KATIE PORTER
45TH DISTRICT, CALIFORNIA

FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON
INVESTOR PROTECTION, ENTREPRENEURSHIP, AND
CAPITAL MARKETS
SUBCOMMITTEE ON
CONSUMER PROTECTION AND FINANCIAL SERVICES

Congress of the United States
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December 20, 2019

The Honorable Jelena McWilliams
Chairwoman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Chairwoman McWilliams,

I write to continue our conversation begun earlier this month and ask that the Federal Deposit Insurance Corporation (FDIC) heighten its vigilance in rooting out high-cost lenders that use state-chartered banks to evade state usury laws.

As we discussed, I am deeply concerned that predatory lenders will see the FDIC's proposed rules relating to the Second Circuit's decision in *Madden v. Midland Funding* as a green light for their announced plans to evade California's usury laws.

The FDIC's proposal would codify the FDIC's position, also adopted by the Office of the Comptroller of the Currency, that *Madden* was wrongly decided and that in fact a state-regulated assignee of a bank loan *can* charge the same interest rate that the bank is authorized to charge under federal law. As you know, while many states have chosen to protect consumers by establishing maximum interest rates for loans, there is no federal usury cap.

The FDIC is within its legal right to express disagreement with the court's holding in *Madden.* While we may not agree as to whether the court ruled appropriately, that difference of opinion neither bears upon the issue at hand nor diminishes our joint commitment to ensuring that regulated institutions do not game consumer protections.

Some high-cost lenders have announced plans to target my home state of California, where the state legislature has capped the interest rates lenders may charge customers. In particular: Curo (Speedy Cash), Enova (NewCredit), and Elevate (Rise and Elastic) have told their investors that they intend to take advantage of what they view as open season on California consumers.[1] They plan to enter into rent-a-bank arrangements so that they can continue making installment loans with interest rates of 100 to 200 percent, even after California Assembly Bill 539 (AB 539)[2] goes into effect on January 1st. AB 539 establishes an interest rate cap of 36 percent plus the federal funds rate (currently about 2.5 percent) for loans with principal amounts of between $2,500 and $10,000. The California legislature passed the bill on an overwhelmingly bipartisan basis.

In addition, another lender, OppLoans, is already using the rent-a-bank model to evade California law. OppLoans makes 160 percent APR loans in California, both directly under a state license and through FDIC-supervised FinWise Bank.[3] It appears that OppLoans lends under the state license for loans above $2,500 (where there is no rate cap until AB 539 takes effect) and through a rent-a-bank arrangement with FinWise Bank for loans under $2,500, where California law caps rates well below the triple digit percentages charged by these predatory lenders. FinWise Bank is also being used by OppLoans and Elevate's Rise in other states that have rate caps but not in states that allow 160% APR loans.[4]

I have included copies of transcripts from Curo, Elevate, and Enova earnings calls, during which company leadership explicitly discussed their plans to enter into rent-a-bank arrangements in order to evade AB 539. My request is that you examine these announced plans and keep them close at hand in the coming months. Please demonstrate your continued commitment to upholding the law and ensuring that predatory lenders do not misinterpret the FDIC's proposal.

I appreciate your attention to this matter and hope to schedule another in-person conversation after you have had an opportunity to review these concerns. I hope to receive your response by January 6th.

Very Truly Yours,

Congresswoman Katie Porter

[1] "Payday Lenders Plan to Evade California's New Interest Rate Cap Law Through Rent-a-Bank Schemes," *National Consumer Law Center* (October 2019) at: https://www.nclc.org/issues/ib-rent-a-bank.html
[2] Katy Grimes, "Bill to Limit 'Predatory Lending' Excludes Three Lenders Who Stand to Benefit From Legislation," *California Globe* (October 2019) at: https://californiaglobe.com/section-2/bill-to-limit-predatory-lending-excludes-three-lenders-who-stand-to-benefit-from-legislation/
[3] "Rates, Terms, and Licenses," *Opportunity Financial LLC* at: https://www.opploans.com/rates-and-terms/
[4] Elevate is also using another FDIC-supervised bank, FinWise Bank, to enable Elastic lines of credit up to 109% effective APR in states that do not allow that rate. "FDIC & OCC Are Wrong to Support Predatory Small Business Lender," *National Consumer Law Center* (October, 2019) at: https://www.nclc.org/media-center/groups-fdic-occ-are-wrong-to-support-predatory-small-business-lender.html. And yet another FDIC-supervised bank, Bank of Lake Mills, appears to be helping World Business Lenders charge usurious rates such as 120% on a $550,000 loan. "Fact Sheet: Stop Payday Lenders Rent-a-Bank Schemes," *National Consumer Law Center* (November 2019) at: http://bit.ly/StopRent-a-BankSchemes.

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Payday Lenders Plan to Evade California's New Interest Rate Cap Law Through Rent-A-Bank Schemes

October 2019

On October 11, 2019, California Governor Gavin Newsom signed into law AB 539, sponsored by Assembly member Monique Limon, which targets predatory long-term payday loans and limits the interest rates on loans of $2500 to $10,000. The following are quotes from the transcripts of August 2019 earnings calls by three publicly-traded payday lenders that offer high-cost installment loans in California at rates of 135% to 199% describing their plans to enter into rent-a-bank schemes to evade the new law. Banks are generally not subject to state interest rate limits, and in other states some payday lenders have used banks to originate loans that are them quickly assigned back to the payday lender, claiming that this arrangement permits high-rate loans. Litigation is pending challenging whether the banks are in fact the true lender and whether banks can assign their immunity from state laws to a state-regulated lender.

