Center for Responsible Lending
National Consumer Law Center (on behalf of its low income clients)
Americans for Financial Reform Education Fund
Consumer Action
Consumer Federation of America
The Leadership Conference on Civil and Human Rights
NAACP
National Association of Consumer Advocates
National Association for Latino Community Asset Builders
UnidosUS
U.S. PIRG

Comments to the Federal Deposit Insurance Corporation
Notice of Proposed Rulemaking
Parent Companies of Industrial Banks and Industrial Loan Companies
12 CFR Part 354
RIN 3064-AF31

July 1, 2020

Submitted via email to comments@fdic.gov

The **Center for Responsible Lending (CRL)** is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Over 37 years, Self-Help has provided over $7 billion in financing through 146,000 loans to homebuyers, small businesses, and nonprofits. It serves more than 145,000 mostly low-income members through 45 retail credit union locations in North Carolina, California, Florida, Greater Chicago, and Milwaukee.

Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

Americans for Financial Reform Education Fund (AFREF) works in concert with a coalition of more than 200 consumer, investor, labor, civil rights, business, faith-based, and community groups to lay the foundation for a strong, stable, and ethical financial system. Through policy analysis, public education, and outreach, AFREF works for stronger consumer financial protections and against predatory practices.

Consumer Action has been a champion of underrepresented consumers since 1971. A national, nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers and regulators to advance consumer rights and promote industry-wide change particularly in the fields of consumer protection, credit, banking, housing, privacy, insurance and utilities.

The **Consumer Federation of America** is a nonprofit association of more than 250 national, state and local consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. For over 50 years CFA has been at the forefront of consumer protection with a broad portfolio of issues including product safety, banking, telecommunications, investor protection, energy, housing, insurance, privacy and saving. CFA's non-profit members range from large organizations such as Consumer Reports and AARP, to small state and local advocacy groups and include unions, co-ops, and public power companies.

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States. Through advocacy and outreach to targeted constituencies, The Leadership Conference works toward the goal of a more open and just society - an America as good as its ideals. The Leadership Conference is a 501(c)(4) organization that engages in legislative advocacy. It was founded in 1950 and has coordinated national lobbying efforts on behalf of every major civil rights law since 1957.

Founded in 1909, the **National Association for the Advancement of Colored People (hereinafter NAACP**) is our nation's oldest, largest and most widely known grassroots civil rights organization. The principal objectives of NAACP are to ensure the political, educational, social and economic equality of all citizens; to achieve equality of rights and eliminate racial prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state and local laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof.

The **National Association of Consumer Advocates (NACA)** is a national nonprofit association of private and public sector attorneys, legal service attorneys, law professors and law students committed to representing consumers' interests. NACA's mission is to promote justice for all consumers by maintaining a forum for information-sharing among advocates across the country and to serve as a voice for its members in its work to curb unfair and abusive business practices, including predatory lending and other conduct that adversely affect consumers.

National Association for Latino Community Asset Builders (NALCAB) represents and serves a geographically and ethnically diverse group of more than 120 non-profit community development and asset-building organizations that are anchor institutions in our nation's Latino communities. Members of the NALCAB Network are real estate developers, business lenders, economic development corporations, credit unions, and consumer counseling agencies, operating in 40 states and DC.

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the national and local levels. For 50 years, UnidosUS has united communities and different groups seeking common ground through collaboration, and that share a desire to make our country stronger.

U.S. PIRG, the federation of state Public Interest Research Groups, is a consumer group that stands up to powerful interests whenever they threaten our health and safety, our financial security, or our right to fully participate in our democratic society. It is part of The Public Interest Network, which operates and supports organizations committed to a shared vision of a better world and a strategic approach to getting things done.

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

I. Introduction and Overview

We, the consumer and civil rights groups named above, write to strongly oppose the Federal Deposit Insurance Corporation (FDIC)'s proposed rule on Parent Companies of Industrial Banks and Industrial Loan Companies (proposal or proposed rule)[1] as well as the agency's approval of new ILC charters. While these actions raise a number of concerns, our comments focus on the dramatic and inappropriate expansion of federal interest rate preemption the rule and additional ILC charters would precipitate.

We are in the midst of an unprecedented health crisis and a severe economic crisis, with both crises impacting communities of color more heavily than white communities. The future, on both the health and economic fronts, is profoundly uncertain.

We are, at the same time, at a pivotal moment in our nation's reckoning with its history of structural racism. Systemic racial barriers persist in virtually every sphere, and the banking and credit arenas are no exception. In fact, racist financial practices are among the most well-known and documented in the history of racial exclusion. As we reevaluate structural racism across our society, we should be critically scrutinizing the effects of financial practices, particularly as they impact Black households' efforts to achieve financial stability and advancement.

Thus, it is difficult to imagine a more uncertain or otherwise inappropriate time to disrupt longstanding safeguards that have played a fundamental role in protecting both our economy from systemic risk and consumers from predatory financial practices. Yet that is just what the proposal at issue would do. By permitting unprecedented blending of commercial and financial activities, and by making it easier than ever to make high-cost loans above states' interest rate limits, this proposal is a recipe for disaster. And no one will feel the misery worse than the millions of households, disproportionately households of color, who are targeted by the abusive lending the proposal will proliferate.

We deeply object to the attempts that banking regulators, online lenders, and others make to justify bank/non-bank partnerships, or preemption of state interest limits more broadly, with claims that these are a path to a more inclusive market, particularly for communities of color. We heard the same claims about predatory subprime mortgage lending until the foreclosure crisis ravaged neighborhoods of color and only widened the racial wealth gap. High-cost, usurious loans represent the worst of financial services. They have no place in America. The suggestion that high-cost lending offers a path toward upward mobility insults those of us who understand that our communities deserve better. High-interest

[1] 84 Fed. Reg. 66845 (Dec. 6, 2019).

loans will never "make poor people rich."[2] Nor do they help with the lack of income and assets caused by centuries of discrimination and growing inequality. Rather, predatory lending only makes poor people poorer. For years now, we have been registering our objection to the notion that credit at rates that exceed reasonable state interest rate limits is the answer. Adding the new label "fintech" to high-cost lending may attract investors and make it easier for banking regulators to justify their support, but it doesn't soften the blow high-cost loans land on struggling families.

This proposal comes amidst a number of attacks on state usury limits by federal banking regulators in recent years, as State-regulated lenders increasingly look to federal regulators to help them avoid state laws against high-cost loans and predatory lending.[3] These attacks include the proposed OCC "special purpose charter," which New York successfully challenged in Federal District Court and which the OCC is appealing to the Second Circuit; the so-called "valid-when-made" interest rate preemption rules issued by the FDIC and OCC (a theory recently rejected by a Colorado court); and a potential proposed "true lender" safe harbor, intended to protect sham bank partnerships from litigation and from states' efforts to stop schemes that flout their laws.[4] Importantly, these attacks are not on state usury limits as they apply to *banks*—the entities under the federal banking regulators' supervision. Rather, these efforts attempt to effectively exempt *non-banks* from state usury limits. But exemption from state law is a case those non-bank lenders should have to make to state legislatures across the land, rather than have the federal banking regulators exceed their authority to achieve for them.

The ILC charter is no different. By making it easier for predominantly online non-bank lenders to obtain bank charters, while avoiding the consolidated supervision of the Federal Reserve, the FDIC would pave the way for non-banks to benefit from federal preemption far more easily than they otherwise could. Indeed, a law firm representing payday lenders recently wrote of the ILC proposal: "The proposed rule, together with the FDIC's recent approvals of deposit insurance applications for NelNet Bank and Square Financial Services, Inc., suggest the ILC charter as a viable alternative to the OCC's fintech charter, which

[2] *See*, *e.g.*, Remarks of Acting Comptroller of the Currency Brian Brooks to the Online Lending Policy Institute, June 11, 2020, https://www.youtube.com/watch?v=Ae_SoZeRbxM, at 33:00 (stating "I want to make poor people rich" while addressing financial inclusion, in a conversation where he also states that his personal belief is that "price controls generally create shortages" and that "if we believe in market pricing for hamburgers, for jeans, for automobiles, I'm not sure why we don't believe in market rates for money; it's another commodity, and we want it to flow freely").

[3] *See*, *e.g.*, Jeremy T. Rosenblum, *FDIC seeks comment on small-dollar lending*, Ballard Spahr's Consumer Finance Monitor, Nov. 15, 2018, https://www.consumerfinancemonitor.com/2018/11/15/fdic-seeks-comments-on-small-dollar-lending/ (noting that the "most significant[]" outcome of the FDIC's 2018 Request for Information on Small Dollar Lending would be its explicit approval of non-bank/bank arrangements "despite 'true lender' and *Madden* arguments to the contrary"); Comments to FDIC on its Request for Information on Small Dollar Lending from the Online Lenders Alliance (Jan. 2019) ("The FDIC Should Address existing Legal Impediments to the Bank-Fintech Partnership Model in Order to Facilitate Small Dollar Lending").

[4] Remarks of Acting Comptroller of the Currency Brian Brooks to the Online Lending Policy Institute, June 11, 2020, https://www.youtube.com/watch?v=Ae_SoZeRbxM, at 19:30 (noting that the OCC will shortly be releasing a proposed rulemaking on true lender; that the rule needs to be a bright-line rule because otherwise, "there will just be litigation over this like you see in Colorado, and this cannot be open to interpretation"; and that he expects to partner with the FDIC on the rulemaking).

has been stalled by litigation."[5] That is, the ILC charter is another way for the federal bank regulators to give non-bank companies bank privileges to which they are not entitled, without the full oversight required for traditional banks.

So we should be clear: Financial companies seeking interest rate preemption will seek ILC charters over traditional bank charters because they want the benefits of a bank charter without with the responsibilities stemming from consolidated Fed supervision. This should be the case in point showing that the FDIC lacks the authority and tools to supervise those companies as effectively as the Fed can. In this way, expansion of ILC charters exacerbates the risks of an uneven playing field that have been acknowledged by the FDIC, and cited by a range of parties, over the years.[6]

Yet federal interest rate preemption was never intended to extend to non-banks. States have had powers since the time of the American Revolution to protect their residents from high-cost lending. The ability to "export" a non-existent home state interest rate into other states came only in recent decades and only for banks.

A number of traditional FDIC-supervised banks are already facilitating evasion of state usury limits by non-banks through rent-a-bank schemes that the FDIC has not addressed. The loans these schemes peddle are among the most exorbitantly priced and irresponsible loans on the market. These include high-cost installment loans and lines of credit, typically directly accessing the borrower's checking account, and car title installment loans. Recent regulatory guidance in the small dollar loan space and the FDIC's rescission of previous guidances have increased the risk that balloon-payment payday and car title loans, which have not used rent-a-bank schemes since the mid-2000s, may return as well. (The FDIC has also indicated that it plans changes to its 2005 guidance addressing payday lending, which could exacerbate the risk that bank payday loans will return.)

Existing ILCs are also engaged in rent-a-bank arrangements. One ILC facilitates predatory consumer loans at rates up to 179.99% APR; another is facilitating small business loans at up to 99% APR; and another has been helping an online lender violate Colorado's state usury limit.

The proposal dramatically understates the impact it would have, suggesting that it "generally would codify the FDIC's current supervisory processes and policies with respect to industrial banks" and "include[] additional safeguards."[7] But, in reality, the proposal, along with the first two charter approvals in over a decade, marks a clear change in course by the agency. The agency does not explain or justify this change. And at the same time, the proposal wholly fails to consider the strong likelihood that it will cause a significant increase in predatory lending, either directly by companies that acquire ILCs or obtain

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[5] Ballard Spahr, March 25, 2020, https://www.jdsupra.com/legalnews/fdic-issues-proposed-rule-for-approval-86042/.

[6] *See, e.g.*, Press Release, FDIC, *Moratorium on Certain Industrial Loan Company Applications and Notices*, 2006, https://www.fdic.gov/news/news/press/2006/pr06073a.html ("The FDIC has noted a recent increase in deposit insurance applications for, and change in control notices with respect to, ILCs that will be affiliated with commercial concerns or other companies that will not have a Federal consolidated supervisor. Some members of Congress, the Government Accountability Office, the FDIC's Office of Inspector General, and members of the public have expressed concerns regarding the lack of Federal consolidated supervision, the potential risks from mixing banking and commerce and the potential for an unlevel playing field.")

[7] 85 Fed. Reg. at 17776.

ILC charters, or indirectly through increased rent-a-bank schemes with ILC banks. That risk is greater given the agency's recently finalized "federal interest rate authority rule," which will encourage predatory lenders to enter into rent-a-bank schemes with FDIC-supervised banks, including ILCs.

Our comment makes the following points in turn:

- Now is among the most inappropriate times imaginable to disrupt longstanding safeguards that protect both the systemic health of the economy and consumers.

- The FDIC's proposal poses severe risks to the federal safety net.

- The past financial crisis demonstrates that the FDIC's supervision of ILCs was not adequate, including with respect to predatory lending.

- The proposal, along with new ILC charters, would severely undermine the States' historical and constitutional role in our federalist system.

- Expansion of ILCs will erode consumer protections and expose consumers to severe harm, which the proposal fails to consider.

    - High-cost lending is fundamentally different than responsible lending and inflicts severe harm on financially vulnerable consumers.

    - Predatory lending causes particular harm to communities of color.

    - Existing ILCs are already involved in rent-a-bank partnerships, including very high-cost schemes.

    - The FDIC fails to consider that proliferation of ILCs will enable high-cost lending, evidenced by existing rent-a-bank schemes that the FDIC is not restraining.

    - Features of online loans, including the originate-to-distribute model and heavy reliance on preauthorized electronic repayment, pose heightened risk of unaffordability and other risks.

    - The proposal fails to consider the safety and soundness risks of predatory lending, which the FDIC has long acknowledged.

- The proposal gives inadequate consideration to Community Reinvestment Act concerns.

- Any final rule should not permit the FDIC staff to waive conditions imposed upon ILCs without Board approval.

I. Now is among the most inappropriate times imaginable to disrupt longstanding safeguards that protect both the systemic health of the economy and consumers.

We are in the midst of an unprecedented health crisis and a severe economic crisis. In May 2020, unemployment hit 17.6% for Hispanic or Latino workers, 16.8% for Black workers, 15.0% for Asian workers and 12.4% for white workers,[8] representing a much steeper climb, and reaching a higher peak, than in the Great Recession.[9] Economic forecasts, domestic and global, are bleak.[10] With the trajectory of the pandemic unclear, there remains great uncertainty around how severe the economic fallout will be, and how long it will last.

The severe economic crisis has several implications for the risks posed by ILCs. In section III below, we discuss that, during the 2008 financial crisis, ILCs experienced great distress and caused severe drains on the federal safety net. The current crisis further demonstrates that commercial owners of ILCs can indeed be liabilities to ILCs, rather than strengths, in a crisis. Corporate bankruptcies rose 48% over the prior year this May, with experts predicting that they will continue to rise as federal relief tapers.[11] Large corporations are receiving equity aid from Treasury of over $450 billion, which the Fed has leveraged into more than $4 trillion.[12] The FDIC's proposal would usher in unprecedented blending of commercial and financial activities that poses severe systemic risks to the financial system.

The pandemic also has strained the FDIC's supervision of regular banks, which should be the agency's current focus. April's FDIC Office of the Inspector General (OIG) report underscores that this is the wrong time for the FDIC to loosen safeguards or take on a surge of supervisory authority. The report was based on evaluation in 2018 and early 2019, unrelated to the COVID pandemic. The report found, among other things, that the FDIC's Pandemic Influenza Plan "did not adequately address how the FDIC might need to adjust supervision, resolution, or closing activities in the event of a pandemic impacting [insured depository institutions]" and that the FDIC had not updated it in five years.[13] The need to adjust

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[8] *See* Testimony of Ashley C. Harrington, Federal Advocacy Director and Senior Counsel, Center for Responsible Lending, Before the U.S. House Committee on Small Business, "Paycheck Protection Program: Loan Forgiveness and Other Challenges," June 17, 2020, at 3-4, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-testimony-harrington-house-smallbusiness-17jun2020.pdf (citing Bureau of Labor Statistics Current Population Survey, Table A-2 and A-3 and elaborating on the racially disproportionate economic impact of the COVID-19 crisis).

[9] *Id.*

[10] *See* Press Release, *Federal Reserve issues FOMC statement*, June 10, 2020, https://www.federalreserve.gov/newsevents/pressreleases/monetary20200610a.htm (announcing that it is holding interest rates at near zero in light of the "considerable risks to the economic outlook over the medium term" posed by the public health crisis); World Economic Outlook Reports, International Monetary Fund, *World Economic Outlook Update, June 2020,* https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020 (noting drop in global growth forecast versus April; that there is a "higher-than-usual degree of uncertainty around this forecast"; and that the "adverse impact on low-income households is particularly acute").

