

March 22, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: Support CRA challenge to OCC “fake lender” predatory lending rule

Dear Speaker Pelosi, Majority Leader Schumer, Minority Leader McCarthy and Minority Leader McConnell:

The undersigned 325 civil rights, community, consumer, faith, housing, labor, legal services, senior rights, small business, and veterans organizations representing all 50 states and the District of Columbia write to urge you to support the Congressional Review Act challenge to the OCC’s final rule, “National Banks and Federal Savings Associations as Lenders,” which will unleash predatory lending in all fifty states.

The final rule, enacted by the OCC in [October 2020](#), overturns 200 years of caselaw endorsed by the Supreme Court that allows courts to look beyond contrivances to prevent usury evasions. The rule replaces the longstanding “true lender” anti-evasion doctrine with a “fake lender” rule that **allows lenders charging rates of 179% or higher to evade state and voter-approved interest rate caps merely by putting a bank’s name on the paperwork – just as payday lenders were doing in the early 2000s**. The rule has already been [challenged by](#) eight Attorneys General.

Interest rates caps are the simplest and most effective way to protect consumers from predatory lenders. States have had the power to enact these caps since the American Revolution. At least 45 states and the District of Columbia (DC) have rate caps on at least some installment loans, depending on the size of the loan. While many states permit short-term payday loans, 17 states and DC—representing about a third of the U.S. population—enforce interest rates of 36% or less that keep all high-cost loans out of their state.

American voters strongly support state rate caps on a bipartisan basis. In November 2020, 83% of voters in Nebraska enacted a rate cap ballot initiative to place a 36% interest rate cap on payday loans. Nebraska thus joins states like Arizona, Colorado, Montana, and South Dakota where strong bipartisan votes in recent years illustrate the public’s overwhelming support for these usury laws. According to recent polling, [70% of voters](#) across party lines support a 36% rate cap, and during the coronavirus pandemic, [81% of Americans](#) support prohibiting high-interest loans.

However, non-bank predatory lenders have sought to evade state usury laws by entering into “rent-a-bank” schemes with a few, rogue banks. Banks are largely exempt from state rate caps, and through these schemes, the non-bank predatory lender launders loans through the bank in order to claim that state interest rate limits do not apply. These lenders charge triple-digit interest rates, target the financially vulnerable and communities of color, and trap consumers in devastating cycles of debt.

Payday lenders first tried using rent-a-bank schemes in the early 2000s, putting a bank’s name on the paperwork, just as the OCC rule now allows, claiming the payday lender was just a “servicer” for a bank loan. State attorneys general, courts, and federal bank regulators shut down these early payday loan rent-a-bank schemes. Relying on a centuries-old anti-evasion doctrine, courts “followed the money” to find that the payday lender, not the bank, was the “true lender.”¹ But rent-a-bank lending is back, now being used to make longer-term installment loans at rates that exceed voter- and legislature-approved rate caps.

High-cost installment loans are an even bigger and deeper debt trap than short-term payday loans. The amounts are bigger, the interest charges are higher, they go on for a longer period of time, and they are harder to escape with help from friends or family.

OCC-regulated banks are already helping to make some of the most predatory installment loans on the market with interest rates of 100% and higher. For example, after California adopted an interest rate cap on loans above \$2,500, CURO – which operates the SpeedyCash and RapidCash brand of payday loans and high-cost installment loans – brazenly announced that “bank partnerships are great” and would allow CURO to ignore the new law.² OCC-regulated Stride Bank is now piloting loans up to 179.99% for CURO’s Verge Credit in a plan to expand to states that do not permit those rates for non-banks.³

Another OCC-regulated bank, Axos Bank, launders loans for the predatory, subprime small business lender World Business Lenders. WBL loans – in the tens and even hundreds of thousands of dollars – carry rate rates of 139% APR or higher, and are often secured by the small business owner’s home, putting many into foreclosure.

In June 2020, the District of Columbia Attorney General filed [suit](#) against yet another rent-a-bank lender, Elevate Credit, Inc.. The DC Attorney General argued that Elevate is the true lender of loans made in DC, well in excess of the District’s rate cap. Elevate sold two short term loan products to District residents that carried interest rates between 99 and 251%, up to 42 times the legal limit in DC. In two years, Elevate made 2,551 loans to residents well above the maximum interest rate of 24% for lenders that disclose their rate in contracts and 6% for those

¹ National Consumer Law Center, Consumer Credit Regulation § 3.9.1 (3d ed. 2020), *updated at* <https://library.nclc.org>. Includes a few of the hundreds of cases that illustrate that the substance-over-form doctrine remains the universal rule today and that emphasize the importance of looking to the truth in preventing evasion of usury laws.