CURO Group Holdings Corp. (Speedy Cash), earnings call August 2, 2019, from SeekingAlpha.com:

Don Gayhardt: "In terms of regulation at the state level in California, we expect a new law to pass in September, capping the APR on [$2500] installment loans at about 38.5%, making our current installment products no longer viable... We also continue to work on a number of new product and partnership opportunities that could give us the ability to serve our California customers with larger, longer term loan products." (p.3)

John Rowan: "And then what's the status with Meta?"

Roger Dean: "So we continue to talk to Meta and we continue to talk to other banks about partnership opportunities... I think we feel very good about being able to find products and partnerships that will serve our, the customer base in California that wants this longer, longer term, larger installment loan or possibly as a line of credit product... And I think from a margin standpoint, it's, the bank partnerships are great. You have to sacrifice a little bit of the economics there because you have a, you have a bank partner there that's going to need a good rev share... And I think, the big as you, a lot of that is dependent on filling the demand in California with bank partnership opportunities and we feel like that, that we've got a good, a really good opportunity to do that." (pp. 7-8)

Elevate Credit Inc. (Rise and Elastic), earnings call July 29, 2019, from SeekingAlpha.com:

Jason Harvison: "As you know, in California a piece of legislation named AB539 continues to move ahead. In summary, the proposal would limit the amount of interest that can be charged loans from $2,500 to $10,000. So what does this mean for Elevate? As you know, we believe our product diversity serves as a competitive advantage and similar to our recent experience in Ohio, we expect to be able to continue to serve California consumers via bank sponsors that are not subject to the same proposed state level rate limitations." (p. 5)

John Hecht: "And then real quickly, in California, if you shifted 100% of the volume to your bank partner there, would it have an yields or anything? Or is it really just a change of the distribution mechanism?"

Jason Harvison: "Yes. John, for Elastic, we don't have any exposure there because that's already originated by Republic Bank. For Rise, that's all done through a state license approach. But because we have multiple bank partners, we are confident that we can make that transition. We did this in Ohio last year. It was very seamless. And the effective yield that we are looking at on the product would be very similar to what we have on the market today. So we think the impact would be minimal and this transition would be pretty seamless." (p. 6)

Chris Lutes: "Realistically, we will probably use a new bank to originate as we transition into California for Rise. It will be bank probably different than FinWise. So that will add to the diversification." (p. 6)

Giuliano Bologna: "And then thinking about the California side, granted that's still early. But are there other opportunities to expand that and even potentially go below $2,500 with a bank partner?"

Chris Lutes: "Yes. I mean that's one of the nice things. Banks don't have the same limitations as a state license vendor would. So whereas the minimum loan size in California today is $2,600, a bank would have the ability to a loan down to $500 and hopefully have a wider range of consumers that they would serve." (p. 10)

Enova International Inc. (NetCredit, CashNetUSA), earnings call July 26, 2019, from SeekingAlpha.com:

David Fisher: "One potential change is a California bill that will cap interest rate at roughly 38% on personal loans between $2,500 and $10,000. This bill has passed the assembly and the first 2 of 3 committees in the Senate. We expect to be heard in the third committee during the last week of August and the last day for the Senate to act on this bill is September 13. We currently offer 3 products in California, a single-pay product, a subprime installment product and a near-prime installment product. If the bill passes in its current form, we will need to wind down our subprime installment product in California. But this product was only about 2.5% of originations last quarter. The bill will not impact our single-pay product, and we will likely convert our near-prime product [NetCredit] to a bank-partner program, which will allow us to continue to operate in California at similar rates to what we charge today." (p. 3)

David Fisher: "There's no reason why we wouldn't be able to replace our California business with a bank program. So that's really the answer for us in California, plus we can keep our single-pay product. The current bill doesn't impact the single-pay product at all. So we actually think if you look kind of beyond 2020, we don't think this is the right answer, but we actually think we can come out ahead with the kind of, vacancy -- with all the subprime installment lenders acting in the State. And probably, more importantly, the subprime title lenders exiting the State, it creates a huge opportunity for our near-prime product in California, and obtaining these bank programs aren't easy. There's not going to be nearly as much competition there, kind of, financially, it could be a win. From a regulatory standpoint, not a win, but financially, actually could be a win for us if this California bill does indeed pass."

John Rowan: "Okay. And just last question here. Do you have a bank partner in place already? Just remind me, that will allow you to make higher rate loans that is, kind of, pass the product through their regulator?"

David Fisher: "We do have a bank program. We do have a bank partner that does higher interest rate loans, and kind of, we'll have to do a couple of quick changes to our program with them to offer that in California, but we don't see any reason why we couldn't do that." (p. 9)

David Fisher: "In terms of the conversion to a bank program, we give up a couple about percentages -- a couple percent of margin to the bank partner, but other than that it's largely like-for-like. And again, I think given the increased opportunity in California from all the subprime instalment lenders that will leave the State, the storefront guys that won't be able to compete. And again, the subprime entitled lenders who are really impacted by this bill, such a large opportunity for NetCredit. Happy to -- almost happy to pay those couple of points of margin to capture that opportunity." (p. 10)