

# Henderson v. Vision Property Management, LLC

## U.S. District Court Eastern District of Michigan

### ***Co-Counsel: National Consumer Law Center (NCLC), NAACP Legal Defense Fund, American Civil Liberties Union (ACLU) Michigan, and Michigan Poverty Law Program***

This class-action lawsuit was filed in the U.S. District Court for the Eastern District of Michigan. The lawsuit alleges the Defendants violated federal and state civil rights and consumer protection laws by targeting low-income families in predominantly Black communities in the Detroit, Michigan area through an unfair and deceptive home purchase scheme. The complaint alleges that Vision marketed its product as a pathway to homeownership, yet many consumers in these contracts were evicted and lost all of their investment in the homes.

### **Plaintiffs**



Ms. Rhonda Henderson



Ms. Roberta Faulks



Ms. Rachel Church

[Download the Complaint \(PDF\)](#)

[Download Plaintiff Profiles \(PDF\)](#)

[Press Release](#)

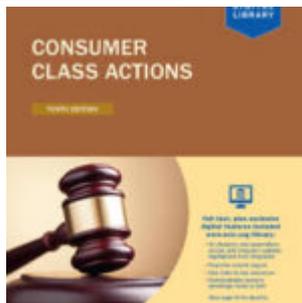
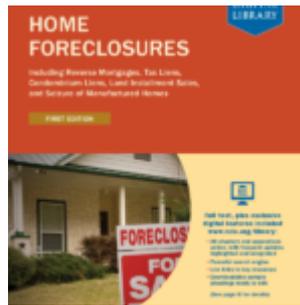
### **Related Links**

- *Horne et al. v. Harbour Portfolio et al*, Unites States District Court for the Northern District of Georgia: Suit was brought by the Atlanta Legal Aid Society on behalf of 22 African-American residents representing 16 household. The action asserted claims of discriminatory targeting for abusive credit terms in home purchase “contract for deed” transactions extended by Harbour Portfolio.  
[Horne et al v. Harbour Portfolio et al. Second Amended Complaint \(N.D. GA\)](#)  
[Horne et al v. Harbour Portfolio et al. Third Amended Complaint \(N.D. GA\)](#)  
[Opposition to Defendant Harbour’s Motion to Dismiss Second Amended Complaint](#)  
[Opposition to Defendant NAA’s Motion to Dismiss Second Amended Complaint](#)  
[Order on Motion to Dismiss Second Amended Complaint \(N.D. GA\)](#)

- NCLC Report: Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color, July 2016
- NCLC Racial Justice and Equal Economic Opportunity Project
- NCLC Racial Justice webinars
- NCLC Guide for Homebuyers: Tips for Getting a Safe Mortgage You Can Afford
- CFPB: Buying a House: Tools and Resources for Homebuyers

## Related NCLC Publications

**Attorneys:** Mortgage Lending (chapter 10) || Home Foreclosures (chapter 12) || Credit Discrimination || Consumer Class Actions



**Consumers:** Surviving Debt



# FHFA's Delay of Fannie & Freddie Mortgage Refinancing Fee is a Necessary Yet Utterly Insufficient Step for Struggling Homeowners

**Washington, D.C.** - The Federal Housing Finance Agency (FHFA) announced yesterday that a fee

from Fannie Mae and Freddie Mac, which FHFA previously approved and which makes refinancing more expensive for mortgages backed by those companies, will be delayed until December 1. FHFA also said the fee will not apply to refinance loans with balances below \$125,000. The fee is 0.5 percent and would add an additional cost of \$1,400 to the average mortgage loan. Fannie and Freddie provide financial backing for around half of all U.S. mortgages and are Government Sponsored Enterprises (GSEs).

Today, the Center for Responsible Lending along with the National Fair Housing Alliance, National Consumer Law Center (on behalf of its low-income clients), and Consumer Federation of America said FHFA's delay and narrowing of the fee, but the agency must completely eliminate the fee and take additional steps to ensure low- to moderate-income and lower-wealth mortgage borrowers can refinance, so that they can more easily afford their mortgage.

"FHFA took a step toward addressing concern over the refinancing fee, but more needs to be done to ensure lower-wealth families can obtain needed relief through refinancing. Lower-wealth homeowners, disproportionately people of color, are most negatively impacted by COVID-19, leading them to struggle financially during this period of both health and economic crises. These hard-working families should be able to refinance at the historically low interest rates to save money on their mortgage - just as higher-wealth homeowners are doing," **said Nikitra Bailey, Executive Vice President at the Center for Responsible Lending.** "The GSEs should not increase fees in a crisis. This entire episode demonstrates yet again why the GSEs should be regulated as utilities to fulfill their public mission and responsibility."

**Bailey added,** "Recovery from the Great Recession was uneven with most of the support from the Home Affordable Refinance Program (HARP) going to wealthier households. We must learn from the past to ensure a just recovery that does not leave Black and Brown communities behind. The SBA Paycheck Protection Program has already failed to be distributed equitably. Another form of large-scale government support cannot be permitted to do the same."

**Lisa Rice, President at the National Fair Housing Alliance said,** "Because of the GSEs' Loan Level Pricing Adjustments (LLPAs) - a crude matrix for measuring risk - borrowers of color are already disproportionately steered to FHA loan products, severely limiting their mortgage credit options. The proposed added fee only exacerbates this systematic barrier to credit access for consumers of color. FHFA should be implementing policies that minimize lending steering not working to decrease opportunities for underserved borrowers. This added fee also diminishes the GSEs' ability to fulfill their charter and mission requirement to 'promote access to mortgage credit' for 'central cities, rural areas, and underserved areas.' The National Fair Housing Alliance calls on the Federal Housing Finance Agency to abandon its proposal to implement the mortgage refinancing fee."

**Alys Cohen, Staff Attorney in the National Consumer Law Center's Washington Office, stated,** "Many homeowners, especially in Black and Latinx communities, are finding it hard to meet their financial obligations right now as the nation faces the health and economic consequences of the pandemic. The option to affordably refinance without additional fees would allow homeowners to more easily pay other bills and better use their often-limited financial resources. Government-backed mortgage refinancings should be made widely available during these unprecedented times and should not play a role in further exacerbating racial inequality."

**Mitria Wilson, Director of Housing Policy at the Consumer Federation of America, noted,** "As the nation continues to navigate the COVID-19 pandemic and its corresponding economic challenges, now is not the time to needlessly increase the costs of refinance products for consumers. FHFA's decision to delay implementation of the refinance fee is important, but still not enough."

Ultimately, the FHFA should reconsider and reverse its decision requiring the GSEs to assess the fee in the first place.”

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## Amicus Briefs

Below are some of the amicus briefs filed by NCLC and our partners on behalf of our low-income clients. In collaboration with national, state, and local organizations and attorney advocates, NCLC provides guidance on a wide range of cases impacting low- to middle-income consumers and their families.

**Access to Justice || Civil Rights || Consumer Protection & the CFPB || Debt Collection || Housing || Predatory Lending || Regulatory Enforcement || Student Loans || TCPA**

### Access to Justice

2019

- **China Agritech v. American Pipe & Construction Co. v. Utah**

The Supreme Court held that “the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.” The question presented in this appeal was whether the plaintiffs, whose individual claims were timely as a result of American Pipe tolling also may bring those claims in a subsequent class action on behalf of all class members who also had timely claims under the American Pipe rule. The 9th Circuit said they could. NCLC, in an amicus brief prepared by the Gupta Wessler law firm, joined AAJ in support of the plaintiff’s claim and seeking affirmation of the 9th Circuit’s ruling.

The Supreme Court ruled, however, that upon denial of class certification, a putative class member may not, in lieu of promptly joining an existing suit or promptly filing an individual action, commence a class action anew beyond the time allowed by the applicable statute of limitations.

- **Franks v. Google**

NCLC filed an amicus brief joined by U.S. PIRG. The issue presented was a challenge by a professional objector and industry-based class action opponent to the approval of a pure cy pres settlement distribution. The agreement negotiated between Google and the consumer class in the underlying breach of privacy case resulted in a more than reasonable damages figure. However, because of the enormous size of the class, it was economically infeasible to distribute the funds to the class members. Therefore, all of the damages were allocated to appropriate non-profit organizations. NCLC’s amicus brief focused on cy pres as a vital component for ensuring the enforceability of consumer laws and preserving their deterrent impact.

Based on a suggestion made by the Solicitor General in his submitted amicus brief, and discussed at the oral argument in the case, however, the Supreme Court ultimately decided it should not reach the merits of the appeal because there were substantial questions about whether any of the originally named plaintiffs had standing to sue in light of the standards established in *Spokeo*. Therefore, the Court never reached the *cy pres* issue but, rather, vacated the judgment of the Ninth Circuit and remanded the matter for further proceedings on the standing issue.

- **Home Depot v. Jackson**

NCLC submitted an amicus brief prepared by the Lief Cabraser and Tousey Brain Stephens Law firms. The case raised a narrow, atypical issue: whether a third-party counter-defendant may remove a case to federal court under the Class Action Fairness Act (“CAFA”), notwithstanding that the federal court lacked subject matter jurisdiction over the original parties. The amicus brief provided the Court with representative examples of fact patterns under which a counter-defendant would attempt to remove a case under CAFA, particularly when the target of a state-court debt collection action counterclaims that the underlying debt is invalid under state law. Class action counterclaims arise in debt collection actions to dispute the merits of the debt itself. When one party avails itself of state court in an effort to collect another party’s fraudulent debt, we argued that it is not unreasonable to expect the latter to answer the charge that its debt is unlawful in that same forum. We stressed that Home Depot not only sought to change the way removal jurisdiction has worked in a radical manner, but would do so in a way that would impact the ability of consumers to raise meritorious counterclaims in an efficient and fair manner.

The Supreme Court ultimately agreed. It held that a third-party counterclaim defendant may not remove a case to federal court — even if the counterclaim against the defendant is brought as a putative class action that otherwise satisfies the requirements for federal subject matter jurisdiction under CAFA. In context, the Court stated, the term “defendant,” as used in 28 U.S.C. § 1441(a), means the defendant sued in the original complaint. The majority held that Section 1441(a) refers to the removal of a “civil action” and that the “civil action” subject to removal is the action “defined by the plaintiff’s complaint,” not a counterclaim later filed in that action. The only “defendant” entitled to remove, the Court thus concluded, is the defendant named in the original complaint. The majority also determined that construing the term “defendant” to have different meanings for purposes of Section 1441 and CAFA would render the provisions “incoherent.”

## **2010**

- **AT&T Mobility L.L.C. v. Concepcion**

NCLC joined a dozen other advocacy organizations in a brief by the Legal Aid Society of the District of Columbia and NACA arguing that the Federal Arbitration Act does not prevent state contract law from invalidating as unconscionable a contract providing that a consumer entering into the contract has waived her right to a class action against the phone company.

