4. Compliance costs:

There are no expected new costs to local governments or to small businesses.

5. Economic and technological feasibility:

The proposed rule does not require any new expenditure on the part of small businesses or local governments. There are no new gear requirements to comply with the proposed rule.

6. Minimizing adverse impact:

This rulemaking is necessary for the State to comply with the ASMFC FMPs for Horseshoe Crab and Jonah Crab. If New York fails to adopt the proposed rule, ASMFC may find the State out of compliance, resulting in federal closure of the State's Horseshoe Crab and Jonah Crab fisheries. The potential economic impacts of a statewide moratorium on Horseshoe Crab and Jonah Crab fishing are significantly greater than the costs associated with compliance with the proposed rule. Additionally, unregulated harvest of other crab species which do not have an interstate FMP, such as Blue Crab, may result in overharvest, diminished stocks, and negative economic impacts to fishers and related small businesses.

7. Small business and local government participation:

New York State fishers, including small businesses, will have an opportunity to provide input on the proposed rule at a Marine Resource Advisory Council meeting on January 14, 2025. Upon publication of the proposed rule in the State Register, the department will provide notice of the proposed rule, public comment period, and public hearing through the department's Environmental Notice Bulletin, the "DEC Delivers" Saltwater Fishing and Boating Newsletter, and the department's website. In addition, the department will send direct notice by mail and/or email to commercial Food Fish, Crab, and Horseshoe Crab license holders.

8. For rules that either establish or modify a violation or penalties associated with a violation:

Pursuant to State Administrative Procedure Act (SAPA) § 202-b(1-a)(b), a cure period is not included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure that the general welfare of the public and the resource are both protected.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA § 207(1)(b).

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rule impacts fishers in the marine and coastal district and inland waters of the Hudson River. There are no rural areas within the marine and coastal district. Five Hudson River watershed counties fall into the rural area category: Columbia, Greene, Putnam, Rensselaer, and Ulster counties. The proposed regulations may impact individuals who participate in the commercial and recreational Blue Crab fisheries in these geographic areas.

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

The proposed rule repromulgates 6 NYCRR sections 44.2, 44.3, and 44.4, as they were in effect on December 31, 2024. There are no new reporting, record keeping, or other compliance requirements associated with this rulemaking. The rulemaking does not require the use of professional services for compliance.

3. Costs:

The proposed rule is a repromulgation of regulations in effect as of December 31, 2024; there are no new costs to rural areas to comply with the proposed rule. There are four licensed Blue Crab harvesters in the Hudson River and the estimated value of this fishery is $884 (ex-vessel value). Blue Crab landings from the Hudson River make up less than one percent of total landings in the State.

4. Minimizing adverse impact:

This proposed rule continues New York State's regulatory authority for commercial and recreational Crab and Horseshoe Crab fisheries and is necessary to comply with the Atlantic States Marine Fisheries Commission (ASMFC) fishery management plans (FMP) for Horseshoe Crab and Jonah Crab. If the State fails to adopt the proposed rule, ASMFC may find the State out of compliance, resulting in federal closure of the State's Horseshoe Crab and Jonah Crab fisheries. Additionally, unregulated harvest of other Crab species which do not have an interstate FMP, such as Blue Crab, could result in overharvest, diminished stocks, and negative economic impacts to fishers and related businesses in rural areas. The consequence of noncompliance would have a far greater adverse impact on commercial fishers than the proposed rule.

5. Rural area participation:

New York State fishers, including in rural areas, will have an opportunity to provide input on the proposed rule at a Marine Resource Advisory Council meeting on January 14, 2025. The department will provide notice of the proposed rule, public comment period, and public hearing through the department's Environmental Notice Bulletin, "DEC Delivers" Saltwater Fishing and Boating Newsletter, and website. In addition, the department will send direct notice by mail and/or email to commercial Food Fish, Crab, and Horseshoe Crab license holders.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the proposed rule within three years, as required by SAPA section 207.

Job Impact Statement

6 NYCRR sections 44.2, 44.3, and 44.4 regulate Crabs, Horseshoe Crabs, and Chinese Mitten Crabs, respectively. These regulations were promulgated pursuant to the statutory authority provided by New York State Environmental Conservation Law (ECL) subdivision 13-0331(7), which expired on December 31, 2024. The proposed rulemaking repromulgates the department's Crab, Horseshoe Crab, and Chinese Mitten Crab regulations under the statutory authority of ECL sections 13-0105 and 3-0301.This rulemaking is necessary for the State of New York to reestablish regulatory authority to manage the State's commercial and recreational Crab and Horseshoe Crab fisheries, and to comply with each of the Atlantic States Marine Fisheries Commission (ASMFC) fishery management plans (FMPs) for Horseshoe Crab and Jonah Crab. Failure to adopt the proposed rule, and to maintain the department's regulatory authority to manage crabs in compliance with ASMFC FMPs, may result in closure of the State's Horseshoe Crab and Jonah Crab fisheries. Additionally, unregulated harvest of other crab species which do not have an interstate FMP, such as Blue Crab, could result in overharvest, diminished stocks, and negative economic impacts to fishers and related businesses.

