

September 3, 2020

The Honorable Brian P. Brooks
Acting Comptroller of the Currency
400 7th St SW
Washington, DC 20219

Re: Comments on Proposal “National Banks and Federal Savings Associations as Lenders”
Docket ID: OCC-2020-0026 RIN 1557-AE97

On behalf of the Californians for Economic Justice Coalition - a diverse coalition of nonprofit community and faith-based organizations working to advance economic justice for all in California – we write to strongly oppose the OCC’s proposed rule “National Banks and Federal Savings Associations as Lenders” because it will invite an onslaught of predatory installment lending into California.

California has strong interest rate caps on installment loans intended to protect our residents from predatory loans. Understanding that products like payday loans, car-title loans, and high-cost installment loans at sky high interest rates are merely debt traps for borrowers, consumer advocates, community and faith-based organizations, and veterans groups worked closely with legislators and lending industry representatives to reach a final compromise that would prohibit predatory lending and still allow companies to offer loans at competitive rates. This effort, spanning three years of deliberative and thoughtful conversations with a broad coalition of stakeholders, led to the final provisions of AB 539 (Limon), The Fair Access to Credit Act in 2019. The law capped interest rates on loans of \$2,500 and above at 36% APR plus the federal funds rate. It became effective January 1, 2020.

However, before Governor Newsom had a chance to sign the bill into law, at least three large lenders that currently charge between 135% and 199% APR on installment loans,¹ brazenly informed their investors of their intent to use rent-a-bank schemes to evade the new rate cap.

Elevate Credit, for example--which currently operates rent-a-bank schemes in many states through FDIC-supervised banks Republic Bank & Trust and FinWise Bank--was explicit about its intent to evade the new law should it be enacted:

“As you know, in California a piece of legislation named AB539 continues to move ahead...So what does this mean for Elevate? ... [W]e expect to be able to continue to serve California consumers via bank sponsors that are not subject to the same proposed state level rate limitations.”²

Enova was equally blatant about its plan to continue offering loans at the same high rates as before, disregarding the legislature’s clear determination that such rates are unacceptably harmful to California families:

¹ These three lenders are Elevate Credit, Inc., Enova International, Inc. and CURO Group Holdings Corp, each operating in California Rise Credit, CashNetUSA, and Speedy Cash, respectively.

² Elevate Credit Inc. earnings call pages 5-6, 10 (July 29, 2019) at SeekingAlpha.com

“One potential change is a California bill that will cap interest rate at roughly 38% on personal loans between \$2,500 and \$10,000... [W]e will likely convert our near-prime product [NetCredit, priced at up to 155% APR] to a bank-partner program, which will allow us to continue to operate in California at similar rates to what we charge today.”ⁱ

Likewise, **CURO**, which operates **SpeedyCash**, made its intended evasion explicit:

“In terms of regulation at the state level in California, we expect a new law to pass in September, capping the APR on [\$2500] installment loans at about 38.5%, making our current installment products no longer viable...[W]e continue to talk to Meta[bank] and we continue to talk to other banks about partnership opportunities... I think we feel very good about being able to find products and partnerships that will serve our, the customer base in California that wants this longer, longer term, larger installment loan or possibly as a line of credit product.”ⁱⁱ

These lenders could not have been more explicit about their intent to use rent-a-bank schemes for the express purpose of ignoring the clearly-stated policy of California. The OCC’s so called “True Lender” rule -- which would actually gut the longstanding anti-evasion true lender doctrine -- threatens to open California’s doors to more of these scams, which harm the people of California by subjecting them to predatory loans that exploit many of our most financially vulnerable residents.

Here are California’s current interest rate limitsⁱⁱⁱ followed by examples of current rent-a-bank schemes in California^{iv}

California interest rate limit	Loan Amount	Loan term
45%	\$500	6 month loan term
25%	\$2,000	2 year loan term
36% + fed fund rate (0.25% today)	\$2,500 – \$10,000	Maximum term 60 months 15 days

Predatory Lender	Rent-a-bank	Federal Regulator	Interest rate charged	Loan amount
World Business Lenders (WBL)	Axos Bank	OCC-supervised	75% to 139% or higher	\$20,000 to \$550,000 Small business loans often secured by the business owner’s home
OppLoans	FinWise Bank (Utah)	FDIC-supervised	Up to 160%	\$400-\$4,000
LoanMart (dba ChoiceCash)	Community Capital Bank (Utah)	FDIC-supervised	Example 170%	Example \$3,000 3-year loan

In addition, the OCC is permitting **Stride Bank** to pilot loans up to 179.99% for CURO's Verge Credit in a plan to expand to states that do not permit those rates for non-banks.

Since the inception of this nation, regulation of interest rate limits has been a state function. Yet the OCC seeks to change that now, by claiming that state-regulated non-bank lenders can ignore state rate caps by essentially paying a bank (which is typically not subject to state usury limits) to pose as the "true lender." The OCC's proposal ensures that predatory lenders can pursue rent-a-bank schemes without any legal concerns.

The OCC lacks the authority to determine whether or not a non-bank lender is evading our state laws. Moreover, the OCC has demonstrated no need for this policy. Indeed, the residents of California are not being harmed by a shortage of loans that exceed California's rate cap; rather, they are better off without high-cost loans.

As a coalition representing communities that have been impacted by the harms associated with predatory lending, we are deeply concerned by the bold statements of lenders planning on evading state law, with the intent of continuing to target economically vulnerable Californians. We strongly oppose the OCC's proposal and urge the OCC instead to prohibit these arrangements that deliberately circumvent state law.

We urge you to withdraw this unjustified and extremely harmful proposal.

Sincerely,

California League of United Latin American Citizens (LULAC)

Center for Responsible Lending

Coalition for Humane Immigrant Rights (CHIRLA)

FreeFrom

The Greenlining Institute

Housing and Economic Rights Advocates

New Economics for Women

San Francisco Office of Financial Empowerment

ⁱ Enova International Inc., earnings call, pages 3, 9-10 (July 26, 2019) at SeekingAlpha.com

ⁱⁱ CURO Group Holdings Corp. earnings call, pages 3, 7-8 (August 2, 2019) at SeekingAlpha.com

ⁱⁱⁱ National Consumer Law Center, State Rate Caps for \$500 and \$2,000 Loans February 2020, https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/FactSheet-StateRateCap.pdf

^{iv} National Consumer Law Center, High-Cost Rent-a-Bank Loan Watch List, <https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html>