



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

February 15, 2017

The Honorable John J. Flanagan
NYS Senate Temporary President & Maj.
Leader
NYS Capitol Building, Room 330
Albany, NY 12224

The Honorable Brian M. Kolb
Minority Leader of the NYS Assembly
Legislative Office Building 933
Albany, NY 12248

The Honorable Carl E. Heastie
Speaker of the NYS Assembly
Legislative Office Building
932 Albany, NY 12248

The Honorable Jeffrey D. Klein
NYS Senate Coalition Leader & IDC Leader
Legislative Office Building 913
Albany, NY 12247

The Honorable Andrea Stewart-Cousins
NYS Senate Democratic Conference Leader
Legislative Office Building 907
Albany, NY 12247

Dear Legislative Leaders:

I write in response to the letter sent by New York Attorney General Eric Schneiderman on February 14, 2017, in opposition to Parts Y, BB, and Z of Governor Cuomo's Transportation, Economic Development and Environmental Conservation Article VII proposal (the "Proposals"). Mr. Schneiderman's letter describes the Governor's Proposals as "a wholly unnecessary overreach by the Executive" that "would alter the enforcement arrangement the Legislature established when creating DFS, resulting in unnecessary and harmful overlapping state enforcement authority, which could jeopardize ongoing and future investigations." As detailed below, Mr. Schneiderman's opposition to the Governor's Proposals is premised on unnecessary rhetoric and a series of factual and legal errors.

1. Mr. Schneiderman Fails to Understand the Role of a Financial Regulator and has Mischaracterized DFS's Reporting Obligations

DFS was created in 2011 to enforce the Insurance Law, the Banking Law, and the Financial Services Law in New York. According to the legislature's declarations set forth in Financial Services Law section 102, this enforcement authority is the *sine qua non* of DFS's existence:

The legislature hereby declares that the purpose of this chapter is to consolidate the departments of insurance and banking, and provide for the enforcement of the insurance, banking and financial services laws, under the auspices of a single state

agency to be known as the “department of financial services” and to accomplish goals including the following:

(b) To establish a modern system of regulation, rulemaking and adjudication that is responsive to the needs of the banking and insurance industries and to the needs of the state's consumers and residents;

(c) To provide for the effective and efficient enforcement of the banking and insurance laws;

(e) To promote and provide for the continued, effective state regulation of the insurance industry;

(f) To provide for the regulation of new financial services products;

Financial Services Law § 102. As the regulator of the insurance, banking, and financial services industries in New York, DFS has over 1,000 employees that are responsible for both supervising institutions under, and enforcing, the Insurance Law, the Banking Law, and the Financial Services Law. DFS routinely takes enforcement action against regulated entities, and assumes primary and sole responsibility for the initiation, prosecution, and completion of these enforcement actions. It makes sense for DFS, which regulates those entities for safety and soundness, to also handle enforcement actions, rather than a separate law enforcement agency that lacks regulatory authority.

Mr. Schneiderman wrongly claims that existing law requires DFS “to report violations of civil penalties imposed under the financial services law or fraud or other criminal activity under the insurance law or banking law to the Office of the Attorney General (“OAG”), an appropriate agency, or relevant district attorney.” Rather, the statute partially quoted in Mr. Schneiderman’s letter actually provides DFS with complete discretion and control in determining whether to report suspected violations and does not mandate any reporting to the Attorney General:

Whenever the superintendent is satisfied that a violation subject to section four hundred eight of this article or fraud or other criminal activity under the insurance law or banking law has been committed or attempted, the superintendent shall report any such violation of law, **as the superintendent deems appropriate**, to the appropriate licensing agency, the district attorney of the county in which such acts were committed, to the attorney general, and where appropriate, to the person who submitted the report of fraudulent activity, as provided by the provisions of this article.

Financial Services Law §409(a) (emphasis added). In fact, most violations of the banking, insurance, and financial services laws never get reported to the Attorney General. As the regulator and enforcer of the insurance, banking, and financial services law, DFS successfully resolves nearly all such violations through DFS’s regulatory and enforcement authority. The Governor’s Proposals do not alter this existing structure.

2. Mr. Schneiderman Misstates DFS’s Existing Enforcement Authority

Contrary to the claim made by Mr. Schneiderman, the Superintendent of Financial Services is already authorized to initiate and prosecute civil enforcement actions in New York

courts for violations of the Banking Law, Insurance Law, and Financial Services Law. For example, Financial Services Law section 309(a) explicitly provides that:

the superintendent may maintain and prosecute an action against any person subject to this chapter, the insurance law or the banking law, or the person's officers, directors, trustees or agents, for the purpose of obtaining an injunction restraining such person or persons from doing any acts in violation of the provisions of this chapter, the insurance law or the banking law.

Financial Services Law § 309(a). This provision is consistent with pre-existing provisions in the Insurance Law and the Banking Law. For decades, Insurance Law section 109(d) has authorized the DFS superintendent (and the Insurance Superintendent prior to 2011) to “maintain a civil action in the name of the people of the state to recover a judgment for a money penalty imposed by law for the violation of any provision of this chapter.” The Banking Law has also conferred authority to the DFS Superintendent (and the Banking Superintendent prior to 2011) to bring specified court actions. *See* Banking Law §§ 9-b and 9-c. Indeed, as DFS, not the Attorney General, is the regulator of these industries, it makes absolute sense for DFS to have the authority to enforce through civil actions the laws governing those industries. Federal and state regulators of the financial industry have similar authority.

