February 4, 2020

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

Delivered electronically **to** **comments@fdic.gov**

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

Dear Chairman McWilliams,

Arizona consumer, community and public interest organizations signed below write to strongly oppose the FDIC's "federal interest rate authority" proposal.

Arizona has strong interest rate caps intended to protect our residents from predatory loans. Arizona's Consumer Lender law has a tiered rate cap for loans up to $10,000, with annual rates limited to 36 percent for loans up to $3,000 and 24 percent for loans over $3,000 up to $10,000. For loans made in the Attorney General's Regulatory Sandbox Program, the Consumer Lender law rate cap applies to loans up to $15,000. In addition, lenders can charge a one-time Administrate Fee of 5 percent of the loan up to a total of $150. Combining the interest cap and fee, the maximum rate in Arizona for a $2,000 two-year loan is 41 percent.

Arizona citizens support a fair usury cap for consumer lending. In 2008 voters rejected the payday loan industry's Prop 200 by a 60 to 40% vote margin. Prop 200 would have made triple-digit rate payday loans legal after the Arizona legislature refused to renew the law that expired in 2010. In the years since, the Arizona legislature has refused to reauthorize payday loans or to create new forms of high-cost credit, such as "Flex Loans," at triple-digit rates.

The only high-cost loans still legal in Arizona are car title loans which can cost from 120 to 204 percent APR. Legislation to cap title loan rates at 36% has been filed in the 2020 Legislature. At some point in the future, voters may have the opportunity to enact a ballot proposition to cap title loan rates. The power of Arizona lawmakers and citizens to protect our state from predatory lending is undermined by the FDIC's failure to prevent rent-a-bank lending by banks you supervise and by this proposal to hamstring state officials and consumers from taking action to prevent usury in our state.

Arizona already has one of the most generous usury caps for Consumer Lender loans, ranking 39th among the 50 states for a $2,000 two-year loan as calculated by the National Consumer

Law Center. Yet, our rate caps are currently being evaded through rent-a-bank schemes. Despite Arizona's lower rate caps:

- FDIC-supervised FinWise Bank (chartered in Utah) is currently renting its charter to Opploans to enable loans at 160% APR.
- FDIC-supervised Republic Bank & Trust (chartered in Kentucky) is currently renting its charter to Elevate to enable Elevate's "Elastic" product at rates up to an effective 109% APR.
- FDIC-supervised FinWise Bank (chartered in Utah) is currently renting its charter to Elevate to enable Elevate's "Rise" loan product at 99-149% APR.
- FDIC-supervised Republic Bank & Trust (chartered in Kentucky) is currently renting its charter to Enova to enable Enova's subsidiary "NetCredit" to make loans at up to 99.99% APR.

The FDIC's proposal, particularly coupled with the FDIC's failure to stop its banks from facilitating rent-a-bank usury evasions happening now, threatens to open Arizona's doors to more of these scams. Rent-a-bank schemes harm the people of Arizona by subjecting them to predatory loans that exploit many of our most financially vulnerable residents.

Since the inception of this nation, regulation of interest rate limits has been a state function. Yet the FDIC seeks to change that now, by claiming that state-regulated non-bank lenders that buy loans from banks should be able to charge rates that exceed Arizona law. The FDIC's proposal leaves far too much room for predatory lenders to pursue rent-a-bank schemes while burdening state regulators and private citizens with the impractical task of policing who is the "true lender." This task is a challenge already, but it will become far more challenging in a landscape where the FDIC's proposal has been finalized.

The FDIC lacks the authority to regulate the interest rates charged by state-regulated non-bank lenders. Moreover, the FDIC has demonstrated no need for this policy. Indeed, the residents of Arizona are not being harmed by a shortage of loans that exceed Arizona's usury cap; rather they are better off without high-cost payday loans.

We urge you to withdraw this unjustified and extremely harmful proposal.

Sincerely,

[redacted]

Jay Young
Southwest Fair Housing Council