

The FDIC Finalized A Rule Allowing Payday Lenders To Avoid State Interest Rate Caps Through Bank Partnerships

The FDIC And OCC Finalized A Rule Allowing Payday Lenders To Bypass State Interest Rate Caps By “Funneling Their Loans Through A Chartered Bank.”

The Federal Deposit Insurance Corporation (FDIC) And The Office Of The Comptroller Of The Currency (OCC) Finalized A Rule To Open The Door For Payday Lenders To Bypass State Interest Rate Caps By “Funneling Their Loans Through A Chartered Bank.” A Practice Commonly Known As A “Rent-A-Bank’ Scheme.”

The Federal Deposit Insurance Corporation (FDIC) And The Office Of The Comptroller Of The Currency (OCC) Proposed A Rule That Would “Effectively Eliminate Regulations On Payday Lending And Interest Rates” By Allowing Payday Lenders To “Funne[l] Their Loans Through A Chartered Bank,” Commonly Known As A “Rent-A-Bank’ Scheme.” “Two top banking regulators, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC), have proposed a controversial rule that could effectively eliminate regulations on payday lending and interest rates—a huge gift to predatory consumer finance. [...] The rule would overturn a 2015 court decision that has proven surprisingly durable, even amid the conservative drift of the courts. It would codify a doctrine known as ‘valid-when-made,’ which critics consider invented by debt collectors and their allies out of whole cloth. In practice, it would mean that any payday lender could evade interest rate caps or other state-level restrictions by funneling their loans through a chartered bank. This is sometimes known as a ‘rent-a-bank’ scheme.” [The American Prospect, [11/19/19](#)]

May 29, 2020: The OCC Finalized This Rule "Clarify[ng] That When A National Bank Or Savings Association Sells, Assigns, Or Otherwise Transfers A Loan, Interest Permissible Before The Transfer Continues To Be Permissible After The Transfer." "The Office of the Comptroller of the Currency (OCC) today finalized a rule to clarify that when a national bank or savings association sells, assigns, or otherwise transfers a loan, interest permissible before the transfer continues to be permissible after the transfer." [Office Of The Comptroller Of The Currency, [05/29/20](#)]

Consumer Advocates Were Dismayed At This Effort To Ease Payday Lenders Use Of The “Rent-A-Bank” Scheme To Bypass State Interest Caps.

In November 2019, The Center For Responsible Lending Criticized This Proposal As Allowing Payday Lenders To “Funne[l] Their Loans Through A Chartered Bank” To Avoid State Interest Rate Caps – “Commonly Known As A ‘Rent-A-Bank’ Scheme” – As It Would Allow Payday Lenders To “Do Whatever The Bank Could Do.”

In November 2019, The FDIC And OCC Proposed A Rule That Would “Effectively Eliminate Regulations On Payday Lending And Interest Rates” By Allowing Payday Lenders To “Funne[!] Their Loans Through A Chartered Bank, Commonly Known As A “‘Rent-A-Bank’ Scheme.” [The American Prospect, [11/19/19](#)]

Debbie Goldstein, The Executive Vice President At The Center For Responsible Lending, Suggested The OCC And FDIC Proposal Would Allow Banks To Hand A Loan “Off To Anybody” Who Could Then “Do Whatever The Bank Could Do.” [Victoria Guida, “UPDATED: Consumer groups say OCC, FDIC proposal could encourage predatory loans,” *Politico Pro*, 11/19/19]

In November 2019, National Consumer Law Center Criticized The FDIC And OCC Proposal Saying It Would “Encourage Predatory Lenders To Try To Use Rent-A-Bank Schemes With Rogue Out-Of-State Banks To Evade State Laws.”

Lauren Saunders, Associate Director Of The National Consumer Law Center, Stated The FDIC and OCC Proposal Would “Encourage Predatory Lenders To Try To Use Rent-A-Bank Schemes With Rogue Out-Of-State Banks To Evade State Laws That Prohibit 160% Loans.” [[Press Release](#), 11/18/19]

Payday Lenders Are Already Using “Rent-A-Bank” Schemes In Order To Avoid State Interest Rate Caps And Even State Laws Outright Banning Payday Loans, While Other Lenders Are Exploring Similar Arrangements.

