New Report: A 50-State Review Finds Many States Lacking Hospital Financial Assistance Programs

FOR IMMEDIATE RELEASE: January 14, 2019

National Consumer Law Center contacts: Jan Kruse (jkruse@nclc.org) or Andrea Bopp Stark (astark@nclc.org), (617) 542-8010

Download the report, including appendices summarizing 50 states and Washington, D.C.'s financial assistance plans.

The National Consumer Law Center Provides a Blueprint for States to Adopt

Boston – With more than 27 million Americans lacking health insurance and almost 50% of nonelderly adults with inadequate insurance that includes high deductibles and significant out-of-pocket costs, an increasing number of families are burdened with medical debt. A new 50-state review by the National Consumer Law Center examines hospital financial assistance plans for each state and the District of Columbia, and looks at the level of financial assistance mandated, or not, in each jurisdiction.

"Medical debt burdens tens of millions of consumers, with low-income families hit the hardest," **said author Andrea Bopp Stark, a staff attorney at the National Consumer Law Center**. "At a minimum, states should mandate that all hospitals create a comprehensive financial assistance policy addressing free and discount care, and include **c**lear minimum eligibility criteria for both uninsured and underinsured patients as detailed in NCLC's Model Medical Debt Protection Act."

An Ounce of Prevention: A Review of Hospital Financial Assistance Policies in the United notes:

- 20% of uninsured adults went without needed medical care in 2018 because of the cost (*Kaiser Health News*)
- 59% of people contacted by a debt collector said it was over a medical debt (Consumer Financial Protection Bureau or CFPB)
- 20% of Americans have at least one medical debt collection item on their credit reports (CFPB)
- 66% of all bankruptcies were tied to the cost of medical care or time lost from work due to an illness or injury (*American Journal of Public Health*)
- Demographics of those likely to lack health insurance: low income working adults (58%), young adults (44%), and Latinx adults (35%), per The Commonwealth Fund.

The Affordable Care Act requires certain nonprofit hospitals with 501(c)(3) status to provide community benefits, including financial assistance for low-income patients. Requirements include establishing a written Financial Assistance Policy (FAP) and a written Emergency Medical Care Policy. However, these requirements apply only to nonprofit hospitals, and the ACA and its implementing regulations do not specify any minimum standards or eligibility criteria for financial assistance. If a nonprofit hospital fails to comply with these requirements, the patient does not have a private right of action under the statute to seek redress for noncompliance, as only the IRS can enforce these requirements.

Just ten states have enacted laws that require hospitals to provide a full spectrum of free and discount care for patients under specific eligibility standards, primarily based on income. **California, Connecticut Illinois, Maine, Maryland, New Jersey, New York, Nevada, Rhode Island, and Washington** have already adopted policies along these lines. Five states (**Hawaii, Montana, New Hampshire, Wisconsin,** and **Wyoming)** have *no* financial assistance requirements or guidelines for hospitals caring for low-income patients with no or inadequate health insurance, and many states have very limited assistance.

The report includes eight appendices that summarize each jurisdiction's type of financial assistance as well as who is eligible, the source of funding for the plans, and that statutes (if any) that mandate the assistance.

National Consumer Law Center Attorney Testifies at Jan. 14 Hearing on Massachusetts Competitive Energy Supply Bills

FOR IMMEDIATE RELEASE: January 14, 2020

National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org), (617) 542-8010

More than 50 Groups, Individuals Urge MA DPU to Investigate Unfair and Deceptive Practices of Competitive Suppliers that Harm Massachusetts Families

Boston – On Tuesday, January 14, 2020, **National Consumer Law Center attorney Jenifer Bosco testified at a hearing** between 1pm and 5pm **before the Massachusetts Joint Committee on Telecommunications, Utilities, and Energy** that will include several bills on competitive energy suppliers (CES) for residential customers. In her testimony, Bosco supported H.2823 (Chan) and oppose H.2818 (Cahill) and S.1978 and S.1979 (Humason). Representatives from the Massachusetts Attorney General's Office (MA AGO) also testified, including Deputy Division Chief Nathan Forster of the Energy and Telecommunications Division. Deregulation of electricity sales in Massachusetts has led to a "wild west" for competitive energy supply (CES) companies who pressure residential customers to sign up for unfair and expensive electricity contracts, and both the Mass AGO and the MA DPU have received thousands of complaints from residential customers about the aggressive telemarketing tactics of some of the CES companies.

