



June 30, 2022

Submitted online at FDIC.gov
The Honorable Martin Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
1776 F Street, NW Washington, DC 20006

Re: Community Reinvestment Act examination of Transportation Alliance Bank

Dear Mr. Gruenberg:

Accountable.US, Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, National Consumer Law Center (on behalf of its low income clients), Public Citizen, US PIRG and the Woodstock Institute submit these comments in connection with the Community Reinvestment Act (CRA) examination of **Transportation Alliance Bank (dba TAB Bank)**. TAB Bank serves as a rent-a-bank, nominally originating predatory loans at rates up to 189% APR for Duvera Billing Services, dba EasyPay Finance, to help EasyPay evade state interest rate laws. An analysis of complaints about EasyPay loans raise serious concerns about extensive consumer harm and potential violations of federal and state consumer protection statutes. Given the information presented, the undersigned request that FDIC downgrade TAB Bank on its Community Reinvestment Act Exam.

I. Introduction

The Community Reinvestment Act requires that banks meet the convenience and needs of the communities they serve. In assessing whether TAB Bank is appropriately serving its communities, the FDIC should consider not merely access to credit but also the quality of credit extended. Predatory credit at high interest rates that borrowers cannot afford to repay, credit designed to evade state interest rate

laws, credit that is the result of deceptive practices, and credit that leads to violations of debt collection, credit reporting, and other laws does not meet the convenience and needs of communities.

TAB Bank must be assessed based on the full scope of the credit it extends, including credit that it extends through partnerships with third parties. Under FDIC Guidance, banks are responsible for the risks arising from third-party relationships “to the same extent as if the activity were handled by the institution.”¹ Thus, TAB Bank’s CRA examination should consider the harm and potential legal violations inflicted through the third-party lending for which it is responsible.

The EasyPay website states that, in several states, loans are “made by Transportation Alliance Bank.”² Contracts in these states identify the bank as the lender and state that EasyPay is “the company hired by the bank to help originate and service the loan.” Thus, EasyPay is acting on the bank’s behalf, the bank is responsible for its conduct, and that conduct must be considered in assessing TAB Bank’s performance.

TAB Bank is helping EasyPay Finance make usurious loans **that it could not legally make directly**. Most states have interest rate limits to stop predatory lending. But predatory lenders like EasyPay Finance try to evade state laws by laundering their loans through banks, which are exempt from state rate caps. “Rent-a-bank” schemes are of questionable legality, and EasyPay should be viewed as the true lender and thus in violation of state law.

Only a few rogue banks are willing to front for predatory lenders. One of these predatory “rent-a-banks” is TAB Bank, which is chartered in Utah and supervised by the FDIC. TAB Bank helps EasyPay Finance charge up to 189% on loans offered through stores nationwide, including auto mechanics, furniture stores, and pet stores.³ In states that do not allow its predatory interest rates, EasyPay launders its loans through TAB Bank so that it can charge exorbitant rates it cannot legally charge directly. In other states, EasyPay extends credit directly in its own name, often as a retail installment sale.⁴

Hundreds of consumers have complained about EasyPay. Complaints raise serious concerns about extensive consumer harm and potential consumer protection law violations.

Consumers are often outraged when they discover that they are being charged high interest rates that are unlawful in their states and that make it nearly impossible to repay even relatively small debts. The following complaints have been reported to the CFPB:⁵

¹ Federal Deposit Insurance Corporation (2008, June 6), Guidance for Managing Third-Party Risk. FIL-44-2008, <https://www.fdic.gov/news/financial-institution-letters/2008/fil08044a.html>.

² <https://www.easypayfinance.com/> .

³ See

https://findastore.easypayfinance.com/web?p=ww0Jgh8mIXLc92ARiufLOA%3D%3D&_ga=2.40483042.175181937.1656456600-1006976108.1656274409.

⁴ See National Consumer Law Center (NCLC), High-Cost Rent-a-Bank Watch List, <https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html>. EasyPay generally extends credit directly in states that do not cap the rates on retail installment sales contracts (RISCs) and originates loans through TAB Bank in states that have rate caps for RISCs. See Appendix C, Summaries of State Retail Installment Sales Acts, NCLC, Consumer Credit Regulation (3d ed. 2020), updated at library.nclc.org.

⁵ All complaints listed in this document appear unedited, in the words of consumers, and as published in the CFPB database.

