December 31, 2024

Terry McMahon
Senior Assistant Deputy Superintendent, Consumer Examinations Unit
New York State Department of Financial Services
1 State St
New York, NY 10004-1511

Re: 10-day Preproposal Comments for Compliance with CRA components of the Banking Law Section 28-bb

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] are writing in response to your request for 10-day pre-proposal comments regarding a draft proposed regulation to apply New York's Community Reinvestment Act to independent mortgage bankers (IMB's).

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[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.

The IMB Model is Distinct and Effective

The following points reflect our best efforts to provide input to the draft regulations in the time afforded and with limited staff available to evaluate the draft regulations.

Our four Associations and member companies fully support the extension of mortgages to creditworthy borrowers regardless of race, ethnicity, immigration status and other protected classes in addition to income. 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 Low-to-Moderate (LMI) borrowers and communities have access to mortgage credit on a fair and equitable basis. The state and federal 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 through 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 serve the broader market in locating branches to take deposits and grow their operations.

The IMB business model is fundamentally different than the bank business model. IMB's 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. Moreover, as demonstrated below and illustratively in the attachment, they have a proven track record of strong and reliable lending to LMI borrowers and communities. IMBs are subject to the same fair lending laws and consumer-protection regulations as depository institutions to ensure sound underwriting and high-quality lending on a nondiscriminatory basis. Please see the attached, which is made part of this response.

Concerns with the Process of Proposing These Regulations

Even though the legislation directing the Department to prepare this proposal has been in place as enacted law since November 1, 2021, our associations and many of our members were not notified of the drafting of these regulations or any progress the Department had made. The December 17, 2024, press release indicated this draft included stakeholder involvement, yet our trades were not involved.[5] While we accept that the Department may have had discussions with some industry stakeholders, the timing of the pre-proposal comment period and failure to involve any of our organization in its development is concerning. Our trades have always sought a positive and collaborative relationship with the Department, and as such, we look forward to having a more appropriate opportunity to offer views on such a consequential regulation.

Facts about IMBs' Record of Lending to LMI Borrowers in New York

It is important for the Department to appreciate the industry's perspective in the context of its statements on IMB's record of lending in the state, and its conclusion that a healthy dose of CRA is a necessary regulatory prescription to increase lending to LMI borrowers and communities. As recently as its December 17th press release, the Department suggests that licensed IMBs have failed in this regard and that CRA is the solution.[6] Both presumptions are wrong, and provably so.

CRA has not increased mortgage lending in general nor lending to LMI communities in particular by New York banks already subject to existing federal or state CRA mandates. MBA analysis of Consumer Financial Protection Bureau (CFPB) Home Mortgage Disclosure Act (HMDA) data between 2008 and 2023 (the most recent year data is available - see attached IMB Fact Sheet – New York). CRA regulated depositories in the state have dropped overall market share throughout the last decade and a half. From 54% in 2008 to 29% in 2023 for large depositories and from 21% to 12% for community banks. By contrast, IMBs without CRA obligations have increased their market share over the same time period from 18% to 50%. Additionally, home purchase loan originations by depositories subject to CRA in the state have dropped from 81% to 51% while IMBs without CRA requirements have grown their purchase loan originations to minority borrowers from 19% to 50%. More specifically, purchase loan originations by depositories to LMI borrowers, the key metric for CRA examinations, have dropped from 79% to 44% during this period. Over the same 2008-2023 period, IMBs have increased these loans to LMI borrowers from 21% to 56%, an amount in excess of their overall 50% market share. [7]

Moreover, in its analysis of 2015–19 American Community Survey and 2121 HMDA data the nonpartisan Urban Institute showed that IMBs as a group outperform the market

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[5] "Leveraging the existing CRA regulation for banks, this regulation was developed with input from a wide range of stakeholders, including industry groups and consumer advocates, and considers the realities of non-depository mortgage lending." Source: https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202412172

[6] "Everyone deserves a fair shot at owning a home, regardless of their income level or where they live," said Superintendent Harris. "Nonbank mortgage companies originate a majority of home loans across the country and just like banks, these companies should be held accountable for meeting the credit needs of communities." Source: https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202412172

