



509 E Radburn Street, Tucson, AZ 85704  
www.economicintegrity.org  
Phone (520) 250-4416

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Acting Comptroller of the Currency

*Brian Brooks*

400 – 7<sup>th</sup> Street, S.W.

Washington, DC 20219

*Via electronic filing*

**Re: Comments on Proposal “National Banks and Federal Savings Associations as Lenders”  
Docket ID OCC-2020-0026 RIN 1557-AE97**

The Center for Economic Integrity (CEI) is a nonprofit organization based in Tucson, Arizona. Founded in 2001, CEI builds economically strong communities for all and opposes unfair corporate and government practices. Our primary consumer protection focus is the southwestern states of Arizona and New Mexico. CEI participates in the Arizonans for Responsible Lending coalition and led the fight against the payday loan industry’s Prop 200 ballot initiative in 2008. We are deeply concerned about the debt trap that high-cost small dollar loans create and the harm done to vulnerable consumers by predatory small dollar lending.

**We submit these comments in strong opposition to the OCC’s proposed rule “National Banks and Federal Savings Associations as Lender”** to determine the “true lender” when banks and nonbank third-parties partner to make loans to consumers. We agree with the courts that the “true lender” in a consumer credit deal involving a nonbank lender and a bank is the entity with the greater financial interest in the transaction. Enacting this proposed rule would codify “rent-a-bank” predatory lending, would eviscerate the authority of states such as Arizona to enforce usury laws, and would harm consumers. This proposed rule change is especially unwelcome at a time when consumers in hard-hit states like Arizona need more protection from predatory lending during the financial devastation caused by the Covid-19 pandemic.

**CEI has spent years advocating on payday, car title, and high-cost/predatory installment lending laws, supervision and enforcement to protect consumers.** We have seen firsthand the harm caused by exorbitantly expensive loans made without consideration of the borrower’s ability to repay and on terms that are impossible to repay and that put valuable family assets at risk. We won the fight to stop payday lending and to safeguard Arizona’s usury law and are still working to remove the usury carve-out for title loans. Our experience informs our opposition to this proposed rule.

**Arizona made triple-digit rate payday and car title loans legal** when the Arizona legislature enacted two bills in 2000 to carve payday lending (deferred presentments) and car title loans (secondary motor vehicle finance transactions) out of the Consumer Lender law which sets the

usury ceiling for open and closed-end credit in Arizona as well as providing consumer protections for credit terms. Payday lending operated legally in Arizona for ten years until the sunset provision in the law took effect. The industry tried for years to get the legislature to remove the sunset provision. Failing at the legislature, the payday lenders sponsored a ballot initiative in 2008 to make payday loans constitutionally authorized at almost 400% APR. Voters rejected Prop 200 by a 60 to 40% vote margin, leading the authorizing law to sunset June 30, 2010. As a result, Arizona's Consumer Lender law usury cap now applies to "payday" loans.<sup>1</sup>

**Harm** to consumers and communities during the decade of legal payday lending in Arizona included debt traps for borrowers unable to repay loans due on their next payday, millions of dollars drained from households and vulnerable communities, overdraft fees and closed bank accounts for borrowers...the same harm later documented by CFPB and states that require data reporting by payday lenders. Housing situations in Arizona were placed at risk because people couldn't pay rent when people have predatory loans (title or payday) as confirmed to us by legal services attorneys. CEI had a particularly heart wrenching call from a 72-year old widow in the Clifton Morenci area who took out a payday loan to help pay medical costs for an emergency air lift evacuation of her husband who subsequently died. She ended up with multiple payday loans and was not able to pay her rent or utilities.

In 2003, CEI issued a report on payday lending in Pima County, Arizona based on surveys with borrowers outside payday loan stores. We found that 67% of borrowers used the loans to pay general bills, such as rent, car loans, groceries, and other debt payments. Just 23% said they used payday loans for unexpected emergencies. The CEI study documented that payday lenders were extracting more in interest rates and fees (\$20,000,000) than what local government was investing in federal block grant neighborhood revitalization efforts.<sup>2</sup> It is easy to understand why voters soundly rejected payday lending.

**Arizona also permits car title lenders to charge up to 204% APR** for loans "secured" by the borrower's vehicle. Vehicle-secured loan rate caps are tiered, based on a percent rate on the one-month amounts borrowed. Loans up to \$500 have a monthly finance rate of 17% or 204% APR. Loans of \$501 to \$2,500 have a monthly finance rate of 15% or 180% APR. Loans greater than \$2,500 but not more than \$5,000 are capped at 13% monthly finance rate or 156% APR. Vehicle-secured loans of more than \$5,000 without an outside limit in size cost 10% month finance rate or 120% APR.<sup>3</sup> There are no limits on loan size, duration or renewals.

