

OCC Proposal Would Turn State Interest Rate Limits Into a “Dead Letter,” Causing Explosion of Rent-a-Bank Payday Lending that Will Devastate Struggling Families

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Washington, D.C. – Today, the Office of the Comptroller of the Currency (OCC) issued a proposed rule that overturns the “true lender” rule that courts have used since the early 1800s to prevent evasions of state usury laws. The deadline to submit comments on the OCC’s proposal is September 3, 2020.

The following statement is by National Consumer Law Center Associate Director Lauren Saunders.

“The OCC’s ‘true lender’ proposal would turn state usury laws into a ‘dead letter,’ in the words of the U.S. Supreme Court, and eviscerate power that states have had since the time of the American Revolution to protect people from high interest rates and predatory lending. At the time of the American Revolution, every American state had interest rate limits, and today at least 45 states and the District of Columbia have interest rate caps on installment loans.

“Yet under the proposal, a payday lender or other nonbank lender could ignore state interest rate limits as long as **either** a bank ‘[i]s named as the lender in the loan agreement,’ **or** the bank ‘[f]unds the loan’ — that is, the payday lender launders the loan through the bank. This proposal would allow payday lenders to resume the rent-a-bank schemes that were shut down by bank regulators in the mid-2000s, and would embolden today’s high-cost predatory rent-a-bank lending by online installment lenders.

“The proposed rule would purport to overturn the ‘true lender’ doctrine, which allows courts to prevent evasions of usury laws by looking beyond the technical form or fine print of a loan transaction to examine which party has the predominant economic interest in the loan. The true lender doctrine has long been used to prevent payday lenders and other high-cost lenders from laundering their loans through banks, which are not subject to state interest rate caps.

“Many courts used the true lender doctrine in the early 2000s to stop payday lenders from using banks to get around state interest rate limits. And in 2014, a West Virginia court found that CashCall had to obey West Virginia’s usury caps and could not charge 96% APR because the purpose of the arrangement with a bank ‘was to allow CashCall to hide behind’ the bank.

“Just last month, the District of Columbia Attorney General used the true lender doctrine to challenge a rent-a-bank scheme by Elevate, which was charging from 99% to 251% APR despite DC’s 6% to 24% interest rate caps

“The OCC has no authority to take away the right of courts to look beyond the fine print to prevent evasions of state usury laws. The true lender doctrine is part of the longstanding anti-evasion

principle that courts have used to enforce usury laws. As the Supreme Court said in one case, *Scott v. Lloyd*, in 1835:

‘The ingenuity of lenders has devised many contrivances by which, under forms sanctioned by law, the [usury] statute may be evaded....[I]f giving this form to the contract will afford a cover which conceals it from judicial investigation, the [usury] statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form, and examining into the real nature of the transaction.’

“The OCC’s proposed rule would prevent courts from examining the real nature of a predatory rent-a-bank scheme, help predatory lenders conceal their schemes from judicial review, and turn state usury laws into the ‘dead letter’ that the Supreme Court predicted in 1835.

“The OCC’s trumped-up excuses for this rule do not hold water. The true lender doctrine does not threaten legitimate bank activities but it *does* prevent predatory lenders from hiding behind banks. The OCC’s overreach is breathtaking in its audacity and it will not stand.

“In 2002, former OCC Comptroller Hawke shut down rent-a-bank schemes that payday lenders were using, declaring that bank privileges ‘cannot be treated as a piece of disposable property that a bank may rent out to a third party that is not a national bank.’ Today the OCC, instead of preventing banks from shielding payday lenders, is attempting to issue a rule that could allow payday lenders to ignore state interest rate limits in all 50 states. But the OCC has no authority to take away courts’ power to enforce state interest rate laws, and this proposal will not stand.

“It is shocking that in the midst of the coronavirus pandemic with unemployment at a level not seen since the Great Depression that the OCC is pushing hard and fast on a proposal that will embolden predatory lenders while trapping many struggling families into long-term debt.”

More information

Predatory Rent-a-Bank Loan Watch List by State

Advocates Praise Rent-a-Bank Colorado Court Ruling Upholding State Interest Rate Caps, June 10, 2020

Advocates Praise D.C. Attorney General Suit Against Predatory High-Cost Rent-a-Bank Lender, June 5, 2020

State Rate Caps for \$500 and \$2,000 Loans, February 2020, updated March 2021

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

Testimony of Lauren Saunders before the U.S. House Financial Services Committee on Rent-a-Bank Schemes and New Debt Traps, Feb. 5, 2020

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