



April 15, 2016

ILLINOIS SMALL BUSINESS LENDING ACT PROPOSAL

An Illinois Senator has proposed an amendment to Illinois Senate Bill 2865 that would enact the Illinois Small Business Lending Act ("SBLA"). The proposed SBLA would regulate small business loans and merchant cash advances not exceeding \$250,000 by establishing requirements and restrictions with respect to:

- Licensing;
- Advertisements;
- Payment by preauthorized electronic fund transfers;
- Returned payment fees, late payment fees, refinancing fees and default charges;
- Powers of attorney;
- Selling loans to persons other than licensees and certain others;
- Documenting a borrower's commercial status;
- Considering a borrower's ability to repay;
- Credit reporting;
- Referral arrangements;
- Disclosures (*e.g.*, requiring disclosure of an APR calculated in accordance with the Truth in Lending Act);
- Prepayment;
- Release of liens; and
- Borrower verification.

Banking institutions are exempted. The bill provides stiff penalties for violations, including injunctive relief, fines, revocation or suspension of licenses, voiding of loans and private civil actions. □

✧ *Mike Tomkies and Chuck Gall*

CFPB ANNOUNCES NEW ASSISTANT DIRECTOR FOR THE OFFICE OF SMALL BUSINESS LENDING MARKETS

The Consumer Financial Protection Bureau has announced the addition of six new members to CFPB leadership positions, including Grady Hedgespeth as the Assistant Director for the Office of Small Business Lending Markets. Mr. Hedgespeth was previously with the U.S. Small Business Administration and before that he led two

different national small business community development financial institution lenders and created several businesses focused on underserved markets at some of the nation's largest banks. The Dodd-Frank Act gives the CFPB authority to implement Equal Credit Opportunity Act data collection requirements with respect to credit applications made by small, women-owned and minority-owned businesses. The CFPB recently reported that one of its top nine priorities over the next two years is to achieve a small business lending market where fair lending laws are enforced and where communities, government entities and creditors have access to the data needed to identify the business and community development needs and opportunities of women-owned, minority-owned and small businesses. □

✧ *Mike Tomkies and Chuck Gall*

DIFFERENT TRADE GROUPS BEING FORMED TO REPRESENT COMMERCIAL FINANCING INDUSTRY

A group of online lenders and others have created the Coalition for Responsible Business Finance, which describes itself as an advocacy and education platform for businesses that provide alternative capital for small businesses with the purported purpose of presenting information on non-traditional small business lending to government agencies and Congress and to craft industry best practices. The group reportedly is in talks with the Responsible Business Lending Coalition, which was formed by a different group of lenders, brokers and others (including a former advisor to the White House National Economic Council under the Obama Administration). The RBLC requires its members to comply with the "Small Business Borrowers' Bill of Rights," which includes certain provisions that are not uniformly accepted or proven to be necessary in connection with small business financing (*e.g.*, the disclosure of an annualized rate or APR). □

✧ *Mike Tomkies and Chuck Gall*

FTC TO HOST MARKETPLACE LENDING FORUM

The Federal Trade Commission will host a forum this June 9th on marketplace lending. The FTC describes marketplace lenders as nonbank financial platforms that leverage technology to reach potential borrowers, evaluate creditworthiness and facilitate loans which the FTC recognizes as providing an avenue for consumers and small businesses to quickly obtain loans that might not be available from traditional sources. The purpose of the forum will be

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to examine the range of marketplace lending models, their potential benefits to consumers, possible consumer protection concerns and the applicability of consumer protection laws to market participants. The forum will take place in Washington, D.C. and will be open to the public. □

✧ *Mike Tomkies and Chuck Gall*

CALIFORNIA REGULATOR RELEASES RESULTS FROM ONLINE LENDING SURVEY

The California Department of Business Oversight released summary findings from the survey of online consumer and small business financing companies issued last December. The purpose of the survey is to determine whether market participants comply with California lending and securities laws and to assess how California's regulatory regime is working, and should work, with respect to the online lending industry. The findings summarize the responses from 13 online lending firms and include statistics on how they grew their businesses at a faster pace in California than the United States as a whole and aggregate data on their annual percentage rates and customers' delinquency rates. One survey recipient declined to respond. The Department has stated that it may send the companies follow-up requests for additional documents and information. □

✧ *Mike Tomkies and Chuck Gall*