

April 27, 2021

U.S. Senate  
Washington, DC 20510

**Re: Re: Support S.J.Res. 15 (Van Hollen)/H.J.Res. 35 (“Chuy” Garcia) disapproving OCC’s Rule on National Banks and Federal Savings Associations as Lenders**

Dear Senator:

The undersigned state chairs of the National Association of Consumer Advocates (NACA) represent individuals who have been harmed by unfair, deceptive, abusive, and fraudulent practices, including illegal debt collection, violations of mortgage servicing and credit reporting laws, and predatory lending. On behalf of our colleagues and working families across the country, we urge you to support the Congressional Review Act resolution (S.J. Res. 15 and H.J. Res. 35) to repeal a federal rule that severely infringes on our respective state laws that help shield residents from usury and other financial abuses.

Last year, the Office of the Comptroller of the Currency (OCC) proposed and finalized a sweeping and extreme regulation that preempts state interest-rate limits as applied to non-bank entities outside the OCC’s authority. The rule allows non-bank lenders charging up to 179% APR or more to ignore state usury laws merely by putting a bank’s name on the loan agreement and claiming that it is a “bank loan” permitted to charge interest above rates permitted by state law. These non-bank lenders would benefit from the federal law that exempts national banks and federal savings associations holding federal charters from state rate laws. The rule does not require any more bank involvement than having a bank’s name as the lender in the fine print.

This is not a theoretical concern. The current activities of OCC-regulated banks to enable predatory lending belie the OCC’s protestations that it will prevent abuses. OCC-regulated Stride Bank has been helping CURO to pilot an online rent-a-bank installment loan program called Verge Credit at 179% APR.<sup>1</sup> CURO’s other brands include the payday lenders Speedy Cash and Rapid Cash. CURO told investors that the Stride Bank program “will help us expand geographically, online and in some states where we — where we don’t operate right now”<sup>2</sup> – in other words, in states that do not permit such high rates.

Similarly, OCC-regulated Axos Bank has enabled high-interest small business loans through World Business Lenders.<sup>3</sup> The OCC’s rule is being used to back World Business Lenders’ right to charge 268% APR on \$67,000 in loans to a restaurant owner.<sup>4</sup> The WBL small business loans enabled by Axos Bank are often secured by the owner’s home. Discovery in litigation has shown that 30% of WBL’s real-estate secured loans default.<sup>5</sup>

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<sup>1</sup> <https://www.vergecredit.com/rates-and-terms/> (visited Jan. 20, 2021), archived site at [https://www.nclc.org/images/pfiles/litigation/Verge\\_Site\\_2021\\_01\\_20.pdf](https://www.nclc.org/images/pfiles/litigation/Verge_Site_2021_01_20.pdf).

<sup>2</sup> CURO Group Holdings Copr. (CURO) Q4 2019 Earnings Call Transcript, Feb. 6, 2020, <https://www.fool.com/earnings/call-transcripts/2020/02/06/curo-group-holdings-copr-curo-q4-2019-earnings-cal.aspx>.

<sup>3</sup> See Stop the Debt Trap, Repeal the OCC’s Fake Lender Predatory Lending Rule to Protect Small Businesses, April 2021, <https://consumerfed.org/wp-content/uploads/2021/04/Small-Business-RAB-Brief-FINAL-1.pdf>.

<sup>4</sup> Compare [PROPOSED] ANSWER, COUNTERCLAIMS, AND THIRD PARTY CLAIMS, Axos Bank v. Swepson et al., No. F0993531-20 (Sup. Ct. N.J. filed Nov. 5, 2020), <http://bit.ly/Swepson-compl>, with Letter Brief of Plaintiff (Nov. 24, 2020), <http://bit.ly/Swepson-reply>.

<sup>5</sup> See Public Comment of Shane R. Heskin, Esq. on behalf of Ramanjeet Kaur, Kulwinder Singh Uppal, and New England Distributors, “National Banks and Federal Savings Associations as Lenders,” Docket ID: OCC-2020-0026 RIN 1557-AE97, Sept. 3, 2020, <http://bit.ly/Heskin-comment>.

