Statement of National Consumer Law Center Advocate in Support of The Emergency Broadband Connections Act of 2020

FOR IMMEDIATE RELEASE: JUNE 29, 2020
National Consumer Law Center contacts: Jan Kruse (jkruse@nclc.org) or Olivia Wein (owein@nclc.org)


“Black, Hispanic, American Indians and Alaska Natives have lower broadband subscription rates than their White counterparts and communities of color have been hardest hit by the COVID-19 crisis,” said Olivia Wein, staff attorney at the National Consumer Law Center. “The Emergency Broadband Connections Act of 2020 will enable telemedicine, distance learning, and online access to the workplace and marketplace for tens of millions of struggling low-income families and unemployed workers while protecting public health during the COVID-19 crisis. The bill also includes urgently needed enhancements to the federal Lifeline program to ensure that this service can meet the voice and data needs of low-income consumers during the pandemic,” said Wein.

The bill is also cosponsored by Sens. Brian Schatz, Kirstin Gillibrand, Edward Markey, Bernie Sanders, Sherrod Brown, Kamala Harris, Cory Booker, Jeff Merkley, Robert Menendez, Amy Klobuchar, Richard Durbin, Tammy Baldwin, Tina Smith, Chris Van Hollen, Michael Bennet, Jacky Rosen, Patty Murray, Elizabeth Warren, Ben Cardin, Tom Udall, Jack Reed, Martin Heinrich, and Tammy Duckworth.

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Supreme Court Weakens Independence of Consumer Watchdog

FOR IMMEDIATE RELEASE: June 29, 2020
National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

National Consumer Law Center Advocates’ Statement re: U.S. Supreme Court Decision Challenging the Structure and Constitutionality of the CFPB (Seila Law v CFPB)

Washington, D.C. – The U.S. Supreme Court today issued its decision in Seila Law LLC v The Consumer Financial Protection Bureau. In a 5-4 decision, the Court, struck down as unconstitutional a provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act that restricts the President’s ability to remove the director of the Consumer Financial Protection Bureau (CFPB) except for cause. Nonetheless, three of those justices, along with the four dissenters, held that the
for-cause provision could be severed from the remainder of the Dodd-Frank Act, leaving the remainder of the CFPB intact.

“The Seila Law decision leaves the CFPB intact, but weakens the Director’s independence, making it more likely that the Director will have to think twice before crossing politically powerful financial industry players that have the ear of the President. This is unfortunate, because the CFPB should not be thinking about political ramifications when deciding whether to bring an enforcement action or to enact rules to address consumer protection problems. We have seen in this Administration how agency heads who have dared to express independent views have been short-lived, and it is unfortunate that the consumer watchdog has lost the critical independence that Congress gave it when addressing the fallout from the 2008 financial crisis,” said Lauren Saunders, associate director of the National Consumer Law Center. “Nonetheless, the CFPB survives as an agency with the rest of its critical consumer protection tools intact, and it will be up to CFPB directors to do their best to resist political pressure not to do their jobs.”

NCLC, as Counsel of Record, joined by others, filed an amicus brief that argued that, if the Supreme Court found the for-cause provision unconstitutional, it should sever that provision and preserve the remainder of the Dodd-Frank provisions establishing the CFPB, as Congress intended. That is exactly what the Court did.

“Severing the ‘for cause’ provision and allowing the CFPB to otherwise continue intact is the appropriate remedy. That result gives effect to the express language of the Dodd Frank Act’s severability clause and comports with the traditional doctrine of severability that provides that a court should nullify no more of a statute than is necessary,” said National Consumer Law Center Director of Litigation Stuart T. Rossman. “Undoing Congress’s sweeping restructuring of financial regulation by eliminating the CFPB instead of severing the for-cause removal provision would have contravened Congress's intent to establish a sole federal regulator charged with stabilizing the marketplace and protecting consumers.”

Other groups who joined the amicus brief filed by NCLC were: Center for Consumer Law and Education Center (a joint partnership between West Virginia University College of Law and Marshall University); the UC Berkeley Center for Consumer Law & Economic Justice; The housing Clinic of the Jerome N. Frank Legal Services Organization at Yale Law School; Consumer Action; and Professor Craig Cowie (Asst. Professor of Law and Director of the Blewett Consumer Law & Protection Program at the University of Montana Alexander Blewett III School of Law.