[11] Katy Stech Ferek, *U.S. Business Bankruptcies Rose 48% in May: Year-to-year jump in chapter 11 filings shows toll of coronavirus pandemic*, Wall Street Journal, June 4, 2020, https://www.wsj.com/articles/u-s-business-bankruptcies-rose-48-in-may-11591308842.

[12] Howard Schneider, *Fed's dilemma: Picking winners for $4 trillion in credit*, Reuters, Apr. 3, 2020, https://www.reuters.com/article/us-health-coronavirus-fed-credit/feds-dilemma-picking-winners-for-4-trillion-in-credit-idUSKBN21L0HR.

[13] FDIC Office of Inspector General, *The FDIC's Readiness for Crises*, Evaluation Report, at 24 (April 2020), https://www.fdicoig.gov FDIC /sites/default/files/publications/EVAL-20-004.pdf.

supervision of traditional banks highlights the challenge to bringing on a new ILCs in the midst of this pandemic.

While we face a pandemic and an economic crisis, we are also grappling more deeply with structural racism, reevaluating the systems and power dynamics that fuel, perpetuate, and exacerbate racial disparities. As we discuss in section V.B below, high-cost lenders have long targeted Black and Latino communities. As we discuss in sections V.C and V.D, the FDIC is currently failing to address existing predatory rent-a-bank schemes from the traditional banks, as well as the ILCs, it supervises. The FDIC should be devoting attention to rooting out those schemes to protect consumers from predatory loans, rather than laying groundwork that will proliferate high-cost lending that, history tells us, disproportionately impacts Black and Latino households.

II. The FDIC's proposal poses severe risks to the federal safety net.

For years, federal regulators, lawmakers, banks, and others have raised concerns about the risks posed by lack of consolidated federal supervision for ILCs. While particular attention, at times, has been given to commercial ownership, versus financial ownership, of ILCs, concern about consolidated federal supervision has consistently been a substantial concern, independent of the degree to which owners engage in commercial activity. A 2005 GAO report,[14] a 2004 FDIC OIG report,[15] a 2016 joint regulator report to Congress and the Financial Stability Oversight Council,[16] and the FDIC's own notices in 2007[17] all make this concern clear.

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[14] As the proposal notes, a 2005 GAO report raised concerns about the FDIC's ability to protect industrial banks from risks as effectively as consolidated Fed supervision. 85 Fed. Reg. 17774 (citing U.S. Gov't Accountability Office, GAO-05-621, *Industrial Loan Corporations: Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority* (Sept. 2005)).

[15] The 2007 FDIC proposed ILC rule acknowledged that the 2004 OIG report had raised concerns about lack of consolidated supervision and the possible limitations of the FDIC's authority. 72 Fed. Reg. 5291 (citing FDIC OIG Report No. 2004–048, *The Division of Supervision and Consumer Protection's Approach for Supervising Limited Charter Depository Institutions* (2004), https://www.fdicoig.gov/publications/reports04/04-048-Report.shtml. That 2004 report noted: "We concluded that ILCs may pose additional risks to the deposit insurance fund by virtue of the fact that these depository institutions' parent holding companies are not always subject to the scope of consolidated supervision, consolidated capital requirements, or enforcement actions imposed on parent organizations subject to the BHCA. Further, the banking organizations that are being created as a result of ILC charter powers allow some mixing of banking and commerce, which is otherwise prohibited for most depository institutions owned by commercial firms." It went on to note that the agency "has established controls to *help mitigate* these added risks" (emphasis added)). *See* section III for discussion of how these risks were not sufficiently mitigated.

[16] *See* Board of Governors of the Fed. Res. Sys., Fed Deposit Ins. Corp., and Office of the Comptroller of the Currency, *Report to the Congress and the Financial Stability Oversight Council Pursuant to Section 620 of the Dodd-Frank Act* (Sept. 2016), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20160908a1.pdf, at 33-34 (Fed citing risks from lack of consolidated supervision of ILCs), 52 (FDIC acknowledging that "[c]onsolidated federal supervision of companies that own FDIC-insured institutions is an important part of the prudential regulatory framework for banking organizations" from which "a small number of companies" are exempt) [hereinafter "2016 Joint Report to Congress and FSOC"].

[17] The 2007 proposal acknowledges the risk of lack of consolidated supervision as a stand-alone risk while also noting that the agency believes it can "deal with" the difficulty in identifying problems in the controlling company that may affect the bank, at least for financially-owned ILCs, through the conditions laid out in that proposal. FDIC,

The FDIC's proposal suggests that the conditions it would require sufficiently compensate for its lack of consolidated supervision. But they do not. The proposal states that the proposed conditions largely formalize existing practices, including historic FDIC requirements that ILC holding companies have capital and liquidity maintenance agreements and "prudential conditions."[18] Yet whatever agreements and conditions the FDIC has imposed in the past have been clearly inadequate, as discussed in the next section. In one particularly striking example discussed below, in 2013, the FDIC sued the management of an ILC—predatory credit card issuer Advanta—that had failed during the 2008 crisis, alleging that Advanta had implemented "massive" interest rate increases on consumers (which led customers to flee and Advanta to fail) to prop up the parent company's crumbling stock price during the financial crisis.[19]

As law professor Arthur Wilmarth explains in his comments to this docket, even if the FDIC could require all the conditions it proposes for ILC owners, the supervision those conditions establish falls well short of the Fed's consolidated supervision. Professor Wilmarth notes that under the proposed conditions, "the FDIC could not conduct unlimited, full-scope examinations" of ILC owners and their nonbank subsidiaries; "impose consolidated capital or consolidated liquidity requirements on ILC owners"; nor "require large owners to conduct stress tests or prepare resolution plans pursuant to [the enhanced supervision and prudential standards under the Dodd-Frank Act for non-bank financial companies supervised by the Fed]."[20] The Fed describes lack of consolidated supervision as "problematic" because "risks that cross legal entities and that are managed on a consolidated basis cannot be monitored properly through supervision directed at any one, or even several, of the legal entity subdivisions" and notes that "financial distress in one part of a business organization can spread, sometimes rapidly, to other parts of the organization."[21]

As Professor Wilmarth discusses at length in his comments, the FDIC's proposal, by not distinguishing between commercial and financial ownership of ILCs, represents a change in course that the FDIC has not explained or justified.[22] As his comments demonstrate, and as discussed more briefly in the following section, commercial nonbank parents of ILCs inherently pose excessive risk that cannot be supervised away. Permitting further acquisition of ILCs by commercial firms runs counter to Congressional intent to separate banking and commerce and poses grave systemic risks to our nation's economy.

Even with respect to financially-owned ILCs, however, the proposal plows ahead without adequately grappling with the demonstrated risks posed by lack of consolidated supervision. Critically, even the

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Proposed Rule, Industrial Bank Subsidiaries of Financial Companies, 72 Fed. Reg. 5217, 5222 (Feb. 5, 2007). *See also* FDIC, Moratorium on Certain Industrial Bank Applications and Notices, Limited Extension of Moratorium, 72 Fed. Reg. 5290, 5291 (Feb. 5, 2007).

[18] 85 Fed. Reg. at 17781.

[19] Kevin Koeninger, *FDIC Sues Advanta Bank Execs for $219 Million*, Courthouse News Service, June 19, 2013, https://www.courthousenews.com/fdic-sues-advanta-bank-execs-for-219-million/.

[20] Comments of Arthur E. Wilmarth, Jr., Professor of Law, George Washington University Law School, to this docket, at 18, https://www.fdic.gov/regulations/laws/federal/2020/2020-parent-companies-of-industrial-banks-3064-af31-c-002.pdf [hereinafter "Wilmarth comments"].

[21] *Id.* at 18 (citing 2016 Joint Report to Congress and FSOC at 33-34).

[22] *See id.* at 3-6.

financial activities of Fed-supervised bank holding companies (BHCs) are permitted *only* if the BHC is well capitalized and well managed and all of its subsidiaries are well capitalized and well managed.[23]

In 2007, the FDIC acknowledged that financial companies without consolidated supervision "present some of the same issues that industrial banks owned by commercial companies do."[24] The FDIC stated, however, that it believed that "those issues can be controlled or minimized in such cases."[25] The agency offered little rationale for this conclusion, however. It noted that "some such companies are subject to well-established regulatory authorities, e.g., by state insurance commissions or the [SEC]" and that those companies engage only in financial activities, not commercial activities.[26] The agency explained, with seemingly less than total confidence, that its 2007 proposed rule "*could be* helpful to identify and avoid or control, on a consolidated basis, the safety and soundness risks and the risks to the DIF" stemming from financial company ownership of ILCs.[27]

Of course, many prospective ILC owners will not be supervised by the SEC or a state insurance commission. And importantly, the vast majority of technology companies expressing interest in federal charters today differ sharply from the "small, community-focused institutions" that the FDIC noted were already a shrinking share of applications back in 2007, when it justified an extended moratorium for commercially-owned ILCs.[28] At that time, the FDIC noted that the "business plans" for ILCs owned by commercial firms "differ substantially from the consumer lending focus of the original industrial banks."[29] The vast majority of companies seeking ILC charters today are not "small, community-focused institutions" and, as the current proposal notes, some "operate unique business models, some of which are focused on innovative technologies and strategies."[30] This will often be the case, regardless of whether those companies are commercial or financial in nature. Thus, the reasons cited in 2007 for the moratorium on commercially owned ILCs support not only the discontinuation of new commercially owned ILCs, but financially owned ILCs as well.

Indeed, the market fully expects that financial companies seeking interest rate preemption will seek ILC charters over traditional bank charters for the primary purpose of avoiding consolidated Fed supervision. This should be the case in point that the FDIC lacks the authority and tools to supervise those companies with the rigor the Fed can apply.

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[23] 2016 Joint Report to Congress and FSOC at 33-34.

[24] 72 Fed. Reg. 5292.

[25] *Id.*

[26] 72 Fed Reg 5292-93.

[27] 72 Fed. Reg. 5293 (emphasis added).

[28] 72 Fed. Reg. 5291 (noting that a growing number of applications were from companies that "would be affiliated with commercial companies *or other entities* that would not be subject to Federal Consolidated Bank Supervision" (emphasis added)).

[29] 72 Fed. Reg. 5291.

[30] 85 Fed. Reg. 17776.

III. The past financial crisis demonstrates that the FDIC's supervision of ILCs was not adequate, including with respect to predatory lending.

In its 2007 proposed rule—a rule similar to this one, but applicable only to financially-owned ILCs, and never finalized—the FDIC noted the following:

> "[T]he financial viability of industrial banks that are owned by companies not subject to consolidated oversight is largely untested in times of economic stress or a downturn in the economy. There is almost no track record that indicates how such ownership structures might perform under stress and, specifically, whether such ownership would tend to cause or exacerbate any risks to the subsidiary industrial banks or the Deposit Insurance Fund."[31]

But the couple of years following the 2007 proposed rule would provide a clear track record, and it is not a good one. Yet the current proposal does not grapple with the financial distress ILC owners and some ILCs experienced during the financial crisis, or their drain on the safety net. Instead, it states that the 2008 financial crisis "demonstrated that the FDIC's supervisory approach with respect to industrial banks was effective."[32] The FDIC states that only two small industrial banks failed and others converted to commercial banks or BHCs for "financial and strategic reasons."[33]

But Professor Wilmarth's comments document thoroughly the financial distress ILC owners experienced during the financial crisis—a fact unacknowledged by the FDIC's proposal. At least six very large corporate owners of ILCs either "received huge bailouts" to prevent failure (General Motors Acceptance Corp. (GMAC), Merrill Lynch, Goldman Sachs, and Morgan Stanley); had "very serious liquidity problems" and "received extensive financial assistance from federal agencies" (GE Capital); or failed, wiping out $2.3 billion of TARP funding (CIT group).[34] The hundreds of billions of dollars in assistance that the federal government extended to these ILC owners is discussed in detail in Professor Wilmarth's comment.[35]

Another ILC owner, Fremont General, discussed in detail below, collapsed in 2008.[36] In a 2016 joint report to Congress and the FSOC, the Fed noted, and the FDIC acknowledged, the poor performance of a number of ILC owners during the crisis.[37]

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[31] 72 Fed. Reg. 5222.

[32] 85 Fed. Reg. 17776.

[33] *Id.*

[34] Wilmarth comments at 7.

[35] *Id.* at 7-10.

[36] *Id.*

[37] *Id.* at 7 (citing 2016 Joint Report to Congress and FSOC at 34 (note 116) (Fed's statement that "companies that failed or required assistance at the outset of the 2008 financial crisis included a number of companies that owned and controlled ILCs") and 52 (FDIC's acknowledgment that some "parent companies or affiliates [of ILCs] failed or experienced severe stress" during the financial crisis)).

Importantly, ILC owners and ILCs have a history of engaging in predatory lending, which led to systemic economic consequences, drains on the safety net, and severe harm to consumers—which their supervisory framework did not prevent. All the entities below were engaged in predatory subprime lending; these bullets are drawn from Professor Wilmarth's comments:[38]

- Long before the crisis, two ILCs engaged in subprime lending, Pacific Thrift and Loan and Southern Pacific Bank, failed in 1998 and 2003, respectively, resulting in significant drains on the Deposit Insurance Fund.

- General Motors Acceptance Corp. (GMAC), which owned a large Utah ILC with $33 billion in assets and $17 billion in deposits, suffered steep losses in 2007-2008 resulting from its subprime mortgage lending business, as well as its auto lending business. It was converted into a bank holding company to avoid failure and received over $40 billion through various forms of financial assistance.

- GE Capital, the large owner of an ILC, held $700 billion in assets in 2008. To address its severe liquidity problems, the Fed purchased $16 billion of its commercial paper and the FDIC guaranteed over $70 billion of a debt issuance. In 2019, GE Capital paid the Department of Justice a fine of $1.5 billion related to its subprime lending leading up to the crisis;[39] its WMC mortgage unit was ranked fourth on the U.S. Treasury Department's list of worst subprime originators.[40]

- CIT Group, also holder of a Utah ILC, was engaged in subprime mortgage lending. It also underwent an emergency conversion to a BHC, received TARP funding of $2.3 billion, and then failed nonetheless in 2009.

Fremont Investment and Loan

Perhaps the ILC most well-known for its involvement in predatory lending was Fremont Investment and Loan. Fremont was one of the nation's largest and most notorious predatory subprime mortgage lenders, "known at the time within the financial industry for issuing poor quality loans and RMBS securities."[41] In November 2008, after the OCC analyzed the ten metropolitan areas with the highest foreclosure rates and identified the ten lenders in those areas with the most foreclosed loans, Fremont

[38] *See* Wilmarth comments at 7-9.

[39] Press Release, U.S. Dept. of Treasury, *General Electric Agrees to Pay $1.5 Billion Penalty for Alleged Misrepresentations Concerning Subprime Loans Included in Residential Mortgage-Backed Securities*, Apr. 12, 2019, https://www.justice.gov/opa/pr/general-electric-agrees-pay-15-billion-penalty-alleged-misrepresentations-concerning-subprime.

[40] OCC, *Worst Ten in the Worst Ten*, https://www.occ.gov/news-issuances/news-releases/2009/nr-occ-2009-112b.pdf.

[41] *Wall Street and the Financial Crisis: Anatomy of Financial Collapse, Majority and Minority Staff Report, U.S. Senate Permanent Subcommittee on Investigations* at 331 (Apr. 13, 2011), available at https://fraser.stlouisfed.org/title/wall-street-financial-crisis-anatomy-a-financial-collapse-5094 [hereinafter Senate Committee Report]; *see also id.* at 338, 361.

was among the "Worst Ten in the Worst Ten," with the fifth-highest number of foreclosures in the Worst 10 Metro Areas.[42]

From 2005-2007, Fremont made $61.7 billion in high interest loans, the seventh largest subprime lender in the country during that period.[43] In November 2006, Fremont made history: its rise in early payment defaults prompted Moody's to downgrade, or put on watch for future downgrades, securities that Moody's had rated that very same year—something Moody's had never done before.[44]

By late 2006, Fremont was experiencing steep losses, registering a $202 million net operating loss in the fourth quarter.[45] In March 2007, the FDIC issued a cease and desist order against Fremont that required it to cease making subprime loans. The order raised a number of issues, including unsafe and unsound banking practices, "a large volume of poor quality loans," excessive risk, and inadequate capital.[46] It also noted that Fremont was making exploding adjustable rate mortgages with teaser rates; approving borrowers without consideration of income; and approving loans with loan-to-value ratios exceeding 100%.[47]

But the FDIC's action came after Fremont had pumped thousands of toxic mortgages into the market, despite numerous warnings from lawmakers, policy groups, and other regulators, that a subprime foreclosure crisis was afoot.[48] In July 2007, when Moody's downgraded 399 subprime mortgage-backed securities that had been issued in 2006, and put 32 additional securities on watch, all totaling $5.2 billion,[49] Fremont had the worst ratio of securities downgraded compared to securities issued in 2006.[50]

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[42] Senate Committee Report at 331 (Apr. 13, 2011), https://www.occ.gov/news-issuances/news-releases/2009/nr-occ-2009-112b.pdf (citing OCC, *Worst Ten in the Worst Ten*, https://www.occ.gov/news-issuances/news-releases/2009/nr-occ-2009-112b.pdf).