This Scheme Is Already Being Used By Payday Lenders To Avoid Interest Rate Caps In Minnesota, Montana, And Oregon And To Flout Other States That Have Outright Banned Payday Loans.

Elevate Financial Currently Uses Kentucky-Based Republic Bank & Trust In Order To Receive “Pre-emption Protection,” With “Elevate Suppl[y]ing] The Underwriting Software” And Republic Bank Holding Onto The Loan And Then Selling “A 90 Percent ‘Participation Interest’ To An Affiliate Of Elevate.” “Non-bank payday lenders try to get in on the action by putting a bank’s name on the loan, allowing them the pre-emption protection. One company engaged in this is Elevate Financial. Its line-of-credit product, Elastic, uses Republic Bank, which is chartered in Kentucky, to make the loans. Elevate supplies the underwriting software and therefore controls who gets a loan. Republic Bank holds onto the loans, but then sells a 90 percent ‘participation interest’ to an affiliate of Elevate. Functionally speaking, Elevate issues and effectively owns the loans, but it has a legal fig leaf that enables it to point to Republic Bank as the actual lender.” [The American Prospect, [11/19/19](#)]

- **Kentucky-Based Republic Bank & Trust Is Associated With Elastic Credit.** “Republic Bank & Trust Company, member FDIC, is the issuing bank for the Elastic line of credit. Founded in 1982 and headquartered in Louisville, Kentucky, Republic Bank & Trust Company has grown into the largest Kentucky-based bank with over \$4 billion in assets and nearly 50 banking centers.” [Elastic Credit, accessed [01/31/20](#)]

By Going Through State-Chartered Banks Like FinWise, Elevate Is Able To Bypass Interest Rate Caps “In States Like Minnesota, Montana, and Oregon,” While “Sell[ing] What Is Effectively A Payday Lending/Installment Loan Product Called Rise In States Where Payday Lending Has Been Banned.” “This enables Elevate to sell Elastic, which its financial disclosures say carries an annual percentage rate of 109 percent, in states like Minnesota, Montana, and Oregon, which cap interest rates at 36 percent. It also allows Elevate to sell what is effectively a payday lending/installment loan product called Rise in states where payday lending has been banned, like Arizona. FinWise Bank, chartered in Utah, has also been helping Elevate and Opploans, a separate company, make loans with interest rates as high as 160 percent.” [The American Prospect, [11/19/19](#)]

Payday Lenders Enova International, Elevate Credit, And Curo Group Holdings Signaled They Would Use Rent-A-Bank Schemes To Bypass A New California State Law Capping Interest Rates For High-Cost Installment Loans—With One Lender Even Stating “There’s No Reason Why We Wouldn’t Be Able To Replace Our California Business With A Bank Program.””

Payday Lenders Have Indicated Their Willingness To Use Bank Partnerships To Avoid State Interest Caps. With The CEO Of Enova Stating, “There’s No Reason Why We Wouldn’t Be Able To Replace Our California Business With A Bank Program.”

The Leadership Of Payday Lenders Enova International, Elevate Credit And Curo Group Holdings – Who In 2018 “Accounted For Roughly One-Quarter Of All Loans That Would Be Covered By The New Law And Had APRs Of At Least 100%” – Had All Suggested That “Bank Partnerships Will Allow Them To Continue Charging High Rates In California.” [American Banker, [10/15/19](#)]

- “‘There’s No Reason Why We Wouldn’t Be Able To Replace Our California Business With A Bank Program,’ Said Enova CEO David Fisher.” [American Banker, [10/15/19](#)]
- “[Curo Group Holdings] CEO Don Gayhardt Said That The Wichita, Kan., Firm Has Had A Lot Of Practice In Adapting To State Regulatory Changes.” [American Banker, [10/15/19](#)]

In November 2019, The CEO Of Elevate Credit Outlined His Company’s Intentions To Use “Three Existing FDIC Regulated Bank Partners” After California Enacted An Interest Rate Cap, Adding The Company Was “Continuously Looking For Additional Banks” To Partner With.

