



COUNCIL OF THE DISTRICT OF COLUMBIA

THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004

KENYAN R. McDUFFIE
Councilmember, At Large
Chair Pro Tempore
Chair, Committee on Business and
Economic Development

Committee Member
Executive Administration and Labor
Housing
Recreation and Youth Affairs

November 30, 2023

Nyasha Smith, Secretary
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Secretary Smith,

Today, I am introducing the Protecting Affordable Loans Amendment Act of 2023 (PALs Act) to prevent out-of-state lenders from partnering with state-chartered banks outside of the District to evade the local usury cap of 24%. The Office of the Attorney General (OAG) has recently investigated several predatory lenders, including EasyPay, which is alleged to have “charged customers exorbitant interest rates averaging 163% APR - roughly 7 times higher than DC’s 24% limit - trapping consumers in cycles of debt that threatened to ruin their credit scores and financial security.”¹ The PALs Act is the result of collaboration between OAG, the Department of Insurance, Securities, and Banking (DISB), and the Committee on Business and Economic Development. This legislation strengthens the tools available for both DISB, the District’s banking regulator, and OAG, the law enforcement agency charged with protecting consumers.

This type of abusive evasion of the District’s usury cap is possible under the Depository Institution Deregulation and Monetary Control Act (DIDMCA), enacted by Congress in 1980, which preempts state usury laws by arguably allowing FDIC-insured, state-chartered banks to contract for the interest rate permitted by the state in which the bank is located and export that interest rate into other states. Accordingly, a bank chartered in a state without an interest rate cap can therefore purportedly lend at usurious rates in many states and in the District. DIDMCA was passed to level the playing field for state-chartered banks after the Supreme Court ruled in Marquette Nat. Bank v. First of Omaha Svc. Corp., 439 U.S. 299 (1978), that nationally-chartered banks are exempt from state usury laws.

DIDMCA, however, allows states and the District to opt-out from these federal provisions regarding interest rates of state-chartered federally insured banks. If the District opts out of this part of DIDMCA, the District can impose its usury caps to prohibit these state-chartered banks (e.g., a Delaware or South Dakota bank) from importing that state’s usury regulations (neither state

¹ “AG Schwalb Secures Comprehensive Financial Relief for Consumers Deceived by Predatory Lender, <https://oag.dc.gov/release/ag-schwalb-secures-comprehensive-financial-relief> (July 12, 2023).

has a cap on interest rates) when offering credit terms to District residents. Several states have exercised this opt-out (some like Iowa in the early years after DIDMCA was passed, and others more recently, including Colorado in 2023) to strengthen state-level consumer protection and enforcement against new technology-enabled platforms seeking to “rent” out-of-state banks and import higher rate lending products into jurisdictions with lower usury caps.

The proposed legislation would exercise the District’s right to opt-out of the federal requirement that the District apply the interest rates of state-chartered federally insured banks.

- This will close the loophole that allows foreign (as in non-District) state-chartered banks to import usurious interest rates and largely end the explosion of nontraditional, fintech-enabled efforts targeting District consumers with these types of predatory loans.
- The proposed legislation also defines several key terms, including “lender,” in the Code to clarify what persons and entities are subject to lending regulations. Currently, the definition of “lender” (or “true lender,” “de facto lender,” “lender in fact,” “actual lender,” “nominal lender,” or “real party in interest”) comes from case law and must often be relitigated case-by-case. This legislation would codify the factors courts have used with substance-over-form doctrines to prevent entities from structuring transactions to evade enforcement of consumer protection laws.

Please contact my Committee Director, Justin Kim, at jkim@dccouncil.gov if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "K.R. McDuffie". The signature is stylized and cursive.

Kenyan R. McDuffie



Councilmember Kenyan R. McDuffie

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 33 of Subtitle II of Title 28 of the District of Columbia Official code to exercise the District’s right under the federal Depository Institutions Deregulation and Monetary Control Act to opt-out of the federal requirement that the District apply the interest rates of state-chartered federally insured banks, and to codify definitions of “lender” and “loan” to encompass loan transactions structured to evade District requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Protecting Affordable Loans Amendment Act of 2023”.

