



FACT SHEET | Notice of Proposed Rulemaking on Federal Interest Rate Authority

The Federal Deposit Insurance Corporation published a proposed rule to clarify the law governing the interest rates state banks may charge.

ADDRESSES MARKETPLACE UNCERTAINTY: The proposal would address marketplace uncertainty regarding the enforceability of the interest rate terms of loan agreements following a bank’s assignment of a loan to a non-bank.

In 2015, the United States Court of Appeals for the Second Circuit issued a decision (*Madden v. Midland Funding, LLC*) that called into question such enforceability by holding that 12 U.S.C. §85 – which authorizes national banks to charge interest at the rate permitted by the law of the state in which the bank is located, regardless of other states’ interest rate restrictions – does not apply following assignment of a loan to a non-bank. This decision created legal uncertainty and a lack of uniformity in secondary credit markets.

- Although the decision concerned a loan made by a national bank, the statutory provision governing state banks’ authority with respect to interest rates is patterned after and interpreted in the same manner.
- The proposal would provide that whether interest on a 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 a loan permissible under Section 27 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.

PROMOTES SAFETY AND SOUNDNESS: The proposal would promote safety and soundness by upholding longstanding principles regarding the ability of banks to sell loans.

- Among other things, loan sales enable state banks to increase their liquidity in a crisis, meet unusual deposit withdrawal demands, pay unexpected debts, and make additional loans.
- Although the proposal does not address which entity is the “true lender” when a state bank makes a loan and assigns it to a third party, the proposal states that the FDIC views 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.