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## **New York State Legislature 2023 Joint Budget Hearing**

### **Housing**

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## I. New York State’s Homeowner Protection Program (HOPP)

Thank you for the opportunity to submit testimony for the Legislative Joint Budget Hearing on Housing. Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester, Yonkers and Central Islip on Long Island. Empire Justice provides support and training to legal services and other community-based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low-income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including consumer law and mortgage foreclosure defense.

Empire Justice has been working on homeownership and predatory mortgage lending issues since the 1990’s. We work on behalf of homeowners who stand very little chance of winning their battles without professional assistance against the big banks and mortgage servicers who own the majority of mortgage loans in this country. We also work on tax foreclosure, deed theft and foreclosure rescue scams, and neighborhood blight issues. This testimony focuses on the need for continued funding for the New York State Office of the Attorney General’s Homeowner Protection Program (HOPP) - New York’s network of 89 non-profit housing counseling and legal services programs working to preserve homeownership since 2012, and prior to that through a program funded through NYS Homes and Community Renewal. (A history of HOPP and sources of funding is attached as “Addendum A.”)

Prior to the creation of these services and the mandatory settlement conferences, over 90 percent of foreclosures ended in a default judgment against homeowners – meaning, virtually no homeowners but a few were saving their homes once they went into foreclosure.<sup>1</sup> **Since 2012, the New York State Office of the Attorney General (OAG) Homeowner Protection Program (HOPP) network of 89 housing counseling and legal services programs have helped well over 145,000 families statewide, achieving loan modifications in about 34 percent of those cases and saving even more through reinstatement, litigation or other loss mitigation options.<sup>2</sup>**

The OAG last issued its last Request for Applications in the spring of 2020. Contracts started July 16, 2020, renewable up to four years depending on funding availability and performance. Grantees are in the third year of these contracts. HOPP is New York State’s only homeowner retention program focused and the only services in communities throughout New York State focused on helping homeowners in distress. There is no other dedicated funding source for these services statewide. If stable funding is not provided in this year’s budget for HOPP, the vast majority of services will end at the very time the new COVID foreclosure crisis begins this summer. Without assistance, the rate of homes lost in foreclosure will likely climb back up to over 90 percent.

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<sup>1</sup> State of New York Unified Court System, 2011 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009, at 4 (stating “From November 2010 to September 2011, only ten percent of homeowner-defendants did not appear for any of their scheduled conferences, down from an estimated 90 percent prior to the legislation.”).

<sup>2</sup> While preventing foreclosures and saving homes are the ultimate goals of housing counselors and legal services lawyers, the services they provide even when preserving the home is not an option are equally valuable. These services include helping folks to list their homes for sale to preserve their equity, or executing a deed in lieu of foreclosure, negotiating short sales, and helping families plan to transition from their home to alternative housing. Perhaps more significant than anything, is the attention, counseling and education that is provided to homeowners while they go through one of the most psychologically stressful times in their life, potentially losing their home. Even if the home is not saved, homeowners do not need to go through the ordeal alone and understand why they are losing it, and have an action plan for next steps.

## **New York State's Current Delinquency Rate and Disparities for Households of Color**

The best publicly available data since the COVID-19 pandemic began regarding how New York State is doing comes from the U.S. Census Household Pulse Survey.<sup>3</sup> The data is reported in 13 day increments, called a “Week.” The data started with “Week 1” (April 23 – May 5, 2020), and changed in November 2021. This summary focuses on this three month time period, consisting of Weeks 34 through 39 (July 21, 2021 - October 11, 2021).

According to US Census Pulse Household Survey data, New York State's average mortgage delinquency rate in 2022 was **7.4%** (between 12/29/21 to 10/17/22), representing an average 288,261 homeowners delinquent at any one time.<sup>4</sup> This number is significantly higher than any historical data we can find. The last historical high occurred in October 2012, when HOPP began and we were still in the Great Recession – that rate was **7.7%**. The delinquency rate averaged **4.86%** between October 2012 through February 2020, just before the pandemic.<sup>5</sup> The rate in January 2020 was **3.4%**, still a high rate compared to the turn of the century which generally had a foreclosure rate of around or below 1%.

### ***Households of Color Report Significantly Higher Delinquency Rates in NYS***

The U.S. Census Housing Pulse Survey data reports delinquencies by state by a number of demographics; we have been closely tracking race and ethnicity data. Altogether, 16.8% of households of color on average report being delinquent compared to 5.6% of white households in New York State. Homeownership and foreclosure has always been a civil rights issue in New York State. Empire Justice mapped in the early 2000's the targeted impact of predatory and subprime mortgage lending on neighborhoods of color on Long Island in particular, as well as in other parts of New York State. The foreclosure crisis that followed the subprime boon and bust logically and tragically disproportionately impacted these same communities. In the past two years, much light has been shown on the disparate impact of a myriad of facets of the COVID-19 pandemic on black and brown communities. The U.S. Census data is unfortunately not surprising but most certainly evidences the issues of economic justice layered onto the delinquency crisis and the new foreclosure crisis New York is entering now that the moratorium is lifted.

Statewide, 43% of the families served by HOPP are households of color; in New York City, the percentage is 75%. HOPP has always been a program primarily serving lower-income homeowners throughout the State,<sup>6</sup> and one of the strongest stop-gaps for preserving wealth in low-income communities and communities of color.

