



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

FROM: Benjamin M. Lawsky, Superintendent of Financial Services
RE: Illegal Online Payday Loans Offered and Sold to New York Customers

We are writing you in connection with the ongoing investigation being conducted by the New York State Department of Financial Services (“DFS” or “Department”) into illegal online payday lending. Payday loans are short-term loans, typically an advance on a future paycheck or other income source. Usurious payday loans are illegal in New York, and such loans are void and unenforceable. Under General Obligations Law § 5-501 and Banking Law § 14-a, loans or forbearances under \$250,000, made by non-bank lenders, with an interest rate exceeding 16 percent per annum, constitute civil usury and are illegal. Further, under New York Penal Law §§ 190.40-42, loans made in New York with an interest rate exceeding 25 percent per annum constitute criminal usury.

The Department has uncovered dozens of out-of-state lenders who have used the Internet to solicit and provide illegal payday loans to consumers in New York. Typically, these lenders charge fees that, when annualized, result in interest rates far in excess of the legal limit. New York consumers who take out these supposedly short-term loans quickly get caught in a vicious cycle of long-term debt; the loans become difficult if not impossible to pay off due to the triple- and quadruple-digit interest rates, together with overdraft fees. To address their unlawful activity, DFS today sent letters to 35 payday lenders directing them to cease and desist offering to lend and lending monies at usurious rates in New York. The lenders include:

- ABJT Funding, LLC d/b/a Dollar Premier
- Advance Me Today
- American Web Loans
- Archer Direct, LLC
- Bayside Loans
- BD PDL Services, LLC d/b/a Bottom Dollar Payday
- Blue Sky Finance, LLC d/b/a ExtraFunds Cash
- BS Financial Group Inc. d/b/a Payday Accelerated
- Cash Jar
- Cash Yes
- Discount Advances
- DMA Financial Corp. d/b/a VIP Q-Loot
- Eastside Lenders, LLC
- Fast Cash Personal Loans
- Golden Valley Lending
- Government Employees Credit Center, Inc. d/b/a Cash Direct Express
- Great Plains Lending, LLC

- Horizon Opportunities, LLC d/b/a Lifestyle Services
- Loan Point USA Online
- MNE Services, Inc. d/b/a AmeriLoan, UnitedCashLoans, US Fast Cash, 500 Fast Cash
- MobiLoans, LLC
- MyCashNow.com, Inc.
- National Opportunities Unlimited, Inc. d/b/a Itsmypayday.com, TheCashSpot.com
- Northway Broker Ltd. d/b/a Zip19
- PayDayMax, Ltd.
- Peak 3 Holding, LLC d/b/a iCashLoans
- Plain Green, LLC
- Red Rock Tribal Lending, LLC d/b/a CastlePayday.com
- SCS Processing d/b/a Everest Cash Advance
- SFS, Inc. d/b/a One Click Cash, Preferred Cash Loans
- Sonic Cash
- Sure Advance, LLC
- Tribal Credit Line d/b/a Quick Credit 911
- United Consumer Financial Services, Inc. d/b/a EZPaydayCash
- Western Sky Financial, LLC

DFS will aggressively pursue appropriate enforcement against payday lenders that refuse to cease and desist from their illegal activity in New York.

Illegal payday loans made over the Internet are made possible in New York by credits and debits that must pass through the Automated Clearing House (“ACH”) network. The current ACH network appears to allow illegal loans to flow through New York without sufficient mechanisms to prevent or block these debits or credits as they occur. According to the Operational Bulletin released recently by NACHA, the organization that manages the ACH network, the borrower’s bank, or the Receiving Depository Financial Institution (“RDFI”), “has no basis or information to make an independent judgment as to whether any specific transaction was properly authorized and relates to a bona fide, legal transaction.” ACH Operations Bulletin #2-2013, High-Risk Originators and Questionable Debit Activity, March 14, 2013. The RDFI only becomes aware of the “questionable debit activity when it is contacted by its customer.” *Id.* This is deeply concerning to the Department. The RDFIs would be a great asset in preventing their customers from being victimized by these illegal loans if they were aware of questionable activity before such debits were made. As such, changes to the ACH network may be necessary.

NACHA also places the onus on the banks originating the debits, also known as the Originating Depository Financial Institutions (“ODFIs”), as “gatekeepers of the ACH Network,” to conduct sufficient due diligence consistent with NACHA Operating Rules. The Department is interested in the steps the ODFIs are taking to monitor compliance among the above-listed and any other loan originators who are using the ACH network to violate New York laws.

