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 were making high-cost payday “deposit advance” loans, structured just like loans made by non-bank payday lenders. 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.

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. 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, 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, community organizations, civil rights leaders, faith leaders, socially responsible investors, state legislators, and members of Congress. 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.

**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.