



**Department of  
Consumer Affairs**

**40 years**

*of ensuring a fair and  
vibrant marketplace*

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**Before the New York State Assembly's  
Standing Committee on Banks**

**Hearing on: The Role of the States in the New  
Financial Services Regulatory Scheme**

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Good morning Assemblymember Towns and members of the Banks Committee. I am Caitlyn Brazill, Deputy Director for Research and Policy at the New York City Department of Consumer Affairs' Office of Financial Empowerment (DCA's OFE). On behalf of DCA Commissioner Jonathan Mintz and OFE Executive Director Cathie Mahon, I thank you for the opportunity to appear before you today. We're very pleased that the Assembly Banks Committee is thinking creatively about the role New York State can play in the evolving financial services regulatory environment.

DCA enforces the Consumer Protection Law and other related business laws throughout New York City. We license more than 71,000 businesses in 57 different industries, and we educate consumers and businesses about their rights and responsibilities through targeted outreach, partnerships with community and trade organizations, and informational materials.

DCA regulates a number of non-bank financial service businesses, such as debt collectors, pawn brokers and second-hand auto dealers. Recently, we expanded our authority to license debt buyers— businesses that buy defaulted debt in bulk and then collect from consumers directly or through use of the courts. The new law, which could serve as a model for state legislation, also increases debt documentation requirements and improves consumers' ability to get information about the debt that is being collected.

DCA's Office of Financial Empowerment was launched by Mayor Bloomberg in December 2006 to educate, empower, and protect those with low incomes, so they can

build assets and make the most of their financial resources. In the past two and a half years, we've worked with financial institutions to negotiate safe, starter bank accounts, and implemented an innovative asset building program to encourage savings among consumers with low incomes. We provide free financial counseling and coaching through Financial Empowerment Centers in four boroughs and coordinate a citywide network of quality financial education providers. DCA also spearheads the Mayor's Earned Income Tax Credit awareness campaign, including a network of free tax preparers that served over 82,000 New Yorkers last year in more than 90 locations.

OFE's work has also spawned a new field of municipal financial empowerment. To share lessons learned and advocate jointly for national policy reforms, New York City founded and co-chairs the Cities for Financial Empowerment (CFE) coalition, a group of 10 city governments working to improve financial services for households with low incomes.

I will first provide an overview of our priorities for federal regulatory reform and then highlight several key areas for immediate reform where the Assembly can improve fairness and opportunity in New York's financial services marketplace.

#### Federal Reform Priorities: A Strong, Independent Consumer Financial Protection Agency

DCA has taken an active role in the promotion of strong, comprehensive regulatory reform, partnering with many in this room and New York's representatives in Washington to support the Obama Administration's plan to create a Consumer Financial Protection Agency (the CFPA).

DCA has offered its expertise in this debate as a regulatory and enforcement agency because every day we see the impact of insufficient regulation of the financial services marketplace. Cities and states are the first, and often the only, lines of defense when federal regulators fail to protect consumers. DCA supports a new national consumer protection regulator, and we believe there are two important aspects of this issue for the members of this Committee to consider.

First, for a new national consumer protection regulator to be effective, it must be independent and have broad authority over bank and non-bank financial services providers. The CFPA can provide long-overdue, critical protections by consolidating regulatory and enforcement authority, closing enforcement loopholes, banning deceptive practices and providing a way for consumer complaints to be addressed. And it would, for the first time, bring non-bank providers of financial products and services within the regulatory fold.

Second, it is critical that CFPA regulations act as a floor, not a ceiling, for state and local regulatory and enforcement authority. State and local governments must be allowed to set consumer protections that are stronger than the federal rules. At the very least, the State of New York and New York City must be allowed to continue our current work protecting consumers. From payday lenders and usury caps to debt collectors and pawnbrokers, there is a generation of existing state and local laws that protect consumers. We need to ensure that the CFPA legislation does not unintentionally undermine the good work we have done together in New York City and State.

In light of the damage that preemption has done to consumers throughout the state and nationwide, we suggest the Assembly join us in urging Congress to pass financial regulatory reform that ensures that states and municipalities have the ability to enact laws they deem necessary and proper to protect their residents in financial transactions.

