

# Payday Lending and Predatory Installment Lending Legalized Nationwide?

Federal Banking Policy About to Take Away  
Your State's Right to Set Interest Rate Limits

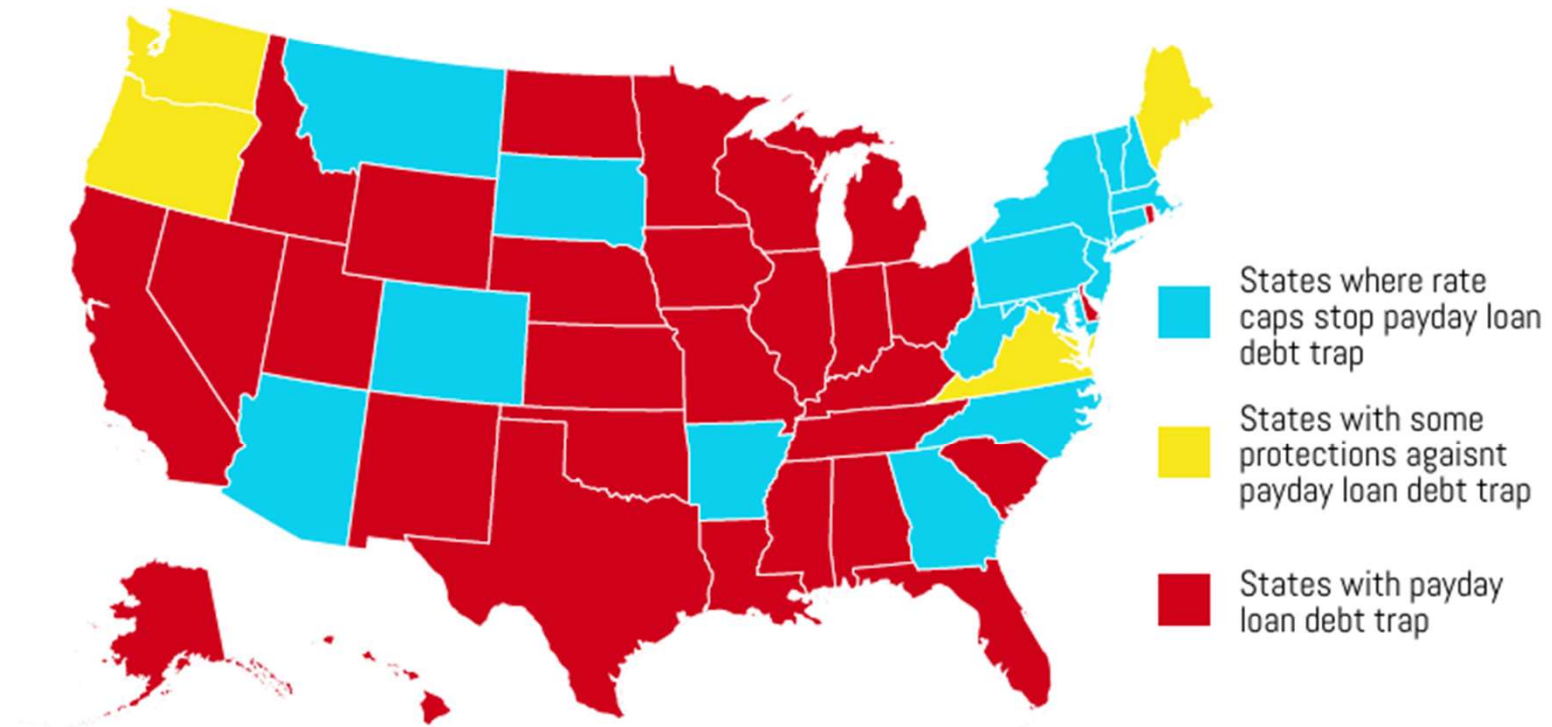
July 30, 2020



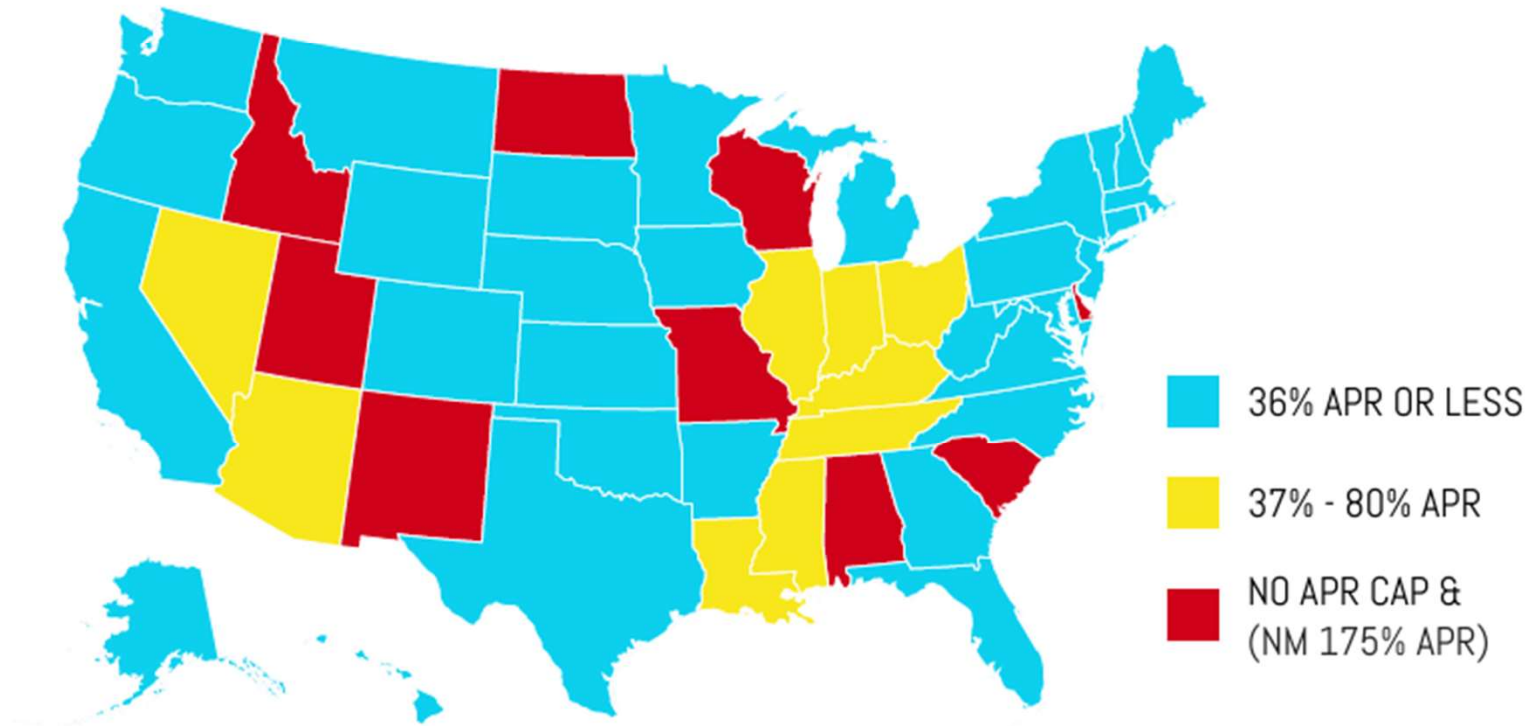


