

Congress of the United States
Washington, DC 20515

July 17, 2020

The Honorable Brian Brooks
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, NW
Washington, D.C. 20219

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Dear Acting Comptroller Brooks and Chairman McWilliams,

Thank you for your agencies' recent rulemakings affirming the valid when made doctrine, which holds that if the interest rate on a loan issued by a bank is valid in the state where the loan was originated, the loan continues to be valid if it is sold, assigned, or otherwise transferred to an entity in another state. These rules will provide certainty in numerous lending markets, support much needed liquidity, instill confidence in bank-fintech partnerships, and allow more Americans to access financial products and services. This will ultimately benefit consumers, small businesses, and other borrowers who rely on access to credit to cover various expenses, start businesses, and engage in trade and commerce.

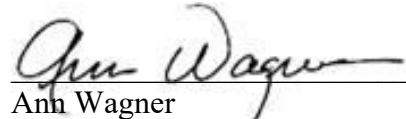
We write regarding a separate but related issue, the "true lender" doctrine. As you know, there have been a number of lawsuits filed against non-bank fintech companies which partner with banks to originate loans to consumers, small businesses, and other borrowers. Plaintiffs allege that the fintech company is not the "true lender" or is engaging in a "rent-a-charter" scheme, and therefore, the interest rate cap of the borrower's home state, rather than that of the overseeing sponsor bank, should apply.

The uncertainty surrounding this issue stemming from the pending litigation casts doubt on loans made under the bank-fintech partnership model and could reduce the availability of credit in affected areas, as was the case in states impacted by the *Madden* decision which deviated from valid when made. As you well know, third-party loan originations are subject to the same supervisory scrutiny as a bank-originated loan when there is a bank-fintech relationship. Given that these cases claim a lack of third-party supervision by the banks in question, we believe the OCC and FDIC have the obligation and the necessary statutory authority to promulgate rules to clarify which entity is the "true lender" under the National Bank Act and the Federal Deposit Insurance Act, respectively. Clarity on this issue would be timely now that the valid when made question has been settled and would foster a robust, competitive, nationwide lending marketplace. The need for consumers and small businesses to have access to these lines of credit is only exacerbated by the COVID-19 pandemic and the associated economic slowdown.

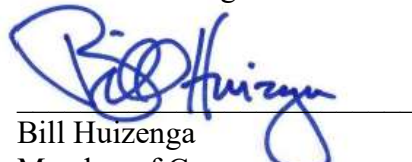
We appreciate your attention to this matter and look forward to working with you to provide clarity on the "true lender" issue to benefit American consumers and businesses.

Sincerely,


Barry Loudermilk
Member of Congress

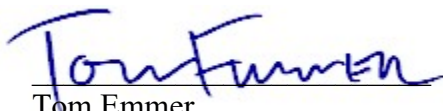

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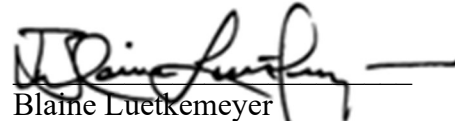

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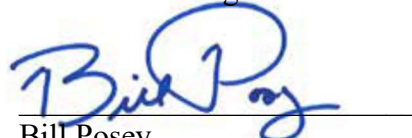

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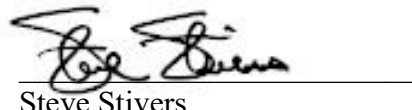

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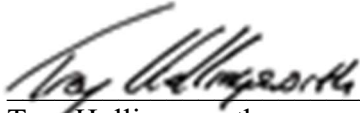

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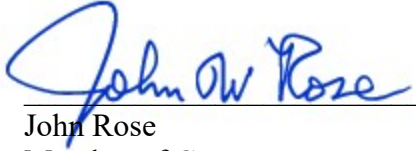

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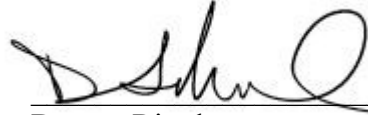
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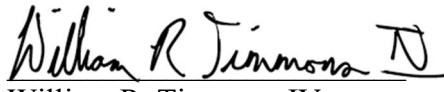
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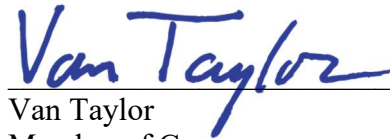
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