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New York State Department of Financial Services
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I would like to thank Chairs Krueger and Weinstein, Breslin, Weprin, Rivera and Paulin, Ranking Members, and all Members for inviting me to testify today. My name is Adrienne Harris, and I am privileged to have the opportunity to present today's testimony as Superintendent of the Department of Financial Services (DFS). DFS's mission is to build an equitable, transparent, and resilient financial system that benefits individuals and supports business. Through engagement, data-driven regulation and policy, and operational excellence, the Department and its employees are responsible for empowering consumers and protecting them from financial harm; ensuring the health of the entities we regulate; driving economic growth in New York through responsible innovation; and preserving the stability of the global financial system.

The Department regulates the activities of approximately 3,000 banking, insurance, virtual currency, and other financial institutions with assets totaling more than $9 trillion. This includes over 1,200 depository and non-depository financial service providers, and nearly 1,800 insurance companies. DFS provides an average of nearly $1 billion to the State and New Yorkers every year through restitution to consumers and health care providers, penalties paid to the state General Fund, and DFS assessment revenue re-appropriated to other state entities. The Department's operating expenses are assessed upon regulated entities under section 206 of the Financial Services Law and are not a cost to New York taxpayers.

Last year, I stated, and I continue to believe, that responsible market growth and consumer protection are mutually supporting concepts and not competing concerns. A healthy market grows when consumers have confidence in the products offered and the providers offering them. I look forward to continuing to work with Governor Hochul, the Legislature, sister agencies, and other important stakeholders to advance policies that support opportunity and access to quality financial services for all New Yorkers. Today, I will provide an overview of the progress we have made since I last testified before you, as well as details of the insurance-focused health care initiatives in this year's Executive Budget. I look forward to your questions.

It has been 17 months since I joined the Department, and I am endlessly proud of what we have accomplished during my tenure. Despite economic and other disruptions caused by the pandemic, among many other things, DFS has proposed amendments to New York's cybersecurity regulation; issued nation-leading virtual currency guidance on stablecoins, insolvency, insider trading, and blockchain analytics; managed the national security impacts of the war in Ukraine; finalized a disclosure regulation for small business lenders; and much more.

More broadly, DFS has expanded its focus on kitchen table issues, taking a more proactive approach to protecting consumers by implementing new laws, promulgating new regulations, issuing regulatory guidance to enhance transparency, and returning money directly to New Yorkers in the form of restitution.

Instead of accepting an outdated methodology for check-cashing fees that granted annual, automatic fee increases to the industry, the team created a new, data-driven fee structure that considers consumer needs.

Instead of acquiescing to historic limitations on what could be done about overdraft fees, the team at DFS issued nation-leading guidance prohibiting unfair and deceptive practices.

Instead of viewing climate risk as a self-contained issue, the team made sure that our proposed banking climate guidance did not have unintended consequences for New Yorkers who are already disproportionately impacted by climate change. Our guidance makes clear that entities cannot meet climate objectives at the expense of their fair lending obligations.

And instead of accepting the longstanding belief that health equity should be tackled exclusively by public health plans, the Department issued a request for data from commercial health insurers to help address health disparities. DFS will use the data to study the effectiveness of health equity initiatives, work to identify best practices and failures, and engage in policymaking from a strong foundation of data.

These are just a few examples of how the Department is taking proactive steps to create better outcomes for New Yorkers. In the unfortunate circumstance when we find through examinations and investigations that a company has harmed New Yorkers, we do everything in our power to make consumers whole. To that end, in 2022, the Department returned more than $151 million to New Yorkers in restitution—separate from penalties and more than double the year prior— something I am incredibly proud of. Penalties are important for punishing wrongdoing, but it is remediation that works to prevent recidivist activity, and it is restitution that tells New Yorkers their government is working for them.

In addition to the team's tremendous policy and regulatory work, we are working within DFS to rebuild the Department around a foundation of what I call "the three Ps": Policy, Process, and People.

When it comes to Policy, we have adopted a data-driven approach to policymaking, rather than one based on ideology. The Department is engaging more than ever with all stakeholders in order to make decisions that will positively impact New Yorkers.

When it comes to Process, it is critically important to me that we strive for operational excellence at DFS, ensuring that decision-making is efficient, transparent, and fair. We are implementing processes and systems, operationalizing process management, and leveraging Key Performance Indicators (KPIs) in all areas of our work. In this vein, we have reset market expectations with regards to the SAPA process and public comment periods so that every New Yorker with an interest in our policy has a fair and equal opportunity to provide feedback on proposed regulation. We also created an Operations Division and hired the Department's first-ever Chief Technology Officer to build systems and implement technology required to regulate the fast-moving markets we oversee.