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<sup>3</sup> <https://www.census.gov/programs-surveys/household-pulse-survey/data.html>. Prior to the pandemic, the NYS Department of Financial Services (DFS) maintained data based on RPAPL sec. 1304 pre-foreclosure notice filings that mortgage servicers are required to send to homeowners at least 90 days prior to filing a foreclosure, and submit information about to DFS. The DFS data includes county-level data, as well as information regarding the homeowner's delinquency (30, 60, 90 or more days delinquent). Once the pandemic hit and the moratoria went into place, mortgage servicers to a great extent stopped sending the RPAPL 1304 notices; thus, we do not have county level or delinquency time data.

<sup>4</sup>Id.

<sup>5</sup> <https://www.consumerfinance.gov/data-research/mortgage-performance-trends/>. The Consumer Financial Protection Bureau's (CFPB) mortgage performance trends data provides historical state-based monthly data, dating back to 2008. For this analysis, we used the two data sets provided in the report posted in September 2021: the first set includes 30-89 days delinquent, the second set includes 90+ days delinquent

<sup>6</sup> HOPP does not set income limits for services, though network providers may set their own internal guidelines. Given the nature of homeownership in NYS, even low-income homeowners often fall above income limits set by

### **HOPP Needs Funding in this Year's Budget**

Governor Kathy Hochul eliminated funding for HOPP in her Executive Budget this year. (Last year, \$20 million from the state general fund was included in her budget to pay for HOPP within NYS Homes and Community Renewal's budget.) We have requested she reinstate funding through the thirty-day amendments. Last year we requested an increase from \$20 million to \$35 million with a commitment of \$40 million for two more years. HOPP received \$35 million in last year's budget and we are left to ask the Legislature for the full amount of \$40 million in this year's budget. The funding request last year which carries over to this year was based on the numbers including:

1. **HOPP needed a minimum \$5.5 million to restore it to its 2012 level.** In 2012, HOPP was funded with \$20 million for direct services; administrative costs were funded separately by the NYS OAG with settlement proceeds.<sup>7</sup> In 2018, the funds which covered administrative costs ran out, and direct service contracts were cut by 12% (\$2.4 million) to cover the shortfall. These cuts were never restored and direct services have been running at less than initially awarded. In addition, operating costs have increased considerably since 2012. The consumer price index rose 15.34% between 2012-2021,<sup>8</sup> a \$3.068 million increase for \$20 million. The cut in funding and the increased costs meant that HOPP organizations had been unable to maintain staffing rates and services at the same level provided in 2012.
2. **NYS's delinquency rate is about 40% higher than in 2012, and over twice the 7-year average.** As set forth above, an average 10.75% of New York State homeowners are delinquent, representing 433,423 homeowners. Funding HOPP at a level commensurate with the increased delinquency rate yields an estimated need between \$28 million to \$44 million.

For HOPP to continue to provide services to the same percentage of distressed homeowners today as served in prior years, the cost is an estimated \$37 million. HOPP agencies serve an average 15,833 homeowners per year,<sup>9</sup> equal to about 75% of New York homeowners facing foreclosure.<sup>10</sup> With an annual allocation of \$20 million, the cost per client comes to \$1,263. While we don't have current case filing data due to moratoriums, we know historically that about 9% of delinquencies lead to a foreclosure filing in New York State.<sup>11</sup> Applied to the current average delinquency number of 433,423, we can expect around 39,000 filings to result in the short term. For HOPP to meet the same level of need, a \$37 million investment is needed.<sup>12</sup>

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other legal services funding sources. HOPP has been the only source of funding available under which much legal services can be provided to homeowners.

<sup>7</sup> Administration costs include the statewide homeowner helpline, escalation program, data collection, training, technical assistance, budget and scope of services review and oversight, periodic application review, and more.

<sup>8</sup> [In2013dollars.com](https://www.in2013dollars.com), citing U.S. Bureau of Labor Statistics Consumer Price Index, stated that "prices in New York were 15.34% higher in 2021 versus 2012." <https://www.in2013dollars.com/New-York/price-inflation/2012-to-2021?amount=20>.

<sup>9</sup>The number of homeowners served per year is based on bi-monthly reports required of HOPP providers. This average number was developed based on data from 2012 through 2019 (pre-pandemic).

<sup>10</sup> In 2019, there were an estimated 21,000 foreclosure filings in New York State. HOPP serves a yearly average of 15,833 homeowners, which represents 75% of the number of estimated filings for 2019.

<sup>11</sup> In 2019, there were just under 227,000 delinquencies, based on DFS pre-foreclosure filing notice data, and an estimated 21,000 foreclosure filings based on data from the NYS Office of Court Administration, representing about 9% of the delinquencies. (This percentage is so low in great part due to HOPP services which prevent thousands of homeowners from going into foreclosure.)

<sup>12</sup> Based on 39,000 expected filings; for HOPP to reach 75% (29,250) of those homeowners, multiplied by the average cost per client of \$1,263, the amount needed is \$36,942,750.

