



July 14, 2020

MEMO IN OPPOSITION

RE: A.10532A (Bichotte) S. 8744 (Sanders) Relates to the forbearance of residential and commercial investment property mortgage payments

This memorandum is submitted on behalf of the Independent Bankers Association of New York State (IBANYS) in opposition to the subject legislation. IBANYS exclusively represents the interests of community banks in New York State.

The subject bill requires state regulated banks to grant up to 360 days forbearance for mortgages on residential or commercial investment property which contain one to four separate units and where the owner receives more than 30% or more of their income from such property. The owner must demonstrate a financial hardship as a result of COVID-19.

IBANYS appreciates that this bill is well intentioned and directed at helping small owners of residential and commercial properties. These owners are the important contributors to their communities. The cost of this mandatory forbearance program is however exclusively placed on community banks that also play an essential role in their community's economic health. The one size all prescriptive remedy in this bill does not allow banks with the flexibility to address customer's specific needs. If the state mandates a forbearance requirement, the cost and potential liability should not be transferred to state chartered community banks. The state has an obligation to backstop this program.

It is particularly egregious because the requirements of this bill only apply to only state chartered banks. As a consequence, federally chartered banks enjoy a competitive advantage in the financial marketplace. These banks escape the negative earnings and capital consequences of this bill. This bill strips community banks of their ability to make individual evaluations of their loans to implement prudent forbearance options for their mortgages. This bill eliminates a banks discretion to balance the forbearance program with appropriate safety and soundness considerations.

Community banks throughout the state have responded positively to Governor Cuomo and the Department of Financial Services to achieve forbearance and loan modifications of mortgages with both residential and commercial mortgages. Banks have responded to borrower requests for relief. The majority of community banks have approximately 25% of their mortgage portfolios in forbearance where loan modifications have been agreed to between the bank and the borrower. This number doesn't account for the forbearance that will occur as a consequence of chapter 112 of 2020 for single

family homeowners. This legislation expands the pool of borrowers that will have the opportunity to obtain forbearance on enhanced terms over a significant time period. Banks are providing forbearance but not with terms of 360 days as required in this bill. Rather banks are reevaluating customer situations on a continuing basis not providing an extended period of forbearance, which is consistent with accounting requirements.

Community bank earnings and capital are currently strained. The commitment of capital and the loss of revenue resulting from forbearance limits banks' ability to deploy funds for small business loans.

The Board of Governors of the Federal Reserve, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau issued an April 7, 2020 an interagency statement on loan modifications and reporting for financial institutions working with customers affected by the Coronavirus. This statement encouraged financial institutions to work prudently with borrowers. The agencies indicated that they would not criticize financial institutions that mitigate credit risks through prudent actions with safe and sound practices. This statement includes guidance on troubled debt restructurings (TDRs) which is a classification that impacts a bank's balance sheet and credit rating. Short term modifications made in response to borrowers that are considered current (less than 30 days past due at the time of the loan modification). Short term is considered less than six months. This bill permits a borrower to have a modification for a 360 day period. As a consequence of the foregoing, a loan modification as required by this bill would constitute a TDR. The loan would be determined as impaired necessitating a reversal of interest income recognized to date from the initial date of forbearance and the non-accrual would extend to any future payments because of the continuing designation as a TDR. TDRs are reportable and raise questions relative to a bank's stability, safety and soundness. This situation would trigger regulatory involvement and shareholder concerns impacting stock prices and the banks valuation.

Further this bill does not have clarity as to the treatment of escrow during forbearance. The bank should not be required to pay for real property taxes and insurance on the property during forbearance. From a practical point of view if the mortgagor neglects to make those payments the bank has to pay to preserve their lien position in the property. The taxes and insurance represent significant costs on top of the loss of principal and interest payments.

The consequences of this legislation on community banks are significant. Community banks have demonstrated that they are working to respond to the sudden uncertainty in New York's economy created by COVID-19. Banks are facing increases in credit loss allowances that were unanticipated. Banks remain committed to working with their customers to achieve loan modifications, which will support the return of New York's economy to health. This bill places an unnecessary burden on state chartered community banks and ultimately their communities. Community banks are particularly impacted as they do not have the size and scale to absorb the costs of this legislation. The banks are required to undertake additional operational work to track, monitor, and adjust APRs with respect to covered loans. The additional cost of this work is being absorbed by the bank.

Based on the foregoing, it is respectfully requested that this bill not receive favorable consideration.