March 22, 2021

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

The Honorable Chuck Schumer Majority Leader United States Senate Washington, D.C. 20510 The Honorable Mitch McConnell Minority Leader United States Senate Washington, D.C. 20510

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, Majority Leader Schumer, Minority Leader McCarthy and Minority Leader McConnell:

The undersigned 325 civil rights, community, consumer, 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 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 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% 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." 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>2</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>3</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 rate 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 <u>suit</u> against yet another rent-abank 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 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

<sup>&</sup>lt;sup>1</sup> National Consumer Law Center, Consumer Credit Regulation § 3.9.1 (3d ed. 2020), *updated at* <a href="https://library.nclc.org">https://library.nclc.org</a>. 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>&</sup>lt;sup>2</sup> National Consumer Law Center, Payday Lenders Plan to Evade California's New Interest Rate Cap Law Through Rent-A-Bank Schemes (October 2019), <a href="https://www.nclc.org/issues/ib-rent-a-bank.html">https://www.nclc.org/issues/ib-rent-a-bank.html</a>.

<sup>&</sup>lt;sup>3</sup> Verge Credit, *Rates and Terms*, 2020, <a href="https://www.vergecredit.com/rates-and-terms/">https://www.vergecredit.com/rates-and-terms/</a>, (last visited September 2, 2020).

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>4</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>5</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
AFCPE (Association for Financial Counseling and Planning Education)
American Civil Liberties Union
American Friends Service Committee
American Sustainable Business Council
Americans for Financial Reform
Appleseed Foundation
Bob Barker Company Foundation

<sup>&</sup>lt;sup>4</sup> 12 C.F.R. § 7.1031(b)(1) (effective Dec. 29, 2020).

<sup>&</sup>lt;sup>5</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.").

**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

Hispanic Federation

Jesuit Social Research Institute

Justice in Aging

League of United Latin American Citizens (LULAC)

Main Street Alliance

**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 Fair Housing Alliance

National Housing Resource Center

National Partnership for Women & Families

National Rural Social Work Caucus

National Urban League

Partnership for America's Children

Prosperity Now

Public Citizen

Public Counsel

Public Good Law Center

**Public Justice** 

**Reinvestment Partners** 

**RESULTS** 

Revolving Door Project

**Small Business Majority** 

**Student Borrower Protection Center** 

Tax March

The Forum for Youth Investment

The Leadership Conference on Civil and Human Rights

U.S. PIRG

**UnidosUS** 

United Church of Christ, Justice and Witness Ministries

Woodstock Institute

#### Alabama

Alabama Arise

**Black Belt Community Foundation** 

**Building Alabama Reinvestment** 

Community Foundation of Greater Birmingham

The Women's Fund of Greater Birmingham

YWCA Central Alabama

### Alaska

Alaska PIRG

Alaska Poor People's Campaign

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

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 Low-Income Consumer Coalition California Reinvestment Coalition **CALPIRG** Center for Public Interest Law

CHC

Consumer Federation of California Eastern Sierra Legal Assistance Program Housing and Economic Rights Advocates **KGACLC** 

New Economics for Women

Public Law Center

Western Center on Law and Poverty

# Colorado

**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.

### **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 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

Brightpoint
Fair Housing Center of Central Indiana
GCC Foundation
Habitat for Humanity of Indiana, Inc.
HomesteadCS
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
LifeStream Services
LifeTime Resources, Inc.
MCCOY (Marion County Commission on Youth)
Prosperity Indiana
Sisters of Notre Dane de Nsmur
Thrive Alliance
Unite Indy

#### Iowa

Iowa Citizens for Community Improvement Iowa PIRG

### Kansas

Kansas Appleseed Center for Law and Justice, Inc.

# Kentucky

Kentucky Equal Justice Center

### Louisiana

Greater New Orleans Housing Alliance Louisiana Budget Project

#### Maine

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

# Maryland

CASH Campaign of Maryland Maryland Consumer Rights Coalition Maryland PIRG Public Justice Center RESULTS DC/MD

#### Massachusetts

CNAHS Massachusetts Affordable Housing Alliance MASSPIRG

# Michigan

Community Economic Development Association of Michigan (CEDAM) 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

Nebraska Appleseed Center for Law in the Public Interest

#### Nevada

Legal Aid Center of Southern Nevada

# **New Hampshire**

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

Democratic Party of New Mexico Veterans and Military Families Caucus

Indivisible of Santa Fe

New Energy Ecconomy

New Mexico Appleseed

NM Center on Law & Poverty

**NMPIRG** 

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

# New York

Chinese-American Planning Council (CPC)

**Empire Justice Center** 

New Economy Project

New York Public Interest Research Group (NYPIRG)

Public Utility Law Project of New York

We All Rise

WESPAC Foundation, Inc.

# **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

Passages to Recovery LLC

### North Dakota

High Plains Fair Housing Center

## Ohio

COHHIO

Ohio Main Street Alliance

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

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

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 South Carolina Appleseed Legal Justice Center South Carolina Association for Community Economic Development

#### **South Dakota**

Disability Rights South Dakota Bread for the World- South Dakota chapter First Peoples Fund

#### **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

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 Members of the United States Senate