NYC Consumer Affairs

Federal Deposit Insurance Corporation
VIA e-mail at comments@fdic.gov

Lorelei Salas
Commissioner

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January 28, 2020

Re: Federal Interest Rate Authority
RIN 3064-AF21

Dear Chair McWilliams,

The New York City Department of Consumer and Worker Protection, formerly known as the Department of Consumer Affairs (DCA), protects and enhances the daily economic lives of New Yorkers to create thriving communities. Through our enforcement and education work, and through the work of our Office of Financial Empowerment (OFE), we seek to protect consumers in the marketplace and promote access to safe and affordable financial products.

OFE has demonstrated a commitment to advancing the financial health of the people we serve. Through our financial counseling and coaching programs, including our Financial Empowerment Centers, we provide free one-on-one financial counseling to New Yorkers that is designed to help them reduce debt, establish credit, build savings, and access safe and affordable financial products. In Calendar Year 2018 alone, our programs served over 8,500 clients. Since inception in 2008, these programs have helped New Yorkers reduce more than $70 million in debt and increase their savings by over $6.5 million.

We know from our work that New Yorkers struggle with unmanageable debt and a persistent lack of savings they can use to handle emergencies and plan for the future. Low and unsteady wages only exacerbate these challenges. We are always seeking ways to deepen our understanding of the ways that individuals deal with income volatility and expense shocks. To this end, we have held two recent convenings on the topic of credit – the first on connecting credit-invisible New Yorkers to credit-building opportunities, and the second on the promise and peril of credit as a financial health tool. And we have undertaken in-depth research into promising solutions that can help those struggling with cash flow problems, solutions including grants and affordable loans.

Our focus on affordable loans as a tool for households with low incomes reflects our belief that high-cost credit acts a debt trap and that strong usury caps are necessary to protect households from predatory lenders. We are therefore distressed to see that in this proposed rule your office contemplates undermining usury caps and allowing predatory lenders greater access to households in states with these strong protections.

At issue is predatory lenders' evasion of interest rate caps and other state restrictions on lending practices through partnership with state banks regulated by the FDIC. Currently, in states like New York that have interest rate caps, payday lenders may not exceed these caps. However, due to preemption, FDIC-regulated state banks are not subject to our New York usury cap and can “export” the interest rate of the state in which they are headquartered to residents of states like New York. The Proposed Rule gives the green light to banks to allow payday lenders to piggyback on this privilege, undermining the financial security of New Yorkers. Consider the following scenario: an online payday lender markets a costly loan, acquires a New York customer for that loan, and provides the underwriting standards that a partner bank then uses to make the loan to the customer. Having originated the loan, the bank then sells a “participation interest” in the loan to the payday lender, giving the payday lender effective ownership of the loan. The payday lender markets the loan, provides the underwriting criteria for the loan, and services the loan. But because the loan was issued by a bank and not the payday lender, and banks headquartered in other states are not subject to our state usury cap, the loan can carry a triple-digit interest rate.

This subversion of protective interest rate caps threatens both the historic role of states in consumer protection and the financial health of American households, principles that are more important than a bank’s desire to assign loans to third parties. Allowing payday lenders to partner with banks for the purpose of evading state law, and by doing so issue high-interest loans, would undermine the will of the people residing in states that have passed interest rate caps, and would immiserate many who take on loans that they cannot afford to repay. Furthermore, such a move would further damage public trust in the banking sector, at a time when roughly 25 percent of U.S. households are either unbanked or underbanked.[1]

The banks the FDIC supervises must not be allowed to rent out their charters to predatory lenders that will trap consumers in usurious loans, in defiance of the law in states that prohibit high-cost lending. Instead of pursuing the path outlined in this proposed rule, your office should, in partnership with the OCC and other federal regulators, send a clear signal to banks that engaging in sleight of hand by assigning loans to payday lenders will not be tolerated.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Lorelei Salas
Commissioner

[1] https://www.fdic.gov/householdsurvey/2017/2017report.pdf