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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

April 22, 2014

Vermont Bankers Association, Inc.
Attn Christopher D'Elia, President
89 Main Street, Third Floor
Montpelier, VT 05601

Via Certified Mail; *E-mail to* vtbanker@sover.net

Association of Vermont Credit Unions
Attn. Joseph G Bergeron, President
401 Water Tower Circle, Suite 301
Colchester, VT 05446-1928

Via Certified Mail, *E-mail to*· jbergeron@vcul.org

Re: Illegal Lending in the State of Vermont

Dear Mr D'Elia and Mr Bergeron.

We are writing you in connection with the Attorney General's ongoing efforts to address illegal and predatory lending, and to request your assistance in these efforts. There has been a recent rise in illegal and predatory lending activities.[1] Nearly all of these illegal loans originate via the Internet and require a consumer to authorize electronic debiting of loan payments directly from the consumer's bank account. Such loans are still proliferating, despite violating Vermont's licensing, usury, and consumer protection laws.

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[1] While the term "payday loans" is often used to describe the kinds of loans at issue, there are several types of loans that violate Vermont (or other state) law that are not strictly speaking, "payday loans." Vermont's prohibition on "unauthorized or illegal lending," refers to: (i) payday loans (i.e , loans contingent on future or postdated checks); (ii) any unlicensed lender who has not obtained the required state license to make loans (including online lenders); and (iii) any loan made in excess of Vermont's usury cap (ranging from 12-24% per annum)

Therefore, we respectfully request your assistance to: (1) distribute notice of this growing public policy concern, and (2) work with Vermont banks and credit unions, and their customers (the borrowers) to take measures to help prevent the flow of illegal transactions from Vermont's financial institutions. In support of this request, below we provide some background on Vermont's regulation of lending, followed by our suggested proposal.

I. Vermont's Regulation of Lending Activities

Excluding banks and credit unions, Vermont regulates several aspects of money lending, including requiring a state license to make loans or even solicit loans (*see* 8 V.S.A. §§ 2201, 2233(b)), and capping the rates of interest charged for this type of money lending at 12-24% per annum (*see* 9 V.S.A. § 41a(b))

Vermont is unique in also regulating those who provide assistance to unauthorized lenders. For example, it is a violation of the Consumer Protection Act for a payment processor to do any financial processing on behalf of unlicensed lenders. *See* 9 V.S.A. § 2481w(c). It is also a violation of the Consumer Protection Act for "any person" to provide "substantial assistance" to an unauthorized lender, once that person is aware (or should be aware) that the lender is not licensed under Title 8 of the Vermont Statutes Annotated. This law does not apply to the consumer's financial institution. *See* 9 V.S.A. § 2481w(d) for the full text of this provision.

Failure to comply with lending laws has wide-ranging and damaging effects on consumers, in Vermont, and generally. As the Center for Responsible Lending recently described, payday loans are "designed to trap individuals in long-term debt" and have a "devastating impact on families' financial well-being."[2] Contrary to industry defenses, the loans are not typically used for short-term or emergency expenses.[3] As the Consumer Financial Protection Bureau found in its 2013 study

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[2] *See* Center for Responsible Lending, "CRL issue Brief," October 4, 2013, *available at* http://www.responsiblelending.org/payday-lending/research-analysis/State-Enforcement-Issue-Brief-10-4-FINAL.pdf

[3] *See* National Consumer Law Center, "Stopping the Payday Loan Trap," June 2010 ("Various studies have found that 40 to 60% of consumers take out payday loans to cover routine expenses like utility bills, rent or groceries, or nonessential items"), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf.

on payday loans, most consumers remain indebted up to a year on these supposed "short-term loans."[4]

In Vermont, with a population of less than 630,000, our office has investigated one lender who funded 427 loans ($993,025 in principal), and earned $888,950 in interest and fees alone, at an average annualized interest rate of 136%, another lender funded 384 loans ($197,000 in principal) and earned $230,000 in interest and fees alone, at an average annualized interest rate over 300% As to individual examples, one Vermont consumer complained of taking out a $400 online loan (at over 300% annualized interest) and paying back over $1,000 within five months (mostly through automatic withdrawals), another complained of an online lender depositing $160 in a small loan to his bank account, and then automatically withdrawing $100 every month in "fees" (resulting in annualized interest of 747%) Another online lender recently loaned a Vermont consumer $1,000 at a stated 623% annual interest rate

In enforcing Vermont law, we have identified over 80 unauthorized lenders. *See* attached Exhibit A. These lenders have been directed to cease all unauthorized lending in Vermont, and to return all monies unlawfully collected from Vermont consumers. Vermont continues to pursue those lenders who fail to comply

However, focusing solely on the lenders is increasingly insufficient to address the problem Many of these lenders operate online, have several affiliated companies, and change their business names often, all to obscure both their location and the true lender-in-interest. Other lenders claim tribal immunity or are located off-shore and in foreign countries, adding further complications for enforcement.