At its best, this agency could empower consumers to make informed choices about financial products and services. We have suggested, for example, that the CFPB could develop a comprehensive rating system that would allow consumers to make apples-to-apples comparisons between financial products. It could also restore confidence in the financial sector and protect our economy from another financial meltdown.

#### What Can Be Done Now: State Reforms to Protect and Empower New Yorkers

While the debate about the CFPB and regulatory restructuring plays out in Washington, the state already has the power to enact reforms that protect and empower New Yorkers. I'll quickly touch on a number of policy solutions, within the purview of the state legislature, that could help (1) increase the availability of safe, affordable financial services that support families' economic well-being; (2) meaningfully support community-based financial institutions; and (3) empower New Yorkers with low incomes to build savings.

#### (1) Safe, Affordable Financial Services

One of the primary goals of the City's Office of Financial Empowerment is to ensure that individuals with low incomes have access to affordable financial products that can help

them build assets. More than 825,000 New York City adults have no checking or savings accounts. Our research in low-income communities in New York City found that two-thirds of people who had bank accounts continued to use check cashers regularly. This is a strong indication that the primary reason those with low incomes are disenfranchised from mainstream banking is a pervasive mismatch between the products being offered and their financial needs. To help mitigate this mismatch, we recommend two strategies:

First, the New York State basic banking account criteria should be updated to preclude courtesy overdraft and other costly, hidden fees.

This legislature, in 1994, enacted the requirement that all banks offer a low-fee bank account that meets specific basic criteria. Fifteen years ahead of Washington, New York understood that consumers need “plain vanilla” products – financial products with no tricks or traps that meet the needs of poor and working families. Since this law passed, though, banks have come up with new fees and charges.

The most prominent and potentially destabilizing fees for low-income households are courtesy overdraft protection fees – which industry analysts estimate will cost consumers a record \$38.5 billion this year.<sup>1</sup> Yet, most customers – even those with legally mandated basic bank accounts - are never even asked if they would like this service on their account.

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<sup>1</sup> Dash, Eric, “Bank Fees Rise as Lenders Try to Offset Losses,” The New York Times, July 2, 2009.

New York State should require that all banks offer at least one low-cost account with no courtesy overdraft protection service and that banks report to the New York State Banking Department the number of consumers actually opening and maintaining these accounts.

Second, the Assembly should also work with Banking Department to improve the Banking Development Districts program by requiring comprehensive disclosure of the product features and pricing at all financial institutions applying for the program.

Since its inception in 1998, the Banking Development District program has taken a critical first step to connect working poor households to mainstream financial services by ensuring that mainstream banks are physically convenient and available where unbanked households live and work. Here in New York City, the program helped establish 25 new bank branches, primarily in low-income communities.

Physical presence is part of the story – and the program has done an admirable job on that score. But unpredictable fees and uncompetitive pricing undermine what the BDD program could achieve, by pushing people away from banking relationship, even when the institutions are available in their communities.

As the state's visionary Superintendent of Banks Richard Neiman assesses this program and identifies opportunities to reinvigorate it for the next generation, we have offered that the BDD program should focus on what happens inside the bank branches, leading banks to offer and sell the right mix of products and services – including basic bank accounts and clear, transparent credit options.

Once designated, branches should be required to publicly report changes to those product features, as well as the take-up rate of certain products designated as being particularly useful to customers with low incomes, such as the basic bank account. This reporting is critical to knowing how prominently or successfully key products are being offered to consumers, ensuring that the BDD program has its intended impact of reaching underserved communities and making sure taxpayers' funds have the greatest impact possible.

## (2) Increase Supports for CDFIs and Credit Unions

We have three suggestions for how New York State can support Community Development Financial Institutions (CDFIs) and credit unions that are already offering safe, affordable products.

First, we support the enactment of Assembly Bill 4319, sponsored by Assemblymember Harvey Weisenberg, to authorize credit unions, savings banks and savings & loan associations, to accept deposits from municipal corporations. New York is one of only five states to prohibit credit unions from receiving municipal deposits.<sup>2</sup> DCA's most innovative pilot programs to reach underbanked populations have relied upon the flexibility and creativity of credit unions and savings banks. Credit unions and savings banks often have branches located in low-income communities and offer basic transactional financial products that are more transparent and less expensive for low-income households than products offered by commercial banks.

