

September 3rd, 2020

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 Jersey 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 Jersey’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 Jerseyans 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 Jerseyans, 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 be devastating to already-struggling New Jerseyans, small businesses, and entire communities—especially low-income communities, immigrant communities, and communities of color.

The proposed rule would effectively obliterate New Jersey’s usury laws in one fell swoop, causing incalculable harm to New Jerseyans, 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 Jersey’s Black and brown communities and hamper our state’s ability to ensure a just recovery for all New Jerseyans.

For years, New Jersey has successfully fought off industry efforts to evade our state's centuries-old usury laws, making sure New Jersey 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 Jersey regulators have shut down through effective enforcement actions. New Jersey'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.

***The proposed rule would undermine New Jersey'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 Jersey's sovereign authority to enact and enforce its own strong consumer protection laws.

Charging more than 30% interest is illegal in New Jersey; this long-established criminal usury cap enabled New Jersey to keep abusive payday loans, which carry triple-digit interest rates, out of our state. New Jersey regulators have effectively directed payday lenders to stop making illegal payday loans to New Jersey residents. The proposed rule would effectively undo these groundbreaking efforts to keep payday lending out of New Jersey 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 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 Jerseyans have 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 Jerseyans 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 Jerseyans 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,

Members of the New Jersey State Senate

Senator Cruz-Perez, Chair, Senate Economic Growth

Senator Joseph Cryan, Vice-Chair, Commerce Committee

Senator Nia Gill, Esq. Member of Legislative Oversight Committee

Senator Vin Gopal, Majority Conference Leader

Senator Nellie Pou. Chair, Senate Commerce Committee

Senator M. Teresa Ruiz, Senate President Pro-Tempore

Senator Ron Rice, Vice Chair, Community and Urban Affairs

Senator Nicolas Sacco, Member of Law and Public Safety Committee

Senator Nicholas Scutari, Chair, Judiciary Committee

Senator Troy Singleton, Chair, Community and Urban Affairs Committee

Senator Brian Stack, Chair, Legislative Oversight

Senator Stephen Sweeney, Senate President

Senator Shirley Turner, Vice Chair, Education Committee

Senator Joseph Vitale, chair, Health, Human Services and Senior Citizens

Senator Loretta Weinberg, Senate Majority Leader

Members of the New Jersey State Assembly

Assemblywoman Annette Chaparro, Vice Chair Law and Public Safety

Assemblywoman Linda Carter, Deputy Whip

Assemblyman Herb Conaway, Chair, Assembly Health Committee

Assemblywoman Mila Jasey, Chair, Higher Education

Assemblywoman Angelica Jimenez, Vice Chair Assembly Health

Assemblywoman Yvonne Lopez, Vice Chair, Ass. Transportation

Assemblyman John F. McKeon, Chair, Financial Institutions and Insurance Committee

Assemblyman Pedro Mejia, Member of Consumer Affairs

Assemblywoman Gabriela Mosquera, Chairwomen and Children

Assemblyman Raj Mukherji, Deputy Speaker Pro-Temp

Assemblywoman Eliana Pintor Marin, Chair of Assembly Budget

Assemblywoman Annette Quijano, Majority Conference Leader

Assemblywoman Verlina Reynolds-Jackson, Vice Chair, Consumer Affairs

Assemblywoman Shanique Speight, Vice Chair, Aging and Senior Services

Assemblywoman Shavonda Sumter, Chair, Community Development and Affairs

Assemblywoman Britnee Timberlake, Vice-Chair, Housing, Community Development and Affairs Committee

Assemblyman Benjie Wimberly, Deputy Speaker