Because the proposed rulemaking is a repromulgation of sections 44.2, 44.3, and 44.4 as they were in effect on December 31, 2024, no new compliance costs are expected. Given that the economic impact would be minimal, a Job Impact Statement is not submitted with this proposal because the proposal would have no substantial adverse impact on existing or future jobs and/or employment opportunities.

Department of Financial Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Compliance with Banking Law Section 28-bb

I.D. No. DFS-05-25-00002-P

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

Proposed Action: Addition of Part 120 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 9-d, 28-bb, 590, 596 and 597; Financial Services Law, sections 202, 301, 302; Executive Law, section 296-a

Subject: Compliance with Banking Law, section 28-bb.

Purpose: This rule implements the mandate of Banking Law Section 28-bb.

Substance of proposed rule (Full text is posted at the following State website: https://www.dfs.ny.gov/industry_guidance/regulations/proposed_banking): The Department of Financial Services ("DFS") provides this description of the subject, purpose, and substance of the proposed new Part 120 of Title 3 of the New York Codes, Rules and Regulations in accordance with State Administrative Procedure Act § 202(1)(f)(v). The full text of the proposed amendment is available on DFS's website at: https://www.dfs.ny.gov/industry_guidance/regulations/proposed_banking

The proposed new Part 120 would implement New York Banking Law ("BL") § 28-bb, L.2021, c. 549, which mandates that the Superintendent of Financial Services ("Superintendent") evaluate the record of performance of certain mortgage bankers licensed under BL § 591 in helping to meet the credit needs of their communities, consistent with their safe and sound operation. Further, the Superintendent must consider the assessment of a licensed mortgage banker pursuant to BL § 28-bb when taking action on applications to DFS from such mortgage banker. This proposal implements this legislative mandate by establishing an evaluation regime for covered institutions and elaborating how the Superintendent will rely on assessments in taking action on covered applications.

Proposed Part 120 resembles 3 N.Y.C.R.R. Part 76, the regulation implementing BL § 28-b, the New York Community Reinvestment Act

("CRA"), enacted in 1978, but Part 120 is tailored to the business model of mortgage banking, which differs from that of banking institutions covered by Part 76. Under Part 76, banking institutions' assessment areas include regions where they take deposits and have physical branches as well as areas where they make loans (except for wholesale banks and limited purpose banking institutions). Like Part 76, proposed Part 120 includes lending tests and service tests, but because mortgage bankers do not take deposits, mortgage bankers will not be evaluated on investment activities. Instead, mortgage bankers will be assessed based on their activities in communities where they do a substantial portion of their lending business. The proposed regulation includes several methods for setting an assessment area, developed to account for the most common mortgage banker business models, both branch-based and lending-based.

Proposed new § 120.1 provides the definitions for the Part, including for such terms as, "area median income," "assessment area," "community development," and "MSA" or "metropolitan statistical area."

Proposed new § 120.2 requires mortgage bankers to file certain federally, state, and locally mandated reports and document filings, such as filings made pursuant to the federal Home Mortgage Disclosure Act, and their supporting materials, with the Superintendent upon request. This provision also requires mortgage bankers to ensure the completeness and accuracy of the data they submit. Further, it permits mortgage bankers to submit additional data concerning their performance in meeting the credit needs of their communities.

Proposed new § 120.3 establishes that when performing the assessments required under BL § 28-bb, the Superintendent will, consistent with the statutory mandate, consider certain factors set forth in the law and the results of the performance tests and standards detailed in § 120.6 of the regulation. This section also clarifies that the Superintendent is permitted to deny certain applications based on a mortgage banker's performance and may, in the Superintendent's discretion, set conditions on the approval of an application.

Proposed new § 120.4 details how the Superintendent will conduct performance evaluations of mortgage bankers, including the steps involved in an evaluation and the rating system to be used. Also, consistent with BL § 28-bb(1), this section provides that the Superintendent will make a written summary of the result of an assessment available to the public.

Proposed new § 120.5 explains how a mortgage banker may delineate one or more geographical assessment areas within which DFS will evaluate the mortgage banker's record of helping to meet the credit needs of its community. It also provides that DFS will use the assessment area or areas delineated by a mortgage banker in conducting its assessment of the mortgage banker unless DFS determines that the assessment area or areas do not meet the requirements of § 120.5. This section does not require any mortgage banker to establish a branch in any specific geographical area. Assessment areas will be established based on the mortgage banker's business volume and location of its branch(es), if any. Mortgage bankers that have branches in New York State will set their assessment areas in relation to the location of their branches, and assessment areas will be established for all mortgage bankers in each MSA (or the nonmetropolitan areas in New York State) outside any branch-based assessment areas where they have made, in each of the two preceding calendar years, at least 100 mortgage loans. Mortgage bankers that have originated at least 1,000 mortgages in New York State in each of the prior two calendar years may opt to designate the whole state as their assessment area.

