

**ELIOT SPITZER**  
Governor



State of New York

**ANDREW M. CUOMO**  
Attorney General

November 8, 2007

The Honorable Nancy Pelosi  
Office of the Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Harry Reid  
Office of the Majority Leader  
U.S. Senate  
Washington, DC 20515

Dear Speaker Pelosi and Majority Leader Reid,

The subprime crisis is impacting homeowners across the nation. New York, along with other states, has been working diligently to develop creative responses to address this crisis. Our efforts have ranged from strengthening our antipredatory lending laws, to providing refinancing assistance to subprime borrowers. We have also continued our vigorous enforcement efforts to crack down on abusive lending practices.

We have been closely following a number of bills before Congress that are designed to address the ongoing crisis in the mortgage markets of our nation's economy. These bills contain a number of provisions that promise to provide additional needed protection to homeowners nationwide. We commend Chairman Barney Frank for his leadership on this issue and his commitment to the crucial role states play in protecting their citizens. However, we have serious concerns that the final legislation could eliminate important state protections against abuses in the mortgage industry.

States have historically played a crucial role in protecting consumers from abusive market practices, and must continue to do so. These new federal laws may also play an important role, but it would be a tragic mistake to think that federal regulators can substitute for state law enforcement in this area rather than supplementing it. The cases spearheaded by New York State underscore the enforcement gap left by federal regulators. These landmark cases, brought against some of the largest subprime lenders in the nation, have resulted in the restitution of hundreds of millions of dollars for victims of predatory lending practices, and have led to structural reforms in the way that the lenders conduct business.

As recently as January, 2006, then-Attorney General Spitzer, along with attorneys general and banking regulators of 48 other states, reached a \$325 million settlement with Ameriquest, the nation's largest subprime mortgage lender. The two-year investigation revealed that Ameriquest had created a culture that encouraged sales personnel to engage in deceptive and

fraudulent conduct. As part of that settlement, Ameriquest also agreed to overhaul its sales, appraisals and closing practices. Likewise, in 2002, working with 20 other state attorneys general and banking regulators, New York State reached a \$484 million settlement with Household International, the parent of two of the nation's largest subprime mortgage lenders. Under the terms of that settlement, Household agreed to significantly reform its business practices, including limiting its fees, enhancing disclosure and adopting other consumer protections.

Attorney General Cuomo has continued the tradition of vigorous enforcement in this area. Just last week, the Attorney General filed suit against First American Corporation and its subsidiary, eAppraiseIT, one of the nation's largest real estate management companies. The complaint alleges that First American and eAppraiseIT colluded with Washington Mutual, the nation's largest savings and loan institution, to inflate the appraised value of homes. This collusive activity between the thrift and the appraiser went on for more than a year and a half, and occurred right in the middle of the market meltdown that has now swept the country. However, no action was taken by the bank's federal regulator, the Office of Thrift Supervision. It took the New York State Attorney General to identify and demand an end to this illegal practice.

Importantly, the conduct identified by the Attorney General's Office is not an isolated instance of fraud. Simply put, over the course of its nine-month investigation into fraudulent practices in the mortgage industry, the Attorney General's Office has determined that the appraisal process is broken and that federal regulators are not effectively dealing with it. Moreover, the crisis in the appraisal industry also infects the securities markets. While, in the past, lenders held on to their mortgages, today the vast majority of the loans are sold to the public as securitized investments. But, if the appraisal process is broken, the mortgage loans, and the investments on which they are based, may not be worth what the investors are led to believe that they are worth.

New York is the center of the financial services industry, and has a long tradition of enacting strong consumer protection and securities fraud laws. We would have grave concerns about any bill that would eliminate state law protections with respect to the mortgage industry, including any provision that prohibits the enforcement of state consumer protection and securities fraud laws. Most notably, H.R.3915, the *Mortgage Reform and Anti-Predatory Lending Act of 2007*, as currently drafted contains an express provision prohibiting the enforcement of state consumer protection laws against assignees and securitizers. This express preemption clause should be removed from the bill. The current foreclosure crisis was precipitated by abuses in the secondary market, and the state must not be prevented from enforcing their consumer protection laws in the market.

Moreover, even without such express preemption language, the bills as currently drafted may not provide adequate assurance that state law will continue to operate fully against creditor abuses. Any bill that is merely silent on the question of preemption may lead to a federal agency attempting to preempt state law by issuing preemptive regulations. In order to prevent that result, we urge that any bill contain an express savings clause stating that nothing in the Act, or in any regulations promulgated under the Act, preempts state law. This express savings

clause is needed in light of the increasingly aggressive actions of federal financial regulators to preempt state law even without statutory authorization.

We very much hope that any legislation in this area will preserve the role of the states and state law, and thereby allow us to support such proposals without reservation. They hold great promise for maintaining our nation's strong tradition of home ownership, preserving neighborhoods, and reducing fraud and abuse in the mortgage industry. We look forward to working with you on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eliot Spitzer', with a long horizontal stroke extending to the right.

ELIOT SPITZER

A handwritten signature in black ink, appearing to read 'Andrew M. Cuomo', with a long horizontal stroke extending to the right.

ANDREW M. CUOMO