

October 24, 2019

Jelena McWilliams, Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Joseph M. Otting, Comptroller
Office of the Comptroller of the Currency
400 7th St. SW
Washington, DC 20219

Re: FDIC and OCC support for predatory small business lender

Dear Chairman McWilliams and Comptroller Otting,

The undersigned small business, consumer and civil-rights groups write to express our deep disappointment and concern regarding the decision of the FDIC and OCC to file an amicus brief supporting a predatory small business lender that used a bank as a fig leaf to enable a 120% APR, \$550,000 loan that the lender could not legally make directly. In taking this position, the FDIC and OCC risk sending a green light for predatory lending when the agencies should be doing the opposite: making clear that the banks you supervise cannot rent out their charters to help predatory lenders make usurious loans that create debt traps for consumers or small businesses.

World Business Lenders has a claim in a bankruptcy proceeding arising out of a \$550,000 loan to a Colorado business at 120% APR despite Colorado's 45% rate limit on non-consumer loans.¹ The loan was nominally originated by Bank of Lake Mills in Wisconsin but was assigned shortly thereafter to World Business Lenders, and we understand that World Business Lenders was involved with the borrower from the outset of the loan. The OCC and FDIC filed an amicus brief supporting World Business Lenders. The bank is no longer involved and is not a party to the case.

A 2014 Bloomberg Law article discussed World Business Lenders' business model of making 125% APR loans to struggling businesses, using many of the practices that led to the financial crisis:

From an office near New York's Times Square, people trained by a veteran of Jordan Belfort's boiler room call truckers, contractors and florists across the country pitching loans with annual interest rates as high as 125 percent, according to more than two dozen former employees and clients. When borrowers can't pay, Naidus's World Business Lenders LLC seizes their vehicles and assets, sometimes sending them into bankruptcy....

Some stock brokers have jumped to business loans after getting kicked out of the securities industry by regulators.... "Our industry is absolutely crazy," said Steven Delgado, who left World Business Lenders last year to become an independent loan broker. "There's lots of people who've been banned from brokerage.

¹ The loan was secured by a deed of trust on property later purchased by the debtor in the bankruptcy proceeding, Rent-Rite Superkegs. Rent-Rite has filed an adversary proceeding challenging the amount due under the deed of trust. RENT-RITE SUPERKEGS WEST, LTD. v. WORLD BUSINESS LENDERS, LLC, Adv. Pro. No. 18-1099 TBM (D. Colo.).

World Business Lenders charged most people 125 percent annualized interest rates on six-month loans regardless of their situation, five former employees said. The borrowers often put up cars, houses or even livestock worth at least twice as much as the loan. About one in five were going bust as of last year, two people with knowledge of the matter said”²

It sends a terrible signal for the FDIC and OCC to support a predatory lender that used a bank to enable a destructive 120% APR loan. Supporting this type of subterfuge will only encourage banks to get involved with predatory products that put not only consumers and small businesses, but also the bank at risk.

FDIC-supervised banks are getting increasingly bold in collaborating with payday lenders and other high-rate predatory lenders. In addition to the bank involved in World Business Lenders case:

- Finwise Bank of Utah is nominally originating 160% APR loans for Opploans and enabling loans up to 149% APR for Elevate’s Rise brand in about 20 states that do not allow such high-rate lending.
- Republic Bank & Trust of Kentucky is helping Elevate’s Elastic band charge up to 109% effective APR in states that do not allow high-rate lines of credit.

Currently, we are not aware of any national banks engaged in such arrangements. We appreciate the OCC’s recent statement that “The OCC views unfavorably an entity that partners with a bank with the sole goal of evading a lower interest rate established under the law of the entity’s licensing state(s).”³ That statement is consistent with the OCC’s longstanding position that interest rate preemption is not “a piece of disposable property that a bank may rent out to a third party that is not a national bank,” and that such arrangements not only “constitute an abuse of the national charter, but they are highly conducive to the creation of safety and soundness problems at the bank, which may not have the capacity to manage effectively a multistate loan origination operation that is in reality the business of the payday lender.”⁴

Unfortunately, there are reports that at least one national bank, MetaBank, is in negotiations to help a payday lender evade California’s new rate cap law. Curo, the owner of the payday lender Speedy Cash, recently noted that it is in talks with MetaBank to help it continue making the high-rate long-term payday loans that California has just banned.⁵

² Zeke Faux, Bloomberg, “Wall Street Finds New Subprime With 125% Business Loans” (May 22, 2014), <https://www.bloomberg.com/news/articles/2014-05-22/wall-street-finds-new-subprime-with-125-business-loans>.

³ OCC Bulletin 2018-14, Installment Lending (May 12, 2018), <https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-14.html> (“The OCC views unfavorably an entity that partners with a bank with the sole goal of evading a lower interest rate established under the law of the entity’s licensing state(s).”).

⁴ Speech by Comptroller of the Currency John D. Hawke, Jr. (Feb. 12, 2002), excerpts available at <https://www.occ.treas.gov/news-issuances/news-releases/2002/nr-occ-2002-10.html>.

⁵ See CURO Group Holdings Corp. earnings call at 7-8 (August 2, 2019) (“In terms of regulation at the state level in California, we expect a new law to pass in September, capping the APR on [\$2500] installment loans at about 38.5%, making our current installment products no longer viable... [Q:] And then what's the status with Meta?”)

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While the courts will work through the legal challenges to these schemes,⁶ we urge the FDIC and OCC to clamp down on the spreading use of banks by payday lenders and subprime business lenders to enable predatory, high-cost loans.

Yours very truly,

Allied Progress
Americans for Financial Reform Education Fund
Arizona PIRG Education Fund
Bell Policy Center
California Reinvestment Coalition
Center for Economic Integrity
Center for Responsible Lending
Community Legal Services, Inc. of Philadelphia
Consumer Action
Consumer Federation of America
Leadership Conference on Civil and Human Rights
Main Street Alliance
Mission Economic Development Agency (MEDA)
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Fair Housing Alliance
Small Business Majority
U.S. PIRG
Wildfire: Igniting Community Action to End Poverty in Arizona
Woodstock Institute

[A:] So we continue to talk to Meta and we continue to talk to other banks about partnership opportunities... I think we feel very good about being able to find products and partnerships that will serve our, the customer base in California that wants this longer, longer term, larger installment loan ...”).

⁶ While we do not, in this letter, discuss the legal theories at issue in the Rent-Rite case, we agree with Prof. Adam Levitin that older cases that were not about evasion of consumer protection laws do not support the claim that payday lenders may use banks to avoid state laws against predatory lending. Amicus Curiae Brief of Professor Adam J. Levitin in Support of Appellant, Rent-Rite Super Kegs West, Ltd. V. Word Business Lenders, LLC, No. 1:19-cv-01552-REB (D. Colo. Sept. 19, 2019), <https://www.creditslips.org/files/levitin-amicus-brief-rent-rite-super-kegs-west-ltd-v-world-business-lenders-llc.pdf>.