

# PUBLICATION

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## True Lender Rule May Be Repealed

May 18, 2021

**As most financial institutions and lenders are aware, in October 2020 the Office of the Comptroller of the Currency (the OCC) issued a rule that required the identification of the "true lender" of a loan to a customer if the loan originates through a partnership between a nationally chartered bank and a third party, usually a non-bank lender.**

Purportedly, the rule was intended to resolve uncertainty in determining which entity was making a loan and what laws applied. There is disparity in federal court decisions on what state law applies to loans acquired by non-bank lenders if they were originated by a bank which can export interest rate laws of their home jurisdiction nationwide. As a result, non-bank lenders can acquire loans with an interest rate that may exceed their applicable state law restrictions by partnering with a bank headquartered in a state that allows a higher interest rate.

The OCC rule specified that the true lender of the loan is the party that is named as the lender in the loan agreement or funds the loan. The rule also specified that if one bank is named as the lender in the loan agreement on the date of origination, and another bank funds the loan, the named bank is the lender and retains the compliance obligations associated with the origination of the loan.

However, some criticized the rule claiming it leaves customers vulnerable to predatory rent-a-charter schemes. The OCC disagreed and asserted that the existing regulatory framework governing underwriting, fair lending, vendor management and predatory, unfair or deceptive practices is sufficient to prevent and address any rent-a-charter schemes.

On Tuesday, May 11, 2021, the United States Senate passed a Congressional Review Act resolution to overturn the OCC's "true lender" rule.

The resolution now heads to the United States House of Representatives, which is expected to pass the measure. The White House issued a statement before the Senate's vote supporting the resolution.

If the repeal resolution is passed, the Congressional Review Act would prohibit the regulators from enacting a replacement rule that is substantially similar to the "true lender" rule.

If you have any questions, contact any member of Baker Donelson's [Financial Services Team](#).