Non-bank lenders have long attempted to pass their loans through banks that would permit them to make costly loan products with triple-digit interest rates in states that have usury rate limits. Even though lenders argued in the past that their product is a “bank loan” exempt from state rate caps, courts over the years had determined that banks had little involvement with these loans. Through thoughtful analyses, courts, relying on a substance-over-form anti-evasion doctrine endorsed by the Supreme Court and the courts of nearly every state, have found the non-bank lender was the *true* lender of the loan, and therefore subject to the respective state usury law.<sup>6</sup>

A group of state attorneys general which sued the OCC challenging the rule’s validity, called the regulation a “federal overreach.”<sup>7</sup> We agree. The OCC rule preempts years of similar state actions and judicial decisions related to non-bank lender collaborations. The rule asserts that banks are the “true lender” and the loans are exempt from state interest rate caps simply if the bank is “named as the lender in the loan agreement.” Meanwhile, in reality, it is the non-bank entity that actually designs, markets, processes, and collects on these high-interest loan products. The OCC rule facilitates these risky “rent-a-bank” schemes, helps lenders to evade state laws, and disregards well-established judicial decisions that consider the substantive administration of the loans.

Not only does the rule interfere with usury laws in at least 45 states,<sup>8</sup> it also goes against the will of voters. Recently, bipartisan majorities supported state interest rate limits in Arizona, Colorado, Montana, Ohio, and South Dakota. Last November, 83% of Nebraska voters supported a 36% interest rate cap.<sup>9</sup>

This rule will hurt borrowers in our states. High-cost lenders are already targeting specific groups, including veterans<sup>10</sup> and small businesses,<sup>11</sup> who now cannot rely on the limits their states put in place to protect them from overcharging on installment and payday loans. We have observed consumers pay for years on these predatory loan products, but still end up owing exceedingly more than the amount of the original loan.

Further, in the wake of the COVID-19 health and financial emergency when families are struggling to make ends meet and small businesses are fighting to survive, state governments should be able to enforce their more protective policies to shield residents and small businesses from usurious loans. Congress should send a clear message that the OCC’s dubious effort to block state protections and threaten states’ authority to safeguard their residents’ financial wellbeing is improper.

We urge you to take immediate steps to rescind this rule. Thank you for considering our views.

Sincerely,

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<sup>6</sup> See, e.g., *CashCall, Inc. v. Morrissey*, 2014 WL 2404300 (W.Va. May 30, 2014).

<sup>7</sup> Complaint, *People of the State of California et al v. The Office of the Comptroller of the Currency*, Case 4:20-cv-05200, N.D. Cal., filed July 29, 2020, <https://oag.ca.gov/system/files/attachments/press-docs/OCC%20Non-bank%20Interest%20Rule%20Complaint%20%28as%20filed%29.pdf>.

<sup>8</sup> National Consumer Law Center, *State Rate Caps for \$500 and \$2,000 Loans*, March 2021, [https://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/payday\\_loans/FS\\_State\\_Rate\\_Caps\\_2021.pdf](https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/FS_State_Rate_Caps_2021.pdf).

<sup>9</sup> Megan Leonhardt, *Nebraska becomes the latest state to cap payday loan interest rates*, CNBC, Nov. 4, 2020, <https://www.cnbc.com/2020/11/04/nebraska-becomes-the-latest-state-to-cap-payday-loan-interest-rates.html>.

<sup>10</sup> See e.g., Complaint, *Sims v. Opportunity Financial, LLC, d/b/a OPPLOANS, Finwise Bank*, Case No.: 4:20-cv-04730-PJH, N. D. Cal., filed Sept. 1, 2020.

<sup>11</sup> Gretchen Morgenson, *New Trump admin rules make it easier for lenders to charge small businesses super-high interest rates*, NBC NEWS, Dec. 8, 2020, <https://www.nbcnews.com/business/economy/new-trump-administration-rules-make-it-easier-lenders-charge-small-n1250023>

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