Memorandum in Opposition to A.10133-A

New Economy Project respectfully submits this memorandum in opposition to A.10133-A. This bill was introduced only recently, and it is our understanding that it is not yet on the radar of many consumer and financial justice advocates or regulators. Given the complexity of the issues involved and the potential consequences for New York's usury and consumer protection laws—and for the working people and communities who depend on them—we believe additional review and consultation with advocates and enforcement authorities is warranted before the Banks Committee takes any action on this bill.

We appreciate the Committee's interest in addressing rent-a-bank schemes. Based on our initial analysis, however, the bill raises two primary areas of concern.

First, A.10133-A may have implications for existing enforcement against rent-a-bank schemes. It is our understanding that the New York Attorney General has relied on well-established common-law "true lender" principles to identify and challenge rent-a-bank arrangements and other lending structures designed to evade New York's usury laws. These doctrines have played a critical role in consumer protection enforcement.

Because the Attorney General is the primary enforcement authority in this area, and because A.10133-A introduces a new statutory framework governing lender identity and loan structure, we believe it would be prudent for the Committee to seek input from the Attorney General's office regarding how the bill may interact with existing enforcement tools before proceeding further.

Second, the bill establishes a new safe harbor that departs from New York's existing usury and licensing framework. A.10133-A establishes a new category of "short-term loans" and provides that loans structured to comply with the statute will not be deemed civilly or criminally usurious. As a result, lenders would be permitted to charge amounts that would otherwise exceed New York's civil usury cap without obtaining a lending license, and the bill also alters how such loans are evaluated under New York's criminal usury laws. In particular, the bill states that "*[a] short-term loan that complies with this subdivision* ***shall not be deemed civilly or criminally usurious solely by reason of the annualized equivalent rate of interest or fees***." This language would reduce the ability of courts and regulators to assess whether a loan made under this framework, in practice, functions as high-cost lending, and would set a concerning precedent for how usury is evaluated in New York.

Importantly, New York already maintains a well-established licensing and supervisory framework for lenders seeking to operate near the usury threshold. In light of that existing framework, it is not clear why a separate statutory compliance pathway is necessary, rather than requiring such lending to occur within established licensing regimes and oversight structures.

For these reasons, New Economy Project respectfully urges the Committee to refrain from advancing A.10133-A pending further review. Please contact Andy Morrison with questions: 212-680-5100 x210, andy@neweconomyproject.org.