February 4, 2022

The Honorable Martin Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
1776 F Street, NW
Washington, DC 20006

Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20220

Michael Hsu, Acting Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC

Dear Acting Chairman Gruenberg, Director Chopra, and Acting Comptroller Hsu:

Accountable.US, Americans for Financial Reform Education Fund, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumer Reports, the Leadership Conference on Civil and Human Rights, NAACP, National Association of Consumer Advocates, National Community Reinvestment Coalition, National Consumer Law Center (on behalf of its low-income clients), Public Citizen, U.S. PIRG, UnidosUS and the Woodstock Institute write to urge the FDIC to stop permitting its supervised institutions to front for predatory lenders evading state interest rate limits.

FDIC-supervised banks are helping predatory lenders make loans up to 225% APR that are illegal in almost every state. These rent-a-bank schemes often operate under the guise of innovative "fintech" products, even as their high-cost, high-default business model inflicts harms similar to those inflicted by traditional payday lenders.

Last year, on a bipartisan basis, Congress expressed its strong disapproval of rent-a-bank schemes by adopting a resolution to overturn the Office of the Comptroller of the Currency's (OCC) "fake lender" rule.[1] President Biden, in signing the resolution, stated:

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[1] Sylvan Lane, The Hill, Senate votes to repeal OCC 'true lender' rule (May 11, 2021) (describing Senate vote including Senators Marco Rubio (R-FL), Susan Collins (R-ME), and Cynthia Lummis (R-WY)).

"The … bill will protect borrowers against predatory lenders. In many states, these lenders are kept in check by caps on how much interest they can charge, but some loan sharks and online lenders have figured out how to get around these limits … -- by using a partnership with a bank to avoid the state cap and charging outrageous interest… -- some as high as 100 percent interest, which is astounding…

"These are so called "rent-a-bank" schemes. And they allow lenders to prey on veterans, seniors, and other unsuspecting borrowers tapping in the -- trapping them into a cycle of debt. And the last administration let it happened, but we won't."[2]

The OCC's effort to protect rent-a-bank schemes triggered an outpouring of criticism,[3] including letters from 413 civil rights, community, consumer, disability rights, housing, labor, legal services, senior rights, small business, and veterans organizations representing all 50 states and the District of Columbia;[4] a bipartisan group of 25 state attorneys general;[5] the Conference of State Bank Supervisors;[6] the National Association of Consumer Credit Administrators;[7] 138 academics;[8] faith groups;[9] and the Military Officers Association of America,[10] among others.

While the FDIC has not proposed a fake lender rule like the OCC's, the FDIC appears to have done nothing to curtail the predatory lending that has exploded on its watch. The OCC, in contrast, appears to have stopped the two OCC-supervised banks that were enabling high-cost installment loans even before Congress overturned the OCC rule.[11] Unfortunately, the end to the OCC fake lender rule did not end rent-a-bank schemes, which are continuing using FDIC-supervised banks.

We are aware of six rogue banks fronting for numerous high-cost non-bank consumer lenders, enabling loans up to 225% APR that are illegal for the non-bank lender to make directly. The schemes are as follows:

