

NACCA

National Association of Consumer Credit Administrators

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January 22, 2019

Robert E. Feldman, Executive Secretary
Attention: Comments, Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Re: Request for Information on Small-Dollar Lending
Docket No. 2018-25257
RIN 3064-ZA04

Dear Mr. Feldman:

The National Association of Consumer Credit Administrators (NACCA) appreciates the opportunity to provide comments in response to the Federal Deposit Insurance Corporation's (FDIC) request for information on small-dollar lending.

NACCA is an association of state financial regulation agencies formed in 1935. NACCA's members include financial regulators from 49 states, the District of Columbia, Puerto Rico, and Alberta, Canada. NACCA's members have decades of experience regulating the consumer credit marketplace, including through the enforcement of small-dollar lending laws.

Introduction

NACCA recognizes and appreciates the FDIC's efforts in seeking input on how best to encourage banks to offer prudently underwritten small-dollar loans that meet the needs of consumers. NACCA seeks to foster the safe and sound growth of the small-dollar lending industry in a manner conducive to innovation, while protecting consumers from practices harmful to their financial well-being. Accordingly, NACCA member states operate under a dual mandate to achieve the goals of consumer protection and ensuring credit availability. From that perspective, NACCA provides the following comments.

Challenges

There is nationwide consumer demand for small-dollar credit and, consequently, most states have established systems to regulate small-dollar credit transactions. NACCA member states oversee and shape those systems. NACCA members are concerned with whether a new FDIC proposal would create a workable environment for cooperative state and federal regulation of the small-dollar lending industry. While FDIC-supervised entities may stand apart from the small-dollar lenders regulated by NACCA members, dissonance between state and federal standards for small-dollar loans could harm consumers and pose a challenge to healthy competition in the small-dollar loan industry. NACCA members have experienced this dissonance before, when small-dollar lenders essentially “rented” state bank charters in order to circumvent state laws and regulations.

Most state legislatures have established outer-bounds for the acceptable features of small-dollar loans, such as cost, terms, and underwriting requirements. The FDIC should consider requiring banks to follow such state-law limits¹ on small-dollar loans out of respect for the historical role of state legislatures and regulators in the area of consumer protection on small-dollar loans. The FDIC could make this requirement a matter of prudential regulation, both because making loans prohibited by state law may pose serious reputational risks for banks and because state law provides, in many cases, a responsible set of limitations on small-dollar loans.

Product Features

The FDIC has previously been a partner in endeavoring to reduce the risks associated with so-called “rent-a-bank” schemes and shares goals in common with NACCA’s members. Among these shared goals are successful lending programs that promote economic vitality and protect consumers. Before a loan program can be successful, however, borrowers must be able to access and understand the products. Additionally, loans must be prudently underwritten and tailored to each borrower to ensure the viability of the loan for both the borrower

¹ See ME 9-A § 2-401 (1999), available at <http://legislature.maine.gov/statutes/9-A/title9-Asec2-401.html>; IND. Code § 24-4.5-7 (2002), available at <http://iga.in.gov/legislative/laws/2018/ic/titles/024#24-4.5-7>; COLO REV. STAT. § 5-3.1-101 et seq. (2010), available at https://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/uccc_2017.pdf; 4 COLO. CODE REGS. § 902-1 (Rule 17) (2010), available at <https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=3842>; WASH. REV. CODE § 31.45.010 et seq. (2009), available at <https://apps.leg.wa.gov/RCW/default.aspx?cite=31.45&full=true>, and WASH. ADMIN. CODE § 208-630-110 et seq. (implementing rules) (2016), available at <https://apps.leg.wa.gov/wac/default.aspx?cite=208-630>; ALASKA STAT. § 06.50.010 et seq. (2010), available at <http://www.akleg.gov/basis/statutes.asp#06.50>; ALASKA STAT. § 06.20.010 et seq. (2010), available at <http://www.akleg.gov/basis/statutes.asp#06.20>; IOWA CODE § 533D.1 et seq. (1995), available at <https://www.legis.iowa.gov/docs/ico/chapter/533D.pdf>, and IOWA CODE § 537.1101 et seq. (1995), available at https://www.legis.iowa.gov/docs/ACO/IC/LINC/Chapter_537.pdf; VA. CODE ANN. § 6.2-1816 (2016), available at <https://law.lis.virginia.gov/vacode/title6.2/chapter18/section6.2-1816/>; MO. REV. STAT. § 408.500-506 (2015), available at <http://revisor.mo.gov/main/OneSection.aspx?section=408.500&bid=23404&hl=>; S.C. CODE ANN. § 34-39-120(3) (Supp. 2016), available at <https://www.scstatehouse.gov/code/t34c039.php>; NEB. REV. STAT. § 45-901, 931 (2018), available at <https://nebraskalegislature.gov/laws/browse-chapters.php?chapter=45>; MISS. CODE ANN. § 75-17-101 et seq., 201 (1972), available at <https://advance.lexis.com/container?config=00JAAzNzhjOTYxNC0wZjRkLTQzNzAtYjJlYSIjNjExZWYxZGFhMGYKAFBvZENhdGFsb2cMlW40w5iIH7toHnTBIEP0&crd=46106792-e41f-44d5-ae7f-5b32c1d1c0c9&prid=e363d1ca-a78c-4e57-ba4a-ac4dd1321865>; UTAH CODE ANN. § 7-23-101 et seq. (2008), available at https://le.utah.gov/xcode/Title7/Chapter23/7-23-S101.html?v=C7-23-S101_1800010118000101; WYO. STAT ANN. § 40-14-362-67 (1971), available at <https://www.wyoleg.gov/StateStatutes/StatutesDownload>; N.C. GEN. STAT. § 53-15 (2015), available at https://www.ncleg.net/enactedlegislation/statutes/html/byarticle/chapter_53/article_15.html; N.C. GEN. STAT. § 24-1 et seq. (2015), available at https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_24.html; N.C. GEN. STAT. § 25A-1 et seq. (2015), available at <https://www.ncleg.gov/Laws/GeneralStatuteSections/Chapter25A>; and KAN. STAT. ANN. § 16a-2-404 (2005), available at http://www.kslegislature.org/li/b2019_20/statute/016a_000_0000_chapter/016a_002_0000_article/016a_002_0404_section/016a_002_0404_k/.

