

OPPOSITION TO S.6985-B/A.9634-B

Community Financial Services Access and Modernization Act

From: New York groups
Date: June 27, 2016
Re: Community Financial Services Access and Modernization Act
(S.6985-B/A.9634-B)

Attached please find seventeen memoranda of opposition to S.6985-B/A.9634-B from New York groups, including members of New Yorkers for Responsible Lending, and from the Center for Responsible Lending, a national non-profit organization dedicated to fighting predatory lending. Many more groups are in the process of updating their memoranda in opposition to the latest version of the bill and we will send them to you once they are finalized.

The enclosed memoranda make clear that the latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state's financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

The groups in opposition include community-based organizations, community development financial institutions, homeless advocacy groups, affordable housing and foreclosure prevention groups, legal services and labor organizations, and community reinvestment, fair lending, and consumer advocacy groups. Attached are updated memoranda in opposition from the following groups (more to follow):

Center for Responsible Lending
Community Capital NY
Consumers Union*
Genesee Co-op Federal Credit Union*
Greater Rochester Housing Partnership
Habitat for Humanity New York City*
Legal Services NYC*+
Lincoln Square Legal Services
Lower East Side People's Federal Credit Union*
MFY Legal Services*
New Economy Project*
New York Statewide Senior Action Council, Inc.*
Queens Volunteer Lawyers Project
St. Nicks Alliance
Teamsters Local 237*
Western New York Law Center*
Women's Venture Fund

* NYRL member

+ Statement of concern



June 14, 2016

Memorandum of Opposition – A.9634-B/Rodriguez - S.6985-B/Savino **The “Community Financial Services Access and Modernization Act”**

The Center for Responsible Lending opposes A.9634-B/S.6985-B, a bill that would allow New York Check Cashers to make small business and commercial loans directly, as well as partner with out-of-state banks to make loans. Despite the amendments recently made, this bill will still allow predatory lenders to evade New York’s strong-standing usury limits and open the door to the type of high-cost, predatory loans that New Yorkers have long fought to keep out of the state.

Unsurprisingly, the amendments included in A.9634-B/S.6985-B do not address the key concerns we had with previous versions of the bill. Instead, the legislation still provides multiple avenues for check cashers to get around the state’s interest rate cap and will do nothing to prevent triple-digit interest lending.

One problematic structure of the bill remains unchanged – check cashers will be exempt from licensing under Article 9 of New York’s Banking Law, which regulates Licensed Lenders. Significantly, this law includes key protections for borrowers by prohibiting lenders from charging any fees or interest other than those explicitly allowed by state statute, including “service, brokerage, [and] commission” fees whether “directly or indirectly charged, contracted for, or received.”¹ As a result of exempting check cashers from Article 9 of the Banking Law, the proposed legislation will allow check cashers to charge unlimited brokering fees on top of the interest rate charged, resulting in triple-digit interest rates. Predatory lenders already use this brokering model to evade state rate caps in states like Texas and Ohio, charging 300% interest rates and higher.²

Although the latest version of the legislation purports to limit the products offered to those that are within usury limits, just as in the previous versions of the bill, check cashers will be allowed to provide “conduit services,” including offering loans in partnership with state or federally-chartered banks. This ability to partner with out-of-state banks will allow them to blatantly sidestep the “protection” from excessively high rates recently added to the bill. Out-of-state banks and financial institutions are not bound by states’ interest rate laws, and thus, the New York Department of Financial Services has no authority to approve or disapprove loan products offered by those institutions. The “collaboration” with out-of-state banks is a scheme that has been rejected by state and federal regulators alike, and should once again be rejected in New York.



Finally, A.9634-B/S.6985-B does little to ensure that the loans check cashers make are actually affordable. The bill now requires check cashers to simply *report* the underwriting processes and criteria used to make small business loans to the Department of Financial Services, but there are no requirements on the check casher to ensure that the underwriting standards work and result in affordable small business loans that borrowers can repay, nor are there provisions that allow the Department to approve or reject the soundness of these criteria.

We know from experience in other states that these types of provisions are simply window dressing. For example, New Mexico law similarly requires payday lenders to annually submit to the state banking regulator the procedures the lenders “follow[] as a standard practice to establish each [borrower’s] ability to repay a loan.”³ Yet, simply *reporting* these procedures does little to actually ensure affordability – the average APR on loans in New Mexico is well over 300% and lender data reveal high delinquency and refinance rates.⁴ The New Mexico experience makes clear that requiring lenders to simply report what they may or may not be doing to ensure a borrower’s ability to repay is not sufficient to protect against the harms of unaffordable loans. The same is true in this proposed legislation.

As we stated in our previous memo of opposition to A.9634-A/S.6985-A, New York should continue to support safe and responsible lending practices instead of empowering check cashers to make poorly underwritten, predatory loans to entrepreneurs in the Empire state. **The Center for Responsible Lending urges you to oppose this legislation and continue to protect New York’s residents by affirming that all lenders, whether offering consumer or business loans, must comply with the state’s long-standing usury law.**

For more information, contact:

Lisa Stifler, Deputy Director of State Policy, lisast@responsiblelending.org, (919) 313-8551

¹ See N.Y. Banking Law § 351(6)(b).

² See, e.g., Diane Standaert & Delvin Davis, Center for Responsible Lending, “The Buckeye Burden: An Analysis of Payday and Car Title Lending in Ohio,” (2015), http://www.responsiblelending.org/payday-lending/research-analysis/crl_ohio_analysis_nov2015.pdf; Ann Baddour, et al, Texas Appleseed, *Pulling Back the Curtain: Shining a Light on Payday and Auto Title Loan Businesses in Texas*, (2015), https://www.texasappleseed.org/sites/default/files/Pulling%20Back%20the%20Curtain_0.pdf; Diane Standaert & Sara Weed, Center for Responsible Lending, “Payday Lenders Pose as Brokers to Evade Interest Rate Caps: The next chapter in payday lender subterfuge,” (2010), <http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/CRL-CSO-Issue-Brief-FINAL.pdf>.

³ See N.M. Stat. Ann. § 58-15-10.1(14) (2016).

⁴ Letter from the New Mexico Fair Lending Coalition to CFPB Director Richard Cordray (Nov. 3, 2015), on file with author.

MEMORANDUM IN OPPOSITION TO

S.6985-B/A.9634-B

June 15, 2016

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: Community Capital New York opposes S.6985-B/A.9634-B, which would permit New York check cashers to become lenders. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers' authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. Community Capital New York opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.

The latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state's financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

Several of the amendments are clearly intended to appear to address concerns that community, labor, and civil rights groups and community development financial institutions have raised regarding earlier versions of the bill. Careful analysis of the amendments reveals them to be largely cosmetic, however, and we urge legislators not to be fooled by them. Even with the latest amendments, the bill would still, for example, allow usurious loans to be made in New York; permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow check cashers to make loans without being subject to strict underwriting requirements.

For years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York's longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry's latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state's low-income communities and communities of color.

Fundamentally, New York State should not reclassify check cashers as "financial services providers" that can make loans. Legislators need only look back to the recent financial meltdown to understand the devastating consequences that unrestricted lending can have on our communities. If we have learned anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting and that effective regulation and enforcement are crucial. Making loans to individuals and small businesses is a serious and complicated function. Sound underwriting calls for careful evaluation of borrowers' ability to repay, considering income and expenses – which is not even addressed in this bill.

In 2011, a bill was introduced in the New York State Legislature that, like this bill, would have permitted New York check cashers to make loans. Civil rights, community, fair lending, and community-based financial institutions voiced strong opposition to the 2011 bill, urging that check cashers should not be permitted to make loans in New York as a matter of sound public policy. As the New York City Department of Consumer Affairs stated in a memorandum opposing the bill, dated May 19, 2011:

Communities need access to *responsible* lending, not loans made without regard to ability to repay, which tend to trap borrowers in a cycle of debt. [C]heck cashers are not regulated or supervised with safety and soundness or responsible lending in mind. ...This legislation would for the first time allow check cashers to make loans, even though the State's supervision is not set up to ensure the safety and soundness of such lending.

In an April 29, 2013 letter addressing a similar bill pushed by the check-cashing industry, former Department of Financial Services' Superintendent Benjamin Lawsky recognized that check cashers are "entities not regulated for...safe and sound lending operations."

