. Millions of dollars have been expended testing the accuracy of the new voting systems, a successful Pilot Program was run in the Fall of 2009 and there simply is no empirical evidence to support the extreme measures offered in this comment, the implementation of which would be cost prohibitive for the counties. Further the operative statutes, regulations and procedures ensure stakeholders are part of each step of the elections process-extensive pre-elections testing, election night reporting, recanvass and audit. Cost and value added relative to cost and availability of staff and other resources must be weighed when considering the impact of these suggestions.

As to the suggestion of auditing by "election districts rather than machines", it is important to note that each scanner can accommodate multiple election districts, so there will be ample coverage for this concern.

- The health status of residents of the planning area;
- Waiting lists for RHCf admission made up of patients who cannot be served adequately in other settings.

The revised regulation would no longer list the county-specific RHCf bed need numbers derived from the need methodology. It is the Department's intention to post these bed numbers on its website to facilitate ease of access by the public and permit updating of the numbers as new beds come into service or existing beds close through rightsizing or because of other developments.

The proposed rules would continue to provide for a reserve of up to 300 additional RHCf beds for the State as a whole. Subdivision (l) states that these beds may be approved in response to applications to add a single bed or multiple beds to an existing facility, to add an extension unit to an existing facility or to construct a new facility, and only to meet emergency situations or other unanticipated circumstances, such as natural disasters and unexpected changes in population census, migration patterns, or health characteristics.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

Statutory Authority:

Paragraph (2) of section 2802 of the Public Health Law details the Commissioner of Health's role in the approval of Certificate of Need (CON) applications for the construction of new hospitals and authorizes the Commissioner to approve such applications following review by the State Hospital Review and Planning Council (SHRPC). In addition, paragraph (2)(a) of section 2803 of the Public Health Law authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law. Pursuant to section 2801(1), (2) and (3) of the Public Health Law, a nursing home or residential health care facility falls within the definition of a hospital.

Legislative Objectives:

Article 28 of the Public Health Law seeks to protect and promote the health of the inhabitants of the State by assuring the efficient, accessible, and affordable provision of health services of the highest quality and that such services are properly utilized. Subdivision (2) of section 2802 states that the Commissioner shall not act upon an application for construction until he or she is satisfied as to the public need for the construction at the time and place and under the circumstances proposed. Consistent with this legislative objective, the proposed amendments will ensure that the criteria for determination of public need for construction of new or replacement residential health care facility (RHCf) beds will provide access to nursing home care for New Yorkers, while avoiding excess RHCf bed capacity.

The need methodology set forth in 10 NYCRR section 709.3 is and will continue to be used with respect to establishment applications considered by the Public Health Council (PHC) pursuant to section 2801-a of the Public Health Law and is incorporated by reference in the PHC's RHCf bed methodology under 10 NYCRR section 670.3.

Current Requirements:

Construction projects undertaken by hospitals, nursing homes, clinics and other health care facilities are subject to approval under Article 28 of the Public Health Law. Construction is defined under Article 28 to include the erection or building of a health care facility and the "substantial acquisition, alteration, reconstruction, improvement, extension or modification of a facility, including its equipment. . . ." Such "equipment" includes inpatient beds for hospitals and RHCfs.

The review of public need under Article 28 helps ensure that beds and services are distributed throughout the State in a manner that both provides sufficient access to care and guards against the costs associated with the operation and maintenance of beds in excess of those needed. By limiting the beds in a given area to the number appropriate for the population, the public need methodology also discourages inappropriate admissions to inpatient care. The approval process for construction of RHCf beds is subject to a determination of public need using the need methodology set forth in 10 NYCRR section 709.3.

Needs and Benefits:

The continuing decline of high occupancy rates in nursing homes throughout the State, the absence of significant waiting lists for nursing home placement over the past several years and the low number of patients who are on hospital alternative level of care (ALC) status suggest that the overall framework of the current RHCf bed need methodology remains adequate today. Based on this experience, the Department of Health does not propose to change the major elements of the current RHCf bed need

methodology. Rather, the proposed rule changes seek to update section 709.3 to reflect new population census projections and the effects of the continued growth of alternatives to RHCf care.