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Advocates Decry Congress’s Failure to Protect Student Loan Borrowers and Taxpayers from School Fraud and Closures

FOR IMMEDIATE RELEASE: June 26, 2020
National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

Boston – National Consumer Law Center advocates are extremely disappointed that today Congress failed to override President Trump’s veto of Congress’s prior bipartisan vote to protect federal
student loan borrowers by striking down the Department of Education’s new borrower defense regulations. The severely watered-down regulations, promulgated by Secretary Betsy DeVos’s administration, are now set to go effect on July 1. The DeVos rules will limit relief to only about 3% of defrauded student borrowers, and only 1% of schools guilty of misleading students would have to reimburse taxpayers, leaving hundreds of thousands of students trapped deep in debt with no job and a worthless degree.

“Congress and President Trump had the chance to stand with Americans struggling against fraud, corruption, and bureaucratic red tape, but instead they walked away,” said National Consumer Law Center attorney Persis Yu. “Veterans and low-income communities of color have borne the brunt of predatory schools’ worst practices, and the schools’ use of arbitration clauses have kept many of their misdeeds secret and out of the courts. The Department of Education should have provided students with a fair path to access the loan relief promised by the Higher Education Act and protected their right to have their day in court. Instead, it gave the schools the green light to defraud students with impunity and continue receiving taxpayer dollars.”

This past March, Congress presented President Trump with Senate Joint Resolution 56, which applied the Congressional Review Act to block the 2019 Borrower Defense to Repayment rule from going into effect and to preserve the existing rules protecting borrowers from school fraud and closures. The joint resolution was supported by broad coalitions of organizations representing veterans (who are disproportionately targeted by predatory schools for their GI Bill dollars), students, low-income consumers, civil rights groups, and advocates for education. Last December, a diverse coalition of 57 organizations wrote that that if the 2019 Borrower Defense Rule went into effect, it would do little to provide relief to students who have been lied to, and even less to dissuade colleges from systematically engaging in deceptive and illegal recruitment tactics. The group also charged that the rule fails to protect students, including first-generation college students, Black and Latino students, and military-connected students, who are targeted by and disproportionately enroll in predatory for-profit colleges. The DeVos rule makes relief all but impossible for them and fails to hold predatory schools who defraud students accountable.

Advocates Condemn FDIC Rule that Encourages Predatory High-Cost Loans; Call on Congress to Pass Federal 36% Interest Rate Cap Limit

FOR IMMEDIATE RELEASE: JUNE 25, 2020
Media Contacts: National Consumer Law Center: Jan Kruse (jkruse@nclc.org)
Center for Responsible Lending: Matthew Kravitz (matthew.kravitz@responsiblelending.org)
Americans for Financial Reform Education Fund: Diop Harris (diop@ourfinancialsecurity.org)

Washington, D.C. – Consumer advocates criticized the Federal Deposit Insurance Corp. (FDIC) for today finalizing a rule that encourages online non-bank lenders to launder their loans through banks so the non-bank lenders can charge triple-digit interest rates in states where high rates are illegal.
The OCC finalized a similar rule last month. The rules were strongly opposed by a bipartisan group of attorneys general, as well as by dozens of community, consumer, civil rights, faith and small business organizations, and may face legal challenges. At least 45 states and the District of Columbia cap rates on many installment loans.

“The FDIC has been letting its banks help predatory lenders charge up to 160% APR in states where that is illegal, and this unlawful rule will only encourage these abusive rent-a-bank schemes. Interest rate limits are the simplest and most effective protection against predatory lending, and states have limited interest rates since the founding of our nation,” said Lauren Saunders, associate director of the National Consumer Law Center. “It’s deeply disturbing that the FDIC and OCC are encouraging high-cost lending rather than working to protect people, especially low-income families and people of color who are being hit the hardest during the COVID-19 crisis.”

“Neither FDIC nor OCC leadership has taken meaningful action to stop the banks they regulate from providing a smokescreen for nonbank lenders to violate state interest rate caps. Even worse, the FDIC has now joined in issuing a rule that helps clear the runway for more of these predatory lending schemes to take off,” said Rebecca Borné, senior policy counsel at the Center for Responsible Lending.