I was making payments on this account and began wondering why the balance wasn't going down. I reviewed the contract and realized the interest rate is 169 % which according to Maryland Law, is illegal. This interest rate needs to be reduced. No one could ever pay this off! (CFPB ID# 5331473)

The company name is XXXX with the website XXXX appears in my credit report as Duvera. The interest rate is 151.97 %. From the {\$1000.00} dollars I owed when I bought the dog in XX/XX/2018, I owe approximately {\$980.00} though I have paid always on time with an autopay plan every two weeks all this time for {\$65.00} each payment. This means that a total of XXXX has been paid until today. But I still owe about the same. I do not deserve this usury high interest. It is against the law in out state. Florida Usury Laws Under Florida statutes, usury is defined as the charging (whether paid or not) of interest that exceeds 18 percent on loans, lines of credit, advances of money or any obligation of amounts up to {\$500000.00}, and that exceeds 25 percent for transactions involving amounts totaling more than {\$500000.00}. Source: CFPB #3255685

...I have been retaliated upon for I believe paying the account off in full and avoiding the exorbitant and illegal interest (according to Virginia code max interest rate on consumer installment loans is 35 %)... Source: CFPB # 5368531

On XX/XX/XXXX, I went into XXXX XXXX in hopes of purchasing a cocker spaniel. I could not afford the price they were charging so they offered to finance the dog. I filed the paperwork for the loan using their in house lending agent. After filing the paperwork and reviewing it I found that I am being charged 151.97 % which is five times the legal limit of 30 % that can be charged in New Jersey as per Section 2C:21-19 - Wrongful credit practices and related offenses. Source: CFPB #3124661

The fact that TAB Bank is helping a predatory lender to evade the law and make predatory loans that cannot legally be offered directly should be enough on its own to downgrade the bank. But the problems with the TAB Bank/EasyPay loans are even more extensive.

An analysis of complaints about EasyPay loans shows a pervasive pattern of conduct that has caused severe consumer harm and has a high potential of violating laws governing unfair, deceptive, and abusive practices, debt collection, credit reporting, electronic fund transfers, and even know-your-customer laws.

The sample complaints included in this comment letter come from states where EasyPay lends through TAB Bank.⁶ Additional complaints about EasyPay's auto repair loans and pet store loans are analyzed in two reports attached to this comment.⁷ A full list of all complaints about EasyPay to the CFPB can be

⁶ According to EasyPay's website, loans are made by TAB Bank, "which determines qualifications for and terms of credit," in the following states: Alabama, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Vermont, West Virginia and Wyoming. See <https://www.easypayfinance.com/privacy-policy/> (last visited June 26, 2022).

⁷ See Stop the Debt Trap, Predatory Auto Repair Loans by TAB Bank and EasyPay Finance (May 2022), https://www.nclc.org/images/pdf/high_cost_small_loans/Rpt-TAB_Auto_Repair-5.11.22.pdf, attached as

downloaded from the CFPB's website.⁸ In addition, many other complaints about EasyPay loans can be found on the websites of the Better Business Bureau,⁹ Ripoff Report,¹⁰ Yelp,¹¹ WalletHub,¹² and other sources. Although some of the complaints come from states where EasyPay does not lend through TAB Bank, they illustrate the pattern of conduct that pervades all of EasyPay's operations, including those in partnership with TAB Bank.

II. Unfair, Deceptive or Abusive Practices

From a federal standpoint, the Dodd-Frank Act prohibits unfair, deceptive, and abusive practices¹³ and the Federal Trade Commission Act prohibits unfair and deceptive practices.¹⁴ Both statutes apply to TAB Bank and its agents.

Similarly, most states have statutes to protect their residents against unfair, deceptive, or unconscionable practices and some of those statutes also prohibit abusive practices.¹⁵ State UDAP laws and laws against unconscionability apply to state-chartered banks, especially banks like TAB Bank that do not have branches outside their home state.¹⁶

EasyPay offers a full interest rebate if loans are repaid in 90 days (along with a \$40 "processing fee")¹⁷ and consumer complaints reveal that store clerks push the "same as cash" payment plan and many consumers do not even realize that the credit bears interest or what the interest rate is. Consumer

Appendix A; Stop the Debt Trap, Predatory Puppy Loans by TAB Bank and EasyPay Finance (Feb. 2022), https://www.nclc.org/images/pdf/high_cost_small_loans/IB_Easypay_Puppy_Loans_Feb22.pdf, attached as Appendix B.

⁸ Complaints through June 28, 2022 can be downloaded at https://www.consumerfinance.gov/data-research/consumer-complaints/search/api/v1/?company=Duvera%20Billing%20Services%2C%20LLC&date_received_max=2022-06-28&date_received_min=2011-12-01&field=all&format=csv&no_aggs=true&size=303&sort=created_date_desc.

⁹ See <https://www.bbb.org/us/ca/carlsbad/profile/consumer-finance-companies/easypay-finance-1126-20004961> (269 complaints in last three years).

¹⁰ See https://www.ripoffreport.com/reports/specific_search/duvera.

¹¹ See <https://www.yelp.com/biz/easypay-finance-carlsbad-4?osq=duvera+billing> (89 reviews averaging 1 star out of 5).

