Home Equity Share Agreements and True Lender Developments

Senate Committee on Business, Financial Services, Gaming & Trade

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Home Equity Sharing Agreement

- May also be known as shared appreciation agreements or home equity investment options.
- Contract between a homeowner and an investor.
  - Homeowner receives a sum of money in exchange for granting a percentage of equity interest in the home to the payer.
- Different than a home equity loan.

Home Equity Line of Credit

- Requires regular installment payments toward repayment of principal and interest.
- Market value appraisal or valuation used to determine loan eligibility.
- Payments may be fixed or variable with respect to interest amount.
- Amount to be repaid over time is set in the loan agreement.
- Secured by a deed of trust.

Home Equity Share Agreement

- Requires regular installment payments toward repayment of principal and interest.
- May or may not entail monthly payments by homeowner to payer.
- Appraisal is discounted from current market value to create a risk adjustment for payer.
- Payment of equity share due at termination or event in contract, such as home sale.
- Upfront payment that the consumer receives is usually less than the value of the percentage equity consigned to the payer.
- Secured by a lien.

HESA

Contract Termination

- Termination occurs if:
  - Homeowner notifies Investor that they wish to repurchase the option; or
  - Homeowner sells home.
- Determine Homeowner's Final Payment to Investor:
  - Equals the Final Home Value * Investor Percentage and fees.
  - Can be a costly outcome for homeowners.

HESA

Consumer Benefits

- Access to home equity liquidity if consumers cannot find conventional home loans.
- No monthly payments.

HESA

Consumer Concerns

- Agreements structured as option contracts:
  - Exempt from mortgage loan disclosure requirements.
  - No foreclosure protections.
  - Home improvements must be approved by payer.
  - Payment received by homeowner not equal to present value of equity consigned in the agreement.
  - Contracts are complex lengthy.
- Clouds title, making conventional refinancing difficult or impossible.
- Consumers have complained that they thought they were taking out a loan, rather than selling their equity.

HESA

Regulatory Treatment

- HESA is modeled as a real estate options contract.
  - Courts tend not to view option contracts as loans.
  - Recent ruling in an active case in Western Washington District Federal Court found that the agreement is not a loan.
- Connecticut and Maryland have passed legislation to treat HESAs as residential mortgage loans.
- California limits use of HESAs only to curing of deficient mortgages by primary mortgage lender in loan modifications.

