



June 7, 2016

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

The Center for Responsible Lending opposes A.9634-A/S.6985-A, 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. We believe that this bill will open the door to the type of high-cost, predatory loans that New Yorkers have long fought to keep out of the state.

A long-standing tenet of responsible lending is that a lender ensures that a borrower, whether an individual or a business, has the ability to repay the loan, by looking at both income and expenses. Check cashers do not have experience doing this type of underwriting, nor would they be required to do so under the proposed legislation. In fact, nothing in this bill requires that check cashers underwrite these loans in any meaningful way.

The lack of underwriting and consumer protections factored into the bill is particularly concerning given the fact that the small business loans contemplated under A.9634-A/S.6985-A are simply predatory consumer loans in disguise. Many of these loans are offered to individuals and are secured by personal property. Data from a recent survey of alternative small business lending firms by the California Department of Business Oversight found that interest rates reach as high as 52%, more than double New York’s criminal usury rate.

Increasingly, payday lenders are offering and making small business loans, to the same individuals they target for high-cost predatory, payday loans. Payday lenders like MoneyTree, CashCall, Money Mart, and Enova offer small business loans at very expensive rates, some reaching as high 200% APR. Just like payday loans, these small business loans will trap borrowers in unaffordable debt for extended periods of time.

The “Community Financial Services Access and Modernization Act” would also allow check cashers to engage in “conduit services,” loosely defined 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 or credit union subject to the approval of the superintendent.” This language would allow check cashers to collaborate with out-of-state banks in an attempt to skirt New York’s strong usury statute. According to recent news reports, the New York Department of Financial Services is investigating this very practice of non-bank companies partnering with out-of-state banks to make loans in New York that exceed state interest rate limits. A.9634-A/S.6985-A authorizes the exact practice that has been squarely rejected by federal and state



regulators, including New York’s banking regulator, and would undo years of hard work that has kept New Yorkers safe from predatory payday lending.

In fact, former Superintendent of Financial Services Ben Lawskey has called this bill a “wolf in sheep’s clothing.” In a recent interview with NY 1, Lawskey said, “I suspect this is not really about small businesses. This is about getting in the door and getting the legislature to pass a bill that allows check cashers to get in the business of lending and the down the road...get back to those consumer loans...get back to those payday loans.”

No state that bans payday lending, as New York does, allows check cashers to make loans. New York should not be the first state to do so. Instead, 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:

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