Center for Responsible Lending

H.R. 4861 Invites Banks to Make Predatory 300%-Interest Payday Loans

March 16, 2018

H.R. 4861 (Hollingsworth), the so-called EQUAL Act, invites banks to get back into the business of 200-300% interest payday loans that trap customers in unaffordable debt. The bill would rescind the FDIC's 2013 guidance addressing bank payday ("deposit advance)" loans; exempt banks and credit unions from the CFPB's final payday loan rule; and provide for express federal preemption of state law for bank and credit union small dollar loans.

Bank Payday Loans Were 200-300% Interest Debt Traps That Caused Substantial Harm to Customers

In 2013, a handful of banks[1] were making high-cost payday "deposit advance" loans, structured just like loans made by non-bank payday lenders.[2] The bank repaid itself the loan in full directly from the borrower's next incoming direct deposit, typically wages or Social Security, along with annual interest averaging 225% to 300%. The data on these loans made clear that despite banks' claims that they were a short-term solution to a temporary shortfall, repeat loans were typical. CFPB's analysis of thousands of bank payday loans found a median number of advances per borrower of 14, with extremely high numbers of advances for many borrowers: Fourteen percent of borrowers had a median of 38 advances in 12 months.[3] Bank payday loans created this debt trap despite so-called protections the banks touted, like installment options.

At their peak, these loans—even with only six banks making them—drained roughly half a billion dollars from bank customers annually.[4] This cost does not include the severe broader harm that the payday loan debt trap has been shown to cause, including increased difficulty paying mortgages, rent, and other bills, loss of checking accounts, and bankruptcy. Payday lending has a particularly adverse impact on African Americans and Latinos. A disproportionate share of payday borrowers come from communities of color,[5] and these loans leave them more disproportionately underserved by the banking mainstream.

Bank Payday Loans Were Met With Broad Public Outcry and Eventually Regulatory Intervention

Payday lending by banks was met by fierce opposition from virtually every sphere—the military community,[6] community organizations,[7] civil rights leaders,[8] faith leaders,[9] socially responsible investors,[10] state legislators,[11] and members of Congress.[12] Recognizing the harm to consumers, regulators took action in 2013 to protect bank customers—the OCC and FDIC with their 2013 deposit advance guidance requiring an income-and-expense-based ability-to-repay determination, and the Federal Reserve with its supervisory statement, emphasizing the "significant consumer risks" bank payday lending poses. For the most part, the banks responded by suspending their payday loan products. The OCC rescinded its guidance in October 2017, which it claimed was warranted in part because CFPB had just issued a final payday loan rule.

The CFPB's Rule Already Limits Impact on Banks & CUs, As Widely Acknowledged by the Industry

There is no need for legislative exemption of banks and credit unions from the CFPB final rule because the rule already minimizes its impact on bank and credit union products. Between the proposed and final rule, CFPB added exemptions for loans that mirror "payday alternative loans" made under the National Credit Union Administration's regulations, and for "accommodation" loans by a lender whose short-term loans don't exceed 2,500 loans or more than 10% of the lender's revenue in a year. Bank and credit union trade associations were generally positive toward the final rule as a result.[13]

H.R. 4861 Enables Short-Term Payday Loans, Pure and Simple

The effect of H.R. 4861 is to permit banks to make short-term balloon payment payday loans. The CFPB final rule, from which this bill would exempt banks and credit unions, only establishes ability-to-repay requirements for loans 45 days or less. The FDIC's 2013 guidance, which the bill rescinds, targeted the short-term balloon payment "deposit advance" loans that banks were making at that time. This bill is not about encouraging banks to make affordable installment loans. It will permit them to make unaffordable payday loans again.

[1] Wells Fargo, US Bank, Fifth Third, Regions, Bank of Oklahoma and its related banking divisions, and Guaranty Bank.

[2] For further background, *see* Center for Responsible Lending, *Been There, Done That: Banks Should Stay Out of Payday Lending* (July 2017), http://www.responsiblelending.org/research-publication/been-there-done-banks-should-stay-out-payday-lending.

