November 7, 2019

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
1776 F Street, NW
Washington, DC 20006
Delivered electronically

Re: FDIC-supervised banks helping predatory lenders charging 135% to 199% APR to evade new California law

Dear Chairman McWilliams,

We write with urgency to express our deep concern about FDIC-supervised banks' involvement in rent-a-bank schemes used to help high-cost lenders evade state interest rate caps, and predatory lenders' expressed intent to expand those schemes to evade the new California interest rate cap that goes into effect January 1, 2020.

As described in an attachment to this letter, FinWise Bank and Republic Bank & Trust are already helping OppLoans and/or Elevate make loans up to 160% in several states that do not allow those rates. In addition, at least three large predatory lenders, which currently charge from 135% to 199% APR on high-cost installment loans that will be illegal under the new California law, have already indicated their plans to start or expand rent-a-bank arrangements into California, with the clear intent to evade the new interest rate cap. We urge you to stop FDIC-supervisee banks from engaging in these shams before they start and to cease the rent-a-bank operations in other states.

On October 10, 2019, California Governor Gavin Newsom signed into law AB 539, limiting the interest rates on loans of $2,500 to $10,000 to 36% plus the federal funds rate, currently 2.5%. Before now, there has been no rate cap in California on loans over $2,500.

Three publicly traded lenders making high-cost installment loans in California recently discussed with investors their plans to evade the new law even before it was enacted. These brazen declarations of their intentions make patently clear that the involved lenders would be forming these partnerships for the purpose of evading the law, and that the involved banks would be renting out their charters to willing bidders, enabling the lenders to do so. Banks may not assign their immunity from state interest rate limits to state-regulated lenders, and the banks are not the true lenders in rent-a-bank-arrangements. These schemes are an abuse of their bank charters and put both consumers and the banks at risk.

Californians for Economic Justice, a diverse California-based coalition, expressed its concern about this development in a recent letter to the California Department of Business Oversight (attached).

Elevate Credit, Inc. currently offers high-cost installment loans in California through its Rise brand at rates of 60% to 225% APR for a $2,600 to $5,000 loan.[1] In other states, where that product would not be permitted by non-banks, Elevate currently uses FDIC-supervised **FinWise Bank** to originate its Rise loans at rates of 99-149% APR. Elevate also uses FDIC-supervised **Republic Bank** to originate Elastic, an open-end line of credit with an effective APR of approximately 109%, in states where state law does not permit that rate by non-banks. In its July earnings call, Elevate discussed its plans to expand its Rise arrangement through a bank partner to evade the new California rate cap:

> "[Q:] So what does [the new California law] mean for Elevate? . . . [A:] [W]e expect to be able to continue to serve California consumers via bank sponsors that are not subject to the same proposed state level rate limitations. . . . [W]e are confident that we can make that transition . . . . And the effective yield that we are looking at on the product would be very similar to what we have on the market today. So we think the impact would be minimal and this transition would be pretty seamless."[2]
>
> "Realistically, we will probably use a new bank to originate as we transition into California for Rise. It will be [] probably different than FinWise. So that will add to the diversification."[3]

Elevate even claims it won't stop at $2500 but may make loans well below $2500 since, through a bank partnership, it would evade the longstanding rate cap in California on loans between $300 and $2500:

> "[T]hat's one of the nice things. Banks don't have the same limitations as a state license vendor would. So whereas the minimum loan size in California today is $2,600, a bank would have the ability to [offer] a loan down to $500 and hopefully have a wider range of consumers that they would serve."[4]

Enova International, Inc., currently has two long-term payday loan products in California. NetCredit offers loans of $2,500 to $10,000 at 34% to 155% APR.[5] CashNetUSA offers, in addition to short-term payday loans, long-term payday loans in California at rates of 129% to 191% for a $2,600 to $3,500 loan.[6] Enova, which has engaged in rent-a-bank shams in the past, also discussed plans to evade the California law, while touting how relatively little lenders must give up in margin to purchase the bank's preemption rights:

> "[W]e will likely convert our near-prime product [NetCredit] to a bank-partner program, which will allow us to continue to operate in California at similar rates to what we charge today"[7] . . . ."There's no reason why we wouldn't be able to replace our California business with a bank program."[8]

[1] https://www.risecredit.com/how-online-loans-work#WhatItCosts (select California).
[2] Elevate Credit Inc., Earnings Call, pp. 5-6 (July 29, 2019) at SeekingAlpha.com.
[3] *Id.* at 6.
[4] *Id.* at 10.
[5] https://www.netcredit.com/rates-and-terms/california.
[6] https://www.cashnetusa.com/rates-and-terms.html.
[7] Enova International Inc., Earnings Call, p. 3 (July 25, 2019) at SeekingAlpha.com.
[8] *Id.* at 9.

