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National Association of Federally-Insured Credit Unions

May 10, 2021

The Honorable Chuck Schumer
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, D.C. 20510

Re: Support S.J.Res.15 to Overturn the OCC's True Lender Rule

Dear Leader Schumer and Leader McConnell:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our support for S.J.Res.15, which would repeal the rule submitted by the Office of the Comptroller of the Currency (OCC) relating to “National Banks and Federal Savings Associations as Lenders” (the “True Lender rule”). As you are aware, NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 124 million consumers with personal and small business financial service products. We have serious concerns with the reemergence of rent-a-bank schemes, which the True Lender rule sanctifies. To that end, we urge you to support S.J.Res.15 when it comes to the Senate floor for consideration.

The OCC finalized its True Lender rule in October 2020, which became effective in December 2020, allowing banks and federal savings and loans to provide their charter for online lenders to deliver high-cost loans with annual rates exceeding 100 percent that evade state consumer protections and usury caps. In this scheme also known as “rent-a-bank,” online lenders essentially rent bank charters and documentation to originate their loans in the name of the OCC-chartered banking institution, arguing that it is now a “bank loan” exempt from state rate caps.

As you know, these schemes are not new. State attorneys general, courts, and federal bank regulators had effectively shut down earlier payday loan rent-a-bank schemes. Relying on a centuries-old anti-evasion doctrine, courts followed the money to find that the payday lender, not the bank, was the true lender. The OCC's True Lender rule enables and authorizes this type of lending arrangement. Contrary to statements made under the previous administration, the OCC's rule will add to, rather than relieve, the burdens of high-cost lending. As Hope Enterprise Corporation/Hope Credit Union/Hope Policy Institute (HOPE) highlighted in their [September 2020 letter](#) in opposition to the OCC's rule, their members paid over \$54,000 in payments to rent-a-bank lenders in the previous 90-day period alone. Such usurious behavior undermines consumer protection laws and puts hard-working Americans at risk during the ongoing difficulties associated with the economic recovery from the COVID-19 pandemic. It is notable that eight states have filed suit against the OCC to try to overturn this rule (*New York v. The Office of the Comptroller of the Currency*, No. 1:21-Civ.-00057 (S.D.N.Y. Jan. 5, 2021)). It is unfortunate that the acting Comptroller of the Currency does not appear to be inclined to revisit the rule and that is why we think it is important for Congress to further examine the issue.

These predatory payday lenders are operating on an uneven playing field, relying upon the benefits of the OCC's federal preemption to circumvent consumer protections and place borrowers in harms' way. What is most concerning is the lasting damage this form of wealth extraction has on household financial security and on communities. Given the damage caused by these high-cost, unaffordable loans to borrowers' balance sheets, it limits the ability for legitimate and responsible lenders to support those households and communities with productive credit.

Credit unions have been on the frontlines during the pandemic, working to ensure their members stay afloat financially with consumer-friendly financial products. Credit unions have voluntarily implemented programs to protect their members' financial health, including skipping payments without penalty, waiving fees, low or no-interest loans, loan modifications and no interest accruals. Moreover, credit unions are able to meet their members' demands for short-term, small dollar loans, while ensuring accessibility, safety, and affordability. Often times, credit unions offer short-term, small-dollar loans as a service to members with the associated fees solely covering the expenses of loan servicing.

The *Federal Credit Union Act* (FCU Act) establishes an interest rate ceiling cap of 15 percent on loans and provides the National Credit Union Administration (NCUA) with flexibility to establish a higher interest rate for up to 18 months after considering certain statutory criteria. The current interest rate is set at 18 percent and has been in place since 1987. The NCUA has authorized a program referred to as payday alternative loans (PALs) to enable credit unions to offer their members a reasonable alternative to high-cost payday loans. The FCU Act establishes the interest rate ceiling for PALs at an additional 1000 basis points above the prevailing interest rate, so the current maximum allowable interest rate for a PAL is 28 percent. This maximum interest rate is far from the exorbitant interest rates charged by payday lenders and provides a safe, affordable option for consumers in need of a quick, short-term, small-dollar loan. The Consumer Financial Protection Bureau (CFPB) and CFPB Director-nominee Rohit Chopra have previously recognized the benefit credit union PALs provide to their communities.

Rather than pursuing problematic options like the OCC's True Lender rule to increase access to credit, we would suggest Congress consider consumer-friendly alternatives such as expanding credit unions' ability to offer PALs. Too many Americans are unbanked, underbanked, or underserved by financial institutions, and do not have the access that they need to financial services. Credit unions stand ready to help with financial literacy education and access to loans and other financial products, including PALs, but many are limited in their ability to add underserved areas to their fields of membership. Allowing all credit unions to add underserved areas to their fields of membership is one way to help those who need it most have access to capital without burdening the federal government. This request has bipartisan NCUA Board support.

At a time when low-income consumers can least afford it, the OCC's rule is enabling high-cost lenders to prey on consumers that are on even more precarious financial footing, which could threaten COVID-19 economic recovery efforts and the good work of consumer-friendly financial institutions like credit unions. We urge you to support S.J.Res.15 to overturn the True Lender rule and stop this harmful practice.

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We thank you for your leadership on this important topic and appreciate the opportunity to share our thoughts on the reemergence of rent-a-bank schemes and the True Lender rule. We look forward to continuing to work with you on these issues, as well as pandemic relief and economic recovery. Should you have any questions or require any additional information, please contact me or Sarah Jacobs, NAFCU's Associate Director of Legislative Affairs, at sjacobs@nafcu.org or (571) 289-7550.

Sincerely,

A handwritten signature in cursive script that reads "Brad Thaler".

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the U.S. Senate