In October 2019, California Governor Gavin Newsom Signed A Law That Would “[Subject] Installment Loans Of Between \$2,500 And \$9,999 To A Rate Cap Of 36% Plus The Federal Funds Rate.” [American Banker, [10/15/19](#)]

On A November 4, 2019 Earnings Call, Elevate Credit CEO Jason Harvison Told Investors That Even Though Elevate Would “Stop Originating Loans Through [Their] Direct Lending Channel In California,” He Believed It Would Not Have A “Material Impact On Our Business Due To Our Diversified Operating Model And Additional Opportunities.” Elevate Credit CEO Jason Harvison said, “Now turning to Slide 6. I like to highlight a few business updates. As you're all probably aware, California passed a law that caps interest rates on personal loans between \$2,500 and \$10,000. We believe that this action unfairly limits credit options to California non-prime consumers. As a result, we will stop originating loans through our direct lending channel in California once the law goes into effect. However, we do not believe that it'll have a material impact on our business due to our diversified operating model and additional opportunities.” [[Seeking Alpha](#)," 11/04/19]

- **Jason Harvison Was Named CEO Of Elevate Credit In 2019.** [Elevate Credit, accessed [01/31/20](#)]

Jason Harvison Went On To Cite Elevate’s “Three Existing FDIC Regulated Bank Partners In New Geographies,” While Noting His Company Was “Continuously Looking For Additional Banks That Share Our Commitment To Providing Innovative Consumer-Focused Products.” “One of those opportunities is to expand our underwriting technology licensing to our three existing FDIC regulated bank partners in new geographies. In addition, we are continuously looking for additional banks that share our commitment to providing innovative consumer-focused products.” [[Seeking Alpha](#)," 11/04/19]

Curo Group Holdings Stated In A Disclosure That California’s Interest Rate Cap Would Have A “Material Adverse Effect On Our Results Of Operations And Financial Condition.”

In Its 2018 Annual Report, Curo Group Holdings Specifically Cited California’s State Interest Rate Cap As Having A “Material Adverse Effect On Our Results Of Operations And Financial Condition” If Passed. “On February 13, 2019, Assembly Bill 593 [sic] in California was introduced. Primarily, Assembly Bill 593 [sic] proposes an interest rate cap on all consumer loans between \$2,500 and \$10,000 of 36% plus the Federal Funds Rate. While it is very early in the legislative process, this bill as written would have a material adverse effect on our results of operations and financial condition. We, along with others in the short-term consumer loan industry, intend to continue to inform and educate legislators and regulators and to oppose legislative or regulatory action that would unduly prohibit or severely restrict short-term consumer loans as compared with those currently allowed.” [[Curo Group Holdings Corp. 2018 10-K](#)," United States Securities and Exchange Commission, 03/18/19]

Just Days After California Governor Gavin Newsom Signed A Bill Establishing An Interest Rate Cap, The CEO Of CURO Group Informed Investors That It Had Entered A New Bank Partnership Agreement.

On October 2019, California Governor Gavin Newsom Signed Assembly Bill B39 Which “Bar[red] Payday Lenders From Charging High Interest Rates – Sometimes As High As 200 Percent – On Loans Between \$2,500 And \$10,000.” “Governor Gavin Newsom today signed into law a measure protecting consumers from predatory lending practices that create ‘debt traps’ for families already struggling financially.

