

Insights

The Illinois Predatory Loan Protection Act is Signed into Law - Regulatory FAQ and PLPA Reporting Notice Released

March 29, 2021

By: Brett J. Ashton

On March 23, 2021 Illinois Governor J.B. Pritzker signed Senate Bill 1792 ("SB 1792") into law, making the "Illinois Predatory Loan Prevention Act" ("PLPA" or the "Act") immediately effective. The PLPA is a far reaching law that every lender directly, or even indirectly conducting business in Illinois should carefully review.

The key provisions of the PLPA are as follows:

- All loans made under the Consumer Installment Loan Act ("CILA"),¹ Motor Vehicle Retail Installment Sales Act ("MVRSA"),² the Retail Installment Sales Act ("RISA"),³ the Sales Finance Agency Act ("SFAA"),⁴ and the Payday Loan Reform Act ("PLRA"),⁵ made by non-exempt entities are now subject to an "all-in" interest rate limit of 36% which is calculated in accordance with the Military Annual Percentage Rate ("MAPR") under the federal Military Lending Act ("MLA"),⁶ and accompanying Department of Defense ("DoD") regulations (the "MLA Regulations");
 - While the interest rate limit refers to the definition of MAPR in the MLA Regulations, the interpretation of what is, and what is not included in the MAPR for purposes of the PLPA remains open to interpretation by the Illinois Department of Financial and Professional Regulations (the "ILDFPR" or the "Department"), the Illinois Attorney General's office, and Illinois courts.
- Eliminates the previously permitted \$25 document preparation fee for Consumer Installment Loans;
- Requires all loans made under the CILA, SFAA, and the PLRA, to report to the "Veritech" loan database that was previously only used for loans in excess of 36%. As of the date of this Alert, the Veritech loan database is unable to accept data for loans with an annual percentage rate calculated in accordance with the federal Truth in Lending Act ("TILA")⁷ below 36%;

While the Act exempts banks and credit unions generally, it provides an expansive evasion standard that not only prohibits the use of any device, subterfuge, or pretense to evade the requirements of the Act, but also eliminates any exemption from the Act for an entity that has a loan in excess of the interest rate limitations who (1) directly or indirectly holds the predominant economic interest in the loan; (2) 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 person or entity is the lender and the transaction is structured to evade the requirements of this Act.

Further, the PLPA definition of a “Title-secured loan” that applies to all loans as opposed the current definition under Illinois law⁸ that only applies to a loan with an annual percentage rate exceeding 36 percent as defined by TILA, may expose lenders taking a security interest in a motor vehicle to additional restrictions. Penalties for violating the PLPA are significant, and include the voiding of the loan and the loss of all principal and interest, enforcement by the ILDFPR and the Office of the Illinois Attorney General, who may seek injunctive relief, and penalties of up to \$10,000 per violation,⁹ not to mention the risk of civil litigation.

The ILDFPR recently issued a **FAQ** and **“PLPA Reporting Notice”** to address common questions about the PLPA and indicating that it will not take enforcement action against lenders unable to report to the Veritech database until such time as the database is able to accept reporting data from licensees.

Krieg DeVault’s Financial Services team is actively monitoring the status of ILDFPR’s anticipated guidance on the PLPA, and is available to assist your institution with adjusting to these significant changes to the Illinois marketplace.

1 205 ILCS § 670

2 815 ILCS § 375

3 815 ILCS § 405

4 205 ILCS § 660

5 815 ILCS § 122

6 10 U.S.C. § 987.

7 15 U.S.C. § 1601 et. seq.

8 See 38 Ill. Adm. Code 110.300

9 While the PLPA itself provides for penalties of \$10,000 per violation, SB 1792 also made violations of the Act a violation of the Illinois Consumer Fraud and Business Practices Act.