3. **Delinquencies will persist for several years. HOPP needs a multi-year commitment to be sustainable.** Even prior to the pandemic, the foreclosure rate remained high, and we still have a backlog of foreclosure cases dating to the subprime lending crisis. When the moratorium lifted, foreclosure cases that had been stayed during the pandemic restarted along with new filings of almost two years of pent-up cases for homeowners who fell behind during the pandemic. HOPP agencies were also responsible for conducting outreach and submitting applications on behalf of homeowners to NYS Homes and Community Renewal's (HCR) Homeowner Assistance Funds program (HAF) which started January 3, 2022. HAF has prescribed eligibility criteria and borrowers will be required to exhaust other loss mitigation options available to them; the work of applying was more extensive than just submitting an application to HAF. In addition, HCR called upon HOPP agencies to reach out to hard-to-reach homeowners for specialized assistance on applications this past summer. There are still pending applications from over a year ago that continue to be handled by HOPP advocates.

Mortgage foreclosure housing counseling and legal services are complicated fields, requiring in-depth knowledge of mortgage products, loss mitigation programs, state and local laws, regulations and procedures, budgeting and negotiation skills, and more. Cases have gotten increasingly difficult since the pandemic both because of new requirements and programs designed by the GSE's and servicers, as well as because of rising interest rates. Significant new trainings have been done this past year and it takes an investment of time and resources to ensure HOPP's advocates have the knowledge they need. HOPP's 89 non-profits are staffed by personnel trained in all areas and keep up with the changes. Agencies are committed to increase services to meet the demand, but it would be infeasible for them to do so for one year only. Hiring and retention challenges in today's market add to the stress of managing programs on a year-to-year basis. New York State needs to recognize that foreclosure assistance is a permanent safety net need in our changed economy.<sup>13</sup>

### **HOPP Services are Necessary to Implement New York's Laws and Programs to Save Homes and Preserve Communities**

New York homeowners in many ways are better off today than they were following the Great Recession because of the multiple consumer protections instilled in our foreclosure process by the Legislature in response to the crisis. In addition to the pre-foreclosure notices, New York has mandatory settlement conferences as part of the foreclosure process for home loans, there is a "Homeowner Bill of Rights" which includes a pamphlet to be provided by the court to the homeowner referring them to services, the New York State Department of Financial Services has promulgated strong business conduct rules for mortgage servicing (Part 419), and we have strong watchdogs over the industry with the NYS OAG as well as DFS. In addition, this past year, eligible homeowners had ability to cure arrears following the pandemic with federal dollars through the Homeowner Assistance Fund (HAF), administered by HCR.

Among the strongest consumer protections, has been the network of HOPP service providers who are now integral to all the consumer protections listed above, and more. The RPAPL sec. 1304

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<sup>13</sup> It is difficult to find foreclosure data from before the subprime mortgage lending crisis; New York did not maintain statewide data before that time. Generally, however, the foreclosure rate at the start of the century was around or below 1%. According to CFPB data, delinquency rates for New York have generally remained above 3%, even throughout moments of pre-pandemic economic recovery.

notices must include a list of non-profit agencies for homeowners to go to for assistance in their geographic region, as must the “Homeowner Bill of Rights” pamphlets, which are the HOPP agencies. HOPP providers are ingrained in the settlement conference processes in every part of the state – whether it be a physical presence in the court on settlement conference days, providing clinics for homeowners who appear pro se, and/or ready to take immediate referrals from courts. During the pandemic, as the courts began scheduling “COVID conferences” in foreclosure cases, HOPP legal services providers have virtually staffed the conferences and provided “friend of the court” assistance to unrepresented defendants, and have advocated with the judiciary to ensure best practices. The protections set forth in NYS law would be rendered in huge part meaningless if HOPP services became unavailable.

In addition to the protections laid out above, New York has passed and implemented a number of laws and programs to protect homeownership and preserve our communities, such as programs addressing zombie properties, vacant and abandoned properties, deed theft and scams and others that depend on the services of the HOPP network. A full listing of these laws and programs is attached in “Addendum B,” “New York State Laws and Programs that Depending on HOPP Network Services,” illustrating the cascading impact if HOPP services were to go away.

HOPP partners were also called upon to assist with the development and implementation of HAF. New York State was the first in the nation to start their HAF because of the hard work and dedication of HCR to get the program going (which was a huge task, in a short amount of time, that they did very well) and also in great part because of New York’s existing network of housing advocates on the ground in every region of the state. HOPP is the strongest and best network of housing counseling and legal services program in the country. It is because of HOPP, that HAF was able to get up and started as quickly as it did. HAF had a dedicated HOPP portal for advocates to submit applications on behalf of homeowners. HOPP advocates worked directly with HCR and the OAG to ensure other options were explored before HAF dollars were allocated. And HCR called upon HOPP advocates six months into the process to reach out to and provide direct assistance to homeowners who had applied for HAF on their own but had problems with their application process and required follow-up.

Regarding deed theft, home equity theft, predatory lending and all other scams targeted at homeowners in an attempt to strip them of their equity, the HOPP network is the greatest single protection for homeowners. We have two good laws that address home scams which but they don’t address the gamut of scams, and may deter but don’t stop nefarious conduct. Without reputable services provided by non-profits working in the best interest of the homeowners, scams will proliferate. On the backside, homeowners who do succumb to scams will have no resources to turn to for assistance, redress and reinstatement of their homeownership rights if HOPP services go away.