The Governor’s Proposals do not create “overlapping enforcement jurisdictions” as alleged in Mr. Schneiderman’s letter. Rather, consistent with the authority vested in the Superintendent by New York law and in various other regulators of financial service industries, the Governor’s Proposals simply clean up existing law to ensure that DFS can enforce the Superintendent’s orders and administrative decisions irrespective of whether the order relates to a violation of the insurance, banking, or financial services law, or seeks injunctive relief or a money judgment. The proposal is that simple, and certainly does not warrant opposition rhetoric based on false assumptions.

3. Mr. Schneiderman has Mischaracterized the Governor’s Proposals as Vesting DFS with Criminal Prosecution Authority

The Governor’s Proposals would not require the creation and funding of “a staff of prosecutors and associated support personnel” as claimed by Mr. Schneiderman. None of the Governor’s Proposals would confer criminal prosecution authority to the Department of Financial Services. Such criminal prosecution authority would remain with the district attorneys throughout the state or the Attorney General as appropriate. Although Mr. Schneiderman is correct that his office has represented the Department of Financial Services in certain civil enforcement proceedings, those are circumstances where the Attorney General acts as DFS’s counsel, in an attorney-client relationship. And, even there, attorneys within the Department of Financial Services always work on (and, on occasion, write) the pleadings, motions, and legal memoranda filed in such actions. DFS has the expertise and personnel to assume all responsibilities that would be conferred by the Governor’s Proposals.

4. Mr. Schneiderman Has Not Been Successful in Banning Bad Actors in the Banking, Insurance, and Financial Services Industries

Mr. Schneiderman’s opposition to the bad actor provision in the Governor’s Proposals is shocking for the simple reason that the Attorney General has not sufficiently used what he claims is his existing authority to disqualify bad actors from future involvement in the banking, insurance,

and financial services industries. The bad actor ban in the Governor's Proposals recognizes that, as the regulator of the banking, insurance, and financial services industries, DFS is in the unique position to identify and investigate bad actors, obtain the cooperation of their employers, and successfully use existing administrative procedures to ban bad actors from continuing to work in these industries in New York. The relative advantages that DFS maintains over the Attorney General in industry expertise and regulatory access clearly favor allowing DFS to protect New Yorkers from the continued participation of industry actors whose conduct has compromised the integrity of the financial security of the state and the banking, insurance, and financial services industries that DFS regulates every day and has the expertise to do. No aspect of this proposal, either, seeks to take away any part of the Attorney General's existing authority.

5. Mr. Schneiderman's Opposition to the Governor's Student Loan Servicer Proposal

There are currently 2.8 million New Yorkers with student loan debt. The total outstanding student loan debt in the state is over \$82 billion. The average debt load of a New Yorker with college loans is over \$30,000. Against this backdrop, the Governor's Proposals would require every student loan servicer doing business in the state to be regulated and licensed by DFS. Given the similarity in business activity between student loan servicers and mortgage loan servicers and their comparable histories of problematic market conduct, the proposed student loan servicer licensure program is modeled after DFS's existing regulation of mortgage loan servicers.

If a business engages in student loan servicing in the state without a license, the Governor's Proposals would allow the Superintendent to order such business to desist and refrain from student loan servicing in the state. In the event the business failed to comply with the Superintendent's order, the Governor's Proposals would allow the Superintendent to maintain a civil action to enforce the desist order. It is the inclusion of this one sentence enforcement provision, and for no other reason, that the Attorney General opposes the student loan servicer proposal.

For policy and pragmatic reasons, the Attorney General's opposition is misguided. Under current law, there is insufficient oversight over student loan servicers. Although the Attorney General has authority to enforce state laws, the ability of the Attorney General to take "after the fact" enforcement actions against student loan servicers provides insufficient protection to New York borrowers. The Attorney General's post-hoc enforcement authority is not a close substitute for the licensure and regulatory authority included in the Governor's Proposals. If it were an acceptable substitute, then we would not be in the present environment where student loan servicers are too often identified for their problematic market conduct. Since its creation, DFS has had a student loan protection unit. DFS, as the supervisor of lending activities in New York State, is well suited to oversee and administer the new licensure and regulation of the student loan servicers in the Governor's Proposal. If, after investigating a business that fails to comply with the licensure requirement, DFS issues a desist order that is disobeyed, it is most efficient on every metric to permit DFS to enforce that order in court. Any suggestion to the contrary – and, hence, the Attorney General's opposition – is without any rational support.

The Governor's Proposals only serve to protect New Yorkers from misconduct committed by banks and insurers (Part Y), student loan servicers (Part Z), and bad actors (Part BB). The Proposals do not create overlapping enforcement jurisdiction. The Proposals do not alter the

balance of authority between DFS and the Attorney General. And the Proposals do not require additional or duplicative funding for DFS. The Attorney General's opposition to the Proposals are based on nothing other than petty concerns over turf. It is regrettable that the important consumer protections in the Governor's Proposals are not supported by the state's Attorney General. DFS will always stand up for consumers in New York.

Very truly yours,

A handwritten signature in black ink, appearing to read "Maria T. Vullo". The signature is written in a cursive, flowing style.

Maria T. Vullo
Superintendent of Financial Services

CC: The Honorable Eric T. Schneiderman, Attorney General of the State of New York