¹² See <https://wallethub.com/profile/easypay-finance-13983228i>.

¹³ 12 U.S.C. § 5531.

¹⁴ 15 U.S.C. § 45(a)(1).

¹⁵ See generally NCLC, *Unfair and Deceptive Acts and Practices* (10th ed. 2021), updated at library.nclc.org.

¹⁶ While state-chartered banks are entitled to the same interest rate exportation rights as national banks, they do not have the same broad preemption rights with respect to other laws except when they are operating out of an out-of-state branch. The FDIC has explained that "the preemption provided by section [12 U.S.C. § 1831a(j)] only operates with respect to a branch in the host state of an out-of-state, state bank. By its terms section [12 U.S.C. § 1831a(j)(1)] ... would not apply if the out-of-state, state bank does not have a branch in the host state." Federal Deposit Ins. Corp., Proposed Rules, Interstate Banking; Federal Interest Rate Authority, 70 Fed. Reg. 60,019, 60,025 (Oct. 14, 2005). Moreover, even as to national banks, state UDAP laws are not generally preempted. See Office of the Comptroller of the Currency, *Exploring Special Purpose National Bank Charters for Fintech Companies* at 5 (Dec. 2016), <https://www.occ.gov/publications-and-resources/publications/banker-education/files/exploring-special-purpose-nat-bank-charters-fintech-companies.html>. ("the OCC has taken the position that state laws aimed at unfair or deceptive treatment of customers apply to national banks.").

¹⁷ See <https://www.easypayfinance.com/customers/>.

complaints about TAB Bank/Easy Pay/Duvera describe the following practices that might involve unfair, deceptive, abusive, or unconscionable practices:

- Making deceptive statements or misrepresentations regarding the terms of their agreements, including concealing the high interest rates or making other misrepresentations about the payment terms
- Making it difficult for consumers to exercise the interest-free option for loans repaid in 90 days, including by revoking the offer when payments are late or the correct amount is not repaid on time due to errors, misrepresentations or changes made by EasyPay
- False statements or misrepresentations on credit applications
- Making loans that consumers cannot reasonably be expected to repay in full on their terms, including by falsifying information on applications and through payments that go heavily to interest and take much longer to pay off than consumers expect¹⁸

Just a sampling of the problems that consumers describe include:

I signed up for a financing company to finance engine work done to my car. When i was signing up i was told that the have a 90 day pay off before they apply interest rates. I was also told that it would be 21 % after i signed up. I made 4 months of payments and ... i was informed that i have a 199 % interest rate which i never agreed on or signed up for. I was never informed or it was never documented that i would have that interest rate. Source: CFPB #2566311

I purchased a living room set.... I made a down payment of {\$460.00} on XX/XX/XXXX. Financing the remaining {\$1500.00} ... The agreement was {\$180.00} per month for 3 months only to pay a {\$40.00} fee if loan ({\$1500.00}) is paid off in it 's entirety. I made 2 payments ({\$180.00} each) ... I realized I was unable to pay the remaining balance of {\$1100.00} in it 's entirety within the 90 days. I go back to my contract to review terms and conditions to realize I 'm going to Incur an exuberant interest rate of 130 % on the remaining balance. I did contact the lending company to verify this rate being accurate as the representative confirmed it was and that it was ok for them to charge me this ridiculous interest rate. XXXX XXXX XXXX where I purchased the set from actually filled out information online (sight unseen) on my behalf only asking me to confirm certain basic information such as name address bank account info excreta. I would have never guessed I was being set up for usury, because I would have never signed up for a 130 % interest agreement. This was never brought to my attention quite naturally because they would n't have gotten the sale.... Source: # 2774318

Bottom line they do not own up to their mistakes they made the mistake and charged me twice in one day I asked them to correct it because it threw me in overdraft. They inform me that they will correct it but because there's a return there's a return fee the money's being returned I will no longer be allowed in the 90 day same as cash. This is their mistake not mit's not mine but yet I am being penalized is penalized because I'm not allowed in the 90 days same as cash that means

I can't pay it off without the humongous interest rates. This is not what I call customer service you don't make the customer suffer because you made an error. Source: Yelp, #191¹⁹

I took my car to a place to be repaired. I needed a transmission. I applied for credit to get the repairs done and when it was approved and the amount, it did not have the interest rate on the paper at the time. I had no idea what the interest fee would be until my car was repaired and ready to be picked up ... I will be paid back over {\$6000.00} by the end of the 24 months. My credit was not perfect but this amount is ridiculous, and they do not disclose the interest rate until after the car is completely repaired because they know SOME people need their transportation, and this allows repairs to be done in a way that seems easier for people with not so perfect credit. Source: CFPB #2926632

