



NYIA DFS COVID-19 Emergency Regulation FAQ

DFS recently issued an [emergency regulation](#) outlining options for policyholders who demonstrate a financial hardship because of COVID-19 with a corresponding moratorium on cancellations, non-renewals and conditional renewals, which was promulgated pursuant to Executive Order [202.13](#).

There have been a number of different interpretations within the industry about what is being put in place by the Governor and DFS to provide policyholders who demonstrate financial hardship with payment accommodations. Starting March 29, 2020 and set to conclude on April 28, 2020, policyholders who demonstrate a financial hardship must be provided a 60-day period where they cannot be canceled, non-renewed or conditionally renewed.

The information contained in Executive Order 202.13 and corresponding emergency regulation are further broken down through the following FAQ. In addition, while the Executive Order and emergency regulation are the directives that are legally binding, DFS issued a [press release](#) that provides further context.

Q1: Which policyholders are impacted by the regulation?

A1: Individuals and businesses, with business being defined as any business that is resident in New York, is independently owned and operated, and employs 100 or fewer individuals.

Q2: Is there a moratorium on all policies?

A2: **NO**, the moratorium **ONLY** applies if the defined policyholder demonstrates a financial hardship.

Q3: What types of actions are prohibited under the moratorium for policyholders who demonstrate financial hardship?

A3: Cancellations, non-renewals or conditional renewals, but the trigger is if the policyholder demonstrates financial hardship.

Q4: How would a property and casualty insurance company implement the provisions of this emergency regulation?

A4: The regulation requires companies to provide policyholders with an opportunity to demonstrate financial hardship as an alternative to cancellation, non-renewal or conditional renewal for a 60-day period. DFS originally indicated that the 60-day period commences with the policy premium due date. In the [FAQ](#) DFS has since issued the commencement of the 60-day period is stated as “the day on which, under the terms of an insurance policy, the insurer could have canceled, non-renewed, or conditionally renewed the policy for any reason.”

Please note this analysis is being provided on an informational only basis. The document should not be viewed as specific compliance or legal advice.

Q5: What is the duration of the Executive Order and emergency regulation?

A5: Executive Order 202.13 states that the provisions put in place are through April 28, 2020. The emergency regulation states that the regulation is pursuant to Executive Order 202.13 and has the same duration until April 28, 2020. Also note that the regulation states that it can be extended. Executive orders and emergency regulations have been extended in the past. NYIA has expressed the industry's strong desire to not extend the emergency regulation given the significant complications it creates.

Q6: What is the effective date of the emergency regulation?

A6: The regulation was promulgated on March 30. The date the Executive Order was signed is March 29. The emergency regulation references either the date the regulation was promulgated or the date of the Executive Order, so the effective date of each directive within the regulation corresponds with the document that is referenced.

Q7: What proof of financial hardship can insurance companies accept?

A7: The regulation states that insurers must accept written attestation as proof of financial hardship as a result of the COVID-19 pandemic. DFS does not detail what the attestation can include.

Q8: Which lines of property and casualty insurance does the emergency regulation apply?

A8: The Executive Order modifies Insurance Law Section 1116 and Articles 34 (homeowners, renters, private passenger auto, commercial auto (issued to small businesses), professional liability, medical malpractice, business policies (issued to small businesses)), 53 (AIP), 54 (NYPIUA), and 55 (MMIP) and Workers' Compensation Law Sections 54 and 226 of the Workers' Compensation Law. The relief shall also apply to the kinds of insurance set forth in paragraphs (16) (surety), (17) (credit), (20) (marine, inland marine), (21) (marine protection), (24) (credit unempl), (26) (gap), and (30) (involuntary unemployment) of Section 1113(a) of the Insurance Law. Section 576 of the Banking Law is modified to apply the provisions of the Executive Order relevant to policy cancellations, to premium finance agencies (as defined in Article XII-B of the Banking Law), subject to the safety and soundness considerations of the premium finance agencies.

Q9: What is required of an insurer if a policyholder demonstrates a financial hardship?

A9: In addition to not cancelling, nonrenewing or conditionally renewing the policy, insurers must:

- Allow for repayment of late premium over a 12-month period.
- Provide a waiver of late fees.
- Adhere to the prohibition on reporting negative data to credit reporting agencies and debt collection agencies.

Q10: Do policyholders need to be notified of the moratorium?

A10: Yes. Within 10 business days of March 30, notice must be provided with each insurance premium bill detailing the provisions of the 11 NYCRR 229 (new Insurance Regulation 216), which are outlined in the emergency regulation, along with a toll-free number that the policyholder may call to discuss billing and make alternative payment

arrangements. NYIA's interpretation is that if no premium is due no notice is required to be sent.

Q11: Do all producers and third party service providers need to be notified?

A11: Yes. Within 10 business days of March 30, notice must be provided detailing the provisions of 11 NYCRR 229 (new Insurance Regulation 216), which are outlined in the emergency regulation.

Q12: Does the moratorium only apply to non-payment cancellations, non-renewals or conditional renewals after March 29?

A12: No. The provisions of the emergency regulation must apply to a policyholder to whom the insurer issued a nonpayment cancellation notice prior to the effective date of the Executive Order, who can still demonstrate a financial hardship. NYIA's interpretation is that this would apply to actions that are still pending.

Q13: Can a policyholder voluntarily cancel their policy?

A13: Yes. Nothing prohibits the policyholder from voluntarily cancelling the policy.

Q14: Where can information on the emergency regulation be found?

A14: Emergency regulation text:

https://www.dfs.ny.gov/system/files/documents/2020/03/re_consolidated_amend_pt_40_5_27a_27c_new_216_text.pdf

Links to emergency regulation and related documents:

https://www.dfs.ny.gov/industry_guidance/regulations/emergency_insurance