II. Vermont's Request for Assistance

Because illegal internet loans rely on electronic payment processing (via the Automated Clearing House ("ACH") network) from the consumer's bank account, Vermont financial institutions have a key role in these transactions. We understand that the current system of ACH processing often leaves the receiving financial institution with the least knowledge about potential fraudulent activity [5]

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[4] *See* Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products. A White Paper of Initial Data Findings*, April 24, 2013 (p 38), *available at* http://bit.ly/CFPBPaydayPaper

[5] According to NACHA, the borrower's bank or Receiving Depository Financial Institutions ("RDFIs") often "have no basis to know whether any specific transaction has been properly authorized and relates to a bona fide, legal transaction" and "[t]he RDFI becomes aware of questionable debit activity when it is contacted by its customer " ACH Operations Bulletin #2-2013, High Risk Originators and Questionable Debt Activity, March

We have also written to NACHA and industry trade groups to enlist their assistance in stopping third-party payment servicers from processing illegal loan transactions. However, even increased scrutiny and supervision of the third-party payment processors and Originating Depository Financial Institutions ("ODFIs") have not halted the problem.[6]

Therefore, we respectfully request that Vermont banks and credit unions (as the RDFIs) join in the effort to stem the flow of illegal loan activity, and take the following steps.

1. Please circulate this letter to all Vermont banks and credit unions, post it on your websites, and feel free to circulate it to any other relevant persons or entities.

2. We request all banks and credit unions to review the attached list "Exhibit A," and to the extent possible, identify any transactions involving those entities, and if so, alert the customer and assist in stopping the transactions (per item #3 below). Please also notify our office (per item #4 below) of any outcome.

3. We ask that all Vermont financial institutions maintain a higher vigilance to monitor illegal loan transactions, and work with their customers in this regard. For example, we hope a bank or credit union will immediately comply with any customer request to revoke consent for unwanted debits. Similarly, if a customer contacts the bank or credit union about an unwanted or suspicious transaction but is unaware of the need to formally "revoke consent," we ask that the Vermont bank or credit union inform the customer of all steps needed to stop the unwanted debits. We have posted a model form for revoking consent at. https://www.uvm.edu/consumer/revocation%20paperwork-04082014.pdf

4. Once a financial institution receives notice from a customer about an unlicensed lender, please notify the Vermont Attorney General's Office

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14, 2013, *available at* http://thepaymentsauthority.s3.amazonaws.com/HighRiskOrigDebitActivity.March2013.pdf.

[6] On September 27, 2013, the FDIC issued an updated guidance letter warning financial institutions of their responsibility for facilitating payment processing on behalf of merchant customers engaged in high-risk activity (i.e., online payday lenders), *available at* http://www.fdic.gov/news/news/financial/2013/fil13043.pdf. On August 5, 2013, New York (through its Department of Financial Services) sent a similar letter to over 117 banks (both ODFIs and RFDIs), *available at* http://www.dfs.ny.gov/about/press2013/pr130806-link1.pdf.

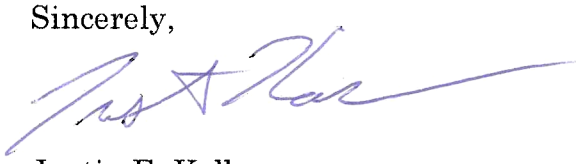
by sending an email with the lender's name, consumer name if consent provided, and any other pertinent information (such as lender's or processor's contact information, if known), to: AGOUnlicensedLending@atg.state.vt.us. You may use this email address to contact us with any questions or concerns you have regarding illegal lending in Vermont.

5. We have asked employers to consider using the United Way's "Working Bridges" income advance loan program, which connects employers with Vermont banks and credit unions to provide reliable and affordable loans for employees based on employer verification of employment. We ask Vermont banks and credit unions to please be aware of this program and consider engaging with employers to provide such loan products to Vermont employees. More information at. http.//www.unitedwaycc.org/resources-for-companies/working-bridges/

6. Periodically, the Attorney General's Office or Department of Financial Regulation will send notices or "alerts" of other illegal lenders or activity to an email distribution list. We ask that all Vermont financial institutions (through an appropriate manager or supervisor) join this distribution list by emailing UnlicensedLending-request@list.state.vt.us.

We would be happy to discuss our laws further and how we can work together to eradicate illegal and predatory lending. Please contact this office with any questions or suggestions. Thank you for your assistance.

Sincerely,



Justin E. Kolber
Assistant Attorney General

Enc. Exhibit A – "Vermont Illegal Lender List April 2014"

cc: Susan Donegan, Commissioner, Department of Financial Regulation