Access to the ACH system is the foot in the door that online payday lenders need to prey on vulnerable New Yorkers. And banks have proven to be – even if unintentionally – an essential cog in the vicious machinery that these purveyors of predatory loans use to do an end-run around New York law.

We are requesting that you work with us to create a new set of model safeguards and procedures to choke off ACH access to the 35 illegal lenders DFS's investigation has identified to date, as well as the broader payday lending industry. Doing so is not only in the interest of your customers who will be better protected from these predatory loans. It is also in your bank's long-term interest to take appropriate action to help ensure that it is not serving as a pipeline for illegal conduct.

The Department therefore requests that you inform us of the steps that you are taking, in your capacity as either an ODFI, RDFI or both, as applicable, to stop illegal payday loans from entering into New York through the ACH network. We are interested in the steps you are able to take now, and what changes are necessary both within your bank and at the ACH network level to stop these illegal loans.

Through a cooperative effort with the banking industry, we can work together to stamp out these pernicious, illegal payday loans in New York. To further that cooperative undertaking, we request the opportunity to meet with you and your designees with knowledge of the ACH network and NACHA rules and processes. Please contact at your earliest convenience Executive Deputy Superintendent Joy Feigenbaum, Financial Frauds & Consumer Protection, at (212) 480-6082, to set up a mutually convenient time to meet. We look forward to working with you on this important issue.

Recipients of Letter

Bank of America Corp.
Capital One Financial Corporation
Citigroup, Inc.
HSBC North America Holdings, Inc.
J.P. Morgan Chase & Co.
Keycorp
M & T Bank Corporation
PNC Financial Services Group
TD Bank
U.S. Bancorp
Wells Fargo & Company
Alpine Capital Bank
Adirondack Bank
Adirondack Trust Company, The
Alden State Bank
Alma Bank
Amalgamated Bank of NY
Amerasia Bank
American Community Bank
AmeriCU Credit Union
Apple Bank for Savings
Banco Popular de Puerto Rico
Banco Popular North America
Bank Hapoalim B.M.
Bank Leumi Le-Israel B.M.
Bank Leumi USA
Bank of Akron
Bank of Castile, The
Bank of Cattaraugus
Bank of Holland
Bank of Millbrook
Bank of Richmondville
Bank of Utica
Berkshire Bank Municipal Bank
Berkshire Bank, The
Branch 6000 NALC Credit Union
Buffalo Service Credit Union
Catskill Hudson Bank
Cattaraugus County Bank
CFCU Community Credit Union

Spring Bank (formerly CheckSpring)
Chemung Canal Trust Company
Citizens Bank of Cape Vincent
Country Bank
CMS Bank
Cross County Savings Bank
Directors Choice Credit Union
Elmira Savings Bank
Emigrant Bank
Emigrant Mercantile Bank
Empire Branch 36 NALC Credit Union
Empire State Bank
Empire State Credit Union
Encompass Niagara Credit Union
Erie County Employees Credit Union
Fairport Savings Bank
First American International Bank
First Central Savings Bank
Five Star Bank
Flushing Bank
Fulton Savings Bank
Genesee Regional Bank
Global Bank
Gold Coast Bank
Greene County Commercial Bank
Habib American Bank
Hanover Community Bank
Hudson River Community Credit Union
Interaudi Bank
Israel Discount Bank of New York
Jamestown Post Office Employees Credit Union
Jeff Bank
Medina Savings and Loan Association
Melrose Credit Union
Montauk Credit Union
Municipal Credit Union
New York Commercial Bank
New York Community Bank
NewBank
Newspaper Employees Credit Union
Niagara Falls Penn Central Employees Credit Union
Niagara Frontier Federal Employees Credit Union

North Country Savings Bank, The
Norton-Troy Employees Credit Union
Oneida Savings Bank
Orange county Trust Company
Pathfinder Bank
Pathfinder Commercial Bank
PCSB Commercial Bank
Pioneer Commercial Bank
Pioneer Savings Bank
Progressive Credit Union
Provident Municipal Bank
Putnam County Savings Bank
Rhinebeck Bank
Ridgewood Savings Bank
Riverside Bank
Rondout Savings Bank
Savoy Bank
Sawyer Savings Bank
Signature Bank
Solvay Bank
State Bank of Chittenango
Steuben Trust Company
The Dime Savings Bank of Williamsburgh
NorthEast Community Bank
Tioga State Bank
Tompkins Trust Company
Ulster Savings Bank
United International Bank
United Orient Bank
USNY Bank
Victory State Bank
Watertown Savings Bank
Westchester Bank, The
WSB Municipal Bank
Yonkers Postal Employees Credit Union