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September 23, 2020

Mr. Mark Brnovich  
Office of Attorney General  
2005 N. Central Avenue  
Phoenix, AZ 85004

Mr. Evan Daniels, Director  
Department of Insurance and Financial Institutions  
100 N. 15<sup>th</sup> Avenue, Suite 261  
Phoenix, AZ 85007

*Delivered electronically*

**Re: Rent-a-Bank Online Lending Federal and State Actions**

Dear Attorney General Brnovich and Director Daniels,

On September 3, the Center for Economic Integrity<sup>1</sup> and thirteen Arizona community groups and leaders<sup>2</sup> filed comments with the Office of Comptroller of the Currency regarding the proposed rule to define the “true lender” in rent-a-bank lending. The rule would codify the practice of laundering usurious loans through a federally chartered bank or thrift to facilitate lending that violates state usury laws, such as Arizona’s Consumer Lender rate cap.<sup>3</sup>

We view the combination of the OCC’s and FDIC’s recent “valid when made” rule and the OCC’s proposed “true-lender” rule as a direct threat to your authority to enforce Arizona laws against predatory lending by nonbank lenders. We are disappointed that the Office of Attorney General and the Department of Insurance and Financial Institutions did not intervene on behalf of Arizona consumers in either rent-a-bank docket at the OCC or the “valid when made” docket at the FDIC as we requested in our January 15, 2020 letter to you.<sup>4</sup>

**We oppose the OCC’s proposal to define the bank entity in a rent-a-bank deal as the “true lender”** if the institution “as of the date of origination; (a) is named as the lender in the loan agreements; or (b) funds the loan.” (85 Fed. Reg. at 44228). As we noted to the OCC, the bank should not be considered the “true lender” 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. Under the OCC’s proposed rule, the nonbank “partner” would be able to launder loans

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<sup>1</sup> <https://nomoreloansharksaz.org/gallery/2020-09-03%20Comment%20from%20AZ%20on%20OCC%20True%20Lender%20docket.pdf>

<sup>2</sup> [https://nomoreloansharksaz.org/gallery/Attachment1\\_AZ\\_Sign\\_On\\_Letter\\_to\\_OCC\\_on\\_True\\_Lender\\_proposal.pdf](https://nomoreloansharksaz.org/gallery/Attachment1_AZ_Sign_On_Letter_to_OCC_on_True_Lender_proposal.pdf)

<sup>3</sup> CEI Press Release “The Return of Rent-a-Bank Lending is the Most Serious threat in 20 Years to States’ Ability to Protect Their Residents From Predatory Lending, September 8, 2020 at <https://www.nomoreloansharksaz.org/gallery/2020-09-08%20Press%20Release%20-%20OCC%20True%20Lender%20proposal.pdf>

<sup>4</sup> <https://nomoreloansharksaz.org/gallery/2020-01-15%20rab%20letter%20to%20az%20ag%20and%20azdfi.pdf>

through a bank, even when the “partner” markets loans, sets loan terms, services and collects the loan and has the predominant economic interest in the credit extended.

A new rent-a-bank lender is doing business in Arizona. In January we notified you of several out-of-state online lenders that are making loans to Arizona consumers at rates that violate the Consumer Lender law. In our comments to the OCC this month, we added another example. **Verge Credit, a brand name of CURO Financial Technologies Corp.,<sup>5</sup> based in Kansas, offers consumer loans in Arizona without being licensed as a Consumer Lender.** CURO also does business in Arizona as Sales Finance licensee A Speedy Cash to make car title loans. Verge Credit makes personal loans with Stride Bank, NA, based in Salt Lake City, Utah. The Verge loans are for \$500 to \$5,000 for six to sixty months at **37 to 179% APR**. According to the Verge website, a sample \$2,000 loan at 94.02% APR repaid over 24 months would include a finance charge of \$2,496.46 for total due of \$4,496.46.<sup>6</sup>

A search of licensees on the Department of Insurance and Financial Institutions website does not show CURO’s brand Verge Credit as a licensed Consumer Lender. The Department issued an Escrow Agent license (EA-1007370) to CURO’s brand Avio Credit, Inc. on behalf of Verge Credit in March, 2020, which is displayed on the Verge Credit website.<sup>7</sup> While Avio Credit also holds a Sales Finance license (SF-0942721), it does not make loans in the Avio Credit name in Arizona at the present time. CURO is making triple-digit rate loans in Arizona via Verge Credit.

Unlike Arizona, neighboring states are taking action to protect their consumers against usurious rates charged by online lenders that launder loans through rogue banks. In August the **Colorado Attorney General settled its cases with Avant LLC and Marlette Funding** along with their bank partners WebBank Inc. and Cross River Bank.<sup>8</sup> While the negotiated settlement provides less than a full victory for consumers and for state authority to enforce usury laws, the settlement does require that the nonbank entities obtain state lending licenses and that loans made to Colorado consumers not exceed 36% APR limits. Arizona should enforce the AZDFI Regulatory and Consumer Alert, CL/CO-16-01 that requires online lenders to comply with the Consumer Lender law.<sup>9</sup>

The **California Department of Business Oversight has launched an investigation<sup>10</sup> of auto title lender Wheels Financial Group, LLC, d/b/a LoanMart**, which makes online auto title loans through its ChoiceCash website at rates over 90%, far in excess of the California 36% rate cap

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<sup>5</sup> <https://www.curo.com/brands>

<sup>6</sup> <https://www.vergecredit.com/rates-and-terms/>

<sup>7</sup> <https://www.vergecredit.com/rates-and-terms/> viewed 9/10/2020

<sup>8</sup> <https://coag.gov/press-releases/8-18-20/>

<sup>9</sup> [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>10</sup> <https://dbo.ca.gov/2020/09/03/dbo-launches-investigation-into-possible-evasion-of-californias-new-interest-rate-caps-by-prominent-auto-title-lender-loanmart/>

for larger loans that took effect this year. LoanMart is using CCBank in Utah to launder their loans.<sup>11</sup> The ChoiceCash website currently lists Florida, Ohio, Michigan and Texas as states where loans are available, but Wheels Financial/LoanMart could choose to drop its Arizona Sales Finance licenses and make online car title loans through CCBank without complying with Arizona's already high rate limits or DIFI supervision.

We have notified you of a half-dozen rent-a-bank operations that should be investigated by Arizona consumer protection officials. Attached is a summary of the Rent-a-Bank lenders currently extending credit in Arizona at high rates.

We continue to urge you to enforce Arizona's Consumer Lender law usury cap and consumer protection requirements against out-of-state lenders that launder their loans through banks and to require these non-bank lenders to obtain the correct license for doing business in Arizona and to comply with Arizona's usury cap. The National Consumer Law Center has noted that rent-a-bank lenders avoid states that vigorously enforce their usury laws.<sup>12</sup> **Arizona should be one of those states.**

Sincerely,



Kelly Griffith  
Executive Director  
Center for Economic Integrity

Attachments:

- CEI Factsheet on Rent-A-Bank lenders active in Arizona, September 2020
- Coalition letter to OCC on Proposal "National Banks and Federal Savings Associations as Lenders" Docket ID OCC-2020-0026 RIN 1557-AE97 | September 3, 2020
- CEI Comments to OCC on Proposal "National Banks and Federal Savings Associations as Lenders" Docket ID OCC-2020-0026 RIN 1557-AE97 | September 3, 2020

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<sup>11</sup> <https://www.choicecash.com/online-title-loans/>

<sup>12</sup> <https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html>