

February 4, 2020

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
1776 F Street, NW
Washington, DC 20006
Delivered electronically via email

Re: Comments on FDIC Notice of Proposed Rulemaking, Federal Interest Rate Authority, 12 CFR Part 331, RIN-3064-AF21

Dear Chairman McWilliams,

The undersigned community, consumer, civil rights, faith and small business organizations write to strongly oppose the FDIC's proposed rule on "federal interest rates," which threatens to eviscerate state interest rate limits around the country and encourage the spread of predatory lending.

Interest rate limits are the single most effective tool states have to protect their residents from predatory loans. Predatory loans include payday and car title loans that often carry annual interest rates as high as 300% or more. Predatory loans also include high-cost installment loans and lines of credit with rates approaching and well exceeding 100%. These loans target financially distressed individuals, compound their debt burden, and leave them worse off. Payday lenders also disproportionately prey on communities of color, stripping them of income, exacerbating financial exclusion, and widening the racial wealth gap.

From the founding of our nation, states have had authority to limit interest rates, and they still do for entities other than banks. Forty-three or more states and the District of Columbia (DC) have rate caps on installment loans, depending on the size of the loan, with a median cap among those states of about 36.5% for a \$500, 6-month loan. Sixteen states and DC—representing about a third of the U.S. population—enforce interest rates of 36% or lower that keep short-term payday loans, in addition to longer-term high-cost loans, out of their borders.

The FDIC's proposal would place all of these rate caps in grave jeopardy. Already, **two FDIC-supervised banks, Republic Bank & Trust (of Kentucky) and FinWise Bank (of Utah)** are enabling high-cost lenders Elevate, OppLoans, and/or Enova to evade state rate caps in over half the states, with loans of up to 160% APR, through "rent-a-bank" schemes. **FDIC-supervised Capital Community Bank (of Utah)** appears to be helping car title lender LoanMart evade state law in a number of states. LoanMart's loans range from 60-222% interest; a typical loan is \$2,500, 18-month loan at 90%, totaling \$2,136 in interest. And **FDIC-supervised Bank of Lake Mills (of Wisconsin)** has enabled predatory small business loans, including a 120% APR \$550,000 small business loan and a 74% APR loan secured by a second mortgage.

Moreover, as California enacts its new interest rate cap of about 36% on loans \$2500 or larger, high-cost lenders have brazenly announced plans to circumvent that new law by forming new rent-a-bank schemes. Reports are that at least one deal has already been struck with Republic Bank & Trust.

The FDIC's proposal would undoubtedly embolden schemes like these, where high-cost non-bank lenders use banks, which are not generally subject to state usury limits, to originate loans at rates well in excess of the rates the non-bank lender—like Elevate, OppLoans, Enova, and World Business Lenders—could charge on its own under state law. These arrangements are plainly designed to evade state usury laws. Under traditional application of state usury laws, courts look beyond the form to the substance when a transaction is designed to avoid application of a state's usury laws. Yet the FDIC's proposal flatly provides that state-regulated entities may charge usurious rates when they purchase loans originated by a bank.

The FDIC's statement that this proposal is not addressing the "true lender" doctrine is of no comfort. Already, the schemes noted above are going unchecked on the FDIC's watch; the proposal offers no indication that the agency will address future schemes like these; and placing the burden of proving the bank is the "true lender" on state regulators and private litigants, within the landscape of the FDIC's proposal being finalized, is largely if not entirely unworkable. The proposal replaces the clear and simple rule that interest charged by state-regulated entities must comply with state law with a rule that encourages high-cost lenders to take their chances. Indeed, it may be the green light many predatory lenders need to operate largely, if not primarily, through rent-a-bank schemes.

The FDIC's proposal broadly exceeds the scope of the agency's authority, since it simply has no authority to regulate the interest rates of non-banks and has no broad preemption authority. The FDIC also wholly fails to demonstrate any need for this proposal while ignoring the clear and present dangers. The agency acknowledges that the "uncertainty" it aims to address (the sale of loans from banks to non-banks post the *Madden v. Midland* court decision) is actually not a problem at all, noting that *Madden*, four years later, has had no widespread or significant impact on the market.

