



**TESTIMONY OF NEW ECONOMY PROJECT BEFORE THE
NYS SENATE COMMITTEES ON BANKS AND CONSUMER PROTECTION,
AND THE ASSEMBLY COMMITTEES ON BANKS, SMALL BUSINESS, AND
CONSUMER AFFAIRS & PROTECTION**

Public Hearing on Online Lending Practices
May 22, 2017

Thank you for the opportunity to testify today. My name is Raúl Carrillo and I represent New Economy Project, based in New York City.

Our organization was founded in 1995 (as NEDAP), with the dual mission of fighting discriminatory economic practices that perpetuate inequality, poverty, and segregation, and working with community groups to promote community-led economic development initiatives. Since that time, New Economy Project has been at the forefront of efforts in New York to expose and combat predatory lending, debt collection, and foreclosure abuses; to end the discriminatory use of credit information to block qualified New Yorkers from jobs; to protect immigrants' rights within the financial system; and to keep payday lending out of our state.

Our staff includes a roster of nationally-recognized experts in the consumer financial justice and economic development fields, and we have deep expertise on bank and insurance redlining, fair lending, and community development finance. We have since 2005 operated a free legal assistance hotline for low-income New Yorkers aggrieved by discriminatory and abusive financial practices. Through our hotline and related impact litigation, New Economy Project has helped hundreds of thousands of low-income New Yorkers and New Yorkers of color, particularly seniors, immigrants, and women, to vindicate their rights and obtain significant redress from banks, debt collectors, and other financial services entities.

We feel compelled to testify today, because we are extremely concerned about new attempts to undermine our state's strong consumer protection laws – this time by online lenders that seek to circumvent or diminish our state's usury laws, firmly on New York's books since colonial days. We see a clear need for increased consumer protections in the online lending space, and to counter misrepresentations made by industry members as they press legislators for less regulatory oversight and enforcement. We approach the hearing topic today, in terms of the implications of online lending for economic and racial justice, and for equitable community development.

We present three main points today, starting with one crucial point: the need to preserve New York State's longstanding civil and criminal usury laws.

- 1. Our longstanding usury law is an absolutely critical bulwark against predatory lending, and the Legislature must ensure that this vital consumer protection remains intact.** New York is one of 15 states in the U.S. with usury laws that serve to ban predatory

payday and other high-cost lending. State usury laws like New York's are indeed considered the best line of defense against predatory consumer lending.

The way our country's banking laws have evolved, nationally chartered banks are largely preempted – or exempt – from our state consumer protection laws. And banks chartered in other states are generally able to “export” their state's usury laws into other states, making it especially attractive for banks to secure charters in Delaware, for example, which has no usury limit. Over the years, payday lenders and others have therefore partnered with out-of-state and nationally-chartered banks, in order to gouge New Yorkers with high-cost loans that exceed our state's usury laws. Fortunately, New York, as well as federal banking regulators, the Consumer Financial Protection Bureau, and the courts, have all cracked down on these sham rent-a-bank arrangements. Allowing online lenders to use out-of-state banks or federally-chartered ones to gouge New Yorkers would not only constitute dangerous public policy, but would also represent a reversal of strong legal precedent and regulatory action.

Our consumer protection laws are not only strong, but they are also meaningfully enforced. Through rigorous oversight and enforcement, New York has emerged as a national leader in consumer protection, particularly with respect to high-cost payday lending and debt collection. New York achieved this distinction by pursuing a series of state-level enforcement actions against illegal payday lenders and debt collectors trying to collect on illegal payday loans, cease and desist orders issued to payment processors, and strongly-worded guidance to banks. As a result, payday lending is all but non-existent in our state, and our legal assistance hotline no longer receives calls from New Yorkers who took out illegal payday loans. Allowing online lenders to get around our usury laws would undo these major efforts – and roll back our vital protections.

- 2. New York should strengthen, not weaken, consumer protections when it comes to online lending.** Online lenders – including Lending Club, LendUp, and others – have been subject to a long list of state and federal enforcement actions, settlement agreements, and investigations. The industry's rhetoric of serving borrowers simply does not match the reality, in which securitization of online loans and other incentives to achieve high volume-lending have led to deceptive practices, misrepresentations, and regulatory violations – to the detriment of borrowers and investors alike.

