Testimony of Graciela Aponte-Diaz

Director of Federal Campaigns, Center for Responsible Lending

Before the United States House Committee on Financial Services

"Rent-A-Bank Schemes and New Debt Traps: Assessing Efforts to Evade State Consumer Protections and Interest Rate Caps."

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Testimony of the Center for Responsible Lending

California borrower story:

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 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.[i]

Good morning Chairwoman Waters, Ranking Member McHenry and Members of the United States House Committee on Financial Services. Thank you for the opportunity to provide testimony today. My name is Graciela Aponte-Diaz, and I am the Director of Federal Campaigns for the Center for Responsible Lending. The Center for Responsible Lending (CRL) is a nonprofit, nonpartisan 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 community development financial institutions. For thirty years, Self-Help has focused on creating asset-building opportunities for low-income, rural, women-headed families, and families of color, primarily through financing safe, affordable home loans and small business loans. In total, Self-Help has provided $6.4 billion in financing to 87,000 homebuyers, small businesses and nonprofit organizations and serves more than 80,000 mostly low-income families through more than 40 retail credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, and Wisconsin.

The borrower story shared above demonstrates how predatory loans can devastate the financial well-being and health of families. While California recently enacted a new law to protect residents from these types of harmful loans, some lenders, including Speedy Cash, have already publicly stated their interest in setting up "rent-a-bank" schemes in an attempt to evade state interest rate caps. Worse, there are already a number of predatory lenders that are engaging in these schemes, offering loans well over 100% APR, and operating in more than 20 states that have strong laws intended to limit the interest rates. Instead of taking enforcement actions to address these abuses, the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) have recently proposed a rule that would embolden predatory lenders to continue to offer these loans through "rent-a-bank" schemes.[ii]

My testimony today will:

I. Describe how "rent-a-bank" schemes are being used in an attempt to evade state interest rate caps;
II. Discuss how "rent-a-bank" schemes and predatory loans severely harm financially vulnerable consumers, disproportionately burden communities of color, and exacerbate racial wealth disparities;
III. Highlight how current FDIC and OCC actions are emboldening predatory lenders and threatening state usury caps across the country; and
IV. Conclude with policy recommendations for addressing this evasion of state laws that is opening the door to a surge in abusive lending practices.

CRL urges federal policymakers to step up and protect all consumers from predatory loans, often with interest rates of more than 100%, that are devasting people's lives. To do so, the FDIC and OCC should order supervised banks to cease and desist from so-called "bank partnerships" where the non-bank lender is offering loans to consumers at rates that are illegal under the laws of the state where the consumer lives. The FDIC and OCC should rescind their proposed rules that do nothing to stop these "rent-a-bank" schemes, but would instead embolden and even encourage predatory lenders to engage in "rent-a-bank" schemes. In addition, Congress should swiftly enact a federal interest rate cap of 36% for all consumer loans, including all loan fees.

I. "Rent-a-bank" schemes are being used in an attempt to evade state interest rate caps

"Rent-a-bank" schemes were used in the 1990s to mid-2000s, where non-bank lenders partnered with banks, which are exempt from state interest rate laws, in an attempt to evade state interest rate caps and offer payday loans with outrageous interest rates. In response federal regulators—the FDIC, OCC, and Federal Reserve—cracked down on this practice.

In 2002, the OCC strongly condemned "rent-a-bank" schemes. Former Comptroller of the Currency, John D. Hawke Jr., called the schemes "an abuse of the national charter,"[iii] noting that "[t]he preemption privileges of national banks derive from the Constitution and are not a commodity that can be transferred for a fee to non-bank lenders."[iv] He criticized the payday lending industry, which "has expressly promoted such a 'national bank strategy' as a way of evading state and local laws. Typically, these arrangements are originated by the payday lender, which attempts to clothe itself with the status of an 'agent' of the national bank. Yet the predominant economic interest in the typical arrangement belongs to the payday lender, not the bank."[v]

Unfortunately, this scheme is reemerging, and the same regulators who acted to prevent these abuses previously are now permitting it to go unchecked. In fact, rather than reaffirm the agencies' strong opposition to this abuse, the FDIC and OCC have issued proposed rules that

lenders could interpret as blessing this practice, encouraging predatory non-bank lenders to issue loans at rates illegal under state law, some with APRs as high as 80%-100% or more.

A. How "rent-a-bank" schemes work

The non-bank lender decides to offer loans at rates that are illegal under state law. Because national and federally-insured banks are generally exempted from state interest rate laws, the non-bank lender finds a bank willing to become the nominal "originator" of the loans the non-bank lender offers. The non-bank lender is the public face of the loan program. Neither the customers nor the general public are aware of the financial gymnastics behind the transaction that purport to legitimize a loan that would be illegal in the hands of the non-bank lender alone.