Last Friday (January 10), more than 50 Massachusetts nonprofit organizations and individuals, including NCLC, Greater Boston Legal Services, community action programs, elder care providers, and social service agencies, sent a letter to the Massachusetts Department of Public Utilities (DPU) to "strongly support" the request of the Massachusetts AGO for the DPU to promptly and thoroughly investigate the effect of residential CES on Massachusetts families. The advocates also urged the DPU to rein in abusive competitive supply practices in the Bay State, especially as they target low-income and vulnerable communities, including the elderly and those with limited English proficiency.

NCLC has written extensively about problems with residential competitive energy suppliers in Massachusetts. In 2019, it was one of several advocacy groups that submitted comments to the DPU Massachusetts Department of Public Utilities (DPU) urging it to more closely oversee and regulate the market. To date, the DPU has done little to strengthen consumer protections.

Bosco's testimony is available at http://bit.ly/bosco-testimony. Related resources, including NCLC's 2018 report and follow-up issue brief on problems with residential CES in Massachusetts, and other materials at: https://www.nclc.org/issues/energy-utilities-a-communications/electric-and-gas.html.

Statement Condemning Consumer Financial Protection Bureau's New Taskforce to Review Consumer Protection Regulations

FOR IMMEDIATE RELEASE: JANUARY 9, 2019

National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org), (617) 542-8010

Washington, D.C.- Late today, the Consumer Financial Protection Bureau (CFPB) announced four members who will serve on the Taskforce on Federal Consumer Financial Law. The Taskforce will examine the existing legal and regulatory environment facing consumers and financial services providers.

Lauren Saunders, associate director of the National Consumer Law Center, issues the following statement.

"It's shocking that Consumer Financial Protection Bureau Director Kraninger didn't even appoint a token pro-consumer person to this sham taskforce. The members have a track record of opposing consumer protection regulations.The CFPB should not be convening a task force to write the industry lobbyists' report to gut consumer protection laws. Whatever recommendations made are likely to be biased and to carry water for large financial corporate interests."

Student Loan Giant Accused of Cheating Public Service Workers Moves to Block Montana Legal Services Program from

Advocating for Low-Income Borrowers' Rights

FOR IMMEDIATE RELEASE: December 20, 2019

HELENA, MT — This week, student loan servicer Pennsylvania Higher Education Assistance Agency (PHEAA), also known as FedLoan Servicing, urged the Montana Supreme Court to reject a brief submitted to the court by the Montana Legal Services Association, the National Consumer Law Center, and the Student Borrower Protection Center in order to preserve low-income borrowers' access to justice. The organizations sought the court's permission to file an amicus brief in Reavis v. PHEAA, explaining how the case would impact its low-income clients and Montana public service workers, and seeking to preserve Montana borrowers' right to hold their student loan servicer accountable when it violates state law.

The Court is considering an appeal by James Reavis who seeks relief after PHEAA miscounted his student loan payments made in an effort to qualify for forgiveness under the federal Public Service Loan Forgiveness Program. These claims are similar to suits brought against PHEAA by the Massachusetts Attorney General and the New York Attorney General.

As documented by the Consumer Financial Protection Bureau, servicer abuses, like the ones complained of in this case, are prevalent and drive borrowers deeper into debt and deny them their repayment rights under federal law.

The brief filed by these nonprofit groups lays out the importance of federal income-driven repayment (IDR) plans and the Public Service Loan Forgiveness (PSLF) program for borrowers serving in their communities across the country, including in Montana. **"**Income-driven repayment is at the heart of affordable loan repayment options offered to federal student loan borrowers. Because of rampant abuses by servicers, like those alleged in this lawsuit, income-driven repayment remains inaccessible to too many student loan borrowers. Mr. Reavis deserves his day in court," said **Persis Yu, staff attorney and director of the National Consumer Law Center Student Loan Borrower Assistance Project.**

Tal M. Goldin, director of advocacy, Montana Legal Services Association (MLSA) said, "Abusive practices by student loan servicers have devastating impacts on everyday Montanans—individuals trying to build a life on a tight budget while watching their student loan balances increase instead of decrease each month. Like Mr. Reavis, many of MLSA's attorneys and staff made life-changing choices to dedicate their professional work in the service of people living in poverty based on the unfulfilled promise of the Public Service Loan Forgiveness Program. Fair implementation of the Program is a critical part of MLSA's ability to hire professionals to help thousands of domestic violence survivors, crime victims, and low-income families across Montana. Their voices should be heard before the Montana Supreme Court."

