January 22, 2019

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

Re: Small-Dollar Lending, Request for Information, RIN 3064–ZA04

Dear Executive Secretary Feldman:

The 88 undersigned community, civil rights, faith, and consumer groups submit these comments in response to the FDIC's Request for Information on Small-Dollar Lending.

Several safeguards are critical to ensure that bank loan programs—particularly those designed for financially distressed consumers—promote financial inclusion rather than exacerbate financial exclusion and distress. To that end, we urge the FDIC to (1) prevent bank partnerships that evade state interest rate limits; (2) require lenders to consider consumers' ability to repay (taking into account both income and expenses) and advise that small dollar installment loans to be priced at 36% or less; and (3) retain the FDIC's critical 2013 guidance addressing payday loans ("deposit advances") made by banks.

(1) Prevent bank partnerships that evade state laws.

Banks should not enter into partnerships with state-regulated lenders in order to facilitate high-rate loans that would otherwise be illegal. Longstanding precedent against rent-a-bank-schemes has served banks and consumers well. In the late 1990s and early 2000s, payday lenders were using banks as a fig leaf to avoid state interest rate caps, but the FDIC, OCC, and Federal Reserve ended most rent-a-bank schemes by 2005. OCC Comptroller John D. Hawke, in 2002-03, called rent-a-bank schemes "an abuse of the national charter" and said that "preemption privileges of national banks derive from the Constitution and are not a commodity that can be transferred for a fee to nonbank lenders." In May 2018, the OCC—which has successfully kept national banks out of rent-a-bank arrangements—refused to change course, reaffirming: "The OCC views unfavorably an entity that partners with a bank with the sole goal of evading a lower interest rate established under the law of the entity's licensing state(s)."

Some FDIC-supervised banks, however, are engaging in rent-a-bank schemes to enable grossly irresponsible high-cost loans. Opploans makes 160% APR loans through FinWise Bank in many states whose laws would not permit it to make the loans directly. Tellingly, Opploans makes the loans directly, without using a bank, in states that permit high-cost loans. Another lender, Elevate, charges 96% APR on its Elastic product, issued through Republic Bank & Trust, including in states with voter-approved rate caps that would prohibit non-bank high-cost loans directly. Elastic's net charge-off rate is 51% of revenues, and Elevate states it has no plans to reduce that rate. This is a high-cost, high-default model that harms consumers, the reputation of the bank facilitating it, and the FDIC itself.

If sanctioned, these schemes pose an existential threat to the greatest protection against predatory small dollar loans: state interest rate limits. It is essential that the Agency put an end to these schemes and prevent new ones from emerging.

(2) Ensure installment loans are based on ability-to-repay considering both income and expenses and that rates do not exceed 36%.

Responsible lending requires assessing the borrower's ability to repay the loan while meeting other expenses. Longstanding regulatory precedent is clear that ability-to-repay means ability-to-repay based on income and obligations/expenses. Income-only underwriting, including a payment-to-income ratio standard that does not account for expenses, is simply not ability-to-repay; it is collateral-based lending, which the banking agencies have all long condemned. There is no place for payment-to-income-based underwriting in responsible banking policy.

We appreciate and share the FDIC's desire to serve underserved consumers, but banks first must do no harm, expanding access only to affordable credit. In the RFI, the agency cites its recent Economic Inclusion report's finding that 13% of consumers have an unmet "need" for small dollar credit. Many of these consumers—who were denied credit; felt discouraged about applying for credit; or used alternative financial services like payday or car title loans—are already overburdened by credit they cannot repay. Unless they are responsibly underwritten and affordably priced, bank loans run a high risk of piling on unaffordable credit, rather than replacing other, higher-cost credit. An ability-to-repay standard based on income and expenses is the only way to determine who does and does not have capacity for more credit.

We also urge that the FDIC retain its longstanding guidance advising banks to limit interest rates to 36%, at most, for small dollar loans. A cap of 36% is sound banking policy, is codified in the Military Lending Act that all lenders must follow, and has been upheld by this Agency in its guidance for over a decade. Most states limit the rates on installment loans; of those that do, the median cap is 37% on a $500 loan; 31% on a $2,000 loan, and 25% on a $10,000 loan. Sanctioning higher-cost credit at the federal level undermines those caps and threatens a regulatory race to the bottom in state legislatures nationwide. Pricing structured as a fee per dollars borrowed, such as US Bank's $12 per $100 cost (which carries a 70% APR) on its "Simple Loan" product, is particularly harmful—confusing to consumers and lending legitimacy to payday loan-like pricing. Finally, a cooling off period of at least 60 days between loans is appropriate to ensure that lenders do not flip borrowers from one unaffordable loan into another.

(3) Retain deposit advance guidance addressing high-cost payday loans.