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[2] Remarks by President Biden Signing Three Congressional Review Act Bills Into Law: S.J.RES.13; S.J.RES.14; and S.J.RES.15 (June 30, 2021).
[3] Stop the Debt Trap, Who Supports Overturning the OCC's "Fake Lender" Rule? (May 2021).
[4] Letter from 413 groups to Speaker Pelosi and Minority Leader McCarthy re Support CRA challenge to OCC "fake lender" predatory lending rule (June 8, 2021).
[5] Letter from 25 state attorneys general to Hon. Charles E. Schumer et al. re Use of Congressional Review Act to Invalidate OCC True Lender Rule That Facilitates Predatory Lending (Apr. 21, 2021) (including AGs of Nebraska and South Dakota).
[6] CSBS Letter re: CRA Resolution on True Lender (Apr. 26, 2021).
[7] Letter from NACCA to Chairwoman Maxine Waters (Apr. 27, 2021).
[8] Letter from 128 scholars to Sen. Chris Van Hollen & Rep. Jesus ("Chu") Garcia re Support S.J. Res. 15 (Van Hollen) and H.J. Res. 35 (J. García), disapproving OCC's Rule on National Banks and Federal Savings Associations as Lenders (Apr. 20, 2021).
[9] Press Release, Faith Leaders Applaud Congress' Decision to Challenge OCC's 'True Lender' Rule (March 30, 2021).
[10] MOAA's Statement on the 117th Congress' SJRES 15.
[11] Stride Bank was enabling a pilot project for the payday lender CURO for its new installment loan brands Verge and Avío. Axos Bank was enabling small business rent-a-bank loans for World Business Lenders and BFS Capital. These rent-a-bank schemes apparently ended last year during the campaign over the OCC's fake lender rule. *See* https://www.vergecredit.com/ ("We are not accepting new loan applications at this time.") (last visited 01/10/2022); https://www.aviocredit.com/ (no longer stating that the loans are originated by Stride Bank) (last visited 01/20/2022); Eric Sherman, Raw Story, Congress close to reversing Trump-era lending loophole that allowed 'rogue banks' to bleed Americans (May 23, 2021) ("Axos [Bank] said that it no longer had has a relationship with WBL ….").

- **Republic Bank and Trust** (Kentucky-chartered) is enabling:
    - o **Enova**, which operates payday and installment lender **CashNetUSA**, to make **NetCredit**-branded installment loans at rates up to 99.99% APR;
    - o **Elevate** to make **Elastic**-branded lines of credit at effective APRs up to 109% APR;

- **FinWise Bank** (Utah-chartered) is enabling:
    - o **Opportunity Financial, LLC (OppFi aka OppLoans)** to make installment loans at rates up to 160% APR;
    - o **Elevate** to make **Rise**-branded installment loans at rates up to 99%-149% APR (Elevate uses two additional banks to enable Rise loans as well, noted below);
    - o **American First Finance** to make secured and unsecured installment loans for purchases at retailers including furniture, appliances, home improvements, pets, auto and mobile home repair, jewelry and body art at rates up to about 161% APR;

- **Capital Community Bank** (Utah-chartered) is enabling:
    - o **Elevate Credit** to make **Rise**-branded installment loans at rates up to 99-149% APR.
    - o **Wheels Financial Group**, LLC dba **LoanMart** (under the **ChoiceCash** brand) to make illegal auto title loans at rates up to 170% APR.
    - o **Axcess Financial,** which operates the Check 'no Go payday loan stores, to make installment loans under the **Xact** brand at APRs up to 225%.
    - o **Total Loan Services** to facilitate CC Connect-brand installments loans up to 225% APR, offered through a variety of payday and online lenders including **EZ$Money Check Cashing**, **LoanMe**, **Lendly LLC**, **MoneyKey**, **Quickcredit.com**, and **SunUp Financial**.[12]

- **First Electronic Bank** (Utah-chartered industrial loan company (ILC)) is enabling:
    - o **Elevate** to make **Rise**-branded installment loans up to 99%-149% APR (along with FinWise Bank).
    - o **Applied Data Finance**, dba **Personify Financial**, to make loans up to 179.99% APR.

- **Transportation Alliance Bank (TAB Bank)** (Utah-chartered) is enabling:
    - o Duvera Billing Services dba **EasyPay Finance** to make loans at rates up to 188.99% APR through businesses across the country that sell auto repairs, furniture, home appliances, pets, wheels, and tires, among other items.
    - o **Integra** to make installment loans at rates up to 99-149% APR.