Lisa Stifler  
**Director of State Policy**  
Center for Responsible Lending  
[Lisa.Stifler@responsiblelending.org](mailto:Lisa.Stifler@responsiblelending.org)

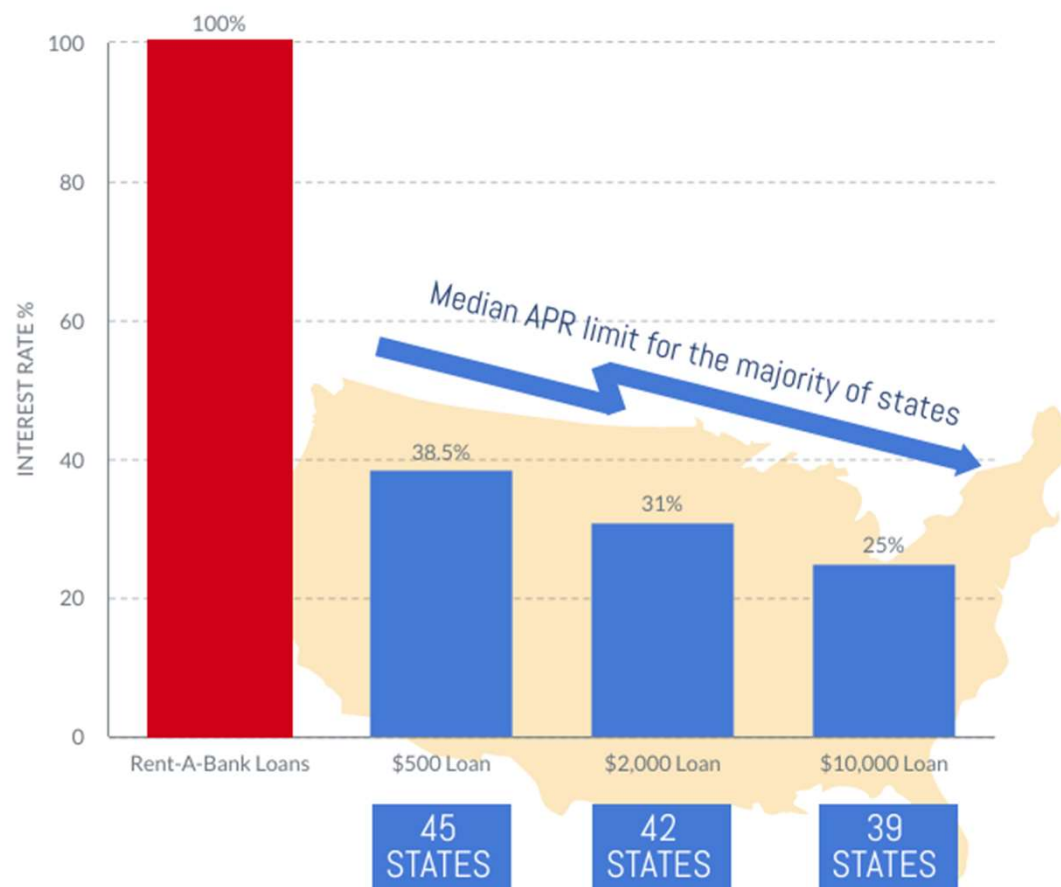
## State interest rate limits for payday loans



