



## Consumer Federation of America

March 25, 2024

Louis Mansolillo  
Committee Clerk  
House Corporations Committee  
State of Rhode Island General Assembly  
82 Smith Street  
Providence, Rhode Island 02903

### **Testimony in support of H-7941**

Sent by electronic mail to [housecorporations@rilegislature.gov](mailto:housecorporations@rilegislature.gov)

The Consumer Federation of America (CFA) would like to express its support for H-7941, “An Act Relating to Commercial Law, General Regulatory Provisions, Interest and Usury: Election of State Opt-Out.”

H-7941 would permit Rhode Island to exercise its privilege to opt out of Sections 521 to 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA).

H-7941 will protect Rhode Island consumers from predatory high-cost loans and prevent non-bank lenders from using partnerships with out-of-state banks to evade Rhode Island’s consumer finance laws.

CFA is an association of non-profit consumer organizations established in 1968 to advance the consumer interest through research, advocacy, and education. Today, more than 250 consumer groups participate in the federation and govern it through their representatives on the organization’s Board of Directors. CFA works to advance pro-consumer policies on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. We communicate and work with public officials to promote beneficial policies, oppose harmful ones, and ensure a balanced debate on issues important to consumers.

*Rhode Island has expressed its will to protect consumers from high-cost lending.*

Rhode Island General Law S19-14.2-9 establishes maximum interest rates for small loans. Under the law, lenders cannot charge more than 3 percent per month on a loan of less than \$300, 2.5 percent per month on a loan of more than \$300 and less than or equal to \$800, and 2 percent per month on loans of more than \$800 up to \$5,000.

*Other states have recognized the harms of rent-a-bank lending and issued enforcement actions against non-bank lenders who have used the arrangement to offer credit at rates above state usury limits.*

Other states have used enforcement powers to penalize rent-a-bank relationships. In 2021, the District of Columbia forced OppFi to pay \$1.5 million in refunds to consumers in the District whose lender charged exploitive interest rates through a rent-a-bank partnership. The agreement also required the lender to

waive accrued interest and pay a fine to the District.<sup>1</sup> In 2022, the DC Attorney General announced a similar agreement with Elevate Credit, a non-bank lender partnering with an out-of-state bank to provide credit at rates above 100 percent.<sup>2</sup>

Some states have challenged rent-a-bank partnerships through the true lender doctrine, asserting that it is an evasion for banks to claim the exemption because the “true lender” is the non-bank.<sup>3</sup>

*Rent-a-bank arrangements are enabling high-cost lenders to evade Rhode Island law.*

The Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) allows state-chartered banks to export the interest rate limits of their home states.

Through DIDMCA, out-of-state banks can claim to be exempt from consumer credit laws on interest and usury established by Rhode Island’s General Assembly. In Rhode Island, this has led to “rent-a-bank” partnerships between high-cost non-bank lenders and out-of-state partner banks. Under “rent-a-bank” arrangements, non-banks partner with banks from states with interest rate rules that favor their interests. The bank uses the privilege of its charter to sidestep state laws. Naturally, almost all partnerships involve banks from only a handful of states with the most permissive laws. Not surprisingly, because these partnerships force the non-banks to share some of the revenue with their bank partners, rent-a-bank arrangements do not occur in states without limited or no ceilings on interest rates.

In a rent-a-bank partnership, the non-bank performs most of the lending steps and holds the predominant economic interest in the loan itself. For example, in rent-a-bank arrangements, the bank generally only performs two functions: it provides the initial source of funds and disburses funds to the consumer.

By contrast, the non-bank lender does everything else. Non-bank lenders advertise to consumers, pay for marketing, accept the loan application, and service the loan after origination. The consumer may never know that a bank has been involved in the transaction. Typically, the bank’s involvement lasts for only a handful of days. After as little as 48 hours, the bank sells the loan (or a high percentage) back to the non-bank. For its involvement, the bank receives a fee.

In Rhode Island, at least four non-bank lenders rely on “rent-a-bank” partnerships to make high-cost loans:

- Opportunity Finance (doing business as OppLoans by OppFI) makes loans with interest rates between 160 and 179 percent.<sup>4</sup> OppFi has rent-a-bank arrangements with FinWise Bank (Sandy, Utah), First Electronic Bank (Salt Lake City, Utah), and Capital Community Bank (Provo, Utah).
- Duvera Billing Services (doing business as EasyPay Finance) offers point-of-sale financing at rates of as high as 189 percent. EasyPay Finance partners with Transportation Alliance Bank (Ogden, Utah), also known as TAB Bank.

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<sup>1</sup> Office of the Attorney General for the District of Columbia. “AG Racine Announces Over \$2 Million Settlement with Predatory Online Lender Will Compensate Thousands of District Consumers,” November 30, 2021. <https://oag.dc.gov/release/ag-racine-announces-over-2-million-settlement>.

<sup>2</sup> Office of the Attorney General for the District of Columbia. “AG Racine Announces Nearly \$4 Million Settlement with Predatory Online Lender That Will Compensate Thousands of District Consumers,” February 8, 2022. <https://oag.dc.gov/release/ag-racine-announces-nearly-4-million-settlement>.