Banks are generally exempt from state rate caps that cover non-bank payday, car-title, installment, and other non-bank lenders. High-cost online lenders have tried to take advantage of this exemption by laundering their loans through banks. Opploans, Elevate’s Elastic and Rise, Enova’s NetCredit, LoanMart’s Choice Cash, EasyPay, and Personify Financial charge 99% to 160% or higher but claim they are exempt from state interest rate limits because they use FDIC-supervised banks such as Republic Bank & Trust and FinWise Bank to originate the loans. The banks then assign most of the interest and profits back to the online lenders or entities controlled by them. NCLC’s website has a Predatory Rent-a-Bank Loan Watch List that describes high-cost rent-a-bank schemes and where they operate.

The FDIC’s rule states that when a bank sells, assigns, or otherwise transfers a loan, interest permissible prior to the transfer continues to be permissible following the transfer. But last month, a Colorado court rejected that argument, finding that an online lender, Marlette (which operates under the Best Egg name) had to comply with Colorado’s interest rate limits. The court found that the provision of the Federal Deposit Insurance Act giving banks the right to charge any rate permitted by their home state “by its plain language does not apply to non-banks, therefore federal preemption [of usury claims against nonbank assignees] does not apply.” Marlette charges up to 29.99%, which is not as sky-high as other high-cost rent-a-bank schemes but is still quite high on loans that can reach $35,000 or more, and is above the 12% allowed for unlicensed lenders in Colorado and even the 21% allowed for licensed lenders.

“As the Colorado court held, the Federal Deposit Insurance Act does not apply to non-banks, and the FDIC therefore has no authority to prevent states from limiting interest rates charged by non-bank lenders,” Saunders explained.

The new rules by the OCC and FDIC do not address whether the bank is the “true lender,” which impacts whether the interest rate is permissible even prior to the transfer. But earlier this month, new Acting Comptroller of the Currency Brian Brooks stated that the OCC plans to issue a new true lender rule to help stem litigation against the fintech lending industry, and that he expects the FDIC to do the same.

“The FDIC and OCC are encouraging lenders to ignore state protections put in place to prevent the harm caused by unaffordable high cost loans. Congress needs to stop these abuses by capping sky-
high interest rates nationwide. Families are facing acute financial distress because of the COVID-19 pandemic; the last thing they need is a lender taking advantage of the situation to snare them in a debt trap.” said Linda Jun, senior policy counsel of Americans for Financial Reform Education Fund.

Additional Resources

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

Fact Sheet: Stop Payday Lenders Rent-a-Bank Schemes, November 2019

Website: Predatory Rent-a-Bank Loan Watch List by State

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

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CFPB Proposal Would Encourage Unaffordable Mortgage Lending and Threaten Access to Credit

FOR IMMEDIATE RELEASE: June 22, 2020
National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

Washington, D.C. – Today, the Consumer Financial Protection Bureau released two proposed rules that together will fundamentally reshape the mortgage market at a time when the market is attempting to adjust to the pandemic and recession and access to credit for communities of color is already constrained.

“With the country facing the effects of a worldwide pandemic, the mortgage markets need stability and the continuation of a known system that provides sustainable access to credit. The CFPB should focus its resources now on providing stability and protection for homeowners, not in making major changes,” said Alys Cohen, staff attorney at the National Consumer Law Center. “The CFPB has reduced transparency by rolling back critical disclosure of fair lending data, refused to enforce important protections for homeowners when mortgage servicers fail to provide them information, and generally neglected the concerns of communities of color in favor of a deregulatory agenda, unconnected to the present circumstances. The decision to proceed with this major mortgage rulemaking now is especially concerning because the homeowners most at risk of losing access to affordable and responsible credit under the proposal, people of color and low-income borrowers, are also those most hard-hit by both the COVID-19 financial and health crisis, as well as the last mortgage meltdown during the Great Recession a decade ago.”

