Advocates Slam FDIC Proposed Rule for Industrial Loan Companies as Invitation for Predatory Lending

FOR IMMEDIATE RELEASE: July 2, 2020

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The bank regulator's plan, described as "recipe for disaster" and as a way to "fuel financial exclusion," provides an avenue for lenders to evade state laws that cap interest rates and to harm families suffering most in this economic downturn.

WASHINGTON, D.C. – The National Consumer Law Center, on behalf of its low income clients, joined with a broad coalition of advocacy organizations in two public comment letters warning the Federal Deposit Insurance Corporation (FDIC) that its proposed rule for chartering additional underregulated Industrial Loan Companies (ILCs) would expand predatory, high-interest lending. The plan would grant the predominantly online non-bank companies that are approved for an ILC with preemptory powers over state consumer protection laws, including interest rate caps. The FDIC is already turning a blind eye to rent-a-bank schemes where non-bank lenders piggyback off ILC and bank charters to issue loans of around 100% APR and higher.

The first, more detailed comment letter was submitted by the following civil rights and consumer organizations: National Consumer Law Center (on behalf of its low-income clients), Center for Responsible Lending (CRL), Americans for Financial Reform Education Fund, Consumer Action, Consumer Federation of America, The Leadership Conference on Civil and Human Rights, NAACP, National Association of Consumer Advocates, National Association for Latino Community Asset Builders, UnidosUS, and U.S. PIRG.

The second, short comment letter was submitted by several leading civil rights, community, consumer, and faith groups. Full text of the short letter is at bottom.

The longer, more detailed comment letter states in part:

"By permitting unprecedented blending of commercial and financial activities, and by making it easier than ever to make high-cost loans above states' interest rate limits, this proposal is a recipe for disaster. And no one will feel the misery worse than the millions of households, disproportionately households of color, who are targeted by the abusive lending the proposal will proliferate….

"Adding the new label 'fintech' to high-cost lending may attract investors and make it easier for banking regulators to justify their support, but it doesn't soften the blow high-cost loans land on struggling families.

"[T]he proposal wholly fails to consider the strong likelihood that it will cause a significant increase in predatory lending, either directly by companies that acquire ILCs or obtain ILC charters, or indirectly through increased rent-a-bank schemes with ILC banks."

The short comment letter states in part:

“These loans target financially distressed individuals, compound their debt burden, and leave them worse off. High-cost lenders also disproportionately prey on communities of color, stripping them of income, widening the racial wealth gap, and more deeply entrenching systemic racism. Rather than promote financial inclusion, as they claim, high-cost lenders fuel financial exclusion.”

Additional Background

In March, the FDIC approved two new ILC charters, the first in over a decade. In so doing, the FDIC failed to adequately address concerns the agency itself has long had about its authority to effectively supervise ILCs.

The FDIC’s proposed ILC rule is among the attacks on state usury limits by federal banking regulators in recent years. These attacks include a proposed Office of the Comptroller of the Currency (OCC) “special purpose charter” and also rules issued by the FDIC and OCC that make it easier for banks to essentially rent out their charter to non-banks that then try to use the charter’s power to preempt state rate caps.

Full text of the short letter:

July 1, 2020

The Honorable Jelena McWilliams

Chairman

Federal Deposit Insurance Corporation

1776 F Street, NW

Washington, DC 20006

Delivered electronically

Re: Comments on FDIC Notice of Proposed Rulemaking, Parent Companies of Industrial

Banks and Industrial Loan Companies

Dear Chairman McWilliams,

The undersigned civil rights, community, consumer, and faith organizations write to strongly oppose the FDIC’s proposed rule on industrial banks and industrial loan companies (together, “ILC”s), as well as the agency’s approval of new ILC charters, in light of the threats these charters pose to state interest rate limits and, consequently, to consumers–particularly to those most financially vulnerable.

Interest rate limits are the single most effective tool states have to protect their residents from predatory loans. Predatory loans include payday and car title loans that often carry annual interest rates as high as 300% or more. Predatory loans also include high-cost installment loans and lines of credit with rates approaching and well exceeding 100%. These loans target financially distressed individuals, compound their debt burden, and leave them worse off. High-cost lenders also disproportionately prey on communities of color, stripping them of income, widening the racial wealth gap, and more deeply entrenching systemic racism. Rather than promote financial inclusion, as they claim, high-cost lenders fuel financial exclusion.