## State interest rate limits for \$2000, 2-year loan



# Median APR limit for Installment loans



Source: National Consumer Law Center



Charla Rios (Hodges)

**Researcher**

Center for Responsible Lending

[Charla.Rios@responsiblelending.org](mailto:Charla.Rios@responsiblelending.org)



THE

# RENT-A-BANK

SCHEME

#RENTABANK



## RENT-A-BANK FACTS



Predatory lenders are making loans of **100%** APR or more in states with caps of 36% or less



**HOW?** By laundering loans through an out-of-state bank that is not subject to state interest rate caps





**PREDATORY LENDER**



**BANK**



**BORROWER**



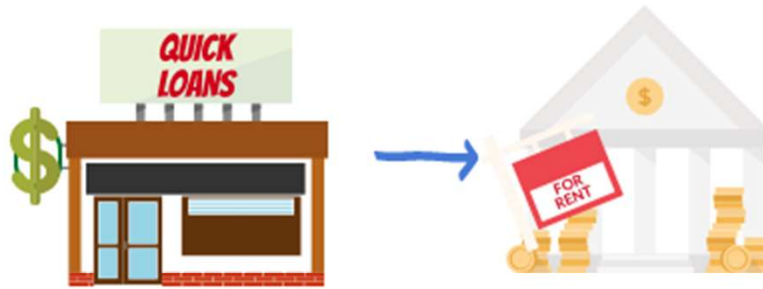
# THE RENT-A-BANK SCHEME

**CONSISTS OF 5 STEPS**



The predatory lender takes the loan application.

2



The predatory lender processes and sends the application to the bank.

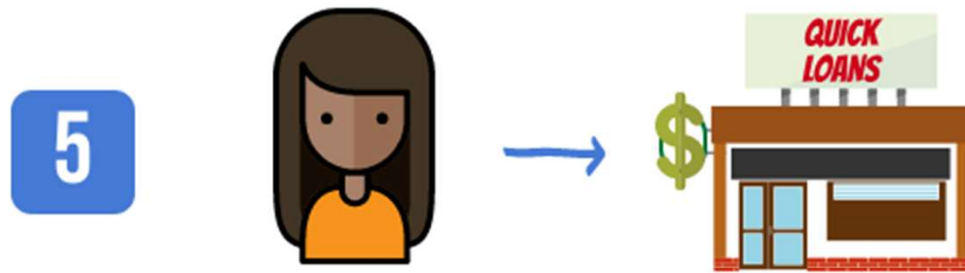


The bank sends the money  
to the consumer.

4



The bank sells the loan back to the predatory lender and gets a cut of the profit.



\* The consumer repays the predatory lender.





## \* REAL LIFE EXAMPLE

A consumer borrowed \$2,500 from a predatory lender at 185% APR.

After four years, she paid \$16,000 in interest.



## THE RENT-A-BANK SCHEME

#RENTABANK



PREDATORY LENDERS  
DISPROPORTIONATELY TARGET  
BLACK & LATINO PEOPLE FOR  
LOANS OF MORE THAN

**100% APR**



# Case Study

“Michigan payday lenders **disproportionately** locate their stores in **communities of color**.

While statewide there are 5.6 payday stores per 100,000 people in Michigan, payday store concentrations are higher in census tracts that have more African-Americans and Latinos.”\*

*\*CRL Report 2018: Power Steering, Payday Lenders Targeting Vulnerable Michigan Communities*



**“I want to make poor people rich.” --2020**  
*remarks to the Online Lending Policy Institute, while also likening interest rate caps to price controls on goods like hamburgers, jeans, and automobiles*

**OCC Acting Comptroller Brian Brooks**





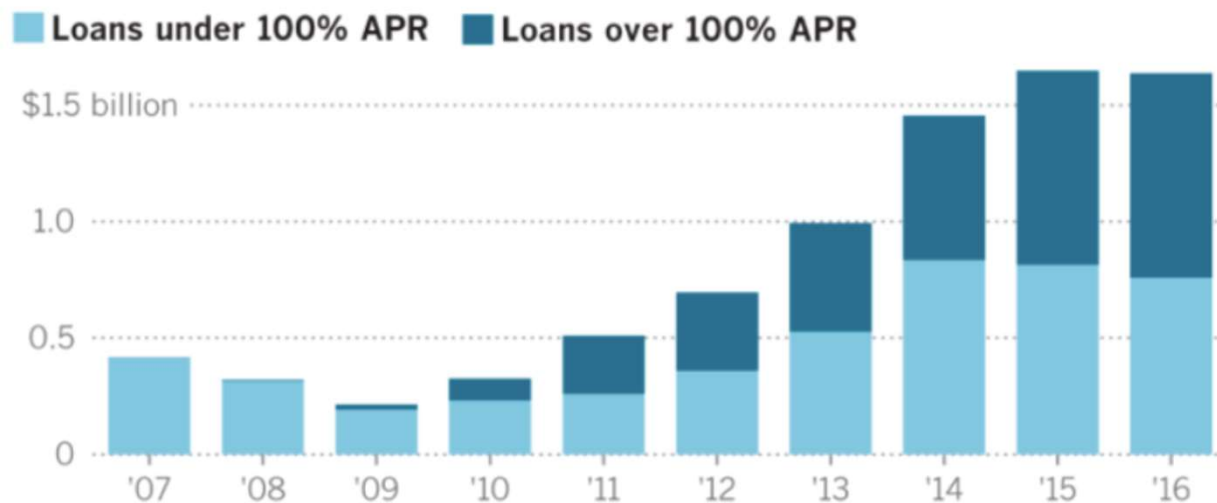
Lauren Saunders  
**Associate Director**  
National Consumer Law Center  
[Lsaunders@nclc.org](mailto:Lsaunders@nclc.org)