The True Lender Question

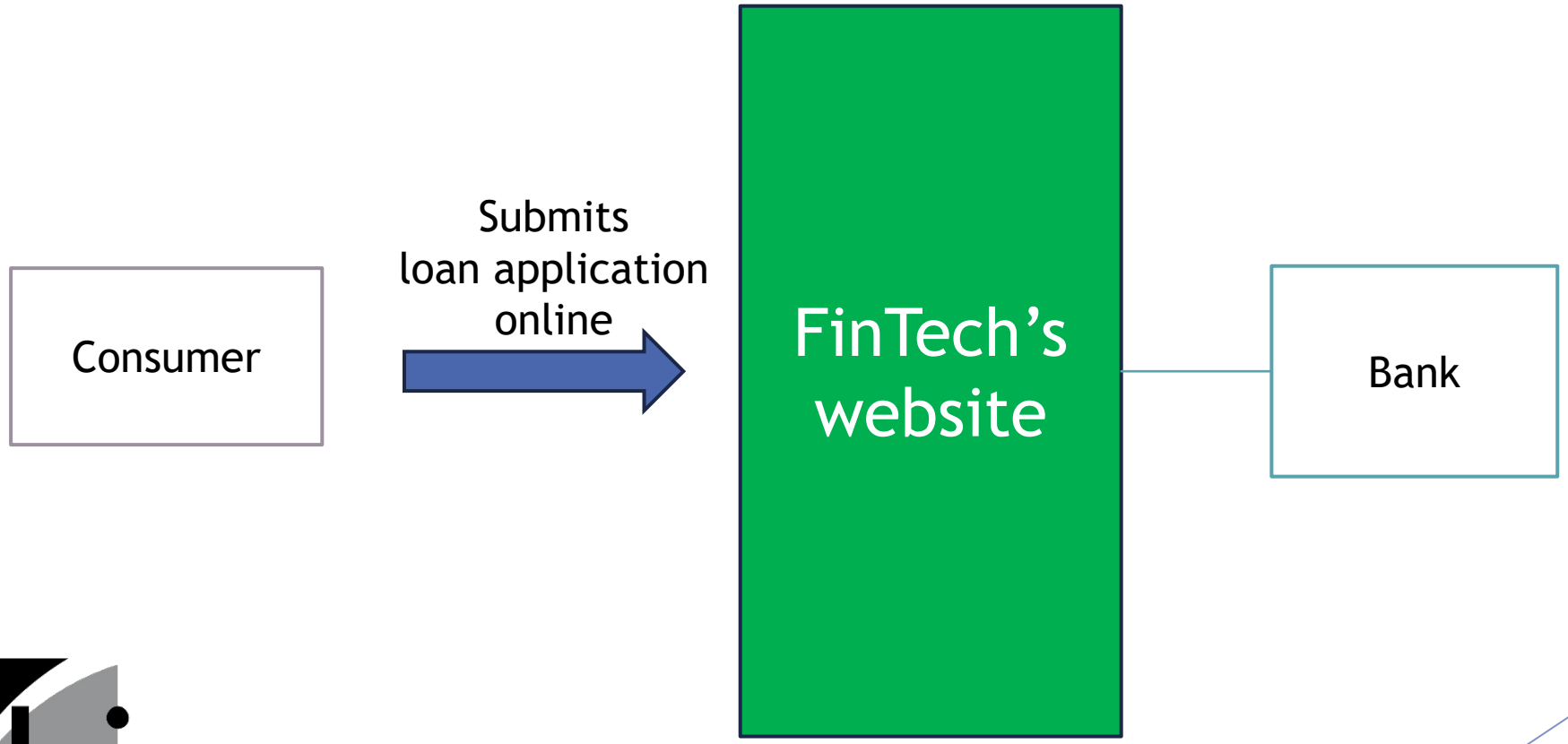
Why is the true lender question important?

- The lending partnership between a non-depository loan company (FinTech) and a depository institution (a bank or credit union) can make it difficult to determine who is the “true lender” of a loan.

- Non-depository loan companies (FinTechs) and depository institutions (banks and credit unions) are **subject to different regulations and interest rate limits.**

