



**New York Bankers Association**

STATEMENT OF  
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BEFORE THE  
NEW YORK STATE  
SENATE BANKS COMMITTEE

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ALBANY, NEW YORK

Good morning. My name is John M. Scarchilli and I am President and CEO of Pioneer Bank (Pioneer). I am also the current Chairman of the Board of the New York Bankers Association (NYBA), and sit on both the Boards of Directors of the New York State Banking Department and the New York Federal Home Loan Bank (FHLBNY). As such, I believe I can offer a unique and multi-faceted perspective on the Governor's Program Bill #44 (now introduced as A.10817(Towns)/S.8143(Farley), and I thank you for the opportunity to comment on this important issue.

Pioneer Bank is a 119 year old "local" thrift institution, which has throughout the years stayed true to its original premise of helping local people and businesses with their banking needs in New York's Capital Region. We have 15 branches staffed by local employees, who support neighborhood organizations and charities and whose business emphasis is exclusively focused on the local consumer and community. It is because of this dedication to our neighbors and community, that we are particularly concerned about the potentially damaging impact that S.8143 can have on community banks, such as ours.

We at Pioneer, of course, abhor predatory lending practices and are committed – as is NYBA and its membership – to their eradication. We are concerned, however, that in so doing, we do not unintentionally eliminate the

legitimate subprime market, or cause a contraction in the all-important prime market, by imposing unnecessary and overly restrictive requirements and prohibitions on the mortgage process.

As Mike Smith testified to earlier, according to a recent study by Warren Traiger, less than 20% of the problematic subprime loans were originated by already highly regulated banking institutions or their affiliates. Pioneer, for example, does not originate any subprime loans and since December 2002 has only foreclosed on ten properties (with none so far in 2008 and only two in 2007). Yet, many of the restrictive provisions in S.8143 could directly negatively impact our bank, undermining Pioneer's and other banks' legitimate current lending practices and activities. In the long run, this will limit access and increase costs for home loans to creditworthy customers seeking to attain the American dream. This is particularly significant in upstate New York, where we already face daunting challenges in inducing our young and brightest citizens to stay in the area and ensure its long-term vibrancy and economic health.

For example, the proposal would impose a duty on all lenders and mortgage brokers to determine the borrower's ability to repay before making any home loan. As the determination of a borrower's ability to repay varies from lender to lender, and even program to program, fixed statutory requirements and presumptions such as those set forth in the proposal, could undermine

the successful loan underwriting guidelines implemented by many highly regulated financial institutions today. Additionally, this mandate might have the unintended consequence of deterring lenders from extending home loans in New York. This is so, not only because of the scope of the mandate, but also because the proposal's liability provisions will undoubtedly result in courts' second-guessing lenders' decisions in many foreclosure actions. This in turn will substantially increase lenders' risks and costs.

It is important to note, too, as you already heard in Mike Smith's testimony, that should the current unreasonably low thresholds in the bill be enacted into law, many of the prime loans originated by bank lenders in the last economically volatile year, would now be defined as "non-conventional." In the case of my own bank, for example, given the volatility in interest rates we have seen over the last few months, coupled with the costs inherent in making relatively small home loans, 21% of the prime 30 year fixed rate loans we have made in the last six months would be deemed "non-conventional" if made today under the standards set forth in S.8143. Moreover, 30% of the current loan commitments outstanding, if closed today, would also be non-conventional. This would unnecessarily and inappropriately subject them to many requirements and restrictions in the law – not to mention the stigma of being labeled something less than prime – therefore making it far less likely that we would make similar, otherwise completely appropriate loans, to our local customers.

For example, the bill requires that at least sixty days before a lender or mortgage loan servicer commences legal action against a borrower of a high-cost or non-conventional loan, an additional notice be given to the borrower. If the borrower responds within thirty days of receipt of this notice that he is interested in commencing loan workout discussions, the lender is then prohibited from commencing an action for another period of sixty days from receipt of such borrower response. This requirement would therefore extend New York's mortgage foreclosure process which already today is the longest in the nation - at up to 445 days - for more than four additional months. During these four months, the homeowners' equity for tax and insurance payments would dwindle, properties would fall into disrepair, blighting whole neighborhoods and ultimately, would discourage lenders from making loans to any borrower without the most pristine of credit histories. This would create an environment where there would be little hope of owning a home for working New Yorkers who have sacrificed much to overcome old credit problems.

Such an expansion of the foreclosure process would not only be detrimental for Pioneer, but would also be completely unnecessary, given our own already extensive pre-foreclosure intervention processes, which begins when a loan is only 16 days past due. At that time a late notice is sent. At 16-20 days past due, telephone calls are started to initiate contact with the

borrower and at 31 days of delinquency, a letter is sent advising the borrower that they can take advantage of approved mortgage counseling. Between 30 and 60 days after delinquency begins, telephone attempts continue. If there is no telephone contact, letters asking the borrower to contact Pioneer are also sent. At 61 days delinquent, a seven day demand letter is sent to the borrower while telephone attempts continue. Between 90 and 120 days of delinquency, a 30 day demand is sent to the borrower, while telephone attempts continue. At that point, we may visit the property. At 120 days delinquent, the loan is presented to Pioneer management for foreclosure approval. Only on such approval is the account sent to counsel to commence a foreclosure action. Even after the loan is called, continuing attempts to reinstate the loan with the borrower are made by bank personnel. As you can see, the process is already a lengthy one and one in which the borrower is afforded many, many opportunities to work with us to prevent the foreclosure. Extending this period for four months is unlikely to yield any benefit to the borrower, but would have unfortunate consequences for the neighborhood.

Obviously, the Assembly passed a one year moratorium of foreclosures which would present a clear threat to credit availability. A two year process is not sound policy for lenders, borrowers or the State.

Pioneer as well as all the other members of NYBA remain committed to the eradication of predatory lending, without unintentionally hurting the rest of the mortgage lending market through the enactment of overly restrictive legislation, particularly when there can be other creative and potentially more productive solutions available. For example, the FHLBNY, for which I serve as a Director, in conjunction with a local bank and religious community leaders, has recently helped to launch a program in New Jersey called the Housing Assistance and Recovery Program (HARP). Through HARP, homes in danger of foreclosure will be purchased and leased back to the homeowner for a defined period of time, allowing the homeowner to stay in the home, pay affordable rent, and have the opportunity to establish the creditworthiness needed to repurchase the property. Programs such as this can make a real difference and I strongly endorse the expansion of HARP, and programs like it, into New York.

In conclusion, we urge that we all work together to explore meaningful solutions to the current mortgage crisis, including working toward a final bill which limits its focus to the subprime market, regulates those firms not currently subject to federal regulations, and avoids undermining consumer access to appropriate credit. We at Pioneer Bank stand ready to work with you towards this outcome.

Thank you.