## Payday Lenders Started Using Rent-a-Bank in Late 1990s, early 2000s



# Industry Shifts from Payday Loans to Predatory Installment Loans

## Triple-digit APR loans have exploded in California



Note: Loans \$2,500 to \$4,999

Source: California Department of Business Oversight

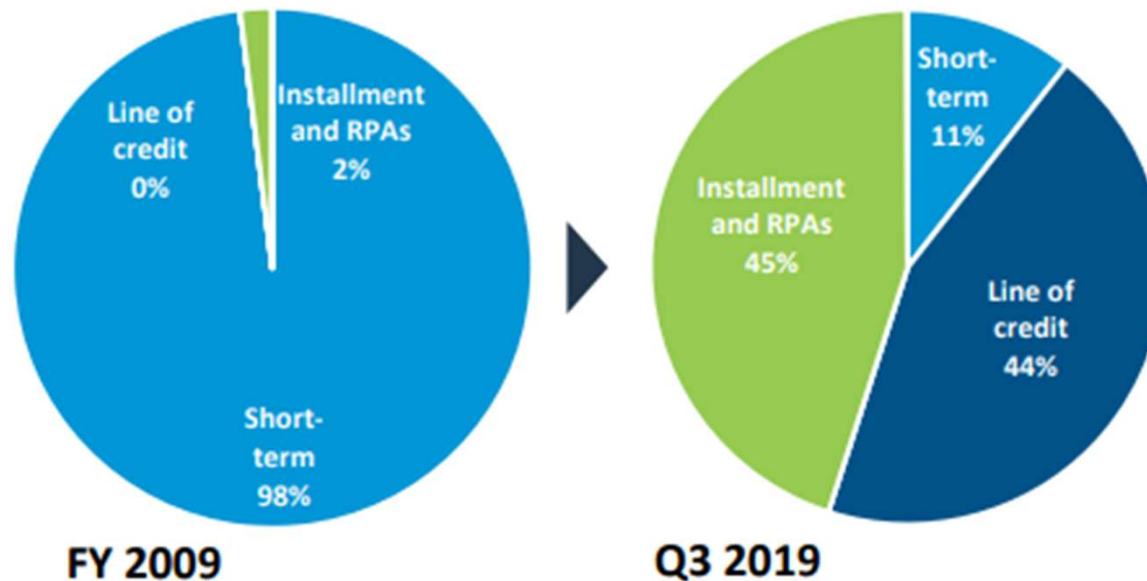
Jon Schleuss / @latimesgraphics

(Los Angeles Times)



