Ranking Member Pat Toomey (R-Pa.)
Opening Statement
Full Committee Hearing: The Reemergence of Rent-a-Bank?
April 28, 2021 at 10:00 AM

Thank you, Mr. Chairman.

In the last decade, we have seen financial technology companies—fintechs—driving new innovations in the financial markets. Fintechs have had remarkable successes in developing technology-oriented solutions to meet consumer needs.

As many banks have exited the personal loan market fintechs have filled the gap, increasing their consumer lending by 72 percent between 2005 and 2018. Today, they issue nearly 40 percent of all unsecured personal loan balances.

In recent years, both nationally-chartered and state-chartered banks and credit unions have begun to partner with fintechs to offer improved products and reach more consumers. This is particularly beneficial for community banks, who lack resources to develop banking technology. In fact, 65 percent of community banks consider fintech partnerships important to their business strategy.

These partnerships also generate significant consumer benefits. Bank-fintech partnerships generate efficiencies that can lower the price of financial products, expand consumer choice, and increase competition. Bank-fintech partners offer a large variety of credit products—not just small-dollar loans—including credit cards, home equity lines of credit, personal loans, auto loans, mortgages, and small business loans.

Unfortunately, recent court rulings have applied differing legal tests to determine which partner in these relationships is the true lender who is legally responsible for the loans. These tests have created uncertainty that threaten to reduce access to credit for consumers, especially for riskier borrowers. That’s why there has been bipartisan Congressional support and industry support for clarifying this issue.

Last year, the OCC issued its True Lender rule to provide this much-needed regulatory clarity. This rule holds a national bank responsible for a loan when, at the time the loan is originated, it is named in the loan agreement or it funds the loan. This allows the OCC to supervise these loans and ensure the bank is not evading the law, including federal consumer protection laws.

Contrary to what some claim, this rule is not intended to facilitate "rent-a-charter" arrangements where banks don't comply with the law. In fact, the OCC's rule does just the opposite. As the OCC has explained, in a rent-a-charter arrangement "a bank receives a fee to 'rent' its charter and unique legal status to a third party … to enable the third party to evade state and local laws … and to allow the bank to disclaim any compliance responsibility for the loans."

In other words, a "rent-a-charter" arrangement means no party takes compliance responsibility for a loan. That's where the True Lender rule comes in. It ensures that national banks that partner with third parties are accountable for the loans they issue through these partnerships, and allows the OCC to supervise the origination of these loans.

You don't have to take my word for it. The current Acting Director of the OCC—who has been a career civil servant for more than 30 years—recently wrote to Congress making this very point.

The True Lender rule also provides the clarity needed for bank-fintech partnerships to flourish and for national credit markets to function. For over four decades, Federal law has allowed both nationally-chartered and state-chartered banks to "export" the state law governing interest rates from the home state where they are based.

This allows the bank to comply with the law of the one state where the bank is located, rather than the 50 different states where its customers are located, in order to facilitate an interstate market for credit. The True Lender rule allows fintechs to partner with banks, which already operate with these efficiencies.

Uncertainty about who the true lender is creates uncertainty about whether the bank can export its interest rate. If the bank guesses wrong, the loan could be unenforceable. This uncertainty jeopardizes the viability of bank-

fintech partnerships. More importantly, it also disrupts the functioning of the secondary market for credit.

Why does the secondary market matter? When a bank sells a loan it frees up capital to make more loans. Perhaps the best-known illustration is mortgages. When a bank sells a mortgage to the GSEs it frees up capital to lend to additional homebuyers. The same principle applies to the secondary market here.

Banks will likely issue far fewer loans if they cannot reliably sell them into the secondary market. Fewer loans means less access to credit; less access means higher costs and less willingness to provide the limited supply of credit to higher-risk borrowers. The result? The most marginalized consumers are hit the hardest.

This isn't just my opinion. Almost 50 leading financial economists from prominent universities—including Harvard, Stanford, and the University of Pennsylvania—made these very points in an amicus brief in support of the OCC's True Lender rule.

We have empirical evidence, too. Studies have shown that after a 2015 court ruling created uncertainty around the ability to export interest rates to New York, it became significantly harder to get loans in New York, especially for higher-risk borrowers.

Despite the importance of the True Lender rule, some Democrats want to rescind it using the Congressional Review Act. The rationale appears to be that overturning the rule may subject more loans to state interest rate caps.

However, price controls are not the answer. They exclude people from the banking system. Price controls restrict the credit supply and make it harder for low-income consumers to access needed credit.

The best form of consumer protection is a robust, competitive market. Preserving the regulatory certainty and clarity the True Lender rule advances that cause.