Proposed changes in subdivision (a) of the regulation would extend the application of the need methodology to the evaluation of Certificate of Need (CON) applications for the renovation of RHCfs, the sale or transfer of RHCf beds between facilities, and changes of ownership of RHCfs that are subject to review by the PHC. The Department expects that this provision will encourage the operators of nursing homes to upgrade their facilities in a manner that converts underused inpatient space to less restrictive forms of care, while modernizing and maintaining space for inpatient beds in numbers that reflect actual bed need in the operators' individual service areas, as identified by the need methodology. The Department believes that the need methodology should be extended to transactions for the renovation, sale and transfer of facilities and beds to discourage the maintenance of excess bed capacity throughout the State and simultaneously encourage the development of less restrictive settings for long-term care.

The proposed amendments would replace the current base year of 2000 with the year 2006, and change the planning target year from 2007 to 2016. In the need methodology set forth in subdivision (d), the several five-year age ranges employed for estimating segments of the population over age 65 would be replaced by the age ranges of 65-74 years and 75 years and older. Estimates of the population aged 064, 65-74, and 75 and older for the base year and the planning target year would be derived from projections by the New York State Data Center. The number of functionally dependent individuals age 65 and older would be derived from United States Census Bureau data which identify persons with a self-care limitation as those who reside in the community but report having a condition that makes activities of daily living difficult.

Further proposed revisions to subdivision (d) would add the number of long-term care patients served by managed long-term care programs to the factors employed in calculating normative use rates for long-term care services and in estimating the number of persons served by long-term care services overall. The fundamental element of the methodology - the blending of statewide pattern use rates and local utilization rates to derive county-specific bed numbers - would remain unchanged. There would also be no change to the 99 percent imputed occupancy rate used in adjusting initial calculations of bed need and the 97 percent threshold occupancy rate for approval of new beds where need is indicated. The proposed regulations also would retain the existing provision of subdivision (h) which permits consideration of local factors that may indicate a need for additional beds, despite an overall occupancy rate of less than 97 percent in the planning area.

Estimates of needed RHCf beds derived under the amended regulations would continue to include beds needed for dementia patients (e.g., Alzheimer's disease and related disorders) but would no longer include beds for ventilator-dependent patients. This reflects the issuance of a separate need methodology for long-term ventilator beds (10 NYCRR section 709.17) since section 709.3 was last amended. The revised methodology would also continue to exclude RHCf bed need estimates for special pediatric beds, beds for patients with AIDS, and beds for those in need of long-term rehabilitation for head injuries.

The revised regulation would no longer list the county-specific RHCf bed need numbers derived from the need methodology. It is the Department's intention to post these bed numbers on its website to facilitate ease of access by the public and permit updating of the numbers as new beds come into service or existing beds close through rightsizing or because of other developments (county bed numbers derived from the methodology have been posted on the Department website concurrent with the publication of these amended rules for public comment.). This practice will also result in access to more up-to-date information on RHCf beds for stakeholders and the general public.

Subdivision (f) of the amended regulation would retain the provision that public need estimates for RHCf beds in New York City shall be obtained from the sum of need estimates for each of the city's five counties, and that the public need for RHCf beds in the counties of Nassau and Suffolk shall be obtained from the sum of the need estimates for each of those two counties.

To help ensure that the revised methodology remains flexible, adequate and timely, the proposed rules would require the Department to conduct an evaluation of the revised need formula by December 31, 2013.

COSTS:

Costs to State Government Other than the Department of Health:

There are no costs to State government other than the Department of Health.

Costs to Local Government:

There are no costs to local governments. For local governments that operate nursing homes, the proposed rules represent merely a change in the existing bed need methodology, with which local governments must already comply.

Costs to Private Regulated Parties:

Because the proposed amendments merely amend existing rules with which nursing homes must already comply, these changes carry no costs for private regulated parties.

Costs to the Department of Health:

There will be no additional costs to the Department of Health because CON review is an established function of the agency.

Local Government Mandates:

The proposed amendments do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed amendments impose no new reporting requirements, forms or other paperwork.

Duplication:

There are no relevant State or Federal rules which duplicate, overlap or conflict with the proposed amendments.

Alternatives:

The Department considered a repeal of the existing need methodology and its replacement with a completely new formula. However, the continuing decline of high occupancy rates in RHCfs over the past several years and the general absence of long waiting times for RHCF admission in most areas suggested that the current methodology was sound and would be adequate for the coming years, if updated to reflect new population data and continued growth in the availability of alternatives to RHCF care.