The student loan market is dominated by several large student loan companies, known as student loan servicers, that are paid to manage accounts and process payments. PHEAA is one of the largest of these companies, handling more than $450 billion in student debt across all 50 states. **Seth Frotman, executive director of the Student Borrower Protection Center and former top student loan official at the Consumer Financial Protection Bureau:** "No student loan company is above the law. This desperate effort by PHEAA to suppress advocates' work on behalf of low-income student loan borrowers is a new low for the embattled student loan giant. Borrowers deserve a voice and an opportunity for relief when their student loan company cheats them."

Public Service Workers Right to Federal Loan Forgiveness

The brief filed by these nonprofit groups lays out the importance of federal IDR plans and the PSLF program for borrowers serving in their communities across the country, including in Montana.

IDR is the largest and most effective safeguard against financial hardship for low-income student loan borrowers, irrespective of their occupation or employment status. For borrowers who are unemployed or earn very low wages, IDR offers the promise of a zero dollar monthly "payment."

For public service workers earning low wages, IDR is also a key component of PSLF. When workers complete ten years of public service and make income-driven loan payments during that time, as required by the program, the government should uphold its end of the bargain and forgive these borrowers' loans.

Loan servicers like PHEAA routinely deprive borrowers of these rights and thwart Congress' intent to forgive these loans, as required by federal law. Borrowers have faced problems in both in enrolling in IDR Plans that help them make lower payments that they can afford in order to qualify for PSLF and in the PSLF applications themselves. For instance, only about 1% of PSLF applicants actually receive the promised discharge. From 2015 through 2019 the Government Accountability Office documented the mismanagement of the PSLF Program, raising alarms about practices by companies like PHEAA. When PSLF does not work the way it was intended, police officers, teachers, and other public servants are deprived of their right to forgiveness under the law.

Because of these widespread servicing problems, state consumer protection laws are a critical lifeline for borrowers.

The Student Debt Crisis in Montana

Nearly 120,000 Montanans owe more than $4 billion in outstanding student debt, double the amount outstanding a decade ago. On average, a Montana borrower owes nearly $35,000 in student debt, and more than 1-in-8 Montana borrowers are behind on their student loan payments.

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Bipartisan TRACED Act Signed Into Law, Latest Tool in Fight Against the Robocall Epidemic

FOR IMMEDIATE RELEASE: December 30, 2019

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Bipartisan TRACED Act Signed Into Law

FCC must now move aggressively to provide critical relief for consumers

Washington, D.C. – Today, the bipartisan Pallone-Thune TRACED Act was signed into law in an important step forward to provide Americans some relief from the plague of robocalls. The final bill, passed overwhelming by the U.S. House last month, includes elements from the bills passed in each chamber on a bipartisan basis: the Stopping Bad Robocalls Act by the House and the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act passed by the Senate.

"This bipartisan bill unquestionably moves the ball forward to protect consumers from unwanted robocalls, especially by requiring that all telephone systems in the U.S. implement a coordinated authentication methodology to improve the accuracy of the caller-ID displayed on our phones," **said National Consumer Law Center Senior Counsel Margot Saunders**." After this bill is signed into law, attention will return to the Federal Communications Commission (FCC), which will have much to do to protect consumers from telemarketers, debt collectors, and others who are bombarding our phones with unwanted robocalls. Representatives of robocallers, such as the U.S. Chamber of Commerce, banks and the debt collectors, are seeking interpretations from the courts and the FCC that would water down, or even nullify, the Telephone Consumer Protection Act- (TCPA) our main bulwark against these unwanted calls. If the FCC does not interpret the TCPA broadly, the federal law could be gutted. Consumer advocates appreciate the attention that members of Congress, especially Senators Markey and Thune, and Representatives Pallone, Walden, Latta, and Doyle, gave to bring some relief for consumers."

