February 8, 2021

Honorable Linda A. Lacewell
Superintendent
New York State Department of Financial Services
1 State Street
New York, NY 10004-1511

Dear Superintendent Lacewell,

The New York Mortgage Bankers Association[1] and the national Mortgage Bankers Association (MBA)[2] are writing to provide you and your staff our initial feedback on the New York Department of Financial Services (NYDFS) October 29, 2020 memorandum[3] regarding climate change and financial risks that was distributed to the CEOs of New York regulated financial institutions. Our groups have also met with NYDFS representatives and wish to express our thanks to these staff members for their availability and look forward to additional opportunities to exchange views.

Climate change is without question a defining issue of our time and one which warrants attention and appropriate public policy responses. With its October 29th memorandum, NYDFS has detailed potential risks from climate change and its expectations for risk mitigation plans. The Department's memorandum notes that residential and commercial loans are examples of

---

[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 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 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 2,100 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[3] https://www.dfs.ny.gov/industry_guidance/industry_letters/il20201029_climate_change_financial_risks

the types of assets that can be at risk due to weather events, and that economically vulnerable communities, often minorities and communities of color, are particularly threatened with respect to environmental impact.

Indeed, just a week after our meeting with NYDFS staff, the Federal Housing Finance Agency (FHFA) released a detailed request for input on Climate and Natural Disaster Risk Management.[4] The FHFA is the conservator of the federal government sponsored enterprises (GSEs) Fannie Mae and Freddie Mac. The GSEs purchase the majority of mortgage loans originated by our member companies, and consequently are the holders of the risk associated with most American mortgages. Through responses to a series of 26 probing questions, FHFA is seeking information on the current and future climate and natural disaster risk to the GSEs and the Federal Home Loan Banks (the FHLBanks). The goal is to enhance FHFA's ability to fulfill its statutory responsibilities to ensure that the regulated entities:

> *(i) operate in a safe and sound manner, (ii) fulfill their statutory missions, and (iii) foster the liquidity, efficiency, competitiveness, and resiliency of the national housing finance markets. FHFA also seeks input on opportunities to strengthen its supervision and regulation of the regulated entities' management of and reporting on the physical and transition risks that may arise from natural disasters and changes in climate patterns. Commenters are encouraged to note, as appropriate, distinctions and similarities between the Enterprises and the FHLBanks.*[5]

With responses due on April 19, 2021, FHFA appears to be taking an iterative approach under which FHFA first engaged the real estate finance industry for input on how best to define climate risk within the FHFA's financial institution supervisory context, and on how best to approach the supervision of regulated entities' management of climate risk impacts to their portfolios. FHFA concedes that, as a prudential financial regulator, it does not have expertise in climate science. We believe the NYDFS approach to climate change risk could benefit from a similar iterative, outreach process that precedes any detailed supervisory expectations for climate risk management.

Also worth noting is that one of the first actions of the new Biden Administration was to issue an "Executive Order on Tackling the Climate Crisis at Home and Abroad"[6] in which the President directs a "whole-of-government approach." Thus, our organizations anticipate that the Federal Housing Administration (FHA), Veterans Administration (VA), and the U.S. Department of Agriculture's Rural Housing Service (RHS) will shortly embark on a similar process to that of FHFA. These agencies' guidelines will set the standard for climate risk management for lenders that sell predominantly into the secondary market.

By contrast, without any rulemaking or comment process that would have allowed mortgage lenders to consider and reply to a new set of proposed state requirements, NYDFS directed all regulated organizations to begin integrating financial risks from climate change into their governance frameworks, risk management processes, and business strategies. NYDFS also expressed an expectation that our member companies will consider engaging with the Task Force on Climate-related Financial Disclosures' framework and other established initiatives when developing their plans.

---

[4] https://www.fhfa.gov/Media/PublicAffairs/Documents/Climate-and-Natural-Disaster-RFI.pdf

[5] https://www.fhfa.gov/Media/PublicAffairs/Documents/Climate-and-Natural-Disaster-RFI.pdf p.2

[6] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/

Lastly, NYDFS expressed the expectation that non-depositories will conduct a risk assessment of the physical and transition risks of climate change, whether or not they directly impact them or the communities they serve in terms of business disruptions, loss of income and higher default rates, supply chain disruptions, and changes in investor and consumer sentiments, and start developing risk mitigation plans.

Following our review of the memorandum and subsequent meeting with NYDFS staff, our organizations would like to make a few general points and pose certain questions related to these newly compulsory policies.

