

June 8, 2021

The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
Washington, D.C. 20515

Re: Support CRA challenge to OCC “fake lender” predatory lending rule

Dear Speaker Pelosi and Minority Leader McCarthy:

The undersigned 413 civil rights, community, consumer, disability rights, faith, housing, labor, legal services, senior rights, small business, and veterans organizations representing all 50 states and the District of Columbia write to urge you to support the Congressional Review Act challenge ([S.J.Res.15/H.J.Res.35](#)) to the OCC’s final rule, “National Banks and Federal Savings Associations as Lenders,” which will unleash predatory lending in all fifty states.

The final rule, enacted by the OCC in [October 2020](#), overturns 200 years of caselaw endorsed by the Supreme Court that allows courts to look beyond contrivances to prevent usury evasions. The rule replaces the longstanding “true lender” anti-evasion doctrine with a “fake lender” rule that **allows lenders charging rates of 179% or higher to evade state and voter-approved interest rate caps merely by putting a bank’s name on the paperwork – just as payday lenders were doing in the early 2000s**. The rule has already been [challenged by](#) eight Attorneys General.

**Interest rates caps are the simplest and most effective way to protect consumers from predatory lenders.** States have had the power to enact these caps since the American Revolution. At least 45 states and the District of Columbia (DC) have rate caps on at least some installment loans, depending on the size of the loan. While many states permit short-term payday loans, 17<sup>1</sup> states and DC—representing about a third of the U.S. population—enforce interest rates of 36% or less that keep all high-cost loans out of their state.

**American voters strongly support state rate caps on a bipartisan basis.** In November 2020, 83% of voters in Nebraska enacted a rate cap ballot initiative to place a 36% interest rate cap on payday loans. Nebraska thus joins states like Arizona, Colorado, Montana, and South Dakota where strong bipartisan votes in recent years illustrate the public’s overwhelming support for these usury laws. According to recent polling, [70% of voters](#) across party lines support a 36%

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<sup>1</sup> Following submission of this letter, the Predatory Loan Prevention Act in Illinois was signed into law, making it the 18th state to cap loans at 36% or lower interest rates.

rate cap, and during the coronavirus pandemic, [81% of Americans](#) support prohibiting high-interest loans.

**However, non-bank predatory lenders have sought to evade state usury laws by entering into “rent-a-bank” schemes with a few, rogue banks.** Banks are largely exempt from state rate caps, and through these schemes, the non-bank predatory lender launders loans through the bank in order to claim that state interest rate limits do not apply. These lenders charge triple-digit interest rates, target the financially vulnerable and communities of color, and trap consumers in devastating cycles of debt.

Payday lenders first tried using rent-a-bank schemes in the early 2000s, putting a bank’s name on the paperwork, just as the OCC rule now allows, claiming the payday lender was just a “servicer” for a bank loan. State attorneys general, courts, and federal bank regulators shut down these early payday loan rent-a-bank schemes. Relying on a centuries-old anti-evasion doctrine, courts “followed the money” to find that the payday lender, not the bank, was the “true lender.”<sup>2</sup> But rent-a-bank lending is back, now being used to make longer-term installment loans at rates that exceed voter- and legislature-approved rate caps.

High-cost installment loans are an even bigger and deeper debt trap than short-term payday loans. The amounts are bigger, the interest charges are higher, they go on for a longer period of time, and they are harder to escape with help from friends or family.

**OCC-regulated banks are already helping to make some of the most predatory installment loans on the market with interest rates of 100% and higher.** For example, after California adopted an interest rate cap on loans above \$2,500, CURO – which operates the SpeedyCash and RapidCash brand of payday loans and high-cost installment loans – brazenly announced that “bank partnerships are great” and would allow CURO to ignore the new law.<sup>3</sup> OCC-regulated Stride Bank is now piloting 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.<sup>4</sup>

Another OCC-regulated bank, Axos Bank, launders loans for the predatory, subprime small business lender World Business Lenders. WBL loans – in the tens and even hundreds of thousands of dollars – carry rates of 139% APR or higher, and are often secured by the small business owner’s home, putting many into foreclosure.

In June 2020, the District of Columbia Attorney General filed [suit](#) against yet another rent-a-bank lender, Elevate Credit, Inc.. The DC Attorney General argued that Elevate is the true lender of loans made in DC, well in excess of the District’s rate cap. Elevate sold two short term loan products to District residents that carried interest rates between 99 and 251%, up to 42 times

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<sup>2</sup> National Consumer Law Center, Consumer Credit Regulation § 3.9.1 (3d ed. 2020), *updated at* <https://library.nclc.org>. Includes a few of the hundreds of cases that illustrate that the substance-over-form doctrine remains the universal rule today and that emphasize the importance of looking to the truth in preventing evasion of usury laws.

