October 15, 2025

Terry McMahon, Esq.,
New York Department of Financial Services
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New York, NY 10004
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Re: Compliance with Banking Law Section 28-bb; I.D. No. DFS-05-25-00002-RP

Dear Mr. McMahon,

The national Mortgage Bankers Association (MBA),[1] the Mortgage Bankers Association of NY (MBA of NY),[2] the New York Mortgage Bankers Association (NYMBA),[3] and the Empire State Mortgage Bankers Association (ESMBA),[4] appreciate the opportunity to comment on the revised proposed regulation published in the September 3, 2025 New York State Register (Register) to implement New York's Community Reinvestment Act (NYCRA) for independent mortgage banks (IMBs).[5] We have reviewed the revised proposal and the New York Department of Financial Services' (Department's) Assessment of Public Comments from the prior version of the proposed regulation and offer the following additional comments.

First, we want to reiterate to the Department the record of IMBs in New York and their growth of market share of mortgage lending and their proportion of lending to low-and moderate-income

[1] 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.

[2] Since 1948, the Mortgage Bankers Association of New York continues to offer its members endless opportunities for networking and education. A broad spectrum of firms and individuals choose membership in the MBA of NY, including mortgage bankers and brokers, commercial and investment banks and other institutional lenders, title companies, attorneys, accountants, appraisers, environmental and construction advisory firms. The MBA of NY continues to be a great place for lenders, their clients and consultants to the industry to meet and share their collective knowledge of the business and get deals done.

[3] 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. With over 100 corporate members, the NYMBA 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. 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.

[4] The Empire State Mortgage Bankers Association (ESMBA) promotes public education, high ethical standards, sound business practices, and cooperation among legislators, regulators and other members of the industry. ESMBA is a group of mortgage banking businesses in New York State, whose members handle tens of thousands of mortgage loans each year. In addition, the mortgage lending industry employs thousands of people across the Empire State.

[5] https://dos.ny.gov/september-3-2025vol-xlvii-issue-35, pages 7-9 and https://www.dfs.ny.gov/industry-guidance/regulations/proposed/banking/rp-bank-3nycrr120-text-rev

(LMI) borrowers raised in our prior comment letters, including our letter from April 1, 2025. For the Department's further review, we are attaching an updated datasheet with information through 2024, along with the April 1, 2025 letter.

In addition, we offer the following additional comments for the Department's consideration.

Inappropriate Limits on CRA Consideration of Purchased Loans

Our organizations continue to be concerned with the inappropriate limitations imposed on purchased loans in the Lending Test of the revised proposed regulation.

Specifically, proposed rule Section 120.7 still includes the following language:

> *(6) Third-party lending. No mortgage banker may include a mortgage loan origination for consideration if another mortgage banker or depository institution claims the same mortgage loan origination under this Part, under section 28-b of the Banking Law or its implementing regulations, or under the federal Community Reinvestment Act.*

In the Department's Assessment of Public Comments, the Department emphasized that "[a] liquid secondary market, incentivized by, *inter alia*, a purchased-loan credit, drives down the cost of low- and moderate-income ("LMI") mortgage originations and thereby expands the borrower pool." This policy assessment is inconsistent with the limitations imposed on purchased loans in proposed section 120.7(6), which remains unchanged in the September 3 revised proposed rule. Notably, imposing such a limitation on CRA-credit fails to take into account the manner in which IMBs operate and would undermine the ability for IMBs to leverage a liquid secondary market to deliver affordable mortgage loans to NY consumers.

This provision would undermine a key channel for delivering credit to LMI communities. It would particularly hurt small IMB's – many of whom are locally based in the LMI communities the CRA is intended to serve, but do not have the scale to sell directly to the GSEs or issue Ginne Mae securities. These small lenders rely on larger bank and nonbank loan purchasers to acquire their loans and in turn sell to the GSEs, issue Ginnie Mae securities or retain the loans in portfolio. It takes BOTH parties to deliver credit to the LMI communities via the loan origination and subsequent purchase. Both parties should receive CRA credit for this activity, just as they do under federal CRA.

For these reasons and the reasons noted in our letter dated April 1, 2025, including the inability for an IMB to know whether another institution is claiming CRA-credit for a particular loan, we believe the limitation in proposed Section 120.7(6) should be removed in the final rule.

Removal of Statewide Assessment Area

Our organizations are concerned with the removal of the ability for IMBs originating at least 1,000 mortgage loans in each of the two preceding calendar years to choose a single assessment area consisting of the entirety of New York State.

As referenced in our prior comment letters, Massachusetts is the only state in the country with longstanding CRA experience for mortgage lenders/bankers and aspects of the Massachusetts'

Community Reinvestment Act model should be adopted in New York. Massachusetts' CRA regulations provide for a statewide assessment area.[6]

Removing the ability for a mortgage lender to utilize a statewide assessment area in the revised proposed rulemaking is a substantial departure from Massachusetts' regulations, which will lead to a patchwork of diverging CRA requirements and standards on a state-by-state basis. This will only increase the costs of compliance and the regulatory burden imposed on IMBs throughout the country and in New York. Our organizations are concerned that such costs will ultimately be borne by consumers, which undermines the goal of providing affordable loans to all New Yorkers, including LMI borrowers and communities.