The business model for the online marketplace lending industry, for example, is disturbingly reminiscent of the subprime mortgage market, in which the name of the game is pumping out a high volume of loans so they can be bundled and securitized on Wall Street. Securitizing online marketplace loans is a multi-billion dollar business, with 70% of these loans now reportedly funded through securitization, totaling more than \$2.4 billion dollars in just the 4th quarter of 2016. In this case, things could get especially ugly for borrowers, as it is difficult to get out of an online marketplace loan.

We understand that many online marketplace loans are targeted at “small businesses.” However, many of these loans are tantamount to personal loans, and should be regulated as such. Loans to mom-and-pop, family, and immigrant-owned small businesses especially resemble consumer loans, in which owners’ personal credit and other information is used to make the loan.

There is a growing chorus of voices – including that of the United States Treasury – calling for greater protections for online small business borrowers and New York has an opportunity to ensure that New Yorkers are not harmed by this fast-growing sector. Indeed in its 2016 report on online marketplace lending, the Treasury Department’s number one recommendation was to “support more robust small business protections and effective oversight,” as “strong evidence indicates that small business loans under \$100,000 share common characteristics with consumer loans yet do not enjoy the same consumer protections.”

Meanwhile, New York is considering a bill, S.5771/A.6511, sponsored by several members of the committees convening this hearing today, that would permit an out-of-state marketplace lender, Insikt, to launch a pilot program similar to one it spearheads in California, which permits predatory payday lending. In fact, loans under the proposed pilot program would carry annual percentage rates nearly two to three times that permitted in New York. Simply put, the proposed pilot would blast a hole in New York’s usury law – and we urge all committee members to oppose this bill.

We are submitting for the record our organization’s memorandum in opposition to this bill, and add to the hearing record a letter from three highly-regarded fair lending and consumer justice groups in California, warning New York not to go down this road. Among other points they raise, the Insikt pilot was implemented in California as a less expensive alternative to predatory payday lending. But payday lending has always been illegal in New York, and the last thing we need is a less predatory “alternative.” Also for the record, I am adding a letter from groups in Florida that opposed a similar pilot program effort in their state. The Florida Legislature recognized that the pilot was unwarranted and did not pass the bill; and consumer advocacy, faith-based, and civil rights groups have gone on record opposing the effort.

Finally, we would be remiss if we did not mention the related dangers of New York’s so-called “check-cashers’ bill.” That ongoing and misguided legislation was recently split into two separate bills, including one that would permit New York check-cashers to engage in “conduit services.” Although the bill, S. 6121 /A. 7907, allegedly would not permit check cashers to make loans, as previous bill versions proposed, the bill language leaves the door wide open to all sorts of predatory lending and brokering abuses. Again, New York cannot simply assert that federally-chartered and out-of-state banks are subject to our state’s “prevailing interest rates.” This does not work as a matter of law.

- 3. The Legislature should support the creation and expansion of community development financial institutions (CDFIs) throughout the state.** New York has perhaps the most robust network of CDFIs in the country, responsible lending institutions that know how to meet the financial services and credit needs of consumers, small businesses, and communities.

In fiscal year 2015, 74 CDFIs served every county in New York State with more than \$2.6 billion in financing to 60,000 customers, including individuals, small businesses, affordable housing developers, primary care and non-profit community facilities.

In its 2016 Small Business Credit Survey, the Federal Reserve Bank of New York reported that small business borrowers have the least satisfaction – and greatest dissatisfaction – with online lenders. By contrast, small business borrowers have the most satisfaction and least dissatisfaction with CDFIs, along with small banks and credit unions.

New York State has invested in an online portal for small businesses in New York State, which links them to CDFIs, based on their location. In 2007, New York created a state CDFI Fund to help local CDFIs secure federal CDFI funding and leverage resources from other public and private sources. That's because the Legislature understood that CDFIs typically leverage every dollar in funding between 12 to 20 times over – all to the benefit of low income New Yorkers and communities, and to community development more broadly. But the state has yet to put public dollars into the very fund it created for these vital purposes.

If New York is serious about ensuring access to fair and responsible credit for New Yorkers and for small businesses, we respectfully urge the Committee Chairs and Members here today and the entire New York State Legislature to put its energy into supporting community development financial institutions – rather than continuing to pursue unsound policies that would compromise our consumer protections and open the floodgates to predatory lending in New York.

