

**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