[43] The Center for Public Integrity, *Who's Behind the Financial Meltdown? The Top 25 Subprime Lenders and Their Wall Street Backers* at 14 (2009), https://cloudfront-files-1.publicintegrity.org/documents/pdfs/The%20Financial%20Meltdown.pdf.

[44] The Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* at 221 (Jan. 2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf [hereinafter *Financial Crisis Inquiry Report*].

[45] Housing Justice, *Foreclosures Involving Fremont Investment Loans*, March 2, 2018, https://thjf.org/2018/03/02/foreclosures-involving-fremont-investment-loans/.

[46] Senate Committee Report at 238 (referencing and quoting Press Release, *FDIC Issues Cease and Desist Order Against Fremont Investment & Loan, Brea, California, and its Parents*, March 7, 2007, https://www.fdic.gov/news/news/press/2007/pr07022.html).

[47] *Id.*

[48] See The Center for Public Integrity, *Who's Behind the Financial Meltdown? The Top 25 Subprime Lenders and Their Wall Street Backers* at 32-37 (2009), https://cloudfront-files-1.publicintegrity.org/documents/pdfs/The%20Financial%20Meltdown.pdf.

[49] Senate Committee Report at 264 (citing Moody's Investors Service, "Moody's Downgrades Subprime First-lien RMBS-Global Credit Research Announcement," July 10, 2007).

[50] *Id*. at 124, *see also id.* at 237-239 for further discussion of Fremont.

Fremont makes a number of unflattering appearances in the Financial Crisis Inquiry Commission (FCIC) Report. One former risk manager for Fremont told the FCIC that Fremont had a "three strikes, you're out rule," describing the practice whereby, if a loan securitizer rejected a loan for, among other reasons, not meeting underwriting guidelines, Fremont would try a different pool until the loan was kicked out three times.[51] When an appraiser began studying the mortgage market after foreclosures began rising in his home of Bakersfield, California, he called Fremont to report findings of what he believed were fraudulent mortgages. He was told by a quality assurance officer: "Don't put your nose where it doesn't belong."[52]

Fremont was subject to other litigation as well. In October 2007, the State of Massachusetts filed suit against Fremont for engaging in "unfair and deceptive conduct on a broad scale" in connection with predatory mortgage lending,[53] including selling "exceedingly risky loan products that Fremont knew or should have known were designed to fail."[54] The suit also addressed Fremont's selling practices, which employed yield-spread premiums that incentivized high-cost loans, and led to "rampant abuse of stated-income loans and misleading borrowers about the loans offered and their ability to refinance to lower cost products."[55] The suit resulted in a $10 million settlement and injunctive relief aimed at stemming the tide of foreclosures Fremont's loans were causing in Massachusetts.[56]

In March 2008, Fremont reported that it had received default notices on $3.15 billion in mortgages it had sold to investors.[57] Later that month, the FDIC again filed an enforcement action against Fremont addressing inadequate capitalization, ordering the company to adequately capitalize the bank within 60 days or sell it.[58] The parent sold the bank's branches, deposits, and other assets, to CapitalSource, Inc., another California ILC, and filed for bankruptcy.

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[51] Financial Crisis Inquiry Report at 168.

[52] *Id.* at 15.

[53] Martha Neil, *MA Sues Lender, Seeks Foreclosure Role*, ABA Journal, Oct. 5, 2007, https://www.abajournal.com/news/article/ma_sues_lender_seeks_foreclosure_role.

[54] Scott Van Voorhis, *AG Coakley sues big subprime lender Fremont*, Boston Herald, Oct. 5, 2007, updated Nov. 7, 2018, https://www.bostonherald.com/2007/10/05/ag-coakley-sues-big-subprime-lender-fremont/ (quoting complaint or Mass. AG press release).

[55] *Id.*

[56] *Commonwealth of Massachusetts v. Fremont Investment & Loan*, Civil Action No. 07-4373-BLS1, Final Judgment by Consent, Apr. 17, 2009, https://www.mass.gov/files/documents/2016/08/up/2009-06-09-fremont-consent-judgment.pdf?_ga=2.82870418.560611157.1592319793-586388755.1592319793.

[57] Senate Committee Report at 238, *see also* n. 941.

[58] *Id.* at 238 (citing *In re Fremont Investment & Loan, Supervisory Prompt Corrective Action Directive*, Docket No. FDIC-08-069 PCAS (March 26, 2008)).

Advanta

Another ILC engaged in predatory lending, credit card issuer Advanta, filed for bankruptcy in March 2010 with $1.5 billion in deposits.[59] The FDIC estimated that this failure would inflict more than $600 million in losses on the Deposit Insurance Fund because there were no buyers.[60]

Advanta was effectively a monoline small business credit card issuer that securitized its receivables.[61] In 2009, the FDIC settled with Advanta related to alleged unfair and deceptive practices, including a "cash bank reward" program that falsely advertised the rates of cash back cardholders could receive, as well as unfair implementation of interest rate increases that caused substantial injury to borrowers.[62]

Following Advanta's failure, the FDIC Inspector General noted that Advanta had "failed to develop adequate contingency plans for responding to an early amortization of the bank's securitization."[63] It concluded:

> "In hindsight, earlier and greater supervisory emphasis or concern could have been expressed regarding the failure of the bank's capital allocation model and contingency funding plans to incorporate more extreme stress scenarios. Such action would have helped ensure adequate capitalization and liquidity to support an unwinding of the securitizations through early amortization, a significant risk associated with Advanta's monoline business strategy."[64]

In 2013, the FDIC sued Advanta's management for $219 million in an effort to claw back losses to the Deposit Insurance Fund. The suit alleged that the ILC had raised interest rates to prop up the parent company, Advanta Corp's, crumbling stock price during the financial crisis—a clear example of the risks of a lack of consolidated supervision.[65] These rate increases—from 7.99% or 14.99% to up to 37%—, the FDIC alleged, drove off 400,000 customers and led to the ILC's failure.[66] Moreover, over 40% of the ILC's

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[59] Press Release, *FDIC Approves the Payout of the Insured Deposits of Advanta Bank Corp., Draper, Utah*, March 19, 2010, https://www.fdic.gov/news/news/press/2010/pr10058.html.

[60] *Id.*; FDIC, *Failed Bank Information for Advanta Bank Corp., Draper, UT,* https://www.fdic.gov/bank/individual/failed/advanta-ut.html (noting no acquiring institution could be located).

[61] FDIC Office of Inspector General, *Semiannual Report to the Congress, October 1, 2010 - March 31, 2011,* https://www.fdicoig.gov/publications/fdic-office-inspector-generals-semiannual-report-congress-10.

[62] Press Release, *FDIC Announces Settlement With Advanta Bank Corporation for Deceptive and Unfair Practices*, July 1, 2009, https://www.fdic.gov/news/news/press/2009/pr09109.html.

[63] FDIC Office of Inspector General, *Semiannual Report to the Congress, October 1, 2010 - March 31, 2011,* https://www.fdicoig.gov/publications/fdic-office-inspector-generals-semiannual-report-congress-10.

[64] *Id.*

[65] Kevin Koeninger, *FDIC Sues Advanta Bank Execs for $219 Million*, Courthouse News Service, June 19, 2013, https://www.courthousenews.com/fdic-sues-advanta-bank-execs-for-219-million/.

[66] Stewart Bishop, *FDIC Nears Accord in $219M Suit Against Ex-Advanta Execs*, Mullin Hoard Brown LLP, Aug. 11, 2014, https://mullinhoard.com/fdic-nears-accord-219m-suit-ex-advanta-execs/.

remaining customers defaulted on their accounts. Management, the FDIC alleged, disregarded more than 35,000 complaints from disgruntled customers.[67]

In other litigation involving Advanta, bank leadership and their auditor, KPMG, paid $3.55 million to settle a putative securities class action alleging that they concealed unfavorable financials from investors.[68]

Thus, ILCs have demonstrated disproportionate involvement in predatory lending, which has inflicted a drain on the safety net and harmed consumers, and which the FDIC's supervision did not prevent.

In section V.C. below, we discuss ILCs currently engaged in high-cost lending.

IV. The proposal, along with new ILC charters, would severely undermine the States' historical and constitutional role in our federalist system.

By making it easier for an entity to gain banking privileges, including preemption, without the consolidated supervision required of other bank owners, the proposed rule threatens to deprive states of their historic power to protect their residents.

States have a long-standing, well-recognized interest in determining the policies best suited to prevailing conditions and priorities within state borders. As compared with the federal government, states are more familiar, accessible, and accountable to their constituencies and can more nimbly develop policies to address the problems they face.[69] With good reason, the Constitution preserves the rights and role of States within our federalist republic.

Interest rate limits are the simplest and most effective protection against predatory lending.[70] Since the time of the American Revolution, states have set interest rate caps to protect their residents from predatory lending.[71] In more recent years, a handful of states eliminated their rate caps, others carved out limited exceptions for short-term payday loans (some since reversed), and a combination of federal and state laws exempt most banks from interest rate limits.[72] But the vast majority of states retain interest rate caps for non-bank installment loans and lines of credit.[73]

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[67] *Id.*

[68] *Id.*

[69] *See Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (stating that federalism "assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society" and "allows for more innovation and experimentation in government").

[70] *See* NCLC, *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default* (July 2016), https://www.nclc.org/issues/misaligned-incentives.html.

[71] James M. Ackerman, *Interest Rates and the Law: A History of Usury*, 1981 Ariz. St. L.J. 61 (1981).

[72] *See generally* NCLC, Consumer Credit Regulation (2d ed. 2015), updated at www.nclc.org/library.

[73] *Id.*

At least 45 states and the District of Columbia (DC) impose interest rate caps on some consumer loans. Among those that cap rates, the median annual rate including all fees is 38.5% for a $500, six-month loan; 31% for a $2000, two-year loan; and 25% for a $10,000, five-year loan.[74] While payday and other high-cost lenders are pushing hard at the state level to make high-cost longer-term loans legal in more states, the large majority of state legislatures have rejected these efforts. In addition, sixteen states plus DC have interest rate caps that prevent short-term payday loans, a number that has grown by several over the last decade. The proliferation of ILCs would severely weaken the protection that consumers receive from state interest rate caps.

Broad preemption of state consumer protection laws via the ILC charter is also inconsistent with the original intent of ILCs and the type of activity in which they were engaged when they were exempted from consolidated supervision. As the proposal notes, ILCs began in the early 1900s to make small loans to industrial workers.[75] They did not have access to deposit insurance until 1982.[76] At the time of their exemption from the definition of "bank" in the Bank Holding Company Act in 1987, they were still small, locally-focused institutions.[77] The notion that a behemoth like Rakuten would have federal preemption privileges without the responsibility borne of consolidated supervision was very likely never foreseen when ILCs were carved out from more rigorous supervision. Indeed, when the FDIC imposed its moratorium in 2006, it noted that the ILC industry was evolving "in ways that may not have been anticipated at the time [the exemption] was enacted in 1987."[78]

Since 2006, Congress has only narrowed preemption, including federal interest rate preemption. After federal preemption played a major role in creating the financial crisis of 2008, Congress amended the National Bank Act to limit the OCC's ability to preempt state consumer protection laws and to make clear that the preemption national banks enjoy does not extend to bank affiliates, subsidiaries, or agents. Expansion of federal preemption through ILCs is clearly inconsistent with Congress's aim to construe preemption very narrowly by prohibiting it even for subsidiaries and affiliates of national banks.

V. Expansion of ILCs will erode consumer protections and expose consumers to severe harm, which the proposal fails to consider.

A. High-cost lending is fundamentally different than responsible lending and inflicts severe harm on financially vulnerable consumers.

In recent years, the harms of high-cost lending have been more comprehensively and thoroughly documented than ever before.[79] High-cost lending is a debt trap by design, exploiting the financially

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[74] *See* NCLC, State Rate Caps for $500 and $2,000 Loans (Feb. 2020), http://bit.ly/state-loan-caps; NCLC, *A Larger and Longer Debt Trap? Analysis Of States' APR Caps For A $10,000 5-year Installment Loan* (Oct. 2018), overview http://bit.ly/2QOp6AG and full report, http://bit.ly/instloan18.

[75] 85 Fed. Reg. at 17772.

[76] Wilmarth comments at 3-4.

[77] *Id.*

[78] *Id.* (citing 71 Fed. Reg. at 43482).

[79] *See* CFPB, Rule Addressing Payday, Vehicle Title, and Certain High-Cost Installment Loans, Final Rule, 82 Fed. Reg. 54472 (Nov. 17, 2017) (CFPB Payday Rule) and Docket No. CFPB-2016-0025 associated with that rule; *see* CRL and

distressed and leaving them worse off, leading to a host of financial consequences that include greater delinquency on other bills,[80] high checking account fees and closed accounts,[81] and bankruptcy.[82] These toxic products inflict financial, emotional, and physical turmoil that can pervade every aspect of a person's life. Growing research documents the links between high-cost loans and negative health impacts.[83]

Today's high-cost loans include so-called "fintech" loans that portray themselves as better alternatives to payday loans, but which, in most significant respects, are not distinguishable from loans by traditional, "non-fintech" payday lenders. These longer-term loans typically still carry extremely high interest rates, are often still tied to repayment on payday, and are still made with little regard for the

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NCLC's comments to that docket, filed with additional consumer and civil rights groups, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_comment_oct2016.pdf (CRL, NCLC, et al., Comments on CFPB Payday Rule); *see id.* at §2, pp. 17-40 (discussing harm to consumers).

[80] *See, e.g.*, B. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market*, (2011), Oxford University Press, *available at* http://bit.ly/10M01tZ; Agarwal, S., Skiba, P. M., & Tobacman, J., *Payday loans and credit cards: New liquidity and credit scoring puzzles?* NBER Working Paper (2009), *available at* http://bit.ly/RtDsXx.

[81] CFPB Payday Rule, 82 Fed. Reg. 54564, 73; *see also* Dennis Campbell, Asis Martinez Jerez, & Peter Tufano, *Bouncing out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures,* Harvard Business School, 12/3/08, *available at* www.bostonfed.org/economic/cprc/conferences/2008/payment-choice/papers/campbell_jerez_tufano.pdf.

[82] Paige Marta Skiba and Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?,* Vanderbilt University and the University of Pennsylvania, 10/10/08, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1266215.

[83] One finds that access to payday loans substantially increased suicide risk—including by over 16% for those ages 25-44. Jaeyoon Lee, *Credit Access and Household Welfare: Evidence From Payday Lending* (SSRN Working Paper, 2017. Another finds that short-term loans, including payday loans, are associated with a range of negative health outcomes, even when controlling for potential confounders. Elizabeth Sweet et al., *Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health,* 5 SSM—Population Health, 114–121 (2018), *https://doi.org/10.1016/j.ssmph.2018.05.009.* These outcomes include symptoms of physical health, sexual health, and anxiety, as well as higher levels of C-reactive protein, which is an indicator of many long-term diseases, including cardiovascular disease, and an indicator of psychological stress. *Id.* Another study finds that restrictions on payday lending reduced liquor sales. Harold E. Cuffe & Christopher G. Gibbs, *The Effect of Payday Lending Restrictions on Liquor Sales,* 85(1) J. Banking & Fin. 132–45 (2017). In one study of qualitative data, respondents revealed symptoms of "allostatic load," a health psychology term that describes how compounding stress can lead to wear and tear on the body. Elizabeth Sweet et al., *Embodied Neoliberalism: Epidemiology and the Lived Experience of Consumer Debt*, 48(3) International Journal of Health Services (2018). The authors describe the respondents as having "embodied" their debt through idioms like "drowning in debt" and "keeping [their] head above water," which illustrated that the participants "experienced debt as a bodily sensation, not only a socioeconomic position or emotional stressor." *Id.* One payday borrower has reported that after being a "a pretty healthy young person," she "became physically sick, broke out in hives . . . [and] had to go to urgent care" as a result of her high-cost loan. Health Impact Partners and Missouri Faith Voices, *When Poverty Makes You Sick: The intersection of health and predatory lending in Missouri* (Feb. 2019), https://humanimpact.org/wp-content/uploads/2019/02/HIP-MFV_PayDayLending_2019.02fin1.pdf. Another expressed feeling, "[i]f I died, my debt would die with me. At least I could give my family that." *Id.*

borrower's ability to repay the loan while meeting other expenses.[84] These loans often inflict as much or more harm—creating a deeper, longer debt trap—for borrowers than two-week payday loans.[85]

Harm caused by high-rate loans extends far beyond the higher cost itself. Yes, a 150% APR costs dramatically more than a 15% APR loan. And the payments alone often strip financially distressed borrowers of what little they may have, leaving them without funds for needed expenses. But the harm is far more than the total cost of the loan. High-cost credit is not like a gallon of milk at the grocery store—a one-and-done purchase for which free market economies, as a general matter, reject price fixing. As a nation we generally *have* regulated the price of credit. And this is because predatory lending is fundamentally, structurally different than responsible lending.