Because actual long-term care market areas often involve more than one county, the Department explored the notion of employing a geographical unit other than the county as the standard planning area for section 709.3. However, existing subdivision (j) of the regulation permits the consideration of a service area that includes a long-term care planning area outside of that in which a facility or proposed facility is located. In addition, circumstances outside the individual county (such as bed occupancy rates in counties contiguous to the applicant's county) are among those local factors that can be considered as pertinent to the assessment of public need for a particular application for RHCF beds under subdivision (h) of the existing regulation. The Department concluded that, together, existing subdivisions (h) and (j) give section 709.3 the flexibility to allow consideration, when advisable, of areas other than the county as the standard planning area.

Federal Standards:

The proposed amendments do not exceed any minimum standards of the Federal government. There are no Federal rules affecting CON approval of RHCF beds.

Compliance Schedule:

The proposed rules will take effect upon filing. Because CON applications may be submitted at any time, there is no schedule of compliance.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, recordkeeping or other compliance requirements on facilities in rural areas.

Because rural areas in general have insufficient numbers of RHCF beds, it is not expected that the application of the need methodology to the renovation, transfer and sale of existing beds and facilities as proposed in the amended subdivision (a) will adversely affect RHCFs in rural areas.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. Because the proposed rule is aimed at maintaining high occupancy in nursing homes, the jobs and employment opportunities associated with such optimum use of residential health care facilities will be affected favorably.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York Higher Education Loan Program (NYHELPS)

I.D. No. ESC-13-10-00007-P

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

Proposed Action: This is a consensus rule making to amend section 2213.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 691(10) and 692(3)

Subject: The New York Higher Education Loan Program (NYHELPS).

Purpose: Amend the provision of the regulation relating to loan limits.

Text of proposed rule: Section 2213.9 of Title 8 of the NYCRR is amended to read as follows:

TITLE 8. EDUCATION DEPARTMENT
PART 2213. THE NEW YORK HIGHER EDUCATION LOAN PROGRAM (NYHELPS)

Section 2213.9 Minimum/Maximum program loan limits.

[(a) Maximum program loan amounts available to eligible borrowers shall be as follows:

(1) \$10,000 annually;

(2) \$20,000 aggregate for undergraduates attending a two year institution; and

(3) \$50,000 aggregate for undergraduates attending a four year institution; and

(4) \$70,000 aggregate total for undergraduate and graduate study.]

(a) *The minimum and maximum individual program loan amounts available to eligible borrowers on an annual basis shall be approved by the corporation, and with respect to program loans that are otherwise eligible for purchase by a public benefit corporation, shall be subject to further approval by such public benefit corporation, on at least an annual basis with respect to program loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial and/or other relevant market conditions. Such amounts shall be published on the corporation's website.*

(b) *The maximum aggregate program loan amounts available to eligible borrowers shall be as follows:*

(1) \$20,000 aggregate for undergraduates attending a two year institution; and

(2) \$50,000 aggregate for undergraduates attending a four year institution; and

(3) \$70,000 aggregate total for undergraduate and graduate study.

[(b)] (c) *The amount of the program loan shall not exceed the difference between the cost of attendance less all other New York State aid, title IV aid (excluding Federal PLUS loans), other Federal aid, institutional aid, and private aid, as certified by the eligible college.*

[(c) *The minimum original principal amount of an education loan shall be determined by the corporation, and with respect to education loans that are otherwise eligible for purchase by a public benefit corporation, shall be subject to approval by such public benefit corporation, on at least an annual basis with respect to education loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.*]

(d) *The maximum interest rate under this program shall not exceed 16.5 percent per annum, or its equivalent rate for a longer or shorter period.*

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1315, Albany, NY 12255, (518) 474-5592, email: regcomments@hesc.org

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

This statement is being submitted pursuant to paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's ("HESC") Notice of Proposed Rule Making seeking to amend section 2213.9 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that no person is likely to object to the adoption of the rule as written. The New York Higher Education Loan Program ("NYHELPS" or "Program") was enacted to provide students and their families with low cost loans to fill the gap between the cost of college and available financial aid. HESC's data reflects that the current annual maximum loan limit of \$10,000 per student for all class years is insufficient and does not meet the needs of many students. The purpose of the proposal is to provide a process for the adjustment of the maximum annual loan limit per student to equal the average borrowing amount needed for private student loans, using actual Program loan data. The average borrowing amount needed is based on both economic conditions and the cost of higher education. Since the aggregate loan limits remain unchanged, the proposal avoids any unintended consequence of over-borrowing. The proposal also requires that the individual annual maximum loan amount, as well as the annual minimum loan amount, established be published on HESC's web site providing clear, transparent information to all Program participants. As a result of the proposal, NYHELPS' availability will be expanded to serve more students, benefitting more New Yorkers.

