

Time Running Out: Congress Should Repeal Rule Protecting Predatory Lenders Harming Small Businesses, Veterans, Consumers

April 23, 2021





Lisa Stifler

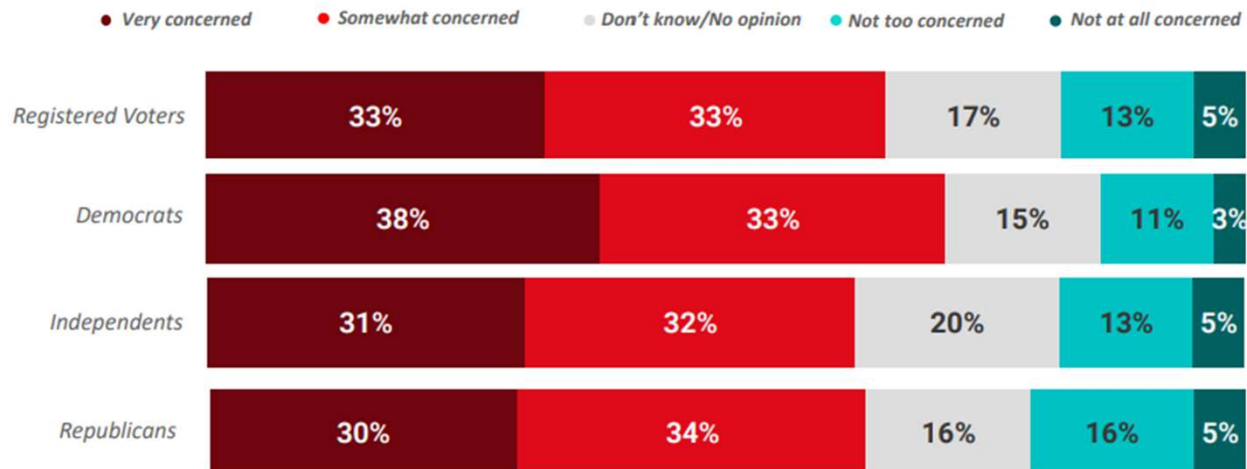
Director of State Policy

Center for Responsible Lending

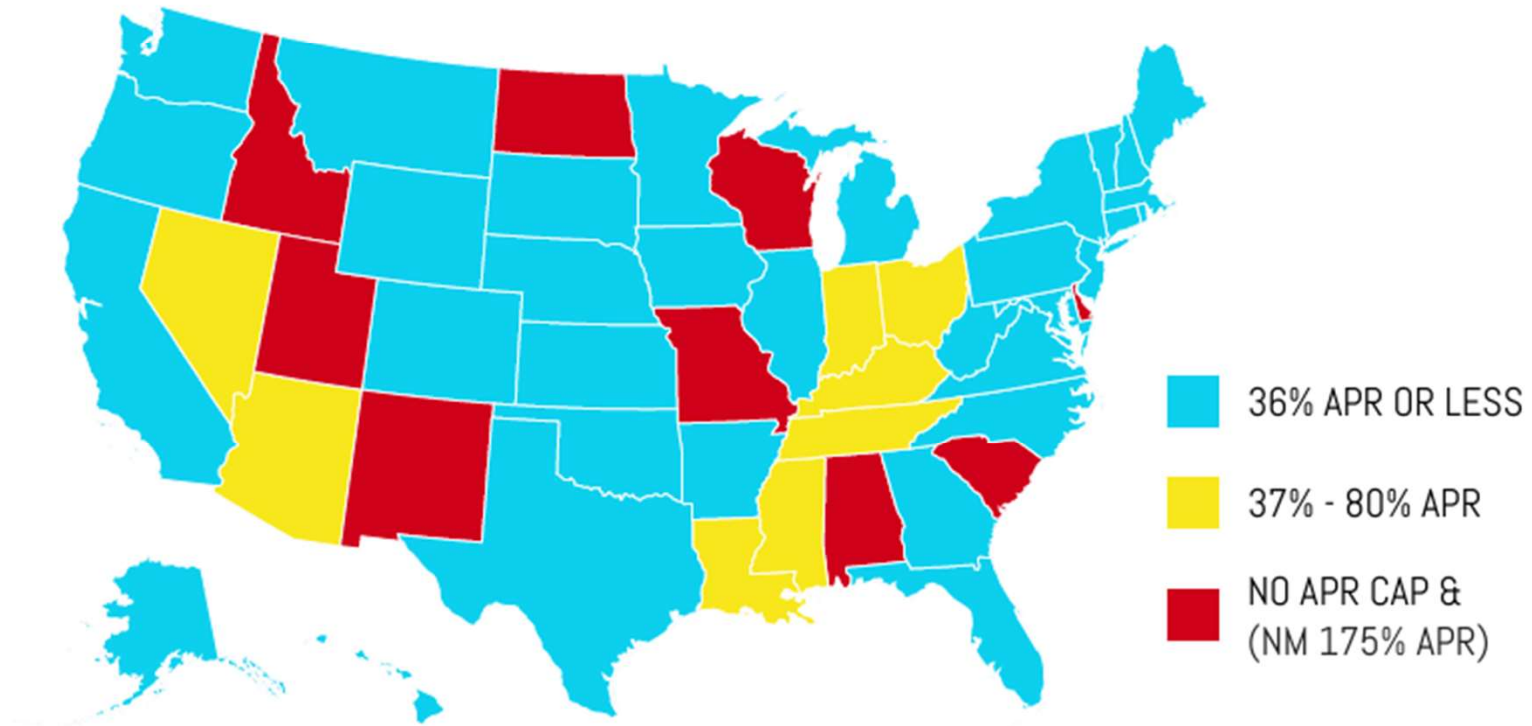
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TWO-THIRDS OF VOTERS (66%) ARE CONCERNED ABOUT THE ABILITY OF HIGH-COST LENDERS TO ARRANGE LOANS THROUGH BANKS AT RATES HIGHER THAN THE STATE LAWS ALLOW

Nearly one in three Republicans, independents and Democrats are very concerned about this practice