Duvera Billing Services is incorrectly reporting a debt in the amount of {\$1000.00}. Their records show an account was established on XX/XX/2015 for an Installment Sales Contract loan. Their records show that 13 % of payments were made as they automatically deducted the amounts from checking account after numerous attempts to change payment terms, frequency and amount. I was told I could change the billing frequency and due at any time and then was told nothing could be changed. Upon review of the application and credit report, I determined that the loan was granted because the store fabricated information in the app to get me to qualify for the Installment Sales Contract. They lied and said I was a manager and changed income amount from what I reported. I saw they misspelled my employer name and lied and said I was a manager when in fact a Host. The store advertises everyone approved because they are adding things to consumer apps to get them qualified for a Installment Sales Contract and are not properly explaining the repayment terms and are doing business unethically.... The collection could have been avoided if I was not lied to about being able to change payment arrangement due dates and frequency. Source: CFPB #3024895.

Our car had a problem with the brakes, and we didn't have the money to afford the payment in cash, and our credit card did not have enough credit limit to make the payment. The person in the place (XXXX XXXX XXXX XXXX) offered to contact a lender and immediately we got approved Follow the approval announcement, the guy asked me my phone number, and I did receive the notification of the approval, and I gave out my bank account information to set up the monthly payments, which we did understand. We thought that the interest rate couldn't be higher than 30 % or so. I did ask the guy if they will send the contract detail by mail, and he said that I should be receiving it in two or three days that never happened. Today, since they did not email any statements or detail contract, and we wanted to pay off I contact them, and I was very frustrate and surprise when they informed me that the amount was almost the same after we make several payments that in theory should cover the full amount plus the interest rate of 30 %. We never get the figure of " get money today and pay tomorrow." The terms and conditions were not clear, and we did not get notify in any way. They mentioned today that they sent an email with the contract, but we never got it, and they did not mail any monthly statements or even

¹⁹ <https://www.yelp.com/biz/easypay-finance-carlsbad-4?start=10>.

emails with the information of the payments. Just right now we knew that we have to pay 189.00 % in interest rate, when we expected to pay off the full amount. Source: CFPB #1465936

My wife and I used a company called XXXX XXXX to rebuild an engine on our vehicle. Because the amount was more than we could afford to pay up front, XXXX XXXX suggested we use their finance company called XXXX XXXX XXXX. I applied for the credit on XX/XX/2018 and was approved for the 90 day same as cash. Yesterday (XX/XX/2018) my first payment came due for XXXX XXXX to withdraw the agreed amount from my bank account. At XXXX I received a text stating they need my help regarding a returned payment. I called them back and they said because I gave them the wrong debit card number I no longer qualify for the 90 same as cash. The card number was correct except the very last number instead of a XXXX it should have been a XXXX. I did not fill out the information on the application it was done over the phone with the guy from XXXX XXXX. He told me he already had my correct debit card number because I gave it to him to pay for the application fee. I also have two receipts showing that he had the correct debit card number because he used it to charge a {\$500.00} deposit and to run the {\$90.00} application fee. He then emailed the contract for me to review and digitally sign, which I did. However I did not see the mistake when I reviewed it. I knew nothing about the input error and have tried to correct it. I have talked to three different people people at XXXX XXXX XXXX and they refuse to honor the 90 same as cash. Source: CFPB # 2882991

Took our loan of {\$2500.00} with biweekly payments of {\$130.00} to pay for transmission through ... who uses a company called easy pay to finance. We struggled to make these payments biweekly and were able to come up with the payoff amount given verbally of {\$2400.00} in ... We then starting receiving messages around ... that the interest had continued to accrue as we did not pay the entire amount off despite being quoted that. We attempted several times to settle but the amount wanted was too high. Now they are asking for over {\$1900.00} just in interest payments. I have sent three debt validation letters with no response, the last with the address given on my credit report, the letter was returned address not known, unable to forward. We never wanted to finance a transmission and could not afford to do anything but finance due to transportation needs. This company took advantage of us, we called and were given a payoff amount the money was immediately sent. Source: CFPB #3165765

I purchased a puppy from XXXX and of course I financed the puppy. XXX ran my credit and came back immediately saying I was financed. What they didn't tell me was that Easy Pay Finance charges 180% interest. The very next day Easy Pay Finance called me and said my payments were wrong. I originally was supposed to pay \$175 but they changed the payment to \$294. My puppy was supposed to cost \$2500 now cost almost \$7000 through Easy Pay. Do not now or ever use this company. They sent me a statement saying that I could use their website but I cannot get into the site. This company is a HUGE ripoff! Source: Ripoff Report #1363992 Easy Pay Finance is a rip-off save yourself the time and trouble of being cheated by this scandalous company. I exceeded the minimum payments and got all the way down to the last one then, Easy Pay decided to do away with my 0% interest promotional rate and charge me 95.98 % interest on a \$1,500 loan! I called and tried to reason with the representatives who were completely unhelpful, unprofessional, and seemed to take pleasure in exacting more than was necessary to pay my loan off.

