

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,<sup>1</sup> 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

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<sup>1</sup> 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.”<sup>2</sup>

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.”<sup>3</sup>

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.”<sup>4</sup>

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).”<sup>5</sup> 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

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<sup>2</sup> Elevate Credit Inc. earnings call pages 5-6, 10 (July 29, 2019) at SeekingAlpha.com

<sup>3</sup> Enova International Inc., earnings call, pages 3, 9-10 (July 26, 2019) at SeekingAlpha.com

<sup>4</sup> CURO Group Holdings Corp. earnings call, pages 3, 7-8 (August 2, 2019) at SeekingAlpha.com

<sup>5</sup> 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.”<sup>6</sup>

As reported in recent articles, lenders participating in these schemes are simply engaging in subterfuge, using banks to evade state regulations.<sup>7</sup> 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](mailto:marisabel.torres@responsiblelending.org).

Sincerely,

The Californians for Economic Justice Coalition

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

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<sup>6</sup> 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>.

<sup>7</sup> 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/>