

Repeal the OCC’s Fake Lender Predatory Lending Rule to Protect Small Businesses

April 2021

Since the American Revolution, states have limited interest rates to stop predatory lending. Some states only limit rates on consumer loans, but some have usury laws, including criminal usury laws, that protect small businesses. But predatory lenders are starting to launder their loans through banks to **evade state laws that make 73% to 268% APR small business loans illegal.**

A new rule by the Office of the Comptroller of the Currency (OCC), the regulator of the nation’s largest banks, protects these predatory lending “rent-a-bank” schemes. The [“fake lender” rule](#) allows predatory lenders to ignore state interest rate laws merely by putting a rogue, out-of-state bank’s name in the fine print. (Bank loans are generally exempt from state rate caps.) The rule overturns [centuries](#) of caselaw in virtually every state allowing courts to look beyond the fine print to the truth in order to prevent usury evasions.

The fake lender rule protects **lenders that not only destroy small businesses – they even take the owner’s home.** World Business Lenders (WBL) currently launders loans through OCC-supervised Axos Bank (fka BOFI Federal Bank) in states where WBL’s high interest rates are **prohibited**. (In other states, WBL lends directly.) Though a bank’s name is on the loan, borrowers deal only with WBL. Axos Bank also enables loans by another predatory small business lender, BFS Capital. Features of these rent-a-bank loans include:

- Rates of 73% to 268% APR on loans of tens and even hundreds of thousands of dollars, in violation of state usury law;
- Deception about the rate (i.e., quoting a 0.35% daily rate instead of 268% APR);
- Gigantic prepayment penalties;
- Shockingly little underwriting beyond ensuring security it can seize (i.e., the business owner’s home).

The OCC’s rule is being actively used to defend a \$67,000 loan at 268% APR (with a huge pre-payment penalty) that violates New York’s criminal usury cap. Axos denies that WBL is renting its charter, but [adds](#) “as recently made clear by the Office of the Comptroller of the Currency, even such arrangements are proper,” and even if the loan were immediately assigned to WBL, “the OCC’s final rule would permit the same interest rates and fees to be charged by WBL as by Axos Bank.”

Businesses in multiple states have been targeted by predatory rent-a-bank loans. Nearly a third of WBL’s real-estate secured [result in default](#), more than 10% result in foreclosure, and even more small businesses owners **lose not only their business but their home.**

Congress must overturn the OCC “fake lender” rule to protect small businesses and to prevent state usury laws in at least 45 states from becoming a [“dead letter.”](#)

Below are descriptions of several cases filed against World Business Lenders (WBL) that illustrate this predatory rent-a-bank business model.

Restaurant owner in New York facing \$67,000 in loans at about 268% APR with a 30% pre-payment penalty. Markisha and Carlos Swepson, the owner and chef of a southern-inspired restaurant, [fell victim](#) when they found themselves stuck in an unexpectedly long renovation process while needing income after having a baby. A loan broker connected them to WBL and they planned to repay the loan quickly once the restaurant was reopened. Axos Bank was listed as the lender. They [did not realize](#) that the .3575% daily rate quote to them amounted to 268% APR. The criminal usury rate in New York is 25%. They fell behind with the high payments and were trying to do a workout plan when the COVID crisis hit. In June 2020, as restaurants began to reopen, they reached out to WBL, which refused to work with them, and then used Axos Bank to file a foreclosure action against the property securing the loan, seeking an exorbitant pre-payment penalty of 30% of the loan. Axos is arguing that the [OCC rule permits](#) that rate and preempts state law challenges.

Massachusetts couple in Indian food distribution business lost home over \$175,000 loan at 92% APR. In [Kaur et al. v. World Business Lenders et al.](#), filed in Massachusetts in April 2019, a married couple was threatened with foreclosure after borrowing \$175,000 at 92% APR from WBL for their business, New England Distributors, secured by a mortgage on their house. The loan paperwork listed BOFI/Axos Bank as the lender, but the loan was presented by WBL, all the forms were WBL forms, and the application discussed WBL's role including ordering a valuation of the collateral. The mortgage was assigned from BOFI to WBL and that assignment by BOFI "was signed by World Business Lenders, LLC, as attorney-in-fact for BOFI Federal Bank." The court is considering whether the loan was "doomed to fail."

