PRESS RELEASE

Federal Deposit Insurance Corporation ● Each Depositor insured to at least $250,000

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FDIC Issues Rule to Codify Permissible Interest on Transferred Loans

The Federal Deposit Insurance Corporation (FDIC) today issued a final regulation to codify the agency's longstanding guidance that the valid interest rate for a loan is determined when the loan is made, and will not be affected by a subsequent sale, assignment, or other transfer of the loan. The rule reaffirms the longstanding 'valid when made' doctrine, a nearly 200-year-old principle in contract law.

In 1980, Congress enacted the Depository Institutions Deregulation and Monetary Control Act, which created Section 27 of the Federal Deposit Insurance Act authorizing state banks to charge interest at a rate that is permissible in the state where the bank is located. The FDIC has interpreted and applied this law to state banks through an opinion of the General Counsel issued in 1998, but until today the agency did not enact corresponding regulations.

Recent court decisions have raised significant uncertainty regarding this longstanding application of Section 27 to state banks operating across interstate lines. Specifically, in 2015, in *Madden v. Midland Funding, LLC*, the United States Court of Appeals for the Second Circuit called into question the enforceability of the interest rate terms of loan agreements following a bank's assignment of a loan to a non-bank which has subsequently decreased credit availability for borrowers with lower credit scores[1] . Although the decision concerned a loan made by a national bank, the statutory provision governing FDIC-supervised state banks' authority with respect to interest rates is substantively identical.

In codifying the longstanding FDIC guidance, the final rule addresses marketplace uncertainty regarding the enforceability of the interest rate terms of a loan agreement following a bank's assignment of a loan to a non-bank. It also promotes safety and soundness in the banking system by giving certainty around loans into the secondary market.

FDIC's action mirrors a final rule issued by the Office of the Comptroller of the Currency (OCC) on May 29, 2020, that applies to national banks.

Attachments:

Final Rule on Federal Interest Rate Authority

Statement by Chairman Jelena McWilliams

Fact Sheet

[1] *See* Colleen Honigsberg, Robert Jackson and Richard Squire, "How Does Legal Enforceability Affect Consumer lending? Evidence from a Natural Experiment," *Journal of Law and Economics*, vol. 60 (November 2017); and Piotr Danisewicz and Ilaf Elard, "The Real Effects of Financial Technology: Marketplace Lending and Personal Bankruptcy" (July 5, 2018). Available at http://ssrn.com/abstract=3209808 or http://dx.doi.org/10.2139/ssrn.3208908.