<sup>3</sup> National Consumer Law Center, Payday Lenders Plan to Evade California’s New Interest Rate Cap Law Through Rent-A-Bank Schemes (October 2019), <https://www.nclc.org/issues/ib-rent-a-bank.html>.

<sup>4</sup> Verge Credit, *Rates and Terms*, 2020, <https://www.vergecredit.com/rates-and-terms/>, (last visited September 2, 2020).

the legal limit in DC. In two years, Elevate made 2,551 loans to residents well above the maximum interest rate of 24% for lenders that disclose their rate in contracts and 6% for those that do not.

Currently, there are only a few of these rogue, predatory lenders, but they will spread to all 50 states if the OCC rule is not overturned. Lenders' use of online platforms allows them to inundate markets across the United States. By gutting the long-standing anti-evasion doctrine, the OCC's rule will eviscerate the power of state governments to independently regulate interest rate limits and will have horrible consequences for consumers, small businesses, and especially, communities of color.

**The OCC's "fake lender" rule protects rent-a-bank schemes by making them exempt from state interest rate caps as long as a bank is "named as the lender in the loan agreement"<sup>5</sup> – that's it!** The non-bank lender could control all interaction with the borrower, take on virtually all of the risk, reap the vast majority of the profits, but could ignore state laws that apply to non-bank lenders. The OCC final rule will leave states with no ability to protect their interest rate caps, leaving usury laws – in the words of Chief Justice Marshall – a "dead letter."<sup>6</sup>

States must be able to protect their residents from the harms of predatory lending, especially amidst a global pandemic that has hit low- and moderate-income families and communities of color, especially Black, Latinx, and Native American communities, particularly hard due to underlying health and socioeconomic disparities. These high-cost loans do not promote financial inclusion. Instead, they exacerbate financial exclusion. They cannot be justified as providing "access to credit." Instead, they trap borrowers in destructive debt cycles, leaving borrowers with ruined credit and unable to borrow at lower interest rates in the future.

**Therefore, we urge you to support the Congressional Review Act challenge to the OCC's true lender rule, which will eviscerate the power of state interest rate caps and rid state regulators of the single most effective tool to protect consumers from predatory lending.**

Sincerely,

**National**

Accountable.US  
American Association for Justice  
AFCPE (Association for Financial Counseling and Planning Education)  
American Atheists  
American Civil Liberties Union  
American Family Voices

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<sup>5</sup> 12 C.F.R. § 7.1031(b)(1) (effective Dec. 29, 2020).

<sup>6</sup> *Scott v. Lloyd*, 34 U.S. (9 Pet.) 418, 446-47 (1835) (Marshall, C.J.) ("The ingenuity of lenders has devised many contrivances by which, under forms sanctioned by law, the [usury] statute may be evaded. . . . [I]f giving this form to the contract will afford a cover which conceals it from judicial investigation, the [usury] statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form, and examining into the real nature of the transaction.").

American Friends Service Committee  
American Sustainable Business Council  
Americans for Financial Reform  
Appleseed Foundation  
Better Markets  
Blue Star Families  
Bob Barker Company Foundation  
CAARMA  
Capital Good Fund  
Center for Economic Justice  
Center for LGBTQ Economic Advancement & Research (CLEAR)  
Center for Responsible Lending  
Center for Survivor Agency and Justice  
Change Machine  
Children's Advocacy Institute  
Coalition on Human Needs  
Color of Change  
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces  
Consumer Action  
Consumer Federation of America  
Consumer Reports  
Consumers for Auto Reliability and Safety  
CornerSquare Community Capital, Inc.  
Credit Builders Alliance  
Demos  
Fahe  
Hispanic Federation  
Jesuit Social Research Institute  
Justice in Aging  
League of United Latin American Citizens (LULAC)  
Local Initiatives Support Corporation (LISC)  
Main Street Alliance  
Minority Veterans of America  
NAACP  
National Action Network (NAN)  
National Advocacy Center of the Sisters of the Good Shepherd  
National Association for Latino Community Asset Builders  
National Association of Consumer Advocates  
National Association of Consumer Bankruptcy Attorneys (NACBA)  
National Association of Social Workers  
National Center for Law and Economic Justice  
National Coalition for the Homeless  
National Community Reinvestment Coalition  
National Consumer Law Center (on behalf of its low income clients)  
National Consumers League  
National Disability Institute