Lastly, I could not be prouder of the People that make up this agency. None of the work at DFS is possible without this dedicated team that continues to produce amazing work, especially given the level of staffing and support available. The team at DFS has performed exceedingly well in the face of many obstacles, including a lack of resources. Since the merger of the Banking and Insurance Departments in 2011, DFS has been staffed at a skeletal level and denied the funding needed to respond to a changing marketplace. Due to the invaluable support of the Governor and Legislature, the FY23 Budget fully funded the Department for the first time in its history, allowing the agency to hire staff that had been needed for years. As a result, since January 2022 through today, we have hired 194 new staff and promoted 194 existing members of the team, making progress against our five-year strategic hiring plan. The Department also onboarded the first new class of financial services examiners since 2018. Continuing to hire top talent at a rapid pace is a high priority for FY24. In the past year, market turbulence has affected a number of entities that DFS regulates. In each instance, DFS staff have worked around the clock to manage risk and ensure that New York markets and consumers are protected. And our staff are critically important to ensuring that DFS continues its data-driven, proactive approach to regulation. Even with the Department's recent hiring success, however, historic failures to maintain adequate staffing levels, combined with ongoing attrition (including attrition to federal financial regulators who pay on average 30-50% more), requires us to continue this important work of hiring in order to fully execute our growing mission.

With increased resources, I am excited for what DFS can achieve now and in the future. I would be remiss not to show additional gratitude for the new authority that you and your colleagues granted in last year's Budget, which included authority to collect new assessments, that will begin to be levied in the coming fiscal year, on our licensed virtual currency businesses. But the FY23 Budget did not add a new State Operations appropriation or additional funding for these assessments. That meant that while DFS obtained the authority to assess virtual currency companies, the Virtual Currency Unit would continue to regulate crypto companies at the expense of staffing needed for the Department's Banking Division. The Governor's proposed Budget provides the appropriation needed to properly staff both the Banking Division and the Virtual Currency Unit in line with the Department's strategic hiring plan. As the leading prudential regulator of cryptocurrency in the nation, DFS must continue building the Virtual Currency Unit so that we can strengthen DFS's nation-leading regulatory approach for the protection of New Yorkers.

When I think of the many accomplishments that DFS has achieved, I know they were a result of going back to first principles: asking what the Department ought to be doing for the people of the State of New York and how we can best respond to the directives of the Legislature, the Governor, and changes in the industry. I remain fully confident that with the requisite resources, DFS can cement its role as a preeminent and globally-respected regulator, and New York's place as the financial capital of the world. I am now excited to talk about an ambitious agenda to improve the quality and accessibility of health care for all New Yorkers, and I want to highlight, in particular, a few DFS-driven initiatives.

Health and Long Term Care Guaranty Fund

Guaranty fund laws have been adopted across the country to ensure that consumers' claims will be paid if an insurer becomes insolvent. In fact, in 1941, New York became the first state in the country to adopt an early version of a guaranty fund to provide consumers with a measure of protection against the insolvency of a domestic life insurer. Currently, New York has a guaranty fund in place to protect consumers in the event that a life insurer or property/casualty insurer becomes insolvent. There is no guaranty fund protection in place for consumers, however, if a health insurer or property/casualty insurer writing health insurance becomes insolvent, and this includes for those writing long term care insurance. New York is the only state in the country that does not have a guaranty fund for health insurers. Consequently, if a consumer purchases a long term care policy from a life insurer that becomes insolvent, she will be fully protected by the Life Guaranty Fund. However, if a consumer purchased the same policy from a health insurer, she will not be protected. New Yorkers with long term care plans purchased through these insurers would lose decades of investments or, if currently on claim, might no longer be able to afford their care. Further, in the event that a health insurer operating in multiple states becomes insolvent, out-of-state consumers would be fully protected, but New Yorkers would be left without recourse. This is bad public policy.

Governor Hochul has proposed closing this glaring gap by creating an essential consumer protection for New Yorkers purchasing health or long term care insurance through a health insurer or property/casualty insurer. The Governor's proposal builds on the existing Life Insurance Company Guaranty Corporation of New York Act, creating a combined fund to ensure that all New Yorkers receive the same protections, regardless of the type of insurer from which they purchase the policy. The Governor's proposal follows the widely-adopted National Association of Insurance Commissioners' Model Act for a combined life and health guaranty fund. New York has waited too long to address this critical consumer protection omission, especially in light of the nationwide financial challenges faced by long term care insurers.

If and when a health insurer writing long term care goes into liquidation, policyholders who were paying into their plan could lose that investment. More importantly, some New York seniors who are on claim could suddenly be unable to pay for their care, as it is very unlikely that a senior who loses coverage would be able to obtain a new long term care policy. Most health insurers already comply with a health insurance guaranty fund in 49 other states. And, by expanding the existing life insurance fund to include health insurers, New York does not need to create new financial or administrative structures, minimizing implementation challenges. It is critical that New York acts now to ensure we have the same protections in place that every other state provides.

