

June 8, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Pelosi and Minority Leader McCarthy:

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

The undersigned trade associations, representing banks and financial services providers that serve millions of American consumers, write in opposition to Senate Joint Resolution 15 and urge the House to oppose this measure.

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.

Changes should be made to the True Lender Rule. However, invalidating the rule through a Joint Resolution would create significant legal impediments to creating a more robust framework for providing safe and affordable credit to consumers. Importantly, the next Comptroller of the Currency would 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 to initiate a new rulemaking to create a more robust True Lender 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 community banks, minority depository institutions, community development financial institutions and midsize, regional, and large institutions partner with technology firms, 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.

The True Lender Rule has provided 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 reduce access to affordable credit, harming consumers and the communities in which they live.

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. However, a vote of disapproval using the CRA would prevent the OCC from considering whether other factors could supplement the agency's 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.

Therefore, invalidation of the True Lender Rule removes the 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 House eliminates the rule with this resolution it will only make that more challenging. For these reasons, we oppose House consideration of Senate Joint Resolution 15 and urge you not to bring this measure before the House of Representatives.

Thank you for your consideration of our views.

Sincerely,

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

cc: Members of the United States House of Representatives