National Disability Rights Network (NDRN)  
National Fair Housing Alliance  
National Housing Resource Center  
National Partnership for Women & Families  
National Resource Center on Domestic Violence  
National Rural Social Work Caucus  
National Urban League  
Partnership for America's Children  
Prosperity Now  
Public Advocacy for Kids (PAK)  
Public Citizen  
Public Counsel  
Public Good Law Center  
Public Justice  
Reinvestment Partners  
RESULTS  
Revolving Door Project  
Small Business Majority  
Social Change  
Student Borrower Protection Center  
Tax March  
The Forum for Youth Investment  
The Leadership Conference on Civil and Human Rights  
Union for Reform Judaism  
Upsolve  
U.S. PIRG  
UnidosUS  
United Church of Christ, Justice and Witness Ministries  
Woodstock Institute

## **Alabama**

Alabama Appleseed Center for Law & Justice  
Alabama Arise  
Black Belt Community Foundation  
Building Alabama Reinvestment  
Community Foundation of Greater Birmingham  
The Alabama Asset Building Coalition  
The Women's Fund of Greater Birmingham  
YWCA Central Alabama

## **Alaska**

Alaska PIRG  
Alaska Poor People's Campaign  
Civil Humanity

Northern Justice Project, LLC

## **Arizona**

Arizona PIRG  
Center for Economic Integrity  
Community Action Human Resources Agency  
Community Renewal  
Gila County Community Services  
Mesa Community Action Network  
NACOG  
Primavera Foundation  
Society of St. Vincent de Paul, Tucson Diocesan Council  
Southeastern Arizona Community Action Program, Inc.  
Southwest Fair Housing Council  
United Food & Commercial Workers Local 99  
Wildfire: Igniting Community Action to End Poverty in Arizona  
William E. Morris Institute for Justice (Arizona)

## **Arkansas**

Arkansans Against Abusive Payday Lending  
Arkansas Community Organizations

## **California**

California Community College CalWORKs Association  
California Low-Income Consumer Coalition  
California Reinvestment Coalition  
CALPIRG  
Center for Public Interest Law  
Community Health Councils  
Consumer Federation of California  
Eastern Sierra Legal Assistance Program  
Housing and Economic Rights Advocates  
Indivisible California Statewide  
KGACLC  
Mission Asset Fund (MAF)  
New Economics for Women  
Public Law Center  
Western Center on Law and Poverty

## **Colorado**

Arapahoe Young Dems  
Bell Policy Center

CoPIRG  
Office of Financial Empowerment and Protection  
Towards Justice

## **Connecticut**

CCAG  
Connecticut Legal Services, Inc.  
ConnPIRG

## **Delaware**

Delaware Community Reinvestment Action Council, Inc.  
Housing Alliance Delaware

## **District of Columbia**

Legal Aid Society of the District of Columbia  
Tzedek DC

## **Florida**

Florida Consumer Action Network  
Florida Legal Services, Inc.  
Florida PIRG  
Florida Prosperity Partnership  
Florida Silver Haired Legislature Inc  
Jacksonville Area Legal Aid, Inc.  
Legal Aid Service of Broward County, Inc.  
Mid-Pinellas (Florida) Coalition of Neighborhood Associations  
The Legal Aid Society of Palm Beach County

## **Georgia**

Georgia Advancing Communities Together, Inc.  
Georgia PIRG  
Georgia Watch  
Step Up Savannah, Inc.  
New Georgia Project

## **Hawaii**

Hawaii Appleseed Center for Law and Economic Justice

## **Idaho**

United Vision for Idaho

## **Illinois**

Chicago Consumer Coalition  
Chicago Urban League  
Housing Action Illinois  
Housing Choice Partners  
Illinois Asset Building Group, a project of Heartland Alliance  
Illinois Conference of Churches  
Illinois People's Action  
Illinois PIRG  
Legal Action Chicago  
Metropolitan Family Services  
Preservation of Affordable Housing  
Unitarian Universalist Advocacy Network of Illinois

## **Indiana**

Area Five Agency on Aging and Community Services  
Brightpoint  
CAP, Inc. of Western Indiana  
Citizens Action Coalition of IN  
COMMUNITY ACTION OF GREATER INDIANAPOLIS, INC.  
Fair Housing Center of Central Indiana  
GCC Foundation  
Grace Care Center  
Habitat for Humanity of Indiana, Inc.  
HomesteadCS  
Hoosier Uplands  
Human Services, Inc.  
Indiana Assets & Opportunity Network  
Indiana Association of Area Agencies on Aging  
Indiana Catholic Conference  
Indiana Coalition Against Domestic Violence  
Indiana Community Action Association  
Indiana Friends Committee on Legislation  
Indiana Institute for Working Families  
Indiana PIRG  
Indiana United Ways  
JobSource Community Action  
LifeStream Services  
LifeTime Resources, Inc.  
Lincoln Hills Development Corporation  
MCCOY (Marion County Commission on Youth)  
Mother Hubbard's Cupboard