When asked the following on the call: "Do you have a bank partner in place already? Just remind me, that will allow you to make higher rate loans that is, kind of, pass the product through their regulator?," the Enova spokesperson responded, "We do have a bank program. We do have a bank partner that does higher interest rate loans, and kind of, we'll have to do a couple of quick changes to our program with them to offer that in California, but we don't see any reason why we couldn't do that"[9] . . . . "In terms of the conversion to a bank program, we give up a couple about percentages -- a couple percent of margin to the bank partner, but other than that it's largely like-for-like."[10]

CURO Group Holdings Corp. currently offers both short-term and long-term payday loans in California through its Speedy Cash brand. Its website gives an example of a $2,600 installment loan at 134% APR and a $5,000 loan at 131% APR.[11] CURO discussed plans to evade the California law while also praising the economics of the bank partnerships:

> "In terms of regulation at the state level in California, we expect a new law . . . [to make] our current installment products no longer viable . . . . "[W]e continue to talk to Meta[Bank] and we continue to talk to other banks about partnership opportunities" . . . . "I think we feel very good about being able to find products and partnerships that will serve our, the customer base in California that wants this longer, longer term, larger installment loan or possibly as a line of credit product . . . . And I think from a margin standpoint [] the bank partnerships are great. You have to sacrifice a little bit of the economics there because you have a, you have a bank partner there that's going to need a good rev share . . . . And I think . . . with bank partnership opportunities [] we feel . . . we've got a good, a really good opportunity to do that."[12]

In addition, **Opploans**, which makes 160% APR long-term payday loans, already originates some loans in California through FDIC-supervised **FinWise Bank** and other loans directly through a California state license. [13] Opploans offers loans in California from $500 to $4,000, and we assume that Opploans is using the rent-a-bank scheme to evade California's current rate caps on loans up to $2,500 and that it will expand its California rent-a-bank loans to its larger loans once the new rate cap law takes effect.

These publicly disclosed rent-a-bank operations and expansions are most likely in addition to others that have not yet been revealed. Other state-regulated high-cost lenders that are not publicly traded may well be in talks to begin rent-a-bank schemes to evade the will of California's legislature.

**

Unfortunately, the FDIC has been the weak link in recent years in keeping supervisee banks out of the business of using rent-a-bank shams to enable predatory lending. To our knowledge, only FDIC-supervised banks, **Republic Bank & Trust (Kentucky-chartered)** and **FinWise Bank (Utah-chartered)**, are currently facilitating triple-digit rate payday loans, while we know of no Federal Reserve- or OCC-supervised banks doing the same (although there are indications that at least one national bank may be considering doing so).

---

[9] *Id.* at 9.
[10] *Id.* at 10.
[11] https://db4nnybic3xty.cloudfront.net/pdf/SRC/2018/california/store/california.pdf (See "Installment Bank Line Loan Price Disclosure" at the bottom).
[12] CURO Group Holdings Corp., Earnings Call, pp. 3, 7-8 (July 30, 2019) at SeekingAlpha.com.
[13] https://www.opploans.com/licenses/.

In addition to the risks to consumers and the reputation risks to banks, banks that enable predatory lending should be aware that the legality of these arrangements are hotly contested. Courts have looked beyond the fine print of paperwork to find that the payday lender is the true lender[14] or may not arrange a loan without complying with state licensing and rate limits[15] and have also held that state-regulated entities are subject to state interest rate caps when they take assignment of a loan.[16] Banks that allow themselves to be used as fig leaves in rent-a-bank schemes with predatory lenders also expose themselves to a range of risks arising out of behavior by unscrupulous third parties that they are not closely supervising.

Indeed, these rent-a-bank arrangements are the exact opposite of your stated desire to see banks make small dollar loans inside the bank. While we support responsible and affordable bank small dollar loans, we will vigorously fight efforts by predatory lenders to shield themselves with a bank charter.

