July 23, 2021

Honorable Andrew M. Cuomo
Governor
Executive Chamber
New York State Capitol
Albany, NY 12224

Re: Veto Request for A.06247-A/S.5246-A

Dear Governor Cuomo:

The New York Mortgage Bankers Association (NYMBA)[1] and the national Mortgage Bankers Association (MBA)[2] are writing to urge you to veto legislation (A.6247-A/S.5246-A) which would impose depository-like Community Reinvestment Act (CRA) mandates on non-depository independent mortgage banks (IMBs) licensed in New York. This bill is unnecessary and ignores longstanding programmatic requirements, including those you championed while Secretary of the U.S. Department of Housing and Urban Development (HUD), such as enforcement of fair housing laws. It also fails to consider the existing legal infrastructure and significant industry efforts that have greatly expanded mortgage lending to low- and moderate-income (LMI) borrowers in New York.

---

[1] The New York Mortgage Bankers Association, Inc. (NYMBA), is a 501(c)(6) not-for-profit statewide organization devoted exclusively to the field of real estate finance. NYMBA's rapidly growing membership is comprised of both bank and non-bank mortgage lenders and servicers, as well as a wide variety of mortgage industry-related firms. NYMBA encourages its members to engage only in sound and ethical business practices, and informs its members of changes in the laws and regulations affecting the mortgage business. The association helps those engaged in or affected by the mortgage business to be better informed and more knowledgeable. It is dedicated to the maintenance of a strong real estate finance system. This involves support for a strong economy, a public-private partnership for the production and maintenance of single and multi-family homeownership opportunities, and a strong secondary mortgage market.

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 1,700 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

This bill seeks to implement an unworkable set of requirements to mandate activities already being undertaken throughout the state to support affordable homeownership. IMBs cannot accept deposits from customers in the state, and so by definition they do not fail to "reinvest" deposits taken from New York consumers. Instead, the IMB business model takes funds gathered from global capital markets and reinvests them in local New York communities, with a focus on LMI and minority households. The IMB business model is in fact the converse of the depository banking model.

Unfortunately, despite IMBs' strong track record of lending to LMI and minority borrowers, the bill's sponsors rely on a dubious conclusion from the New York Department of Financial Services (NYDFS) that the state's own CRA requirements for New York state-chartered depository institutions have worked well, and that "requiring non-depository mortgage lenders to comply with CRA requirements would lead to these institutions to focus more on serving the entirety of the communities in which they operate, resulting in an increase in lending to minorities and low-income borrowers."[3] The data discussed below do not support this conclusion as IMBs in New York have served LMI borrowers very well without a CRA law for the last decade. These are points the NYDFS report acknowledges, but skips over, because they conflate fair lending issues with community reinvestment.[4]

Additionally, the legislation advances a false narrative that IMBs operate in an unregulated financial system. The assertion, for example, made by the bills' sponsors in their introduction memorandum that without this legislation communities will be left "vulnerable to fair lending abuses" completely ignores two indisputable facts. First, federal and state laws are readily available tools for government bodies as well as private litigants to pursue fair lending violations. The Fair Housing Act and Equal Credit Opportunity Act (ECOA) apply to all mortgage lenders, IMBs included, and include strict penalties for discrimination. Second, there already is a vast network of state and federal regulators actively engaged in enforcing these statutes and otherwise supervising and regulating nonbank lenders. This array of supervisory bodies includes the Consumer Financial Protection Bureau (CFPB), the U.S. Department of Justice, the HUD Office of Fair Housing, the New York Attorney General, and the NYDFS.

[3] *Report on Inquiry into Redlining in Buffalo, New York* , New York Department of Financial Services, February 4, 2021, page 22: https://www.dfs.ny.gov/system/files/documents/2021/02/report_redlining_buffalo_ny_20210204_1.pdf

[4] The A.6247-A Sponsor's Introduction Memorandum – https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A06247&term=2021&Summary=Y&Memo=Y – states: "In February of 2021, the Department of Financial Services released a report on redlining within the City of Buffalo. In it, DFS recommended that non-depository lenders are extended into CRA's mechanisms of investigation and compliance. Accomplishing so would increase lending to minorities and low-income borrowers as they are currently served at higher rates than CRA regulated banks. This is collaborated by Homestead Funding Corp, a non-depository lender who explained that its ability to reach minority populations in the Buffalo area is partly attributable to the fact that it operates in another state with CRA requirements on non-depository institutions."

Background

The NYMBA and MBA understand and respect the bill sponsors' concerns. Our organizations and member companies fully support the extension of mortgages to creditworthy borrowers regardless of race, ethnicity, immigration status and other protected classes. We categorically oppose illegal discrimination, which never should be tolerated in housing and credit markets. Housing policy in the state can and should seek to ensure that LMI borrowers and communities have access to mortgage credit on a fair and equitable basis. The state and federal lending laws that address these issues should be enforced robustly.

By contrast, the CRA addresses policy concerns that are distinctly different and that are uniquely tied to the acceptance of insured consumer deposits. The CRA is meant to ensure that financial institutions accepting deposits from a particular community reinvest those deposits in that community and otherwise meet the credit needs of the residents, including consumer loans, mortgages, and small business lending. Put simply, it ensures that the deposits residents entrust to a bank are available to meet the credit needs of that community. The CRA also seeks to ensure banks that have national charters serve the broader market in locating branches to take deposits and growing their operations.