The Pallone-Thune TRACED Act will:

1. Require the implementation of a comprehensive caller-ID authentication program that will inform called parties whether the caller ID displayed with incoming calls is accurate;
2. Require that the FCC ensure that consumers who receive telephone service from smaller, often rural providers, benefit from an authentication service.
3. Require the FCC to allow providers to employ a "robocall blocking" methodology for unauthenticated calls.
4. Prohibit telephone providers from separately billing for either the authentication and blocking services.
5. Require that the FCC initiate a proceeding to evaluate how to require voice providers that provide multiple phone numbers to callers (such as Skype and Google Voice) know their customers — which is important to stop robocallers from cycling through numerous numbers to avoid detection.
6. Enhance the FCC's enforcement mechanisms.
7. Require a variety of reports from the FCC and establish a number of working groups.

The final bill does *not*:

1. Provide clarification of disputed terms in the Telephone Consumer Protection Act that would prevent callers from continuing to call consumers who have not consented to robocalls, or who have withdrawn their consent for such calls.
2. Mandate that call blocking programs be offered to all consumers.

Last year, Americans received nearly 48 billion robocalls, according to YouMail, a private robocall blocking service, and the monthly number skyrocketed to a record 5.7 billion in October, putting the number on track to hit 60 billion unwanted calls this year.

Robocalls surged after a 2018 decision from the U.S. Court of Appeals in D.C. that set aside a 2015 FCC order on the question of how to interpret the Telephone Consumer Protection Act's ban on autodialed calls to cell phones without the called party's consent.

Report: Rampant Errors on Criminal Background Check Reports Are Still Preventing Consumers from Securing Jobs and Housing

FOR IMMEDIATE RELEASE: December 9, 2019

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Report: Rampant Errors on Criminal Background Check Reports Are Still Preventing Consumers from Securing Jobs and Housing

National Consumer Law Center Urges Federal and State Action to Stop Faulty Criminal Background Check Reports and Hold Background Screening Companies Accountable;

FTC/CFPB to Host Accuracy in Consumer Reporting workshop on Tue., Dec. 10

Download the National Consumer Law Center report at:
https://www.nclc.org/issues/rpt-broken-records-redux.html

Boston – Passing a criminal background check is a nearly universal prerequisite to securing a job or housing, yet employers and landlords are making decisions based on inaccurate reports. *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing*, a new report from the National Consumer Law Center (NCLC), finds that problems with accuracy in commercial criminal background check reports are still rampant. "Unfortunately, many background screening companies still seem to prioritize profit over accuracy, leading to reports that cost consumers' jobs and housing," **said Ariel Nelson, National Consumer Law Center staff attorney and author of the report.**

Nelson and NCLC attorney Chi Chi Wu will also be panelists at an all-day workshop on [Accuracy in Consumer Reporting] to be held at the Constitution Center *(also available to view via live stream on the FTC website*) in Washington, D.C. on Tuesday, December 10 from 9 a.m. until 4:30 p.m. sponsored by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB).

NCLC's research reveals that background screening companies continue to generate criminal background check reports that:

- **Mismatch the subject of the report with another person** (e.g., listing criminal records belonging to someone else, often harming common-name consumers in particular);
- **Include sealed or expunged records** (e.g., listing a conviction that was legally removed from the public record);
- **Omit information about how the case was resolved** (e.g.., failing to report that charges were dismissed);
- **Contain misleading information** (e.g., listing a single charge multiple times); and/or
- **Misclassify the offense reported** (e.g., reporting a misdemeanor as a felony)**.**

The background screening industry is now a multi-billion dollar industry, with about 94% of employers and about 90% of landlords using criminal background check reports to evaluate prospective employees and tenants. *Yet there are still no registration requirements for background checking companies and no standardized criteria governing background checks.*

A recent development: many screening products are designed to automate and outsource decision making to the background screener. This means that users may not individually assess or make judgment calls about applicants. Automated decision making may also mask errors and deny consumers the chance to explain why a record is inaccurate or why it should not bar housing or employment. Further, there is no common standard for predicting if an individual will be a "good" tenant or employee. As a result, applicants who otherwise would have been accepted are excluded, and employers and landlords miss out on qualified applicants.

"Background screening companies often promote their products by pointing to the advanced technologies and automated processes they use, but the automation of criminal background check reporting has come with its own serious problems," **said Nelson.**

Companies use automation to generate reports by running computer searches through giant databases of aggregated criminal record data. Reports may only undergo minimal, if any, manual review, which is especially problematic because the data is often purchased in bulk through intermediaries or obtained using web scraping technology. Thus, it often lacks key personal identifiers, information about how a case was resolved, and may not be updated frequently. Practices like these, along with the use of loose matching criteria, lead to erroneous reports that have grave consequences for consumers seeking jobs and housing.