Bank payday loans, so-called "deposit advances," were a disastrous experiment. FDIC banks never made these loans, and it would be shameful for them to do so now. These products are not an alternative to payday loans; they are payday loans, pure and simple. Borrowers were stuck in a debt trap at the hands of their own banks, averaging nearly 20 such loans a year, at costs averaging 225-300% APR. The loans did not replace higher-cost credit; rather, these borrowers represented only 8% of all eligible account holders but incurred 33% of overdraft items and 40% of debits by non-bank payday lenders. They were also seven times more likely to have their accounts closed. As payday lending has a particularly adverse impact on African Americans and Latinos, bank payday loan products directly undermine broader economic inclusion.

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Given that many financially struggling consumers are already overburdened by unaffordable credit, we urge the FDIC to encourage expansion of credit builder products and secured credit cards, to help consumers build or rebuild credit capacity at the front end, without falling further behind. In addition, given the tremendous burden overdraft fees impose on banks' most distressed customers, we urge the Agency to enforce its guidance addressing abusive overdraft fees; discourage charging these fees on debit card and ATM transactions; and strongly encourage safe accounts without these fees. These initiatives would go a long way toward increasing economic inclusion among our nation's financially vulnerable.

We thank the FDIC for considering our comments.

National groups
Americans for Financial Reform Education Fund
Center for Responsible Lending
Coalition on Human Needs
Consumer Action
Demos
Interfaith Center on Corporate Responsibility
NAACP
National Association for Latino Community Asset Builders

National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Fair Housing Alliance (NFHA)
Public Justice
The Leadership Conference on Civil and Human Rights
U.S. PIRG

State and local groups
Action Housing Inc. (PA)
The Alabama Appleseed Center for Law & Justice (AL)
Alaska Public Interest Research Group (AkPIRG) (AK)
The Alliance (TX)
Americans for Democratic Action Iowa (IA)
Arkansans Against Abusive Payday Lending (AR)
Arkansas Community Organizations (AR)
BakerRipley (TX)
Brazos Valley CDC, Inc. (TX)
Brazos Valley Financial Fitness Center (TX)
Bryan Community Development Department
CAFE Montgomery MD (MD)
California Reinvestment Coalition (CA)
Center for Economic Integrity (AZ)
Center for NYC Neighborhoods (NY)
Chinese Community Center (TX)
CitySquare (TX)
Cleveland Jobs with Justice (OH)
COHHIO (OH)
Colorado Public Interest Research Group (CoPIRG) (CO)
The Community Enrichment Center (TX)
Colorado Cross-Disability Coalition (CO)
Connecticut Legal Services, Inc. (CT)
Convencion Bautista Hispana de Texas (Hispanic Baptist Convention of Texas) (TX)
Delaware Community Reinvestment Action Council, Inc. (DE)
Empire Justice Center (NY)
Fair Housing Council of Orange County (CA)
Florida Alliance for Retired Americans (FL)
Georgia Watch (GA)
Goodwill Industries of Dallas, Inc. (TX)
Heartland Alliance (IL)
H.I.S. BridgeBuilders (TX)
Housing Action Illinois (IL)
Indiana Institute for Working Families (IN)
Interfaith Alliance of Colorado (CO)
Jacksonville Area Legal Aid, Inc. (FL)
Jane Addams Resource Corp (IL)
Jewish Family Service of Dallas (TX)
Kentucky Equal Justice Center (KY)
Legal Aid Foundation of Los Angeles (CA)
Legal Assistance Foundation of Chicago (IL)
Local Initiatives Support Corporation – Houston (TX)
Mansfield Mission Center (TX)
Maryland Consumer Rights Coalition (MD)
Mississippi Center for Justice (MS)
Mobilization for Justice (NY)
Montana Organizing Project (MT)

New Friends New Life (TX)
North Carolina Justice Center (NC)
North Dakota Economic Security and Prosperity Alliance (ND)
THE ONE LESS FOUNDATION (PA and CO)
PathWays PA (PA)
Pennsylvania Council of Churches (PA)
Policy Matters Ohio (OH)
Project IRENE (IL)
Public Good Law Center (CA)
Public Justice Center (MD)
Public Law Center (CA)
RAISE Texas (TX)
Reinvestment Partners (NC)
SC Appleseed Legal Justice Center (SC)
Tennessee Citizen Action (TN)
Texas Appleseed (TX)
To Each His Home Community Redevelopment Corporation (TX)
United Way of Central Texas (TX)
United Way of Greater Houston (TX)
United Way of Metropolitan Dallas (TX)
United Way of Southern Cameron County (TX)
Wealth Watchers, Inc. (FL)
West Virginia Center on Budget and Policy (WV)
Wisconsin Public Interest Research Group (WISPIRG) (WI)
The Women's Resource of Greater Houston (TX)
Woodstock Institute (IL)