The bill would also permit check cashers to provide "conduit services" as well as "any other financial service permitted in this state." "Conduit services," however, are undefined in any current federal or state lending laws (except in the telecommunications context). The bill defines "conduit services" as "any activity permitted to be offered by a licensee under this article to its customers in collaboration with a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union subject to the approval of the superintendent, provided no conduit services under this section shall be approved, *which exceed prevailing usury provisions in state law...*" (emphasis added). Although this new, amended bill language would appear to prohibit usurious loans, the prohibition would in fact be legally unenforceable against any and all national banks and federally-insured out-of-state banks – i.e., virtually all banks. It is well established that national banks are not subject to state

usury (and other consumer protection) laws, under federal preemption doctrine. Out-of-state, federally-insured state banks are similarly not subject to state usury laws, under exportation doctrine. The bill therefore would allow check cashers to collude with banks and other financial institutions to make usurious loans in New York.

Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers are no longer plagued by internet and other predatory payday lenders. S.6985-B/A.9634-B flies in the face of these critical public enforcement actions. This bill should be seen for what it is: an attempt to bring high-cost, predatory loan products to small businesses and individual borrowers in New York, and to strip wealth from low-income communities and communities of color. At greatest risk are low-income seniors and other New Yorkers in financial distress.

It is worth noting that the only states where check cashers are allowed to make loans are states that also permit payday loans. No state that bans payday loans – and there are 14 of them – allows check cashers to make loans, and New York should not be the first to do so. New York should stand with its Northeast neighbors New Jersey, Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to extend the capacity to check cashers to make loans.

The Legislature should reject S.6985-A/A.9634-A and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Specifically, the Legislature should:

- Support CDFIs that already provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC's best practices recommendations;
- Convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

Community Capital New York urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.

Memorandum of Opposition – A.9634B /S.6985B

The “Community Financial Services Access and Modernization Act,” legislation to permit New York check cashers to make small business and commercial loans

Consumers Union opposes A.9634B/S.6985B, fast-track special interest legislation that would permit New York check cashers to make small business and commercial loans. The recently amended bill would allow check cashers, who have no experience as lenders, to make loans to businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers’ lending authority, the bill would potentially pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state.

For the last five years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York’s longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry’s latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and give them a foothold in the lending business.

Fundamentally, New York State should not reclassify check cashers as “financial services providers” that can make loans. Legislators need only look back to the recent financial meltdown to understand the devastating consequences that unrestricted, poorly regulated lending can have on our communities. If we have learned anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting, and that effective regulation and enforcement are crucial. Making loans to small businesses is a serious and complicated activity. Further, the revised bill exempts check cashers from limits on fees charged for brokering small business loans, and could result in much higher cost loans to small businesses than are already available through other lenders.

In states where check cashers are permitted to make any type loans, the overwhelming focus of that lending is on high-cost, small dollar consumer loans (payday loans). There are 14 states in the U.S. that do NOT authorize payday loans, and only one of them permits check cashers to make pawn shop loans under a usury cap (New Jersey). New York should stand with its Northeast neighbors Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to extend the capacity to check cashers to make loans.

The New York Assembly and Senate should squarely reject A.9634B/S.6985B, and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. **Consumers Union strongly urges you to oppose this legislation, and to preserve the safety and soundness of our banking system, and the integrity of our state’s lending and usury laws.**

For more information, contact:

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MEMORANDUM IN OPPOSITION TO

S.6985-B/A.9634-B

June 15, 2016

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: GENESEE CO-OP FEDERAL CREDIT UNION opposes S.6985-B/A.9634-B, which would permit New York check cashers to become lenders. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers' authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. **GENESEE CO-OP FEDERAL CREDIT UNION opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.**

The latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state's financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

Several of the amendments are clearly intended to appear to address concerns that community, labor, and civil rights groups and community development financial institutions have raised regarding earlier versions of the bill. Careful analysis of the amendments reveals them to be largely cosmetic, however, and we urge legislators not to be fooled by them. Even with the latest amendments, the bill would still, for example, allow usurious loans to be made in New York; permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow check cashers to make loans without being subject to strict underwriting requirements.

For years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York's

longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry's latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state's low-income communities and communities of color.

Fundamentally, New York State should not reclassify check cashers as "financial services providers" that can make loans. Legislators need only look back to the recent financial meltdown to understand the devastating consequences that unrestricted lending can have on our communities. If we have learned anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting and that effective regulation and enforcement are crucial. Making loans to individuals and small businesses is a serious and complicated function. Sound underwriting calls for careful evaluation of borrowers' ability to repay, considering income and expenses – which is not even addressed in this bill.

In 2011, a bill was introduced in the New York State Legislature that, like this bill, would have permitted New York check cashers to make loans. Civil rights, community, fair lending, and community-based financial institutions voiced strong opposition to the 2011 bill, urging that check cashers should not be permitted to make loans in New York as a matter of sound public policy. As the New York City Department of Consumer Affairs stated in a memorandum opposing the bill, dated May 19, 2011:

Communities need access to *responsible* lending, not loans made without regard to ability to repay, which tend to trap borrowers in a cycle of debt. [C]heck cashers are not regulated or supervised with safety and soundness or responsible lending in mind. ...This legislation would for the first time allow check cashers to make loans, even though the State's supervision is not set up to ensure the safety and soundness of such lending.

In an April 29, 2013 letter addressing a similar bill pushed by the check-cashing industry, former Department of Financial Services' Superintendent Benjamin Lawsky recognized that check cashers are "entities not regulated for...safe and sound lending operations."

The bill would also permit check cashers to provide "conduit services" as well as "any other financial service permitted in this state." "Conduit services," however, are undefined in any current federal or state lending laws (except in the telecommunications context). The bill defines "conduit services" as "any activity permitted to be offered by a licensee under this article to its customers in collaboration with a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union subject to the approval of the superintendent, provided no conduit services under this section shall be approved, *which exceed prevailing usury provisions in state law...*" (emphasis added). Although this new, amended bill language would appear to prohibit usurious loans, the prohibition would in fact be legally unenforceable against any and all national banks and federally-insured out-of-state banks – i.e., virtually all banks. It is well established that national banks are not subject to state usury (and other consumer protection) laws, under

federal preemption doctrine. Out-of-state, federally-insured state banks are similarly not subject to state usury laws, under exportation doctrine. The bill therefore would allow check cashers to collude with banks and other financial institutions to make usurious loans in New York.

Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers are no longer plagued by internet and other predatory payday lenders. S.6985-B/A.9634-B flies in the face of these critical public enforcement actions. This bill should be seen for what it is: an attempt to bring high-cost, predatory loan products to small businesses and individual borrowers in New York, and to strip wealth from low-income communities and communities of color. At greatest risk are low-income seniors and other New Yorkers in financial distress.

It is worth noting that the only states where check cashers are allowed to make loans are states that also permit payday loans. No state that bans payday loans – and there are 14 of them – allows check cashers to make loans, and New York should not be the first to do so. New York should stand with its Northeast neighbors New Jersey, Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to extend the capacity to check cashers to make loans.

The Legislature should reject S.6985-B/A.9634-B and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Specifically, the Legislature should:

- Support CDFIs that already provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC's best practices recommendations;
- Convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

GENESEE CO-OP FEDERAL CREDIT UNION urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.

Sincerely



Melissa Marquez
Chief Executive Officer



Greater Rochester
Housing Partnership

MEMORANDUM IN OPPOSITION TO

S.6985-B/A.9634-B

June 15, 2016

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: Greater Rochester Housing Partnership opposes S.6985-B/A.9634-B, which would permit New York check cashers to become lenders. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers' authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. Greater Rochester Housing Partnership opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.

The latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state's financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

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For years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York's longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry's latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state's low-income communities and communities of color.

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state banks – i.e., virtually all banks. It is well established that national banks are not subject to state usury (and other consumer protection) laws, under federal preemption doctrine. Out-of-state, federally-insured state banks are similarly not subject to state usury laws, under exportation doctrine. The bill therefore would allow check cashers to collude with banks and other financial institutions to make usurious loans in New York.

