New York Credit Union Association

Memo in OPPOSITION

NEW YORK creditunion ASSOCIATION

February 3, 2022

S.933A – Gianaris (Advanced To Third Reading, 01/19/2022)
A.1812A – Dinowitz (Referred To Economic Development, 01/05/2022)

The New York Credit Union Association (the Association) STRONGLY OPPOSES S.933A/A.1812A, which would impose onerous and ultimately counterproductive restrictions on all businesses in New York. Although the impetus for the legislation is to restrict the conduct of large corporations, such as prominent internet companies, as drafted, it would apply to almost all financial service providers, including credit unions.

Credit unions were created to provide fair, affordable and equitable access to the financial system to communities and individuals that were often overlooked by other types of financial institutions. Today, credit unions continue to serve the needs of many underserved communities, including both rural and urban environments, communities of color, and immigrant populations. To that end, it is not uncommon for credit unions to serve as a town or neighborhood's only financial institution.

The legislation would impose a vague and stringent European style legal framework onto New York State, which would make it more difficult for credit unions to provide needed financial services to consumers. Most importantly, a new "abuse of dominance" standard would be introduced into New York State law. Under this standard, any business that provides 40% or more of the products or services in a given marketplace would be presumed to be in violation of the law and exposed to being sued, and even face criminal liability for simply conducting normal business operations. This means that a credit union providing services in a financially underserved rural or urban area could suddenly find itself exposed to costly litigation for carrying out its mission: serving the underserved. This dilemma is exacerbated by the fact that proof of procompetitive impacts would not be a defense to dominance claims.

Another troubling aspect of the bill is that it does not require plaintiffs to delineate the specific marketplace or geographic area that is being subjected to market dominance. This

means that an area as small as a neighborhood branch offered by a small credit union could trigger this framework. Furthermore, legal and regulatory actions in this area will take place against the backdrop of new regulations, promulgated by the Attorney General but approved by the legislature, and litigation in which New York State judges will have to interpret legal concepts that have never been litigated in any other state. This will result in increased legal and regulatory costs that many credit unions simply cannot afford.

Not only is an abuse of dominance standard unworkable on a state level, but the bill would also add duplicative mandates to well-established business practices for which there is no proven need for state intervention. Under existing federal regulations for example, any credit union seeking to merge must comply with a host of regulations before merging. This is in addition to existing FTC and Department of Justice requirements, which mandate a 30-day review process of any merger involving $90M or more in assets. Although the existing framework is already rigorous, this bill would impose a state-level 60-day review process on any merger involving approximately $9M in assets. This means that virtually any combination involving all but the smallest of businesses will be subject to state review.

Although the legislation is intended to target larger companies, its biggest impact will be on medium- to small-size businesses. First, the imposition of this legislation on large national companies raises novel legal issues that will be litigated for years before any statute could actually take effect. Secondly, large companies will have the option of simply relocating their headquarters to other states at a time where more than 300,000 New Yorkers left in 2021. It will be small- and medium-size businesses that are left to comply with this new antitrust framework.

While recent trends have demonstrated the need to take a comprehensive look at existing antitrust standards, such a review should be conducted on the federal level where the result of any changes will be imposed on all institutions and implemented against the backdrop of existing antitrust laws and regulations. In contrast, if the legislature goes forward with this proposal, its impact on credit unions underscores that it will have unique and unforeseen consequences for a whole range of businesses and activities — including those seeking to provide services to underserved communities.

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