

Who Supports Overturning the OCC's "Fake Lender" Rule?

Across party lines, state attorneys general, banking regulators, credit unions, academic scholars, state legislators, faith leaders, and civil rights, consumer, disability rights, housing, labor, legal services, senior rights, small business, and veterans organizations agree that a bank's mere name on a piece of paper should not allow predatory lenders to hide behind a fake lender in order to evade state usury laws.

Since the American Revolution, states have limited interest rates to stop predatory lending. But predatory lenders are starting to launder their loans through a few rogue banks to **evade laws that make installment loans at rates approaching and exceeding 200% APR illegal in nearly every state.** (Bank loans are generally exempt from state rate caps.) A rule by the Office of the Comptroller of the Currency (OCC), the regulator of the nation's largest banks, effective last December protects these predatory lending "rent-a-bank" schemes and overturns [centuries of caselaw](#) allowing courts to look beyond ruses to the truth.

The House must pass the Congressional Review Act resolution, [SJ.Res.15/ HJ.Res.35](#), [supported by the Biden Administration](#), to overturn the OCC "fake lender" rule. The Resolution was [recently passed](#) by a bipartisan vote in the Senate, with all Democrats and Republican Senators Marco Rubio (FL), Susan Collins (ME), and Cynthia Lummis (WY) voting in favor. If signed into law, it would protect consumers, especially veterans, small business owners, and communities of color, and prevent state usury laws in at least 45 states from becoming a ["dead letter."](#)

A [Bipartisan Coalition of 25 State Attorneys General](#), urged Congress to support the resolution in order to **"safeguard states' fundamental sovereign rights to protect their citizens from financial abuse."**

[Conference of State Bank Supervisors](#) agreed, saying that **"the OCC should not erode state consumer rights and protections**, particularly when it refuses to follow the process mandated by Congress to preempt those protections."

The [National Association of Consumer Credit Administrators](#) stated that the fake lender rule **"...would create new legal support for the "rent-a-bank" arrangements that NACCA member states have repeatedly seen lenders use to attempt to bypass state licensing and usury laws** by arguing that loans are technically closed in the name of a state-chartered bank that is exempt from the applicable state usury laws..." and would **"...thereby allow state regulated consumer lenders to unilaterally opt out of state usury regulation"**

[National Association of Federal Credit Unions](#) said that the fake lender rule **"is enabling high-cost lenders to prey on consumers that are on even more precarious financial footing, which could threaten COVID-19 economic recovery efforts and the good work of consumer-friendly financial institutions like credit unions."**

[Credit Union National Association](#), writing in support of the resolution, said the rule **"appears to be a blatant attempt by an unelected regulatory agency to weaken state laws"** that **"could be exploited to promote 'rent-a-charter' arrangements between payday lenders and national banks."**

[Faith for Just Lending](#), a coalition of faith-based institutions that represents millions of Christians, said **"our churches and charities are actively engaged in efforts to end poverty, alleviate suffering and promote opportunities for all people to flourish. We are deeply concerned about how the OCC's rule will impact the working families and vulnerable communities we serve."**

[Military Officers Association of America](#) urged that “**failure to disapprove this rule could harm MOAA’s members** from NOAA, USPHS, and all reserve components, veterans and retirees, survivors, and their families.”

[Veterans Education Success](#) said they are “**concerned that the final rule hurts all consumers, including veterans, Gold Star families, and unactivated members of the reserves and National Guard** by allowing lenders to charge interest rates of 179% or higher and not being subject to state interest rate caps.”

[413 civil rights, community, consumer, disability rights, faith, housing, labor, legal services, senior rights, small business, and veterans organizations from all 50 states](#), said the rule “**replaces the longstanding “true lender” anti-evasion doctrine with a “fake lender” rule that allows lenders** charging rates of 179% or higher **to evade state and voter-approved interest rate caps** merely by putting a bank’s name on the paperwork.”

[138 scholars from 44 states](#), further explained the rule should be overturned because it “**usurps the critical role of states in limiting the interest charged to their citizens by nonbank lenders**—a role that states have held since the founding of this country.”

36 state chairs of the [National Association of Consumer Advocates](#) explained that “**Congress should send a clear message that the OCC’s dubious effort to block state protections and threaten states’ authority to safeguard their residents’ financial wellbeing is improper.**”

A [lawyer representing small businesses](#) targeted by predatory rent-a-bank loans wrote in comments that the OCC rule blesses an arrangement that “**caused my clients to lose their home and their business.**”

[Small Business Advocacy Organizations](#), representing tens of thousands of affiliated small businesses and the interests of **30 million small businesses**, urged Congress to “**protect small businesses where state governments have acted to protect them from lenders who seek to take advantage of desperate business owners** by evading state interest rate caps.”

Former **Maine Republican State Chairman** and current Maine State [Senator Richard Bennett](#) wrote that the rule questions “**the ability of Maine or any other state to establish consumer protections** such as interest rate caps on small loans.”

The [Community Credit Union](#) in Maine wrote that these predatory lenders “are operating on an uneven playing field, **relying upon the benefits of the OCC pre-emption to circumvent consumer protections** and place borrowers in harms’ way.”

But why must the House act now? [Charleston Gazette-Mail](#), in West Virginia said that Congress must act before “**West Virginians and other Americans are potentially taken advantage of through predatory lending practices** that go beyond what is allowed in a given state.”

Consumers agree—[two thirds of voters](#) across party lines are concerned about the ability of high-cost lenders to evade state interest rate caps.

The House must act now. Support [S.J.Res.15/H.J.Res.35](#) to restore the truth, so that predatory lenders can’t hide behind a fake lender in order to make high-cost, usurious loans that are illegal in nearly every state.