"If Congress, federal agencies, and states don't act to ensure that background screening companies are closely monitored and hold them accountable for their repeated mistakes due to poor policies and practices, consumers will continue to pay the price by forfeiting housing and job opportunities while employers and landlords will miss out on qualified employees and tenants," **said Nelson.**

Since NCLC's ground-breaking report in 2012, the CFPB and the FTC have brought a handful of enforcement actions against several background screening companies for violations of the Fair Credit Reporting Act (see pages 24-25 of the new report), but much more must be done.

Recommendations: The National Consumer Law Center report recommends that Congress, federal regulatory agencies, and states use their authority to clean up the criminal background screening industry once and for all, including the following steps.

- **Congress** should amend the FCRA to increase protections for prospective tenants and give the Federal Trade Commission specific supervisory authority over background screening companies.
- The **Consumer Financial Protection Bureau** should use its rulemaking authority to require mandatory measures to ensure greater accuracy of background check reports and require registration of background screening companies.
- The **Consumer Financial Protection Bureau** and the **Federal Trade Commission** should continue to use their enforcement powers to investigate major background screening companies for FCRA violations. These federal agencies should also investigate nationwide employers for compliance with FCRA requirements for users of consumer reports for employment purposes.
- **States** should pass legislation requiring users of background check reports to review the underlying report produced by the background screener before making employment or housing decisions. States should require companies that receive bulk data from public records sources to promptly delete sealed and expunged records and to routinely update their records. States should revoke the ability to receive data if an audit reveals that the company is not in compliance.

The National Consumer Law Center Earns Top Rating From Charity Navigator

FOR IMMEDIATE RELEASE: December 5, 2019

National Consumer Law Center Contact: Jan Kruse (jkruse@nclc.org) or (617) 542-8010

Boston – The National Consumer Law Center's (NCLC) strong financial health and commitment to accountability and transparency have earned it a 4-star rating from Charity Navigator, America's largest independent charity evaluator. This is the third consecutive time that NCLC has earned this top distinction. Only 25% of the charities evaluated have received at least 3 consecutive 4-star evaluations.

Since 2002, Charity Navigator has used over two dozen accountability and transparency metrics to award only the most fiscally responsible organizations a 4-star rating. This rating distinguishes charities that operate in accordance with industry best practices and are open with their donors and stakeholders.

"The National Consumer Law Center's exceptional 4-star rating sets it apart from its peers and demonstrates its trustworthiness to the public," according to Michael Thatcher, President & CEO of Charity Navigator. "Based on its 4-star rating, people can trust that their donations are going to a financially responsible and ethical charity when they decide to support NCLC."

Detailed information regarding NCLC's rating and about charitable giving are available on Charity

Navigator at: https://www.charitynavigator.org/index.cfm?bay=search.summary&orgid=10224 and at www.nclc.org.

Statement Regarding Bank Regulators' Guidance on Alternative Data

FOR IMMEDIATE RELEASE: December 4, 2019

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Boston – Yesterday, the Federal Reserve Board, Federal Deposit Insurance Corp., Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, and National Credit Union Administration released an Interagency Statement on the Use of Alternative Data in Credit Underwriting.

Chi Chi Wu, staff attorney at the National Consumer Law Center, issued the following statement about the banking regulators' guidance:

"I am pleased to see that the bank regulators have taken a measured approach to alternative data, encouraging the use of the more promising forms, such as cash flow data, while cautioning about data that could present "greater consumer protection risks." While the regulators do not identify what types of data could present these greater risks, in our opinion social media and Big Data are examples.

With alternative data, our mantra is the "devil is in the details" and the Interagency Statement appears to follow such an approach. For example, the Interagency Statement notes the benefits of using alternative data as part of a "Second Look" approach, i.e., only for applicants who cannot access credit, something we've supported as well because it does not affect consumers who are already considered creditworthy.

"The bank regulators' focus on consumer protection laws, such as the Fair Credit Reporting Act, unfair and deceptive acts and practices statutes, and fair lending laws, is important, and we think the applicability of these laws should be stated in the strongest and clearest terms possible. Yet it is also important to encourage lenders to be open to the more promising forms of alternative data, such as cash flow, given how slow some of them have been to adopt even newer credit scoring models based on traditional credit reports so a nudge may be useful here.