AB 539 by Assemblymember Monique Limón (D-Santa Barbara) promotes affordable and accessible credit for consumers and encourages responsible lenders to offer safer loan alternatives. The bill bars payday lenders from charging high interest rates – sometimes as high as 200 percent – on loans between \$2,500 and \$10,000.” [Press Release, [10/10/19](#)]

On October 25, 2019, Curo Group Holdings CEO Donald Gayhardt Told Investors During A Q3 Earnings Call That While Curo Group Had Ended Its Prior Bank Partnership With MetaBank It Had “Enter[ed] Into

A New Agreement To Offer Analytics, Marketing And Servicing Support To Another Bank. “A quick word on MetaBank and bank relationships in general. After almost 18 months of hard work by a lot of people in our team, we decided to direct our efforts elsewhere during the quarter, so we mutually agreed to terminate our partnership agreement with MetaBank. But during the quarter, we did enter into a new agreement to offer analytics, marketing and servicing support to another bank and look forward to discussing this arrangement more in the near future.” [Seeking Alpha, [10/26/19](#)]

- **Donald Gayhardt Has Been The CEO For Curo Group Holdings Since 2012.** [Curo Group Holdings, [01/31/20](#)]

Members Of The House Financial Services Committee Have Received Nearly \$37,000 From Companies Who Have Or Have Planned To Use Rent-A-Bank Schemes To Avoid State Interest Rate Caps And Nearly \$670,000 From The Payday Industry In General.

Rep. Patrick McHenry (R-NC) Has Received At Least \$10,500 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes and Over \$156,000 From The Payday Industry In General.

Rep. Patrick McHenry (R-NC) Has Received At Least \$10,500 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Employer	Date	Amount
Charles S. Greever	Elevate	04/18/2018	\$1,000
Ken Rees	Elevate Credit	09/30/2017	\$2,700
Ken Rees	Elevate Credit	09/30/2017	\$2,300
Walter Ramsey	Elevate	09/23/2016	\$1,000
Kirk Chartier	Enova	03/31/2016	\$1,000
David Fisher	Enova	03/24/2016	\$1,500
Kirk Chartier	Enova	03/24/2016	\$1,000
		Total	\$10,500

Since Joining Congress, Patrick McHenry Has Received \$156,899 From The Payday Lending Industry. [OpenSecrets, accessed [01/30/20](#)]

Rep. Steve Stivers (R-OH) Has Received At Least \$250 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes And Nearly \$190,000 From The Payday Industry In General.

Rep. Steve Stivers (R-OH) Has Received At Least \$250 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Employer	Date	Amount
Ozgul Baysar	Enova	12/31/2011	\$250

		Total	\$250
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Since Joining Congress, Steve Stivers Has Received \$189,725 From The Payday Lending Industry.
 [OpenSecrets, accessed [01/30/20](#)]

Rep. Ann Wagner (R-MO) Has Received At Least \$4,000 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes And Nearly \$70,000 From The Payday Industry In General.

Rep. Ann Wagner (R-MO) Has Received At Least \$4,000 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Employer	Date	Amount
Ken Reese	Elevate	11/03/2017	\$2,000
Donald Gayhardt	Curo Financial	04/14/2017	\$1,000
Ken Reese	Elevate	03/26/2015	\$1,000
		Total	\$4,000

Since Joining Congress, Ann Wagner Has Received \$69,500 From The Payday Lending Industry.
 [OpenSecrets, accessed [01/30/20](#)]

Rep. Andy Barr (R-KY) Has Received At Least \$12,500 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes And Nearly \$47,000 From The Payday Industry In General.

Rep. Andy Barr (R-KY) Has Received At Least \$12,500 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Employer	Date	Amount
Steven E. Trager	Republic Bank & Trust	03/21/2019	\$1,000
Brian Yates	Elevate	02/12/2019	\$500
David Fisher	Enova	10/03/2018	\$1,000
Steven E. Trager	Republic Bank & Trust	08/14/2018	\$1,000
Andrew Trager-Kusman	Republic Bank & Trust	01/24/2018	\$500
Eugene Ziegler	Republic Bank	01/24/2018	\$250
Steven E. Trager	Republic Bank & Trust	01/24/2018	\$500
Steven E. Trager	Republic Bank & Trust	11/08/2017	\$1,000
Thomas Hobbs	Republic Bank	09/21/2017	\$250
Christopher Lutes	Elevate Credit	07/17/2017	\$1,500
Steven E. Trager	Republic Bank & Trust	02/24/2017	\$250
Steven E. Trager	Republic Bank & Trust	09/01/2016	\$250
Steven E. Trager	Republic Bank & Trust	03/31/2016	\$1,000
Kenneth E. Rees	Elevate	08/07/2015	\$2,500
David Fisher	Enova	07/18/2014	\$1,000
		Total	\$12,500

