

May 6, 2021

The Honorable Chuck Schumer  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Mitch McConnell  
Republican Leader  
United States Senate  
Washington, D.C. 20510

Dear Majority Leader Schumer and Republican Leader McConnell:

RE: Opposition to Senate Joint Resolution 15 (disapproval of OCC True Lender Rule)

The undersigned trades associations, representing banks and financial services providers that serve millions of American consumers, write in opposition to Senate Joint Resolution 15. Changes should be made to the True Lender Rule (the final rule issued by the Office of the Comptroller of the Currency (OCC) that clarifies which entity is the “true lender” of a loan that is the product of a partnership between a bank and a nonbank entity). However, invalidating the rule through a Joint Resolution issued under the Congressional Review Act (CRA) would create significant legal impediments to creating a much-needed framework for providing safe and affordable credit to consumers.

We share the view of proponents of the Joint Resolution that responsible and affordable financial products and services should be broadly available to consumers. We believe that responsible innovation in financial services holds tremendous potential to expand access to fair and affordable credit, particularly for unbanked and underbanked consumers. When banks and technology firms partner, they can efficiently and conveniently deliver services that customers demand, from a bank that customers trust to meet their financial needs. Innovation can promote financial inclusion, making it possible for institutions to extend credit to many more borrowers.

Prior to issuance of the True Lender Rule, the legal framework governing these partnerships was neither clear nor predictable because there was no straightforward test for determining which entity originates a loan in a bank-nonbank partnership. In the absence of a binding agency rule, courts applied different standards for determining which entity is the true lender of the loan. This uncertainty discouraged lending and impaired the ability of banks to securitize or sell their loans, which reduced liquidity and stifled banks’ efforts to increase lending in their communities.

Although we support clarifying the legal framework, we believe that, by proposing a simple bright line test, the OCC has not taken advantage of the opportunity to underscore expectations for regulatory compliance and consumer protection. We support appropriate safeguards within the True Lender Rule to ensure regulators have the authority to prevent predatory practices, as well as promote safety and soundness and financial stability.

Nonetheless, the True Lender Rule provides clarity for determining which entity originates a loan in a bank-nonbank partnership. That legal certainty has tangible benefits for borrowers seeking affordable credit and for market participants, which will promote economic growth. We are concerned that using a CRA resolution of disapproval would create significant legal impediments to revisiting the Rule and would reduce access to affordable credit, harming

consumers and the communities in which they live. For those reasons, we oppose Senate Joint Resolution 15.

A vote of disapproval using the CRA would prevent the OCC from considering whether other factors could supplement the agency's true lender framework. As noted above, we believe the True Lender Rule could be improved if it establishes expectations for regulatory compliance and consumer protection that will limit the risk of predatory and abusive lending. Invalidation of the True Lender Rule removes that opportunity to create a more fulsome true lender framework. This would diminish the OCC's work to promote accountability and ensure responsible partnerships. To reiterate, we think the existing rule can be strengthened, but if the Senate eliminates the rule with this resolution it will only make that more challenging.

Thank you for your consideration of our views.

Sincerely,

American Bankers Association  
American Fintech Council  
Consumer Bankers Association  
Electronic Transactions Association  
Independent Community Bankers of America  
Mid-Sized Bank Coalition of America

cc: Members of the United States Senate