Nearly 140 Scholars Call for Congressional Repeal of "True Lender" Rule

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OCC Rule Usurps Role States Have Had Since Founding of the Nation in Protecting Families from Usurious Lending

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A group of 138 scholars, including professors of banking law and consumer finance regulation, from 43 states and the District of Columbia sent a letter today to Congress urging it to use the Congressional Review Act (CRA) to overturn the Office of the Comptroller of the Currency's (OCC's) final rule on National Banks and Federal Savings Associations as Lenders, known as also the "true lender" rule.

In the letter, he scholars wrote:

"The Rule usurps the critical role of states in limiting the interest charged to their citizens by nonbank lenders—a role that states have held since the founding of this country…. This short-sighted reversal effectively circumvents the long-standing principle of applying a "substance over form" analysis to prevent evasions of usury laws, a principle that has been endorsed by the Supreme Court and state courts since the earliest days of our nation."

The scholars explained that all of the original 13 states had usury laws, and 45 states currently do, but attempts to evade usury laws are as old as the laws themselves." The "true lender" doctrine addresses evasions where payday lenders and other high-cost lenders form "superficial arrangements with banks, put the bank's name as a lender on the loan agreement, and used the bank as the nominal originator of the loan" in order to take advantage of the lack of interest rate limits that applied to banks. "In doing so, these high-cost lenders tried to charge borrowers interest rates that were otherwise illegal if the lender made the loan itself."

But courts have relied on the longstanding anti-evasion doctrine to determine if the "true lender" is a state-regulated lender covered by state usury laws. For example, the letter cited a West Virginia case, *CashCall v. Morrisey*, that relied on an 1895 case in finding that CashCall, not the bank, was the "true lender":

"The usury statute contemplates that a search for usury shall not stop at the mere form of the bargains and contracts relative to such loan, but that all shifts and devices intended to cover a usurious loan or forbearance shall be pushed aside, and the transaction shall be dealt with as usurious if it be such in fact."

The scholars criticized the OCC for "rejecting this overwhelming history that courts can ignore contrivances and search instead for the truth in order to prevent evasions of usury laws … The result of the OCC Rule will be to strip states of their agency in regulating usurious lending by nonbanks to their citizens. Over 200 years of legal precedent from states and the U.S. Supreme Court will be

eliminated by this ill-conceived and overreaching Rule."

"Iowa, like many states, limits the interest rates on installment loans," said Professor Chris Odinet, professor of law at the University of Iowa College of Law, who led the letter. "But under the OCC's rule, a state-regulated lender could ignore our state's usury laws merely by finding a bank to put its name on a piece of paper."

"Veterans are not covered by the Military Lending Act, but they are protected by many state interest rate caps. The OCC's rule could leave veterans exposed to predatory lenders who evade laws passed with broad bipartisan support, like Illinois' new 36% rate cap," **said Colonel Paul Kantwill, the founding executive director of The Rule of Law Institute at the Loyola University Chicago School of Law and the former head of the Office of Servicemember Affairs at the Consumer Financial Protection Bureau.**

"In overturning the 'true lender' doctrine, the OCC ignored the doctrine's deep historic roots in our country's foundational cases against usury evasions," **said Professor Adam Levitin, the Anne Fleming Research Professor and Professor of Law at the Georgetown University Law Center.**

Under the Congressional Review Act, Congress has a limited amount of time following the enactment of a regulation (currently estimated to be May 21) to repeal it through an expedited process that does not permit a filibuster in the Senate.