# FinTech Companies and

# Out-of-State Banks Inquiry Report

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## INTRODUCTION AND SCOPE OF THE DEPARTMENT'S INQUIRY

Lending relationships between non-bank financial technology (FinTech) companies and banks (or credit unions) are often referred to as "banking as a service" or "rent-a-bank relationships." Due to the nature of these relationships, it can be difficult to determine who the "true lender" of the loan is. The true lender question is important because non-depository loan companies and depository institutions (such as banks and credit unions) are subject to different regulations and interest rate limits.

Banks and credit unions are permitted to "export" their home state's interest rate to other states. As such, loan programs facilitated pursuant to partnership agreements between non-bank FinTech companies and out-of-state banks and credit unions may result in higher interest rates charged to Washington consumers.

To better understand the relationships between non-bank FinTech companies and out-of-state banks (or credit unions), the terms of the loan products being offered in Washington, and the impact of these loan products to Washington consumers, the Department of Financial Institutions (Department) issued requests for information to ten non-bank FinTech companies.[1]

In its inquiry, the Department requested that the non-bank Fintech companies provide information on their corporate structure, contractual agreements with bank partners, the role of each partner in the loan program, the responsibilities of each partner throughout the life-cycle of the loan, and loan-level details for Washington consumers. It should be noted that the Department does not currently license, charter, or regulate any of the non-bank FinTech companies or banks that are part of this inquiry.

Due to public interest in this inquiry, the Department submits this report containing the general results of the inquiry. This report is based on the information submitted to the Department by the non-bank FinTech companies. Thus, the Department cannot, and does not, purport to substantiate the veracity of the responses received.

## NON-BANK FINTECH COMPANY INQUIRY RECIPIENTS

Using complaint data from the Department and the Consumer Financial Protection Bureau (CFPB), the Department identified ten non-bank FinTech companies that appeared to be engaged in consumer lending activity using a bank partnership. The Department sent requests for information to:

1. American First Finance, LLC
2. Applied Data Finance, LLC dba Personify
3. Axcess Financial Services, Inc. (Xact)
4. Duvera Billing Services, LLC dba EasyPay Finance
5. Elevate Credit, Inc.
6. Enova International, Inc. dba NetCredit
7. Lendly, LLC
8. Opportunity Financial, LLC (OppFi)

[1] Washington State Department of Financial Institutions, *DFI Looking into FinTech Companies and Out of State Banks Charging High Interest Rates for Consumer Loans*, Feb. 1, 2023, *available at* https://dfi.wa.gov/fintech/banks-cu-fintech-products.

9. Total Loan Services, LLC dba Quick Credit and Quick Credit Connect
10. Tradition Media Group, LLC dba Max Cash

**RESPONSE TO THE DEPARTMENT'S REQUEST FOR INFORMATION**

The Department's request for information sought information on business activities, the nature and structure of any relationships with bank partners, and loan data.

Of the ten companies:

- Nine companies provided partial responses; and
- One company responded that it does not have any bank partnerships.

Of the nine partial responses:

- One company responded that it was ending its loan program in Washington and was only accepting outstanding firm offers of credit;
- Two companies responded that they offer retail installment contracts;[2] and
- Three companies responded that they have at least two bank partnership programs.

The non-bank FinTech companies generally assert that partial responses to the inquiry are due to confidential, proprietary, and/or trade secret information. Further, all responses to the inquiry included redactions on certain portions of their responses including dollar amounts, percentages, and fees.

**LOAN TERMS**

Based on the non-bank FinTech companies' responses or information stated on the non-bank FinTech companies' websites, loans made to Washington consumers range from:

- Principal loan amount of $250 – 15,000;
- Interest rates of 19 – 225%; and
- Loan period of 30 days to 48 months.

**PARTNERSHIPS**

Nine non-bank FinTech companies reported that they were facilitating at least 11 loan programs through partnerships with the following banks: Capital Community Bank, FinWise Bank, First Electronic Bank, Republic Bank & Trust Co., and Transportation Alliance Bank, Inc. dba TAB Bank.

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[2] The Retail Installment Sales of Goods and Services Act (RISA), chapter 63.14 RCW, does not fall within the Department's jurisdiction at this time. Entities conducting transactions pursuant to the RISA are exempt from the Consumer Loan Act of Washington, chapter 31.04 RCW. *See* RCW 31.04.025(2)(c). Compliance and enforcement of the RISA generally falls under the purview of the Washington State Attorney General's Office. Specifically, RCW 63.14.190 states, "The attorney general or the prosecuting attorney may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter."