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The Legislature should reject S.6985-A/A.9634-A and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Specifically, the Legislature should:

- Support CDFIs that already provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC's best practices recommendations;
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Greater Rochester Housing Partnership urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.



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S.6985-B/A.9634-B

June 15th, 2016

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SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: Habitat for Humanity New York City opposes S.6985-B/A.9634-B, which would permit New York check cashers to make loans. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers' authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state.

Habitat NYC opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers. As we stand with Habitat for Humanity International in seeking strong regulations for PayDay lenders nationally, it is critical that New York State firmly oppose lending schemes aimed at locking low-income families into usurious debt traps.

The latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state's financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

Several of the amendments are clearly intended to appear to address concerns that community, labor, and civil rights groups and community development financial institutions have raised regarding earlier versions of the bill. Careful analysis of the amendments reveals them to be largely cosmetic, however, and we urge legislators not to be fooled by them. Even with the latest amendments, the bill would still, for example, allow usurious loans to be made in New York; permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow check cashers to make loans without being subject to strict underwriting requirements.



For years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York’s longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry’s latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state’s low-income communities and communities of color.

Fundamentally, New York State should not reclassify check cashers as “financial services providers” that can make loans. Legislators need only look back to the recent financial meltdown to understand the devastating consequences that unrestricted lending can have on our communities. If we have learned anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting and that effective regulation and enforcement are crucial. Making loans to individuals and small businesses is a serious and complicated function. Sound underwriting calls for careful evaluation of borrowers’ ability to repay, considering income and expenses – which is not even addressed in this bill.

In 2011, a bill was introduced in the New York State Legislature that, like this bill, would have permitted New York check cashers to make loans. Civil rights, community, fair lending, and community-based financial institutions voiced strong opposition to the 2011 bill, urging that check cashers should not be permitted to make loans in New York as a matter of sound public policy. As the New York City Department of Consumer Affairs stated in a memorandum opposing the bill, dated May 19, 2011:

Communities need access to *responsible* lending, not loans made without regard to ability to repay, which tend to trap borrowers in a cycle of debt. [C]heck cashers are not regulated or supervised with safety and soundness or responsible lending in mind. ...This legislation would for the first time allow check cashers to make loans, even though the State’s supervision is not set up to ensure the safety and soundness of such lending.

In an April 29, 2013 letter addressing a similar bill pushed by the check-cashing industry, former Department of Financial Services’ Superintendent Benjamin Lawsky recognized that check cashers are “entities not regulated for...safe and sound lending operations.”

The bill would also permit check cashers to provide “conduit services” as well as “any other financial service permitted in this state.” “Conduit services,” however, are undefined in any current federal or state lending laws (except in the telecommunications context). The bill defines “conduit services” as “any activity permitted to be offered by a licensee under this



article to its customers in collaboration with a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union subject to the approval of the superintendent, provided no conduit services under this section shall be approved, *which exceed prevailing usury provisions in state law...*" (emphasis added). Although this new, amended bill language would appear to prohibit usurious loans, the prohibition would in fact be legally unenforceable against any and all national banks and federally-insured out-of-state banks – i.e., virtually all banks. It is well established that national banks are not subject to state usury (and other consumer protection) laws, under federal preemption doctrine. Out-of-state, federally-insured state banks are similarly not subject to state usury laws, under exportation doctrine. The bill therefore would allow check cashers to collude with banks and other financial institutions to make usurious loans in New York.

Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers are no longer plagued by internet and other predatory payday lenders. S.6985-A/A.9634-A flies in the face of these critical public enforcement actions. This bill should be seen for what it is: an attempt to bring high-cost, predatory loan products to small businesses and individual borrowers in New York, and to strip wealth from low-income communities and communities of color. At greatest risk are low-income seniors and other New Yorkers in financial distress.

It is worth noting that the only states where check cashers are allowed to make loans are states that also permit payday loans. No state that bans payday loans – and there are 14 of them – allows check cashers to make loans, and New York should not be the first to do so. New York should stand with its Northeast neighbors New Jersey, Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to extend the capacity to check cashers to make loans.

The Legislature should reject S.6985-A/A.9634-A and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Specifically, the Legislature should:

- Support CDFIs that already provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC's best practices recommendations;



- Convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

Habitat for Humanity New York City urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Haycox".

Karen Haycox
Chief Executive Officer
Habitat for Humanity New York City



AMENDED MEMORANDUM CONCERNING

S.6985-B/A.9634-B

June 14, 2016

BILL NUMBER: S.6985-A/A.9634-A

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF CONCERNS: Legal Services NYC ("LSNYC") submits this amended memorandum concerning S.6985-B/A.9634-B, which would permit New York check cashers to make loans. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers' authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. The most recent amendments to the bill would still allow usurious loans to be made in New York; permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow check cashers to make loans without being subject to strict underwriting requirements.

LSNYC is Legal Services NYC (LSNYC) is the largest provider of free civil legal services in the nation and a leading advocacy organization for low-income New Yorkers, who are especially vulnerable to predatory and irresponsible forms of consumer lending. LSNYC is concerned that the communities we serve will be tangibly harmed if New York check cashers are permitted to make loans, whether to small businesses or to individual borrowers.

Legal Services NYC
Legal Support Unit

40 Worth Street, Suite 606, New York, NY 10013

Phone and Facsimile: 646-442-3634 e-mail: jinwald@ls-nyc.org www.LegalServicesNYC.org

Raun J. Rasmussen, Executive Director

Michael D. Young, Board Chair



For years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York's longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. LSNYC is concerned that this bill is nothing more than an effort to pave the way for legalization of high-cost, payday or payday-like loans that target our state's low-income communities and communities of color by taking the first step of authorizing lending by check cashing institutions.

LSNYC is very concerned about the impact on low-income New Yorkers if New York State were to reclassify check cashers as "financial services providers" permitted to make loans. The events of the last several years and their continuing impact on New York's most vulnerable communities are an ongoing reminder about the devastation that unrestricted lending can unleash on our communities. If we have learned anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting and that effective regulation and enforcement are crucial. Making loans to individuals and small businesses is a serious and complicated function. Sound underwriting calls for careful evaluation of borrowers' ability to repay, considering income and expenses – important requirements that are not addressed in the legislation under consideration.

In 2011, a bill was introduced in the New York State Legislature that, like this bill, would have permitted New York check cashers to make loans. We note that civil rights, community, fair lending, and community-based financial institutions voiced strong opposition to the 2011 bill, urging that check cashers should not be permitted to make loans in New York as a matter of sound public policy. As the New York City Department of Consumer Affairs stated in comments on that proposal dated May 19, 2011:

Communities need access to *responsible* lending, not loans made without regard to ability to repay, which tend to trap borrowers in a cycle of debt. [C]heck cashers are not regulated or supervised with safety and soundness or responsible lending in mind. ...This legislation would for the first time allow check cashers to make loans, even though the State's supervision is not set up to ensure the safety and soundness of such lending.

In an April 29, 2013 letter addressing a similar bill advanced by the check-cashing industry, former Department of Financial Services' Superintendent Benjamin Lawskey recognized that check cashers are "entities not regulated for...safe and sound lending operations."

The bill would also permit check cashers to provide "conduit services" as well as "any other financial service permitted in this state." "Conduit services," however, are undefined in any current federal or state lending laws (except in the telecommunications context). The bill defines "conduit services" as "any activity permitted to be offered by a licensee under this article to its customers in collaboration with a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union subject to the approval of the superintendent, provided no conduit services under this section shall be approved, which exceed prevailing usury provisions in state law..." (emphasis added). Although this new, amended bill language would appear to prohibit usurious loans, the prohibition would in fact be legally unenforceable against any and all national banks and federally-insured out-of-state banks – i.e., virtually all banks. It is well established that national banks are not subject to state usury (and other consumer protection) laws, under federal preemption doctrines. Out-of-state, federally-insured state banks are similarly not subject to state usury laws, under exportation doctrine. The bill therefore would allow check cashers to collude with banks and other financial institutions to make usurious loans in New York.

Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers are no longer plagued by internet and other predatory payday lenders. S.6985-A/A.9634-A could undermine the progress New York has made in combating the impact of payday lending on our low-income communities, and we believe it is likely an attempt to pave the way for high-cost, predatory loan products that are harmful to small businesses and individual borrowers in New York, and which are known to strip wealth from low-income communities and communities of color. At greatest risk are the low-income seniors and other New Yorkers in financial distress who form the client base of LSNYC.