For further discussion of the rent-a-bank problem and longstanding precedent against rent-a-bank, please see the comments submitted by several of the undersigned groups and others in response to the FDIC's Request for Information on small dollar lending.[17]

We strongly urge you to take immediate action to stop existing, and prevent new, rent-a-bank scams under the FDIC's watch.

To discuss our concerns further, please contact Lauren Saunders at the National Consumer Law Center, (202) 595-7845, lsaunders@nclc.org, or Rebecca Borné at the Center for Responsible Lending, (202) 349-1868, rebecca.borne@responsiblelending.org.

Yours truly,

AKPIRG

Alabama Appleseed Center for Law & Justice

Allied Progress

Americans for Financial Reform Education Fund

---

[14] *See*, *e.g.*, Final Order on Phase II of the Trial the State's Usury and Lending Claims, West Virginia v. CashCall, et al. (Kanawha Co. Cir. Ct. 2012) (Civil Action No. 08-C-1964) (finding that CashCall was the de facto lender and the bank was not the true lender).

[15] Maryland Commissioner of Financial Regulation v. CashCall, et al. (MD Ct. of Special App. 2015).

[16] *See*, *e.g.*, Madden v. Midland Funding, LLC, 786 F.3d 246 (2d Cir. 2015); Amicus Curiae Brief of Professor Adam J. Levitin in Support of Appellant, Rent-Rite Super Kegs West, Ltd. V. Word Business Lenders, LLC, No. 1:19-cv-01552-REB (D. Colo. Sept. 19, 2019), https://www.creditslips.org/files/levitin-amicus-brief-rent-rite-super-kegs-west-ltd-v-world-business-lenders-llc.pdf

[17] Comments of the Center for Responsible Lending, National Consumer Law Center (on behalf of its low income clients), Americans for Financial Reform, the Leadership Conference on Civil and Human Rights, and NAACP to the FDIC (Jan. 22, 2019), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-fdic-smalldollar-rfi-22jan2019.pdf; Comments of 88 community, civil rights, faith, and consumer groups to the FDIC (Jan. 22, 2019), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/short-comments-to-fdic-small-dolar-lending-jan2019.pdf. .

Arkansans Against Abusive Payday Lending
Arkansas Community Institute
Arkansas Community Organizations
Belmont Baptist Church, Columbia, SC
Berkeley Law Consumer Advocacy and Protection Society
California Low-Income Consumer Coalition
California Reinvestment Coalition
Center for Economic Integrity
Center for Responsible Lending
Community Economic Development Association of Michigan (CEDAM)
Community Legal Services, Inc. of Philadelphia
Consumer Action
Consumer Federation of America
Consumers for Auto Reliability and Safety
CoPIRG (Colorado Public Interest Research Group)
East Bay Community Law Center
Empire Justice Center
Florida Alliance for Consumer Protection
Housing and Economic Rights Advocates
Illinois Asset Building Group
Indiana Institute for Working Families
Kentucky Equal Justice Center
Leadership Conference on Civil and Human Rights
Legal Aid Center of Southern Nevada
Legal Aid Society of the District of Columbia
Louisiana Budget Project
Mission Asset Fund (MAF)
Maine Center for Economic Policy
Maryland Consumer Rights Coalition
Metrocrest Services
Montana Organizing Project
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League

National Fair Housing Alliance

New Economy Project

New Jersey Citizen Action

North Carolina Justice Center

Public Justice Center

Public Law Center

Reinvestment Partners

South Carolina Appleseed Legal Justice Center

South Carolina Christian Action Council, Inc.

Statewide Poverty Action Network (WA)

Tennessee Citizen Action

Texas Appleseed

The Bell Policy Center

Tzedek DC

U.S. PIRG

United Way of Greater Houston

United Way of Metropolitan Dallas

Virginia Citizens Consumer Council

Virginia Poverty Law Center

Voices for Children (Omaha)

West Virginia Center on Budget and Policy

Wildfire (AZ)

Woodstock Institute

Attachment: National Consumer Law Center, Issue Brief: Stop Payday Lenders' Rent-a-Bank Schemes!, November 2019

Letter from Californians for Economic Justice to the California Department of Business Oversight dated October 25, 2019