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<sup>1</sup> AZDFI Regulatory and Consumer Alert, CL/CO-16-01, updated from CL/CO-13-01, June 9, 2016 at [https://dfi.az.gov/sites/default/files/FE-AD-PO-Regulatory\\_and\\_Consumer\\_Alert\\_CL\\_CO\\_06%2009-16-2016.pdf](https://dfi.az.gov/sites/default/files/FE-AD-PO-Regulatory_and_Consumer_Alert_CL_CO_06%2009-16-2016.pdf)

<sup>2</sup> CEI, "Pay Day Lending in Pima County, Arizona," December 2003 at [https://economicintegrity.org/wp-content/uploads/2018/06/2003-12-scei\\_reportonpaydaylendingreleased1.pdf](https://economicintegrity.org/wp-content/uploads/2018/06/2003-12-scei_reportonpaydaylendingreleased1.pdf)

<sup>3</sup> A.R.S. § 44-291 G.

Bills have been introduced in the Arizona legislature to repeal the title loan carve-out from the Consumer Lender usury cap and this year a ballot initiative was initially considered to bring vehicle-secured nonpurchase money loans into compliance with the Arizona usury law.

**Harm** caused by title loans is well documented. These loans are asset-based lending, are either one-month loans that can be renewed indefinitely by paying only the interest and extending the debt or are installment loans at triple-digit rates. Title lenders are permitted to make balloon payment loans, causing consumers to make payments for months or years and still owe the full amount of the loan on the last payment. Failure to pay causes vehicles to be repossessed or borrowers to be sued in Justice Court or both.

While the Arizona Department of Insurance and Financial Institutions does not require any reporting of Sales Finance licensee loan data, the Consumer Financial Protection Bureau's research on the title loan industry found that borrowers are trapped by title loans. CFPB's study found that 23% of single-payment title loan sequences consisted of 10 or more loans and 56% of sequences were at least four loans. Fully one-third of title loan borrowers eventually default on a sequence of single-payment loans. One in five single-payment title loan borrowers have their vehicle repossessed by the lender. CFPB found that 60% of balloon-payment installment loans resulted in refinancing, reborrowing or default.<sup>4</sup>

**High-cost lenders target vulnerable consumers.** Mapping of the location of licensed title loan stores for a CEI report in 2016 demonstrated that title lenders are concentrated in low-income neighborhoods and communities of color. The CEI/Consumer Federation of America report, "Wrong Way: Wrecked by Debt – Auto Title Lending in Arizona," found that communities of color in the central sections of Phoenix and on the southern margins of the Tucson metro areas are saturated with title lenders, while the northern regions of the metro area have many banks and relatively few title lenders.<sup>5</sup>

This targeting of vulnerable communities for high-cost credit products is consistent with FDIC Census study data on users of alternative financial services, including payday and title loans. The FDIC study found that the use of alternative financial services in 2017, well before the economic disruption of the pandemic in 2020, was "more common among lower-income households, less-educated households, younger households, black and Hispanic households, working-age disabled households, and households with volatile income."<sup>6</sup> The FDIC reported that 5.4% of Arizona households were unbanked in 2017 while 18.7% were "underbanked,"

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<sup>4</sup> CEI, "Car Title Loan Harm and Risks from CFPB Analysis," December 2019 at <https://nomoreloansharksaz.org/gallery/2019%20az%20factsheet%20car%20title%20loan%20harm%20and%20risks%20cfpb%20rule.pdf>

<sup>5</sup> CEI/CFA, "Wrong Way: Wrecked by Debt – Auto Title Lending in Arizona," January 2016, pages 10-13 at <http://bit.ly/wrongwayreport>

<sup>6</sup> FDIC, "2017 | FDIC National Survey of Unbanked and Underbanked Households," <https://www.fdic.gov/householdsurvey/2017/2017report.pdf>

meaning that households had bank accounts but used alternative financial services.<sup>7</sup> In 2017 6.8% of Arizona households used alternative financial services for credit products or 178,772 households. (FDIC Appendix at p11 - 2,629,000 HH, at p91 - 6.8% of AZ HH use AFS credit). This is the market of families that are vulnerable to rent-a-bank predatory lending.

**Title lending is big business in Arizona.** Title lending drains \$254,924,519 annually from Arizona consumers, according to the Center for Responsible Lending.<sup>8</sup> When CEI surveyed licensed Sales Finance lenders to identify those making title loans in the fall of 2015, we identified 100 companies operating 633 locations, a 300 percent increase in less than a decade. (CEI, *Wrong Way* report at p9.) By 2019, CEI's title lender update documented consolidation in the industry and found 73 companies holding 80 unique licenses with 476 licensed locations.<sup>9</sup>

**The OCC's proposed true-lender rule nullifies state usury laws that Arizonans have worked hard to enact and protect.** This proposed rule permits nonbank entities to claim to be exempt from state usury laws such as Arizona's Consumer Lender law, as well as from state licensing and examination by the Arizona Department of Insurance and Financial Institutions. If adopted, we expect to see the return of triple-digit rate payday loans, even more expensive title loans, and online installment loans at rates far above the Arizona usury law rate cap.

