

Prohibiting Rent-a-Bank Arrangements: A Longstanding Banking Principle

September 2019

1. Long Precedent Against Rent-A-Bank Schemes Has Served Banks and Consumers Well.

- **OCC, FRB, and FDIC ended most rent-a-bank schemes by 2005.**
 - OCC Comptroller John D. Hawke, in 2002-2003:
 - Rent-a-bank arrangements are “an abuse of the national charter”;
 - “The preemption privileges of national banks derive from the Constitution and are not a commodity that can be transferred for a fee to nonbank lenders”;
 - “[w]e are particularly concerned where an underlying purpose of the relationship is to afford the vendor an escape from state and local laws.”
 - FRB-supervised First Bank of Delaware ended partnerships with payday lenders in 2003 under pressure from FRB.
 - FDIC ended FDIC-supervised bank partnerships with short-term payday lenders in 2005.
- **The 2010 Wall Street Reform Act reinforces impropriety of rent-a-bank.** The Act limited preemption of state law to the bank itself, reversing a Supreme Court decision that had extended preemption to operating subsidiaries. Rent-a-bank schemes are even less connected to the bank than activities of bank subsidiaries.

2. More Recent Rent-a-Bank Arrangements (with FDIC-supervised banks) Include Grossly Irresponsible Loans.

- **Opploans (through FinWise Bank (UT))**
 - 160% APR loans from \$500-\$4000.
 - Website strongly suggests it makes loans directly in states where the loans are permitted, and through FinWise Bank in states where they are not.
- **Elevate (Rise) (through FinWise Bank (UT))**
 - 99% to 149% APR loans from \$500 to \$5,000.
 - Website discloses the same rates in some states that do not permit those rates.
- **Elevate (Elastic) (through Republic Bank & Trust (KY))**
 - 96% APR on Elastic product (129% on entire book of business).
 - \$380 advance repaid with monthly minimum payments costs \$480 over five months.
 - Net charge-offs as a percentage of revenues: 51%.
 - No intention of driving down charge-offs → High rate, high default model → unaffordable loans.
- **CashCall, previously (through First Bank & Trust (S.D.))**
 - 99-135% APR loans; targeting default rates of 35-40%; abusive debt collection practices.
 - Sued by WV and MD. Court held purpose was to hide behind bank’s charter.

3. Change in Course Would Invite Risk, Backlash, and Erosion of Confidence in Banking System.

- **Grave threat to strongest protection against predatory lending, state rate caps.** Most states cap rates on installment loans; of those, median cap is 37% for \$500 loan; 31% for \$2,000; 25% for \$10,000.
- **Broad outcry from civil rights, consumer, community, and faith groups.** At least 150 national, state and local groups have opposed permitting rent-a-bank arrangements.
- **CSBS and NY DFS have sued the OCC over the preemptive fintech charter.**