The Supreme Court on April 27, in a highly anticipated decision in *Concepcion* sharply limited consumer class actions. The court ruled that the Federal Arbitration Act (FAA) preempts the “Discover Bank” rule, finding unconscionable a contractual clause banning class relief. The Court limited FAA language that an arbitration agreement can be struck down “upon such grounds as exist at law or in equity for the revocation of any contract.” The Discover Bank rule prohibited bans on class-wide relief found in consumer adhesion contracts where damages are small and where the party with superior bargaining power deliberately cheats large numbers of consumers out of individually small sums of money. Since this rule applies to bans on class relief both in court and arbitration, it is grounds for “the revocation of any contract.” The majority still struck it down as

inconsistent with the FAA. The majority found that it was fundamental to arbitration that it be streamlined and expeditious. The Discover Bank rule, by forcing class arbitration on an unwilling party, negates the FAA requirement that arbitration agreements be enforceable as written. Class arbitration is inconsistent with FAA arbitration because it greatly increases the risks to defendants, requires arbitrators to make class certification judgments, and is slower, more costly and more likely to generate procedural issues.

- **Wal-Mart Stores v. Dukes**

NCLC joined in an amicus brief with the Consumers Union of the United States, Inc. and Center for Constitutional Rights. Although the case primarily concerns issues of employer wage discrimination against female employees, its implications for other class actions is enormous. The brief argues that Wal-Mart Stores, Inc. (“Wal-Mart”) was mistaken that a defendant has the right to individual hearings to determine the monetary relief owed by its discriminatory policies. This position would gut the class-action mechanism along with its intended efficiencies. Wal-Mart disregards widely approved techniques used to calculate monetary relief in class suits generally, and in employment-discrimination class actions specifically. Second, the employees’ experts on discrimination satisfied the requirements for expert testimony.

The Supreme Court found (9 to 0) that classes certified under Fed. R. Civ.P. 23(b)(2) cannot include claims for individualized monetary relief—in this case, backpay—at least where the monetary relief is not incidental to injunctive or declaratory relief. Instead, the class should proceed under Rule 23(b)(3) that contains additional requirements. The case’s other ruling (5-4 with the usual five conservative justices in the majority) found insufficient commonality where the class alleged that thousands of Wal-Mart managers pursuant to a corporate culture had each discriminated against 1.5 million female employees. While the decision contains broad and troubling language about commonality, the unusually ambitious nature of the claims should limit the holding’s applicability regarding many consumer class actions.

- **Jackson v Rent A Center, Inc.**

NCLC and Consumer Action joined in an amicus urging the Supreme Court to affirm the 9th Circuit’s decision and hold that unconscionability is a question for a court, rather than the arbitrator, to decide because judicial review of unconscionability challenges to arbitration clauses is necessary to maintain the fairness and integrity of arbitration proceedings.

## **Civil Rights**

**2019**

- **Bostock v. Clayton County**

NCLC, with 56 other civil rights organizations, joined an amicus brief prepared by The Lawyers’ Committee for Civil Rights Under Law and The Leadership Conference on Civil and Human Rights, filed in a trio of cases before the Supreme Court. These combined cases, which the Court will consider next term, examine whether employment discrimination on the basis of sexual orientation and gender identity are covered under Title VII of the Civil Rights Act of 1964. The brief argues that outlawing job discrimination based on LGBTQ status is fully consistent with Title VII’s long history of anti-discrimination achievements, as well as the statutory text that has made those successes possible. Furthermore, if Title VII does not bar LGBTQ discrimination, that will leave many LGBTQ people of color vulnerable to workplace discrimination – an outcome contrary to Congress’ paramount goal of ensuring equal access to employment opportunities for minorities. Since there are

nearly two million LGBTQ people of color in America's workforce, they are far more likely to suffer discrimination than their white counterparts. We argue, therefore, if Title VII is not construed according to its plain text so that it covers LGBTQ discrimination, such discrimination would go unchecked by federal law, and biased employers would have a convenient pretext for discriminating against LGBTQ persons of color. It is thus impossible to carve out LGBTQ discrimination from Title VII's ambit without inflicting severe harm on countless employees of color.

- **State of New York v. U.S. Department of Commerce**

NCLC joined with over 150 civil rights, grassroots, advocacy, labor, legal services groups in an amicus drafted by the Leadership Conference on Civil and Human Rights, The Leadership Conference Education Fund, Muslim Advocates, National Coalition on Black Civic Participation, National Association of Latino Elected and Appointed Officials and Wilmer Cutler Pickering Hale and Dorr LLP.

The case involved a challenge by numerous states, local governments, and non-governmental organizations to the Secretary of Commerce's announcement to add a citizenship question to the 2020 census over the strenuous objection of the Census Bureau. The stakes are high and long-lasting as the decennial census endeavors to count every person residing in the US, regardless of citizenship status. The count is used to apportion political power at all levels of government, allocate \$800 billion annually in federal funds, and affect policy and investment decisions by government and non-government entities. The addition of a citizenship question threatened to undermine the integrity of the population count by depressing the count for those who fear the government will use the information against them, in particular noncitizens and immigrant communities of color. The amicus brief challenged the defendants' premise that the citizenship question has been a part of the modern census, as the question hasn't been a part of the census since 1950 (before the passage of the Voting Rights Act). The amicus also argued that the plaintiffs had standing because the citizenship question would lead to an undercounting which would result in a loss of federal funding. Finally, the amicus challenged the defendants' assertion that the citizenship question was necessary to enforce the Voting Rights Act.

The Supreme Court upheld that the Enumeration clause allows for a citizenship question to be added to the Census, but stated that the decision to add this question is a reviewable action under the Administrative Procedure Act (APA). The Supreme Court also agreed that the explanation provided by the Commerce Department for the question was insufficient. The majority wrote that under the APA, it was expected that the Commerce Department would "offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public", but that the reason provided by the Commerce Department appeared to have been contrived and was pretextual. The Supreme Court, therefore, affirmed the District Court's injunction prohibiting the addition of the citizenship question until the Commerce Department is able to provide a satisfactory explanation for such an action.

- **Comcast v. NAAAOM**

NCLC joined 20 other national civil rights organizations in an amicus brief filed by the Lawyers Committee for Civil Rights Under Law with the United States Supreme Court. The case concerns the issue of whether a claim of race discrimination under 42 U.S.C. § 1981, a historic and critical civil rights law, fails in the absence of but-for causation. The brief seeks to detail how the application of a but-for analysis to claims brought under section 1981 could hinder access to the protections guaranteed by the statute and argues that the application of a but-for standard to establish claims of intentional race discrimination would be inconsistent with the statute's text, history, and purpose.

**2017**

- **Bank of America v. City of Miami**

NCLC joined an amicus brief prepared by the Cohen Milstein law firm and also signed by the Lawyers Committee for Civil Rights, NFHA, ACLU, the Poverty & Race Research Action Council, the Leadership Conference on Civil Rights and the Impact Fund, supporting the standing of the City of Miami to assert discrimination claims against BOA and Wells Fargo under the FHA. The brief argued that standing under the FHA extends to municipalities not directly targeted by discrimination. Noting that racially discriminatory lending practices are a major cause of this country's residential segregation, we asserted that the FHA was designed to address the systemic problems associated with such segregation and permits cities to seek redress for injuries caused by discriminatory practices.

The Supreme Court ruled that the city's claimed injuries fall within the zone of interests that the FHA arguably protects," and, therefore, "the city is an 'aggrieved person' able to bring suit under the statute." The Court sent the case back to the 11th Circuit Court of Appeals after it "declined to decide whether the city had asserted a direct enough connection between the banks' actions and the harm it claimed."

## **Consumer Protection & the CFPB**

**2020**

- **Seila Law v. CFPB**

NCLC's amicus brief was joined by the Center for Consumer Law and Education Center (a joint partnership between West Virginia University College of Law and Marshall University); the UC Berkeley Center for Consumer Law & Economic Justice; The Housing Clinic of the Jerome N. Frank Legal Services Organization at Yale Law School; Consumer Action; and Professor Craig Cowie (Asst. Professor of Law and Director of the Blewett Consumer Law & Protection Program at the University of Montana Alexander Blewett III School of Law). The brief supports the 9th Circuit's ruling that the Dodd-Frank Act provision providing that the Director of the CFPB only can be terminated by the President for-cause is constitutional. Because the CFPB has chosen to join the appellant's challenge to its own management structure, the Supreme Court has appointed former Solicitor General Paul Clement to defend the Court of Appeals' decision. However, since that opinion found that the for-cause termination provision was valid the Court of Appeals did not reach the issue of remedy and, therefore, Mr. Clement has not addressed that issue either. However, the appellant, the CFPB (via the current Solicitor General), and a number of their supporting amici have argued for various outcomes in the event that the provision is found to be unconstitutional, ranging from severance of the offending clause to the repeal of Dodd- Franks. NCLC's brief, therefore, argues that if a remedy nonetheless is necessary it only should entail the severance of the current "for-cause" termination provision (which, in essence, would result in an "at-will" termination status for the Director). Such a remedy would give effect to the express language of the Dodd-Frank Act's severability clause and comport with the traditional doctrine of severability that provides that a court should nullify no more of a statute than is necessary. We also assert that undoing Congress's sweeping restructuring of financial regulation by eliminating the CFPB instead of severing the for-cause removal provision would contravene Congress's intent to establish a sole federal regulator charged with stabilizing the marketplace and protecting consumers.

**2018**

- **Ohio v. American Express Co.**

NCLC joined a brief also submitted on behalf of the U.S. Public Interest Research Group Education Fund, Inc., the Center for Responsible Lending, Consumer Federation of America, Consumers Union, the National Association of Consumer Advocates, and Public Citizen. The United States and several states sued Amex, claiming that its anti-steering provisions (i.e. merchants could not offer if the Amex card as a payment option unless they agreed not to steer customers towards other credit cards that provided better financial deals for the merchant) violate §1 of the Sherman Antitrust Act. The District Court agreed, finding that the credit-card market should be treated as two separate markets—one for merchants and one for cardholders—and that Amex’s anti-steering provisions are anticompetitive because they result in higher merchant fees. The Second Circuit reversed. It determined that the credit-card market is one market, not two. The Court of Appeals concluded that Amex’s anti-steering provisions did not violate federal antitrust law. Our brief was prepared by U.S. PIRG and the firm of Cohen, Milstein, Sellers & Toll and argued that American Express’s merchant restraint suppresses price competition and thereby harm consumers. The Supreme Court affirmed the Second Circuit ruling.

## **Debt Collection**

### **2020**

- **Rotkiske v. Klemm**

The key question presented in this case is whether the discovery rule applies to toll the Fair Debt Collection Act’s (“FDCPA”) one-year statute of limitations. NCLC filed its own amicus brief in which we argued that debt collection, which affects millions of Americans each year, often is accompanied by deceptive or unfair practices, particularly by the third-party debt collectors that are subject to the FDCPA. We contended that the FDCPA was intended to curb such abuse, but that such a purpose would be impaired if consumers were not given a fair opportunity to pursue violations that go undetected when they occur. Therefore, we supported the proposition that the one-year statute of limitations should not be construed as an absolute bar to claims that are brought beyond a year from the date of the violation.

In an 8-1 opinion authored by Justice Thomas, the Supreme Court ruled that, absent the application of an equitable doctrine, the statute of limitations in the FDCPA begins to run on the date on which the alleged violation occurs, not the date on which the violation is discovered. The Court recognized, however, the existence of a fraud-based discovery rule, although it found that Rotkiske failed to properly make that fraud argument on appeal (contrary to the dissent filed by Justice Ginsberg). We are disappointed that the discovery rule clearly will not apply in FDCPA cases as we argued, but we were pleased that the Court did not change any of its jurisprudence regarding the availability of equitable tolling of the applicable statute of limitations under appropriate circumstances.