**Rent-a-bank lenders are already making car title loans in some states.** LoanMart makes car title loans through its ChoiceCash brand using Community Capital Bank in Utah in 16 states and the District of Columbia, jurisdictions that do not authorize the title loan product at triple-digit rates.<sup>10</sup> The National Consumer Law Center (NCLC) reports that a sample ChoiceCash loan is a three-year \$3,000 loan at 170% APR with 36 monthly payments totaling \$15,431.04.<sup>11</sup> LoanMart's parent company, Wheels Financial in California, is currently licensed to make title loans in Arizona and ChoiceCash does not make title loans in Arizona. However, this title lender/bank arrangement demonstrates that rent-a-bank lending has already entered the title loan market. Should Arizona repeal the title loan carve out from the Consumer Lender usury law, LoanMart could easily switch from state-licensed lending to rent-a-bank lending at rates higher than title lenders are permitted to charge in Arizona.

CURO Holdings in Kansas, which licenses title loan brands A Speedy Cash and Todd Car Title as Sales Finance companies in Arizona, now offers Avio Credit via OCC-regulated Stride Bank at

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<sup>7</sup> FDIC, "2017 | FDIC National Survey of Unbanked and Underbanked Households | Appendix Tables," page 11 <https://www.fdic.gov/householdsurvey/2017/2017appendix.pdf>

<sup>8</sup> Center for Responsible Lending, "Payday and Car-Title Lenders Drain Nearly \$8 Billion in Fees Every Year," April 2019 at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-statebystate-fee-drain-apr2019.pdf>

<sup>9</sup> CEI, "Still Wrong: Wrecked by Debt/ Title Lending in Arizona 2019," August 2019 at <https://economicintegrity.org/wp-content/uploads/2019/08/2019-CEI-Brief-Update-Car-Title-Loan-Survey-8-4-19.pdf>

<sup>10</sup> <https://www2.800loanmart.com/application/terms-conditions.asp>

<sup>11</sup> <https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html>

130% APR in at least two states.<sup>12</sup> Avio Credit holds a Sales Finance license in Arizona but does not currently make loans here according to the Avio website and confirmation from the company.<sup>13</sup> An OCC stamp of approval on rent-a-bank lending is likely to encourage companies to expand title lending into more states without complying with state licensing or usury laws.

**The current rent-a-bank lending products in Arizona are installment loans and lines of credit** that should be subject to Arizona’s Consumer Lender law which caps rates for open and closed-end loans up to \$10,000 and prohibits balloon payment contracts. Loans up to \$3,000 are capped at 36% with loans greater than \$3,000 capped at 24 percent on the amount greater than \$3,000. A loan origination fee of 5 percent of the loan up to \$150 is permitted.<sup>14</sup> The total cost of Consumer Lender loans at the maximum interest rate and fee permits 54% APR for a \$500 six-month loan and 41% APR for a \$2,000 two-year loan. Arizona’s generous usury caps are higher than the national median.<sup>15</sup>

**Lenders already launder loans through banks to evade usury limits and loan protections in Arizona.** Due to lax supervision by federal bank regulators and inaction by Arizona’s Attorney General and Department of Insurance and Financial Institutions, five rent-a-bank companies are already operating in Arizona. These five products should all fall under the Arizona Consumer Lender law rate cap as well as loan term protections, such as a ban on balloon payment loans.

### **OppLoans Online Installment Loans**

OppLoans makes loans directly under state licenses in 13 states that permit 160% APR loans and only makes loans via FinWise Bank in the 24 states plus DC where its product is illegal, including in Arizona.<sup>16</sup>

Opportunity Financial LLC (“OppLoans”), based in Chicago, Illinois, offers installment loans of \$500 to \$4,000 with terms of 9-18 months at 160% in Arizona. A \$3,000 OppLoans loan at 160% APR repaid over 12 months results in total paid of \$6,859.20. The lender claims that loans are made by FinWise Bank or First Electronic Bank, both located in Utah, and “serviced” by OppLoans. These loans cost far more than the 36% annual interest plus 5% administrative fee

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<sup>12</sup> <https://www.aviocredit.com> viewed 8/11/2020.

<sup>13</sup> [https://elicense.az.gov/ARDC\\_LicenseSearch](https://elicense.az.gov/ARDC_LicenseSearch) Search “Arizona Department of Financial Institutions” for Business license SF-0942721. Electronic communication from [CustomerService@aviocredit.com](mailto:CustomerService@aviocredit.com) received 8/11/2020.

