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RICHARD H. NEIMAN
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May 7, 2010

The Honorable Charles E. Schumer
Hart Senate Office Building 313
Washington, DC 20510

The Honorable Kirsten E. Gillibrand
Russell Senate Office Building 478
Washington, DC 20510

Re: Financial Regulatory Reform – Preserving New York's Ability to Protect Consumers and Effectively Regulate Banks

Dear Senator Schumer and Senator Gillibrand:

I write to highlight two issues from the current Senate financial reform bill that most directly pertain to New York State, in particular to our ability to regulate banks and protect consumers.

The bill is largely a strong step forward for consumers and for financial stability. Critically for New York, it recognizes our country's long and successful history of dual banking. As you are probably more aware than most, this partnership between states and federal regulators in supervising banks has been beneficial for our consumers, local economies, and position as the world's financial center. However, one critical provision in this regard is under serious attack by opponents of reform and another provision should be removed.

First, the bill's section that allows pro-consumer states to make laws to protect their citizens beyond a federal level is a victory for New York that must remain intact. It removes the Office of Comptroller of the Currency's (OCC) unfettered discretion to override state consumer protection laws. States like New York passed laws to protect borrowers well ahead of the subprime mortgage crisis, but those laws were preempted by an overly aggressive OCC. Had the states been empowered to protect consumers, I strongly believe the housing crisis could have been mitigated.

<u>Those who are against strong consumer protection are targeting this provision for removal, relying on the tired and embellished argument that national banks cannot comply with multiple state laws.</u> It is not true. Banks routinely deal with multiple state laws in areas such as contract enforcement, zoning, and foreclosure, but only when it comes to protecting consumers do they claim they cannot comply. Further, states have demonstrated they have no incentive to go beyond a federal law when that law is appropriately set. For instance, only a handful of states have gone beyond the privacy requirements of Gramm Leach Bliley even though the states have the power to do so.

In fact, granting states the power to protect consumers beyond a federal standard will incentivize the federal government to maintain an appropriate level of consumer protection. This threat of state action will be particularly important in the future when a new administration may be less concerned about consumers than the current one. Even though the bill's language has been watered down several times since the President proposed it last year, it is my hope that the Senate, under New

York's leadership, will ward off these final efforts by those against reform to further undermine this necessary pro-consumer provision.

Second, the provision of the bill to shift state bank supervision away from the Federal Reserve would have the unfortunate and unintentional effect of undermining New York's role in quality supervision. The provision would perversely incentivize New York's largest state supervised institutions away from New York State's supervision. The provision calls for transferring supervision of all state *banks* that are members of the Federal Reserve System from the Federal Reserve (Fed) to the FDIC, but it leaves the very largest *bank holding companies* under Fed supervision. Therefore, if adopted, large state member banks would go from having two regulators as they do now (New York and the Fed) to having three regulators (New York, the Fed, and the FDIC).

The unintended effect would be charter flipping, whereby large state member banks switch to a federal charter in order to be supervised by only two regulators (OCC and the Fed). Such flipping would severely impact New York's smaller community banks due to the necessity of increasing assessments upon them in order to fulfill quality supervisory responsibilities.

I believe undermining New York's supervisory role would be a step backward for reform as it would jeopardize dual banking. It is noteworthy that state banks in New York fared much better during the financial crisis than their national counterparts, while largely steering clear of the risky products that caused the crisis. Further, shifting small banks from the Fed and pushing large banks towards the OCC works against important reform efforts to correct any large bank biases among these federal regulators, to the detriment of most state institutions.

<u>Amendments are expected in the Senate that would retain our partnership with the Fed in supervising state member banks and have some Democratic support.</u> New York would be impacted more adversely than most states if such an amendment failed, as we regulate more large banks than any other. Your assistance on this issue would be of great service to promote New York supervision while assuring that the Fed remains engaged with the perspective of smaller banks that are more in touch with our real economy.

Thank you kindly for your consideration of these two issues and for a reform bill that moves the country forward. New York's national reputation as a financial center – and as the stage for consumer protection and quality supervision that benefits the whole economy – will again be cemented by your leadership.

Sincerely,

Richard H. Neiman

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Superintendent of Banks

cc: New York Congressional Delegation