Proposed new § 120.6 provides that DFS will conduct assessments using lending and service tests described in §§ 120.7 and 120.8 of the proposed regulation and that it will consider contextual factors in applying those tests.

Proposed new § 120.7 describes the lending test, which DFS shall use to evaluate a mortgage banker's record of helping to meet the credit needs of its assessment area(s) through home mortgage lending activity. The test will take into account both originations and purchases of mortgage loans; the mortgage banker's volume of lending activity and amount loaned; the proportion of mortgages the mortgage banker originates in its assessment area; the geographic distribution of the mortgage banker's mortgage loans within its assessment area; the number and size of mortgage loans the mortgage banker makes in low-, moderate-, middle-, and upper-income geographies in its assessment area; the borrower characteristics of borrowers within the mortgage banker's assessment area; if the mortgage banker uses, in a safe and sound manner, any innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies, or underserved geographies; and whether the mortgage banker has engaged in any harmful practices that, for example, discourage application for or extension of credit to, or which may result in harm to, low- and moderate-income individuals. Proposed § 120.7 also provides that no mortgage banker may include a mortgage loan origination for consideration in its assessment if another mortgage banker or depository institution claims the same origination under Part 120, BL § 28-b or its implementing regulations, or the federal Community Reinvestment Act.

Proposed new § 120.8 describes the service test, which evaluates a mortgage banker's record of helping to meet the credit needs of its assessment area(s) by analyzing the availability and effectiveness of the mortgage banker's systems for delivering mortgage loan products and the extent and innovativeness of a mortgage banker's community development services, community outreach, and educational programs.

Proposed new § 120.9 provides that DFS may be flexible in its considerations of a mortgage banker's activities pertaining to owner-occupied housing where the gap between housing costs and area median income greatly restricts the affordability of owner-occupied housing for low- and moderate-income persons residing in the area.

Proposed new § 120.10 establishes that the compliance date for the new rule will be six months after the date of publication of the notice of adoption in the State Register.

Text of proposed rule and any required statements and analyses may be obtained from: Terry McMahon, Esq., Department of Financial Services, One State Street, New York, NY 10004, (212) 837-7314, email: Terry.McMahon@dfs.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority: Banking Law ("BL") §§ 9-d, 28-bb, 590, 596, and 597; Financial Services Law ("FSL") §§ 202, 301, and 302; and § 296-a of the Executive Law.

BL § 9-d authorizes the Superintendent of Financial Services ("Superintendent") to enforce Executive Law § 296-a.

BL § 28-bb (L.2021, c. 549), mandates that the Superintendent assess the record of mortgage bankers in helping to meet the credit needs of their entire communities, consistent with their safe and sound operation, and that the Superintendent consider that assessment when taking action on applications to the Department of Financial Services ("DFS") from such mortgage banker. Among the criteria for consideration set forth in BL § 28-bb are "[a]ctivities conducted by the mortgage banker to ascertain credit needs of its community," "[t]he geographic distribution of the mortgage banker's credit extensions, credit applications, and credit denials," and "[a]ny practices intended to discourage application for types of credit offered by the mortgage banker." BL § 28-bb(5) authorizes the Superintendent to "promulgate rules and regulations effectuating the provisions of" BL § 28-bb.

BL § 590 authorizes the Superintendent to promulgate rules and regulations "consistent with the purposes of [BL Article 12-D], or appropriate for the effective administration of [BL Article 12-D]."

BL § 596 authorizes the Superintendent to examine mortgage bankers.

BL § 597 requires mortgage bankers to maintain books and records in a manner that enables the Superintendent to review to ensure compliance with applicable laws and regulations and to file annual reports in the form prescribed by the Superintendent. This section also authorizes the Superintendent to require the filing of additional reports.

FSL § 202 establishes the office of the Superintendent of Financial Services and provides the Superintendent with broad rights, powers, duties and discretion relating to matters under the FSL, BL, Insurance Law ("IL"), and "any other applicable law of this state."

FSL § 301(a) states that the Superintendent shall have the powers conferred by the FSL, BL, IL, and any other State law that grants the Superintendent authority.

FSL § 302 sets forth the power of the Superintendent to prescribe, withdraw or amend regulations involving financial products and services that effectuate and interpret the provisions of the FSL, BL, IL, and "any other law in which the superintendent is given authority," and "govern[] the procedures to be followed in the practice of the Department."