They wanted a statement from my bank to reinstate the promotional offer. But, wanted it from a specific date and not the one that is provided on a monthly basis. Then, when I explained that I can't just get a statement from any arbitrary date they said they wanted to speak with a representative from the bank! So, now I look like a crazy person calling the bank to connect them with a representative from EasyPay so that we can reinstate the promotional offer which doesn't expire until 06/18/2020.

When I called the last representative with the teller from my branch the lady from Easy Pay told me, "We don't have to work with you! If you get the statement from the day I told you will reinstate the promotional offer if not too bad you're responsible for the balance."

I've dealt with scam artists like this before so I immediately filed a complaint with the Illinois Attorney General hopefully he will run them out of the state of Illinois so that they will not attempt to rip off other people. Source: Yelp (6/17/2020)

III. **Debt Collection and Credit Reporting**

Due to the questionable underwriting, high interest rates and deceptive practices detailed above, it appears that a significant number of borrowers of TAB Bank/EasyPay loans struggle to repay their loans. As a result, a large number of these borrowers are likely to be subject to debt collection activities and reporting of defaulted debt. In addition, many consumers have complained about efforts to collect or report debts that they say are not theirs. Complaints indicate that some of these activities may potentially violate laws governing debt collection, credit reporting, or know-your-customer obligations.

a. **Debt collection**

The Federal Debt Collection Practices Act (FDCPA) was enacted to protect consumers from unfair, abusive and deceptive practices by debt collectors. The FDCPA requires, among other things, that debt collectors refrain from harassing consumers, making inappropriate threats, or misrepresenting the alleged debts owed. Although the FDCPA does not apply to first-party creditors like TAB Bank or to servicers like Duvera, such conduct also generally constitutes a violation of federal and state UDAP laws that do apply to TAB Bank and Duvera.²⁰

Moreover, some state debt collection laws cover creditors and servicers,²¹ and debt collection laws are not generally preempted by federal banking regulations.²² Creditors can also be liable under state agency law for the actions of their collectors and servicers.²³ EasyPay claims to be a servicer for TAB Bank, and thus the bank is responsible for its conduct.

One-third of the Duvera complaints submitted to the CFPB (108 out of 302) were coded by the consumer as being about debt collection.

²⁰ See CFPB Bulletin 2013-07, Subject: Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (July 10, 2013), https://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf; NCLC, Unfair and Deceptive Acts and Practices § 6.10.

²¹ See NCLC, Fair Debt Collection § 16.2.3.3.1 (10th ed. 2022), updated at library.nclc.org.

²² See *id.* § 16.1.2.

²³ See *generally id.* § 11.4.4.5.

Here are a few examples that consumers relate about their debt collection experiences with Duvera Billing to the CFPB:

I went to a puppy shop bought a shih Tzu and was told everything was ok with the dog I advise after the vet came to my home from there shop the dog was acting funny and it wouldn't eat and was basically laying around not full of energy. So I took the dog to the vet they advise they would need to do a serious of test that would cost me over a {\$1000.00}. "I than went the animal care and control to have the puppy look at and they gave a shot of antibiotic to see if that would help I than paid for blood work for {\$280.00} the vet advise I should take o dog back I call them while there and they said you only have 2 days to return the dog. That is not a enough time to see if a puppy would get sick and die. After the puppy was found laying outside of the cage with light breathing I was force to take him to XXXX XXXX for cremations me and my XXXX old daughter was devastated from all this with a puppy that was apart our family. I than began getting phone calls from a gentleman about making payments I advise I never got a call back from this puppy place and now you want me to pay with a 30 % interest rate maybe more so I told him if he send something writing to accept {\$1000.00} I would pay it and be done never herd from again. One evening starting getting calls from this guy again when I told him in writing cease all calls he went to calling from different numbers saying I'm calling them which was false I want to make complaint and investigation on this company as well as the 3 Credit bureaus for not given me proof to validate this date with a contract and payments that were paid into this account and why are the credit bureaus still reporting late payment when the account is charge off..." I have been falsely threatened and accused by this debt collection company less threatened to tell coworkers or file legal action that could result in criminal prosecution. Source: CFPB #3153548

