



United States Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

April 28, 2021

Re: The Re-Emergence of Rent-a-bank?

Consumer Reports appreciates the Committee on Banking, Housing, and Urban Affairs holding a hearing to examine rent-a-bank schemes, “The Re-Emergence of Rent-a-bank?” We write today to express our concern regarding rent-a-bank schemes, which are designed to circumvent state usury laws and our support for both H.R. 5050, the Veterans and Consumers Fair Credit Act, and S.J Res. 15, which uses the Senate’s authority under the Congressional Review Act to overturn the OCC True Lender Rule. **We urge the Committee to rein-in predatory lending by passing the resolution that will stop non-bank lenders from partnering with nationally chartered banks to evade state interest rate caps, and to go further by establishing a federal usury cap of 36%.**

Predatory Lending in the United States

Payday loans are marketed as lifelines to some of the most financially fragile Americans, yet are structured in a way that keeps people trapped in cycles of debt. A typical payday loan is required to be paid back in full within two weeks, which is an unconventional and unreasonably short deadline for financially struggling consumers¹. The short payback period of these loans also results in triple digit APRs, with most borrowers unable to pay them off for four months.² Payday loans clearly aren’t a lifeline at all - they’re predatory debt traps.

Despite 45 states and the District of Columbia passing state usury caps, consumer protections regarding payday lending have eroded in recent times. Since the 1970’s, in many states, the payday industry has found a way to circumvent existing usury laws through the use of rent-a-bank partnerships. These partnerships — where a nationally-chartered bank that is not subject to state lending laws partners with a non-bank lender — allow the non-bank lenders to

¹ Lauren Saunders, *Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap*, National Consumer Law Center (NCLC), April 2013, available at: <https://www.nclc.org/images/pdf/pr-reports/why36pct.pdf>

² *Stopping the Payday Loan Trap: Alternatives That Work, Ones That Don’t*, NCLC, June 2010, available at: https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-stopping-payday-trap.pdf

offer loans well above state interest rate caps in the form of payday loans, auto title loans, and auto installment loans.

Rent-a-Bank Partnerships And The OCC True Lender Rule

Rent-a-Bank schemes involve a non-bank lender and a nationally chartered bank. The non-bank lender markets and approves loans with interest rates above the state usury limit. The banks, which through their authority under federal law are exempt from state interest rate caps, originate the loan and then sell the loan back to the lender. The lender handles all other aspects of the loan, including the marketing and servicing of the loan and the approval of the loan application. The role of the bank is simply to shield the non-bank lender from state usury limits.

The OCC adopted policies to prohibit rent-a-bank lending schemes beginning in the early 2000s after payday lenders used these arrangements to get around state usury caps. Since that time, numerous states have successfully challenged rent-a-bank schemes in court, which have found that the nonbank lender is the true lender in the partnership since it gains the most financially from each loan.

In a complete reversal, this past fall, the OCC finalized its True Lender Rule, which applies a different standard to determine the true lender of the loan. Under this rule, the national bank will be considered the true lender if it is named as the lender in the loan agreement or funds the loan. The rule preempts laws in at least forty-five states that protect consumers from high-interest nonbank installment loans and other predatory loans; it further undermines other state laws involving licensing and examination for nonbank lenders that partner with national banks.

This rule solidifies national banks' position in rent-a-bank schemes and undermines state efforts to protect their residents. Despite calls from consumers and consumer advocates to reconsider, and a global pandemic that put millions of consumers in financially vulnerable positions, the OCC has taken no action to change course. Attached is CR's letter to the OCC describing the potential impact on consumers and urging it to rescind its true lender rule.

Steps Congress Can Take to Address Predatory Lending and Rent-a-Bank Schemes

There are a number of steps the committee can take to rein in the use of rent-a-bank schemes and curb predatory lending. The Senate can use its authority under the Congressional Review Act and pass S.J. Res. 15 in order to rescind the OCC true lender rule. Congress can also directly address predatory lending by passing H.R. 5050, a bipartisan bill which establishes a federal usury limit of 36%. The bill expands the existing rate cap for service members established under the Military Lending Act to apply to all consumers. In order to fit under the rate cap, small-dollar lenders would have to restructure their loans to have longer terms, making them more affordable and manageable for borrowers.

We strongly urge the Committee to rein-in predatory lending, eliminate rent-a-bank schemes, and pass both S.J Res. 15 and H.R. 5050.

Sincerely,

A handwritten signature in black ink, appearing to read 'Syed Ejaz', with a stylized flourish at the end.

Syed Ejaz
Policy Analyst