June 9, 2020

Elizabeth Garvey, Esq.

Special Counsel and Senior Advisor to the Governor

State of New York

Executive Chamber

Albany, NY 12224

Re: S.8428 (Parker) A.10530 (Mosely)

This letter is submitted on behalf of the Independent Bankers Association of New York State, which exclusively represents the interests of community banks in New York State. This letter is submitted in support of the chapter amendment, which was obtained through the efforts of the Governor’s office in conjunction with the New York State Department of Financial Services. The underlying bill, which the chapter amends, mandates state chartered banks, that hold residential mortgages in their portfolio to provide up to a year of forbearance to any mortgagor, that demonstrates financial hardship.

The underlying legislation mainly targets community banks which retain mortgages in their portfolio. Federally chartered banks and credit unions are not subject to this bill. State credit unions and some state chartered banks are also largely not impacted because they do not generally retain mortgages in their portfolios. These institutions make conforming loans that are sold to Fannie Mae, Ginnie Mae or other such entities. Community banks retain mortgages in their portfolio because they are sometimes non-conforming loans such as manufactured housing mortgage loans which are not saleable on the secondary market. Most importantly community banks have confidence in their mortgage loans and demonstrate this by retaining the mortgages in their portfolios. This accounts for why community banks were not responsible for the subprime mortgage crisis. This bill penalizes them for retaining mortgages in their portfolio while rewarding banks that sell their mortgages to the secondary market.

Community banks have a significant portion of their residential and commercial loan portfolios already in forbearance. It is unknown how many additional mortgages will seek forbearance taking advantage of this legislation. There is however a potential additional burden that would be placed on these community banks, which have pursuant to the Governor’s Executive Order and DFS’s guidance placed more than a quarter of their loan portfolio consisting of residential and commercial mortgages in forbearance. This situation underlines the importance of the chapter amendment provision making forbearance subject to the bank having sufficient capital and liquidity to meet its obligations. There is a limit to the amount of additional risk and cost that a bank can take on without negative consequences. This provision enables banks to not provide forbearance to a qualified mortgage based on the bank’s financial condition. Appropriate implementation of this provision requires cooperation between DFS and the bank to define the parameters of sufficient capital and liquidity. This section is critical because the mandate of forbearance impacts both a bank’s capital and balance sheet. Unlike the federal forbearance, which is provided by Fannie Mae, Freddie Mac and the Federal Home Loan Banks where the federal government through those entities bears the cost of forbearance. This legislation places those costs on the banks their shareholders or their accountholders in a mutual financial institution. There is no backstop provided for the impacted state banks.

The chapter amendment permits banks to continue to charge the agreed interest without the ability to charge any additional interest beyond scheduled amounts. This change in the chapter amendment is a positive improvement, which exceeds federal forbearance relief.

The commitment of capital and the loss of revenue resulting from forbearance impacts the banks ability to deploy funds for small business loans. Small business loans are critical in the reopening stage to ensure that businesses have sufficient funds to start their business up. The consequences of mandating forbearance for both residential and commercial loans should be carefully considered because of not only the impact on the bank but ultimately what affect this has on the community’s economic health.

This legislation provides an advantage to federally chartered banks and credit unions and to banks or credit unions which don’t maintain mortgages in their portfolio. Without the requirement mandating forbearance, these institutions have a competitive advantage in the ability to deploy their capital for loans.

The community banks have worked diligently with all their customers to arrive at forbearance terms.

Based on the foregoing, it is respectfully requested that this chapter amendment receive favorable action.