Further, on the issue of long term care insurance, since I joined DFS, my team and I have been reviewing existing laws, regulations, and processes to ensure they adequately protect the solvency of insurers and protect consumers' investments. I directed my team to begin a comprehensive examination of the assumptions and decisions that led us to this point, where consumers are too often forced to choose between exorbitant rate increases or reduced benefits.

Although assumptions on mortality and health care costs may have been valid at one time, past regulators and industry should have been quicker to ensure that policies were priced appropriately as these assumptions grew outdated. Too often, previous administrations have ignored difficult systemic issues in the financial system and kicked the can down the road. In the spirit of transparency, we plan to release findings of our research publicly in a report to be published later this year, and to leverage that data to inform decision-making going forward. In the meantime, there is no escaping that we must deal with the consequences of past decisions. That is why action on the guaranty fund is necessary in this budget cycle. It is a critical first step to addressing long term care insurance challenges.

Combatting Drug Pricing Abuses

Following the enactment of historic Pharmacy Benefit Manager (PBM) legislation, last year DFS stood up the new Pharmacy Benefits Bureau, which is tasked with licensing PBMs and supervising their practices' impact on the cost of and access to quality, affordable health care. PBMs were required to register with DFS by June 1st, and the Bureau is working tirelessly to ensure New York has the most comprehensive oversight in the country. In addition, the Bureau is responsible for investigating significant spikes in the cost of prescription drugs and referring matters to the Drug Accountability Board, DFS's panel of experts on drug pricing.

Through our work this year, we identified that legislative action is needed to give DFS the authority to regulate companies that play a role in ever-rising drug prices. The Governor's proposed Budget includes a five-point proposal to establish the strongest prescription drug price transparency program in the country. The proposal will shine a light on the entities that play a role in setting drug prices by: requiring public disclosure of drug price increases; requiring disclosure of "pay for delay" deals that pay manufacturers to keep low-cost generic drugs off the market; and registering and regulating opaque players in the prescription drug distribution chain that contribute to higher costs, including Pharmacy Services Administrative Organizations (PSAOs), switch companies, and rebate aggregators.

DFS also has the authority to investigate significant drug price spikes. In 2022, DFS completed the first drug price spike investigation. We discovered errors in the reporting of drug prices led to a false impression of a drug spike, confirmed no consumers were harmed, and the company agreed to develop internal control policies to mitigate future mistakes. DFS's authority, however, is limited to investigating price increases of at least 50% in one year, which the Department must uncover on its own by actively monitoring the market and investigating complaints. There are currently no reporting requirements. Increasing medical costs are not driven simply by these egregious spikes, but rather, by persistent lower-level increases and fees tacked on by hidden players throughout the prescription drug supply chain. Currently, policymakers and consumers have no real insight into these costs.

The Governor's proposal would address this lack of transparency by requiring manufacturers to report all drug price increases in advance by incentivizing early notification. These requirements will provide historic transparency where manufacturers currently provide none. This information will create more predictability in price changes and will help consumers to make more informed health insurance decisions, keeping more money in their pockets.

The Governor's proposal also builds on findings from DFS's Pharmacy Benefits Bureau to uncover practices that increase health care costs for consumers. A "pay for delay" agreement is an arrangement between pharmaceutical manufacturers to pay a competitor to withhold releasing a generic, lower-cost equivalent drug into the marketplace. While the federal government has done nothing to stop this practice, the Governor's proposal will require companies to disclose these agreements with DFS, allowing the Department to make them public.

Further, the proposal requires the registration of three entities which obfuscate the prescription drug supply chain and maintain an unfair advantage for drug manufacturers, distributors, and PBMs when they negotiate with pharmacies and insurance companies. This ultimately impacts the rates consumers pay. PSAOs pose as contracting entities for pharmacies, allowing multiple pharmacies to band together to negotiate as a single unit. This arrangement ought to move pharmacies toward a better negotiating position with PBMs and drug distributors. PSAOs, however, are often owned by the wholesale drug distributors, leaving pharmacies in a position where they do not understand that they are joining a group formed by the entities with whom they have a potential conflict of interest and from whom they are purchasing. The reality is that many of the PSAO-represented, independent pharmacies that have come to DFS in the past year have never seen their PBM contract and are surprised to learn that the PSAO had agreed to contract provisions that are unfavorable to the pharmacies they were hired to represent.

"Switch companies" take their name from the telephone operators who would physically connect parties by routing calls via a switchboard. Today, these companies provide software to pharmacies. The software allows pharmacies to enter claims information, which the switch company then routes to the correct PBM or health plan. These entities can have a huge impact on whether pharmacies are correctly reimbursed. When pharmacies sign up with switch companies, they should know who owns them and whether they have any conflicting deals with drug manufactures.

