WOODSTOCK INSTITUTE

Advancing Economic Justice and Racial Equity

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Submitted via Federal eRulemaking Portal

Federal Reserve Board of Governors
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RE: Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses; Extension of Comment Period (89 FR 76913; Docket ID OCC-2024-0014; OP-1836; RIN 3064-ZA43)

Dear OCC, Federal Reserve Board of Governors, and FDIC:

Woodstock Institute appreciates the opportunity to provide comment to the OCC, the Federal Reserve Board of Governors, and the FDIC ("the agencies") on this Request for Information (RFI) regarding bank-fintech arrangements. Based in Chicago, Woodstock works to advance economic justice and racial equity within financial systems through research and advocacy at the local, state, and national levels. The topic of this RFI is of particular importance here in Illinois; in 2021, Gov. Pritzker signed into law the Predatory Loan Prevention Act (PLPA), our state's landmark consumer protection law setting a 36% APR cap on consumer loans in our state.

First, Woodstock appreciates and is in full agreement with the Agencies' stated support of responsible innovation and bank-fintech arrangements that are safe and maintain consumer protections. Indeed, our coalition of supporters that have helped pass and protect the PLPA

includes industry actors like the American Fintech Council (AFC).[1] A commitment to a 36% APR cap is a condition of membership for AFC, and their members include banks and fintechs that are active in bank-fintech partnerships. When responsible fintechs are considering introducing an innovative new product, they conduct thorough surveys of state lending and consumer protection law to ensure they are operating by the book.

However, there are other actors who pursue bank-fintech arrangements to *evade* state consumer protection laws – consumer advocates refer to these nonbank companies as "rent-a-bank" lenders. This comment letter will focus on our concerns around rent-a-bank lending, particularly its impact on consumer protection in Illinois and beyond.

I. Defining rent-a-bank lending.

Typically, a non-bank lending institution ("rent-a-bank lender") that is prohibited from lending in a certain state, because they are not chartered to lend in that state or the cost of their loans exceed that state's interest rate cap, may circumvent these obstacles by contracting with a bank to "rent" their charter. The rent-a-bank lender handles marketing, customer acquisition, and applications, and the bank funds the loan. After origination, the bank typically sells the loan to the rent-a-bank lender for a fee. The rent-a-bank lender then services the loan or outsources that function to a fourth party. We think of rent-a-bank lending as a subset of bank-fintech arrangements in connection with consumer lending as defined in the RFI.

By partnering with a bank chartered in a state with lax consumer financial protections, the rent-a-bank lender can "export" the light regulatory environment from the state where the bank is chartered to a state with more restrictive regulatory requirements. Put simply, a state with little interest in consumer financial protection can override another state's decision to enforce consumer financial protection. As such, rent-a-bank arrangements are primed for predatory, high-cost lenders to take advantage of consumers in states that have laws to protect them from such predation.[2]

II. Illinois's rate cap law includes strong anti-evasion language.

While many states have set rate caps for various consumer loan products, Illinois's PLPA goes a step further. In anticipation of rent-a-bank schemes, the law was drafted to ban attempts to evade the rate cap. In relevant part, the anti-evasion section of the law reads:

> "No person or entity may engage in any device, subterfuge, or pretense to evade the requirements of this Act, including, but not limited to […] making, offering, assisting, or arranging a debtor to obtain a loan with a greater rate or interest, consideration, or charge than is permitted by this Act through any method including mail, telephone, internet, or any

[1] In the spirit of transparency, Woodstock Institute sits on AFC's Consumer Advisory Board. This comment letter represents Woodstock Institute's positions and concerns independent of our relationship with AFC.
[2] *See also* National Consumer Law Center, "High-Cost Rent-a-Bank Loan Watch List," updated Sept. 26, 2024.

electronic means regardless of whether the person or entity has a physical location in the State." (815 ILCS 123/15-5-15)[3]

To operationalize this anti-evasion section, for loans exceeding the rate cap, a few tests are applied to determine whether an entity is considered a lender subject to the law. These tests are applied regardless of whether the entity claims to be acting only as an agent for an exempt entity (such as an out-of-state bank). The tests determine that an entity is a lender in the following circumstances, among others:

> "(1) the person or entity holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan; or
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> (2) the person or entity markets, brokers, arranges, or facilitates the loan and holds the right, requirement, or first right of refusal to purchase loans, receivables, or interests in the loans; or
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> (3) the totality of the circumstances indicate that the person or entity is the lender and the transaction is structured to evade the requirements of this Act. Circumstances that weigh in favor of a person or entity being a lender include, without limitation, where the person or entity:
>
> (i) indemnifies, insures, or protects an exempt person or entity for any costs or risks related to the loan;
>
> (ii) predominantly designs, controls, or operates the loan program; or
>
> (iii) purports to act as an agent, service provider, or in another capacity for an exempt entity while acting directly as a lender in other states." (815 ILCS 123/15-5-15)

By only applying the predominant economic interest test and others to loans exceeding the rate cap, the law acknowledges that bank-fintech arrangements can be conducted responsibly in compliance with the law, but that those seeking to evade consumer protections are harmful. Even still, Woodstock has found evidence that at least one rent-a-bank lender is making loans exceeding the rate cap, in flagrant violation of the law.

