

January 21, 2020

The Honorable Joseph M. Otting  
Comptroller  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW  
Washington, DC 20219  
***Delivered electronically***

Re: Comments on OCC Notice of Proposed Rulemaking, Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred, 12 CFR Part 7 and Part 160, Docket ID OCC-2019-0027, RIN 1557-AE73

Dear Comptroller Otting:

The undersigned community, consumer, civil rights, faith and small business organizations write to strongly oppose the OCC's proposed rule addressing state interest rate limits, which threatens to eviscerate state rate caps around the country and encourage the spread of predatory lending.

Interest rate limits are the single most effective tool states have to protect their residents from predatory loans. Predatory loans include payday and car title loans that often carry annual interest rates as high as 300% or more. Predatory loans also include high-cost installment loans and lines of credit with rates approaching and well exceeding 100%. These loans target financially distressed individuals, compound their debt burden, and leave them worse off. Payday lenders also disproportionately prey on communities of color, stripping them of income, exacerbating financial exclusion, and widening the racial wealth gap.

From the founding of our nation, states have had authority to limit interest rates, and they still do for entities other than banks. Forty-three or more states and the District of Columbia (DC) have rate caps on installment loans, depending on the size of the loan, with a median cap among those states of about 36.5% for a \$500, 6-month loan. Sixteen states and DC—representing about a third of the U.S. population—enforce interest rates of 36% or lower that keep short-term payday loans, in addition to longer-term high-cost loans, out of their borders.

The OCC's proposal would place all of these rate caps in grave jeopardy. It would embolden rent-a-bank schemes, where high-cost non-bank lenders use banks, which are not generally subject to state usury limits, to originate loans at rates well in excess of the rates the non-bank lender could charge on its own under state law. These arrangements are plainly designed to evade state usury laws. Under traditional application of state usury laws, courts look beyond the form to the substance when a transaction is designed to avoid application of a state's usury laws. Yet the OCC's proposal flatly provides that state-regulated entities may charge usurious rates when they purchase loans originated by a bank.

The OCC's statement that this proposal is not addressing the "true lender" doctrine is of no comfort. In a recent amicus brief, the OCC, along with the FDIC, is already promoting the so-called "valid-when-made" theory the proposed rule would codify to support a predatory lender, when the bank (FDIC-supervised Bank of Lake Mills) is likely not the true lender. In that case, small business lender World Business Lenders is attempting to collect 120% interest on a \$550,000 small business loan. The loan is illegal for a nonbank lender in Colorado; World Business Lenders used the bank to make the loan. The OCC has also evidently not stopped a rent-a-bank scheme between World Business Lenders and another bank, **OCC-supervised Axos Bank**, which involves loans like a \$90,000 mortgage at 138% APR, which is the subject of separate litigation.

In addition, the proposal offers no indication that the agency will address future rent-a-bank schemes, even as some predatory lenders have publicly announced that they plan to evade California's new interest rate cap using rent-a-bank schemes.

Rather, the proposal places the burden of proving the bank is the "true lender" on state regulators and private litigants, which, within the landscape of the OCC's proposal being finalized, is largely if not entirely unworkable. The proposal replaces the clear and simple rule that state usury laws generally apply to state-regulated nonbank entities with a rule that encourages high-cost lenders to take their chances. Indeed, it may be the green light many predatory lenders need to operate largely, if not primarily, through rent-a-bank schemes.

The OCC's proposal, which would broadly preempt state interest rate limits that apply to state-supervised non-banks, far exceeds the scope of the agency's authority. The OCC also wholly fails to demonstrate any need for this proposal. The agency purports to address "uncertainty" in the market (related to the sale of loans from banks to non-banks post the *Madden v. Midland* court decision) but offers no evidence of any negative impact on the market or on consumers. This unsubstantiated and speculative need for the proposal contrasts with the virtually certain, enormous damage it would cause.