Lastly, for those who have studied the impacts of drug pricing, manufacturer rebates have been a critical point of interest. These rebates are supposed to be passed to health plans, reducing the impact of rising drug prices on consumers through lower health insurance premiums. But ongoing federal review of rebates paid to Medicare plans found that as an intermediary in the rebate process, PBMs were pocketing a portion of rebates for profit. With increased scrutiny from the federal government, PBMs created new subsidiaries called rebate aggregators to perform the simple task for passing rebates from manufacturers to health plans. These rebate aggregators charge administrative fees for handling each transaction, effectively allowing PBMs to continue taking a portion of each rebate. With the Governor's proposal, DFS will have the authority to regulate the activities of rebate aggregators, ensuring that every rebate dollar is delivered to health plans so they can be used as intended, to help mitigate premium costs.

The proposal would require registration of PSAOs, switch companies, and rebate aggregators – each of whom add unknown costs to the price of prescription drugs – and transparency into the roles they have in the drug supply chain. This information will allow regulators and policymakers to better understand how these entities operate and to take appropriate action to control health care costs.

<u>Medical Debt</u>

DFS works every day to keep health insurance costs affordable, including working with the Legislature to limit copays and cost-sharing for vital services. Costs for care can vary widely, however, depending on policy terms, health needs, and provider costs. Between 2015 and 2022, 53,000 New Yorkers were sued to pay for outstanding medical debts. Governor Hochul signed the Consumer Credit Fairness Act in 2021 and this Budget includes a new proposal to ensure those important protections apply to medical debt when a debt collector is seeking a default judgment. The proposal will expand protections for consumers with medical debt by requiring debt collectors and collection agencies to obtain an affidavit from the hospital or health care professional of the details constituting the medical debt before seeking a default judgment. DFS does not regulate health providers, but we do regulate third-party debt collectors and this proposal is another step to protecting New Yorkers from unfair medical debt. The Governor's proposal ensures that bad actors who purchase old medical debts cannot sue without proving the validity of the debt and demonstrating they actually have the right to collect on it.

To further protect New Yorkers from unfair medical debt, the Governor is proposing to reform hospital financial assistance applications by requiring hospitals to use a uniform application form which will simplify the financial assistance eligibility process for patients. New Yorkers should be able to get the care they need without fear of unfair medical bills and fees. Governor Hochul also will promote consumer education in this space, and the Department is proud to work alongside the Department of Health to create a consumer education program about medical debt.

Overdraft Protections

This Budget also proposes to protect the financial health of consumers by enacting nation-leading legislation that comprehensively addresses abusive bank fee practices. In 2022, DFS addressed the critical need for affordable and accessible banking services by issuing new guidance for New York-regulated banking institutions to promote financial inclusion by prohibiting unfair and deceptive overdraft and non-sufficient funds (NSF) fee practices. However, the Department lacks sufficiently clear legal authority to address other overdraft and NSF fees that disproportionately harm low- and moderate-income New Yorkers. To change that, Governor Hochul has proposed legislation that will empower the Department to (1) prevent banking organizations from arranging the order of processing transactions to maximize the fees that consumers pay; (2) implement reasonable restrictions on overdraft fee practices, such as limiting the number and/or amount of overdraft fees an institution may charge a single customer in a given period of time; (3) implement reasonable restrictions on non-sufficient fund fee practices, such as explicitly prohibiting multiple NSF fees associated with the same transaction; (4) impose reasonable limitations on fees charged for return deposit items, which are unavoidable to consumers who have no knowledge that a check that they submit for deposit will not clear; and (5) impose reasonable requirements on banking organizations to provide consumers with alerts, notices, and disclosures about the imposition or possible imposition of such fees.

These are some of the critical initiatives included in Governor Hochul's agenda that DFS is proud to help advance in close collaboration with the Legislature. The Department also looks forward to working on other important initiatives with government and community stakeholders to help promote economic growth, and to create a more fair, equitable, and sustainable financial system.

As always, I appreciate this opportunity to appear before you today and to discuss the health insurance items in the Executive Budget. New York faces many challenges, and the Governor has laid out a bold agenda that I look forward to discussing further. I am so honored that I have been given the opportunity to serve at this important time.

As I said last year, I think DFS can best serve New Yorkers by working closely and collaboratively with all of you. I have enjoyed working with so many of you over the last 17 months, and I look forward to today's hearing and the work we will continue throughout this budget process and into the future.

ADRIENNE A. HARRIS

Superintendent

Through engagement, data-driven policy and regulation, and a commitment to operational resiliency, Superintendent Adrienne A. Harris is building a new Department of Financial Services ("DFS" or the "Department") that is fostering an equitable, transparent, and resilient financial system that protects consumers and supports responsible businesses. Since joining DFS 17 months ago, the Superintendent has led initiatives to improve financial access and outcomes for consumers, strengthen supervision of virtual currency companies, and ensure entities are adequately addressing cybersecurity risk for their operational resiliency. Foundational to building a new DFS is the Superintendent's commitment to securing the Department's maximum full-time equivalent allotment and appropriations for the first time in its history and fostering a culture of inclusion and performance to attract, retain, and cultivate top talent.