<sup>14</sup> CEI, “Arizona Consumer Lenders,” February 2019, <https://nomoreloansharksaz.org/gallery/2019%20az%20factsheet%20consumer%20lenders.pdf>

<sup>15</sup> NCLC, “State Rate Caps for \$500 and \$2,000 Loans,” February 2020, [https://www.nclc.org/images/pdf/high\\_cost\\_small\\_loans/payday\\_loans/FactSheet-StateRateCap.pdf](https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/FactSheet-StateRateCap.pdf)

<sup>16</sup> <https://www.opploans.com/rates-and-terms/> viewed 8/25/2020

that Arizona’s Consumer Lender law allows. Opportunity Financial is not a licensed Consumer Lender but holds a Collection Agency license in Arizona.<sup>17</sup>

### **Elevate Credit’s Rise Loans and Elastic Credit**

Elevate Credit, Inc., headquartered in Fort Worth, Texas, offers two types of high-cost loans in Arizona without holding a state license or complying with the Consumer Lender law’s consumer protections. Elevate offers Rise installment loans via the “bank model” in 19 states and directly in 14 states.<sup>18</sup>

Elevate Credit, Inc. uses two banks to offer credit in Arizona. Elevate uses Republic Bank and Trust in Kentucky to offer a line of credit of \$500 to \$4,500 via the **Elastic product**. Elevate does not disclose an APR to consumers for its line of credit product but the National Consumer Law Center notes an effective APR of up to 109% for this product compared to the permissible rate in Arizona for a \$2,000 line of credit repaid over two years to be 41% APR.<sup>19</sup>

Elevate uses FinWise Bank in Utah to offer **Rise installment loans** in Arizona. Installment loans of \$500 to \$5,000 are offered with repayment in seven to twenty-six months at an APR of 99% to 149%. A cost example of a \$2,000 loan at 149.36% APR and 26 bi-weekly payments of \$150 results in repayment of \$3,900.<sup>20</sup>

### **NetCredit Personal Loan**

Enova’s NetCredit uses Republic Bank and Trust to make loans in Arizona at rates up to 99.99% APR. Loans offered in Arizona range from \$1,000 to \$10,000 for terms of 12 to 60 months. Rates range from 34.99% to 99.99%. NetCredit also charges a \$25 late fee if all or part of a scheduled installment payment is not made within 15 days. NetCredit provides an example of loan repayment terms. A \$4,500 loan at 65% APR repaid in 50 \$262.53 monthly payments results in a total of \$13,126.50 repaid.<sup>21</sup>

### **Personify Financial**

Personify Financial uses First Electronic Bank in Utah to make installment loans of \$500 to \$10,000 with APRs up to 179.99% in 22 states including Arizona. Terms are for 24, 36 or 48 months and include a loan origination fee of 5% of the loan amount which is added to the loan. Personify provides an example of a \$2,500 36-month loan at 176.84% APR plus a \$125 fee. Over the term of the loan, a borrower would repay \$13,086.36 which includes a finance charge of

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<sup>17</sup> Opportunity Financial LLC, search for Business license CA-0945745 at [https://elicense.az.gov/ARDC\\_LicenseSearch](https://elicense.az.gov/ARDC_LicenseSearch)

<sup>18</sup> <https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html>

<sup>19</sup> National Consumer Law Center Issue Brief, “Stop Payday Lenders’ Rent-A-Bank Schemes,” <https://www.nclc.org/images/Rent-a-bank-one-pager.pdf>

<sup>20</sup> <https://www.risecredit.com/how-online-loans-work/#WhatItCosts> select Arizona, viewed 8/13/2020

<sup>21</sup> <https://www.netcredit.com/rates-and-terms/arizona> viewed 8/13/2020

\$10,586.36.<sup>22</sup> Arizona’s Consumer Lender law caps this size loan at 36% annual interest plus a 5% fee.

### **Verge Credit (CURO Financial Technologies Corp.)**

In March, 2020, the Arizona Department of Financial Institutions granted an Escrow Agent license (EA-1007370) to Avio Credit, Inc. on behalf of Verge Credit which makes personal loans with Stride Bank, NA, based in Salt Lake City, Utah. Verge offers loans of \$500 to \$5,000 for 6 to 60 months at 37 to 179% APR. According to the Verge Credit website, a sample \$2,000 loan at 94.02% repaid over 24 months would include a finance charge of \$2,496.46 for total due \$4,496.46.<sup>23</sup> These rates exceed the usury limits set by Arizona’s Consumer Lender law.

