

Advocates Praise D.C. Attorney General Suit Against Predatory High-Cost Rent-a-Bank Lender

Elevate charged 99% to 251% APR despite D.C.'s 6% to 24% rate cap

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Washington, D.C. – Consumer advocates praised today's announcement by District of Columbia (DC) Attorney General Karl Racine that he has filed a lawsuit against online lender Elevate for making loans up to 251% in DC and trying to launder its loans through two banks to avoid DC's interest rate caps.

"Since the time of the American Revolution, states have capped interest rates to protect people from predatory lending. Yet predatory lenders are now trying to evade state interest rate limits by laundering their loans through a few rogue out-of-state banks in Utah and Kentucky. DC Attorney General Racine's important lawsuit points out the obvious truth: these predatory high-cost lenders are the true lender and they cannot hide behind a bank to make illegal loans," said **Lauren Saunders, associate director of the National Consumer Law Center.**

Elevate, through its Rise and Elastic brands, charged annual interest rates between 99% and 251% despite DC law capping rates at 6% to 24%. The lawsuit noted that Elevate claims that its loans are "a better, more responsible alternative to more expensive options like overdraft fees, payday loans, late fees and utility reconnection fees," but in fact "overdraft fees pale next to the finance charges on a Rise loan... An average consumer ... would need to incur more than 51 overdraft fees to exceed the finance charges for an average Rise loan."

"Elevate claims that it is a 'fintech,' but the D.C. lawsuit makes clear that technology and 'innovation' can also be used to promote predatory 251% APR loans," **Saunders observed.**

At least 45 states and DC impose interest rate caps on many loans, but banks are generally exempt from state rate caps. In the last couple of years, high-cost lenders have begun trying to take advantage of this exemption by entering into rent-a-bank schemes where they launder their loans through banks and then purchase back the loans or receivables and continue to charge high rates that would be illegal for the non-bank lenders to charge directly. Elevate used FinWise Bank in Utah and Republic Bank & Trust in Kentucky, both regulated by the Federal Deposit Insurance Corp. (FDIC), but the lawsuit alleges that Elevate directs and controls the funding of the loan and reaps most of the profits and thus is subject to DC law.

"Attorney General Racine's lawsuit shows how states can stand up to predatory rent-a-bank lenders. These rent-a-bank lenders pick and choose where they lend, and they tend to stay out of states like New York and Pennsylvania that enforce their laws," **Saunders explained.** Elevate pulled out of D.C. after the District began investigating. "The FDIC has let the banks it supervises launder loans for predatory lenders, so it is up to the states and DC to step up and protect their families from these outrageous and illegal loans at rates of 100% or higher. Today's lawsuit also makes clear that state

attorneys general still can and should act to stop predatory rent-a-bank lending despite the willful inaction by and even encouragement of federal bank regulators,” **Saunders added.**

The FDIC and OCC have proposed rules, which the OCC recently finalized, that would allow an assignee of a bank loan to charge any rate the bank could charge. But the agencies have stated that the rules do not address the situation, as with Elevate, where a nonbank is the “true lender.”

Other high-cost online lenders, including Opploans, Enova’s NetCredit, LoanMart’s Choice Cash, EasyPay, and Personify Financial, launder their loans through banks to try to skirt state laws so they can pedal predatory triple-digit interest rate loans to consumers. Most of the rent-a-banks are FDIC-supervised. World Business Lenders uses OCC-supervised Axos Bank to make predatory loans to small businesses. NCLC’s website has a Predatory Rent-a-Bank Loan Watch List that describes high-cost rent-a-bank schemes and where they operate.

“The last thing we need during the COVID-19 crisis is more predatory lending or schemes to evade state interest rate caps. Interest rate limits are the simplest and most effective protection against predatory lending, and DC shows that states can stand up to rent-a-bank schemes,” **said Saunders.**

Additional Resources

Predatory Rent-a-Bank Loan Watch List by State

Press release: Advocates Condemn Rent-a-Bank Rule that Encourages Predatory High-Cost Loans; Call on Congress to Pass Federal 36% Interest Rate Cap Limit, May 29, 2020

Brief: FDIC/OCC Proposal Would Encourage Rent-a-Bank Predatory Lending, December 2019

Fact Sheet: Stop Payday Lenders Rent-a-Bank Schemes, November 2019

Op-Ed: Rent-a-bank schemes trample voters’ and states’ rights by Lauren Saunders, Feb. 8, 2018