NYC Department of Consumer Affairs

**Testimony of Commissioner Julie Menin**
**New York City Department of Consumer Affairs**

**Before the**
**New York State Assembly's**
**Standing Committee on Banks**
**and the**
**Subcommittee on Banking in Underserved Communities**

**Public Hearing on**
**Identifying Alternatives to High-Cost Financial Products**

November 25, 2014

Good morning Chairs Robinson and Weprin and members of the Assembly's Committee on Banks. I am Julie Menin, Commissioner of the New York City Department of Consumer Affairs ("DCA"). I greatly appreciate the opportunity to testify today about the important issues of protecting consumers from debt traps resulting from predatory high-cost financial products and identifying ways to support safe and appropriate alternatives.

DCA's mission is to empower consumers and businesses to ensure a fair and vibrant marketplace. In addition to licensing approximately 80,000 businesses across 55 different industries, DCA mediates complaints between consumers and businesses, conducts patrol inspections and legal investigations, and engages in significant efforts to educate businesses about laws, rules, and new policies. Through our broad jurisdiction to enforce both State and City consumer protection laws, DCA is currently involved in a number of aggressive initiatives to crack down on scams, fraud, and other predatory practices.

DCA's Office of Financial Empowerment ("OFE") assists low-income New Yorkers with innovative programs and services to increase access to high-quality financial education and counseling and income-boosting tax credits and increasing availability of and access to safe, affordable mainstream banking products.

Through both our enforcement authority and our financial empowerment programs, DCA is focused on pursuing those who illegally offer high-cost financial products and on providing alternatives that help financially empower our residents.

Payday lending is a prime example of a problematic high-cost financial product. Nationwide, predatory payday lenders have had devastating effects on low income consumers and communities, charging billions of dollars in fees annually,[1] trapping borrowers in cycles of debt,[2] and resulting in hundreds of millions of dollars in lost economic activity.[3]

In New York State, we are fortunate to be among the fifteen states[4] that prohibit high-interest short-term loans. Consumers benefit from our longstanding, effective usury law[5] that prevents dangerous debt traps from injuring the financial stability and economic opportunity of our residents.

Given our commitment to reducing inequality and enhancing opportunity for all New Yorkers, DCA is steadfast in our opposition to any efforts to weaken or repeal the State's essential protections against usurious lending. Any legislation that would permit minimally underwritten short-term loans at costs in excess of the usury limit to our least economically stable consumers threatens to hobble one of New York's strongest consumer protections and to undermine the City's efforts to improve the financial stability of New Yorkers by connecting them to stable resources and services through partnerships with mainstream financial institutions. Efforts to weaken or repeal the State's strong protections against usurious lending must not be passed.

It is also essential that any federal rules seeking to address this issue support and enhance strong state laws like New York's. Yesterday, I sent a letter to Director Cordray of the federal Consumer Financial Protection Bureau ("CFPB") emphasizing that any forthcoming federal regulations to address small-dollar credit must support, not diminish, New York's strong protections. I recently joined with Commissioner Sutton of the Mayor's Office of Veterans' Affairs to call on the Department of Defense ("DoD") to adopt strong, comprehensive Military Lending Act regulations to protect military servicemembers and their families from high-cost financial products like payday loans.[6] This type of approach should serve as a model for the CFPB. New York State has long been a leader in getting out ahead on consumer protection issues, and maintaining and strengthening consumer protections is a high priority for DCA.

As members of the Committee are likely aware, some predatory businesses have sought to evade New York's law. At DCA, we have focused on using our local authority over debt collectors to prevent internet payday lenders from collecting on loans made illegally online. DCA has made clear that collecting on usurious loans is not permissible,[7] and we are aggressively enforcing the law to ensure debt collectors do not enable illegal high-cost credit practices. Combined with strong enforcement efforts by state and federal regulators, we are sending a clear message that illegal high-cost loans will not be tolerated in New York.

Before discussing the availability of alternatives to high-cost short-term loans, it is important to consider the often cited but false narrative surrounding payday lending. Payday proponents often argue that payday loans are necessary because borrowers lack access to credit from mainstream sources and that payday loans provide lifelines in the event of emergencies. However, research from the Pew Charitable Trusts debunks this theory, finding that more than half of payday loan applicants carry credit card debt, 40 percent own homes, and many also hold other forms of debt.[8] Pew's research also finds that 69 percent of first-time payday loan borrowers reported that they turned to the loan to get money to pay ordinary living expenses, while just 16 percent took out a payday loan to cover an unexpected expense.[9]

Another strategy often used by those hoping to authorize usurious loans is to falsely imply that use of mainstream banking is the same as access to credit. These proponents often argue that unbanked consumers need access to credit from alternative sources because they do not have bank accounts. However, DCA's own research found that, in New York City, households in low-income neighborhoods are more likely to hold a credit card than a bank account and have higher credit card utilization rates than households in higher-income neighborhoods.[10] In 18 of the top 20 unbanked neighborhoods, residents have the highest credit card utilization rates in the City.[11] Oftentimes, unbanked consumers are struggling with massive debt burdens already.

For the typical prospective payday loan borrower – a low-income consumer struggling to make ends meet to pay ordinary living expenses and already facing excessive debt burdens, more debt is not the answer. Payday lending use, for many, is a symptom of overall financial instability. The right alternative to high-cost credit products may be something other than more credit.

