Consumer & Civil Rights Advocates to OCC: Your Proposed “True Lender” Rule Would Help Fraudulent, Predatory Lenders Evade State Interest Rate Laws that Protect Families

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The timing of the OCC’s embrace of predatory lenders could not be worse

We are in the midst of an unprecedented health crisis and a severe economic crisis, with both crises impacting communities of color more heavily than white communities

WASHINGTON, D.C. – A proposal by the regulator of the nation’s largest banks would allow predatory lenders to do an end-run around state interest rate caps, exposing people to high-cost loans with minimal consumer protections, according to a comment letter submitted today to the Office of the Comptroller of the Currency (OCC) by 13 national consumer and civil rights groups. Most of these groups also joined a shorter comment letter submitted today by more than 100 community based organizations across the country.

The Center for Responsible Lending, National Consumer Law Center (on behalf of its low income clients), 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, National Coalition for Asian Pacific American Community Development (National CAPACD), Public Citizen, UnidosUS, and U.S. PIRG strongly oppose the OCC’s “true lender” rule.

The proposed rule would facilitate fraudulent predatory “rent-a-bank” schemes where a non-bank lender launders a loan through a bank (which is not subject to state rate caps) in order to charge interest rates beyond what state law allows.

The OCC’s proposal provides that a bank “makes” the loan and thus is the lender — so that state interest rate laws do not apply — so long as the bank’s name is on the loan agreement or the bank funds the loan. This rule would prohibit courts from looking behind the fine print form to the truth about which party is running the loan program and is the “true lender.” The head of the agency has said that he intends for this rule to shelter rent-a-bank arrangements from litigation. Just days before the speech, the District of Columbia (D.C.) attorney general sued a high-rate rent-a-bank lender, Elevate, for violating state rate caps; and California just launched an investigation into

LoanMart, another rent-a-bank lender. Currently, 45 states and D.C. have interest rate caps on at least some installment loans to protect residents from high-cost predatory lending.

The groups urged the OCC to abandon its proposal in its comment letter to the OCC:

“The proposal would eliminate state interest rate limits for nonbank predatory lenders in every state as long as a bank’s name is in the fine print – nothing more – taking us back to the days of the early 2000s when payday lenders used rent-a-bank schemes to evade state laws. States would lose the power they have had since the time of the American Revolution to limit interest rates to prevent predatory lending. …

“The OCC is asking us to trust that it will not allow predatory lending. But when the OCC is going out of its way to support the right of a predatory small business lender to charge 120% APR, and is doing nothing to stop a payday lender from using an OCC-regulated bank to launder 179% APR installment loans, a naïve trust is no substitute for state interest rate limits. …

“The timing of the OCC’s embrace of predatory lenders could not be worse. We are in the midst of an unprecedented health crisis and a severe economic crisis …. We are, at the same time, at a pivotal moment in our nation’s reckoning with its history of structural racism…. [I]t is difficult to imagine a more inappropriate time to disrupt longstanding safeguards in place since the founding of this country that have played a fundamental role in protecting consumers from predatory financial practices.”