



Long Island Housing Services, Inc.

640 Johnson Avenue, Suite 8, Bohemia, New York 11716-2624
Suffolk: 631-567-5111 ~ Nassau: 516-292-0400 ~ Fax: 631-567-0160
www.LIFairHousing.org

Protecting Civil Rights for Long Islanders since 1969



September 2, 2020

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

Board of Directors

Connie Lassandro

President

Stephanie Baldwin, Esq.

Vice President

Jennifer Martin, Esq.

Secretary

Michael Wigutow, Esq.

Treasurer

Rose Cicchetti

Jo Anne Durovich, PhD

Georgette Grier-Key, Ed.D.

Tawanda Harris

Linda R. Hassberg, Esq.

President Emeritus

Emily Murphy, MSW

Executive Director

Ian Wilder, Esq.

Executive Director Emeritus

Michelle Santantonio

Advisory Council

Alex Ames, CPA

Frederick K. Brewington, Esq.

Cathryn Harris-Marchesi, Esq.

Mildred Lewis

Thomas Maligno, Esq.

Robert Schonfeld, Esq.

Nina J. Stewart, Esq.

Beth M. Wickey, Esq.

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

I am writing on behalf of Long Island Housing Services, Inc. (“LIHS”) to express our strong opposition to the Office of the Comptroller of the Currency's ("OCC") proposed rule “National Banks and Federal Savings Associations as Lenders.” We are opposed to the proposed rule, which would eviscerate New York’s longstanding usury laws and contravene our state legislature as lawmakers and elected officials representing the people of our state.

LIHS is a private, not-for-profit 501(c)(3) corporation, and Long Island’s only private fair housing advocacy and enforcement agency serving Nassau and Suffolk counties in the state of New York. LIHS’s mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education. Our founding objectives are to promote racial and economic integration and equal housing opportunity throughout Long Island, to reduce and eliminate unlawful housing discrimination, to encourage the development of low-income and affordable housing, and to educate and assist the public regarding housing rights and opportunities in the region. As part of our efforts to meet these objectives, LIHS provides advocacy, counseling, and legal services to ensure that clients have equal and fair access to housing, insurance, lending, and financial services.

LIHS is committed to exposing and eliminating predatory, deceptive and unfair practices of lending. LIHS recognizes that such practices are inconsistent with important community, state and national objectives, including the goals of fair access to credit, community development and stable home ownership by the broadest spectrum of America. The OCC’s proposed rule is in direct opposition to these objectives and will facilitate the ability of payday lenders, and other predatory lender contrivances, to outflank state laws which prohibit or restrict exorbitant interest rates.

PROUD COMMUNITY PARTNER OF



A 501(c)(3) nonprofit
Fair Housing agency

*Our mission is the elimination of unlawful housing discrimination
and promotion of decent and affordable housing through advocacy and education.*

PREDATORY LENDING IN THE STATE OF NEW YORK

Payday loans and other usury lender contrivances, are currently illegal in the State of New York ("NYS") in-person, by telephone, or over the internet. It is also illegal in NYS for a debt collector to collect, or attempt to collect, on a payday loan. NYS law impose a criminal usury cap that equals 25% APR for any loans; there is also a civil usury cap that equates 16% per annum.¹

For years, NYS 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 and younger adults, and others struggling financially.²

The proposed rule would permit "rent-a-bank" schemes clearly designed to evade our usury laws—the very schemes that NYS regulators have shut down through effective legislative and enforcement actions. New York State'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.

PREDATORY LENDING TOOLS: PAYDAY LOAN, TITLE LOANS & RENT-A-BANK FINANCIAL STRUCTURES

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.

Payday loans have long been marketed as a quick and easy way for people to access cash between paychecks. However, that is an over simplistic rosy description of a predatory lending tool which is impacting the long term economic health of our most vulnerable communities. There are about 23,000 payday lenders—twice the number of McDonald's restaurants in the United States—across the country. People without a college degree, renters, African Americans, Latinos, individuals earning less than \$35,000 a year, seniors, and people who are separated or divorced are the most likely to have a payday loan. This is nothing new, communities of color, particularly, African American communities, have historically been targeted and disadvantaged

¹ **NYBL 340**, General Obligation Law 5-501, March 14, 2011.

² CUOMO ADMINISTRATION DEMANDS 35 COMPANIES CEASE AND DESIST OFFERING ILLEGAL ONLINE PAYDAY LOANS THAT HARM NEW YORK CONSUMERS, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1308061, press release, August 6th 2013.

by unfair lending practices. In these communities, women make up roughly 60% of all payday loan customers. Increasingly, many of these payday loan borrowers are young people.³

Payday and title lenders make these loans without assessing the borrower's ability to repay, the loans are thus debt traps by scheme. Due to their design, most borrowers cannot afford to both repay the loan and pay their other important expenses and are thus, caught in a cycle of debt the repercussions of which often last for years or a lifetime. The Consumer Financial Protection Bureau (CFPB) estimates that 20% of payday loans end up in default. These debt trap products often lead to other financial harms, including non-payment on other bills, bank overdraft and NSF fees, involuntary loss of bank accounts, credit problems, and bankruptcy.⁴ For car title loans specifically, 1 in 5 consumers end up losing their vehicle through repossession. The unaffordability of the loan and the lenders extreme leverage over the borrowers, either through direct access to the bank account or threatening repossession of the borrower's car, makes it very difficult to escape the cycle of debt.⁵