Duvera Financial has been reporting my account as past due monthly although this account is in the collection phase. I have complained previously about predatory lending practices such as excessive calls and being harassed about a debt that I did not agree to. The interest rate and continuous fees were not explained to me properly and I feel that this lender should not be in business. The bill of {\$1500.00} has ballooned to over {\$7000.00}. In this climate, those fees are ridiculous. In addition, the account is being reported as open and past due with is incorrect. Please remove this account from my credit report." Source: CFPB# 5075456I took a loan with ... on ... when I need necessary car repairs and had no other options. I signed an agreement and tried my best to make bi-weekly payments of {\$71.00} ... I sent an email to the customer service dept. explaining I was having difficulty making the payments and could they please lower the interest rate or work with me to make smaller payments so I could pay back the money faster. They refused and I have been bombarded with text messages, and calls ever since. "A recent text message offered me the chance to get my account back on track if I paid {\$10.00} and then set up a once a month payment. I paid {\$10.00} ... and then had set up a payment of {\$100.00} on ... and thought from what the email indicated they would be taking a {\$100.00} payment per month going forward. However, they took {\$71.00} on ... and tried to take the additional {\$100.00} on top of that. I have contacted my bank to stop any further EFT withdrawals from this company as they seem to do what they want and I can not afford to have unexpected withdrawals from my account. I feel like this company is taking advantage of people who have

no other means of getting assistance to pay for unexpected expenses and are just setting people up to fail with charging almost 100 % interest rate!!! Source: CFPB#3279950

b. Fair Credit Reporting Act

When creditors like TAB Bank (directly or through servicers) report information to credit bureaus, the Fair Credit Reporting Act (FCRA) imposes requirements on furnishers to provide accurate information, to respond to consumer disputes, to conduct reasonable investigations, and to promptly correct inaccurate information.²⁴

About a quarter (70 out of 302) of the Duvera complaints filed with the CFPB were coded by the consumer as being about credit reporting. Consumer complaints suggest that TAB Bank or its agents have:

- Reported loans that were paid off
- Reported loans that were fraudulently opened as a result of identity theft or failure to obtain valid electronic signatures
- Reported incorrect information
- Reported debts for items that were returned
- Failed to respond to consumer disputes, to conduct reasonable investigations, or to promptly correct inaccurate information

Consumers describe their experiences as follows:

I was a victim of identity theft while living in XXXX, Virginia. On or around this time, an account was opened in my name with a company called DUVERA. This original loan amount was {\$2400.00}, and has now climbed up to {\$7600.00}. I didn't notice this account until it came up on my credit report. After I was aware of this fraudulent account, I called the credit reporting agency and was told to contact the company at the number listed in the credit report, which I did. This was after I disputed the account with XXXX. They argued with me that the account was in fact mine and there was nothing I could do but pay for this account that I have no knowledge of. At this point, I have done everything that I know to do and i still have this on my credit report. Any assistance that you could give would be greatly appreciated. The account is not my account and I have never had any business with Duvera/ XXXX XXXX XXXX. I sent a letter regarding this debt collection attempt to this company indicating that this debt is not mine and that I am a victim of identity theft I have made attempts to get this situation resolved due to the fact that I have no knowledge of the debt owed. I have requested verification and validation of the debt owed including a legitimate signature and state issued ID validating that I authorized this account. I have attached a copy of my ID Theft report and letter. Source: CFPB #4150750

On XX/XX/XXXX, I obtained an installment loan from XXXX XXXX to fund my vehicle repair from XXXXXXXX XXXX XXXX XXXX ...The first payment processed on XX/XX/XXXX and subsequent payments were made via auto payment twice every month. While all payments were made and processed including extra and irregular payments, XXXX XXXX has reported to the credit bureau that the account is past due 30 days.The fact is that the account is actually paid in Full. While I

²⁴ See generally NCLC Fair Credit Reporting, Ch. 6 (9th ed. 2019), updated at library.nclc.org.

have attempted to resolve this in phone calls with XXXX XXXX, but have been unable to do so...
Source: CFPB ID# 5368546

I disputed the account and ask that they validate this account, and they fail to respond to the action. The law states they have 30 days to do so if not or over the 30 days this account must be removed from the credit file and in this case, they fail to respond to the matter. It has been over 30 days with no response, and I did not open or authorize this account, and I therefore request that it be closed immediately. By the federal law requirement this account must be removed because you do not have proof or any evidence to support this matter and failure to respond.
Source: CFPB #5067618

c. Know Your Customer and Electronic Signature Laws

A significant number of the CFPB complaints about debt collection or credit reporting problems with Duvera loans allege that the debts were the result of identity theft or otherwise belonged to someone else. Two-thirds of the debt collection complaints fall into those categories, as do about a third of those coded as credit reporting.

These problems stem may stem from fraud committed by the store employees or mechanics who completed loan applications on electronic tablets and either improperly signed for the consumer or induced the consumer into electronically signing without realizing that they were taking out a loan. Several complaints reference this type of pattern. To the extent that these third parties were helping to originate loans in the name of TAB Bank, they were agents of the bank and the bank is responsible for their conduct.

In addition to the debt collection and credit reporting laws discussed above, other laws are implicated by these complaints. Under the Bank Secrecy Act and related amendments and regulations, banks have an obligation to “know-your-customer” (KYC). KYC obligations apply to all accounts, including credit accounts.²⁵ Failure to adequately confirm the identity of the borrowers of loans originated in the name of the bank would be a KYC violation.