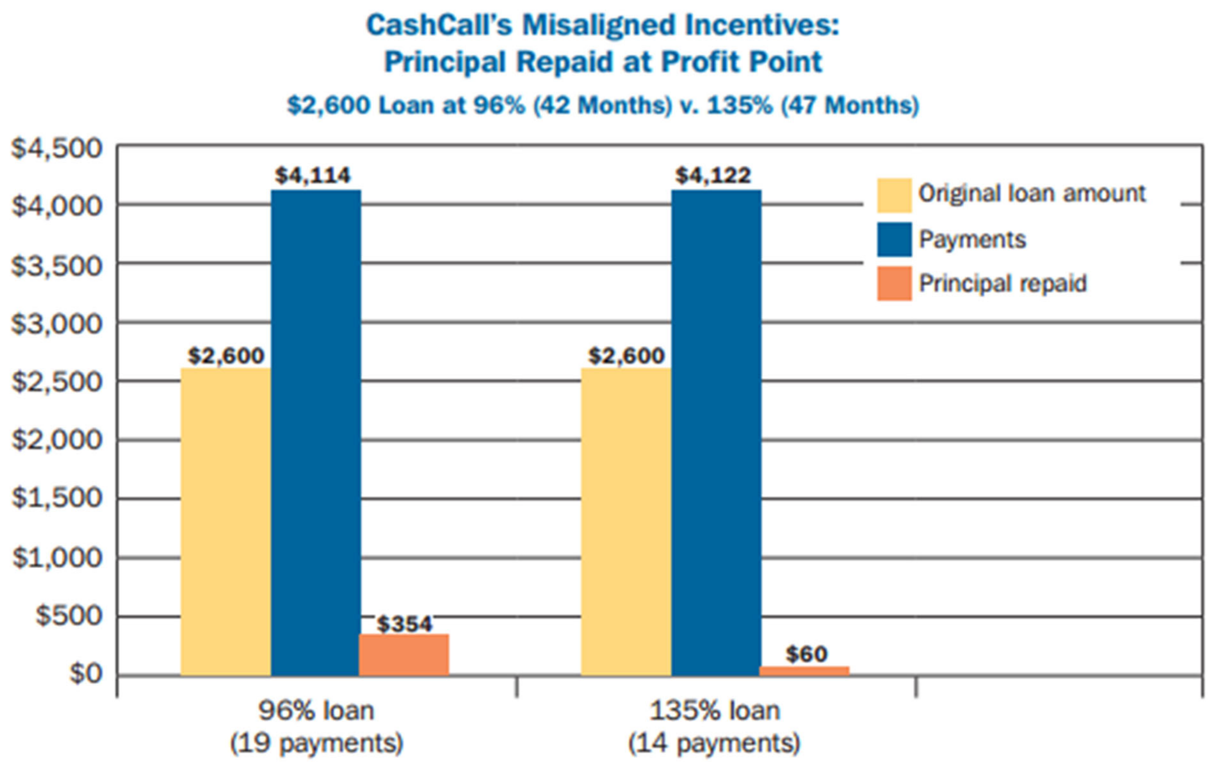
High-cost lending turns incentives on their head, so that lenders succeed when borrowers fail.[86] As shown in the following chart,[87] high rates slow down repayment of principal so much that for months, or even years, progress toward principal is close to negligible, even after hundreds or thousands of dollars has been repaid. Litigation against CashCall exposed that the lender, even without breaking 100% APR, recovered far more than its original principal and started making a profit at month 19 on its 42-month loan, even while very little of those payments were applied to principal. That discrepancy only grew, with the profit point at 14 months on a 47-month loan, once CashCall increased the interest rate and lengthened the term. The chart also demonstrates how little progress the borrower has made toward principal at that point, and how long they have to go.

[84] CRL, NCLC, et al., Comments on CFPB Payday Rule at § 2.5 (pp. 31-34) and § 10.1-10.3 (pp. 165-172). *See also* CFPB Proposed Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans, discussion of longer-term high-cost loans, 81 Fed. Reg. 47864, 47885-92 (July 11, 2016).

[85] *Id.*

[86] *See*, *generally*, NCLC, *Misaligned Incentives: Why High-Rate Installment Lenders Want Borrowers Who Will Default* (July 2016), https://www.nclc.org/issues/misaligned-incentives.html.

[87] This chart is drawn from NCLC, *Misaligned Incentives*, *supra*, at 15.



Once even small portions of principal are paid down, lenders aggressively push refinances to borrowers to keep them on a high-cost debt treadmill.[88] Even with these high refinance rates, defaults on high-cost loans are extraordinarily high. Elevate, one high-cost lender using FDIC-supervised banks to make loans averaging 122% APR,[89] has net charge-offs as a percentage of revenues of 50%.[90] The CFPB found that Elevate's charge-off rate as a percentage of outstanding loan volume in 2014 was over 50%.[91] Elevate has stated that it does not intend to drive down its charge-off rates.[92] Essentially, Elevate's is a high-rate, high-default model that profits while making unaffordable loans.

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[88] The CFPB found that for online payday installment loans (the channel for most new "fintech" loans) refinance rates were very high. CFPB Supplemental Findings on payday, payday installment, and vehicle title loans (June 2, 2016) at 15 (35% for storefront, 22% for online). *See also* Elevate Credit, Inc., Form 10K, 2019, https://www.sec.gov/Archives/edgar/data/1651094/000165109420000010/elevate10-kx2019.htm, at 15 (noting "[a]pproximately 55% of Rise installment customers in good standing had refinanced or taken out a subsequent loan as of December 31, 2019, with 40% of the outstanding Rise installment loan balances on that date consisting of new customer loans and 60% related to returning customer loan."). While mainstream lenders also often have substantial rates of refinancings, those lenders also charge rates that permit reasonable amortization of loan balances.

[89] Elevate Form 10K, 2019, at 75.

[90] *Id;* the CFPB found that 55% of online loan sequences ended in default. CFPB Supplemental Findings on payday, payday installment, and vehicle title loans (June 2, 2016) at 15.

[91] As calculated by the CFPB, CFPB Proposed Payday Rule, 81 Fed Reg. 47886, n.246.

[92] Elevate Form 10K, 2019, at 81.

Car title lenders, which are also expanding into rent-a-bank operations that the FDIC has failed to curtail (see section V.D for further), inflict a special kind of pain. Lenders take title to unencumbered cars borrowers previously owned outright. An astounding one in five borrowers have their car repossessed.[93] The consequences of losing one's vehicle are dire—both the loss of a valuable asset and the serious disruption of a borrower's ability to get to work, earn income, and manage their lives.[94] More than a third of auto title borrowers have reported pledging the only working car in their household as security for their auto title loan.[95]

Thus, high-cost lending is not just credit at a higher price. It is a wrecking ball of a business model, designed by lenders to extract as much as possible, for as long as possible, from often already desperate borrowers, leaving them worse off than when they started. In this way, high-cost lending is also a mechanism that siphons resources from the poorest communities—often communities of color—to some of the wealthiest companies and individuals in the world.[96]

Consumer narratives of dozens of borrowers of loans made by lenders using rent-a-bank schemes, included in the Appendix to these comments, help to convey the harm these unaffordable loans inflict.

B. Predatory lending causes particular harm to communities of color.

The undersigned groups deeply object to the attempts that banking regulators, fintech lenders, or others, make to justify bank/non-bank partnerships, or preemption of state interest limits more broadly, with claims that these are a path to a more inclusive market.[97] Rather than help communities of color, which several of the undersigned groups represent, high-cost lending disproportionately harms communities of color, exploiting and fueling the racial wealth gap.

A legacy of racial discrimination in housing, lending, banking, policing, employment, and otherwise, has produced dramatically inequitable outcomes that persist today. Communities of color, often largely

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[93] CFPB Single-Payment Vehicle Title Lending at 4 (2016). CRL estimates that approximately 340,000 auto title borrowers annually have their car repossessed, well exceeding the population of St. Louis. For calculation, *see* CRL, Public Citizen, NCLC et. al comments on CFPB's proposed repeal of the ability-to-repay provisions of the payday rule at 26, n.90 (May 15, 2019), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/comment-cfpb-proposed-repeal-payday-rule-may2019.pdf.

[94] *See* CFPB Payday Rule, 82 Fed. Reg. at 54573, 93.

[95] *Id.*, n. 592 (internal citations omitted).

[96] *See* Nicholas Confessore, *Mick Mulvaney's Master Class in Destroying a Bureaucracy From Within*, N.Y. Times Magazine, Apr. 16, 2019 (discussing the involvement of venture capitalists and private equity firms in high-cost lending and quoting Diane Standaert, former director of state policy at CRL: "These are entities that suck up billions of dollars a year from people making $25,000 a year. And it's going into the pockets of the wealthiest peoples in the world.").

[97] *See*, *e.g.*, Remarks of Acting Comptroller of the Currency Brian Brooks to the Online Lending Policy Institute, June 11, 2020, https://www.youtube.com/watch?v=Ae_SoZeRbxM, at 33:00 (stating "I want to make poor people rich" while addressing financial inclusion, in a conversation where he also states that his personal belief is that "price controls generally create shortages" and that "if we believe in market pricing for hamburgers, for jeans, for automobiles, I'm not sure why we don't believe in market rates for money, it's another commodity, and we want it to flow freely").

segregated due to the history of redlining and other racially exclusionary housing policies, experience higher rates of poverty, lower wages, and higher cost burdens to pay for basic living expenses. These disparities have been laid bare of late, as communities of color, and especially Black communities, are experiencing far greater human and economic loss during the COVID-19 pandemic.

High-cost lenders peddling unaffordable loans cause particular harm to these communities,[98] often in the same geographic areas that experienced redlining. Storefront high-cost lenders have long targeted borrowers of color, more likely to locate stores even in more affluent communities of color than in less affluent white communities.[99] Online high-cost lenders may focus more on subprime credit score than geography, although we understand that some lenders use zip codes to target online marketing. But historical discrimination against communities of color is also reflected in credit scores.[100] Lenders that focus on subprime borrowers inevitably will disproportionately target borrowers of color. The algorithms and big data that "fintech" lenders use may also result in disparate impacts on these communities.[101]

Moreover, online lenders often promote their models as expanding economic inclusion, which will often put borrowers of color among their target borrowers. Communities of color have historically been disproportionately left out of the traditional banking system, a disparity that persists today. About 17 percent of African American and 14 percent of Latino households are unbanked, compared to three percent of white households.[102] Some defend the high-cost "fintech" loans as bringing communities of

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[98] *See* CFPB Payday Rule, 82 Fed. Reg. at 54556-57 (African Americans are payday borrowers at three times the rate, and Hispanics at twice the rate, of non-Hispanic whites (citing 2015 FDIC National Survey of Unbanked and Underbanked Households (calculations using custom data tool). Vehicle title borrowers are also disproportionately African American and Hispanic. *Id*.)

[99] Li, *et al*., *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California,* Center for Responsible Lending (2009), http://www.responsiblelending.org/payday-lending/research-analysis/predatory-profiling.pdf; Brandon Coleman and Delvin Davis, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law*, Center for Responsible Lending at 7, Chart 2 (March 2016); Delvin Davis and Lisa Stifler, *Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities*, Center for Responsible Lending (Aug. 2018), https://www.responsiblelending.org/research-publication/power-steering-payday-lenders-targeting-vulnerable-michigan-communities; Delvin Davis, *Mile High Money: Payday Stores Target Colorado Communities of Color*, Center for Responsible Lending (Aug. 2017; amended Feb. 2018), https://www.responsiblelending.org/research-publication/mile-high-money-payday-stores-target-colorado-communities-color.

[100] *See* Chi Chi Wu, *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination*, National Consumer Law Center (May 2016), https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

[101] *See* Testimony of Chi Chi Wu, National Consumer Law Center, Before the U.S. House Committee on Financial Services Task Force on Financial Technology Regarding "Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit" (July 25, 2019); Carol A. Evans, *Keeping Fintech Fair: Thinking about Fair Lending and UDAP* Risks, Consumer Compliance Outlook (2017), https://consumercomplianceoutlook.org/2017/second-issue/keeping-fintech-fair-thinking-about-fair-lending-and-udap-risks/.

[102] 2017 FDIC National Survey of Unbanked and Underbanked Households, at 3, https://www.economicinclusion.gov/downloads/2017_FDIC_Unbanked_HH_Survey_Report.pdf.

color into the economic mainstream.[103] But high-cost loans, particularly with their high association with lost bank accounts,[104] drive borrowers out of the banking system and exacerbate this disparity. By sustaining and exacerbating an existing precarious financial situation, high-cost lending reinforces and magnifies existing income and wealth gaps—legacies of continuing discrimination—and perpetuates discrimination today.[105]

C. Existing ILCs are already involved in rent-a-bank partnerships, including very high-cost schemes.

ILCs are already involved in rent-a-bank schemes, including those facilitating very high cost loans. The programs these banks facilitate vary, ranging from loans that start in the single digits and top out at below 36% APR to those routinely well into the triple digits.

First Electronic Bank,[106] a Utah-chartered ILC, is being used by Personify Financial to offer high-cost installment loans of $1,000 to $10,000 at APRs as high as 179.99% in 22 states that do not allow that rate for some or all loans in that size range.[107] At the same time, Personify Financial is offering these loans directly in three states whose laws do permit those rates—one of many characteristics that evidence that Personify is the true lender.[108] In May of this year, Personify became subject to a class action lawsuit alleging violation of Florida's state usury limits on consumer installment loans, as well as a

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[103] *See* Remarks of Acting Comptroller of the Currency Brian Brooks to the Online Lending Policy Institute, June 11, 2020, supra.

[104] CFPB found that about half of borrowers with online payday or other high-cost online loans paid a nonsufficient funds (NSF) or overdraft fee. These borrowers paid an average of $185 in such fees, while 10% paid at least $432. It further found that 36% of borrowers with a bounced payday payment later had their checking accounts closed involuntarily by the bank. CFPB Online Payday Loan Payments at 3-4, 22 (April 2016).

[105] For further on the undersigned groups' concerns about the harm predatory consumer loans cause communities of color, and the efforts we have long made to stop that harm, see the sampling of references cited here: http://stopthedebttrap.org/wp-content/uploads/2014/11/PayDay-loans.7-2016.pdf; http://stopthedebttrap.org/wp-content/uploads/2015/08/lcchr_resolution_payday_deposit_advance_lending_12dec2015.pdf; http://stopthedebttrap.org/wp-content/uploads/2015/08/naacp_letter_obama_payday_15december2014.pdf; https://www.unidosus.org/about-us/media/press/releases/NCLR-CFPB-Payday-Lending-Rule-Release; http://ourfinancialsecurity.org/2011/04/hilary-shelton-cfpb-testimony/; http://www.responsiblelending.org/payday-lending/policy-legislation/states/Letter-JBond_Rendell-012306.pdf; https://nalcab.org/nalcab-new-pay-day-rule-step-forward-latino-consumers-businesses/; http://stopthedebttrap.org/blog/cfpb-payday-lending-rule-will-disrupt-abusive-lending-protect-families-financial-predators/.

[106] https://www.firstelectronic.com/. First Electronic Bank is wholly owned by Fry's Electronics, which is based in Silicon Valley. https://www.firstelectronic.com/about-us/

[107] https://www.personifyfinancial.com/, last visited June 30, 2020. Those states are Alaska, Arizona, Delaware, Florida, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, North Carolina, Ohio, Oklahoma, Tennessee, Texas, and Washington. In early 2020, this list included California and Rhode Island, but those states no longer appear on Personify's website.

[108] Personify was lending directly in eight other states as of early 2020; as of June 30, 2020, they are only lending directly in three states (Alabama, Georgia, and Illinois).

willful attempt to evade Florida law through a rent-a-bank scheme.[109] The complaint underscores the myriad indications that Personify is the true lender, including that it defines itself as the "Lender" on the "loan agreement" Florida consumers see when they apply for a loan,[110] even while it claims that Florida loans are originated by First Electronic Bank.