Executive Law § 296-a describes unlawful discriminatory practices in which creditors may not engage and empowers the Superintendent "to issue appropriate orders to [a] creditor pursuant to the banking law," upon the Superintendent's "determination that [such] regulated creditor has engaged in or is engaging in discriminatory practices." Section 296-a(9) obligates creditors to certify their compliance with Executive Law § 296-a when making certain applications to the Superintendent. Executive Law § 296-a(11) authorizes the Superintendent to promulgate regulations necessary to effectuate its purposes.

2. Legislative Objectives: This regulation will implement BL § 28-bb by establishing the rules according to which DFS will evaluate mortgage bankers as mandated by BL § 28-bb, an anti-discrimination and anti-redlining statute.

3. Needs and Benefits: In February, 2021, DFS published its Report on Inquiry into Redlining in Buffalo, New York ("Report"), which led to the passage of BL § 28-bb. "Redlining" refers to an array of illegal discriminatory practices relating to mortgage lending that include, among other things, mortgage lenders refusing to do business in a neighborhood based

on the population's racial or ethnic composition or imposing more onerous terms on mortgages for homes in a particular neighborhood in an unlawfully discriminatory fashion. Report, 1-2. The term "redlining" arises from the historical and now illegal practice by which lenders or real estate brokers would draw lines on maps around neighborhoods they would not serve at all or around areas in which they would not serve minorities. Report, 3. Mortgage lending discrimination has substantial negative societal impacts. As homeownership has long been a major source of financial stability and path for wealth building for New Yorkers and Americans generally, discrimination in mortgage lending inhibits the economic opportunity of negatively affected groups. Moreover, housing segregation is correlated with greater social vulnerability for those subject to discrimination, including decreased economic and educational opportunity and negative health outcomes. Id.

Until recently, banks originated most mortgages. In 2013, banks still originated 70% of new mortgages, but by 2019, mortgage bankers originated most new mortgages. Report, 14, n. 22. According to the Financial Stability Oversight Counsel's 2024 Report on Nonbank Mortgage Servicing ("FSOC Report"), in 2022, mortgage bankers originated about two-thirds of mortgages nationally. FSOC Report, 3.

Since the late 1970s, banks have been evaluated under both the Federal and New York State Community Reinvestment Acts ("CRA"), 12 U.S.C. § 2901 et seq. and BL § 28-b, anti-redlining laws that require regular assessments of banks' activity, including their mortgage lending, by Federal and State supervisors. CRA laws are part of a constellation of laws intended to prevent housing discrimination and its attendant harms. CRA assessments evaluate the extent to which covered banks serve the communities where they do business, including by lending to low- and moderate-income borrowers and in low- and moderate-income neighborhoods. Banks must maintain and report relevant data to regulators, and, to score well on assessments, ensure they are serving their whole communities. Banks dedicate resources to this effort for various reasons, including that regulators must consider these scores in making determinations on banks' applications to the regulators for certain expansionary and other activity and that scores on CRA evaluations are publicly available. Banks with strong CRA performance have also conveyed to DFS that such efforts benefit their business by allowing them to reach more customers. Report, 18-20.

Until the enactment of BL § 28-bb, no statute required a similar evaluation of mortgage bankers' lending activity in New York. The Report, detailing DFS' investigation of mortgage bankers in the Buffalo metropolitan statistical area ("MSA") and mortgage lending data for the MSA overall, underscored the need for the law. DFS found that, in the Buffalo MSA, mortgage bankers generally were lending at lower rates in majority-minority areas than depository institutions, and a few mortgage bankers that accounted for about 15% of the total mortgage lending in the MSA were lending overwhelmingly to white borrowers in majority-white neighborhoods and served minority borrowers and majority-minority areas at substantially lower rates than other lenders in the MSA. Report at 14-17. Additionally, overall lending patterns in the MSA tended to follow those established by redlining nearly a century earlier. Report, 6-8. However, for the mortgage bankers DFS investigated, DFS found this practice was not due to mortgage bankers' illegal rejection of applicants based on their race or ethnicity or any explicit policy not to offer mortgages for homes in certain areas. Rather, these mortgage bankers simply did not engage with potential minority borrowers, directed little or no marketing towards minority communities, and took no steps to track how well they were serving these potential customers and neighborhoods. These failures would likely negatively affect a CRA score were the mortgage bankers subject to CRA evaluation at that time. The mortgage bankers that DFS investigated eventually entered into agreements with DFS to remediate their poor performance. Id. DFS found similar patterns in the Syracuse and Rochester MSAs and published a report covering those regions, and reviewing the impact of recent illegal steering and historical restrictive covenants on Long Island. https://www.dfs.ny.gov/system/files/documents/2022/12/second_rpt_redlining_inquiry_20221208.pdf.

