

May 11, 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 American Bankers Association,¹ representing banks that serve millions of American consumers, write in opposition to Senate Joint Resolution 15. The Joint Resolution, which was issued under the Congressional Review Act (CRA), would invalidate 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 (True Lender Rule).

As we stated in a [letter](#) co-signed by other financial institution trade associations, changes should be made to the True Lender Rule. We write to underscore that the next Comptroller of the Currency could be denied the opportunity to modify the True Lender Rule if the Joint Resolution is enacted. The better course is to put aside the Joint Resolution and allow the next Comptroller to analyze the rule and consider whether a new rulemaking to create a more robust True Lender framework for providing safe and affordable credit to consumers is needed.

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.

During the rulemaking process, we expressed support for clarifying the legal framework. The True Lender Rule provides much-needed certainty for determining which entity originates a loan in a

¹ The American Bankers Association is the voice of the nation’s \$21.9 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$17 trillion in deposits, and extend nearly \$11 trillion in loans.

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 reduce access to affordable credit, harming consumers and the communities in which they live.

Moreover, a vote of disapproval using the CRA would erect significant legal impediments to revisiting the Rule, removing the opportunity for the next Comptroller to create a more fulsome True Lender framework. The CRA precludes an agency from reissuing the rule in "substantially the same form," or from issuing a new rule that is "substantially the same" as the disapproved rule "unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." Moreover, there is no time limit on this prohibition.

During the rulemaking process, ABA expressed concern that, by proposing a simple bright line test, the OCC had not taken advantage of the opportunity to establish expectations for regulatory compliance and consumer protection. We continue to support appropriate changes to the True Lender Rule to ensure regulators have the authority to prevent predatory practices, as well as promote safety and soundness and financial stability. We continue to believe that 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.

However, if the Joint Resolution is enacted, it would create significant legal impediments to revising the Rule. The next Comptroller most likely would be precluded from initiating a new rulemaking to consider whether other factors could supplement the agency's true lender framework. Invalidating the Rule without a path to improvement would diminish the OCC's work to promote accountability and ensure responsible partnerships. That result benefits neither consumers nor the financial institutions with whom they do business. For these reasons, we oppose Senate Joint Resolution 15 and urge you not to bring this measure before the Senate.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "BOB NICHOL". The letters are bold and slightly slanted, with a stylized flourish at the end of the word "NICHOL".

cc: Members of the United States Senate