

September 3, 2020

BY EMAIL: regs.comments@occ.treas.gov

Brian P. Brooks
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Re: Proposed rule concerning “National Banks and Federal Savings Associations as Lenders” (Docket ID OCC-2020-0026)

Dear Acting Comptroller Brooks:

We, the undersigned New York State Senators and Assemblymembers, write with utmost urgency to oppose the Office of the Comptroller of the Currency’s (“OCC”) above-referenced proposed rule (the “proposed rule”), which would eviscerate New York’s longstanding usury laws and contravene our authority as lawmakers and elected officials representing the people of our state. The proposal should be seen as part and parcel of the Trump administration’s broader efforts to dismantle critical protections, and exploit our national emergency to advance corporate interests.

As so many low-income and Black and brown New Yorkers continue to struggle from COVID-19 and its devastating economic fallout, high-cost debt-trap loans are the last thing our communities need. The proposed rule would wreak havoc on struggling New Yorkers, small businesses, and entire communities; undermine our state’s sovereign power and longstanding public policy against usurious lending; and exacerbate existing racial and economic inequities in our financial system.

1. ***The proposed rule would be devastating to already-struggling New Yorkers, small businesses, and entire communities—especially low-income communities, immigrant communities, and communities of color.***

The proposed rule would effectively obliterate New York’s usury laws in one fell swoop, causing incalculable harm to New Yorkers, small businesses, and communities. By legalizing payday lending and other debt traps long banned in our state, the proposed rule would further fuel the disproportionate impact of COVID-19 on New York’s Black and brown communities and hamper our state’s ability to ensure a just recovery for all New Yorkers.

For years, New York has successfully fought off industry efforts to evade our state’s centuries-old usury laws, making sure New York keeps the floodgates closed to predatory payday and car title lenders, which target low-income people of color, older adults, and others struggling financially. Usurious lending is categorically not a solution to people’s financial distress. Rather, it exacerbates existing racial and economic inequities and traps people and small businesses in long-term cycles of debt.

The proposed rule would permit “rent-a-bank” schemes clearly designed to evade our usury laws—the very schemes that New York regulators have shut down through effective enforcement actions. New York’s civil rights, community, labor, and fair lending groups, as well as community-based financial institutions, have long vigorously opposed similar schemes that would have ushered in a flood of predatory lending. What’s more, your agency previously flagged these arrangements as posing increased strategic, reputation, compliance, and transaction risks to banks, and both the OCC and the Federal Deposit Insurance Corporation clamped down on the very kinds of payday lending “rent-a-bank” schemes now proposed.

2. *The proposed rule would undermine New York’s sovereign authority and strong public policy against excessive interest rates.*

The proposed rule would result in an unconscionable preemption of our state’s fundamental public policies. By adopting the proposed rule, the OCC would usurp New York’s sovereign authority to enact and enforce its own strong consumer protection laws.

Charging more than 25% interest is a felony in New York; this long-established criminal usury cap enabled New York to keep abusive payday loans, which carry triple-digit interest rates, out of our state. New York regulators have effectively directed payday lenders to stop making illegal payday loans to New York residents; warned debt collectors that collecting on payday loans is illegal in New York; and called on banks and payments processors to block payday lenders from accessing New Yorkers’ bank accounts. Additionally, New York has obtained national credit bureaus’ agreement to stop reporting illegal payday loans on New Yorkers’ credit reports.

The proposed rule would effectively undo these groundbreaking efforts to keep payday lending out of New York and undercut our state’s ability to protect people and small businesses from predatory schemes that extract massive amounts of wealth from communities, and perpetuate racial and economic injustice.

3. *The proposed rule would exacerbate existing inequities in our financial system.*

The proposed rule would eradicate the true-lender doctrine, enabling sham, predatory financial transactions, under the false guise of providing “regulatory clarity.” Courts have relied on the true-lender doctrine to detect when a third-party lender has partnered with a national bank—which itself bears no substantial financial risk—to evade state interest-rate caps. Without this bastion against illegitimate financial schemes, third-party lenders would be free to engage in usurious lending schemes that extract wealth from our communities.

Thanks to vigorous enforcement of our state consumer protection laws, New Yorkers have long been spared the plague of payday and similar forms of predatory lending. The proposed rule would usher in high-cost, predatory loan products that would harm New Yorkers and small business owners, and strip wealth from our low-income communities, immigrant communities, and communities of color. At great risk are low-income seniors of color and other New Yorkers in financial distress.

We join with other commenters from around the country in objecting to the flawed process surrounding this proposal, from the OCC’s providing just 30 days in which to submit public comments—during the throes of the pandemic, in the month of August—to glaring conflicts of interest that the proposal raises.

We strenuously oppose this blatant attempt to subvert our strong state consumer protections and do the bidding of predatory online, “fintech,” and other lenders, and we urge you to withdraw the proposed rule immediately.

Respectfully,

State Senator James Sanders Jr., Chair of Senate Committee on Banks
Assemblymember Thomas J. Abinanti, Chair of Assembly Committee on Banks
Assemblymember Yuh-Line Niou
Assemblymember Helene E. Weinstein
State Senator Leroy Comrie
State Senator Michael Gianaris
State Senator Andrew Gounardes
State Senator Brad Hoylman
State Senator Robert Jackson
State Senator Jordine Jones
State Senator Anna M. Kaplan
State Senator Brian Kavanagh
State Senator Timothy Kennedy
State Senator Liz Krueger
State Senator John C. Liu
State Senator Shelley B. Mayer
State Senator Velmanette Montgomery
State Senator Zellnor Y. Myrie
State Senator Roxanne J. Persaud
State Senator Gustavo Rivera
State Senator Julia Salazar
State Senator Luis R. Sepulveda
State Senator James Skoufis
State Senator Toby Ann Stavisky
Assemblymember Charles Barron
Assemblymember David Buchwald
Assemblymember Maritza Davila
Assemblymember Inez E. Dickens
Assemblymember Jeffrey Dinowitz
Assemblymember Harvey Epstein
Assemblymember Patricia Fahy
Assemblymember Mathylde Frontus
Assemblymember Sandy Galef
Assemblymember Richard N. Gottfried
Assemblymember Andrew Hevesi

Assemblymember Pamela Hunter
Assemblymember Kimberly Jean-Pierre
Assemblymember Ron Kim
Assemblymember Joseph R. Lentol
Assemblymember Barbara Lifton
Assemblymember Donna Lupardo
Assemblymember Walter T. Mosley
Assemblymember Catherine Nolan
Assemblymember Félix W. Ortiz
Assemblymember Amy Paulin
Assemblymember Karines Reyes
Assemblymember Rebecca A. Seawright
Assemblymember Jo Anne Simon
Assemblymember Michaelle Solages
Assemblymember Latrice Walker
Assemblymember David Weprin
Assemblymember Tremaine Wright
Assemblymember Kenneth P. Zebrowski