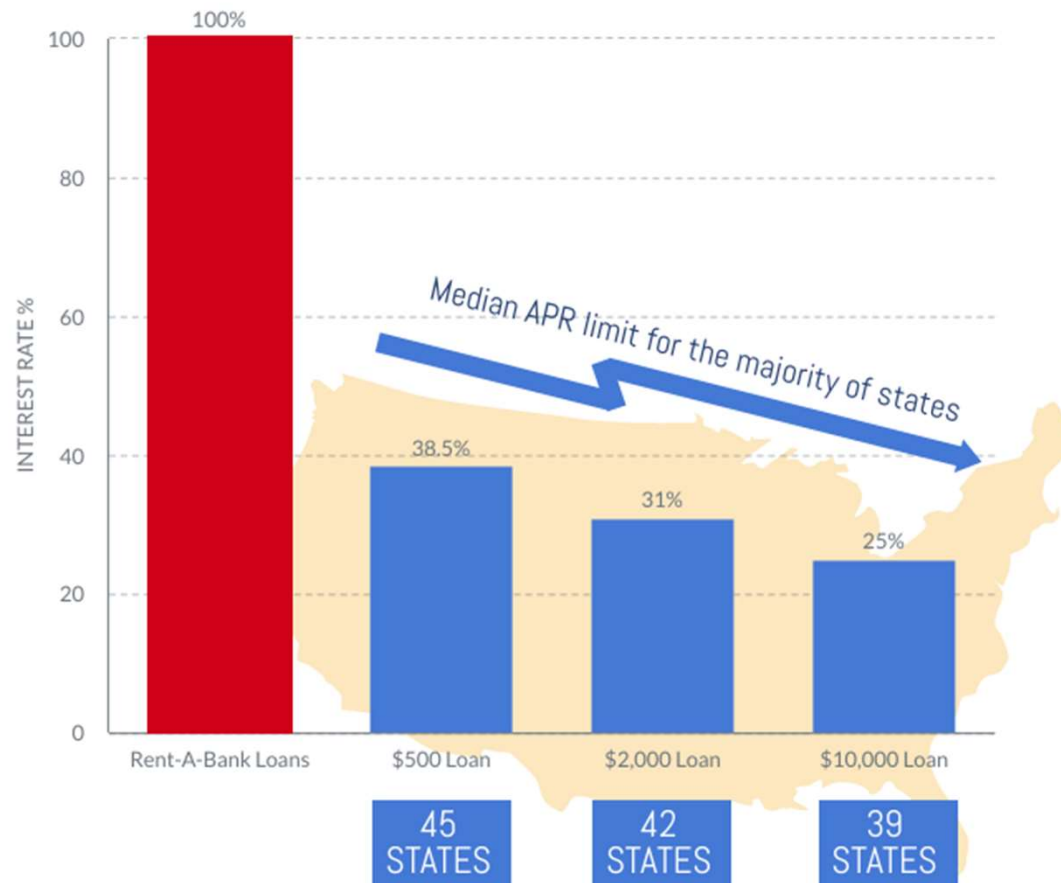


State interest rate limits for \$2000, 2-year loan



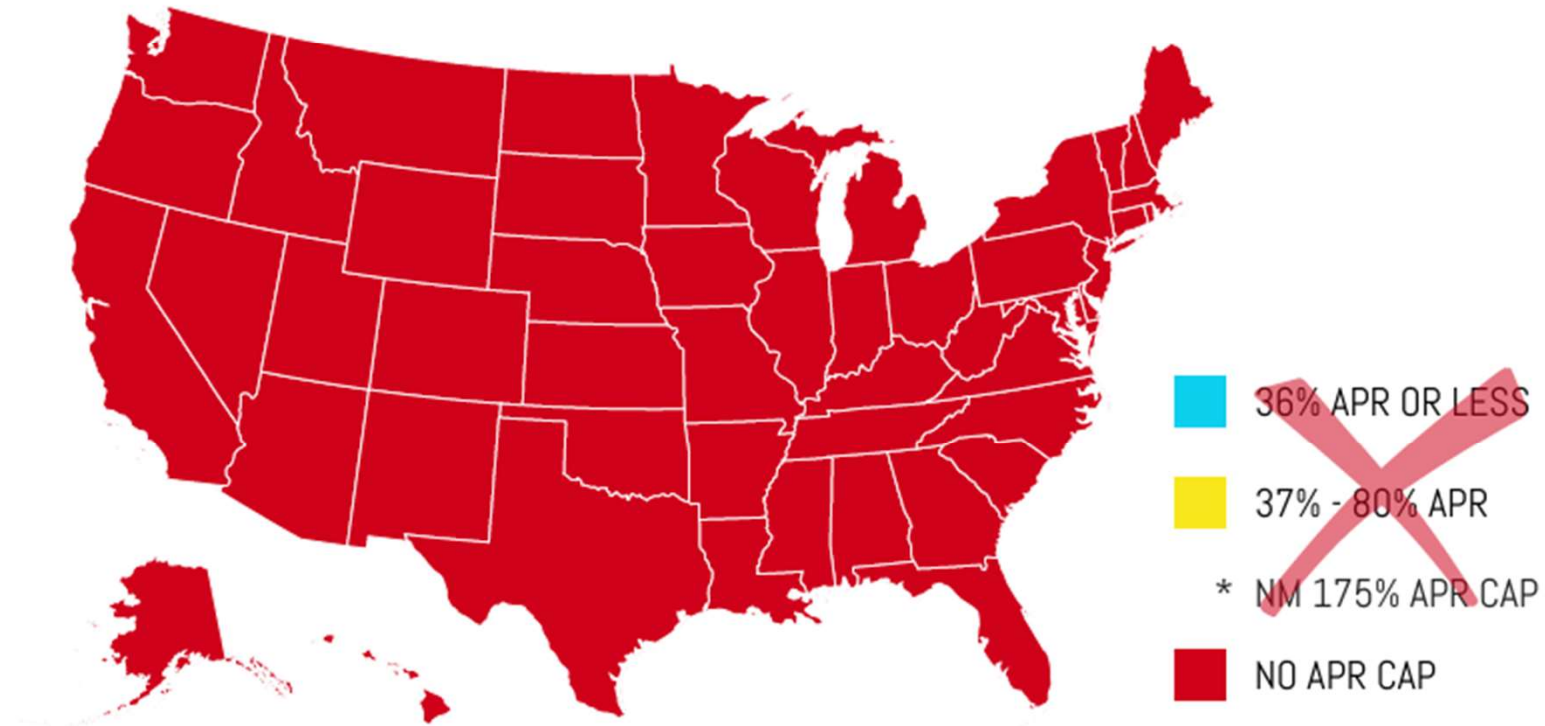
Source: National Consumer Law Center

Median APR limit for Installment loans



Source: National Consumer Law Center

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





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THE
RENT-A-BANK
SCHEME

#RENTABANK

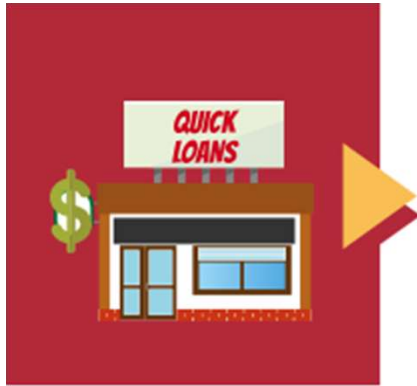
RENT-A-BANK FACTS