### **Enforcement to require out-of-state lenders to comply with Arizona’s laws**

Arizona has brought an enforcement action against one lender that operated without required licenses in Arizona. The Arizona Attorney General’s Office filed a civil lawsuit against **CashCall, Inc.** et. al. for a “coordinated scheme to market, fund, service, and collect payments on high-interest, illegal loans to Arizona consumers utilizing a sham loan program that disguised the fact that the loans were void under Arizona law and violated Arizona usury laws.”<sup>24</sup> The Arizona Department of Financial Institutions entered into a Consent Order with CashCall two years earlier to stop unlicensed lending in violation of Arizona law and to impose a \$250,000 Civil Penalty.<sup>25</sup> CashCall’s loan costs ranged up to 169% APR.

Arizona officials have not enforced state licensing and usury laws against nonbank lenders that claim their bank partners are the lender. CEI and other Arizona organizations have written to both the Arizona Attorney General and the Department of Insurance and Financial Institutions complaining about rent-a-bank lenders that extend credit in Arizona without being licensed as Consumer Lenders.<sup>26</sup> No action has been publicly announced in response to our communications.

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<sup>22</sup> <https://www.personifyfinancial.com/rates-terms-and-licensing-information> viewed 8/18/2020

<sup>23</sup> <https://www.vergecredit.com/rates-and-terms/>

<sup>24</sup> Press Release, Arizona Office of Attorney General, “AG Brnovich Announces Consumer Fraud Lawsuit Against CashCall,” March 2019, and complaint, posted at:  
<https://www.azag.gov/press-release/ag-brnovich-announces-consumer-fraud-lawsuit-against-cashcall>  
[https://www.azag.gov/sites/default/files/docs/press-releases/2019/complaints/CashCall\\_Complaint.pdf](https://www.azag.gov/sites/default/files/docs/press-releases/2019/complaints/CashCall_Complaint.pdf)

<sup>25</sup> Arizona Department of Financial Institutions, Consent Order, In the Matter of the Consumer Lender License of CashCall, Inc. and John Paul Reddam, President, No. 17F-BD015-SBD, signed October 17, 2017, posted at [https://dfi.az.gov/sites/default/files/media/CashCall\\_%20IncandJohnPaulReddam\\_President\\_Consent.pdf](https://dfi.az.gov/sites/default/files/media/CashCall_%20IncandJohnPaulReddam_President_Consent.pdf)

<sup>26</sup> CEI Letter to Attorney General and Department of Insurance and Financial Institutions Re: Rent-a-Bank Online Lending Update, Action Requested,” July 15, 2020 at <https://www.nomoreloansharksaz.org/gallery/2020-07-15%20AZ%20CEI%20Letter%20to%20AG%20and%20AZDFI.pdf> and CEI/ARL Letter to Attorney General and Department of Financial Institutions, Re: Rent-a-Bank

## OCC proposed “true lender” rule reverses policy on rent-a-bank lending

The Office of Comptroller of the Currency and Office of Thrift Supervision issued advisories to banks and thrifts in 2000 to address payday lender partnerships with banks. The OCC Advisory Letter stated that the OCC “is issuing this advisory letter to ensure that any national bank that engages in payday lending does so in a safe and sound manner and does not engage in abusive practices that would increase the compliance, legal, and reputation risks associated with payday lending and could harm the bank’s customers.” After describing the various forms of bank/lender arrangements being used, the OCC stated **“Payday lenders entering into such arrangements with national banks should not assume that the benefits of a bank charter, particularly with respect to the application of state and local law, would be available to them.”** (Emphasis added.)<sup>27</sup>

The Office of Thrift Supervision issued a Memorandum for Chief Executive Officers regarding Title Lending<sup>28</sup> and Payday Lending<sup>29</sup> on November 27, 2000. The OTS explained that vehicle title loan companies were approaching depository institutions urging them to enter into a contractual arrangement to fund title loans, causing the OTS to have a variety of safety and soundness, compliance, and consumer protection concerns regarding title lending programs and warned of close supervision and enforcement actions where appropriate. In its Title Loan memo, the OTS stated: “Title companies are pursuing depository institutions to participate in these ventures in order to avoid usury laws in states where lending at such high interest rates is prohibited. Participating depository institutions are promised high income with minimal initial investment. Although they may have appeal, funding arrangements with title loan companies could threaten both the financial stability and the reputation of an association. Title lenders that seek to affiliate with federal thrifts should not assume that the benefits of a federal charter, particularly in relation to state and local law, will be available.”