Personify touts itself as "Serving the Underestimated Underbanked" with a target market of those with incomes between $20,000 and $75,000, many with less-than-prime credit.[111] It claims to "fill[] the void left by traditional financial institutions" while it "makes payday lenders and other sources of short-term financing obsolete."[112]

The Appendix to these comments includes a number of narratives from Personify Financial customers from the CFPB complaints database. They document borrowers' distress that their payments are not reducing principal due to the loan's high interest rates; consumers' inability to sustain those payments; and queries about how such loans can possibly be legal. One narrative conveys a borrower's struggle to repay a Personify Financial loan on top of multiple payday loans, which in total took 90% of the borrower's take-home income for well over three months.[113] This narrative supports the reality that neither Personify Financial, nor any other triple digit loan, is "making payday lenders . . . obsolete," as it claims. Rather, it is piling yet more unaffordable debt on those also struggling with payday loans. The involvement of an FDIC-supervised bank with this lending program also highlights how FDIC supervision cannot compensate for lack of an interest rate cap.

WebBank, a Utah-chartered ILC, is used by marketplace lenders that charge 36% or less, though for large loans in the $10,000-$40,000 range, that is still a very high that exceeds the rate permitted by many states.[114] WebBank—sold to Steel Partners LP, a large, public, diversified global holding company the year after its 1997 founding—has experienced regulatory troubles over the years.[115] In 2005, the

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109 Complaint, *Ryan Derosier v. Applied Data Financial LLC, d/b/a Personify Financial*, 17th Cir. Ct., Broward County, Florida (filed May 22, 2020).

110 *Id.* at 17.

111 https://www.applieddatafinance.com/ (last visited June 30, 2020).

112 *Id.*

113 Appendix, Personify Financial examples, last bullet point.

114 These include Lending Club, Prosper Marketplace, and Avant. S&P Global, 2018 US Digital Lending Market Report at 2 (May 22, 2020), http://marketplacelendingassociation.org/wp-content/uploads/2018/11/SP-2018-US-Digital-Lending-Mkt-Report.pdf. WebBank's partnership with Avant has been the subject of litigation brought by the Colorado Attorney General for violating Colorado's usury limit. In June 2020, in similar litigation involving a different bank and lender, the Colorado trial court rejected the lender's and bank's argument that a non-bank assignee could charge rates free of state usury laws on a loan originated by a bank. (The court has not yet addressed the issue of which entity is the true lender.) *Martha Fulford, Administrator, Uniform Consumer Credit Code v. Marlette Funding, LLC et al.*, Case No. 17CV30376, Order Regarding Plaintiff's Motion for Determination of Law (June 9, 2020) (District Ct., Denver Cty., Colo.), https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2020/06/2020.06.09-CO-v.-Marlette.pdf.

115 *See* Joseph Caputo and Lee Reiners, *The Rise of Rent-a-Charter: Examining New Risks Behind Bank-Fintech Partnerships*, The FinReg Blog, Global Financial Markets Center, Duke University School of Law, Jan. 23, 2020, https://sites.law.duke.edu/thefinregblog/2020/01/23/the-rise-of-rent-a-charter-examining-new-risks-behind-bank-fintech-partnerships/. The background on WebBank provided in this paragraph was drawn primarily from this

FDIC issued a cease and desist order against WebBank, finding that it had engaged in "unsafe and unsound banking practices and violations of the law" and ordering WebBank to, among other things, stop operating with management that has failed to adequately supervise the bank, harming the bank and putting deposits at risk.[116] Again in 2010, the bank was cited by the FDIC, related to a partnership with Genesis credit cards for allegedly engaging in unsafe and unsound practices, unfair and deceptive acts and practices, and violations of the Fair Debt Collection Practices Act.[117] The order instructed WebBank to establish effective oversight of third-party agreements and services.[118]

Yet these FDIC actions against WebBank have not stopped problems at lending programs facilitated by the bank. WebBank lender partners have been the subject of two FTC enforcement actions in the last two years. In 2018, the FTC sued Lending Club for allegedly deducting hidden fees of hundreds or even thousands of dollars; telling consumers they are approved for loans when they are not; taking money from consumers' bank accounts without authorization; and failing to provide privacy notices.[119] In 2019, the FTC entered into a $3.85 million settlement with Avant involving allegations that Avant engaged in unfair and deceptive practices; illegally required consumers to repay via automatic repayment from their checking accounts; charged consumers late fees and interest they didn't owe; and reported to credit bureaus that loans were delinquent even after consumers paid the quoted payoff amount. In one instance, a customer's monthly payment was debited from their account eleven times in one day. The lawsuit alleges problems continued even after hundreds of consumer complaints about unauthorized charged and internal documents acknowledging there was a problem.[120]

Celtic Bank, also a Utah-chartered ILC, is used by OnDeck Capital and Kabbage to originate large small business loans up to 99% APR. OnDeck makes small business term loans up to $500,000, up to 36 months long, at rates up to 99% APR, and lines of credit up to $100,000 at rates up to 61.9% APR.[121] Its

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piece. In 2004, WebBank was warned by the FDIC in 2004 because one of largest shareholders of Steel Partners had failed to notify the FDIC that he had acquired a controlling interest in WebBank. (citing 2004 letter from FDIC to Steel Partners leadership). *Id.*

[116] *Id.* (citing FDIC order).

[117] *Id.* The consent order prohibited WebBank from offering credit cards intended for the transfer and payment of charged-off consumer debt without prominently disclosing that the debt could not be collected under applicable statutes of limitations, as well as from misleading consumers about the utility of such cards if consumers have no available credit on the card when it is issued. FDIC, *In the Matter of WebBank*, Consent Order, Order for Restitution, and Order to Pay Civil Money Penalty, Dec. 29, 2010, https://www.fdic.gov/bank/individual/enforcement/2010-12-19.pdf.

[118] *Id.*

[119] Press Release, *FTC Amends Complaint against Lending Club*, Nov. 29, 2018, https://www.ftc.gov/news-events/press-releases/2018/11/ftc-amends-complaint-against-lending-club.

[120] Press Release, FTC, *Online Lending Company Agrees to Settle FTC Charges It Engaged in Deceptive and Unfair Loan Servicing Practices*, Apr., 15, 2019, https://www.ftc.gov/news-events/press-releases/2019/04/online-lending-company-agrees-settle-ftc-charges-it-engaged.

[121] https://www.ondeck.com/business-loans; OnDeck, Form 10K, 2019, at 8, http://d18rn0p25nwr6d.cloudfront.net/CIK-0001420811/b106838d-1f1f-4c80-bb2a-21757fead116.pdf.

charge-off rate as a percentage of principal balance outstanding was 13.6% in 2019.[122] Kabbage makes small business loans up to $250,000 up to 99% APR for terms up to 18 months.[123]

In some states, these loans won't violate usury limits because those limits don't apply to commercial/non-consumer loans. Even still, a rate of 99% APR, particularly on relatively larger and longer-term loans like the OnDeck and Kabbage products, is extremely high—and for many small businesses, unsustainable, placing the business at risk.

D. The proposal fails to consider that proliferation of new ILCs will enable high-cost lending, evidenced by existing rent-a-bank schemes that the FDIC is not restraining.

As described below, FDIC-supervised, non-ILC banks are currently engaged in rent-a-bank schemes facilitating high-cost longer-term installment payday loans, lines of credit, and vehicle title installment loans. The FDIC's failure to crack down on these schemes is strong indication that non-bank lenders will find new paths to exploit state interest rates caps, either by entering into a rent-a-bank scheme with an ILC or pursuing their own ILC charter. The FDIC continues to let these schemes persist even as they generate State Attorney General action. In June 2020, the District of Columbia sued Elevate, with which Republic Bank & Trust and FinWise Bank scheme, for violating its interest rate cap.[124]

In this section, we focus on the most egregious examples of lenders making loans far in excess of 36%. But as noted above, even 36% is a very high rate, and most states limit large loans well below that level.

With respect to consumer loans, we are aware of four FDIC-supervised banks engaging in rent-a-bank schemes that include high-cost payday installment loans, lines of credit, auto title loans, or auto repair loans.

Republic Bank & Trust (Kentucky-chartered) and **FinWise Bank** (Utah-chartered) are helping three high-cost lenders, **OppLoans**, **Elevate**, and **Enova**, make installment loans or lines of credit in excess of 100% APR in a total of at least 30 states that do not allow such high rates.[125]

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[122] OnDeck, 10K, 2019, at 47, http://d18rn0p25nwr6d.cloudfront.net/CIK-0001420811/b106838d-1f1f-4c80-bb2a-21757fead116.pdf.

[123] https://www.kabbage.com/what-it-costs/loan-rates-and-terms/. For a recent summary of Kabbage and OnDeck's loan offerings and required qualifications, see https://www.nerdwallet.com/blog/small-business/kabbage-ondeck-lender-small-business/.

[124] Press Release, Office of the Attorney General for the District of Columbia, *AG Racine Sues Predatory Online Lender for Illegal High-Interest Loans To District Consumers*, June 5, 2020, https://oag.dc.gov/release/ag-racine-sues-predatory-online-lender-illegal.

[125] For details on rent-a-bank lending, see NCLC, *High-Cost Rent-a-Bank Loan Watch List* (tracking which lenders are scheming with which banks in which states), https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html; NCLC, *Fact Sheet: Stop Payday Lenders' Rent-a Bank Schemes!* (Dec. 2019), http://bit.ly/StopRent-a-BankSchemes; NCLC, *Issue Brief: FDIC/OCC Proposal Would Encourage Rent-a-Bank Predatory Lending* (Dec. 2019), http://bit.ly/FDICrent-a-bankproposal (providing links to lenders' websites).

OppLoans offers $500 to $4,000 installment loans through FinWise Bank at 160% APR in 24 states that do not allow that rate.[126] FinWise sells the receivables back to OppLoans or a related entity. OppLoans makes loans directly through a state license in states that allow high rates.

Elevate Credit uses FinWise Bank to originate **Rise** installment loans at 99% to 149% APR in 18 states that do not allow those rates and in other states through a state license.[127] FinWise sells a 96% interest in the loans to an entity controlled by Elevate for which Elevate is the primary beneficiary.[128]

Elevate also offers a line of credit called **Elastic** that carries an effective APR of up to 109% in 14 states that do not allow that rate on a line of credit.[129] Elevate uses Republic Bank & Trust of Kentucky to originate the Elastic product. Republic sells a 90% interest in the loans to an entity controlled by Elevate for which Elevate is the primary beneficiary.[130]

Republic is also helping **Enova's NetCredit** brand to make $1,000 to $10,000 installment loans with APRs up to 99.9% in 23 states that do not allow that rate.[131] Enova or a related entity likely purchases the loans or receivables shortly after origination.

Capital Community Bank (of Utah) is helping car title lender **LoanMart** evade state law in a number of states.[132] LoanMart's loans range from 60-222% interest; a typical loan is $2,500, 18-month loan at 90%, totaling $2,136 in interest.[133]

In addition, **Transportation Alliance Bank**, **dba TAB Bank** (Utah)[134] is helping **EasyPay Finance** make predatory loans for furniture, appliances, pets, auto repairs and other products. For example, TAB helped EasyPay make a $1,500 loan for a car repair at a rate of 188.99%, with bi-weekly payments of $129 for 26 months. The marketing the mechanic provided the borrower was for EasyPay Finance. The

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[126] *See* https://www.opploans.com/rates-and-terms/. Earlier this year, OppLoans was also making loans through FinWise in the District of Columbia; DC is no longer listed on OppLoans's website as of June 30, 2020.

[127] *See* https://www.risecredit.com/ (bottom of page) (last visited July 1, 2020).

[128] Elevate Form 10K, 2019, at 87.

[129] *Id.* at 16, 79; NCLC, High-Cost Rent-a-Bank Loan Watch List, supra.

[130] Elevate Form 10K, 2019, at 77.

[131] *See* https://www.netcredit.com/ (bottom of page); https://www.netcredit.com/rates-and-terms (last visited June 30, 2020).

[132] *See* https://www.800loanmart.com/ (last visited July 1, 2020) ("Loans for certain California residents, and residents of Delaware, District of Columbia, Florida, Illinois, Indiana, Kansas, Kentucky, Michigan, Mississippi, Oklahoma, Ohio, Oregon, South Dakota, Tennessee, Texas, and Washington residents are made by Capital Community Bank . . ..").

[133] *See* https://www.800loanmart.com/ (accessed January 2020).

[134] *See* https://www.easypayfinance.com/privacy-policy/ (last visited July 1, 2020) ("Not available to customers in NY. Financing offered to residents in AL, AR, CO, CT, FL, GA, HI, IA, IN, LA, MA, MD, ME, MI, MN, MS, MT, NC, NE, NJ, OH, OK, RI, SC, SD, TN, TX, VT, WV, WY and District of Columbia is made by Transportation Alliance Bank, Inc., dba TAB Bank, which determines qualifications for and terms of credit. Financing in all other states is administered by EasyPay Finance.").

loan documents indicate that EasyPay Finance is the "servicer" and refer to it as the "agent" of TAB Bank.

In the small business area, FDIC-supervised **Bank of Lake Mills** (Wisconsin-chartered) formerly helped **World Business Lenders (WBL)** originate loans. For example, WBL used Bank of Lake Mills to originate a 120% APR $550,000 loan[135] and a 74% APR mortgage.[136] The loans appear to be resold to a WBL-related entity. Indeed, the FDIC filed an amicus brief in a district court bankruptcy case, *Rent-Rite Super Kegs v. World Business Lenders*,[137] defending WBL's ability to charge 120% APR without one word expressing any concern about the grossly predatory interest rate. The agency also supported this loan despite knowledge that Bank of Lake Mills has engaged in unfair and deceptive practices in recent years, the subject of an FDIC enforcement action involving harmed military servicemembers.[138]

In summary, FDIC-supervised, non-ILC, banks are facilitating the following loans:

- 160% APR, $400 to $5,000 loans (OppLoans's product)
- 99% to 149% APR, $500 to $5,000 loans (Elevate's Rise product)
- Up to 109% effective APR, $500 to $4,500 lines of credit (Elevate's Elastic product)
- Up to 99.9% APR, $1,000 to $10,000 loans (Enova's NetCredit product)
- Up to 222% APR, $2,500 loans (LoanMart's auto title loan)
- Up to 188.9% APR, $1,500 loans (EasyPay Finance's auto repair loan)

A review of the CFPB Consumer Complaints data on those predatory lenders currently using rent-a-bank scams find several recurring themes:

- consumers puzzled and distraught that their large bi-weekly or monthly payments are not reducing principal due to the loan's high interest rates;
- frequent inability to sustain the high payments;
- queries about how such loans can possibly be legal;
- distress caused by wage garnishment; and

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[135] *See Rent-Rite Super Kegs West, Ltd., v. World Business Lenders*, LLC, 603 B.R. 41 (Bk. Ct. D. Colo. 2019).

[136] *See* Complaint, *Deramo et al. v. World Business Lenders, LLC, et al.*, No. 8:17-cv-01435-RAL-MAP (Cir. Ct. of 12th Jud'l Cir., Sarasota Co., Fla. June 16, 2017), *available at* https://www.nclc.org/images/Deramov.WBL_.pdf.

[137] *See Amicus Brief of the [FDIC] and the [OCC] in Support of Affirmance and Appellee, In Re: Rent-Rite Super Kegs West Ltd.*, https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2019/09/Amicus_Brief.pdf (Sept. 10, 2019); *see also* Letter to the OCC and FDIC from NCLC, CRL, and additional groups opposing the agencies' support of a predatory small business lender using a rent-a-bank scheme (Oct. 24, 2019), https://www.nclc.org/issues/ltr-opp-rent-a-bank.html; Complaint, *Rent-Rite Super Kegs West Ltd. v. World Business Lenders* (Bankr. D. Colo) (filed March 14, 2018) *available at* https://www.nclc.org/images/Rent-Ritev.WBL_.pdf.

[138] *See* FDIC Press Release, *FDIC Announces Settlement with Bank of Lake Mills, Freedom Stores, Inc., and Military Credit Services, LLC, for Unfair and Deceptive Practices* (May 11, 2017) (The FDIC determined that Bank of Lake Mills and affiliates had violated federal law prohibiting unfair and deceptive practices by, among other things, charging interest on loans promoted as interest free).

- stress caused by relentless collection calls to a borrower's home or workplace.[139]

Having reviewed complaints about payday and other payday installment loans, these comment authors can attest that complaints about these loans are of the very same nature, replete with financial and emotional anguish at the hands of unaffordable high-cost loans. Dozens of examples of complaints about loans made by these lenders are included in the Appendix.

E. Features of online loans pose heightened risk of unaffordability and other risks.

In critical ways, high-cost online loans are just like high-cost loans from storefronts, most notably in that they are designed by lenders to be unaffordable for huge swaths of borrowers. But online loans carry additional risks as well.[140] This is overwhelmingly clear of the highest-cost rent-a-bank schemes discussed above; it also true of online lenders that make large loans at rates of up to 36%. These higher-risk features argue for the importance that these loans comply with state interest rate limits. High rates only further reduce the incentives for lenders to make affordable loans, since, as discussed in section V.A above, high-rate loans are more likely to be profitable to the lender even when unaffordable to the borrower.

1. The originate-to-distribute model, which additional ILCs would proliferate, encourages riskier loan terms and warrants greater oversight.