Thank you again for the opportunity to testify today. I look forward to responding to any questions you might have.

Testimony of Lisa Stifler
Deputy Director of State Policy, Center for Responsible Lending

Before the New York Senate Standing Committee on Banks,
Senate Standing Committee on Consumer Protection,
Assembly Standing Committee on Banks,
Assembly Standing Committee on Consumer Affairs & Protection,
and Assembly Standing Committee on Small Business

On Practices of the Online Lending Industry

May 22, 2017

Chairs Hamilton, Carlucci, Zebrowski, Thiele, Jr., and Kavanaugh and members of the standing committees, thank you for allowing me to submit this testimony for today's hearing on online lending practices.

The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan research and policy organization which is dedicated to protecting homeownership and family assets by working to eliminate abusive financial practices. We strive to promote responsible lending and access to fair terms of credit for low-wealth families. CRL is an affiliate of Self-Help Credit Union, which is the nation's largest community development financial institution with a mission of helping underserved people and communities build wealth and assets.

To that end, we have long worked to combat predatory lending practices like payday lending. Payday loans and other financial products like them – whether made online, in stores, or by banks – keep low-income families stuck in a cycle of debt, continually taking out one loan in order to pay off another.

Payday and other high-cost loans create a debt cycle for borrowers because most low-income people cannot afford such large withdrawals from their bank accounts without defaulting on other expenses or immediately re-borrowing when these payments come due. The harms to consumers stem from the loans high costs, lack of underwriting assessing affordability, and the lender's direct access to a borrower's bank account. The average payday loan consumer ends up with 10 loans each year, paying annual interest rates of around 400%.¹ The Consumer Financial Protection Bureau (CFPB) has found that 80% of payday loans are either rolled over or taken out to pay off another loan.²

¹ Consumer Financial Protection Bureau, *Payday loans and deposit advance products: A white paper of initial data findings* (2013), available at <http://1.usa.gov/1aX9ley>.

² Consumer Financial Protection Bureau, *Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products* (2016), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf.

High rates of default and repeat refinancing persist even when online payday loans are structured to be payable in installments. According to the CFPB's analysis, over 40% of online payday installment loans experience default, and 37% are refinanced.³ In the CFPB's dataset, online payday installment loans carried an average APR of 279% and an average loan amount of about \$2,100.⁴ Regardless if loans are structured as short-term or long-term, the debt trap is the core of the payday lenders' business model. It leads to devastating consequences for borrowers, such as an increased likelihood of bankruptcy, and delinquency on other bills such as rent, utility, and medical care.

Nationally, in states where these loans are legal, payday and car title loan fees strip American consumers of approximately \$8 billion each year. Thankfully, New York is a leader in protecting its residents against the harms of high-cost lending.⁵ The state has long recognized the predatory nature of high-cost lending and has protected borrowers by capping interest rates on consumer and certain business loans at 25%. Critically, this law, coupled with the state's history of enforcing its long-standing usury law, is the most effective protection against the harms of unaffordable, high-cost loans, whether they are made in stores or online.

These well-defined usury laws and regulatory enforcement actions save New Yorkers millions of dollars each year. The Center for Responsible Lending estimates that the state's rate limits save New Yorkers \$790 million annually in fees that would otherwise be paid on triple-digit payday or car title loans.⁶ As they have done in other states, payday lenders have frequently attempted to evade New York's rate cap protections in order to subject consumers to their predatory high-cost loans. Each time, New York state regulators have acted swiftly to ensure that lenders are not able to work around the state's consumer protections. In fact, the New York Attorney General and Department of Financial Services have been national leaders in ensuring that predatory lenders, including those that offer loans online, cannot evade the state's strong consumer protection laws by enforcing these laws not only against payday lenders, but also against those facilitating these predatory lending practices: lead generators, payment processors, and debt collectors.⁷

³ *Id.*

⁴ *Id.*

⁵ New York is one of fifteen states, plus the District of Columbia, that have enacted regulations that effectively protect consumers from predatory payday lending practices. New York is also one of more than 30 states in which a \$2,000, two-year loan that has an APR above 36%, including all fees, would violate the state usury law. See National Consumer Law Center, *Installment loans: Will states protect borrowers from a new wave of predatory lending?* (2015), <https://www.nclc.org/images/pdf/pr-reports/report-installment-loans.pdf>.

