



January 31, 2020

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, D.C. 20429

Regarding: Federal Interest Rate Authority; RIN 3064-AF21

Dear Mr. Feldman:

The Community Bankers Association of Illinois (“CBAI”), which proudly represents 300 Illinois community banks, appreciates the opportunity to provide our observations and recommendations to the Federal Deposit Insurance Corporation (“FDIC”) proposed rulemaking regarding federal interest rate authority (“Proposed Rule” or “Proposal”). CBAI acknowledges the statements made in the Summary of the Proposal that “The FDIC is seeking comments on the proposed regulations clarifying the law that governs the interest rate State-chartered banks and insured branches of foreign bank may charge.” In addition, the Proposal would “provide whether the interest on the loan is permissible under section 27 of the Federal Deposit Insurance Act would be determined at the time the loan is made, and interest on the loan permissible under section 27 would not be affected by subsequent events”.

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CBAI agrees with the statement in the Proposal that “A bank’s power to make loans implicitly carries with it the powers assign loans, and thus, a State bank’s authority under section 27 to make loans at particular rates necessarily includes the power to assign the loans at those rates.” However, this important rule has been called into question by a United State Court of Appeals for the Second Circuit (Madden v. Midland Funding, LLC) and thus there is a pressing need to codify in the regulation the permissibility of interest when the loan is made, and is not affected by later events such as the assignment or other transfer of the loan.

CBAI believes that the ability to sell, assign or otherwise transfer a loan is clearly recognized as a crucial risk management tool which enhances the safety and soundness of financial institutions particularly in times of stress. Loan assignments are an important choice to manage liquidity and often may be the best course of action. Banks also rely on assignments in secondary market securitization to manage concentrations of credit and access other funding sources. All these tools are used to effectively manage financial institutions and meet customers’ needs. This management tool would be significantly weakened if the interest on assigned loans to third parties were uncertain for fear of violating state usury caps.

Unfortunately, some financial institutions and service providers seek to use a “rent-a-bank” scheme to unjustifiably avoid state usury laws. CBAI appreciates the FDIC supporting the position “that it will view unfavorably entities that partner with a State bank with the sole goal of evading a lower interest rate established under the law of the entity’s licensing state(s).”CBAI strongly urges the banking regulators, including the FDIC, to be vigilant, closely examine, and not permit such schemes that abuse financial services, to harm consumers and small businesses.

Thank you for your consideration of our observations and recommendations regarding this Proposed Rule. If you have any questions or need additional information, please contact me at 847-909-8341 or by e-mail at [davids@cbai.com](mailto:davids@cbai.com) .

Sincerely,

/s/

David G. Schroeder

Senior Vice President , Federal Governmental Relations