



NEW YORKERS FOR RESPONSIBLE LENDING

Submitted via email to: regs.comments@occ.treas.gov

September 3, 2020

Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Re: OCC Docket ID OCC-2020-0026; National Banks and Federal Savings Associations as Lenders

Dear Office of the Comptroller of the Currency:

New Yorkers for Responsible Lending (NYRL) submits the following comments on the Office of the Comptroller's (OCC) proposed "True Lender" rule (the "Rule"), which would obliterate New York State's usury law and expose New Yorkers to predatory products that will drive them into debt. **We urge the OCC not to adopt this Rule.**

NYRL is a coalition of over 160 New York community financial institutions, community-based organizations, affordable housing and first-time homebuyer groups, and advocates for seniors. NYRL promotes economic justice as a matter of racial and community equity through legislative and policy advocacy, popular education, media advocacy, and organizing campaigns. One of our guiding principles is the belief in a government that puts the interests of the public before those of Wall Street and the financial services industry, operates transparently, and ensures that community-based organizations have full representation at the decision-making table. We believe it is incumbent upon legislators and regulators to move creatively and aggressively to build fair and affordable financial services.

The centuries-old true lender doctrine has always enabled courts to examine the true nature of a transaction and has prevented predatory lenders from hiding behind banks to legitimize the issuing of what would otherwise be illegal loans. The true lender doctrine is grounded in centuries-old precepts of comity and respect for states' rights to regulate commerce within their borders and prescribe state consumer protections without interference by the federal government. According to the Rule proposed by the OCC, if, on the date of origination a national bank or Federal savings association is named as the lender in a loan agreement or funds a loan, even in partnership with a third party, it would be deemed the "true lender" so that state usury laws could be evaded. The OCC Rule purports to close a gap left open when the OCC implemented its "valid when made" rule as to which entity is the "true lender" when a third party is involved with issuing a loan. In actuality, the Rule will legalize the nefarious "rent-a-bank" practices which allow lenders in states with strong consumer protections to skirt those protections through the use of this artifice. Alarming, this Rule would allow for fringe

financial services to be offered to New Yorkers who can least afford them and permit third parties to pair up with out-of-state banks for the purpose of targeting low-income New Yorkers who lack access to mainstream financial services with usurious products. By promulgating this Rule, the OCC is subjecting New Yorkers to exploitative, unaffordable financial services and is intruding on New York's prerogative to protect its consumers with strong usury laws.

The OCC Rule will undermine New York's long-standing usury caps, intended to protect its residents from harmful loans. See N.Y. Banking Law § 14-a and Gen. Oblig. Law § 5-501 (imposing a civil usury cap of 16%); N.Y. Penal Law § 190.40 (imposing a criminal usury cap of 25%). Loans that exceed the State's usury caps are void and unenforceable under New York. N.Y. Banking Law § 356. New York has a long history of usury protections. Because of these strong usury protections, New York is proudly one of three states in which rent-a-bank lending does not exist. See National Consumer Law Center, High-Cost Rent-a-Bank Loan Watch List, *available at*: <https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html>. Despite these protections, entities, including payday lenders, have tried for years to enter New York's marketplace, circumvent our laws, and obtain carve-outs from New York's centuries-old usury law. In 2013 Governor Andrew Cuomo lauded New York's Department of Financial Services (DFS) for proactively warning debt collectors not to collect on illegal payday loans in New York, and said, "Studies clearly show that payday loans are not a solution for people with low incomes, but rather a high cost debt trap. That's why they are illegal in New York, and the State will continue to protect consumers from these misleading loans." Press Release, Governor Cuomo Announces Department of Financial Services Notifies Debt Collectors Not to Seek Collection on Illegal Payday Loans (February 22, 2013), *available at*: <https://www.governor.ny.gov/news/governor-cuomo-announces-department-financial-services-notifies-debt-collectors-not-seek>.

Along with Governor Cuomo, DFS, and the New York State Attorney General's office, our coalition members have worked tirelessly to keep payday lending, rent-a-bank, and other schemes that attempt to sidestep New York's usury law from entering the market in New York. All those efforts would be undermined by the OCC's Rule and would give free rein to bad actors that have been chomping at the bit for years to exploit vulnerable New Yorkers who are overwhelmed with financial burdens.

The COVID-19 crisis, which has caused widespread unemployment, has exacerbated the previously precarious economic status of many consumers and rendered vast numbers of people unable to pay their bills, through no fault of their own. The economic downturn has increased the use of credit to pay for basic necessities, which means consumers will be easy marks for predatory companies eager to take advantage of people under tremendous economic strain. Further, as has been made painfully clear, the COVID-19 crisis has disproportionately impacted communities of color, including rates of infection, hospitalization, and fatalities. Black families are still facing the consequences of the 2008 financial meltdown as we head into the economic crisis wrought by the COVID-19 pandemic, in part because "they are still rejected for home mortgages at more than double the rate of white families" and because the banking industry "doesn't only suppress black wealth, it aggressively strips it, through excessive interest rates on consumer debt, egregious overdraft penalties and higher fees even for simple A.T.M. transactions." Angela Glover Blackwell and Michael McAfee, Banks Should Face History and Pay Reparations, *The New York Times*, June 26, 2020, *available at*: <https://www.nytimes.com/2020/06/26/opinion/sunday/banks-reparations-racism-inequality.html>. Instead of recognizing and acting to correct this historical imbalance, the OCC is purposefully

undermining usury protections and putting the financial security of New Yorkers—especially Black New Yorkers—in jeopardy.

In conclusion, NYRL stands against targeting vulnerable populations, including low-income persons, immigrants, older persons, and domestic violence survivors, with what will inevitably be abusive, predatory lending. We respectfully implore the OCC not to intrude on states' rights to protect their consumers from usurious loans by implementing this dangerous Rule for the reasons detailed above and for the reasons laid out in the comments submitted from other consumer advocates and organizations from across the country. Thank you for the opportunity to comment on this proposed Rule.