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Via Fax (518-486-9652) and U.S. Mail

Mylan L. Denerstein
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

RE: A. 3510 (Robinson) / S.2089 (Griffo)

Dear Ms. Denerstein:

This letter is submitted on behalf of our client the Independent Bankers Association of New York State, Inc. ("IBANYS") in strong opposition to the subject legislation, which is currently awaiting executive action. IBANYS exclusively represents the interests of community banks located throughout New York State.

This bill would significantly expand the field of membership for a state chartered credit union beyond the current federal qualifications for members.

Credit unions are member-owned cooperatives, not-for-profit depository institutions which serve a defined field of membership. Membership in a credit union has been comprised of entities having a common bond of occupation, association or geographic area. The common bond was last expanded to allow multiple groups to become members. The rationale for such expansion was based on concerns about the concentration of risk in credit unions. Diversification of membership was the underpinning of expansion of the common bond.

This legislation goes beyond the common bond to apply to a geographic area without any other limitation of consequence. The criteria are expanded in this bill so that there would be a minimal chance that an applicant for credit union membership would be denied. This scheme represents a significant departure from the original credit union concept.

There is no public policy basis for this expansion. It is rooted in the desire of credit unions to become more competitive with community banks. Unlike in the late 1990s when the field of membership was expanded, there are no issues with concentration of risk. This change is

particularly directed at the large credit unions who want to have the ability to continue to expand their membership base without significant restrictions. This expansion is clearly unnecessary since credit unions have increased membership by 5 million in the last 3 ½ years.

The argument has been advanced that an expansion of the field of membership is necessary to maintain a healthy dual charter system. This argument is grounded in the premise that if New York State expands membership opportunities for credit unions, federally chartered credit unions will flip their charters. There is no sustainable rationale to start a competition to attract more state credit union charters, particularly when the underlying policy is flawed. Equality between federal and state credit union powers is ensured by a wild card provision.

Additional credit unions regulated by the New York State Department of Financial Services ("DFS") will not result in any significant revenue increase to DFS and certainly not to the State. A cost/benefit analysis should be undertaken by DFS.

Credit unions in New York State have 4.5 million members, which represents close to a quarter of New York State's population. There is no valid argument that New York State is underserved by credit unions. This bill simply represents an attempt to expand credit union membership to make credit unions increasingly like banks without accepting the burden of taxes. Credit unions want to expand beyond their historic mission to function as banks. Their growth comes at the expense of taxpaying community banks. There is no meaningful barrier to competition. The credit unions already enjoy a tax advantage since they pay no federal, state or local income taxes, almost no sales tax and no MTA mobility tax. The credit union business model is predicated on return of this tax advantage to its members either through reduced fees, lower interest rates on loans, or higher interest rates on deposits.

This bill would permit a state credit union to automatically engage in incidental activities approved by the National Credit Union Association. This change automatically shifts regulatory power from DFS. There is already a wild card mechanism in statute to enable state credit unions to achieve incidental powers. This clearly demonstrates that credit unions are leveraging their regulatory environment to achieve the broadest scope of powers without any input from DFS.

The incidental activities permitted pursuant to 12 CFR Part 721 as incorporated in this legislation do not apply to corporate credit unions. There is no reference to their exclusion in the language included in this bill. As a consequence, a corporate credit union could argue that such regulation applies to New York State corporate credit unions.

Section three of this legislation provides for a significant expansion of investment authority for credit unions. The proposed statute incorporates by reference securities which are permissible investments for savings banks. This bill does not appear to specifically incorporate the limitations provided for in the Banking Law for the investment of funds by savings banks. As a consequence, it is questionable as to whether specific limitations on the investments would be applicable. For example, Banking Law section 235 subdivision 29 limits the percentage of investment in the stock of a small business investment company based on whether the savings bank is stock-form or non-stock. This limitation obviously has no applicability to credit unions, which leads to the conclusion there is no limitation on such an investment. The statute could be

interpreted to expand only the investments without any limitations. The incorporation by reference of the savings bank investment statute rather than a statute specifically applying to credit unions creates interpretation problems.

The investments generally provided for in this section permit credit unions to invest in complex mortgage instruments on properties located both in- and out-of-state. The credit unions' fundamental mission was directed at providing loans to members. This bill would expand their ability to make mortgages beyond both their membership and market area. This bill would give many small and less sophisticated credit unions expansive investment powers. These institutions neither have the experience or expertise to engage in such investments without significant risk. Most importantly, there is no justification provided for the credit unions to expand their risk exposure with these types of investments. The sponsor's memo asserts the need for a viable business model to meet the needs of low and middle class New Yorkers. There is no nexus between expanded investments and a business model to service their members. This proposed expansion represents a desire to function as a bank in all aspects but the payment of taxes.

This legislation provides unfettered authority to the Superintendent of DFS to add any investment to the list of permitted investments for credit unions. This grant of authority to designate investments would be unprecedented as compared to other financial institutions and the State itself, which require specific statutory authority for investments.

Based on the foregoing, it is respectfully requested that the Governor not act favorably on this legislation.

Respectfully submitted,

William Y. Crowell, III
Legislative Counsel to IBANYS

cc: legislative.secretary@exec.ny.gov