⁶ Robin Howarth, Delving Davis & Sarah Wolff, *Shark-free waters: States are better off without payday lending* (2016), http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_shark_free_waters_aug2016.pdf.

⁷ See, e.g., Press Release, New York Dept. of Financial Services, "DFS Announces Settlement with Two Debt Buyers Resulting in \$3 Million of Restitution to Thousands of New York Consumers", (May 18, 2016), <http://www.dfs.ny.gov/about/press/pr1605181.htm> (for collecting on illegal payday loans); Press Release, New York Dept. of Financial Services, "NYDFS Announces Lead Generator Will Pay \$1 Million Penalty and Stop Selling 'Leads' of New York Consumers to Illegal Payday Lenders", (Mar. 17, 2016), <http://www.dfs.ny.gov/about/press/pr1603171.htm>; Rachel Abrams, "New York State Makes New Efforts to Combat Payday Lenders", NEW YORK TIMES, (Apr. 29, 2014), <https://dealbook.nytimes.com/2014/04/29/embargo->

Payday lenders are rarely deterred when they have been halted at the front door; instead, they attempt to gain access to vulnerable consumers through back channels by using various evasion tactics to sidestep regulations. Nationally, payday lenders have used numerous schemes to dodge state laws, whether charging fees they claim are not considered interest,⁸ posing as brokers to facilitate loans and charging high fees for doing so,⁹ partnering with out-of-state banks to circumvent usury laws (known as the “rent-a-bank” model),¹⁰ affiliating with Native Nations,¹¹ operating off-shore,¹² or operating online.¹³ The latest iteration of these schemes often combine the rent-a-bank model, operating solely online, and use of newer technologies like “big data” and phone-based applications. Some of these lenders disguise their practices behind the labels of “fintech” or “marketplace lenders,” but in reality they often carry the old and storied signs of unsafe lending. While many of these lenders make big promises about

new-york-makes-new-efforts-to-combat-payday-lenders/; Press Release, New York Attorney General, “A.G. Schneiderman Announces Settlement With Western Sky Financial And CashCall For Illegal Loans Made Over The Internet”, (Jan. 24, 2014), <https://ag.ny.gov/press-release/ag-schneiderman-announces-settlement-western-sky-financial-and-cashcall-illegal-loans>; Evan Weinberger, “Tribes Lose Bid to Halt NY Payday Loan Crackdown”, LAW360, (Oct. 1, 2013), <https://www.law360.com/articles/477154/tribes-lose-bid-to-halt-ny-payday-loan-crackdown>; Reuters, “N.Y. Attorney General settles with payday loan companies”, (Sept. 30, 2013), <http://www.reuters.com/article/us-usa-paydayloans-newyork-idUSBRE98T03920130930>; Press Release, New York Dept. of Financial Services, “Cuomo administration demands 35 companies cease and desist offering illegal online payday loans that harm New York consumers”, (Aug. 6, 2013), <http://www.dfs.ny.gov/about/press/pr1308061.htm>.

⁸ See, e.g., Proposed Amendment to Ariz. S.B. 1520 (2017) (proposing an open-end loan product that would carry no interest but a daily transaction fee).

⁹ Diane Standaert & Sara Weed, “Payday Lenders Pose as Brokers to Evade Interest Rate Caps: The Next Chapter in Payday Lender Subterfuge”, (Jul. 2010), <http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/CRL-CSO-Issue-Brief-FINAL.pdf>.

¹⁰ See Diane Standaert & Brandon Coleman, “Ending the Cycle of Evasion: Effective State and Federal Payday Lending Enforcement”, (Nov. 2015); http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_enforcement_brief_nov2015.pdf. See also Diane Standaert and Rebecca Borné, Comment in re: the Dept. of Treasury’s RFI on marketplace lending, (Sept. 30, 2015), available at http://www.responsiblelending.org/other-consumerloans/crl_comment_treasury_marketplacelending_sept2015_final.pdf; Ellen Harnick, “Georgia’s Payday Loan Law: A Model for Preventing Predatory Payday Lending”, (2006), <http://www.responsiblelending.org/payday-lending/policy-legislation/states/pa-GeorgiaPayday-0606.pdf>; Media Release, NC Justice Center, “North Carolina Class Action Against Country’s Largest Payday Lender Reaches \$18.75 Million Settlement”, (Sept. 21, 2010), <http://www.ncjustice.org/?q=media-release-northcarolina-class-action-against-country%E2%80%99s-largest-payday-lender-reaches-1875>.