### **2019**

- **Obduskey v. McCarthy & Holthus, LLP**

NCLC submitted an amicus brief in support of the consumer’s argument that non-judicial foreclosures are covered under the FDCPA, clarifying that mortgages are debts, the law firm in question was a debt collector, and the letter in question was in connection with the collection of a debt. The brief also analyzed the mechanics of Colorado foreclosure law and discussed the policy reasons for applying the FDCPA to non-judicial foreclosure.

The Supreme Court, however, affirmed the lower court ruling and held that a business engaged in no more than non-judicial foreclosure proceedings is not a “debt collector” under the FDCPA, except for the limited purpose of enforcing security interests.

## **2017**

### **• Henson v. Santander**

NCLC joined with NACA, Tzedek DC, The Legal Aid Society of the District of Columbia, and Civil Justice in an amicus brief to address the question whether a company that regularly attempts to collect debts it purchased after the debts had fallen into default is a “debt collector” subject to the Fair Debt Collection Practices Act. Our amicus builds upon one that we filed in the 4th Circuit, which was authored by Dick Rubin and Joanne Faulkner. Dan Edelman is the lead author of this version of the brief. This amicus brief argues that the ruling below, holding that a bad-debt purchaser is not subject to the FDCPA because the debt buyer is not seeking to collect “for another” (1) runs afoul of the principles of statutory construction; (2) is inconsistent with congressional intent and legislative history of the FDCPA; (3) is contrary to decades of guidance and enforcement actions by the federal agency responsible for enforcing the FDCPA; and (4) would exempt the entire debt buying industry and grant debt buyers a significant competitive advantage over other debt collectors whose collection efforts must comply with the FDCPA, which would elevate form over substance and weave a technical loophole into the fabric of the FDCPA big enough to devour all of the protections Congress intended in enacting that legislation.

The Supreme Court decided, however, that Santander was not a debt collector under the FDCPA’s second definition of debt collector. The narrow opinion held that a debt buyer is not subject to the FDCPA as an entity regularly collecting debts “owed or due another,” leaving intact the alternative approach of showing that a debt buyer qualifies as a debt collector under the FDCPA because the “principal purpose” of its business is the collection of debts.

## **2016**

### **• Midland Funding v. Johnson**

NCLC joined Public Citizen, the Legal Aid Society of DC and NACA in an amicus brief prepared by Public Citizen in support of the respondent. The case presents two questions: (1) whether filing a proof of claim on a knowingly time-barred debt violates the FDCPA, and (2) whether any such claim under the FDCPA is impliedly repealed by the Bankruptcy Code. The Public Citizen amicus brief argues: (1) The Court should affirm that a knowing attempt to collect time-barred debt violates the FDCPA, and (2) The least sophisticated consumer standard for assessing whether collection conduct is deceptive or misleading under 15 U.S.C. 1692e should be applied to proof of claims in bankruptcy, not what a competent attorney or trustee would believe as argued by Midland Funding.

### **• Sheriff v. Gillie**

NCLC coordinated efforts in this FDCPA case to file an amicus brief prepared by Dick Rubin and Deepak Gupta that also was joined by Public Good and NACA. The issues presented are (1) Whether special counsel – lawyers appointed by the Attorney General to undertake his duty to collect debts owed to the state – are state “officers” within the meaning of 15 U.S.C. § 1692a(6)(C); and (2) whether it is materially misleading under 15 U.S.C. § 1692e for special counsel to use Attorney General letterhead to convey that they are collecting debts owed to the State on behalf of the Attorney General.

Our amicus focuses on the second issue, including rebutting Petitioner’s argument that the Supreme Court should reject the least sophisticated consumer standard and instead adopt an “average consumer” standard.

## **2013**

- **Marx v. General Revenue Corp**

The court held that when a debt collector wins a Fair Debt Collection Act case brought by a consumer that the consumer may be made responsible for the debt collector’s court costs, amounting to \$ 5443, in this case. Previously most courts had held that the debt collector could only recover its costs if it established that the consumer brought the suit in bad faith and for the purpose of harassment. The debt collector must establish that to obtain the payment of its attorney fees by the consumer.

## **2010**

- **Jerman v. Carlisle**

Debt collectors’ legal mistake in the language of a Fair Debt Collection Practices Act notice did not amount to a bona fide error defense letting the debt collector off the hook.

- **United Student Aid Funds, Inc. v. Espinosa**

Argued that the Fair Debt Collection Practices Act’s bona fide error defense was not intended by Congress to apply to mistakes of law by debt collectors. Since the bankruptcy court’s error in confirming a Ch. 13 plan discharging a portion of the student loan debt without first finding undue hardship in an adversary proceeding was not jurisdictional, the judgment was not void. Because student loan creditor received actual notice of the filing, due process was met. The bankruptcy court’s legal error in confirming the debtor’s plan absent a finding of undue hardship in an adversary proceeding did not render its judgment void. Bankruptcy courts presented with a plan proposing the discharge of student loan debt without a determination of undue hardship in an adversary proceeding should not confirm such a plan, even if the creditor fails to object or to appear at the proceeding at all.

## **Housing**

### **2015**

- **Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.**

NCLC filed an amicus brief with our colleagues at the ACLU in an appeal in the United States Supreme Court in which the disparate impact cause of action under the Fair Housing Act is being challenged. The brief is substantially similar to the amicus we filed in the Mt. Holly case prior to that appeal being settled before a decision was handed down. It is one of approximately a dozen amicus briefs being coordinated by a coalition of civil rights organizations, including NCLC, to be filed in support of the appellee. The unique contribution of our amicus brief is that it focuses on disparate impact as a vital tool for remedying the discriminatory lending practices that fueled the subprime lending bubble and contributed to the current foreclosure crisis. The brief also argues that disparate impact analysis is a crucial tool for stopping housing discrimination against domestic and sexual violence victims. The Supreme Court subsequently upheld the decision of the 5th Circuit Court of

Appeals and ruled that disparate-impact claims are cognizable under the Fair Housing Act.

- **Jesinoski v. Countrywide Home Loans, Inc**

NCLC and amici opposed the respondents' argument that TILA rescission must be exercised by filing a lawsuit. Rescission gives homeowners the right to cancel a loan transaction for three days after a loan closing. Consumers can exercise this right simply by giving notice to the creditor. The plain language of the statute unmistakably supports this position. Additionally, administrative interpretations from the Federal Reserve Board and judicial interpretations from the federal courts of appeal support rescission through notice. The Truth in Lending Act gives a homeowner the right to rescind a mortgage loan (other than a purchase-money mortgage) for up to three years if the lender failed to make certain key disclosures about the loan. Some courts had held that the homeowner had to file suit in court within this three year period. The Supreme Court issued a unanimous decision, agreeing with our amicus brief that the only thing the homeowner has to do within the three-year period is notify the creditor that he or she is exercising the right to rescind. The Supreme Court also made another very helpful comment, stating that the consumer could return the net amount owing on the loan after rather than before rescinding. The right to rescind under the Truth in Lending Act has been one of the most important tools to fight predatory mortgage lending. This decision will make a difference for many homeowners.

## 2013

- **Mount Holly v. Mount Holly Citizens in Action**

NCLC wrote the amicus brief with the ACLU and were joined on the brief by the National Coalition Against Domestic Violence; NCRC; the National Center on Homelessness and Poverty; the National Housing Law Project; Public Citizen and the National Women's Law Center. The Mt. Holly case concerns the application of the Fair Housing Act disparate impact discrimination cause of action in a municipal zoning challenge by elderly African Americans and Hispanic Americans whose affordable residences were consider "blighted" by their town and threatened with demolition to build unaffordable housing. The case was settled by the parties and dismissed.

## 2012

- **First American v. Edwards**

NCLC joined AARP, Center For Responsible Lending, and the National Consumers League in a amicus brief prepared primarily by Public Citizen, Inc., arguing that permitting Real Estate Settlement Procedures Act plaintiffs to seek statutory damages without proving their monetary loss does not undermine the values of the constitutional requirement of "standing" - that a plaintiff has a real stake in the suit.

The Court dismissed its decision to grant certiorari in *Edwards v. First American. Corp.* as improvidently granted. In *Edwards* the Ninth Circuit held that a homebuyer had standing to assert a violation of RESPA's ban on referral fees and kickbacks against a title insurer even though the homebuyer did not allege that she was overcharged as a result of the illegal conduct. The court based its decision on the text of RESPA and legislative history showing that Congress was concerned about more than just the cost of settlement services. Kickbacks could affect a service provider's impartiality and willingness to give professional advice. In doing so the Ninth Circuit followed similar decisions from the Third and Sixth Circuits. No circuit courts have required economic injury to establish standing under this section of RESPA.

- **Magner v. Gallaher**

NCLC joined an amicus brief prepared by the Lawyers' Committee for Civil Rights Under Law with other national civil rights organizations arguing that the Fair Housing Act properly is interpreted to authorize disparate impact claims and that the Eight Circuit applied the correct burden-shifting approach to litigating disparate impact claims consistent with current practices and HUD's proposed regulation. NCLC also consulted with the ACLU (which cites NCLC's Credit Discrimination manual and references NCLC's sub-prime mortgage discrimination disparate impact cases brought under the Fair Housing Act) and the Department of Justice with regard to the preparation of the amicus briefs they separately prepared.

The Fair Housing Act makes it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer ... or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a).

Plaintiffs are owners of rental properties who argue that Petitioners, municipal officials, violated the Fair Housing Act by "aggressively" enforcing the City of Saint Paul's housing code. According to Respondents, because a disproportionate number of renters are African-American, and Respondents rent to many African-Americans, requiring them to meet the housing code will increase their costs and decrease the number of units they make available to rent to African-American tenants. The district court granted summary judgment for the City, and the Eighth Circuit reversed holding that the lessors should be allowed to proceed to trial because they presented sufficient evidence of a "disparate impact" on African-Americans.

The Supreme Court granted cert on the following critical questions presented:

1. Are disparate impact claims cognizable under the Fair Housing Act?
2. If such claims are cognizable, should they be analyzed under the burden-shifting approach, under the balancing test, under a hybrid approach, or by some other test?

## **Predatory Lending**

**2010**

- **Midwest Title Loans v. Mills**

NCLC joined AARP, Consumer Federation Of America, Indiana Legal Services, Inc., and The Sargent Shriver National Center On Poverty Law in an amicus brief primarily prepared by Public Citizen and the Center For Responsible Lending in support of the Indiana Attorney General's certiorari petition to the U.S. Supreme Court. Indiana, which regulates auto-title lending, sought to apply its law to title loans made by Illinois lenders to Indiana residents when the loans were advertised in Indiana and the lenders registered liens in Indiana and repossessed cars in Indiana- but the loan contracts themselves were signed over the border in Illinois. A lender brought a commerce clause challenge and was successful arguing that the Indiana law unlawfully interfered with interstate commerce: "The contract was, in short, made and executed in Illinois, and that is enough to show that the territorial-application provision violates the commerce clause."

Cert denied leaving intact the 7th Circuit decision that the Indiana law regulating car loans between Indiana consumers and Illinois car dealers unlawfully interfered with interstate commerce.