The IMB business model is fundamentally different than the bank business model. IMBs are designed to tap global financial markets to fund mortgages locally – in effect, IMBs draw capital from Wall Street and deliver it to Main Street. IMBs do not accept deposits, nor are they the beneficiaries of any other direct taxpayer backstops for their ongoing operations.[5] Moreover, as demonstrated below, they have a proven track record of strong and reliable lending to LMI borrowers and communities. They are subject to the same fair lending laws and consumer-facing regulations as depository institutions to ensure sound underwriting and high-quality lending on a nondiscriminatory basis.

Facts About IMB Lending to LMI Borrowers In New York

A February 3, 2021, press release from the NYDFS uses highly charged language regarding its examination of mortgage lending in Buffalo to recommend that the New York Legislature extend the state's CRA law to nonbanks. "…Department of Financial Services finds significant lack of lending in majority-minority neighborhoods and to homebuyers of color, decades after redlining was banned by law." The release further asserted "[a]pplying the CRA to non-depository mortgage lenders would be an important step in addressing fair lending abuses in the New York residential loan market. This is increasingly important as nonbank mortgage lenders now make a majority of loans nationwide."[6]

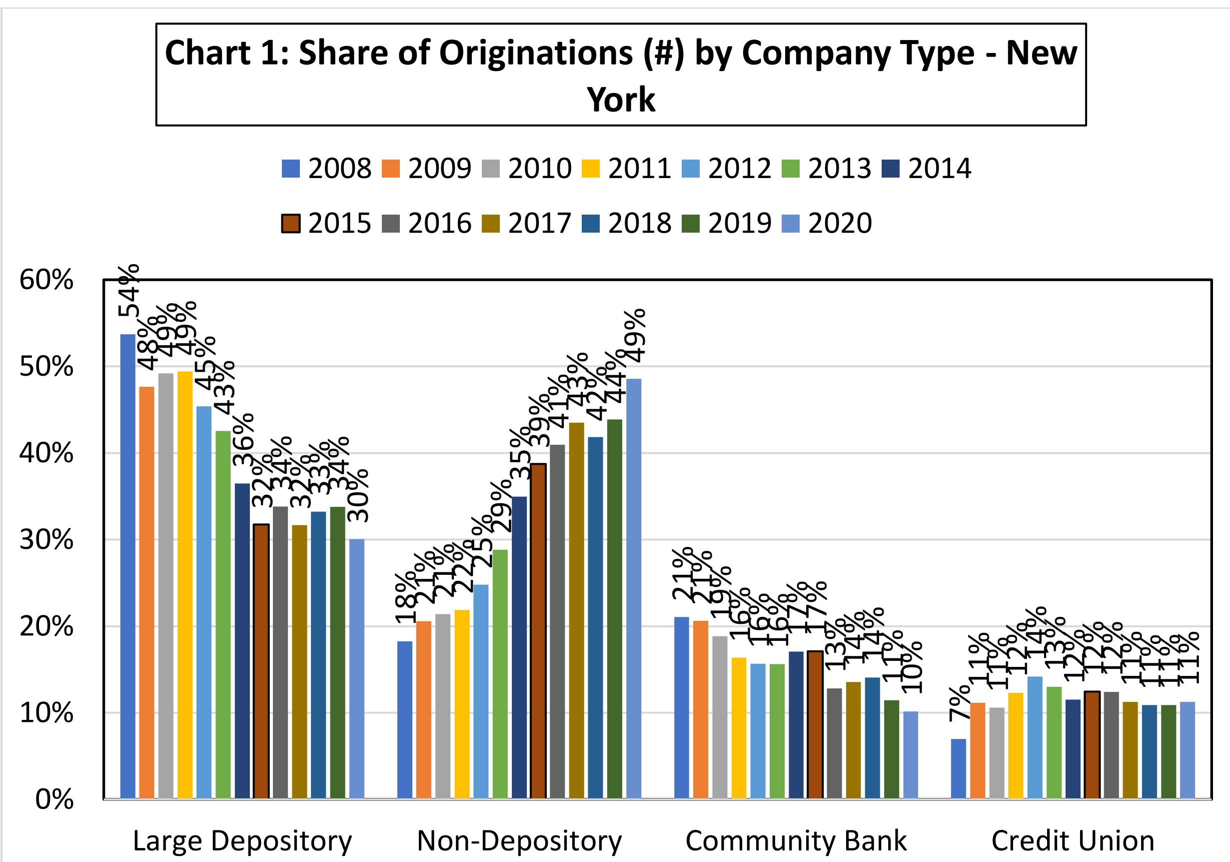
[5] Indeed, access to federally-insured deposits, Federal Home Loan Bank advances and Federal Reserve liquidity support represent significant advantages for banks over IMBs. It would be inequitable to impose the same burdens banks bear in exchange for such taxpayer support on those companies that do not receive similar benefits, and compete with those that do.