HOPP service providers also assist homeowners facing property tax foreclosure, seniors with reverse mortgages – a very vulnerable population often targeted by scams, and homeowners who have been scammed by “foreclosure rescue” companies or have been victim of a deed theft scam. Homeowners facing all of these issues literally have no place else to turn for direct assistance in New York State.

### **Eleven Years of Investment in HOPP is in Jeopardy**

The housing counseling and legal services programs that make up the HOPP network are well-integrated with each other and work in coordination to provide efficient services to homeowners. Housing counseling agencies generally assist homeowners in default but not in foreclosure with



budgeting, financial education and counseling, and working with mortgage services to get loan modifications or other loss mitigation solutions. Legal service providers assist homeowners through litigation, advising on filing answers to foreclosure complaints, leveling the playing field by providing representation in the settlement conferences where the lenders always have legal counsel, asserting the legal rights of reverse mortgage borrowers and all borrowers, and litigating more complex cases involving predatory loans, deed theft and other scams.

In the wake of COVID, a complicated patchwork of federal and state programs has been developed which homeowners cannot navigate on their own. No uniform program has been established; FHA, Fannie Mae & Freddie Mac, and conventional lenders are developing independent programs to work with homeowners behind because of COVID. New York State enacted its own law on forbearance programs for non-federally-backed loans. Accessing relief requires understanding the details of these various interventions and knowing who owns your loan and what program you may be eligible for. We expect new programs to develop in light of rising interest rates which will require continued expertise to understand and implement. Homeowners need help to insure they can access relief and they need advocates to make sure lenders are complying with applicable federal or NY laws and regulations.

Housing counselors, lawyers and legal assistants in the HOPP network receive extensive training that is ongoing through each year because of the continual development of new programs to assist homeowners. In January of this year, Empire Justice conducted an intensive day-long legal services training to train new hires as a result of this past year's funding increases that was attended by over 100 advocates. We provide more or less monthly trainings for housing counselors and legal services advocates that typically have high attendance rates. Foreclosure prevention is not an area that anyone dabbles in; it requires in-depth knowledge and the HOPP network includes many, many advocates who have been focused on this work since the beginning of HOPP. Elimination of funding would mean an obliteration of year's of investment by the state.

In cases where homeownership cannot be preserved, the HOPP providers provide invaluable services. These services include helping folks to list their homes for sale to preserve their equity, or executing a deed in lieu of foreclosure, negotiating short sales, and helping families plan to transition from their home to alternative, affordable housing. Losing a home, usually the greatest financial asset of families, can be among the most devastating life events. The psychological and emotional impact can be tremendous for a family, not to mention the loss of supports and social networks that can occur when a home is lost. Perhaps more significant than anything, is the attention, counseling and education that is provided to homeowners while they go through one of the most stressful times in their life. Even if the home is not saved, New York homeowners should not go through the ordeal alone and need to understand why they are losing it, and have an action plan for next steps.

Homeownership and community stability is integral to New York's economy. Two years ago, Empire Justice conducted an in-depth study of the impact of foreclosures on New York's economy. The findings are attached herein, in "Addendum C." Given the uncertainty and general lack of data from 2020, we are unable to update these figures but suffice it to say, given the considerably higher rate of mortgage delinquencies today versus two years ago, the economic forecast is much graver.

### **HOPP Needs a Permanent Funding Source**

HOPP ran on leftover funding from settlements for several years. A lack of stable funding causes incredible hardships for the non-profit agencies that comprise the network. Even before the pandemic,

delinquency and foreclosure numbers were decreasing though they were still high. Stagnant wages, increased job insecurity, and higher medical, child care and living costs, along with now rising interest rates, make it unlikely we will return anytime soon to the low delinquency rates of twenty years ago. Our state has invested an incredible amount into the HOPP network and it is a tried and true, incredibly effective and efficient program. The uncertainty every year of whether HOPP will be funded is an agonizing and untenable way for non-profits to function, especially when they hire new personnel with the prospect of having to lay them off the following year. HOPP needs a permanent source of funding in the New York State budget.

Over ten years ago, New York State started down its path to become the best in the nation for protecting homeowners in default and foreclosure. The first laws put in place were providing prescribed pre-foreclosure notices to homeowners and mandating settlement conferences for all residential home loans which immediately reduced the default rate in foreclosure cases from 90 percent to around 10 percent. Simultaneously, HCR started its funding for direct services to homeowners. Many laws and programs have been put in place to address new aspects of the problem – scammers, reverse mortgage defaults, vacant and abandoned homes, zombie properties and more.

With over 500 people employed under HOPP statewide, we have the strongest network of housing counseling and legal services programs working together for homeowners in the country. Most importantly, we have helped well over 145,000 New York families remain in their homes or find a soft landing. It has been a dozen years building capacity, institutional knowledge, networks, and systems within local courts and communities. The new mortgage delinquency crisis brings a host of new challenges New York will face, but we are well-poised with our programs and services to do the very best we can to prevent the highest number of homes from ultimately being lost. All of this investment will be lost, and more, if further funding is not provided.

