2005 Market Street, Suite 2800
Philadelphia, PA 19103-7077
P 215.575.9050
F 215.575.4939

901 E Street NW, 10th Floor
Washington, DC 20004
pewtrusts.org
P 202.552.2000
F 202.552.2299

April 27, 2021

The Honorable Sherrod Brown, Chairman
The Honorable Patrick Toomey, Ranking Member
United States Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Via Electronic Submission

RE: Comments for Hearing, "The Reemergence of Rent-a-Bank?"

Chairman Brown, Ranking Member Toomey, and Members of the Committee:

Thank you for meeting to address this critical issue. I am providing short comments on behalf of The Pew Charitable Trusts, where I direct our consumer and home financing program and lead an expert team of researchers and analysts. **In our view, based on Pew's extensive research, it is critical to stop "rent-a-bank" partnerships immediately, before they take root in our banking system, and to do so in a way that fosters more beneficial partnerships between banks and non-banks**.

"Rent-a-bank" arrangements occur when a bank partners with a non-bank lender to target customers who have little or no other relationship with the bank. The bank typically does not hold the loan on its books or carry the risk associated with the loans. The non-bank typically lends at an annual percentage rate that is substantially higher than the bank otherwise charges or that the law of the borrower's state of residence allows. These arrangements are fairly characterized as a way for a non-bank to form contracts that provide the benefits of national bank preemption even when the non-bank's customers are not subject to the same policies or oversight as the bank's own customers, which is why the arrangements are known as "rent-a-bank" or "rent-a-charter" arrangements. Though rent-a-bank partnerships remain uncommon, they have grown rapidly in recent years.[1]

[1] While only a handful of federally regulated banks currently engage in this practice, they have expanded rapidly into more than a dozen states, including states where payday or other high-cost loans are otherwise prohibited. Pew is aware of at least seven states where unlicensed payday lenders use bank partnerships to charge *more than state-licensed payday lenders charge* in those states. These states are: Colorado, Maine, New Mexico, Ohio, Oregon, Virginia, and Washington. One example, from Ohio, is OppLoans, which partners with FinWise Bank, First Electronic Bank, and Capital Community Bank, all Utah-chartered banks supervised by the FDIC: As of April 26, 2021, a $1,000, 9-month loan from Opploans which is originated by one of these banks carried charges resulting in 160% APR, while the same loan from Advance America (the largest payday lender, which operates under an Ohio non-bank lender license according to the state's payday loan law as revised in 2018) has an APR of 88%. The rent-a-bank loan in this example has an APR that is 72 percentage points higher than the equivalent loan from the state-licensed payday lender and costs nearly double in dollar terms. See: https://www.advanceamerica.net/store-locations/ohio#rates; https://www.opploans.com/rates-and-terms/ohio/.

Conversely, partnerships between banks and non-banks that have the potential to be beneficial occur when a non-bank service provider joins with a bank to help serve the bank's own customers. Often, the non-bank partner provides technological platforms that increase the speed and reduce the cost of underwriting and originating loans to the bank's checking account customers. While the cost of the loans may in some cases exceed what a non-bank lender could charge under the laws of the state where the customer resides, the principles of preemption apply because the bank is serving its own customers across state lines, holding the risk of loss, and generally operating within the well-established framework of federal regulation and supervision.

In short, rent-a-bank partnerships create grave risk to consumers and the banking system by enabling non-banks to circumvent state usury and consumer protection laws, lending at sometimes exorbitant cost to borrowers who have little or no connection with the bank or the bank's system of federal regulation and supervision.[2] Conversely, true partnerships between banks and non-banks help improve service to the bank's own customers on fair rates and terms that are subject to federal oversight.[3]

Pew's research shows that millions of Americans who use payday and similar high-cost loans could save billions of dollars annually if the nation's banks offered safe, affordable installment loan alternatives.[4] Considerable progress has occurred toward this goal in recent years, as federal regulators issued joint guidance encouraging banks to offer this type of credit and millions of consumers gained access to new offerings from U.S. Bank, Bank of America, and others.[5] Though these types of loans may have annual percentage rates that are higher than credit cards or other mainstream types of credit, they cost far less than comparable loans from payday lenders—and they are overwhelmingly popular with both borrowers and the general public. In a recent letter to the Office of the Comptroller of the Currency (OCC), Pew explained these developments and noted that regulators should make careful distinctions between potentially beneficial partnerships between banks and non-banks versus "rent-a-bank" arrangements that risk putting this progress at grave risk.[6]

American families need access to safer, more affordable small-dollar loans from the country's banks. Major success is on the horizon. But it will only continue if federal regulators continue to nurture it (by

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[2] This is not to say that rent-a-bank customers are unbanked. The FDIC has found only about 5.4% of American households are unbanked, and every payday loan customer has a bank account because that is a precondition of getting the loan. Instead, rent-a-bank partnerships often target customers who have checking accounts at other banks.

[3] Indeed, leveraging technology and expertise from non-bank service providers who can improve the speed and cost of small-dollar lending may be the key to ensuring access to safe and affordable small installment loans within the banking system. For example, Pew recently encouraged the CDFI Fund to concentrate its efforts on supporting these types of partnerships when they are focused on serving the bank's own customers. See: https://www.pewtrusts.org/en/research-and-analysis/speeches-and-testimony/2020/09/10/pew-encourages-efficiency-in-treasury-departments-small-dollar-loan-program-investments.

[4] The Pew Charitable Trusts, "Standards Needed for Safe Small Installment Loans From Banks, Credit Unions," 2018, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/02/standards-needed-for-safe-small-installment-loans-from-banks-credit-unions.

[5] Federal regulators issued joint guidance in 2020 that encourages small installment loans to bank customers. See: https://www.pewtrusts.org/en/research-and-analysis/articles/2020/08/12/federal-regulators-greenlight-small-installment-loans-from-banks.

[6] The Pew Charitable Trusts, "OCC Proposed Rule on National Banks and Federal Savings Associations as Lenders, Docket OCC-2020-0026," (September 3, 2020), https://www.pewtrusts.org/en/research-and-analysis/speeches-and-testimony/2020/09/03/pew-expresses-concern-about-efforts-to-codify-bank-partnerships.

continuing to encourage banks to make safe small installment loans available to their own customers, with assistance if needed from non-bank service providers); and it will only survive if federal regulators decisively stop rent-a-bank partnerships.

Sincerely,

Nick Bourke
Director, consumer finance
The Pew Charitable Trusts
nbourke@pewtrusts.org