

LEGAL UPDATES

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Illinois Legislative Update: 36% Rate Cap on Consumer Loans, Effective Upon Governor's Signature

On January 13, 2021, the Illinois General Assembly passed the Predatory Loan Prevention Act, which imposes a 36% “all in” APR cap on **all** consumer loans, including closed-end and open-end installment loans, payday loans, and motor vehicle retail installment loans, except those made by financial institutions. The bill awaits the signature of the Governor, which is expected any time. Once signed, the rate cap will take effect **immediately** on any consumer loan made or renewed on or after that date.

Thus, lenders operating in Illinois assessing an all in APR above 36% as currently permitted must begin preparing now in order to avoid serious repercussions for non-compliance under the Act. Failure to comply will render the loan null and void and, furthermore, will prohibit the lender from collecting or retaining (and will require the return of) any principal, interest, fees, or charges related to the loan. Additionally, a violation of the law constitutes a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, which would allow a borrower to recover actual damages, punitive damages, and reasonable attorney fees. Other penalties up to \$10,000 per violation can also be assessed by the Secretary of the Department of Financial and Professional Regulation.

Importantly, the APR is an “all in” APR, meaning that all charges associated with the credit transaction must be included in the calculation, including fees for ancillary products. Pursuant to the Act, the APR must be calculated consistent with the Military APR (MAPR) calculation contained in the Military Lending Act implementing regulations, 32 C.F.R. § 232.4. Pursuant thereto, a lender must include the following in the APR calculation: (i) finance charges; (ii) application fees or, for open-end credit, participation fees; (iii) 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; (iv) any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account of open-end credit.

Lenders should work swiftly to address this change. First, a lender should evaluate whether it can sustain business operations in Illinois with the change. Assuming continuation of business within the state, we recommend readying your systems to deploy these changes as soon as possible. Importantly, because the law takes effect immediately upon the Governor's signature, to the extent systems are **not** ready to originate loans consistent with the Act, serious consideration must be given to halting all originations, refinances, and renewals until systems and staff are prepared.

Additionally, lenders originating loans currently in excess of the 36% rate cap that do not lend to members of the military in order to avoid the 36% "all in" rate cap under the Military Lending Act may wish to consider broadening their borrower base to include military members in the state of Illinois. Note, however, that other provisions of the Military Lending Act will still apply and document and system changes may be required.

Lenders should stay tuned for further developments, which we will provide as they become available. This may include the promulgation of implementing regulations, which the Secretary has the authority to issue.

Contact us

If you have any further questions or require more information regarding this alert, please contact Lauren Capitini, Scott Helfand, Marci Kawski or your Husch Blackwell attorney.