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



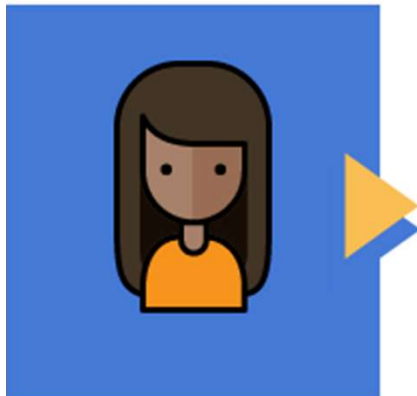
HOW? By laundering loans through an out-of-state bank that is not subject to state interest rate caps



PREDATORY LENDER



BANK

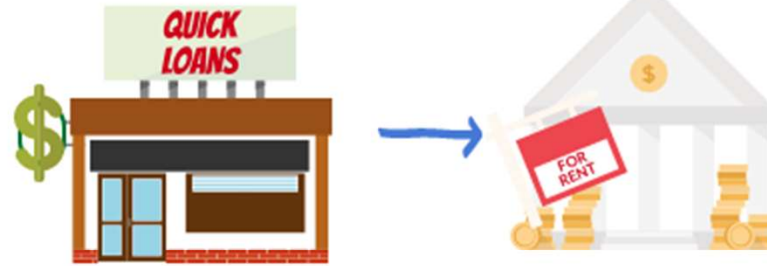


BORROWER



The predatory lender takes the loan application.

2



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

3

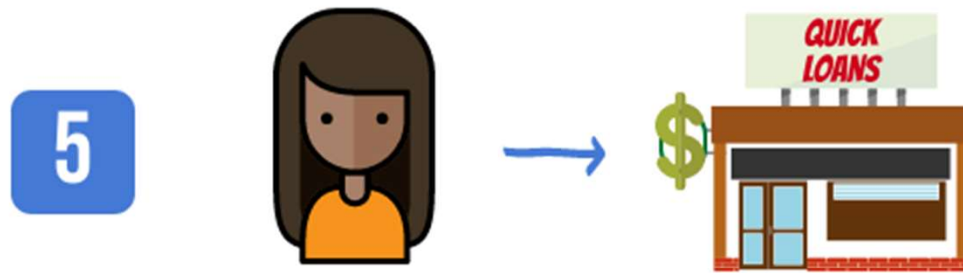


The bank sends the money
to the consumer.