Typically, the non-bank lender is involved both on the front end of the loan program—designing the loan program, marketing the loans to consumers or small businesses, taking and processing applications—and on the back end, servicing and collecting the loans and owning or benefiting from the assigned loans or receivables. While the bank may make some underwriting decisions, at least nominally, it typically does so by using criteria, software, or analysis primarily designed or provided by the non-bank company. In more recent incarnations, the bank may also claim to retain ownership of the "loan" or "account" and only to sell receivables. Even in cases whether the bank may retain a share of the receivables, the non-bank company typically has the larger share of the economic interest in the program.

Sanitized as a "bank partnership model," these arrangements can be used by companies that charge rates that, while below 36%, are still high—especially for large loans—and may exceed what is legal in many states. Increasingly, these models are being used by predatory lenders charging extraordinarily high rates that result in harmful outcomes for consumers.

Some of these models operate with brazen openness about the centrality of evasion of state usury laws. Publicly available documents, like a presentation by a prominent fintech law firm, eliminate any doubt as to how the "bank partnership" model works:

The bank originates the loan; the loan acquires the bank's right to "rate exportation" (ie, the right to ignore usury laws in all states but the bank's home state); and the non-bank handles marketing, consumer interactions, servicing and/or other tasks associated with the loan.[vi]

Here are recent examples of companies considering rent-a-bank evasions in order to lend at rates illegal under state law. Each example involves a publicly traded company reporting to their investors in anticipation of the passage of the recently enacted California law that caps interest rates on loans larger than $2,500. Each of these companies was lending at rates of 135% to 199%, which the California law now prohibits (as of January 1, 2020). In each case, the company's senior management openly told investors, in essence, "do not worry; if the California law passes, we will partner with a bank in order to evade it." Here are relevant excerpts from each of the companies' statements on the matter:

> *Example 1:*
> Elevate Credit—which currently operates "rent-a-bank" schemes in many states through FDIC-supervised banks Republic Bank & Trust and FinWise Bank—was explicit about its intent to evade the new California law should it be enacted:
>
> ***"As you know, in California a piece of legislation named AB539 continues to move ahead…So what does this mean for Elevate? … [W]e expect to be able to continue to serve California consumers via bank sponsors that are not subject to the same proposed state level rate limitations."*** [vii]
>
> *Example 2:*
> Enova was equally blatant about its plan to continue offering loans at the same high rates as before, disregarding the legislature's clear determination that such rates are unacceptably harmful to California families:
>
> ***"One potential change is a California bill that will cap interest rate at roughly 38% on personal loans between $2,500 and $10,000... [W]e will likely convert our near-prime product [NetCredit, priced at up to 155% APR] to a bank-partner program, which will allow us to continue to operate in California at similar rates to what we charge today."*** [viii]

As these statements make clear, "rent-a-bank" schemes can entail little more than inserting a bank into an economic transaction between a non-bank lender and its customer, in an attempt to shield the non-bank from state usury laws, without materially altering the economics of the transaction from the non-bank lender's perspective—or the borrower's.

B. *Non-bank lenders currently involved in "rent-a-bank" schemes frequently peddle extremely high-cost debt*

"Rent-a-bank" schemes currently facilitate some undeniably egregious lending practices. The chart below offers a few examples.

Non-bank lender	Type of loan	APR	FDIC or OCC supervised bank
OppLoans	**Consumer installment loans** ($500 to $4,000)	160%	FinWise Bank, Utah (FDIC)
Elevate's "Rise" brand	**Consumer installment loans** ($500 to $5,000)	99% to 149%	FinWise Bank, Utah (FDIC)
Elevate's "Elastic" brand	**Lines of credit** ($500 to $4,500)	109%	Republic Bank & Trust, Kentucky (FDIC)
Enova's "NetCredit" brand	**Consumer installment loans** ($1,000 to $10,000)	99.9%-155%	Republic Bank & Trust, Kentucky (FDIC)
LoanMart	**Auto-title loans**, typical loan is $2,500	60-222%	Capital Community Bank, Utah (FDIC)
World Business Lenders (WBL)	**Small business loans**, including personal mortgages at rates up to 139% that are resulting in foreclosure, including loans for hundreds of thousands of dollars at over 120% APR	75% to 139%	Bank of Lake Mills, Wisconsin (FDIC) and Axos Bank (OCC)

It is hard to overstate the harms associated with interest rates of 99% to 149% on loans of $500 to $4,000, like those made by Elevate through a scheme with FDIC-regulated FinWise Bank, or the over-sized loans at 75% to 139% APR made by World Business Lenders, through the connivance of FDIC-regulated Bank of Lake Mills, Wisconsin, or OCC-regulated Axos Bank. Yet neither the OCC nor the FDIC has done anything to shut down these abuses. And in fact, as discussed in section III below, the agencies have defended a World Business Lender loan in an amicus brief (without any acknowledgment that the bank may not be the true lender).

