

June 16, 2016

**Memorandum in Opposition to A.9634-B/S.6985-B**

**Allied Progress  
Americans for Financial Reform  
Association for Neighborhood and Housing Development  
Center for Responsible Lending  
CFED  
Consumer Federation of America  
Consumers Union  
Demos  
Main Street Alliance  
National Association of Consumer Advocates  
Public Citizen  
Reinvestment Partners  
Small Business Majority  
U.S. PIRG**

New York has been a long-standing national leader in the fight against high-cost predatory lending practices. However, the state's authority to protect consumers from these debt-trap loan products is in significant jeopardy due to a bill being pushed through in these final days of session. A.9634-B/S.6985-B, the "Community Financial Services Access and Modernization Act", would allow New York check cashers to make small business and commercial loans themselves, or through partnerships with out-of-state banks. We, the undersigned organizations, strongly oppose this legislation as yet another attempt by predatory lenders to dismantle consumer protections that states have worked tirelessly to protect.

At the core of our concerns with the proposed legislation is the fact that the bill will give check cashers numerous ways to evade New York's effective interest rate cap. Not only does the bill allow check cashers to offer loans directly, something they are not currently allowed to do, A.9634-B/S.6985-B would allow check cashers engage in "conduit services," including the ability to partner with out-of-state banks to offer loans. This rent-a-bank model – whereby a non-bank entity partners with an out-of-state bank not subject to state lending laws– has been tried and rejected by federal and state regulators and the courts.<sup>1</sup> The New York Department of Financial Services and the California Department of Business Oversight are both investigating this very practice of non-bank companies partnering with out-of-state banks to make loans in their states that exceed state interest rate limits.<sup>2</sup> A.9634-B/S.6985-B would entrench this practice in New York state law and would serve as a first step to dismantling usury protections.

The proposed legislation also provides a clear path for check cashers to broker loans and charge unlimited brokering fees. As things stand currently under New York law, lenders are not allowed to charge any additional fees or charges, including brokering or commission fees, other than interest allowed under state law.<sup>3</sup> A.9634-B/S.6985-B provides an explicit carve-out for

check cashers by exempting them from the exact provisions prohibiting these extra fees and gives check cashers the authority to charge unlimited broker fees for loans made in partnership with out-of-state banks or other licensed lenders. This brokering model is a common way payday lenders subvert usury limits and should be rejected.<sup>4</sup>

One of the hallmarks of responsible lending practices is sound underwriting standards. Whether considering individuals or businesses, strong underwriting standards confirming the borrower's ability to repay the loan are key to ensuring the success of any loan transaction. Not only would A.9634-B/S.6985-B allow check cashers – entities inexperienced in making and properly underwriting loans – to engage in the business of making loans, the bill fails to ensure proper underwriting will be conducted at all.

Under the bill, check cashers would be required to “submit the underwriting criteria and processes... the [check casher] will utilized to evaluate the ability of the borrower to repay the... loan.” Unfortunately, a requirement simply to *submit* these underwriting standards does nothing to ensure that the underwriting is effective, or that the subsequent loans issued will be affordable. New Mexico, which incorporates similar language into its Small Loan Act, is an unfortunate example where, regardless of the underwriting standards lenders report to the New Mexico regulator, loans regularly exceed 300% APR and lead borrowers into a debt trap cycle of borrowing and re-borrowing due to excessive interest and fees.

No state that bans payday lending 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. **We urge 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.**

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<sup>1</sup> See, e.g., Center for Responsible Lending Letter to the U.S. Treasury, “Marketplace Lending RFI (“Public Input on Expanding Access to Credit Through Online Marketplace Lending”), Docket No. 2015-17644, (Sept. 30, 2015), available at <http://www.responsiblelending.org/other-consumer-loans/crl-comment-treasury-marketplacelending-sept2015-final.pdf>.

<sup>2</sup> See, e.g., Suzanne Barlyn, “N.Y. Regulator Subpoenas Lending Club over Interest Rates, Fees – Source”, *Reuters* (May 18, 2016), <http://www.reuters.com/article/us-lendingclub-new-york-subpoena-idUSKCN0Y92CP>; Kevin Wack, “Online Lenders Queried by Regulators on Referral Fees, Bank Deals”, *American Banker* (May 9, 2016), <http://www.americanbanker.com/news/marketplace-lending/online-lenders-queried-by-regulators-on-referral-fees-bank-deals-1080924-1.html>.

<sup>3</sup> N.Y. Banking Law §351(6).

<sup>4</sup> 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](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](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>.