

Housing Policy Council
Mortgage Bankers Association
National Association of Federally-Insured Credit Unions
National Housing Conference
New York Mortgage Bankers Association

May 2, 2022

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

Dear Governor Hochul,

The undersigned organizations are writing to express our serious concerns about the proposed Foreclosure Abuse Prevention Act (“FAPA”) and our belief that this legislation has the potential to create severe unintended consequences for New York State homeowners and communities. The bill warrants further discussion, to assess the impact of the proposed changes on the extensive existing architecture of borrower protections.¹ The measure may increase community blight and exacerbate the significant housing affordability challenges in New York, yet such considerations have not been discussed or analyzed in Committee hearings.

We recommend additional discussion to enhance stakeholder understanding of the issues this bill is attempting to solve. The purported rationale for this bill, the *Engel* decision, simply said that a lender can pause and renew the foreclosure proceedings while working with a borrower to resolve the delinquency and retain homeownership. This type of activity should be encouraged, rather than penalized. Indeed, the former General Counsel of the Federal Housing Finance Agency – which oversees the two largest investors in home mortgages, Fannie Mae and Freddie Mac-- observes that “[i]t is ironic that this would be seen as controversial in light of the highly praised experience of the COVID 19 pandemic provisions of federal and many states seeking lenders to forebear on non-payments, delay foreclosures and evictions and then resume their actions at a subsequent time.”²

The bill’s attempt to apply these provisions retroactively is particularly concerning. As a threshold matter, changing foundational legal concepts like the application of a statute of limitations retroactively is extraordinarily disruptive to settled contracts and businesses that rely

¹ A more thorough analysis of the bill’s impact is appropriate given the expert opinions that this bill may increase the cost of mortgage loans in New York and possibly interferes with a lender’s ability to provide foreclosure alternatives to borrowers. See Swanson, A. (2022, Apr. 12) NY Foreclosure Bills Would Destroy A Key Consumer Right. Law360. <https://www.law360.com/articles/1483034>

². For instance, please see attached the letter from Alfred Pollard, former General Counsel of the Federal Housing Finance Agency.

on the stability of the law. In this instance, it is more concerning given the efforts put forth by mortgage servicers to offer relief to New Yorkers during the COVID pandemic. As noted above, mortgage forbearance was mandated by Congress and strongly encouraged by federal and state regulators.³ A number of federal and state organizations required payment forbearance periods for up to 18 months. In some instances, forbearance plans were offered to borrowers who were already significantly delinquent on their obligations. To our knowledge, the impact of this bill on those loans has not been discussed or properly understood.

Some of the undersigned organizations have previously expressed their opposition to this bill, based on well-founded fears that it will prove to be damaging to the New York real estate finance ecosystem.⁴ Other key suppliers of mortgage credit, including the FHFA (as conservator of Fannie Mae and Freddie Mac), the Federal Housing Administration, and the Veterans Administration, are still studying the bill and trying to understand both the rationale for its proposal and the impacts it could have on borrowers, lenders, investors and guarantors. All agree that further conversation and study is absolutely required before passing a bill with the potential consequences of the FAPA.

We appreciate your time and consideration. If you have any questions, please do not hesitate to contact us.

Sincerely,

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cc: Senate Majority Leader Andrea Stewart-Cousins
Senator James Sanders Jr., Sponsor

³ This includes New York regulators and the Attorney General. See New York Attorney General's 2020 Press Release. AG James Calls on Mortgage Servicers to Provide Substantial COVID-19 Relief for Homeowners. <https://ag.ny.gov/press-release/2020/ag-james-calls-mortgage-servicers-provide-substantial-covid-19-relief-homeowners>

⁴ The New York Mortgage Bankers Association and Mortgage Bankers Association have previously sent letters to the relevant legislative committees expressing our concerns with this bill.