To accomplish this goal, the proposal contains one change, which is to have the annual maximum Program loan amount be established by the corporation, subject to approval by a public benefit corporation in connection with Program loans that are eligible for purchase by such public benefit corporation, and that such amount, and the annual minimum loan amount, be published on HESC's web site. The established aggregate limits, as well as all other provisions, remain unchanged.

Consistent with the definition of "consensus rule", as set forth in section 102(11) of the State Administrative Procedure Act, and inasmuch as the proposed consensus rule will benefit more students and their families without the concern of over-borrowing, HESC has determined that this proposal is non-controversial and, therefore, no person is likely to object to its adoption.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to amend section 2213.9 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. The proposal would result in an expansion of the availability of the New York Higher Education Loan Program (NYHELPS) to serve more students, benefitting New Yorkers without the concern of over-borrowing.

Insurance Department

EMERGENCY RULE MAKING

Workers' Compensation Insurance - Independent Livery Driver Benefit Fund

I.D. No. INS-13-10-00004-E

Filing No. 252

Filing Date: 2010-03-15

Effective Date: 2010-03-15

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

Action taken: Addition of Subpart 151-5 (Regulation 119) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 3451

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

Specific reasons underlying the finding of necessity: Chapter 392 of the Laws of 2008, parts of which became effective immediately, with other parts becoming effective on January 1, 2009 and January 1, 2010, enacts a new Article 6-G of the Executive Law, a new Section 18-c of the Workers Compensation Law, and a new Section 3451 of the Insurance Law. Article 6-G authorizes the creation of a new Independent Livery Driver Benefit Fund (the "Fund") to provide coverage to livery drivers dispatched by independent livery bases that are members of the Fund. Section 18-c sets forth criteria for the designation of a livery base as an independent livery base. Although the State Insurance Fund is authorized under Article 6-G

to provide the insurance afforded therein, Section 3451 of the Insurance Law authorizes the Superintendent of Insurance to promulgate rules and regulations permitting insurers authorized to write workers' compensation and employers' liability insurance to provide coverage to the new independent livery driver benefit fund ("Fund").

Insurers authorized to write workers' compensation and employers' liability insurance have expressed interest in writing policies of insurance affording coverage to the Fund. Providing the Fund with alternative choices may lower the costs that will be borne for the coverage and can provide other benefits to the Fund. This regulation was previously promulgated on an emergency basis on December 17, 2009. The proposal was sent to the Governor's Office of Regulatory Reform on January 8, 2010 and the Department is awaiting approval to publish the regulation, however because of the effective date of the relevant provision of the law is January 1, 2010, and the need to have rates and forms approved in advance of that date, it is essential that this regulation, which establishes procedures that implement provisions of the law, be continued on an emergency basis.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Workers' Compensation Insurance - Independent Livery Driver Benefit Fund.

Purpose: Authorizes workers' compensation and employers' liability insurers to provide coverage authorized by Executive Law Article 6-G.

Text of emergency rule: A new subpart 151-5 is added to read as follows:
Section 151-5.0 Purpose.

The purpose of this sub-part is to authorize workers' compensation and employers' liability insurers to provide coverage as afforded under Executive Law Article 6-G.

Section 151-5.1 Authorization of workers' compensation insurers' to write insurance pursuant to Executive Law Article 6-G

(a) Pursuant to Insurance Law section 3451, insurance companies authorized to write workers' compensation insurance and employers' liability insurance, as defined in Insurance Law section 1113(a)(15), are hereby authorized to write policies of insurance affording coverage in accordance with Executive Law Article 6-G.

(b) No policy or certificate thereunder providing for coverage pursuant to Executive Law Article 6-G shall be issued or issued for delivery in this State unless the forms have been filed with, and approved by, the superintendent in accordance with Insurance Law Article 23.

(c) No policy or certificate thereunder providing for coverage pursuant to Executive Law Article 6-G shall be issued or issued for delivery in this State unless the rates have been filed with the superintendent for prior approval in accordance with Article 23 of the Insurance Law and subpart 151-1 of this Part.

(d) Every policy and certificate thereunder providing for coverage pursuant to Executive Law Article 6-G issued or issued for delivery in this State shall provide coverage in accordance with the provisions of Executive Law Article 6-G.

(e) The policy shall be issued on a group basis to the Independent Livery Driver Benefit Fund and shall provide coverage to livery drivers dispatched by independent livery bases that are members of the Independent Livery Driver Benefit Fund established pursuant to Executive Law Article 6-G.