North Central Community Action Agencies, Inc.  
Northwest Indiana Community Action  
Pace Community Action Agency, Inc.  
Prosperity Indiana  
SIEOC  
Sisters of Notre Dame de Namur  
StarkePulaski Habitat for Humanity  
Thrive Alliance  
Unite Indy

## **Iowa**

Indivisible Iowa  
Iowa Citizen Action Network  
Iowa Citizens for Community Improvement  
Iowa PIRG

## **Kansas**

Kansas Appleseed Center for Law and Justice, Inc.

## **Kentucky**

Kentucky Center for Economic Policy  
Kentucky Equal Justice Center

## **Louisiana**

Greater New Orleans Housing Alliance  
Louisiana Budget Project  
THE MIDDLEBURG INSTITUTE

## **Maine**

CASH Maine  
Coastal Enterprises, Inc.  
Maine Center for Economic Policy  
Maine Equal Justice  
Maine Small Business Coalition  
New Ventures Maine

## **Maryland**

Addiction Connections Resource  
CASH Campaign of Maryland  
Charm City Players

Maryland Consumer Rights Coalition  
Maryland PIRG  
Public Justice Center  
RESULTS DC/MD  
Voices of Hope, Inc.

### **Massachusetts**

CNAHS  
Massachusetts Affordable Housing Alliance  
MASSPIRG  
The Consumer Assistance Council, Inc.

### **Michigan**

Community Economic Development Association of Michigan (CEDAM)  
Michigan Poverty Law Program  
Michigan State University College of Law - Housing Law Clinic  
PIRG in Michigan (PIRGIM)

### **Minnesota**

Exodus Lending  
Legal Services Advocacy Project  
Minneapolis Area Synod, ELCA  
Minnesota Main Street Alliance

### **Mississippi**

Hope Policy Institute  
Mississippi Center for Justice  
Mississippi Community Financial Access Coalition

### **Missouri**

Heartland Center for Jobs and Freedom  
Missouri Faith Voices  
MoPIRG

### **Montana**

Montana Housing Coalition  
MontPIRG  
Rural Dynamics, Inc.

### **Nebraska**

CUES Fund  
Heart Ministry Center  
Lending Link  
Lozier Foundation  
Nebraska Appleseed Center for Law in the Public Interest  
Nebraska Chapter of the National Association of Social Workers  
NeighborWorks Lincoln  
RISE  
Voices for Children in Nebraska  
Women's Fund of Omaha

## **Nevada**

Legal Aid Center of Southern Nevada

## **New Hampshire**

AHEAD Inc.  
New Hampshire Legal Assistance  
NHPIRG

## **New Jersey**

Consumers League of New Jersey  
Legal Services of New Jersey  
New Jersey Appleseed Public Interest Law Center  
New Jersey Citizen Action  
New Jersey Coalition for Financial Education  
New Jersey Main Street Alliance  
New Jersey Peace Action  
NJPIRG

## **New Mexico**

Adelante Progressive Caucus of the Democratic Party of New Mexico  
Credit Union Association of New Mexico  
Democratic Party of New Mexico Veterans and Military Families Caucus  
Indivisible of Santa Fe  
Lutheran Advocacy Ministry - New Mexico  
New Energy Economy  
New Mexico Appleseed  
New Mexico Center on Law & Poverty  
NM Fair Lending Alliance  
NMPIRG  
New Mexico Conference of Churches  
New Mexico Voices for Children

New Mexico Working Families Party  
Ocamora Retreat Center  
Prosperity Works  
Retake Our Democracy  
Rio Grande Valley Broadband, Great Old Broads for Wilderness  
Santa Fe Lodge, Independent Order of Odd Fellows  
Silver City Indivisibles  
Southern New Mexico New Progressives  
Think New Mexico

## **New York**

Chinese-American Planning Council (CPC)  
Empire Justice Center  
Genesee Co-op Federal Credit Union  
La Fuerza Unida, Inc.  
Long Island Housing Services, Inc.  
New Economy Project  
New York Legal Assistance Group (NYLAG)  
New York Public Interest Research Group (NYPIRG)  
NYC Network of Worker Cooperatives  
Public Utility Law Project of New York  
Rockland Housing Action Coalition  
Rural Law Center of New York, Inc.  
Rural Housing Coalition of New York  
Safe Horizon  
STEPS to End Family Violence  
Upper West Side MoveOn/Indivisible Action Group  
We All Rise  
WESPAC Foundation, Inc.  
Western New York Law Center