The CFPB’s proposals would change the circumstances in which a lender is presumed to have met the requirement of the Dodd-Frank Act that borrowers have an ability to repay their mortgages. Instead of the current rule, which tracks the statute in requiring lenders to look at a borrower’s income in making this determination, the new rule would allow lenders to get a safe harbor from any enforcement of the statutory requirement so long as the loan is under an arbitrary price cap. While
lower priced loans, unsurprisingly, have lower default rates, the CFPB’s own research shows that, holding constant for one major determinant of pricing, credit scores, Blacks and Hispanic Whites are denied mortgage loans more often than whites, thus suggesting that using pricing as a cutoff point will necessarily have a discriminatory impact on access to credit unconnected to ability to repay.

The proposals would also end the ability of lenders to rely on underwriting criteria established by Fannie Mae and Freddie Mac in meeting the statutory requirements. It is under this “GSE-patch” that a great deal of current lending in communities of color and in low-income communities is made currently. Rather than extending the GSE patch to provide stability to a market already roiled by economic uncertainty, the CFPB proposes to end it as soon as April 2021.

“Instead of continuing the GSE-patch to provide stability at a time of great market uncertainty, the CFPB is plunging ahead with rulemaking that would dramatically alter the rules of the game for mortgage lenders, borrowers, and our entire economy,” said Cohen. “Government, industry, and consumer and civil rights stakeholders must work together to develop sustainable mortgage lending models that do not risk a resurgence of abusive loans in the hardest-hit communities and that ensure opportunities to build wealth for all. The CFPB should focus its attention on pandemic response while building the long-term models for sustainable lending, rather than forcing through a rulemaking on limited data.

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**CFPB Announces Another Pilot Program Placing Financial Companies’ Interests Before Consumers**

**FOR IMMEDIATE RELEASE:** June 18, 2020

National Consumer Law Center contact: Jan Kruse (jkruse@nclc.org)

Washington, D.C. – Today, the Consumer Financial Protection Bureau announced a pilot advisory opinion program designed to provide additional protections for financial institutions at the expense of consumers. Under the CFPB pilot, itself issued without notice and comment, financial institutions are invited to submit requests for regulatory clarifications in areas of “substantive importance.” The advisory opinions will then be issued by the CFPB, without notice-and-public comment, on the basis of confidential information submitted by the financial institution. Only entities subject to the CFPB’s jurisdiction may request these advisory opinions, and the advisory opinions will provide safe harbor protections for financial institutions under all major consumer protection laws. One of the priorities of the pilot program is to identify outdated, unnecessary or unduly burdensome regulations in order to reduce regulatory burdens on companies.

“The CFPB’s plan to reduce protections in areas of ‘substantive importance’ with no public input is offensive and contrary to the CFPB’s mandate,” said National Consumer Law Center Associate Director Lauren Saunders. “Now, more than ever, when communities of color are under siege, the CFPB must listen to their voices and those of all homeowners, borrowers, and families affected by financial industry abuses and put consumers first.”
Advocates Praise California Public Utility Commission’s Unanimous Vote to Pass Utility Shut-Off Protections for Residents

FOR IMMEDIATE RELEASE: JUNE 12, 2020

Media Contacts: National Consumer Law Center: Jan Kruse (jkruse@nclc.org) or Stephen Rouzer (srouzer@nclc.org)

Center for Accessible Technology: Melissa Kasnitz (mkasnitz@cforat.org)

California adopts rules and programs to reduce residential disconnections from gas and electric service

San Francisco – Consumer advocates praised yesterday’s unanimous vote by the California Public Utilities Commission (CPUC) to adopt a suite of utility credit and collections rules and programs to reduce residential electric and natural gas disconnections for customers of the large investor-owned utilities. The CPUC decision will remove credit and collection barriers that make it hard for struggling consumers to get back on their feet, ensure availability of longer-term payment plans, increase opportunities to learn about and enroll in utility assistance programs, and provide a pathway to solvency by offering arrearage management programs (AMPs) to consumers who have fallen behind on their bills. The case will now move to a separate phase, which will include the development of targeted pilot affordability programs called Percentage of Income Payment Plans (PIPPs). The intent is to develop pilot programs that will be available to low-income consumers in the top 10 zip codes with the highest disconnection rate.