¹¹ See e.g. *Otoe-Missouria Tribe of Indians v. New York Dept. of Financial Services* (2d Cir. 2014) (13-3769-cv); Complaint For Injunction and Other Equitable Relief, *FTC v. AMG Services, Inc., et al.* (D. Nev. 2012) (Case No. 2:12-cv-00536).

¹² See, e.g., *Schuette v. Liquidation, LLC, et al.* (Ingham Co. Cir. Ct. 2016) (16-30-CP) (action against lender based out of the Cook Islands, New Zealand).

¹³ See Diane Standaert & Brandon Coleman, “Ending the Cycle of Evasion: Effective State and Federal Payday Lending Enforcement”, (Nov. 2015); available at http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_enforcement_brief_nov2015.pdf.

making affordable loans, improving credit scores, and providing credit to those shut out of the market, many of those promises are simply too good to be true.

For example, one of these online lenders, Flurish, Inc., dba LendUp, claims to provide an “alternative to payday loans” that could lead to higher credit scores and that does not cause a debt trap.¹⁴ Yet, the majority of its loan products carry triple-digit annual percentage rates, many over 300%.¹⁵ These kinds of loans are no different than the predatory payday loans we are familiar with, similarly trapping people in a cycle of debt instead of helping improve their financial situation. In fact, LendUp was the subject of at least two regulatory enforcement actions for misleading customers by failing to help consumers improve their credit scores or access more affordable loans, as promised, and for charging illegal fees, incorrectly calculating interest rates, and committing more than 380,000 individual violations of two state laws over a roughly two-year period.¹⁶

Other online lenders offer equally unaffordable consumer or business loan products. Enova International, Inc., dba CashNetUSA, offers an open-end line of credit in a number of states with an APR of nearly 300%.¹⁷ Another company, Elevate, offers an online installment loan product with an APR of up to 299%¹⁸ and carries a steady charge-off rate of 54% of its domestic revenues,¹⁹ with no intent of seeking to lower the number of loans that go bad.²⁰ OnDeck, a lender focused on small business lending, offers term loans up to 99%.²¹ Even online lenders such as Avant, Lending Club, and Prosper – companies that market themselves as responsible lenders with lower interest rates – are showing signs that their loans are similarly unaffordable and carry some of the same problems that are associated with payday loans.²² Recent news

¹⁴ LendUp, <https://www.lendup.com> (last visited May 21, 2017). *See also* LendUp, About LendUp, <https://www.lendup.com/about> (last visited May 21, 2017) (“Our business is based on customers succeeding (paying back their loans on time and paying off their credit card balances)...No rollovers, no debt traps. Ever.”)

¹⁵ LendUp, Rates & Notices, <https://www.lendup.com/rates-and-notices> (last visited May 21, 2017).

¹⁶ Press Release, Consumer Financial Protection Bureau, “CFPB Orders LendUp to Pay \$3.63 Million for Failing to Deliver Promised Benefits”, (Sept. 27, 2016), <https://www.consumerfinance.gov/about-us/newsroom/lendup-enforcement-action/>; Press Release, California Department of Business Oversight, “CA DBO Announces \$2.7 Million Settlement with LendUp to Redress Widespread Violations of Payday, Installment Loan Laws”, (Sept. 27, 2016), http://www.dbo.ca.gov/Press/press_releases/2016/LendUp%20Settlement%20Release%202009-26-16.pdf.

¹⁷ *See, e.g.*, CashNetUSA, Alabama Rates & Terms, <https://www.cashnetusa.com/rates-and-terms.html> (last visited May 21, 2017) (offering line of credit product at 299% APR).

¹⁸ RISE, Why RISE, <https://www.risecredit.com/why-rise/> (last visited May 21, 2017).

¹⁹ Elevate Credit, Inc., Amendment No. 7 to Form S-1, Registration Statement, p. 96 (Apr. 6, 2017).

²⁰ *Id.* When discussing the net charge-offs as a percentage of revenue, the company stated: “...we do not intend to drive down this ratio significantly below our historical ratios and would instead seek to offer our existing products to a broader new customer base to drive additional revenues.”