**Figure 1.** Bank Partnerships and Non-Bank FinTech Companies

| Name of Bank Partner | State Charter | Non-Bank FinTech Company |
|---|---|---|
| Capital Community Bank | Utah | Axcess Financial Services, Inc.<br>Lendly, LLC<br>Opportunity Financial, LLC<br>Total Loan Services, LLC |
| FinWise Bank | Utah | American First Finance, LLC<br>Elevate Credit, Inc.<br>Opportunity Financial, LLC |
| First Electronic Bank | Utah | Applied Data Finance, LLC |
| Republic Bank & Trust Co. | Kentucky | Enova International, Inc. |
| Transportation Alliance Bank, Inc. dba TAB Bank | Utah | Duvera Billing Services, LLC<br>Enova International, Inc. |

As previously stated in this report, the Department does not currently license, charter, or regulate any of the non-bank FinTech companies or banks that are part of this inquiry. Specifically, the Department only regulates banks (and credit unions) that are chartered in the state of Washington. The results of the Department's inquiry indicate that lending partnerships are prevalent with banks located in Utah and in one case, Kentucky.

The state of Utah's legal rate of interest is 10 percent absent a contract.[3] Utah state-chartered banks do not have an interest rate cap. In the state of Kentucky, the legal rate of interest is eight percent absent a contract.[4] Furthermore, Kentucky state-chartered banks are authorized to make loans with a principal amount of $15,000 or less at any rate allowed by national banking associations.[5] The state of Washington's legal rate of interest is 12 percent.[6] Similarly, Washington state-chartered banks are authorized to make loans at any rate allowed by national banking associations.[7] Federal law also allows state-chartered banks to make loans at the maximum interest rate permitted by the state where they are located (*i.e.*, may export interest rates).[8]

Nothing in this report should be construed to be the Department's position on the true lender question or whether a specific party should be considered the true lender.

## PARTNERSHIP LOAN PROGRAM STRUCTURE

Based on the non-bank FinTech companies' responses, when entering into a partnership agreement for the loan program, the non-bank FinTech company and bank partner generally enter into a program/marketing agreement, servicing agreement, and loan purchase agreement or participation

[3] Utah Code Ann. § 15-1-1.
[4] K.R.S. § 360.010.
[5] K.R.S. §286.3-214.
[6] RCW 19.52.020.
[7] RCW 30A.04.025; *see also* Washington State Department of Financial Institutions, *Exceptions to the Usury Law*, *available at* https://dfi.wa.gov/financial-education/information/exceptions-usury-law.
[8] 12 U.S.C. § 1831d; *see also* 12 U.S.C. §§ 85 and 1463(g).

purchase agreement. The loan programs appear to be either designed by the non-bank FinTech company and require the bank partner's final approval, or are based on the bank's criteria.[9]

The program/marketing agreements typically state that the non-bank FinTech company is responsible for advertising, marketing, and soliciting consumers for the associated loan program. Consumers appear to interact exclusively with the non-bank FinTech company during the loan application process as consumers submit loan application materials through the non-bank FinTech company's website or platform.

Additionally, the program/marketing agreements generally state that the non-bank FinTech company should assist consumers though the loan application process. Similarly, approval and execution of the final loan documents, or denial decisions, appear to be executed through the non-bank FinTech's website or platform. The program/marketing agreements generally state that the bank partner is the lender, and funds the loan.

Participation Agreement

When non-bank FinTech companies and banks enter into program agreements, non-bank FinTechs will typically enter into an agreement to purchase a participation in the loan program receivables. Six non-bank FinTechs reported engaging in a participation agreement with a partner bank.

Generally, in a participation agreement, the non-bank FinTech (or the affiliate of the non-bank FinTech) will purchase an interest in 95 – 99% of the program loan receivables, with the bank partner retaining the remainder. Two participation models were observed in this inquiry.

a. Participation Model A

In this participation model, the non-bank FinTech purchases the participation from the bank, and then sells that participation to the non-bank FinTech's affiliate within a short period of time. Three non-bank FinTech companies reported that they engage in this model.

b. Participation Model B

In this participation model, the non-bank FinTech's affiliate purchases the participation directly from the bank, as opposed to the non-bank FinTech purchasing the participated loans and then selling them to its affiliate. Three non-bank FinTech companies reported that they engage in this model.

**SERVICING**

Of the nine non-bank FinTech companies that have such bank partnerships, eight indicated they act as the servicer or subservicer of the program loans originated through the bank partnership. In all applicable cases, program agreements, or separate servicing agreements, included a provision that designates the non-bank FinTech company as the servicer or subservicer of the loans originated through the bank partnership loan program. Four non-bank FinTech companies reported that an affiliated entity

[9] Bank criteria could include items such as underwriting standards, use of technology, or other program guidelines that a bank determines to be necessary.

subservices the program loans or have the ability to assign the servicing responsibilities to an approved third party servicer.

## EXACT WASHINGTON VOLUME DATA UNKNOWN

Due to the limited responses, the Department could not ascertain the general market size of loans made through partnerships with out-of-state banks. However, based on the information provided by three non-bank FinTech companies in 2022, at least $18.9 million in loans were facilitated to 6,763 Washington consumers.

## THE DEPARTMENT'S FUTURE STEPS

At this time, the Department continues to engage with non-bank FinTech companies to seek additional information on industry practices, market trends, and to monitor the industry's impact on Washington consumers.