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

Rent-a-bank lender: **RISE**

Loan amount: \$3,000

APR: 148.75%

Loan payments: \$190 bi weekly

Total amount paid = \$7,980

Source: <https://www.risecredit.com/how-online-loans-work#WhatItCosts>

Total amount paid calculation: Center for Responsible Lending



THE RENT-A-BANK SCHEME

#RENTABANK



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

100% APR





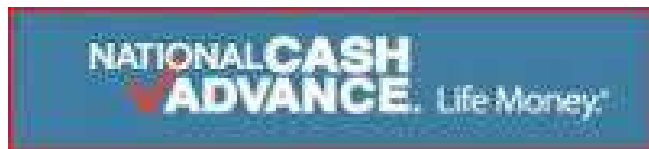
Lauren Saunders

Associate Director

National Consumer Law Center

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



For centuries, courts have looked beyond the form of contracts

Chief Justice Marshall, *Scott v. Lloyd* (1835):

“The ingenuity of lenders has devised many contrivances ... [I]f giving [the claimed] form to the contract will afford a cover which conceals it from judicial investigation, the [usury] statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form, and examining into the real nature of the transaction.”

Courts applied traditional “substance over form” doctrine to find the “true lender”

Example: CashCall v. Morrissey
(S.Ct. App. WV 2014)

- Charged 96% in violation of WV law
- Relied on 1895 case to find loan program was structured “to allow CashCall to hide behind” the bank



Payday Lender

Rent-a-Bank Loan

CashNetUSA®

NetCredit

99.99% APR

SPEEDY CASH

vergecredit

179.99% APR

AVÍO CREDIT

130%
APR

Check n Go®

Xact™

199% APR

CHECK INTO
CASH
PAYDAY ADVANCE CENTERS

CC | CONNECT

225% APR

Other Predatory Consumer Loan Rent-a-Bank Schemes

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**

The logo for CHOICE CASH features the word "CHOICE" in blue and "CASH" in green. Above the "A" in "CASH", there are two green arrows pointing upwards and outwards.The logo for easypay finance features a green circular icon with a white "e" inside, followed by the word "easypay" in a green, lowercase, sans-serif font, and the word "finance" in a smaller, blue, lowercase, sans-serif font below it.The logo for American First Finance features a blue and red geometric icon on the left, followed by the words "American First Finance" in a blue, sans-serif font.

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

True Lender Doctrine

Long-standing anti-evasion doctrine

If the **totality of the circumstances** show that the loan program is **designed to evade** usury laws and the true lender is a state-regulated lender, then state interest rate caps apply

Courts look beyond the fine print!

OCC's Outrageous Rule Guts "True Lender" Doctrine

The OCC's rule says the bank is the true lender, so long as:

The bank's is named as the lender on
the loan document

(all about the fine print!)

Advance America 05851
3500 Roxboro Rd. Suite 44
Durham, NC 27704

Date:

2.23.04

[REDACTED]

Durham NC 27701

Dear Tanya:

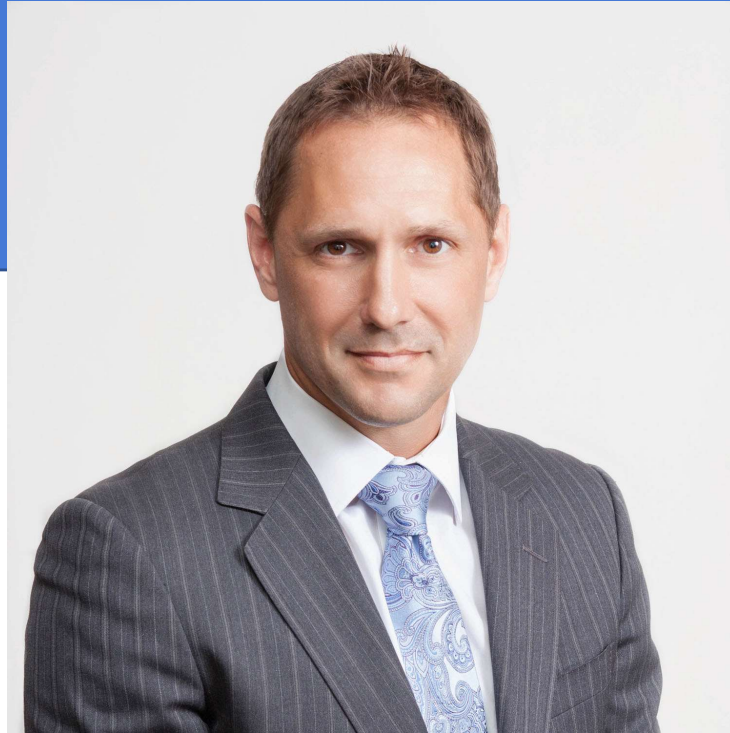
As you know, **Advance America**, Cash Advance Centers of North Carolina, Inc. ("Advance America") markets and services loans for Republic Bank & Trust Company of Kentucky, an FDIC insured Kentucky bank ("Republic Bank").

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)



Shane Heskin

Partner

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Predatory Small Business Rent-a-Bank lending

- **World Business Lenders + OCC-regulated Axos Bank =
75% to 268% APR**
 - **Tens to hundreds of thousands of dollars**
 - **Often secured by owner's home**
- **Targets small businesses**
 - Restaurant supplier in Massachusetts
 - General contractor in Florida
 - Restaurant owner and medical supply company in New York
 - Engineering services In Georgia

Small Business Rent-a-Bank lending



- Borrowers deal only with WBL, not the bank
- Shockingly little underwriting beyond ensuring a seizable asset (i.e., the home)
- Quote a daily rate, obscuring APR: .35% v. 268%
- Unconscionable rate well above state civil and criminal usury limit
- Gigantic prepayment penalties
- **30% of real-estate backed loans default;
10 % result in foreclosure**



VETERANS
EDUCATION SUCCESS

Mike Saunders

Director of Military and Consumer Policy
Veterans Education Success

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The CRA is the Best Option

- **Immediate.** Predatory lenders are using the fake lender rule now. Rulemaking can take a year or longer.
- **Certain.** A repeal could be challenged in court.
- **Preserves OCC resources.** Focus should be on COVID, safety and soundness, consumer protection.
- **A scapel, not a blunt tool.** Only bars a “substantially the same” rule that protects predatory lenders using nominal bank involvement to evade usury laws. And the CRA bars judicial challenges.



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The OCC's authority over banks is clear— this rule was not needed to clarify it

- **No impact on the OCC's supervisory and enforcement authority.**
- **Instead, it enables and protects predatory lending.** The rule gives high-cost, state-regulated, non-bank lenders the “certainty” of evading state law and shuts down the ability of states to stop these evasions.
- **No guardrails.** The rule promotes and defends rent-a-bank schemes without any consumer protections.
- **The rule was rushed.** More than 4,000 comments were submitted and the OCC failed to meaningfully address concerns

Across Party Lines, Attorneys General Agree

- **25 Attorneys General** sent a letter to Congress urging it to “use the Congressional Review Act (CRA)” to rescind the rule in order to “safeguard states’ fundamental sovereign rights to protect their citizens from financial abuse.”
- AGs from **Nebraska, South Dakota, and Colorado** all supported, where voters overwhelmingly supported a 36% interest rate cap
- The AG in **Arkansas** supported as well, where voters approved a 17% rate cap on payday and installment loans in 2010

What Can Be Done?

Congress Can Stop the Evasions of State Interest Rate Limits

- Pass a resolution to overturn the "fake lender" predatory lender rule
- Push the new banking agency heads to stop rent-a-bank lending
- Pass the Veterans and Consumers Fair Credit Act to create a national 36% rate cap covering all lenders

Resources

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



Q&A