

Bulletin No. 2020-24

May 13, 2020

RE: CLARIFICATION OF COVID-19 MORATORIUM/GRACE PERIOD/NOTIFICATIONS ISSUES

The following is offered as clarification on several issues regarding the cancellation/nonrenewal moratorium, premium payment grace period and notification requirements of [Executive Order 202.13](#) and the Department of Financial Services (“DFS”) [Emergency Regulation](#). The DFS has published [FAQs](#) offering select property-casualty compliance guidance. We have included an attachment with specific FAQs that relate to the below issues.

- 1) The Emergency Regulation implementing the cancellation/nonrenewal moratorium, premium payment grace period and notification requirements applies to certain excess line policies, specifically a) personal lines policies, and b) small business commercial lines policies that include coverage for damage to real property against the peril of fire. (See attached DFS FAQ 1)
- 2) The cancellation/nonrenewal moratorium does not prohibit issuance of cancellation, nonrenewal and conditional renewal notices. The notices can be issued but the insured has the right to assert a financial hardship due to the COVID-19 virus. If the insured asserts such a hardship, the cancellation, nonrenewal or conditional renewal notice cannot be effective until 60 days from the effective date of the cancellation, nonrenewal or conditional renewal. (See attached DFS FAQ 2).
- 3) Section 3425 of the New York Insurance Law sets forth certain requirements regarding personal lines cancellations, nonrenewals and conditional renewals. If an insurer attempts to cancel a policy within 60 days of issuance but cannot because of the cancellation/nonrenewal moratorium, or attempts to nonrenew a policy at the end of a three year cycle but cannot due to the moratorium, the effective date of the cancellation, nonrenewal or conditional renewal is deferred for 60 days. (See attached DFS FAQ 3)
- 4) The cancellation/nonrenewal moratorium, premium payment grace period and notice requirements are in effect at least through June 6, 2020, which is the current expiration date of the Executive Order. However, the Emergency Regulation was filed with a June 28, 2020 expiration date and there is some uncertainty as to which applies. Therefore, insureds may claim a COVID-19 financial hardship at least through June 6th.

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FAQ 1**Do the moratorium and Emergency Regulation apply to a commercial lines insurance policy issued by an excess line insurer?**

The moratorium and Emergency Regulation do not apply to a commercial line insurance policy issued by an excess line insurer and will not affect any such policy's cancellation provisions, except with respect to an excess line commercial fire insurance policy. Insurance Law § 3426, which sets forth cancellation and non-renewal requirements for commercial lines policies, specifically excludes excess line policies pursuant to subsection (1)(2). Insurance Law § 3404, however, sets forth cancellation requirements that apply to standard fire insurance policies, regardless of whether those policies were issued by an admitted or excess line insurer. See [OGC Opinion No. 03-09-11](#) (Sept. 10, 2003). Thus, in a situation where a commercial lines insurance policy insures solely against the peril of fire, or against the peril of fire in combination with other kinds of insurance for an indivisible premium and where there is one cancellation provision applicable to the entire policy, the moratorium and Emergency Regulation apply to such policy in its entirety, even if it was issued on the excess lines market.

FAQ 2**When does the moratorium begin?**

The moratorium begins on 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. For a sixty (60) day period starting on that day, the moratorium protects the policyholder from cancellation, non-renewal, or conditional renewal by the insurer if the policyholder can demonstrate financial hardship due to COVID-19. During this period, the Emergency Regulation prohibits late fees and negative credit reports from unpaid premiums.

FAQ 3**If an insurer was planning to cancel or non-renew a policy now subject to the moratorium, is the policy now renewed for a full policy term?**

The Emergency Regulation only defers the effective date of an otherwise permitted termination or conditional renewal and does not prescribe the creation of a new full policy term.

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