## **II. Statewide Right to Counsel in Eviction Proceedings**

Empire Justice Center supports a statewide right to counsel in eviction matters (S2721/A1493). If enacted, this legislation would provide essential assistance to tenants across New York State in fighting the loss of their homes. In addition, preventing unfair and unnecessary evictions helps to stabilize families and local communities.

The statewide Right to Counsel legislation (S2721/A1493), introduced by Assembly Member Latoya Joyner and Senator Rachel May, would ensure that every tenant in New York State has the right to a lawyer when facing an eviction and:

- Covers every tenant across the state, regardless of income.
- Covers any legal proceeding that could result in a tenant losing their home.
- Requires that tenants be represented throughout their entire case, not just when they show up in court. This includes legal advice, advocacy, and assistance.
- Requires the State to contract with non-profit legal services organizations to provide Right to Counsel and with non-profit community based organizations to provide tenants' rights education and tenant organizing.

More recently in Monroe County, in response to the Covid-19 pandemic, Rochester's legal services community including Empire Justice Center began a jointly-run pilot program called the Tenant Defense Project to offer legal representation to all income-eligible tenants facing an eviction proceeding in the county. The program has helped to keep tenants housed, and has saved money by avoiding costly re-housing and shelter placements. The Tenant Defense Project hotline has fielded tens of thousands of



requests for legal help with eviction-related issues. Over the past year, the demand for legal assistance has only increased. As a result, the resources required to staff and maintain the project have also increased. Therefore, a state-wide right-to-counsel program must be adequately funded to ensure robust and reliable representation.

When enacted, this legislation will build on New York City's model. In 2017, New York City became the first city in the United States to commit to provide access to free legal services to all tenants facing eviction proceedings in housing court and public housing authority termination of tenancy proceedings<sup>1</sup>. In FY2021, in Housing Court eviction and New York City Housing Authority termination cases resolved by the Office of Civil Justice legal services providers, 84% of households represented in court by lawyers were able to remain in their homes, which both helps the individual and helps preserve affordable housing and neighborhood stability<sup>2</sup>.

In addition to supporting individuals, we know that keeping people in their homes far more cost effective than providing shelter and services to the homeless. It is estimated that the economic benefits of a right to counsel in eviction matters outweigh the costs of providing representation, based on analysis in other jurisdictions across the United States. In the jurisdictions analyzed, most were estimated to potentially realize cost savings of between \$3 and \$6 per dollar invested in a right to counsel<sup>3</sup>.

The positive outcomes provided to tenants in New York City from the right to counsel should be afforded to tenants across New York State. Empire Justice Center and other legal services providers in the regions outside of New York City do provide these services under state contract. However, the current resources and services are not nearly sufficient to ensure that all tenants in need of representation are able to access it. Passage of (S2721/A1493) will enable New York State to bring consistent rights and resources to all New Yorkers facing eviction and will also build an infrastructure to support the highest quality representation.

### **III. Conclusion**

Thank you once again for the opportunity to testify today and again, we urge you to include **\$40 million in this year's budget with a commitment to do the same next year** to provide long-term stability for the Homeowner Protection Program (HOPP) and we encourage the final FY 2024 budget to include **\$172 million to begin implementation of the Statewide Right to Counsel**.

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## Addendum A

### History of the Homeowner Protection Program (HOPP) and New York's Foreclosure Prevention Services Network

The Foreclosure Prevention Services Program was established in 2008 with an allocation of \$25 million in state general fund dollars to the Housing Trust Fund Corporation, within New York State Homes and Community Renewal (HCR). Funding provided competitive collaborative grants,<sup>14</sup> training and technical assistance to housing counseling and legal services programs to provide direct assistance to distressed homeowners. In 2009, New York directed \$21.825 million more in AARA funding (American Recovery and Reinvestment Act) to the program, which supported services through December 2011. HCR implemented an aggressive training program over this period, as well. Seventy trainings were conducted between 2009 and 2012 to teach legal services and private attorneys how to defend mortgage foreclosures (though the trainings resulted in few private lawyers representing homeowners full-time because of the nature and complexity of the cases). Housing counselors were trained primarily through NeighborWorks America's intensive in-person trainings on foreclosure prevention.

In early 2012, as the New York State Legislature was trying to find funding to continue the program, the National Mortgage Servicing Settlement was signed. New York State's Office of the Attorney General (OAG), in control of the settlement dollars, entered into an agreement with the Legislature and State to ensure continuity of services. The OAG gave HCR funding to continue the program through September 2012. The program then moved to the OAG, where the Attorney General created the Homeowner Protection Program (HOPP) with an initial commitment of \$60 million for three years (\$20 million per year). In 2015, with proceeds from another bank settlement, the OAG dedicated \$40 million more to continue HOPP for two years. Additional administrative dollars were allocated to provide for oversight of the grants, and ongoing training and technical assistance to HOPP grantees. The OAG was able to direct dollars from two other bank settlements to network partners which extended the program, as well.<sup>15</sup>

In 2019, HOPP was extended with funding through a re-appropriation of funding allocated to a different program as part of the 2015 MOU, following the OAG settlement between J.P. Morgan Securities LLC and the people of the state of New York.<sup>16</sup> In 2020, \$10 million of this still unspent pot of

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<sup>14</sup> In its first request for proposal process, HCR required housing counseling and legal services programs serving the same geographic area to submit a memorandum of understanding as a way of fostering relationships between these agencies. HCR promoted efficiency by encouraging housing counselors and lawyers to work symbiotically to help homeowners. These relationships have grown and continue today. HCR's foresight is one of the reasons why New York has the most effective network of partners in the country.