- Our organizations are concerned that NYDFS has not yet reviewed its new policy mandates against the federal affordable housing programs that could be affected by the climate-change directive. We believe it is vital that Department staff immediately begin discussing the specifics of this novel set of policy changes with FHFA leadership as well as with the leaders of the federal affordable housing programs: FHA, VA, and RHS. It is also critical that the NYDFS team engage with those entities that provide liquidity to the primary mortgage market for these federal programs: Ginnie Mae, Fannie Mae and Freddie Mac. As noted above, these organizations issue securities with guarantees for the majority of mortgages in the United States. Consequently, our member companies are required to obey policies for risk mitigation established and routinely updated by these federal institutions. NYDFS needs to avoid unintended consequences of mandating new practices that potentially conflict with federal requirements.

  For our part, the staffs at the NYMBA and the MBA have begun discussing climate change and the NYDFS memorandum with our counterparts in these federal policymaking bodies. Additionally, the New York MBA will begin to discuss these issues with the leadership and members of the New York State Assembly and Senate Banking Committees.

- New York's new climate risk mitigation requirements, we believe, could create an unintended outcome. Specifically, it is possible they could have a disproportionate impact on underserved communities. The NYDFS memorandum states:

  > *Mortgage loans, commercial real estate loans, agricultural loans, and derivatives portfolios are a few examples of the types of assets that can be at risk due to weather events. Economically vulnerable communities, **often minorities and communities of color**, are particularly threatened with respect to physical devastation. In hard-hit communities, climate change is expected to undermine economic output, reduce already limited household income and wealth, and diminish access to capital. Regulated Organizations, in turn, could see an increase in default rates, reduced lending activity, devalued assets, and losses.* [Emphasis added]

  Mortgage lenders address risk in a few different ways. The investors they sell loans to or portfolio lenders can price for the additional risk in the cost of the loan. In certain instances, the lender may reduce its exposure to climate risk by declining to make the loan. For certain risks, the consumer may have to assume more out-of-pocket third-party costs for insurance or other mitigation. For example, mortgages in special flood hazard areas require flood insurance coverage as well as traditional homeowners insurance. Managing additional risk from climate change would be addressed no differently, and each of these approaches has cost and credit access implications for the borrower.

If the intent of the Department is public policy that results in reductions in risk from climate change across the whole of the mortgage market, the new mandates on lenders may potentially result in higher costs borne by those least able to afford them. We appreciate and support the Department's stated goals to protect minority and low-to-moderate income communities from the negative impact of climate change and would encourage the Department to ensure that its solutions do not raise the cost of credit for these borrowers due to the creation of a special "climate risk premium."

As the NYDFS considers institutions' climate-risk management programs, it should recognize that, at present, there is no accurate or standardized way of measuring and understanding flood risk. Lenders generally turn to the Federal Emergency Management Agency's (FEMA) flood insurance rate maps to determine whether or not to require flood insurance. These maps are outdated and inaccurate as demonstrated by Hurricane Harvey and other recent flood events. Further, these maps do not incorporate climate change or other factors such as additional infrastructure on the ground. A uniform standard metric or other enhancements to the implementation of the NFIP would substantially help lenders to be able to fully assess the unique risks that flooding events pose to them.

- The NYDFS states in the memorandum that among its expectations for its regulated entities is to "start developing their approach to climate-related financial risk disclosure and consider engaging with the Task Force for Climate-related Financial Disclosures framework and other established initiatives when doing so." In our meeting with Department staff, our organizations asked what experience with non-bank mortgage lending the Task Force had, and what Task Force recommendations our members should review. However, staff were unable to provide any insight on this matter. We would appreciate greater details from NYDFS on precisely what its expectations are apropos to Task Force (or other related organizations) recommendations on financial disclosures, or other matters, that would be relevant to the unique structure of non-bank mortgage lending in the United States, which is replete with numerous contractual obligations, mechanisms for the transfer of credit risk and counterparty risk standards.

- The NYDFS Memorandum quotes a report by the Commodities Future Trading Commission, which states that regional and community banks are more at risk from climate change:

  The flood risk could impact regional and community banks in particular. According to a report by the U.S. Commodity Futures Trading Commission's Climate-Related Market Risk Subcommittee of the Market Risk Advisory Committee, "Regional and community banks … are more vulnerable to regionally concentrated physical risk, including to sudden extreme events." "These banks' property loans tend to be more geographically concentrated than the loans of larger banks. In addition, CRE [commercial real estate] loans constitute a much larger share—nearly a third—of the loan books of small banks."

  Since our organizations have a significant number of members that are community banks, we would like to have a separate conversation on community bank concerns with the Department that includes representatives from these companies. The purpose of this meeting would be to discuss more specifically NYDFS's expectations.

Thank you for your engagement on this matter. We look forward to your response. In the meantime, should you or your staff have questions or would like to meet again, please feel free to contact Christina Wiley at the NYMBA (cwiley@nymba.org) and Pete Mills at the MBA (pmills@mba.org).

Respectfully,

Christina Wiley
Executive Director
New York Mortgage Bankers Association

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

CC: Rholda Rickets, Rholda.Ricketts@dfs.ny.gov
Dr. Yue Chen, Nina.Chen@dfs.ny.gov