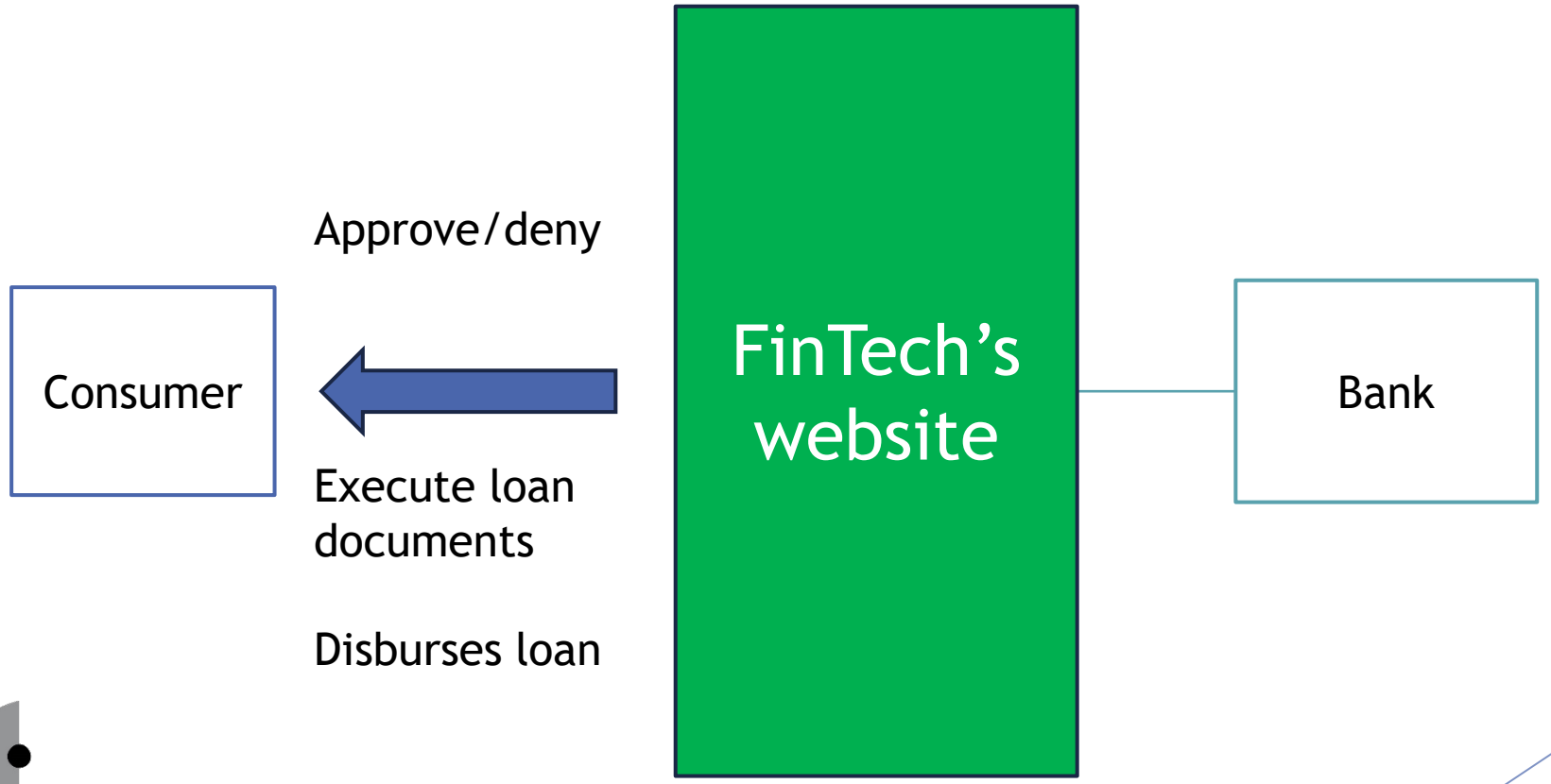
The True Lender Question

Lifecycle of Loans made through FinTech and Bank Loan Programs



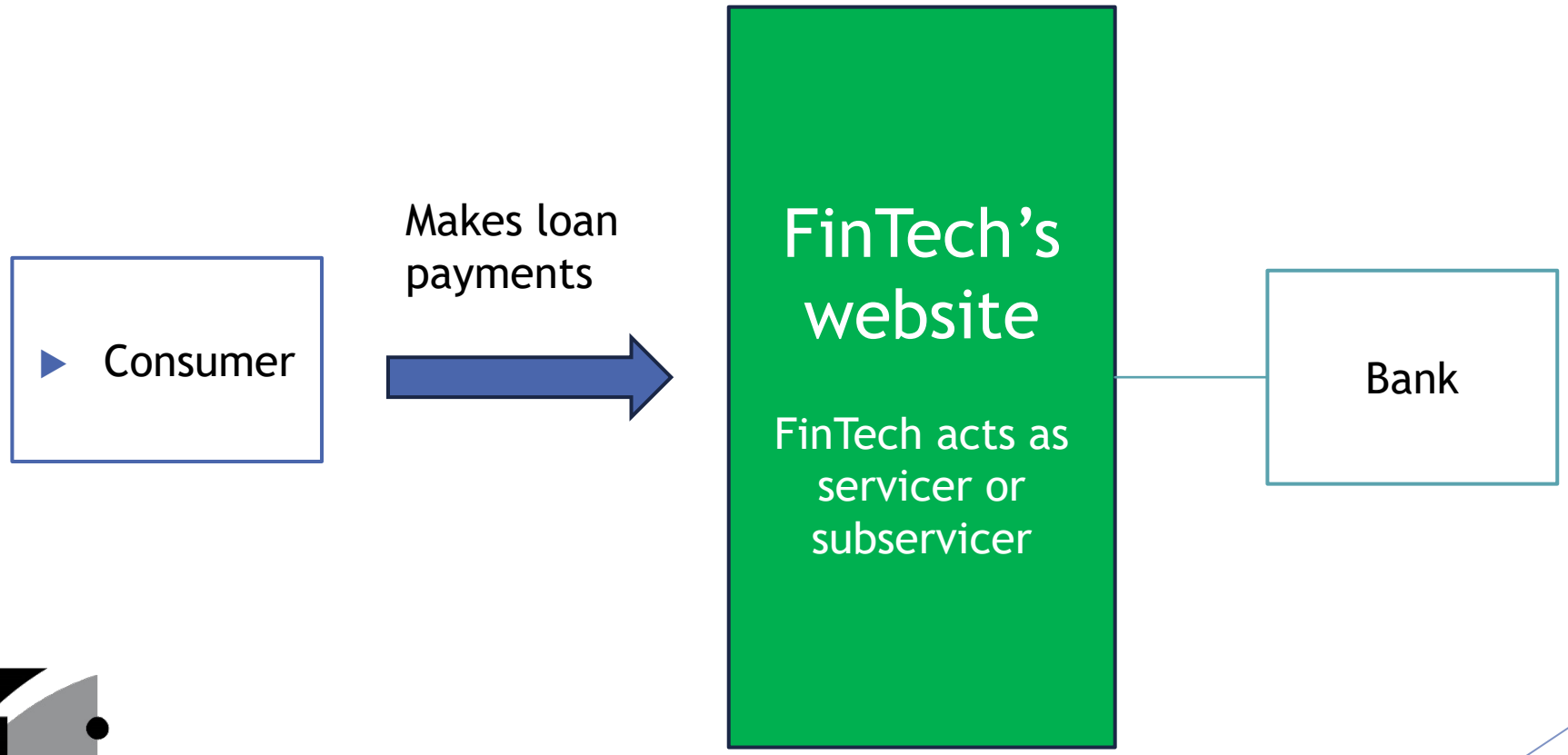
The True Lender Question

Lifecycle of Loans made through FinTech and Bank Loan Programs



The True Lender Question

Lifecycle of Loans Made through FinTech and Bank Loan Programs



The True Lender Question

- **Who is the "True Lender"?**
  - The Bank?
  - Or the FinTech?

- **What is the Concern?**
  - The FinTech is not necessarily licensed or regulated as it is connected to the depository.
  - The depository is permitted to "**export**" its home state's interest rate.
  - Lending partnerships may result in higher interest rates charged to Washington consumers.

The True Lender Question

Inquiry Report issued September 1, 2023

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. Lendly, LLC Opportunity Financial, LLC Total Loan Services, LLC
FinWise Bank	Utah	American First Finance, LLC Elevate Credit, Inc. 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 Enova International, Inc.

The True Lender Question

Inquiry Report issued September 1, 2023

- **Results of the Inquiry**
  - Partner banks are primarily located in Utah.
  - FinTech (or affiliate) will generally purchase a 95-99% interest of the loan receivables from the partner bank.
  - FinTech will generally act as servicer for the loan.
  - Exact data for Washington could not be ascertained.
    - At least $18.9 million loans
    - 6,763 consumers

    **Based on YE 2022 from three companies.

The True Lender Question

Options to address the issue

- Engage in litigation
  - California
- Opt-out of the Depository Institutions Deregulation and Monetary Control Act (DIDMCA)
  - Iowa - 1980
  - Colorado (HB23-1229) - 2023
- Pass legislation
  - Hawaii, Georgia, Illinois, Maine, Maryland, Minnesota, Nebraska, New Mexico, Nevada, New Hampshire, and Wyoming

The True Lender Question

Legislative Option – General Features

- Anti-evasion principles
- Predominant economic interest of the loan
- Other factors to determine who the true lender is
  - Who markets, brokers, facilitates, or services the loan?
  - Who holds the right to acquire the loan?
- Totality of the circumstances indicates the person is the lender

Questions

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