<sup>15</sup> The OAG is no longer in control of settlement dollars and is unable to direct any further funding to HOPP. Since 2015, monetary awards from settlements entered into by state agencies and departments go into the general fund to be appropriated by the Legislature and Governor, rather than remaining in the possession of the office. It is our understanding that the OAG has no further funding from old settlements to keep HOPP going.

<sup>16</sup> Aid to Localities – Reappropriations 2019-20, “8. Up to \$25,000,000 may be allocated and distributed for services and expenses of [~~the restore New York's communities initiative pursuant to section 16-n of the New York state urban development corporation act; provided however, notwithstanding any law to the contrary, that such allocation and distribution is subject to the approval by the director of the budget of a plan for such program submitted by the administering department, agency, or public authority]~~ a homeowner protection program administered by the department of law. Within the amounts available hereunder and in conjunction with other remaining funds held by the attorney general consistent with the terms of the Settlement Agreement dated November 19, 2013 between J.P. Morgan Securities LLC (f/k/a "Bear, Stearns & Co. Inc."), JPMorgan

money was used to fund HOPP and an additional \$10 million was allocated from the Mortgage Insurance Fund.

In 2021, a three-year commitment of \$90 million was made with funding from the American Rescue Plan Act's Homeowner Assistance Fund (HAF), however subsequent U.S. Treasury guidance made that allocation unworkable for HOPP; \$20 million was subsequently provided in 2021 to ensure HOPP services continued into 2022 year. In 2022, HOPP received its first increase in a decade from \$20 million to \$35 million for the contract year, July 16, 2022 through July 15, 2023. HOPP grantees were able to right-size their budgets and use funding to hire additional personnel to meet the increased need that resulted from the COVID-19 pandemic years. HOPP is now in its eleventh year, running at \$35 million per year, with current contracts ending July 15, 2023.

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**Chase Bank, N.A., EMC Mortgage LLC (f/k/a "EMC Mortgage Corporation") and the people of the state of New York, \$20,000,000 shall be made available through March 31, 2020; provided further that any remaining amounts shall be made available beginning April 1, 2020;**

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## Addendum B

### New York State Laws and Programs that Depending on HOPP Network Services

Since 2008, New York State has passed and implemented significant laws and programs to help homeowners, communities and neighborhoods impacted by foreclosures. The following *laws require by law or are predicated upon* services provided by the HOPP network of 87 housing counseling and legal services providers:

**1. 90 Day Pre-Foreclosure Filing Notices (RPAPL sec. 1304)** – lenders are required to send a prescribed notice to homeowners at least 90 days prior to filing a foreclosure complaint. This law was set to sunset but was made permanently applicable to all home loans by the 2019 budget legislation.

- The notice must attach a list of at least 5 non-profit housing counseling agencies serving the geographic region of the homeowner. NYS Department of Financial Services (DFS) has to maintain the statewide list of counseling agencies which is comprised almost entirely of HOPP agencies.

**2. Settlement Conferences (CPLR 3408)** – courts must hold a mandatory settlement conference to bring the homeowner and lender together for good faith negotiations in order to prevent avoidable foreclosures, if possible. The law specifically provides homeowners with an additional opportunity to answer foreclosure complaints within 30 days of the first settlement conference, and requires the courts to provide homeowners with information about local legal services programs that can assist them. This law was set to sunset but was made permanently applicable to all home loans by the 2019 budget legislation.

- HOPP agencies are integral to the settlement conference process, representing homeowners in the conferences, at which lenders are always represented by large law firms. HOPP agencies have become ingrained in courts' processes across the state providing informational sessions for homeowners, being present in courts on conference days for defendants who appear *pro se*, and acting as the main referral source for courts. By law, the courts are required to advise homeowners at their first conference of their statutory right to answer the complaint, and many HOPP agencies staff clinics at "first-time-on" settlement conference calendars to intake cases, and assist homeowners in answering complaints on the spot.

**3. NYS Homes and Community Renewal's Homeowner Assistance Fund (HAF)** – Launched on January 3, 2022, HAF provides federal assistance to homeowners at or below 100% AMI who are in default on their mortgage, property taxes or other fees threatening homeownership because of a COVID-19 pandemic hardship. New York's HAF program development was predicated on the existing HOPP network and depends on HOPP service providers to conduct outreach, screen homeowners, and assist homeowners to apply through a specialized HOPP portal. HOPP advocates are also relied upon to negotiate with services and seek alternative resolutions for eligible homeowners to ensure HAF dollars go to the most urgent cases.

**4. Consumer Protections For Reverse Mortgages (RPAPL sec. 1304.1-A, 1304.6(b)(2); CPLR 3408)** – In 2018, the Governor and Legislature extended the 90 day pre-foreclosure filing notice protections and the mandatory settlement conferences to seniors with reverse mortgage loans, and mandated a pre-foreclosure notice specifically designed for seniors confronting reverse mortgage foreclosures. This past session, the Legislature passed legislation providing additional consumer protections for seniors targeted for reverse mortgages (A05626/S04407) and legislation allowing for reverse loan originations

for coops, which mandates similar pre-foreclosure notice and settlement conference protections (A02632/S03686).

