



# Correcting the Record

## The OCC's "Fake Lender" Rule Expands Harmful, Predatory Lending

April 2021

The Office of the Comptroller of the Currency's (OCC) "fake lender" rule is an existential threat to state interest rate limits that protect consumers from predatory lending. Since the American Revolution, states have limited interest rates to stop predatory lending. Forty-five states and the District of Columbia (DC) have interest rate caps on at least some installment loans, depending on the size.<sup>1</sup> These laws are extremely popular. In recent years, Arizona, Montana, South Dakota, Colorado, and Nebraska have passed ballot initiatives, with overwhelming support, establishing or reaffirming rate caps at or about 36%. Nebraska voters passed its measure last fall with 83% of the vote.

The OCC claims that its "fake lender" Rule will benefit consumers and lenders. However, the OCC rule is [being used in court right now](#) to defend a \$67,000 loan to a [restaurant owner at 268%](#) APR that violates state usury law. The predatory lender, World Business Lenders (WBL), is laundering loans through OCC-supervised bank Axos. In addition to the abusive interest rate, small business owners are facing foreclosure proceedings by WBL because the loan is often secured by their home.

Another OCC-regulated bank, Stride Bank, has, for over a year, been helping the payday lender CURO (Speedy Cash) pilot online installment loans that can go as high as 130 - 179% APR to help CURO "expand geographically ... where we don't operate right now." It conveniently stopped accepting applications this month.

**The OCC's authority over banks is clear, and this rule was not needed to clarify it. The "fake lender" rule addresses the interest rate charged by lenders that are not banks by attempting to claim it is a bank loan. The rule has no impact on the OCC's ability to supervise and take enforcement actions with respect to banks. Repealing the rule won't affect that authority.** Moreover, the OCC's authority to protect the safety and soundness of banks and to protect consumers will not be affected by repealing the rule through a Congressional Review Act (CRA); rather, the CRA will only prevent a "substantially the same" effort from the OCC to protect predatory lenders that are evading state usury laws.



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<sup>1</sup> Among those states, the median interest rate limit for a \$2,000 loan with a 2-year limit is 32% APR, and 25% APR for a \$10,000 loan with a 5-year term.



# Facts

**The OCC's defense of the “fake lender” rule is as deceptive as the rule itself. Here are the facts:**



**FACT:** The rule facilitates rogue banks lending their name to rent-a-bank lending schemes, as all that is necessary for the bank to be the “true lender” is the bank’s name on the loan agreement.



**FACT:** The rule enables and protects predatory lending, as shown in the examples above. This pulls people into debt traps.



**FACT:** The rule gives high-cost, state-regulated, non-bank lenders the “certainty” of evading state law and shuts down the ability of states and state courts to stop these evasions.



**FACT:** The rule irrationally deems that the lender of a loan program run almost entirely by a non-bank lender is actually a bank, leaving the state without the ability to protect consumers through state interest rate limits or supervision of loan origination.



**FACT:** The rule enables non-bank predatory lenders to offer high-cost loans that exceed state rate caps by laundering their loans through OCC-supervised banks that are not subject to state interest rate limits.



**FACT:** The rule promotes and defends rent-a-bank schemes and does not have a single guardrail. The OCC is currently allowing predatory rent-a-bank schemes, as shown in the previous examples.



**FACT:** National banks have no interest rate limits. Banks put headquarters in states with no limits, and the National Bank Act allows the home state rate to be charged anywhere. But the rule expands that freedom from rate caps to non-bank lenders.



**FACT:** The OCC rushed to finalize its “fake lender” rule. More than 4,000 comments were submitted during the short public comment period. Many of these letters sounded alarms about the grave threat this rule posed to consumers by facilitating predatory lending, yet the OCC wholly failed to meaningfully address these concerns.



**FACT:** A bipartisan group of 25 state attorneys general including Arkansas, Nebraska and South Dakota have called for Congress to overturn this fake lender rule.



**FACT:** High-cost loans made through rent-a-bank schemes are debt traps. See chart below that uses loan amounts and terms typical of current rent-a-bank loans compared to loans with lower interest rates.

	Total interest on 25% APR	Total interest on 36% APR	Total interest on 160% APR
\$500, 6-month term	\$37.08	\$53.79	<b>\$257.44</b>
\$2,000, 2-year term (24 months)	\$561.79	\$834.22	<b>\$4,732.92</b>

All calculations based on all-in interest rate with no additional fees.

Average state interest rates per [National Consumer Law Center](#).

Fee-inclusive (“all-in”) Annual Percentage Rates (APRs) enable consumers to make “apples to apples” cost comparisons and help determine affordability.

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**Congress should pass S.J.Res. 15/H.J.Res. 35 to repeal the harmful “fake lender” rule.**

