



NEW YORKERS FOR RESPONSIBLE LENDING

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March 14, 2003

By Email and First Class Mail

Chairman Donald Powell
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429-9990

RE: COMMENTS ON DRAFT FDIC GUIDELINES FOR PAYDAY LENDING

Dear Mr. Powell:

The 43 undersigned members of New Yorkers for Responsible Lending (NYRL) and the Speaker of the New York City Council respectfully submit these comments to the Federal Deposit Insurance Corporation (FDIC), in response to a request for comments on its Draft Guidelines for Payday Lending. We ask the FDIC to treat this letter as constituting 44 separate submissions. The signatories represent a diverse cross-section of organizations and reflect widespread concern about payday lending in New York. We appreciate the opportunity to comment on the Draft Guidelines.

We urge the FDIC to strengthen its Guidelines. Even more important, we call on the FDIC to go beyond guidelines and promulgate strong, enforceable payday lending regulations and other measures.

NYRL is a state-wide coalition of affordable housing, community development, senior and consumer groups, and community development financial institutions, dedicated to promoting fair lending and an end to predatory lending practices in New York State. Founded in 2000, NYRL is comprised of more than 100 organizations representing millions of New Yorkers in rural, suburban and urban communities throughout the state.

We support the comments submitted by the Consumer Federation of America (CFA) and National Consumer Law Center (NCLC), which expertly describe the problem of payday lending from a national perspective. Accordingly, our comments focus on payday lending as it affects New Yorkers and their communities.

PAYDAY LENDING HARMS NEW YORKERS

Payday lending is a relatively new phenomenon in New York. In the past year, payday lenders have blanketed New York subways and radio stations with ads for "Fast Cash" and "Instant Credit." These solicitations in fact are for short-term, high-cost loans at annual interest rates upwards of 700%. Loans are made to people with a bank account, who can

show they receive income either from a job or government benefits. Many borrowers renew the loan several times, ultimately paying more in fees than in principal.

Unlike other states that explicitly permit payday lending, New York effectively prohibits payday lending through a state usury cap of 25%. Out-of-state banks, however, circumvent New York's usury law by making payday loans in New York via toll-free numbers and internet sites, without maintaining a physical presence in the state. These out-of-state banks "export" their home states' usury laws (or lack thereof) and violate one of New York's strongest consumer lending protections. The most aggressive and visible payday lender in New York, in fact, is a state-chartered bank from Delaware regulated by the FDIC.

Like other forms of predatory lending, payday lending targets vulnerable consumers for abusive loans and perpetuates a cycle of escalating debt. In New York, out-of-state payday lenders are exploiting a need for credit—in this case, short-term or small loans—and are able to attract borrowers only because few or no options exist. While there is a real need for sound short-term lending in New York communities, the lack of underwriting, structure and pricing of payday loans make them inherently abusive.

Among their predatory features, payday loans:

- **Violate New York State's usury law, a vital consumer protection.** Out-of-state payday lenders circumvent New York State's usury rate of 25%. Payday loans carry annual percentage rates (APRs) averaging 780% in New York (CFA and U.S. PIRG, 2001), or \$30 for every \$100 borrowed. This average is among the highest in the country.
- **Lack sound underwriting and are made without regard to a borrower's ability to repay.** Typically, payday lenders require only that borrowers have a bank account and a modest minimum monthly income (for one lender, this was \$1,000 in employment income or \$800 in Social Security or other government benefits). In addition, payday lenders do not ask borrowers to provide information about their other debts and expenses – fundamental components of sound underwriting.
- **Contain abusive repayment terms that entrap borrowers in debt.** Borrowers of payday loans are required to repay the full loan amount plus finance charges at the end of the loan period, which is typically two weeks. Few if any payday lenders accept partial or installment payments; instead, borrowers who cannot repay the full amount are essentially forced to extend their payday loan. The extended loan carries new finance charges, making it ever harder for the borrower to pay off the debt.
- **Restrict borrowers' legal rights.** Payday lenders restrict borrowers' right to due process by requiring them to sign mandatory arbitration clauses and class action opt-outs when applying for a payday loan. Much has been written about the harmful use of mandatory arbitration in subprime lending.

RECOMMENDATIONS

The Offices of Thrift Supervision (OTS) and Comptroller of the Currency (OCC) have issued advisories to national banks under their supervision, and taken numerous actions against “rent-a-bank” partnerships between national banks and third-party payday lenders. As a result, payday lenders are increasingly turning their attention to state-chartered banks as potential partners. We urge the FDIC to block these attempts and to take serious action to stop nonmember banks from “renting” their charters to payday lenders. We also call on the FDIC to halt abusive payday lending that nonmember banks engage in directly with consumers.

