

In recent years states have responded to the growth of partnerships between banks and nonbank financial service companies through so-called “true lender” laws. These laws, sometimes called “anti-evasion laws”, aim to settle the question of which party should be considered the “true” lender—the partner nonbank financial institution, or the partner bank.

This determination is important, as federal law permits national banks and FDIC-insured state-chartered banks to “export” the interest rate from their home state when lending to borrowers elsewhere, whereas nonbank financial institutions must comply with the usury and licensing laws of the borrower’s state.

Supporters of “true lender” laws call these partnerships “rent-a-bank” arrangements and allege that nonbank partners are simply seeking to “evade” state interest-rate caps, particularly where credit is extended at rates significantly above prevailing levels (e.g., greater than 36%). Critics counter that these bank relationships vary widely in nature, with many AFSA members, for example, purchasing only receivables rather than entire loans, while the consumer’s account relationship remains with the originating bank until charge-off. These practices are considered essential to mitigating risk and ensuring access to credit for consumers with lower credit scores.

At the federal level, in 2020, the OCC adopted a federal True Lender Rule saying that a national bank was the lender if it was named as lender in the agreement or if it funded the loan. Congress overturned the rule with the Congressional Review Act in 2021. No replacement national true-lender standard has been adopted, leaving the issue largely to court decisions and national/state-chartered bank prudential oversight.

Ten states have some form of “true lender” law designed to disrupt bank/nonbank lending arrangements.ⁱ These laws vary considerably but modern versions employ some kind of broad test, the most common of which is a “predominant economic interest” test, which is intended to determine whether the nonbank bears most of the economic risk or receives most of the economic benefit from the loan. If so, the state may consider the nonbank partner the “true” lender and attempt to subject it to the state’s interest-rate ceiling, APR calculation rules, lending-license requirements and other consumer-credit laws.ⁱⁱ Under other “tests”, frequently vague “factors” of uncertain weight, some of which have little to do with actual credit underwriting decisions, are considered.

AFSA’s Position

AFSA supported the federal OCC rule and is advocating for the adoption of a similar standard by Congress and federal regulators. In the states, AFSA finds true lender laws deeply problematic on the basis that they ignore significant variances in the nature of bank relationships that make them unsuitable for “one-size-fits-all” regulation, and that they [CONTINUED] undermine the established “valid-when-made” principle by invalidating a loan that is legal and valid when originated if it, or related receivables, is subsequently sold to a nonbank partner or on the secondary market through securitizations or other funding mechanisms.

AFSA also considers regulatory tests for “true lender” seen in state legislation to be inconsistent with established statutory frameworks, legal precedent, and industry realities. Varying state standards create uncertainty for financial institutions by relying on ambiguous factors and unclear methodologies to determine lender status. Furthermore, state true lender laws seek to impose a state’s independent determination of lender status within a federal regulatory

framework. As a result, they may conflict with established law, congressional intent and the principles that support the flow of interstate commerce.

Given the existential threat that true lender laws pose for many businesses, continued legal challenges are likely. These disputes can create costly and time-consuming burdens for regulators, policymakers and market participants alike.

ⁱ CT, IL, ME, MN, NM, & WA, are the clearest examples of the modern legislative model, generally using a *predominant economic interest* and/or *totality of the circumstances* test (CA, GA, NV, & NH have older laws) ([SOURCE](#))

ⁱⁱ Frustrated at the lack of legal success of “true lender” laws, some states have investigated a related but legally distinct approach to prevent out-of-state state-chartered banks from exporting their home-state rates into customers. States. This involves “opting out” of the provisions of the federal Depository Institutions Deregulation and Monetary Control Act (DIDMCA), as, for example, Colorado did in 2023. Thus, “true lender” statutes and DIDMCA opt-outs pursue similar policy objectives through different legal mechanisms (see [associated AFSA materials related to DIDMCA](#)).