Notably the only states where check cashers are allowed to make loans are states that also permit payday loans. No state that bans payday loans – and there are 14 of them – allows check cashers to make loans.

While we recognize the need to expand financial services for New York's under-banked communities, we are wary of opening the door to unregulated check cashers to the lending business, and would encourage exploration of ways to strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Among the options that could encourage responsible, non-predatory small dollar lending the Legislature might consider:

- Supporting CDFIs that already provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encouraging banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC's best practices recommendations;
- Convening banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

MEMORANDUM IN OPPOSITION TO
S.6985-B/A.9634-B
June 16, 2016

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: LINCOLN SQUARE LEGAL SERVICES, INC. ("LSLS") at Fordham University School of Law opposes S.6985-B/A.9634-B, which would permit New York check cashers to become lenders and, with no lending experience, make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. Such an unprecedented and unwarranted expansion of check cashers' authority would allow high-cost, predatory loans that New York State ("NYS") has long successfully fought to keep out of our state. LSLS opposes allowing NYS check cashers to make loans, whether to small businesses or to individual borrowers.

NYS should not reclassify check cashers as "financial services providers" that can make loans. The recent economic meltdown revealed the destructive impact of unrestricted lending, and that lenders must be required to engage in sound underwriting, subject to effective regulation and enforcement. Sound loan-making to individuals and small businesses must require careful assessment of ability to repay. The bill fails to address that this.

The check-cashing industry has long sought to make usurious small-dollar loans in NYS. They pressed for legislation to exempt them from NYS's longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans and, when unsuccessful, pressed for legislation that masked the true cost of the loans they would make. This bill is the industry's latest attempt to convince the NYS Legislature to legalize and empower check cashers to make high-cost, payday or payday-like loans that target our state's low-income communities.

A bill introduced in the NYS Legislature in 2011, like this bill, would have allowed NYS check cashers to make loans. That bill was vigorously opposed by community advocates and financial institutions as adverse to good public policy. By memorandum dated May 19, 2011 opposing the bill, the New York City Department of Consumer Affairs stated:

Communities need access to *responsible* lending, not loans made without regard to ability to repay, which tend to trap borrowers in a cycle of debt. [C]heck cashers are not regulated or supervised with safety and soundness or responsible lending in mind. ...This legislation would for the first time allow check cashers to make loans, even though the State's supervision is not set up to ensure the safety and soundness of such lending.

In an April 29, 2013 letter about a similar bill pushed by the check-cashing industry, former Department of Financial Services' Superintendent Benjamin Lawsky recognized that check cashers are "entities not regulated for...safe and sound lending operations."

June 13, 2016 amendments to the bill leave intact its basic problems. If enacted, the dramatic, new measure of letter check cashers become lenders would undermine NYS's success at steering clear of high-cost loans; the amendments don't address this peril. Even with the latest amendments, the bill would still, for example, allow usurious loans to be made in NYS; permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow them to make loans free of strict underwriting requirements.

In addition, by allowing check cashers to provide "conduit services" and "any other financial service permitted in this state," the bill would allow them to collude with banks to make usurious loans in NYS. "Conduit services" -- undefined in current federal or state lending laws (except in the telecommunications context) -- are defined in the bill as "any activity permitted to be offered by a licensee under this article to its customers in collaboration with a state or federally chartered bank...[and] savings bank..., provided no conduit services under this section shall be approved, *which exceed prevailing usury provisions in state law...*" (emphasis added). In fact, this apparent prohibition against usurious loans would be legally unenforceable against virtually all banks: national banks and federally-insured out-of-state banks are *not* subject to state usury laws, under the federal preemption and exportation doctrines.

New Yorkers are no longer plagued by internet and other predatory payday lenders because of strong enforcement of consumer protection laws. Running counter to these critical public enforcement actions, S.6985-B/A.9634-B is an attempt to bring high-cost, predatory loan products to small businesses and individual borrowers in NYS and to strip wealth from low-income communities, particularly the elderly and others in financial trouble.

The only states where check cashers are allowed to make loans also allow payday loans. None of the 14 states that ban payday loans allows check cashers to make loans; NYS should stand fast with New Jersey, Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to facilitate them via check cashers.

Rather than enact S.6985-A/A.9634-A, the Legislature should:

- Support responsible lenders that seek to meet credit needs safely, e.g., Community Development Financial Institutions that already provide affordable small-dollar loans and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans as per the FDIC's best practices recommendations;
- Convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

LINCOLN SQUARE LEGAL SERVICES INC. urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.



MEMO IN OPPOSITION

A.9634-B/Rodriguez - S.6985-B/Savino Community Financial Services Access and Modernization Act

The Lower East Side People's Federal Credit Union opposes A.9634-B/S.6985-B, which would eliminate New York's longstanding ban on lending by check cashers, and exempt check cashers from New York's current laws and regulations governing licensed lenders. Despite the amendments recently made, the bill would still allow a whole new sector, completely inexperienced in lending, to become licensed as business lenders. The amended bill also still allows check cashers to provide so-called "conduit services", imposing a fee for operating as a "go-between" between their customers and a regulated bank or credit union; this type of service is currently available free or at very low cost from non-profit organizations in the under banked communities the check cashers claim to serve.

We are concerned that this bill is yet another attempt by the check cashing industry – and other financial interests – to market high-interest loans in violation of our state's usury laws. The amended bill would still allow the check cashers to charge unlimited brokering fees, through the conduit services provision. This would permit them to circumvent NYS's usury laws through the use of upfront "fees" which effectively push up the interest rate.

The bill would allow check cashers to make "commercial and business" loans, yet it is still not clear how these small loans will differ from personal loans for the small business owners. While the amended bill describes ways in which it must be proved that the loan will be used for commercial purposes, it does not address the more fundamental underwriting issue that will result in required personal guarantees and personal collateral.

If these loans are underwritten as personal loans for business purposes, they are essentially payday loans without the paycheck. For example, a bodega owner borrows \$25,000 for inventory, which gets purchased the following week. The loan is expected to be paid back from the proceeds of the sale of the inventory. However, the bodega owner can't pay back the loan because she needs the income to pay the rent, her employee, etc. So she borrows some more. Just like a payday loan, this becomes a never-ending cycle which only stops at bankruptcy.

While the amended bill now includes language regarding underwriting, it simply states that the Department of Financial Services must promulgate rules/regulations requiring check cashers to submit proposed underwriting criteria as part of their application to become licensed as lenders under Article 9, but there is no requirement that DFS would have to



approve those criteria.

As a low-income designated, certified Community Development Financial Institution (CDFI), LES People's FCU has been making loans to small businesses in our communities for 30 years. Unlike the check cashers, we are a regulated financial institution which follows strict guidelines in underwriting. Also unlike the check cashers, we are not for profit, and as a result we are most concerned with our members' ability to afford the loans we make. Therefore we look at all aspects of a member's business before determining the amount and term of a loan. **We do not believe that the check cashers have the expertise to underwrite commercial and business loans in a manner that is safe for the borrower.**

It is this lack of expertise which we believe has led to the inclusion of the "conduit services" section of the bill. The check cashers are proposing, and the bill permits, that they assist their customers in preparing applications for loans from banks and credit unions. In this way, they are collecting a fee for technical assistance that is already available free of charge in underbanked communities in New York. For example, CDFI loan funds and credit unions all provide this service, as well as the City's Small Business Solution Centers and numerous non-profit technical assistance providers. In addition, the Small Business Administration offers technical assistance to low income entrepreneurs at many City and State university campuses. **The provision of "conduit services" is in fact nothing short of a way for the check cashers to charge a fee for something low income people can receive for free.**

Our State already has a well-established financial services industry. Supporting and expanding the availability of credit unions and banks will help low-income citizens, working New Yorkers, and senior citizens, and will benefit communities. Opening the door for check cashers to provide loans does not!

New York is one of 14 states – including our Northeast neighbors New Jersey, Pennsylvania, Connecticut and Massachusetts – that ban usurious payday or payday-like loans. The Legislature should not allow such predatory products to gain a foothold here, under this bill or any other scheme.