[6] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202102043

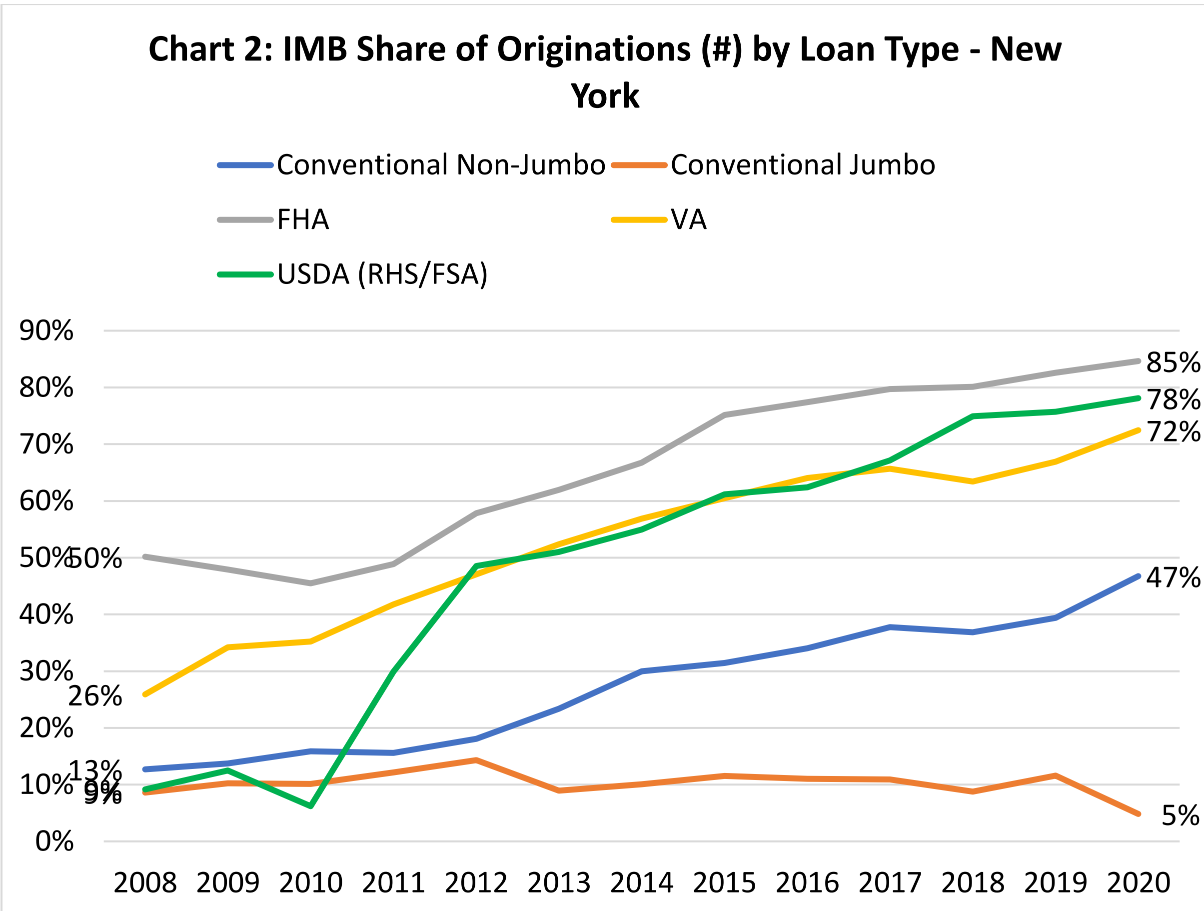
The assertion that IMBs are redlining in Buffalo is unsupported by evidence and inappropriate. It is simply wrong to conclude that the inapplicability of CRA to licensed and regulated nonbank mortgage lenders in New York jeopardizes credit access for LMI borrowers. Federal Home Mortgage Disclosure Act (HMDA) data over the last 12 years provides remarkable evidence to the contrary.

IMBs have accumulated an admirable record of LMI lending in the state *without a CRA mandate.* The following data review IMB lending in New York between 2008 and 2020, the most recent year for which HMDA data is available. During this period, national banks were covered by federal CRA requirements, and New York state chartered banks were covered by both federal and state CRA laws, and yet banks' share of lending to underserved populations declined precipitously, while the IMB share rose sharply.

