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## OCC Issues Final Rule Defining “True Lender” – A Bank is the “Lender” if it is Named the Lender in the Loan Documents or if it Funds the Loan

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On October 27, the Office of the Comptroller of the Currency issued a final rule that establishes a new standard for when a national bank or Federal savings association (“bank”) is the “true lender” in a lending arrangement with a third party. This rule may have significant impact on bank’s partnerships and other arrangements with non-bank third parties, including bank-FinTech partnerships. It is particularly significant because, under the OCC’s recent rule regarding interest rate exportation for transferred loans, if the bank is the true lender, its interest rate exportation authority would continue to apply to the loan even after a transfer. The rule takes effect 60 days after its publication in the Federal Register.

The final rule largely adopts the OCC’s proposed rule issued on July 20, 2020. Buchalter’s Client Alert discussing that proposed rule can be found here: <https://www.buchalter.com/wp-content/uploads/2020/07/OCC-Proposes-New-Rule-Defining-“True-Lender”-1.pdf>

1. New Definition of Lender: Under the new rule, the bank is deemed to be the lender in a loan transaction if either (1) the bank is the named lender in the loan documents at origination, or (2) the bank funds the loan at origination. If, as of the date of origination, one bank is named as the lender in the loan agreement for a loan and another bank funds that loan, the bank that is named as the lender in the loan agreement makes the loan.

A bank that meets this definition remains the true lender even if the loan is subsequently transferred.

2. Bank Lending to Party Which Makes Subsequent Loan: The OCC did not create specific exceptions for arrangements such as warehouse lending and indirect auto lending, explaining that such arrangements would not meet the lender definition in the new rule. For instance, “[w]hen a bank provides a warehouse loan to a third party that subsequently draws on that warehouse loan to lend to other borrowers, the bank is not

funding the loans to these other borrowers."

3. Need to Continue to Follow All Lender Compliance and Risk Management

Requirements: The final rule emphasized that any bank defined as the lender is still expected to follow all underwriting and loan origination requirements, risk management practices, vendor management, consumer protection law compliance, and all other regulatory expectations and requirements for any lender.

A copy of the new rule can be found here: <https://www.occ.gov/news-issuances/federal-register/2020/nr-occ-2020-139a.pdf>

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