² National Consumer Law Center, Payday Lenders Plan to Evade California’s New Interest Rate Cap Law Through Rent-A-Bank Schemes (October 2019), <https://www.nclc.org/issues/ib-rent-a-bank.html>.

³ Verge Credit, *Rates and Terms*, 2020, <https://www.vergecredit.com/rates-and-terms/>, (last visited September 2, 2020).

that do not.

Currently, there are only a few of these rogue, predatory lenders, but they will spread to all 50 states if the OCC rule is not overturned. Lenders' use of online platforms allows them to inundate markets across the United States. By gutting the long-standing anti-evasion doctrine, the OCC's rule will eviscerate the power of state governments to independently regulate interest rate limits and will have horrible consequences for consumers, small businesses, and especially, communities of color.

The OCC's "fake lender" rule protects rent-a-bank schemes by making them exempt from state interest rate caps as long as a bank is "named as the lender in the loan agreement" ⁴ – that's it! The non-bank lender could control all interaction with the borrower, take on virtually all of the risk, reap the vast majority of the profits, but could ignore state laws that apply to non-bank lenders. The OCC final rule will leave states with no ability to protect their interest rate caps, leaving usury laws – in the words of Chief Justice Marshall – a "dead letter."⁵

States must be able to protect their residents from the harms of predatory lending, especially amidst a global pandemic that has hit low- and moderate-income families and communities of color, especially Black, Latinx, and Native American communities, particularly hard due to underlying health and socioeconomic disparities. These high-cost loans do not promote financial inclusion. Instead, they exacerbate financial exclusion. They cannot be justified as providing "access to credit." Instead, they trap borrowers in destructive debt cycles, leaving borrowers with ruined credit and unable to borrow at lower interest rates in the future.

Therefore, we urge you to support the Congressional Review Act challenge to the OCC's true lender rule, which will eviscerate the power of state interest rate caps and rid state regulators of the single most effective tool to protect consumers from predatory lending.

Sincerely,

National

Accountable.US
AFCPE (Association for Financial Counseling and Planning Education)
American Civil Liberties Union
American Friends Service Committee
American Sustainable Business Council
Americans for Financial Reform
Appleseed Foundation
Bob Barker Company Foundation

⁴ 12 C.F.R. § 7.1031(b)(1) (effective Dec. 29, 2020).

⁵ Scott v. Lloyd, 34 U.S. (9 Pet.) 418, 446-47 (1835) (Marshall, C.J.) ("The ingenuity of lenders has devised many contrivances by which, under forms sanctioned by law, the [usury] statute may be evaded. . . . [I]f giving this form to the contract will afford a cover which conceals it from judicial investigation, the [usury] statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form, and examining into the real nature of the transaction.").

CAARMA
Capital Good Fund
Center for Economic Justice
Center for LGBTQ Economic Advancement & Research (CLEAR)
Center for Responsible Lending
Center for Survivor Agency and Justice
Change Machine
Children's Advocacy Institute
Coalition on Human Needs
Color of Change
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Consumer Action
Consumer Federation of America
Consumer Reports
Consumers for Auto Reliability and Safety
CornerSquare Community Capital, Inc.
Credit Builders Alliance
Demos
Hispanic Federation
Jesuit Social Research Institute
Justice in Aging
League of United Latin American Citizens (LULAC)
Main Street Alliance
NAACP
National Action Network (NAN)
National Advocacy Center of the Sisters of the Good Shepherd
National Association for Latino Community Asset Builders
National Association of Consumer Advocates
National Association of Consumer Bankruptcy Attorneys (NACBA)
National Association of Social Workers
National Center for Law and Economic Justice
National Coalition for the Homeless
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Disability Institute
National Fair Housing Alliance
National Housing Resource Center
National Partnership for Women & Families
National Rural Social Work Caucus
National Urban League
Partnership for America's Children
Prosperity Now
Public Citizen
Public Counsel
Public Good Law Center

Public Justice
Reinvestment Partners
RESULTS
Revolving Door Project
Small Business Majority
Student Borrower Protection Center
Tax March
The Forum for Youth Investment
The Leadership Conference on Civil and Human Rights
U.S. PIRG
UnidosUS
United Church of Christ, Justice and Witness Ministries
Woodstock Institute

Alabama

Alabama Arise
Black Belt Community Foundation
Building Alabama Reinvestment
Community Foundation of Greater Birmingham
The Women's Fund of Greater Birmingham
YWCA Central Alabama

