



May 22, 2020

Re: S.8243-Relates to the forbearance of residential mortgage payments

This memorandum is submitted on behalf of the Independent Bankers Association of New York State (IBANYS) in strong 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 forbearance on residential mortgages of 180 days to mortgagees who are in arrears or are participating in a trial period plan. A request for forbearance by a mortgagee results in a presumption of financial hardship. The bill enables a mortgagee to either: extend their loan for the term of the forbearance with a waiver of interest and late fees or defer the arrears during the forbearance as a noninterest bearing balloon payable at maturity.

This bill unilaterally changes the terms of a contract between the parties of the loan and mortgage. This proposal does not account for the treatment of escrow during the forbearance. Who is responsible for the payment of real property taxes and the maintenance of insurance on the property? If the mortgagor does not pay for taxes and insurance wouldn't the bank be effectively required to pay those expenses to protect their interest in the property. The bank would not only be waiving interest and late fees but by default be obligated to pay any escrow deficiency.

There is also no provision for a mortgage with private mortgage insurance. The provision of forbearance without the permission of the private mortgage insurance carrier would break the insurance contract so that coverage would be denied, if there was a default. Without the protection afforded by private mortgage insurance the bank is exposed to significant risk.

Community banks throughout the state at the request of Governor Cuomo and the Department of Financial Services (DFS) have worked diligently to achieve workouts of mortgage obligations with both residential and commercial mortgagees. Some banks have 25% of their mortgage portfolios in forbearance where loan modifications have been agreed to between the bank and the borrower. This legislation would provide the opportunity for additional borrowers to obtain forbearance on enhanced terms. The impact on community banks would be significant resulting in a reduction to earnings, capital and liquidity. This bill would impact earnings based on the loss of interest income where banks have already pursuant to DFS requirements eliminated fees charged for use of ATMs, elimination of overdraft fees and credit card late payment fees. Capital is negatively impacted by the loss of principle from forbearance, which would not able to be recirculated into loans to respond to community loan demand. Liquidity is negatively impacted as mortgages in forbearance, as provided for in this bill, would not be able to be pledged with the Federal Home Loan Bank. The foregoing situation makes a significant point in that community banks are being required to provide forbearance on loans in



their portfolios that would not be acceptable as collateral by the Federal Home Loan Bank. The DFS, based upon treatment of such mortgages for accounting purposes, could change the asset classification and available capital for banks limiting their ability to make loans.

Community banks earnings and capital are already strained based on covid-19 workouts and fee waivers. This bill provides a presumption that any applicant for a mortgage forbearance is eligible without any demonstration of hardship based on Covid-19. The lack of an effective mechanism to screen applicants combined with the extensive commitments already made by community banks to respond to Covid-19 results in a significant impact on community banks balance sheets and their ability to effectively serve their communities.

The argument has been made that New York should offer a similar forbearance to that provided in the Cares Act for mortgages held by government sponsored enterprises or a federal home loan bank. This bill attempts to bring that end to fruition. Unfortunately, it accomplishes that at a cost to community banks whereas in the Cares bill, ultimately the costs of forbearance inure to the federal government. Any cost of this program should not be borne by community banks. If the goal is to expand forbearance on a mandatory basis New York State could accomplish that result by establishing a program to provide qualified mortgagees with State of New York Mortgage Agency Insurance on the loan with forbearance and modification as provided for in the bill. With the mortgage insurance as a credit enhancement the loan could be sold by the bank to the Common Retirement Fund. This approach would not over burden the community banks and the state would only be responsible for the cost of the premium to SONYMA. It should be noted that excess monies have been transferred from SONYMA to the state over a number of years. Community banks would be positioned to continue to provide loan funds in their communities to bring back small businesses that have been hurt.

Importantly this bill is only applicable to state chartered banks. This bill would clearly cause banks to consider converting to federal charters.

Community banks have demonstrated that they are working diligently with mortgagees who are experiencing financial difficulties to arrive at workouts that enable them to deal with this Covid -19 crisis. This bill places an unnecessary burden on these banks and ultimately their communities. It is respectfully requested that this bill not receive favorable consideration.

Respectfully submitted,

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