Since Joining Congress, Andy Barr Has Received \$46,627 From The Payday Lending Industry.
 [OpenSecrets, accessed [01/30/20](#)]

Rep. Roger Williams (R-TX) Has Received At Least \$3,000 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes And

Nearly \$44,000 From The Payday Industry In General.

Rep. Roger Williams (R-TX) Has Received At Least \$3,000 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Company	Date	Amount
April Sealy	Elevate	04/07/2015	\$1,000
Kenneth Rees	Elevate	04/07/2015	\$500
Jason Harvison	Elevate	04/07/2015	\$1,500
		Total	\$3,000

Since Joining Congress, Roger Williams Has Received \$43,850 From The Payday Lending Industry. [OpenSecrets, accessed [01/30/20](#)]

Rep. French Hill (R-AR) Has Received At Least \$500 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes And Nearly \$16,000 From The Payday Industry In General.

Rep. French Hill (R-AR) Has Received At Least \$500 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Employer	Date	Amount
Jason Harvison	Elevate	10/07/2015	\$500
		Total	\$500

Since Joining Congress, French Hill Has Received \$15,962 From The Payday Lending Industry. [OpenSecrets, accessed [01/30/20](#)]

Rep. Tom Emmer (R-MN) Has Received At Least \$500 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes And \$7,500 From The Payday Industry In General.

Rep. Tom Emmer (R-MN) Has Received At Least \$500 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Employer	Date	Amount
Jason Harvison	Elevate	10/22/2015	\$500
		Total	\$500

Since Joining Congress, Tom Emmer Has Received \$7,500 From The Payday Lending Industry. [OpenSecrets, accessed [01/30/20](#)]

Rep. Trey Hollingsworth (R-IN) Has Received At Least \$1,000 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes And Over \$8,250 From The Payday Industry In General.

Rep. Trey Hollingsworth Has Received At Least \$1,000 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Employer	Date	Amount
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Christopher Lutes	Elevate Credit	07/17/2017	\$1,000
		Total	\$1,000

Since Joining Congress, Trey Hollingsworth Has Received \$8,250 From The Payday Lending Industry. [OpenSecrets, accessed [01/30/20](#)]

Rep. Josh Gottheimer (D-NJ) Has Received At Least \$850 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes And \$12,500 From The Payday Industry In General.

Rep. Josh Gottheimer (D-NJ) Has Received At Least \$850 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Employer	Date	Amount
Matthew Hollender	Enova International	06/06/2019	\$500
Michael Kerr	Enova International	05/31/2019	\$350
		Total	\$850

Since Joining Congress, Josh Gottheimer Has Received \$12,500 From The Payday Lending Industry. [OpenSecrets, accessed [01/30/20](#)]

Rep. David Scott (D-GA) Has Received At Least \$3,750 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes And Over \$118,000 From The Payday Industry In General.

Rep. David Scott (D-GA) Has Received At Least \$3,750 From Banks Or Lenders With An Interest In The Deregulation Of Rent-A-Bank Schemes.

Name	Employer	Date	Amount
Denise F. Russell	Elevate	03/30/2018	\$1,250
Joan C. Kuehl	Elevate	03/30/2018	\$1,250
Albert P. Comeaux	Elevate	12/30/2017	\$1,250
		Total	\$3,750

Since Joining Congress, David Scott Has Received \$118,330 From The Payday Lending Industry. [OpenSecrets, accessed [01/30/20](#)]