II. <u>"Rent-a-bank" schemes severely harm financially vulnerable consumers, disproportionately burden communities of color, and exacerbate racial wealth disparities</u>

In recent years, the harms of high-cost lending have been more comprehensively and thoroughly documented than ever before.[ix] High-cost lending is a debt trap by design, exploiting the financially distressed and leaving them worse off, leading to a host of financial

consequences that include greater delinquency on other bills,[x] high checking account fees and closed accounts,[xi] and bankruptcy. [xii]

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

A. Consumer High-Cost Installment Loans

There has been substantial growth in the issuance of larger loans with longer terms with rates ranging from 100%-200% APR. The move to longer-term high-cost installment lending is occurring among brick and mortar payday lenders, but also through lenders operating online. Many of these online lenders, making excessively priced loans with direct access to a borrowers' bank account and no safeguards of affordability, seek to disguise their harmful lending practices under the guise of "fintech." The "fintech" label does not wipe away the underlying harms and consequences of these unaffordable loans. Regardless of whether the loan is made through an "app" or a storefront, high-cost loans, made without regard to the borrower's ability to afford them, result in high default rates—sometimes staggeringly high, as exemplified by a brazen "rent-a-bank" schemer, Elevate Financial. **In both 2016 and 2017, Elevate reported charged-off debt amounting to 52% of their domestic revenues.[xiv]**

High default rates signal unaffordability, but also significant harms to consumers. Defaults push struggling families into deeper financial distress, often including aggressive collection efforts, lawsuits, and wage garnishment, as well as increased difficulty meeting other expenses and obligations. They also make it harder for borrowers to obtain more affordable loans, and thus reduce access to better credit and increase reliance on more abusive products. This debt trap is the high-cost lender's chosen business model.

B. Auto title loans

FDIC-regulated Capital Community Bank currently facilitates auto title lending through a rent-a-bank scheme with Loan Mart at rates of 60% to 222% APR. Loan Mart is operating in states that currently prohibit car title lending, including the District of Columbia, Michigan, South Dakota, and Washington. The FDIC has done nothing to shut down this abuse, which is on-going.

Auto title loans can be particularly devastating. In addition to inflicting the same harms caused by payday and other high-cost installment loans, auto title loans put borrowers at substantial risk of losing their car. 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. More than a third of auto title borrowers have reported pledged the only working car in their household as security for their auto title loan.[xv]

Research has found that an astounding one in five auto title borrowers have their car repossessed.[xvi] In Virginia, a state that allows longer-term car title loans, lenders seized over 70,000 cars between 2014 and 2017.[xvii]

Mere statistics on the loan performance of high-cost loans, staggering as they are, do not do justice to the brutal financial, emotional, and physical turmoil these toxic products inflict. The distress can pervade every facet of a person's life, often extending to the borrower's family members as well. Growing research documents the links between high-cost loans and negative health impacts.[xviii]

C. Particular harm to communities of color

By turning a blind eye to these evasions, the federal banking regulators are enabling practices that increase and further entrench racial wealth disparities. High-cost lending disproportionately harms communities of color, exploiting and perpetuating 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 segregated due to the history of redlining and other federally operated or sanctioned racially exclusionary housing policies, experience higher rates of poverty, lower wages, and higher cost burdens to pay for basic living expenses. Payday lenders peddling unaffordable loans cause particular harm to these communities.[xix]

Storefront lenders, which often offer both short-term and longer-term loans, target borrowers of color, in part by concentrating their locations in communities of color.[xx] Indeed, the communities most affected by redlining are the same who are saturated by payday lenders today. Multiple studies have found that payday lenders are more likely to locate in more affluent communities of color than in less affluent white communities.[xxi] In light of this targeting, it is unsurprising that a disproportionate share of payday borrowers come from communities of color, even after controlling for income.[xxii] The disparity in payday loan borrowing is especially significant given that African Americans and Latinos are much less likely to have checking accounts, typically a requirement for a payday loan, than whites.[xxiii]

Online high-cost lenders may focus more on subprime credit scores than geography. But the historical discrimination against communities of color is also reflected in credit scoring.[xxiv] Lenders that focus on subprime borrowers will inevitably disproportionately target borrowers of color. The algorithms and big data that "fintech" lenders use may also result in disparate impacts on these communities.[xxv]

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 3 percent of white households.[xxvi] High-cost loans, with their high association with lost bank accounts,[xxvii] 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—and perpetuates discrimination today.[xxviii] Schemes to evade state interest rate limits therefore not only harm families in economic distress, but also exacerbate existing racial inequities.

III. FDIC and OCC actions embolden predatory lenders and threaten state usury caps across the country

A. FDIC and OCC inaction, and harmful action, to date

Non-bank lenders such as Elevate, OppLoans, Enova, Loan Mart and World Business Lenders currently lend at rates that are illegal under state law, through the use of "rent-a-bank" schemes with banks regulated by the FDIC or the OCC. Neither regulator has done anything to shut down these abuses. This silence by the regulators has emboldened non-bank lenders to more openly acknowledge seeking so-called "bank partnerships" to further these schemes, as exemplified above by Elevate, Curo and Enova, whose senior management publicly touted their plans to evade new California rate caps in this way.