- **Lead Bank** (Missouri-chartered), like Capital Community Bank, is enabling **LoanMe** to make loans in certain states.[13] LoanMe's rates run from 85% APR into the triple digits.[14]

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[12] The Center for Economic Integrity, an Arizona-based community and advocacy organization, recently documented Capital Community Bank's rent-a-bank schemes in detail as part of a complaint the organization filed with the FDIC about the high-cost lending the bank is enabling in Arizona. See these details and the organization's complaint at https://economicintegrity.org/?p=2875.
[13] https://www.loanme.com/
[14] *See* Greg Smith & Clifford Michel, The City, Incoming Lt. Gov. Brian Benjamin Owns Insider Stock in Firm That Arranges Sky-High Interest Loans (Sept. 7, 2021).

Federal supervision and enforcement of the laws that apply to banks are no substitute for the state rate caps that rent-a-bank schemes evade. State interest rate limits are the most effective way to protect consumers from unfair, abusive and unaffordable loans in the absence of a national interest rate limit.

Nearly every state prohibits the grossly high-cost installment loans described above. For example, 42 states and DC cap rates well below 100% for a $2,000, two-year installment loan.[15] In addition, seventeen states plus DC have interest rate caps that prevent short-term payday loans, a number that has grown by several over the last decade.[16] Voters have strongly endorsed interest rate limits. In recent years, overwhelming bipartisan majorities in both red and blue states, including Arizona, Colorado, Montana, Nebraska, Ohio and South Dakota have supported rate caps of 36% APR or less.[17]

The FDIC has numerous reasons to stop its supervised banks from engaging in high-cost predatory lending. These rent-a-bank schemes:

- Are an abuse of the bank charter to facilitate loans for non-banks that are the true lender, helping them evade state laws.
- Lead to abusive lending practices as they divorce lender and borrower incentives, allowing lenders to succeed while causing severe harm to consumers.
- Pose a range of legal, safety and soundness, and reputational risks to banks.
- Carry a high risk of jeopardizing compliance with several federal laws, including the Military Lending Act, Community Reinvestment Act, the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, the Fair Debt Collection Practices Act and the Fair Credit Reporting Act.
- Contradict principles of responsible lending that banking agency guidance has consistently promoted.

Rent-a-bank schemes have flourished at FDIC banks in the past few years and it is time for that to come to an end. The FDIC has the tools that it needs to prevent its banks from fronting for predatory lenders that are evading state law and making grossly high-cost installment loans and lines of credit at 100% to 225% APR. Two decades ago, the FDIC, along with the other bank regulators, used its supervisory and enforcement powers to stop banks from helping short-term payday lenders evade the law.[18]

It is now time for the FDIC to put an end to modern predatory rent-a-bank schemes involving longer-term loans that are an even bigger, deeper debt trap.

Yours very truly,

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[15] National Consumer Law Center, State Rate Caps for $500 and $2,000 Loans (July 2021).

[16] Center for Responsible Lending, Map of U.S. Payday Interest Rates (Mar. 23, 2021).

[17] *See* NCLC, After Payday Loans: Consumers Find Better Ways to Cope with Financial Challenges at 1 n.3 (Aug. 2021).

[18] *See, e.g.,* Robert Schoenberger, Republic to Get Out of Payday Loans; FDIC Urged Bank to Exit Business, The Courier-Journal, Mar. 3, 2006; Republic Bancorp Inc., SEC Form 8-K (Feb. 24, 2006), available at www.sec.gov (noting decision to get out of payday lending business due to FDIC action); Delaware Business Blog, FDIC to FIRST BANK OF DELAWARE, "Cease and Desist" (Dec. 21, 2008); Letter from Donald E. Powell, Chairman, FDIC to Mr. Roy Cooper, Attorney General of North Carolina (Apr. 27, 2005), on file with CFA ("FDIC-supervised banks have been informed that they will be held accountable for the activities of their payday lender partners, and the FDIC has taken actions against banks based on the activities of their payday lender partners. Banks cannot simply 'rent their charter' and leave management of the program to a third party. Such an approach would prompt the FDIC to pursue appropriate corrective action, which may include instructing the bank to discontinue payday lending.").

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Public Citizen
U.S. PIRG
UnidosUS
Woodstock Institute