NEW YORK BANKERS ASSOCIATION

MEMORANDUM IN OPPOSITION

July 15, 2020

A.10532A Bichotte (On Assembly Codes Committee Agenda)
S.8744 Sanders (Senate Rules Committee)

AN ACT to amend the banking law, in relation to mortgage forbearance repayment

This memorandum in opposition is written on behalf of the New York Bankers Association (NYBA). NYBA is comprised of the smaller community, mid-size regional, and large banks across every region of New York State. NYBA members are vigorously regulated by either the New York State Department of Financial Services (State chartered banks) or its federal counterparts (federally chartered banks). Together NYBA members employ nearly 200,000 New Yorkers, safeguard $2 trillion in deposits, and extend nearly $70 billion in home and small business loans.

This bill would require New York State chartered banks to offer up to a year of limited mortgage forbearance options on residential/commercial investment properties. Such properties are limited to those which contain one to four separate units with owners who receive 30% or more of their income from the property. The owner must also demonstrate a hardship due to COVID-19. While NYBA recognizes and fully supports the intention to protect consumers and small business owners, this bill is broadly written and vague in its terms; the result could be an unintended negative cascading and undermining effect on the housing and small business market as well as future lending practices for both groups.

Negative Effect on State Chartered Banks

This bill would have a significant negative impact on State chartered community banks and the entire State chartered banking system. NYBA wholeheartedly supports the State's goals to find ways to help consumers in this unprecedented time, and as we reopen, to help our communities thrive again. In this vein, the State chartered institutions subject to this bill have already been working closely with their customers to help alleviate financial concerns by offering assistance best suited to a customer's individual situation during an unprecedented time.

By some estimates, these State chartered community banks- the lifeblood of their cities, towns and villages- are forbearing on as much as 30% of their loans already. Most of these loans are held in the bank's own portfolio, and therefore any default will fall squarely on that bank's shoulders, putting them at tremendous risk. Despite this, our members are willing to take that risk in order to assist their most needy customers. Changing requirements for these loans now would devastate this already precarious balance.

Furthermore, previous laws passed by this State Legislature applied similar provisions to residential mortgages, and we were grateful to work with both the Legislature and regulators on how best to proceed in that market. The difference here is that this bill takes it a step further into commercial lending, which has a whole different set of requirements and more resolutions and options available to business customers, not to mention licensing requirements in order to lend in New York State. For instance, if you originate or service a residential mortgage in NY, you must either be a State or federally chartered bank or a licensed mortgage bank. However, for commercial lending, a non-bank lender need not be licensed in New York to originate or service a commercial loan. Therefore, this bill would apply ONLY to the classic New York State chartered community bank, exempting all other players in the lending space, including federally chartered banks and credit unions, insurance carriers, online non-bank lenders and private equity firms, to name a few. These entities would be able to proceed without such limiting requirements, leaving the State chartered banks at a tremendous disadvantage. A bank chooses its charter based on overall market risk and requirements, and can change that charter if the situation warrants. The bill squarely discriminates against State chartered banks, and diminishes the value of the charter overall, as it would be more prudent to be a federally chartered bank given the circumstances should this legislation go forward in its current form.

Mandates and Limits on Loan Options Harm Consumers

As written, this bill completely reduces a State chartered bank's discretion in working with its customers to find the plan that is right for that customer's individual needs. At present, there are many options already being utilized that provide flexibility in working with customers to help them with their specific needs. Limiting these options hurts NY banks, their small business customers, and eventually their communities. For example, federal rules advocate for a "waterfall" approach to pursuing remedies, including an opportunity to cure, repurchase and repurchase alternatives, refinancing, and fee negotiation, among other options. These options would not be available to the State chartered banks covered by this bill.

Further, if a bank were to offer a different option other than what is listed in the bill, it would be unable to pursue remedies if in the unfortunate situation such customer defaulted at a later date, thus limiting the ways in which it could assist a customer in default. It also makes no provisions for any previously agreed upon forbearance, including those that go beyond the limited options in the bill. In addition, while NYBA appreciates the effort to limit such forbearance options to those most in need by requiring an income threshold, determining if a borrower is deriving 30% or more of his or her income from the investment property is a matter that will almost assuredly delay the forbearance options for those in immediate need, given that it is near impossible for a bank to determine all of the income streams a customer may have unless it somehow determined that all of the customer's income is held in that bank's accounts. It also does not limit the total amount of income that is derived per customer nor the type of individual that could present for forbearance- such as corporate owners and limited liability companies- thus inexplicably protecting these sophisticated borrowers who hold investment property as individuals.

Credit Limitations Will Hinder Future Lending

Provisions in the bill will cause credit limitations that will hinder future financing in New York State, including financing that these same customers may need in the future. As noted above, requiring up to 360 days of forbearance will impact performing asset portfolio size and performance overall, which negatively impacts access to the flow of funds in that portfolio, and eventually impacts overall public market flow itself, thus the community at large. It is obvious that financing will continue to be vital to New York State moving forward as part of the economic recovery from COVID-19. Under the terms of this bill, a State chartered bank's long-term lending strategy will be near impossible to plan, and that impossibility will hinder customer and community recovery. As parts of New York State are already starting to re-open, NYBA members report that the careful phase-in of business reopening is already having a positive effect, and that many of the loans that had been provided individualized forbearance plans are already beginning repayment. While it is unknown at this time whether COVID-19 will continue to have a negative economic impact on most New Yorkers for a full year, we urge the Legislature to consider the consequences of such a broad sweeping law. While we support efforts to help New York consumers, and our members have already been assisting customers for several months, we believe this legislation will unnecessarily cause a freeze on credit in New York going forward.

NYBA members are strong and steadfast community supporters, and as such we stand with the State in working to help consumers and business owners as we begin recovery and reopening. While we recognize that the intent behind this bill is to do just that, we believe there are better ways to achieve this purpose. We are ready and willing to work with all interested parties in finding common ground that will both assist our residents and business owners in need, while also creating a dynamic and economically viable future for our State. We look forward to working together to rebuild our communities.

For these reasons, the New York Bankers Association ***opposes*** this legislation and urges that it be ***held***.

Respectfully submitted,

NEW YORK BANKERS ASSOCIATION