Finally, we wholly reject any notion that this proposal may be needed to enable lenders to meet the credit needs of the financially vulnerable. To the contrary, it would make the financially vulnerable more so, facilitating the spread of predatory lending, and—betraying our federalist system—jeopardizing the most effective tool states have to stop it.

We appreciate your consideration of our concerns.

Yours truly,

Alabama Appleseed Center for Law & Justice  
Allied Progress  
Americans for Financial Reform Education Fund  
Arizona PIRG Education Fund  
Arkansans Against Abusive Payday Lending  
Arkansas Community Organizations  
Asian Law Alliance (California)

Atlanta Legal Aid Society, Inc.  
The Bell Policy Center (Colorado)  
Bread for the World-South Dakota chapter  
California Association for Micro Enterprise Opportunity CAMEO  
California Reinvestment Coalition  
Californians for Economic Justice  
CALPIRG  
Center for Economic Integrity  
Center for Responsible Lending  
Coalition for Humane Immigrant Rights (CHIRLA)  
Community Economic Development Association of Michigan  
Community Legal Services, Inc. of Philadelphia  
ConnPIRG  
Consumer Action  
Consumer Federation of America  
Consumer Justice Law Center LLC (Wisconsin)  
Consumer Reports  
Consumers for Auto Reliability and Safety (California)  
CoPIRG  
Delaware Manufactured Home Owners Association  
Demos  
East Bay Community Law Center (California)  
Empire Justice Center (New York)  
Faith in Action  
Florida Alliance for Consumer Protection  
Florida Consumer Action Network  
Florida PIRG  
Georgia PIRG  
Georgia Watch  
Heartland Alliance (Illinois)  
Heartland Center for Jobs and Freedom (Missouri)  
HOPE for All: Helping Others Prosper Economically (California)  
Housing & Economic Rights Advocates (California)  
Illinois PIRG  
Indiana Institute for Working Families  
Indiana PIRG  
Interfaith Center on Corporate Responsibility  
Iowa PIRG  
Kentucky Equal Justice Center  
Leadership Conference on Civil and Human Rights  
Legal Aid Society of the District of Columbia

Legal Services of New Jersey  
Main Street Alliance  
Maryland PIRG  
MASSPIRG  
Metropolitan Christian Council Detroit Windsor  
Montana Organizing Project  
MontPIRG  
MoPIRG  
NAACP  
NAACP CO-MT-WY State Conference  
National Association of Consumer Advocates  
National Baptist Convention of America  
National Consumer Law Center (on behalf of its low income clients)  
National Fair Housing Alliance  
NCPIRG  
Neighborhood Partnerships (Oregon)  
New Economics for Women (California)  
New Economy Project (New York)  
New Jersey Citizen Action  
NHPIRG  
NJPIRG  
NMPIRG  
North Carolina Justice Center  
North Dakota Economic Security and Prosperity Alliance  
Ohio PIRG  
Oregon PIRG (OPIRG)  
PennPIRG  
Person County Habitat for Humanity (North Carolina)  
PIRG in Michigan (PIRGIM)  
Policy Matters Ohio  
Portland Community Reinvestment Initiatives, Inc. (Oregon)  
Public Justice Center (Maryland)  
Public Law Center (California)  
RIPIRG  
SC Appleseed Legal Justice Center (South Carolina)  
SD Bread for the World (South Dakota)  
Shaw University Divinity School (North Carolina)  
Small Business Majority  
South Carolina Christian Action Council, Inc  
Southern Arizona Grandparent Ambassadors  
Statewide Poverty Action Network (Washington)

Tennessee Citizen Action  
Texas Appleseed  
TexPIRG  
The Financial Clinic  
Tzedek DC  
U.S. PIRG  
United Way of Metropolitan Dallas  
Virginia Organizing  
Virginia Poverty Law Center  
VOICE OKC (Oklahoma)  
WASHPIRG  
Wesley Memorial UMC (Virginia)  
WISPIRG