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 Center for Economic Integrity (CEI) submits these comments in response to the FDIC's request for information on small dollar lending. CEI is a nonprofit based in Tucson, Arizona. Founded in 2001, CEI builds economically strong communities for all and opposes unfair corporate practices. Our primary consumer protection focus is the southwestern states of Arizona and New Mexico. CEI participates in the Arizonans for Responsible Lending coalition and led the fight against the payday loan industry's Prop 200 ballot initiative in 2008. We are deeply concerned about the debt trap that high-cost small dollar loans create and the harm they cause. While payday lending is no longer legal in Arizona, car title lending at rates up to 204 percent APR is. In 2016, CEI and the Consumer Federation of America published a study of car title lending in Arizona and documented serious failure to protect consumers from asset-based loans.

Arizona has a voter-approved usury law that protects consumers from high-cost payday and installment lending. The Consumer Lending law caps tiered rates for loans up to $10,000 at up to 36 percent annual interest plus a 5 percent loan fee. As a result of this usury cap, traditional payday loans are no longer legal in Arizona, both from physical stores and from out-of-state online lenders. The only exception from the usury law is the carve-out for loans secured by the borrower's vehicle.

We share the FDIC's goal of greater financial inclusion for low-income consumers and communities of color. We also know too well the harm that unaffordable, high-cost loans cause these communities. And we know that state interest rate limits are the most critical protection against predatory small dollar loans.

Thus, any bank product must carry critical safeguards. And FDIC banks must not sell, rent, or lend their charters to facilitate usurious and abusive lending practices by nonbank lenders seeking to evade state consumer protections.

First, the FDIC must not sanction "rent-a-bank" schemes, where non-bank lenders partner with banks to facilitate high-rate loans that would otherwise be illegal. These schemes post an existential threat to state law and promise to cause severe harm to our nation's most financially distressed consumers. We are aware of at least two FDIC supervised state-chartered bank is partnering with non-bank lenders to make high-cost loans in Arizona that far exceed our usury cap.

The Arizona Consumer Lender law applies the up to 36 percent usury cap to "a person that advertises to make or procure, solicits or holds itself out to make or procure, or makes or procures consumer lender loans to consumers in this state" (A.R.S. 6-601.5). In our view, any non-bank entity that solicits consumers for loans in Arizona should be a licensed Consumer Lender regardless whether the loans are originated by the bank and then assigned to the nonbank lender.

Opportunity Financial, located in Chicago, Illinois, partners with FinWise Bank in Utah to make installment loans via the Internet as OppLoans to Arizona consumers at rates far above those permitted for licensed consumer lenders. The fine print on OppLoans' website states that loans made in Arizona and other states with small loan or usury rate caps "are originated by FinWise Bank, a Utah chartered bank, located in Sandy, Utah, member FDIC....All loans funded by FinWise Bank will be serviced by OppLoans." (FinWise Bank holds FDIC Certificate # 35323.) Loans offered in states with no rate caps are made directly by OppLoans under state licenses.

OppLoans offers installment loans to consumers in Arizona of $500 to $4,000 for terms of 9 to 18 months at **160% APR**. The loan examples given on the OppLoans website for Arizona with our calculation of total repayment in parentheses are for loans of:

$2,000 for nine months with nine payments of $372.94 (total repayment $3,356.46)

$3,000 for twelve months with twelve payments of $486.44 (total repayment $5,837.28)

$4,000 for eighteen months with eighteen payments of $563.36 (total repayment $10,140.48)

See Arizona loan examples and rates at https://www.opploans.com/licenses/arizona/ viewed 1/10/2019.

Elevate is a Texas-based company that offers a variety of loan products, including RISE Credit. In Arizona, RISE offers loans of $500 to $5,000 for terms of seven to twenty-six months at APRs ranging from 99 percent to 149 percent. The loan examples given on the RISE Credit website for Arizona with our calculation of total repayment in parentheses are for loans of:

$1,000 for 22 bi-weekly payments of $81 at 148.59% APR (total repayment $1,782)

$2,000 for 26 bi-weekly payments of $150 at 149.36% APR (total repayment $3,900)

$3,000 for 42 bi-weekly payments of $190 at 148.75% APR (total repayment $7,980)

See Arizona loan examples and rates at https://www.risecredit.com/how-online-loans-work/ viewed 1/10/2019.

We would note that FinWise Bank does not offer these triple-digit-rate consumer loans directly to Arizona consumers on its own website. Buried on its Strategic Partnerships page, the bank provides links to the outside websites of payday lenders where consumers can apply for loans. The FinWise list of its "Strategic Partnerships" in 2019 includes American First Finance, ForwardLine, LendingPoint, OppLoans, and RISE. See https://www.finwisebank.com/strategic-partnership-products/ viewed 1/10/2019. Three of these partners lend to Arizona consumers.

LendingPoint holds an Arizona debt collection license (AZDFI #0936385) but charges rates generally under the Consumer Lender usury cap. OppLoans is also licensed as a debt collector (AZDFI #0945745) and charges rates far above the usury cap. RISE, which does not appear to hold any Arizona licenses, offers loans up to $5,000 for up to 26 months and charges up to 149% APR in Arizona. (https://www.risecredit.com/how-online-loans-work/ select Arizona, viewed 1/10/2019).

Beyond stopping FDIC banks from aiding and assisting lenders in evading state usury laws and consumer protections, the FDIC must require that any bank product be both affordable and reasonably priced:

(i) To ensure loans are affordable, the bank must consider the customer's income and expenses before making the loan. Relying on income-only standards like a "payment-to-income" ratio is not ability-to-repay, and it will result in widespread unaffordable lending.

(ii) On pricing, a 36% interest rate limit is already the law of the land for military servicemembers, it has been upheld by the FDIC for over a decade, and it is the state interest rate cap in many states, including Arizona (plus a 5% loan fee). Erosion of this standard ---such as by the OCC-supervised US Bank's "Simple Loan" product at 70% APR ---will harm the consumers the FDIC most aims to help.

Finally, the FDIC must retain its 2013 guidance against unaffordable bank "deposit advance" loans. The evidence overwhelmingly shows that these were debt-trap payday loans that piled onto bank customers' existing unsustainable debt load. FDIC-supervised banks never made these loans, and for the Agency to encourage them now would be reckless and regrettable.

Ultimately, banks must first do no harm, expanding access only to affordable credit. Given that many financially struggling consumers are already overburdened by credit, we urge the FDIC to encourage savings, credit builder products and secured credit cards, and to take all needed steps to root out abusive overdraft fees. These initiatives would go a long way toward increasing economic inclusion among our nation's financially vulnerable.

Thank you for your consideration of our comments.

Sincerely,

Kelly Griffith, Executive Director
Jean Ann Fox

Center for Economic Integrity
Tucson, Arizona