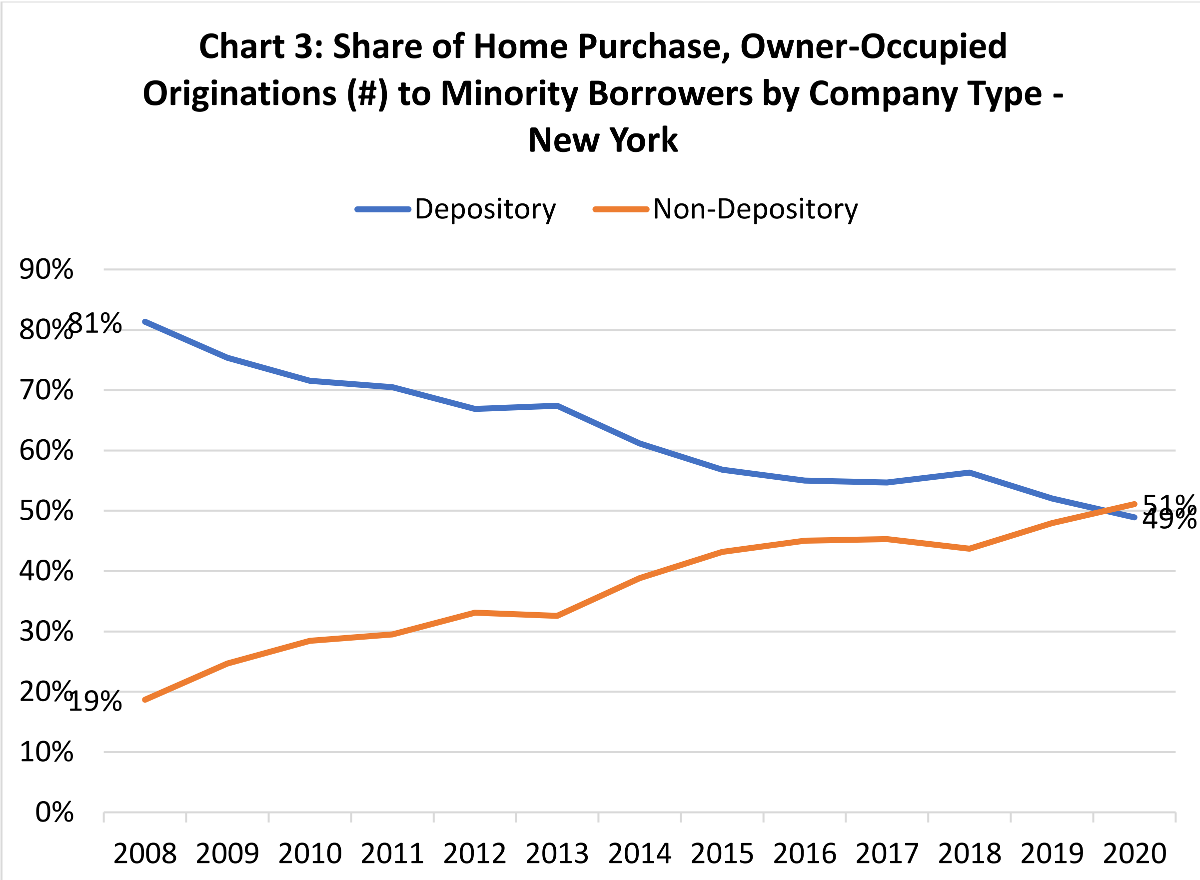
First, please note that the nationwide IMB share of overall single-family origination volume (in units) climbed from 25% in 2009 to 63% in 2020. In New York, the IMB share climbed from 18% in 2008 to 49% in 2020 (Chart 1).



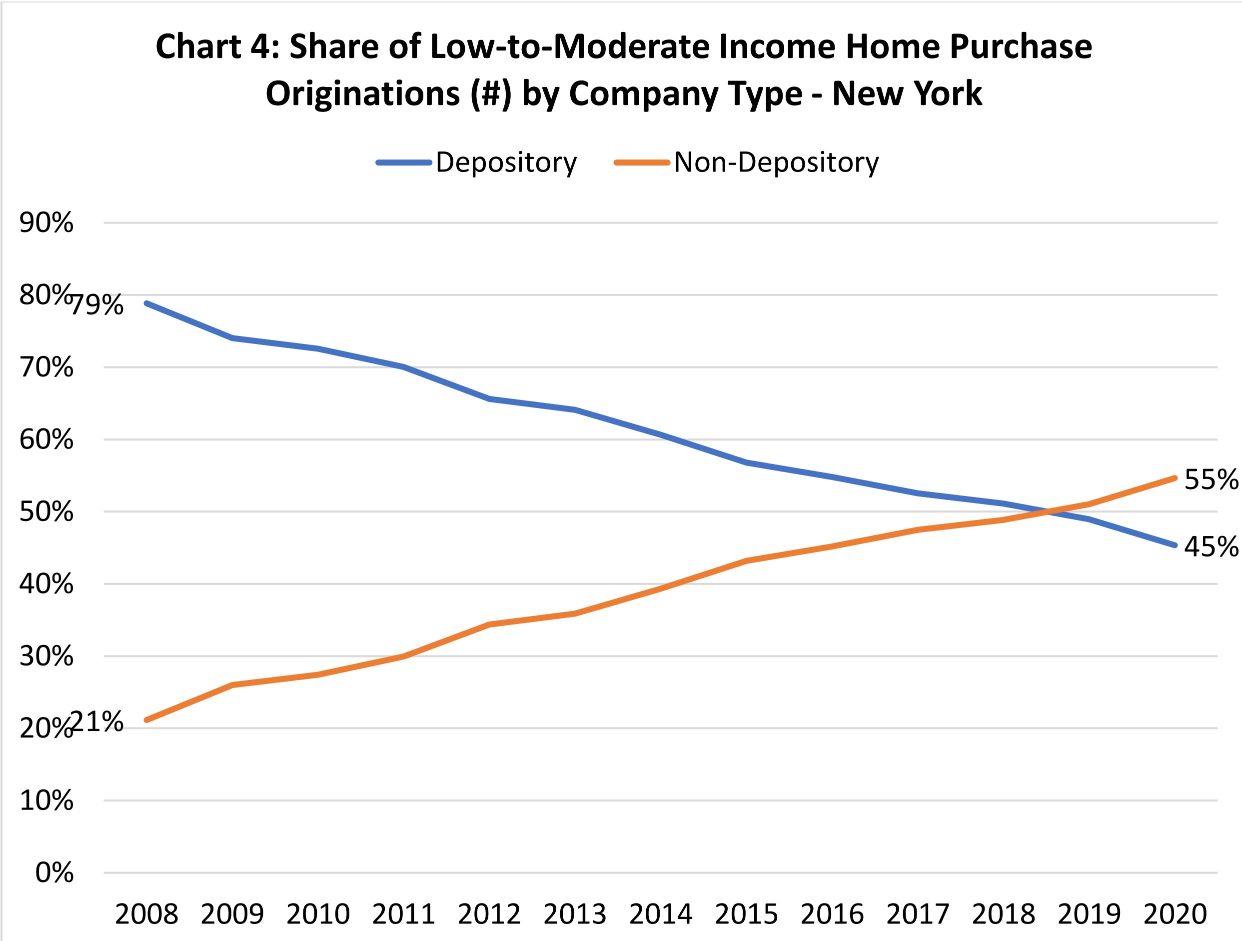
Moreover, IMBs are the primary source of government-backed loans designed to serve LMI borrowers, first-time homebuyers, veterans, and consumers in rural areas. In New York in 2020, IMBs accounted for 85% of all loans insured by the Federal Housing Administration, 72% of loans guaranteed by the Department of Veterans Affairs, and 78% of loans insured by the Rural Housing Service (Chart 2).



