



MEMORANDUM IN OPPOSITION

April 16, 2021

**S.191 Sanders (On Senate Finance Committee Agenda 4/20/21)
A.5459 Darling (Assembly Ways & Means)**

AN ACT to amend the state finance law and the banking law, in relation to authorizing credit unions to participate in the excelsior linked deposit program

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association (NYBA). NYBA is comprised of small, regional, and large banks across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard \$2 trillion in deposits, and extend nearly \$70 billion in home and small business loans.

The New York Bankers Association opposes this legislation that would authorize credit unions to participate in the Excelsior Linked Deposit Program. This legislation would provide taxpayer funds to institutions that pay no New York income tax and increase the competitive advantage already available to credit unions.

The Excelsior Linked Deposit Program was created in 1993 to expand the sources of funding for small business loans which increase and retain jobs in New York State. The State Comptroller's Office and the Department of Taxation and Finance are authorized to deposit millions of taxpayer dollars in participating lenders at rates of interest which may be 200 to 300 basis points below market rates in return for the depository institutions' passing on the lower rate of interest on loans to qualifying small businesses. This program has been extremely successful, involving most of the retail banks and thrifts in New York, and has provided significant small business credit over the years.

This legislation would expand the Excelsior Linked Deposit Program by authorizing credit unions to participate. Until recently, credit unions have historically not participated in small business lending to a significant degree because their membership is required to be comprised of individuals who share a common bond of employment, association or geography. Because of these membership limitations, credit unions were granted a complete exemption from Federal, State and local income taxes, an exemption that has provided them with a dramatic competitive advantage over tax-paying commercial and savings banks. However, in recent years, credit unions have expanded in size and scope to such a degree that they are now some of the largest financial institutions in the State, and their original purpose has been lost in this expansion.

Banks and thrifts will pay the State of New York this fiscal year more than \$1 billion in State income taxes alone. Credit unions- including those large institutions referenced above- do not pay income taxes. In addition, the Cities of New York and Yonkers receive hundreds of millions more in income tax revenue from banks and thrifts. They receive no revenues from credit unions. Similarly, the Metropolitan Transportation Authority receives hundreds of millions per year in income tax payments from banks and thrifts. It receives no taxes from credit unions. Banks and thrifts as a result are faced with an extraordinary competitive burden not shared by their credit union counterparts. Furthermore, unlike credit unions, banks and savings institutions comply with federal and State Community Reinvestment Act (CRA) requirements. Under CRA, banks put money back into their communities for affordable housing, students, seniors and hospitals, among

many other community programs. Credit unions are not subject to the Community Reinvestment Act, and thus are not required to lend in their communities, nor are they held accountable on community investments through annual examinations.

When the tax exemption was first provided to the credit union industry, one of the most important reasons for the exemption was the fact that credit unions operated for special, limited purposes, drawing all of their members from small, homogeneous groups which shared a common bond. Many credit unions have grown far beyond their local roots, but the Federal Credit Union Act (for Federal credit unions) and the Banking Law (for State-chartered credit unions) continue to require that their members share a common bond. Because of this mandated common bond, credit unions are prohibited from offering their services, including loans, to the general public. This bill would therefore discriminate against those small businesses that are not eligible for credit union membership.

For these reasons, the New York Bankers Association opposes this legislation and urges that it be withdrawn.

Respectfully Submitted,

SHENKER RUSSO & CLARK LLP