[3] Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings* at 33-34, April 24, 2013, http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

[4] CFPB reports that the market was roughly $6.5 billion in advances at its peak in 2013. Bureau of Consumer Protection, 12 CFR Part 1041, Payday, Vehicle Title, and Certain High-Cost Installment Loans; Proposed Rule, 81 Fed. Reg. 47864, 47884 (July 22, 2016), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-07-22/pdf/2016-13490.pdf (CFPB Proposed Rule). Banks charged from $7.50 to $10.00 per $100 borrowed, computing to a range of $487.5 million to $650 million.

[5] For example, studies in California and Texas have both shown that African American and Latinos are far more likely to have been extended payday loans than the population as a whole. California Department of Corporations, "Payday Loan Study (Updated June 2008); Paige Marta Skiba and Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* Vanderbilt University and the University of Pennsylvania (October 10, 2008). This disproportionate share is even more significant because African Americans and Latinos are much less likely to have a checking account—a basic requirement for obtaining a payday loan.

[6] *See*, *e.g.*, Testimony of Steve Abbot, former President of the Navy-Marine Corps Relief Society, Before the U.S. Committee on Banking, Housing and Urban Affairs (Nov. 3, 2011) (noting bank payday loans among the "most egregious trends").

[7] *See*, *e.g.*, Letter from approximately 250 groups to FDIC, OCC, FRB and CFPB, February 22, 2012, http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Dear-Regulators.pdf.

[8] *See*, *e.g.*, Letter from Benjamin Todd Jealous, President and Chief Executive Officer, NAACP, to FDIC, OCC, FRB, and CFPB opposing bank payday lending (Feb. 21, 2013), *available at* http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/NAACP-redatory-Pay-Day-Loans-to-regulators-BTJ.pdf.

[9] *See*, *e.g.*, Elaina Ramsey, Faith Groups Take On Payday Lenders, Sojourners, *available at* https://sojo.net/magazine/stub/faith-groups-take-payday-lenders (discussing a National Day of Action among faith leaders in early 2013 to address payday lending). In connection with this National Day of Action, Rev. DeForest B. Soaries, jointly with other nationally prominent African American ministers, called for "an end to usury, an end to 300% interest rates, and an end to enslavement to both payday lenders and the banks now offering equally dangerous products" in *An Emancipation Proclamation from Payday Lending.* Center for Responsible Lending, *Bank Payday Lending: Overview of Media Coverage and Public Concerns*, CRL Issue Brief, March 7, 2013, *available at* http://www.responsiblelending.org/payday-lending/tools-resources/BPD-media-coverage-3-7-13.pdf.

[10] For proxy year 2013, investors filed shareholder resolutions with the four largest banks making payday loans expressing concern about the product and requesting data, which none of the banks agreed to provide.

[11] *See*, *e.g.*, "Legislative Black Caucus slams Regions Bank over payday-style loans," Raleigh News and Observer "Under the Dome," Oct. 11, 2012, *available at* http://www.cashcowadvances.com/paydayblog/legislative-black-caucus-slams-regions-bank-over-payday-style-loans.html; Letter from Arizona Democratic Caucus to the prudential banking regulators, Feb. 2012 (noting that Arizona "has spent countless state resources to study and understand the effects of [payday lending], and ultimately outlaw payday lending entirely" and calling on federal regulators to "take immediate action so that meaningful reforms taking place in Arizona and throughout the country in the name of consumer protection will not be undermined.").

[12] In January 2013, several Senators wrote the FRB, OCC, and FDIC urging action to address bank payday lending (http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-calls-on-regulators-to-act-to-stop-abusive-bank-payday-lending). In April 2013, House members did the same.

[13] See major trade association statements following release of the rule: American Bankers Association, https://bankingjournal.aba.com/2017/10/aba-wins-cfpb-exemption-for-accommodation-loans/ ("ABA Wins CFPB Exemption for 'Accommodation Loans"); Independent Community Bankers Association; https://www.icba.org/news/press-releases/2017/10/05/icba-statement-on-cfpb-final-small-dollar-lending-rule%5C ("This exemption acknowledges that community banks offer an invaluable and financially sound service to customers"); Credit Union National Association, http://news.cuna.org/articles/113088-cuna-analyzing-cfpbs-short-term-small-dollar-rule; National Federal Credit Union Association: https://www.nafcu.org/Tertiary.aspx?id=72042.