On behalf of the 8,500 members of LES People's FCU, living and working in all five boroughs of New York City, we urge you to oppose this legislation.

June 14, 2016



**LEGAL
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OPPOSE
**An Act to amend the Banking Law, in
relation to the**
**“Community Financial Services Access and
Modernization Act of 2016”**

June 14, 2016

A.9634B – Rodriguez/S.6985B -- Savino

MFY Legal Services, Inc. (“MFY”) strongly opposes the introduction of A.9634B/S.6985B, which would erode New York’s longstanding protections against abusive loans by authorizing check cashers to make “business or commercial loans” without formal underwriting standards applicable to other lenders. By allowing an unprecedented and unwarranted expansion of check cashers’ authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. MFY opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for over 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 10,000 New Yorkers each year. Specifically, MFY’s Consumer Rights Project and Low-Income Bankruptcy Project provide advice, counsel, and representation to low-income New Yorkers, some of whom are small business owners, on a range of consumer problems, including predatory loan products.

This legislation is yet another attempt by the check cashing industry – and other financial interests – to market high-interest and risky loans that have proven harmful to the residents and communities of New York. It would, for the first time, allow check cashers to be licensed under Article 9 of the Banking Law, which regulates licensed lenders. The bill, however, lacks any parameters on the making of loans, and the last-minute amendments do nothing to impose safe and sound parameters or alleviate legitimate concerns about opening the door in New York to payday lending.

The latest amendments to the bill, posted on June 13, 2016, fail to resolve certain fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state’s financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the lack of public hearings and engagement on the bill.

Several of the amendments are clearly intended to appear to address concerns that community, labor, and civil rights groups and community development financial institutions have raised regarding earlier versions of the bill, but careful analysis of the amendments reveals them to be largely cosmetic. Even with the latest amendments, the bill would still, for example, allow usurious loans to be made in New York; permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow check cashers to make loans without being subject to strict underwriting requirements.

Strong underwriting parameters are particularly important considering how greatly this proposal would expand the permissible services of check cashers beyond cashing checks, selling money orders and processing bill payments. Check-cashing businesses have never been in the business of making loans or issuing credit, and properly doing so to small businesses is even more complicated than issuing credit to individuals, who typically have a steady, verifiable income. Underwriting small business loans entails reviewing books and records, expense sheets, business plans, and other information, details of which are absent in this bill.

Furthermore, the bill would permit check cashers to provide “conduit services” as well as “any other financial service permitted in this state.” The bill defines “conduit services” as “any activity permitted to be offered by a licensee under this article to its customers in collaboration with a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union subject to the approval of the superintendent, provided no conduit services under this section shall be approved, *which exceed prevailing usury provisions in state law...*” (emphasis added). Although this new, amended bill language would appear to prohibit usurious loans, the prohibition would in fact be legally unenforceable against any and all national banks and federally insured out-of-state banks – virtually all banks.

We are also concerned by the very real prospect that this legislation, billed as providing products for businesses, would open the door to high-cost and predatory usurious small-dollar loans. For years the check-cashing industry has pressed for legislation that would effectively exempt them from New York’s longstanding civil and criminal usury caps, which bank payday loans. This bill is the industry’s latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state’s low-income communities and communities of color. No state that bans payday loans allows check cashers to make loans, and New York should not be the first to do so.

New York State already has a well-established financial services industry. Banks, credit unions, and community development financial institutions (CDFIs) offer loans to small businesses, and provide loans that are properly underwritten and that help communities, not harm them. If we have learned anything from the financial meltdown, it is that making loans without proper underwriting is a recipe for disaster. The Legislature should not rush headlong into allowing check cashers to enter the lending business. Instead, the Legislature should support CDFIs that already provide affordable small-dollar loans and whose mission is to serve underserved communities and lower-income New Yorkers; encourage banks that participate in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC’s best practices recommendations; and should convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

MFY Legal Services urges your opposition to A.9634B/S.6985B.

*For more information, please contact: Ariana Lindermayer at 212-417-3742, alindermayer@mfy.org
or Carolyn Coffey at 212-417-3701, ccoffey@mfy.org.*



MEMORANDUM IN OPPOSITION TO

S.6985-B/ A.9634-B

June 14, 2016

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: New Economy Project opposes S.6985-B/A.9634-B, which would permit New York check cashers to a) become licensed business and commercial lenders, and b) broker consumer, business and other loans in collaboration with out-of-state banks not subject to New York's usury laws. The bill would allow check cashers, which have no experience as lenders, to make or broker loans without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers' authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. New Economy Project opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.

The latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state's financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill

would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

Several of the amendments are clearly intended to appear to address concerns that community, labor, and civil rights groups and community development financial institutions have raised regarding earlier versions of the bill. Careful analysis of the amendments reveals them to be largely cosmetic, however, and we urge legislators not to be fooled by them. Even with the latest amendments, the bill would still, for example, allow usurious loans to be made in New York; permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow check cashers to make loans without being subject to strict underwriting requirements.

As described in detail below, the latest amendments to the bill do not resolve its many fundamental, structural problems:

- **The bill still authorizes a whole new sector, which has no prior experience as lenders, to become licensed as business lenders – even though business loans are much more complex to underwrite than consumer loans.**
 - Check cashers would be permitted to make loans to small businesses – including mom-and-pop, family- and immigrant-owned businesses – that resemble consumer loans, and where (e.g.) the loans are secured by personal property. (Big corporations would likely not seek business or commercial loans from check cashers.) At risk of harm would be lower income New Yorkers and their families.
 - Despite the growing chorus of voices – including that of the United States Treasury – calling for greater protections for small business borrowers, the bill adds *no* protections whatsoever for borrowers. (The Treasury has noted that “strong evidence indicates that small business loans under \$100,000 share common characteristics with consumer loans yet do not enjoy the same consumer protections.”)
 - The bill would also create the huge risk that check cashers, motivated by profit and completely inexperienced in underwriting, would make unaffordable loans to small business owners; and that after small business owners default, check cashers will then engage in debt collection on many of those loans, or hire debt collectors to collect on those loans for them. The protections under the federal Fair Debt Collection Practices Act and other debt collection laws do not apply to small business loans, and so borrowers under this bill's scheme would have little to no recourse against abusive debt collection practices.
 - The only states that allow check cashers to make loans are states that allow payday loans, which are effectively banned in New York thanks to our usury laws.

- **The bill still permits usurious loans – both consumer and business/commercial loans – to be made in New York by reclassifying check cashers as “financial services providers” that could engage in so-called “conduit services” in collaboration with out-of-state banks.**
 - Contrary to what bill proponents claim, check cashers could bring usurious loans into New York by acting as loan brokers for out-of-state banks. A recent amendment to the bill purports to limit interest rates on loans from out-of-state banks to “prevailing usury provisions in state law.” Although this new, amended bill language would appear to prohibit usurious loans, the prohibition would in fact be legally unenforceable against any and all national banks and federally-insured out-of-state banks – i.e., virtually all banks. It is well established that national banks are not subject to state usury (and other consumer protection) laws, under federal preemption doctrine. Out-of-state, federally-insured state banks are similarly not subject to state usury laws, under exportation doctrine. The bill therefore would allow check cashers to collude with banks and other financial institutions to make usurious loans in New York.
 - Check cashers could also effectively blow up our usury caps by charging unlimited brokering fees. The bill still wholly exempts check cashers, or newly-dubbed “licensed financial services providers,” from Article 9 of the Banking Law, which, notably, prohibits any fees, including brokering and other fees, that would effectively push the interest rate above our usury caps. As a result of this exemption from Article 9, the bill permits check cashers to charge unlimited brokering and other fees, even if those fees would effectively push the interest rate above our usury caps.
 - The bill permits check cashers to broker consumer (as well as business and commercial) loans for New York residents via “conduit services.” Check cashers could steer New Yorkers to consumer loans from “collaborating” financial institutions.
- **The bill still allows check cashers to prepare and submit loan applications to “collaborating” financial institutions. There are many problems with this:**
 - As stated above, the bill exempts check cashers from Article 9 and would therefore arguably permit them to charge unlimited fees, including loan application fees – even if those fees would in reality push the interest rate above our usury caps.
 - These services are already available to New York State residents *for free* or at very low cost, in the same “underbanked” communities the check cashers claim to serve, whereas check cashers would charge a fee. *There is nothing in the bill that sets forth any caps on fees, such as application fees, or commissions that check cashers could charge.* Free or very low-cost services are available, for example, from the broad network of community development credit unions and other community development financial institutions (CDFIs) statewide, and New York City’s Small Business Solution Centers. The

Small Business Administration also offers technical assistance to low-income entrepreneurs at many CUNY and SUNY campuses.