This proceeding, R.18-07-005, stems from CA Senate Bill 598, which requires the CPUC to develop rules, policies, or regulations with the goal of the reducing the disconnection rate of gas and electric customers by 2024. Commissioner Martha Guzman Aceves stewarded the decision through the regulatory process.

The CPUC’s Decision Number D.20-06-003 is particularly important given the public health and economic crisis due to COVID-19. “This decision moves California in the right direction by pivoting rules away from punitive measures that make it harder for families to afford utility service, which especially harm low-income households and households of color,” said Olivia Wein, staff attorney at the National Consumer Law Center.

The decision establishes an innovative arrearage management (AMP) program that utilities in other states have adopted to address utility debt for households barely keeping their heads above water. Low-income Californians drowning in utility debt will now be able to have that debt forgiven bit-by-bit as they make timely payments of current bills. “Arrearage management programs can help struggling households achieve a fresh start while preserving their connection to electric and natural gas service,” said Wein.

It also adopts numerous other changes to existing disconnection processes, including caps on the total number of disconnections authorized for each utility, extended payment plans, removal of
various deposit requirements, and increased transparency in any efforts to require customers initiating service to pay existing arrearages from the same location.

“While work on these issues started long before the current pandemic, the Commission noted that access to electric and natural gas service is essential to shelter at home safely during this COVID-19 crisis,” said Melissa Kasnitz of the Center for Accessible Technology. “California’s action will help reverse a long-term trend of increasing disconnections while also limiting the risk of an enormous crisis in disconnections when the moratorium associated with the COVID-19 pandemic expires next April.”

Also yesterday, Illinois Attorney General Kwame Raoul announced a similar agreement with the state’s major utility companies that provide electric, gas, water, and sewer services that will reduce residential utility shut-offs and late fees during the COVID-19 crisis, and move toward creating AMPs and PIPP programs to permanently keep Illinoisans connected with vital essential utilities. Additionally, the utilities will provide regulators with data to assess whether particular communities, including communities of color, are being disproportionately impacted by a utility’s disconnection and credit and collections processes.

Together, the California and Illinois agreements will affect tens of millions of people. “Utilities provide essential life-saving services and we hope other states will adopt similar programs to help keep their families and communities well,” said Wein.

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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.

The Center for Accessible Technology (CforAT) works to ensure that people with disabilities can live independently in their communities, and supports the use of technology to assist in independent living. Through its policy program, CforAT advocates before the CPUC to ensure that people have access to essential utility service, including reliable and affordable energy, telecommunications and water. CforAT also works to support the availability of assistive technology for students and seniors, and to ensure accessibility of websites in accordance with evolving standards.

Advocates Praise Rent-a-Bank Ruling Upholding State Interest Rate Caps

Colorado Court Follows “Madden” Decision that Banks Can’t Assign Bank Privileges to Nonbank Lenders

FOR IMMEDIATE RELEASE: JUNE 10, 2020

National Consumer Law Center Contacts: Jan Kruse (jkruse@nclc.org) or Lauren Saunders (lsaunders@nclc.org)
Washington, D.C. – Consumer advocates praised yesterday’s ruling by a Colorado court upholding the Colorado Attorney General’s claim that an online lender, Marlette Funding (dba Best Egg), must abide by Colorado’s interest rate limits when it purchases loans originated by a bank, Cross River Bank, that is exempt from the state’s rate caps. The National Consumer Law Center (NCLC) filed an amicus brief supporting Colorado in the case.

“The Colorado ruling makes clear that federal banking laws do not give banks a license to sell their bank privileges to nonbank lenders that charge rates above state limits,” said Lauren Saunders, associate director of the National Consumer Law Center. The Colorado court quoted the Second Circuit Madden decision in holding that extending federal banking laws “to third parties would create an end-run around usury laws for non-national bank entities.” “The decision upholds the power that states have had since the time of the American Revolution to cap interest rates to protect people from predatory lending,” Saunders added.

Marlette offers loans on its Best Egg website, but the fine print says that “Best Egg loans are unsecured personal loans made by Cross River Bank ....” Rates go up to 29.99% and loans may be as large as $35,000, or even $50,000 in some instances. Colorado allows 12% annual interest for consumer loans by unlicensed lenders and 21% for licensed lenders.

