Civil Rights and Consumer Groups File Amicus Brief in Support of States’ Challenge to OCC Rule that Enables Predatory Lending

FOR IMMEDIATE RELEASE

December 22, 2020

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Advocates argue that the OCC letter issued late Friday will not save the OCC rule that facilitates usurious loans with interest rates that are higher than what state laws allow

WASHINGTON, D.C. – Several civil rights and consumer groups filed an amicus brief in support of the attorneys general of California, Illinois, and New York in their case against a rule from the Office of the Comptroller of the Currency (OCC) that encourages predatory lending through “rent-a-bank” schemes. The OCC’s non-bank interest rate rule facilitates non-bank lenders’ efforts to form superficial partnerships with banks in order to issue loans with interest rates that are higher than what state laws allow non-banks to charge. A link to the full amicus brief is here. Advocates also argued that an interpretive letter issued by the OCC late on Friday will not save the OCC’s rule from the states’ challenge.

The amicus brief, in part, states:

“[T]he primary impact of this rule will be to protect-high-cost, non-bank lenders that are increasingly and brazenly evading state usury laws....

“The Rule improperly regulates the interest charged by non-bank lenders, and thus it is outside the OCC’s authority over bank interest rates....

“Today, the rent-a-bank scheme is making a comeback. Primarily through installment loans, lenders are charging up to 274% APR in states that do not permit those rates....

“High-cost lending is a debt trap by design, exploiting the financially distressed, and leaving them unable to pay other bills and facing high checking account fees, closed bank accounts, and bankruptcy. These toxic products inflict turmoil pervading every aspect of a person’s life.

“[I]n 2010, Congress slashed the OCC’s power to preempt state laws as applied to non-bank entities
by overturning the OCC’s extension of preemption to non-bank subsidiaries and affiliates and imposing restrictions on the OCC’s general preemption powers. The OCC’s actions had contributed substantially to the predatory lending that led to the foreclosure crisis, and ultimately to the Great Recession, including the draining of a trillion dollars in wealth from communities of color.... [T]he OCC, in promulgating the Rule,... ignor[ed] the congressional mandate that the OCC may only preempt state law upon finding significant interference with banks.”

The OCC Interpretive Letter

After the brief was filed, late on Friday, December 18, the OCC issued an Interpretive Rule claiming that Congress’s 2010 preemption limits apply only to rules where the OCC concludes that a state consumer financial law is preempted. The OCC’s non-bank interest rate rule is directly aimed at preempting state interest rate laws, but the OCC did not directly discuss the rule’s preemption effect when it issued the rule.

Additional Background

Banks are generally exempt from state rate caps that govern non-bank payday, car-title, installment, and other online lenders. For many years, high-cost lenders have attempted to evade state law by crafting 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 on loans they originate. In the early 2000s, federal bank regulators shut down rent-a-bank arrangements with storefront payday lenders. But in the last few years, high-cost online installment lenders have begun using rent-a-bank schemes.

The OCC rule encourages and attempts to protect these schemes by preempting state usury laws even when the interest is charged by a non-bank entity. The rule states that when a bank sells, assigns, or otherwise transfers a loan to a non-bank, interest permissible prior to the transfer continues to be permissible following the transfer — in other words, the non-bank purchaser of the loan can ignore state interest rate laws.

The OCC followed up this rule with another separate, “true lender” rule finalized October 30 that also facilitates rent-a-bank schemes. The OCC said that the true lender rule “operates together” with the non-bank interest rate rule. This second rule guts the long-standing “true lender” doctrine that states and courts apply to shut down rent-a-bank schemes and says the bank is always the true lender so long as its name is on the paperwork.

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About the Center for Responsible Lending

The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices.

About the National Consumer Law Center

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

About the East Bay Community Law Center
The East Bay Community Law Center is the largest provider of direct legal services in Alameda County, California and an education clinic of Berkeley Law School focused on advancing systemic solutions to racial inequities.

About the National Association for Latino Community Asset Builders (NALCAB)

NALCAB is the hub of a national network of more than 120 mission-driven organizations in 40 states, DC and Puerto Rico that serve ethnically diverse Latino communities across the US Members of the NALCAB Network invest in their communities by building affordable housing, addressing gentrification, supporting small business growth and providing financial counseling on issues such as credit building and home ownership. Our mission is to strengthen the economy by advancing economic mobility in Latino communities. The NALCAB Network serves hundreds of thousands of low- and moderate-income people, the vast majority of whom are immigrants or the children of immigrants.

About National CAPACD

The National Coalition for Asian Pacific American Community Development (National CAPACD – pronounced “capacity) is a coalition of more than 100 local organizations that advocate for and organize in low-income AAPI communities to further the economic and social empowerment of low income AAPIs and equitable development of AAPI neighborhoods. The organization strengthens and mobilizes its members to build power nationally and further a vision of economic and social justice for all.