



March 8, 2021

RE: 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.

**MEMORANDUM IN OPPOSITION**  
**S.191 (Sanders) / A.5459 (Darling)**

This memorandum is submitted in strong opposition to the subject legislation by the Independent Bankers Association of New York State, Inc. ("IBANYS") which exclusively represents the interests of community banks located throughout New York State.

This bill would amend the State Finance Law to include credit unions as participants in the Excelsior Linked Deposit Program (the "Program"). This Program is currently open to banks, thrifts, farm credit system institutions and the New York Business Development Corporation. All of the current participating lenders pay State and Federal taxes. Under the Program, a lender pays the State a reduced interest rate on its four-year deposit, which is in the form of a certificate of deposit, and the lender in turn reduces the interest rate charged on the borrower's loan by a like amount.

There are a number of sound public policy reasons which militate against the enactment of this legislation. This bill not only permits credit unions to accept State deposits in the context of the Program, it also subsidizes the rate to the lender. This enables the credit union to lower the rate of interest charged to the borrower. Credit unions' lending rates are already effectively subsidized because they pay no Federal, State or local income taxes, negligible sales taxes, and no MTA mobility taxes. Banks are subject to significant regulatory and tax burdens as compared to credit unions. This bill diminishes the value of the bank franchise by rewarding a significant competitor, which does not pay taxes, with an additional subsidy.

The Empire State Development Agency characterizes the Program as an effective marketing tool for lenders seeking new products and customers. This legislation provides taxpayer funds and subsidies to credit unions to make loans, which do not generate any income taxes for the State and Federal government from credit unions. In contrast, loans made by community banks not only aid the State's economy but also result in income taxes being paid by the bank on any earnings from the loans. This bill provides credit unions with a significant competitive advantage based on their current tax exemption status.

There is no provision in this bill which specifically limits its availability to members of the credit union. The competitive advantages would only be compounded if it were interpreted to apply to any business eligible for a linked deposit loan, irrespective of the borrower's membership in a credit union.

Credit unions continue to expand their powers and franchise without accepting the costs associated with taxes and additional regulation, such as compliance with the Community Reinvestment Act. This bill would expand the credit unions' marketplace and loan rate advantages to the significant disadvantage of community banks. Larger financial institutions are not impacted to the same extent as community banks because of their size and scale. In fact, the biggest beneficiaries of this proposed legislation are the larger credit unions, which have more assets than most community banks. These larger credit unions in particular want to function without any limitations as commercial banks, with the glaring exception of paying taxes.

The Community Banking Report issued by the Department of Financial Services in 2013 stated: "Today New York's community banks continued to drive growth throughout the State, touching virtually every major aspect of the economy and significantly affecting the everyday lives of many New Yorkers." Community banks are reliant on municipal deposits and small business loans to operate their business model. The expansion of the Program to credit unions creates an unlevel playing field with a subsidy to a non-taxpaying competitor, along with expansion of their ability to accept State deposits.

Based on the foregoing, ***it is respectfully requested that this bill not receive favorable action.***