**2008**

- Commonwealth of Massachusetts v. Fremont Investment & Loan, and Fremont General Corporation

NCLC joined AARP, Center for Responsible Lending, National Association of Consumer Advocates, and National Association of Consumer Bankruptcy Attorneys in an amicus brief vigorously disagreeing with Fremont's claim that the Superior Court's injunction "is flawed as a matter of public policy." Fremont's lending practices exemplified the "immoral, unethical, oppressive, or unscrupulous" conduct prohibited as unfair by Chapter 93A. *Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 563 (2008).

The promise of subprime mortgage lending is simple: allowing persons without traditional access to credit the opportunity to become homeowners and build long-term wealth. That promise, however, is fulfilled only when the subprime mortgage is backed by solid underwriting and includes fair terms that the borrower will be able to meet over the long-term. Unfortunately, some subprime lenders disregarded the underwriting process and the fairness of loan terms in focusing on short-term profits that could be gained by catering to Wall Street's insatiable appetite for subprime loans. Fremont singularly concentrated on the profits to be made by selling more and more loans to Wall Street.

## **Regulatory Enforcement**

### **2020**

- **Liu v. SEC**

NCLC joined an amicus brief with Better Markets and CRL. The issue presented in *Liu* is whether the SEC has the ability to order disgorgement as a remedy in its cases under the explicit equitable authority granted by its enabling statute. The court certified the question whether, and to what extent, the SEC may seek "disgorgement" in the first instance through its power to award "equitable relief" under 15 U. S. C. §78u(d)(5), a power that historically excludes punitive sanctions. The appellant's argument, rejected by both the District Court and the 9th Circuit Court of Appeals, is that disgorgement is an unauthorized penalty rather than an equitable remedy. Our amicus brief supports the position that disgorgement is, in fact, an equitable remedy which falls well within the broad express powers granted to the agency by Congress. But it goes further in arguing that a contrary ruling would call into question similar remedies available to other agencies through virtually identical grants of equitable authority and jeopardize their enforcement efforts by eliminating critical options for effective relief. Without raising the issue directly in the amicus brief, we primarily are concerned that a bad opinion affecting our ability to exercise private rights of action under the ECOA, FHA and ERISA, among other consumer protection statutes, where NCLC often relies upon disgorgement as a viable remedy and a necessary component for successfully certifying a class. The Supreme Court held that a disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under §78u(d)(5).

### **2012**

- **National Meat Ass'n. v. Harris**

NCLC joined in an amicus brief with Public Citizen, Center for Responsible Lending, AARP, Public Health Law Center and Consumer Federation of America in a case about whether the Federal Meat Inspection Act expressly nullifies or preempts a particular California law. The amicus brief argues there is a presumption against federal laws preempting state laws. Although the main brief did not

challenge the presumption, the Chamber of Commerce's amicus brief did challenge it. The Supreme Court held that the California statute directly conflicted with the federal statute and was preempted without having to address the presumption against preemption.

## **Student Loans**

### **2020**

- **New York Legal Assistance Group v. Devos and U.S. Department of Education**

Based on our extensive experience advocating for debt relief on behalf of low-income students harmed by abusive schools and consulting with legal aid attorneys across the country who represent student borrowers, amicus writes to explain how the Department of Education's 2019 Rules arbitrarily and capriciously ignored congressional intent and its own prior justification for heightened student protections. Further, it ignored the experience of the students Congress intended the Higher Education Act to help. Legal aid organizations told the Department about the ways in which schools deceive borrowers and the struggles borrowers face in getting relief. Instead of reducing burdens for borrowers and increasing school oversight, the 2019 Rules not only rescind virtually all of the student protections added by the 2016 Rules, they also give predatory schools a free pass to lie and cheat students, while saddling them with debt they will never be able to repay.

## **TCPA**

### **2020**

- **Barr v. American Association of Political Consultants**

The National Consumer Law Center, the Consumer Federation of America, and Verizon filed a joint amicus brief in a case in which a group of robocallers is challenging the constitutionality of an exemption provision of the Telephone Consumer Protection Act (TCPA). The amicus brief does not support either party in the appeal. Nor does it take any position on the validity of the specific TCPA exemption at issue in the case. Rather the amici argue that the TCPA plays an integral role in protecting the country's communications customers as well as the communications system from being deluged by automated, unsolicited calls to mobile phones. The purpose of the statute represents a compelling interest sufficient to justify any narrow restrictions on speech inherent in protecting consumers and the communications network from such calls. Therefore, minimal exceptions to the TCPA's general protections should not in any way justify a ruling from the Court that would undermine Congress' ability to adopt the TCPA's general prohibition on non-consented-to calls to cellular phones.

### **2018**

- **Marks v. Crunch San Diego**

The National Consumer Law Center and the National Association of Consumer Advocates (NACA) filed a joint amicus brief as consumer protection organizations that work to protect consumers from the scourge of unwanted robocalls. The brief argues the Federal Communication Commission's (FCC) pre-2015 orders are still in effect and are binding on Courts. The effect of *ACA International v. FCC*, 885 F.3d 687 (D.C. Cir. 2018), on three pre-2015 FCC orders interpreting the definition of automated telephone dialing systems (ATDS) under the TCPA, 47 U.S.C. § 227(a)(1), is critical to this appeal but has not received thorough analysis in the other briefs. All three orders state, among other things, that a system that dials numbers from a list is an ATDS.

**2016**

- **ACA International (Cavalry Portfolio Services) v. FCC**

The National Consumer Law Center, the National Association of Consumer Advocates, Consumers Union, AARP, Consumer Federation of America, and MFY Legal Services are each non-profit filed a joint amicus brief, drawing on extensive experience in consumer protection legal issues, including the financial impact of onerous policies and practices affecting consumers, and specifically, the burdens and intrusions of increasingly rampant automatically dialed “robocalls” and texts to cell phones. The amicus brief raised the following issues: the distressing—and sometimes financially perilous—impacts on consumers subjected to multiple unwanted and unconsented-to robocalls to their cell phones. Amici support the FCC’s 2015 Order as an entirely legal and justified interpretation of the TCPA, and appropriate safeguarding of consumers’ legal right to decide whose autodialed and prerecorded calls and texts to their cell phones they will receive.

**2011**

- **Mims v. Arrow Financial Services, LLC**

NCLC and the National Association of Consumer Advocates (NACA) urged the Supreme Court to review a lower court decision denying a consumer the right to file their federal Telephone Consumer Protection Act (TCPA) claim in a federal court by finding that Congress limited TCPA claims to state courts. On June 27, 2011, the United States Supreme Court granted the petition for review. Oral argument for petitioners is scheduled for November 28, 2011.

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## **Advocates Slam FDIC Proposed Rule for Industrial Loan Companies as Invitation for Predatory Lending**

FOR IMMEDIATE RELEASE: July 2, 2020

National Consumer Law Center contacts: Stephen Rouzer (srouzer@nclc.org) or Lauren Saunders (lsaunders@nclc.org)

*The bank regulator’s plan, described as “recipe for disaster” and as a way to “fuel financial exclusion,” provides an avenue for lenders to evade state laws that cap interest rates and to harm families suffering most in this economic downturn.*

WASHINGTON, D.C. – The National Consumer Law Center, on behalf of its low income clients, joined with a broad coalition of advocacy organizations in two public comment letters warning the Federal Deposit Insurance Corporation (FDIC) that its proposed rule for chartering additional underregulated Industrial Loan Companies (ILCs) would expand predatory, high-interest lending. The plan would grant the predominantly online non-bank companies that are approved for an ILC with preemptory powers over state consumer protection laws, including interest rate caps. The FDIC is already turning a blind eye to rent-a-bank schemes where non-bank lenders piggyback off ILC and

bank charters to issue loans of around 100% APR and higher.

The first, more detailed comment letter was submitted by the following civil rights and consumer organizations: National Consumer Law Center (on behalf of its low-income clients), Center for Responsible Lending (CRL), Americans for Financial Reform Education Fund, Consumer Action, Consumer Federation of America, The Leadership Conference on Civil and Human Rights, NAACP, National Association of Consumer Advocates, National Association for Latino Community Asset Builders, UnidosUS, and U.S. PIRG.

The second, short comment letter was submitted by several leading civil rights, community, consumer, and faith groups. Full text of the short letter is at bottom.

**The longer, more detailed comment letter states in part:**

“By permitting unprecedented blending of commercial and financial activities, and by making it easier than ever to make high-cost loans above states’ interest rate limits, this proposal is a recipe for disaster. And no one will feel the misery worse than the millions of households, disproportionately households of color, who are targeted by the abusive lending the proposal will proliferate....

“Adding the new label ‘fintech’ to high-cost lending may attract investors and make it easier for banking regulators to justify their support, but it doesn’t soften the blow high-cost loans land on struggling families.

“[T]he proposal wholly fails to consider the strong likelihood that it will cause a significant increase in predatory lending, either directly by companies that acquire ILCs or obtain ILC charters, or indirectly through increased rent-a-bank schemes with ILC banks.”

**The short comment letter states in part:**

“These loans target financially distressed individuals, compound their debt burden, and leave them worse off. High-cost lenders also disproportionately prey on communities of color, stripping them of income, widening the racial wealth gap, and more deeply entrenching systemic racism. Rather than promote financial inclusion, as they claim, high-cost lenders fuel financial exclusion.”

**Additional Background**

In March, the FDIC approved two new ILC charters, the first in over a decade. In so doing, the FDIC failed to adequately address concerns the agency itself has long had about its authority to effectively supervise ILCs.

The FDIC’s proposed ILC rule is among the attacks on state usury limits by federal banking regulators in recent years. These attacks include a proposed Office of the Comptroller of the Currency (OCC) “special purpose charter” and also rules issued by the FDIC and OCC that make it easier for banks to essentially rent out their charter to non-banks that then try to use the charter’s power to preempt state rate caps.

**Full text of the short letter:**

July 1, 2020

The Honorable Jelena McWilliams

Chairman

Federal Deposit Insurance Corporation

1776 F Street, NW

Washington, DC 20006

Delivered electronically

Re: Comments on FDIC Notice of Proposed Rulemaking, Parent Companies of Industrial Banks and Industrial Loan Companies

Dear Chairman McWilliams,

The undersigned civil rights, community, consumer, and faith organizations write to strongly oppose the FDIC's proposed rule on industrial banks and industrial loan companies (together, "ILC"s), as well as the agency's approval of new ILC charters, in light of the threats these charters pose to state interest rate limits and, consequently, to consumers—particularly to those most financially vulnerable.

Interest rate limits are the single most effective tool states have to protect their residents from predatory loans. Predatory loans include payday and car title loans that often carry annual interest rates as high as 300% or more. Predatory loans also include high-cost installment loans and lines of credit with rates approaching and well exceeding 100%. These loans target financially distressed individuals, compound their debt burden, and leave them worse off. High-cost lenders also disproportionately prey on communities of color, stripping them of income, widening the racial wealth gap, and more deeply entrenching systemic racism. Rather than promote financial inclusion, as they claim, high-cost lenders fuel financial exclusion.

These high interest rates do not just make loans dramatically more expensive than mainstream loans. They also fundamentally alter the repayment structure, as borrowers can make payments for many months or even years without seeing any significant reduction in principal. As a result, these high rates also warp market incentives, where lenders succeed even if borrowers eventually default in great numbers.