Alaska

Alaska PIRG
Alaska Poor People's Campaign
Northern Justice Project, LLC

Arizona

Arizona PIRG
Center for Economic Integrity
Community Action Human Resources Agency
Community Renewal
Gila County Community Services
Mesa Community Action Network
NACOG
Primavera Foundation
Southeastern Arizona Community Action Program, Inc.
Southwest Fair Housing Council
United Food & Commercial Workers Local 99
Wildfire: Igniting Community Action to End Poverty in Arizona
William E. Morris Institute for Justice (Arizona)

Arkansas

Arkansans Against Abusive Payday Lending
Arkansas Community Organizations

California

California Low-Income Consumer Coalition
California Reinvestment Coalition
CALPIRG
Center for Public Interest Law
CHC
Consumer Federation of California
Eastern Sierra Legal Assistance Program
Housing and Economic Rights Advocates
KGACLC
New Economics for Women
Public Law Center
Western Center on Law and Poverty

Colorado

Bell Policy Center
CoPIRG
Office of Financial Empowerment and Protection
Towards Justice

Connecticut

CCAG
Connecticut Legal Services, Inc.
ConnPIRG

Delaware

Delaware Community Reinvestment Action Council, Inc.

District of Columbia

Legal Aid Society of the District of Columbia
Tzedek DC

Florida

Florida Consumer Action Network
Florida Legal Services, Inc.
Florida PIRG
Florida Silver Haired Legislature Inc

Jacksonville Area Legal Aid, Inc.
Legal Aid Service of Broward County, Inc.
Mid-Pinellas (Florida) Coalition of Neighborhood Associations
The Legal Aid Society of Palm Beach County

Georgia

Georgia Advancing Communities Together, Inc.
Georgia PIRG
Georgia Watch
Step Up Savannah, Inc.
New Georgia Project

Hawaii

Hawaii Appleseed Center for Law and Economic Justice

Idaho

United Vision for Idaho

Illinois

Chicago Consumer Coalition
Chicago Urban League
Housing Action Illinois
Housing Choice Partners
Illinois Asset Building Group, a project of Heartland Alliance
Illinois Conference of Churches
Illinois People's Action
Illinois PIRG
Legal Action Chicago
Metropolitan Family Services
Preservation of Affordable Housing
Unitarian Universalist Advocacy Network of Illinois

Indiana

Brightpoint
Fair Housing Center of Central Indiana
GCC Foundation
Habitat for Humanity of Indiana, Inc.
HomesteadCS
Indiana Assets & Opportunity Network
Indiana Association of Area Agencies on Aging
Indiana Catholic Conference

Indiana Coalition Against Domestic Violence
Indiana Community Action Association
Indiana Friends Committee on Legislation
Indiana Institute for Working Families
Indiana PIRG
Indiana United Ways
LifeStream Services
LifeTime Resources, Inc.
MCCOY (Marion County Commission on Youth)
Prosperity Indiana
Sisters of Notre Dame de Namur
Thrive Alliance
Unite Indy

Iowa

Iowa Citizens for Community Improvement
Iowa PIRG

Kansas

Kansas Appleseed Center for Law and Justice, Inc.

Kentucky

Kentucky Equal Justice Center

Louisiana

Greater New Orleans Housing Alliance
Louisiana Budget Project

Maine

Coastal Enterprises, Inc.
Maine Center for Economic Policy
Maine Equal Justice
Maine Small Business Coalition

Maryland

CASH Campaign of Maryland
Maryland Consumer Rights Coalition
Maryland PIRG
Public Justice Center
RESULTS DC/MD

Massachusetts

CNAHS
Massachusetts Affordable Housing Alliance
MASSPIRG

Michigan

Community Economic Development Association of Michigan (CEDAM)
PIRG in Michigan (PIRGIM)

Minnesota

Exodus Lending
Legal Services Advocacy Project
Minneapolis Area Synod, ELCA
Minnesota Main Street Alliance

Mississippi

Hope Policy Institute
Mississippi Center for Justice
Mississippi Community Financial Access Coalition

Missouri

Heartland Center for Jobs and Freedom
Missouri Faith Voices
MoPIRG

Montana

Montana Housing Coalition
MontPIRG
Rural Dynamics, Inc.

