RECEIVABLES MGMT. ASSOC. INTL.
SETTING THE GLOBAL STANDARD

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By Electronic Submission and Post

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

Re: Federal Interest Rate Authority
RIN 3064-AF21

Dear Chairman McWilliams:

The Receivables Management Association International ("RMAI") appreciates the opportunity to respond to the Federal Deposit Insurance Corporation's ("FDIC") request for comment in its notice of proposed rulemaking regarding the permissible rates of interest on loans that state-chartered banks and insured branches of foreign banks (collectively, "State Banks") sell, assign, or otherwise transfer ("NPR") (RIN 3064-AF21).

RMAI is a nonprofit trade association that represents more than 550 companies that support the purchase, sale, and collection of performing and nonperforming receivables on the secondary market. RMAI member companies include debt buying companies, collection agencies, law firms, originating creditors, and industry-related product and service providers. RMAI's "Receivables Management Certification Program" sets the "gold standard" within the receivables industry due to its rigor and focus on consumer protection.

We support the FDIC's decision to clarify that pursuant to federal statutory law, and consistent with the common law doctrine of "valid-when-made", the validity of the interest terms on a loan originated by a State Bank does not change after the bank sells, assigns, or otherwise transfers the loan to a third party. We believe the NPR is necessary to clarify the existing uncertainty surrounding this feature of federal banking law, and the unequal playing field the Second Circuit created with its decision in *Madden v. Midland Funding, LLC*, 786 F. 3d 246 (2nd Cir. 2015).[1] Further, RMAI asks that the FDIC also consider clarifying that all price terms on such loans remain valid upon sale, transfer, or assignment.

Federal Law and Common Law Preserve the Validity of Interest Rates on Loans Assigned by State Banks to Third Parties

RMAI agrees with the FDIC that federal law authorizes State Banks to engage in lending activity that includes the assignment of loans, and that this authority preserves the interest rate imposed by the assigned loan contract's terms. As discussed in the NPR, the Federal Deposit Insurance Act expressly empowers State Banks to enter into a loan contract, and charge interest at the maximum rate permitted in

[1] We note that the Office of the Comptrolller of the Currency ("OCC") proposed a substantially similar rule. RMAI submited a comment supporting the OCC's proposed rule for the same reasons it supports the FDIC's NPR.

the state where they are located.[2] This law also allows State Banks to export the interest rate to borrowers in other states irrespective of the law of the state in which the assignee is located.[3] The FDIC also is correct that the power to assign a loan contract, as that contract is written, is an implied power of the express power to extend loans.[4] The Federal Deposit Insurance Act, thus, ensures that an interest rate that is valid pursuant to it remains valid when the loan is assigned to a third party.

We also agree with the FDIC that the federal judiciary has long recognized State Banks' authority to subsequently assign a loan to another entity and that the usury laws of the state where the assignee is located are preempted.[5] This long-established "valid-when-made" doctrine makes clear that the interest terms on loans assigned, sold or otherwise transferred by State Banks to any third party remain intact, irrespective of the laws of the assignees' home states.

Preservation of the Interest Rates of Assigned Loans is Critical to the Consumer Credit Market

As the FDIC states, preservation of the validity of the interest rate on a loan assigned by a State Bank to a third party, irrespective of the law of the state in which the assignee is located, is central to the stability and liquidity of the domestic loan markets.[7] The accounts receivables secondary market[8] is one of the major secondary markets that provides for the assignment or sale of bank loans. By enabling banks to recover funds from non-performing assets, the secondary market provides an influx of capital to the banking system. This capital enables the banks to extend more credit to more individuals. The ability to assign underperforming and nonperforming loans through the secondary receivables market is an important risk management tool that promotes safety and soundness. Banks can de-risk their portfolios while increasing liquidity through the assignment of such loans.

The assignment of such loans through the receivables secondary market is only an effective risk management tool, however, if assignees obtain all of the legal rights associated with the asset. Through the secondary receivables market, a bank is able to sell the ownership of its defaulted loan or credit card receivables to a debt buying company. As a result of the sale, the ownership of the receivables and all legal rights associated with that asset are held by a company not a party to the original transaction. The debt buyer purchases the loan, in part, because of the legal rights associated with that loan. If those rights are not transferred, including the interest rate terms, the debt buyer will not be able to purchase the asset under the same terms it would have otherwise, or perhaps not at all. As a result, banks will have fewer and more expensive options to de-risk their portfolio. Accordingly, the FDIC correctly notes "the ability of an assignee to rely on the enforceability and collectability in full of a loan that is validly made is central to the stability and liquidity of the domestic loan markets. Restrictions on assignees' abilities to enforce interest rate terms would...frustrate the purpose of the FDI Act."[9] The NPR will reinforce this critical risk management tool by clarifying debt buyers' ownership of all the legal rights associated with the assigned loan, including the interest rate terms.

2 84 Fed. Reg. 66845, 66845 (December 6,
3 2019). Id. at 66847.
4 Id. at 66848.
5 Id.
6 Id.
7 Id.
8 This is also referred to as the "debt buying" industry.
9 Id.

The FDIC should Consider Clarifying that All Price Terms Are Valid-When-Made

The NPR effectively clarifies that the interest rate of a loan assigned by a State Bank remains valid upon sale, assignment, or transfer through other means. RMAI respectfully requests that the FDIC consider revising the NPR to also clarify that all price terms of a valid loan originated by a State Bank remain valid upon transfer to a third party.

According to the Federal Deposit Insurance Act, all price points of a loan can be exported upon sale to a third party, not just the interest rate. Therefore, any entity that purchases such loans may collect the fees and interest imposed pursuant to the loans' terms. To avoid any future confusion on this point, the FDIC should consider making this point explicit in the NPR. To that same end, the FDIC should consider including a provision that clarifies that no state can preempt these features of federal law.

Conclusion

RMAI supports the FDIC's efforts to clarify the validity of the interest rate of a loan assigned by a national bank or an FSA to a third party, and, thus, supports the NPR. We believe that the NPR will help reinforce some of the fundamental building blocks of the consumer credit economy.

To prevent any additional future confusion among the industry or the courts, we also ask that the NPR make clear that all price terms of a valid loan originated by a State Bank remain valid upon transfer to a third party, and that states may not enact laws that contradict these aspects of federal banking law.

Please do not hesitate to contact us if we can be helpful. We look forward to reviewing the final rule.

Sincerely,

[redacted]

Jan Stieger
Executive Director
Receivables Management Association International