This proposal comes amidst a number of attacks on state usury limits by federal banking regulators in recent years, as state-regulated lenders increasingly look to federal regulators to help them avoid state laws. The ILC charter is no different. By making it easier for predominantly online non-bank lenders to obtain bank charters, while avoiding consolidated supervision of the Federal Reserve, the FDIC would pave the way for non-banks to benefit from federal preemption far more easily than they otherwise could. Indeed, a law firm representing payday lenders recently wrote of the ILC proposal: "The proposed rule, together with the FDIC's recent approvals of deposit insurance applications for [NelNet and Square], suggest the ILC charter as a viable alternative to the OCC's fintech charter, which has been stalled by litigation."

Several traditional FDIC-supervised banks are already facilitating evasion of state usury limits by non-banks through rent-a-bank schemes that the FDIC has not addressed. The loans these schemes peddle are among the most irresponsible loans on the market. Republic Bank & Trust (of Kentucky) and FinWise Bank (of Utah) are enabling high-cost lenders Elevate (100% APR), OppLoans (up to 160% APR), and/or Enova (up to 99.99% APR) to evade state rate caps in over half the states. Capital Community Bank (of Utah) is helping car title lender LoanMart evade state law in a number of

states. LoanMart's loans range from 60-222% interest; a typical loan is \$2,500, 18-month loan at 90%, totaling \$2,136 in interest. Transportation Alliance Bank, dba TAB Bank (of Utah) is helping EasyPay Finance make predatory loans for furniture, appliances, pets, auto repairs and other products, including a \$1,500 loan at a rate of 188.99%. And Bank of Lake Mills (of Wisconsin) has enabled predatory small business loans, including a 120% APR \$550,000 small business loan and a 74% APR loan secured by a second mortgage.

A disproportionate number of ILCs are also engaged in rent-a-bank arrangements; these are all chartered in Utah. First Electronic Bank is helping Personify Financial make loans up to 179.99% in 22 states. WebBank is involved in litigation alleging violation of Colorado's state usury limit through a rent-a-bank arrangement. And Celtic Bank is helping OnDeck Capital and Kabbage make small business loans at up to 99% APR.

Experience has demonstrated that parents of ILCs pose excessive risks that the FDIC is unable to constrain. A number of ILC owners failed or nearly failed during the 2008 financial crisis, including predatory mortgage lender Fremont and predatory credit card issuer Advanta. The FDIC's proposed plan, which claims to largely formalize the existing practices that have already proved inadequate, will not compensate for its lack of consolidated supervisory authority. The FDIC proposal also fails to give adequate consideration to the Community Reinvestment Act implications of an expansion of ILC charters, including convenience and needs, fair lending, and consumer protection.

We wholly reject any notion that approval of additional ILC charters may enable lenders to meet the credit needs of the financially vulnerable. To the contrary, they would make the financially vulnerable more so by facilitating the spread of predatory lending and undermining states' ability to stop it.

We appreciate your consideration of our concerns.

Yours truly,

Americans for Financial Reform Education Fund, National

Arkansans Against Abusive Payday Lending, Arkansas

Arkansas Community Organizations, Arkansas

California Reinvestment Coalition, California

Center for Economic Integrity, Arizona

Center for Responsible Lending, National

Consumer Action, National

Demos, National

Indiana Institute for Working Families, Indiana

Jacksonville Area Legal Aid, Inc., Florida

The Leadership Conference on Civil and Human Rights, National

Maryland Consumer Rights Coalition, Maryland

Missouri Faith Voices, Missouri

National Association of Consumer Advocates, National

National Association of Consumer Advocates (NACACO), Colorado

National Consumer Law Center (on behalf of its low income clients), National

New Jersey Citizen Action, New Jersey

Public Good Law Center, National

Texas Appleseed, Texas

THE ONE LESS FOUNDATION, Pennsylvania and Colorado

Tzedek DC, District of Columbia

Virginia Citizens Consumer Council, Virginia

Virginia Organizing, Virginia

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Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

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## **Alert: IRS Sending Letters About Unactivated Stimulus Prepaid Cards**

**FOR IMMEDIATE RELEASE:** July 2, 2020

**National Consumer Law Center contacts:** Stephen Rouzer (srouzer@nclc.org) or Lauren Saunders (lsaunders@nclc.org)

WASHINGTON, D.C. - People who have not received their Economic Impact Payments (EIP) should be on the lookout for letters being sent starting today by the Internal Revenue Service (IRS) telling them that they may have an unactivated prepaid card.

Last month, the IRS sent stimulus payments via the EIP prepaid cards instead of by paper checks to about 2 million taxpayers. Many people who were not expecting a prepaid card and did not know what it was threw it out, thinking it was a scam, or may have overlooked it.

These new letters, like the prepaid cards, are not a scam, though people should be aware of what they look like in case scammers try to impersonate them. The envelope can be viewed here and a

sample letter is here.

Most importantly, the number that should be on the letter to call if someone has not received the card or has accidentally thrown it away is 800.240.8100. If the letter gives a different number people should not call it, as it is likely a scam.

“The EIP Card from Money Network Services is not a scam. It is a card being used by the IRS to distribute stimulus payments to some people. If you have any doubts or have not received your card, call 800-240-8100,” **said Lauren Saunders, associate director of the National Consumer Law Center**. However, she cautioned that that number will have information only about people who are being paid through the EIP card, not about payments made by paper check. “The EIP card can be cashed or used in numerous ways without incurring fees, including by transferring the funds to your bank account, using network ATMs, asking for cash back at a grocer or big box store, and by going inside to the teller window at virtually any bank or credit union,” she added.

For more details on what the EIP Card looks like and how to use it without paying fees, see NCLC’s issue brief *The EIP Stimulus Payment Prepaid Card: Not a Scam; How to Avoid Fees*, which includes links to a photo of a sample card and mailer.

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## **Advocates Praise California Public Utility Commission’s Unanimous Vote to Pass Utility Shut-Off Protections for Residents**

**FOR IMMEDIATE RELEASE: JUNE 12, 2020**

**Media Contacts: National Consumer Law Center:** Jan Kruse (jkruse@nclc.org) or Stephen Rouzer (srouzer@nclc.org)

**Center for Accessible Technology:** Melissa Kasnitz (mkasnitz@cforat.org)

### ***California adopts rules and programs to reduce residential disconnections from gas and electric service***

San Francisco – Consumer advocates praised yesterday’s unanimous vote by the California Public Utilities Commission (CPUC) to adopt a suite of utility credit and collections rules and programs to reduce residential electric and natural gas disconnections for customers of the large investor-owned utilities. The CPUC decision will remove credit and collection barriers that make it hard for struggling consumers to get back on their feet, ensure availability of longer-term payment plans, increase opportunities to learn about and enroll in utility assistance programs, and provide a pathway to solvency by offering arrearage management programs (AMPs) to consumers who have fallen behind on their bills. The case will now move to a separate phase, which will include the development of targeted pilot affordability programs called Percentage of Income Payment Plans (PIPPs). The intent is to develop pilot programs that will be available to low-income consumers in the top 10 zip codes with the highest disconnection rate.

This proceeding, R.18-07-005, stems from CA Senate Bill 598, which requires the CPUC to develop rules, policies, or regulations with the goal of reducing the disconnection rate of gas and electric customers by 2024. Commissioner Martha Guzman Aceves stewarded the decision through the regulatory process.

The CPUC's Decision Number D.20-06-003 is particularly important given the public health and economic crisis due to COVID-19. "This decision moves California in the right direction by pivoting rules away from punitive measures that make it harder for families to afford utility service, which especially harm low-income households and households of color," **said Olivia Wein, staff attorney at the National Consumer Law Center.**

The decision establishes an innovative arrearage management (AMP) program that utilities in other states have adopted to address utility debt for households barely keeping their heads above water. Low-income Californians drowning in utility debt will now be able to have that debt forgiven bit-by-bit as they make timely payments of current bills. "Arrearage management programs can help struggling households achieve a fresh start while preserving their connection to electric and natural gas service," **said Wein.**

It also adopts numerous other changes to existing disconnection processes, including caps on the total number of disconnections authorized for each utility, extended payment plans, removal of various deposit requirements, and increased transparency in any efforts to require customers initiating service to pay existing arrearages from the same location.

"While work on these issues started long before the current pandemic, the Commission noted that access to electric and natural gas service is essential to shelter at home safely during this COVID-19 crisis," **said Melissa Kasnitz of the Center for Accessible Technology.** "California's action will help reverse a long-term trend of increasing disconnections while also limiting the risk of an enormous crisis in disconnections when the moratorium associated with the COVID-19 pandemic expires next April."

Also yesterday, Illinois Attorney General Kwame Raoul announced a similar agreement with the state's major utility companies that provide electric, gas, water, and sewer services that will reduce residential utility shut-offs and late fees during the COVID-19 crisis, and move toward creating AMPs and PIPP programs to permanently keep Illinoisans connected with vital essential utilities. Additionally, the utilities will provide regulators with data to assess whether particular communities, including communities of color, are being disproportionately impacted by a utility's disconnection and credit and collections processes.

Together, the California and Illinois agreements will affect tens of millions of people. "Utilities provide essential life-saving services and we hope other states will adopt similar programs to help keep their families and communities well," **said Wein.**

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The Center for Accessible Technology (CforAT) works to ensure that people with disabilities can live independently in their communities, and supports the use of technology to assist in independent living. Through its policy program, CforAT advocates before the CPUC to ensure that people have

access to essential utility service, including reliable and affordable energy, telecommunications and water. CforAT also works to support the availability of assistive technology for students and seniors, and to ensure accessibility of websites in accordance with evolving standards.

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# Los Angeles County Ends PACE Program Marred by Fraud, Abuse, and Unaffordable Loans

**FOR IMMEDIATE RELEASE:** May 20, 2020

**National Consumer Law Center contacts:** John Rao (jrao@nclc.org) or Stephen Rouzer (srouzer@nclc.org)

## Los Angeles County Ends PACE Program Marred by Fraud, Abuse, and Unaffordable Loans

*Thousands of LA County homeowners have been trapped in unaffordable loans through the Property Assessed Clean Energy financing program*

WASHINGTON, D.C - Effective May 13, 2020, Los Angeles County has discontinued new financing under its Property Assessed Clean Energy (PACE) loan program, concluding the County could not be certain the program can “provide sufficient protection for all consumers.”

“Los Angeles County has made the courageous decision to end a program that, while well-intentioned, has harmed far too many homeowners,” **said John Rao, an attorney at the National Consumer Law Center.** “We urge other local governments to ask the same tough questions about their PACE programs and follow the County’s lead by suspending or ending programs that cannot assure their residents will be protected.”

PACE programs offer loans for home improvements theoretically designed to improve energy and water efficiency, such as solar panels, HVAC systems, and new windows. Qualifying “green energy” improvements are offered through home improvement contractors often going door to door with contracts on tablets that commit people on the spot to property tax liens that can increase taxes by thousands of dollars a year without any assessment of affordability. Homeowners who cannot afford the increased taxes risk losing their homes. NCLC has documented the stories of many families who were denied the potential benefits of PACE by being sold unaffordable loans for home improvements, many of which did not give the deep energy savings homeowners were promised or resulted in shoddy or incomplete work.

