

Madden Bill Will Facilitate Predatory Lending That Harms Financially Distressed Consumers

The so-called Madden bill would make it easier for predatory payday lenders and other non-banks using rent-a-bank arrangements or partnerships to override state interest rate caps and make loans of 300% annual interest or higher. Unaffordable payday loans and other triple-digit interest predatory loans have devastating consequences for already financially distressed borrowers—trapping them in a cycle of debt and increasing the likelihood of delinquency on other bills, delayed medical care, bankruptcy, and eviction.

Madden Bill Will Allow Lenders To Override Longstanding, Critical State Interest Rate Caps

The Madden bill gravely threatens the strongest available tool against predatory lending—state interest rate limits. The bill would override the Second Circuit’s 2015 *Madden v. Midland* decision, which held that a debt buyer purchasing charged-off credit card debt could not add additional interest above state interest rates. This decision was consistent with longstanding law that nonbank creditors are covered by state interest rate limits. This bill would effectively reverse that decision, permitting predatory non-bank lenders to use banks’ preemption rights to violate state interest rate caps—including in the 15 states plus the District of Columbia whose state interest rate limits currently save borrowers over \$2.2 billion annually in payday loan fees.

How Rent-A-Bank Arrangements Work

Banks benefit from preemption of state interest rate caps through the National Bank Act and related laws, but nonbank lenders—like payday lenders—have long been subject to state interest rate caps. Through rent-a-bank arrangements, a nonbank lender uses a bank to originate its loans and attempts to evade state interest rate caps. For example, the payday lender Elevate uses Republic Bank to make high-cost loans that exceed state interest rate caps. Elevate does not disclose an APR for its “Elastic” product, but a \$380 advance repaid with monthly minimum payments would cost \$480 to repay over five months, which, including all fees, carries an annual rate of about 100%. This is nearly three times the 36% legal interest rate approved by voters in Montana, one of the states where Elevate’s Elastic product is offered.

Consumer and Civil Rights Groups, and 20 State Attorneys General, Oppose the Madden Bill Provision

More than 150 organizations, including consumer advocate, civil rights, and faith organizations across the country, have come out against the Madden bill. In addition, twenty State Attorneys General have warned that the Madden bill provision “would restrict states’ abilities to enforce interest rate caps. It is essential to preserve the ability of individual states to enforce their existing usury caps and oppose any measures to enact a federal law that would preempt state usury caps.”¹ Currently, the Colorado Attorney General is challenging online lenders’ use of a rent-a-bank scheme to make loans in violation of the state’s usury limits. The Madden bill aims to thwart actions like these that seek to enforce state laws.

FinTech Companies Making Responsible Loans Do Not Need the Madden Bill

State interest rate caps have not impacted responsible marketplace loans. The leading marketplace lenders do not make loans above 36%, and the vast majority of their loans are well below that rate, comfortably within state caps.

The Madden Bill Is Not Necessary To Ensure Access to Affordable Credit

The only evidence provided that the *Madden* decision has purportedly affected access to credit is one research paper that shows, at most, a trivial impact. Yet this bill would dramatically weaken lenders’ incentive to underwrite properly by making it easier to make high-rate loans that borrowers don’t have the ability to repay.

¹ Letter from Eric T. Schneiderman, New York Attorney General, and 20 other State Attorneys General, to Paul Ryan, Speaker, U.S. House of Representatives, et. al. (June 7, 2017), addressing the same provision included in the Financial CHOICE Act, *available at* https://ag.ny.gov/sites/default/files/6.7.2017_choice_act_letter.pdf.