CREATING A SAFE & SOUND FINANCIAL SYSTEM

Superintendent Harris has taken a number of steps to ensure the health of the entities the Department regulates and preserve the stability of the global financial system. Under her leadership, the Department proposed amendments to New York's cybersecurity regulation, acted quickly in light of the war in Ukraine to ensure regulated entities were in compliance with sanctions against Russia, and stood up a first-in-the-nation Climate Division.

CYBERSECURITY

DFS has taken a data-driven approach to amending its first-in-the-nation cybersecurity regulation to ensure that regulated entities address new and evolving cybersecurity threats with effective controls and best practices to protect businesses and consumers. The proposed amendments strengthen the Department's risk-based approach to ensure cybersecurity considerations are integrated into business planning, decision-making, and risk management.

In addition to amending the regulation, Superintendent Harris brought enforcement actions against companies for non-compliance with the current cybersecurity regulation.

- Robinhood Crypto: In July 2022, under Superintendent Harris, DFS assessed its first penalty against a cryptocurrency company, despite regulating the industry since 2015. Robinhood Crypto will pay a $30 million penalty for significant cybersecurity, anti-money laundering, and consumer protection violations. All virtual currency companies licensed in New York State are subject to the same cybersecurity, anti-money laundering, and consumer protection regulations as traditional financial services companies. These regulations are critical to protecting New York consumers and ensuring the safety and soundness of institutions.

- Carnival Corporation: DFS imposed a $5 million penalty for cybersecurity violations after four cybersecurity events at Carnival caused the exposure of substantial sensitive, non-public, personal customer data.

NATIONAL SECURITY

Superintendent Harris renewed DFS's commitment to protecting our national security by assessing more than $140 million in penalties to companies that violated U.S. sanctions laws and/or had significant Bank Secrecy Act/Anti-Money Laundering ("BSA/AML") deficiencies. Representative enforcement actions include:

- For processing payments in violation of U.S. sanctions laws, Mashreqbank will pay a $100 million penalty;
- For significant compliance program failings, Coinbase, Inc. will pay a $50 million penalty and will invest an additional $50 million on its compliance program;
- For compliance deficiencies related to BSA/AML requirements, the National Bank of Pakistan will pay a $35 million penalty; and
- For compliance deficiencies related to BSA/AML requirements, MoneyGram will pay a $8.25 million penalty.

To protect U.S. national security and consumers, Superintendent Harris issued guidance within 24 hours of Russia's invasion of Ukraine, reiterating that regulated entities must fully comply with U.S. sanctions on Russia, as well as New York State and federal laws and regulations, including Department cybersecurity and virtual currency regulations.

- DFS also took action to strengthen the Department's enforcement of sanctions against Russia, including the expedited procurement of additional blockchain analytics technology. These tools have bolstered DFS's ability to detect exposure among DFS-licensed virtual currency businesses to Russian individuals, banks, and other entities that the Biden Administration has sanctioned.

CLIMATE

Superintendent Harris took the bold step of making DFS the first financial regulator in the nation to establish a stand-alone Climate Division, ensuring that DFS will maximize the integration of climate risks into the safety and soundness supervision of its regulated entities.

- The newly created Climate Division issued final guidance to New York-regulated domestic insurers detailing DFS's expectations that all New York insurers begin integrating consideration of the financial risks from climate change into their governance frameworks and risk management strategies.
- To help banking and mortgage institutions manage their safety and soundness risks related to climate change, DFS issued proposed banking guidance. The guidance will support efforts by regulated institutions to identify, measure, monitor, and control their material climate-related financial risks.

- In response to increasing flood risks, DFS now requires education in flood insurance for property/casualty insurance producers.

A ROBUST REGULATORY FRAMEWORK FOR VIRTUAL CURRENCY

Superintendent Harris has worked diligently to strengthen the Department's leadership as the preeminent, prudential regulator for virtual currency business activity. Through industry guidance and a commitment to operational excellence, the Superintendent has built upon the State's virtual currency regulation to strengthen consumer protections, preserve the safety and soundness of companies, ensure cybersecurity compliance, and root out financial crimes like money laundering and terrorist financing.