Through OFE, DCA is offering a range of alternatives that help New Yorkers make the most of their current earnings, build emergency savings, and boost their incomes by claiming the tax credits to which they are entitled, especially the Earned Income Tax Credit ("EITC").

To help New Yorkers make the most of their money, DCA has developed a variety of safe and affordable financial products available to people who cannot afford minimum balances and may have negative banking histories. By partnering with financial institutions to offer the NYC SafeStart account and the NYC Direct Deposit program, for example, we are able to provide New Yorkers with an alternative to some of the high-fee checking accounts on the market that may have risky overdraft charges.

Another alternative - our Financial Empowerment Centers - offer free, professional, face-to-face financial counseling at 30 sites through 5 partner organizations. Financial counselors help clients reduce their debts and begin building the savings necessary to better weather emergencies. Our Financial Empowerment Centers have completed more than 50,000 counseling sessions - helping clients to accumulate more than $3 million dollars in savings and to reduce their debt by more than $19 million dollars.

Increasing access to and uptake of income-boosting tax credits is another key way to improve overall financial stability. In fact, Pew's research found that forty-one percent of payday loan borrowers needed a cash infusion to pay back their payday loan debt and one in six payday loan borrowers has specifically used a tax refund to eliminate payday loan debt.[12] The Earned Income Tax Credit (EITC) can be the single largest cash payment many families receive all year and can make significant inroads in helping to pay off debts and to begin building emergency savings. However, many eligible New Yorkers do not take advantage of EITC.

Since 2009, Volunteer Income Tax Assistance (VITA) sites that are part of OFE's Tax Credit Campaign have processed nearly 400,000 free tax returns, generating more than $600 million dollars in refunds, while avoiding more than $100 million in tax preparation fees. This upcoming tax season, DCA is ramping up efforts to ensure more New Yorkers who are entitled to the EITC claim the credit. We are hosting a groundbreaking Phone-a-thon in every borough to spread the word about the EITC and VITA, launching a multi-faceted marketing and outreach campaign, and increasing capacity of community-based service providers. Assuring all New Yorkers get their full refunds in the first place is one of the best alternatives available. One way the legislature can support alternatives to high-cost products is to support these vital credits and the community tax preparation services that allows our residents to claim them for free.

In addition to DCA's numerous financial empowerment programs, New Yorkers already have access to responsible credit and credit-building products from mainstream banks and credit unions for those situations where credit is the answer. For example, low-income credit unions and community development financial institutions (CDFIs) throughout New York State already offer consumer loans between $100 and $10,000 that are originated responsibly and at interest rates below New York's usury limit. These loans are designed to be able to be repaid affordably and are broadly accessible. The "borrow and save" product referenced in the hearing notice, which is offered by CDFI banks and credit unions, is an important example of the type of innovative lending product already available to those in need of credit to meet emergency needs. The legislature can help to further expand the availability of alternatives to high-cost products by supporting the community-based institutions that are already providing a full range of safe, affordable products aimed at meeting the needs of those with low incomes.

Thank you, Chairs Robinson and Weprin and members of the Banks Committee for the opportunity to testify today. At DCA, we are committed to protecting New Yorkers from predatory financial products and to offering programs and products that support the financial stability of all New Yorkers. We look forward to working with members of this Committee as you consider ways to support these important goals. I would now be happy to answer any questions.

[1] *See,* e.g., Consumer Financial Protection Bureau, "Payday Loan and Deposit Advance Fact Sheet" (April 24, 2013), noting that, according to Stephens Inc., payday lenders collect about $7 billion in fees annually.

[2] *See,* e.g., Consumer Financial Protection Bureau, "CFPB Data Point: Payday Lending" (March 2014), finding that over 80% of payday loans are rolled over or followed by another loan within 14 days. *See also*, The Pew Charitable Trusts, "Payday Lending in America: Series Summary" (October 2013), finding that the average borrower is in debt for five months during the year, spending $520 in interest to repeatedly reborrow the loan.

[3] *See,* e.g. Tim Lohrentz, Insight Center for Community Economic Development, "The Net Economic Impact of Payday Lending in the U.S." (March 2013), finding that the payday lending industry caused a net loss in economic activity of $774 million in 2011 and that U.S. households lost an additional $169 million as a result of an increase in Chapter 13 bankruptcies linked to payday lending usage, bringing the total loss to nearly $1 billion.

[4] *See,* e.g., http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/state-payday-loan-regulation-and-usage-rates.

[5] General Obligations Law § 5-501, Banking Law § 14-a, New York Penal Law §§ 190.40-42

[6] http://www.nyc.gov/html/dca/downloads/pdf/DCAMOVA_MilitaryLendingActComments20141110.pdf

[7] http://www.nyc.gov/html/dca/downloads/pdf/20130419PayDayLoanDebtsLetter.pdf

[8] The Pew Charitable Trusts, Testimony of Nick Bourke Before the Senate Committee on Banking, Housing and Urban Affairs, Financial Institutions and Consumer Protection Subcommittee (March 24, 2014).

[9] The Pew Charitable Trusts, "Payday Lending in America: Series summary" (October 2013).

[10] New York City Department of Consumer Affairs, Financial Empowerment Brief (February 2011). Available at http://www.nyc.gov/html/ofe/downloads/pdf/fe_brief_february2011.pdf

[11] *Id.*

[12] The Pew Charitable Trusts, "Payday Lending in America: How Borrowers Choose and Repay Payday Loans" (February 2013).