

[Banking and Finance Law Daily Wrap Up, TOP STORY—OCC proposes ‘True Lender’ rule, \(Jul. 21, 2020\)](#)

Banking and Finance Law Daily Wrap Up

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The OCC has issued a proposed rule that would establish that a bank is the "true lender" of a loan if it is named as the lender in the loan agreement on the date of origination, or if it funds the loan.

The Office of the Comptroller of the Currency has issued a [proposed rule](#), specifying that, in the context of a partnership between a national bank or federal savings association and a third party, the bank makes a loan and is the "true lender" if, as of the date of origination, it is named as the lender in the loan agreement, or funds the loan. [According](#) to the OCC, the rule is intended to end uncertainty caused by banks' lending relationships with third parties and the legal framework that applies to loans made as part of these relationships, as well as to help foster greater access to credit. Comments are due by Sept. 3, 2020.

House Financial Services Committee Ranking Member Patrick McHenry (R-NC) [called](#) the proposal "another important step toward providing clarity to banks and non-banks on the 'true lender' doctrine. Clarity will foster greater innovation in financial services—ultimately leading to greater financial inclusion." In addition, a [letter](#) signed by Republican members of the Financial Services Committee expresses concern that the uncertainty surrounding this issue could reduce the availability of credit. The letter references "lawsuits filed against non-bank fintech companies which partner with banks to originate loans to consumers, small businesses, and other borrowers." The lawsuits often must decide if the fintech company is not the "true lender" or if "the interest rate cap of the borrower's home state, rather than that of the overseeing sponsor bank, should apply."

The proposed rule would provide certainty about key aspects of the legal framework that applies to loans made as part of banks' relationships with third parties. The OCC noted in a [Bulletin](#) that banks' lending relationships with third parties, such as marketplace lenders, can be effective tools to facilitate access to affordable credit but the uncertainty "may make banks and third parties less willing to enter into relationships, limit competition, and chill the innovation that these partnerships enable—all of which may restrict access to affordable credit."

Groups, organizations respond. According to the Conference of State Bank Supervisors, the true lender doctrine "is and should remain a matter of state law" because issues of credit affordability and access are "inherently local concerns." CSBS President and CEO John Ryan [stated](#) that the OCC "should not erode state consumer rights and protections, particularly when it refuses to follow the process mandated by Congress to preempt those protections."

The National Consumer Law Center stated that the proposed rule would overturn the "true lender" rule that courts have used since the early 1800s to prevent evasions of state usury laws. National Consumer Law Center Associate Director Lauren Saunders [commented](#) that the proposal would "eviscerate power that states have had since the time of the American Revolution to protect people from high interest rates and predatory lending." [According](#) to National Community Reinvestment Coalition CEO Jesse Van Tol, the proposed rule "rubber-stamps evasion of state laws." He stated that the rule "will protect banks, undermine states and make consumers more vulnerable to exorbitant interest rates. The proposed rule would take away from states the longstanding right to impose interest caps inside their borders, a privilege given to states for over two hundred years." The Center for Responsible Lending also [warned](#) that the rule would facilitate "triple-digit interest rate loans" that violate state rate cap laws. Further, Linda Jun, senior policy counsel of Americans for Financial Reform, issued a [statement](#) calling the proposal "nothing more than a plan for unleashing predatory lenders to peddle dangerous financial products nationwide by eviscerating the power of state usury laws."

Companies: Americans for Financial Reform; Center for Responsible Lending; Conference of State Bank Supervisors; National Community Reinvestment Coalition; National Consumer Law Center

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