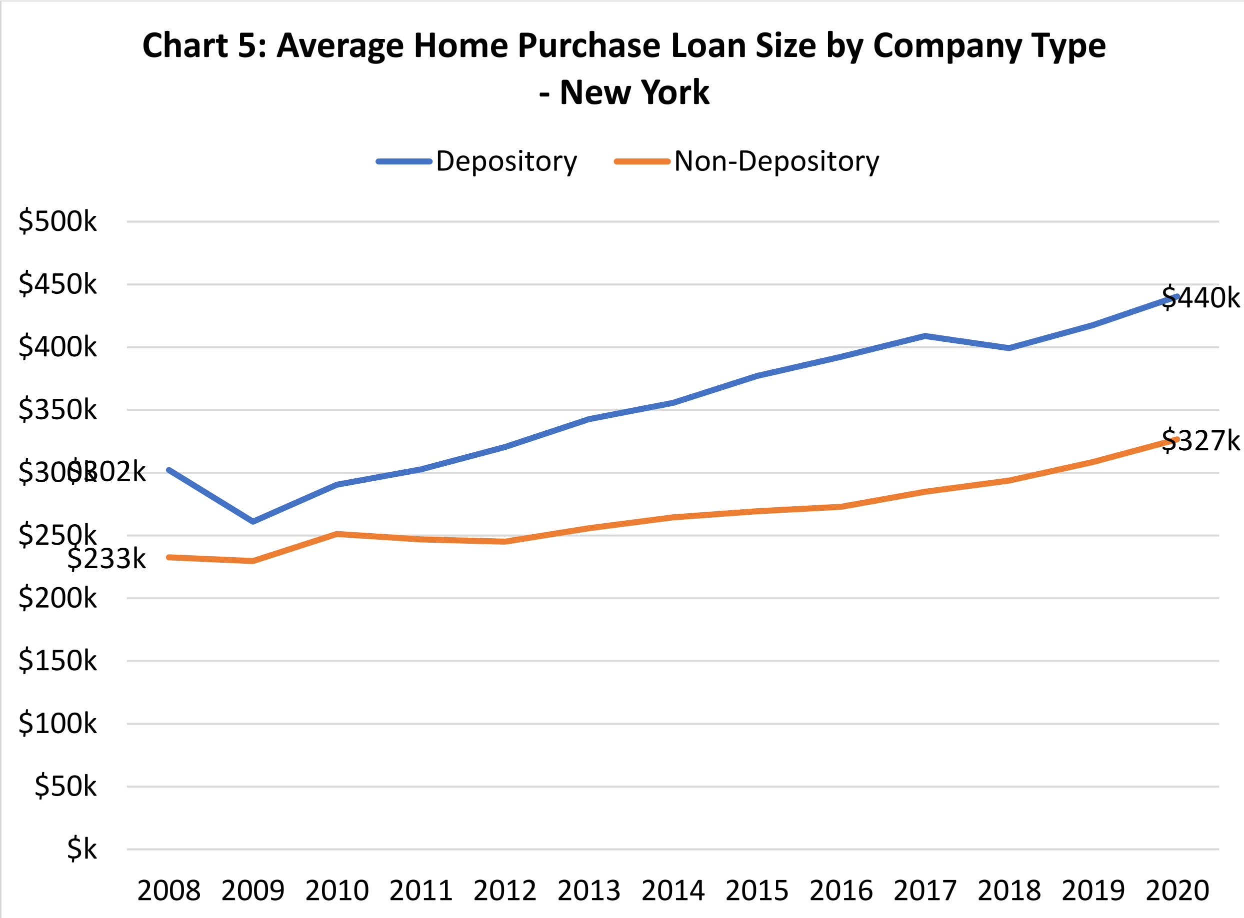
Given their market focus on government lending, during 2020 IMBs in New York originated 51% of home purchase mortgage loans to minority homebuyers, which is up from 19% in 2008, and higher than the IMBs' overall market share (49%, Chart 1) in New York (Chart 3).