At least 45 states and DC impose interest rate caps on many loans, but banks are generally exempt from state rate caps. In the last couple of years, high-cost lenders – some charging rates as high as 160% — have begun trying to take advantage of this exemption by entering into rent-a-bank schemes where 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 directly.

The Colorado Attorney General’s win this week follows the filing last week of a complaint by the District of Columbia Attorney General against another online lender, Elevate, that through its Rise and Elastic brands charged annual interest rates between 99% and 251% despite D.C. law capping rates at 6% to 24%. The National Consumer Law Center’s (NCLC) website has a Predatory Rent-a-Bank Loan Watch List that describes high-cost rent-a-bank schemes and where they operate.

“Colorado and D.C. are showing how states can defend their interest rate caps and protect borrowers from high-rate lending despite the lack of federal protection. Rent-a-bank lenders pick and choose where they lend, and they tend to stay out of states that enforce their laws,” Saunders explained.

The ruling also puts into question the legality of proposed rules by the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC), which the OCC recently finalized, that would overturn the Madden decision and allow an assignee of a bank loan to charge any rate the bank could charge. The court found that the “plain language [of the Federal Deposit Insurance Act] does not apply to non-banks, therefore federal preemption does not apply.” The court made the same observation about the National Bank Act. “The court made clear that federal banking laws don’t apply to nonbanks, and for the same reason, the OCC and FDIC have no authority to preempt state interest rate limits that apply to nonbanks,” Saunders explained.

But the OCC and FDIC have stated that their rules do not address the situation where a nonbank is the “true lender.” The D.C. Attorney General’s case alleges that Elevate, not the two banks it uses, is the ‘true lender’ and thus state interest rates apply. The Colorado court did not yet address whether Marlette or the bank is the true lender.

Instead, the court held that even if the bank is the true lender, once a loan is assigned to a nonbank
lender, new charges must follow state law. In *Madden v. Midland Funding*, the Second Circuit Court of Appeals held that debt buyers that purchase charged-off credit card debt are subject to New York usury laws when they add new interest even though the credit card banks themselves are not limited by those laws. “The Colorado court correctly rejected the *specious claim* that centuries of law under a so-called ‘valid-when-made’ theory prevent challenges under longstanding usury laws to usurious interest charged by nonbank lenders that purchase loans assigned by banks,” *Saunders said*. An NCLC *issue brief* explains the *Madden* and true lender doctrines.

“Online lenders claim that they are ‘fintechs,’ but whatever the label, they are not banks, and technology and ‘innovation’ do not give them the right to charge high interest rates that are illegal under state law,” *Saunders noted*. “Interest rate limits are the simplest and *most effective* protection against predatory lending, and states can and should defend their rate limits and stand up to rent-a-bank schemes.”

**Additional NCLC Resources**

[Preatory Rent-a-Bank Loan Watch List by State](#)

Press release: *Advocates Condemn Rent-a-Bank Rule that Encourages Predatory High-Cost Loans; Call on Congress to Pass Federal 36% Interest Rate Cap Limit*, May 29, 2020

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

Fact Sheet: *Stop Payday Lenders Rent-a-Bank Schemes*, November 2019

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

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**Advocates Praise D.C. Attorney General Suit Against Predatory High-Cost Rent-a-Bank Lender**

**Elevate charged 99% to 251% APR despite D.C.’s 6% to 24% rate cap**

**FOR IMMEDIATE RELEASE**: JUNE 5, 2020

[National Consumer Law Center Contacts](#): Jan Kruse (*jkruse@nclc.org*), Lauren Saunders (*lsaunders@nclc.org*)

Washington, D.C. – Consumer advocates praised today’s *announcement* by District of Columbia (DC) Attorney General Karl Racine that he has filed a lawsuit against online lender Elevate for making loans up to 251% in DC and trying to launder its loans through two banks to avoid DC’s interest rate caps.

“*Since the time of the American Revolution*, states have capped interest rates to protect people from predatory lending. Yet predatory lenders are now trying to evade state interest rate limits by laundering their loans through a few rogue out-of-state banks in Utah and Kentucky.  DC Attorney
General Racine’s important lawsuit points out the obvious truth: these predatory high-cost lenders are the true lender and they cannot hide behind a bank to make illegal loans,” said Lauren Saunders, associate director of the National Consumer Law Center.