These high interest rates do not just make loans dramatically more expensive than mainstream loans. They also fundamentally alter the repayment structure, as borrowers can make payments for many months or even years without seeing any significant reduction in principal. As a result, these high rates also warp market incentives, where lenders succeed even if borrowers eventually default in great numbers.

This proposal comes amidst a number of attacks on state usury limits by federal banking regulators in recent years, as state-regulated lenders increasingly look to federal regulators to help them avoid state laws. The ILC charter is no different. By making it easier for predominantly online non-bank lenders to obtain bank charters, while avoiding consolidated supervision of the Federal Reserve, the FDIC would pave the way for non-banks to benefit from federal preemption far more easily than they otherwise could. Indeed, a law firm representing payday lenders recently wrote of the ILC proposal: "The proposed rule, together with the FDIC's recent approvals of deposit insurance applications for [NelNet and Square], suggest the ILC charter as a viable alternative to the OCC's fintech charter, which has been stalled by litigation."

Several traditional FDIC-supervised banks are already facilitating evasion of state usury limits by non-banks through rent-a-bank schemes that the FDIC has not addressed. The loans these schemes peddle are among the most irresponsible loans on the market. Republic Bank & Trust (of Kentucky) and FinWise Bank (of Utah) are enabling high-cost lenders Elevate (100% APR), OppLoans (up to 160% APR), and/or Enova (up to 99.99% APR) to evade state rate caps in over half the states. Capital Community Bank (of Utah) is helping car title lender LoanMart evade state law in a number of states. LoanMart's loans range from 60-222% interest; a typical loan is $2,500, 18-month loan at 90%, totaling $2,136 in interest. Transportation Alliance Bank, dba TAB Bank (of Utah) is helping EasyPay Finance make predatory loans for furniture, appliances, pets, auto repairs and other products, including a $1,500 loan at a rate of 188.99%. And Bank of Lake Mills (of Wisconsin) has enabled predatory small business loans, including a 120% APR $550,000 small business loan and a 74% APR loan secured by a second mortgage.

A disproportionate number of ILCs are also engaged in rent-a-bank arrangements; these are all chartered in Utah. First Electronic Bank is helping Personify Financial make loans up to 179.99% in 22 states. WebBank is involved in litigation alleging violation of Colorado's state usury limit through a rent-a-bank arrangement. And Celtic Bank is helping OnDeck Capital and Kabbage make small business loans at up to 99% APR.

Experience has demonstrated that parents of ILCs pose excessive risks that the FDIC is unable to constrain. A number of ILC owners failed or nearly failed during the 2008 financial crisis, including predatory mortgage lender Fremont and predatory credit card issuer Advanta. The FDIC's proposed plan, which claims to largely formalize the existing practices that have already proved inadequate, will not compensate for its lack of consolidated supervisory authority. The FDIC proposal also fails to give adequate consideration to the Community Reinvestment Act implications of an expansion of ILC charters, including convenience and needs, fair lending, and consumer protection.

We wholly reject any notion that approval of additional ILC charters may enable lenders to meet the credit needs of the financially vulnerable. To the contrary, they would make the financially vulnerable more so by facilitating the spread of predatory lending and undermining states' ability to stop it.

We appreciate your consideration of our concerns.

Yours truly,

Americans for Financial Reform Education Fund, National

Arkansans Against Abusive Payday Lending, Arkansas

Arkansas Community Organizations, Arkansas

California Reinvestment Coalition, California

Center for Economic Integrity, Arizona

Center for Responsible Lending, National

Consumer Action, National

Demos, National

Indiana Institute for Working Families, Indiana

Jacksonville Area Legal Aid, Inc., Florida

The Leadership Conference on Civil and Human Rights, National

Maryland Consumer Rights Coalition, Maryland

Missouri Faith Voices, Missouri

National Association of Consumer Advocates, National

National Association of Consumer Advocates (NACACO), Colorado

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

New Jersey Citizen Action, New Jersey

Public Good Law Center, National

Texas Appleseed, Texas

THE ONE LESS FOUNDATION, Pennsylvania and Colorado

Tzedek DC, District of Columbia

Virginia Citizens Consumer Council, Virginia

Virginia Organizing, Virginia

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