In New York, IMBs accounted for 55% of home purchase loans to LMI borrowers in 2020, which is up from 21% in 2008 (Chart 4). Again, IMBs' share of loans to LMI borrowers is higher than their overall market share (49%, Chart 1).



IMBs also tend to serve borrowers needing lower-balance loans. In New York, the average loan amount on home purchase loans for IMBs was $327,000 compared to $440,000 for depositories. These lower balance loans tend to serve first-time homebuyers and LMI communities. (Chart 5).



Given the data trends during the past decade, it is difficult to understand the NYDFS claim that lack of access to credit for LMI, minority and other underserved borrowers in New York is a result of the lending policies and practices of independent mortgage banks. It appears that the basis for this claim stems from the significant omissions and gaps in the report on which the sponsors of this bill rely. The NYDFS report relies on an overly simplistic methodology of comparing LMI populations in census tracts to loans made in those same areas. It makes no attempt to consider available non-rental housing inventory and that lack of loans may be an outgrowth of the real and pressing lack of supply in affordable housing. Relatedly, the NYDFS methodology does not consider the impact of real estate investors on the number of loans made in LMI census tracts as those investors purchase housing units in these neighborhoods without traditional mortgage financing and convert them into rental housing. The NYDFS also does not evaluate whether potential LMI borrowers' debt-to-income ratios meet federal ability-to-repay standards mandated by Dodd-Frank laws and strictly enforced by CFPB. Lastly, in its report NYDFS has not gauged the willingness of home sellers to accept competitive offers from borrowers using FHA insurance or VA guarantees, because of the delays that can often accompany loan qualification and closing under these programs.

Massachusetts as a Model?

Supporters of the legislation point to Massachusetts, because in 2006 the Commonwealth enacted a statute mandating CRA for nonbank mortgage lenders.[7] The Massachusetts Division of Banks promulgated regulations in 2007 and conducted its first nonbank CRA exam in 2009. It is reasonable to conclude, therefore, that lending in Massachusetts to LMI borrowers over the past decade should serve as a case study to assess its efficacy at stimulating more lending to LMI and minority borrowers compared to states without a nonbank CRA requirement. This inference is not supported by data.

If CRA for IMBs were an effective policy measure, the rules in Massachusetts would be expected to result in faster growth in IMB lending to LMI and minority homebuyers after implementation compared to states without CRA requirements for IMBs. A comparison of the key HMDA data points discussed above do not reveal results that support enacting a CRA law in New York:

- Chart 3: In Massachusetts, the proportion of mortgages made to minority homebuyers by IMBs increased from 27% in 2008 to 62% in 2020 – an impressive increase of 129% after the enactment of CRA. In New York, the share of loans to minority homebuyers by IMBs rose from 19% to 51% over the same time period – a 168% increase in the IMB share of purchase loans to minority households *without a CRA requirement*.

- Chart 4: Similarly, the IMB share of home purchase loans to LMI households in Massachusetts rose from 27% to 62% between 2008 and 2020 – a 129% increase. By comparison, *without a CRA mandate in New York* the IMB market share of purchase loans to LMI borrowers grew by 157% from 21% in 2008 to 55% in 2020.

The bottom line – compared to Massachusetts, ***New York experienced faster market share growth in IMB lending to CRA-targeted populations <u>without</u> a CRA requirement for nonbank lenders.*** The Massachusetts data do not provide a compelling case that CRA requirements for nonbanks will generate faster growth in lending to LMI, minority and other historically underserved populations. CRA requirements will impose greater compliance costs and higher examination expenses that will raise costs for consumers and may discourage IMBs from <u>expanding or establishing</u> operations in the state. New York's challenging regulatory climate already appears to have significantly reduced the overall IMB market share in the state (49%, Chart 1) relative to the national average (63%). Adding CRA burdens on IMBs could exacerbate this disparity and end up reducing access to credit to CRA-targeted populations.

[7] https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A06247&term=2021&Summary=Y&Memo=Y

Alternatives to Encourage More Lending to LMI Borrowers

The successful record of nonbanks in serving LMI borrowers is not accidental. As noted above, it is in great measure the result of them becoming the primary source of credit for FHA, VA and RHS borrowers – programs designed to serve many of the same borrowers and communities as the CRA. Much of that market share was ceded by bank lenders that withdrew from these important programs. Policy and law makers should seek to understand why this has taken place and support policies in the state and at the federal level that increase the diversity of lending institution business models participating in these programs which are specifically designed to serve the LMI populations.

Moreover, rather than burdening nonbank lenders with unnecessary and expensive new regulatory burdens that are illogical – i.e., examining a nonbank's track record of reinvesting deposits it never received – legislative leaders and the Executive branch should work together to pursue expansion of homeownership options the industry has already operationalized, and thousands of New Yorkers have used to transition from rental housing to homeownership. For example, downpayment assistance programs, affordable housing tax credits, programs offered through state housing finance agencies, including the innovative programs of the New York State Mortgage Agency (SONYMA) and the New York City Housing Development Corporation. These low-interest mortgage loans and other programs already exist and with additional support from policy makers could help even more qualified LMI buyers in the state purchase their first home.

