

January 20, 2020

Via electronic submission to: [comments@fdic.gov](mailto:comments@fdic.gov)

Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, DC 20429

**RE: Notice of Proposed Rulemaking  
Federal Interest Rate Authority  
12 CFR Part 331  
RIN 3064–AF21**

On behalf of the Innovative Lending Platform Association (“ILPA”), we appreciate the opportunity to comment on the Office of the Comptroller of the Currency’s (“OCC”) and the Federal Deposit Insurance Corporation’s (“FDIC”) Notice of Proposed Rulemaking regarding permissible interest on loans that are sold, assigned or otherwise transferred (“NPR”).

### ***Background on ILPA***

ILPA is the leading trade organization representing a diverse group of online lending and service companies supporting small businesses. United by a shared commitment to the health and success of small businesses in America, ILPA is dedicated to advancing best practices and standards that enable responsible innovation and access to capital for small businesses. ILPA, in partnership with the Association for Enterprise Opportunity, launched a model small business pricing disclosure called the SMART Box<sup>®</sup> (Straightforward Metrics Around Rate and Total cost.) The SMART Box<sup>®</sup> is a first-of-its-kind model pricing disclosure and comparison tool focused on empowering small businesses to better assess and compare finance options.

ILPA members have a tangible impact on our nation’s businesses. A recent study published by NDP Analytics, a Washington-based economic research firm, provides some insight into our economic footprint. According to the study, a handful of the leading online small business lending platforms (including ILPA member companies) funded nearly \$10 billion in online loans from 2015 to 2017, generating \$37.7 billion in gross output, and creating 358,911 jobs and \$12.6 billion in wages in U.S. communities. In addition, every \$1 dollar lent to small businesses increased sales by \$2.31 and created \$3.79 in gross economic output for local communities across the U.S.<sup>1</sup> Online small business lenders are filling a critical financing gap for small businesses across industries.

---

<sup>1</sup> Will insert link to Infographic on ILPA website

## ***Proposed Rulemaking Regarding Valid When Made***

ILPA strongly supports the agencies undertaking this joint rule to clarify permissible interest on loans sold, assigned, partially assigned where participation interest is assigned, or otherwise assigned or transferred. As the FDIC and OCC stated in the NPR, federal law has long held that national banks may charge interest at the rate permitted in the state where the bank is located, and those banks have the authority to sell, assign, or otherwise transfer loans at that rate.

Despite this long-standing doctrine, the Second Circuit's 2015 decision in *Madden v. Midland Funding, LLC* brought into question the inviolability of the "valid when made" doctrine. The lack of clarity following the *Madden* decision has prompted additional litigation. For instance, two lawsuits were filed in New York challenging the sale of credit card securitization programs of two banks and the permissible interest rate. Additionally, the Colorado AG sued two companies under the Colorado Uniform Consumer Credit Code (UCCC) for violating the allowable interest rate in Colorado on loans made by chartered banks. Absent action by the regulatory agencies, ILPA is concerned this trend will continue, impacting access to credit for a greater share of small businesses outside of the Second Circuit. If banks cannot sell loans that they legally make, capital markets will break down and liquidity challenges will arise. Such a confused marketplace undermines the powers of banks to make and sell loans and damages the safety and soundness of the banking system itself.

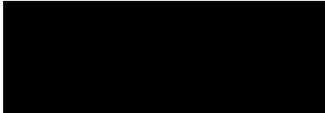
The United States is home to more than 30 million small businesses. These businesses comprise 99 percent of businesses in our national economy and account for nearly half of the private sector workforce. Just like every major corporation, small businesses need to have access to credit to hire more employees, purchase inventory, expand locations, or simply survive in times of hardship. Most small businesses are looking for capital that meets their immediate need and is tailored to the size and scope of their business. Despite the criticality of small businesses to the US economy, such businesses struggle to access financing in amounts below \$250,000, as highlighted in the Federal Reserve's annual Small Business Credit Survey.

The *Madden* decision created further complications and challenges for a small business lending market that has yet to fully recover from the Great Recession. Small, community banks remain the predominant financial institutions serving and lending to small businesses, but these institutions do not have the same levels of accessibility and lending capacity as the nation's largest banks. The ability to sell and assign loans, not only protects financial institutions, but it ensures those institutions have the capacity to continue lending. Limiting the ability of financial institutions to sell or assign loans does nothing to support or promote small business growth. By providing greater clarity around permissible interest on loans sold, assigned, or otherwise transferred, the agencies can provide financial institutions with the certainty they need to continue to serve an essential section of the American economy.

**Conclusion**

ILPA would like to thank the agencies for undertaking this proposed rulemaking to clarify permissible interest on loans sold, assigned, or otherwise transferred. Given the uncertainty resulting from the *Madden* decision and its very real impact on the health of small businesses and their access to credit, ILPA members encourage the agencies to ensure the formal rulemaking process is completed in a timely manner.

Sincerely,



Scott Stewart  
CEO, Innovative Lending Platform Association