(f) A certificate issued under the group master policy shall be provided to each member independent livery base and contain all material terms and conditions of coverage with respect to a livery driver, unless the group master policy is incorporated by reference, and in which event, a copy of the master policy shall accompany the certificate or shall be promptly provided to a member independent livery base upon request.

(g) An insurer issuing or renewing the group policy shall maintain separate statistics tracking group loss and expense experience for the group program. The statistics shall be maintained in conformance with Part 243 of Title 11 of the New York Codes, Rules and Regulations (Regulation 152).

(h) Coverage disputes between insurers pursuant to Executive Law Article 6-G shall be subject to mandatory arbitration of controversies between insurers, pursuant to the provisions of section 5105 of the Insurance Law and section 65-4.11 of subpart 65-4 of this Title (Regulation 68-D).

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 June 12, 2010.

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-2285, email: amais@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of Part 151-5 of Title 11 of the Official Compilation of Codes, Rules

and Regulations of the State of New York (Regulation No. 119) derives from Sections 201, 301, and 3451 of the Insurance Law, and Executive Law Article 6-G.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, and to prescribe regulations interpreting the Insurance Law.

Section 3451 of the Insurance Law (L.2008, c. 392, § 12), permits the Superintendent to promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G.

Executive Law Article 6-G establishes clear rules for determining when livery drivers in New York City, Westchester County and Nassau County are employees or independent contractors of livery bases, and establishes the Independent Livery Driver Benefit Fund ("the Fund") to provide independent contractor livery drivers workers' compensation benefits in certain circumstances where No-Fault automobile insurance does not provide sufficient coverage. Article 6-G permits the Fund to purchase insurance from the State Insurance Fund ("SIF") or, if the Superintendent authorizes it by regulation, from an insurer licensed to write workers' compensation or employers' liability insurance.

2. Legislative objectives: Chapter 392 of the Laws of 2008 enacted Executive Law Article 6-G, establishing clear rules for determining when livery drivers in New York City, Westchester County and Nassau County are employees or independent contractors of livery bases, and establishing the Fund to provide independent contractor livery drivers workers' compensation with benefits in certain circumstances where No-Fault automobile insurance does not provide sufficient coverage. Before passage of this law, the only recourse for independent contractor livery drivers was No-Fault automobile insurance. This resulted in delays in payment as No-Fault insurers ascertained whether livery drivers were independent contractors and eligible for coverage.

The law also permits the Superintendent to promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G.

3. Needs and benefits: Pursuant to Insurance Law § 3451, the Superintendent may promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G. This regulation will ensure that the Fund has a choice of procuring coverage from either SIF or an authorized insurer, which may provide savings to the Fund, and ultimately the livery bases that pay for the coverage.

4. Costs: No costs will be imposed by the proposed rule. Executive Law Article 6-G permits the Fund to purchase insurance from SIF or, if the Superintendent authorizes it by regulation, from an insurer licensed to write workers' compensation or employers' liability insurance. This rule authorizes workers' compensation and employees' liability insurers to provide coverage to the Fund for livery drivers dispatched out of independent livery bases pursuant to Insurance Law § 3451 and Executive Law Article 6-G. An insurer may, but is not required to, offer to provide coverage to the Fund. The Fund has a choice of procuring coverage from either SIF or an authorized insurer, which may provide savings to the Fund, and ultimately the livery bases that pay for the coverage.

5. Local government mandates: This rule has no impact on local governments.

6. Paperwork: This rule imposes no new paperwork on affected parties. An insurer would have to file rates and forms subject to the Superintendent's approval as it would for any other workers' compensation coverage, and designate an individual to maintain statistics in conformance with Part 243 of Title 11 of the New York Code, Rules and Regulations (Regulation 152).

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The only alternative was for the Superintendent not to authorize insurers to provide coverage to the Fund. In that case, only SIF would have been able to provide coverage. This regulation allows insurers to compete for the business of the Fund and may reduce the costs of insurance as a result.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: The rule does not impose a compliance schedule.

Regulatory Flexibility Analysis

1. Small businesses:

The rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The rule is directed at workers' compensation insurers authorized to do business in New York State, none of which falls within the definition of "small business" set forth in Section 102(8) of the State Administrative Procedure Act ("SAPA"). The Insurance Department has monitored Annual Statements and Reports on Ex-

amination of authorized workers' compensation insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business", because there are none that are both independently owned and have fewer than one hundred employees.