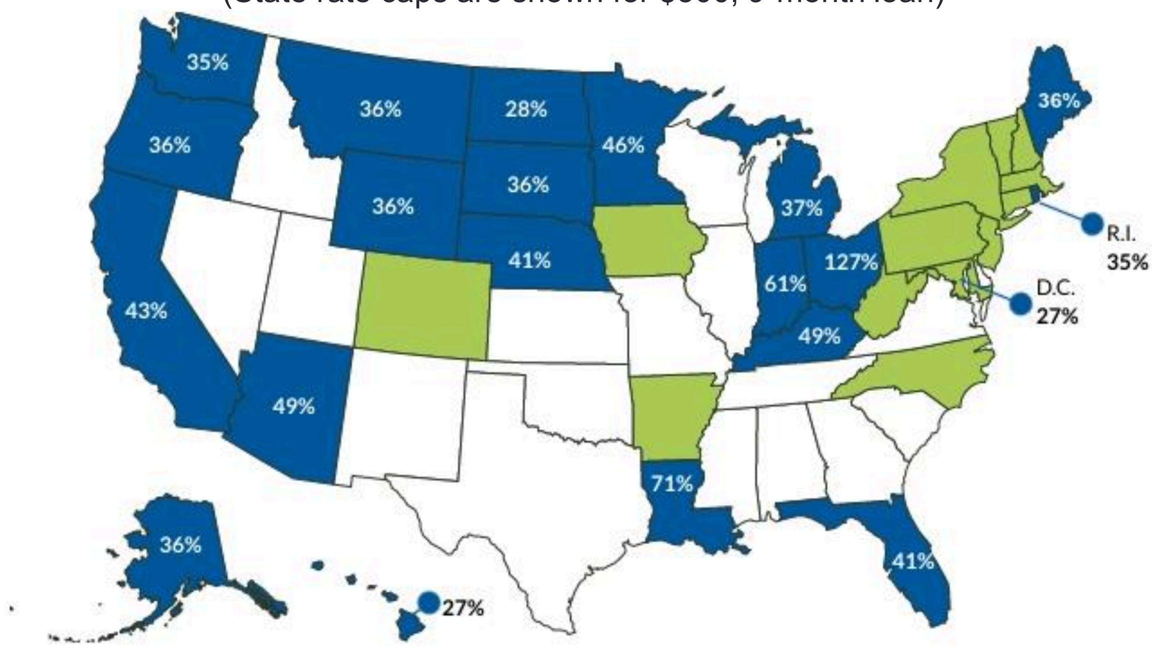
NCLC® NATIONAL CONSUMER LAW CENTER®

STOP PAYDAY LENDERS' RENT-A-BANK SCHEMES!

Payday lenders are starting to make **usurious loans up to 160% in states where those rates are illegal** by using banks, which are not subject to state rate caps, as a fig leaf**.** Banks have little to do with the loans, which they immediately sell. Bank regulators shut down these schemes in the early 2000s, but two state-chartered banks, FinWise Bank and Republic Bank and Trust, both regulated by the FDIC, are again helping payday lenders evade the law.

Opploans + FinWise Bank = 160% APR

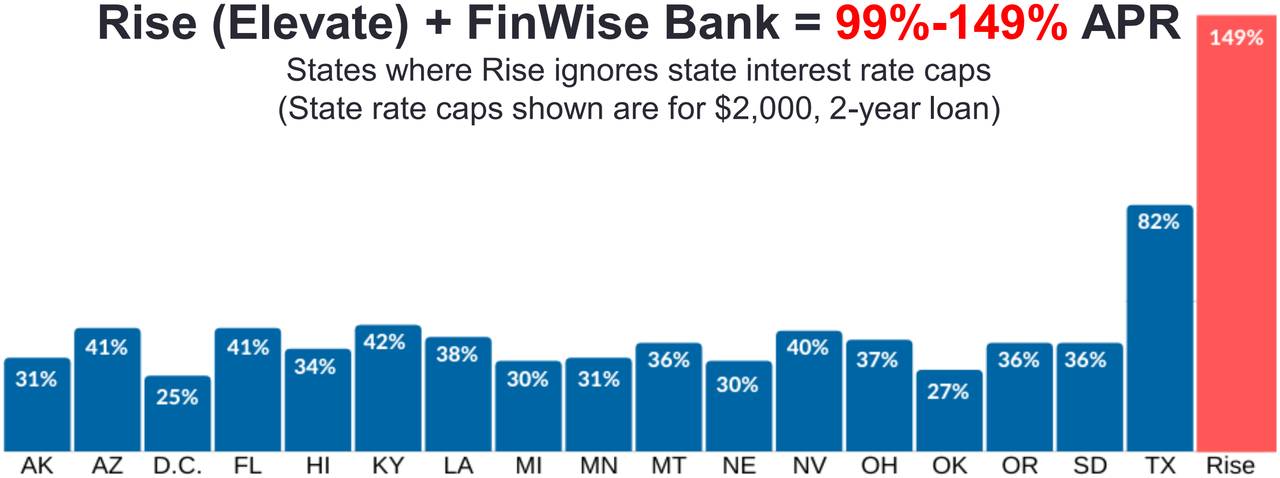
Opploans ignores the interest rate cap laws of several states
(State rate caps are shown for $500, 9-month loan)



