

January 22, 2020

The Honorable Jelena McWilliams

Chairman  
Federal Deposit Insurance Corporation  
1776 F Street, NW  
Washington, DC 20006

*Delivered electronically to [comments@fdic.gov](mailto: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,

Montana Organizing Project writes from the state of Montana to strongly oppose the FDIC's "federal interest rate authority" proposal.

Montana has strong interest rate caps intended to protect our residents from predatory loans. In 2010, Montanans voted at an overwhelming majority to cap interest rates on these loans at 36%. When online lenders from outside the state sought to circumvent this law in 2014, by continuing to target Montanans; Montana's former AG and the supreme court decided that here all short term small dollar loans would be included with the provisions of the law, no matter where the business resides. Montanans agree that this industry is predatory and they want to ensure that it is regulated to protect people across the country experience the freedom from the abusive debt-trap associated with these lending products.

However, our rate caps are currently being evaded through rent-a-bank schemes. Despite Montana'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" 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%.

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 Montana's doors to more of these scams. Rent-a-bank schemes harm the people of Montana 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 Montana 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 Montana are not being harmed by a shortage of loans that exceed Montana's rate cap; rather, they are better off without high-cost loans.

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

Thank you for the opportunity to submit these comments.

Yours very truly,

Katie Sutton  
Executive Director  
Montana Organizing Project