As stated in the sponsor's memo accompanying L.2021, c. 549, BL § 28-bb expanded CRA coverage to mortgage bankers with the goal of ensuring that where mortgage bankers do business, they are serving the whole community, including through lending to low- and moderate-income people and originating mortgages for homes in low- and moderate-income neighborhoods. This regulation is necessary to effectuate its purposes. Because BL § 28-bb is similar in form and, in part, in substance to BL § 28-b, the statute that applies CRA requirements to banks, DFS adapted 3 N.Y.C.R.R. Part 76, the CRA regulation that applies to banks, for the proposed rulemaking, as modes of implementation of the provisions of Part 76 are well established. However, DFS substantially tailored proposed Part 120 to the business of mortgage bankers by not including, for example, criteria and tests provided for by BL § 28-b but not BL § 28-bb and that are not relevant to mortgage bankers. DFS also reviewed CRA requirements applied to mortgage bankers in other states to refine the proposed regulation.

Without the provisions of this regulation, DFS will not be able to perform its statutory evaluation obligations.

4. Costs: Mortgage bankers regulated by DFS are already assessed for DFS' costs of examinations. DFS does not expect that CRA examination will significantly change the assessments on mortgage bankers.

Under proposed § 120.2(a), mortgage bankers must submit to DFS "each report and document which [they are] required to prepare and/or file with one or more Federal, State, or local agencies and which relates to the credit needs of its community" so that DFS can conduct its mandated evaluations. Under proposed § 120.2(b), mortgage bankers will also have to test their data for accuracy. DFS may request additional data as part of its assessment of a covered entity, and mortgage bankers may voluntarily supplement their data. Id., § 120.2(c). These requirements should not impose substantial additional expense.

DFS will evaluate covered mortgage bankers periodically. Thus, mortgage bankers will have to determine their assessment area(s) in accordance with proposed § 120.5 and, from time to time, staff will have to expend effort in facilitating DFS's evaluations. As part of an evaluation, DFS may require written responses to requests for documentation and information, interview mortgage banker personnel, and conduct site visits. Better performance can reduce expenses incurred in connection with evaluations. Under proposed § 120.4(a), mortgage bankers that have received an "outstanding" rating on their most recent evaluation (the highest rating) will be evaluated less frequently than a those earning lower ratings, unless DFS has cause to conduct an evaluation earlier than planned. DFS expects costs of participation in an evaluation to vary among mortgage bankers depending on their size, business volume, and performance at meeting the credit needs of their entire community. All mortgage bankers already have experience with DFS's regular safety and soundness examinations.

A mortgage banker may, but will not be required to, expend resources to ensure it is serving its whole community by offering informational programs, developing new products, and expanding the reach of its advertising. The mortgage banker's expenses may consequently be offset by resulting business growth.

5. Local Government Mandates:

The proposed rule imposes no local government mandates.

6. Paperwork:

DFS expects reporting paperwork pursuant to proposed § 120.2 to be minimal as compliance will primarily require submission of data already collected and maintained by mortgage bankers. Periodic evaluations will involve some additional paperwork. DFS may also request additional data as part of its assessment under the proposed rule, and mortgage bankers may, under proposed § 120(c), supplement their data at their option.

7. Duplication:

The proposed rule does not duplicate any Federal or State statute or rule, and covered entities will rely substantially on data that they must already prepare, as noted in item 4 above.

8. Alternatives:

DFS must implement BL § 28-bb; the statute offers no alternative. Consistent with legislative intent expressed in the bill memo for L.2021, c. 549, the proposed rule is modeled on Part 76, which implements BL § 28-b, the CRA for banks, but tailored substantially to the mortgage banking business. Part 76 has been in use for decades.

The Department posted a draft of this regulation on its website for 10 days to solicit comments from small businesses that might be affected. DFS received two comments but does not believe that any changes are necessary.

9. Federal Standards:

There are no applicable Federal standards.

10: Compliance Schedule:

Covered mortgage bankers will have six months to comply following publication of the Notice of Adoption of this proposal in the State Register.

Regulatory Flexibility Analysis

1. Effect of rule: This rule will apply to mortgage bankers licensed under Banking Law ("BL") Article 12-D that have originated 200 or more mortgages in New York State in the immediately prior calendar year. State Administrative Procedure Act ("SAPA") § 102(8) defines a small business to mean "any business which is resident in this State, independently owned and operated, and employs one hundred or less individuals." The Department of Financial Services (DFS) estimates based on its licensee data that 66 of the 140 DFS-licensed mortgage bankers maintain branches in New York State. DFS estimates that of those 66 licensees, 41 are headquartered in the State, and 23 of those may be small businesses under the definition provided by SAPA § 102(8).

This rule will not apply to any local government.