[7] https://www.mba.org/docs/default-source/policy/state-relations/2023-imb-state-data-sheets/new-york data-sheet---2023.pdf?sfvrsn=7c5eb45f

benchmark for serving LMI and predominantly minority neighborhoods (defined as neighborhoods that are 70% or more minority households). The Urban Institute report, *An Assessment of Lending to LMI and Minority Neighborhoods and Borrowers Performance of Independent Mortgage Banks in the Context of CRA Reform*, included a focus on specific states and NY was among them. It noted that in NY 14.7% of total mortgage lending for home purchases in the state went to borrowers in LMI neighborhoods during 2021. As a group, IMBs compared favorably and originated 15.6% of loans to borrowers in LMI neighborhoods, outperforming other lender types. Similarly, lending in predominantly minority neighborhoods accounted for 9.2% of all mortgage lending for home purchases in the state, but IMBs led the market by originating nearly 10.7% of their loans in those areas.[8]

We hope that by sharing this information, the Department can fully appreciate the disposition of our member companies within the IMB community, as they received this very brief opportunity to review and comment on a such a significant, and in their view unnecessarily punitive and costly regulation. Going forward, when the Department re-proposes this regulation for a more appropriate comment period, it should provide no less than a full 90-day period to consider this entirely new regulation and its impacts.

Concerns with the Proposed Regulation

Our Associations have identified the following shared concerns with this Proposed Regulation:

1. The Proposed Regulation should include a fee structure for exams. The industry cannot assess the full impact/scope of the rule unless the Department includes such a fee schedule. The Proposal should also include a small lender impact statement.
2. We believe that the Proposed Regulation should be modelled as much as possible on the Massachusetts regulation for CRA examination of IMBs. We implore the Department to create continuity among state requirements, by not diverge from established regulations. The latter adds to lenders' legal and regulatory costs that cannot be absorbed and ultimately raises the cost of homeownership. Massachusetts is the only regulator in the United States with IMB CRA exam experience dating back to 2008.
3. We believe that this Proposed Regulation should not be modelled on NY's CRA regulation for exams of depositories. As noted above, IMBs operate on an entirely different business model than banks and other depositories. Specifically, IMBs:
    a. Do not have deposits to reinvest.

[8] https://www.urban.org/sites/default/files/2023-04/An%20Assessment%20of%20Lending%20to%20LMI%20and%20Minority%20Neighborhoods%20and%20Borrowers.pdf Page 18, Figure 12.

   b. Do not have access to direct government support.
   c. Do not have large marketing and advertising budgets.
   d. Already engage in sustainable lending in LMI communities, and,
   e. Are subject to robust oversight and supervision in every state in which they operate, as well as from the federal regulators.
4. We believe that the Department should technically clarify and ensure that new license applications for lending in NY do not consider that lender's record of performance in NY, a record which does not exist.
5. We believe that the Department should not, in any way, convert this regulation into a fair lending or general compliance examination. The proposal takes one line from the statute: "(g) Evidence of prohibited discriminatory or other illegal credit practices;" and includes an extensive list of fair lending and federal consumer protection laws to be considered in evaluating an IMB. This could turn a regulation intended to assist in measuring the amount of loans by a lender to consumers of different incomes into an additional fair housing and compliance examination. Our Associations clearly support all existing state and federal fair housing and consumer protection laws as well as their vigorous enforcement.
6. We believe that the Department should limit examination authority to NY activity. The Proposed Regulation suggests a degree of extraterritoriality that is not appropriate or necessary.
7. We believe the Department should establish clear and measurable guidelines for the marketing of IMB's products and services through lower cost social media platforms, due to the limited advertising budgets for product and service promotion.
8. We believe that the Department should provide more clarity on exam schedules. The release does not indicate the expected frequency of CRA exams; and only states that they will take place "from time to time." We also respectfully request that there be no punitive actions or financial penalties assessed with any IMB's first CRA Performance Exam. We encourage the Department to provide constructive feedback and action items at the conclusion of the first exam, to allow IMB's full understanding of the scope and results and prepare for successive exams.
9. We believe the final Proposed Regulation should clarify whether the final rule will take effect in six months, as currently drafted, or a year after it is issued, as stated in the press release accompanying the proposal. Given the complexities involved by both industry and the Department, a one year implementation period is more appropriate.