²¹ On Deck Capital, Inc. Annual Report, Form 10-K, p. 7 (Mar. 2, 2017) (“The APRs of our term loans currently range from 6.0% to 99.0%...”).

²² *See, e.g.*, Michael Corkery, “Pitfalls for the Unwary Borrower Out on the Frontiers of Banking”, NEW YORK TIMES, (Sept. 13, 2015), <https://www.nytimes.com/2015/09/14/business/dealbook/pitfalls-for-the-unwary-borrower-out-on-the-frontiers-of-banking.html>.

reports and SEC filings show that delinquency and charge-off rates at these marketplace lenders are rising, a strong indication of inadequate underwriting standards.²³

Critically, just like traditional storefront payday lenders, online lenders engage in no underwriting or underwriting insufficient to ensure borrowers can afford to repay the loans. Instead of engaging in adequate underwriting to minimize the hardship to borrowers and ensure for timely, affordable payments, these companies rely on direct access to borrowers' bank accounts in order to guarantee repayment, just like traditional storefront payday lenders. This bank account access is essential to the success of the high-cost lending business model and is highly detrimental to consumers.

Complaints to the Consumer Financial Protection Bureau highlight the unaffordable, debt trap nature of these online products. As one borrower attested "...I decided take out an installment loan for {\$2600.00}...Most installment loans take out a payment once a month around {\$200.00}. However, Cashnetusa.com is taking out [payments] every two weeks for 38 payments which equals {\$7800.00}. This is over triple times the amount of the loan I took out."²⁴

Another borrower had this to say about a personal loan with online lender, Avant: "The interest rate is 35%. At the beginning of the loan I was not told that the interest rate would be this high. As a matter of fact the advertisement said that the rate would be around 6%. They changed the terms of the loan which they called restructuring of the loan to change the payment and they never honored the new payment of {\$100.00} a month. I have paid for about 7 payments of this loan on this and still ow[e] the same amount as when I started out."²⁵

Strong state rate caps, such as New York's, coupled with effective and meaningful enforcement remain the most effective method to protect consumers from the predatory lending debt trap. Contrary to popular belief, robust state laws that rein in the abusive debt trap practices do not drive people to find loans online. In fact, illegal online lending is more prevalent in states that do not effectively regulate predatory lending and is less in states, like New York, that prohibit high-cost lending and enforce those laws.²⁶ The citizens of New York are fortunate to have regulators that are vigorously enforcing the state's long-standing interest rate cap.

²³ *Id.* See also Enova International, Inc., Annual Report, Form 10-K, p. 61 (Feb. 24, 2017) (reflecting increase in charge-offs from 2015 to 2016 from almost \$213.3 million to \$295.5 million); *Id.* at 99 (showing rise in delinquent accounts across all consumer loan product lines); Elevate Credit, Inc., Amendment No. 7 to Form S-1, Registration Statement, pp. 82, F-22 (Apr. 6, 2017) (showing an increase in net charge-offs and past due loans in 2016 compared to 2015).

²⁴ Consumer Financial Protection Bureau, Consumer Complaint Database, Complaint ID 2131838, *available at* <https://data.consumerfinance.gov/dataset/Consumer-Complaints/s6ew-h6mp>.

²⁵ *Id.*, Complaint ID 2138152.

²⁶ nonPrime101, *Does state regulation of small-dollar lending displace demand to internet lenders?*, (2015), <https://www.nonprime101.com/wp-content/uploads/2013/10/Does-State-Regulation-of-Small-Dollar-Lending-Displace-Demand-to-Internet-Lenders2.pdf>.

We urge the Attorney General and the Department of Financial Services to continue their enforcement work and for the state legislature to support these activities. Critically, any legislative attempt to roll-back the state's strong anti-usury law should be roundly rejected, and we urge you to continue New York's long and proud history of protecting consumers by doing so. Thank you for your time and attention to this important issue.