- HOPP agencies have seen a steady increase of seniors needing reverse mortgage foreclosure assistance and who are particularly targeted by scammers. Availability of the HOPP network is the only means of ensuring that seniors with reverse mortgages are able to vindicate their rights under New York's pioneering provisions governing reverse mortgages.

**5. New York Homeowner Bill of Rights (RPAPL sec. 1303.3-a)** – DFS is required by law to promulgate a Consumer Bill of Rights that courts must provide to foreclosure defendants at their first appearance.

- The Homeowner Bill of Rights has prescribed language that must state that free legal services are available and provide referral information to HOPP agencies, a provision which is bereft of meaning if the HOPP network is absent.

The following additional laws and programs *depend on* the services provided by the HOPP network:

**6. Deed Theft Scam Prevention** - NY has two laws designed to help homeowners avoid being scammed (the Distressed Property Consultant Law (RPL sec. 265-b) and the "Help for Homeowners in Foreclosure" Notice (RPAPL sec. 1303)), which were both substantially amended to provide better protection by legislation signed this year by the Governor (Chapter 167 of the Laws of NY 2019-20).

- With the Governor's recent announcement concerning the need to amplify protections for vulnerable homeowners preyed upon by deed theft scammers, it bears noting that the distressed homeowners victimized by deed fraud are dependent on the HOPP network of legal services providers in order to secure redress.
- The HOPP network is the strongest way to prevent homeowners from turning to scammers. Homeowners are routinely referred to HOPP agencies by state agencies, elected officials and the courts. Without the network, homeowners will be even more vulnerable to scammers.
- The OAG, DFS, HCR and local law enforcement look to and depend upon information from HOPP agencies to bring enforcement actions against bad actors. Members of HOPP agencies have recently been asked by DFS to participate in a task force convened at the Governor's direction to discuss additional action to address deed theft.

**7. DFS Business Conduct Rule for Servicing Mortgage Loans (Part 419 of Superintendent's Regs)** – The rule sets forth standards of prescribed and prohibited behavior for mortgage servicing and provides guidance to courts on mortgage servicing conduct.

- HOPP agencies are the main enforcers of the regulations and routinely identify violations during the settlement conference negotiations.

**8. Homeowner Hotline (1-855-HOME-456)** – A statewide hotline for homeowners in default and foreclosure to call and have their delinquency or foreclosure case triaged.

- Homeowners are given a warm transfer to the HOPP agency serving their area.

**9. Zombie and Vacant Properties Remediation and Prevention for Municipalities (RPAPL sec. 1308)** – Municipalities across NYS received funding to enforce the Abandoned Property Neighborhood Relief Act of 2016, a/k/a "the zombie property law."

- Municipalities subcontract with HOPP agencies and depend on the services provided to homeowners as an important component of neighborhood preservation efforts; HOPP agencies identify zombie properties and prevent vacancies.

**10. Tenants' Rights to Notice and Holdover (RPAPL secs. 1303, 1305, 1307)** – Tenants in foreclosed properties must be given notice when foreclosures are filed, and are given the right to remain in the property for up to ninety days after a foreclosure sale of a building.

- HOPP agencies often are the only source of information and counseling to tenants about their rights.

**11. Land Banks** – Created in NYS in 2012, there are now 25 land banks across the state.

- HOPP agencies work with land banks to identify properties, prepare individuals to become homebuyers, and assist in efforts addressing neighborhood blight.



## Addendum C

### The Economic Impact of HOPP - HOPP is Cost Effective

*The following analysis was done in November 2019, before the COVID-19 pandemic, based on foreclosure data. Since there was a foreclosure moratorium until a year ago (January 2022), we have not been able to update the research. The recent average delinquency rate is over 10%, compared to a rate around 3.4% when this research was conducted. Suffice it to say, if a similar analysis were done in 2023, the numbers would be far higher.*

HOPP services save New York State over \$1.2 billion a year. Foreclosed homes cost New York State money in several calculable ways. Foreclosure depreciates the value of the foreclosed home, as well as an estimated 50 surrounding homes in non-rural areas.<sup>17</sup> Depreciated values impact tax revenue from homes sales, sales tax, as well as real property tax collections. Foreclosed homes, and especially homes vacated as the result of foreclosures, cost localities thousands of dollars every year in code enforcement, repairs, and emergency response calls. Just looking at the tax savings and additional property cost savings from foreclosed homes, every \$1 million invested in HOPP returns over \$5 million in savings to New York State. Here is a breakdown, based on county level property values and foreclosure rates:

	2019 Projected Losses to NYS If HOPP Did Not Exist	2019 Savings Realized by NYS Because of HOPP Services
<b>Impact on property values</b>	<b>\$4,385,207,338</b>	<b>\$1,096,301,834</b>
Direct impact on foreclosed homes <sup>18</sup>	\$1,529,959,498	\$382,489,874
Indirect impact on surrounding homes <sup>19</sup>	\$2,855,247,840	\$713,811,960
<b>Tax loss/savings<sup>20</sup></b>	<b>\$26,749,765</b>	<b>\$4,772,430</b>

<sup>17</sup> There is no available research data regarding the impact on neighboring properties in rural areas but the impact would be similar, we just can't calculate it.