New York policy makers also should play a role in supporting efforts at the national level to improve homeownership opportunities for LMI households, with a particular focus on communities of color. Ongoing coalition efforts across groups representing consumers, lenders, servicers, and other mortgage market stakeholders are focused on several discrete areas in which targeted changes to policies and market practices – or greater investments – hold the potential to increase housing supply and lending to LMI borrowers. These include changes related to homeownership counseling, down payment assistance, housing production, credit and lending standards, homeownership sustainability, and marketing and outreach.

The real estate finance industry continues to serve as a partner in further reducing the racial homeownership gap and promoting sustainable homeownership policies for communities of color.

Conclusion

Our organizations urge you to veto A.6247-A/S.5246-A. IMBs are serving the communities and borrowers most in need, without a government mandate. Subjecting IMBs to the CRA would impose unnecessary costs on these organizations and is unlikely to produce significant incremental benefits, given the important role IMBs already play in serving LMI borrowers. It is more likely that this additional mandate would reduce competition and choice among those lenders offering affordable mortgage credit options in the state, and consequently increase consumer costs. Again, IMBs:

- do not have deposits to reinvest;
- do not have access to direct government support;
- already engage in sustainable lending in LMI communities; and,
- are subject to robust oversight and supervision in every state they operate as well as from federal regulators.

If you have questions, or need more information, please feel free to contact Christina Wiley (cwiley@nymba.org) or Pete Mills (pmills@mba.org).

Respectfully,

Christina Wiley
Executive Director
New York Mortgage Bankers Association

Pete Mills
Senior Vice President, Residential Policy and Member Engagement
Mortgage Bankers Association

CC: Superintendent Linda A. Lacewell
Majority Leader Crystal D. Peoples-Stokes
Chairman Timothy M. Kennedy
Niall O'Hegarty, Deputy Secretary to the Governor for Financial Services and Taxation
Craig Herskowitz, Assistant Counsel to the Governor for Taxation and Financial Services

Attachments

- MBA White Paper - *Applying CRA to Independent Mortgage Banks: An Ineffective and Misguided Policy Choice*

MORTGAGE BANKERS ASSOCIATION

Applying CRA to Independent Mortgage Banks:
An Ineffective and Misguided Policy Choice

Issue:	Regulators and legislators – at both the federal and state levels – are considering options to extend the reach of the Community Reinvestment Act to independent mortgage banks.
Concern:	These policy options represent a solution in search of a problem and do not recognize the incompatibility of the Community Reinvestment Act with the business models and historical lending activities of independent mortgage banks.
Highlights:	Independent mortgage banks: • Do not have deposits to reinvest • Do not have access to direct government support • Engage in sustainable lending in low- to moderate-income communities • Are subject to robust oversight and supervision
Bottom Line:	The application of the Community Reinvestment Act to independent mortgage banks would be an ineffective and misguided policy choice.

In recent months, regulators, legislators, and others in the public policy community have re-visited the structure and contours of the Community Reinvestment Act (CRA; Act). The CRA was enacted in 1977 to encourage covered depository institutions to "demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business," including "the need for credit services as well as deposit services."[1] While various amendments to the implementing regulations have been made over the past 40 years, major changes in the nature and provision of financial services have spurred some to call for more fundamental CRA modernization efforts.

Among the options being considered by Congress and state legislatures is an expansion of CRA requirements to apply to non-depository lenders, such as independent mortgage banks (IMBs). This would be a major policy mistake—one that overlooks the data on IMB performance in serving low- to moderate-income (LMI) communities and rests on a misunderstanding of the IMB business model as well as the purposes of the CRA.

[1] 12 U.S.C. § 2901(a).

Lack of Deposits to Reinvest

The CRA was designed to cover deposit-taking institutions that enjoy the benefits of federal deposit insurance provided by the Federal Deposit Insurance Corporation (FDIC). These institutions include national banks, savings associations, and state-chartered commercial and savings banks. The primary purpose of the Act is to ensure that if financial institutions accept deposits from a particular community or population, they also lend to, or invest in programs or activities that benefit, that community or population. In other words, in exchange for receiving FDIC deposit insurance, these institutions must *reinvest* an appropriate proportion of these deposits in a fair and equitable manner—hence, the name of the Act.

In contrast to FDIC-insured institutions, IMBs do not accept deposits from their customers as a source of funds to lend or invest, and therefore are not recipients of FDIC deposit insurance. IMBs instead use short-term borrowing, or warehouse lines of credit, to obtain the funds needed to originate mortgages. This borrowing is secured by the funded mortgages until the mortgages are sold to investors in the secondary market. As a result, the IMB business model is designed to *import* funds from global capital markets and lend those funds in local communities to support homeownership. IMBs do not take in deposits or other resources from these local communities, and therefore the concept of *reinvesting* does not apply. Rather, IMBs channel capital from outside the local community into productive uses within that community. At its core, this is an entirely different model of originating mortgages than the model used by banks, and it is not compatible with the requirements of the CRA.

Lack of Access to Direct Government Support

The CRA obligations imposed on banks not only represent a policy choice to promote lending and investing in LMI communities, but also are a mechanism to ensure that institutions receiving access to various types of government support serve the taxpayers that provide this support. Many depository institutions that are subject to the CRA, for example, are eligible to access deposit insurance from the FDIC, advances from the Federal Home Loan Banks (FHLBs), and emergency loans from the Federal Reserve through the discount window. These programs provide both reliable liquidity on an ongoing basis and backstop funding in periods of stress.