10. Finally, we believe that the final Proposed Regulation should clarify that the threshold exemption for CRA examination provides exemption from full future regulation. Any IMB originating 200 loans or less in a calendar year should not have their future branch license or change of control filings delayed due to additional regulatory hurdles. These smaller IMBs are naturally localized, and any change or new branch location would benefit their communities and allow them to increase their reach in lending.

Recommendations

We propose the following alternative strategies to achieve the stated goals of the Proposed Regulations without imposing undue burdens on IMBs:

1. Focus on Targeted Fair Lending Initiatives
   Strengthen enforcement of existing fair lending laws to address any gaps in access to credit for underserved communities. IMBs have demonstrated consistent commitment to LMI borrowers under these frameworks.
2. Leverage HMDA Data for Community Impact Assessments
   Use existing HMDA data to evaluate the effectiveness of IMBs in serving LMI communities. This approach avoids duplicative reporting requirements while providing a clear picture of community impact.
3. Aligning with Proven Regulatory Models
   Look at Massachusetts, which has successfully implemented a tailored CRA framework for IMBs since 2007. [9]Their approach is focused, streamlined, and avoids the pitfalls of imposing a one-size-fits-all CRA structure. Additionally, alignment between states avoids a patchwork of laws, which increase the cost to comply and ultimately lowers competition in the state.
4. Foster Collaborative Dialogue with Stakeholders
   Facilitate ongoing discussions with industry stakeholders, including IMBs, to refine policies that balance community needs with operational feasibility.
5. Expand Commutable Distance for Remote Employees
   Unlike banks, which can leverage diverse revenue streams like deposits and consumer loans, IMBs rely solely on mortgage lending income. Relaxing commutable distance limitations would advance the goal of the Proposed Regulation, by enhancing IMBs' ability to serve LMI communities and expand their positive impact in underserved areas.

[9] Illinois finalized their IMB regulations December 6th, 2024 – examinations/implementation begins in 2025: https://www.ilsos.gov/departments/index/register/volume48/register_volume48_49.pdf

Conclusion

As previously stated, the legislation directing the Department to apply CRA to IMBs has been in place for over 3 years. We were accordingly surprised and disheartened to receive notification of the opportunity to comment at year-end, with only 10 days to respond during two major Holiday's, when multiple individuals take vacation time and were unavailable to assist. We respectfully request that the future comment periods on a revised proposed rule provide a full 90 days to analyze and consider the scope of such a significant additional regulatory burden.

We stand ready to collaborate on this important issue and welcome further dialogue with the Department at your 1 State Street headquarters to develop solutions that benefit our Associations, the Department, and all New Yorkers. If you have questions or need more information, please reach out to Joe Culver, Executive Director of the New York MBA (jculver@nymba.org) who can respond on behalf of our associations and coordinate any potential meeting. We thank you for considering this request.

