COZEN O'CONNOR

November 23, 2016

William Y. Crowell III
Direct Phone 212-883-4944
Direct Fax 646-588-1579
wcrowell@cozen.com

ForeclosureRegComments@dfs.ny.gov

Celeste Koeleveld
New York State Department of Financial Services
One State Street
New York, NY 10004-1311

Re: Proposed 3 NYCRR 422 (Inspecting, Securing and Maintaining Vacant and Abandoned Residential Resale Property)

Dear Ms. Koeleveld:

On behalf of the Independent Bankers Association of New York State (IBANYS) the following comments are submitted in response to the subject proposed regulation.

Section 422.3 Definitions. The definition of mortgage in the proposed regulation captures building loan mortgages, credit line mortgages and reverse mortgages, which are first liens upon residential real property. The intent of Part Q of Chapter 73 of the laws of 2016 was arguably to cover residential mortgage loans provided in the context of a home purchase. This legislation was not intended to require banks to maintain properties in foreclosure as a consequence of building loans, reverse or credit line mortgages, where the loan advances were not provided to purchase the residence. The application of this regulation to these transactions may result in underwriting and cost consequences to borrowers based on the additional requirements placed on the lenders.

The definition of residential real property in the proposed regulation includes any one to four family residential dwelling which is used for commercial purposes where no more than twenty percent of the total appraised value is attributable to the commercial purpose. There is no language in Part Q of Chapter 73 which extends the statute to a mixed use property (residential and commercial). The statute references only one to four family residential property. The inclusion of mixed used property should require an amendment to the statute. This regulation would require a bank to maintain a mixed use property in situations where the mortgagor does not reside on the mortgaged premises and the mortgage loan was made on a commercial basis, where both commercial and residential rents would be available to the mortgagor. This definition effectively protects a commercial transaction. This is outside the scope of the intent of this legislation.

Section 422.3 Exemption. The formula applied to obtain the exemption is based on the number of mortgages issued in the state divided by the number of mortgages that the applicant bank either originated, owned, serviced or maintained. This approach results in a percentage which is not an apples to apples comparison. The formula should simply measure the percentage of

277 Park Avenue New York, NY 10172
212.883.4900 888.864.3013 212.986.0604 Fax cozen.com

originations made by the bank versus the number of originations statewide. During the negotiations surrounding the legislation there was a chart provided by DFS listing percentages for banks based on statewide mortgage originations for 1 to 4 family residences and the bank originations for 1 to 4 family residences. The concern with including maintenance and servicing of mortgages as a component is that banks may be encouraged not to service loans, particularly if elimination of this component would qualify them for the exemption. This approach creates an incentive not to maintain or service loans, which has a negative impact on the jobs attached to servicing and also potentially on state revenues because banks that maintain or service mortgages pay taxes on their income from such mortgages. The language of the statute allows DFS to use either mortgages originated, owned, serviced or maintained. There is no conjunctive so DFS may use originated as the only criteria. This methodology provides the most equitable result and is based on publically available information within the control of DFS.

This section places the obligation on the bank to prove its entitlement to the exemption. There is no statutory requirement for the banks to prove entitlement. The information for making a determination is within the control of DFS particularly if limited to originations in conformance with the original DFS tabulation used during the negotiations.

This section provides that if a bank loses its exemption that the requirements of the statute would apply retroactively to any vacant and abandoned property. An exemption should continue to be applicable to properties that were exempted from the maintenance during the period of the exemption. It is not equitable to end an exemption and to apply it retroactively. The application of this statute could subject a foreclosure already in progress to additional requirements, which would delay a pending action. There would be a significant likelihood of litigation about the applicability of various requirements. The costs and problems with the residence based on the delay will multiply to the detriment of the bank and the community.

Section 422.4 Reporting. The obligation to report is based on a learns or should have learned standard. The should have learned or should have known standard is speculative. It subjects a bank to a potential penalty when the objective should be to ensure that information provided to the registry is correct. There are potential negative consequences to sales and valuations of surrounding real property if the information reported is not precise. The time frame should be increased for reporting to aid accuracy.

Section 422.6 Report Applicability. Reporting obligations are placed on both the mortgagee and the mortgage loan servicer. Multiple reports are not required by both entities. It would be appropriate to have the mortgage loan servicer bear the responsibility since the mortgage servicer will have immediate access to the data.

Sincerely,

William Y. Crowell III

By: William Y. Crowell III

WC/kw