2. Compliance requirements: Compliance with this regulation will

require all covered licensed mortgage bankers, including those that are also small businesses, to submit data that they already collect for other purposes to the Department of Financial Services ("DFS") and to undergo periodic evaluations by DFS. Under proposed § 120.2(a), they must submit to DFS "each report and document which [they are] required to prepare and/or file with one or more Federal, State, or local agencies and which relates to the credit needs of its community." Under proposed § 120.2(b), mortgage bankers must ensure the data they report is accurate. From time to time, pursuant to BL § 28-bb, DFS will conduct evaluations of covered entities, and such evaluations will require covered entities to set their assessment area(s), submit written responses to requests for documentation and information, and otherwise participate in the evaluation process.

No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with this proposed rule because the proposed rule does not apply to any local government.

3. Professional services: This regulation's primary requirements of mortgage bankers are that they submit materials to DFS that they already prepare for other purposes and ensure the accuracy of the data in those materials and participate in the evaluation process so that DFS can conduct the evaluations required by BL § 28-bb. Because mortgage bankers will not be required to generate new reports, and because they already have experience with DFS examinations pursuant to BL Article 12-D, DFS does not expect that covered entities, whether or not they are small businesses, will need additional professional services to comply.

No local government will need professional services to comply with the proposed rule because the proposed rule does not apply to any local government.

4. Compliance costs: DFS does not expect that covered mortgage bankers, including those that are small businesses, will incur capital costs to come into compliance with this rule. As noted above, the key requirements of the rule with respect to covered mortgage bankers is that they submit to DFS materials they already prepare and submit to other government entities so that DFS can review their lending activity and participate as needed in their periodic evaluations. DFS expects the costs of submitting existing materials to be minimal. Participation in evaluations will require resources to gather records and answer requests for documents and information. Mortgage bankers already have related experience with safety and soundness examinations that DFS conducts pursuant to BL Article 12-D.

There are no compliance costs for local governments because the proposed rule will not apply to local governments.

5. Economic and technological feasibility: DFS has concluded that compliance with this rule by small businesses is technologically and economically feasible because the rule chiefly relies on the submission of data already collected by covered mortgage bankers to DFS and participation in evaluations, and all covered entities already have experience being examined by DFS pursuant to Banking Law Article 12-D.

No economic or technological feasibility concerns exist with respect to local governments because the proposed rule will not apply to any local government.

6. Minimizing adverse impact: DFS does not expect that this rule will adversely impact small businesses economically, and it may help small businesses grow. Following SAPA § 202-b, DFS has designed this rule to avoid adverse impact to mortgage bankers, including those that are small businesses, in several ways. As noted throughout this proposal, DFS has determined that it can generally perform its obligations under BL § 28-bb without requiring covered mortgage bankers to create new reports to submit to DFS; rather, the rule requires submission of materials already generated by the mortgage bankers to submit to other government agencies. DFS may require written responses to information requests as part of its mandated periodic evaluations. Furthermore, the performance tests that constitute the basis for DFS's evaluation of covered mortgage bankers account for the size and location of the entity being evaluated. For example, proposed § 120.6 provides that performance will be evaluated in the context of the "mortgage banker's product offerings and business strategy," "the mortgage banker's institutional capacity and constraints," and "the mortgage banker's market share in its assessment area."

Mortgage bankers that originate fewer than 200 mortgages in a year will not be subject to evaluation by DFS under the proposed rule, thus excluding those entities more likely to be resource constrained while ensuring that over 90% mortgage lending in New York is evaluated regularly. (DFS has longstanding authority under BL § 596 and FSL §§ 301 and 404 to examine or investigate any licensed mortgage banker, regardless of its size, to determine if it has acted illegally and to obtain information the Superintendent may need for other supervisory or investigatory purposes.) Relatedly, because Part 76 is a well-known regulation and has been in effect for many years, using it as a model for proposed Part 120 means that entities preparing to comply with Part 120 will be able to rely on common understandings of terms in the industry and find models for compliance.

No local government should be adversely impacted by this rule because the rule does not apply to any local government.

7. Small business and local government participation: DFS complied with SAPA § 202-b(6) before publishing this proposal by soliciting input from industry participants before drafting the proposed rule and by posting a draft of the proposed rule on its website and notifying trade organizations that represent the interests of small businesses that the draft proposed rule had been posted. DFS also will comply with SAPA § 202-b(6) by publishing the proposal in the State Register and posting the proposed amendment on its website again.