“The potential benefit of the PACE program in Los Angeles County has been overshadowed by increasing criticism and concern about gifted customers who risked losing their homes,” **added Rao.**

Legal services agencies throughout California have been overrun with complaints related to PACE, including fraud, forgery, identity theft, price gouging, undisclosed costs and fees, and unpermitted or uncompleted work. These issues have been repeatedly raised to state and local lawmakers.

For its part, California has tried to preserve the program while enhancing consumer protections - through a series of bills enacted over the past ten years. Additional changes were made in response to an enforcement action brought by California District Attorneys. And the County took it a step further by strengthening its PACE consumer protection practices and establishing a hotline to confirm consumers' acceptance of loan terms. Despite these efforts, problems continued and the County concluded it could not be certain the added measures will provide sufficient protection for all consumers.

Homeowners with existing PACE assessments are still required to make payments, and approved projects that are not yet completed or were on hold due to the Safer At Home Order will still be completed. Homeowners with additional questions should contact their PACE administrator (Renew Financial, Renovate America, or PACE Funding Group). Homeowners with legal questions or concerns should contact their local legal aid office or find an attorney at the website of the National Association of Consumer Advocates, [consumeradvocates.org](http://consumeradvocates.org)

For additional resources, visit NCLC's Property Assessed Clean Energy (PACE) Loans page.

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## **Trump Administration's plan to pause student loan payments is woefully insufficient**

**FOR IMMEDIATE RELEASE:** March 20, 2020

**National Consumer Law Center Contact:** Jan Kruse at [jkruse@nclc.org](mailto:jkruse@nclc.org)

BOSTON—Today, advocates warn that the plan announced by the U.S. Secretary of Education Betsy DeVos to allow borrowers with federally held student loans the option to suspend their payments falls far short of what is needed in this national crisis.

**Statement by Persis Yu, director of the National Consumer Law Center's Student Loan Borrower Assistance Project:**

"The administration's plan to allow borrowers to request a pause in payments is woefully insufficient for addressing the needs of millions of student loan borrowers struggling during this public health crisis. Borrowers who may be short on funds and have limited bandwidth between juggling changes in their childcare and work plans should not have to also find time to consult with their loan servicer.

“Worse still, pausing payments simply kicks the can down the road. Struggling borrowers still burdened with historically high student loan debt will face a potentially devastated economy when payments resume. Moreover, under the Administration’s plan, borrowers in an income-driven repayment plan, those working towards Public Service Loan Forgiveness, or seeking similar relief will lose out on qualifying time towards forgiveness, leaving them burdened by student debt longer. And the plan fails to even cover the 1.2 million borrowers with Federal Family Education Loans not held by the Department.

“What’s needed at this time is bold action. Borrowers should not have to jump through needless hoops or make sacrifices they cannot afford right now. We need to do more than just pause payments. We need to cancel student loan payments and ensure that balances go down so borrowers can make ends meet now and then recover along with the economy. That is the real, lasting relief lawmakers must deliver for student loan borrowers.”

### NCLC Resources

- **Blog:** Repaying Student Loans Amid COVID-19 Outbreak, March 12, 2020
- **Brief:** Congress Must Provide Relief to Defaulted Student Loan Borrowers; Recommendations for Higher Education Act Reauthorization, March 2020

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## High-Cost Rent-a-Bank Loan Watch List



Interest rate limits are the simplest and **most effective** protection against predatory lending. Since the time of the **American Revolution**, states have limited interest rates to protect their residents. **American voters** strongly support interest rate caps. At least **45 states** and the District of Columbia (DC) cap rates on **at least some** installment loans.

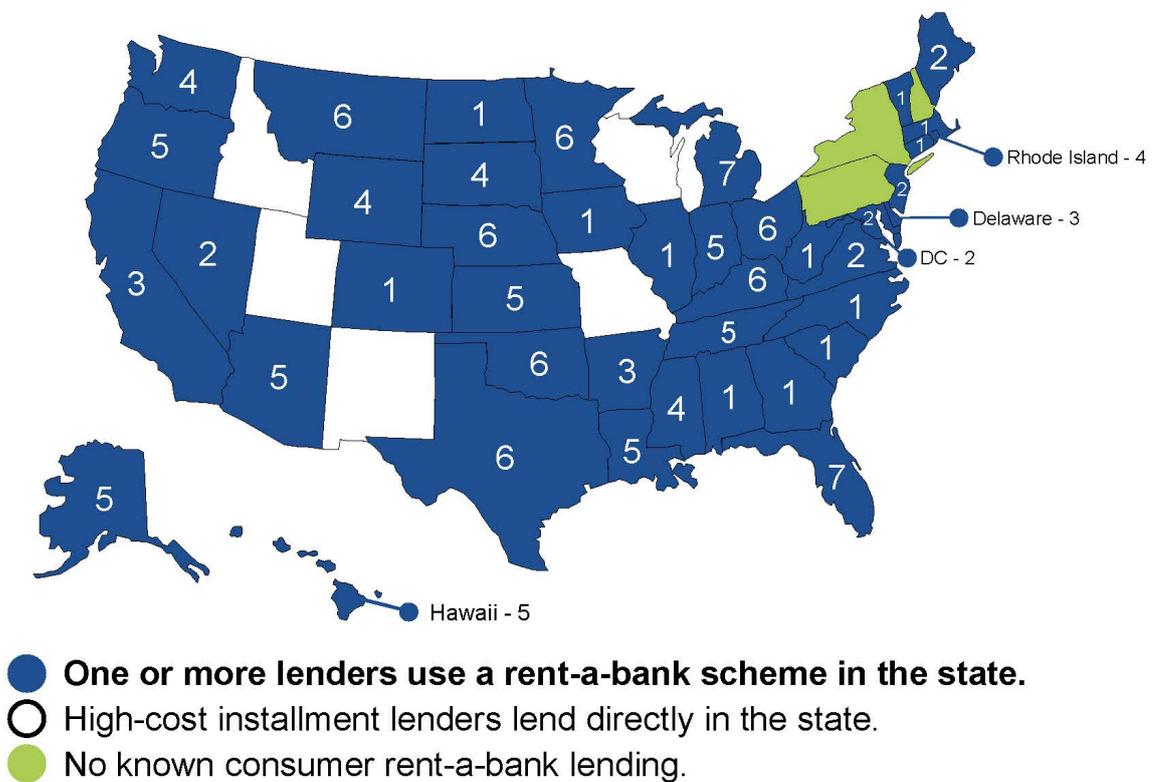
But high-cost lenders are increasingly using **rent-a-bank schemes** with a small number of rogue banks, which are not subject to state interest rate limits, to evade state rate caps on installment loans and lines of credit. **Check out our Take Action page to see what you can do to help fight rent-a-bank lending!**

Rent-a-bank schemes are of **questionable legality**. Lenders pick and choose where they lend,

generally avoiding states that vigorously enforce their laws. At least **eight consumer lenders (American First Finance, CURO, EasyPay, Elevate, Enova, LoanMart, OppLoans, PersonifyFinancial)** and using five FDIC-supervised banks (Community Capital Bank, FinWise Bank, First Electronic Bank, Republic Bank & Trust (Kentucky), TAB Bank) and one OCC-supervised bank (Stride Bank) to make high-cost rent-a-bank loans to consumers. Others, including World Business Lenders and OCC-supervised Axos Bank, are targeting **small businesses**.

See below to learn about the banks and lenders teaming up to issue triple-digit interest, debt-trap loans in states that do not allow high-cost loans — and which states they avoid. **Find your state on the maps below or in this spreadsheet to see how many “rent-a-bank” lenders are attempting to avoid rate caps in your state.**

## How Many Consumer Rent-a-Bank Lenders Operate in Your State?

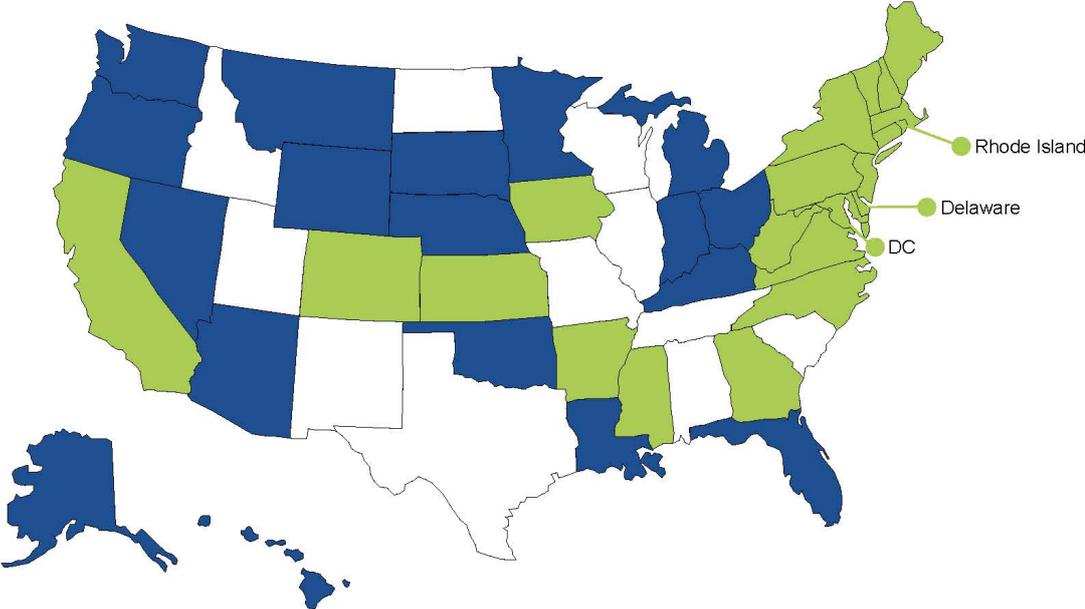


## Watch out for These High-Cost Lenders and Their Bank Partners





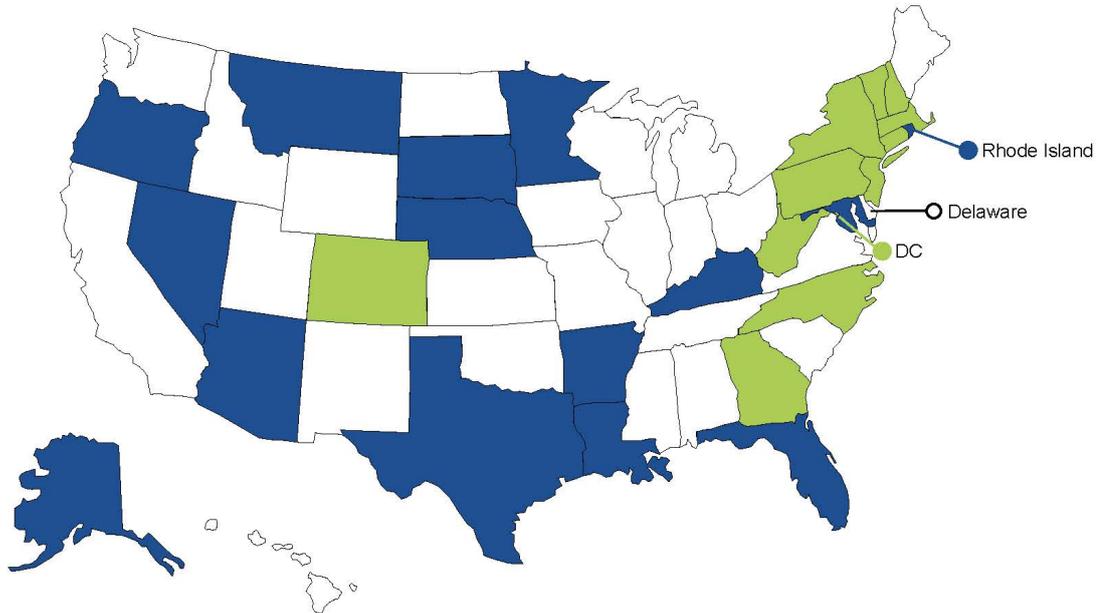
# Rent-a-Bank Lending by Elevate's Rise



- Rise uses a rent-a-bank scheme to evade state rate caps
- Rise lends directly in the state.
- Rise does not lend in the state.