<sup>18</sup> Direct impact to foreclosed homes was calculated using methodology cited in Alliance of California for Economic Empowerment and the California Reinvestment Coalition, *The Wall Street Wrecking Ball*, (Sept. 2011), and citing Anthony Pennington-Cross, Marquette University, *The Value of Foreclosed Property*, at <https://static1.squarespace.com/static/58d8a1bb3a041137d463d64f/t/5ca7a3c56e9a7f1e0d7f4f17/1554490313328/Wrecking+Ball+-+San+Jose+-+Sep+2011.pdf>, and methodology from the U.S. Joint Economic Committee Report (*Sheltering Neighborhoods from the Subprime Foreclosure Storm*). Our estimates used Mundi index median county home value, our estimated foreclosure numbers for 2019, and the decline estimate from the above report of 22%; the 22% decline estimate is based on the most conservative property value decline ranging from 22% to 28%.

<sup>19</sup> Indirect impact on neighboring home value decline was calculated using methodology from the U.S. Joint Economic Committee and Dan Immergluck, Georgia Institute of Technology and Geoff Smith, Woodstock Institute, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, (March 2010), using what is considered to be a conservative decline estimate in value of .9%. For counties considered to be non-rural counties we have adopted the assumption that approximately 50 nearby homes will be impacted, approximating the number of homes to be encompassed in a 1/8 to 1/4 mile radius in a typically concentrated neighborhood; we applied the .9% decline to 2019 foreclosure estimates. We do not attempt to estimate, and have not included, any projections for impact costs in the 44 counties in NYS recognized as rural counties (see end note 2).

<sup>20</sup> Alliance of California for Economic Empowerment at 3. Property tax losses estimated using lost home values (foreclosed and impacted homes as described above) and using an effective tax reduction rate of 0.61% taken from the U.S. Census and Tax Foundation.

Additional property costs/savings to localities <sup>21</sup>	\$409,997,780	\$102,499,445
<b>TOTAL LOSSES and SAVINGS TO NYS</b>	<b>\$4,821,954,883</b>	<b>\$1,203,573,709</b>

There are additional savings to New York State that are not as easily quantifiable. One savings is the cost of homelessness. While it is impossible to know how many families avoid becoming homeless because of our services, even if that number is less than 3 percent of the clients we serve, HOPP saves money (based on an average cost between housing a homeless family for a year inside and outside of NYC of \$64,000). A second savings is the increased impact and costs that courts would have statewide if our services did not exist. State law requires courts to hold a mandatory settlement conference in every residential home loan foreclosure case.<sup>22</sup> In 2018, there were 41,442 conferences.<sup>23</sup> HOPP agencies are integral to the settlement conferences, being present in courts to assist *pro se* borrowers and providing clinics at first appearances.

A third savings is the cost of deed theft and other scammers. As mentioned above, HOPP agencies are the best defense against deed theft and foreclosure rescue scams. If HOPP services go away, it is inevitable that scams will increase exponentially as desperate homeowners seek assistance. Finally, are the societal costs of foreclosure. Despite our strong consumer protections, scammers still exist and homeowners fall prey. HOPP agencies typically assist homeowners who have been scammed to get their home or money back, and serve as watchdogs on the ground, reporting offenders to enforcement agencies. Deed theft scams, which heavily target gentrifying NYC boroughs but exist elsewhere, cost homeowners hundreds of thousands of dollars in equity, equity that should be going towards generational wealth-building. Foreclosure rescue scams, prevalent across the state, rip off homeowners in the range of \$5,000 to \$8,000 a scam. While the direct costs hit victim families, the state incurs indirect costs as the result of law enforcement efforts, the loss of trickle-down economic effects from equity building, and the opportunity costs of losing generational wealth building in low-income communities and communities of color.

Finally, there are the societal costs of foreclosure. Instability in housing impacts a number of other factors including health, financial stability, emotional distress, childhood education and development, criminal activity, and support networks particularly for older homeowners, to list just a few.<sup>24</sup> These factors have ripple effects on New York’s economy, particularly when families end up having to depend on state systems for support.

<sup>21</sup> *Id* at 4. Cost per foreclosure of \$19,229 based on U.S. Joint Economic Committee report using estimates from Homeownership Preservation Foundation, *The Municipal Cost of Foreclosures: A Chicago Case Study*.

<sup>22</sup> NY CPLR 3408.

<sup>23</sup> State of NY Unified Court System, *2018 Report of the Chief Administrator of the Courts on the Status of Foreclosure Cases Pursuant to 507 of the Laws of 2019*, at 8.

<sup>24</sup> See Kingsley, G.Thomas, Smith, Robin E., Price, David, The Urban Institute, *The Impact of Foreclosures on Families and Communities: A Primer* (July 2009), available at:

<https://www.urban.org/sites/default/files/publication/30431/411910-The-Impacts-of-Foreclosures-on-Families-and-Communities-A-Primer.PDF>.