TREASURY DEPARTMENT
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PA 17120

JOSEPH M. TORSELLA
TREASURER

February 4, 2020

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
1776 F Street, NW
Washington, D.C. 20006
Delivered electronically

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

Dear Chairman McWilliams:

We, a bipartisan coalition of state Treasurers, are writing to you about the importance of preserving state law and respecting state prerogatives, protecting the income and assets of American families, and ensuring the safety and soundness of our dual banking system.

Treasurers provide an independent voice for fiscal responsibility and economic opportunity. We promote and administer sound financial policies and programs while also helping everyday American households save for college, retirement, and other important expenses. Treasurers also serve our citizens by promoting financial education, savings and investment, personal finance management, and homeownership. Many of us have legislatively-mandated responsibilities to deliver these types of programs and services.

We are from all regions, backgrounds, and political affiliations. And like any group of committed, passionate public servants, our opinions vary on any number of issues, including the relative merits of any one financial product or the specifics of how a financial practice should be permitted, regulated, or even allowed at all.

But we stand united in our support of the current federal regime of preventing high-cost lenders from circumventing state law. Over 15 years ago, some banks "rented" their charter to nonbank lenders for the purpose of evading state laws, including interest rate limitations and other consumer protections.

It was President George W. Bush's era of financial regulation that saw the end of most federal rent-a-bank arrangements. Starting in 2003 through 2005, the federal regulators shut down "rent-a-bank" schemes with a series of enforcement and regulatory actions. OCC Comptroller John D. Hawke specifically noted that these types of schemes were "an abuse of the national charter," and the powers of the national charter were "not simply a commodity that can be transferred for a fee to nonbank lenders."

Our constituents consistently endorse state interest rates caps. In 2016, South Dakota voters approved a statewide interest rate cap by 76 percent, while rejecting a constitutional amendment to allow unlimited rates by nearly 2-1. In Montana, voters approved a rate cap in 2010 by 75 percent. Arizona and Ohio both approved rate caps in 2008 despite the opposition's dramatic overspending of the rate caps' proponents. By comparison, some rent-a-bank schemes advertised annualized interest rates as high as 780 percent.

We support the FDIC's 2005 guidelines that advise state-chartered banks to avoid partnerships with lenders that keep borrowers in unlimited cycles of debt. High-cost lenders often do just that by relying on their excessive rates to offset the bad losses stemming from careless underwriting.

However, your recent proposal, "Federal Interest Rate Authority," would severely undermine both state law and Bush-era banking guidance. Specifically, under the proposal, federal regulations would provide that interest on permissible loans would "not be affected by subsequent events, such as a change in state law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan" without providing for any explicit exceptions. According to national consumer law experts, when reviewing whether a loan is structured to avoid state law, courts traditionally look at both specific contractual features and the factual context of how the loan is made. However, the FDIC's proposal clearly provides that state-regulated, nonbank entities may charge and collect otherwise illegal rates so long as they first purchase the loans from a bank.

Already, we note that the FDIC is allowing two banks to form partnerships with high-cost lenders---with rates of up to 160 percent APR---that operate online in over half of the country.

For both states and families, debt is a powerful tool if used properly. It can help grow the state's economy, pay for college, or finance a family's first home. But without restraint, debt can lead to economic recessions, foreclosures, and bankruptcy.

Finally, we note that each one of our states is different and we each have different governing philosophies and economic development strategies. This should be welcomed, and should not be short-circuited by unnecessary federal regulatory intervention. As the laboratories of democracy, we often compete, learn from each other, and yes, sometimes fail, but we do this consistent with our values and in the spirit of innovation.

We hope you reconsider your Notice of Proposed Rulemaking and look forward to continue working with you to increase the financial well-being of all U.S. citizens. Thank you.

Sincerely,

JOSEPH M. TORSELLA
Pennsylvania State Treasurer

DUANE DAVIDSON
Washington State Treasurer

ALLISON BALL
Kentucky State Treasurer

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Oregon State Treasurer

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Colorado State Treasurer

cc: Chairman Jerome H. Powell, Federal Reserve Board of Governors
Chairman Jelena McWilliams, Federal Deposit Insurance Corporation
Chairman Rodney E. Hood, National Credit Union Administration