



PRESS RELEASE

Federal Deposit Insurance Corporation

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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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Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation’s banking system. The FDIC insures deposits at the nation’s banks and savings associations, 5,303 as of June 30, 2019. It promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars—insured financial institutions fund its operations.

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