Nebraska

Nebraska Appleseed Center for Law in the Public Interest

Nevada

Legal Aid Center of Southern Nevada

New Hampshire

New Hampshire Legal Assistance

NHPIRG

New Jersey

Consumers League of New Jersey
Legal Services of New Jersey
New Jersey Appleseed Public Interest Law Center
New Jersey Citizen Action
New Jersey Coalition for Financial Education
New Jersey Main Street Alliance
New Jersey Peace Action
NJPIRG

New Mexico

Adelante Progressive Caucus of the Democratic Party of New Mexico
Democratic Party of New Mexico Veterans and Military Families Caucus
Indivisible of Santa Fe
New Energy Economy
New Mexico Appleseed
NM Center on Law & Poverty
NMPIRG
Ocamora Retreat Center
Prosperity Works
Retake Our Democracy
Rio Grande Valley Broadband, Great Old Broads for Wilderness
Santa Fe Lodge, Independent Order of Odd Fellows
Silver City Indivisibles
Southern New Mexico New Progressives

New York

Chinese-American Planning Council (CPC)
Empire Justice Center
New Economy Project
New York Public Interest Research Group (NYPIRG)
Public Utility Law Project of New York
We All Rise
WESPAC Foundation, Inc.

North Carolina

Charlotte Center for Legal Advocacy
Children First/Communities In Schools of Buncombe County
Community Empowerment Fund
Community Link
Eastern Carolina Board of Realtist

Episcopal Diocese of North Carolina
Financial Haven, Inc
Financial Pathways of the Piedmont
Financial Protection Law Center
FIRST
Goodwill Industries of the Southern Piedmont
Haywood Habitat for Humanity
Independent Financial Solutions Group
Lexington Area Habitat for Humanity
NC Conference of the United Methodist Church
NC Rural Center
NCPIRG
North Carolina Coalition on Aging
North Carolina Conference, United Methodist Church
North Carolina Council of Churches
The Collaborative of NC
Thread Capital
Youth Education for Savings Consortium
Passages to Recovery LLC

North Dakota

High Plains Fair Housing Center

Ohio

COHHIO
Ohio Main Street Alliance
Ohio PIRG
Policy Matters Ohio

Oklahoma

Catholic Charities of the Archdiocese of Oklahoma City, Inc.
Fellowship Congregational UCC
Prospect Church
VOICE-OKC

Oregon

CASA of Oregon
Neighborhood Partnerships
Oregon Main Street Alliance
Oregon PIRG (OSPIRG)
Oregon's Stop the Debt Trap Alliance
Our Children Oregon

Pennsylvania

Bucks County Women's Advocacy Coalition
Community Justice Project
Harrisburg Center for Peace & Justice
Just Harvest
PennPIRG
Pennsylvania Council of Chapters, Military Officers Association of America (MOAA)
Pennsylvania Council of Churches
Pennsylvania Legal Aid Network, Inc.
Pennsylvania Utility Law Project, on behalf of our low income clients
Pennsylvania War Veterans Council, Inc
Philadelphia Solar Energy Association
Post 9264, Department of Pennsylvania, Veterans of Foreign Wars
Commission on Economic Opportunity
Community Legal Services, Inc. of Philadelphia
The One Less Foundation

Rhode Island

NeighborWorks Blackstone River Valley
RIPIRG

South Carolina

Columbia Consumer Education Council
South Carolina Appleseed Legal Justice Center
South Carolina Association for Community Economic Development

South Dakota

Disability Rights South Dakota
Bread for the World- South Dakota chapter
First Peoples Fund

Tennessee

Tennessee Justice Center

Texas

BCL of Texas
Brazos Valley Financial Fitness Center
Helping Hands Ministry of Belton
RAISE Texas
Texas Appleseed

TexPIRG
The Women's Resource
United Way of Metropolitan Dallas
United Way of Southern Cameron County

Utah

Fair Credit Foundation

Vermont

Vermont Legal Aid, Inc.
Vermont Main Street Alliance
Vermont Public Interest Research Group

Virginia

Legal Aid Justice Center
Virginia Citizens Consumer Council
Virginia Organizing
Virginia Poverty Law Center

Washington

Columbia Legal Services
Statewide Poverty Action Network
WashPIRG

West Virginia

Communications Workers of America - West Virginia
Covenant House of WV
Mountain State Justice
National Association of Social Workers West Virginia Chapter
West Virginia Association for Justice
West Virginia Center on Budget and Policy
West Virginia Council of Churches
West Virginia Main Street Alliance
WV Citizen Action

Wisconsin

Metropolitan Milwaukee Fair Housing Council
Urban Economic Development Association of Wisconsin, Inc.
Wisconsin Faith Voices for Justice
Wisconsin Main Street Alliance

WISPIRG

Wyoming

Wyoming Trial Lawyers Association

cc: Members of the U.S. House of Representatives
Members of the United States Senate