IMBs, however, are ineligible for any of these government benefits. If an IMB faces liquidity strains, it cannot turn to FHLB advances or obtain funding from the Federal Reserve discount window. The operations of IMBs are not directly supported by federal backstops in the way that is true of insured depository institutions' operations. As such, imposing CRA obligations on IMBs as a means of compensating taxpayers imposes cost burdens on IMBs with no offsetting benefits.

Robust Lending in LMI Communities

One of the main objectives of the CRA is to ensure reliable, sustainable lending to LMI borrowers and communities throughout the country. This is a laudable goal, and any national housing policy should foster and promote such lending. Those arguing to extend CRA obligations to IMBs on these grounds often ignore the fact that IMBs already engage in substantial lending in LMI communities—and IMBs compare very favorably to other types of financial institutions in this regard.

Based on Home Mortgage Disclosure Act (HMDA) data and the CRA files from the Federal Financial Institutions Examination Council (FFIEC), the Urban Institute found that IMBs have a higher LMI borrower share and LMI area share than banks, whether viewed by loan count or dollar volume.[2] Similarly, IMBs are the dominant originators in the government housing finance programs operated by the Federal Housing Administration (FHA), Department of Veterans Affairs (VA), and Rural Housing Service (RHS). The FHA program, in particular, primarily serves LMI borrowers and accounts for a disproportionate share of lending to minority borrowers and first-time homebuyers. According to 2019 HMDA data, IMBs originated more than 85 percent of FHA loans, 74 percent of VA loans, and 69 percent of RHS loans. Further, IMBs originated nearly 67 percent of loans to minority borrowers and approximately 62 percent of purchase loans for LMI borrowers. Finally, IMBs served homebuyers with lower average purchase loan amounts ($264,000) than their depository counterparts ($298,000).[3]

Taken together, these statistics point to a clear conclusion—IMBs do not need any regulatory obligation or incentive in order to serve LMI borrowers and communities; they have a strong history of doing so that continues today. As a result, extending CRA coverage to IMBs is very much a policy solution that is detached from IMBs' willingness and ability to provide mortgage credit to LMI borrowers and communities.

Strengthened Regulatory Oversight

Another argument made in favor of a broader CRA that applies to IMBs centers on the idea that CRA examinations serve as a defense against poor underwriting practices, such as those that were prevalent in some areas of the mortgage market in the years prior to the financial crisis. As this argument goes, IMBs that do not undergo bank examinations would be well served to submit to CRA examinations to better ensure that the loans they originate are sustainable for consumers.

This view, however, is rooted in a pre-2008 regulatory framework and ignores the dramatic changes in both the state and federal oversight of IMBs over the past decade.

---

[2] Goodman, Laurie, Jun Zhu, and John Walsh, "The Community Reinvestment Act: Lending Data Highlights," Urban Institute, November 2018. Available at: https://www.urban.org/sites/default/files/publication/99427/community_reinvestment_act_lending_data_highlights_update.pdf.

[3] Mortgage Bankers Association, "Independent Mortgage Banks: Financing the American Dream." Available at: https://www.mba.org/Documents/Policy/22153_MBA_IMB_Summary_Report_2021.pdf.

In addition to more robust prudential standards that are applied by state regulators and counterparty risk standards that are applied by Fannie Mae, Freddie Mac, Ginnie Mae, and warehouse lenders, IMBs also are subject to the supervisory, investigative, and enforcement authority of the Consumer Financial Protection Bureau (CFPB). The CFPB examines IMBs with respect to their lending practices and their compliance with consumer-facing regulations.

Further, the regulatory framework in place in the mortgage market today effectively has eliminated the damaging types of products that contributed to the financial crisis—for lenders of all types. The CFPB's ability-to-repay rules and the accompanying Qualified Mortgage standard, for example, better ensure thorough documentation of borrower income, assets, employment, and debt, as well as promote product features that are more likely to foster long-term homeownership for consumers.

In contrast, CRA examinations are not the mechanism by which to ensure high-quality lending. Such an argument conflates the purpose of the CRA and fails to recognize the far-superior post-crisis methods for overseeing underwriting practices that now are in place for all lenders. Again, the CRA simply is the wrong solution to the concerns raised in this context.

* * *

National housing policy can and should seek to ensure that LMI borrowers and communities have access to mortgage credit on a fair and equitable basis. Indeed, all lenders should serve such borrowers and communities, and discrimination in any form should not be tolerated. The CRA is a vital component of this policy objective, though advocates of extending CRA to IMBs should remember that the CRA has a far more specific purpose. The CRA is meant to ensure that financial institutions accepting deposits from a particular community or population reinvest those deposits in that community or population.

IMBs do not accept deposits, nor are they the beneficiaries of direct taxpayer backstops for their ongoing operations. They have a proven track record of strong and reliable lending to LMI borrowers and communities, and are subject to the same consumer-facing regulations as depository institutions, which ensures sound underwriting and high-quality lending.

Subjecting IMBs to the CRA therefore would impose costs on IMBs that are unlikely to produce significant incremental benefits, given the important role IMBs already play in serving LMI borrowers. As such, CRA is an ineffective and misguided policy choice with respect to IMBs—a mistake that Congress and state legislatures should take care to avoid.