As a result, our organizations recommend that the Department reconsider its position and provide mortgage lenders with the ability to use a statewide assessment area as provided in the original proposed rule.

Concerns Regarding Inclusion of Special Purpose Credit Programs within the Definition of Community Development

The revised proposed rule modifies the definition of "community development" in proposed Section 120.1(d)(2) to include "mortgage products made as part of a special purpose credit program" and added a definition to proposed Section 120.1(p) providing:

> *Special purpose credit program means any credit program offered by a mortgage banker to meet special social needs which is in conformity with and explicitly authorized by the Equal Credit Opportunity Act (15 U.S.C. § 1691(c)) and Regulation B (12 C.F.R. § 1002.8).*

As the Department is likely aware, on September 17, 2025, the United States Department of Housing and Urban Development withdrew its FHEO Statement on the Fair Housing Act and Special Purpose Credit Programs (Dec. 7, 2021),[7] which provided special purpose credit programs designed to meet ECOA and Regulation B's requirements would not constitute discrimination under the Fair Housing Act.[8]

While our organizations agree that special purpose credit programs authorized by ECOA and Regulation B should be looked upon as favorable community development activities when mortgage bankers are evaluated in their service test, there is now risk that lenders providing special purpose credit programs will be viewed as violating the Fair Housing Act and subject to legal risk.

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[6] See 209 Mass. Code Regs. 54.21, 54.22, and 54.23.

[7] See Memorandum re Notice of Withdrawal of FHEO Guidance Documents, from John Gibbs, Principal Deputy Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Dept. of Housing & Urban Dev. (Sept. 17, 2025).

[8] Separately, on March 25, 2025, the FHFA issued an order directing Fannie Mae and Freddie Mac to terminate programs supporting special purpose credit programs. See In Re: Special Purpose Credit Programs (Directive), Decision No. 2025-145, U.S. Federal Housing FHFA (Mar. 25, 2025).

Due to the current risks associated with special purpose credit programs, we suggest that a provision be added to proposed Section 120.8, similar to current proposed Section 120.8(e), providing in substance that a mortgage banker shall not be required to provide mortgage products made as part of a special purpose credit program to achieve any particular rating on the service test. We believe this approach balances the current uncertainty regarding the fair housing risks associated with providing special purpose credit programs and including the use of special purpose credit programs in the community development component of the service test.

Agree with the Department's Position on Public Hearings in Connection with Licensing Applications

In the Department's Assessment of Public Comments, the Department declined to amend the proposed rule at the request of a community organization that requested the rule mandate public hearings for all applications made by mortgage bankers, including change of control, branch openings, or mergers.

We agree with the Department's assessment that New York already has an established process in connection with licensing, including branch, changes of control and merger applications. Our organizations are of the view that New York's established processes are among the most robust and rigorous in the country and would be further burdened by any additional mandatory public hearing.

As a result, we support the Department's position that the rule should not be revised to mandate such public hearings.

The Department should rely on HMDA Data in Developing Performance-Based Metrics

Our organizations reiterate our discussion in our April 1, 2025, letter regarding the use of the CFPB's HMDA data in evaluating IMBs performance. As a result, we request that the Department again consider the points made in that letter.

Remote Work Flexibilities and the Elimination of Commutable Distance Requirements Will Enhance the Ability of IMBs to Serve LMI Communities

As referenced in our April 1, 2025, letter, the vast majority of states have recognized the need for remote work flexibilities in the post-COVID-10 pandemic era and removed commutable distance requirements. New York is among the small minority of states that have not addressed this issue by statute, regulation or other guidance.

While we recognize and appreciate the Department's view that elimination of commutable distance requirements and providing remote work flexibilities is beyond the current scope of the CRA rulemaking process, due to the time and expense associated with branch licensing we believe eliminating such requirements and providing remote work flexibilities will directly impact our members' ability to serve New York consumers, including urban and rural LMI communities. Specifically, we believe IMBs will be able to better satisfy CRA obligations, including providing community development services to broader areas of the state when MLOs are provided with such flexibilities and are able to live in broader areas of the state, as opposed to an arbitrary distance from a licensed branch location.

As a result, while we understand the Department's position regarding the constraints of its current rulemaking, we strongly encourage the Department to eliminate commutable distance requirements and provide remote flexibility in the near future because it will further the policy goals of N.Y. Banking Law § 28-bb.

Conclusion

Our organizations, as always, are ready to collaborate on this important regulatory rulemaking and welcome further dialogue with the Department to develop solutions that benefit New Yorkers. If you have questions or need more information, please reach out to Joe Culver, Executive Director & COO of the NYMBA, via email at jculver@nymba.org who can respond on behalf of our associations and coordinate any potential meeting. We thank you for considering this request.

Respectfully,
The Mortgage Banker Association
The Mortgage Bankers Association of New York
The New York Mortgage Bankers Association
The Empire State Mortgage Bankers Association