In addition, if the consumer did not complete a valid electronic signature for the loan agreement, there is no valid contract. In that case, debits against the consumer’s bank account arguably amount to conversion. Efforts to collect or report debts not owed by the consumer, or failure to adequately respond to disputes about the debts, could also be debt collection or credit reporting violations, as discussed above.

Here are some examples of the Duvera complaints that discuss loans that the consumer did not incur:

Numerous times I have contacted both the collection company and the credit reporting agencies that incorrectly report this account that is clearly identity theft. I have never chosen to do business with this company and when I called them to report the identity theft as most collection companies do, they laughed it off.

²⁵ Section 3261 of the USA PATRIOT Act and regulations thereunder require banks to have a Customer Identification Program (“CIP”) to verify the identity of each customer who opens an account. 31 C.F.R. § 1020.220(a)(2). “Account” includes “a credit account, or other extension of credit.” 31 C.F.R. § 1020.100(a)(1).

As required by the FCRA and identity theft laws This account should be reported as identity theft and removed immediately from all credit bureaus and less the company can miraculously provide definitive proof the count to belongs to me. Source: CFPB #2817654 (2018)

The account is not my account and I have never had any business with Duvera/ XXXX Pay XXXX. I sent a letter regarding this debt collection attempt to this company indicating that this debt is not mine and that I am a victim of identity theft I have made attempts to get this situation resolved due to the fact that I have no knowledge of the debt owed. I have requested verification and validation of the debt owed including a legitimate signature and state issued ID validating that I authorized this account. I have attached a copy of my ID Theft report and letter. Source: CFPB# 4577096

I was a victim of identity theft while living in XXXX, Virginia. On or around this time, an account was opened in my name with a company called DUVERA. This original loan amount was {\$2400.00}, and has now climbed up to {\$7600.00}. I didn't notice this account until it came up on my credit report. After I was aware of this fraudulent account, I called the credit reporting agency and was told to contact the company at the number listed in the credit report, which I did. This was after I disputed the account with XXXX. They argued with me that the account was in fact mine and there was nothing I could do but pay for this account that I have no knowledge of. At this point, I have done everything that I know to do and i still have this on my credit report. Any assistance that you could give would be greatly appreciated. Source: CFPB ID# 4150750

I contacted XXXX XXXX XXXX/Duvera Billing via phone and email to dispute a fraudulent account listed on my credit report. I provided their company my FTC Identity Theft Report and Police Report along with my dispute. Within 3 hours of sending the email I received what seems to be a generic/templated response stating they have completed their investigation and did not find sufficient evidence to classify the account as Identity theft. I called to speak with a manager to request the details of their investigation and was told the only way to communicate with the fraud team is via email and that based on the email response I received they are not willing to remove this fraudulent account despite me providing all of the required Identity theft documentation. Source: CFPB ID# 4115054

IV. Electronic Fund Transfer Act and NACHA rules

The Electronic Fund Transfer Act (EFTA) sets out authorization requirements for preauthorized electronic fund transfers (PEFTs). Among other requirements, consumers cannot be required to repay credit by PEFTs,²⁶ and PEFTs must be authorized by a writing signed or similarly authenticated by the consumer.²⁷ Authorization is valid if it is “readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.”²⁸ The consumer must be given a copy of the authorization.

²⁶ 15 U.S.C. § 1693k (1).

²⁷ Reg. E, 12 C.F.R. § 1005.10(b).

²⁸ Official Interpretation of 10(b)-6 to Reg. E.

NACHA rules, which govern ACH payments, contain similar requirements, and also give the consumer the right to revoke authorization, and require that notice of the right to revoke and the manner in which to do so must be part of the authorization.²⁹

A PEFT that is not properly authorized, or for which authorization has been revoked, is unauthorized.³⁰

Several of the complaints against Duvera indicate potential EFTA violations:³¹

...A recent text message offered me the chance to get my account back on track if I paid {\$10.00} and then set up a once a month payment. I paid {\$10.00} ... and then had set up a payment of {\$100.00} on ... and thought from what the email indicated they would be taking a {\$100.00} payment per month going forward. However, they took {\$71.00} on ... and tried to take the additional {\$100.00} on top of that. I have contacted my bank to stop any further EFT withdrawals from this company as they seem to do what they want and I can not afford to have unexpected withdrawals from my account...Source: CFPB#3279950

