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Joint Guidance Encouraging Small-Dollar Lending During COVID-19 Pandemic

The CFPB And Four Other Financial Regulators Encouraged Financial Institutions To Start Offering Small-Dollar Loans, A Move Seen As Enabling Predatory Loans That "Trap Consumers Into Cycles Of Debt."

The CFPB, OCC, FDIC, NCUA, And Federal Reserve "Issued Joint Guidance" To "Encourage Financial Institutions To Offer' Small-Dollar Loans.

In March 2020, The CFPB, OCC, FDIC, NCUA, And Federal Reserve "Issued Joint Guidance […] To 'Encourage Financial Institutions To Offer Responsible Small-Dollar Loans To Both Consumers And Small Businesses.'" "All five federal bank and credit union regulators on Thursday called on the financial firms they regulate to offer short-term loans to customers facing hardships during the coronavirus pandemic. The Federal Reserve Board of Governors, Federal Deposit Insurance Corp., Consumer Financial Protection Bureau (CFPB), Office of the Comptroller of the Currency (OCC) and National Credit Union Administration issued joint guidance Thursday to 'encourage financial institutions to offer responsible small-dollar loans to both consumers and small businesses.'" [The Hill, 03/26/20]

Senate Democrats Criticized The Guidance, Accusing CFPB Director Kraninger Of Using The Pandemic "As An Opportunity To Protect Big Banks, Payday Lenders, Debt Collectors, And Other Corporate Interests" Loans As They Offer Predatory Loans That "Trap Consumers Into Cycles Of Debt."

Senate Democrats To Kraninger On Small-Dollar Loan Guidance: "The CFPB Under Your Leadership Has Used This Pandemic As An Opportunity To Protect Big Banks, Payday Lenders, Debt Collectors, And Other Corporate Interests" As They Offer Predatory Loans That "Trap Consumers Into Cycles Of Debt." "Instead of taking bold action to protect consumers, the CFPB under your leadership has used this pandemic as an opportunity to protect big banks, payday lenders, debt collectors, and other corporate interests. On March 26, the CFPB issued guidance that 'encourages' banks and credit unions to issue small dollar loans to consumers. But by failing to include any limitations on what interest rate that can be charged or require that consumers be able to repay the loan, this guidance opens the door for banks and credit unions to offer predatory payday loans that trap consumers into cycles of debt." [Press Release, 04/07/20]

Consumer Advocates Were Concerned At The Joint Guidance's "Troubling Language" Suggesting Banks Begin Making Payday Loans And Suggested Any Such Products Be Underwritten With An "Ability-To-Repay" Standard While Not Exceeding A 36% APR.

The Center For Responsible Lending Criticized The Joint Guidance's "Troubling Language" Encouraging Banks To Begin Making Payday Loans.

The Center For Responsible Lending Criticized The Joint Guidance's "Troubling Language" Encouraging Banks To Begin Making Payday Loans. "On March 26, 2020, five federal agencies (the OCC, FDIC, Federal Reserve, CFPB, and National Credit Union Administration (NCUA)) issued brief joint guidance to 'specifically encourage' financial institutions to offer 'responsible small-dollar loans' to both consumers and small businesses during the COVID-19 crisis. The guidance stresses that loans must be 'responsible' and 'fair.' The guidance does contain troubling language that could be read to permit banks to make paydayloans. Banks should not read it that way and should stay out of the business of payday lending. They should also charge reasonable prices on installment loans, at no more than 36% APR." [Center For Responsible Lending, 04/01/20]

The Center For Responsible Lending Went On To Recommend That Short Term Loan Products Not Exceed 36% APR, While Also Being Underwritten With An "Ability-To-Repay" Standard To Ensure Borrowers Can Actually Pay Back The Loan Without Neglected "Ongoing Expenses And Obligations."

Because Banks Are "Getting Loans At 0% From The Federal Discount Window," The Center For Responsible Lending Urged Them To "Keep Interest Rates Reasonable" For Any Short-Term Installment Loans They Originate, With No Loan Products Exceeding A 36% APR. "Banks are getting loans at 0% from the Federal Discount Window. They should treat customers fairly and keep interest rates reasonable. Banks that may plan to introduce an installment loan product at rates exceeding 36% during this crisis would serve their customers better by keeping that product on the shelf." [Center For Responsible Lending, 04/01/20]

The Center For Responsible Lending Recommended Banks Maintain An "Ability-To-Repay" Standard When Originating Short Term Loans To Ensure "Borrowers Can Afford The Debt While Continuing To Meet Ongoing Expenses And Obligations." "An ability-to-repay determination that takes into account a borrower's expenses or obligations is important to ensuring that borrowers can afford the debt while continuing to meet ongoing expenses and obligations. Depositories have ready access to their customers' checking account activity, which permits them to assess expenses and obligations efficiently." [Center For Responsible Lending, 04/01/20]

The National Consumer Law Center Also Recommended Any Banks Offering Payday Loans Do So At An APR Of 36% Or Less As This Is Commonly Seen As The "Dividing Line Between Predatory And Mainstream Small-Dollar Loans."

Lauren Saunders, Associated Director Of The National Consumer Law Center, Also Urged Banks To Adopt An APR Of 36% Or Less Due To Its "Widespread Public Support And Increasing Acceptance As The Dividing Line Between Predatory And Mainstream Small-Dollar 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.'" [National Consumer Law Center, 05/20/20]