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Hawaii Attorney General Urges Congress to Rescind a Proposal Allowing Predatory Lenders to Take Advantage of Consumers

HONOLULU— Hawaii Attorney General Clare E. Connors joined a bipartisan coalition of 25 attorneys general led by Illinois Attorney General Kwame Raoul in urging Congress to use the Congressional Review Act to rescind the Office of the Comptroller of the Currency's (OCC) True Lender Rule. The rule would sanction high-cost lending schemes that are devised to evade state usury laws. Such laws, or caps, prevent predatory lenders from taking advantage of consumers by limiting interest rates that can be charged on loans.

The coalition issued a letter calling for the OCC's True Lender Rule to be rescinded because it would enable predatory lenders to circumvent state interest rate caps through "rent-a-bank" schemes, in which banks act as lenders in name only, passing along their state law exemptions to non-bank payday lenders. These arrangements would allow lenders to charge consumers rates that far exceed the rates permissible under United States usury laws.

"Predatory lenders cannot be allowed to take advantage of consumers by charging exorbitant interest rates," Attorney General Connors said. "To prevent circumvention of our state usury laws by unscrupulous lenders, I have joined this bipartisan coalition urging Congress to rescind the True Lender Rule."

In January 2021, a consortium of states filed a lawsuit to prevent the implementation of the OCC's True Lender Rule. Congress, however, can resolve this issue by repealing the rule under the Congressional Review Act (CRA). In today's letter, the coalition is urging Congress to pass pending House and Senate resolutions introduced March 26, 2021 that use the CRA to repeal the True Lender Rule. If Congress does not use the CRA to rescind this rule, the state litigation to stop enforcement could take several years. While that litigation is pending, predatory small-dollar lenders will be able to utilize rent-a-bank models to evade state usury caps and harm consumers.

The National Bank Act permits federally-regulated banks to charge interest on loans at the maximum rate permitted by their "home" state, even in states where that interest

rate would violate state usury laws. For years, non-bank entities such as payday, auto title, and installment lenders have attempted to partner with national banks to take advantage of banks' exemptions to state interest caps in order to offer ultra-high-rate loans in states where such loans are forbidden. Courts have scrutinized these lending relationships and concluded that because the national bank is not the "true lender" of the loan, state-law usury caps apply to the non-bank lenders.

The OCC's True Lender Rule would prevent courts from intervening if a national bank is either named as the lender on loan documents or the bank initially "funds" the loan. Further, the rule would allow the bank to instantly sell the loan and never take any meaningful risk on it. This rigid, formalist approach will provide an advantage to only banks and predatory lenders, at the expense of hardworking and unsuspecting consumers. Moreover, rule represents a stark departure from decades of OCC policy admonishing national banks from entering into these sham "rent-a-bank" arrangements.

Joining Attorneys General Connors and Raoul in this letter are the attorneys general of Arkansas, California, Colorado, Connecticut, District of Columbia, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia and Wisconsin.

A copy of the letter is available [here](#).

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