

## Frequently Asked Questions for Partners

*Please note that this document should be used in preparation for advocacy meetings, **but should not be shared directly with legislators.***

- **What does the “National Banks and Federal Savings Associations as Lenders” Rule do?**
  - This “fake lender” rule 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 overturns 200 years of caselaw endorsed by the Supreme Court that allows courts to prevent usury law evasions by looking beyond the fine print to the truth. The rule replaces the longstanding “true lender” anti-evasion doctrine with a “fake lender” rule.
- **Aren’t non-bank lenders subject to state rate caps? How do non-bank lenders evade rate caps?**
  - While non-bank lenders are subject to state rate caps, banks are largely exempt and many traditional banks lend below state usury law caps. **Non-bank predatory lenders evade state usury laws by entering into “rent-a-bank” schemes with a few, rogue banks.** Through these schemes, the non-bank predatory lender launders loans through the bank in order to claim that it is a “bank loan” and that state interest rate limits do not apply.
- **Which banks are helping predatory lenders launder loans to evade state rate caps?**
  - Ones you’ve never heard of, almost all in Utah. Stride Bank, Axos Bank, FinWise Bank, First Electronic Bank, TAB Bank, Republic Bank and Trust of Kentucky, CC Bank. Mainstream banks do not launder loans for predatory lenders.
- **How do can I find out which of these predatory lenders operate in my state?**
  - You can learn whether your state rate cap is being evaded, and by which high-cost, predatory, rent-a-bank lenders, [here](#). This website is regularly updated, so continue to check in to see if there are changes to your state.
- **Will this rule effect affect existing state interest rate caps?**
  - **Yes, this rule effectively guts the power of state interest rate caps.** State attorneys general, courts, and federal bank regulators have long shut down rent-a-bank schemes by relying on a centuries-old anti-evasion doctrine, where they “follow the money” to find that the predatory lender, not the bank, is the “true lender.” The final OCC rule guts this long-standing anti-evasion doctrine, and thus the rule will eviscerate the power of state governments to independently regulate interest rate limits.

- **Does the fake lender rule harm small businesses as well as consumers?**
  - Yes. For example, the predatory small business lender World Business Lenders makes loans up to 139% APR and higher to small businesses and often secures the loans with the owner's home, then puts them into foreclosure. It launders the loans through a bank to try to evade criminal and civil usury laws.
  
- **My state doesn't have strong laws against high-cost loans. Why should I care?**
  - States and voters have the right to change their laws to address predatory lending and shouldn't have to worry about their laws being undermined. For example, in November 2020, Nebraska voters approved a 36% interest rate cap by a wide margin -- 82% voted in favor of the Nebraska rate cap. Even states with some higher interest rate limits are seeing their laws evaded.
  
- **Are there other ways to fix this?**
  - **The Congressional Review Act Challenge is the fastest, most definite and straightforward way to overturn this incredibly harmful rule.** Although the rule has already been [challenged by](#) eight Attorneys General, allowing the case to work through the court system will take a long time and the outcome is uncertain. We hope a new head of the OCC would move to reverse this rule, but a new comptroller has not been nominated and the OCC has historically supported preempting state consumer protection laws. Even with a willing comptroller, it would take an extended period of time to work through the rulemaking process and the reversal might be attacked as arbitrary and capricious and challenged in court. Thus, it could take years to finalize a repeal, which could get reversed.
  
- **Since many of these lenders operate online, would this impede innovation through financial technology?**
  - Responsible lenders making reasonably priced loans do not need this rule. They were thriving even before this rule was passed. Also, innovation should abide by existing consumer protection laws and should seek to protect consumers' best interests. These rent-a-bank schemes are entered into so that predatory lenders can evade state interest rate caps and offer high-cost loans, well above rates permitted by state law. **This is not responsible innovation or lending. These lenders charge triple-digit interest rates, target the financially vulnerable and communities of color, and trap consumers in devastating cycles of debt.**
  
- **Is usury cap evasion a widespread problem?**
  - 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.

- **Who would benefit from overturning this rule?**
  - Consumers in 45 states and DC, where there are interest rate limits on at least some installment loans, would be left unprotected from predatory lenders if this rule remains in place. And even the other five states would be blocked from adopting effective laws in the future to protect their residents. **Interest rates caps are the simplest and most effective way to protect consumers from predatory lenders**, and states have had the power to enact these caps since the American Revolution.
  
- **Do voters support overturning this rule?**
  - Yes. [66% of voters polled](#) -- 64% of Republicans, 71% of Democrats, and 63% of independents -- expressed concern about the ability of high-cost lenders to arrange loans through banks at rates higher than state laws allow. One in three, regardless of party affiliation, is “very concerned.”
  - In addition, 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 [81% of Americans](#) support prohibiting high-interest loans during the coronavirus pandemic.
  
- **Most of the banks doing rent-a-bank lending are state banks regulated by the FDIC, but this is an OCC rule that only protects national banks and federal savings associations. Will overturning the rule do any good?**
  - Some of the most predatory loans are laundered through OCC banks. World Business Lenders, described above, uses an OCC bank. The payday lender CURO is piloting rent-a-bank loans up to 179% APR through an OCC bank that it plans to expand to other states.
  - States and consumers are starting to challenge rent-a-bank loans made through FDIC-regulated banks in court. For example, the DC Attorney General has sued Elevate (which makes Rise and Elastic loans) for charging 99% to 251% despite DC’s 6% to 24% rate caps. DC alleges that Elevate, not the bank, is the true lender. But if the OCC rule is not overturned, Elevate can just switch to an OCC bank, and the fake lender rule would block any legal challenge.