Respectfully,

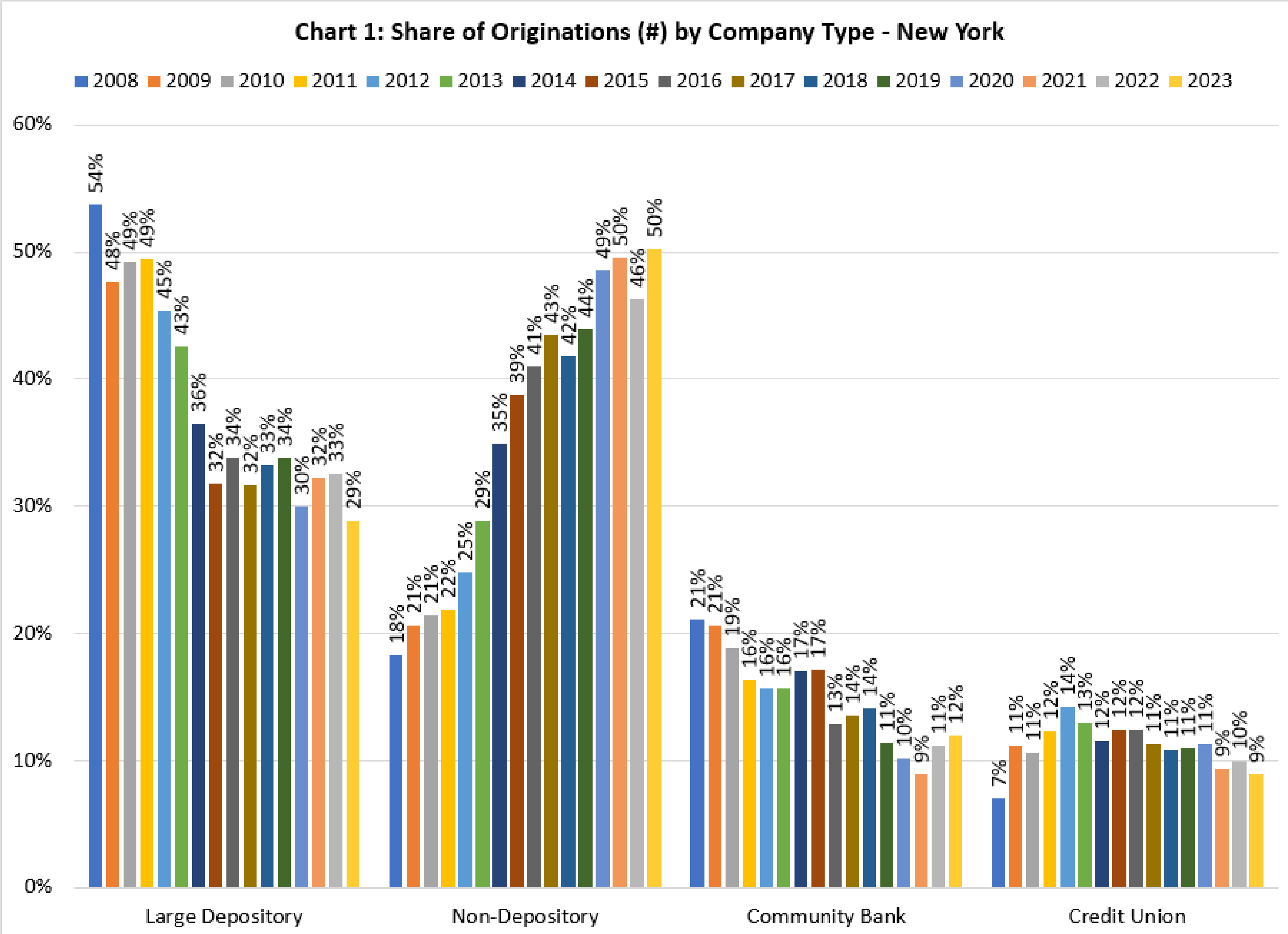
The Mortgage Banker Association
The Mortgage Bankers Association of New York
The New York Mortgage Bankers Association
The Empire State Mortgage Bankers Association