III. Regulatory action is needed to stop nefarious rent-a-bank lending and foster responsible innovation.

Our coalition of PLPA supporters includes for-profit lenders because they recognize that the law levels the playing field. Responsible, affordable lenders simply cannot compete in the marketplace when predatory lenders charge exorbitant rates and use their profits on marketing, storefronts, and customer acquisition. The same is true for bank-fintech arrangements. How can

[3] Full text of the Predatory Loan Prevention Act is available online via the Illinois General Assembly at https://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=4088&ChapterID=67.

responsible bank-fintech partnerships thrive, innovate, and compete when rent-a-bank lenders are evading consumer protection laws and preying on consumers?

In recent years, advocates have raised concerns around rent-a-bank lending in the regulatory context, particularly under the Community Reinvestment Act (CRA).[4] In 2022, 40 groups submitted comments to the FDIC in connection with the CRA exam for Utah-based TAB Bank for allowing EasyPay Finance to use its charter to make loans with rates as high as 189.99% in states where such rates are illegal.[5] Rent-a-bank lending is directly contrary to the spirit and letter of the CRA as it further victimizes already vulnerable low-income communities. It does not provide positive reinvestment in those communities, nor does it serve their financial service needs. The FDIC gave TAB Bank a rating of "Needs to Improve" on that CRA exam, based on the behavior of one of its fintech lending partners. Although FDIC did not specify which partner or what the practice was beyond "an illegal credit practice" under Unfair, Deceptive or Abusive Acts or Practices (UDAAP), this was widely interpreted to refer to TAB's relationship with EasyPay.[6] Advocates, including Woodstock Institute, greatly appreciated this action from the FDIC, and we hope to see the regulators take harmful rent-a-bank practices into consideration on future CRA exams as well.

Furthermore, we urge the agencies to take more direct action to protect consumers from rent-a-bank lenders that try to evade duly enacted consumer protection laws. The agencies should issue official guidance stating that allowing a nonbank fintech to use a bank's charter to evade state consumer protection laws by originating predatory loans represents significant reputation and third-party risks and violates consumer compliance mandates. The agencies should also work in concert with other regulatory bodies on this issue, including the Consumer Financial Protection Bureau (CFPB), state attorneys general, and the Conference of State Bank Supervisors. For instance, we believe that applying UDAAP authority even further would be appropriate in this context: evading consumer protection laws is unfair to consumers as well as from an anti-competition standpoint, and nonbank rent-a-bank lenders are deceiving consumers and state regulators about the banks' role in the process. The recent settlement between Washington, DC and OppFi illustrates how rent-a-bank lending exemplifies unfair and deceptive business practices.[7] Likewise, the DC OppFi settlement and

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[4] *See* Woodstock Institute, press release, "Advocates Call for FDIC, under New Leadership, to Stop Banks from Fronting for Predatory Lenders," Feb. 4, 2022; Accountable.US, Consumer Action, Consumer Reports, Americans for Financial Reform Education Fund, Center for Responsible Lending, Consumer Federation of America, The Leadership Conference on Civil & Human Rights, NAACP, National Association of Consumer Advocates, National Community Reinvestment Coalition, National Consumer Law Center, Public Citizen, US PIRG, Unidos US, and Woodstock Institute, coalition letter to FDIC, CFPB, and OCC, Feb. 4, 2022.

[5] National Community Reinvestment Coalition, "40 Groups Urge FDIC to Downgrade TAB Bank," June 30, 2022.

[6] Penny Crosman, *American Banker*, "Fintech partner's predatory puppy loans get TAB Bank low CRA rating," Feb. 7, 2023.

[7] Office of the Attorney General for the District of Columbia, press release, "AG Racine Announces Over $2 Million Settlement with Predatory Online Lender Will Compensate Thousands of District Consumers," Nov. 31, 2021.

the TAB Bank CRA exam both illustrate how rent-a-bank arrangements expose banks to significant reputational risk and are inconsistent with safe and sound business practices.

As responsible bank-fintech partnerships seek to innovate to serve consumers better and state policymakers enact laws to protect consumers from predatory financial practices, we must ensure that their efforts are not undermined by bad actors trying to evade state laws and charge consumers exorbitant interest rates. We appreciate the agencies' efforts to better understand the landscape of bank-fintech arrangements through this RFI, and we urge you to exercise all tools available under your regulatory authority to protect consumers and our financial system from predatory practices.

Thank you for the opportunity to comment on this important issue. Should you have any questions, please contact Senior Regulator Policy Associate Jane Doyle (jdoyle@woodstockinst.org).