



May 12, 2021

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

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

Dear Speaker Pelosi, Minority Leader McCarthy, Chairwoman Waters and Ranking Member McHenry:

The Structured Finance Association (SFA)¹ writes to express its opposition to Senate Joint Resolution 15² that would invalidate the True Lender Rule issued by the Office of the Comptroller of the Currency (OCC) in October of last year. Congress' use of the Congressional Review Act (CRA) to nullify the True Lender Rule will lead to costly uncertainty regarding the foundational aspects of the legal and regulatory framework financial services providers need to provide consumers and small businesses access to affordable, responsible credit.

Importantly, SFA agrees with the proponents of the CRA that appropriate OCC safeguards for bank-originated loans are imperative to ensure fair and responsible lending to consumers and protection against predatory, high-cost lending. As we stated in our response to the OCC's Notice of Proposed Rulemaking to the True Lender Rule in September 2020, SFA believes that additional emphasis on the regulatory expectations of the OCC for Bank oversight of partnership programs is appropriate to ensure banks are extending fair and responsible credit to consumers. We would encourage the next Comptroller to address these questions via rulemaking.

¹ The Structured Finance Association (SFA) is the leading securitization trade association representing over 370 member companies from all sectors of the securitization market. Our core mission is to support a robust and liquid securitization market and help its members and public policymakers grow credit availability and the real economy in a responsible manner. SFA provides an inclusive forum for securitization professionals to collaborate and, as industry leaders, drive necessary changes, advocate for the securitization community, share best practices and innovative ideas, and offers professional development for industry members through conferences and other programs. For more information, visit www.structuredfinance.org.

² <https://www.congress.gov/117/bills/sjres15/BILLS-117sjres15is.xml>



Repealing the True Lender Rule through the blunt tool of a CRA, however, would largely eliminate the OCC's ability to offer the much-needed clarity on this issue through a formal rulemaking process³. The potential for the OCC to no longer be able to offer further guidance on true lender would recreate the ambiguity and legal uncertainty that existed prior to the rule. Further, the OCC's ability to deal with any unintended consequences of overturning the rule would be severely hampered. For these reasons we reiterate our support for needed changes to the existing rule without reliance on the blunt tool of CRA.

Banks' ability to efficiently provide affordable credit to fuel household economic growth and manage their balance sheet risk is supported by capital markets investors, financing partners and asset purchasers, with over \$12 trillion of financing provided by the robust and liquid structured finance market. Uncertainty of foundational aspects of the legal and regulatory framework for everyday financing and sales arrangements can increase costs, and limit access, for banks and thus their customers. Therefore, SFA supports the OCC providing the much-needed clarity and a uniform standard to the "true lender" issue.

SFA also supports the OCC's "Valid-When-Made Rule"⁴ which is an important corollary to the True Lender Rule and necessary to ensure the enforceability of the interest rate and other terms of loan agreements following a Bank's origination and assignment or sale of a loan to an entity that does not hold a bank charter. Absent the True Lender Rule, the legal certainty created by the Valid-When-Made Rule could be undermined by a growing number of claims that a Bank is not the true lender. In fact, prior to the adoption of the True Lender Rule, many of these lawsuits already resulted in a myriad of vastly inconsistent and often conflicting state-by-state rulings with considerable subjectivity in determining who is the true lender.

These conflicting state-by-state judicial rulings, as opposed to a uniform standard, presents significant uncertainty and subjectivity risk for financing partner, loan purchasers and capital markets investors, who face the continued possibility that a court could determine that they are the true lender or that they have financed or purchased loans where the interest rate is subsequently found to be unenforceable. In turn, banks as well as their financing partners and asset purchasers are likely to impose tighter restrictions on their lending and financing activities impacting consumers' access to and cost of credit.

Further, this runs the risk of conflicting state standards defining when a national bank has originated the loan as opposed to a uniform standard set by their regulator responsible for ensuring their safety and soundness, and fair access to financial services.

The OCC currently maintains the authority and discretion to address Congress's concerns of predatory lending behavior in the marketplace, using the notice and comment period to add

³ 5 U.S. Code § 801 (b)(2)

⁴ <https://www.occ.gov/news-issuances/federal-register/2019/84fr64229.pdf>



additional guard rails to protect borrowers leaving families vulnerable to products that perpetuate the cycle of debt. This rule does not diminish the states ability and authority to oversee third party service providers and require appropriate licensing and oversight even though the bank is the true lender issuing the loan.

A vote to repeal the OCC's True Lender Rule through the CRA poses real risk for our economy. It is critical that the OCC provide clarity and transparency through rulemaking for loans originated by national banks. If the OCC's authority on true lender is removed, appropriate safeguards within the True Lender Rule to prevent predatory practices will also be put at risk, as will the overall safety and soundness of the banking system.

We strongly encourage you to vote against Senate Joint Resolution 15 and thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Bright", is positioned above the typed name.

Michael Bright
CEO

cc: Members of the United States House of Representatives