- **Opploans uses a rent-a-bank scheme to evade state rate caps.**
- State that allow Opploans' 160% APR loans
- Opploans does not lend in these states, which have a history of enforcing rate caps.

Rise (Elevate) + FinWise Bank = 99%-149% APR

States where Rise ignores state interest rate caps
(State rate caps shown are for $2,000, 2-year loan)



Elastic (Elevate) + Republic Bank & Trust = 109%

Elastic uses a rent-a-bank scheme to offer lines of credit at rates above those allowed in many states. Elastic does not disclose an APR to consumers, but its SEC filing gives an example of a $2,500 advance with an effective **APR of 109%.** Actual APRs vary depending on the amount advanced and repayment schedule. The Elastic line of credit is offered in the following states that have far lower rate caps for lines of credit.

Maximum APR (with fees) for $2,000 advance repaid over 2 years			
Alaska	31%	Minnesota	36%
Arizona	41%	Montana	36%
Arkansas	17%	Nebraska	30%
D.C.	25%	Nevada	42%
Florida	34%	Oregon	36%
Kentucky	35%	South Dakota	31%
Louisiana	39%	Texas	28%
Maryland	33%		

Coming soon to California

Speedy Cash (Curo), NetCredit (Enova), and Rise (Elevate) have announced plans to their investors to **use rent-a-bank schemes to evade a new California law** going into effect on January 1, 2020 covering loans above $2,500 that will ban their current 135%-191% APR loans.

Federal and state legislators, regulators of both banks and payday lenders, and enforcement agencies must all do their part to stop payday lenders from evading state interest rate caps through rent-a-bank schemes.

November 2019

CALIFORNIANS for ECONOMIC JUSTICE

October 25, 2019

Manuel P. Alvarez
Commissioner
California Department of Business Oversight
1515 K Street, Suite 200
Sacramento, CA 95814
Delivered electronically

Re: Stopping lenders' ability to use "rent-a-bank" schemes to evade AB 539

Dear Commissioner Alvarez:

On behalf of the Californians for Economic Justice Coalition - a diverse coalition of nonprofit community and faith-based organizations working to advance economic justice for all in California – we write to request a meeting with your office to discuss our concerns with lenders planning to evade California's recently established rate cap on loans from $2,500 to $10,000.

Understanding that products like payday loans, car-title loans, and high-cost installment loans at sky high interest rates are merely debt traps for borrowers, our coalition worked closely with legislators and lending industry representatives to reach a final compromise that would prohibit predatory lending and still allow companies to offer loans at competitive rates. This effort, spanning three years of deliberative and thoughtful conversations with a broad coalition of stakeholders, led to the final provisions of AB 539 (Limon), The Fair Access to Credit Act.

However, before Governor Newsom had a chance to sign our coalition's bill into law, at least three large lenders that currently charge between 135% and 199% APR on long-term loans,[1] brazenly informed their investors of their intent to use rent-a-bank schemes to evade the new rate cap.

Elevate Credit, for example, was explicit about its intent to evade the new law should it be enacted:

> "As you know, in California a piece of legislation named AB539 continues to move ahead…So what does this mean for Elevate? … [W]e expect to be able to continue to

[1] These three lenders are Elevate Credit, Inc., Enova International, Inc. and CURO Group Holdings Corp, each operating in California Rise Credit, CashNetUSA, and Speedy Cash, respectively.

