

SCHWARTZ & BALLE LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465

WWW.SCHWARTZANDBALLEN.COM

TELEPHONE
(202) 776-0700

FACSIMILE
(202) 776-0720

MEMORANDUM

July 2, 2021

To Our Clients and Friends

Re: OCC “True Lender” Rule Rescinded

President Biden has signed the Joint Resolution rescinding the Comptroller of the Currency’s (OCC) “true lender rule”¹ which the agency finalized last October. The rule determined when a national bank (or federal savings association) makes a loan and is the “true lender” in the context of a business relationship between a bank and a third party. The rule specified that a national bank is the true lender if as of the date of origination it (1) is named as the lender in the loan agreement; or (2) funds the loan. The Joint Resolution provides that Congress disapproved the OCC rule and therefore it will have no force or effect.

The OCC’s rule was intended to provide legal certainty as to how to determine which entity in a lending program is the lender and therefore the laws that will apply to the loans. This question will again be resolved by caselaw.

Copies of the Joint Resolution and the repealed rule are available on our website at <http://schwartzandballen.com/news.html>.

For more information, please call Gilbert Schwartz, Robert Ballen, Heidi Wicker, or Eric Knight at (202) 776-0700.

¹ National Banks and Federal Savings Associations as Lenders, 85 Fed. Reg. 68742 (Oct. 30, 2020).