Instead of taking steps to stop this abuse, federal regulators are signaling support of this lending practice. Just a few months ago, in September 2019, the OCC and FDIC took the unusual step of filing an amicus brief in an obscure bankruptcy case in which World Business Lenders had used FDIC-supervised Bank of Lake Mills to make a loan of $550,000 at 120% APR with a one-year term. A 120% APR would be a staggering rate on a $5,000 loan; on a $550,000 loan it is, in the words of the bankruptcy court judge, "stupendously high."[xxix] The loan required payments equating to $3,775 *daily*.[xxx] Yet the federal banking regulators weighed in on this case, *in support of* World Business Lenders' right to collect on this loan—and without even suggesting that Bank of Lake Mills may not be the true lender.

B. Recent FDIC/OCC proposed rule risks giving predatory lenders the greenlight to use "rent-a-bank" schemes

In November 2019, the OCC and FDIC proposed rules[xxxi] that could have the effect of encouraging predatory non-bank lenders to run their loans through banks in an attempt to evade state interest rate caps. CRL, along with more than 100 civil rights, and consumer, small business, and community and faith-based organizations submitted comments in opposition to the proposed rules.[xxxii] The proposal threatens to take away powers that states have had since the time of the American Revolution to protect their residents. Our comment letters explain that the proposals are outside the OCC's and FDIC's statutory authorities; they are not justified by any evidence of problematic impact on legitimate bank operations; and the agencies have failed to consider the strong likelihood that the proposal will unleash a torrent of predatory lending.

C. *FDIC and OCC's proposal would not only give cover for the expansion of larger, longer high-cost loans through "rent-a-bank"; it would also embolden a return of short-term balloon-payment payday loans and balloon-payment vehicle title loans*

High-cost products currently using "rent-a-bank" schemes are longer-term installment payday loans, lines of credit, vehicle title installment loans, subprime business loans, and mortgages masquerading as business loans. But the proposal would also clearly embolden a return of short-term balloon-payment payday loans and balloon-payment vehicle title loans.

Some of the lenders that offer or are threatening to offer high-cost "rent-a-bank" installment loans also offer short-term payday loans. Enova's CashNetUSA offers both balloon-payment payday loans and long-term payday loans. CURO's SpeedyCash also offers short-term payday loans.

The arrangements between payday lenders and banks 20 years ago, and the arguments they made, were not that different from today's "rent-a-bank" lending. Currently, to our knowledge, "rent-a-bank" schemes are not being used to offer short-term loans. One FDIC action that led to the end of these schemes was its 2005 payday loan guidelines, which advised limiting borrowers' indebtedness in payday loans to 90 days within 12 months. Lenders then lost interest in the schemes because their business model was built on trapping borrowers in debt for far longer. If this guidance is repealed, as some lenders have been pushing, and the proposed rule is finalized, only the self-restraint of banks would prevent short-term "rent-a-bank" lending from returning.

D. *FDIC and OCC's proposal gives comfort to other predatory lenders considering entering "rent-a-bank" market*

Predatory lenders have long hoped for the banking regulators to issue this very proposal. After the proposal was released, one investment advisor wrote in its investment notes:

"Enova received a strong endorsement from banking regulators in support of its bank partnership model, which is a key aspect of its California growth strategy moving forward (Elevate Credit [ELVT, MP] is also a beneficiary of these developments)."[xxxiii]

On October 10, 2019, California Governor Gavin Newsom signed into law AB 539, effective January 1, 2020, which targets long-term payday loans, limiting the interest rates on loans of $2,500 to $10,000 to 36% plus the federal funds rate. There has been no rate cap in California on loans over $2,500 since 1985 when predatory lenders fought to deregulate.

As noted above, three large high-cost lenders, which were charging from 135% to 199% APR on high-cost installment loans—rates illegal under the new law—indicated their plans to start or expand rent-a-bank arrangements into California, with the clear intent to attempt to evade the new interest rate cap. These lenders discussed with investors their plans even before it was

enacted. These shameless declarations of their intentions make patently clear that the involved lenders would be forming these partnerships for the purpose of attempting to evade the law, and that the involved banks would be renting out their charters to these lenders. These lenders have been met with resistance,[xxxiv] and to our knowledge have not yet begun new schemes in California. But at least two of these lenders appear to be already making high-cost "rent-a-bank" loans elsewhere, and the FDIC/OCC's proposal would embolden these schemes—a fact the FDIC/OCC proposal conspicuously fails to consider.