I went to ... to have the brakes on my ... replace. I was informed by the Shop Manager that all four must be replaced as well as the Rotor which will cost approximately {\$940.00}. I informed the Manager that I only was able to afford to have the front brakes did. They reply by inviting me to a 90-days interest-free cash payment. Or 12 month I agreed ... I didn't realize that I was being schemed until my alleged new brake pads and rotors were squeaking I couldn't understand why this was happening. I took the car back and showed the General Manager how they deliberately downloaded my miles, they did honor that and replace both the brakes pads and rotors. My primary complaint was this company that finances the balance of the bill, my agreement was that I will make my payments by money order only I do not have any of my creditors to automatic withdraw payment from my account... "... [They] illegally withdrew from my bank account {\$80.00} ... which at that time caused my account to be overdrawn. Im a seniors citizen living on a monthly budget wherefore, I can not afford my checking account to be overdrawn. According to their monthly statement, the customer has an option to enroll in automatic payments from either your checking account or debit/credit card. I refused to participate. After researching my rights and how I can begin legal action against this company for violating my privacy and attempting to steal my identity to gain access to my bank account. That when I also

²⁹ Reg. E, 12 C.F.R. §1005.10(b).

³⁰ See, e.g., *FTC v. Health Formulas, L.L.C.*, 2015 WL 2130504 (D. Nev. May 6, 2015) (finding FTC likely to prevail on claim that defendants violated EFTA by engaging in recurring EFTs without obtaining proper written authorization or providing a copy to consumer).

³¹ See also the following complaint from Yelp, which is from Nevada, a state where EasyPay does not appear to lend through TAB Bank, but it is consistent with other complaints:

"I have never had so many issues trying to simply pay off an account in my 40 years of life. I knew better than to go past 90 days because you're not getting me for 133% interest. I don't even see how that is even legal but I went in eyes open because I knew I'd pay it off long before then and didn't want to go in my account to make one large payment; however, after going through all this- I should have pulled the 3K out and paid that way. All these headaches incurred doing "business" with DUVERA were NOT worth it.

"Since using them, I've had unauthorized payments taken from my account, my "due date changed" for attempting to make a payoff, AND almost lost my rebate due to it, because they took the payment & found out the bank used, doesn't do business with them (hmmmm wonder why???) ... so the funds had to go back. AND on top of all of that I've spent well over 8 hours combined JUST in hold-time trying to resolve these and other account issues messing with these people...." <https://www.yelp.com/biz/easypay-finance-carlsbad-4> (Henderson, NV Feb. 2, 2022).

discovered I was being overcharged interest rate. I didnt realize they were in violation of the Illinois payday loans interest rates laws. I informed ... that I appreciate if they would return the funds right away which per my conversation ... I was informed to fax a copy of the bank transaction which I did. Today ... they inform me my funds won't be available for at least 6-10-days. I requested 48 hours. They went into my account electronically they can refund my account electronically." Source: CFPB #3042132

V. Military Lending Act

The Military Lending Act (MLA) limits the interest rate on loans to active duty servicemembers and their dependents to 36% APR, including fees. The MLA applies to banks like TAB Bank. The MLA exempts purchase money loans that are secured by the personal property purchased.³²

Active duty servicemembers have complained about the high rates on some Duvera loans.³³ It is not clear if TAB Bank was associated with these loans, as Duvera lends directly in some states, or the loans may have been made before the TAB Bank-Duvera partnership began. It is also not clear if some of these loans fall under the MLA exception for secured purchase money loans. A loan for a puppy, if secured by the puppy, might fall within that exception. A loan for an auto repair that cannot be returned should be covered by the MLA, as any "security" would be fictitious.

While we cannot determine based on the limited information we have whether TAB Bank or its agents have violated the MLA, the risk is high given the high interest rates, the origination practices involving store clerks and auto mechanic who are unlikely to be trained or supervised, and the use of agreements executed on electronic tablets that the consumer may not have themselves filled out or even signed. The FDIC should evaluate whether TAB Bank is complying with the MLA as part of the analysis of whether it is meeting the convenience and needs of the military community.

VI. Conclusion

The FDIC should downgrade TAB Bank's CRA rating in light of the extensive evidence of the abusive lending and potential violations of the law involving its lending program. High-cost credit that extracts wealth and burdens borrowers in debt does not meet credit needs in a responsible manner and must be penalized on CRA exams. For questions about these comments, please contact Nadine Chabrier at the Center for Responsible Lending at Nadine.Chabrier@responsiblelending.org or Lauren Saunders at the National Consumer Law Center at lsaunders@nclc.org.

Yours very truly,

Accountable.US

Americans for Financial Reform

Center for Responsible Lending

Consumer Action

³² 10 U.S.C. § 987(i)(6).

³³ See Stop the Debt Trap, Predatory Lenders TAB Bank and EasyPay Finance Harm Veterans and Military Servicemembers with Loans up to 189% (May 25, 2022), https://www.nclc.org/images/pdf/high_cost_small_loans/Rpt_TAB_Military.pdf.

Consumer Federation of America

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

Public Citizen

U.S. PIRG

Woodstock Institute