Pursuant to Insurance Law § 3451, the Superintendent may promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G. This regulation authorizes a workers' compensation and employees' liability insurer to provide coverage of the Independent Livery Driver Benefit Fund ("the Fund") for livery drivers dispatched out of independent livery bases pursuant to Insurance Law Section 3451 and Executive Law Article 6-G. This will give the Fund a choice of procuring coverage from either the State Insurance Fund or an insurer. Since livery bases pay for the coverage, this regulation may ultimately benefit them if the costs of insurance are reduced as a result.

2. Local governments:

The rule has no impact on local governments.

Rural Area Flexibility Analysis

Chapter 392 of the Laws of 2008 enacted Executive Law Article 6-G, establishing clear rules for determining when livery drivers in New York City, Westchester County and Nassau County are employees or independent contractors of livery bases, and creating the Independent Livery Driver Benefit Fund ("the Fund") to provide independent contractor livery drivers workers' compensation with benefits in certain circumstances where No-Fault automobile insurance does not provide sufficient coverage.

The law also permits the Superintendent to promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G. This rule authorize workers' compensation and employers' liability insurers to provide coverage as afforded under Executive Law Article 6-G.

Neither New York City, Nassau County nor Westchester County are rural areas.

The rule contains no provisions that create impacts unique to rural areas of the state.

Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. The rule authorizes workers' compensation and employers' liability insurers to provide coverage as afforded under Executive Law Article 6-G. Participation by insurers is voluntary. For those insurers that choose to offer coverage, existing personnel should be able to perform this task.

There should be no region in New York that would experience an adverse impact on jobs and employment opportunities. This regulation should not have any impact on self-employment opportunities.

Commission of Judicial Nomination

NOTICE OF ADOPTION

Procedures of the Commission on Judicial Nomination

I.D. No. JDN-31-09-00004-A

Filing No. 255

Filing Date: 2010-03-16

Effective Date: 2010-03-31

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

Action taken: Amendment of Parts 7100 and 7101 of Title 22 NYCRR.

Statutory authority: Judiciary Law, section 65

Subject: Procedures of the Commission on Judicial Nomination.

Purpose: To update the commission's procedures to best implement the commission's constitutional and statutory mandates.

Substance of final rule: Section 7100.0. Preamble.

This new section of the Commission's rules sets out the Commission's understanding of its constitutional and statutory mandates - i.e., to fill vacancies on the Court of Appeals, the Commission will vigorously seek out, carefully evaluate, and then nominate to the Governor well-qualified candidates from the extraordinary, diverse community of lawyers admitted to practice in New York State.

Section 7101.1. Chairperson.

This section of the Commission's rules has been amended to provide that if the Commission's chairperson is unable to fulfill the duties of office, or if the position of chairperson becomes vacant, the longest-serving commissioner able to fulfill the duties of chairperson will act as chairperson. This section of the Commission's rules has also been amended to provide that the chairperson may designate another member of the Commission or the Commission's counsel as spokesperson.

This section of the Commission's rules has also been edited for stylistic clarity.

7100.2. Counsel.

This section of the Commission's rules has been amended, consistent with Section 64(6) of the Judiciary Law, to provide explicitly that the Commission may appoint, remove, and fix the compensation of its counsel and staff at the Commission's pleasure; and to provide that Commission counsel will conduct orientation sessions for new commissioners.

This section of the Commission's rules has also been edited for stylistic clarity.

7100.3. Commission Vacancies.

This new section of the Commission's rules provides that, 30 days prior to the occurrence of an expected vacancy on the Commission, the Commission shall notify the public, press, bar associations, and appropriate appointing authority of such imminent vacancy, together with a statement that the ultimate objectives of wide diversity and broad outreach in the nomination of well-qualified candidates for the Court of Appeals are best served by a Commission that itself reflects the diversity of New York's communities.

7100.4. Meetings.

This section of the Commission's rules has been amended to allow the Commission to call a meeting through the use of electronic notice. This section of the Commission's rules has also been amended to repeal a provision allowing for a meeting of the Commission to be held without notice whenever the Commission, at a previous meeting, has designated the time and place for the meeting.

This section of the Commission's rules has also been renumbered and edited for stylistic clarity.

7100.5. Quorum for meetings.

This section of the Commission's rules has been renumbered and edited for stylistic clarity.