- DFS leads the nation with a comprehensive regulatory framework for virtual currency. The framework includes strict licensing, supervisory, and examination standards, as well as enforcement authority. DFS-regulated virtual currency entities are subject to capitalization and reserving, cybersecurity, BSA/AML, and consumer protection requirements. Once licensed, companies are subject to a rigorous and transparent pre-approval process for new products, new listings, and material changes in business model.
- Superintendent Harris issued first-in-the-nation regulatory guidance setting foundational criteria for USD-backed stablecoins issued by DFS-regulated entities. The guidance outlines the Department's expectations with regards to reserves, redemption policies, and independent audits.
- Under Superintendent Harris's direction, the Department issued new guidance to better protect customers in the event of a virtual currency insolvency or similar proceeding, reiterating expectations regarding the safekeeping of customer assets.
- Superintendent Harris directed the issuance of new guidance to establishing the use of blockchain analytics tools as a best practice for virtual currency entities to prevent and manage financial risks and suspicious activities, providing companies with an efficient, data-driven way to conduct customer due diligence, transaction monitoring, and sanctions screening.
- Superintendent Harris released virtual currency guidance for banking organizations, reiterating the Department's expectations to review virtual currency-related activities for prior approval and outlining criteria by which proposals will be evaluated.
- To ensure operational excellence across the Virtual Currency Unit, DFS has defined and formalized a set of internal guiding principles under Superintendent Harris, which is known as VOLT – Vision, Operations, Leadership, and Technology.
    - Vision: Continue as the preeminent regulator of virtual currency, using all of DFS's tools (rule-writing, guidance, licensing, supervision, and enforcement) to regulate the industry effectively.
    - Operations: Achieve operational excellence through new processes and process management, enhanced communications and transparency, and commitment to constant improvement to keep pace with the market. It is critical to make these improvements without sacrificing regulatory rigor.

- Leadership: Continue to lead through greater engagement, new policy, and a robust hiring initiative to ensure the Department has the expertise to be a forward-looking regulator. Superintendent Harris continues to hire and promote within the virtual currency team, strengthening the Department's capacity to bring companies within the regulatory perimeter and supervise them effectively. Over the course of the past 17 months, the Superintendent has expanded the virtual currency team to more than 50 employees,
  - *Assessments*: Worked with the New York State Legislature and the Governor's Office to obtain new assessment authority, allowing DFS to build staff with the capacity and expertise to support the industry's growth and be a more nimble, responsive regulator.
- Technology: Leverage technology to streamline communications, increase transparency regarding DFS's robust regulatory requirements, and enhance supervision.
  - Superintendent Harris has onboarded blockchain analytics and insider trading technology tools, which have enhanced the Department's ability to detect fraud and other illegal activity among regulated virtual currency companies.

FOSTERING POSITIVE OUTCOMES FOR CONSUMERS

Superintendent Harris has deepened the Department's focus on kitchen table issues and consumer restitution, ensuring that consumers have confidence in the financial products they use and the providers offering them. In addition to returning more than $151 million to New Yorkers in restitution through recoveries and enforcement actions, the Superintendent is taking a proactive approach to protecting consumers by implementing new laws, proposing new regulations and amending existing ones, and issuing guidance.

PROACTIVELY BUILDING A MORE EQUITABLE FINANCIAL SYSTEM

Banking & Access to Credit

- Under Superintendent Harris's decisive leadership, for the first time in Department history, DFS issued a new emergency check cashing regulation, halting annual fee increases and reexamining the methodology the Department uses to determine this fee. Superintendent Harris proposed a forward-looking regulation to ensure that the methodology meets the needs of New Yorkers today and into the future. The previous methodology tied check-casher fees to the regional Consumer Price Index and thus hit consumers with increased fees precisely when they could least afford them. The adopted new methodology eliminates this link, provides more predictability for consumers, and creates a two-tiered system under which government benefit checks are subject to a lower fee.
- Addressing New York's critical need for affordable and accessible banking services, under Superintendent Harris's direction, DFS published new guidance for New York-regulated banking institutions to promote financial inclusion by prohibiting unfair and deceptive overdraft and non-sufficient funds fee practices. The guidance addresses "authorize positive-settle negative" transactions, overdraft protection fees, and representments.

- Additionally, Superintendent Harris has approved three new Banking Development Districts in The Bronx, the City of Poughkeepsie, and Brooklyn to increase financial access in support of the Department's mission to build a more equitable financial services system. The Heritage Financial Credit Union in the City of Poughkeepsie is the first credit union to be approved through the program.

- Superintendent Harris also issued guidance to expand access to low-cost bank accounts for New Yorkers. State-regulated banks can now offer Bank On certified accounts as an alternative to the New York Basic Banking Account, allowing more New Yorkers to have access to safe, affordable banking services without several common fees—including overdraft, inactivity, and low balance fees—while permitting banks to meet their state-mandated affordable banking requirements.

- Superintendent Harris has championed the expansion and modernization of the Community Reinvestment Act in New York State to ensure equal access to credit for consumers. She pushed legislation to cover non-depository mortgage lenders and adopted a new regulation to allow the Department to evaluate how well New York-regulated banking institutions are serving their communities with respect to minority- and women-owned businesses.

- Superintendent Harris proposed and adopted a small business lending disclosure regulation that will increase transparency and help business owners better understand and compare the terms of commercial financing offers.

- In light of findings from the Department's investigations of abusive and deceptive debt collection, as well as data from consumer complaints, Superintendent Harris issued a proposed amendment to the Department's debt collection regulation that will help ensure consumers pay only debts they owe and pay them only once. This proposed amendment will enhance disclosures to consumers, reduce opportunities for debt collectors to mislead consumers about their debt obligations, and prevent harassment of consumers with excessive communication through stricter limits on phone calls than federal regulations impose.

