PRESS RELEASE

Federal Deposit Insurance Corporation

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Media Contact:
Brian Sullivan
202-898-6993
MediaRequests@FDIC.gov

FDIC Proposes New Rule Clarifying Federal Interest Rate Authority

Proposal to address marketplace uncertainty following 2015 court opinion

WASHINGTON – The Federal Deposit Insurance Corporation's Board of Directors is proposing a new rule to clarify the Federal law governing interest rates state banks may charge their customers. The FDIC's proposal is intended to address marketplace uncertainty in the wake of a 2015 court ruling that called into question the enforceability of interest rate terms following the sale or assignment of a loan originated by a national bank to a third-party non-bank.

The FDIC's proposal would codify legal guidance the agency has relied upon for more than 20 years regarding interest rates that may be charged by State-chartered banks and insured branches of foreign banks. The guidance, which is consistent with decades of case law, provides that a permissible interest rate on a loan, as permitted by the law where the bank is located, would not be affected by subsequent events, such as a change in State law, a change in the relevant commercial paper rate, or the sale/assignment/transfer of the loan. However, in 2015 the U.S. Court of Appeals for the Second Circuit ruled in *Madden v. Midland Funding, LLC* that federal interest rate authority does not apply following the sale or assignment of a loan to a non-bank, which created uncertainty regarding the enforceability of loans originated and sold by State banks.

Although the proposal does not address which entity is the "true lender" when a state bank makes a loan and assigns it to a third party, the proposal states that the FDIC views unfavorably entities that partner with a State bank with the sole goal of evading a lower interest rate established under the law of the entity's licensing state.

The FDIC is soliciting public comment on the proposal, which implements sections 27 and 24(j) of the *Federal Deposit Insurance Act* and seeks to reaffirm and codify this 'valid-when-made' doctrine.

Attachments:
[Fact Sheet]
[FDIC's Notice of Proposed Rulemaking]
[FDIC Chairman Jelena McWilliams' statement]

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