> serve California consumers via bank sponsors that are not subject to the same proposed state level rate limitations."[2]

Enova was equally blatant about its plan to continue offering loans at the same high rates as before, disregarding the legislature's clear determination that such rates are unacceptably harmful to California families:

> "One potential change is a California bill that will cap interest rate at roughly 38% on personal loans between $2,500 and $10,000... [W]e will likely convert our near-prime product [NetCredit, priced at up to 155% APR] to a bank-partner program, which will allow us to continue to operate in California at similar rates to what we charge today.[3]

Likewise, Curo made its intended evasion explicit:

> "In terms of regulation at the state level in California, we expect a new law to pass in September, capping the APR on [$2500] installment loans at about 38.5%, making our current installment products no longer viable...[W]e continue to talk to Meta[bank] and we continue to talk to other banks about partnership opportunities... I think we feel very good about being able to find products and partnerships that will serve our, the customer base in California that wants this longer, longer term, larger installment loan or possibly as a line of credit product.[4]

These current licensees could not be more explicit about their intent to use rent-a-bank schemes for the express purpose of ignoring the clearly-stated policy of California. This is precisely what the Office of the Controller of the Currency (OCC) had in mind when it stated in official guidance:

"The OCC views unfavorably an entity that partners with a bank with the sole goal of evading a lower interest rate established under the law of the entity's licensing state(s)."[5] This clear subterfuge cannot be tolerated.

State regulators in North Carolina and Colorado, among other states, have taken a stand to shut down rent-a-bank schemes for violating their state usury limits. Indeed, it would not be unprecedented for DBO to act similarly. In January of this year, Attorney General Becerra joined a fourteen-state coalition urging the Federal Deposit Insurance Corporation (FDIC) to include strong consumer protections for small dollar bank loans, maintaining that "state-chartered banks should be wary of entering into relationships with fringe lenders that are structured to evade state

[2] Elevate Credit Inc. earnings call pages 5-6, 10 (July 29, 2019) at SeekingAlpha.com
[3] Enova International Inc., earnings call, pages 3, 9-10 (July 26, 2019) at SeekingAlpha.com
[4] CURO Group Holdings Corp. earnings call, pages 3, 7-8 (August 2, 2019) at SeekingAlpha.com
[5] Office of the Comptroller of the Currency. OCC Bulletin 2018-14, *Installment Lending: core lending principles for short-term, small-dollar installment lending* (May 23, 2018), available: https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-14.html.

rate caps." The coalition's letter included a recommendation that "the FDIC discourage banks from entering into [rent-a-bank] relationships in any guidance it issues on small dollar lending."[6]

As reported in recent articles, lenders participating in these schemes are simply engaging in subterfuge, using banks to evade state regulations.[7] We urge your office to proactively take a stand and shut down these rent-a-bank schemes that are merely loopholes set up by lenders to avoid complying with state usury caps, like the one AB 539 creates.

As a coalition representing communities that have been impacted by the harms associated with predatory lending, we are deeply concerned by the bold statements of lenders planning on evading state law, with the intent of continuing to target economically vulnerable Californians. We strongly believe that DBO has the tools to prohibit these arrangements that deliberately circumvent state law and expect that your office will let licensees know that these schemes will not be tolerated. We respectfully ask for your time to discuss these plans and to hear from your office on your efforts to stop lenders from evading the rate cap.

To coordinate a meeting date, please contact Marisabel Torres, Director of California Policy at the Center for Responsible Lending, 510-379-5518 or marisabel.torres@responsiblelending.org.

Sincerely,

The Californians for Economic Justice Coalition

Cc: Governor Gavin Newsom
Attorney General Xavier Becerra
Assemblywoman Monique Limón

[6] Maura Healy and Karl A. Racine, Re: Docket No. RIN 3064-ZA04 Request for Information on Small-Dollar Lending, (Jan. 22, 2019) available: https://oag.dc.gov/sites/default/files/2019-01/FDIC-Small-Dollar-Lending-Letter.pdf.

[7] Tom Dresslar, CalMatters, *California has reformed consumer loan interest rates. But will lenders find loopholes?* (Oct. 16, 2019), available: https://calmatters.org/commentary/high-interest-loan/