

Advocates Condemn Rent-a-Bank Rule that Encourages Predatory High-Cost Loans; Call on Congress to Pass Federal 36% Interest Rate Cap Limit

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Washington, D.C. - Consumer advocates slammed the Office of the Comptroller of the Currency (OCC) for its final rule issued today that encourages online non-bank lenders to launder their loans through banks so they can offer high-cost triple-digit loans in states where such loans are illegal. The Federal Deposit Insurance Corp. proposed a similar rule but has not finalized it. The rules were strongly opposed by a bipartisan group of attorneys general as well as by numerous community, consumer, civil rights, faith and small business organizations, and may face legal challenges. At least 45 states and the District of Columbia cap rates on many installment loans.

“The last thing we need during the COVID-19 crisis is more predatory lending or schemes to evade state interest rate caps. Interest rate limits are the simplest and most effective protection against predatory lending, and states have limited interest rates since the founding of our nation,” **said Lauren Saunders, associate director of the National Consumer Law Center.** “It’s deeply disturbing that the OCC is encouraging rent-a-bank schemes to evade state laws that prohibit triple-digit loans.”

“The FDIC and OCC have failed to crack down on banks that are enabling predatory lending aimed at families and small businesses. Now, OCC leadership is issuing a rule that could facilitate these schemes and make a dangerous environment for borrowers even worse,” **said Rebecca Borné, senior policy counsel at the Center for Responsible Lending.**

High-cost online lenders, including Oploans, Elevate’s Elastic and Rise, Enova’s NetCredit, LoanMart’s Choice Cash, EasyPay, and Personify Financial, launder their loans through banks such as Republic Bank & Trust and FinWise Bank in order to skirt state laws so they can pedal predatory triple-digit interest rate loans to consumers. Most of the rent-a-banks are FDIC-supervised. World Business Lenders uses OCC-supervised Axos Bank to make predatory loans to small businesses. NCLC’s website has a Predatory Rent-a-Bank Loan Watch List that describes high-cost rent-a-bank schemes and where they operate.

“The OCC is making it easier for lenders to ignore state protections put in place to prevent the harm caused by unaffordable high cost loans. Congress needs to stop these abuses by capping sky-high interest rates nationwide. Families are facing acute financial distress; the last thing they need is banks - or any lenders - taking advantage of the situation to snare them in a debt trap.” **said Linda Jun, senior policy counsel of Americans for Financial Reform Education Fund.**

Banks are generally exempt from state rate caps that cover non-bank payday, car-title, installment,

and other online lenders. For many years, high-cost lenders have attempted to take advantage of this exemption by entering into rent-a-bank schemes by which they launder their loans through banks and then purchase back the loans or receivables and continue to charge high rates that would be illegal for the non-bank lenders to charge directly. In the early 2000s, federal bank regulators shut down rent-a-bank arrangements.

The new rule will encourage a resumption of these schemes. The rule states that when a bank sells, assigns, or otherwise transfers a loan, interest permissible prior to the transfer continues to be permissible following the transfer. The OCC did state that the rule does not address whether the bank is the “true lender,” which may impact whether the interest rate was permissible even prior to the transfer; courts have held that if the non-bank lender has the predominant economic interest in the loan, then it is the true lender and is subject to state interest rate limits. Nonetheless, advocates warned that the rule does not list any exceptions and will encourage predatory lending.

“Predatory lenders will try to use the rule to bless their rent-a-bank schemes even though the OCC has no authority to preempt state interest rate laws that apply to non-bank lenders,” **Saunders added.**

Consumer and civil rights groups submitted comments opposing the proposal in January 2020.

Additional Resources

Brief: FDIC/OCC Proposal Would Encourage Rent-a-Bank Predatory Lending, December 2019

Fact Sheet: Stop Payday Lenders Rent-a-Bank Schemes, November 2019

Predatory Rent-a-Bank Loan Watch List by State

Op-Ed: Rent-a-bank schemes trample voters’ and states’ rights by Lauren Saunders, Feb. 8, 2018