and lender. A growing body of research suggests that consumer protection features and limits on loan terms, number of outstanding loans, loan costs, payment structure, and loan extensions are important to prudent and successful small-dollar credit offerings. The FDIC should consider current research and state consumer protection laws relating to small-dollar lending².

Innovation/ Use of Technology

With the appropriate safeguards and product features, a small-dollar credit offering could provide additional bank revenue and new customers, increase access to prudently underwritten credit, and introduce healthy competition and innovation to the market. The FDIC could further support such innovation by creating or utilizing a system to track and register small-dollar loans, such as the databases³ many states use. In the experience of several NACCA members, the information produced by these systems enables data-driven regulation and innovation.

Conclusion

NACCA reiterates its interest in fostering measured growth of the small-dollar lending industry in a manner conducive to innovation while protecting borrowers from practices harmful to their financial well-being. This outcome requires balanced standards that ensure both consumer protections and credit availability. NACCA appreciates the opportunity to present these comments.

Sincerely,



Carri Grube Lybarker
President
National Association of Consumer Credit Administrators

² See Colorado 2016 Deferred Deposit/Payday Lenders Annual Report (UCCC), available at https://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/2016_ddl_composite.pdf; Colorado Payday Lending-Demographic and Statistical Information (July 2000-December 2015), available at <https://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/DemoStatsInfo/ddlasummary2000-2015.pdf>; Washington State Annual Payday Lending Reports, available at <https://dfi.wa.gov/reports/payday-lending-reports>; Missouri Payday Lending Reports, available at <https://finance.mo.gov/reports/paydaysurveys.php>; SC Department of Consumer Affairs' 2018 State of Credit Report, available at https://consumer-test.sc.gov/sites/default/files/Documents/About%20Us/2018_SOCRprt.pdf; Nebraska 2018 Delayed Deposit Services Report, available at <https://ndbf.nebraska.gov/sites/ndbf.nebraska.gov/files/industries/Delayed%20Deposit%20Services%20Report%2045-931.pdf>; Nebraska Annual Reports, available at <https://ndbf.nebraska.gov/reports/annual-reports>; and State of Mississippi 2017 Annual Report, available at <http://www.dbcf.ms.gov/documents/annualreport17.pdf>.

³ See IND. CODE § 24-4.5-7-404 (2010), available at: <http://iga.in.gov/legislative/laws/2018/ic/titles/024#24-4.5-7-404>; see also WASH. REV. CODE § 31.45.093 (2009), available at <https://app.leg.wa.gov/RCW/default.aspx?cite=31.45.093>, and WASH. ADMIN. CODE § 208-630-556 (2010), available at <https://apps.leg.wa.gov/wac/default.aspx?cite=208-630-556>; VA. CODE ANN. § § 6.2-1810, 1816 (2016), available at <https://law.lis.virginia.gov/vacode/title6.2/chapter18/section6.2-1810/>; and S.C. CODE ANN. § 34-39-120(3) (Supp. 2016), available at <https://www.scstatehouse.gov/code/t34c039.php>.