

**120 Consumer, Civil Rights, Community Groups Oppose HR 4439  
and Sham Rent-a-Bank Payday Lending**

May 21, 2018

Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

Re: HR 4439 (Hollingsworth), Sham Lender Bill – Oppose

Dear Representative,

The 120 undersigned consumer, civil rights, labor, community and legal services organizations strongly oppose HR 4439 (Hollingsworth), the so-called Modernizing Credit Opportunities Act. **The bill would allow payday lenders to use the fine print of loan terms and sham rent-a-bank arrangements to make loans at 100% to 400% APR or higher in states where those rates are illegal.** The bill would undercut the historic power of the states to protect people from dangerous, usurious loans.

Payday lenders have long tried using banks, which can ignore state interest rate limits, as a fig leaf to originate high-cost loans that payday lenders cannot make directly. More than a decade ago, the Office of the Comptroller of the Currency stopped national banks from entering into sham lender schemes, criticizing the “abuse” of renting bank charters to payday lenders who have the “predominant economic interest” in the arrangement.

Yet high-cost lenders have continued rent-a-bank schemes using FDIC-supervised banks:

- [CashCall](#) made loans up to 99% in Maryland and West Virginia using First Bank of Delaware and First Bank & Trust, but courts later shut them down.
- [Elevate](#) makes loans at 100% interest using Republic Bank & Trust in Kentucky, ignoring the voter-approved 36% or lower rate caps in Arkansas, Montana, South Dakota and other states.
- [On Deck Capital](#) makes small business loans with rates that go up to 99.7% APR, originating loans through Celtic Bank in states where it cannot make the loans directly.

Marketplace lenders have also used banks to charge rates up to 36% that are not permitted in many states for large loans of \$30,000 to \$40,000.

Courts have often seen through sham lender schemes. One [court](#) looked beyond CashCall’s “superficial” business model and applied the “predominant interest test” to find that the “purpose of the lending program was to allow CashCall to hide behind the FB & T’s South Dakota charter” to avoid West Virginia’s licensing and interest rate laws. A [federal court in 2018](#), without resolving the merits, noted that WebBank “plays only an ephemeral role” in making loans offered by Avant, which “collects 99% of the profits”; “Avant is for all practical purposes in control of the Avant loans, and it has indemnified WebBank, whose role was short-lived and is now entirely in the past.”

Yet HR 4439 would protect sham lender schemes like these. Payday lenders could ignore state interest rate limits if a bank is named as “the party to which the debt is owed according to the terms of the loan ... regardless of later assignment” to a state-regulated lender and regardless of the true “economic relationship” between the bank and the lender.

State interest rate limits are the simplest and most effective barrier to predatory lending. Federal lending laws and federal bank regulators cannot be counted on as the sole line of defense. The FDIC has not been fully able to stop rent-a-bank schemes, and the OCC recently [repealed its guidance against 200% to 300% APR bank payday loans](#).

Please oppose HR 4439 and defend your state's power to protect its citizens from predatory lending.

Yours very truly,

Action NC  
Alabama Appleseed Center for Law & Justice  
Allied Progress  
Americans for Financial Reform  
Arizona Community Action Association  
Arizona Public Interest Research Group (Arizona PIRG)  
Arkansans Against Abusive Payday Lending  
Baltimore Neighborhoods, Inc  
Bell Policy Center  
California Reinvestment Coalition  
CARECEN-Central American Resource Center  
CASH Campaign of Maryland  
Catalyst Miami  
Center for Economic Integrity  
Center for Financial Social Work  
Center for Global Policy Solutions  
Center for Responsible Lending  
Charlotte Center for Legal Advocacy  
Children First/Communities In Schools of Buncombe County  
Clarifi  
Colorado Center on Law & Policy  
Colorado Public Interest Research Group (CoPIRG)  
Connecticut Legal Services, Inc.  
Consumer Action  
Consumer Advocacy and Protection Society (CAPS)  
Consumer Federation of America  
Consumers Union  
Covenant House  
Dakota Prairie CAA  
Delaware Community Reinvestment Action Council, Inc.  
Demos  
Disability Rights NC  
Eastern Jackson County Justice Coalition  
Empire Justice Center  
Financial Pathways of the Piedmont  
Florida Alliance for Consumer Protection  
Florida Consumer Action Network  
Georgia Watch

Habitat for Humanity of North Carolina  
Heartland Alliance for Human Needs & Human Rights  
Hispanic Baptist Convention of Texas  
Homeowners Against Deficient Dwellings  
HomesteadCS  
Indiana Institute for Working Families  
Interfaith Alliance of Colorado  
Interfaith Center on Corporate Responsibility  
Jacksonville Area Legal Aid, Inc.  
Just Harvest  
Kentucky Equal Justice Center  
La Casa de Don Pedro  
Legal Aid Justice Center  
Legal Aid Society of Milwaukee  
Legal Aid Society of the District of Columbia  
Maine Center for Economic Policy  
Maryland Consumer Rights Coalition  
Mobilization for Justice  
Montana Organizing Project  
Mountain State Justice, Inc.  
NAACP  
NAACP CO MT WY State Conference  
National Advocacy Center of the Sisters of the Good Shepherd  
National Association for Latino Community Asset Builders  
National Association Consumer Advocates  
National Association of Consumer Bankruptcy Attorneys  
National Center for Law and Economic Justice  
National Consumer Law Center (on behalf of its low income clients)  
National Consumers League  
NC Conference of The United Methodist Church  
NC Justice Center  
New Economics for Women  
New Economy Project  
New Jersey Citizen Action  
New Jersey Tenants Organization  
New Mexico Center on Law & Poverty  
New Mexico Fair Lending Coalition  
NJ NAACP  
North Carolina Council of Churches  
North Carolina Justice Center  
North Dakota Economic Security and Prosperity Alliance  
Northern Arizona Council of Governments  
PathWays PA  
PennPIRG  
Pennsylvania Council of Chapters, Military Officers Association of America (MOAA)  
Pennsylvania Council of Churches  
People's Action Institute  
Piedmont Housing Alliance

Prince George's CASH Campaign  
Project IRENE  
Prosperity Works  
Public Citizen  
Public Good (California)  
Public Justice (Washington, DC)  
Public Justice Center (Baltimore, MD)  
Public Law Center (Santa Ana, CA)  
Reinvestment Partners  
SC Appleseed Legal Justice Center  
Sisters of Charity of Nazareth Congregational Leadership  
Sisters of Charity of Nazareth Western Province Leadership  
Sisters of Mercy South Central Community  
Tennessee Citizen Action  
Texas Appleseed  
THE ONE LESS FOUNDATION  
U.S. PIRG  
UnidosUS (formerly NCLR)  
United Way of Southern Cameron County  
University of Wisconsin Law School Consumer Law Clinic  
Virginia Citizens Consumer Council  
Virginia Organizing  
Virginia Poverty Law Center  
Virginians Against Payday Loans (VAPL)  
VOICE OKC  
Wake Forest University Divinity School  
Walsh County Social Services  
West Virginia Association for Justice  
West Virginia Center on Budget and Policy  
West Virginia Council of Churches  
West Virginians for Affordable Health Care  
Woodstock Institute  
WV Citizen Action Group  
WV Consumer Protection Alliance