In a speech given in early 2002, Comptroller of the Currency John Hawke made these comments about rent-a-bank concerns:

*“Let me raise one other caution about preemption. The benefit that national banks enjoy by reason of this important constitutional doctrine cannot be treated as a piece of disposable property that a bank may rent out to a third party that is not a national bank.*

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Online Lending in Violation of Arizona Consumer Protections, January 15, 2020 at <https://www.nomoreloansharksaz.org/gallery/2020-01-15%20rab%20letter%20to%20az%20ag%20and%20azdfi.pdf>

<sup>27</sup> Office of Comptroller of the Currency, “OCC Advisory Letter: Payday Lending,” AL 2000-10 at <https://www.occ.gov/static/ots/ceo-memos/ots-ceo-memo-131.pdf>

<sup>28</sup> Office of Thrift Supervision, Memorandum for Chief Executive Officers from Richard M. Riccobono, “Title Loan Programs,” November 27, 2000 at <https://www.occ.gov/static/news-issuances/ots/ceo-memos/ots-ceo-memo-131.pdf>

<sup>29</sup> Office of Thrift Supervision, memorandum for Chief Executive Officers from Richard M. Riccobono, “Payday Lending,” November 27, 2000, <https://occ.gov/static/ots/ceo-memos/ots-ceo-memo-132.pdf> rescinded and superseded by AL 2000-10.

*Preemption is not like excess space in a bank-owned office building. It is an inalienable right of the bank itself.*

*We have recently seen several instances in which nonbank lenders who would otherwise have been fully subject to various state regulatory laws have sought to rent out the preemption privileges of a national bank to evade such laws. Indeed, the payday lending industry has expressly promoted such a ‘national bank strategy’ as a way of evading state and local laws. Typically, these arrangements are originated by the payday lender, which attempts to clothe itself with the status of an ‘agent’ of the national bank. Yet the predominant economic interest in the typical arrangement belongs to the payday lender, not the bank.*

***Not only do these arrangements constitute an abuse of the national charter, but they are highly conducive to the creation of safety and soundness problems at the bank, which may not have the capacity to manage effectively a multi-state loan origination operation that is in reality the business of the payday lender.”*** (Emphasis added.)<sup>30</sup>

One early OCC enforcement action illustrates the risk of rent-a-bank lending. The OCC entered into a consent order with Eagle National Bank to withdraw from payday lending with Dollar Financial Group in 2001. The OCC found that the bank risked its financial viability by concentrating in one line of business, relinquished supervision of the program to a single third party originator of payday loans, and conducted its payday loan program in an unsafe and unsound manner in violation of a multitude of standards of safe and sound banking, compliance requirements and OCC guidance. The OCC consent order required Eagle National Bank to cease all payday loan origination, loan renewal, loan rollover and loan refinancing and reduce all outstanding payday loans and participations in payday loans to zero by June 15, 2002.<sup>31</sup>

The OCC press release announcing this action quoted the Comptroller saying “This case demonstrates the dangers inherent in arrangements under which national banks rent out their charters to nonbank providers of financial services. **Not only did Eagle allow itself to become a mere appendage to Dollar, but it effectively collaborated in Dollar’s scheme to evade state law requirements that would otherwise be applicable to it.**” (Emphasis added.)<sup>32</sup>

Despite the new “fintech” tag on this practice and larger, longer-term installment loans as the product, we are again facing rent-a-bank lending that harms consumers and undermines state authority. Federal bank regulators, including the OCC, that fail to enforce guidance adopted

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<sup>30</sup> OCC, Speech to Women in Housing and Finance by Comptroller of the Currency, February 12, 2002, at <https://www.occ.gov/news-issuances/speeches/2002/pub-speech-2002-10.pdf> p. 10 quoted in CFA Report “Unsafe and Unsound” at <https://consumerfed.org/pdfs/pdlrentabankreport.pdf> p. 17.

<sup>31</sup> Office of Comptroller of the Currency, Consent Order, Eagle National Bank, Upper Darby, PA, #2001-104, 12/18/01 at <https://occ.gov/static/enforcement-actions/ea2001-104.pdf>

<sup>32</sup> Press Release, “OCC Orders Eagle to Cease Payday Lending Program,” Comptroller of the Currency, Jan. 3, 2002, at <https://www.occ.treas.gov/news-issuances/news-releases/2002/nr-occ-2002-1.html>

years ago against rent-a-bank lending also add to the regulatory burden on state Attorneys General and state credit regulators to protect consumers.

**True-lender definition codifies rent-a-bank lending.** The proposed OCC rule states that a national bank or federal savings association in partnership with a nonbank lender will be deemed the “true lender” for purposes of 12 U.S.C. 85 or 1463(g) if the institution, “as of the date of origination: (a) Is named as the lender in the loan agreement; or (b) Funds the loan.” 85 Fed. Reg. at 44228. The bank would be considered the “true lender” even when it immediately sells the loan to the third-party lender, such as a payday loan company, a car title lender, or a high-cost online installment or line of credit lender that is currently subject to the state usury law where the consumer gets a loan. The nonbank “partner” would be able to launder loans through a bank, even when the “partner” markets loans, sets loan terms, services and collects the loan and bears the predominant economic risk for the credit extended.

