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March 20, 2025

Senate Finance Committee

Re: Comments on Senate Bill 39

Dear Honorable Members,

My name is Catherine Brennan, and I am a partner at Hudson Cook LLP, a law firm with offices across the US. Our firm focuses on regulatory compliance with financial services laws, representing fintechs as well as state and national banks that offer loan products on a nationwide basis.[i] My practice focuses on bank partnership programs. I am providing the following comments on Senate Bill 39, titled "An Act relating to loans in an amount of $25,000 or less; relating to the Nationwide Multistate Licensing System and Registry; relating to deferred deposit advances; and providing for an effective date." Although there are several components to this bill, I am focusing my comments on Section 10 , the anti-evasion section of the proposed legislation.

The Small Loans Act ("SLA")[ii] provides an optional licensing scheme for the purpose of making loans in amounts of $25,000 or less at "a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the person were not a licensee."[iii] The SLA exempts a person doing business under and as permitted by any law of Alaska or of the United States relating to banks, savings banks, trust companies, building and loan associations, or credit unions from its licensing requirements. However, an exempt entity must still comply with all other provisions of the SLA if it chooses to contract for interest at a greater rate of interest than permitted under Alaska's usury limit on loans of $25,000 or less. The SLA does not currently require entities that broker, purchase or service consumer loans to obtain a license. In hearings thus far, discussion around this anti-evasion language has been focused on stopping unregulated, potentially offshore entities from circumventing Alaska law and even federal law. There is likely no argument over that objective. However, the way it is written, Senate Bill 39 would impair highly regulated US banks from making legal loans to Alaskans. Senate Bill 39 would incorporate an anti-evasion provision into the SLA that recharacterizes a bank's partner/service provider as the "true lender" on the credit transaction.

Financial institutions of all sizes employ the use of technology to reach customers where they are and to respond to growing consumer preference to conduct more commerce online. While large banks have the ability to invest sizable capital into technology, smaller banks do not. Fintechs act as service providers to banks and offer technology-based solutions that the bank could not financially develop on its own. This collaboration has extended to lending, where banks work in conjunction with their technology service providers to provide credit to businesses and individuals.

In consumer lending, banks work with fintech to offer loans of differing amounts, durations, and pricing to individuals seeking credit. Because of the wide use and availability of online access (through computers and smartphones), almost any consumer or business can search for credit through an array of competing products.

Banks are highly regulated by state and federal officials who oversee their activities for compliance with a myriad of laws and regulations, including consumer protection laws and safety and soundness standards. Fintechs that act as service providers to the banks are subject to a high level of scrutiny from the bank and their regulator. For example, on May 3, 2024, the Office of the Controller of Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (the "Agencies") published "the Third-Party Risk Management: A Guide for Community Banks"[iv] as a resource for community banks to bolster their third-party risk management programs. The Agencies had also published an "Interagency Guidance on Third-Party Relationship: Risk Management,"[v] providing principles that banking organizations may consider when developing and implementing risk management practices for all stages in the life cycle of third-party relationships.

Furthermore, contrary to the assertions of some consumer advocates, fintechs generally operate with a high degree of regulatory requirements. Fintechs contractually agree, as the service provider of the banks, to comply with the panoply of consumer financial services laws that apply to consumer lending, and they may need to comply with specific licensing requirements in certain states, depending on what functions they are performing as service providers to the bank.

Attached to this letter is a copy of the federal prudential regulators' (Federal Reserve, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency) *Interagency Guidance on Third-Party Relationships: Risk Management*. Parts of this guidance have been highlighted to reflect key areas of supervisory oversight with respect to banks' third-party relationships. The highlighting shows that the agencies' expectations are comprehensive and detailed, making for a tight supervisory framework around these relationships.

Federal law clearly allows banks to make loans to borrowers in other states with varying usury limits. Section 85 of the National Bank Act allows federally chartered banks to charge the maximum permissible interest rate of their home state when lending to borrowers in other states.[vi] Furthermore, section 521 of the Depository Institutions Deregulation and Monetary Control Act ("DIDMCA"), allows federally insured state banks, state credit unions, and state savings institutions the ability to export the "interest" permitted under their home state laws to customers/borrowers in other states.[vii]

Clearly, federal law authorizes banks to make loans to borrowers across state lines, and it also allows these banks to work with third parties in the loan making process.

Furthermore, the evasion language in SB 39 ignores the modern reality that banks manage their balance sheets by routinely originating, purchasing and selling loans. Consider the basic example of a community bank originating a mortgage. There is a high probability that the bank will not hold that 30 year mortgage on its books for the full term, and that loan will be sold and ultimately securitized by Fannie Mae or Freddie Mac. The wording in this bill greatly complicates this type of common practice and will make many consumer and commercial loans unworkable.

The language in this bill is based on twenty-year-old guidance from the Office of the Comptroller of the Currency ("OCC"). It ignores that in today's world banking regulators demand strict legal compliance from its member banks, and banks further demanding strict legal compliance from their service providers. The anti-evasion language in this bill does not add any additional protections for consumers. Rather, it impairs the ability of banks to contract with service providers to offer lending products that consumers want. Succinctly put, banks are great at lending; they are not great at technology. Without the assistance of fintechs, many banks are not able to provide credit the way that most consumers expect to access it in 2025 – online and through our mobile phones. Alaska should not deny its residents access to such credit products based on outdated concepts that do not align with how fintech partnerships operate today.

Regards,

Catherine M. Brennan

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HC# 4914-3898-2954

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[i] *See* https://www.hudsoncook.com/index.cfm.

[ii] Alaska Stat. §§ 06.20.010 *et seq.*

[iii] Alaska Stat. § 06.20.010.

[iv] *See* https://www.occ.gov/news-issuances/bulletins/2024/bulletin-2024-11.html.

[v] *See* https://www.fdic.gov/news/financial-institution-letters/2023/fil23029.html.

[vi] *See* https://www.law.cornell.edu/uscode/text/12/85.

[vii] *See* https://www.congress.gov/96/statute/STATUTE-94/STATUTE-94-Pg132.pdf.