

Clients & Friends Memo

New York Seeks to Regulate Fintech Lending Market

February 21, 2017

New York is joining a small but growing list of states seeking to regulate the “bank-origination” method of online lending.

The recently introduced New York Budget legislation would amend Section 340 of the New York Licensed Lender Law to require licensing of entities that market (but do not originate) loans to New York residents *if* that same entity, in connection with such solicitation, also “purchases or otherwise acquires from others loans or other forms of financing, or arranges or facilitates the funding of loans.”¹ Under the current Licensed Lenders Law, only those entities that actually “make” loans are subject to licensing.

The Licensed Lenders Law requires licensing for loans with an interest rate above 16% and in an original amount of \$25,000 or less if made for consumer purposes, or \$50,000 or less if made for commercial purposes. Loans made in violation of the Licensed Lender Law are void and unenforceable.² Thus, for all practicable purposes, the amendment, if passed, would force online marketers using the bank-origination model either to become licensed, or to structure the loans such that the loans are exempt from the Licensed Lender Law (*e.g.*, either by increasing the original principal balance or by reducing the interest rate) if the online marketer solicits into New York.

With the new proposal, New York follows several other states – including Colorado, Vermont, and West Virginia – in seeking to regulate the bank-origination model. If adopted, the amendment would take effect in January 2018.

The proposed amendment to the Licensed Lenders Law follows on the heels of a scathing criticism of the OCC’s “fintech charter” proposal issued by New York Department of Financial Services Superintendent Maria Vullo.³

¹ <https://www.budget.ny.gov/pubs/executive/eBudget1718/fy18artVIIbills/TEDArticleVII.pdf>.

² <http://codes.findlaw.com/ny/banking-law/bnk-sect-356.html>.

³ http://www.dfs.ny.gov/about/occ_letter1-17-17.pdf.

Should you have any questions about this summary, please contact:

Scott A. Cammarn	+1 704 348 5363	scott.cammarn@cwt.com
Joseph W. Beach	+1 704 348 5171	joseph.beach@cwt.com
Scott Cogar	+1 704 348 5122	scott.cogar@cwt.com