

OVERTURN THE OCC'S "FAKE LENDER" PREDATORY LENDING RULE

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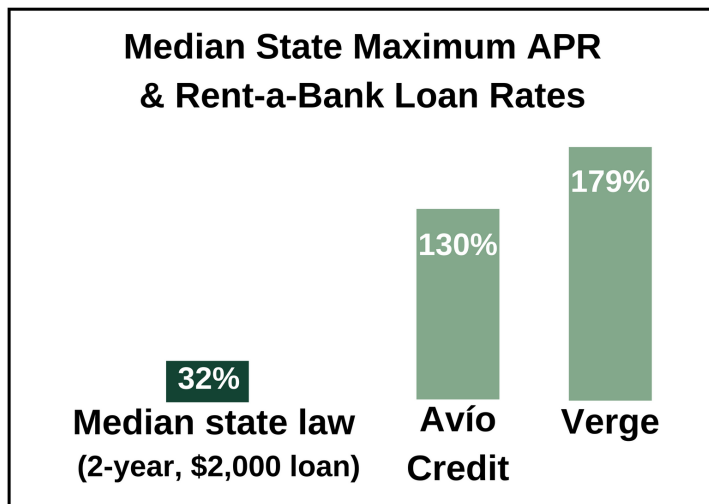


Since the American Revolution, states have limited interest rates to stop predatory lending. But predatory lenders are starting to launder their loans through banks to **evade state laws that make loans up to 179% APR illegal** (Bank loans are generally exempt from state rate caps). A rule by the regulator of the nation's largest banks (the Office of the Comptroller of the Currency or OCC) effective last December would protect these predatory lending "rent-a-bank" schemes and overturn centuries of case law allowing courts to look beyond ruses to the truth. **Congress must overturn the OCC fake lender rule to prevent state usury laws in at least 45 states from becoming a "dead letter."**

Interest rate caps are the simplest, most effective protection against predatory lending. While many states permit short-term payday loans, 45 states and DC limit rates on longer-term loans, depending on the size of the loan.

For example, **42 states and D.C. cap the rate on a \$2,000, 2-year loan at a median of 32%.**

The OCC rule allows **179% APR** loans to evade state rate caps that have broad, bipartisan voter support.



Voters, on a bipartisan basis, strongly support state rate caps. Recently, large, bipartisan majorities supported rate caps in Arizona, Colorado, Montana, Ohio, and South Dakota. **Last November, 83% of Nebraska voters supported a 36% interest rate cap.**

To evade these state rate caps, predatory lenders have tried to launder their loans through a bank, arguing that it is now a "bank loan" exempt from state rate caps. Payday lenders first tried using rent-a-bank schemes in the early 2000s. They put

the bank's name on the paperwork and ran the loan through a bank but then bought the loan back, 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.**

But rent-a-bank lending is back – threatening state authority in all 50 states.

Rent-a-bank schemes are now used by these payday and other predatory lenders to make longer-term loans at rates that exceed voter- and legislature-approved rate caps:

- **Installment Loans:** CURO's Verge Credit (**179% APR**) and Avío Credit (**130% APR**); Check N Go's Xact (**199%**); Elevate's Rise (**149% APR**); OppLoans (**160% APR**); Enova's NetCredit (**99% APR**); and Personify (**179% APR**)
- **Lines of Credit:** Elevate's Elastic (**up to 99% effective APR**)
- **Retail Point-of-Service Loans** (auto repairs, furniture, dental care, and more): EasyPay (**188% APR**) and American First Finance (**161% APR**)
- **Auto Title Loans:** LoanMart's ChoiceCash (**170% APR**)
- **Small Business Loans:** World Business Lenders (**139% APR loans secured by mortgages**) and BFS Capital (**274% APR**)

Veterans and others are harmed by these schemes, enabled by obscure, rogue banks. For example, OCC-regulated Stride Bank helps launder the payday lender CURO's Verge and Avío Credit loans. OCC-regulated Axos Bank (formerly BOFI Federal Bank) launders loans for World Business Lenders (WBL) and helps foreclose on the homes of small business owners. FDIC-regulated banks also engage in rent-a-bank lending, but the FDIC has not tried to overturn the true lender doctrine, leaving states and others the ability to **challenge these fake lender schemes in court**.

The rule allows lenders to evade rate caps if a bank is "named as the lender" as in this 2004 payday loan agreement:

debit entry or to pay the Check(s) or otherwise cover the loan payment on the due date, you promise to pay all sums you owe by mailing a money order to "County Bank," c/o Check 'n Go, loan servicer, 5155 Financial Way, Mason, Ohio 45040.

The OCC's **fake lender rule** protects these schemes by making them exempt from state interest rate caps if the bank is simply "named as the lender in the loan agreement" – that's it! Despite the fact that the predatory lender designs, markets, processes, and collects the loan,

while harvesting most of the proceeds, the predatory nonbank just needs to find one rogue bank willing to put its name on the paperwork so it can do an end-run around state rate caps. **The OCC's rule prevents courts from looking beyond the fine print to uncover who is running and profiting off the loan program and is the "true lender," as courts did for challenges to payday loan rent-a-bank schemes in the 2000s.**

The OCC rushed this rule through, finalizing it in **late October 2020**. The rule is being **challenged in court** by several state attorneys general. But litigation can move slowly and is uncertain. **So it's critical that Congress take swift action to overturn the rule through a congressional veto.**

To stop predatory lending across the nation, Congress must:

- Use the Congressional Review Act to overturn the OCC's fake lender rule.
- Pass the Veterans and Consumers Fair Credit Act to enact a national 36% interest rate cap that covers all lenders, including banks.

For more information, visit StopTheDebtTrap.org