# Successful Product Diversification

Revenue Diversification by Product Type<sup>1</sup>



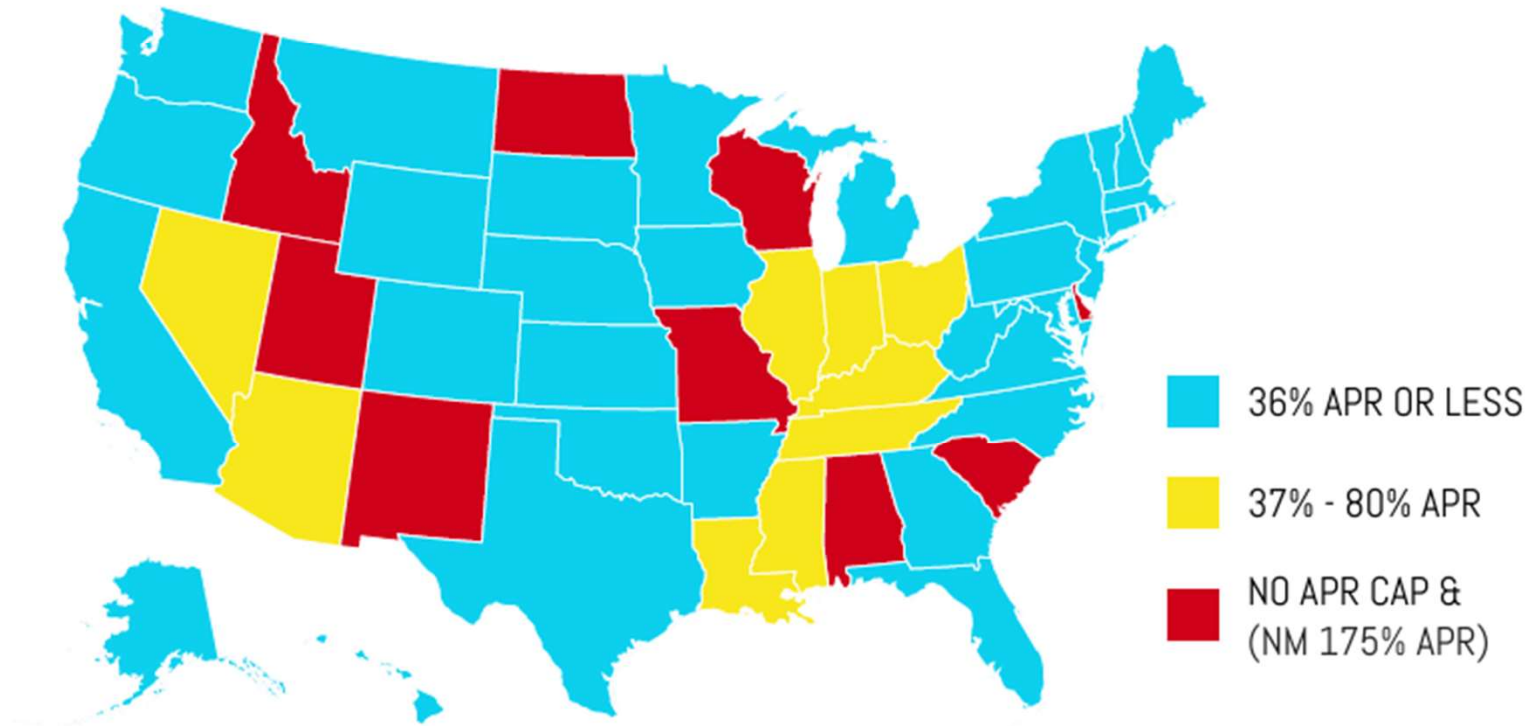
Source: Enova 2019

# High-Cost Installment Loans: A Bigger, Deeper Debt Trap

	<b>\$300 15-day payday loan rolled over 9x</b>	<b>\$2000, 2-year installment loan 149%</b>
<b>Size of loan</b>	\$300	\$2,000
<b>APR</b>	<b>360%</b>	<b>149%</b>
<b>Monthly payments</b>	\$90	\$264
<b>Last payment</b>	\$345	\$264
<b>Months in debt</b>	5	24
<b>Total payments</b>	<b>\$750</b>	<b>\$6,336</b>

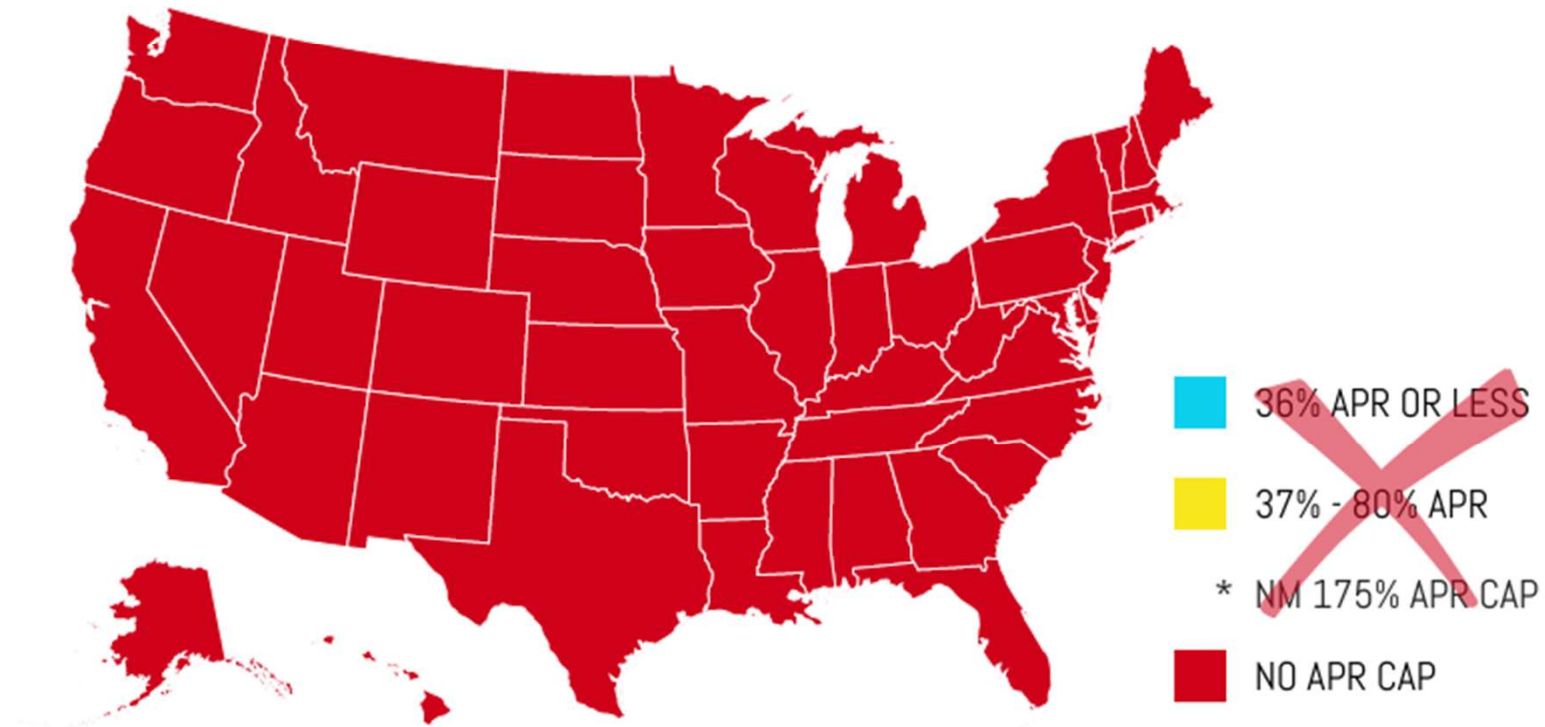
But They Have a Problem:  
State Interest Rate Caps