With primary emphasis on significant safety and soundness risks to lenders, the Draft FDIC Guidelines inadequately address the serious consumer and fair lending concerns raised by payday lending. Accordingly, we urge the FDIC to broaden the scope of the Guidelines explicitly to address consumer and fair lending issues. Below are our recommendations for improving the Guidelines and for strong regulatory oversight.

- 1. The FDIC should prohibit abusive payday lending by its nonmember banks, either directly or through third-party agreements.**
- 2. Nonmember banks should be required to abide by the laws of the states in which they do business. They should not be able to export their home states’ laws, particularly to states with stronger consumer protections and interest rate ceilings to protect their consumers.**
- 3. The FDIC should provide strong incentives for nonmember banks to responsibly meet the short-term credit needs of low and moderate income people and communities. Payday lenders have exploited this critical need.**
- 4. The FDIC should require a substantive and appropriate underwriting process in the making of all short-term loans.**
- 5. The FDIC should prohibit inclusion of mandatory arbitration clauses and class action opt-outs in nonmember banks’ loan agreements with customers.**
- 6. For CRA purposes, the FDIC should take a bank’s payday lending activities and practices into account, *including those outside its assessment area*. A bank’s unsound payday lending should have a negative impact on its CRA evaluation. Otherwise payday lenders will export their abusive practices to states outside their CRA assessment areas, with impunity.**
- 7. To the extent that the FDIC allows payday lending, the agency should: (1) require lenders to accept partial payments from borrowers to avoid repeated refinancings by people unable to make full payment; and (2) increase capital requirements to \$1 in reserve for every dollar lent.**

CONCLUSION

The FDIC has the authority and ability to put an end to abusive payday lending. Strong FDIC Guidelines are an important first step to address payday lending abuses. We urge the FDIC to exercise its broad discretion and prohibit payday lending abuses.

Thank you for taking steps to address this pressing issue. Please do not hesitate to contact us if you have questions or require additional information.

Respectfully,

NYRL Members:

Abyssinian Development Corporation (NY, NY)

ACORN (Brooklyn, NY)

Alternatives Federal Credit Union (Ithaca, NY)

Bethex Federal Credit Union (Bronx, NY)

Brooklyn-wide Interagency Council of the Aging, Inc. (Brooklyn, NY)

Bushwick Cooperative Federal Credit Union (Brooklyn, NY)

Central Brooklyn Partnership (Brooklyn, NY)

Chautauqua Home Rehabilitation and Improvement Corp. (Chautauqua, NY)

Community Agency for Senior Citizens (Staten Island, NY)

Concord Community Development Corporation (Brooklyn, NY)

Cooper Square Committee (NY, NY)

Erasmus Neighborhood Federation (Brooklyn, NY)

Fifth Avenue Committee (Brooklyn, NY)

Foreclosure Prevention Project at South Brooklyn Legal Services (Brooklyn, NY)

Group 14621 Community Association, Inc. (Rochester, NY)

Hispanic Senior Action Council (NY, NY)

The Housing Council (Rochester, NY)

Housing Help, Inc. (Greenlawn, NY)

Housing Resources of Columbia County (Hudson, NY)

Institute for Puerto Rican/Hispanic Elderly (NY, NY)

Legal Services for the Elderly in Queens (Rego Park, NY)

Long Island Housing Services, Inc. (Bohemia, NY)

Lower East Side People's Federal Credit Union (NY, NY)

Margert Community Corporation (Far Rockaway, NY)

Metro Justice of Rochester (Rochester, NY)
Midwood Development Corporation (Brooklyn, NY)
National Federation of Community Development Credit Unions (NY, NY)
Neighborhood Economic Development Advocacy Project (NY, NY)
Neighborhood Preservation Coalition of New York State, Inc. (Albany, NY)
Neighbors Helping Neighbors (Brooklyn, NY)
NHS of New York City (NY, NY)
New York Public Interest Research Group (Albany, NY)
New York StateWide Senior Action Council (Albany, NY)
Northeast Brooklyn Housing Development Corporation (Brooklyn, NY)
N.W. Queens Housing Corporation (Astoria, NY)
Parodneck Foundation (NY, NY)
Pratt Area Community Council (Brooklyn, NY)
Progressive Neighborhood Federal Credit Union (Rochester, NY)
Public Interest Law Office of Rochester (Rochester, NY)
Steuben Churchpeople Against Poverty, Inc. (Bath, NY)
Syracuse Cooperative FCU (Syracuse, NY)
University Neighborhood Housing Program (Bronx, NY)
Utica Citizens in Action (Utica, NY)

Elected Official:

Gifford Miller, Speaker, New York City Council