



New York Bankers Association

**STATEMENT OF MICHAEL P. SMITH
PRESIDENT & CEO, NEW YORK BANKERS ASSOCIATION
REGARDING INT. NO. 485
SUBMITTED TO THE NEW YORK CITY COUNCIL
COMMITTEE ON FINANCE AND THE
COMMITTEE ON COMMUNITY DEVELOPMENT**

Thank you for the opportunity to provide comments on Int. No. 485, A Local Law to Amend the New York City Charter. The New York Bankers Association is comprised of 150 community, regional, and money-center banks operating in New York State, with approximately 200,000 New York employees.

The New York Bankers Association commends the New York City Council for exploring the effective systems that the banks with which it does business have in place to help meet the credit and financial needs of its citizens. The banking industry has a long and proud history of playing a vital role in the life of the City, whether through its financing of consumer needs, housing, and small businesses, its development of affordable housing, its commitment to serving low- and moderate-income neighborhoods, its generosity in charitable and philanthropic causes, or its dedication to bringing financial literacy to even the youngest New Yorkers.

While it is reasonable to expect the City of New York to select the depository banks it uses to safeguard public funds based, among other things, upon aspects of a bank's record of corporate citizenship, the industry has grave concerns regarding the manner in which the Department of Finance would classify the banks and the City Banking Commission would make its selections. Primary among these concerns is the subjectivity inherent in the ranking criteria set forth in Int. No. 485 and the reputational risk such criteria could inappropriately create. This is so for despite the potentially vast swaths of information that might be required to be produced by banks seeking depository status, the proposal offers no clarity on how the information would be weighed and compared among financial institutions. Nor does its rating system reflect or appear to accommodate banks with various missions, such as wholesale banks. Second, the proposal seeks to make public certain proprietary bank information that has strategic business implications. Third, because the criteria to be considered by the Department of Finance would seem to include mandating the types of products and services to be offered, possible terms of restructured home loans, and mandatory submission of strategic plans, it may, in large part, be preempted by state and federal banking law. Finally, we are concerned by the overly burdensome and duplicative reporting that Int. No. 485 would mandate.

Our primary concern is that, despite a potential new mountain of paperwork banks could be required to provide, as well as the seven new categories on which banks would be assessed if Intro. 485 were enacted, the ultimate criteria

on which financial institutions would be ranked and depository institutions selected would be subject to enormous subjectivity, with no clear guidance on how much weight would or should be put on any one category. For example it is completely unclear whether investment by a bank in economic development projects would be deemed to be more or less worthy than an emphasis on meeting the needs of small businesses. In this regard, too, the proposal contemplates a world in which all banks offer the same products and services. New York's banking environment, by contrast, is comprised of banks with a range of widely varying missions. Wholesale banks focus much of their business strategy on serving larger clients, such as fortune 500 companies and large municipalities, such as New York. Thrift institutions are specialized housing lenders, many of whom, such as those who are expert at multi-family housing lending, regard New York City as a prime market. There are niche banks that provide banking services to money services businesses, such as check cashers and money transmitters; others are specialized at making loans on cooperative apartments; some are almost exclusively small business lenders; and others may have far-flung retail branch networks designed to cover as large a geographic reach as possible. By narrowly focusing on census tracts geographically and a limited range of products, the legislation will disadvantage many of these banks in competing for City deposits as well as potentially tarnish their reputation by an inappropriately low ranking. Such inequities and reputational risk could inadvertently discourage safe and sound institutions with strong records of corporate responsibility from seeking to become public depositories.

Second, it appears that the legislation could require that information that provides a competitive advantage for individual banks could be made public under this proposal. For example, the proposal calls for the publication of bank strategic plans. However, strategic planning is exactly the process by which a bank attempts to distinguish itself from its rivals, marshalling the expertise and resources necessary to excel in particular markets. We oppose forcing competitive institutions to share with their competitors the types of trade secrets called for in this bill.

Third, NYBA is concerned that the criteria for the rating represents an inappropriate “backdoor mandate” for which products and services a bank may offer. If banks are to be evaluated based upon their record of meeting the credit needs of the community, beyond what is intended by CRA, then we believe it possible that the Department of Finance would penalize with a low ranking certain institutions for their lack of subprime products, for example. This penalty of a low ranking would be tantamount to a requirement to offer such products – a result, we believe, far outside the scope of the Banking Commission and the Finance Department’s purview.

The New York City Banking Commission rules are laudably designed to provide a framework to ensure that the City’s money is handled by financially responsible banks, that provide the City with an optimal interest rate, and safeguard New

York City's financial interests. The extensive criteria which would be under review pursuant to proposed Intro. 485, however, go far beyond these important objectives. As they include, among other considerations, the types of products and services to be offered by banks, the terms of banks' restructured home loans, and mandatory submission of strategic plans, the criteria would seem to delve into the business of banking itself – an area preempted by both state and federal banking law. It is well settled law that New York State has occupied the field of the business of banking for state-chartered banking institutions (see Section 10 of the Banking Law). The recently enacted federal Dodd-Frank Act, which has, in essence, codified aspects of the United States Supreme Court case, *Barnett Bank v. Nelson*, also prohibits the application of local law with respect to federally chartered institutions if such law "prevents or significantly interferes" with the exercise by a national bank of its powers. The criteria set forth in Intro. 485 would appear to do just that.

