Independent Bankers Association of Texas

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Julie Courtney, CAE, CMP
IBAT Services Inc. President
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Karen Neeley
General Counsel
IBAT, Austin

January 9, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219

Email: regs.comments@occ.treas.gov
Re: Docket ID OCC–2019–0027

Robert E. Feldman, Executive
Secretary, Attention: Comments, Federal
Deposit Insurance Corporation, 550 17th
Street NW, Washington, DC 20429

Email: comments@fdic.gov
Re: RIN 3064–AF21

Greetings,

The following comments are submitted on behalf of the Independent Bankers Association of Texas ("IBAT"), a trade association representing more than 350 independent, community banks domiciled in Texas.

The Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") recently issued Proposed Rules that would codify the position that the interest on a loan originated by a bank, if permissible when and where the loan was originated, will continue to be a permissible and an enforceable term of the loan following the sale, assignment or transfer of the loan. This is known as the "valid-when-made" doctrine.

The Proposed Rules would effectively overrule the Second Circuit Court of Appeals' decision in the case of Madden v. Midland Funding ("Madden") and cases in other judicial circuits that have followed it. In that case, decided in 2015, the Second Circuit ruled that a nonbank purchaser of bank-originated credit card debt was subject to New York State's usury laws. As noted in the Proposed Rule, Madden specifically addressed the assignment of a loan by a national bank. Madden has also created uncertainty regarding the enforceability of loans originated and sold by state banks.

Both the OCC and FDIC take the position that federal law establishes that a national bank or insured state bank may enter into a loan contract, charge interest at the maximum rate permitted in the state where it is located and subsequently assign the loan with preemption of usury laws in the states

where investors may be located. The proposal states that preemption of state usury laws in this manner is fundamental to the nation's banking system.

We concur with the position with of the agencies and urge adoption of the Proposed Rule. In particular, we would note that the ability to freely originate, buy and sell loans is a well-established banking function. This ability would be impaired by the uncertainty and complexity that would result from the application of the Madden decision. It is useful for community banks to be able to sell or buy loans from non-banks. Madden created an impediment to this function.

As always, thank you for consideration of our comments and concerns, as well as for working to provide community banks with clarity and certainty.

Sincerely,

Karen M. Neeley
IBAT General Counsel