## State interest rate limits for \$2000, 2-year loan



**Their Answer:**  
**Loan Laundering using**  
**Rent-a-Bank Scheme**

Predatory lenders will be able to evade  
ALL state interest rate limits through  
the rent-a-bank scheme



# Recent Rent-a-Bank Schemes

## Installment loans:

- **OppLoans** + FinWise Bank = **160% APR**
- **Rise** (Elevate) + FinWise Bank = **99%-149% APR**
- **NetCredit** (Enova)+Republic B&T = **99.99% APR**
- **Avio Credit** (CURO) + Stride Bank = **130% APR**
- **Verge Credit** (CURO) + Stride Bank = **179% APR**
- **Personify** + First Electronic Bank = **179.99% APR**

## Lines of Credit:

- **Elastic** (Elevate)+Republic Bank & Trust=**109% APR**



# Recent Rent-a-Bank Schemes continued

## Auto Title Loans:

- **LoanMart + Community Cap. Bank = 170% APR**

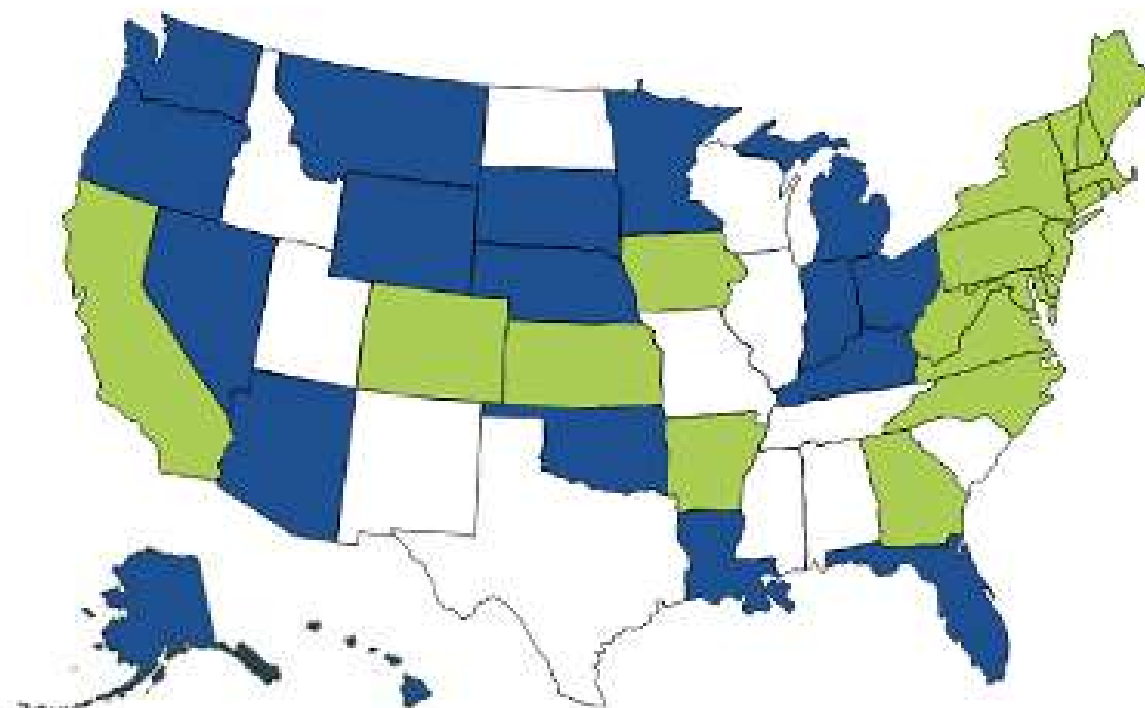
## Retail Finance and Auto Repair Loans:

- **EasyPay + TAB Bank = 188.99% APR**
- **American First Finance + FinWise Bank = 161% APR**