<sup>3</sup> Brennan, Catherine M., and Latif Zaman. “True Lender Developments: Litigation and State Regulatory Actions.” *The Business Lawyer* 74, no. 2 (2019): 545–52.

<sup>4</sup> <https://www.opploans.com/rates-and-terms/rhode-island/>

- LoanMart makes loans of up to 179 percent through a partnership with Utah-based Community Capital Bank.
- Enova (doing business as NetCredit) makes loans of up to 100 percent through a partnership with Kentucky-based Republic Bank & Trust Company (Louisville, Kentucky) and TAB Bank.

Because of the DIDMCA, non-bank lenders can use these agreements to offer loans at rates that would not otherwise be permitted in Rhode Island. The result is lending at rates far in excess of Rhode Island's maximum permissible interest.

*Opting out will protect consumers from high-cost loans, leading to substantial savings in the cost of borrowing.*

Instead, H-7941 would reinstate Rhode Island's laws on usury and interest and prevent Rhode Island consumers from receiving loans at unreasonable interest rates.

Consider the difference between the maximum rates allowed by state law and those offered through rent-a-bank arrangements.

- The cost of financing is \$9 for a \$300 loan to be paid in a single payment in 1 month at an APR of 36 percent. However, the borrower's interest expense surges to \$44.75 at 179 percent.
- The cost of financing a \$1,000 loan payable in twelve monthly installments at 24 percent is \$134.72. For a \$1,000 loan of the same term but at 179 percent, the financing cost is \$1,205.90.
- The total financing cost for a \$5,000 loan, payable in 12 monthly installments at 24 percent APR, is \$673.58. For a \$5,000 loan of the same term but at a 179 percent interest rate, the total cost of financing is \$6,029.50.

The sizable differences in borrowing costs show the impact H-7941 would have on financially vulnerable households in Rhode Island. Moreover, because higher-cost debt is more likely to catch consumers in debt traps, where the cost of repaying debt becomes insurmountable, H-7941 will prevent some consumers from experiencing severe financial hardship.

*Rhode Island can pass H-7941 to protect consumers from high-cost loans. Doing so will put Rhode Island banks and credit unions on a competitive playing field with out-of-state institutions.*

Because Rhode Island already applies these laws to consumer credit provided by non-banks and to in-state depositories, H-7941 creates regulatory parity across different types of lenders and prevents regulatory arbitrages.

H-7941 will support Rhode Island's banks and credit unions. By definition, "rent-a-bank" partnerships involve out-of-state institutions that trade on their home states' less restrictive regulatory regimes to gain an advantage over banks in states with stronger consumer protections. The bill reverses the current arrangement that allows non-bank lenders to charge higher interest rates if they work with out-of-state banks than if those lenders had partnered with a Rhode Island bank or credit union. As a result, some of the demand for consumer credit previously met by out-of-state partnerships will return to local Rhode Island banks and credit unions but under terms that comply with Rhode Island's laws.

### *Conclusion*

We support H-7941 to amend Chapter 6-26 of Rhode Island's General Laws on Interest and Usury. Rhode Island's existing laws on interest and usury provide a defense against predatory lending. Rhode Island's General Assembly must close the regulatory loophole permitted by DIDMCA. Two states have already

chosen to opt out of DIDMCA. Iowa opted out soon after the bill's passage, and Colorado opted out last year.<sup>5</sup> Minnesota legislators introduced bill to opt-out of the DIDMCA loophole in February 2024.<sup>6</sup> CFA hopes Rhode Island will be the next state to do so.

For these reasons, the Consumer Federation of America calls on the Rhode Island General Assembly to pass H-7941.

Please contact me directly if I can answer any questions or provide clarifications.

Sincerely,

A handwritten signature in black ink that reads "Adam M. Rust". The signature is written in a cursive style with a large initial 'A' and 'R'.

Adam Rust  
Director of Financial Services  
Consumer Federation of America

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<sup>5</sup> Rosenblum, Chris Capurso, Jason Cover, Taylor Gess, James Kim, Caleb Rosenberg, Jeremy. "Colorado Passes Legislation Seeking to Stop State-Chartered Banks from Preempting Colorado's Usury Limit." Consumer Financial Services Law Monitor, June 8, 2023. <https://www.consumerfinancialserviceslawmonitor.com/2023/06/colorado-passes-legislation-seeking-to-stop-state-chartered-banks-from-preempting-colorados-usury-limit/>.

<sup>6</sup> Griffith, Jason Cover, James Kim, Caleb Rosenberg, Jeremy Rosenblum, Taylor Gess, Melanie. "Rhode Island and Minnesota Latest States with Bills Opting Out of Federal Banking Law Allowing Interest Rate Exportation." Consumer Financial Services Law Monitor, February 14, 2024. <https://www.consumerfinancialserviceslawmonitor.com/2024/02/rhode-island-and-minnesota-latest-states-with-bills-opting-out-of-federal-banking-law-allowing-interest-rate-exportation/>.