CURO Group Holdings Corp. currently offers both short-term and long-term payday loans through its **SpeedyCash** brand. Its website gives an example of a $2,600 installment loan at 134% APR and a $5,000 loan at 131% APR.[xxxv]

The following is an example of a SpeedyCash loan made in California before the new rate cap: $2,600 loan at 135% APR, repayable over 3.5 years with payments of $138 every two weeks, or approximately $276 monthly, totaling **$12,560** in total payments.[xxxvi]

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you	Amount Financed The amount of credit provided to you or on your behalf	Total of Payments The amount you will have paid after you have made all payments as scheduled
135.211%	$9,960.35	$2,600.00	$12,560.35

Your Payment Schedule will be:

Number of Payments	Amount of Payment	When Payment is Due
90	$138.09	Every 14 days , beginning 28 Feb 2014

CURO discussed plans to attempt to evade the California law, noting discussions with the national bank **MetaBank**, while praising the economics of the bank partnerships:

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

We note that in April 2018, CURO announced plans to offer a line of credit product "through a relationship with MetaBank" which would not contribute to its financial results until 2020, [xxxviii]

and that in its November 2019 10Q, it announced that it had discontinued that agreement in September 2019.[xxxix] Notably, MetaBank has a history of working with payday lenders and helping third parties offer predatory products in an attempt to evade the law.[xl]

Two other high-cost lenders, Enova dba NetCredit, and Elevate dba Rise and Elastic, also noted plans to attempt to evade the California law through rent-a-bank schemes. Though not naming OCC-supervised banks, they could pursue such schemes with national banks as they look to attempt to evade the new law.

The immediately pending threat of expansion of "rent-a-bank" schemes in California—and the risk to other states that already had strong rate caps—should have been considered by the FDIC and OCC. Notably, FDIC Chairman McWilliams testified in front of this Committee at a December 2019 hearing, following the issuance of both agencies' proposals, that she was unaware of these developments,[xli] despite letters having been sent to her intended to alert her to these developments.[xlii]

E. FDIC/OCC proposed rules threaten state interest rate caps

Since our country's founding, states have protected their citizens from financial abuses, setting standards for lenders with respect to terms of credit, as well as the allowable methods of collecting debts.

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.[xliii] With good reason, the Constitution preserves the rights and role of states within our federalist republic.

The FDIC/OCC proposals fail to recognize states' historical and primary role in regulating and enforcing usury and how the proposal would undermine that role. In our federalist system, states have always been the primary regulator of non-bank lenders. Yet the proposed rule threatens to deprive states of their historic power by allowing non-bank lenders to use banks as a fig leaf in an attempt to avoid state consumer protection laws.

Interest rate limits are the simplest and most effective protection against predatory lending.[xliv] Since the time of the American Revolution, states have set interest rate caps to protect their residents from predatory lending.[xlv] At least 43 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 37.5% for a $500, six-month loan, 31% for a $2000, two-year loan, and 25% for a $10,000, five-year loan.[xlvi] 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.

Policy trends at the state and federal levels for more than a decade have been to rein in the harms of the unsafe loans, ranging from the 2006 passage of the 36% rate cap in the Military Lending Act to voter-enacted 36% rate caps in South Dakota and Colorado, in 2016 and 2018, respectively. Ballot initiatives in Montana (2010), Arizona (2008) and Ohio (2008) were also met with large majorities supporting interest rate caps in those states. Most recently, California's new law caps installment loans of $2,500 - $10,000 at approximately 36%. Since 2005, no new state has legalized payday lending. States with rate caps that prevent the payday loan debt trap are home to about 100 million people—nearly a third of the U.S. population.
States are typically successful in enforcing their interest rates against the products to which interest rate caps apply.[xlvii] But the inaction from the FDIC and OCC and their recent proposed rule risks undermining these regulatory landscapes and severely hamstringing states' ability to enforce rate caps.

F. States with strong interest rate caps oppose "rent-a-bank" schemes

Residents and legislators in states with strong interest rate caps have fought hard for these crucial protections, against payday lenders and their very well-resourced lobby. Whether through a ballot initiative or a legislative battle, residents of those states have used the democratic process and won. There is bi-partisan support for strong interest rate caps. In fact, in both South Dakota (76%) and Colorado (77%), residents voted overwhelmingly in favor of an interest rate cap of 36% APR. Despite the payday lenders' outsized-spending, 76% of South Dakota voters said yes to lowering the rates of payday loans, car-title loans, and other high-cost installment loans to 36% annually. Most recently, in California, opponents of the rate cap bill poured millions of dollars into campaigns and lobbying. Despite their efforts, community and faith-based organizations, labor and veterans' groups, and consumer advocates led a three-year campaign and won. The residents in these states have spoken: They do not want exorbitantly high interest rate loans in their states.

This month, a bi-partisan coalition of attorneys general submitted a comment letter opposing the OCC's proposed rule.[xlviii] The attorneys general that filed the comment letter represent California, Colorado, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Virginia, Washington, Wisconsin, and the District of Columbia.

