

# BAKER DONELSON

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January 22, 2019

Robert E. Feldman  
Executive Secretary  
Attn: Comments  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, D.C. 20429  
([comments@fdic.gov](mailto:comments@fdic.gov))

Re: RIN 3064-ZA04

Dear Mr. Feldman:

I am a bank corporate, securities, and regulatory attorney with Baker, Donelson, Bearman, Caldwell & Berkowitz, and represent approximately 100 community-based financial institutions in my practice. I deal with many types issues including dealings with the FDIC on behalf of our clients. My involvement includes assisting banks with their strategic planning as well as responding to examination issues.

I have had a number of instances in my career where banks have been criticized by the FDIC for their small-dollar lending programs. These evaluations generally focus on the quality of these assets from an underwriting and collateral standpoint resulting in write-downs and/or increases to reserves. In most cases, the criticisms lead to a reduction or elimination of the small-dollar lending programs altogether.

I applaud the FDIC, other federal regulators, and especially state regulators such our Tennessee Department of Financial Institutions ("TDIF") which seem to be concerned with the availability of small-dollar loans to American citizens from regulated financial sources. I am sure that you have the data which indicates that most of this lending has left the traditional banking industry and resides in non-bank lenders. These include finance companies, payday lenders, title loan lenders, many online organizations, and other non-bank, non-regulated, or non-licensed entities. I think that we are all especially concerned with the non-regulated entities making these loans which, while subject to state usury and state or federal consumer compliance regulations, stay under the radar screen for consumer compliance enforcement. As an attorney, I know that it is not very profitable for a plaintiff's attorney to accept a case for such a small-dollar proposition.

If you agree with me that these types of loans can and should be made by regulated lenders, especially banking organizations, then I think some of the following ideas need to be considered:

- Apply a different examination review criteria to small-dollar loans. Lending review by auditors and examiners has morphed into a national standard requiring certain collateral, cash flow, and other guarantees of repayment which might not be applicable for this category of loan. For example, many of these borrowers do not have sufficient collateral or credit scores, but their cash flow and historical repayment success will justify a loan, especially when the lender is a small institution which really “knows their customer.” This is the old standard for a “signature loan” in these circumstances. The history of a particular bank’s success or failure in making these types of loans should be a major consideration, while currently, it does not seem to be considered at all in the examination process. Banks need flexibility in the underwriting process.
- Encourage the use of new technologies to assist the lenders in making these types of loans profitable and quickly enough to meet financial needs. Whether it is the “sandbox” approach being tested in Arizona or allowing other types of technology investments or joint ventures, I believe the regulators can assist banks in developing or encouraging technological developments that can assist them in originating the loans, closing the loans, and then monitoring the loans.
- Reduce the scrutiny and application of other regulatory requirements that might inhibit the offering of small-dollar loans. For example, when one of my clients attempted a small-dollar loan car program, the software for which they bought from a third-party vendor, and after only making six loans under this program, the bank was criticized for fair lending compliance based upon a statistical analysis of the six loans and then applying a disparate treatment standard. The bank shut down this program after being fined by the FDIC. What was most ironic is that this was minority bank. Another example where regulations should be relaxed for this purpose is enforcement of the Community Reinvestment Act and potential changes being considered by regulators in that arena. Finally there may some disclosure and other paperwork burdens that could be considered for reduction when making small-dollar loans to assist in making these loans more profitable to the lending institutions.
- Work directly with the industry to determine under what terms the industry is willing to make these types of loans. Then the FDIC can decide whether those terms will be acceptable from an examination standpoint. In Tennessee, there already is an effort for a number of banks to meet to discuss under what terms they would be willing to make small-dollar loans, and the FDIC on a region basis as well as the TDFI has been part of and has encouraged these discussions. Hopefully the results of the discussions can be shared with the FDIC on a national level.
- Any final decisions made at the federal level in Washington need to filter down to the examiners in the field. Many good ideas are discussed at the higher levels of all of

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the regulatory agencies, and I have participated in these discussions for many years as a member of the Tennessee Bankers Association's government relations committee when we visit all of the agencies each year in May. Unfortunately, the encouragement and decisions that are made in Washington many times are not implemented at the examination level as evidenced by many examples discussed at these meetings each year.

I hope that these general observations and some of these specific recommendations can be taken into consideration in developing federal policy to encourage the reinstatement of small-dollar lending in the banking industry. We all know that the need exists, especially in the underserved segment of the community. From my perspective as a banking attorney, I am available to you for any further discussion you would like to have on this topic.

Sincerely,

A large black rectangular redaction box covers the signature area.

Steven J. Eisen

SJE/plb

cc: Commissioner Greg Gonzales ([greg.gonzales@tn.gov](mailto:greg.gonzales@tn.gov))  
Colin Barrett, President, Tennessee Bankers Association ([cbarrett@tnbankers.org](mailto:cbarrett@tnbankers.org))