Illinois Passes Bill Prohibiting Lenders From Charging More Than 36% APR on Consumer Loans

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On January 13, the Illinois legislature unanimously passed the Predatory Loan Prevention Act (SB 1792) ("PLPA"), which would prohibit lenders from charging more than 36% APR on consumer loans. Specifically, the PLPA would apply to any non-commercial loan made to a consumer in Illinois, including closed-end and open-end credit, retail installment sales contracts, and motor vehicle retail installment sales contracts.

Under the PLPA, any loan made in excess of 36% APR would be considered null and void and no entity would have the "right to collect, attempt to collect, receive, or retain any principal, fee, interest, or charges related to the loan." Additionally, each violation would be subject to a fine of up to $10,000.

We suggest that banks, lenders, loan purchasers and other participants in bank partnership programs involving loans to consumers in Illinois immediately review their lending criteria and contracts to determine what, if any, changes are required to comply with the PLPA. If signed into law, the PLPA will likely require many participants in the Illinois consumer lending market to modify their current practices.

The PLPA contains the following significant changes to the Illinois Consumer Installment Loan Act ("CILA"), the Illinois Sales Finance Agency Act ("SFAA"), and the Illinois Payday Loan Reform Act ("PLRA"):

1. Imposes a 36% APR cap on all loans, including those made under the CILA, SFAA, and the PLPRA;
2. eliminates the $25 document preparation fee on CILA loans; and
3. repeals the Small Loan Exemption of the CILA that previously allowed for APRs greater than 36% for small consumer installment loans less than or equal to $4,000.

Notably, banks and credit unions are exempt from the restrictions of the PLPA. However, bank lending partners and service providers such as fintechs may be subject to the PLPA restrictions if:

1. The partner holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan;
2. the partner markets, brokers, arranges, or facilitates the loan and holds the right, requirement, or first right of refusal to purchase loans, receivables, or interests in the loans; or
3. the totality of the circumstances indicate that the partner is the lender and the transaction is structured to evade the requirements of the PLPA. Circumstances that weigh in favor of a partner being considered a lender under the PLPA include, without limitation, where the partner:
    1. Indemnifies, insures, or protects an exempt person or entity for any costs or risks related to the loan;
    2. predominantly designs, controls, or operates the loan program; or
    3. purports to act as an agent, service provider, or in another capacity for an exempt entity while acting directly as a lender in other states.

Many of these features are common in bank partnership programs, which means that loans to Illinois consumers originated through such programs could be subject to the 36% APR limit even if such loans were made by a bank that is itself exempt from the PLPA.

The PLPA's attempt to eliminate, or seriously challenge, the bank partnership lending model is likely to cause significant upheaval since it is broadly drafted to cover persons that make, arrange, act as a service provider with respect to, or purchase whole or partial interests in, loans to consumers in Illinois, whether or not such persons are themselves located in Illinois. In recent years the prudential regulators and Attorney General's office in Illinois have not been hesitant to pursue out-of-state online lenders that violated usury and other state licensing and lending laws and the PLPA's broad scope would substantially expand the potential enforcement opportunities for these regulators.

The PLPA comes less than a month after the effective date of the Office of the Comptroller of the Currency's ("OCC") final rule with respect to the "true lender" doctrine, which attempts to resolve some of the legal uncertainty created by the *Madden v. Midland Funding, LLC* decision in 2015. The OCC's new rule confirms that a national bank lending partner will benefit from federal preemption of state usury laws and is the "true lender" if the national bank is named as the lender in the loan agreement or funds the loan. The PLPA, in contrast, contains a less forgiving framework for structuring bank lending partnerships.

Governor Pritzker has 60 days to sign or veto SB 1792. The PLPA will become effective upon the Governor's signature.

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