From:	Stanley Hirtle
To:	regs.comments@occ.treas.gov; Comments
Cc:	College Hill Church
Subject:	[EXTERNAL MESSAGE] FDIC RIN 3064–AF21 ; OCC 1557-AE73.
Date:	Monday, January 20, 2020 6:03:40 PM

The Honorable Joseph M. Otting
Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

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

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

and

on OCC Notice of Proposed Rulemaking, Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred, 12 CFR Part 7 and Part 160, Docket ID OCC-2019-0027, RIN 1557-AE73

Dear Comptroller Otting and Chairman McWilliams,

The Social Justice and Peacemaking Ministry Unit of College Hill Community Presbyterian Church strongly opposes the proposed rules by the OCC and FDIC which would allow predatory lenders to avoid state interest rate limits by “rent a bank” schemes to shield their loans by assigning loans originally made to them by banks. These high interest loans will trap people in debt and extract their wealth and prevent them from building wealth for themselves and their families. It will also exacerbate the national gap in wealth. We urge you to withdraw these rules immediately.

Our Church is a racial and cultural rainbow that values all people. We are located in a mostly African American neighborhood in northwest Dayton, Ohio. Many around us are low or moderate income. Our community has been a target for numerous kinds of disinvestment, and is often described as a food desert, a healthcare desert, and a retail desert. It was a former ground zero in the foreclosure crisis, where predatory mortgage lending first appeared. Supermarkets, retailers, and restaurants have left for wealthier white suburbs. Hospitals have closed. Schools are closing. Abandoned strip malls and boarded up foreclosed on homes are prevalent. Employers have closed their factories. What new employment there is may require purchasing a motor vehicle to get to. Small businesses struggle and often fail. Unemployment among disadvantaged groups like minority youth and citizens returning from the penal system remain high. Tornados struck last spring, bringing additional loss and hardship to the area.

Bank branches have closed as well. Many people are unbanked, suffer from the digital divide, and are taken advantage of by high cost lending. Payday and car title lenders have saturated our communities, and are now seeking to evade recent enactments by the State of Ohio to limit their activities.

Ohio is a state where rent a bank lenders are becoming active. In Ohio, OppLoans is making loans at 160%, APRElevate is making loans named “Rise” at 99% to 149% ND APREnova’s NetCredit subsidiary is making loans up to 99.99%APR.

We contact you because our faith tradition expects justice from the powerful, care for the needy and vulnerable, and love for the worth of all people in all their diversity. Accordingly outsiders and the poor are to be valued, workers are to be paid a fair wage, a fair marketplace is required, and greed and exploitation are to be avoided. Excessive debt was limited, as by periodic debt forgiveness in Jubilee years. These values are not limited to our Judeo-Christian faith tradition but are found throughout American society.

The proposed regulations will have the effect of allowing predatory “subprime” non-bank lenders to avoid state regulations in the interest rates they charge, by attaching to themselves the power of banks to “export” the interest rates of the bank’s home state, generally chosen for its bank friendly regulatory and legal environment, to other states. This is done by borrowing from a bank and assigning the loan proceeds, essentially "renting" the bank's immunities. This an abuse of the special power of banks.

Predatory loans include payday and car title loans that often carry annual interest rates as high as 400% 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 much worse off. Payday lenders also disproportionately prey on communities of color, stripping them of income, exacerbating financial exclusion, and widening the racial wealth gap.

High interest rates have been shown to be debt traps[1], where borrowers can not pay back the loan within the time period required, and instead take out new loans to pay off the old ones, generating additional debt for themselves and profitable origination fees for the lender, but leading eventually to financial ruin for the borrower. These cycles of unsustainable debt have been much too common.

Interest rate limits are the single most effective tool states have to protect their residents from predatory loans. Since 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. Ohio is one of those states.

The proposals of the OCC and FDIC would place all of these rate caps in grave jeopardy. 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 OCC's and FDIC's proposal flatly provides that state-regulated entities may charge usurious rates when they purchase loans originated by a bank.

In a recent amicus brief, the OCC and FDIC, promoted the so-called "valid-when-made" theory, which the proposed rule would codify, to support a predatory nonbank lender, when the bank is likely not the true lender. The regulators have shifted the burden of proving the bank is the "true lender" on state regulators and private litigants. The regulators also wholly fail to demonstrate any need for this proposal. The agencies purports to address "uncertainty" in the market (related to the sale of loans from banks to non-banks as a result of the court decision Madden v. Midland) but offers no evidence of any negative impact on the market or on consumers. The unsubstantiated and speculative need for the proposal contrasts with the virtually certain, enormous damage it would cause.

Finally, we wholly reject any notion 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 the harms of excessive debt, and jeopardizing the most effective tool states have to stop it. Government should help the financially strapped by other methods, such as living wages, improved and affordable education, supporting lenders such as credit unions that make affordable loans, progressive taxation to support a strong safety net for vulnerable people, and meaningful bankruptcy protection.

We appreciate your consideration of our concerns.

Yours truly,

Social Justice and Peacemaking Ministry Unit

Stanley Hirtle, chair

Dayton, Ohio 45406