7100.6. Solicitation of candidates.

This section of the Commission's rules has been amended to formalize the Commission's protocol for making broad outreach across the legal profession in order to enable the Commission to identify qualified candidates from a wide range of New York's diverse communities. Such amendments include:

(a) dissemination of the procedure to be followed by the public to bring qualified candidates to the attention of the Commission;

(b) requiring Commissioners to disclose to the full Commission that they have recruited particular candidates under consideration;

(c) allowing the Chairperson to appoint a search committee to solicit recommendations from the legal community to enhance candidate outreach;

(d) dissemination of notices of vacancy through certain specified channels, including the media; bar associations; deans of New York law schools; members of the public; the Commission's website; the websites of the New York State Senate and New York State Assembly; relevant political actors, including the Governor, Unified Court System, Attorney General, Presiding Justices of the Appellate Divisions, the Administrative Judges for each Judicial District, and the Chief Administrative Judge for the State of New York; and organizations that are registered with the Commission;

(e) posting the applicant questionnaire on the Commission's website;

(f) conducting at the Commission's discretion, and as practicable, informational meetings in at least two of the State's four Judicial Departments to discuss the requirements for Court of Appeals and the Commission's procedures and rules for submitting recommendations

of qualified candidates for vacancies, at which time, the public may be heard about community needs, the general qualifications for judicial office and the nominating process; and

(g) posting on the Commission's website answers to frequently asked questions about the requirements for the position and the Commission's procedures for the public to bring qualified candidates to its attention.

This section of the Commission's rules has also been renumbered and edited for stylistic clarity.

7100.7. Investigation of candidates.

This section of the Commission's rules has been renumbered and edited for stylistic clarity.

7100.8. Consideration of candidates.

(a) This subdivision of the Commission's rules has been amended to set forth the Commissioners' duty of impartiality in the consideration of candidates, and to provide that no Commissioner may individually communicate with an applicant to the Commission about the application or the nomination process, from the time the application is submitted until completion of the Commission's final vote on the nominations.

(b) This subdivision of the Commission's rules has been amended to provide for a two-step initial application process, wherein a candidate for the Court may first submit a short-form questionnaire, resume, and statement of interest, and only after the Commission has determined whether that candidate merits an interview must the candidate complete the Commission's full application questionnaire; and further to provide that:

(i) if the number of qualified applicants appears to be inadequate, the Commission may extend the deadline for submission of applications;

(ii) candidates shall be considered for the final nomination process upon their nomination by two commissioners, unless the Commission determines otherwise; and

(iii) the Commission presumably will employ a two-step application procedure for all vacancies, unless circumstances make the two-step process impracticable.

(c) This subdivision of the Commission's rules has been amended to set forth the objectives of the Commission's nomination procedure - i.e., (i) to ensure that the commission thoroughly considers and evaluates each candidate; (ii) to ensure that the commission is impartial in its deliberations; (iii) to promote consensus in the selection of nominees; and (iv) to ensure that each nominee receives at least eight affirmative votes from the commissioners, as required by Section 63(3) of the Judiciary Law.

(d) This new subdivision of the Commission's rules sets forth the Commission's non-discrimination policy.

(e) This new subdivision of the Commission's rules sets forth the Commission's commitment to diversity.

The portion of this section of the Commission's rules that details the voting procedures to be used by the Commission for consideration of candidates has been relocated to Appendix I to Section 7100 of Title 22, N.Y.C.R.R., and further edited, as below.

This section of the Commission's rules has also been renumbered and edited for stylistic clarity.

7100.9. Report to the Governor.

This section of the Commission's rules has been amended to require that the Commission's report to the Governor will set forth (a) the relevant accomplishments of each nominee, and include major legal matters in which the nominee participated, as well as other notable professional qualities that the Commission considered important in determining that each was well-qualified and fit to serve as the Chief Judge or an Associate Judge of the Court of Appeals, as the case may be; and (b) the efforts made by the Commission and counsel to publicize each vacancy and to solicit applications from the broadest group of well qualified candidates, provided that the report will not compromise the confidentiality of Commission proceedings, as mandated by Section 66 of the Judiciary Law. This section of the Commission's rules has also been amended to provide that the Commission's report will encourage the public to submit comments to the Governor.

This section of the Commission's rules has also been renumbered and edited for stylistic clarity.

7100.10. Amendment or waiver of rules.

This section of the Commission's rules has been renumbered and edited for stylistic clarity.

7100.11. Website.

This new section of the Commission's rules establishes a protocol for the Commission's website, to be used to educate and communicate with the public, and to aid in soliciting candidates.