DFS has not engaged with local governments because the proposal does not apply to local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Pursuant to the mandate imposed by the Legislature, this rule will apply statewide to mortgage bankers licensed under Banking Law Article 12-D, that have originated 200 or more mortgages in New York State in the immediately prior calendar year. Mortgage bankers operate throughout the State, though not all licensed mortgage bankers maintain offices or branches in the State. There are no rural areas that are specifically affected by or excluded from coverage of the proposed regulation. The Department of Financial Services (DFS) has estimated that the 140 mortgage bankers licensed by DFS maintain 793 branches nationally and 323 branches in New York State. Of those 323 New York State branches, DFS estimates that 51 are in rural areas as defined by Executive Law § 481(7). Those 51 branches are associated with twelve licensed mortgage bankers, eleven of which also maintain branches in non-rural areas of New York State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Compliance with this regulation will require all covered mortgage bankers, including those located in rural areas, to submit data that they already collect for other purposes to DFS and to undergo periodic evaluations by DFS. Under proposed § 120.2(a), they must submit to DFS "each report and document which [they are] required to prepare and/or file with one or more Federal, State, or local agencies and which relates to the credit needs of its community." Under proposed § 120.2(b), mortgage bankers must ensure the data they report is accurate. From time to time, pursuant to BL § 28-bb, DFS will conduct evaluations of covered entities, and such evaluations will require covered entities to set their assessment area(s), submit written responses to requests for documentation and information, and otherwise participate in the evaluation process. DFS does not expect that the proposed regulation's reporting and recordkeeping requirements will affect covered mortgage bankers in rural areas differently than covered mortgage bankers in non-rural areas or create a need for professional services different from that of mortgage bankers in non-rural areas, if any need is created at all. All covered mortgage bankers will be required to submit materials they already prepare for other purposes and participate in evaluations. Like their non-rural counterparts, mortgage bankers in rural areas already have experience with DFS examinations pursuant to BL Article 12-D.

3. Costs: DFS does not expect that covered mortgage bankers, including those located in rural areas, will incur significant costs to come into compliance with this rule because, as noted above, the main requirements of the rule with respect to covered mortgage bankers is that they submit to DFS materials they already prepare and submit to other government entities for evaluation by DFS and participate in periodic evaluations by answering requests for information with written responses and by gathering and submitting records. Participating in evaluations will demand resources, but mortgage bankers already have related experience with safety and soundness examinations that DFS conducts pursuant to BL Article 12-D.

4. Minimizing adverse impact: DFS does not expect that mortgage bankers in rural areas will be adversely impacted by the proposed rule. The proposed rule does account for variable factors that may relate to the area a covered mortgage banker operates in, providing that performance evaluations shall take into account, "demographic data including median income levels, distribution of household income, housing data, and any other relevant data pertaining to a mortgage banker's assessment area(s)," "the performance of all mortgage lenders. . . in the mortgage banker's assessment area(s)," "lending and service opportunities in the mortgage banker's assessment area(s)," "institutional capacity and constraints," and "market share in its assessment area."

5. Rural area participation: To the extent mortgage bankers in rural areas area also small businesses, they have received advance notice of the proposal's publication, as well as the opportunity to review a draft of and comment on a draft proposal posted on the DFS website before publication of the notice of proposed rulemaking in the State Register. DFS also makes efforts to ensure that covered entities throughout the State are aware of this proposal and their opportunity to comment.

Job Impact Statement

The Department of Financial Services (DFS) does not expect the proposed regulation to have a substantial adverse impact on jobs and

employment opportunities. The proposed regulation, in accordance with the intent and mandate of BL § 28-bb, establishes the rules and processes by which DFS will perform evaluations of mortgage bankers' service to their communities, including through lending to low- and moderate-income people and originating mortgages for homes in low- and moderate-income neighborhoods.

To comply with this regulation mortgage bankers will have to submit data that they already collect for other purposes to DFS and test their data for accuracy. DFS may request additional data as part of its assessment of a covered entity, and mortgage bankers may voluntarily supplement their data. Mortgage bankers will have to set their assessment area(s) and, from time to time, dedicate resources to facilitating DFS's evaluations, including by preparing written responses to requests for documentation and information. DFS expects costs of compliance and staffing needs to vary among mortgage bankers depending on their size and volume of business, though all covered mortgage bankers already have experience with DFS's regular safety and soundness examinations.

Mortgage bankers may, but will not be required to, engage in new efforts to ensure they are serving their whole community, such as by offering new products, expanding marketing activities, and putting on additional community-oriented informational programs. In addition, mortgage bankers may improve their performance on Community Reinvestment Act evaluations by increasing their lending activity in low- and moderate-income geographies and to low- and moderate-income individuals, which may increase lending overall. The proposed regulation therefore may generate new jobs.

Office of Mental Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Incident Management Programs

I.D. No. OMH-05-25-00001-P

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

Proposed Action: Amendment of Part 524 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09, 7.21, 29.29, 31.04, 31.11 and 33.25

Subject: Incident Management Programs.

Purpose: To ensure behavioral health providers develop and implement effective incident management programs.

Substance of proposed rule (Full text is posted at the following State website: https://omh.ny.gov/omhweb/policy_and_regulations/): • Updated language throughout to conform with changes in naming conventions, including:

o replacing gendered pronouns with gender neutral pronouns,

o updating State agency names.

• 14 NYCRR Part 524.4 General Definitions.

o Added a definition for human trafficking to mean a crime that involves compelling or coercing a person to provide labor or services, or to engage in commercial sex acts. Such coercion can be subtle or overt, physical, or psychological. Clarifies that exploitation of a minor for commercial sex is human trafficking, regardless of whether any form of force, fraud, or coercion was used.