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<sup>2</sup> Other states are Kentucky, South Carolina, Nebraska, and Ohio.

Our ability to increase the scale of existing pilot programs and pilot new innovative banking products and services depends on the continued partnership of these types of institutions. Further, municipal deposits could allow credit unions and savings banks to increase their deposit base, and greatly scale up the offering of affordable products to serve New Yorkers with low incomes throughout the state. Simply put, there is no reason not to trust municipal deposits to an institution that is federally regulated and insured.

Second, we support the enactment of Assembly Bill. 238, sponsored by Assemblymember Brian Kavanagh, which would include low income credit unions in the Banking Development District program. The BDD program could be tremendously enhanced by expanding its scope to include low income credit unions, helping these small institutions to expand to new underserved communities. Extending below-market-rate deposits and expanding the capital based of low income credit unions with an express mission of serving the underbanked is a no-brainer.

Third, the Assembly should allocate supporting funds necessary for New Yorkers to realize the benefits of a State CDFI Program. Thanks to the leadership of Chairman Towns and others, Governor Spitzer signed Chapter 186 of the Laws of 2007 to create a state program to provide financial and technical assistance to CDFIs that serve low-to-moderate income communities. However, the CDFI fund has yet to receive an appropriation. An allocation of \$15 million to the CDFI fund will directly leverage a 20% increase in CDFI loan volume - \$145 million in loans for affordable housing, small

businesses, community facilities – at a time when many communities are desperate for capital.

### (3) Empower New Yorkers to Save

One third (32.5%) of New York State residents are asset poor, meaning they lack the resources to subsist at the poverty level for three months if they were to lose their income. New York has more asset-poor families than any other state in the nation, and has a 44% high rate of asset poverty than the national average.<sup>3</sup> We also have the second lowest homeownership rate in the country, at 53%, compared to 64% nationwide.<sup>4</sup> As a state that has always been a leader in protecting and empowering consumers, we can do better.

The legislature should create a New York State Assets Taskforce to develop a multi-disciplinary agenda to increase savings and assets across the state. DCA has been piloting an initiative that may inform tax-based strategies for increasing short term savings. In February 2008, we launched \$aveNYC, a matched saving program that leverages the Earned Income Tax Credit (EITC) to help New Yorkers build unrestricted savings and assets. It provides a 50% match to working poor New Yorkers who save a portion of their tax refund for a full year.

In two years of offering the program, nearly 1,100 people have opened accounts, saving over \$418,000 and earning potential matches of over \$200,000. In the first year of the

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<sup>3</sup> “State Profile: New York,” 2009-2010 Assets and Opportunity Scorecard, CFED. Available online at [http://scorecard.cfed.org/state\\_data/new\\_york.php](http://scorecard.cfed.org/state_data/new_york.php)

<sup>4</sup> Ibid.

pilot, 76% of the families who opened accounts were actually able to save for 12 months – despite the fact that the average income of participants was only \$15,000 a year.

The \$aveNYC pilot offers a scalable model for a tax-time emergency savings incentive program that could be implemented as a refundable tax credit at the state level. The State's 30% EITC supplement could be a valuable tool, not only to help struggling New Yorkers make ends meet, but to encourage them to create a cushion for the future.

An Assets Taskforce could identify an array of asset building solutions, from helping low and moderate income families save for college through incentivized contributions to the state's 529 plans, to facilitating retirement savings by creating a voluntary portable account program. The Assets Taskforce should also seek to complement asset building efforts by supporting innovative financial education programs to help families manage the assets they have. There are dozens of innovative and often low-cost strategies for creating and building assets, and we look to Chair Towns and the Assembly Banks Committee as potential leaders on this important issue.

In closing, we thank you for the opportunity to testify here today. By advancing these important policy solutions, the legislature has a timely opportunity to once again show that states truly are laboratories of democracy whose laws should not be preempted by federal regulators. We look forward to working with you to enact these vital reforms and would be glad to follow-up with more details on any of the proposed policy solutions I mentioned. I'd now be happy to answer any questions.