Health

- In coordination with Governor Hochul and the Legislature, the Department is requiring insurance companies to cover pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) to provide New Yorkers with critical access to lifesaving medications and help prevent against HIV infection.

- Superintendent Harris took action to reduce health disparities through an initial health insurer data request, allowing DFS to establish a foundation from which to build thoughtful, data-driven policies to ensure better health outcomes for all New Yorkers.

- Under Superintendent Harris's leadership, DFS expanded its oversight to the pharmacy benefit manager ("PBM") industry with the creation of the DFS Pharmacy Benefits Bureau, which is tasked with licensing and supervising to keep a watchful eye on PBMs' impact on consumers and the cost of health care. Superintendent Harris has now directed the PBB to request public engagement as the Department looks to develop nation-leading regulatory standards for Pharmacy Benefit Managers ("PBMs"), and particularly information from pharmacies and pharmacy benefit managers about the pharmacy audit process.

- In February 2022, the Department's Office of Pharmacy Benefits and Drug Accountability Board concluded the first investigation under its new authority to investigate significant spikes in drug prices. The investigation discovered that errors in the reporting of drug prices led to a false impression of a drug price spike, confirmed that no consumers were harmed, and secured commitments to implement enhanced internal controls from the subject of the investigation.

- Consumer advocacy groups lauded Superintendent Harris for proposing an essential new regulation to protect consumers against healthcare provider directory misinformation to ensure that consumers who believe that a provider is in their network based on incorrect information provided by their insurer will pay no more than their in-network cost-sharing for services from that provider.

Student Debt

- Working in coordination with Governor Hochul and the Legislature, the Department is helping borrowers take advantage of new legislation that removes substantial barriers to accessing the Federal Public Service Loan Forgiveness ("PSLF") program. The new law establishes uniformity as to what qualifies as full-time employment for the purposes of accessing PSLF and allows public service employers to certify employment on behalf of workers.

- Continuing DFS's commitment to New York student loan borrowers, Superintendent Harris issued a letter to federal student loan servicers to increase awareness of and enrollment in the PSLF program before the rule waiver expires. The waiver, in effect through October 2022, made it easier for eligible borrowers to have their federal loans forgiven. Subsequently, Superintendent Harris secured commitments from organizations representing more than 8,500 public and not-for-profit employers to distribute information to their workforces about the PSLF program and to assist them in applying before the waiver expires.

Holocaust Survivors

- Superintendent Harris championed the work of the DFS Holocaust Claims Processing Office ("HCPO") in advocating for Holocaust victims and their heirs, requesting that New York State-chartered institutions voluntarily waive wire transfer and processing fees associated with Holocaust reparations payments. Working in coordination with Governor Hochul and the Legislature, DFS's continued commitment to support Holocaust survivors and maintain an updated list of banks has now been codified into law.

- The Superintendent, in collaboration with the international law enforcement agencies, has returned 18 pieces of Nazi-looted art to their rightful owners. To date, HCPO has responded to thousands of inquiries and received claims from 46 states and 39 countries. The office has helped secure over $183 million in offers for bank, insurance, and other losses. The office has facilitated settlements involving more than 228 cultural objects.

ENFORCING LAWS & REGULATIONS TO PROTECT CONSUMERS

- DFS's Consumer Assistance Unit ("CAU") has recovered more than $151 million to New Yorkers in restitution through recoveries and enforcement actions. This is a 129% increase over restitution collected by DFS in 2021.

- Consumers and/or their beneficiaries are receiving $21.6 million after the Department found that John Hancock Life & Health Insurance Company prematurely terminated 156 New York State Partnership long-term care policies prior to insureds exhausting benefits and miscalculated lifetime maximum benefits. Because these policies were prematurely terminated, insureds who were on claim or who went on claim after termination may have paid long-term care expenses out of pocket or accessed Medicaid prematurely.
- Superintendent Harris has taken critical action in response to violations of the Insurance Law, securing almost $8 million in restitution for New York consumers from Columbian Mutual for failing to make efforts to identify beneficiaries for thousands of life insurance policies, most of which were held by low-to-moderate income consumers and people of color.
- DFS secured $3.4 million in restitution for New York consumers in addition to $2.24 million in penalties through a settlement with Nationwide Life Insurance Company for its failure to properly disclose to consumers income comparisons and suitability information, which caused consumers to exchange more financially favorable deferred annuities for immediate annuities.
- Under Superintendent Harris's leadership, DFS secured $3.1 million for New Yorkers, including $473,565 in restitution, following DFS's review of New York insurers' compliance with state and federal cost-sharing requirements for mental health and substance use disorder parity. The penalty provides critical funding for initiatives supporting parity implementation and enforcement on behalf of consumers.
- Superintendent Harris secured a $950,000 penalty and restitution to eligible impacted borrowers from Rhinebeck Bank to resolve fair lending violations concerning auto loans. The Department's investigation found that Rhinebeck's practices resulted in minority borrowers paying higher interest rates than non-Hispanic white borrowers for their auto loans, without regard to their creditworthiness.