MEMORANDUM IN OPPOSITION TO

S.5771 / A.6511

May 19, 2017

BILL NUMBER: S.5771 (Hamilton) / A.6511 (Morelle)

TITLE OF BILL: "Credit creation pilot program act of New York"

STATEMENT OF OPPOSITION: The "Credit Creation Pilot Program Act of New York" (S.5771 / A. 6511) is a dangerous bill that would create a special exemption from our state's longstanding usury laws – for a single industry player based in California. The company, known as Insikt, seeks to make high-cost loans to struggling New Yorkers, packaged as a pilot program. The bill, however, would blast a hole in our vital state usury laws, which serve as a crucial bulwark against high-cost and predatory lending. The bill would jeopardize financial security for struggling New Yorkers, particularly low-income immigrants and people of color.

This out-of-state company seeks to convince New York legislators that it deserves a special carve-out from our state's strong consumer protection laws. Allowing Insikt to pursue profits in New York through its high-cost lending model, however, would set a dangerous precedent. Why New York legislators would contemplate weakening state consumer protections – especially when the new federal administration and members of Congress are working to dismantle federal financial regulations – is beyond comprehension.

New York has long been a national leader in the fight to keep predatory loans out of our state. This bill would roll back that important progress and allow usurious lending in New York. Moreover, New York is home to a robust network of community development financial institutions (CDFIs) -- which have a proven track record of responsibly meeting the credit needs of New Yorkers and New York communities.

Here's what the "Credit Creation Pilot Program Act of NY" would in fact "create:"

- **High-cost, usurious loans targeted at financially-struggling New Yorkers.** New York's vigorously-enforced civil and criminal usury laws set interest rate caps of 16% and 25%, respectively. The bill, however, would authorize Insikt to make loans to New Yorkers at interest rates more than 280% higher than New York's civil usury cap, and 180% higher than our criminal usury rate cap.
- **A dangerous, slippery slope to payday and other types of predatory loans.** New York State, in its wisdom, bans predatory payday lending through its strong usury laws and consumer protections. Indeed, in a state like California, which permits usurious payday lending, Insikt's high-cost lending might be tolerated as a better alternative to even worse payday loan products. But here in New York – where the Governor, Attorney General, state and federal courts, and other enforcement agencies have successfully driven illegal payday lending from the state – we simply do not need such an "alternative." That's why national consumer protection and civil rights groups, including Center for Responsible Lending and Consumers Union, have gone on record to oppose the Insikt bill effort in New York. Please see [the letter](#) they authored with California Reinvestment Coalition, affirming New York's strong usury cap. Moreover, the Florida state legislature just rejected Insikt's effort to launch a similar pilot program in Florida, notwithstanding that Florida also permits predatory payday lending. State-wide consumer protection and civil rights groups within Florida actively opposed that proposal, and have written [a letter](#) clarifying their opposition to any such pilot program.
- **A largely unregulated and unaccountable brokering system.** The bill would authorize "referral partners" to broker loans -- but inexplicably would exempt them from vital laws that govern brokers, leaving them effectively unregulated. Functioning as lead generators, these "referral partners" could perform various loan

brokering functions, including assembling credit applications, providing loan information to applicants, disbursing loan proceeds, and receiving loan payments from borrowers. Deeming them non-brokers would run counter to public policy lessons we should have learned from the financial crisis. Moreover, and of great concern, most referral partners participating in the pilot program in California are reportedly payday lenders and other fringe financial services companies.

High-cost, usurious loans are simply not the answer to people's income shortfalls. Rather, our priority should be to help all New Yorkers secure a living wage and, where appropriate, gain access to responsible lending that comports with our state consumer protection laws. There is no public policy basis for enacting a law that helps Insikt make profits, and that puts New Yorkers' financial security and our state's strong legal protections in peril.

New York's usury laws are our best line of defense against payday and other forms of predatory lending. Legislating dangerous carve-outs would move New York in exactly the wrong direction. Legislators should oppose "The Credit Creation Pilot Program Act."

For the above reasons, New Economy Project strongly opposes this legislation.

Please contact Andy Morrison at andy@neweconomynyc.org or 212.680.5100 with any questions.



May 19, 2017

Via E-mail

Dear Majority Leader Morelle, Chairman Zebrowski, and Chairman Hamilton:

We understand that the New York legislature is considering a proposal (A6511/S5771) modeled after a pilot lending program in California, and that supporters of the proposal have referenced our organizations or other California organizations in conversations seeking your approval of the proposal. As such, we are writing to ensure clarity of our position on the California pilot program.

