May 17, 2018

New York State Department of Financial Services
One State Street
New York, NY 10004-1511
OnlineLending@dfs.ny.gov

Re: Request for Comments on Online Lending in New York State

The New York Mortgage Bankers Association (NYMBA)[1] and the Mortgage Bankers Association (MBA)[2] appreciate the opportunity to comment on the New York Department of Financial Services' (NYDFS) forthcoming report to the State Legislature detailing the current status of online lending in New York State and its impact on consumers.[3]

The preparation of this report by NYDFS is consistent with the requirements in legislation enacted in 2017 (A8260-A/S6593-A) and also the subject of currently pending legislation (A8938/S7294), which has unanimously passed both the State Assembly and Senate. The former bill created a state task force to examine online lending, and the pending legislation would amend the 2017 statute and convert that task force into a report issued by NYDFS.

[1] The New York Mortgage Bankers Association, Inc. (NYMBA), founded in 2014, is a statewide organization, devoted exclusively to the field of real estate finance. NYMBA's membership is comprised of both bank and non-bank mortgage lenders and servicers, as well as a wide variety of mortgage industry-related firms. The NYMBA was formed to encourage its members to engage only in sound and ethical business practices, and to inform 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. For additional information on the New York Mortgage Bankers Association, visit NYMBA's 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 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the Association works to ensure the continued strength of the Nation's residential and commercial real estate markets; to expand homeownership and 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 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information on the Mortgage Bankers Association, visit MBA's website: www.mba.org.

[3] https://www.dfs.ny.gov/banking/online_lending_share.htm

Following our evaluation of this legislation and its sponsor memoranda as well as through conversations with legislative staff, our organizations understand that the legislative intent on this issue is not to include mortgage lending within the scope of "online lending" in this evaluation. It is important to make this point clear as there is confusion in the industry about the intent of the report. Part of that confusion stems from language in sponsor memoranda for both the 2017 law and the currently pending legislation which indicates that "online lenders issued over $20 billion in loans in 2015." Based on that citation it is not clear what type of lending is covered – e.g. mortgages, auto lending, unsecured consumer lending, payday loans – or whether that figure relates to New York State or the entire country.[4] More importantly, neither the Legislature nor NYDFS has thus far offered a definition for "online lending" for the purposes of this report. While the report appears designed to study online "marketplace," "platform" or "peer-to-peer lenders,"[5] neither NYDFS nor the legislature has clarified this. Such clarity is important to improve the specificity and quality of feedback that NYDFS receives and to ensure the report satisfies the legislative intent. Absent this, it would be easy to confuse online lending with what some lenders in our industry are offering in terms of greater levels of in-person electronic and online services to help speed loan origination and mortgage closing.

These services are regulated in the same fashion as "traditional" brick-and-mortar mortgage lending activities. Mortgage lenders operate in an environment which has robust supervision of all aspects of operations. Our member companies have spent the last ten years implementing and investing in technology and system changes to comply with dozens of new federal and state laws and regulations which stem back to the Secure and Fair Enforcement of Mortgage Licensing (SAFE) Act of 2008 and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) of 2009. The SAFE Act implemented mandatory licensing requirements for state-regulated companies, their branches and their mortgage loan originators, and the Dodd-Frank Act established the federal Bureau of Consumer Financial Protection (BCFP), which in turn implemented the statute's requirements to create the most robust system of regulatory supervision of financial institutions in the nation's history. Dodd-Frank's consumer protections impact all aspects of mortgage lending and the industry continues to work to meet federal regulatory requirements as they are issued by BCFP. Many states have also enacted additional mortgage related rules. Moreover, in addition to Dodd-Frank rules, active and appropriate oversight of mortgage lenders is conducted every day by attorneys general and state banking regulators nationwide, including NYDFS.

The New York Legislature's intent is clear on the need for consumer protection that may result from a gap in existing lending regulations.[6] We are not aware of any such

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[4] By way of background, MBA estimates that in 2015 total residential mortgage originations totaled $1.679 trillion nationally, and that figure has grown to $1.710 trillion in 2017.

[5] See "Understanding Online Marketplace Lending" by the Bureau of Consumer Financial Protection at https://files.consumerfinance.gov/f/201603_cfpb_understanding-online-marketplace-lending.pdf.

[6] From the Justification portion of bill memoranda: "Although online loans can provide another avenue for entrepreneurs to acquire capital and grow their small businesses, there is also significant potential for

regulatory gaps that apply to mortgages originated using online portals for consumers to apply, submit documents and communicate with their mortgage lender. While we do not believe this study is intended to address mortgage lending, we would welcome the opportunity to discuss innovation in the mortgage market if it is of interest in this matter or in the future.

Thank you again for this opportunity to offer our organizations' views on NYDFS' request for comments.

Sincerely,

Christina Wiley
Executive Director
New York Mortgage Bankers Association

Pete Mills
Senior Vice President, Residential Policy
and Member Engagement
Mortgage Bankers Association

unscrupulous online lenders to exploit consumers through predatory practices such as unusually high interest rates, lack of disclosure of hidden fees, and unclear loan terms."