Sec. 2. Chapter 33 of Subtitle II of Title 28 of the District of Columbia Official

Code is amended as follows:

(a) The table of contents is amended by adding new section designations to read as follows:

“§ 28-3311a. Lender defined.

“§ 28-3311b. Loan defined.

“§ 28-3311c. Lendee defined.

“§ 28-3311d. Territorial application.”.

(b) Section 28-3301 is amended by adding a new subsection (j) to read as follows:

“(j) In accordance with section 525 of the Depository Institutions Deregulation

37 and Monetary Control Act of 1980, approved March 31, 1980 (Pub. L. 96-221; 94 Stat.
38 161) (“DIDMCA”), it is hereby expressly provided that the District does not want the
39 amendments made by section 521 of DIDMCA (12 U.S.C. § 1831d) to apply with respect
40 to loans made in the District.”.

41 (c) New sections 28-3311a, 28-3311b, and 28-3311c are added to read as follows:

42 “§ 28-3311a. Lender defined.

43 “For the purposes of this chapter, the word “lender” means a person, including any
44 affiliate or subsidiary of another legal entity, that offers or makes a loan, arranges or
45 facilitates a loan for a third party, or acts as an agent for a third party in making or
46 servicing a loan, including any person engaged in a transaction that is in substance a
47 disguised loan or a subterfuge for the purpose of avoiding this chapter, regardless of
48 whether or not the entity or person is subject to licensing, and that:

49 “(a) Holds, acquires, or maintains, directly or indirectly, the whole, predominant,
50 or partial economic interest, risk or reward in the loan;

51 “(b) Markets, brokers, arranges, facilitates, or services the loan and holds or holds
52 the right, requirement, or first right of refusal to acquire, the loan or a receivable or
53 interest in the loan; or

54 “(c) The totality of the circumstances indicate that the person is the lender and the
55 transaction is structured to evade the requirements of this chapter. Circumstances that
56 weigh in favor of a person being considered a lender include, but are not limited to, when
57 the person:

58 “(1) Indemnifies, insures, or protects an exempt entity for any costs or
59 risks related to the loan;

60 “(2) Predominantly designs, controls, or operates the loan program;
61 “(3) Purports to act as an agent, service provider, or in another capacity for
62 an exempt entity while acting directly as a lender in other states, or
63 “(4) Holds the trademark or intellectual property rights in the brand,
64 underwriting system, or other core aspects of the loan program.”

65 “§ 28-3311b. Loan defined.

66 “For the purposes of this chapter, the word “loan” means money or credit
67 provided to a consumer in exchange for the consumer’s agreement to a certain set of
68 terms, including, but not limited to, any finance charges, interest, or other payments,
69 closed-end and open-end credit, retail installment sales contracts, motor vehicle retail
70 installment sales contracts, and any deferred deposit transactions.”

71 “§ 28-3311c. Lendee defined.

72 “For the purposes of this chapter, the word “lendee” means any person who
73 received a loan.”

74 “§ 28-3311d. Territorial application.

75 “A loan shall be considered as having been made in the District if the lendee is a
76 resident of the District at the time the lender receives either a signed writing evidencing
77 the transaction or modification, or a written or oral offer of the buyer, lessee, or debtor to
78 enter into or modify the transaction.”

79 Sec. 3. Fiscal impact statement.

80 The Council adopts the fiscal impact statement in the committee report as the
81 fiscal impact statement required by section 4a of the General Legislative Procedures Act
82 of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

83 Sec. 4. Effective Date.

84 This act shall take effect following approval by the Mayor (or in the event of veto
85 by the Mayor, action by the Council to override the veto), a 30-day period of
86 congressional review as provided in section 602(c)(1) of the District of Columbia Home
87 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
88 206.02(c)(1)), and publication in the District of Columbia Register.