Part 7100 Appendix I. Voting procedures.

This section of the Commission's rules, formerly a portion of Section 7100.7 of Title 22, N.Y.C.R.R., has been amended to provide that the default number of candidates to be ranked by the Commissioners when voting on candidates - assuming no nominations have been made by consensus - will be 15. The voting process will henceforth be conducted such that candidates to be nominated must be a candidate receiving the greatest number of "points," as well as the affirmative votes of eight Commissioners, as required by Section 63(3) of the Judiciary Law.

This section of the Commission's rules has also been edited for stylistic clarity.

Section 7101.4: Rules for public access to records of the State of New York Commission on Judicial Nomination: Location.

This section of the Commission's rules has been amended to provide that the Commission's point of contact for all information requests pursuant to the State Freedom of Information Law will be the office of the Commission's current Counsel.

Full text of the revised rules is available at the Commission's website, <http://nysegov.com/cjn>.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 7100.3, 7100.6(c) and 7100.8(e).

Revised rule making(s) were previously published in the State Register on December 23, 2009.

Text of rule and any required statements and analyses may be obtained from: Stephen P. Younger, Counsel, Commission on Judicial Nomination, 1133 Avenue of the Americas, New York, New York 10036, (212) 336-2685, email: spyounger@pbwt.com

Revised Regulatory Impact Statement

None of the proposed revisions change the Commission's previous analysis contained in its prior Regulatory Impact Statement, as published in the New York State Register of August 5, 2009.

Revised Regulatory Flexibility Analysis, Revised Rural Area Flexibility Analysis and Revised Job Impact Statement

None of the proposed revisions change the Commission's previous conclusion, as published in the New York State Register of August 5, 2009, that a regulatory flexibility analysis, rural area flexibility analysis and job impact statement are not required.

Assessment of Public Comment

In July of 2009, the Commission published for public comment its initial draft of proposed revisions to its rules. In December of 2009, the Commission published for public comment a revised draft of proposed revisions to its rules. The Commission received and carefully considered a number of comments on these proposed revisions from private and public individuals and organizations, including the New York State Bar Association, the City Bar Association, the New York County Lawyers' Association and The Fund for Modern Courts. These comments dealt with almost every aspect of the proposed rules, and the rules as adopted incorporate many of the comments received.

The substantive changes contained in the republished rules include: clarification of the duty of an interim chairperson; a provision for orientation sessions for new members; broadening the outreach for candidates to include notice to civic and public interest organizations who register with the Commission; establishing the two-step application procedure as the Commission's preferred procedure for nomination; and further clarification of the Commission's voting procedure.

The changes contained in the republished rules are described in more complete detail in the Summary of the Revised Rules, above.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

IRA and Community Residence Reimbursement Methodology

I.D. No. MRD-03-10-00002-A

Filing No. 263

Filing Date: 2010-03-16

Effective Date: 2010-03-31

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

Action taken: Amendment of section 671.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b), 41.36(c) and 43.02

Subject: IRA and community residence reimbursement methodology.

Purpose: To update rent allowance offsets based on Supplemental Security Income (SSI) levels for 2010.

Text or summary was published in the January 20, 2010 issue of the Register, I.D. No. MRD-03-10-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, OMRDD, Regulatory Affairs Unit, Office of Counsel, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OMRDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Oneida County Motor Vehicle Use Tax

I.D. No. MTV-01-10-00021-A

Filing No. 254

Filing Date: 2010-03-16

Effective Date: 2010-03-31

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

Action taken: Amendment of section 29.12(gg) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

Subject: Oneida County motor vehicle use tax.

Purpose: To impose an Oneida County motor vehicle use tax.

Text or summary was published in the January 6, 2010 issue of the Register, I.D. No. MTV-01-10-00021-P.

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

Text of rule and any required statements and analyses may be obtained from: Monica J. Staats, Department of Motor Vehicles, 6 Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.state.ny.us

Assessment of Public Comment

The agency received no public comment.

**Office of Parks, Recreation and
Historic Preservation**

INFORMATION NOTICE

NOTICE

A Notice of Adoption, I.D. No. PKR-39-09-00004-A, pertaining to Summer Empire State Games - An Annual Multi-Sport Recreational Event Conducted by OPRHP Primarily for Young Athletes, published in the February 10, 2010 issue of the *State Register* adopted Part 465 which will be published in 9 NYCRR as Part 464 due to current existence of Part 465 under another agency's regulations.