



May 10, 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

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

Dear Majority Leader Schumer and Republican Leader McConnell:

The Structured Finance Association (SFA)<sup>1</sup> writes to express its opposition to Senate Joint Resolution 15<sup>2</sup> 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.

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"<sup>3</sup> 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. These cases have resulted in a myriad of inconsistent and often conflicting rulings with considerable subjectivity in who is the true lender.

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<sup>1</sup> 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](http://www.structuredfinance.org).

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

<sup>3</sup> <https://www.occ.gov/news-issuances/federal-register/2019/84fr64229.pdf>



This uncertainty and subjectivity present significant concerns for loan purchasers and fixed income 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.

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.

Repealing the True Lender Rule through the blunt tool of a CRA would largely eliminate the OCC's ability to offer the much-needed clarity on this issue through a formal rulemaking process<sup>4</sup>. 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.

A vote to repeal the OCC's True Lender Rule through the CRA poses real risk. 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 Senate

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<sup>4</sup> 5 U.S. Code § 801 (b)(2)