



July 1, 2021

Honorable Rossana Rosado
New York Secretary of State
123 William Street
New York, NY 10038

Dear Secretary Rosado,

The New York Mortgage Bankers Association¹ and the Mortgage Bankers Association (MBA)² are writing to support your efforts to promulgate regulations to implement recently passed legislation ([S.1780-C/A.399-B](#)) that, if signed, will grant the authority to utilize Remote Online Notarization (RON) in New York. If implemented properly, RON offers consumers safe and secure options to complete New York real estate finance transactions.

RON laws have been enacted similarly by 35 states and S1780 is generally consistent with this national consensus for RON adoption and implementation. This uniformity across different states stems from a reliance on language released by the non-partisan Uniform Law Commission (ULC) in 2018.³ However, our associations have one important concern regarding the language of the bill that deviates from the ULC proposal and which we believe must be addressed in your forthcoming regulations. Specifically, S1780 does not completely align with other states, because the Legislature did not include a provision to fully protect consumers' by expressly requiring a third party to verify a signer's identity through multifactor authentication. The bill authorizes the Secretary of State to promulgate rules that establish state standards for

¹ The New York Mortgage Bankers Association, Inc. (NYMBA), is a 501(c)(6) not-for-profit statewide organization devoted exclusively to the field of real estate finance. NYMBA's rapidly growing membership is comprised of both bank and non-bank mortgage lenders and servicers, as well as a wide variety of mortgage industry-related firms. NYMBA encourages its members to engage only in sound and ethical business practices and informs its members of changes in the laws and regulations affecting the mortgage business. The association helps those engaged in or affected by the mortgage business to be better informed and more knowledgeable. It is dedicated to the maintenance of a strong real estate finance system. This involves support for a strong economy, a public-private partnership for the production and maintenance of single and multi-family homeownership opportunities, and a strong secondary mortgage market. Additional information can be found on our website: www.NYMBA.org.

² The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 1,700 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

³ <https://www.uniformlaws.org/viewdocument/final-act-no-comments-86?CommunityKey=8acec8a5-123b-4724-b131-e5ca8cc6323e&tab=librarydocuments>

identifying document signers but does not enumerate the manner in which the ID verification must be completed.

Therefore, in anticipation of S1780's enactment, we urge you to consider promulgating rules that would require all remote notarizations completed within the state's jurisdiction to be accomplished using a process of third-party multifactor identification consistent with national standards, which generally includes credential analysis and knowledge based authentication questions for ID proofing. Our organizations recommend that forthcoming proposed rules rely on the well-reasoned approach of the ULC's Revised Uniform Law on Notarial Acts (RULONA). Additionally, we recommend review of the Mortgage Industry Standards Maintenance Organization (MISMO) RON standards,⁴ and the bipartisan National Association of Secretaries of State standards for remote notarization implementation.⁵

Our organizations recommend including the following language to create an identity verification standard that will protect consumers and combat fraud:

“Identity proofing is a service or process that is provided by a third person. The verification is performed by comparing and reviewing data from public or private data sources with information from or provided by the remotely located individual.”

Additionally, our organizations further recommend that the forthcoming proposed rules be consistent with a set of core principles that have been embraced by other states, including, but not limited to:

- Consumer optionality;
- Ensuring acknowledgements performed online can be readily identified and distinguished from those done in person; and
- Adopting technology requirements that should not be so specific as to favor one vendor over another, nor should they be so restrictive that they impede evolution of new ways to improve security over time

Lastly, MBA intends to collaborate with our sister association the American Land Title Association (ALTA) and their local partner the New York Land Title Association (NYLTA) to seek a chapter amendment to S1780 that will require “papering-out” requirements for RON transactions. Papering-out language would create guidance for allowing an electronically notarized document to be recordable if printed-out and certified by a notary to be a true and complete copy of an electronic original.

Again, to ensure all remote notarizations completed within the state's jurisdiction are secure and protect consumers, we encourage you to propose rules to adopt RON that include standards

⁴ <https://www.mismo.org/standards-and-resources/emortgage-specifications/remote-online-notarization-standards>

⁵ https://www.nass.org/sites/default/files/resolutions/2018-02/nass-support-revised-enotarization-standards-winter18_0.pdf

consistent with 35 other states for ID proofing requiring third party, multifactor authentication of a signer.

Our associations welcome the opportunity to engage with you further to develop New York's RON regulations. If you have any questions, please contact Christina Wiley at NYMBA (cwiley@nymba.org) and Kobie Pruitt at the MBA (kpruitt@mba.org).

Sincerely,

New York Mortgage Bankers Association
Mortgage Bankers Association