With New OCC Guidance, Banks Must Ensure Small-Dollar Loans are Affordable

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WASHINGTON – In reaction to a new Bulletin from the Office of the Comptroller of the Currency (OCC) that encourages banks to offer small-dollar loans, advocates at the National Consumer Law Center emphasized that banks must make affordable loans of 36% or less and stay away from rent-a-bank payday loans.

"The OCC bulletin appropriately emphasizes the importance of determining a borrower's ability to repay, along with reasonable and transparent pricing and terms that do not result in costs disproportionate to the amount borrowed. But banks must go farther and limit the loans to 36% APR or less to avoid high-cost debt-trap lending," **said Lauren Saunders, associate director of the National Consumer Law Center.** "The 36% interest rate cap has a long history going back over 100 years, widespread public support, and increasing acceptance as the dividing line between predatory and mainstream small-dollar loans. Higher interest rates encourage misaligned incentives, with lenders profiting while consumers default."

The bulletin advises national banks to use internal and external sources to assess creditworthiness and "sound underwriting for credit offered to consumers who have the ability to repay but who do not meet traditional standards." "Assessing ability to repay by looking at both income and expenses is a cornerstone of responsible lending," **Saunders explained.**

While the bulletin only applies to loans over 45 days in length that are outside the Consumer Financial Protection Bureau's payday loan rules, **Saunders noted**: "The admonition to 'avoid continuous cycles of debt and costs disproportionate to the amounts borrowed' should be taken as condemnation of the costly bank payday loans that several national banks offered in the past and must continue to avoid." Last fall, the OCC rescinded 2013 guidance about bank payday loans, aka "deposit advance products," but numerous groups wrote an open letter to banks urging them not to re-enter that market.

Saunders praised the warning that the OCC "views unfavorably" banks that partner with payday lenders and other entities to help them evade state interest rate limits that apply to nonbank entities but not to banks. "Since 2003, national banks, which are regulated by the OCC, have stayed out of rent-a-bank lending, and this bulletin is a signal that it must stay that way," **Saunders explained**. But high-cost lenders have been using rent-a-bank partnerships with FDIC-supervised banks to avoid state interest rate limits, and Saunders called on the FDIC to stop those abusive arrangements.

"We welcome banks into the small-dollar loan market as long as they offer affordable and responsible loans at 36% or less," **Saunders added.** "With their existing infrastructure and knowledge of their customers, banks are well positioned to offer affordable small-dollar loans as a service to their customers that enhances a broader relationship."

The OCC bulletin follows a letter earlier this month that several national civil rights, faith, and consumer groups wrote to the OCC and other federal regulators urging them to prevent high-cost, usurious loans by banks and credit unions in any form, short- or long-term and whether made directly or through partnerships with non-bank lenders.

Additional Resources:

- Report: Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default, 2016
- Guidelines for Affordable Small Dollar Loans, 2014
- Report: Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap, 2013
- Learn more about NCLC’s body of work on high-cost short-term loans.