**Elevate's Rise** uses FDIC-supervised **FinWiseBank** (Utah) to make installment loans of \$500 to \$5,000 with **APRs of 99% to 149%** in **18 states** that do not allow those rates for some or all loans in that size range: Alaska, Arizona, Florida, Hawaii, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nebraska, Nevada, Ohio, Oklahoma, Oregon, South Dakota, Washington, and Wyoming. Rise also lends directly in 14 states.

# Rent-a-Bank Lending by Elevate's Elastic

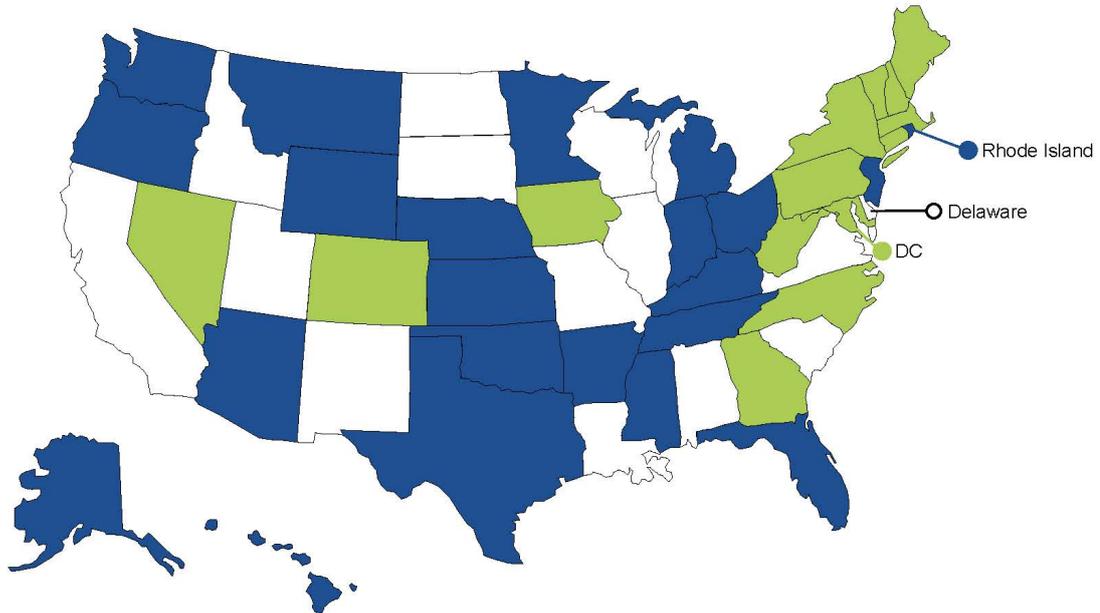


- Elastic uses a rent-a-bank scheme.\*
- State permits high-cost lines of credit or has loopholes in rate caps.
- Elastic does not lend in the state.\*

**Elevate's Elastic** line of credit uses FDIC-supervised **Republic Bank & Trust** (Kentucky) to offer lines of credit of \$500 to \$4,500 with an effective **APR of up to 109%**.

\*Elastic's website no longer discloses where the line of credit is available, but Elastic is no longer available in the District of Columbia as a result of litigation, and its FAQs previously noted that it was not available in 11 states: Colorado, Connecticut, Georgia, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Vermont, and West Virginia. Elastic was, and probably still, is available in many states that may not permit effective APRs as high as 109% on some or all lines of credit.

# Rent-a-Bank Lending by Enova's NetCredit

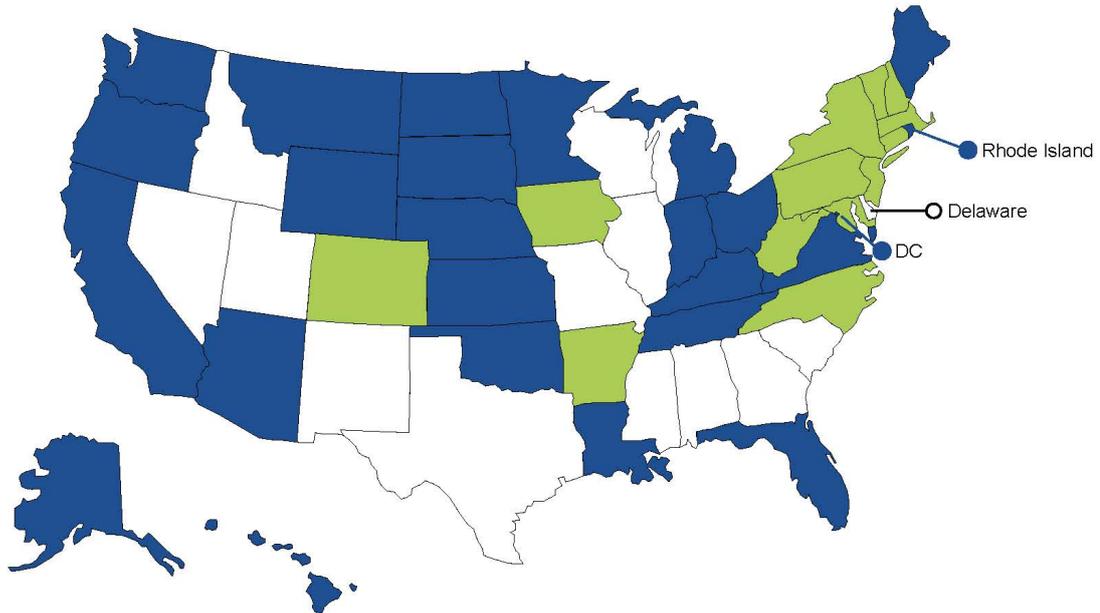


- NetCredit uses a rent-a-bank scheme to evade state rate caps.
- NetCredit lends directly in the state.
- NetCredit does not lend in the state.

**Enova's NetCredit** uses FDIC-supervised **Republic Bank & Trust** (Kentucky) to make installment loans of \$2,500 to \$10,000 with **APRs up to 99.99%** in **22 states** that do not allow those rates on some or all loans in that size range: Alaska, Arizona, Arkansas, Florida, Hawaii, Indiana, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Tennessee, Washington, and Wyoming. Enova also lends directly in 15 states.

- **Sample NetCredit/Republic Bank & Trust loan:** NetCredit's website for Montana (where voters capped rates at 36%) gives an example of a \$4,500 loan at 65% APR repaid with 50 monthly payments of \$262.53 — for a total of \$13,126.50. This example shows how high-rate loans above what states allow can balloon even when the rate is not in the triple digits.

## Rent-a-Bank Lending by OppLoans

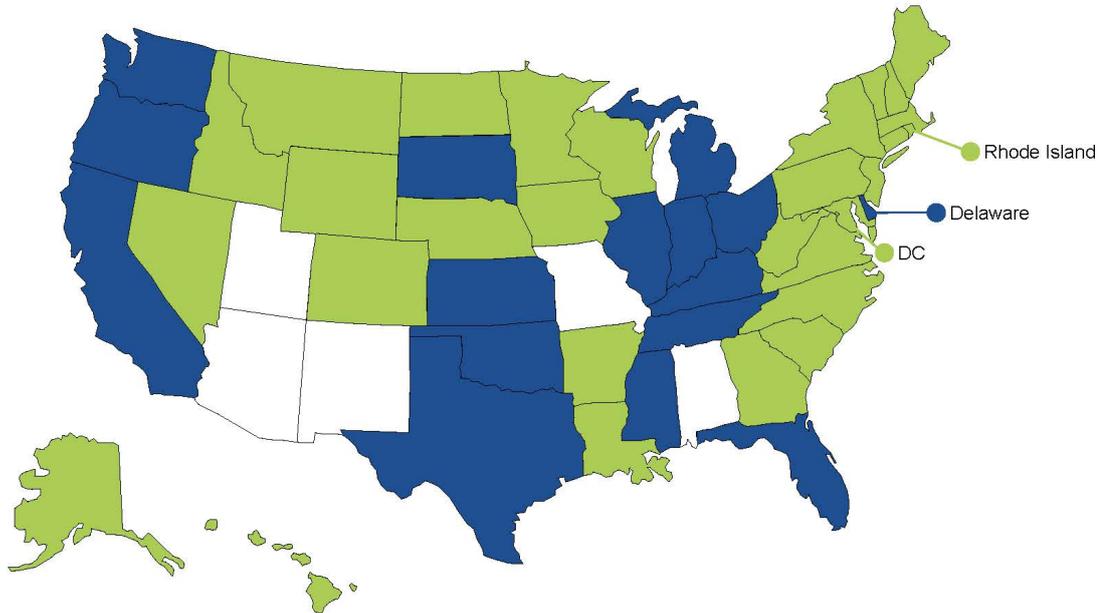


- OppLoans uses a rent-a-bank scheme in the state.
- Opploans lends directly in the state.
- Opploans does not lend in the state.

**OppLoans** uses FDIC-supervised **FinWise Bank** (Utah) and **First Electronic Bank**, a Utah industrial bank, to make installment loans of \$400 to \$4,000 at **160% APR** in **24 states** that do not allow that rate for some or all loans in that size range: Alaska, Arizona, California, Florida, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Virginia, Washington, and Wyoming. OppLoans also lends directly in 13 states.

