Insights

Illinois Legislature Passes Sweeping Changes to Consumer Lending Laws

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Early this morning the Illinois legislature passed and sent to Governor Pritzker for signature, one of the most restrictive consumer lending bills seen in decades that, if signed, will have far reaching implications for not only the payday lending and sub-prime lending industry, but traditional prime lenders as well.

Illinois Senate Bill 1792 ("SB 1792") contains, among other things, the "Illinois Predatory Loan Prevention Act" ("ILPLPA" or the "Act") that will impact all lenders in the state. A very brief, bullet point summary of the major contents of the ILPLPA is below.

Illinois Predatory Loan Prevention Act

The ILPLPA contains the following significant changes to the existing Illinois Consumer Installment Loan Act ("CILA")[1], the Illinois Sales Finance Agency Act ("SFAA")[2], and the Illinois Payday Loan Reform Act ("PLRA")[3]:

- Imposes a 36% interest rate cap, calculated in accordance with the Military Lending Act[4] on all loans, including those made under the CILA, SFAA, and the PLPRA;
- Eliminates the $25 document preparation fee on CILA loans;
- Repeals the Small Loan section of the CILA that previously allowed for small loans in excess of 36% up to $4,000;
- Asserts jurisdiction over bank-origination partnership programs if:
    - the person or entity holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan;
    - the person or entity 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;
    - the totality of the circumstances indicate that the person or entity is the lender and the transaction is structured to evade the requirements of this Act. Circumstances that weigh in favor of a person or entity being a lender include, without limitation, where the person or entity:

- indemnifies, insures, or protects an exempt person or entity for any costs or risks related to the loan;
- predominantly designs, controls, or operates the loan program; or
- 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.

While certainly the provisions of the Act attempting to eliminate the online bank-origination model will become the subject of debate, especially in light of the ongoing litigation over the Office of the Comptroller of the Currency's regulation with respect to the "true lender" doctrine, if signed into law by Governor Pritzker, the ILPLPA imposition of the first in the nation 36% Military Annual Percentage Rate to all CILA, SFAA, and PLPRA licensees, will require anyone operating under these acts to review and amend their compliance management systems in response to the Act.

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

Krieg DeVault's Financial Services team is actively monitoring this legislation, and in the event it is signed into law, can assist your institution with adjusting to these significant changes to the Illinois marketplace.

[1] 205 ILCS 670
[2] 205 ILCS 660
[3] 815 ILCS 122
[4] 32 CFR. § 232.4(c). Calculation of the MAPR.—(1) Charges included in the MAPR. The charges for the MAPR shall include, as applicable to the extension of consumer credit:
(i) Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement;
(ii) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and
(iii) Except for a bona fide fee (other than a periodic rate) which may be excluded under paragraph (d) of this section:
(A) Finance charges associated with the consumer credit;
(B) Any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan, provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period; and
(C) Any fee imposed for participation in any plan or arrangement for consumer credit, subject to paragraph (c)(2)(ii)(B) of this section.