

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
CHIEF POLICY OFFICER

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May 6, 2021

The Honorable Sherrod Brown
Chairman
Committee on Banking,
Housing and Urban Affairs
Washington, DC 20510

The Honorable Patrick Toomey
Ranking Member
Committee on Banking,
Housing and Urban Affairs
Washington, DC 20510

Dear Chairman Brown and Ranking Member Toomey:

The U.S. Chamber of Commerce opposes S.J.Res.15, a Congressional Review Act (CRA) resolution regarding the Office of the Comptroller of the Currency's (OCC) rule on "National Banks and Federal Savings Associations as Lenders." The Chamber supports this rule, also known as the "True Lender" Rule, finalized on October 27, 2020.¹ We oppose S.J.Res.15, which would effectively overturn the Rule.

If a joint resolution of disapproval is submitted within the CRA-specified deadline, passed by Congress, and signed by the President, the CRA states that the disapproved rule "shall not take effect (or continue)." The rule would be deemed not to have had any effect at any time – even provisions that had become effective would be retroactively negated. If a joint resolution of disapproval is enacted, the CRA provides that a rule may not be issued in "substantially the same form" as the disapproved rule unless it is specifically authorized by a subsequent law.²

The True Lender Rule provides important legal certainty for national banks and federal savings associations regarding loans they may issue in conjunction with a third-party. Various judicial rulings have created legal uncertainty as to who is the "True Lender" of a loan when a bank works with a third-party, thus calling into question the laws that apply to these loans. This legal uncertainty discourages financial institutions from partnering to provide credit to consumers and small businesses.

Partnerships between banks and third parties has become a critical avenue for making credit available to both consumers and small businesses. These partnerships expand banks' access to communities and customers they might not otherwise have been able to reach through their traditional channels. Furthermore, third parties oftentimes use technology that improves the

¹ The Office of the Comptroller of the Currency. National Banks and Federal Savings Associations as Lenders (October 27, 2020), available at [https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-139.html](https://www OCC.gov/news-issuances/news-releases/2020/nr-occ-2020-139.html)

² Congressional Research Service. The Congressional Review Act (CRA): Frequently Asked Questions (Updated January 14, 2020), available at <https://fas.org/sgp/crs/misc/R43992.pdf>

underwriting process and overall experience for borrowers, thus making access to credit that much easier.

The OCC's rule establishes a clear test for determining the "True Lender" when a bank makes a loan, thus clarifying what legal frameworks are applicable to the loan. The rule provides that a bank is the "True Lender" when it, as of the date of origination, (1) is named as the lender in the loan agreement or (2) funds the loan.³ This clarification is critical for banks to partner with third-parties and does not undermine the myriad consumer protection laws enforced by state and federal regulators.

The Chamber opposes S.J.Res.15. We believe bank-partnerships are a critical source of credit for consumers and small businesses. S.J.Res.15 would severely disrupt this ecosystem just as it is beginning to flourish.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a stylized flourish at the end.

Neil L. Bradley

cc: Members of the Senate Committee on Banking, Housing and Urban Affairs

³ The Office of the Comptroller of the Currency. National Banks and Federal Savings Associations as Lenders (October 27, 2020), available at <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-139.html>