RESPONDING IN CRISIS

- Superintendent Harris guided DFS's efforts to assist New Yorkers recovering from Hurricane Ida, which caused extensive damage throughout the state. She toured multiple disaster sites, meeting with local residents and ensuring that DFS's resources were available to assist affected communities. She also helped establish an informal steering group, including representatives from the property/casualty insurance industry, to share best practices, strengthen consumer education, and gather real-time information to ensure that New York is better prepared for the next storm. Under her leadership, DFS provided insurance advice to more than 2,700 affected New Yorkers, both in person and through its disaster hotline. DFS also issued guidance to insurers requiring them to increase their resources to impacted communities and expedited the issuance of temporary permits to qualified, out-of-state, independent insurance adjusters so that more adjusters were available to process claims and help get residents' property repaired and claims paid.

- Following Hurricane Fiona, Superintendent Harris directed DFS to issue guidance calling on New York state-chartered banks to take all reasonable steps to assist consumers and businesses affected by the hurricane, including waiving ATM and late fees, increasing ATM withdrawal limits, and facilitating and expediting the transmission of funds. These actions helped ease financial burdens for the many New Yorkers seeking to support family and friends in Puerto Rico, as well as anyone in Puerto Rico with a New York bank account.
- Similarly, following a severe winter storm in the Western and North Country regions of New York, Superintendent Harris issued guidance to banking institutions to provide fee-free services to nearby customers and non-customers while travel conditions remained dangerous.

BUILDING AN OPERATIONALLY RESILIENT DFS

Superintendent Harris is building a new DFS on a foundation of policy, process, and people.

- <u>Policy</u>: Strengthen consumer protection while encouraging a healthy marketplace.
    - Superintendent Harris is leading the adoption of a data-driven approach, developing policy based on data rather than ideology.
    - New rules, amended regulations, and draft guidance go through a robust engagement process with all stakeholders, including consumer advocates, legislators, other regulators, and industry.
    - Superintendent Harris undertook a review the Department's mission statement to align with this foundation, soliciting feedback from employees to articulate how the agency works, the agency's values, and the outcomes the agency aims to achieve.
- <u>Process</u>: The Superintendent is cultivating operational excellence so that decision-making is efficient, transparent, fair, and surfaces the best solutions for New Yorkers.
    - The Department is increasing the use of data and technology to license, supervise, and regulate financial services, protect consumers, and enforce the law.
- <u>People</u>: The Superintendent is shifting the perception of DFS to that of an outcomes-oriented, innovative regulator with a strong culture of performance to retain, promote, and attract top talent.
    - Working with the Governor, Superintendent Harris secured the Department's maximum full-time equivalent allotment and appropriations in FY23; this is the first time in the Department's history that it is fully funded.
    - Under Superintendent Harris's leadership, the Department has hired the first ever Chief Technology Officer, who will improve DFS digital capabilities by implementing core foundation systems to migrate legacy systems and business processes that are over twenty-five years old, and to implement new technologies to help keep pace with industry best practices.
    - As a result of the Superintendent's commitment to staffing, the Department has hired more than 194 new employees and promoted 194 existing employees since January 1, 2022.

- The Department has hired 66 new financial services examiners to the Department, the first class since 2018.

NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES

MISSION

The New York State Department of Financial Services seeks to build an equitable, transparent, and resilient financial system that benefits individuals and supports business. Through engagement, data-driven regulation and policy, and operational excellence, the Department and its employees are responsible for empowering consumers and protecting them from financial harm; ensuring the health of the entities we regulate; driving economic growth in New York through responsible innovation; and preserving the stability of the global financial system.

PRIORITIES

1. Maintain and grow DFS as a preeminent, global regulator
2. Deepen our focus on kitchen table issues and consumer restitution
3. Create a fairer, more resilient financial services system via engagement and data-driven policy making
4. Build a sustainable, forward-looking agency

GUIDING PRINCIPLES

POLICY

Strengthen **consumer protection** while encouraging a **healthy marketplace**.

Adopt a **data-driven approach;** develop **policy based on findings** rather than ideology.

Lead through **collaboration** and **engagement** with all stakeholders.

PEOPLE

Foster a **culture of inclusion** and **performance**.

Attract, retain, and support **expert talent**.

Be known as a "**Best Place to Work.**"

PROCESS

Cultivate **operational excellence** so that decision-making is **efficient, transparent, fair,** and surfaces the **best solutions** for New Yorkers.

Increase the use of **data** and **technology** to **regulate** financial services, **protect** consumers, and **enforce** the law.

EQUITABLE • INNOVATIVE • COLLABORATIVE • TRANSPARENT