

Bipartisan Group of 25 State Attorneys General Urge Congress to Repeal OCC “True Lender” Rule

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Letter Reflects Bipartisan Support for State Interest Rate Caps and the Need to Stop “Rent-a-Bank” Evasions by Predatory Lenders

In a rare form of bipartisan agreement, a group of 25 Attorneys General (AGs) sent a letter today to Congressional leadership urging it to “use the Congressional Review Act (CRA) to rescind the Office of the Comptroller of the Currency’s (OCC’s) “True Lender” rule in order to “safeguard states’ fundamental sovereign rights to protect their citizens from financial abuse.”

The bipartisan letter included the AG in Arkansas, where voters approved a 17% interest rate cap on payday and installment loans in 2010, as well as AGs from Nebraska, South Dakota and Colorado, where voters overwhelmingly supported a 36% interest rate cap. The Nebraska vote last November was the most recent, with 83% of the voters approving the rate limit. Yet in all of these states, voter-approved rate caps are being evaded by high-cost lenders laundering their loans through a few rogue banks, which are not subject to state rate caps. The true lender rule (more accurately, “fake lender” rule) protects those evasions.

The letter states:

“A growing number of states continue to pass state usury interest-rate caps on high-cost small-dollar loans in an effort to protect their consumers from predatory financial products. The OCC’s Rule would be exploited by lenders seeking to circumvent these state interest-rate caps and invite, indeed welcome, predatory consumer-lending partnerships between banks and lightly regulated non-depository lenders. We urge you to use the Congressional Review Act, 5 U.S.C. §§ 801-808 (“CRA”), to rescind the OCC’s True Lender Rule and safeguard states’ fundamental sovereign rights to protect their citizens from financial abuse.

“Numerous courts across the United States have held that non-banks cannot escape state usury prohibitions under the guise of rent-a-bank schemes.² Courts have not hesitated to apply the “true lender doctrine” when a bank is named as the nominal principal party to a loan transaction but the transaction involves a non-bank participant attempting to skirt state usury limits. ...In direct contradiction to reasoned judicial analysis, the OCC has issued a harmful Rule that establishes a simplistic standard to redefine the meaning of “true lender””

The letter concludes:

“Americans spanning all political alignments are demanding that lenders who impose unconscionably exorbitant interest rates be subject to more, not less, regulation. Currently, 45 states and the District of Columbia cap interest rates on installment loans, depending on the size, at a median rate of 38.5% for a \$500, 6-month loan and 32% for a \$2,000, 2-year loan.¹³ During an unprecedented economic downturn, brought on and exacerbated by Covid-19, the OCC seeks to

expand the availability of exploitative loans that trap borrowers in a never-ending cycle of debt. We urge Congress to use its powers under the Congressional Review Act to invalidate the OCC's True Lender Rule and safeguard the right of sovereign states, and the ability of an independent judiciary, to safeguard our citizens from rent-a-bank schemes designed to work end- runs around essential consumer protections."

In another sign of bipartisan support for repealing the rule, on March 30, 2021, Maine State Senator Richard A. Bennett (R- ME) sent a letter to U.S. Senator Susan Collins (R-ME) urging her support for the resolution to invalidate the OCC rule. Bennett, a former chair of the state Republican Party, has sponsored a bill to prevent rent-a-bank evasions in Maine, which was unanimously approved by a committee in March.

Also this week, 138 scholars across the nation also sent a letter yesterday urging Congress use of the CRA to overturn the rule, which overturns more than 200 years of case law that allow courts to look beyond the form of a transaction to its substance to assess whether usury laws are being evaded.

LEARN MORE about this issue by registering for free webinar this Friday, April 23, 12:00pm - 1:30pm ET: Time Running Out: Congress Should Repeal Rule Protecting Predatory Lenders Harming Small Businesses, Veterans, and Consumers

Related Resources

Illinois AG press release

Arkansas fact sheet

Nebraska fact sheet

Maine fact sheet

South Dakota fact sheet

Predatory Rent-a-Bank Loan Watch List by State