New York realtor facing foreclosure threats on \$90,000 loan at 138% APR. In [Adoni et al. v. World Business Lenders, LLC, Axos Bank and Circadian Funding](#), filed in New York in October 2019, Jacob Adoni has been threatened with threats to foreclose on his home after receiving a \$90,000 loan at 138% APR secured by his personal residence. Adoni was contacted by Circadian Funding with an offer of a personal loan that would be funded by WBL and Axos Bank. He was told that the loan documents would be provided to him at 12:00 pm and he must execute them by 6:00 pm or the offer would no longer be valid. Adoni was told by Circadian that the loan was meant to be a personal loan to him, but it was necessary for the loan documents to make reference to his business. The defendants "have inundated Mr. Adoni with multiple threats to foreclose on his home and on the mortgage."

Georgia engineering services owner threatened with foreclosure over \$55,000 loan at 88% APR. In [Quantum-Mac Int'l v. World Business Lenders, et al.](#), a Georgia small business owner was given a \$50,000 loan at 88% APR, despite Georgia's 60% usury cap. WBL prepared all of the documents with BOFI Federal Bank (known known as Axos Bank) listed as the lender, and then an officer of WBL used a power of attorney for the bank to assign the loans to WBL. WBL is seeking \$133,519 in interest and is threatening to foreclose on the owner's home.

Florida realty company challenging 100% APR loan. In [Koffel et al. v. World Business Lenders et al.](#), filed in Florida in June 2020, a realty company challenged a loan at rate of over 100%. WBL prepared all loan documents but only BOFI Federal Bank (Axos Bank) was named, though the borrowers never communicated with the bank. The complaint alleges that when WBL was "confronted with the fact that the loans were outrageous and criminally usurious,

WBL replied that was because Nevada does not have such laws and that WBL agreed they were using Bofl [Axos Bank] solely for the purpose as a ‘rent a bank.’”

General contractor in Florida deceived into 73% APR for \$400,000 loan. In [*Vincent Deramo Jr. et al. v. World Business Lenders, LLC*](#), filed in Florida in 2017, a general contractor and his wife allege that WBL contacted them, saying they were an agent for a bank, and offered a \$400,000 loan, secured by their home and later refinanced. Despite the promise of a 15% APR, they allege that WBL actually charged them 72-73% APR. The documents were prepared by WBL and were mailed to WBL and the plaintiffs had no contact with the bank. The mortgage was assigned from the bank to WBL through a signature of the vice president of WBL as power of attorney for the bank.

Medical supply business in New York facing 73% APR on \$28,000 loan. In [*B&S Medical Supply et al v. World Business Lenders et al.*](#), filed in New York in 2017, WBL solicited Boris Simon, the owner of B&S Medical Supply, for a \$28,000 business loan at 73% APR, provided by Liberty Bank, that was secured by Simon’s home. The business loan application contained both the business logo and contact information of WBL and Liberty. The loan was immediately assigned from Liberty to WBL. WBL corresponded with Simon, referring to itself as the “Lender” and saying that it would service the loan and have the right to collect payments.

Foreclosure on home in Connecticut over \$20,000 and \$30,000 loan at 121%, 400% APR. In [*Speer v. Danjon Capital et al.*](#), Elissa Speer of Connecticut alleged that she was facing a civil action in Nevada and a foreclosure of a residential property in Connecticut after taking out a \$30,000 loan alleged to be at 400% and a second loan of \$20,000, alleged to be at 121% APR. The loans were offered by Danjon Capital in collusion with WBL, but were purportedly on funds lent by Bank of Lake Mills (WBL’s partner before Axos Bank). After executing the first note and mortgage, Danjon refused to release the funds unless Speer executed a lease agreement for “restaurant equipment” despite the fact that Speer was never in the restaurant business and she alleged that the equipment referenced, including two backpack leaf blowers, had no practical restaurant use. The complaint alleges that the defendants disguised residential mortgage loans made to consumers primarily for personal, family, or household uses, as commercial loans in order to avoid Connecticut’s licensure and other laws.

Warehouse business in Colorado faced 120% APR on \$550,000 loan; OCC defended the rate despite Colorado’s 40% business interest cap. The loan was secured by a warehouse. After the warehouse owner ended up in bankruptcy, the debtor challenged the 120% rate as usurious. The OCC and FDIC filed an amicus brief [supporting](#) that rate because a bank’s name was on the paperwork and the loan was subsequently assigned to WBL.

Design studio in Texas caught in \$42,000 loan at 274% APR. Tammy Laurie Hamilton owned The Design Studio. According to a [lawsuit](#), she entered into a loan with BFS Capital, but the loan agreement named Axos Bank as the lender. The loan quoted a “factor rate” of 1.3475, which equated to a 274% APR, which the lawsuit alleged violated Texas’s 24% usury cap for commercial loans.