A number of FDIC-supervised banks partner with online lenders, facilitating those lenders' avoidance of state laws. Online loans are often securitized and sold to investors. The lending platform often earns the bulk of its revenues through an initial origination fee, with a smaller percentage coming from servicing fees and actual repayment of the loan. Just as in the mortgage market, securitization can lead originators to pay insufficient attention to the borrower's ability to repay.[141] This operate-to-distribute model limits the "skin in the game," or a significant stake in how the securitizations of their loans perform, needed to incentivize lenders to make affordable loans.

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[139] Complaints related to Elevate, OppLoans, Enova (NetCredit), Curo (SpeedyCash), and LoanMart, 2015 to present; downloaded from CFPB's complaint database and on file with CRL.

[140] *See, generally*, Lauren Saunders, *Fintech and Consumer Protection: A Snapshot*, NCLC (March 2019), https://www.nclc.org/images/pdf/cons-protection/rpt-fintech-and-consumer-protection-a-snapshot-march2019.pdf; Comments of National Consumer Law Center to U.S. Department of the Treasury on Marketplace Lending RFI, TREA-DO-2015-0007-0001 (Sept. 30, 2015), https://www.nclc.org/images/pdf/rulemaking/treasurymarketplace-loan-comments.pdf.

[141] *See* Moody's Investor Services, Press Release, *Moody's: Unique risks in marketplace versus traditional lending* (May 5, 2015), https://www.moodys.com/research/Moodys-Unique-risks-in-marketplaceversus-traditional-lending--PR_324544; *see also* Michael Corkery, *Pitfalls for the Unwary Borrower Out on the Frontiers of Banking*, New York Times (Sept. 13, 2015), https://www.nytimes.com/2015/09/14/business/dealbook/pitfalls-for-the-unwary-borrower-out-on-the-frontiers-of-banking.html?mcubz=0, ["Pitfalls, NY Times"]. Moody's credit-rating firm likens this industry to mortgage lending in the years leading up to the 2008 financial crisis in that "the companies that market the loans and approve them quickly sell them off to investors," relieving themselves of the risk of the loan later going bad.

Even in a strong economy before the COVID-19 crisis, various online lenders have experienced periods of high delinquencies and charge-offs;[142] have had to repay investors for their losses in securitizations sold to Wall Street;[143] and have failed to verify borrowers' income for large portions of their loans.[144] The current economic crisis has placed the sector under significant stress, as sources of funding have dried up. Lending Club reduced originations by 90%; OnDeck and Kabbage stopped their normal lending operations altogether; 45% of OnDeck's total loans outstanding were delinquent by the end of April.[145]

As Board Member Gruenberg noted in his statement opposing approval of an ILC charter for Square, the originate-to-distribute model is "highly vulnerable to an economic downturn," since if demand diminishes, the bank's "liquidity and capital positions would be quickly and seriously impacted."[146]

2. High-cost lenders use electronic repayment as an abusive collection mechanism for unaffordable loans.

Federal law prohibits lenders from requiring electronic repayment for installment loans. But high-cost online lenders routinely coerce repayment via electronic means. This is evidenced both by tactics lenders use, like delaying access to loan proceeds or use of remotely created checks in the absence of electronic repayment by ACH, and by the take-up rates of borrowers using electronic payment, which is far higher than for other forms of credit like credit cards. Automatic repayment prevents the borrower from prioritizing which bills to pay when funds are short. If the account lacks sufficient funds, lenders repeatedly ping the account—turning electronic access to the account a collection device rather than a payment device. These repeated hits to the account severely harm borrowers, including by causing non-sufficient funds and overdraft fees that ultimately drive borrowers out of their checking accounts altogether.[147] The CFPB payday loan rule established modest protections of high-cost loan borrowers'

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[142] Matt Scully, *Consumer Loans Souring Fast in Bonds Tied to Online Lenders*, Bloomberg (Nov. 15, 2016), https://www.bloomberg.com/news/articles/2016-11-15/consumer-loans-souring-fast-in-some-bonds-tied-to-online-lenders; Kevin Wack, *Spike in delinquency rate mars outlook for personal loans*, American Banker (Jan. 18, 2018), https://www.americanbanker.com/news/spike-in-delinquency-rate-mars-outlook-for-personal-loans.

[143] Steve Daniels, *Online lender Avant's reboot still hasn't yielded profit*, Crain's Chicago Business (May 27, 2017) (Avant had so many of its loans fail that it had to repay investors for their losses in consecutive securitizations of the loans it bundled up and sold to Wall Street), *available at* http://www.chicagobusiness.com/article/20170527/ISSUE01/170529902/online-lender-avants-reboot-still-hasnt-yielded-profit.

[144] One online lender reportedly failed to verify a borrower's income for a full two-thirds of its loans in 2016.

Matt Scully, *Biggest Online Lenders Don't Always Check Key Borrower Data*, Bloomberg (June 14, 2017), https://www.bloomberg.com/news/articles/2017-06-14/biggest-online-lenders-don-t-always-check-key-borrower-details.

[145] Kevin Wack, *Battered by coronavirus crisis, online lenders face reckoning*, American Banker, May 14, 2020, https://www.americanbanker.com/news/battered-by-coronavirus-crisis-online-lenders-face-reckoning.

[146] *See* Statement by Martin J. Gruenberg, Member, FDIC Board of Directors, Application for Federal Deposit Insurance: Square Financial Services, Inc., Salt Lake City, Utah, March 17, 2020, https://www.fdic.gov/news/news/speeches/spmar1820b.html.

[147] CFPB found that about half of borrowers with online payday or other high-cost online loans paid a nonsufficient funds (NSF) or overdraft fee. These borrowers paid an average of $185 in such fees, while 10% paid at least $432. It

checking accounts—to limit failed attempts to two before reauthorization is required—but consumers can still incur significant nonsufficient funds and overdraft even with those protections, and that rule has been stayed.

Significantly, electronic access to the account weakens lenders incentive to meaningfully underwrite. Automatic repayment enhances a lender's ability to collect but does not ensure that the consumer has the ability to make loan payments while also meeting other expenses. This is a problem not only with the highest-cost online loans but also among relatively lower-cost online lenders. Moody's has noted about one marketplace lender that "the automatic withdrawals made it more likely that 'strapped borrowers' would pay their marketplace loans ahead of other expenses."[148] The FTC enforcement actions above underscore that some lenders have made it difficult to stop electronic payments and have led to bank account closures.[149]

F. The proposal fails to consider the safety and soundness risks of predatory lending, which the FDIC has long acknowledged.

The proposal fails to consider the risk that high-cost lending poses to the safety and soundness of ILCs, despite having long acknowledged the risks of predatory lending. The FDIC's historical position has been that predatory lending poses "significant risks" for banks.[150] The examples of Fremont and Advanta discussed above make that risk clear. The FDIC has also long acknowledged this risk with respect to payday lending.

In the late 1990s and early 2000s, banks entered into agreements with payday lenders to help the payday lenders evade state interest rate caps. In 2005, the FDIC issued guidance addressing payday loans, emphasizing safety and soundness concerns. These included credit risk in light of limited analysis of ability-to-repay; transaction risk, should the non-bank misrepresent information; and reputation risk associated with facilitating loans with terms that a non-bank could not make directly. The guidance cited the federal banking agencies' general guidance on subprime lending, which identifies lending to a borrower with "little or no ability to repay from sources other than the collateral pledged" as a characteristic of abusive lending.[151]

The 2005 guidance had the impact of shutting down most FDIC-bank involvement in rent-a-bank schemes involving short-term payday loans. For those that remained, as noted above, the FDIC ended them through enforcement actions, citing "inherent risks associated with payday lending activities" [152]

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further found that 36% of borrowers with a bounced payday payment later had their checking accounts closed involuntarily by the bank. CFPB Online Payday Loan Payments at 3-4, 22 (April 2016).

[148] Pitfalls, NY Times, supra (citing a Moddy's report about Prosper).

[149] *See also* Pitfalls, NY Times, supra ("Some borrowers like Mr. Mansour said they ended up closing their bank accounts because they thought it was the only way to stop the lenders from taking out the money.").

[150] FDIC, 2005 Guidelines for Payday Lending (Revised Nov. 2015), https://www.fdic.gov/news/news/financial/2005/fil1405a.html.

[151] Interagency Expanded Guidance for Subprime Lending Programs (FIL 9-2001), January 31, 2001.

[152] *See* Republic Bancorp, Inc., SEC Form 8-K (Feb. 24, 2006), *available at* https://www.sec.gov/Archives/edgar/data/921557/000110465906011951/a06-5812_18k.htm (where Republic Bancorp discloses that its Indiana bank has exited the payday loan arrangement after the FDIC cited "inherent risks

and unsafe or unsound practices, as well as unfair or deceptive practices, involved in a supervisee's "rent-a-BIN" arrangement.[153]

The risks highlighted by the FDIC in the early-to-mid 2000s remain today. In fact, the reputation risk by bank involvement in high-cost lending is likely only higher than it was in the early 2000s. Since then, as noted in section V.A. above, the harms of high-cost lending, both short-term loans and longer-term loans, have become more fully documented and known. Several states have had statewide ballot initiatives that capped interest rates at 36% APR or less. And direct bank involvement in payday lending by a handful of banks was met with sweeping public condemnation from virtually every sphere—the military community,[154] community organizations,[155] civil rights leaders,[156] faith leaders,[157] socially

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associated with payday lending activities"); *see also*, Robert Schoenberger, *Republic to Get Out of Payday Loans; FDIC Urged Bank to Exit Business*, The Courier-Journal, Mar. 3, 2006.

[153] *See In the Matter of First Bank of Delaware, and CompuCredit Corporation*, Notice of Charges for an Order to Cease and Desist and For Restitution, Federal Deposit Insurance Corporation, FDIC-07-256b, FDIC-07-257k, https://www.fdic.gov/news/news/press/2008/FBD_Notice_of_Charges.pdf (finding that the bank had operated in violation of Section 5 of the FTC Act (unfair or deceptive practices) and "without effective oversight" of third-party lending programs and ordering the termination of the "rent-a-BIN" . . . arrangement).

[154] *See*, *e.g.*, Testimony of Steve Abbot, former President of the Navy-Marine Corps Relief Society, Before the U.S. Committee on Banking, Housing and Urban Affairs (Nov. 3, 2011) (noting bank payday loans among the "most egregious trends"); Comments of Michael Archer, Director of Military Legal Assistance, Marine Corps Installations East, to CFPB (April 4, 2012): "Most ominously, a few large banks have gotten into the business of payday loans through the artifice of calling the loans open ended credit," http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0009-0056.

[155] Hundreds of groups urged the prudential regulators to stop banks from trapping borrowers in payday loans. Letters from approximately 250 groups to FDIC, OCC, FRB and CFPB, March 13, 2013 (http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2013/03/Bank-Payday-Sign-On-Letter-3-13-13-Final.pdf) and February 22, 2012 (http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Dear-Regulators.pdf). Thousands of individuals and many community groups filed comments with the OCC urging that Wells Fargo's Community Reinvestment Act rating be negatively impacted because it makes payday loans, including CRL and NCLC (http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/cra-comment_wells-nov-29-2012_final.pdf).

[156] *See*, *e.g.*, Letter from Benjamin Todd Jealous, President and Chief Executive Officer, NAACP, to FDIC, OCC, FRB, and CFPB opposing bank payday lending (Feb. 21, 2013), http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/NAACP-redatory-Pay-Day-Loans-to-regulators-BTJ.pdf.

[157] *See*, *e.g.*, Elaina Ramsey, Faith Groups Take On Payday Lenders, Sojourners, https://sojo.net/magazine/stub/faith-groups-take-payday-lenders (discussing a National Day of Action among faith leaders in early 2013 to address payday lending). In connection with this National Day of Action, Rev. DeForest B. Soaries, jointly with other nationally prominent African American ministers, called for "an end to enslavement to both payday lenders and the banks now offering equally dangerous products" in *An Emancipation Proclamation from Payday Lending.* Center for Responsible Lending, *Bank Payday Lending: Overview of Media Coverage and Public Concerns*, CRL Issue Brief, March 7, 2013, http://www.responsiblelending.org/payday-lending/tools-resources/BPD-media-coverage-3-7-13.pdf

responsible investors,[158] state legislators,[159] and members of Congress.[160] Moreover, the rise of online and social media make it faster and easier to garner outrage at a bank that is facilitating predatory lending.

In addition, credit risk may be even greater today, as banks may retain some ongoing interest in the loans (though nowhere near the predominant one) as lenders try out more sophisticated schemes to skirt regulators or courts.

The proposal fails to acknowledge, wrestle with, or address these concerns.

VI. The proposal gives inadequate consideration to Community Reinvestment Act concerns.

The proposal also gives inadequate consideration to the Community Reinvestment Act (CRA) obligations of ILCs, even as it poses risks to the intent of the CRA. The objective of the CRA is to ensure that financial institutions meet the banking needs of the communities they are chartered to serve, including low- and moderate-income neighborhoods and individuals.[161] This legal obligation is considered a *quid pro quo* for the valuable public benefits financial institutions receive, including federal deposit insurance and access to favorably priced borrowing through the Federal Reserve's discount window.[162]

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[158] For proxy year 2013, investors filed shareholder resolutions with the four largest banks making payday loans expressing concern about the product and requesting data, which none of the banks agreed to provide. Wells Fargo (https://trilliuminvest.com/shareholder-proposal/payday-lending-wells-fargo-2013/); Fifth Third Bank (http://www.trilliuminvest.com/resolutions/payday-lending-fifth-third-bancorp-2013/); U.S. Bank; (https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2013/dominisocial012513-14a8.pdf); and Regions (https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2013/congregationsisters011413-14a8.pdf).

[159] *See*, *e.g.*, "Legislative Black Caucus slams Regions Bank over payday-style loans," Raleigh News and Observer "Under the Dome," Oct. 11, 2012, http://www.cashcowadvances.com/paydayblog/legislative-black-caucus-slams-regions-bank-over-payday-style-loans.html (quoting letter from N.C. Senator Floyd McKissick, Jr., chairman of the N.C. Legislative Black Caucus, to Regions Bank, which stated: "We are deeply concerned about recent reports of Regions Bank offering its 'Ready Advance' payday loans in North Carolina . . . . High-cost, short-term balloon loans like these sharply increase the financial distress of families under economic strain"); Letter from Arizona Democratic Caucus to the prudential banking regulators, February 2012 (noting that Arizona "has spent countless state resources to study and understand the effects of [payday lending], and ultimately outlaw payday lending entirely" and calling on federal regulators to "take immediate action so that meaningful reforms taking place in Arizona and throughout the country in the name of consumer protection will not be undermined.").

[160] In January 2013, several Senators wrote the FRB, OCC, and FDIC urging action to address bank payday lending (http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-calls-on-regulators-to-act-to-stop-abusive-bank-payday-lending). In April 2013, House members did the same. For further documentation of opposition to bank payday lending, *see* Center for Responsible Lending, *Bank Payday Lending: Overview of Media Coverage and Public Concerns* at 10, CRL Issue Brief, March 7, 2013, http://www.responsiblelending.org/payday-lending/tools-resources/BPD-media-coverage-3-7-13.pdf.

[161] 12 U.S.C. 2901 *et seq*.

[162] Federal Reserve Board Chairman Ben S. Bernanke, "The Community Reinvestment Act: Its Evolution and New Challenges," Speech at the Community Affairs Research Conference, Washington, D.C. (March 30, 2007), *available at* http://www.federalreserve.gov/newsevents/speech/Bernanke20070330a.htm#f2.

In contradiction to this obligation, the ILC proposal would facilitate the making of high-cost loans by lenders seeking to evade state interest rate limits. CRA requires that banks serve communities' credit needs.[163] But the data show that high-cost, unaffordable loans to financial distressed consumers do the opposite, leading to high-cost cycles of indebtedness that not only leave borrowers' needs unmet but leave them affirmatively worse off than before the lending began.

A significant number of ILCs will likely be involved in scurrilous online lending in which most traditional banks would not engage. In that way, the proposal would only exacerbate this irresponsible lending that is at the core of what the CRA is designed to prevent. While the FDIC has proposed to revise the CRA regulations, the CRA proposal would not prevent the risk that new ILCs pose.

VII. Any final rule should not permit the FDIC staff to waive conditions imposed upon ILCs without Board approval.

The Board resolutions for NelNet and Square both included language that would delegate to staff the authority to modify or dispose of the conditions of those charter approvals without Board approval.[164] As Board Member Gruenberg noted in his opposition to the Square proposal, this runs counter to the Board's 2007 resolution that reserves ILC approval for the Board itself.[165] The Board's current approach is likely to lead to an erosion of conditions over time. Instead, any final rule should require Board approval for any change to an ILC owner's conditions.