- **Sample OppLoans/FinWise Bank loan:** A \$3,000 loan at 160% APR for 12 Months. 12 Payments of \$514.60 each for a total of **\$6,175.20**

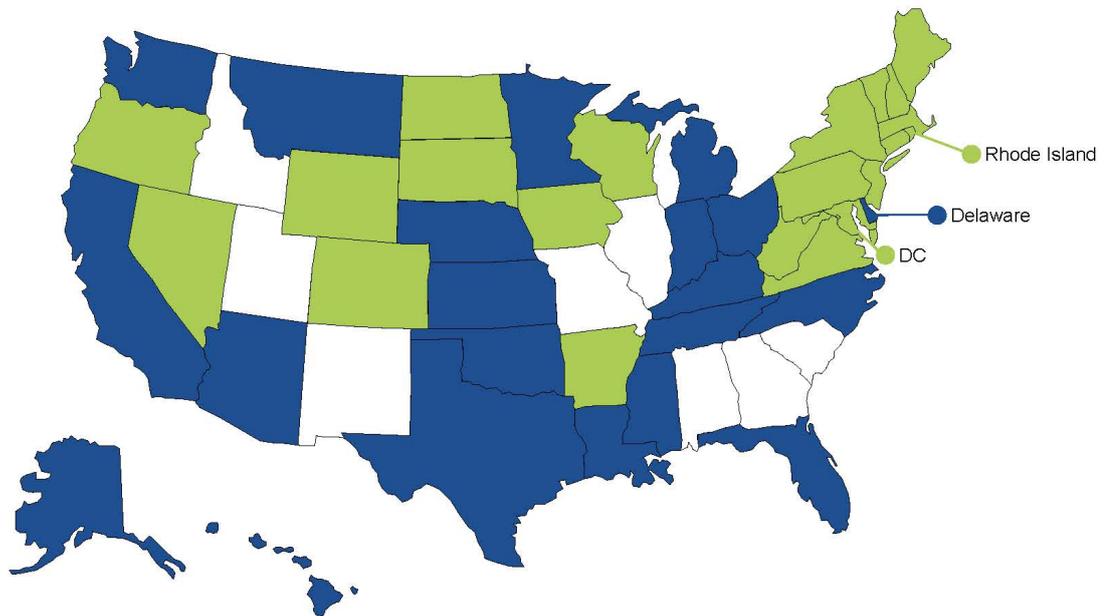
## Rent-a-Bank Lending by LoanMart



- LoanMart uses a rent-a-bank scheme to evade state rate caps.
- LoanMart lends directly in the state.
- LoanMart does not lend in the state.

Wheels Financial Group, LLC dba **LoanMart** (under the ChoiceCash brand) uses FDIC-supervised **Community Capital Bank** (Utah) to make auto-title loans in **DC and 16 states**, most of which restrict or disallow high-cost auto title lending: California, Delaware, Florida, Illinois, Indiana, Kansas, Kentucky, Michigan, Mississippi, Oklahoma, Ohio, Oregon, South Dakota, Tennessee, Texas, and Washington. A sample loan formerly on LoanMart's website was a 3-year, \$3,000 loan at **170% APR** with 36 monthly payments totaling \$15,431.04. LoanMart also makes auto-title loans directly in five states. LoanMart does not operate in other states.

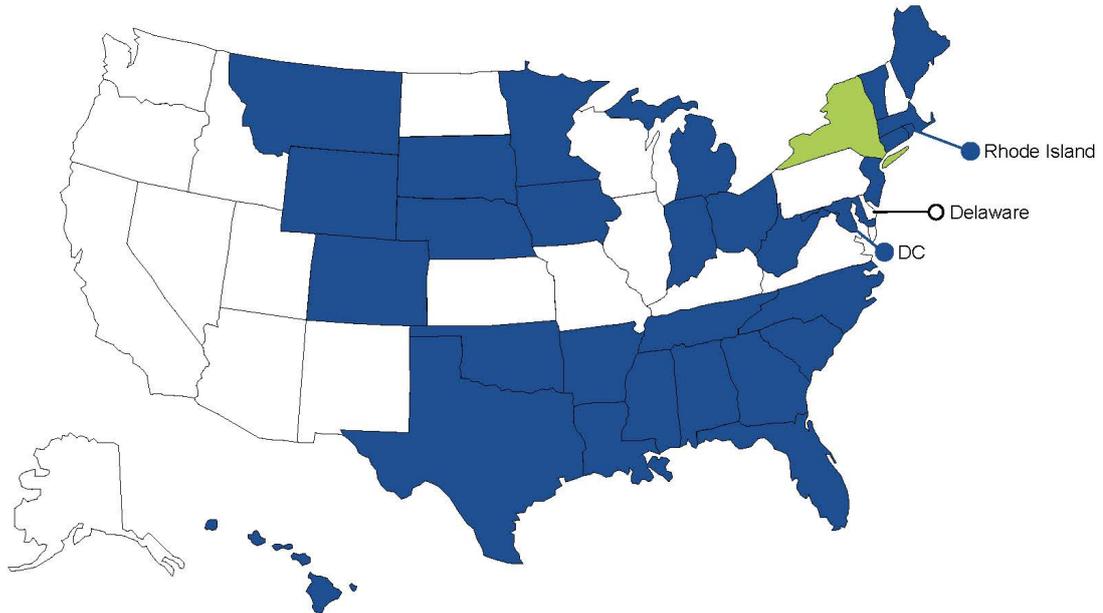
## Rent-a-Bank Lending by Applied Data Finance's Personify



- Personify uses a rent-a-bank scheme to evade state rate caps.
- Personify lends directly in the state.
- Personify does not lend in the state.

**Applied Data Finance**, doing business as **Personify Financial** uses **First Electronic Bank**, an FDIC-supervised industrial bank chartered in Utah (and owned by Fry's Electronics), to enable installment loans of \$500 to \$10,000 with **APRs as high as 179.99%** in 22 states that do not allow that rate for some or all loans in that size range: Alaska, Arizona, California, Delaware, Florida, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, and Washington. Personify also lends directly in eight other states.

## Rent-a-Bank Lending by EasyPay



- EasyPay uses a rent-a-bank scheme.
- EasyPay extends credit directly in the state.
- EasyPay does not extend credit in the state.

**EasyPay Finance** offers high-cost credit through **businesses across the country** that sell auto repairs, furniture, home appliances, pets, wheels, and tires, among other items. EasyPay’s website does not disclose its rates, but examples from consumers in some states include \$1,500 loans at **188.99% APR**. EasyPay extends credit through FDIC-supervised Transportation Alliance Bank dba **TAB Bank** (Utah) in **DC and 30 states** that may not allow that rate: Alabama, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Iowa, Indiana, Louisiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Mississippi, Montana, North Carolina, Nebraska, New Jersey, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, and Wyoming. EasyPay’s website states that it administers financing directly in other states, other than in New York, most likely under state lending or retail installment sales laws.

*Note: The map at the top of this page on How Many Rent-a-Bank Lenders Operate in Your State does not include states where EasyPay operates directly.*

## Other Consumer Rent-a-Bank Lenders

**CURO** launched a pilot program in 2019 in Delaware and South Carolina through its **Avio Credit** brand testing a new lending program using Stride Bank, a national bank, to make loans at **rates up to 130% APR**. Curo has **told investors** that the Stride Bank program “will help us expand geographically, online and in some states where we — where we don’t operate right now.”

CURO’s Avio Credit has also launched **VergeCredit**, which makes installment loans up to 179% APR. Verge Credit is currently in 10 states and is expanding.

**American First Finance** offers secured and unsecured **installment loans through FinWise Bank** for purchases at retailers including furniture, appliances, home improvements, pets, veterinarian services auto and mobile home repair, jewelry, body art. A **sample loan** is a \$5,000 loan with 104 weekly payments of \$154.92, including 145% interest and a \$250 origination fee, which is about 161% APR. The website does not disclose in what states AFF lends, but lawsuits and complaints indicate loans in states including North Carolina and Rhode Island.

## Small Business Rent-a-Bank Lending

**World Business Lenders** (WBL) uses a rent-a-bank scheme to make small business loans, often secured by the small business owner's home. WBL's website does not disclose where it lends directly and where it uses a rent-a-bank scheme. But **lawsuits** in Colorado, Connecticut, Florida, Georgia, Massachusetts, and New York have described rent-a-bank mortgages of \$20,000 to \$550,000, usually secured by the business owner's personal residence with **APRs of 75% to 139% or higher**. World Business Lenders currently uses OCC-supervised **Axos Bank** (previously known as Bank of Internet), a federal savings association and previously used FDIC-supervised **Bank of Lake Mills (Wisconsin)** to attempt to evade state rate caps. World Business Lenders has been profiled for its **predatory practices**.

**BFS Capital** also uses Axos Bank to fund its small business loans. A lawsuit in Texas claims that BFS charged 274% despite a legal rate in Texas of 18%.

### Related Resources

These resources and much more can be found on our **Rent-a-Bank Loans** webpage, and check out our **Take Action** page for what you can do to help stop rent-a-bank lending!

- **Issue Brief: FDIC/OCC Proposal Would Encourage Rent-a-Bank Predatory Lending**
- **Fact Sheet: Stop Payday Lenders Rent-a-Bank Schemes**
- **Report: Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap**

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## West Virginia to Adopt Used Car Donor Tax Credit Program, Incentivizing Donation of Reliable and Affordable Vehicles

FOR IMMEDIATE RELEASE: March 2, 2020

Good News Mountaineer Garage contact: Ron Wiles (goodnews.ron@gmail.com) or (304) 680-7140;

National Consumer Law Center contacts: Margot Saunders (msaunders@nclc.org), Stephen Rouzer (srouzer@nclc.org) or (202) 595-7847

This afternoon, the West Virginia state senate unanimously approved HB 4969, Creating a Used Car Donor Tax Credit Program to incentivize the donation and reduced-price sale of safe and reliable used vehicles to a program that provides low-cost financing for low-income West Virginia workers. The legislation was first introduced by Delegate Terri Sypolt (R- Preston) and Senator David Sypolt (R-District 14) and will now head to Governor Jim Justice, who is expected to sign the bill.

“Not having a car is a major barrier to employment, with at least two-thirds of the carless households in West Virginia also facing joblessness,” said Delegate Terri Sypolt. “With labor force participation decreasing year after year, it’s essential that the state provide solutions that will boost our state economy and put low-income West Virginians in the driver’s seat.”

The newly-approved legislation supports a comprehensive program being developed by Good News Mountaineer Garage and the National Consumer Law Center that will:

- Provide low interest rate financing for approved cars to eligible workers in the state;
- Subsidize both the interest rate charged for the financing and the cost of the cars;
- Train participants in critical financial literacy and car ownership skills.

The bill will substantially boost the success of this program by making reliable cars more affordable for participating workers. By providing a tax credit up to half of the car’s fair market value (up to \$2,000), the bill will encourage individuals to donate used vehicles of higher value to the program and incentivize auto dealers to reduce the purchase price of cars sold through the program. Only cars that are certified by the program to be in reliable and safe condition will trigger the tax credit for their owners. Thus a dealer could sell a \$7,000 car for \$3,000 (reducing the car price by \$4,000), and receive a tax credit for \$2,000.

“Low-income workers in West Virginia face significant difficulties finding reliable cars with reasonable financing terms. Without a clean credit history, low-income consumers face higher priced cars and higher interest rates,” said Ron Wiles, deputy director of the Good News Mountaineer Garage. “This bill will help put reliable car ownership in reach for many West Virginia workers.”

Labor force participation has declined in West Virginia over the last several years and car ownership is strongly correlated to employment: at least two-thirds of all carless households in the state have no employed people. Public transit does not fill the void, only reaching 33 of the state’s 55 counties and rarely reaching rural areas. This leaves carless households without meaningful transportation to get to work or medical appointments, to do basic shopping, and to participate in their community.

The state of West Virginia has a strong interest in helping workers access employment opportunities. The program will assist 150 workers each year. After five years, the program will have enabled 750 West Virginians to get to work, generating more than \$13.5 million in wages for these workers along with increased tax revenues for the state.

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The non-profit Good News Mountaineer Garage began in 1999 when a group got together to plan a project to help their fellow West Virginians get on the road to independence. The program has since helped over 3,209 West Virginia families meet their transportation needs.