"One issue that does need greater guidance is consumer control over alternative data, especially bank account transactions. The Interagency Statement notes that consumers can "expressly permission access to their cash flow data, which enhances transparency and consumers' control over the data." However, protections are necessary to ensure that such permission is not abused, i.e., that permission granted for credit underwriting is not later used for a purpose the consumer never intended, such as targeted marketing or debt collection."

Advocates Condemn U.S. Department of Education Delays on Student Debt Relief for Disabled Veterans

FOR IMMEDIATE RELEASE: November 22, 2019

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Boston – Advocates at the National Consumer Law Center (NCLC) condemned news that the U.S. Department of Education (Department) is delaying its plans to automatically forgive federal student loan debt for totally and permanently disabled veterans, citing regulatory hurdles. Advocates also urge the Department to go further and grant relief to *all* of the more than 200,000 of totally and permanently disabled student loan borrowers it has identified.

"I'm glad to see that the Department is now taking swift action to fix the regulations for disabled veterans. But if Secretary DeVos believes that regulatory hurdles stand in the way of getting relief to disabled veterans, she's had nearly three years to address those hurdles and she didn't," **said National Consumer Law Center attorney Abby Shafroth.** "Instead, she prioritized regulatory changes pushed by the for-profit school industry—changes to make it easier for low-quality schools to access student loan dollars and harder for veterans and other students hurt by their schools' fraud or closures to get loan relief. Even after a shocking string of actions by Secretary DeVos that harm students, today's action harming totally and permanently disabled veterans is a new low."

In April 2016, the Department established a data matching process with the Social Security Administration (SSA) to identify totally and permanently disabled borrowers who are eligible for student loan relief. In April 2018, the Department expanded its matching program to include disability determinations by the Veterans Administration (VA). Then in August 2019, a Presidential Memorandum to Secretary DeVos identified the "pressing need to quickly" and automatically give loan relief to disabled veterans and a directive to implement an automatic relief process. However, that Memorandum did not include the more than 234,000 borrowers identified through the SSA.

"The Department's proposed regulatory fix does not go far enough," said **National Consumer Law Center attorney Persis Yu, and director of NCLC's Student Loan Borrower Assistance Project**. "The Department of Education knows of more than 200,000 disabled borrowers who are eligible for loan cancellation and yet it is failing to cancel the loans. The Department should take immediate steps to provide relief to every disabled borrower identified as eligible for student loan cancellation. It is morally outrageous that any disabled borrowers should have to wait even one more day for the relief that they are entitled to under law."

Related Resources

NCLC Student Loan guest blog post: DeVos's unfinished business — student debt relief for 200,000 borrowers with disabilities (Oct. 2019).

NCLC Student Loan blog post: New Matching Program for Disabled Student Loan Borrowers

(Dec. 2015).

NCLC: Disability and Death Discharges

U.S. Department of Education, Federal Student Aid: disabilitydischarge.com

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FDIC/OCC Proposal Would Encourage Rent-a-Bank High-Cost Predatory Lending

FOR IMMEDIATE RELEASE: November 18, 2019

Contact: Jan Kruse (jkruse@nclc.org) or (617) 542-8010

OCC Proposes Rent-a-Bank Rule Today; Proposed Rule is on Agenda for FDIC Meeting on Nov. 19

Washington, D.C. – Advocates reacted with outrage to a new proposal from two federal bank regulators that could make it easier for payday and other high-cost lenders to use banks as a fig leaf so that online lenders can offer predatory loans at interest rates that are prohibited under state law. Online lenders have become increasingly bold in using rent-a-bank schemes to offer loans up to 160% in states where their rates are illegal. The Office of the Comptroller of the Currency (OCC) proposed such a rule today and a **proposed rule is on the agenda for the FDIC board meeting on November 19 beginning at 10:00 a.m.**

Banks are generally exempt, when they offer credit, from state rate caps that cover payday lenders and other online lenders. For many years, payday lenders and others have attempted to take advantage of this exemption by entering into rent-a-bank schemes where they launder their loans through banks and then purchase those loans back but continue to charge high rates that would be illegal for the online lenders to charge directly. The OCC and FDIC are now proposing a rule that would state 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 proposal does not include any exception for assignments that are intended to evade state interest rate limits. The Supreme Court has held since the 19th century that contracts governing the interest rate on a loan will not be upheld if they were formed with the intent to evade usury laws. The OCC's proposal notes that it does not address whether the bank is the "true lender" that is fronting for a high-cost lender.