Unfortunately, many small businesses are unaware of these free or low-cost services – and would end up paying fees to check cashers, even if they are turned down for loans. Small business owners that check cashers would likely target include the bodega owner who needs funds for inventory, the local aspiring restaurant owner who just needs a little more (after borrowing other amounts) to open her restaurant, and the young entrepreneur who thinks he has the next best idea.

- Check cashers would not be required to assess the likelihood of approval before taking the loan application fee, and as a result many of the applications would be rejected by responsible lenders.
- Much like the fraud that happened with mortgage brokers who intentionally inflated people’s income on loan applications, check cashers might in fact be incentivized by a fee/commission paid by the collaborating financial institution to prepare and submit loan applications containing false income and other information, in order to secure as many loans as possible for the collaborating financial institution, which could then bundle and securitize the loans. This could lead to a nightmarish replay of the subprime mortgage crisis.
- **The bill would still allow check cashers to steer small business owners to Article 9 licensed lenders (including check cashers), which would not be subject to our 16% civil usury cap, but only to our 25% criminal usury cap.** There is nothing in the bill that would require check cashers to guide New York consumers and small business owners instead to responsible lenders such as community development financial institutions (CDFIs), which are mission-driven lenders that engage in sound underwriting and have a long track record of responsibly meeting consumer, business, and other community credit needs. CDFIs cover every county in New York State, and collectively tens of thousands of loans to New York small business at interest rates *below our 16% civil usury cap*.
- **The bill’s “conduit services” definition still includes the language “including but not limited to,” which could mean a Wild Wild West of scam financial services** – especially if we do not have a Superintendent who is willing to set strict parameters on what constitutes “conduit services.”
- **The bill still does not impose on check cashers any underwriting or other requirements that would require check cashers to assess a borrower’s ability to repay.** Another recent amendment to the bill purports to address underwriting, but does not even come close to imposing any underwriting requirements. The amendment would mandate that the Department of Financial Services (DFS) promulgate rules/regulations requiring check cashers to submit underwriting criteria as part of their application to become licensed as lenders under Article 9, but there is no requirement that DFS

would have to approve those criteria. Similar language in laws in other states – New Mexico, for example – has done nothing to ensure that people actually have the ability to repay loans or to prevent triple-digit interest rates.

- Another amendment to the bill purports to ensure that business loans are not diverted for personal use; this provision, however, is unenforceable, and would penalize the borrower for a lender's subterfuge of the law.

The bill proposes a radical change in New York's financial services landscape, and yet there has been NO public hearing, NO transparency, and NO public accountability. NO research has been provided to support the notion that check cashers have the capacity to be effective small business lenders. Nor has any consideration been given to how this proposal relates to – and potentially undermines – sound small business and community lending by New York agencies, nonprofits, and CDFIs. If New York is serious about meeting community credit needs, it would do well to identify and bolster organizations and programs that have proven effective – not recklessly open the door to an industry with no track record of making loans.

The bill directly undermines New York's tremendous, successful efforts to drive payday lending out of our state. Under former DFS Superintendent Lawsky, New York demonstrated what meaningful enforcement of consumer protection laws can achieve. Through a series of enforcement actions and surviving a lawsuit challenging its actions, DFS drove illegal payday lending out of New York, including illegal Internet and tribal payday lending, and debt collection and buying of payday loans.

None of the 14 states, including New York, that ban payday lending permit check cashers to make loans. In states that permit check cashers to make loans, the loans they make are payday and other high-cost loans (at rates and on terms that are illegal in New York). New York has been a steady leader in enacting and enforcing strong consumer and fair lending protections. This bill represents a regressive and dangerous step, and one that would reverberate nationally. New Yorkers deserve better.

Finally, check cashers have made no bones about their longstanding desire to make payday loans, and this bill paves the way. New York's check cashers have previously sought legislation to explicitly exempt check cashers (and only check cashers) from our usury laws and permit them to make short-term payday loans. When that effort failed, the industry proposed a bill that would have permitted check cashers to make short-term installment payday loans; required the Superintendent to set fees and interest rates for the loans based on those charged by similar (i.e., payday) lenders in other states; and required the Superintendent to ensure that interest and fees were high enough to guarantee profitability to the check cashers.

The Legislature should reject S.6985-B/A.9634-B and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000

loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

New Economy Project urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.

STATE WIDE

New York StateWide Senior Action Council, Inc.

275 State Street, Albany, NY 12210 • (518) 436-1006 • Fax (518) 436-7642

Toll-Free Patients Rights Helpline **1-800-333-4374**

Memorandum of Opposition

A. 9634B (Rodriguez) - S. 6985B (Savino)

AN ACT to amend the banking law, in relation to enacting the "community financial services access and modernization act of 2016"

New York StateWide Senior Action Council opposes this legislation which will authorize check cashers to partner with out-of-state banks to offer loans, including those that are currently illegal under our state usury caps. The result will trap borrowers in unaffordable debt for extended periods of time, without the means to shoulder the burden.

We oppose the authorization of extremely high interest rates for loans through check cashing services that can lead to the practice of payday loans. The legislation would erode our state's strong consumer protections. The legislation will start a slippery slope that could lead to predatory lending, a practice that is particularly problematic in low income neighborhoods and communities of color.

New York StateWide Senior Action Council urges defeat of A.9634/S.6985 to maintain the ban on lending by check cashers in New York. Rather, we urge the Legislature to strengthen and promote community development financial institutions, which have a proven track record of meeting community and small business credit needs.



Mark Weliky, Esq.
Executive Director
QVLP

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MEMORANDUM IN OPPOSITION TO

S.6985-B / A.9634-B

June 16, 2016

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: The Queens Volunteer Lawyers Project ("QVLP") opposes S.6985-B/A.9634-B, which would permit New York check cashers to become lenders. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers' authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. QVLP opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.

The latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state's financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

Several of the amendments are clearly intended to appear to address concerns that community, labor, and civil rights groups and community development financial institutions have raised regarding earlier versions of the bill. Careful analysis of the

amendments reveals them to be largely cosmetic, however, and we urge legislators not to be fooled by them. Even with the latest amendments, the bill would still, for example, allow usurious loans to be made in New York; permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow check cashers to make loans without being subject to strict underwriting requirements.

For years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York's longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry's latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state's low-income communities and communities of color.

Fundamentally, New York State should not reclassify check cashers as "financial services providers" that can make loans. Legislators need only look back to the recent financial meltdown to understand the devastating consequences that unrestricted lending can have on our communities. If we have learned anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting and that effective regulation and enforcement are crucial. Making loans to individuals and small businesses is a serious and complicated function. Sound underwriting calls for careful evaluation of borrowers' ability to repay, considering income and expenses – which is not even addressed in this bill.

In 2011, a bill was introduced in the New York State Legislature that, like this bill, would have permitted New York check cashers to make loans. Civil rights, community, fair lending, and community-based financial institutions voiced strong opposition to the 2011 bill, urging that check cashers should not be permitted to make loans in New York as a matter of sound public policy. As the New York City Department of Consumer Affairs stated in a memorandum opposing the bill, dated May 19, 2011:

Communities need access to *responsible* lending, not loans made without regard to ability to repay, which tend to trap borrowers in a cycle of debt. [C]heck cashers are not regulated or supervised with safety and soundness or responsible lending in mind. ...This legislation would for the first time allow check cashers to make loans, even though the State's supervision is not set up to ensure the safety and soundness of such lending.

In an April 29, 2013 letter addressing a similar bill pushed by the check-cashing industry, former Department of Financial Services' Superintendent Benjamin Lawsky recognized that check cashers are "entities not regulated for...safe and sound lending operations."

