February 8, 2023

The Honorable Kathy Hochul
Governor of New York State
Executive Chamber
State Capitol Building
Albany, NY 12224

Dear Governor Hochul:

The New York Mortgage Bankers Association (NYMBA), the Mortgage Bankers Association (MBA), and the Housing Policy Council (HPC) are writing to you for two reasons. First, we wish to note that we broadly support policies to address the affordable housing crisis in our country, which will not be solved unless our political leadership at all levels of government make it a priority like you have in your recent State of the State address to the New York Legislature and proposed 2023-2024 state budget.

Secondly, and given the importance of your housing agenda, we urge you to take quick action to address the profound issues created by the recent enactment of Chapter 821 of the Laws of 2022. Your signature on this bill came as a surprise to the real estate finance industry, which will be instrumental to the success of this core component of your affordable housing work in 2023 and the years ahead. Amendments to the new law are needed as quickly as possible to avoid harming New York borrowers and the New York mortgage market. We respectfully request an immediate meeting with your senior staff and the Department of Financial Services to discuss these urgently needed changes or other alternatives to restore the proper incentives to the New York residential real estate market.

As you and your staff are aware, our organizations have been strongly opposed to this legislation. It not only overturned a well-reasoned decision by New York's highest court, but also reached beyond it – as noted in a July 6, 2022 letter to you from the General Counsel of the Federal Housing Finance Agency (attached).

During most of 2022 our organizations and other industry partners and federal housing agencies engaged constructively with your administration to articulate our deep policy concerns with this legislation and to also provide detailed legal perspectives as well as mortgage servicing data from our member companies that demonstrate the economic harm to residential loan portfolios in New York. We also worked hard and in good faith with the Department of Financial Services to develop viable chapter amendments for your consideration to mitigate the borrower and lender harms. Our policy and legal concerns, industry data, and proposed legislative fixes were offered in the spirit of cooperation and were requested and very well received by your administration.

This new law is troubling because over the years the mortgage industry has worked diligently to navigate challenging environments and repeatedly sought ways to work together with regulators. Indeed, the enactment of this law is even more concerning because our organizations and their members have found common ground and developed solutions through partnerships with New York's policy makers. For example, we worked together to ensure borrowers who needed forbearance during the COVID crisis not only received it but also had solutions available to them to exit it successfully. As detailed in the several discussions with members of your team before and after the bill was passed, this Act makes our work to help these New York families much more difficult by imposing legal and financial risks on servicers. In fact, the new law creates competing interests for servicers who are attempting to exhaust all homeowner retention procedures and options for struggling borrowers while also navigating New York's complicated and costly foreclosure statutes. This legislation also adds to the well-known challenges for servicing mortgages in New York and the increased expense incurred. Our member companies continue to absorb the higher costs of operating in the state as best they can to ensure credit worthy borrowers have access to affordable mortgage credit, but in the last year members have informed us that they will only refinance existing customer loans and cease to originate new loans in the state.

Our organizations have a long history of constructive collaboration with New York regulators on a wide variety of issues to protect New York borrowers and preserve access to credit. Amendments are urgently needed to restore the appropriate incentives to mortgage servicers to provide borrowers struggling to make their mortgage payments with all programmatic options to remain in their home, rather than to initiate a foreclosure.

While New York's laws and regulations make it among the most difficult of states to originate and service residential mortgages, this new law is causing our members who have remained active in the state to consider the viability of their futures here. These re-examinations come at a perilous time as your administration seeks commitments and partnerships from regulated mortgage bankers to pursue your very important affordable housing objectives.

Again, we respectfully request an immediate meeting to discuss the swift delivery to the Legislature by your administration of amendments to the statute to help restore certainty to foreclosure laws in New York.

If you have any questions or need more information, please contact Christina Wiley at the NYMBA (cwiley@nymba.org), Kobie Pruitt at MBA (kpruitt@mba.org), or Matt Douglas at HPC (Matt.Douglas@housingpolicycouncil.org).

Respectfully,

New York Mortgage Bankers Association
Mortgage Bankers Association
Housing Policy Council

CC: Honorable Adrienne A. Harris, Superintendent Department of Financial Services

Attachment

- July 6, 2022, Letter to the Governor from the Federal Housing Finance Agency

CONTROLLED

Federal Housing Finance Agency

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July 6, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul:

I am writing on behalf of the Federal Housing Finance Agency ("FHFA"), the regulator and conservator for Fannie Mae and Freddie Mac (the "Enterprises") regarding New York State Assembly Bill 7737-B, "The Foreclosure Abuse Prevention Act" (Assembly Bill 7737-B). FHFA and the Enterprises have reviewed Assembly Bill 7737-B, and, based on that analysis, have determined that in its current form, the proposed legislation will have unintended adverse consequences for New York homeowners as well as the Enterprises. I ask that you consider these concerns as you evaluate the legislation.

As noted above, FHFA is the financial regulator and, since 2008, conservator of Fannie Mae and Freddie Mac. The Enterprises play a critical role in the housing finance market by purchasing, bundling, and securitizing mortgages. These actions increase liquidity and improve affordability for homeowners. As of March 2022, the most recent period for which public data is available, the Enterprises were jointly overseeing more than 1.2 million loans in New York, with roughly $283 billion in unpaid principal balance.

Assembly Bill 7737-B would modify New York's statute of limitations for foreclosure proceedings. Under the proposed legislation, the state's six-year statute of limitations would not be tolled or reset by a lender's voluntary discontinuance of a foreclosure action. This limitation would apply to all existing New York mortgages for which a foreclosure has not been completed, as well as all future New York mortgage agreements.