Research from the CFPB has found that the average payday consumer takes out 10 loans a year, borrowing one loan immediately after another.⁶ Similarly, the Center for Responsible Lending (CRL) found that the typical car title loan consumer will renew their loan 8 times, paying more in fees than they originally borrowed. Overall, repeat refinancing is essential to generate fee revenue for both the payday and car title business models.⁷

CRL estimates that payday and car title loans cost consumers over \$8 billion in fees annually. Research indicates that states that strictly enforce their consumer lending usury rates, not allowing lenders to exploit loopholes in their state law, have been effective in providing substantial savings from payday and/or car title lending in those states. Research has further documented that regulating debt trap lending has not resulted in a restriction of access to credit on a state level. In fact, the same research found that the majority of former payday borrowers in North Carolina, for example, saw a positive impact on their household after payday was banned in 2006. The State of New York recorded savings of \$789,995,328 in 2017 alone from its ban on payday and title loans.⁸

Payday lenders target borrowers of color, in part by concentrating their locations in communities of color. Indeed, the communities most affected by redlining are the same who are saturated by payday lenders today. Payday lenders in California were found 2.4 times more concentrated in

³ Young People are Payday Lender's Newest Prey, Center for American Progress, By Abbey Meller, December 23, 2019.

⁴ CFPB Finalizes Rule To Stop Payday Debt Traps, Lenders Must Determine If Consumers Have the Ability to Repay Loans That Require All or Most of the Debt to be Paid Back at Once, CFPB website, OCT 05, 2017

⁵ Id.

⁶ CFPB, White Paper Payday and Deposit Advance Product, https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf, 2013.

⁷ States without Payday and Car-title Lending Save Over \$5 Billion in Fees Annually, Center For Responsible Lending, Delvin Davis, Senior Research Analyst Susan & Lupton, Senior Policy Associate, update January 2017.

⁸ Id.

African American and Latino communities, even after controlling for income and a variety of other factors. Payday lenders in Florida were also more concentrated in majority African American and Latino communities, even after controlling for income.⁹

The majority of payday lending borrowers are currently between 18 to 24 years old. With the cost of living outpacing inflation, quick loans that do not require a credit score have proven to be an enticing tool to fill personal financial gaps, especially for young people who are experiencing high student loan debt upon graduation. According to a 2018 CNBC survey, nearly 40 percent of 18- to 21-year-olds and 51 percent of Millennials have considered a payday loan.¹⁰

Payday lenders are taking full advantage of technology to reach young borrowers, with targeted advertisements and easy access. Apps such as Earnin are a perfect example. Earnin has been referred to as an early wage access provider, allowing access to earned wages between biweekly paycheck all while avoiding typical lending regulations or the standards set in the Truth in Lending Act, which require lenders to publish their interest rates. Earnin is currently being investigated by NYS Department of Financial Services in a probe backed by 10 other state banking regulators and Puerto Rico for skirting banking regulations and acting as a payday lender.¹¹

As so many low-income, and persons of color in New York, 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.

The proposed rule would effectively obliterate New York States' usury laws in one fell swoop, causing incalculable harm to New Yorkers. 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 communities of color and hamper our state's ability to ensure a just recovery for all New Yorkers.

THE PROPOSED RULE WOULD UNDERMINE NEW YORK'S SOVEREIGN AUTHORITY AND STRONG PUBLIC POLICY AGAINST PREDATORY LENDING & 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 State's sovereign authority to enact and enforce its own strong consumer protection laws.

⁹ Id.

¹⁰ Id.

¹¹ Id.

New York's long-established criminal usury cap enabled us to keep abusive payday loans, which carry triple-digit interest rates, out of our state. NYS regulators have effectively directed payday lenders to stop making illegal payday loans to NYS residents; warned debt collectors that collecting on payday loans is illegal in NYS and called on banks and payments processors to block payday lenders from accessing New Yorkers' bank accounts. Additionally, NYS 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 NYS 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.

THE PROPOSED RULE WOULD EXACERBATE EXISTING INEQUITIES IN OUR FINANCIAL LENDING 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.

It would allow predatory lenders to drain resources from our community organization. Our nonprofit organization will end up helping community members out of thousands of dollars of high-cost debt, siphoning away resources from other proactive efforts, like community development and wealth building.

Additionally, the proposal will act to increase pressure on the state legislature from brick & mortar lenders to increase rates allowed in the state causing a race to the bottom for lending practices in the state.

Long Island Housing Services Inc.'s comments on the proposed rule concerning "National Banks and Federal Savings Associations as Lenders"
(Docket ID OCC-2020-0026)
Page 6 of 6

Loans made through rent-a-bank schemes are some of the most predatory on the market. Interest rate limits are the best way to protect consumers, and this rule will eliminate our state's ability to do that. With all of the above in mind, **Long Island Housing Services Inc. requests the withdrawal of the OCC proposed rule, "National Banks and Federal Savings Associations as Lenders."**

Sincerely,

Ian Wilder

Ian Wilder, Esq.
Executive Director
Long Island Housing Services, Inc.
Ian@LIFairHousing.org
631-567-5111 ext. 314