The bill would also permit check cashers to provide “conduit services” as well as “any other financial service permitted in this state.” “Conduit services,” however, are undefined in any current federal or state lending laws (except in the telecommunications context). The bill defines “conduit services” as “any activity permitted to be offered by a licensee under this article to its customers in collaboration with a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union subject to the approval of the superintendent, provided no conduit services under this section shall be approved, *which exceed prevailing usury provisions in state law...*” (emphasis added). Although this new, amended bill language would appear to prohibit usurious loans, the prohibition would in fact be legally unenforceable against any and all national banks and federally-insured out-of-state banks – i.e., virtually all banks. It is well established that national banks are not subject to state usury (and other consumer protection) laws, under federal preemption doctrine. Out-of-state, federally-insured state banks are similarly not subject to state usury laws, under exportation doctrine. The bill therefore would allow check cashers to collude with banks and other financial institutions to make usurious loans in New York.

Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers are no longer plagued by internet and other predatory payday lenders. S.6985-B/A.9634-B flies in the face of these critical public enforcement actions. This bill should be seen for what it is: an attempt to bring high-cost, predatory loan products to small businesses and individual borrowers in New York, and to strip wealth from low-income communities and communities of color. At greatest risk are low-income seniors and other New Yorkers in financial distress.

It is worth noting that the only states where check cashers are allowed to make loans are states that also permit payday loans. No state that bans payday loans – and there are 14 of them – allows check cashers to make loans, and New York should not be the first to do so. New York should stand with its Northeast neighbors New Jersey, Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to extend the capacity to check cashers to make loans.

The Legislature should reject S.6985-B/A.9634-B and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Specifically, the Legislature should:

- Support CDFIs that already provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC's best practices recommendations;
- Convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

QVLP urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.



Mark Weliky
Executive Director, QVLP



MEMORANDUM IN OPPOSITION TO

S.6985-B/A.9634-B

June 15, 2016

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: St. Nicks Alliance opposes S.6985-B/A.9634-B, which would permit New York check cashers to become lenders. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers' authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. **St. Nicks Alliance opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.**

The latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state's financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

Several of the amendments are clearly intended to appear to address concerns that community, labor, and civil rights groups and community development financial institutions have raised regarding earlier versions of the bill. Careful analysis of the amendments reveals them to be largely cosmetic, however, and we urge legislators not to be fooled by them. Even with the latest amendments, the bill would still, for example, allow usurious loans to be made in New York; permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow check cashers to make loans without being subject to strict underwriting requirements.

For years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York's longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry's latest attempt to convince the New York State



Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state's low-income communities and communities of color.

Fundamentally, New York State should not reclassify check cashers as “financial services providers” that can make loans. Legislators need only look back to the recent financial meltdown to understand the devastating consequences that unrestricted lending can have on our communities. If we have learned anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting and that effective regulation and enforcement are crucial. Making loans to individuals and small businesses is a serious and complicated function. Sound underwriting calls for careful evaluation of borrowers' ability to repay, considering income and expenses – which is not even addressed in this bill.

In 2011, a bill was introduced in the New York State Legislature that, like this bill, would have permitted New York check cashers to make loans. Civil rights, community, fair lending, and community-based financial institutions voiced strong opposition to the 2011 bill, urging that check cashers should not be permitted to make loans in New York as a matter of sound public policy. As the New York City Department of Consumer Affairs stated in a memorandum opposing the bill, dated May 19, 2011:

Communities need access to *responsible* lending, not loans made without regard to ability to repay, which tend to trap borrowers in a cycle of debt. [C]heck cashers are not regulated or supervised with safety and soundness or responsible lending in mind. ...This legislation would for the first time allow check cashers to make loans, even though the State's supervision is not set up to ensure the safety and soundness of such lending.

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The bill would also permit check cashers to provide “conduit services” as well as “any other financial service permitted in this state.” “Conduit services,” however, are undefined in any current federal or state lending laws (except in the telecommunications context). The bill defines “conduit services” as “any activity permitted to be offered by a licensee under this article to its customers in collaboration with a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union subject to the approval of the superintendent, provided no conduit services under this section shall be approved, *which exceed prevailing usury provisions in state law...*” (emphasis added). Although this new, amended bill language would appear to prohibit usurious loans, the prohibition would in fact be legally unenforceable against any and all national banks and federally-insured out-of-state banks – i.e., virtually all banks. It is well established that national banks are not subject to state usury (and other consumer protection) laws, under federal preemption doctrine. Out-of-state, federally-insured state banks are similarly not subject to state usury laws, under exportation doctrine. The bill



therefore would allow check cashers to collude with banks and other financial institutions to make usurious loans in New York.

Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers are no longer plagued by internet and other predatory payday lenders. S.6985-B/A.9634-B flies in the face of these critical public enforcement actions. This bill should be seen for what it is: an attempt to bring high-cost, predatory loan products to small businesses and individual borrowers in New York, and to strip wealth from low-income communities and communities of color. At greatest risk are low-income seniors and other New Yorkers in financial distress.

It is worth noting that the only states where check cashers are allowed to make loans are states that also permit payday loans. No state that bans payday loans – and there are 14 of them – allows check cashers to make loans, and New York should not be the first to do so. New York should stand with its Northeast neighbors New Jersey, Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to extend the capacity to check cashers to make loans.

The Legislature should reject S.6985-A/A.9634-A and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Specifically, the Legislature should:

- Support CDFIs that already provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC's best practices recommendations;
- Convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

St. Nicks Alliance urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.



CITY EMPLOYEES UNION LOCAL 237
AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS



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MEMORANDUM IN OPPOSITION TO

S.6985-B/A.9634-B

June 15, 2016

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: "Community Financial Services Access and Modernization Act"

STATEMENT OF OPPOSITION: Teamster Local 237 City Employees Union opposes S.6985-B/A.9634-B, which would permit New York check cashers to become lenders. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers' authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. Teamsters Local 237 opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.

The latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state's financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

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For years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York's longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry's latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state's low-income communities and communities of color.

Fundamentally, New York State should not reclassify check cashers as "financial services providers" that can make loans. Legislators need only look back to the recent financial meltdown to understand the devastating consequences that unrestricted lending can have on our communities. If we have learned anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting and that effective regulation and enforcement are crucial. Making loans to individuals and small businesses is a serious and complicated function. Sound underwriting calls for careful evaluation of borrowers' ability to repay, considering income and expenses – which is not even addressed in this bill.

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Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers are no longer plagued by internet and other predatory payday lenders. S.6985-B/A.9634-B flies in the face of these critical public enforcement actions. This bill should be seen for what it is: an attempt to bring high-cost, predatory loan products to small businesses and individual borrowers in New York, and to strip wealth from low-income communities and communities of color. At greatest risk are low-income seniors and other New Yorkers in financial distress.

It is worth noting that the only states where check cashers are allowed to make loans are states that also permit payday loans. No state that bans payday loans – and there are 14 of them – allows check cashers to make loans, and New York should not be the first to do so. New York should stand with its Northeast neighbors New Jersey, Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to extend the capacity to check cashers to make loans.

The Legislature should reject S.6985-A/A.9634-A and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Specifically, the Legislature should:

- Support CDFIs that already provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC's best practices recommendations;
- Convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

Teamsters Local 237 City Employees Union urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.

MEMORANDUM IN OPPOSITION TO

S.6985-B/A.9634-B

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: “Community Financial Services Access and Modernization Act”

The Western New York Law Center opposes A.9634-B/S.6985-B, which would allow check cashers in New York State to make small business and commercial loans both directly and through partnering with out-of-state banks. The recent amendments to the legislation do not address the reality that this legislation would allow predatory lenders to work around New York’s strong usury rules and would open a door to high-cost, predatory loans that have no place in New York. Under the amended legislation, check cashers are exempt from Article 9 of New York Banking Law, which regulates licensed lenders. This legislation would greatly expand the authority of check cashers and pave the way for high-cost, predatory loans that New York has fought hard to keep out. New York has been a leader in fighting off predatory lending practices and should continue to fight for rights and protections for its business owners and residents.

The recent amendments to A.9634-B/S.6985-B, posted on June 13, 2016, fail to address the concerns raised about previous versions of the bill by the Western New York Law Center and other consumer groups. The legislation continues to offer check cashers many routes to move around New York’s interest rate cap and provides no protections from astonishingly high interest rates.