We wholly reject the agency's suggestion that this proposal may be needed to enable lenders to meet the credit needs of the financially vulnerable. To the contrary, it would make the financially vulnerable more so, facilitating the spread of predatory lending, and—betraying our federalist system—jeopardizing the most effective tool states have to stop it.

We appreciate your consideration of our concerns.

Yours truly,

Alabama Appleseed Center for Law & Justice
Alaska Public Interest Research Group (AKPIRG)
Allied Progress
Americans for Financial Reform Education Fund
Arizona PIRG
Arizona PIRG Education Fund
Arkansans Against Abusive Lending
Arkansas Community Organizations
Asian Law Alliance (California)
Atlanta Legal Aid Society, Inc.
Bay Area Legal Aid (California)
The Bell Policy Center (Colorado)
Brazos Valley Affordable Housing Corp. (Texas)
Bread for the World - South Dakota chapter

California League of United Latin American Citizens (LULAC)
California Reinvestment Coalition
Californians for Economic Justice
CALPIRG
CAMEO - California Assoc for Micro Enterprise Opportunity
Center for Economic Integrity
Center for Responsible Lending
Coalition for Humane Immigrant Rights (CHIRLA) (California)
Color Of Change
Community Economic Development Association of Michigan
Community Legal Services, Inc. of Philadelphia
Connecticut Legal Services, Inc.
ConnPIRG
Consumer Action
Consumer Federation of America
Consumer Justice Law Center LLC (Wisconsin)
Consumer Reports
Consumers for Auto Reliability and Safety (California)
CoPIRG
Delaware Community Reinvestment Action Council, Inc.
Delaware Manufactured Homeowners Association
Demos
DOVE, Inc. (Massachusetts)
East Bay Community Law Center (California)
Empire Justice Center (New York)
Evangelical Lutheran Church in America
Faith in Action
Florida Alliance for Consumer Protection
Florida Consumer Action Network
Florida PIRG
Georgia PIRG
Georgia Watch
Heartland Alliance (Illinois)
Heartland Center for Jobs and Freedom (Missouri)
HOPE for All: Helping Others Prosper Economically (California)
Housing & Economic Rights Advocates (California)
Illinois PIRG
Indiana Institute for Working Families
Indiana PIRG
Interfaith Center on Corporate Responsibility
Iowa PIRG
Kentucky Equal Justice Center
Legal Aid Society of the District of Columbia
Legal Services of New Jersey
Main Street Alliance
Maryland PIRG
MASSPIRG
Metropolitan Christian Council Detroit Windsor

Montana Organizing Project
MontPIRG
MoPIRG
NAACP
NAACP CO-MT-WY State Conference
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Fair Housing Alliance
NCPIRG
Neighborhood Partnerships (Oregon)
New Economics for Women (California)
New Economy Project (New York)
New Jersey Citizen Action
NHPIRG
NJPIRG
NMPIRG
North Carolina Justice Center
North Dakota Economic Security and Prosperity Alliance
Ohio PIRG
Oregon PIRG (OSPIRG)
PennPIRG
Person County Habitat for Humanity (North Carolina)
PIRG in Michigan (PIRGIM)
Policy Matters Ohio
Portland Community Reinvestment Initiatives, Inc. (Oregon)
Public Counsel (California)
Public Good Law Center
Public Justice Center (Maryland)
Public Law Center (California)
RIPIRG
SC Appleseed
SD Bread for the World
Shaw University Divinity School (North Carolina)
Small Business Majority
South Carolina Appleseed
South Carolina Christian Action Council, Inc.
Southern Arizona Grandparent Ambassadors
Statewide Poverty Action Network (Washington)
Tennessee Citizen Action
Texas Appleseed
TexPIRG
The Leadership Conference on Civil and Human Rights
The Ohio Council of Churches
Tzedek DC
U.S. PIRG
Virginia Organizing
Virginia Poverty Law Center
VOICE OKC (Oklahoma)

Voices for Children in Nebraska
WASHPIRG
Wesley Memorial UMC (Virginia)
Western Center on Law and Poverty (California)
WISPIRG