## Small Business Loans

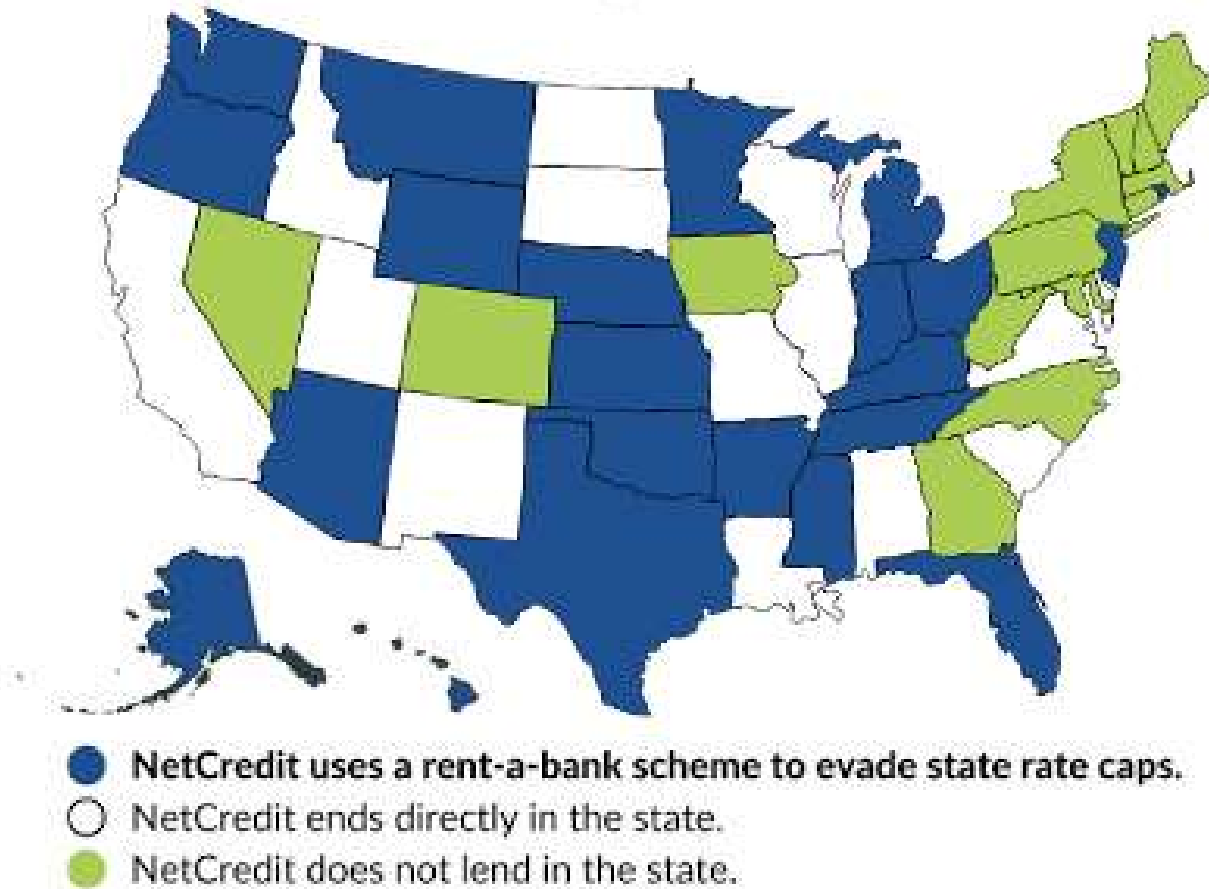
- **World Business Lenders + Axos Bank = 75% to 139% APR**  
**mortgages secured by small biz. owner's home**
- **BFS Capital + Axos Bank = 274% APR**
- **Enova buying OnDeck (so more bad loans coming)**

## Rent-a-Bank Lending by Elevate's Rise



- Rise uses a rent-a-bank scheme to evade state rate caps.
- Rise lends directly in the state.
- Rise does not lend in the state.

## Rent-a-Bank Lending by Enova's NetCredit



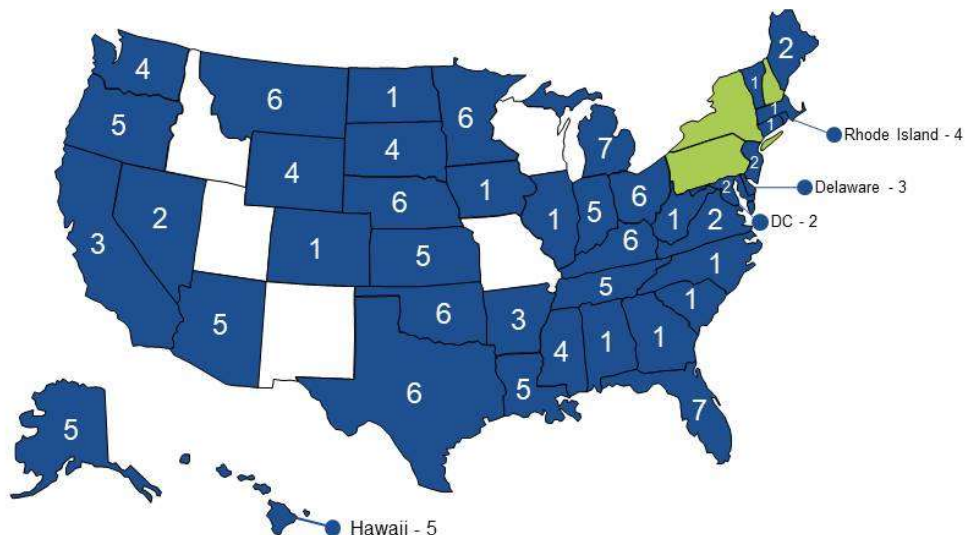
## Rent-a-Bank Lending by OppLoans



- OppLoans uses a rent-a-bank scheme in the state.
- OppLoans lends directly in the state.
- OppLoans does not lend in the state.



## How Many Rent-a-Bank Lenders Operate in Your State?



- One or more lenders use a rent-a-bank scheme in the state.
- High-cost installment lenders lend directly in the state.
- No known consumer rent-a-bank lending.

