

From: Robert Rutkowski [REDACTED]
Sent: Tuesday, October 19, 2021 1:58 PM
To: jerome.powell@frb.gov; Public Information; Comments; publicaffairs3@occ.treas.gov
Cc: Keith Abouchar
Subject: [EXTERNAL MESSAGE] Bank Regulators' Proposal on Third-Party Relationships Silent on Predatory Rent-a-bank Lending, Posing Risks for Banks and Consumers

Jerome Powell, Chair
Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue N.W.
Washington, DC 20551
jerome.powell@frb.gov

Jelena McWilliams, Chair
Federal Deposit Insurance Corporation
Public Information Center
3501 North Fairfax Drive
Room E-1021
Arlington, VA 22226
publicinfo@fdic.gov, comments@fdic.gov

Michael J. Hsu, Acting Comptroller
Office of the Comptroller of the Currency (OCC) Legislative and Regulatory Activities Division OCC Headquarters
400 7th Street, SW
Washington, D.C. 20219
(202) 649-6800
E-mail: publicaffairs3@occ.treas.gov

Re: Bank Regulators' Proposal on Third-Party Relationships Silent on Predatory Rent-a-bank Lending, Posing Risks for Banks and Consumers

Dear Gentlemen and Chair:

Today, the Center for Responsible Lending, the National Consumer Law Center, on behalf of its low-income clients, and the National Fair Housing Alliance released their comment letter to the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and Federal Reserve Board (FRB) on the regulators' "Proposed Interagency Guidance on Third-Party Relationships: Risk Management." The comments noted that the guidance is silent about rent-a-bank lending, whereby a bank rents out its charter to a financial company that is not a bank "to enable attempted avoidance of state consumer protection laws, in particular interest rate and fee caps, or state oversight through licensing regimes." The groups criticized this glaring omission given the rise of rent-a-bank lending and Congress's recent action in passing bipartisan legislation nixing an OCC rule that encouraged rent-a-bank arrangements.

This guidance was proposed to support banks in reducing risk, but, as written, it could increase risk. If, in its final version, the guidance remains silent on rent-a-bank schemes, it could encourage this predatory practice – which threatens to harm both consumers and banks.

Federal bank regulators should make crystal clear that banks may not facilitate non-bank's end-run around state consumer lending laws. Bank regulators must put an end to ongoing rent-a-bank schemes.

If it remains silent on harmful bank partnerships, this guidance could not only abdicate its responsibility, but also subvert consumer protections at the state and federal levels. This would echo the failures of federal regulators in the runup to the 2008 Financial Crisis which was largely driven by product risks.

The letter states, in part:

There are many legitimate purposes of bank partnerships with third parties, but assisting a third party in the violation or evasion of state laws is not one of them... The core of our concerns with rent-a-bank schemes is that they facilitate predatory, unaffordable credit. Rent-a-bank relationships are especially risky to banks and harmful to consumers when they enable lending above the Military Lending Act's (MLA) fee-inclusive 36% interest rate cap (MLA 36% APR). Lending above those rates violates the laws of a significant number of states and poses a number of other risks, including greater risk of (i) violating the MLA itself; (ii) predatory lending, consequent harms, and violation of other prohibitions against unfair, deceptive or abusive practices, including debt collection abuses associated with unaffordable loans; (iii) fair lending issues; (iv) litigation risk and risk that the scheme may be found unlawful, with the bank potentially responsible for conspiring to assist an attempted evasion of usury laws, given the greater disparity between permissible state interest rate limits and the loans made through the scheme; and (v) reputation risk when a bank attempts to enable a third party to offer a product it would not offer directly to its own customers and that is illegal across the country, often using underwriting guidelines it would not approve for its own customers.

The letter, more broadly, highlights the harms and risks that high-cost lending through rent-a-bank schemes cause consumers and urges the FDIC to stop the schemes that six FDIC-supervised banks are currently engaged in on the FDIC's watch.

Full letter:

<https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/comment-crl-nclc-nfha-proposed-joint-third-party-guidance-oct2021.pdf>

Yours sincerely,

Robert E. Rutkowski

cc:

Legislative Correspondence Team
1705 Longworth House Office Building
Washington DC 20515
Office: (202) 225-4131
Fax: (202) 225-4300
keith.abouchar@mail.house.gov