CEI joined with consumer advocates around the country to object to the amicus brief filed by the FDIC and OCC in support of a predatory small business lender using a bank to make 120% APR loans in a bankruptcy case in Colorado. CEI also joined a letter to oppose the OCC rule to aid predatory rent-a-bank schemes by allowing nonbank assignees of loans originated by banks to ignore rate caps based on the theory of “valid when made.”<sup>33</sup> In our view, the final rules in those dockets (re “valid when made”) falsely claim that interest rate preemption is transferable through rent-a-bank schemes. We note that three state Attorneys General have taken legal action challenging the recent OCC “valid when made” rule and eight state Attorneys General have filed a lawsuit challenging the FDIC’s similar rule.<sup>34</sup> The current OCC docket is the last blow against the authority of states to enforce their usury laws.

### **Enabling predatory lenders to target vulnerable consumers is especially harmful during the economic upheaval caused by the pandemic**

Reasons claimed by the OCC for proposing this rule include increasing access to credit for the poor and expanding financial inclusion. The exact opposite will happen if predatory lenders are permitted to launder loans through a few rogue banks to offer loans in violation of Arizona’s usury law. People need solid, responsible resources that will help get them through this pandemic and the financial recovery to come. We do NOT need usurious, irresponsible lending

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<sup>33</sup> CEI signed onto 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, January 21, 2020 at

[http://stopthedebttrap.org/wp-content/uploads/2020/01/Comment\\_Letter\\_OCC\\_Interest\\_Rates\\_FINAL.pdf](http://stopthedebttrap.org/wp-content/uploads/2020/01/Comment_Letter_OCC_Interest_Rates_FINAL.pdf)

See, also, Letter to FDIC and OCC Re: FDIC and OCC support for predatory small business lender, October 24, 2019 at <https://www.nclc.org/issues/ltr-opp-rent-a-bank.html?print=print>

<sup>34</sup> Press Release, “Attorney General Becerra Challenges FDIC Rule that Allows Predatory Lenders to Bypass State Interest-Rate Caps,” August 20, 2020 at

<https://oag.ca.gov/news/press-releases/attorney-general-becerra-challenges-fdic-rule-allows-predatory-lenders-bypass>

that will harm families and impede recovery. The OCC is proposing access to high-cost debt traps, not “access to credit.”

Arizona families are at-risk financially. In Arizona 14 percent of our population lived in poverty prior to the economic disaster caused by the Covid-19 pandemic.<sup>35</sup> According to the Bureau of Labor Statistics, Arizona’s unemployment rate was 10.6% in July 2020, a bit higher than the national rate. In July, 377,307 persons were unemployed in Arizona.<sup>36</sup> The reduction in CARES Act unemployment support and other safety-net holes are leaving many families in dire financial straits.

Arizona has a high population of people of color, including 31.6% Hispanic or Latino origin, 5.1% African-American, 3.7% Asian, and 5.3% American Indian or Alaska Natives.<sup>37</sup> Because of underlying and systemic inequities, people of color are being subjected to the worst health impacts of COVID-19, as well as the highest unemployment rates. The threat of financial ruin and homelessness is greater for these communities, which are so often the target of predatory lenders.<sup>38</sup> The proposed rule will perpetuate racial disparities and widen the gaping racial wealth gap.<sup>39</sup>

### **Conclusion: OCC “True Lender” Rule Nullifies Arizona State Usury Law**

OCC’s proposed “true lender” rule will cripple our state’s ability to protect consumers from predatory loans. As noted above, CEI and a broad coalition of public, labor, senior, veteran and faith organizations worked hard to defeat the payday loan industry’s Prop 200 which led to termination of this product in mid-2010. While we have not succeeded in repealing the title loan carve-out from our usury law, we have managed to protect the limits and protections in the Consumer Lender law which apply to the installment loans and lines of credit most often marketed by rent-a-bank lenders. Arizona’s legislature has refused to reauthorize payday lending at triple digit rates since before the deferred presentment law sunset in 2010.<sup>40</sup>

**All of that progress will be wiped out if nonbank lenders can evade state usury laws, licensing requirements and loan term protections in state law simply by renting a bank charter.** This is true both for lenders that use banks to launder loans and to their competitors who will lobby state legislators to repeal or weaken state usury laws that restrain their business practices.

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<sup>35</sup> <https://www.census.gov/quickfacts/fact/table/AZ,US/PST045219>