<https://bit.ly/rentabank-watch-list>

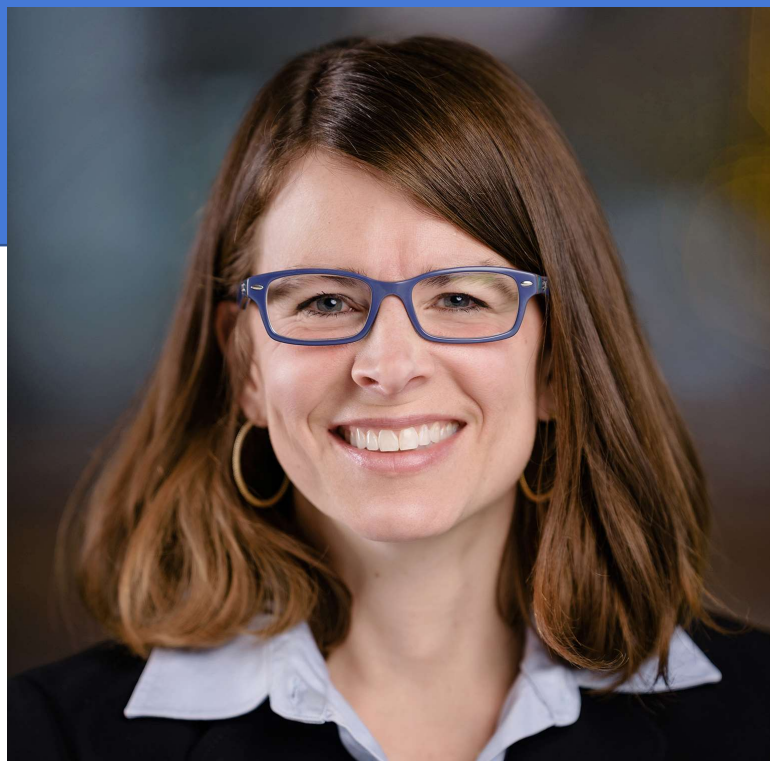
# But Rent-a-Bank Lending is Threatened by AGs and Courts

AG Racine Sues Predatory Online Lender For Illegal High-Interest Loans To District Consumers

**BankThink** There's a 'true lender' fight  
brewing in California

Colorado Attorney General  
Pursues 'True Lender' and  
'Madden' Actions Against Major  
Non-Bank Online Lenders

*Online Lenders Beware—CashCall Decision  
another Example of True Lender Risks*



Rebecca Borne  
**Senior Policy Counsel**  
Center for Responsible Lending  
[Rebecca.Borne@responsiblelending.org](mailto:Rebecca.Borne@responsiblelending.org)



# True Lender Doctrine

“True lender”:

Long-standing anti-evasion doctrine

Courts look beyond the fine print!

## Question

*Which party has the “predominant economic interest” in the loan?*

# True Lender Doctrine

Answer

*The non-bank predatory lender!*

And therefore, state interest rate limits  
apply.

Generally based on the totality of the  
circumstances

# OCC's Outrageous Proposal to Gut "True Lender" Doctrine

The OCC proposal says the bank is the true lender, so long as either:

- (1) The bank's is named as the lender on the loan document (all about the fine print!),  
or
- (2) The bank funds the loan.

**Advance America #5851**  
**3500 Roxboro Rd. Suite 44**  
**Durham, NC 27704**

Date:

2.23.04

[REDACTED]

Durham NC 27701

Dear

Tanya:

As you know, **Advance America**, Cash Advance Centers of North Carolina, Inc. ("Advance America") markets and services loans for Republic Bank & Trust Company of Kentucky, an FDIC insured Kentucky bank ("Republic Bank").

Please be advised that your account with Republic Bank is now in default. As of this date, the amount past due is \$262.00. Please pay this amount by 3.26.04 2004. If the amount due is not paid by this date, **Advance America, on Republic Bank's behalf**, reserves the right to pursue any and all civil remedies available under applicable law and your consumer loan agreement with Republic Bank. Such civil remedies include, but are not limited to, the possible filing of a civil lawsuit against you.

Please contact the manager at the location mentioned above to make your payment.

If you have any questions, please do not hesitate to contact the location. Thank you for your prompt attention to this matter.

  
(Manager)

# Predatory Lender Elevate's Reaction

“Elevate commends the OCC for providing such clarity and encouraging innovation in lending.”

“Especially now during times of economic difficulty, it is critical that we preserve and promote innovation, partnership, and access to credit for non-prime borrowers.”

# OCC Rules Are Subject to Legal Challenge

## Attorney General Becerra Challenges Rule by Comptroller of the Currency Green-lighting Predatory Lending Schemes

Press Release / Attorney General Becerra Challenges Rule by Comptroller of t...



Wednesday, July 29, 2020





Graciela Aponte-Diaz  
**Director of Federal Campaigns**  
Center for Responsible Lending  
[Graciela.Aponte@responsiblelending.org](mailto:Graciela.Aponte@responsiblelending.org)

What Can I Do???



# Take Action

- Submit a public comment to the OCC by **September 3, 2020**
- Media (social media, op-ed, editorial board memo)
- Collect & share borrower stories
- Contact local representatives (state legislators, AG, bank regulator, Congressional members)

# Resources

- **Center for Responsible Lending**  
[responsiblelending.org/rentabank](http://responsiblelending.org/rentabank)
- **National Consumer Law Center**  
[nclc.org/issues/high-cost-small-loans/rent-a-bank.html](http://nclc.org/issues/high-cost-small-loans/rent-a-bank.html)
- **Stop The Debt Trap**  
[StopTheDebtTrap.org/about/rent-a-bank-schemes](http://StopTheDebtTrap.org/about/rent-a-bank-schemes)



Q&A