

January 23, 2024

House Economic Matters Committee

Chair: Delegate Wilson
House Bill 254 – True Lender Act

Re: Letter of Support

As Maryland’s Consumer Financial Protection Agency, the Office of Financial Regulation (OFR) requests a favorable report on HB254 which confirms consumer protections for Marylanders.

Under long-standing Federal law, Maryland’s laws limiting interest rates do not apply to national banks and banks chartered by other states. Consequently, these banks may extend loans to Maryland consumers at interest rates permissible under the laws of their “home” states that can significantly exceed the Maryland interest rate cap. Thirty-five states have higher interest rate caps (or no cap) than Maryland permits on a small dollar loan. Because of the supremacy of federal law, Maryland cannot pass legislation preventing these banks from charging Maryland borrowers interest at rates allowed by their home states. The practice of charging the highest interest rate available in a state where a lender is located on credit it extends to borrowers residing in other states has been known as “interest rate exportation.”

Historically, national and out-of-state banks started interest rate exportation in volume through credit card lending, and over time, as technology has improved and consumer lending expanded nationally, they expanded exportation of interest rates to all types of lending products. However, while national and out-of-state banks have long exported their higher interest rate products into Maryland, they have typically not been the entities that are engaging in predatory lending practices.

High interest products, however, started becoming a problem both locally and nationally between ten and fifteen years ago when payday and other nonbank lenders such as financial technology companies (FinTechs) started partnering with banks located in states authorizing high interest rates to effectively use the bank’s interest rate exportation right to avoid licensing requirements and offer high-cost loans in other states. This arrangement is commonly known as “rent-a-charter.” The combination of the interest rate exportation laws and willingness of certain banks in states with high interest rate caps to partner with FinTechs and other lenders (e.g., payday) has led to predatory and abusive practices that have hurt Maryland consumers.

So-called True Lender laws are named for the analysis used by courts to determine the party that is, as the name implies, the “true lender” to the consumer in a rent-a-charter arrangement. If the bank is determined to be the true lender, then the interest rate exportation is deemed legal and the high interest not violative of the consumer’s home usury limits. However, if the FinTech or other partner is deemed to

be the true lender, then the exportation of the interest rate is not permitted under federal law and the high-interest rate lender's loan is deemed to violate the usury laws of the consumer's state of residence. Hence, true lender laws confirm that FinTechs and other potential bank partners cannot avoid state interest rate caps by partnering with a bank located in a state allowing high consumer interest rates.

The rent-a-charter arrangement has been controversial, and both state and federal financial regulators have made various attempts to address the situation in the context of payday lending. OFR has also taken action. Currently, OFR is pursuing an enforcement action against an out-of-state bank and its FinTech partner for their high-cost lending activities in Maryland. Unfortunately, litigation is historically a slow process. A similar case in Colorado took over 3 years to resolve.

HB254 seeks to confirm the scope of Maryland's consumer lending rules by adding language to the code that explicitly prohibits lenders from engaging in subterfuges (e.g., making a loan purporting to be a sale/leaseback or providing a cash rebate) to evade Maryland's lending laws and otherwise it follows the example of other states like Maine and New Mexico and provides rules for determining when a FinTech is the true lender in a transaction and must adhere to Maryland's licensing laws, interest rate caps, and other consumer protections. OFR further believes that a statutory solution will align Maryland with the increasing number of states who are addressing the problem of high interest rate exportation, will reduce the number of predatory lenders marketing their products to Marylanders and, overall, is the best way to address this issue.

With that, we urge a favorable Committee Report.