



## THE OCC FINALIZES “TRUE LENDER” RULE

On October 27th, the Office of the Comptroller of the Currency (“OCC”) finalized its “true lender” rule, which provides a simple bright-line standard to determine whether a national bank or federal savings bank is the lender with respect to loans made in a partnership with a nonbank entity. Specifically, the rule states that a bank makes a loan when the bank, as of the date of origination:

- (1) Is named as the lender in the loan agreement; or
- (2) Funds the loan.

If, as of the date of origination, one bank is named as the lender in the loan agreement for a loan and another bank funds the loan, the bank that is named as the lender in the loan agreement makes the loan.

The final rule is unchanged from the proposed rule except with respect to the clarification language regarding which bank is the lender when one bank is named as the lender in the loan agreement and the other bank funds the loan. The OCC created the “true lender” rule to resolve legal uncertainty that banks face with third party relationships in loan originations. The legal uncertainty stems from (i) silence under federal banking law on when a bank makes a loan in connection with a third party and (ii) divergent judicial doctrines on who is the “true lender.” The OCC hopes that the certainty provided by the “true lender” rule will increase competition, expand access to affordable credit and spur innovation.

The OCC’s commentary to the final rule is notable in a few respects. First, the OCC stated loud and clear that “rent-a-charter” relationships “have absolutely no place in the federal banking system.” If a bank fails to satisfy its compliance obligations with loan originations, the OCC will not hesitate to use its enforcement authority. The OCC’s rule commentary reviews the “robust” supervisory framework around bank loan originations.

The OCC rejected, without discussion, recommendations to adopt a “true lender” test that looks at which entity (the bank or nonbank) has the “predominant economic interest” in a loan. The OCC also rejected recommendations to adopt the “safe harbor” approach used in the settlement between the Colorado Attorney General and Marlette/Avant. The OCC thought the simplicity of the proposed “true lender” rule would be a better vehicle to achieve the

OCC’s goal of providing legal certainty to banks. Finally, the OCC clarified that the “true lender” rule should not apply to banks in certain indirect lending relationships and should not affect the meaning of “lender” or “creditor” under other consumer financial laws.

The final rule becomes effective 60 days after the rule is published on the federal register. Like the so-called “Madden-fix” rule promulgated earlier this year, the “true lender” rule may be challenged in court. The Federal Deposit Insurance Corporation has yet to propose a “true lender” rule. □

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