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January 23, 2024

To: The Honorable C. T. Wilson
Chair, Economic Matters Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: House Bill 254 – Credit Regulation – Predatory Loan Prevention (True Lender Act)
(SUPPORT)

The Consumer Protection Division of the Office of the Attorney General supports House Bill 254, a Departmental bill introduced by the Commissioner of Financial Regulation. House Bill 254 is targeted at preventing non-bank companies from using pretextual affiliations with non-Maryland chartered banks and credit unions to circumvent Maryland's usury and licensing laws. House Bill 254 creates a statutory framework for analyzing when such non-banks, rather than their out-of-state bank affiliates, are the "true lenders" of Maryland loans, and thus are subject to Maryland lending laws, by looking at the economic substance of the loan transactions, rather than their form.

The Division believes that Maryland law already looks to the economic substance of lending transactions to determine who the true lender behind Maryland loans is, and whether a loan transaction is usurious, and thus that companies using pretextual relationships with out-of-state banks to provide loans that would be usurious in Maryland already are subject to Maryland lending laws.¹ However, companies at times seek to circumvent this law.

¹ See *CashCall, Inc. v. Maryland Com'r of Fin. Regul.*, 448 Md. 412, 436 (2016) ("In exchange for CashCall's role in assisting consumers to obtain the aforementioned loans, CashCall received, through contracts with the banks, the exclusive right to collect all payments of principal, interest and fees, including the origination fee. This arrangement, in essence, rendered CashCall the de facto lender."); *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 159 (2021) ("Usury is a moral taint wherever it exists and no subterfuge shall be permitted to conceal it from the eye of the law.... [I]t matters not in what part of the transaction it may lurk, or what form it may take ... or whether it be a pretended sale and lease, or under whatever guise the lender – always fruitful in expedients – may attempt to evade the law, Courts of justice, disregarding the shadow and looking to the substance, will ascertain what in truth was the contract between the parties.") (citations omitted).

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By way of background, under the federal Depository Institutions Deregulation and Monetary Control Act of 1980, banks are permitted to “export” their home state’s interest rate to other states. Thus, for example, a bank chartered in a state with no interest rate cap can offer loans in Maryland that would otherwise violate Maryland’s interest rate restrictions. Companies, including Fintech companies, are exploiting this federal law by creating partnerships with out-of-state banks to offer high interest rate loans in states like Maryland with lower usury rate caps. Some of these companies, however, do not merely facilitate lending transactions between Maryland consumers and out-of-state banks. Instead, in economic substance these companies are acting as lenders.

As stated, House Bill 254 creates a statutory framework for determining when it is the non-bank, rather than the out-of-state bank affiliate, that is providing Maryland loans, and thus whether the non-bank is subject to Maryland’s licensing and usury laws. Moreover, under House Bill 254, if the company’s affiliation with the out of state bank is determined to be a “device, subterfuge, or pretense” to evade Maryland law, the company’s loans will be deemed “void and unenforceable.” House Bill 254 likewise prohibits using subterfuge to disguise loans as personal property sale and leaseback transactions, or as cash rebates for pretextual installment sales—devices employed by companies using pretextual relationships with out-of-state banks attempting to circumvent state lending laws. Such disguised loans would also be void and unenforceable.

The Division supports House Bill 254 because it provides a clear framework for determining the “true lender” behind loan transactions and seeks to protect Marylanders. Companies should not be permitted either to use pretextual affiliations with out-of-state banks, or to disguise their loans as different kinds of transactions to circumvent Maryland lending laws. Such companies most often offer very high interest rate loans that are unlawful if Maryland law applies, and they target consumers who are financially vulnerable, who have poor credit and are desperate for funds, or who otherwise have little access to traditional lending.

cc. Members, Economic Matters Committee
The Honorable Anthony Salazar