MORTGAGE BANKERS ASSOCIATION

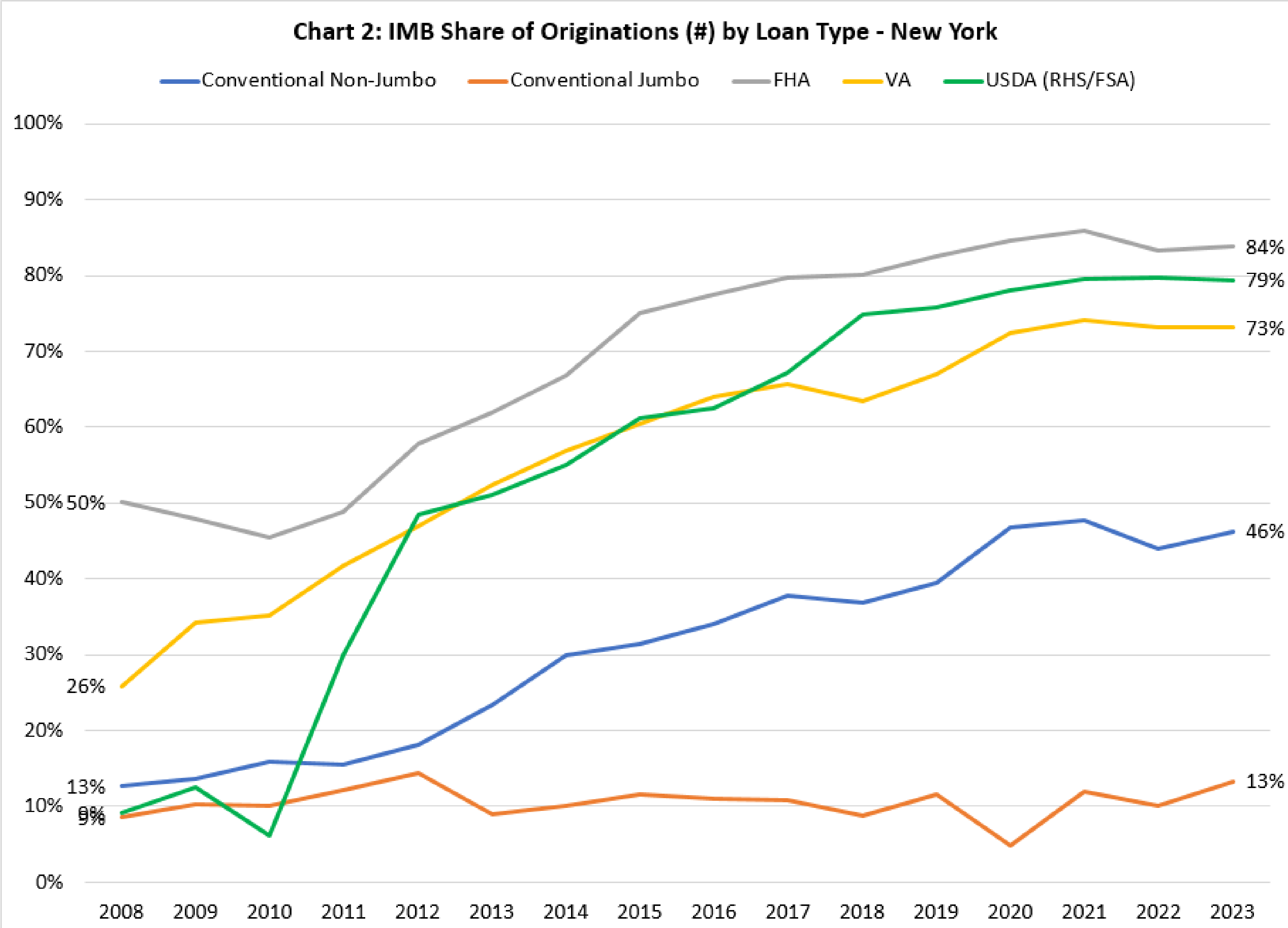
IMB Fact Sheet – New York

The Important Role of Independent Mortgage Banks in Financing the American Dream

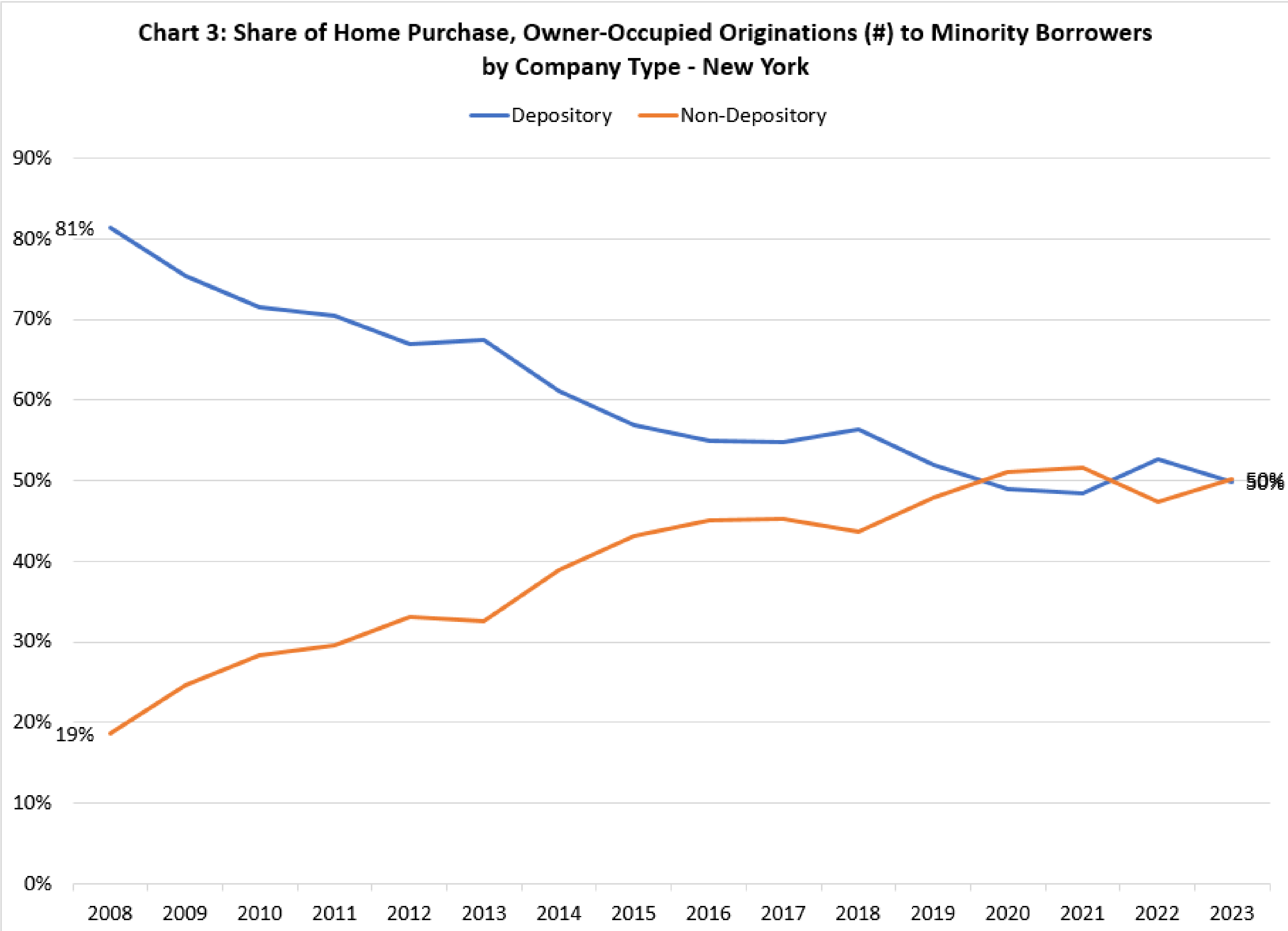
Source: Federal Home Mortgage Disclosure Act Data. Note - 2023 is the most recent year for which data are available.
The nationwide IMB share of overall single-family origination volume (in units) climbed from 24% in 2008 to 64% in 2023. In New York, the IMB share climbed from 18% in 2008 to 50% in 2023 (Chart 1).



