NCLC®
NATIONAL CONSUMER LAW CENTER®

OCC's Short-Term, Small Dollar Lending Bulletin: Vague Guidelines Leave the Devil to the Details

July 2018

The Office of the Comptroller of the Currency (OCC) is encouraging national banks to make small-dollar installment loans to consumers with an ability to repay despite a credit profile outside the bank's typical underwriting standards. The new OCC guidance provides "core lending principles" for loans typically of $300 to $5,000 with 2- to 12-month terms.

The ambiguous guidance includes some laudable consumer protection principles, but the devil is in the details. It will be up to both the OCC and national banks themselves to ensure that the Bulletin is not an excuse for national banks to resume high-cost, unaffordable lending.

Positive aspects:

- **Installment, not balloon-payment loans**. The OCC is encouraging installment loans with equal amortizing payments, not the destructive bank payday loans ("deposit advance products") of the past.
- **Focus on ability to repay**. "All credit products should be underwritten," using "internal and external data … to assess a consumer's creditworthiness," and product structures that "support borrower affordability and successful repayment of principal and interest in a reasonable time frame." The Bulletin emphasizes "sound underwriting … [of] consumers who have the ability to repay …"
- **Avoidance of "continuous cycles of debt and costs disproportionate to the amounts borrowed."** Both traditional and bank payday loans are debt traps.
- **Warning against rent-a-bank operations.** The OCC discourages "an entity that partners with a bank with the sole goal of evading a lower interest rate established under the law of the entity's licensing state(s)."

Areas of concern:

- **No explicit limit on interest rates or fees.** The Bulletin references "reasonable pricing" that is "reasonably related to product risks and costs" but is not more specific as to price. Voters overwhelmingly support a 36 percent cap on interest rates. Banks and the OCC should use the Military Lending Act as the benchmark for reasonable pricing.
- **Vague underwriting criteria.** True underwriting determines the consumer's ability to pay a loan while meeting other obligations such as rent, food, medical care, car payments, and child care. Underwriting is not merely the ability of the bank to collect.
- **Does the rent-a-bank warning have teeth?** Will the OCC permit high-cost lender partnerships if they can identify another goal besides evasion of state interest rate limits?
- **Guidance is unenforceable.** The bulletin is not a rule, and it does not provide a remedy for borrowers to hold banks accountable if they fail to live up to these principles.
- **Balloon-payment loans coming?** The OCC states it will work with the Consumer Financial Protection Bureau to ensure that national banks "can responsibly engage in consumer lending, including lending products covered by the [CFPB's] Payday Rule."

The ultimate meaning of the OCC guidance may be in the eye of the beholder. It will be up to the OCC and banks to use it to encourage affordable loans, not destructive, high-cost ones.