## **North Carolina**

Charlotte Center for Legal Advocacy  
Children First/Communities In Schools of Buncombe County  
Community Empowerment Fund  
Community Link  
Eastern Carolina Board of Realtist  
Episcopal Diocese of North Carolina  
Financial Haven, Inc  
Financial Pathways of the Piedmont  
Financial Protection Law Center  
FIRST  
Goodwill Industries of the Southern Piedmont  
Haywood Habitat for Humanity

Independent Financial Solutions Group  
Lexington Area Habitat for Humanity  
NC Conference of the United Methodist Church  
NC Rural Center  
NCPIRG  
North Carolina Coalition on Aging  
North Carolina Conference, United Methodist Church  
North Carolina Council of Churches  
The Collaborative of NC  
Thread Capital  
Youth Education for Savings Consortium

### **North Dakota**

High Plains Fair Housing Center

### **Ohio**

COHHIO  
Ohio CDC Association  
Ohio Main Street Alliance  
Ohio Poverty Law Center  
Ohio PIRG  
Policy Matters Ohio

### **Oklahoma**

Catholic Charities of the Archdiocese of Oklahoma City, Inc.  
Fellowship Congregational UCC  
Prospect Church  
VOICE-OKC

### **Oregon**

CASA of Oregon  
Neighborhood Partnerships  
Oregon Main Street Alliance  
Oregon PIRG (OSPIRG)  
Oregon's Stop the Debt Trap Alliance  
Our Children Oregon

### **Pennsylvania**

Bucks County Women's Advocacy Coalition  
Community Justice Project  
Harrisburg Center for Peace & Justice

Just Harvest  
Neighborhood Allies  
PennPIRG  
Pennsylvania Council of Chapters, Military Officers Association of America (MOAA)  
Pennsylvania Council of Churches  
Pennsylvania Legal Aid Network, Inc.  
Pennsylvania Utility Law Project, on behalf of our low income clients  
Pennsylvania War Veterans Council, Inc  
Philadelphia Solar Energy Association  
Pittsburgh Community Reinvestment Group  
Post 9264, Department of Pennsylvania, Veterans of Foreign Wars  
Commission on Economic Opportunity  
Community Legal Services, Inc. of Philadelphia  
The One Less Foundation

### **Rhode Island**

NeighborWorks Blackstone River Valley  
RIPIRG

### **South Carolina**

Columbia Consumer Education Council  
Grand Strand Action Together  
South Carolina Appleseed Legal Justice Center  
South Carolina Association for Community Economic Development  
United Way of Greenville County

### **South Dakota**

Bread for the World- South Dakota chapter  
Disability Rights South Dakota  
First Peoples Fund  
South Dakota Chapter of the National Association of Social Workers

### **Tennessee**

Indivisible Tennessee  
Tennessee Justice Center

### **Texas**

BCL of Texas  
Brazos Valley Financial Fitness Center  
Helping Hands Ministry of Belton  
RAISE Texas

Texas Appleseed  
TexPIRG  
The Women's Resource  
United Way of Metropolitan Dallas  
United Way of Southern Cameron County

## **Utah**

Fair Credit Foundation

## **Vermont**

Vermont Legal Aid, Inc.  
Vermont Main Street Alliance  
Vermont Public Interest Research Group

## **Virginia**

Indivisible Virginia  
Legal Aid Justice Center  
Virginia Citizens Consumer Council  
Virginia Organizing  
Virginia Poverty Law Center

## **Washington**

Columbia Legal Services  
Statewide Poverty Action Network  
WashPIRG

## **West Virginia**

Communications Workers of America - West Virginia  
Covenant House of WV  
Mountain State Justice  
National Association of Social Workers West Virginia Chapter  
West Virginia Association for Justice  
West Virginia Center on Budget and Policy  
West Virginia Council of Churches  
West Virginia Main Street Alliance  
WV Citizen Action

## **Wisconsin**

Metropolitan Milwaukee Fair Housing Council  
Urban Economic Development Association of Wisconsin, Inc.

Wisconsin Faith Voices for Justice  
Wisconsin Main Street Alliance  
WISPIRG

**Wyoming**

Wyoming Trial Lawyers Association

cc: Members of the U.S. House of Representatives