AARP
Real Possibilities

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January 31, 2020

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

RE: Federal Interest Rate Authority, RIN 3064-AF21

Dear Mr. Feldman:

AARP, on behalf of our nearly 38 million members and all older Americans nationwide, thanks you for the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) proposed rule governing federal interest rate authority.

The FDIC's guidance notes that the agency "recognizes that the use of third parties can assist management in attaining strategic objectives."[1] There are certainly many reasons for banks to enter into partnerships with third parties in order to provide new products and services. However, AARP has concerns the proposed rule is overly broad with respect to bank-nonbank partnerships and, as a result, lacks sufficient guardrails to prevent consumer harm to older adults. More specifically, the proposed rule is likely to permit the growth of high-cost lending practices – such as payday loans, auto title loans, and installment loans – in states where they are presently restricted. As a result, the proposed rule would undermine efforts by states – and in some cases by their individual citizens at the ballot box – to address harmful and deeply unpopular lending practices within their communities.

Older adults face increasing financial challenges and often have less capacity to recover from financial shortfalls. At the median spending level, nearly 80 percent of dollars spent by those age 65 and older simply fill their basic needs of housing, healthcare, food, clothing, and

[1] Federal Deposit Insurance Corporation, "Guidance for Managing Third-Party Risk," FIL-44-2008, June 6, 2008, available at https://www.fdic.gov/news/news/financial/2008/fil08044a.html

transportation.[2] Meanwhile, fixed, regular payments such as Social Security and pension income make older adults attractive targets for lenders. In Florida, for instance, the fastest-growing demographic of payday loan borrowers between 2005 and 2015 was age 65 and older. In California, payday loan usage tripled among those age 62 and older from 2015 to 2016 alone.[3] In addition to payday loans, the high-cost lending market has diversified to include installment loans that contain similar pitfalls for borrowers, albeit with a longer repayment period.[4] AARP is concerned that older borrowers who fall into a cycle of debt from high-cost lending have even fewer options to return to a solid financial footing, such as returning to work or taking on more hours.

The proposed rule, which codifies an extension of banks' interest rate authority to nonbanks, opens the door more widely for high-interest nonbank lenders to operate in ways that contravene state protections for borrowers. For example, the vast majority of states place a rate cap on a $2,000 installment loan, with 33 states and the District of Columbia limiting the annual percentage rate to an already exorbitant 36 percent or less, inclusive of all fees.[5] However, nonbank lenders have already expressed interest in using out-of-state bank partnerships to evade rate caps, as we have seen in efforts to evade California's new interest rate cap on installment loans between $2,500 and $10,000 that went into effect this year.[6]

If the proposed rule officially sanctions these types of partnerships and extends banks' interest rate authority to nonbanks, it will additionally subvert the will of voters in states where rate caps limiting high-cost lending resulted from broadly supported ballot initiatives. This includes 72 percent of Montana voters selecting to cap rates on payday loans in 2010, more than 76 percent of South Dakota voters approving an interest rate cap in 2016, and more than 75 percent of Colorado voters approving a rate cap in 2018.[7] Even when voters needed to successfully navigate competing ballot provisions, they overwhelmingly chose to restrict high-cost lending practices.

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2 Steven A. Sass, "Will the Financial Fragility of Retirees Increase?" Center for Retirement Research at Boston College, February 2018, available at https://crr.bc.edu/briefs/will-the-financial-fragility-of-retirees-increase/.

3 Alessandra Malito, "Lax payday loan regulations could hit older Americans especially hard," *MarketWatch*, February 9, 2019, available at https://www.marketwatch.com/story/lax-payday-loan-regulations-could-hit-older-americans-especially-hard-2019-02-08.

4 Diane Standaert and Peter Smith, "Payday and Car Title Lenders' Migration to Unsafe Installment Loans," Center for Responsible Lending, October 2015, available at https://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/crl_brief_cartitle_lenders_migrate_to_installmentloans.pdf.

5 Carolyn Carter, Lauren Saunders, and Margot Saunders, "Predatory Installment Lending in 2017: States Battle to Restrain High-Cost Loans," National Consumer Law Center, August 2017, available at https://www.nclc.org/images/pdf/pr-reports/installment-loans/report-installment-loans.pdf.

6 Kevin Wack, "High-cost lenders already seeking ways around crackdown in California," *American Banker*, October 15, 2019, available at https://www.americanbanker.com/news/high-cost-lenders-already-seeking-ways-around-crackdown-in-california.

7 Erin Madison, "Debate over I-164 rages as high-rate lenders prepare to close," *Great Falls Tribune*, November 7, 2010; Dana Ferguson, "Payday lenders flee South Dakota after rate cap," *Argus Leader*, January 6, 2017, available at https://www.argusleader.com/story/news/politics/2017/01/06/payday-lenders-flee-sd-after-rate-cap/96103624/; Joe Robino, "Colorado Proposition 111: Payday loan interest limit wins big," *The Denver Post*, November 6, 2018, available at https://www.denverpost.com/2018/11/06/colorado-proposition-111-payday-wins/.

The proposed rule is also inconsistent with prior actions of the FDIC to limit risky bank-nonbank relationships. With regard to payday lending, the FDIC's 2005 guidance explicitly states the following: "The combination of the borrower's limited financial capacity, the unsecured nature of the credit, and the limited underwriting analysis of the borrower's ability to repay pose substantial credit risk for insured depository institutions… institutions face increased reputation risks when they enter into certain arrangements with payday lenders, including arrangements to originate loans on terms that could not be offered directly by the payday lender."[8] Many of these same characteristics remain true with regard to high-cost installment loans prevalent today. The FDIC clearly recognizes the potential risks involved in these partnerships—as noted in its statement that "it will view unfavorably entities that partner with a State bank with the sole goal of evading a lower interest rate."[9] And yet the proposed rule fails to make this statement actionable in any way. Moreover, the statement's focus on a "sole goal" of evasion does not adequately anticipate that a third party could identify multiple rationales for ostensibly entering into such a partnership to the detriment of consumers. We urge the FDIC to reject a rule that fails to take these well-known and historic risks into account with regard to high-cost lending.

AARP submits that the FDIC should reconsider its proposed rule in light of the potential for consumer harm to older adults and reduced confidence in the oversight of abusive practices. Millions of Americans strongly oppose high-cost lending and the cycle of debt it can foster. They expect their federal and state governments to work together to provide robust oversight of lending practices to protect vulnerable consumers.

Once again, AARP appreciates the opportunity to address our concerns with the FDIC's proposed rule regarding Federal Interest Rate Authority. If you have any questions, please feel free to contact Tom Nicholls of our Government Affairs staff at 202-434-3765 or by email at TNicholls@aarp.org.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

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[8] Federal Deposit Insurance Corporation, "Guidelines for Payday Lending (Revised November 2015)," FIL-52-2015, November 16, 2015, available at https://www.fdic.gov/news/news/financial/2005/fil1405a.html.
[9] 84 FR 66846.