> ***As stated in the letter, "States have long played a critical role in protecting residents from high-cost loans. While federal law provides a carve out from state law for federally-regulated banks, state law continues to protect residents from predatory lending by non-banks such as payday, auto title, and installment lenders. Congress affirmed that role with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, preserving more protective state laws. Yet, the new regulations proposed by OCC would extend the National Bank Act exemption for federally-regulated banks to non-bank debt buyers such as payday lenders. The proposed rule is a sharp reversal in policy and a deliberate attempt to evade state laws that target predatory lending."*** [xlix]

Case Study: South Dakota, Two Years After a 36% rate cap

"I think that now that I don't have all those payday loans to pay off, I actually have money. I actually have money to set aside and with a partner, we set money aside and we have a savings account now. We have a savings account now, so without the stress of additional payments and with finding you and helping me rebuild my credit, I have a brand new car. And before then, I couldn't even get a brand new car, or I couldn't even get a credit card. Now I have both, and now we have a home of our own. So, it's all coming together. I'm finally at where I always wanted to be years ago." –Wambli Bear Runner, Black Hills Community Loan Fund Client

In 2016, South Dakota voters spoke loud and clear that they did not want triple-digit interest rates in their state. In 2018, two years following enactment of the rate cap, South Dakotans continue to show strong support for the rate cap. In a recent CRL report, "The Sky Doesn't Fall: Life After Payday Lending in South Dakota," data, polling, and community interviews demonstrate that South Dakotans are faring better without these predatory products in the state.[l] They continue to have access to credit through safer financial products, and where payday loan shops once dotted the landscape, churches, restaurants, and other wealth-creating and community-building institutions exist.

To understand South Dakotans' views towards the changes in the state since the enactment of the 36% rate cap, CRL commissioned a poll among Republican primary voters in South Dakota.[li] The poll was conducted in August of 2018, nearly two years following the enactment of the rate cap, and it revealed strong levels of support for keeping the rate cap in place and strong opposition to any legislative attempt to allow higher rates than those the voters' approved.

In thinking about the ballot initiative specifically, if asked to vote on the same measure again today, the vast majority **(82%) of those who voted yes in 2016 said in 2018 that they would vote yes again to cap the cost of payday loans in South Dakota at an annual interest rate of 36%.**[lii]

IV. Recommendations for addressing the evasion of state laws and preventing lenders from trapping consumers in a cycle of debt

1. **The FDIC and OCC should rescind their proposed rules, which risk giving banks and lenders a greenlight to use rent-a-bank schemes.** These schemes will usher in a new wave of triple-digit interest rate loans across the country, even in states that seek to prohibit them.

2. **The FDIC and OCC should step up to stop "rent-a-bank" schemes by FDIC- and OCC - supervised banks**. To date, no enforcement actions have been taken to address the new wave of the evasion of state interest rate caps by FDIC- and OCC-supervised banks.

3. **The FDIC should preserve its 2005 payday loan guidelines advising limiting indebtedness in payday loans to 90 days in 12 months; its 2007 guidelines advising a rate cap of 36%; and its 2013 guidelines advising ability-to-repay assessments for bank payday ("deposit advance") loans. The OCC should reinstate its 2013 guidelines addressing bank payday loans.** The 2005 and 2013 guidelines are important to keeping banks out of rent-a-bank schemes or direct lending involving short-term balloon payment payday loans. The 2007 guidance describes responsible installment loans (which the ongoing FDIC rent-a-bank schemes are flouting).

4. **Congress should enact a rate cap of 36% or less, while not pre-empting the laws of states with even stronger rate caps**. In 2006, upon the finding by the U.S. Department of Defense that predatory lending "undermines the military readiness," Congress enacted with bi-partisan support a 36% rate cap for consumer credit, including for payday and car title loans, to active duty military and covered dependents. Congress should extend the same protection to veterans and all Americans, preventing the harms of the debt traps, by supporting HR 5050, the Veterans and Consumers Fair Credit Act.

5. **The Consumer Financial Protection Bureau must reverse its course of seeking to repeal the ability-to-repay provisions of its 2017 rule addressing payday, car-title, and certain high-cost installment loans**. The 2017 rule aimed to stop the debt trap caused by short-term payday and car title loans (while advising that the Bureau would address problems with high-cost installment lending in a future rulemaking). The rule established the common-sense principles of requiring lenders to determine a borrower's ability to repay the loan in light of their income and expenses. The CFPB proposed the repeal of the heart of the rule, without legal justification, in 2019. Rescinding the rule will allow payday and car title lenders' debt trap business model to continue as usual and leave millions of people across our country burdened with the unavoidable harms of this crushing debt.

V. Conclusion

Predatory lenders have a long history of attempting to evade consumer protection laws. If federal regulators and Congress allow this to go on, more predatory lenders will enter the "rent-a-bank" market to attempt to bypass state laws, leaving millions of people vulnerable to the harms of high-cost lending—even when it directly contradicts the affirmative public policy decisions of their home states.