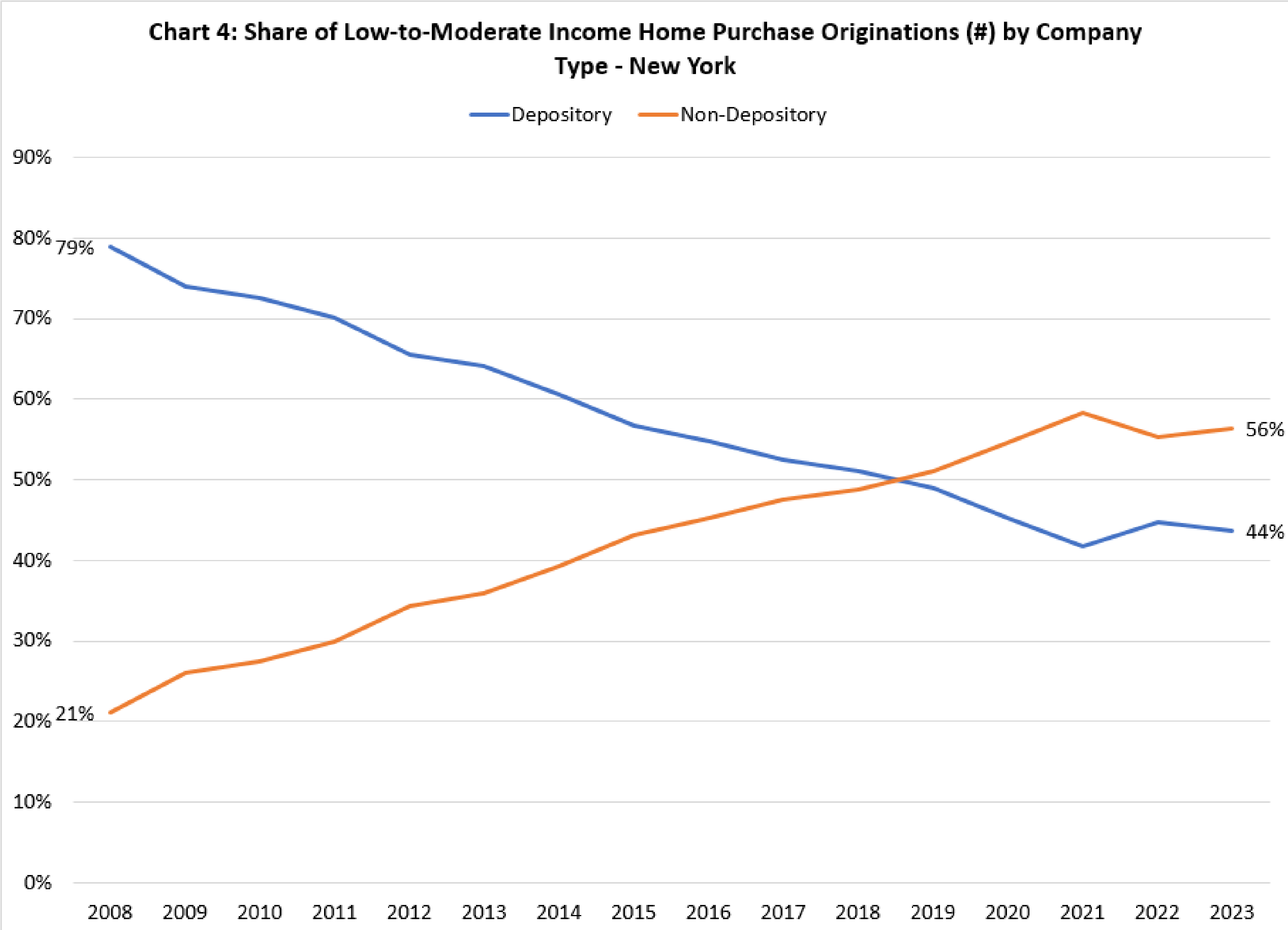
By 2016, IMBs became the predominant lender segment in both purchase loans and refinances. In addition, since 2008, IMBs have gained significant market share in every loan type category — government (FHA, VA, and Rural Housing Service), conventional, and even jumbo. In New York, the share of these loans originated by IMBs in 2023 was 84% of FHA loans, 73% of VA loans, and 79% of RHS loans (Chart 2).



Given their market focus on government lending, during 2023 IMBs in New York originated 50% of home purchase mortgage loans to minority homebuyers, which is up from 19% in 2008 (Chart 3).



In New York, IMBs accounted for 56% of home purchase loans to low- and moderate-income (LMI) borrowers in 2023, which is up from 21% in 2008 (Chart 4) and is higher than the IMBs' overall market share (50%) in New York in 2023 (see 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 in 2023 was $390,000 compared to $502,000 for depositories. These lower balance loans tend to serve first-time homebuyers and low- and moderate-income communities (Chart 5).