<sup>36</sup> <https://www.azeconomy.org/arizona-unemployment-2/>

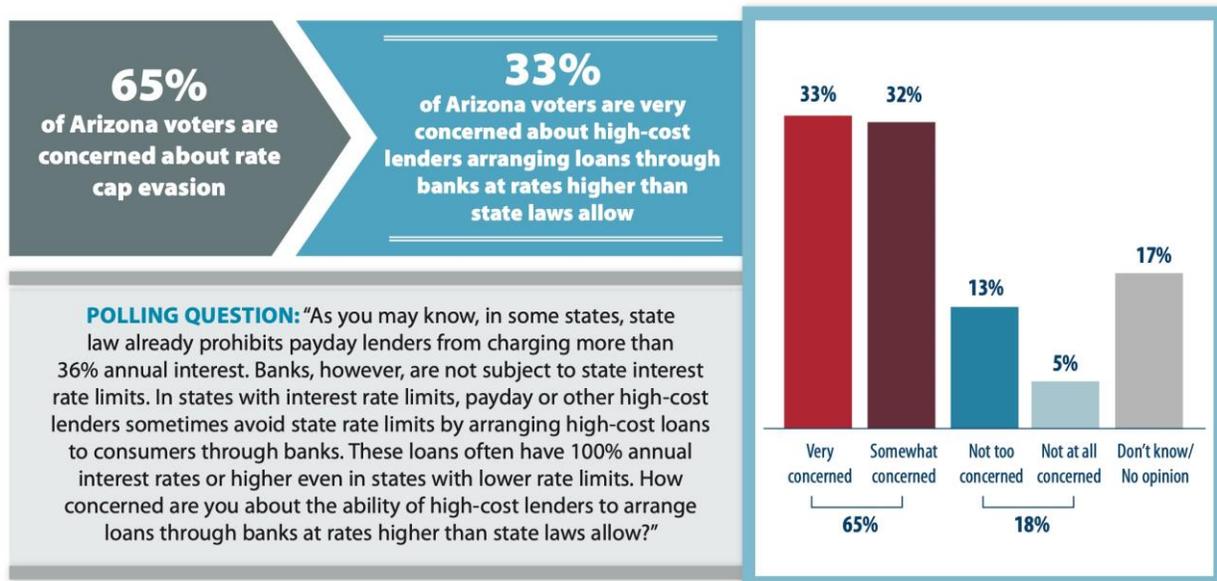
<sup>37</sup> <https://www.ruralhealthinfo.org/states/arizona>

<sup>38</sup> <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-standaert-ri-usccr-payday-apr2018.pdf>

<sup>39</sup> <https://www.washingtonpost.com/business/2020/06/04/economic-divide-black-households/>

<sup>40</sup> CEI, “Arizona Lawmakers Said NO to Usury Since Prop 200 Vote in 2008,” January 2020, at <https://nomoreloansharksaz.org/gallery/2020%20az%20factsheet%20no%20on%20usury%20since%202008.pdf>

Arizonans support a reasonable 36% small loan usury cap by very wide margins and 65 percent of Arizonans in a recent poll say they are concerned about rate cap evasions.<sup>41</sup>



We believe that interest rate limits such as those in Arizona law are the best way to prevent predatory debt-trap lending. This OCC proposed rule will eliminate our state's ability to police the credit market and prevent harmful rate gouging. We strongly urge the OCC to withdraw the proposed rule, "National Banks and Federal Savings Associations as Lenders." We urge the OCC to take prompt enforcement action to stop banks with national charters from laundering usury for predatory lenders.

Sincerely,

*Kelly S Griffith*

Kelly Griffith  
Executive Director,  
Center for Economic Integrity

[the next page lists Attachments submitted with these Comments]

<sup>41</sup> CRL/CEI Factsheet "Arizona Voters Overwhelmingly Support 36% Rate Cap," <https://economicintegrity.org/wp-content/uploads/2020/02/2020-02-26-CRL-CEI-Polling-on-AZ-Rate-Cap.pdf>

## Attachments

Attachment 1: Letter co-signed by members of the coalition Arizonans for Responsible Lending.

Attachment 2: CEI/CRL Factsheet “Arizona Voters Overwhelmingly Support 36% Rate Cap,”  
[Arizona Voters Overwhelmingly Support 36% Rate Cap](#)

Attachment 3: CEI, “Still Wrong: Wrecked by Debt/Title Lending in Arizona 2019,” August, 2019 at  
<https://economicintegrity.org/wp-content/uploads/2019/08/2019-CEI-Brief-Update-Car-Title-Loan-Survey-8-4-19.pdf>

Attachment 4: State of Arizona vs. CashCall, Inc.; WS Funding LLC, a wholly owned subsidiary of CashCall, Inc.; and J. Paul Reddam, Superior Court of the State of Arizona Maricopa County, March 4, 2019 at  
[https://www.azag.gov/sites/default/files/docs/press-releases/2019/complaints/CashCall\\_Complaint.pdf](https://www.azag.gov/sites/default/files/docs/press-releases/2019/complaints/CashCall_Complaint.pdf)

Attachment 5: CEI Comments filed with CFPB on the payday lending rule.  
[CEI Comment Letter Submitted to the CFPB Sep 27, 2016](#)

Attachment 6: CEI/CFA, “Wrong Way: Wrecked by Debt – Auto Title Lending in Arizona,” January 2016 at <http://bit.ly/wrongwayreport>