[i] CFPB complaints database #1377341 (California borrower)
[ii] 84 Fed. Reg. 64229 (Nov. 21, 2019) and 84 Fed. Reg. 66845 (Dec 6, 2019)
[iii] Remarks by John D. Hawke, Jr., Comptroller of the Currency, Before the Women in Housing and Finance at 10 (Feb. 12, 2002), https://www.occ.treas.gov/news-issuances/speeches/2002/pub-speech-2002-10.pdf.
[iv] https://www.occ.treas.gov/news-issuances/news-releases/2002/nr-occ-2002-10.html.
[v] Remarks by John D. Hawke, Jr., Comptroller of the Currency, Before the Women in Housing and Finance at 10 (Washington, D.C. Feb. 12, 2002), https://www.occ.treas.gov/news-issuances/speeches/2002/pub-speech-2002-10.pdf.
[vi] *See Bank Partnership and the Valid-When-Made Doctrine: an Update on Madden v. Midland*, Catherine M. Brennan, Meghan Musselman and Joseph Vitale, Hudson Cook, Thirteenth Annual Consumer Financial Services Conference (April 2016), available at https://catherinembrennan.files.wordpress.com/2016/04/madden-panel.pdf.
[vii] Elevate Credit Inc. earnings call pages 5-6, 10 (July 29, 2019) at SeekingAlpha.com
[viii] Enova International Inc., earnings call, pages 3, 9-10 (July 26, 2019) at SeekingAlpha.com
[ix] *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 NCLC's comments to that docket, filed with additional consumer and civil rights groups, here: 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).
[x] *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.
[xi] 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.
[xii] 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.
[xiii] 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.
[xiv] Elevate Credit, Inc., 10-K at 39 (filed March 9, 2018), http://bit.ly/2FmFdzc
[xv] CFPB Payday Rule, 82 Fed. Reg. at 54573 & n. 592 (internal citations omitted).
[xvi] 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.
[xvii] Virginia Bureau of Financial Institutions." 2017 Annual Report," page 57, http://bit.ly/2UOkDj1
[xviii] 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.*
[xix] *See* CFPB Payday Rule, 82 Fed. Reg. at 54556-57.
[xx] *See*, *e.g.*, Delvin Davis, *et al*., *Race Matters: The Concentration of Payday Lenders in African-American Communities in North Carolina*, Center for Responsible Lending (2005), http://www.responsiblelending.org/north-carolina/nc-payday/research-analysis/racematters/rr006-Race_Matters_Payday_in_NC-0305.pdf (finding that, even when controlling for a variety of other factors, African-American neighborhoods had three times as many payday lending stores per capita as white neighborhoods in North Carolina in 2005); Assaf Oron, *Easy Prey: Evidence for Race and Military Related Targeting in the Distribution of Payday Loan Branches in Washington State*, Department of Statistics, University of Washington (2006) (concluding based on a study of Washington State payday lenders that "payday businesses do intentionally target localities with a high percentage of African Americans.").
[xxi] 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.

[xxii] CFPB Payday Rule, 82 Fed. Reg. at 54556. African-Americans are payday borrowers at three times the rate, and Hispanics at twice the rate, of non-Hispanic whites. 82 Fed. Reg. at 54556-57 (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.*

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

[xxiv] *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.

[xxv] *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/.

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

[xxvii] CFPB found that about half of borrowers with online payday 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).

[xxviii] For further on the undersigned groups' concerns about the harm payday and vehicle title 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; 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/.

[xxix] *In re Rent-Rite Super Kegs West, Ltd. v, World Business Lenders, LLC*, Bankruptcy Case No. 17-21236 TBM Chapter 7, Adv. Pro. No. 18-1099 TBM, Corrected Memorandum and Order Denying all Claims, (May 20, 2019) at 8https://www.docketbird.com/court-documents/Rent-Rite-Super-Kegs-West-LTD-v-World-Business-Lenders-LLC/Corrected-Written-Opinion-related-document-s-44-Written-Opinion-48-Order-Dismissing-Adversary-Proceeding/cob-1:2018-ap-01099-00049

[xxx] Id. At 5.

[xxxi] 84 Fed. Reg. 64229 (Nov. 21, 2019) and 84 Fed. Reg. 66845 (Dec 6, 2019)

[xxxii] CRL, NCLC, *OCC Rent A Bank Rule Proposal Comment Letter 2020*, available at https://www.responsiblelending.org/research-publication/occ-rent-bank-rule-proposal-comment-letter-2020 and Community, Consumer, Civil Rights, and Faith Groups Strongly Oppose OCC's Proposed Rule on State Interest Rate Limits, available at https://www.responsiblelending.org/research-publication/community-consumer-civil-rights-and-faith-groups-strongly-oppose-occs-proposed

[xxxiii] On file with National Consumer Law Center.

[xxxiv] *See* Press Release, *Advocates Urge FDIC, OCC, Federal Reserve to Stop Banks from Helping Payday Lenders Evade State Interest Rate Limits* (Nov. 7, 2019) (discussing letters to the agencies from a coalition of 61 consumer, civil rights, and community groups, flagging the lenders' statements of intent to evade California law and urging the regulators to prevent rent-a-bank schemes in California and elsewhere), https://www.responsiblelending.org/media/advocates-urge-fdic-occ-federal-reserve-stop-banks-helping-payday-lenders-evade-state-interest. Those letters attached another letter from Californians for Economic Justice to the California Department t of Business Oversight, the Attorney General, and the Governor, flagging the same concerns. *See also* Letter from Rep. Katie Porter of California to FDIC, Dec. 20, 2019 and Tweet: "High-cost lenders announced during their earnings calls that they planned to target CA borrowers with abusive loan terms banned in our state. Today, I'm forwarding transcripts of those calls to federal watchdogs. I won't stand by while bad actors try to skirt our laws." https://twitter.com/RepKatiePorter/status/1208039708095238145?s=20.