• Section 524.5. Incident category definitions

o Provides a definition for choking to mean an event where a patient is unable to breathe as a result of ingestion of food or other foreign object, requiring a physical intervention (i.e. Heimlich Maneuver) resulting in serious injury or harm or admission to a hospital, or where there is a written directive for such patient concerning risk of choking in place at the time of the event.

o Provides a definition for inappropriate use of restraint or seclusion to include the use of restraint, as defined in Part 526.4, that is inappropriate because it was implemented without a valid physician's order or in a manner that was otherwise not compliant with applicable State or Federal regulations, but which does not rise to the level of physical abuse, as defined in this section or the use of seclusion, as defined in Part 526.4, that was unauthorized because it was implemented without a valid physician's order or in a manner that was otherwise not compliant with applicable State or Federal regulations.

o Provides a definition for human trafficking to include a patient of an inpatient or residential youth program, while on authorized leave or pass from the program.

o Removes definition of mistreatment.

o Defines overdose to mean when a patient consumes an amount of a substance (e.g., prescription, over-the-counter, legal, or illegal) which is not intended to cause their own death, but results in serious injury or harm.

o Defines reasonable cause to suspect to mean that based on all the evidence, facts, and circumstances known or readily available, it is rational to think a Reportable Incident may have occurred. Reasonable cause to suspect is a judgment about a statement, not about the condition, competency, or credibility of a patient.

o Redefines sexual assault to include nonconsensual sexual contact including the deliberate touching of a patient's intimate body parts, or clothing covering those body parts, or using force to cause self-touching by another patient of intimate body parts, or contact, that results in vaginal, anal, or oral penetration; any sexual contact between a person who is 18 years old or more and a person who is less than 15 years old, or between a person who is 21 years of age or older and a person who is less than 17 years old; or any sexual contact which involves a patient who is deemed incapable of consent.

o Clarifies that sexual contact between children means vaginal, anal, or oral penetration by patients under age 18.

o Amends wrongful conduct to include activity of a sexual nature involving a patient and a custodian; or activity of a sexual nature involving a patient that is encouraged by a custodian to include social media. Adds the removal of a patient from regular programming and isolate them in an area for the convenience of a custodian or as a substitute for programming; and any intentional administration to a patient of a prescription drug or over-the-counter medication which is not in substantial compliance with a physician's, dentist's, physician's assistant's, specialist's assistant's, or nurse practitioner's prescription.

• Section 524.6. Incident management program

o Is amended to provide that at a minimum, incident management programs shall consist of a written incident management plan which shall include the identification, review, and documentation of incident patterns and trends.

• Section 524.7. Incident reporting requirements

o Adds choking and inappropriate use of restraint of seclusion to the list of significant incidents when they occur on program premises.

o Adds OMH only reportable incidents which must be reported to the office in accordance with the provisions of Part 524.10 to include: crimes in the community; missing subject of assisted outpatient treatment (AOT) order; of-site suicide attempt; death of an individual receiving outpatient mental health services; or human trafficking.

• Section 524.8. Incident reporting procedures

o Clarifies that incident management programs shall include procedures for promptly reporting incidents including OMH reportable incidents and that providers are responsible for immediately notifying OMH within 24 hours of discovery of such incident.

o Clarifies that policies will be developed to address where patients have a demonstrated pattern of frequently reporting allegations of abuse or neglect and there is no reasonable cause to suspect that an incident occurred.

o Clarifies that providers must establish a dedicated electronic mailbox to receive incident notifications to act on issues, including requests from the office, in a timely manner.

• Section 524.9. Incident investigation, corrective action, and records maintenance

o Clarifies that as soon as a provider of services is made aware that an allegation of abuse or neglect has been reported to the Justice Center, or a patient death has occurred, such provider is responsible for immediately conducting any assessment or review that may be necessary, provided, that witness statements, interviews, interrogations and written statements shall not be taken by anyone other than the designated investigating entity.

o Clarifies that death reports must be submitted to the Justice Center and the Office within five business days of incident or discovery of incident and may be reopened and updated upon receipt of an autopsy report.

• Section 524.10. Additional incidents reportable to the Office of Mental Health

o Clarifies that State operated or licensed mental health providers must immediately notify the office, of OMH-only reportable incidents when they occur off the premises of the facility or program or when the patient was not under the intended or actual supervision of a custodian.

• Section 524.11. Patient death reporting

o Clarifies that the Justice Center Medical Review Board must be notified through the Justice Center's Vulnerable Persons' Central Register Death Reporting Unit, of the death of a patient of a State operated or licensed mental health provider who was enrolled in or receiving services from a Comprehensive Psychiatric Emergency Program, Inpatient, or Res-