Perhaps one of the most alarming pieces that remains unchanged in the legislation after the most recent amendments is that check cashers will be exempt from licensing under Article 9 of New York’s Banking Law. Article 9 of New York Banking Law regulates licensed lenders. Specifically, this law includes protections for borrowers that prohibit lenders from charging fees and interest outside of what is allowed by state law. By exempting check cashers from Article 9 of the Banking Law, the legislation would allow check cashers to charge unlimited fees in excess of interest rate charges.

In the latest version of the legislation, check cashers are still allowed to provide “conduit services,” which would give them ability to partner with out-of-state banks allowing them to clearly step around protections from egregious interest rates. Out-of-state banks are not bound to New York State’s interest rate laws, thus the New York Department of Financial Services does not have the authority to approve or disapprove such a loan product. The “collaboration” with out-of-state banks suggested in this legislation has been rejected by New York State in previous attempts to expand check cashers ability to lend, and should be rejected again by New York State.

The bill continues to fail in providing any measure to ensure that loans made by check cashers are affordable to the borrower. The amended bill requires that check cashers *report* the underwriting process and criteria that will be used to make the small business or commercial loan to the Department of Financial Services. However, there is no requirement on the part of check cashers to ensure that the underwriting standard they report works and results in affordable small business loans to the borrower. Additionally, there is no provision in the legislation that would allow the Department of Financial Services to reject the soundness of

the underwriting process and criteria.

The Western New York Law Center remains in opposition of A.9634-B/S.6985-B. The New York Legislature should focus their efforts on supporting safe and responsible lending practices instead of expanding the power of check cashers to make poorly unwritten, predatory loans to small business owners. Throughout New York State there are responsible, community oriented credit unions and CDFIs who meet community and business lending needs in a safe, non-discriminatory manner. Such institutions should be supported by New York State in achieving their mission of meeting community needs. **The Western New York Law Center urges you to oppose A.9634-B/S.6985-B and fight to protect the interest of small business owners and consumers in New York State.**

MEMORANDUM IN OPPOSITION TO
S.6985-B/A.9634-B

June 15, 2016

BILL NUMBER: S.6985-B/A.9634-B

SPONSORS: Senator Savino/Assemblymember Rodriguez

TITLE OF BILL: “Community Financial Services Access and Modernization Act”

STATEMENT OF OPPOSITION: Women’s Venture Fund opposes S.6985-B/A.9634-B, which would permit New York check cashers to become lenders. The bill would allow check cashers, which have no experience as lenders, to make loans to New Yorkers and small businesses in New York, without ensuring the safety and soundness of those loans. By allowing an unprecedented and unwarranted expansion of check cashers’ authority, the bill would pave the way for high-cost, predatory loans that New York has long successfully fought to keep out of our state. Women’s Venture Fund opposes allowing New York check cashers to make loans, whether to small businesses or to individual borrowers.

The latest amendments to the bill, posted on June 13, 2016, fail to resolve the fundamental problems with the bill. Allowing check cashers to become lenders in New York would constitute a radical change in our state’s financial services landscape. The legislature should not enact such a dramatic, new measure, especially given the total lack of public hearings and public engagement on the bill. Indeed, this bill would undermine New York's successful efforts to keep high-cost loans out of our state, and the amendments in no way address this danger.

Several of the amendments are clearly intended to appear to address concerns that community, labor, and civil rights groups and community development financial institutions have raised regarding earlier versions of the bill. Careful analysis of the amendments reveals them to be largely cosmetic, however, and we urge legislators not to be fooled by them. Even with the latest amendments, the bill would still, for example, allow usurious loans to be made in New York;

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permit check cashers to charge unlimited loan-brokering, application, and other fees; and allow check cashers to make loans without being subject to strict underwriting requirements.

For years, the check-cashing industry has been trying to push open the door to usurious small-dollar loans in New York. They have pressed for legislation that would effectively exempt them from New York's longstanding civil and criminal usury caps, which ban payday and other types of predatory, high-cost loans. When that effort proved unsuccessful, they pressed for legislation that masked the true cost of the loans they sought to make. This bill is the industry's latest attempt to convince the New York State Legislature to grant check cashers the power to make loans, and pave the way for legalization of high-cost, payday or payday-like loans that target our state's low-income communities and communities of color.

Fundamentally, New York State should not reclassify check cashers as "financial services providers" that can make loans. Legislators need only look back to the recent financial meltdown to understand the devastating consequences that unrestricted lending can have on our communities. If we have learned anything from the financial meltdown, it is that lenders must be required to engage in sound underwriting and that effective regulation and enforcement are crucial. Making loans to individuals and small businesses is a serious and complicated function. Sound underwriting calls for careful evaluation of borrowers' ability to repay, considering income and expenses – which is not even addressed in this bill.

In 2011, a bill was introduced in the New York State Legislature that, like this bill, would have permitted New York check cashers to make loans. Civil rights, community, fair lending, and community-based financial institutions voiced strong opposition to the 2011 bill, urging that check cashers should not be permitted to make loans in New York as a matter of sound public policy. As the New York City Department of Consumer Affairs stated in a memorandum opposing the bill, dated May 19, 2011:

Communities need access to *responsible* lending, not loans made without regard to ability to repay, which tend to trap borrowers in a cycle of debt. [C]heck cashers are not regulated or supervised with safety and soundness or responsible lending in mind. ... This legislation would for the first time allow check cashers to make loans, even though the State's supervision is not set up to ensure the safety and soundness of such lending.

In an April 29, 2013 letter addressing a similar bill pushed by the check-cashing industry, former Department of Financial Services' Superintendent Benjamin Lawsky recognized that check cashers are "entities not regulated for... safe and sound lending operations."

The bill would also permit check cashers to provide "conduit services" as well as "any other financial service permitted in this state." "Conduit services," however, are undefined in any current federal or state lending laws (except in the telecommunications context). The bill defines

“conduit services” as “any activity permitted to be offered by a licensee under this article to its customers in collaboration with a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union subject to the approval of the superintendent, provided no conduit services under this section shall be approved, *which exceed prevailing usury provisions in state law...*” (emphasis added). Although this new, amended bill language would appear to prohibit usurious loans, the prohibition would in fact be legally unenforceable against any and all national banks and federally-insured out-of-state banks – i.e., virtually all banks. It is well established that national banks are not subject to state usury (and other consumer protection) laws, under federal preemption doctrine. Out-of-state, federally-insured state banks are similarly not subject to state usury laws, under exportation doctrine. The bill therefore would allow check cashers to collude with banks and other financial institutions to make usurious loans in New York.

Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers are no longer plagued by internet and other predatory payday lenders. S.6985-B/A.9634-B flies in the face of these critical public enforcement actions. This bill should be seen for what it is: an attempt to bring high-cost, predatory loan products to small businesses and individual borrowers in New York, and to strip wealth from low-income communities and communities of color. At greatest risk are low-income seniors and other New Yorkers in financial distress.

It is worth noting that the only states where check cashers are allowed to make loans are states that also permit payday loans. No state that bans payday loans – and there are 14 of them – allows check cashers to make loans, and New York should not be the first to do so. New York should stand with its Northeast neighbors New Jersey, Pennsylvania, Connecticut and Massachusetts in continuing to ban payday loans, and in declining to extend the capacity to check cashers to make loans.

The Legislature should reject S.6985-A/A.9634-A and instead affirmatively strengthen and promote Community Development Financial Institutions (CDFIs) and other responsible lenders that are in the business of meeting community and small business credit needs in a safe, non-discriminatory manner. For example, in 2012, the most recent year for which data are available, CDFIs made more than 20,000 loans to small businesses in New York – responsibly meeting the need of small businesses unable to obtain loans from mainstream financial institutions.

Specifically, the Legislature should:

- Support CDFIs that already provide affordable small-dollar loans, and whose mission is to serve underserved communities and lower-income New Yorkers;
- Encourage banks participating in the NYS Banking Development District program to make small-dollar loans in accordance with the FDIC’s best practices recommendations;



- Convene banks, credit unions, loan funds, nonprofits, and community groups to design and implement responsible small business and small-dollar loan programs.

Women's Venture Fund urges you to oppose this legislation, and preserve the integrity of our state's lending and usury laws.