Elevate, through its Rise and Elastic brands, charged annual interest rates between 99% and 251% despite DC law capping rates at 6% to 24%. The lawsuit noted that Elevate claims that its loans are “a better, more responsible alternative to more expensive options like overdraft fees, payday loans, late fees and utility reconnection fees,” but in fact “overdraft fees pale next to the finance charges on a Rise loan... An average consumer ... would need to incur more than 51 overdraft fees to exceed the finance charges for an average Rise loan.”

“Elevate claims that it is a ‘fintech,’ but the D.C. lawsuit makes clear that technology and ‘innovation’ can also be used to promote predatory 251% APR loans,” Saunders observed.

At least 45 states and DC impose interest rate caps on many loans, but banks are generally exempt from state rate caps. In the last couple of years, high-cost lenders have begun trying to take advantage of this exemption by entering into rent-a-bank schemes where 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 directly. Elevate used FinWise Bank in Utah and Republic Bank & Trust in Kentucky, both regulated by the Federal Deposit Insurance Corp. (FDIC), but the lawsuit alleges that Elevate directs and controls the funding of the loan and reaps most of the profits and thus is subject to DC law.

“The last thing we need during the COVID-19 crisis is more predatory lending or schemes to evade state interest rate caps. Interest rate limits are the simplest and most effective protection against predatory lending, and DC shows that states can stand up to rent-a-bank schemes,” said Saunders.

Additional Resources

Predatory Rent-a-Bank Loan Watch List by State

Press release: Advocates Condemn Rent-a-Bank Rule that Encourages Predatory High-Cost Loans;
The tragic death of George Floyd is just the latest in a long and repugnant history of unarmed African American deaths at the hands of police officers. We mourn the loss of his life and the lives of so many others like him in the history of this country. The repetition of such horrific events reflects the widespread, institutional, and deeply ingrained racism that exists in all aspects of American society.

The destructive impact of racism is everywhere to see. Witness the COVID-19 crisis where communities of color, which are suffering the highest rates of infection and death, are also now dealing with the highest rates of unemployment and financial instability. On every measure of individual or community well-being and security - economic, educational, and health - communities of color are overwhelmingly worse off and face tremendous barriers. The data is shocking in its consistency and reveals staggering levels of economic inequality.

If we are to ever move forward as a country and end the cycle of racism, violence, and oppression, we must all do our part in the fight. It is a fight that is vital to the very lives, dignity, and futures of millions of our fellow citizens.

The National Consumer Law Center's pursuit of economic justice is a vital part of the struggle for justice and equality. We have established a Racial Justice and Equal Economic Opportunity Initiative to ensure that issues of racial equity are front and center in our work. The Initiative addresses the profound injustices present in every type of consumer transaction: mortgages and foreclosures, auto finance, debt collection, toxic land installment contracts, student loans and for-profit schools, criminal justice debt, credit reporting and scoring, access to broadband internet, and more. To make matters worse, people, families, and communities of color are suffering the most widespread consequences of the COVID-19 pandemic and the resulting economic crisis.

We stand in solidarity with those risking their lives and their health to protest racial injustice, and urge our supporters to do the same.

As an organization and as individuals, we must all work to fight bias and racism wherever we find it. We cannot rest until we have made our society one where all people are treated with equal dignity and respect and have equal opportunities to provide for themselves and their families.
We also call on our community of consumer lawyers and advocates to join the fight for racial justice. Attorneys have a special responsibility to use their privileged position to achieve justice for the most vulnerable and victimized. No matter the focus of your practice, you can help attack systemic racial discrimination that denies individuals access to credit, affordable housing, and financial services on fair and equitable terms.

The list of outrages is long. There is no shortage of work to do. We urge you to jump into this fight and join us in building a more just and inclusive economy and society. To succeed, we must all join the struggle, together.

In solidarity,

Richard Dubois  
Executive Director  
National Consumer Law Center

Odette Williamson  
Director  
NCLC’s Racial Justice & Equal Economic Opportunity Initiative