Last, the New York Bankers Association respectfully requests that the Council consider alternative ways to achieve its goals without adding to the already onerous reporting obligations of banks, including those already required by Sections 1523 and 1524 of the New York City Charter as well as Title 22 of the Rules of New York City. In fact, the Council could achieve its goals by accessing readily available public information that is already routinely reported by banks and regulators – and in some cases already reported to New York City by its depository institutions and depository institution applicants. To the extent that

additional information is deemed necessary by the New York City Commissioner of Finance or Banking Commission, a plethora of public resources already are available for these purposes. In fact, State and federal banking regulators have built elaborate and sophisticated online data reporting systems to allow consumers to access detailed information about their financial institution. Such systems could well provide the information the Council is seeking to make available to the Department of Finance and the Banking Commission.

For example, the Banking Commission - comprised of the Mayor, the Commissioner of Finance and the Comptroller - which designates the banks in which City moneys are to be deposited, already requires from banking institutions, as part of the application process, an array of information which is responsive to the concerns addressed in Int. 485. In this regard, among many other things, a depository bank applicant must already provide its most recent State and federal CRA examination summary reports, its most recent federal and State CRA ratings, a copy of the bank's banking development district application and the State Banking Department's approval of such application, if applicable, and a certificate setting forth the bank's policy regarding branch closings. With this information in hand, the Banking Commission then makes a designation, relying upon the Federal and State CRA rating, and such other factors as the Banking Commission deems relevant, including a bank's participation in the banking development district program. With all this information already required, the need for more strategic and product information is unnecessary and would

place an inappropriate additional burden on banks who are already being inundated with new regulatory requirements as a result of the Dodd-Frank Act. If there is a need for more data, however, it already can be found in, Federal Deposit Insurance Corporation Call Reports, the website of the New York State Department of Banking, the Federal Reserve, and the Federal Financial Institutions Examination Council (APPENDIX A).

There is also a trove of information reported by any financial institution that currently participates in the State's Banking Development District program and the Excelsior Linked Deposit Program. Much of this reported data focuses on banks' lending commitment to their communities, and would be very helpful in the City's consideration of banks' seeking to do business with the City of New York. The Banking Development District application process is administered by the State Banking Department. The depository aspects of the Excelsior Linked Deposit Program, in which 72 New York banks and thrifts participate, is administered by the State Comptroller and the Commissioner of Taxation and Finance according to a thorough and established application process.

In summary, the New York Bankers Association strongly opposes Int. No. 485 on the grounds that it would impose a subjective new, unnecessary, and duplicative burden of reporting on banks in order for them to do business with the City of New York. As we have noted, we believe the proposal interjects a potentially high degree of new subjectivity into the ranking and depository selection process,

while lacking sufficient flexibility in its criteria to accommodate the City's varied banking entities. We also believe the proposal would threaten the confidentiality of competitive and sensitive proprietary information, and could in large part be preempted by State and federal law. Should the Department of Finance and the Banking Commission believe it should add to its already expansive review of potential banking depositories in order to evaluate their community commitment, there is ample, current, and detailed information already in the public domain to which City officials have complete access.

Thank you.

APPENDIX A: Publicly Available Information

Source: New York State Banking Department

Website: <http://www.banking.state.ny.us/intrate.htm>

Credit Card Fees

Annual Fee

Balance Transfer Fee

Cash Advance Fee

Over Limit Fee

Late Payment Fee

Foreign Currency Fee

Standard APR

Penalty APR

Introductory Rate

Bank Fees

Minimum Deposit to Avoid Fees

Monthly Service Fee

Number of Free Items

Per Item Fee

NSF Fee

Online Bill Pay Fee

Consumer Loan Rates

New Auto Loan

Used Auto Loan

Home Equity Loan

Home Equity Line of Credit

Mortgage Rates

Fixed Rate Conforming

Adjustable Rate Conforming

Fixed Rate Jumbo

Adjustable Rate Jumbo

Source: Federal Deposit Insurance Corporation

Website: <http://www.fdic.gov>

Demographic Information

Assets and Liabilities

Income and Expense

Performance and Condition Ratios

Changes in Bank Equity Capital

Charge-offs and Recoveries from Loans and Leases
Changes in Allowance for Loan and Lease Losses
Income from Foreign Offices
Balance Sheet
Securities
Cash and Balances Due from Depository Institutions
Loans and Leases
Loans to Small Businesses and Small Firms
Trading Assets and Liabilities
Deposits in Domestic Offices
Deposits in Foreign Offices
Derivatives and Off-Balance Sheet Items
Past Due and Nonaccrual Loans Leases and Other Assets
1-4 Family Residential Mortgage Banking Activities
Regulatory Capital
Servicing Securitization and Asset Sale Activities
CRA Ratings
Summary of Deposits by Branch

Home Mortgage Disclosure Act (HMDA) Data

Source: Federal Financial Institutions Examination Council

Website: <http://www.ffiec.gov/hmdaadwebreport>

Applications by Tract
Loans Sold by Tract
Loans Sold by Purchaser Type
FHA, FSA/RHS and VA Purchases by Race
Conventional Purchases by Race
Refinancings by Race
Home Improvements by Race
Multi-Family Loans by Race
Nonoccupant Loans by Race
FHA, FSA/RHS and VA by App Income
Conventional Purchases by App Income
Refinancings by App Income
Home Improvements by App Income
Nonoccupant Loans by App Income
FHA, FSA/RHS and VA Purchase by Tract Income
Conventional Purchases by Tract Income
Refinancings by Tract Income
Home Improvements by Tract Income
Multi-Family Loans by Tract Income
FHA, FSA/RHS and VA Purchase Denials
Conventional Home Purchase Denials
Refinancing Denials

Home Improvement Denials

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