August 27, 2020
Acting Comptroller of the Currency
Brian Brooks
400 7th St SW
Washington, DC 20219


To Comptroller Brian Brooks,

The Alaska Public Interest Research Group (AKPIRG) is writing to voice strong opposition to the OCC’s proposed rule regarding “National Banks and Federal Savings Associations as Lenders.” This proposed rule will cause harm to the communities that we serve.

AKPIRG, established in 1974, advocates on behalf of public and consumer interests. To our knowledge, we are the only non-governmental organization focused on addressing Alaska-specific consumer interest issues.

Alaska, like most other states across the country, has seen a proliferation of high-interest, predatory payday lenders in our communities. According to the Alaska Division of Banking and Securities, the typical APR for a $100 payday loan in our state is approximately 521%, an interest rate that is nearly insurmountable for most borrowers. Inevitably, these borrowers will be trapped in an endless cycle of debt. The financial crisis caused by COVID-19 has further exacerbated these financial struggles, making even day-to-day survival a struggle. AKPIRG has received story after story from Alaskans who are having to choose between their bills and groceries, or are on the verge of houselessness because neither food nor housing are affordable.

A relatively small loan of $100 might not seem like a big deal, but the inordinately high interest rates, in addition to all of the associated costs of poverty (overdraft fees, wage garnishments, negative credit scores, etc.) all add up to billions of dollars annually. According to the Center for Responsible Lending (CRL), payday and car-title loans cost consumers over $8 billion in fees annually\(^1\). However, since some states and government agencies have adopted rate caps of 36% or less, we can see what the counterfactual to predatory lending would be. Fifteen states, along with the District of Columbia and the Dept. of Defense, have adopted these rate caps, and according to the CRL, these states have saved over $5 billion in fees annually.

\(^1\) [https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf](https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf)
Additionally, the negative impacts of the car-title and payday lending industries are not evenly distributed across all communities; these negative impacts disproportionately affect historically marginalized communities in our country. Historical policies such as redlining, discriminatory lending, and many other institutional barriers have already caused an aggregate shift of wealth away from communities of color, but predatory lenders intentionally exacerbate this dynamic. An analysis of Californian payday lenders from their Department of Business Oversight\(^2\) has shown that although comprising a minority in the state, 60% of majority Black and Latinx communities had 6 or more payday lending businesses, while only 28% of white communities had 6 or more payday lenders. These patterns are also reflected in a previous CRL study. Not only are payday lenders disproportionately located within communities of color, many operate online, where their ads specifically geotarget these aforementioned communities.

The OCC’s proposed “National Banks and Federal Savings Associations as Lenders”, although marketed as an attempt to make capital more accessible to low-income borrowers, creates a wide avenue for predatory lenders to evade Alaska’s Small Dollar Loan 36% rate caps through partnering with a bank. In Alaska, OppLoans is registered as a software platform and is using two state-chartered banks, FinWise Bank and Republic Bank and Trust to make Small Dollar Loans at a rate of 100-200% APR, well above Alaska’s cap. Banks have little to do with the loans, which they immediately sell. Bank regulators shut down these schemes in the early 2000s, but two state-chartered banks, FinWise Bank and Republic Bank and Trust, both regulated by the FDIC, are again helping payday lenders evade the law in 28 states & DC.

If the OCC were to bless rent-a-bank schemes, this would not increase access to capital for low-income borrowers, but rather would increase access to predatory credit, which traps these borrowers in an endless cycle of debt. The payday lenders would have another way to actively mislead their borrowers, saying that the “true lender” of their loan is a reputable bank, when the bank is simply an intermediary through which the predatory loan is laundered. Through the “true lender rule,” paydays lenders are able to provide loans with over 100% APR, even though Alaska’s rate cap is 36% APR.

If this rule is allowed to go through, we will see a massive transfer of wealth away from low-income communities (most of which are struggling immensely during the COVID-19 pandemic) to predatory lenders and banking institutions. This will not only bankrupt many communities, negate any borrower protections enacted by state legislatures (and through ballot measures in some cases), but also increase pressure from brick-and-mortar lenders who wish to increase the interest rates allowed in the state. This will ultimately lead to a nationwide race to the bottom and ultimately decrease access to capital, which is why the OCC and FDIC have cracked down on similar “rent-a-bank” schemes in the past\(^3\). There will also be many negative externalities associated with this rule, such as the over-burdening of NGOs and government agencies that serve these exploited communities.

\(^2\) https://www.responsiblelending.org/media/state-research-shows-payday-lending-stores-are-heavily-concentrated-african-american-and

\(^3\) https://www.responsiblelending.org/sites/default/files(nodes/files/research-publication/crl-rentabank-jan2020.pdf
In summation, Comptroller Brooks, rent-a-bank loans, enabled and obfuscated by the “true lender” rule, are uniquely misleading and predatory. This proposed “National Banks and Federal Savings Associations as Lenders” rule completely undermines the ability for states to enact rate caps that would protect borrowers. It is especially unconscionable to be enabling predatory lenders during a pandemic-induced financial crisis, who are taking advantage of borrowers who are desperate to pay their bills. Comptroller Brooks, please withdraw the “National Banks and Federal Savings Associations as Lenders” rule and use the authority vested in your office to protect the American people.

Sincerely,

David Song
Economic Justice Organizer
Alaska Public Interest Research Group and Native Movement

Veri di Suvero
Executive Director
Alaska Public Interest Research Group