We understand and share the intent of the legislation – to prevent servicer abuses such as those witnessed during the 2008 financial crisis and to keep homeowners, to the greatest extent possible, in their homes. FHFA and the Enterprises have worked diligently since the start of conservatorship to align and improve the process for servicing Enterprise loans. Through concrete action, the Enterprises have worked with their servicers to ensure a fair process that provides homeowners with multiple opportunities for loss mitigation with the goals of reducing foreclosures and helping borrowers obtain sustainable mortgage agreements. In fact, as part of our conservatorship of the Enterprises, FHFA has a statutory obligation to maximize assistance for homeowners and "encourage the servicers of [] underlying mortgages…to take advantage of…available programs

to minimize foreclosures."[1] Assembly Bill 7737-B, if enacted, would compromise the Enterprises' ability to efficiently maximize homeowner assistance and thus reduce foreclosures in New York.

We believe the Enterprises' procedures are robust and aimed toward promoting fairness for homeowners in the foreclosure process. Our main concerns related to Assembly Bill 7737-B are summarized in the three subsections below.

1- Elimination of the Ability for Servicers to Unilaterally Deaccelerate a Foreclosure Action

The Assembly Bill 7737-B eliminates the ability for a mortgage servicer to unilaterally deaccelerate a foreclosure action. While well intentioned, this provision may result in more foreclosures concluding quickly, without sufficient options for a work-out between homeowner and servicer. Lenders use deacceleration for a variety of reasons, including to seek loss mitigation or loan modification agreements with the borrower. Lenders may be discouraged from seeking those agreements if the ability to unilaterally deaccelerate is eliminated and the statute of limitations continues to run. Mortgages are typically thirty-year agreements, and lenders will offset the increased risk of a second default beyond the six-year time horizon, likely at a significant cost to borrowers.

These concerns could be alleviated through greater clarity in the legislative language. For example, the current text appears to leave open the question of whether a loan modification agreement constitutes a joint deacceleration between borrower and servicer, and whether it would therefore pause the foreclosure process without penalty to the servicer. It is also unclear how the statute of limitations would apply to loans that went into forbearance under general Federal relief programs. Both Enterprises have disaster assistance programs that may pause a foreclosure action in an area hard hit by a natural disaster, such as Hurricane Sandy. There does not appear to be any provision in Assembly Bill 7737-B to account for these borrower-focused programs. In a similar way, at the onset of COVID-19, FHFA and the Enterprises took considerable steps to support homeowners and keep families in their homes. FHFA suspended all single-family foreclosures and foreclosure driven evictions. FHFA also required servicers to forego foreclosure actions based on mere attestation of a COVID-related hardship by the borrower. The current draft of Assembly Bill 7737-B is ambiguous as to how these arrangements would affect the statute of limitations. Assembly Bill 7737-B requires greater clarity in the proposal.

2- The Bill's Retroactivity and Potential Losses to the Enterprises

As noted above, the Enterprises have a significant presence in New York. As of March 2022, more than 4,000 Enterprise loans in New York were in foreclosure, accounting for a total unpaid principal balance of almost $1 billion. Approximately one-quarter of such loans have been in the foreclosure process for more than six years already.

Because the bill is retroactive, we view the legislation as putting the collateral for Fannie Mae and Freddie Mac's existing books of business at risk, including for any future mortgages they purchase in New York. If a foreclosure action cannot be completed because of technical limitations arising out of Assembly Bill 7737-B, and a foreclosure action cannot be refiled, the Enterprises will be

[1] 12 U.S.C. § 4513(a)(1).

barred from capturing the collateral to compensate their losses and may be unable to recover the statutorily required mortgage insurance payments. Similarly, if a borrower is currently acting in accordance with a loan modification arising out of a foreclosure action filed more than six years ago, it is not clear that the servicer would be able to file a new foreclosure if the borrower re-defaulted on the loan.

This risk presented by Assembly Bill 7737-B to the Enterprises is inconsistent with FHFA's statutory mandate to preserve and protect Enterprise assets since it could ultimately compromise effective foreclosure processes.

3- Negative Impact on Sales of Non-Performing and Reperforming Loans

Assembly Bill 7737-B may hinder the Enterprises' nonperforming and reperforming loan sales through its modifications to New York's "savings statute." The savings statute allows civil action plaintiffs to refile a complaint if the action was terminated for a variety of procedural errors.

Under Assembly Bill 7737-B, however, parties bringing a foreclosure action would be far more limited in their ability to refile, and the remaining restart rights for foreclosure plaintiffs would be limited only to the original plaintiff, even if the note had been transferred. Both Fannie Mae and Freddie Mac conduct private sales of nonperforming loans (NPLs) and reperforming loans (RPLs) in order to reduce credit risk on delinquent mortgages. Purchasers of Enterprise NPLs and RPLs must adhere to requirements set forth by FHFA, which have been enhanced over time. The sales help transfer risk to the private sector, protecting the assets of the Enterprises and preventing losses to the taxpayer. We are very concerned that this proposal would significantly reduce demand for sales of Enterprise NPLs and RPLs.

We appreciate the effort that both the NY Assembly and Senate have made to improve the foreclosure process in the state. We believe, however, that there are unintended negative consequences from Assembly Bill 7737-B that could harm homeowners in New York. FHFA requests that you address these issues through any available process related to this legislation. We are available to discuss the concerns presented in this letter with you or your staff and look forward to working together to ensure that the mortgage market operates smoothly for New York homeowners in order to support homeownership in New York communities.

Please contact Alex Johnson (Alex.Johnson@fhfa.gov) to discuss these issues further. Thank you for your consideration and your attention to this matter.

Sincerely,

CLINTON JONES

Digitally signed by CLINTON JONES
Date: 2022.07.06 14:11:51 -04'00'

Clinton Jones
General Counsel