"The FDIC and OCC proposal will encourage predatory lenders to try to use rent-a-bank schemes with rogue out-of-state banks to evade state laws that prohibit 160% loans," **said Lauren Saunders, associate director of the National Consumer Law Center.** "States have had the power to limit interest rates since the time of the American Revolution," **she added**.

"The courts rejected the OCC's first effort to eviscerate state interest rate caps through a fintech 'bank' charter that would give companies that are not banks the power to ignore state law, and I expect courts to strike down this effort as well, which risks gutting the laws of more than 40 states that prohibit high-cost lending" **Saunders emphasized**. On October 21, 2019, a New York court upheld a claim by the New York Department of Financial Institutions that the OCC did not have the authority to give national bank charters to companies that do not accept deposits. "In 2010 in the Dodd-Frank Act, Congress limited the bank regulators' authority to preempt state consumer protection laws, yet the OCC and FDIC are ignoring those limits," **she added.**

"Voters of both parties overwhelmingly support limiting interest rates to 36% or lower, and we encourage all to speak up loudly against the proposal to let banks help predatory lenders charge rates that voters have said should be illegal," **said Rebecca Borné, senior policy counsel at the Center for Responsible Lending**.

Recent developments have highlighted the threat posed by allowing predatory lenders to use rent-a-bank schemes to evade state interest rate limits:

1. Three large payday lenders (Elevate, Enova and Curo) have announced to investors that they plan to use rent-a-bank schemes to evade a new 36% California rate cap effective January 1, 2020, which will outlaw their loans that currently go up to 191%.
2. A new analysis shows that two banks are helping online predatory lenders to evade state rate caps:

- OppLoans charges 160% APR in 20 states and D.C. through a rent-a-bank scheme with FinWise Bank, chartered in Utah. For example, OppLoans charges 160% on a $500, 9-month loan in Maine, where the legal maximum rate is 36%.
- FinWise Bank also helps Elevate's Rise online loans charge 99% to 149% APR in 16 states and D.C. where that rate is illegal. In D.C., for example, the legal rate on a $2,000, 2-year loan is 25%, but Rise charges 99% to 149%.
- Elevate also uses this rent-a-bank scheme to offer an online line of credit, Elastic, at an effective APR up to 109%, in 14 states and D.C. that prohibit triple-digit rates. For example, Elastic is available in South Dakota, where voters in 2016 adopted a 36% rate cap by an overwhelming bipartisan vote, but Elevate makes Elastic brand loans there that exceed this cap.

In the early 2000s, the federal bank regulators shut down rent-a-bank arrangements like these, but now the OCC and FDIC are taking actions that could enable them. The OCC and FDIC recently filed an amicus brief in support of a predatory small business lender, World Business Lenders, used a Wisconsin bank to camouflage the illegality under state law of a $550,000 loan at 120% to a business in Colorado.

Some states are fighting these rent-a-bank evasions of their laws. For example, the Colorado Attorney General has sued two online lenders, Avant and Marlette (BestEgg), for charging high rates on loans up to $75,000 despite Colorado's 21% interest rate limit. In the Avant case, the court noted that WebBank "plays only an ephemeral role in making the loans," that Avant and other nonbank entities keep 99% of the profits, and that "Avant is for all practical purposes in control of the Avant loans, and it has indemnified WebBank, whose role was short-lived and is now entirely in the past."

"This is why banks must be subject to interest rate limits and why Congress must pass the Veterans and Consumers Fair Credit Act, which would extend the 36% rate cap which servicemembers and their immediate families enjoy to veterans and other consumers while allowing states to set lower limits," **said Linda Jun, senior policy counsel at the Americans for Financial Reform.**

For more information

Issue Brief: Stop Payday Lenders' Rent-a-Bank Schemes!, November 2019 (showing the states in which lenders are evading state interest rate caps)

Issue Brief: Payday Lenders Plan to Evade California's New Interest Rate Cap Law through Rent-A-Bank Partnership, October 2019

Press Release: "Groups: FDIC & OCC Are Wrong to Support Predatory Small Business Lender" (Oct. 24, 2019)

Lauren Saunders, *The Hill*, Op-ed: Rent-a-bank schemes trample voters' and states' rights (Feb. 8, 2018)