Further, while doing so would not adequately mitigate the broader problems with ILCs, the FDIC should retain the authority to require any additional written agreements, commitments, or conditions on or by an industrial bank or owner after an initial approval. The agency should also retain that authority as to an industrial bank that became a subsidiary of a parent company that is not subject to Federal consolidated supervision by the FRB prior to the effective date of the rule. In addition, any final rule should require disclosure to the FDIC not only of subsidiaries, but also of additional affiliates or portfolio companies of the Covered Company.

VIII. Conclusion

We strongly urge the FDIC to withdraw this proposed rule and to cease approving charter applications, in light of the lack of statutory tools the FDIC has to adequately supervise ILCs; the inherent risks of commercially-owned ILCs that cannot be supervised away; and the threat to state interest rate limits and, consequently, consumers, that the proliferation of ILCs poses. Thank you for your consideration of our concerns. We would welcome the opportunity to discuss them further.

(see next page for contacts)

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[163] 12 U.S.C. 2901.

[164] Statement by Martin J. Gruenberg, Member, FDIC Board of Directors, Application for Federal Deposit Insurance: Square Financial Services, Inc., Salt Lake City, Utah, March 17, 2020 at 5 (referencing FDIC Board Resolution bearing Seal Number 085095 (Sept. 11, 2007), https://www.fdic.gov/news/news/speeches/spmar1820b.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery.

[165] *Id.*

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(See Appendix on following page)

IX. Appendix

Below are narratives from the CFPB complaints database describing borrowers' experiences with high-cost installment loans by lenders currently engaging in rent-a-bank schemes (Personify Financial, facilitated by ILC First Electronic Bank; and Elevate, OppLoans, Enova (NetCredit brand), and LoanMart, facilitated by non-ILC FDIC-supervised banks), or who have stated that they intend to (CURO (SpeedyCash brand)). While many of these complaints so far do not involve rent-a-bank loans, they are illustrative of the type of loans these lenders make that they will bring to states that do not allow high-cost loans.

Personify Financial

- I was approved for a loan for {$3500.00} . . . . My payments are {$140.00} biweekly. To date I have paid over {$1800.00} on time. However, my current balance is . . . over the amount I borrowed. I am being told that my interest rate 98 % and if I pay according to the terms of the loan, I will pay out over {$10000.00}. I want to pay what I owe plus a fair interest rate for someone with my credit profile but I am not able to comply with the current terms of the loan. I need assistance in making sure that XXXX XXXX is fair in their loan terms and updating the current terms which are clearly predatory.[166]

- I was referred to this company through XXXX XXXX which I took to be a reputable company because of the referral. I was skeptical because I have a chapter XXXX filed 3 years ago and sub par credit. I was granted a XXXX dollar loan which I expected to be a high interest loan. My complaint is that on top of the accrued daily interest they charge me they added XXXX dollars to the balance from day one. In looking at their terms more closely their rates and fees are not fair and are considered predatory in giving loans to someone who frankly cant afford to pay it off and I feel that is their game which ends up in collections where the balance due will balloon with fees.[167]

- I started this loan on XX/XX/2019. I financed XXXX I have made 15 payments . . . . My interest rate is 98.98 % I will never pay off my balance at this rate, we are talking about 65 payments of XXXX totaling XXXX. For the consumer looking for a small personal loan, this is outstanding and incredibly insane. How can this be legal? This is getting people in trouble financially.[168]

- I have been on XXXX since XX/XX/XXXX, I needed this loan to keep current with my bills after XXXX. The loan origination date of my loan is XX/XX/XXXX. I called XXXX today to check on [] my loan balance and it turns out that after making every payment on time every 2 weeks for nearly a year I owe {$500.00} more than I borrowed. so I pay {$140.00} every 2 weeks, my original loan amount was {$3000.00} and I now owe XXXX this doesn't seem fair and due to my XXXX I am currently unable to work and these payments are strain on my ability to stay current with my other bills. Is there anything I can do about it. Please Help[169]

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[166] # 3224776, 4/27/2019 (North Carolina borrower) (appears to be a rent-a-bank loan)

[167] #3309320, 7/17/2019 (Tennessee borrower) (appears to be a rent-a-bank loan)

[168] #3326027, 8/1/2019 (Indiana borrower) (appears to be a rent-a-bank loan)

[169] 2843920, 3/15/2018 (California borrower)

- I took out a loan with Personify Financial XXXX, 2017 in the amount of {$3900.00} not realizing the interest rate was 98.22 %. the pay back would be {$12000.00}. I was in desperate need of a loan. I feel I was taken advantage of. Personify Financial is nothing short loan sharks. I thought there were laws against this and consumer protection against loan companies charging such ridiculously high fees. I paid them approximately {$7000.00} then started to realize the balance was not going down. I tried to contact the company to see if this could be looked at but nothing was done. I contact the better business bureau and logged a complaint. I would have even been willing to settle at a lower and fair amount taking into consideration what I had paid already. Paying back {$12000.00} on a {$3900.00} loan is terrible business practice. The Dodd-Frank Wall Street Reform act states the lenders must engage in fair lending practices. I feel that this company is not engaging in fair business practices and they are taking advantage of consumers. I would like my case investigated.[170]

- I can not remember how I heard about XXXX. I applied for a {$3900.00} loan back in XX/XX/2017 not realizing until the other day just how much the interest rate and finance charges I am paying to them. I borrowed {$3900.00} and the total amount I will have paid back is {$12000.00}. I was in total shock. I am paying {$150.00} per pay period. I know in ignorance I did this to myself but is there a law against someone charging 98.23 % annual percentage rate. This is such an awful rip off. Please advise if there is anything that can be done about this.[171]

- I am a mother of 4. During a hard time, I took out an {$8400.00} loan from Personify Financial on XX/XX/XXXX. The original interest rate is 78.69 %. 36 month term. I have paid to date {$8500.00}. Only {$1500.00} of those payments have gone to the principal balance. The other {$7000.00} have gone to interest. I am on an automatic payment plan bi-weekly. {$260.00} comes directly out of my bank account every 2 weeks. I have never been late on a payment to this company. They offer a 3 % interest rate reduction for every 13 payments. My interest rate is currently 71 %. This is a predatory loan. This is unethical. This company is charging exceptionally high interest rates. I have paid OVER the amount that I asked for. At this point, I am throwing money out the window. I can not afford this any longer. I have called numerous times demanding supervisors, and nothing has been accomplished. I offered them {$500.00} more to close out my loan. Which would put me over {$9000.00} out of pocket when I only financed {$8400.00}. IF I pay this loan until the maturity date which is XX/XX/XXXX, I will have paid them OVER {$20000.00} for a {$8400.00} loan. This is absolutely 100 % predatory.[172]

- …the rates are staggering and they never check to see if I could afford these loans . . . And, I have been paying on a total of (XXXX) Payday loans for well over 9 months in succession with much difficulty . . .. the huge charges were destroying our ability to live after deducting well over 90 % of my take home income for well over 3 months and I have not paid my mortgage since XX/XX/XXXX and XX/XX/XXXX for both the first and second mortgages and I am in jeopardy of foreclosure as of this date, XX/XX/XXXX . . . . several Companies did not tell me of their

[170] #3476403, 12/23/2019 (Illinois borrower)

[171] 3049302, 10/25/2018 (Illinois borrower)

[172] #3519412, 2/4/2020 (Ohio borrower) (Personify does not appear to be lending in Ohio, per its website visited on June 18, 2020)

extremely high rates they were and some also withdrew from my bank account even though I asked them to STOP future via EFT Revocation Letters. A Couple withdrew funds directly from my account even after it was Bank closed causing me to incur heavy bank fees per day of even {$50.00} or {$60.00} at certain intervals. This was a very stressful time . . . causing us to be fragmented and close to homeless situation.[173]

Elevate

- I am a single mother who is living . . . below the poverty level. I have had my share of credit problems and have owed more than I make for quite some time. I was misled by Rise Credit to believe that they were unlike other predatory loan companies. By the time I understood what I had [signed], I had paid them thousands of dollars in interest. I have recently become temporarily unemployed and called them to ask for help during my time of financial hardship. They refused any solution and my account is headed to collections now . . . . [T]he total paid is far over the amount I initially borrowed from Rise . . . . This is robbery and all of the necessities I have for myself and my children are suffering because of it . . . . How is it that they can do this? I am asking for help for not only my family, but for all of the families targeted by these predatory loans meant to target those living in poverty and struggling to live paycheck to paycheck.[174]

- [T]hey are charging me over $6000.00 interest on a simple loan for only $2600.00 . . . . i did not forsee such an impact on my monthly income for so long ... that $500.00 is supposed to be the monies I have left over after bills and survive/live on after all my other bills. They have access to my bank account and automatically take it out . . . . I do not know how to stop this madness. How can they charge me over $8000.00 for a $2600.00 loan? Is this legal?[175]

- My [] mother was solicited by a predatory lender, RISE for a personal loan. She agreed to $1300.00 loan but was told the California law stated the minimum loan amount was $2600.00. Her interest rate is 125 %, how is this legal? She is on a fixed income and RISE has set up an auto pay with her checking account with a monthly payment of $470.00 . . . . This is elder abuse! Please shut this company down.[176]

- To date I have paid well over $6900.00, almost three times the principle. I still owe close to $3000.00. Prior to accepting the loan I did read the " fine print '' but it was not easy to understand. It was not explicit[ly] stated that the monthly payments would be going to the interest and not to paying down the principle, making the loan impossible to pay off quickly. I called . . . and asked specifically for an amnesty on the remaining balance because I am having a hard time paying on this exorbitantly high interest loan for over 12 months. I also explained to her that to date I had paid almost three times the principle . . . . in the end, the total paid before

[173] #2291555, 1/18/2017 (Illinois borrower)

[174] #1487339 (California borrower)

[175] #1361463 (California borrower)

[176] #1584177 (California borrower)

it is satisfied will be over $9500.00! Paying $7500.00 in interest for a $2500.00 loan is outrageous and should be illegal.[177]

- I took a loan with rise credit . . . and I was unable to make timely payments. I expected to pay it once I received my tax return. However, it went to collections and then a lawyer and they added so many penalties and fees. Now I owe XXXX for a XXXX loan. Now, they are garnishing 25 percent of my paycheck and I 'm already struggling as it is.[178]

- I am a visually impaired person, with a monthly income of less than $900. I can surely say that I had no idea that the monthly installment would not be applied to the principal loan amount. After my aid read to me just a few days ago that I was not paying off the loan all of the money was going to interest and only {$19.00} was applies to the principal. But I do not have that kind of money. I am requesting that you cease deducting {$520.00} from my bank account . . . . I have struggled for the last five moths giving RISE most of my income, and I can not make the rent, utilities, or food.[179]

- I have a high interest installment loan through Rise. I pay $220.00 every 2 weeks with $16.00 of that going to the principal. I had a medical procedure done that kept me out of work for just a little more than a month. I did not receive a paycheck during that time. This has put me a few payments behind on my loan as they come due every 2 weeks. I am trying to get this all worked out so I can catch up with them over time as I just started back to work today. My issue is when I came back today I was told by my coworkers that this number called (XXXX) so many times a day that they turned off the phone in our office. . . . . I am willing to work something out with them but calling my work to harass me and doing multiple attempt debits to my bank account that has no money in it racking up a ton of fees. This is not helping their cause as I have to pay my bank now instead of putting that money towards catching up on my loan. They tried withdrawing twice within a few minutes during XXXX attempt which racked up an instant $70.00 more to my bank account fees like the money was going to instantly appear in there after the first attempt a few minutes earlier.[180]

- We originally signed up for a $3,000 [loan] with an interest rate of 208%. I have been paying $520.00 every month and paid a total of $5500.00 . . . . This has been a burden for me and my family. As an [redacted] military member, i have reached out to my chain of command regarding this issue. I have been advised by financial counselors that in accordance with Military Lending Act says that you can't be charged an interest rate higher than 36 % on most types of consumer loans and provides other significant rights. I am currently working with my local Judge Advocate General 's Office to get some help with legal issues.[181]

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[177] #1962588 (California borrower)

[178] #2181870 (California borrower)

[179] #2202311 (California borrower)

[180] #2303749 (Missouri borrower)

[181] #2442651 (U.S. Armed Forces - Pacific borrower)

- I received a mail out stating that I was pre-approved for credit and to go online and apply. I did so and entered into a line of credit agreement in the amount of $2500 . . . . The payments are bi-weekly and the second one jumped to $240.00. My gross income is XXXX per month. I have XXXX child and simply can not afford this high of a payment. My father called . . . and tried to get the company to lower the payment. They said that they could do whatever they wanted to and refused to address my concerns. The APR on this loan was 199 %. I feel this company is operating on an unfair and deceitful basis.[182]

- Why are my payments not reducing my principal balance? My statement for month 1 states that my balance is $3800.00. It said I owed $430.00. I paid it. The next month my bill was $540.00 and I paid it. After that payment was applied (?) my total balance owed wasn$3800.00. So I asked them why my balance was only reduced by $3.00 even though I had paid them almost $1000.00 . . . . please help me. This can not be right.[183]

- I have fallen on hard times . . . . I borrowed $1200.00 and have paid back $1100.00, however due to the interest rate being so high [I owe a] balance of over $1000.00 still. I was told when I took this loan that after a period of time I would be able to refinance the loan and lower my payments. This was not true, I have attempted to refinance and the APR is the same 291 %. I would like to cancel my account and come to an agreement that works for both of us. I am a single mother and paying $160.00 every time I get paid equaling to $260.00 per month is unbearable. I have also [made] large payments over the past few months hoping this would decrease the balance and it has not.[184]

- On XX/XX/17 I needed to pay for a major repair on my vehicle and had to refinance an existing loan I had with Rise credit to an amount of $2500.00. Since that date I have been making regular payments twice a month of $230.00 and it has all been interest. I have made 21 payments, so over $4000.00 in interest and my principal balance has not gone down at all. I am at a loss of what to do, because I was in a tight spot but had I known id be living this nightmare I never would have taken out this loan.[185]

- I would have rejected/not accepted the loan if I had realized it was a 238.36% interest rate. They set up ACH installment payments of $410.00 a month which I can not afford . . . . I am on Social Security XXXX (Fixed income) with limited resources . . . . I can't believe that this is legal-this is more like loan sharking and preying on people who are not able to defend themselves. I am more than willing to pay the $2000.00 back at a reasonable interest rate and reasonable monthly payments of $200.00 a month (ie ... a credit card rate for people with limited resources perhaps 25-28 %?)[.] [N]ot 238.36 %[. H]ow can this even be legal?[186]

<u>OppLoans</u>

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[182] #2764858 (Kansas borrower)

[183] #2816269 (Tennessee borrower)

[184] #2858004 (Wisconsin borrower)

[185] #2942998 (North Dakota borrower)

[186] #3141291 (Wisconsin borrower)

- I am being contacted everyday, with the exception of Sunday, for a month. The[y] want the loan paid but, I am unemployed and a [] veteran. I have tried to explain this to the company. However, they continue to contact me. It's the same thing everyday.[187]

- I have been paying this loan for more than a year and the principal has not changed. I borrowed $2000.00 and have paid $4600.00 into this loan to date….[188]

- I contacted this firm opp loans several times . . . regarding the high interest[] rates being charged on my loan. I informed them that [we are] military spouses and famil[ies] . . . that we are protected against high interest rates. They informed me that they needed proof to review my interest rate. They then informed me that spouse loans are not covered under the military lending act and was notified by their legal department. My current interest rate is 159 % on short term installment loan. Please assist[189]

- This company calls me 6 times or more a day. I informed them . . . that I had lost my job and I would call them back when I start work again and get my finances back on track. They dont care they have been calling non stop. They have made it harder for my recovery.[190]

- I had a loan with this company for about $2000.00[,] now i went on short term [leave or disability] with my job and didn't get paid [and] called the company [and] explained why I couldn't make payment . . . . I really dont know what to do but i have arrangements with other companies after they knowingly understood my dilemma. Im upset that i have to pay all the fees and loan with no arrangement and still be a single mom and live. Now they are emailing and calling me saying they will garnish my bank account for 20 years and my check and so on. Im very afraid and dont want to be homeless or behind over 4500 dollars.[191]

- I work as an [] for my [daughter], who was in the Intensive care unit . . . . When my daughter is hospitalized I do not get paid. After being in the hospital for a month I signed an Opp loan for $2600.00 . . . . I have paid them over $3600.. Today they tell me that I owe them $2800.00 . . . .[192]

- I . . . took out the loan[.] I am not disputing the loan[.] I had a downfall in life and defaulted . . . . I . . . received a " Notice of Intent to Assign Wages[.]'' I spoke to [a representative] who refused to assist. [H]er only option was for me to pay $560.00 now and make the original monthly payments. I stated to her I do not have that money[.] I really do not[.] I need help[.] [S]he refused to offer me any solution. I currently have $100.00 in my checking account. I asked to