[xxxv] https://db4nnybic3xty.cloudfront.net/pdf/SRC/2018/california/store/california.pdf (See "Installment Bank Line Loan Price Disclosure" at the bottom).

[xxxvi] Loan document on file with CRL.

[xxxvii] CURO Group Holdings Corp., Earnings Call, pp. 3, 7-8 (July 30, 2019) at SeekingAlpha.com.

[xxxviii] CURO 2018 10K at 46.

[xxxix] CURO 10Q, Nov. 2019, at 44, https://fintel.io/doc/sec-curo-10q-curo-group-holdings-2019-november-04-18209.

[xl] Form 8-K filed by Meta Financial Group, Inc. with the Securities and Exchange Commission, October 6, 2010, *available at* http://www.sec.gov/Archives/edgar/data/907471/000110465910052100/a10-19319_18k.htm.

[xli] House Financial Services Committee hearing on Oversight of Prudential Regulators, Dec. 5, 2019:

Rep. Porter: "[A[re you aware of statements made on earnings calls by lenders in California in the wake of California's new lending law, several payday lenders announced on their earnings calls that they plan to use rent-a-bank schemes to evade California's new law that outlaws 100 to 200 percent installment loans."

Chairman McWilliams: "I'm not and I frankly don't listen to payday lender' investor calls. I just don't have the time."

[xlii] At the time of the hearing, and prior to the FDIC's proposed rule on "federal interest rate authority," two letters, both publicized through press releases, had been sent to Chairman McWilliams, with copies to her staff, notifying the agency of lenders' stated intentions to evade the new California law through rent-a-bank schemes: an Oct. 24 letter opposing the agencies' support of WBL in the Rent-Rite case

(https://www.nclc.org/issues/ltr-opp-rent-a-bank.html), and a Nov.7 letter addressing the California statements in detail (https://www.responsiblelending.org/media/advocates-urge-fdic-occ-federal-reserve-stop-banks-helping-payday-lenders-evade-state-interest).

[xliii] *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").

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

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

[xlvi] See Carolyn Carter et al., NCLC, Predatory Installment Lending in 2017: States Battle to Restrain High-Cost Loans (Aug. 2017), http://bit.ly/2vRZkEf; Carolyn Carter et al., 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; *see also* NCLC, State Annual Percentage Rate (APR) Caps for $500, $2,000, and $10,000 Installment Loans (2019), https://www.nclc.org/images/pdf/high_cost_small_loans/fact-sheet-apr-caps-for-installment-loans.pdf.

[xlvii] *See* Diane Standaert and Brandon Coleman, *Ending the Cycle of Evasion: Effective State and Federal Payday Lending Enforcement* (2015), Center for Responsible Lending, *available at* http://www.responsiblelending.org/payday-lending/research-analysis/crl_payday_enforcement_brief_nov2015.pdf.

[xlviii] Multi-state Attorneys General comment letter to the OCC, January 21, 2020, available at https://oag.ca.gov/system/files/attachments/press-docs/Multistate%20comment%20--%20OCC%20Madden%20%28FINAL%29.pdf

[xlix] State *of* California Department *of* Justice, Attorney General Becerra Slams Proposal That Would Allow Predatory Lenders to Take Advantage of California's Most Vulnerable Communities, January 22, 2020, available at https://oag.ca.gov/news/press-releases/attorney-general-becerra-slams-proposal-would-allow-predatory-lenders-take

[l] Charla Rios, Diane Standaert, Yasmin Farahi, *The Sky Doesn't Fall: Life After Payday Lending in South Dakota*, (2020), Center for Responsible Lending, available at https://www.responsiblelending.org/research-publication/sky-doesnt-fall-life-after-payday-lending-south-dakota

[li] Gonzales Research and Media Services, "South Dakota Survey," August 2018. The poll was conducted by Gonzalez Research and Media Services from August 21 through August 28, 2018. A total of 509 registered Republican voters in South Dakota, who vote in the state's primary elections and indicated that they are likely to vote in the November 2018 general election, were queried by live telephone interviews, utilizing both land line and cell phone numbers. The margin of error is a range of plus or minus 4.4 percentage points.

[lii] If you were voting on the Payday Lending Initiative again today, would you vote: "Yes" in favor of keeping the cost of payday loans in South Dakota to a maximum annual interest rate of 36 percent or "No" in opposition to keeping the cost of payday loans in South Dakota to a maximum annual interest rate of 36 percent.