Due to concerns with costs of the loans and the insufficient safeguards for affordability, our organizations have not actively supported California's pilot program. While the pilot sets relatively lower rates than those for payday loans, which can cost as much as 460% APR under California law, it still permits effective APRs much higher than those currently permitted in New York. Permitting similar loans in New York would be a step backward for New Yorkers.

Enacted in 2010 and later modified in 2013 and 2015, the original California pilot proposal has undergone several changes in the California Legislature, and more have been proposed this year. Throughout the legislative process, opposition from numerous groups, including CRL, Consumers Union, and the California Reinvestment Coalition (CRC) has mitigated some of the more egregious components of industry's proposals for the pilot. However, the pilot in its final form does not fully address our concerns about unsafe lending practices. Upon enactment and currently, the loan costs are excessive and lenders are not required to account for certain significant expenses, such as rent, in assessing whether a loan is affordable for a borrower. For example, the California pilot program allows loan costs to reach 50% of the borrower's gross monthly income. For borrowers paying 50% of their gross income on rent – a common occurrence in both California and New York – the staggering loan burden leaves nothing remaining even to pay income taxes, let alone buy food and other essentials. Even a limit on costs of 35% of a borrower's gross monthly income, as is proposed in A6511/S5771, does not do nearly enough to ensure borrowers can truly repay the loans.

A pilot program proposal modeled on California law is of significant concern for New York, which has effectively maintained and enforced its long-standing criminal usury cap of 25%. Unlike California, New York effectively protects against the harms of the high-cost payday loan debt trap that saturates California communities, particularly communities of color. The most effective tool to prevent such abusive lending practices is New York's current cap.

CRL, Consumers Union, CRC, and others have ongoing concerns about the costs and affordability of the California pilot loans, even in the context of the other abusive loans in California communities, such as payday loans and car title loans. These concerns are heightened in a state like New York, where the loans will be allowed to exceed the criminal usury rate, thus opening the door for other lenders to seek permission to charge such high costs – or higher.

Finally, we are aware of proposals being pushed by high-cost lenders in other states that are characterized as similar to what California has in place, but in reality, are not. As such, we would be happy to provide feedback on the specific proposal you are considering in New York.

Thank you for your consideration of this information.

Sincerely,



Graciela Aponte-Diaz
California Policy Director
Center for Responsible Lending



Suzanne Martindale
Staff Attorney, West Coast Office
Consumers Union



Liana Molina
Director of Community Engagement
California Reinvestment Coalition

CC: Chuck Bell, Consumers Union
Andy Morrison, New Economy Project



May 19, 2017

The Honorable Jesse Hamilton, NYS Senate Banks Chairman
The Honorable Joseph Morelle, NYS Assembly Majority Leader

Via Email

Dear Senator Hamilton and Assemblymember Morelle:

We understand that the New York Legislature is considering a proposal for a pilot program (A.6511 / S.5711) that would create an exception to New York's criminal usury law, among other things. A bill to create a virtually identical pilot program in Florida failed in our recently concluded 2017 legislative session (SB 872/HB 595) and also failed last year in the Florida 2016 session (SB 1696/HB 1425).

We are writing because we wish to clarify certain representations that we understand are being made to win support for the New York bill. Specifically, we understand that proponents of the New York bill have described Florida groups as supportive of the legislative effort in our state.

Our organizations actively opposed this proposal when it came before the Florida legislature this year, because of serious concerns we have regarding the costs of the proposed loans and insufficient safeguards in the bill to ensure their affordability. We are unaware of any groups supporting the pilot program before the Florida legislature. In fact, Florida NAACP, Florida Legal Services, and Florida AARP also joined us in raising their opposition to the bill in committee.

We believe New York State is fortunate to have strong usury laws that keep predatory payday lending out of the state. Indeed, many of our groups are fighting hard to win similar consumer protections here in Florida. Based on our direct experience with payday lenders, we would caution New York against weakening its strong usury laws -- which are recognized as the best line of defense against predatory payday lending.

Sincerely,

Alice Vickers
Director
FLORIDA ALLIANCE FOR CONSUMER PROTECTION

Marucci Guzmán
Executive Director
LATINO LEADERSHIP, INC.

Lynn Drysdale
Division Chief, Consumer Advocacy & Litigation Unit
JACKSONVILLE AREA LEGAL AID

cc: Andy Morrison, New Economy Project