[187] #2812101 (Tennessee borrower) (appears to be a rent-a-bank loan)

[188] #3106431 (Maryland borrower)

[189] #3354050 (Michigan borrower) (appears to be a rent-a-bank loan)

[190] #3371847 (Arizona borrower) (appears to be a rent-a-bank loan)

[191] #3015405 (Illinois borrower)

[192] #3028087 (California borrower).

speak to a supervisor and she refused to allow me to speak to a supervisor . . . . I think this company has no intentions to help anyone who is struggling.[193]

- I took a payday installment loan for the sake of building my credits . . . . I then told them I am not doing it through debit card anymore . . . . as per contract, it doesn't say I have to use my debit card as a routing number was a condition for approval. This week . . . they contacted my employer and decided to garnish my wage. This is unfair to me as I wasn't informed and it is not my fault, I never refused to pay or change my account. They didn't do their responsibility to deduct money while I gave my account information (confirmed today they still have). This is unfair garnishment and punishment to me because of their fault (or their systems) . . . . I urge your help to assist me to remove this unfair garnishment on me and let the company comply with their promises. I also ask you to judge this and make Opploans repair my damaged credits that were caused by this unfair transaction. I am not delinquent to this transaction.[194]

- I emailed company . . . and then I also called and rescinded the wage assignment. I sent an email to the CEO office and also spoke to several representatives to try to reach a settlement for the principle amount of the loan. The amount when I asked for the settlement was XXXX. This would have had the company write off about 200 in interest only. There was a los[s] of income in my household. So to prevent a long term impact to my credit and finances, I asked to settle the account. I was informed that I had to be at least 61 days behind and that if I made a minimum payment of XXXX that I would stay in a positive balance. This did not make sense as this would also keep the account in a current status. This would also cause more interest to accrue over time. I wanted to settle the account, close the account and avoid negative impact on my credit, and more fees. The company refused to work with stating the contract was enforceable. This would benefit the company to continue to accrue more interest and fees over a period of time and impact the consumer in a negative light.[195]

Enova (NetCredit brand)

- On XX/XX/2016 I was approved for a personal loan with NetCredit. I was unaware of the future circumstances and took out a very high interest loan, 99 % interest on a $2000.00 [loan]. I have become a XXXX veteran and unemployed at the moment due to my condition. The total amount that I will be paying back on a $2000.00 loan is $7800.00. I have been paying on this loan since that date. [The complaint was filed on May 2, 2019.][196]

- Netcredit is a company that [is] not interest[ed] in listening to any complaint or trying to work with [] me to help because I can't pay the high amount of interest[,] and the very little amount going towards the principle [—] that is unfair and wrong for anybody to have to do. I am not trying to not pay them but I have a problem with them trying to lock me in a five year loan which they seek to collect three time the loan amount they gave me. I am a XXXX Veteran that

[193] #3027480 (Illinois borrower)

[194] #3190625 (Illinois borrower)

[195] #3407914 (Illinois borrower)

[196] 3229883 (South Carolina borrower)

gets a monthly check that all I have to live on[.] [F]or Netcredit to do this is shameful and disgraceful. PLEASE HELP!![197]

- At the time, I had been struggling financially because . . . I lost the father of my [] children. I lost more than half of our income and could not keep up on my salary alone. I became in over my head with debt to many people . . . . I took out the loan through NetCredit for the amount of $3700.00 . . . I was steadily making payments every two weeks on this loan for $230.00 . . . I am a XXXX employee who was out of work and without pay for the duration of the XXXX . . . NetCredit deferred my payments without question or hesitation giving me the peace of mind that everything was going to be okay . . . . [M]y intent was to pay the balance in full. What NetCredit failed to tell me was that the payments I had made toward the loan did not go to the principle whatsoever . . . . By the time the XXXX was over, they had tacked on over $1000.00 in interest to the loan. Despite almost paying the loan off, they still reported I owed $3700.00 plus accrued interest at that time. They told me that since I had been in non-pay status for so long . . . that if I didn't make a payment immediately they would send me to collections . . . . They have yet to close the account and are continuing to rack up interest and report the balance of the loan increasing every month. They are reporting that I owe 6600.00 . . . . I am a single mother of [] children who are not even old enough to be in school yet. I can not afford what they are putting on me and they are making it so I can not provide for my family by destroying my credit.[198]

- I got a loan in the amount of $2100.00. [D]ecided to login into my account to see how much principal was left on the loan and its $2100.00. Only $57.00 paid to principal in the last year. Ive made all my payments on time, $58.00 every 2 weeks. Something can not be right with this loan. I feel as though Ive been getting robbed for the past year. I do not understand. My [fiancé] has a loan with NetCredit as well within the same timeframe . . . Loan amount $3000.00 . . . principal is only down to $2900.00. Her payments are $78.00 every 2 weeks, never missed a payment. Please help![199]

- I was contacted by netcredit advising that I was pre approved for an installment loan. As I am a single mother of XXXX and have been . . . behind on HOA fees and other bills and decided to take out the loan . . . . I checked an account that I used and realized that they were taking out the XXXX every 2 weeks . . . . I told them I could not afford the XXXX coming out every 2 weeks as this is not what I [anticipated]. This has brought my checking account seriously negative and my bank is giving me a hard time as well . . . . I feel this is very deceptive, [an] installment loan is supposed to be a monthly payment[,] a payday loan is a bi weekly payment. I really need help with this. I can [make] [monthly] payments[,] I can not make bi weekly payments of XXXX[,] that is too much and it is really creating a hardship for my family.[200]

- I took out a loan in 2014 with NetCredit for $2600.00. I paid on the loan for 40 payments . . . . I ran into an inability to pay and wanted to work with Net Credit to settle the loan. I even hired a

[197] #3251851 (Georgia borrower)

[198] #3370736 (California borrower)

[199] #3393212 (Virginia borrower)

[200] #3053313 (Utah borrower)

firm to assist. Net Credit was not willing to work with the firm nor myself and an agreement was never reached. My fear is that they are holding back wanting to work with me while late fees and interest continue to accrue at an alarming rate.[201]

- I am disputing this loan based on that it is impossible to pay it off at 98.8 % . . . I will pay over $7000.00 for a $3900.00 loan at 98.8 % . . . . I have called and spoke with them about 10 times within the last 3 1/2 weeks. NETCREDIT WILL NOT WORK WITH ME OR DISCUSS ANY OPTIONS WITH ME. All I am asking for is to take the interest away from this loan and allow me to make monthly payments that I am able to handle. I understand my responsibility of the balance of the loan but they do not work with their consumers, instead make a profit with predatory lending practices.[202]

- I offered NetCredit a reasonable settlement amount which they dismissed and demand full payment which is completely insane. I had no idea after I paid $3000.00 on $3400.00 loan that I would have to pay an additional $4000.00 to pay it off or continue making the payment and by the time it was paid off I would have paid many thousands of dollars.[203]

- I took a loan from NetCredit in the amount of $1200.00. To date I have made 11 payments at the payment amount of $100.00 each for a total paid of $2000.00 plus a check payment of $100.00 which has not been cashed or applied to my account. NetCredit states I still have fourteen more payments of $100.00 each to make. For a $1200.00 loan, I will end up paying $3600.00, more than THREE TIMES the loan amount!![204]

- [I] [b]orrowed $1400.00 . . . Paid [x]payments of $110.00 = $1100.00 . . . balance is currently $1400.0 . . . Was unable to keep up with payments due to XXXX income (was unemployed for 10 months- catching up on past debts and medical bills). Several attempts were made to set up payment agreements with NETCREDIT . . . but Net Credit didn't agree . . . . I was NOT aware the interest on $1400.00 would be $1200.00 (almost the amount of the loan). I would have NEVER agreed to this loan. I am a veteran and XXXX civilian on a tight budget. This interest charged on the loan is hideous. I could have borrowed that amount from a local bank/lender and not have that much in interest. This is a horrible way to take advantage of those that are in need![205]

- NetCredit is a company that take advantage of people ... they approve your loan on line then hit you with 98 % interest . . . . I took a loan out for $6000.00 ... once I found out the loan was to be taken out of my checking account 2x a month [] I called and asked them to adjust to 1x a month ... they said they couldn't do ... this was the biggest mistake I have ever made to take a loan out [] with them ... I was unable to pay and got in touch to work something out ... they sent gave me minimal options and then sent a letter saying that I can pay off the balance which now is $7800.00 . . . . I had been paying the monthly for a year at least??? and now I owe XXXX

[201] #2418022 (California borrower)

[202] #2183667 (Virginia borrower)

[203] #3270880 (California borrower)

[204] #3324359 (South Carolina borrower)

[205] #2144831 (Virginia borrower)

more??? This is a company that the government should look into … they are sharks!!!! I would recommend that people stay away from this company!!![206]

LoanMart

- I have this loan and ... being a senior citizen the payment[s] are [too] high[.] I am [p]aying $420.00 each month[,] have not paid for this month[,] and they can take my car at anytime[.] I am trying to work with them[,] my health is now becoming poor as I can not sleep . . . . I want to pay them and I will but I need the payment to be [up to] $320.00 per month[,] which would be a hardship but I could do that . . . . had I known I would not have take[n] this loan out and would have just gone homeless . . . .at least I would have had a car to sleep in and live not . . . on the street with no car or a place to live[.][207]

- I have been paying monthly, often times after . . . my due date, but I get the payment in monthly. On two occasions I was given extensions, but I have paid way more than the $1500.00 loan amount and expected to be paid off . . . . I was told because I was late many times, my loan has been extended for approx 20 more months, unless I can come up with the $1500.00 original loan amount plus $680.00 in late fees. Had I paid on time by the 11th if every month I would be paid off. When I told them that was ridiculous that it was still paid in the same month they told me too bad . . . . so now I have to pay another $4000.00 plus dollars ({$210.00} x 20) on time . . . or it may take longer . . . . I [will] never get my title back or get this loan paid off … . I will be paying over $8000.00 on a $1500.00 loan.[208]

- My Loan charged off . . . . after i turned [in] the vehicle . . . . They auctioned off the vehicle and sent me a final charge off amount of $2600.00 . . . I received a payment settlement request in XXXX of XXXX for $1500.00 . . . As of today, they are reporting that i owe $7700.00 as the interest is still being charged on a loan they have been " charged off ''. They are . . . inflating the amount owed to well over 300 % of what the original loan was . . . . They already have my car, now they want to ruin my credit. They are predatory [and] overly punitive with high interest after the charge off.[209]

- I was in need of a loan to move and the television and radio were [inundated] with advertisements from "1-800- Loan-Mart XXXX[.]'' I called and they offered me a " title loan '' for $10000.00 specific to my . . . Toyota Camry. The payment was and remains a staggering $850.00 per month. Also, my ex-husband bounced a check to me . . . which prevented making a payment so I called for an extension [but] they repossessed my car . . . and charged me almost $2500.00 to get the car back . . . . I have been paying the $850.00 monthly for over two years and the principle balance or payoff remains just a [little] less than the original loan. What guidelines

[206] #1998233 (California borrower)

[207] #2894498 (California borrower)

[208] #3126449 (Wisconsin borrower)

[209] #1792457 (California borrower)

regulate the loan industry and why are they permitted to be rude, abusive and lend money like . . . loan sharks?[210]

- 1 800 Loan Mart has repeatedly called me 30 times a day for the last 7 months[,] also have incorrectly reported negative things on my credit report, also called and threatened me with imprisonment lawsuit . . . [A]fter I paid them $4000.00 and they took my vehicle[,] now they're saying I still owe them $5000.00[.] [T]he original amount of loan was $2500.00.[211]

- I needed money to pay for my moving expenses. I took a title max car loan. I 've tried to keep up with the payments but fall short so my payments are late and include a hefty penalty payment in addition to interest . . . . My plan is to pay the entire bill with large lump sum payments. The problem is the amount that is added to the principal balance makes it difficult to pay the loan off. My car was reposed this morning. In order to get my car back, I must pay them $900.00 which includes towing, paying for personal property left in the car and making a trip to the police department to obtain a [repossession] receipt. This is robbery.[212]

- I took out a loan in . . . 2014 for $5700.00. I've made payments of $450.00 since then [totaling] about $8000.00. I just recently got a payment history to see my balance due and almost none of my payments have applied to principal balance, almost all of it has gone towards interest! I spoke with a customer service rep today and they still want $7000.00 to close [the] account. I told them I no longer have a steady job or income and have been going through health/medical issues and have been in and out of the hospital. I just want to settle amount of another $1000.00 to close account. I 've already paid back the $5700.00 and interest of more than $2000.00 and still going to give $1000.00 to settle. I 'm trying to be honest with them and get a settlement and close my account.[213] (This complaint was submitted on August 12, 2016).

<u>CURO (SpeedyCash brand)</u>

- Speedy Cash took money from my . . . debit card without my authorization. I receive my social security SSI payments in the amount of $730.00 on this card . . . my card was debited by Speedy Cash for the amount of $520.00. When I called them they stated that my account was past due . . . and that it had gone into collections . . . . They also said that there was nothing they could do because the third party collector was involved . . . When I called [the third party], the representative told me that they were not involved in collecting on this account any longer because Speedy Cash had taken the loan back. I am confused by the back and forth. Now, I am in a horrible position. My account was basically drained which leaves me with no money for the entire month. No money for rent, utilities, doctor visit, or prescriptions. I . . . have no idea what I am going to do.[214]

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[210] #1867122 (California borrower)

[211] #2356677 (California borrower)

[212] #2157776 (Nevada borrower)

[213] #2958482 (California borrower)

[214] #2657445 (Missouri borrower)

- I have paid $1600.00 on the account and all payments have gone towards the interest and late fees. I have given seven payments at $220.00 each month since the loan and I owe at this time $2800.00 at this rate the loan will cost more than I borrowed. I need help because this is a car title loan and I can't afford losing my car over this. I have called the corporate office and . . . they all say the same thing (—) there is nothing that can be done except keep making the payments . . . It's like I borrowed the monies from [someone] in a street alley.[215]

- I borrowed $750.00 . . . .First month repayment . . . $240.00 . . . . Remaining balance over $1000.00. Next installment $240.00 . . . remaining balance over $1000.00. Payments increase as does amounts owed. Decline in principal is offset by increase in fees or 'interest.' . . . . Never ending cycle.[216]

- [I] borrowed $1300.00 from speedy cash and the first payment was ok ($77.00) and after that they were $140.00 every other week and [I] am now unable to make these ridiculous payments [because] my hours have been cut at [work]. I notified them . . . I am in default and [I] have sent emails . . . . [T]hey say to contact them if [you can't] make a payment and they will work with you. All they do is extend it 4-5 days out and [that don't] help either! I am desperate[, I] have called about filing bankruptcy and [I] may have to and [I don't know what else to do.[217]

- Speedy Cash stopped the payday loans and changed to the installment loans . . . . If your payment is due on a certain day they could move it up by 4 days but it [doesn't] help if that 4th day is not a payday. I have paid so many overdraft and bank fees until I feel ashame[d] and stupid. I needed the money but once you get it [it's] hard to get rid of it. I [don't] understand [what's] hard about reasonable payment arrangements. Your 4 day extension is not realistic to customers.[218]

- I currently have an installment loan in the amount of $2600.00 from Speedy Cash . . . . At the same time, I also have [x] $300.00 payday loans from [x] different storefronts in my neighborhood, including Speedy Cash. So basically, I have both a $300.00 payday loan from Speedy Cash and a $2600.00 installment loan. Is that legal? I am drowning in debt and I can't handle it anymore. I need some relief. This is very stressful and expensive for me, and I don't know what to do . . . . . I 've been paying about $140.00 every two weeks on the Speedy Cash installment loan, and I 've already paid $2200.00 . . . but my total balance is still $2600.00! How is this even possible? Are all my payments going toward interest only? I can't keep paying on all these loans. I need to prioritize my rent ($1100.00), car payment ($320.00), insurance ($180.00) and my other basic needs like food and utilities. After taxes, I only bring home about $1800.00 a month. So this is really hurting me and I 've reached my breaking point . . . . I don't want to default on the loan, but at this point I'm not seeing another alternative. I recently received XXXX

[215] #2792493 (California borrower)

[216] #2772146 (Utah borrower)

[217] #3046440 (Tennessee borrower)

[218] #2718087 (Mississippi borrower)

utility disconnection notices from my gas, water and light companies[.] To make matters worse, I'm also facing being laid off from work in the next few months. I need help.[219]

- I could not get Speedy Cash to stop taking payments out of by bank account using my debit card. I called them, I wrote them. I tried to set up payments. I told my bank to not authorize any more payments. Didn't help. Finally I had to shut down all my accounts at my bank and go to another bank. I could not believe it when I when, at my new bank, Speedy Cash withdrew $100.00, the next day $60.00. I have no idea what that amount is for. I'm disputing the charges Can you help me?[220]

[219] #1377341 (California borrower)

[220] #2158561 (Kansas borrower)